ARTICLE

SECTION 25 COMPANIES

1. MEANING UNDER SECTION 25 OF THE COMPANIES ACT, 1956

Under Indian Law, 3 Legal forms exist for Non – Profit Organizations:

1. Trusts

- 2. Societies
- 3. Section 25 Companies

Due to better Laws, recognition & administration, Section 25 Companies have the most reliable strongest organizational Structure of NGOs in India.

An association having objects to promote commerce, art, science, religion, charity or any other useful purpose and not having any profit motive can be registered as Non Profit Company under Section 25 of the Companies Act,1956. This section gives central government, the power to grant the license directing that such an association may be registered as a company with limited liability, without the addition of the words 'Limited' or 'Private Limited' to its name.

Conditions for grant of License under Section 25

Thus there are three criteria for determining whether a particular company is Section 25 Company or not:

- a) Its objects should be only to promote commerce, art, science, religion, charity or any other useful object.
- b) Its should intend to apply its profits or other incomes only in promoting its objects; and
- c) Central Government through the office of the Registrar of Companies should have granted a license to such a company recognizing them as such.

The application for grant of license is to be made to the Registrar of Companies of the state where the proposed company is to be registered.

Main Instrument – For a Section 25 Company, the main instrument i.e. Bye laws are Memorandum and Articles of Association.

2. APPLICATION FOR REGISTRATION

<u>E – FORM 1 A– NAME APPROVAL</u>

Obtain Name Availability Letter from the Registrar of Companies after making an application in E-Form 1A with a prescribed fee, presently, INR 1,000/-. Six names in preferential order may be proposed in single application.

> <u>APPLICATION TO REGISTRAR OF COMPANIES</u>

Once the name is confirmed, an application should be made in writing to the Registrar of Companies for granting of license. The application should be accompanied by the following documents:

- Draft of the MOA and AOA of the proposed company.
- Name, Address and Occupation of the promoters & members of Board of Directors with the name of Companies in which they holding responsible position.
- A statement showing details of assets and liabilities of the association as on the date of application.
- Statement showing estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure.
- A statement giving a brief description of the work proposed to be carried out after incorporation.
- Statement specifying the grounds on which the application is made.
- A declaration by a Company Secretary or advocate or a chartered accountant on Non-Judicial Stamp Paper of the appropriate value.
- Declaration signed by all the promoters on Non Judicial Stamp Paper of the appropriate value.
- Declaration on Non-Judicial Stamp paper of appropriate value by a Chartered Accountant/Company Secretary/Advocate of Supreme Court or High Court that Memorandum & Articles of Association have been drawn up in accordance with the provisions of the act.

Very Recently, MCA has done away with the requirement of a notice which was required to be published in one English newspaper and vernacular newspaper of the local area where the proposed company is to be established within one week of making an application to the Registrar of companies.

<u>GRANT OF APPROVAL</u>

Registrar of Companies shall scrutinize the documents and if the Registrar of Companies is satisfied that the application made is complete in all respects and in the best interest of the country, the Registrar of Companies may grant the license within 30 days from the date of filing of application.

3. INCOME TAX PROVISIONS

Income of sec25company is treated in the same manner as treatment of income of a society or a public charitable trust.

Such Companies also can get itself registered under section 80G of the Income Tax Act, 1956 and the donor making the donation to such company will get a deduction of 50% of the sum donated from its income. The Company has to apply in Form10G to the Commissioner of Income Tax for such Registration.

Section 12(A) of the Income Tax Act 1956 provides for mandatory audit of such companies provided the total income exceeds the maximum amount which is not chargeable to Income

Tax (without giving effects to the provisions of Sec11). The audit report is to be submitted in Form. 10B and must be duly signed by the Chartered Accountant holding certificate of practice.

4. ADVANTAGES/ EXEMPTIONS OF SECTION 25 COMPANY

- Dispense with the words 'Limited' or 'Private Limited' Section 25 Companies are allowed to dispense with the use of the words 'limited' or 'Private limited' from their names. This helps the company to enjoy its limited liability.
- Partnership firm A partnership firm is allowed to be a member of the Section 25 Company.
- Minimum Paid up Share Capital The Companies Amendment Act, 2000 introduced the concept of minimum paid-up capital. Thus all the companies i.e. existing companies as well as the companies registered after the commencement of the Companies Amendment Act, 2000 were obligated to increase their paid-up capital to the required minimum Rs. 1 lac for private limited companies & Rs. 5 lacs for public limited companies. The companies registered under Section 25 of the Act either before or after the commencement of Companies Amendment Act, 2000, have, however, been exempted from the requirement of minimum paid-up capital. This is a privilege exclusively for companies registered under section 25 of the Act. No Separate minimum share capital is prescribed for the section 25 companies. However, depending on the portfolio or Organizational Structure like Private or Public Company, Section 25 companies require having INR 1 lac or 5 Lacs as authorised Share capital respectively.
- Publication of Name Section 25 Company is not required to mention its name & address outside its office as required in case of all other companies u/s 147.
- Time and Place of AGM Section 25 Companies are allowed to free to determine the date, place and time of its AGM through its BOD.
- ✤ Notice of AGM Section 25 Company is allowed to hold an annual general meeting after giving a notice of 14 days instead of 21 days.
- Maintenance of Books of Accounts Section 25 Company is required to maintain the Books of Accounts of only 4 years instead of 8 years
- Increase in Number of Directors Section 25 Company are free to increase its number of directors without seeking approval of the central government u/s 259.
- Board Meetings Section 25 Companies are required to hold Board Meeting only once in six months but should have held four board Meetings in a year.
- No Stamp Duty- Section 25 companies are not required to pay Stamp duty on registration of Companies as well as on increase of capital. In other words, Section 25 companies are exempted from stamp duty payment.
- Quorum for Board Meetings $1/4^{th}$ or 8 whichever is less with a minimum of 2.
- Exemption from Companies Auditor Report Order 2003 Section 25 Companies are exempt from the applicability of Companies Auditor Report Order 2003.
- Foreign Funds: Section 25 Companies are recognized under Foreign Contribution Regulation Act for receiving foreign contribution and funds for carrying on charitable and religious activities. Since these companies are subject to regulatory control, therefore they are preferred in comparision to other form of organizations

- Liability: A Company exists as a separate legal entity from your personal life. Both company and person who own it are separate entities and both functions separately. Liability for repayment of debts and lawsuits incurred by the Company, lies on it and not the owner. Any business with potential for lawsuits should consider incorporation. Incorporating will offer an added layer of protection
- Perpetual Succession: An incorporated company has perpetual succession. Notwithstanding any changes in the members of the Company, the Company will be a same entity with the same privileges, immunities, estates and possessions. The Company shall continue ton exist till its wound up in accordance with the provisions of the relevant law.
- Easy Transferable Ownership: The shares and other interest of any member in the Company shall be a movable property and can be transferable in the manner provided by the Articles, which is otherwise not easily possible in other business forms. Therefore, it is easier to become or leave the membership of the Company or otherwise it is easier to transfer the ownership.
- Separate Property: A Company as legal entity is capable of owning its funds and other properties. The Company is the real person in which all the property is vested and by which it is controlled, managed and disposed off. The property of Company is not the property of its shareholders.
- ✤ Taxation: Another main benefit to incorporating is the taxation of a Company. Companies are often taxed at a lower rate and are provided with better taxable benefits as compared to other forms of business organization.
- Raising Money: A Company can sell shares of the Company to the public or can accept deposits from public and can therefore raise money easier than other business structure types. The modes of financing business carried on by company are numerous.
- Recognized Under Tax Laws: Section 25 Companies are recognized under Income Tax Laws for exemption from payment of tax on income generated from rendering services for charitable and religious purposes.
- Capacity to sue: As a juristic legal person, a Company can sue in its name and be sued by others. The managing director and other directors are not liable to be sued for dues against the Company.
- Better Governed: Companies are governed by Companies Act, 1956 and have to follow various regulatory procedures during the course of its governance, moreover they have to comply with stringent disclosure norms which let to better governed organizations and creation of value for owners.

5. OBLIGATIONS OF SECTION 25 COMPANIES

- ✓ Section 25 Company has to ensure that its profits and other incomes are utilized for the sole purpose of promoting its objects,
- ✓ Ensure that its profits are not being distributed for the payment of the Dividend to its members.
- ✓ Memorandum of Association cannot be altered without seeking approval of the Central Government.
- ✓ If the Central Government has given the license subject to some conditions, then it must be ensure that the Section 25 Company complies with those conditions.

- ✓ If Section 25 Company is carrying out the business which is outside the scope of Memorandum of Association, then proper alteration should be made in the Memorandum & Articles of Association.
- ✓ Section 25 Company has to ensure that its income is taxable according to the applicable rates similar to those applying to other companies.

6. <u>BENEFITS OF SECTION 25 COMPANY</u>

- Lesser Compliance as compare to Private or Public Limited Company.
- Easy to Regulate and operate.
- Better Transparency than trust or society.
- Corporate status is the better mode to represent than trust or society.

7. <u>REVOCATION OF LICENSE</u>

If the Central Government feels that the company is contravening the conditions subject to which the license has been granted, then the Central Government has the power to revoke the license.

But Before revoking the License, the Central government shall give a notice in writing to the company and give an opportunity of being heard in opposition to the revocation. Upon revocation. the company shall be cease to enjoy the privileges and exemptions granted under section 25 of The Companies Act,1956 and enter the word 'limited' or 'Private Limited' at the end of the name of the company.

8. WINDING UP OF THE COMPANY

Section 25 Company can be wound up if the objects for which it had been established are fully achieved. The Surplus assets, if any may be given to a similar charitable concern.

Hence, having noticed various benefits and drawbacks of section 25 companies, its clear that such companies are a well regulated form of non-profit organizations and the prescribed incorporation and dissolution procedures and other provisions helps the government in keeping a check on the working of such companies.

9. IMPORTANT POINTS

- If any documents required for registration under section 25 of the Companies Act 1956 are not in English or in Hindi, a translation of that document either in English or in Hindi certified to be correct by any promoter or proposed director, or in the case of an association which is already in existence, by any member of its executive or governing body, shall be furnished to the Regional Director together with the document.
- Indian Companies can carry out the activities outside India. The Companies Act 1956 do not prohibit activities outside India. However in case of Sec25 companies, conditions u/s 11(1) © need to be satisfied.
- To employ foreign staff with due consideration of FCRA provisions and also obtain a No Objection Certificate.

Recently, only in last week of November, 2011, Cabinet of India Government has approved Companies Bill 2011 & recommended the same to parliament for approval.