

Companies with Charitable Objects (Structuring, Annual Compliances, Event- Based Compliances)

Gaurav Pingle,
Practising Company Secretary
(E): gp@gauravpingle.com
(W): www.csgauravpingle.com

2

Activities which may be included by companies in their CSR Policies

Schedule VII of Cos. Act, 2013

Activities which may be included by companies in their CSR Policies

3

- i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;

... Activities which may be included by companies in their CSR Policies

4

- v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- vi. Measures for the benefit of armed forces veterans, war widows and their dependents;
- vii. Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- viii. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- ix. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- x. Rural development projects;
- xi. Slum area development.

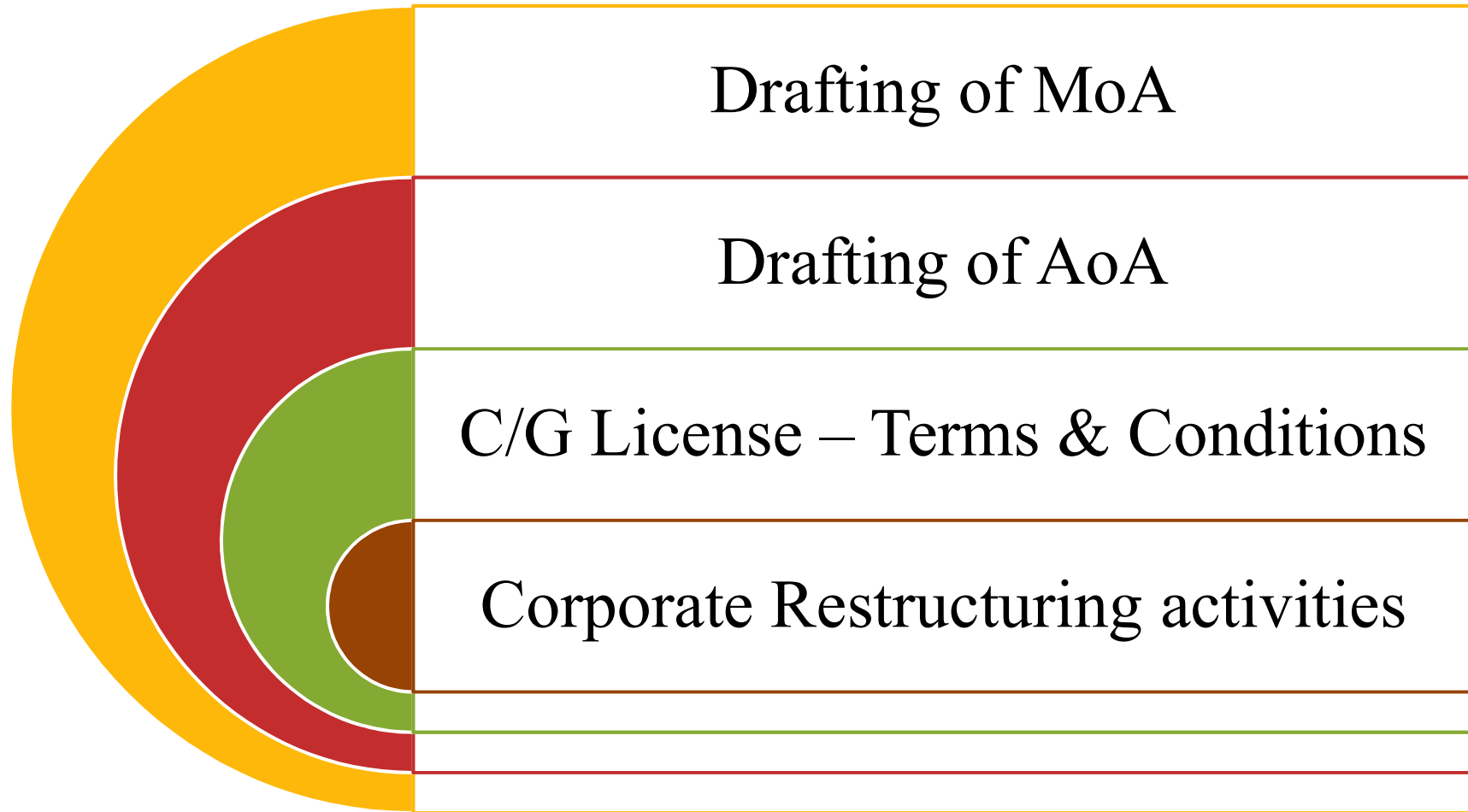
Companies with Charitable Objects

5

- **Section 8 Co. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object,**
- **Section 8 Co. intends to apply its profits, if any, or other income in promoting its objects.**
- **Section 8 Co. intends to prohibit the payment of any dividend to its members.**

Relevance & Importance of understanding Sec. 8 of the Act

6



Some important provisions of Sec. 8 of Act

7

- C/G may, by licence issued, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company u/s 8 of the Act without the addition to its name of the word “*Limited*”, or as the case may be, the words “*Private Limited*”.
- For the companies u/s 8 of the Act, name shall include words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust & the like etc.

Some important provisions of Sec. 8 of Act

8

- ❑ Sec. 8 Co. enjoys all the privileges and be subject to all the obligations of limited companies.
- ❑ A firm may be a member of the company registered u/s 8 of the Act
- ❑ Co. registered u/s 8 shall not alter the provisions of its MoA or AoA except with the previous approval of C/G [*powers delegated to ROC*].

Some important provisions of Sec. 8 of Act

9

- Co. registered u/s 8 may convert itself into company of any other kind only after complying with prescribed conditions.
- C/G may, by order, revoke the licence granted to Sec. 8 Co. if Co. contravenes any of the requirements of Sec. 8 or any of the conditions subject to which a licence is issued or the affairs of Co. are conducted fraudulently or in a manner violative of the objects of the Co. or prejudicial to public interest.

** Reasonable opportunity of being heard.*

Some important provisions of Sec. 8 of Act

10

- If on the winding up or dissolution of a company registered u/s 8 of the Act, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered u/s 8 and having similar objects, subject to such conditions as NCLT may impose, or may be sold and proceeds thereof credited to IBC formed u/s 224 of IBC Code, 2016.
- Sec. 8 Co. shall amalgamate only with another Sec. 8 Co. having similar objects.

Deciding nature of Co. with Charitable Objects

11

- **Company Limited by Shares**
 - SCHEDULE I – TABLE A – MoA of Co. Limited by Shares
 - SCHEDULE I – TABLE F – AoA of Co. Limited by Shares

- **Company Limited by Guarantee & not having Share Capital**
 - SCHEDULE I – TABLE B – MoA of a Co. Limited by Guarantee and not having Share Capital
 - SCHEDULE I – TABLE H – AoA of Co. Limited by guarantee and not having Share Capital

Deciding nature of Co. with Charitable Objects

12

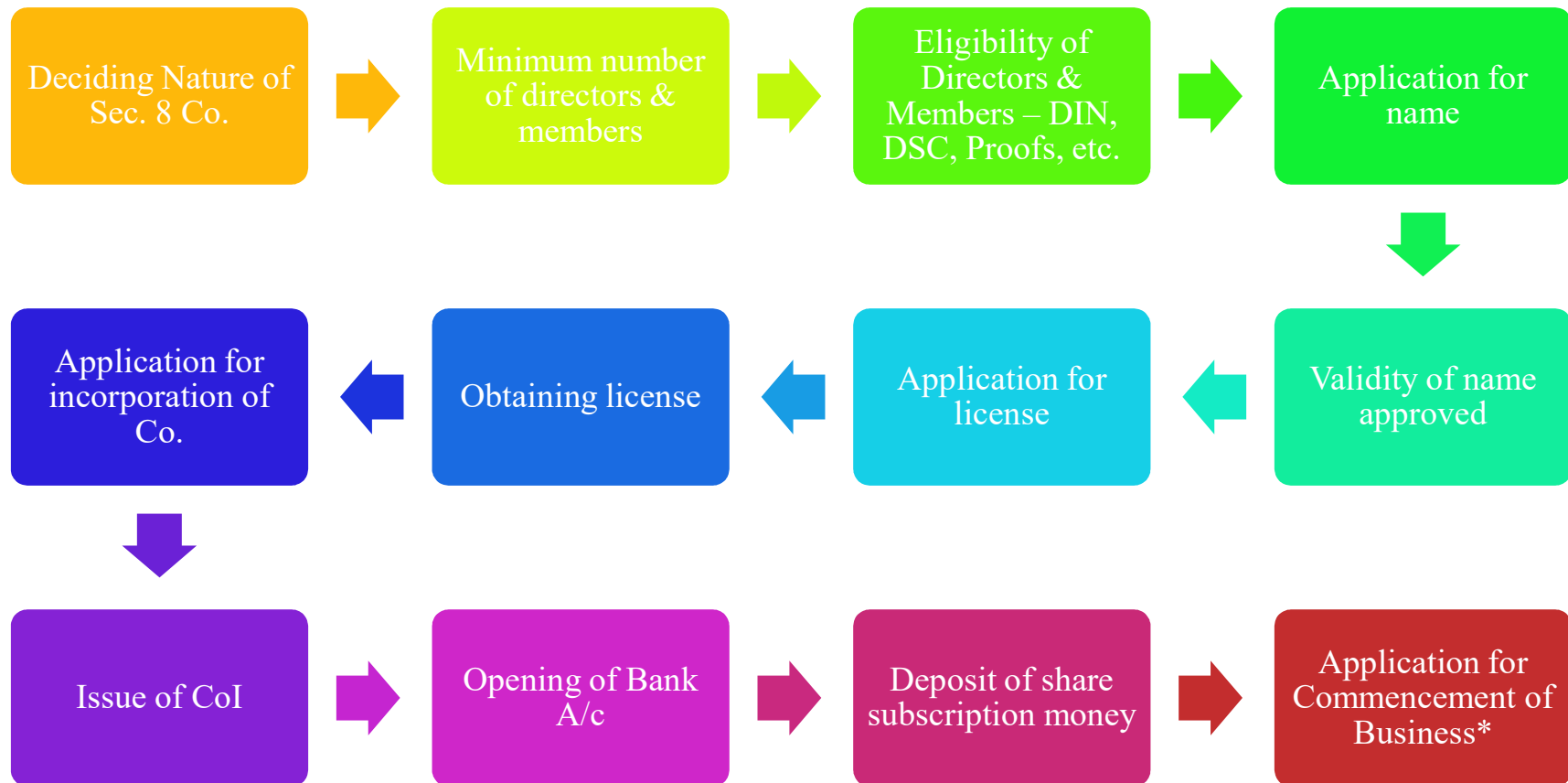
- **Company Limited by Guarantee & having Share Capital**
 - SCHEDULE I – TABLE C – MoA of a Company Limited by Guarantee and having Share Capital
 - SCHEDULE I – TABLE F – AoA

- **Unlimited Company & not having share capital**
 - SCHEDULE I – TABLE D – MoA of an unlimited Company and not having share capital
 - SCHEDULE I – TABLE J – AoA of an Unlimited Company and not having Share Capital.

- **Unlimited Company & having Share Capital**
 - SCHEDULE I – TABLE E – MoA of an Unlimited Company and having Share Capital
 - SCHEDULE I – TABLE I – AoA of an Unlimited Company and having a Share Capital

Incorporation Process

13



What are prohibited activities / corporate actions for Section 8 Cos.

14

ESOP

Capitalisation of profit

Dividend

Premium

Preference Shares

Classification of shares

Differential Voting Rights

Distribution of profit by way of issue of bonus shares

Discount issue

Buy Back

Capital Reduction

15

License of Sec. 8 Co. issued by CG

Discussion with Practical example

Conversion & Re-conversion of Cos.

16

- Conditions for conversion of a Co. registered u/s 8 into a company of any other kind,
- Other conditions to be complied with by Cos. registered u/s 8 seeking conversion into any other kind
- Conversion of a company limited by guarantee into a company limited by shares

[Companies (Incorporation) Rules, 2014]

Compliances for Sec. 8 Co.

17

- ❑ Registered Office – eForm ACTIVE compliance
- ❑ Alteration of MoA & AoA – C/G Approval
- ❑ Can Sec. 8 Co. be a Holding Co.?
- ❑ Can Sec. 8 Co. be a Subsidiary Co.?
- ❑ Can Sec. 8 Co. be an Associate Co.?
- ❑ Issue of Share Certificate,
- ❑ Transfer & Transmission related compliance,
- ❑ Can Sec. 8 Co. borrow money?
- ❑ Can Sec. 8 Co. create / modify / satisfy Charges?

Compliances for Sec. 8 Co.

18

- ❑ Maintenance of Statutory Registers,
- ❑ SBO Compliance – whether applicable?
- ❑ Place of keeping Registers & Returns
- ❑ AGM – any exemption?
- ❑ EGM – any exemption?
- ❑ Type of Voting in general meetings
- ❑ Filing of Resolution & agreements with ROC [MGT – 14]
- ❑ Maintenance of Minutes of Meeting – any exemptions?

Compliances for Sec. 8 Co.

19

- ❑ Maintenance of Books of Accounts by the Co.,
- ❑ Signing of Financial Statements,
- ❑ Board Report,
- ❑ Auditors Report,
- ❑ Whether CSR applicable to Sec. 8 Co.?
- ❑ Annual Filing – AOC 4 & MGT 7 – with ROC
- ❑ Appointment of Auditors,
- ❑ Powers, Functions & duties of Auditors,
- ❑ Auditors to attend AGM,

Compliances for Sec. 8 Co.

20

- ❑ Board of Directors – minimum & maximum?
- ❑ Independent Directors – whether to be appointed?
- ❑ Additional Directors appointment
- ❑ Alternate Directors appointment
- ❑ Resignation of directors – any different procedure?
- ❑ Whether Audit Committee formation is mandatory?
- ❑ Whether NRC formation is mandatory?
- ❑ Whether CSR Committee formation is mandatory?

Compliances for Sec. 8 Co.

21

- ❑ Disqualification of directors – whether applicable?
- ❑ Vacation of director's office – whether applicable?
- ❑ Number of directorships?
- ❑ Removal of Directors – procedure – any change?
- ❑ Meetings of board of directors – any exemptions?
- ❑ Can BoD of Sec. 8 Co. pass a Circular resolution?
- ❑ Borrowing restrictions – Sec. 180 & limits?
- ❑ Lending restrictions – Sec. 185 & limits?
- ❑ Investment restrictions – Sec. 186 & limits?

Q&A Session

Thank you professional colleagues for your active participation!

**GAURAV PINGLE,
PRACTISING COMPANY SECRETARY**

+91 9975565713

gp@csgauravpingle.com