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COMPANIES INCORPORATED
OUTSIDE INDIA (FOREIGN COMPANY)

Section Summary

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Definition of Foreign Company

Any Co or Body Corporate (BC) incorporated outside India which-

- a). **Has a place of business in India** whether by itself or through an agent, physically or through electronic mode &
 - b) **Conducts any business activity in India** in any other manner
- Branch Offices** = reflection of the Parent Co's office



Sec 379 – Application of Act to foreign companies

1. Section 380 to 386 & Section 392 and 393 = applicable to foreign companies
2. If > 50% of PUSC of company is held (singly or in aggregate) by
 - 1 or more Indian citizens
 - 1 or more Companies / BCs incorporated in India
 - 1 or more Indian citizens and 1 or more BCs incorporated in India
3. Such companies shall comply with provisions of CA, 2013 – as if such companies are incorporated in India



Sec 380 – Documents to be delivered to ROC by foreign companies

1. Every foreign company shall deliver the following documents to ROC for registration –
 - Certified copy of the charter, statutes or MOA and AOA, of the company or other instrument defining the constitution of the company. If the instrument is not in English - a certified translation thereof in the English language
 - Full address of Registered Office or Principal Office

- Full address of Principal Place of business in India
 - Name & Address of 1 or more persons resident in India authorized to accept on behalf of Co service of process & any notices
 - Particulars of opening and closing of a place of business in India on earlier occasion(s)
 - List of Directors & Secretary of Co
 - Declaration that none of directors have ever been convicted or debarred from formation of companies & management in India or abroad
2. Time limit - **< 30 days** of establishment of place of business in India by Foreign Company (Form FC-1)
 3. Alterations in documents submitted – Intimate ROC < 30 days of such change in Form FC-2
 4. Docs to be delivered to ROC having jurisdiction over New Delhi + Prescribed fees
 5. If any Foreign Co – ceases to have a place of business in India – give notice to ROC. From that day notice – any obligation of Co to deliver any doc to ROC – ceases provided it has no other place of business in India



Sec 381 – Accounts of the foreign companies

- Every foreign company – **prepare and file** with ROC – **P&L and B/S**
- If **not in English** – a **certified translation** in English to be annexed
- **Time limit for filing with ROC** – every calendar year
- **List of places of business established in India** as at the date of Balance Sheet – to be filed with ROC

Preparation of Financial Statement

- To be prepared in Form **Schedule III**
- All necessary documents required for prep of FS to be annexed with FS
- All documents of CFS of parent foreign company – as submitted by the company to the prescribed authority (outside India – in the country of incorporation)
- Along with FS, Company to file –
 - Statement of **RPT**
 - Statement of **repatriation of profits**
 - Statement of **transfer of funds** (including dividends)
- **Time limit for filing** – 6 months from end of FY + ROC may extend it by 3m (Period not exceeding 3 months)
- **Audit** – Accounts of Indian business operations –to be audited by a practicing CA / Firm / LLP



Sec 382 – Display of names of foreign company

1. Duty of FC to exhibit its name etc outside place of business in India 1. NAME | 2. COUNTRY OF INCORPORATION | 3. FACT THAT THE LIABILITY OF MEMBERS IF LIMITED
To be written in
 - Letters easily legible in English character
 - Legible character of one of the local languages
2. Every foreign company shall exhibit in legible English character 1. NAME | 2. COUNTRY OF INCORPORATION | 3. FACT THAT THE LIABILITY OF MEMBERS IF LIMITED In all business letters / bill heads / letter papers / notices / other official publications of the company



Sec 383 – Service of documents on foreign company

Any document required to be served on a foreign company shall be deemed to be sufficiently served if –

1. It is addressed to any person whose name and address have been delivered to ROC u/s 380 AND
2. left at, or sent by post to, address which has been so delivered to Registrar or by electronic mode



Sec 384 – Debentures, annual return, registration of charges, books of account and their inspection

- Provisions of **Sec 70 (Issue of Debentures)** to be applied mutatis mutandis to foreign company
- Provisions of **Sec 92 and Sec 135** – with certain modification – shall apply to Foreign Company
 - Foreign company to prepare Annual Return
 - AR – filed with ROC < 60 days of last day of FY
- Provisions of **section 128 (Books of account, etc., to be kept by company)** shall apply to a foreign company (w.r.t. its Indian business)
- Provisions of **registration of charge** – Applicable to FC
- Provisions of **Inspection, Inquiry, investigation** – Applicable to FC



Sec 385 – Fees for registration of documents

As per this chapter – if there is any requirement of payment of fees – such fees to be paid to ROC



Sec 386 – Interpretation

1. **“Certified”** means certified in the prescribed manner to be a true copy or a correct translation;
2. **“Director”**, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
3. **“Place of business”** includes a share transfer or registration office.

Further, to qualify as a ‘foreign company’ a company must have the following features:

- a) it must be incorporated outside India; and
- b) it should have a place of business in India.
- c) That place of business may be either in its own name or through an agent or may even be through the electronic mode; and
- d) It must conduct a business activity of any nature in India.
 - (i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.
 - (ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India



Sec 386 – Interpretation

1. Prospectus should not issued, circulated and distributed unless it is dated and signed



Sec 390 – Offer of Indian Depository Receipts

CG may make rules applicable to offer of IDR & manner in which IDR shall be dealt with in depository mode & by custodian & underwriters

According to Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India shall make an issue of Indian Depository Receipts (IDRs) unless it complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India



Sec 391 - Application Of Sections 34 To 36 And Chapter XX

According to sub-section (1), the provisions of sections 34 to 36 (both inclusive) shall apply to—

1. Issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;
 2. Issue of IDR by a foreign company
- Section 34 deals with criminal liability for mis-statements in prospectus.
 - Section 35 deals with Civil Liability for mis-statement in prospectus.
 - Section 36 deals with punishment for fraudulently inducing persons to invest money
 - Chapter XX – Provisions of winding up of a company



Sec 393 – Company's failure to comply with provisions of this chapter not to affect validity of contracts etc

If company fails to comply with the provisions of this chapter - consequences shall be as under

- Validity of any contract, dealing or transaction entered into by the company shall not be affected
- Company may be sued w.r.t. such contracts
- If provisions of CA, 2013 not complied = Company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction – until provisions are satisfied



Rule 12 Of Companies (Registration Of Foreign Companies) Rules, 2014

- Action for Improper Use or Description as Foreign Company: It states that if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person