CHAPTER→11

Companies Incoporated outside India

Section 2(42) Defination of Foreign companies

→ It means a Company

- Incoporated outside the India.
- having a Place of business & business acitivities in India
  - → either itself OR through agent
  - → either in Physical mode OR in electronic mode
    ↓
    Mobile device, computer cloud computing etc.
- Whether main server is established in India OR Not
- Conduct any business acitivities in India

→ Some example of Business activities

(i) B to B (ii) B to C

(iii) Share transfer or Registration office in India

(iv) Inviting, Accepting or subscription of Securities
- Deposit from India or from citizen of India

(v) Telemarketing, Telecomunication, Telemedicine web Based market etc.

(vi) Following service: Advisory & transactional service

→ Financial Settlement, Database service, Supply chain mgmt

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(Section 379) Applicability of Companies Act 2013 on Foriegn Company.

→ Company define u/s 2(42) shall be governed from the Provision of Companies Act 2013 in the same manner if it were a Co incoporated in India
- In relation to Business in India

→ Where more than 50% of its Paid up share capital of Foriegn Co held by :- (Equity + Preference)
(i) one or more citizen of India
(ii) one or more companies or BC incoporated in India
(iii) i + ii.

(Section 380) Document ~~etc.~~ to be delivered ~~to~~ ROC
1) Which ROC → having juridiction over New Delhi
2) Form, time Limit etc for delievery of Documents
(i) In $\boxed{\text{Form FC-1}}$ within 30 days from establishment of Place of Business in India
(ii) with Prescribe Fees
3) Following Documenent need to be submitted to ROC By Foriegn company.
(i) submitted in English language. If Not in English language
→ their certified transalation in English language
Attest copy of
(a) approval of RBI under FEMA or other regulators
(b) declaration from Authorise Representative that no appraval is required

(ii) Documents etc.

(a) Certified copy of charter/ statue defining constitution of foreign company including MOA & AOA.

(b) Full address of Principal office of company (NOT in a India)

(c) Full address of office of company deemed to be Principal POB in India

(d) Particular of Director/ company Secretary
[Name, Father's Name, DOB, Address, Occupation, Nationality, Passport, PAN, DIN etc]

(e) Name & Address of Person resident in India
→ bound to accept notice/ other document served on company

~~(f) Address of office of Principal Place of Business in India~~

(f) Time period of opening/ closing of POB in India in earlier occassion.

(g) A Declaration that none of Director & Authorised Representative in India
→ Not debarred or convicted in relation to Formation or mgmt of company in India or outside India

~~(h)~~

4) Intimation about subsequent alteration to ROC in Document delivered u/s 380 (1)(c)

(i) In FORM FC-2 within 30 days from such alteration

(ii) with perscribe fees

(Section 392) Penalty for Contravention of this Provision Chapter

1) On Foriegn Company
Fine of 1 lakh - 3 lakh
In case of continous / default
Additional fine upto ₹ 50000 / day
till such default continue

On defaulting office
Fine of ₹ 25000 to 5 lakh

(Section 381) Account of Foriegn Company
1) Section 381(1) Duty of Foriegn company to prepare Financial statement i.e Balancesheet, P&L A/c etc
→ For Every Calander year
→ In relation to its Business
(ii) In the manner as provided under schedule III
(iii) and Compliance of chapter IX ie A/c of companies (Sec 128 - 138)
Attachment of Required documents
(iv) Filing of such Financial st etc with ROC (New Delhi)
→ In FORM FC 3 within 6 month from closure / end of FY
(v) In english language, If NOT in english language their certified transalation in english language
(vi) Extension of time for filing of FS etc By ROC on Application of Foriegn Company
→ For max 3 month
→ For special reason
2) Document required to be annexed with Financial st
(i) Particular of RPT
(ii) Statement of Repartriation of Profit
(iii) Statement of Transfer of Fund including dividend.
3) Audit of Account of Foriegn company
→ By Practing CA in India or Firm / LLP of CA
→ Applicability of chapter X ie Audit & Auditor of company

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4) Every foreign Company shall prepare & File AR in Form FC-4 along with Fees in 60days from last day of FY to ROC

(Section 382) Display of Name of Foreign Company

→ Every Foreign Company	Shall exhibits:
Where) 1) Outside of every office or POB in India	Business letter, Bill heads letter Papers & all notice and other Publications

a) Name of foreign company
b) Country of Incoporation
c) Particular about limited liability of Members.
conspicously Display / mention

In legible letters easily readable
→ in english language
→ Local Language of the Place of Business in India

(Section 383) Service on Foreign Company of Documents / notice to be served

1) It shall deemed to be sufficienty served if
By Electronic mode
By POST → at the address given to ROC
To Authorised Represantative of such Foreign Co.

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(Section 387) Dating of Prospectus and Particular to be contained theirin.

1) No Prospectus offering to subscribe any security shall Be deemed issued or circulated By a company incoporated outside India
Whether or Not having place of Business in India By such company after its Incoporations.
unless such Prospectus:-

a) Is dated & signed
b) Document required to be attach with such Prospectus:-
  (i) Instument defening contitution of company i.e COI.
  (ii) Enactment under which such company is incoporated
  (iii) Place in India where such Instument or Enactment can be ispected or take copy.
  → In English language or certified transaltion in English language

NOTE> No need to give Particular of Point (i)(ii)&(iii) if Prospectus is issued after 2 yrs from the date when Foriegn company is entiteld to commence Business.

  (iv) Date and country of Incoporation
  (v) Address of Principal Place of business in India (If any)

c) Matter to be stated U/S 26.

2) Compliance with condition cannot be waived off on any ground.

3) Form of Application
→ Such app is issued with prospectus which compliance with this chapter
→ No contravention of Provision of sec 388 i.e Expert consent

Exception> Bona Fide invitation to a Person for Underwriting Agreement

4) Non Applicability of Sec 387
↓
On Prospectus or Form of Application
↓
Securities

issued to existing members or debentureholder of company Eg) Right issue	uniform in all respect to Previously issued securities → Listed at RSE Eg FPO

Exceptions> Provision of sec 387 shall apply in respect of dating of Prospectus

(Section 388) Provision as to Expert consent & Allotment

Expert → unbaised person → Statement on Material Facts given in Prospectus.

1) Where Prospectus contain an Expert's Statement
→ Such statement must be given with written consent of expert for issue of Prospectus.
→ No withdrawal of such consent By expert
2) If No such statement is given in Prospectus
→ Need to comply with Provision of sec 33+40

3) A statement deemed include on the Face of Prospectus
→ Disclosure about expert's opinion.

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(Section 389) Registration of Prospectus with ROC

1) No prospectus shall circulate / issue unless all the following condition satisfied
   a) A certified copy ~~[illegible]~~ has been delivered for registration to ROC
      duly certified By → chairperson of company
      → 2 Director of company
      → approved By managing Body of company by resolution
   b) on the Face of Prospectus → Disclosure about delivering copy of Prospectus to ROC
      about expert's consent u/s 388

2) Document ~~[illegible]~~ required to be annexed with such Prospectus.
   (i) Copy of expert consent u/s 388
   (ii) copy of contract for appointment of MD or manager
      → if it is not in writing
      → Full Particular of such contract given in written memorandum
   (iii) copy of material contract in last 2 year not in ordinary course of Business
   (iv) copy of underwriting Agreement
   (v) Copy of Power of Attorney if Prospectus is signed by auth. agent of director.

(Section 391) Application of Provision of

(Sec 34-36)

1) (Sec 34) criminal liability for misstatement in Prospectus
   → liable u/s 447 for Fraud
2) (Sec 35) Civil liability for misstatement in Prospectus
   → liable to pay compensation

→ issue of Prospectus u/s 389 or IDR u/s 390

(Chapter XX)

winding up
closure of Place of Business by Foreign Co in India.

3) (Section 36) Punishment for fraudulently inducing person to invest their money

(Section 393) Foriegn Failure to comply with the provision of this chapter not effect validity of contract etc.

→ Entered into by such company or its liability to sued

Foriegn Co $\xrightarrow{\text{contract}}$ 3rd Party

↓

→ Fails to comply provision of Chapter XXII

But company shall not be entitled to bring any suit, claim any set off, make any counter claim

1) 3rd Party v/s Foriegn Co ✓

2) Foriegn Co v/s 3rd Party ×

- No suit
- No set off
- No counter claim

until the company has complied with the provision of this Act.

(Section 393 A) Exemption By CG

→ Power to CG to grant exemption from provision of this chapter

1) CG $\longrightarrow$ Foriegn
   - By notification
   - grant exemption from provision of this capter

2) CG $\longrightarrow$ Both houses of Parliment
   - laid down of such notification after its making.