

Lecture-28 (4-8 marks)

2(42)

Chapter-13

380

Company incorporated o/s India - Foreign Co

386(c)

389

Que-1 Definition - Section 2(42)

381

Ans - Incorporated outside India

382

- Having place of business in India by itself383 or through agent, physically or electronically.

384 - And conducting any business activity in India

385

386

Que-2 Document to be filed - Section 380

387

Ans S: Details of Secretary and directors -

388

name, address, occupation, nationality

389

390

C: Charter, MOA, AOA, Statutes in English

391

If not available in English, certified

392

translated copy in English.

393

393A

R: Full address of registered office →
foreign office

A: Authorized person in India

P: POB in India (Place of business)

E: Eligibility (none of the directors/authorized person should have been debarred in or outside India)

SCRAPE

↓

RDC (NEW DELHI)

↓
Form FC-1 (within 30 days of establishment of business)

Any alterations in SCRAPE should be filled in Form FC-2 within 30 days of making alteration

Que-3 Place of business includes Section 396(c)
Share transfer office
AND
Share registration office

Que-4 Explain Deemed Indian Co. Section 379

Ans Foreign to Indian → see 379

If in a foreign Co.

↓
≥ 50% of PUSC, either equity or preference or both

↓
held by Indian citizen or Indian Co. or jointly

↓
then such company is deemed to be an Indian Co.

↓
Comply with

1. Chapter XXII → foreign Co.

AND

2. Such others prescribed by CA

Lecture-29

Ques: Accounts of foreign company - Section 381

Ans: 1. Every foreign company

↓

Prepare FS of its Indian business operation as per Schedule III or as near there to

Including documents to be attached as per

Chapter IX - Ac of ^{Co.} and CFS.
latest

Four exemption - apply to Cu

2. The above documents if not in English certified translated copy ~~is~~ should be sent

3. Foreign company

↓

ROC

↓

list of POB in India → Forum FC-3
(Place of Business)

4. Foreign company

↓

ROC

↓

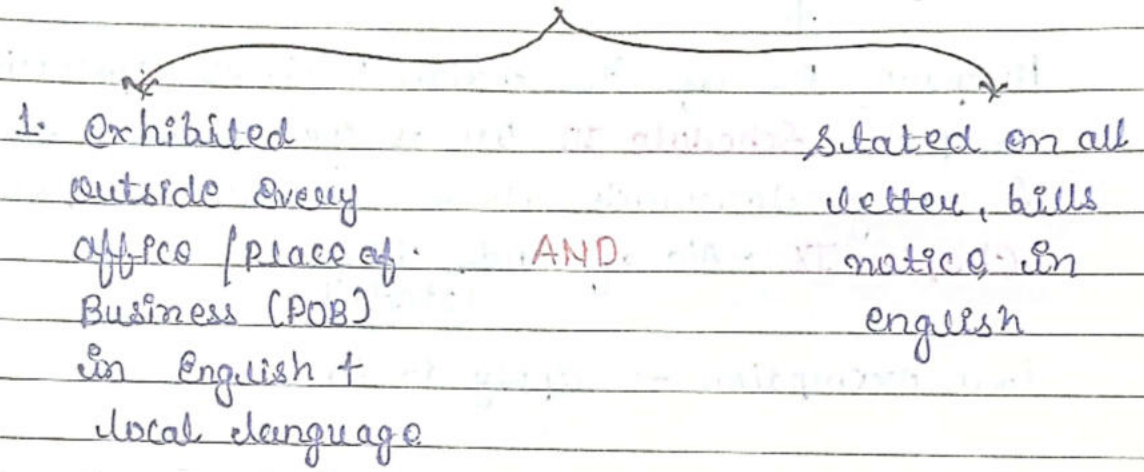
Statement → 1. Related party transaction
2. Repatriation of profits
3. Transfer of funds.

5. All documents → within 6 months from closure of FY.

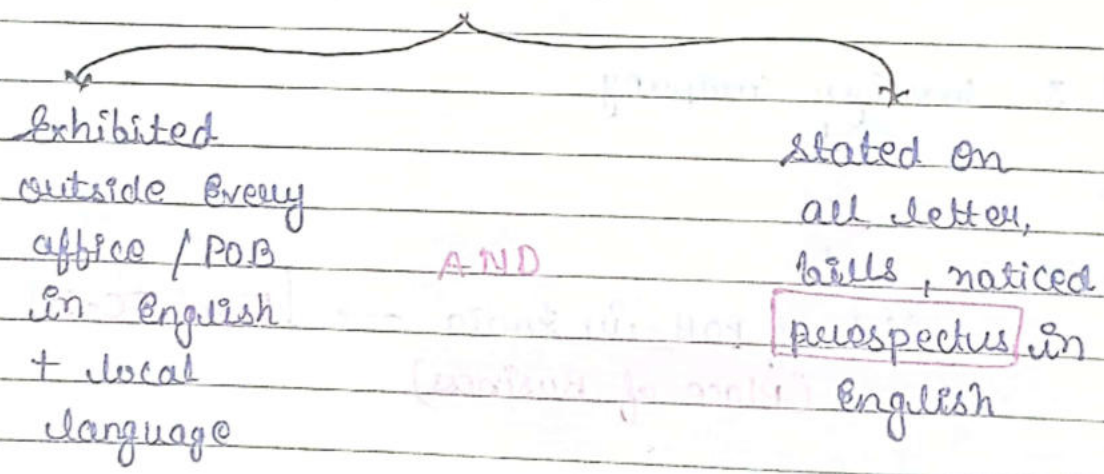
6. Audited by practicing CA/CA firm

Ques-6 Disaloves (Additional) - Section-389

Ans (1) Name of company and country of an incorporation



(2) Liability of member is limited



Ques-7 Service of documents - Section 383

Ans => To authorized person via -

1. Post
2. Electronic mode
3. Hand delivery.

Ques: charges section 394

Ans: foreign company files return

↓

ROC

↓

- 1. Creation
- 2. Modification
- 3. Satisfaction of charges

(i) Sec 71: Issue of debentures

(ii) Section 92: EC-4

AND Annual return ≤ 60 days from closure of FY

(iii) Section 128: Books of A/C

(iv) Section 135: Corporate Social Responsibility

(v) Chapter VI: Registration of charges.

(vi) Chapter XIII: Inquiry, Inspection, Investigation

= ~~NA~~ MUTATIS MUTANDIS (same to same) to

foreign company

Imp.

Ques: Penalty — section 392

Ans: Company

↓

Maximum: Rs 3 lakh

Minimum: Rs 1 lakh

↓

Continuity of default = ₹50,000/day till default continues

Officers → ₹ 25,000 — ₹ 500,000

Q4-10 Contents of Prospectus Section 397

- Ans.
- (a) Instrument → defining → constituting → constitution of company
 - (b) Provision under which company is incorporated
 - (c) Address of place in India where above documents can be inspected.
 - (d) Date on which the company is incorporated
 - (e) Country of incorporation
 - (f) Address of POB in India

A/B/C : not applicable when prospectus is issued after 2 years of commencement of business.

Lecture-30

Q4-11 Annexures to Prospectus Section 399

Ans Prospectus → registered with ROC before circulation approved by chairman + 2 directors.

- a) Expert opinion
- b) Copy of contracts with MD/manager if not in writing → memorandum
- c) Material contract: not entered in ordinary course of business but entered in last 2 years
- d) Copy of underwriting agreement
- e) Copy of power of attorney, if prospectus is signed by agent of directors.

Que-12 Indian Depository Receipts Section 390

Ans. A company incorporated or to be incorporated outside India whether the company has or hasn't established or may or may not established any place of business in India, i.e. it is a foreign co. or not a foreign co. may issue Indian Depository Receipts (IDR) only by complying, the condition, the condition mentioned by CBI, in addition to direction issued by SEBI & RBI.

Que-13 Company's failure to comply with provisions of this chapter not to affect validity of contracts, etc Section 398

Ans. Any failure by a foreign company provisions of this chapter not to affect comply with this chapter will.

NOT EFFECT

Validity of any contract

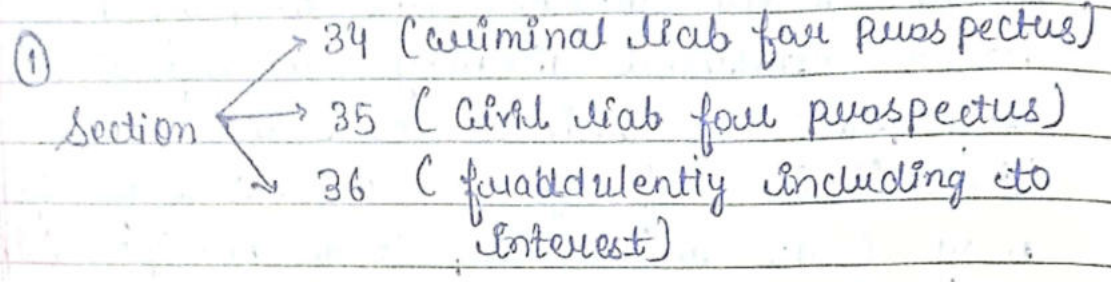
dealing / transaction entered by Co.

its liability to be sued

2) Co. shall not be entitled to bring any suit, claim any set off, make any counter claim or institute any legal proceedings until the Co. has complied with provision of the Act applicable to it.

Que-14 Application of Section 34 to 36 AND CHAPTER XX
- Section 391.

Ans-



shall apply MUTATIS MUTANDIS to foreign Co. for issue of prospectus while issuing FDR.

② Chapter xx (winding up) shall apply MUTATIS MUTANDIS to a foreign Co. if the Co. has raised money through offer as issue of securities which have not been repaid or redeemed.

Que-15 Provision as to Expert's consent and allotment
- Section 388

Ans

No Co. shall issue, circulate or distribute, in India any prospectus for subscription in securities of a Co. incorporated or to be incorporated outside India & whether a Co. has or hasn't established any place of business in India, unless the prospectus includes a statement made by an expert, his consent should be obtained & he should have not withdrawn his consent till the allotment of securities.

- FC-1 - Registration - $\leq 30D$ of establishment of POB
- FC-2 - Alteration - $\leq 30D$ of alteration
- FC-3 - POB - $\leq 6m$ from close of FY
- FC-4 - Annual return - $\leq 60D$ of close of FY.

Section 13A

Section 13A deals with the provisions regarding the registration of companies. It outlines the requirements for a company to be eligible for registration under this section. The key points are:

- The company must be a private company.
- The company must have a paid-up share capital of at least Rs. 100,000.
- The company must have a minimum of 7 members.
- The company must have a registered office in India.
- The company must have a minimum of 2 directors.
- The company must have a minimum of 1 director who is an Indian citizen.
- The company must have a minimum of 1 director who is a resident in India.
- The company must have a minimum of 1 director who is a resident in India for at least 182 days in the financial year.
- The company must have a minimum of 1 director who is a resident in India for at least 182 days in the financial year.
- The company must have a minimum of 1 director who is a resident in India for at least 182 days in the financial year.

