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Chapter XI

Company Incorporated Outside India

1. INTRODUCTION

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Chapter XXII	Consists of sections 379 to 393A as well as the Companies (Registration of Foreign Companies) Rules, 2014.

2. Section 2(42) FOREIGN COMPANY

“Foreign company” means -

- any company or body corporate
- incorporated outside India which -
 1. has a place of business in India
 2. whether by itself or through an agent,
 3. physically or through electronic mode; and
 4. conducts any business activity in India in any other manner.
- PoB Includes – Share Transfer or Registration Office (STO/SRO) - Sec.386

Example: *ABC Entertainment Limited (Indian Company) having foreign subsidiary UVW Limited rendering satellite services to the group will be covered under the definition of Foreign Company under the Companies Act, 2013.*

Example: *Airline companies that operate through their booking agents in India will be covered under the definition of Foreign Company under the Companies Act, 2013.*

“Electronic mode” means -

- carrying out electronically based,
- whether the main server is installed in India or not,
- including, but not limited to -

Acronym - B.C.D. mat karo, Data Tele karo

- B2B AND B2C transactions, data interchange and other digital supply transactions;
- DEPOSITS - Offering to accept or inviting or accepting or subscriptions in securities in India or from citizens of India (IDR case)
- Financial services like - settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- TELE - online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- DATA COMMUNICATION - all related services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Explanation:

For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act.

Example: Zakpak Ltd. is a shipping company incorporated in Japan. The Company has set up a branch office in India after obtaining necessary approvals from RBI. Branch Offices are generally considered as a reflection of the Parent Company's office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

1. Foreign Company means
 - a. any Company or Body Corporate outside India
 - b. place of business in India
 - c. conducts any business activity in India
 - d. all of the above

2. Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. Select the incorrect statement from those given below as to the nature of the

Radix Healthcare Ltd. in the light of the applicable provisions of the Companies Act, 2013:

- (a) Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.
- (b) Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.
- (c) Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.
- (d) Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.

3. Section 379 APPLICATION OF ACT TO FOREIGN COMPANIES

Applicability of Act to Foreign companies:

- Sections 380 to 386 (both inclusive) & sections 392 and 393 shall
- apply to all foreign companies.
- It implies that all companies which fall within the definition of foreign company as per section 2(42) shall comply with the provisions of this Chapter.

Requirement of holding of Paid-up Share Capital:

Where not less than 50% of –

- The paid-up share capital,
- whether equity or preference or partly equity and partly preference,
- of a foreign company incorporated outside India
- whether singly or in the aggregate is held by –
 - One or more citizens of India or
 - By one or more companies or BC incorporated in India; or
 - By one or more citizens of India and one or more companies or BC incorporated in India.

Example:

The shareholding of Emaar Company LLC, incorporated in Dubai and having a place of business in India, is as follows:

- *Hinduja Company Limited (Indian Company): 26%*
- *Vaishali Company Limited (Indian Company): 25%*
- *Citizens of Dubai: Remaining holding*

As per section 379(2) -

- *Emaar Company LLC will also be required to comply with the provisions of Chapter XXII as*
- *not less than 50% of the shareholders of Emaar Company LLC consists of body corporates incorporated in India.*
- *Emaar Company LLC will also be required to comply with other provisions of this Act as may be prescribed with regard to the business carried on*
- *by its place of business in India as if it were a company incorporated in India*

380	Documents to ROC (New Delhi)	FC-1
381	Change in Doc. periodically	FC-2
	List of all POB in India	FC-3
384	Annual Return	FC-4

1. One or More Citizens of India, and I or Companies or Bodies Corporate incorporated in India, whether singly or in the hold less than the Paid Share Capital (Equity or Preference or in aggregate, not of -Up partly both) of a Foreign Company, such Company shall comply with such of the provisions the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.
 - a. 50%
 - b. 25%
 - c. 51%
 - d. 49%

4. Section 380 DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES

Timeline	Within 30 days of establishing a place of business in India deliver to the Registrar for registration along with prescribed fees and documents filed in Form FC-1
ROC for Filing	<ul style="list-style-type: none"> All the documents shall be delivered to Registrar, Central Registration Centre located in Gurgaon (Haryana) Foreign Company Registration Number (FCRN) will be issued to the Foreign company
Filing Requirements	Form shall include attested copy of – <ul style="list-style-type: none"> RBI approval under FEMA regulations (if required) Approval from other regulators (if required) Declaration from authorised persons that no approval is required
Alteration or changes in Documents Section - 380(3)	Timeline: <ul style="list-style-type: none"> Within 30 days of alteration Form FC-2. Details: Return containing particulars of the alteration with prescribed fees.
Documents to be Delivered	<ul style="list-style-type: none"> Certified copy of charter/statutes or Memorandum/articles of the company. If not in English, certified translation in English. Full address of RO/PPO of the company. List of directors and secretary
Details for List of Directors and Secretary	<ul style="list-style-type: none"> Personal name and surname (full). Former name(s), surname(s) (full). Father's, mother's, or spouse's name. Date of birth. Residential address. Nationality and nationality of origin (if different). Passport details (number, issue date, country). PAN (if applicable). Occupation.

	<ul style="list-style-type: none"> • Directorship in any Indian company (DIN, Name, CIN). • Other directorships held. • Membership Number (Secretary only). • Email ID.
Authorized Representative	<ul style="list-style-type: none"> • Name and address of at least one or more persons who is Resident in India and authorized to • accept service of process, notices, or documents on behalf of the company.
Principal place of Business	Full address of the office in India acting as the principal place of business.
History of Business Operations	Particulars of opening and closing of business places in India on earlier occasions (if any).
Declaration Requirement From DIR & Authorised Representatives	<p>Declaration that:</p> <ul style="list-style-type: none"> • None of the directors or authorized representatives in India have been convicted or debarred from company formation/management in India or abroad.
Cessation of Business	<ul style="list-style-type: none"> • If a foreign company ceases to have a place of business in India, • it must notify the Registrar immediately about the fact • From such date of notice, the company's filing obligations will cease (provided there is no other place of business).

Illustration:

Search & Find Pte. Ltd., incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013.

Answer:

Yes, as per 2(42) of Companies Act, 2013, any company or body corporate incorporated outside India which (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner shall be considered as a foreign company. Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

1. Foreign Companies shall, the of business, deliver Documents to the within of establishment of place ROC for registration
 - a. 60 days
 - b. 30 days
 - c. 15 days
 - d. 45 days

2. Jackson Communications LLC, incorporated in Arizona, USA, has established a principal place of business at Kolkata, West Bengal. It is required to deliver requisite documents to the specified authority. You are required to select an appropriate option from the four given below which indicates the number of days within which such documents shall be delivered:
 - a. Jackson Communications LLC shall, within 10 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
 - b. Jackson Communications LLC shall, within 15 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
 - c. Jackson Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
 - d. Jackson Communications LLC shall, within 45 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

3. Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver

certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents:

- a. Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine up to 25,000 rupees for every day after the first during which the contravention continues.
- b. Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine up to 20,000 rupees for every day after the first during which the contravention continues.
- c. Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine up to 50,000 rupees for every day after the first during which the contravention continues.
- d. Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine up to 50,000 rupees for every day after the first during which the contravention continues.

4. Fam Software Company Inc., a company incorporated in Australia, proposes to establish a place of business at Mumbai. The list of the Directors includes
 - (i) Mr. Arjun – Managing Director,
 - (ii) Mr. Ranveer – Director,
 - (iii) Mr. Ramesh Malik - Director and
 - (iv) Mr. Arbaaz - Director.
 Ms. Lavina has been appointed as the Secretary of Fam Software Company Inc. It is to be noted that Mr. Ramesh Malik and Mr. Arbaaz, resident in India, are the persons who have been authorised by Fam Software Company Inc. to accept on behalf of the company service of process, notices or other documents required to be served on Fam Software Company Inc. In relation to the company's establishment, you are required to enlighten the Fam Company Inc. with respect to whose, a declaration will be required to be submitted to the Registrar of Companies by Fam Software Company Inc. for not being convicted or debarred from formation of companies in or outside India.
 - a. Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.
 - b. Mr. Arjun, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.
 - c. Mr. Ramesh Malik and Mr. Arbaaz.
 - d. Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik and Mr. Arbaaz.
5. Any alteration is made or occurs in the documents delivered to ROC, the Foreign Company shall file to ROC, containing the particulars of the alteration, within 30 days of such alteration.
 - a. Form FC-1
 - b. Form FC-4
 - c. Form FC-2
 - d. Form FC-3

5. Section 381 ACCOUNTS OF FOREIGN COMPANY

Requirement Every Calendar Year	Foreign companies shall: <ul style="list-style-type: none"> • B/S and P&L for its Indian business operations. • Attach prescribed documents to the FS.
Form of FS	FS to be prepared in accordance with Schedule III as possible
Timeline for Filing	<ul style="list-style-type: none"> • Documents must be delivered to the Registrar within 6 months from the close of the financial year. • Extension of 3 months may be granted for special reasons.
Jurisdiction	Doc. must be filed with the ROC in New Delhi .
Audit Requirements	<ul style="list-style-type: none"> • Accounts of Indian business operations must be audited. • Audit to be conducted by - Practicing Chartered Accountant in India - CA firm or LLP.
Form FC-3	List of all places of business in India on the date of the balance sheet
Additional Documents to be Annexed	<ul style="list-style-type: none"> • Statement of Related Party Transactions • Statement of Repatriation of Profits • Statement of Transfer of Funds (including dividends, if any).
Parent Company's FS	Latest consolidated financial statements submitted to the authority in its country of incorporation must be attached.
Certified Translation	If documents are not in English, certified English translations must be annexed - Section 381(2)
Applicability of Audit Provisions	Chapter X: Audit & Auditors apply mutatis mutandis to FC

Cessation of Place of Business	<ul style="list-style-type: none"> • If a foreign company ceases to have a PoB in India: <ul style="list-style-type: none"> ○ It must notify the Registrar immediately. ○ Filing obligations cease if no other place of business exists.
Definition of Financial Year	<ul style="list-style-type: none"> • The financial year ends on 31st March each year. • If incorporated on/after January 1st, the financial year ends March 31 of the following year. • Exception: CG may approve for different FY (Consolidation purposes)
<p>Example:</p> <p><i>ROK Limited, is a company incorporated outside India having a place of business in India. ROK Limited is a subsidiary of HOK Limited (Holding company), registered in Australia and is required to consolidate its accounts with HOK Limited. Accordingly, if HOK Limited is required to follow a financial year other than 31st day of March every year, ROK can make an application to the Central Government to follow the financial year as per HOK Limited.</i></p>	
Exemption for Financial Year	Foreign companies can apply to the CG for approval of a different FY provided it is required for global consolidation.

1. A Foreign Company shall, in make out a Financial Statement of its Indian business operations as per Schedule III or as near thereto as possible for each financial year,
 - a. Every Financial year
 - b. Every calendar year
 - c. every Half year
 - d. either (a) or (b)
2. A Foreign Company shall deliver a copy of financial statement to ROC along with a list showing all Places of Business established by the Foreign Company in India as on the date of Balance Sheet.
 - a. Form FC-1
 - b. Form FC-4
 - c. Form FC-2
 - d. Form FC-3
3. Time Limit for filing all the documents with ROC by Foreign Company shall be from the close of the financial year.
 - a. 4 months
 - b. 3 months
 - c. 6 months
 - d. 9 months
4. A Copy of statements shall be accompanied with Financial statements for filing with ROC.
 - a. Statement of Related Party Transactions showing specified particulars
 - b. Statement of Repatriation of Profits showing specified particulars
 - c. Statement of Transfer of Funds showing specified particulars
 - d. All of the above

5. 5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows the calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act, 2013:
- Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.
 - Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.
 - Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.
 - Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.

6. Section 382 DISPLAY OF NAME, ETC. OF FOREIGN COMPANY

Display of Company Name and Country of Incorporation

1. Every foreign company shall – At Offices/Business Places:

- ✓ Conspicuously exhibit the **company name** and the **country of INC.**
- ✓ Use **English characters** and the **local language characters** of the place where the office is located.

2. Use of Company Name in Official Documents – The name of the company and its country of incorporation must be stated in:

- ✓ All **business letters**
- ✓ **Bill-heads**
- ✓ **Letter paper**
- ✓ All **notices** and other **official publications** of the company

3. Notice of Limited Liability

If the company's **liability is limited**, the foreign company shall:

a) On Official Documents

- Mention this fact in **legible English characters** on:
 - ✓ Every **prospectus** issued
 - ✓ All **business letters, bill-heads, letter paper, notices, advertisements, and other official publications**

b) At Offices/Business Places – Conspicuously display this fact:

- In **English characters**
- In the **local language characters** of the place where the office or business place is located

7. Section 383 SERVICE ON FOREIGN COMPANY

- Any process, notice, or other document
- required to be served on a foreign company
- shall be deemed to be sufficiently served, if –
 - addressed to any person (AUTHORISED REPRESENTATIVES) whose name and address have been delivered to the Registrar under section 380 and
 - left at, or sent by post to,
 - the address which has been so delivered to the Registrar or by electronic mode.

8. Section 384 DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION

- 1. Issue of Debentures (Section 71)** – The rules for issuing debentures under Section 71 apply **mutatis mutandis** to foreign companies.
- 2. Annual Return (Section 92)** – Foreign companies must
 - ✓ Prepare and file an **Annual Return** in **Form FC-4**.
 - ✓ Submit it within **60 days** from the end of the financial year to the Registrar
 - ✓ If the foreign company meets the criteria under **Section 135(1) – CSR** then comply.
- 3. Books of Account (Section 128)**
 1. Foreign companies must keep their **BOA** at their POB in India.
 2. Records must include:
 1. Money received and spent
 2. Sales and purchases made
 3. Assets and liabilities related to business in India
- 4. Registration of Charges (Chapter VI) – Section 77 to 87**
- 5. Inspection, Inquiry, and Investigation (Chapter XIV)**

1. Every Foreign Company shall prepare and file Annual Return in Form No.FC-4, to ROC fees, with within — from the last day of its financial year
 - a. 90 days
 - b. 60 days
 - c. 120 days
 - d. 45 days
2. Time Limit of 6 months for filing all the documents with ROC by Foreign company and Time limit 60 days for filing Annual return with ROC
 - a. can be extended and cannot be extended
 - b. cannot be extended and can be extended
 - c. cannot be extended and cannot be extended
 - d. can be extended and can be extended
3. Time Limit of 6 months for filing all the documents with ROC by Foreign company and Time limit 60 days for filing Annual return with ROC
 - a. can be extended and cannot be extended
 - b. cannot be extended and can be extended
 - c. cannot be extended and cannot be extended
 - d. can be extended and can be extended

9. Section 384 FEE FOR REGISTRATION OF DOCUMENTS

- There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.
- According to the Companies (Registration of Foreign Companies) Rules, 2014, the fees to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.

10. Section 387 DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN

1	Prospectus to be Dated and Signed	No prospectus can be issued in India unless it is dated and signed.
a	Required Information in the Prospectus Must contain details about	<ol style="list-style-type: none"> 1. Instrument constituting the company. 2. Enactments or provisions for incorporation. 3. Address in India for inspection of the instrument or provisions (with translation if not in English). 4. Date and country of incorporation. 5. Whether the company has a place of business in India, and address.
b	Matters to be Stated	Must include matters specified under Section 26 (Matters to be stated in a prospectus)
	Exceptions	Points 1, 2, and 3 do not apply if the prospectus is issued more than 2 years after the company is entitled to start business.
<p>Example:</p> <p><i>Mir Company LLC, a company incorporated in Dubai, on 28th April 2019. Mir Company LLC has established a place of Business in Mumbai in the year 2022. Now the place of business in India proposes to offer subscription to securities of Mir Company LLC. Now the place of business in India before going with the subscription will have to file a prospectus dated and signed and the prospectus shall not be required to contain the particulars mentioned in points (1), (2) and (3) of point (a) above as the prospectus will be getting issued after a period of more than 2 years since the Mir Company LLC has commenced its business.</i></p>		
2	No Waiver of	Any condition waiving compliance with Section 387(1) is void .
3	Form of Application Be attached with PROSPECTUS	<p>The form of application for securities must be issued with a valid prospectus.</p> <p>Exception: invitation for an underwriting agreement.</p>

4	Exemptions	<ol style="list-style-type: none"> 1. To existing members or debenture holders. 2. To previously issued securities listed on a stock exchange (except for dating).
5	Liability	Section 387 does not limit or diminish any liability under other laws or the Companies Act, 2013.

11. Section 388 PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT

Issuance, Circulation, or Distribution of Prospectus in India Conditions for Issuance

No person shall issue, circulate, or distribute a prospectus in India offering securities of a foreign company unless the following conditions are met:

- **Expert's Statement:**
 - If the prospectus includes a statement made by an expert:
 - The expert **must give written consent** to include the statement in the prospectus.
 - If consent is withdrawn before the prospectus is delivered for registration, the prospectus cannot be issued.
 - The prospectus must include a statement confirming that the expert has given and not withdrawn consent.
- A statement shall be deemed included in the prospectus if:
 - ✓ It is found in a **report or memorandum** on the face of the prospectus.
 - ✓ It is incorporated by reference in the prospectus.
 - ✓ It is issued alongside the prospectus

12. Section 389 Registration of Prospectus

Conditions Before Issuing a Prospectus

1. **No person shall issue, circulate, or distribute a prospectus in India for:**
 - a. A foreign company (incorporated or to be incorporated)
 - b. Whether or not it has established or will establish a place of business in India.
2. **Requirements before issuance:**
 - a. A certified copy of the prospectus must be delivered to the Registrar for registration.

- b. Certification must be done by:
- i. The Chairperson of the company, and
 - ii. Any two directors.

3. The prospectus must:

- a. State on its face that a certified copy has been delivered.
- b. Have any consent and required documents endorsed or attached (as per Section 388)

Documents to be Annexed to the Prospectus -

1. Expert Consent:

- a. Any consent required from a person as an expert.

2. Contracts:

- a. A copy of contracts for:
 - i. Appointment of a managing director or manager.
 - ii. If the contract is not in writing: A memorandum giving full details.
- b. Any other material contracts:
 - i. Not made in the ordinary course of business.
 - ii. Entered within the last 2 years.

3. Underwriting Agreement (Copy)

4. Power of Attorney - A copy of the prospectus is signed through an authorized agent of the directors.

13. Section 390 Offer of Indian Depository Receipts

Indian Depository Receipts (IDRs)	
Definition	Instrument in the form of depository receipt created by a Domestic Depository in India and authorized by a foreign company.
Section 390	The Central Government may make rules for: <ul style="list-style-type: none"> • Offer of IDRs. • Disclosure requirements in the prospectus/letter of offer for IDRs. • Depository dealings: Custodian, underwriters, and depository mode. • Sale, transfer, or transmission of IDRs.
Rule 13	Conditions for issuing IDRs:

	<ul style="list-style-type: none"> Comply with Rule 13 of Companies (Registration of Foreign Companies) Rules, 2014.
	<ul style="list-style-type: none"> Follow SEBI (ICDR) Regulations, 2009.
	<ul style="list-style-type: none"> Adhere to RBI directions.
Key Fact	Standard Chartered PLC was the 1st Co. to issue IDRs in 2010 .

Application of Chapter XV - Compromises, Arrangements and Amalgamations	
Section 234(1)	Provisions of Chapter XV apply to mergers/amalgamations between:
	<ul style="list-style-type: none"> Companies registered under the Companies Act, 2013.
	<ul style="list-style-type: none"> Companies incorporated in jurisdictions notified by the Central Government.
	Rules made in consultation with the RBI .
Section 234(2)	Foreign companies can merge into an Indian company (or vice versa) with RBI approval .
	Terms of merger scheme may include:
	<ul style="list-style-type: none"> Consideration in Cash.
	<ul style="list-style-type: none"> Consideration in Depository Receipts (DRs).
	<ul style="list-style-type: none"> Combination of both.

14. MISCELLANEOUS SECTIONS

PROVISION	EXPLANATION
Section 391 - Application of Sections 34-36 and Chapter XX	<ul style="list-style-type: none"> • Sections 34-36 (Civil and Criminal liability) apply to: Prospectus by foreign companies under Section 389. Issue of IDR by foreign companies. – • Chapter XX (Winding Up) applies for closure of business of foreign companies that raised money but have not repaid/redeemed securities.
Sections 34-36 (Details)	<ul style="list-style-type: none"> • Section 34: Criminal liability for misstatements in prospectus. • Section 35: Civil liability for misstatements in prospectus. • Section 36: Punishment for fraudulently inducing investment.
Section 393 - Validity of Contracts	<ul style="list-style-type: none"> • A company's failure to comply does not affect validity of contracts/transactions. • The company cannot sue or claim until compliance is achieved.
Rule 12 - Improper Use	Unregistered persons falsely representing as a foreign company are liable for investigation under Section 210 .
Exemptions Under Chapter	<p>Central Government can exempt:</p> <ul style="list-style-type: none"> • Foreign companies. • Companies incorporated outside India. - Applies to securities, prospectus requirements, and matters related to International Financial Services Centres under SEZ Act, 2005.

15. Section 392 PUNISHMENT FOR CONTRAVENTION

Section 392 Punishment for Contravention	<ul style="list-style-type: none"> • Fine on foreign company: ₹1,00,000 to ₹3,00,000. • Continuing default: Additional ₹50,000 per day. • Fine on officers in default: Minimum ₹25,000; can extend to ₹5,00,000.
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1. Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents:

(a) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.

(b) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 20,000 rupees for every day after the first during which the contravention continues.

(c) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

(d) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

Problem Kya Hai? Question Bank
ICAI Module Descriptive Questions

Section 2(42) Foreign Company

1. In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company':
- (i) Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.
 - (ii) Xen Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

Solution :

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

- i. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- ii. conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) all related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

- (i) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.
- (ii) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Section 380 Documents to be Delivered to RoC by Foreign Companies

2. (i) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to the Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state where the said company should deliver such documents.
- (ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied

Solution:

- (i) The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to Registrar, central registration center, Gurugram.
- (ii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which comprises sections 379 to 393. The penalties for non-filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 but which may extend to 5,00,000.

Section 380

3. Jackson & Jackson LLC, incorporated in Germany, is proposing to establish a business in Mumbai, India. Its official documents are in German language. Whether Jackson & Jackson LLC can file the required documents with the Registrar in the same language.

Solution:

Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013. Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to the Registrar.

Section 380

4. Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with the registrar within the due date. On March 1, 2024, Swift Pharmaceuticals shifted its principal office to Singapore. Is the Company required to undertake any steps due to change in address of principal office.

Solution:

Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2024.

Section 380

5. DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:
- (i) Whether the branch office will be considered as a company incorporated outside India.
 - (ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

Solution:

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

Further, branch offices are generally considered as a reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

(ii) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

- (1) personal name and surname in full;
 - (2) any former name or names and surname or surnames in full;
 - (3) father's name or mother's name or spouse's name;
 - (4) date of birth;
 - (5) residential address;
 - (6) nationality;
 - (7) if the present nationality is not the nationality of origin, his nationality of origin;
 - (8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
 - (9) income-tax permanent account number (PAN), if applicable;
 - (10) occupation, if any;
 - (11) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - (12) other directorship or directorships held by him;
 - (13) Membership Number (for Secretary only); and
 - (14) e-mail ID.
- (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from the formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to Registrar, central registration center, Gurugram.

Section 83 Power of Roc to Register Satisfaction

6. Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.

Solution :

Preparation and filing of financial statements by a foreign company:

According to section 381 of the Companies Act, 2013:

- (i) Every foreign company shall, in every calendar year,—
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
 - (b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

- (1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
- (2) The documents relating to copies of the latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

- (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification on that behalf.
- (iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
- (iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

According to the Companies (Registration of Foreign Companies) Rules, 2014, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

- (v) According to the Companies (Registration of Foreign Companies) Rules, 2014,
 - (a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-
 - (1) Statement of related party transaction
 - (2) Statement of repatriation of profits
 - (3) Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.
 - (b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Section 389 Registration of Prospectus

7. Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.

Solution:

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Abroad Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

RTP, MTP and PYQ Descriptive Questions

Section 2(42) Foreign Company

1. (i) In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server is located outside India.
- (ii) In continuation of (i) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial years for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Solution:

Law:

- (i) According to section 2(42) of the Companies Act, 2013, “foreign company” means any company or body corporate incorporated outside India which –

has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to, online services such as telemarketing, telecommuting, telemedicine, education and information research.
- (ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Conclusion:

- (i) In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in the online business of telemarketing services in India having its main server outside India, Gram Pte will be treated as foreign company.
- (ii) Here, Prism Ltd. is advised to follow the above procedure accordingly.

Section 2(42) Foreign Company

2. Based on the applicable provisions of the Companies Act, 2013, define the term "foreign company" and identify which among the following companies can be categorized as a foreign company:

(PYQ Jan 2025)

<i>Sl. No.</i>	<i>Place of Incorporation</i>	<i>Registered</i>	<i>Additional information</i>
1	Singapore	Singapore	Developed a patient's database for a hospital in Mumbai, India, server in Singapore.
2	UAE	UAE	No place of business in India but employs agents in India.
3	Cape Town	Cape Town	Board Meeting held in Leh, India.
4	Germany	Germany	49% of the shares held by an Indian company.

Solution:

Law: As per section 2(42) of the Companies Act, 2013 (the Act), "Foreign Company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

Conclusion: So, as per the definition, we can conclude:

Case 1: Place of Incorporation – Singapore. Developed a patient's database for a Hospital in Mumbai – Server at Singapore.

It is a Foreign Company.

Though incorporated outside India, it is involved in transacting business in India and having place of business through electronic mode. Hence, it is a foreign company.

Case 2: Place of Incorporation – UAE. No place of business in India, but employs agents in India.

It is not a foreign company.

Since the company, though employed agents in India, has no place of business in India. Hence, it is not a foreign company.

Case 3: Place of Incorporation and Registered Office – Cape Town; Board Meeting held in Leh, India.

It is not a foreign company.

Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence, it is not a foreign company.

Case 4: Place of Incorporation and Registered Office – Germany; 49% shares are held by an Indian Company.

As per the question, the company is registered in Germany and no information is available about any business(es) being carried on by the company in India which is a basic condition to be fulfilled for being called a foreign company. Under the circumstances, it is just a company incorporated outside India and shall not be considered as a foreign company.

Alternate Answer

Applying the provisions of section 379 (2) of the Companies Act, 2013, if not less than 50% of the shareholding of a foreign company is held by an Indian Company; it is treated as an Indian Company, on which provisions of Chapter XXII of the Companies Act, 2013 applies. Here, only 49 % is held by Indian Companies. Hence it is a foreign company.

Section 380 Documents to be Delivered to RoC by Foreign Companies

3. Namaste Limited, a foreign company having its Indian principal place of business at Ranchi, Jharkhand is required to deliver various documents to the Registrar of Companies under the provisions of the Companies Act, 2013. State where the said company delivers such documents.

(MTP May 25)

Solution:

The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to Registrar, central registration center, Gurugram.

However due to amendment only for section 380 all documents will be delivered to Registrar, central registration center, Gurugram.

Section 381 Accounts of Foreign Co.

4. Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign companies'.

(MTP Jan 25)

Solution:

Audit of accounts of foreign company

According to the Companies (Registration of Foreign Companies) Rules, 2014,

- (i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
- (ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

Section 381

5. Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.

(MTP May 24)

Solution:

Preparation and filing of financial statements by a foreign company According to section 381 of the Companies Act, 2013:

- (i) Every foreign company shall, in every calendar year,—
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
 - (b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

- (1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
- (2) The documents relating to copies of the latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

- (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification on that behalf.
- (iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
- (iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

Section 389 Registration of Prospectus

6. Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India.

As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India.

(MTP Sept 24)

Solution:

Law: As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Conclusion: Accordingly, Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Section 389

7. What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014?

(MTP May 24)

Solution:

According to section 389 of the Companies Act, 2013:

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

- (1) any consent to the issue of the prospectus required from any person as an expert;
- (2) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (3) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
- (4) a copy of underwriting agreement; and
- (5) a copy of power of attorney, if the prospectus is signed through a duly authorized agent of directors.

Section 393 Failure by a Company to Comply with the Provisions of Chapter XXII

8. XYZ Limited, a company incorporated outside India and to which provisions of Chapter XXII of the Companies Act, 2013 are applicable, entered into a contract with ABC Limited, an Indian company, for the supply of machinery. After the machinery was delivered, ABC Limited failed to make the payment citing defects in the machinery.

XYZ Limited discovered that it had failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, relating to the registration of foreign companies in India. Despite this, XYZ Limited intends to file a suit against ABC Limited for payment.

Discuss whether XYZ Limited can initiate legal proceedings against ABC Limited in light of the non-compliance with Chapter XXII of the Companies Act, 2013.

Give your answer as per the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014].

(MTP Jan 25)

Solution:

Law: According to section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013, shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. However, the 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 the company has complied with the provisions of the Companies Act, 2013, applicable to it.

Conclusion: In this given question, XYZ Limited, a company incorporated outside India, has failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, which governs the registration and compliance requirements for foreign companies operating in India.

According to the Companies Act, 2013, non-compliance with Chapter XXII does not affect the validity of any contract, dealing, or transaction entered into by the company. Therefore, the contract between XYZ Limited and ABC Limited remains valid, and ABC Limited is still legally bound to fulfill its contractual obligations, including the payment for the machinery supplied.

Further, XYZ Limited cannot bring a suit, claim any set-off, make any counter-claim, or institute any legal proceeding related to the contract as it has not complied with certain provisions of Chapter XXII.