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CHAPTER

Companies Incorporated Outside India

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■ INTRODUCTION

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

MULTIPLE CHOICE QUESTIONS (MCQ)

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.

SECTION 379 APPLICATION OF ACT TO FOREIGN COMPANIES

Applicability of Act to Foreign Companies

1. Sections 380 to 386 (both inclusive) & Sections 392 & 393 shall apply to all F.C.
2. It implies that all companies which falls within the definition of foreign company as per section 2(42) shall comply with the provisions of this Chapter.
3. Special Category of FC where 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 is held by –
- whether singly or in the aggregate
 - 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 (Combination)

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

MULTIPLE CHOICE QUESTIONS (MCQ)

3. 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. Android Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through remote delivery of healthcare services in India. State the incorrect statement as to the nature of the Android Ltd. in the light of the Companies Act, 2013-
 - (a) **It is not a foreign company as it has no place of business established in India**
 - (b) It is a foreign company being involved in business activity through telemedicine
 - (c) It is a foreign company as its doing business through electronic mode
 - (d) It is a foreign company as it conducts business activity in India
5. Astro Ltd. is a company registered in Delhi, India. Although, it is registered in India but it has no business activities in India and all its business operations are scattered across Europe. Choose the correct statement in the light of the provisions of Companies Act, 2013.
 - (a) It is not a foreign company as it has no place of business established in India
 - (b) **It is not a foreign company because it is incorporated in India even though it has no business activity in India**
 - (c) It is a foreign company as it has business activities outside India
 - (d) It is a foreign company as it is incorporated in India
6. African Cycle Limited is a company registered in Africa. Although, it has no place of business established in India, yet it is planning to have an electronic presence in India. Considering the provisions of Companies Act, 2013; in which of the cases, Robert Junior Limited will be considered as a foreign company-
 - (a) The company is planning to undertake Business to Consumer transactions but the main server will be located in Africa
 - (b) The company is planning to raise deposits from Indian citizens
 - (c) The company is planning to provide web-based marketing services in India with the main server located in India
 - (d) **All of the above**

■ 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	<input type="checkbox"/> All the documents shall be delivered to Registrar, Central Registration Centre located in Gurgaon (Haryana) <input type="checkbox"/> 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"> <input type="checkbox"/> RBI approval under FEMA regulations (if required) <input type="checkbox"/> Approval from other regulators (if required) <input type="checkbox"/> Declaration from authorised persons that no approval is required
Alteration or changes in Documents Section - 380(3)	Timeline: <ul style="list-style-type: none"> <input type="checkbox"/> Within 30 days of alteration <input type="checkbox"/> Form FC-2. <input type="checkbox"/> Details: Return containing particulars of the alteration with prescribed fees.
Documents to be Delivered	<input type="checkbox"/> Certified copy of charter/statutes or <input type="checkbox"/> Memorandum/articles of the company. <input type="checkbox"/> If not in English, certified translation in English. <input type="checkbox"/> Full address of RO/PPO of the company. <input type="checkbox"/> List of directors and secretary
Details for List of Directors and Secretary	<input type="checkbox"/> Personal name and surname (full). <input type="checkbox"/> Former name(s), surname(s) (full). <input type="checkbox"/> Father's, mother's, or spouse's name. <input type="checkbox"/> Date of birth. <input type="checkbox"/> Residential address. <input type="checkbox"/> Nationality and nationality of origin (if different). <input type="checkbox"/> Passport details (number, issue date, country). <input type="checkbox"/> PAN (if applicable). <input type="checkbox"/> Occupation. <input type="checkbox"/> Directorship in any Indian company (DIN, Name, CIN). <input type="checkbox"/> Other directorships held. <input type="checkbox"/> Membership Number (Secretary only). <input type="checkbox"/> Email ID.

Authorized Representative	<input type="checkbox"/> Name and address of at least one or more persons who is Resident in India and authorized to <input type="checkbox"/> 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 & Authorized Representatives	Declaration that: <input type="checkbox"/> 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	<input type="checkbox"/> If a foreign company ceases to have a place of business in India, <input type="checkbox"/> It must notify the Registrar immediately about the fact <input type="checkbox"/> 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.

MULTIPLE CHOICE QUESTIONS (MCQ)

7. 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
8. 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.

9. 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.**

10. 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.**

11. 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**

■ SECTION 381 ACCOUNTS OF FOREIGN COMPANY

Requirement Every Calendar Year	Foreign companies shall: <ul style="list-style-type: none"> <input type="checkbox"/> B/S and P&L for its Indian business operations. <input type="checkbox"/> 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"> <input type="checkbox"/> Documents must be delivered to the Registrar within 6 months from the close of the financial year. <input type="checkbox"/> 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"> <input type="checkbox"/> Accounts of Indian business operations must be audited. <input type="checkbox"/> 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"> <input type="checkbox"/> Statement of Related Party Transactions <input type="checkbox"/> Statement of Repatriation of Profits <input type="checkbox"/> 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"> <input type="checkbox"/> If a foreign company ceases to have a PoB in India: <ul style="list-style-type: none"> <input type="radio"/> It must notify the Registrar immediately. <input type="radio"/> Filing obligations cease if no other place of business exists.

Definition of Financial Year	<input type="checkbox"/> The financial year ends on 31st March each year. <input type="checkbox"/> If incorporated on/after January 1st, the financial year ends March 31 of the following year . <input type="checkbox"/> Exception: CG may approve for different FY (Consolidation purposes)
<p>Example: 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.</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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 12. 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)
- 13. 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**
- 14. 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
- 15. 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
- 16. 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:**
- (a) Within a period of 30 days from the close of the financial year of SK Cosmetic Shop plc.
(b) Within a period of 3 months from the close of the financial year of SK Cosmetic Shop plc.
(c) Within a period of 60 days from the close of the financial year of SK Cosmetic Shop plc.
(d) Within a period of 6 months from the close of the financial year of SK Cosmetic Shop plc.

■ 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

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

■ 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.

■ 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)**

MULTIPLE CHOICE QUESTIONS (MCQ)

- 17.** 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
- 18.** 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

19. 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

■ SECTION 385 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.

■ SECTION 386 INTERPRETATION

Illustration: Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

- (i) A company incorporated outside India having a share registration office at Mumbai.
- (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

Answer: Section 2(42) of the Companies Act, 2013 defines a “foreign company” as 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.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression “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.

■ 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 [P.-C.E.D.I.A]	<ol style="list-style-type: none"> Instrument constituting the company. Enactments or provisions for incorporation. Address in India for inspection of the instrument or provisions (with translation if not in English). Date and country of incorporation. Whether the company has a place of business in India, and its 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: 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.</p>		
2.	No Waiver of	Any condition waiving compliance with Section 387(1) is void .
3.	Form of Application Be attached with PROSPECTUS	The form of application for securities must be issued with a valid prospectus. Exception: invitation for an underwriting agreement.
4.	Exemptions	<ol style="list-style-type: none"> To existing members or debenture holders. 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.

■ 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

■ 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.**

MULTIPLE CHOICE QUESTIONS (MCQ)

- 20.** Mannat Company LLC, a company incorporated outside India, proposes to establish a place of business in India through electronic mode. Mannat Company LLC issued prospectus to the citizens of India for subscription of Mannat Company's securities. Mannat Company LLC has been into business for more than 2 years since the company received the commencement of business certificate. The prospectus was duly dated and signed but did not contain the particulars relating to the enactments under which Mannat Company was incorporated and does not provided with any details relating to any establishment in India. You as a pursuing Chartered Accountant are required to examine the validity of the prospectus issued by Mannat Company LLC?
- (a) Yes, the prospectus issued is valid in law as it is duly dated and signed.
 - (b) No, the prospectus issued is invalid in law as it does not contain the particulars relating to the enactments under which the Mannat Company was incorporated.
 - (c) No, the prospectus issued is invalid in law as Mannat Company LLC does not have a place of business in India.
 - (d) No, the prospectus issued is invalid in law as it does not contain the particulars with respect to any establishment of a place of business in India.**

■ 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:
	<input type="checkbox"/> Offer of IDRs.
	<input type="checkbox"/> Disclosure requirements in the prospectus/letter of offer for IDRs.
	<input type="checkbox"/> Depository dealings: Custodian, underwriters, and depository mode.
<input type="checkbox"/> Sale, transfer, or transmission of IDRs.	
Rule 13	Conditions for issuing IDRs:
	<input type="checkbox"/> Comply with Rule 13 of Companies (Registration of Foreign Companies) Rules, 2014.
	<input type="checkbox"/> Follow SEBI (ICDR) Regulations, 2009 .
<input type="checkbox"/> 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:
	Companies registered under the Companies Act, 2013 .
	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:
	Consideration in Cash .
	Consideration in Depository Receipts (DRs) .
	Combination of both .

■ MISCELLANEOUS SECTIONS

Provision	Explanation
Section 391 - Application of Sections 34-36 and Chapter XX	<ul style="list-style-type: none"> <input type="checkbox"/> Sections 34-36 (Civil and Criminal liability) apply to: <ul style="list-style-type: none"> <input type="radio"/> Prospectus by foreign companies under Section 389. <input type="radio"/> Issue of IDR by foreign companies. – <input type="checkbox"/> 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"> <input type="checkbox"/> Section 34: Criminal liability for misstatements in prospectus. <input type="checkbox"/> Section 35: Civil liability for misstatements in prospectus. <input type="checkbox"/> Section 36: Punishment for fraudulently inducing investment.
Section 393 - Validity of Contracts	<ul style="list-style-type: none"> <input type="checkbox"/> A company's failure to comply does not affect validity of contracts/ transactions. <input type="checkbox"/> 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"> <input type="checkbox"/> Foreign companies. <input type="checkbox"/> Companies incorporated outside India. - Applies to securities, prospectus requirements, and matters related to International Financial Services Centers under SEZ Act, 2005.
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■ SECTION 392 PUNISHMENT FOR CONTRAVENTION

Section 392 Punishment for Contravention	<ul style="list-style-type: none"> <input type="checkbox"/> Fine on foreign company: ₹1,00,000 to ₹3,00,000. <input type="checkbox"/> Continuing default: Additional ₹50,000 per day. <input type="checkbox"/> Fine on officers in default: Minimum ₹25,000; can extend to ₹5,00,000.
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MULTIPLE CHOICE QUESTIONS (MCQ)

- 21.** 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.**
- 22.** Aster Limited, a foreign company with a place of business in India was established to conduct the business online as to data interchange and other digital supply transactions. The said company failed to deliver within the prescribed time period, some desired documents to the Registrar of Companies in compliance to the Companies Act, 2013. State the penalty cast on Aster Limited for the cause of its failure.

- (a) Aster Ltd. punishable with fine upto ₹3,00,000 + additional fine upto ₹50,000 in case of continuing offence.
- (b) Aster Ltd. punishable with fine extending upto ₹25,000 + additional fine upto ₹50,000 in case of continuing offence.
- (c) Aster Ltd. punishable with fine extending upto ₹5,00,000 + additional fine upto ₹50,000 in case of continuing offence.
- (d) Aster Ltd. punishable with fine levied ₹1,00,000 to ₹3,00,000 + additional fine upto ₹50,000 in case of continuing offence.**

