

**MOST IMPORTANT QUESTIONS FOR CA INTER
CORPORATE & OTHER LAWS**

**CHAPTER 11 – COMPANIES INCORPORATED OUTSIDE
INDIA**

**FOREIGN COMPANY | IMPROPER DESCRIPTION AS
FOREIGN COMPANY**

Question 1A

Trans Asia Limited is registered as a public company u/s 4 (7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Trans Asia Limited carries on business in India describing itself as a foreign company. Can it do so? State the actions that can be taken against the company for improper use or description as foreign company under the provisions of the Companies Act, 2013.

Answer

Section 2(42): Definition of Foreign Company

"Foreign Company" means 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.

Rule 12: Action for Improper Use or Description as Foreign Company

If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

In the instant case, Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Though Trans Asia Limited is a subsidiary of a foreign company but since it is registered in India, it is not a foreign company. Hence, it **cannot describe itself as a foreign company**.

Hence, it shall be liable for **investigation under section 210** of the Act and **action** consequent upon that investigation shall be taken against that person.

FOREIGN COMPANY

Question 1B

Analyse under the provisions of the Companies Act, 2013, whether the following Companies can be considered as a Foreign Company:

(i) A Company incorporated outside India and registered in Moscow (Russia) has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India.

(ii) A Company which is incorporated outside India employs agents in India but has no place of business in India and does not conduct any business activity in India.

(iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company.

(iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the Board Meetings held only in India.

Answer

Definition of foreign company: Same as above

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- "all related **data communication services**, whether conducted by e-mail, mobile devices, social media, **cloud computing**, document management, voice or data transmission or otherwise"

Answer (i)

As per the facts, a company is registered in Moscow, Russia and has installed its main server in Moscow for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that this company has a place of business in India through electronic mode and is conducting business activity in India. Hence, the above company is a foreign company.

Answer (ii)

In this case, a company is incorporated outside India and employs agents in India but does not have a place of business in India. As per 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. Since, the company though employed agent in India but have no place of business in India and does not conduct any business activity in India, **so it CANNOT be termed as foreign company.**

Answer (iii)

In the given situation, a company is registered in Australia. It has authorised Mr. X in India to source customers and enter into contract on behalf of the company. Thus, it can be said that this company has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, **this company is a foreign company.**

Answer (iv)

In the given situation, a company is registered in Mauritius. 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 models, financial strategies and important decisions in India cannot be termed as conducting business activity in India. Hence, the above company is NOT a foreign company.

FOREIGN COMPANY & ELECTRONIC MODE – SECTION 2(42)

Question 1C

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.

Answer

Definition of foreign company: Same as above

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-

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services, Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

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.

FOREIGN COMPANY | INDIANS OWNED FOREIGN COMPANY

Question 1D

Kids Toys Limited, a company incorporated in Japan, has established its branch office in Mumbai for business to be conducted in India. The structure of paid-up share capital of Kids Toys Limited as at 31.03.2020 is as below:

Preference share capital held by Jiyalal, an Indian citizen:	10 %
Equity share capital held by Ramlal, an Indian Citizen:	20 %
Equity share capital held by Smart Toys Limited, Indian National company:	20 %

You are being a Chartered Accountant is requested to explain with reference to the provisions of the Companies Act, 2013: -

- (1) whether Kids Toys Limited shall be deemed to be a foreign Company or an Indian Company for the business carried on by it in India and
- (2) whether for such Indian business, will it be required to comply with the relevant provisions of the companies Act, 2013 as if it is an Indian Company.

Answer

Definition of foreign company: Same as above

Answer 1

Accordingly, Kids Toys Limited, a Japanese Company has established a place of business in India (branch office in Mumbai) and also carries on the business in India. Hence, this Company shall be deemed to be a Foreign Company.

Section 379(2): Indians owned Foreign Company

Where not less than 50% of the paid-up share capital, whether

1. equity or
 2. preference or
 3. partly equity and partly preference,
- of a foreign company is held by :-

(A) one or more citizens of India or by

(B) one or more companies or bodies corporate incorporated in India, or by

(C) one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall COMPLY with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Answer 2

Accordingly, preference share capital held by Jiyalal and equity share capital held by Ramlal, both being Indian citizens, besides equity share capital held by Smart Toys Limited, an Indian Company, in Kids Toys Limited (Company incorporated in Japan) are 10%, 20% and 20% respectively. In aggregate, Jiyalal, Ramial and Smart Toys Limited are holding 50% of the paid-up share capital of a foreign Company.

Thus, Kids Toys Limited, shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Documents, etc., to be delivered to Registrar by foreign companies – Section 380

Question 2A

(i) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to 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

Answer i

CS LLM ARJUN CHHABRA

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 the Registrar having jurisdiction over New Delhi.

Answer ii - Section 392: Punishment for contravention

Fine to Company	Office in default
Min: 100000 Max: 300000 Continuing offence: Additional fine max 50000/day.	Min: 25000 Max: 500000

TRANSLATED COPY OF INSTRUMENT – SECTION 380 (1)

Question 2B

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 Registrar in the same language.

Answer

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 Registrar.

Alteration in documents to be delivered to ROC – Section 380 (3)

Question 2C

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 registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

Answer

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, 2023.

Question 2D

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 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, establishment of a branch office at Mumbai.

Answer

- (i) Section 2 (42): Same as above

Further, **branch offices are generally considered as 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;

- (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 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 the Registrar having jurisdiction over New Delhi.

ACCOUNTS OF FOREIGN COMPANY – SECTION 381

Question 3

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.

Answer

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 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 in 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, 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)

(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.

DISPLAY OF NAME, ETC., OF FOREIGN COMPANY - SECTION 382

Question 4

The liability of members of Style Limited, a company incorporated in Singapore, is limited. The company plans to start a place of business in Mumbai from 1st Dec. 2016. It has taken an office space in Andheri (West), Mumbai for that purpose. The person who is to take charge of Mumbai Office seeks your advice regarding the provisions of the Companies Act, 2013, in respect of displaying of the company's name etc., at its Mumbai office as well as in its business letters and other documents. Advise him with reference to the provisions of the Companies Act, 2013 governing foreign companies.

Answer

Section 382: Display of Name, etc., of Foreign Company

Display outside office of name and country

Every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situated;

Display on the business letter, billheads, etc.

Every foreign company shall cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and

Display of Limited Liability status

Every foreign company shall if the liability of the members of the company is limited, cause notice of that fact—

1. to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

2. to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

In the given case the person who is to taken charge of Mumbai Office of Style Limited may follow the above provisions in respect of displaying of the company's name etc. at its Mumbai office as well as in its business.

SERVICE ON FOREIGN COMPANY - SECTION 383

Question 5

X Inc is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the State VAT Officer having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the VAT Officer on valid service of notice.

Answer

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 whose name and address have been delivered to the Registrar u/s 380 or at the address of the place of business in India and

- (i) left at (Hand delivery), or
- (ii) sent by Post or
- (iii) by electronic mode (email/fax).

The VAT Officer may serve the show cause notice by following the above provisions.

DATING OF PROSPECTS AND PARTICULARS TO BE CONTAINED THEREIN SECTION 387

Question 6

Blue Berry Ltd. is a Company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital are held by Companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the Country in which it is incorporated. Examine in the light of the provisions of the Companies Act, 2013 whether the issue of prospectus by the Company is valid.

Answer

Section 387(1): Prospectus to contain prescribed particulars

No person shall issue, circulate or distribute in India any prospectus offering to subscribe for 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 the prospectus is dated and signed, and contains particulars with respect to the date on which and the COUNTRY in which the company would be or was incorporated.

It is irrelevant that more than 50% Share Capital of the Company incorporated outside India is owned by Indian Companies.

In the instant case, issue of prospectus by Blue Berry Limited is not valid as it did not state the Country in which it is incorporated.

REGISTRATION OF PROSPECTUS – SECTION 389

Question 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.

Answer

Section 389: Registration of Prospectus

Company incorporated outside India/Foreign company shall file the Prospectus with ROC, New Delhi.

A company incorporated outside India (CIOI) shall NOT issue, circulate or distribute in India any prospectus offering for subscription of its securities, unless the following conditions are satisfied: -

- (1) The prospectus is approved by the Board of Directors.
- (2) The prospectus is certified by the Chairperson and 2 other Directors.
- (3) It has been delivered for registration to the Registrar.
- (4) The prospectus states on the face of it that a copy has been delivered to ROC.
- (5) The prospectus contains the prescribed annexures below.

Documents to be Annexed to Prospectus

- (a) Expert's Consent.
- (b) MD's Appointment Contract.
- (c) Other Material Contract.
- (d) Underwriting Agreement.
- (e) Power of Attorney.

DEFINITION [2(42)] | INDIAN OWNED FC (379) | IDR (390)

Question 8

Examine in the light of the provisions of the Companies Act, 2013 whether the following companies can be considered as "Foreign Companies". Assume all of them have a place of business in India & conduct business In India.

- (i) A company incorporated outside India having shareholders who are all Indian citizens.
- (ii) A company incorporated in India but all the shares are held by foreigners.
- (iii) Also examine whether the above companies can issue Indian Depository Receipts under the provisions of the Companies Act, 2013?

Answer

Section 2(42): Definition of Foreign Company

"Foreign Company" means 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.

Section 379(2): Indians owned Foreign Company

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 is held by:-

- (A) one or more citizens of India or by
- (B) one or more companies or bodies corporate incorporated in India, or by

(C) one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall COMPLY with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Sec 390: Offer of Indian Depository Receipts

Company, which is incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India may make an issue of Indian Depository Receipts (IDRs) by complying with the conditions mentioned under this rule, in addition to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Answer

Type of Company	Foreign Company?	IDR issue?
A company incorporated outside India having shareholders who are all Indian citizens.	It is a Foreign Company.	It can issue IDR.
A company incorporated in India but all the shares are held by foreigners.	It is NOT a Foreign Company.	It cannot issue IDR.

COMPANY'S FAILURE TO COMPLY WITH PROVISIONS OF THIS CHAPTER NOT TO AFFECT VALIDITY OF CONTRACTS, ETC. – SECTION 393

Question 9

Z Limited, a Foreign Company, incorporated in Japan has a branch office in Hyderabad in India. Mr. Bhartiya, the Indian Citizen holds preference shares of Z Limited which comprises 10% of the paid-up share capital of the company. Deshi Limited, a company incorporated in India holds equity shares of Z Limited which comprises 45% of the paid-up share capital of the company. During the financial year 2019-20, there has been alteration in the particulars of the documents mentioned under section 380 of the Act and the company has failed to submit the alterations to the Registrar within 30 days. Analyse in the light of the applicable laws the consequences of failure on the validity of any contracts entered into by the foreign company?

Answer

Section 379(2): Indians owned Foreign Company

Same as above

Section 393: Company's Failure to Comply not to affect Validity of Contracts, etc.

Any failure by a company to comply with the provisions of this Chapter 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: -

- (i) bring any suit,
- (ii) claim any set-off,
- (iii) make any counter-claim or

(iv) institute any legal proceeding in respect of any such contract, dealing or transaction, **until** the company has complied with the provisions of this Act applicable to it.

In the above question, 55% of the paid-up share capital of the company are held by an Indian citizen and Indian company.

Hence, the company shall **comply** with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

There has been non-compliance of section 380 of the Act by Z Limited. So as per section 393 of the Act, the validity of any contract entered into by the foreign company shall not be affected.

However, the company may be sued in respect of such contract but shall not be entitled to bring any suit in respect of such contract until the company has complied with the provisions of this Act applicable to it.

AUDIT OF FS (381), VALIDITY OF CONTRACTS (393) & ANNUAL RETURN (384)

Question 10

Phil Heath Systems Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the Indian business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the Companies Act, 2013, advise the Company on the following matters:

- (i) Whether the accounts of the Company pertaining to Indian business operations shall be audited? If yes, by whom?
- (ii) What is the due date for filing the audited financial statements with the Registrar of Companies (RoC)?
- (iii) What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?
- (iv) In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies?

Answer

Phil Health Systems Incorporated (PHSI), a foreign company, is registered outside India and has a place of business in India. As it has prepared financial statements pertaining to the Indian business operations, it reflects conducts of business activity in India. Therefore, provisions related to companies incorporated outside India shall be applicable to it. Following are the answer in line with said nature of the company.

Answer (i): Sec 381: Audit of FS

According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered

Accountants. The Provisions of Audit Chapter shall apply mutatis mutandis on the Foreign Company as well.

Answer (ii) Sec 381: Due date for filing FS

PHSI shall deliver a copy of audited financial statements of Indian business operations to the Registrar, New Delhi in Form FC-3, within a period of 6 months of the close of the financial year of the foreign company to which the documents relate. Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding 3 months.

Answer (iii): Sec 393: Company's Failure to Comply not to affect Validity of Contracts

In the instant case, non-filing of financial statements by PHSI 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 :-

- (i) bring any suit,
- (ii) claim any set-off,
- (iii) make any counter-claim or
- (iv) institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Answer (iv) Section 384(2): Annual Return

PHSI shall prepare and file, within a period of 60 days from the last day of its financial year, to the Registrar, New Delhi; Annual Return in Form FC-4 along containing the particulars as they stood on the close of the financial year.