

CA Inter - Corporate and Other Law

Suggested Answers

Chapter -Accounts of Co. & Foreign Co.

Answer 1:

Relevant provision:

According to section 2(42) of the Companies Act, 2013, "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

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.

Given Case and Analysis:

1. In the given situation, M/s 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.
2. In the given situation, M/s Blue Star is registered in Thailand. It has authorized Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent,

physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.

3. In the given situation, M/s Xex 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 Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.

Answer 2 :

- (i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

- (ii) Persons responsible to maintain books

As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of sec 128.

- (iii) A Company have has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

- (a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
- (b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate

and such records shall not be disposed of or rendered unusable, unless permitted by law.

- (c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Answer 3:

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM. However, Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August, 2023.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar

Answer 4 :

- 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 by taking into account the provisions of Section 2(42) of the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014.
- 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. Since, the company though employed agent in India but have no place of business in India, so it cannot be termed as foreign company.

iii. In the given situation, a company is registered in Australia. It has authorized 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 as per the Companies Act, 2013.

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 as per the Companies Act, 2013

Answer 5:

Section 380 (3) of the Companies Act, 2013, 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 along with prescribed fees. Accordingly, Fine Publishers is required to submit to the Registrar the full address of the new registered or principal office of the company by March 30, 2023.

Answer 6:

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.

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