

11

Foreign Company

Section Structure

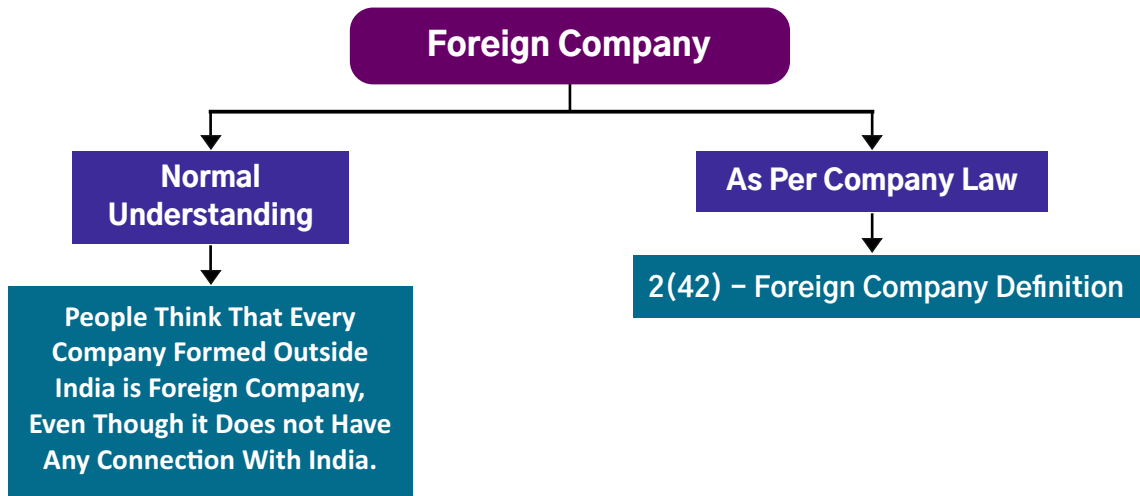
Coverage of Chapter

Section	Details
379.	Application of Act to Foreign Companies
380.	Documents, etc., to be Delivered to Registrar by Foreign Companies
381.	Accounts of Foreign Company
382.	Display of Name, etc., of Foreign Company
383.	Service on Foreign Company
384.	Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection
385.	Fee for Registration of Documents
386.	Interpretation
387.	Dating of Prospectus and Particulars to be Contained Therein
388.	Provisions as to Expert's Consent and Allotment
389.	Registration of Prospectus
390.	Offer of Indian Depository Receipts
391.	Application of Sections 34 to 36 and Chapter XX
392.	Punishment for Contravention
393.	Company's Failure to Comply With Provisions of This Chapter Not to Affect Validity of Contracts, etc.
393A.	Exemptions under this Chapter

E-Forms Companies (Registration of Foreign Companies) Rules, 2014

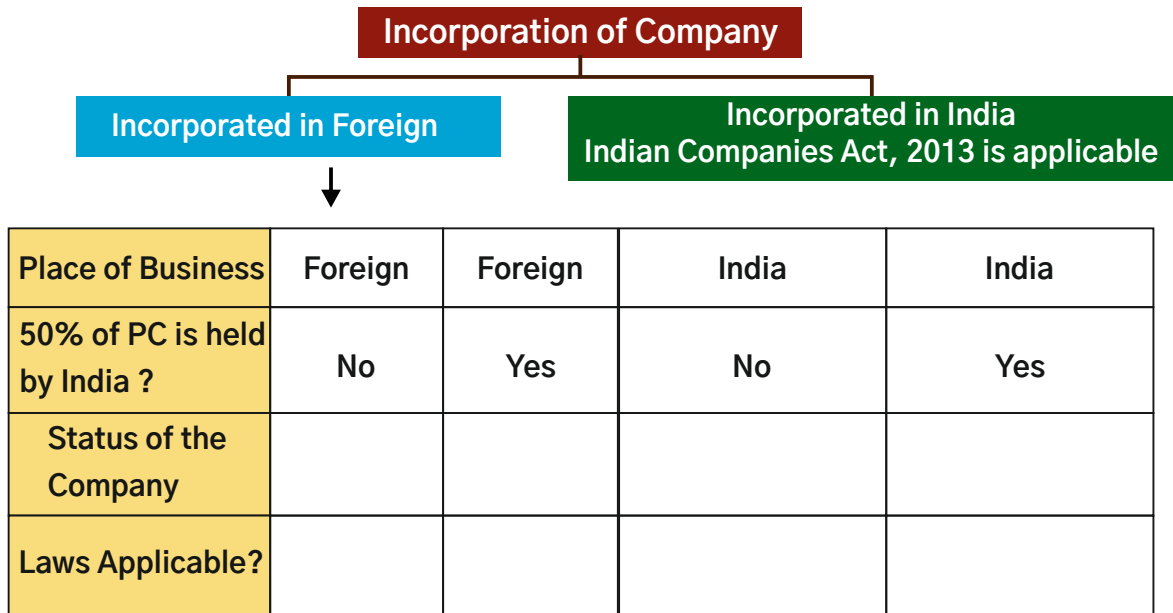
E-Form	Details	Relevant section	Rule No
FC-1	Information to be filed by company with ROC	380	3
FC-2	Return for alteration of information or documents filed with ROC	380	3
FC-3	Filing of annual accounts with list of all Place of Business in India	381	6
FC-4	Annual Return of Foreign Company	384	7
FC-5	Nomination by IDR holder	390	13

Concept of Foreign Company



Sec. 2(42) & 379: Foreign Company & Its Meaning

Chart for Understanding



Section

“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.

The essential conditions of the foreign company are as follows:

- a) It must be a company or body corporate.

- b) The company shall be incorporated outside India.
- c) The company shall have the place of business in India by agent or physically or electronically.
- d) Conducts business activity in India in any manner.

Status of foreign company:

- A Foreign company is not ‘Company’ as defined under section 2(20) of the Companies Act, 2013.
- A Foreign company is a “body Corporate” as defined under section 2(11) of the Companies Act, 2013.

Meaning of Electronic Mode

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

Rule 2(1)(h) of the Companies (Specification of Definitions Details) 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.

Sec.379: Application of Act to foreign companies.

Provision

379 (1) : Co Act, 2017 (1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies 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.

379 (2) 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:

- one or more citizens of India; or
- by one or more companies or bodies corporate incorporated in India; or
- by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such foreign company shall also 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.

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

Provision

380(1): Documents, etc. to be delivered to Registrar by foreign companies

Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration—

- i) 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 and, if the instrument is not in the English language, a certified translation thereof in the English language;
- ii) the full address of the registered or principal office of the company;
- iii) a list of the directors and secretary of the company containing such particulars as may be prescribed; (

Rule 3 of Companies (Registration of Foreign Companies) Rules, 2014

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:

- a) personal name and surname in full;
- b) any former name or names and surname or surnames in full;
- c) father's name or mother's name and spouse's name;
- d) date of birth;
- e) residential address;
- f) nationality;
- g) if the present nationality is not the nationality of origin, his nationality of origin;
- h) 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)
- i) income-tax permanent account number (PAN), if applicable;
- j) occupation, if any;
- k) 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);
- l) other directorship or directorships held by him;
- m) Membership Number (for Secretary only); and
- n) e-mail ID.
- iv) 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;
- v) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- vi) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- vii) 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
- viii) any other information as may be prescribed.

Rule 3 of Companies (Registration of Foreign Companies) Rules, 2014

- 1) Every foreign company shall, within thirty days of establishment of its place of business in India, in addition to the particulars specified in sub-section (1) of section 380 of the Act, also deliver to the Registrar for registration, a list of directors and Secretary of such company.
- 2) **Refer point 2 in above (iii)**
- 3) A foreign company shall, within a period of 30 days of the establishment of its place of business in India, file with the registrar Form **FC-1** with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380 and the application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.

Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014:

Office where documents to be delivered and fee for registration of documents:

- 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.
- It shall be accompanied with the prescribed fees.
- 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 from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

380(2): Filing of documents by existing foreign company before commencement of act.

Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

The existing foreign company before the commencement of this act who have not made the filing u/s 592 of the old Companies Act, 1956 shall make such filing u/s 380 of the Companies Act, 2013.

380(3): Form, procedure and time within which alteration in documents shall be intimated to Registrar:

Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty 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.

If the information or the documents delivered to the ROC are altered the same shall be filed with the ROC within **30 days** of such alteration in the return prescribed.

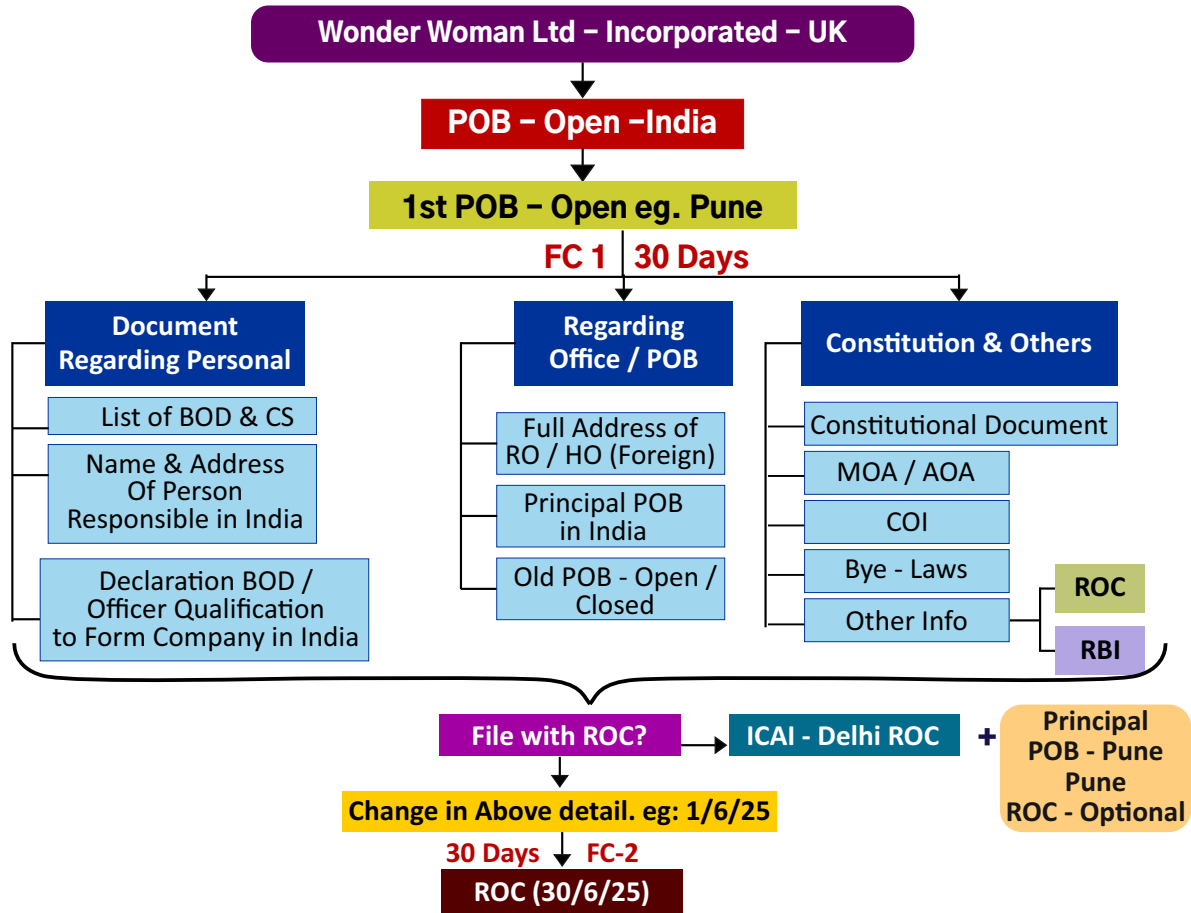
E-Filings

Form FC-1: Filing of the details of the foreign company under section 380.

Form FC-2: Filing of changed details of the foreign company under section 380.

Chart for Understanding

380 – Filing By FC



Sec. 381: Accounts of foreign company.

Provision

Every foreign company shall, in every calendar year:

a) make out a balance sheet and profit and loss account

- i) in such form,
- ii) containing such particulars and
- iii) including or having annexed or attached thereto such documents as may be prescribed;

b) deliver copy of those documents to ROC

The Central Government may, by notification,

- i) exempt any foreign company class or class of foreign companies from the requirements of (a) above or
- ii) apply the requirements of (a) above to any foreign company or class or classes of companies with exceptions/modifications.

381 (2): The documents shall be filed in the English language.

If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

The documents if not in English language the translated certified copy of same shall be filed with ROC in English language.

381 (3): Filing of list of places of business in India

Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (1), 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 sub-section (1) is made out.

Every foreign company shall file **E- Form FC 3** with the ROC the list of POB in India as on the date of making the balance sheet.

Companies (Registration of Foreign Companies) Rules, 2014

Rule 4: Financial statement of Foreign Company

1) Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including-

- i) documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies;
- ii) 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 provisions of the law for the time being in force in that

country:

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language:

Provided further that where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted;

Note: "financial year" in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after

the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of 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.

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

It is important to note that a foreign company having its place of business in India may not necessarily follow a financial year ending on the 31 st day of March every year provided it has obtained the requisite approvals from the Central Government for the same.

iii) Such other documents as may be required to be annexed or attached in accordance with sub-rule (2).

2) Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

a) Statement of related party transaction, which shall include-

- i) name of the person in India which shall be deemed to be the related party within the meaning of clause (76) of section 2 of the Act of the foreign company or of any

subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner;

- ii) nature of such relationship;
- iii) description and nature of transaction;
- iv) amount of such transaction during the year with opening .closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;
- v) reason of such transaction;
- vi) material effect of such transaction on both the parties;
- vii) amount written off or written back in respect of dues from or to the related parties;
- viii) a declaration that such transactions were carried out at arms length basis; and
- ix) any other details of the transaction necessary to understand the financial impact;

b) Statement of repatriation of profits which shall include-

- i) amount of profits repatriated during the year;
- ii) recipients of the repatriation;
- iii) form of repatriation;
- iv) dates of repatriation;
- v) details if repatriation made to a jurisdiction other than the residence of the beneficiary;
- vi) mode of repatriation; and
- vii) approval of the Reserve Bank of India or any other authority, if any.

c) Statement of transfer of funds (including dividends if any) which shall, in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company, include-

- i) date of such transfer;
- ii) amount of fund transferred or received;

- iii) mode of receipt or transfer of fund;
- iv) purpose of such receipt or transfer; and
- v) approval of Reserve Bank of India or any other authority, if any.

3) The documents referred to in this rule 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:

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**.

Rule 5: Audit of accounts of foreign company.

1) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of subsection (1) of section 381 and rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability

partnership of practicing chartered accountants.
 Explanation: For the purposes of this sub-rule, the expressions "Chartered Accountant", "Firm" and "Limited Liability Partnership" shall have the meanings respectively assigned to them under the Act and Limited Liability Partnership Act, 2008 respectively.

2) The provisions of Chapter Xi.e. Audit and Auditors and rules made thereunder, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

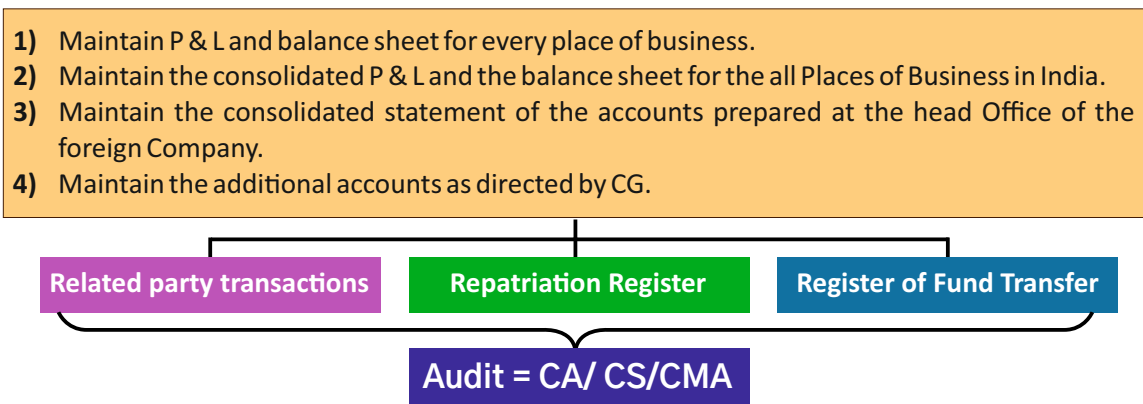
Rule 6 : List of places of business of foreign company.

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.

E-Filings

Form FC-3: Filing of list of place of businesses in India with ROC as on the date of making the Balance Sheet.

Chart for Understanding



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.

Sec. 382: Display of name, etc., of foreign company.

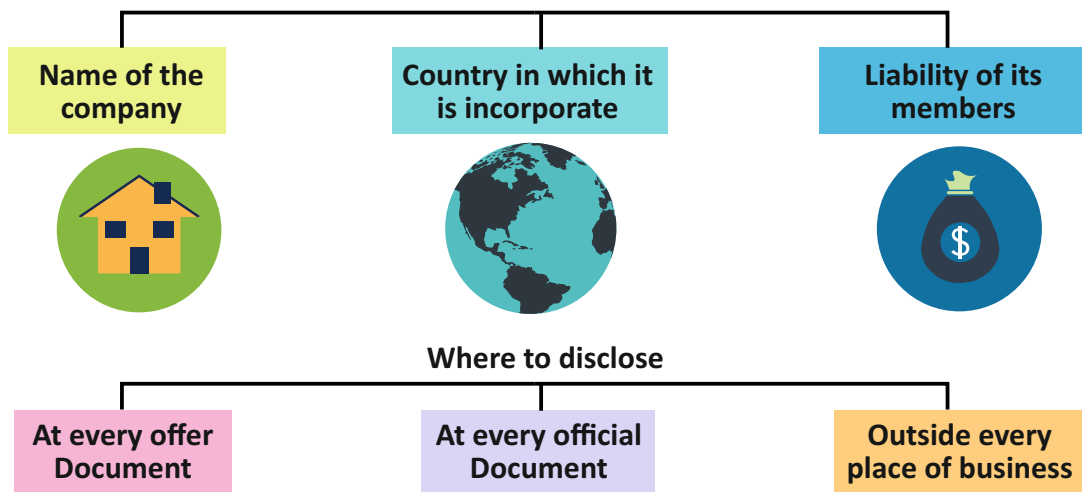
Provision

Every foreign company shall—

- a) 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 situate;
- b) 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
- c) if the liability of the members of the company is limited, cause notice of that fact —
 - i) to be stated in every such prospectus issued and in all business letters, billheads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - ii) 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.

Chart for Understanding

382 : Disclosures by Foreign Company



Sec. 383 : Service on foreign company

Provisions

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 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.

Sec. 384 : Debentures, annual return, registration of charges, books of account and their inspection

Provisions

Sec. 384(1): Applicability of the provisions of debenture.

The provisions of this Act relating to debentures section 71 shall apply mutatis mutandis to a foreign company.

Sec. 384(2): Applicability of provisions of annual return.

The provisions relating to annual return [section 92] shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

Further, as per Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules 2014, a foreign company which fulfills the criteria specified under Section 135(1) of the Companies Act 2013 is required to comply with Section 135 of the Companies Act, 2013, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

384(3): Applicability of provisions of maintenance of books of accounts.

The provisions relating to books of account section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

384(4): Applicability of provisions of Charges on asset.

The provisions relating to registration of charges Sections 77 to 87 shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.

384(5): Applicability of provisions of chapter inspection and investigation.

The provisions relating to inspection, inquiry and investigation Sections 206 to 240 shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

Companies (Registration of Foreign Companies) Rules, 2014

Rule 7: Every foreign company shall prepare and file, within a period of **60 days** from the last day of its financial year, to the Registrar annual return in **Form FC.4** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

E-Filings

Form FC-4: filing of annual returns with ROC by Foreign Company.

Sec. 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.

As per Rule 8(2) of the Companies (Registration of Foreign Companies) Rules, 2014, fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 shall be paid to the Registrar for registration of any documents.

Sec. 386: Interpretation.

For the purposes of the foregoing provisions of this Chapter:

- a) the expression **“certified”** means certified in the prescribed manner to be a true copy or a correct translation;
- b) the expression **“director”**, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
- c) the expression **“place of business”** includes a share transfer or registration office.

Example: 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.

Accordingly, to qualify as **‘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 will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

Sec. 387 : Dating of prospectus and particulars to be contained therein.

Provisions

Sec. 387(1): Prospectus to be dated and signed

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:

- 1) contains particulars with respect to the following matters, namely:—
 - a) the instrument constituting or defining the constitution of the company;
 - b) the enactments or provisions by or under which the incorporation of the company was effected;
 - c) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;
 - d) the date on which and the country in which the company would be or was incorporated; and
 - e) whether the company has established a place of business in India and, if so, the address of its principal office in India; and
- 2) states the matters specified under section 26 (Matters to be stated in prospectus).

Provided that points (1), (2) and (3) of point (a) above shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business

387(2): – No waiver of compliance in prospectus

The following conditions shall be void:

- i) Any condition requiring or binding an applicant for securities to waive compliance with any requirement as above.
- ii) Any condition purporting to impute him with

notice of any contract, documents or matter not specifically referred to in the prospectus.

It is to be understood that Sec. 387(2) does not provides any exception with respect to non-compliance of requirement stated under Sec. 387(1) by any person responsible for issuing or circulating prospectus.

387(3): Further requirements for issue of prospectus in India.

The company can issue form of application for securities in India only if:

- a. The company complies with the provision of this chapter.
- b. Such issue does not contravene the provision of sec 388.

However a company can issue form of application to underwriter for entering into underwriting agreement in bona fide manner without compliance of above requirements.

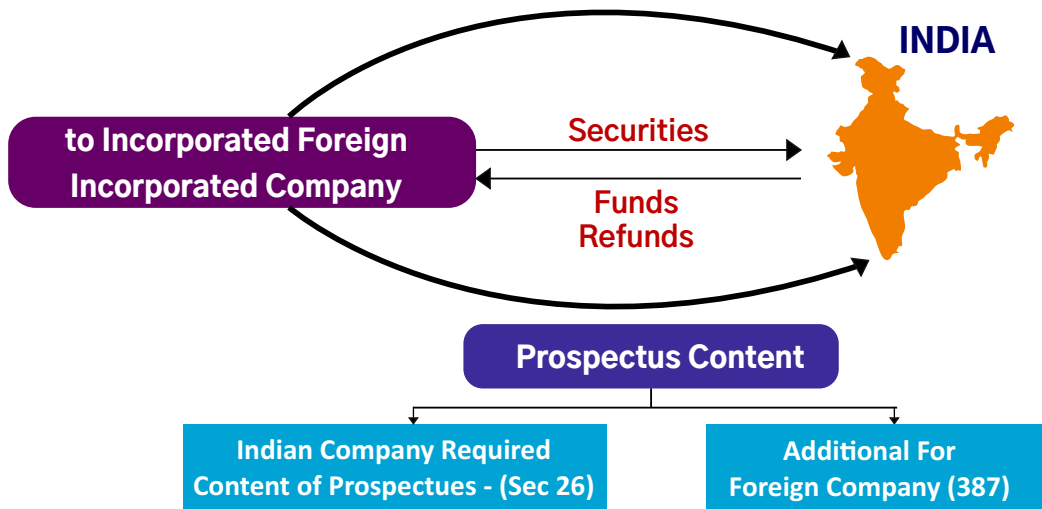
387(4): Non applicability of provisions in certain cases.

1. The above provisions are not applicable for issue of prospectus for shares or debentures to existing shareholders or debenture holders irrespective of whether they renounce the shares or not.
2. The above provisions shall not be applicable to issue of prospectus for securities of the same nature which are already issued by company and are listed on recognized stock exchange.
3. But the section is applicable to issue of prospectus or form of application of securities issued for formation of company or future formation of company.

387(5): Liability to remain the same.

Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

Chart for Understanding



Sec.388: Provisions as to expert's consent and allotment.

According to this section:

- 1) **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 been established, or when formed will or will not establish, a place of business in India,—
 - a) if, where the prospectus includes a statement purporting to be made by an expert, **he has not given, or has before delivery** of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
 - b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of section 33 (Issue of application forms for securities) and section 40 (Securities to be dealt with in stock exchanges), so far as applicable.
- 2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Sec. 389: Registration of prospectus.

According to this section:

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) 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
- b) the prospectus states on the face of it that a copy has been so delivered, and
- c) 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.

Companies (Registration of Foreign Companies) Rules, 2014

Rule 11: The following documents shall be annexed to the prospectus, namely:

Documents to be annexed to prospectus.

- (a) any consent to the issue of the prospectus required from any person as an expert;
- (b) 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;
- (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
- (d) a copy of underwriting agreement; and
- (e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Class Work

Sec. 390: Offer of Indian Depository Receipts.

Provisions

For the purposes of this section, and according to the Companies (Registration of Foreign Companies) Rules, 2014, **Indian Depository Receipts (IDR)** means any instrument in the form of a depository receipt **created by a Domestic Depository in India** and authorized by a company incorporated outside India making an issue of such depository receipts.

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

- (a) the offer of Indian Depository Receipts;
- (b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;
- (c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and
- (d) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Rule 13 : Issue of Indian Depository Receipts (IDR's)

According to the Companies (Registration of Foreign Companies) Rules, 2014, no company 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 shall make an issue of Indian Depository Receipts (IDRs) unless it complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

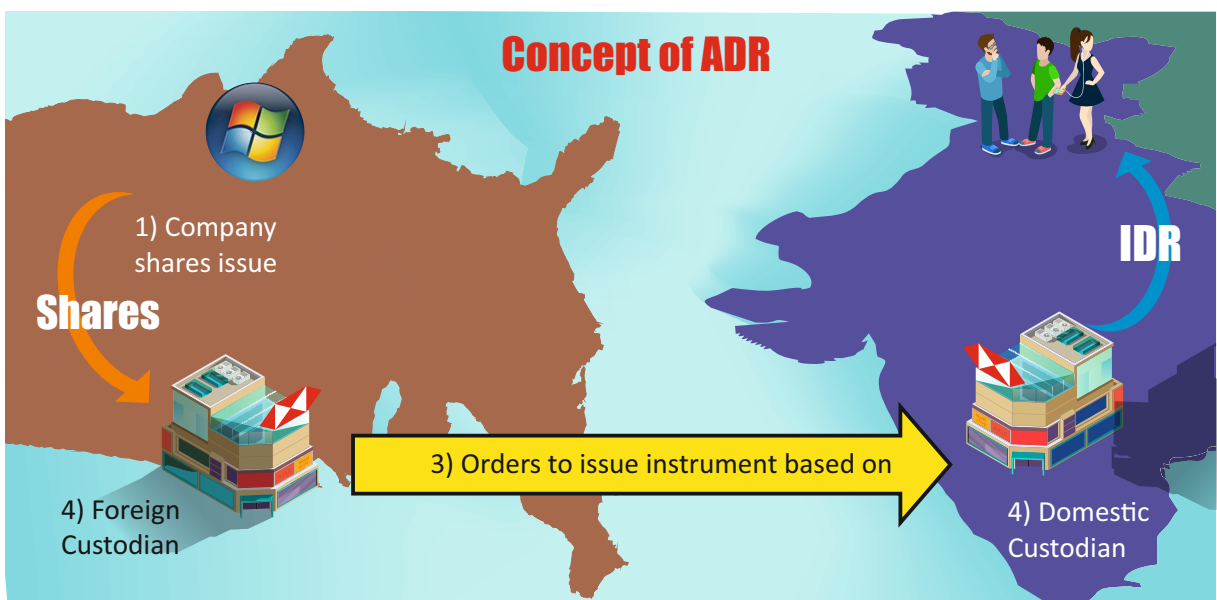
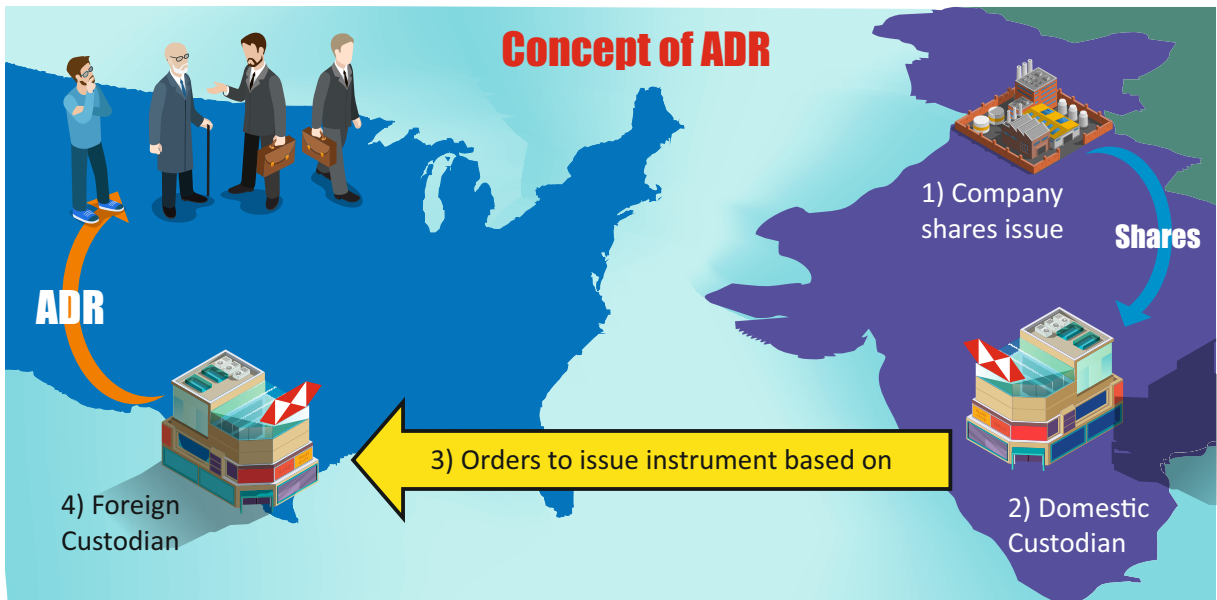
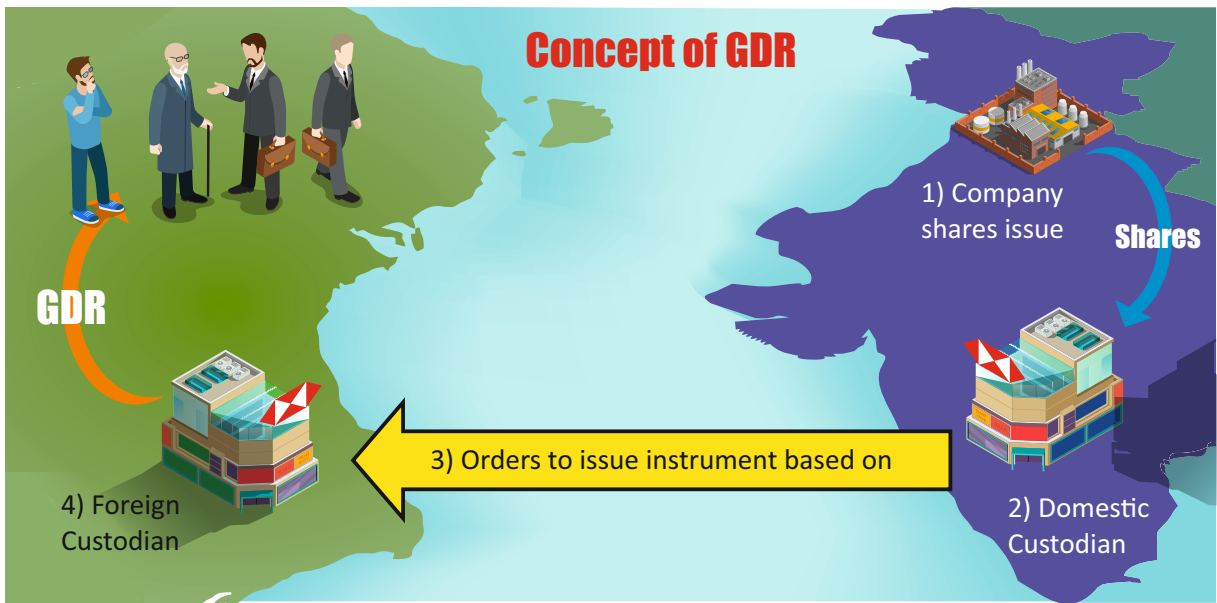
The Rules relating to offer, disclosure requirements and manner of transfer, sale etc., related to IDR are contained in Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014.

Application of Chapter XV (Compromises, Arrangements and Amalgamations):

Section 234 of the Companies Act, 2013 deals with merger or amalgamation of company with foreign company.

- 1) Section 234(1)** states that the provisions of Chapter XV unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes or mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.
- 2) Section 234(2)** states that subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation: For the purposes of sub-section (2) above, the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not



Sec.391: Application of sections 34 to 36 and Chapter XX.

Provisions

391(1): applicability of the provisions of the liability :

The provisions relating to Civil liability/Criminal Liability for misstatement in prospectus/Fraudulently inducing to invest (Sections 34 to 36) shall apply:

- a. To the issue of a prospectus by a company incorporated outside India [See section 389] as they apply to prospectus issued by an Indian company.
- b. The issue of Indian Depository Receipts by a foreign company.
 - Section 34 deals with criminal liability for mis-statements in prospectus
 - Section 35 deals with Civil Liability for mis-statement in prospectus
 - Section 36 deals with punishment for fraudulently inducing persons to invest money

391(2): Applicability of the provisions for winding up.

Co Act 2017 (2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

Sec.392: Punishment for contravention.

Provisions

Where a foreign company fails to comply with any of the provisions of this Chapter (Chapter XII):

- the foreign company shall be punishable:
 - a. with fine which shall not be less than ₹ **1,00,000** but which may extend to ₹ **3,00,000**; and
 - b. in the case of a continuing offence, with an additional fine which may extend to ₹ **50,000** for every day during which the default continues;

and
- every officer 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**.

Thus, the punishment for contravention may be summed up as under:

1. Fine on defaulting foreign company in the range of ₹ **1 lac to ₹3 lac**.
2. In case of continuing default an additional fine on the foreign company to the tune of ₹ **50,000 per day** after the first during which the contravention continues.
3. Punishment for every officer of the foreign company who is in default shall be imposition of a fine of a minimum amount of ₹ **25,000** , but which may extend to ₹ **5,00,000**.

Class Work

Sec. 393: Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

Section

393: Validity of contracts and power of prosecution.

1. 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.
2. But the company shall not be entitled to file a case or suit regarding such contracts until the company has complied with the provisions of this Act applicable to it.

RULE 12 of Companies (Registration of foreign companies) Rules, 2014

Action for Improper Use or Description as Foreign Company:

It states that 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.

Exemptions under this Chapter

Provisions

The Central Government may, by notification, exempt any class of-

- a) foreign companies;
- b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, in so far as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centers set up under section 18 of the Special Economic Zones Act, 2005.

Class Work

