15 November 2023 15:43

Foreign Co.

2(42)

(1) A company which is incorporated outside India.

(2) has a place of Business in India

386 = includes a share transfer office or share Registration office

itself ; Agent

physical ; or e-mode --> H.O.

(3) conducts Business Activity in India

A Ltd Germany

India = shop 2018 → Closure - operations 2022

Still having a shop

= 2023.

Foreign co. = NO

(No Business Activity)

A Ltd. France

share offer = in India. } electronic POB.

de-mat

Foreign co ✓

A Ltd. Denmark = Foreign Co ✓

Issued in Denmark = Debentures (₹10 cr)

AO

Indian citizen

money

CC Avenue USA = Foreign co.

payment Gateway

AOCC website.

Book ordered = 18/11/2023

₹ 1799/-

T+1 = 19/11/2023

1% = PG.

1799 - 1% = 1781 ← credited

Financial settlement.

Data Analytics = Data Analyst

Amazon

Data Analytics = Data Analyst
Data Scientist

Amazon
Chennai WH
Air + Truck } Delhivery
- Chennai WH (packed)
- Left CWH
- Reached B2B
HO Delhi

Company (UK) → FC
Supply chain management

879.

① Foreign Co = Shall comply = Section 379 to 386
392 & 393.

② Foreign Co = Shall comply = ① This chapter
whose 50% of ② All the provisions of this Act
paid-up capital (as if the Co. is formed in India).
is held by
a) Indian citizen
b) Indian Co
c) Indian citizen + Indian Co.

Issued cap = 400cr
Called up cap (300cr x 10/each) =
Unpaid cap (1cr x 2/ each) =

} Paid-up capital
30 cr x 10 = 300cr
1cr x 2 = 2cr
paid-up 298cr

Office = Number
Supply chain management.

Foreign Co. — F Ltd France =
1. Mukesh (IC) = 2cr x ₹10/ = 20cr
2. ABC Ltd (ICo) = 12cr x ₹10/ = 120cr
3. Anil (IC) = 2cr x ₹10 = 19.60cr
(40 lacs x ₹9/-) 159.60cr

1.60cr x 10 = 16cr
40 lacs x 9 = 3.60cr
19.60cr

159.60 / 298
= 53.56%

India
POB = Delhi
capital = 4cr

Reduction of s/capital = Section 66
Annual Return = Section 92 (MGT-7)
AGM = Section 96.

Deemed Indian Co = Shall comply with = As if it is an Indian Co
CA I 2013

RFC Ltd
F Co.
4 ES @ 100 $
1 PS @ 100 $]

Paid-up capital = 5 lakh @ 100 $ = 5cr
(-) 5000 @ 50 US$ (250000)

paid-up capital = 5 lakh @ 100 \$ = 5 Cr
(−) 5000 @ 50 US\$ (250000)
paid-up cap. 4,97,50,000

(1) RJ Ltd = 26000 × \$ 100 = 2600000
1100 × \$ 50 (55000)
2545000

(2) Ronit Ltd = 223000 × \$100
= 2,23,50,000

49750000 / 2,48,95,000

50.04%

↓

Deemed Indian Co

380.

Foreign Co. — Shall File → ROC

(1) establishment of P.O.B in India = 30 days = FC-1
(2) Amendment in document filed in FC-1 = 30 days = FC-2.
(3) Closure of P.O.B. in India = Immediately.

(1) charter, MOA, AOA, statutes, instrument containing constitution
(Not in English, then translated copy in English must be filed).
Authentication

In India
(1) Advocate / Attorney / Pleader → High Court
(2) Competent person having Knowledge of original and English Language = Affidavit

Outside India
(1) Person having custody of original doc
(2) Notary public.

(2) Address of R.O. / principal POB = Country of Incorp.
(3) Address of principal POB = In India.
(4) Name and Address = Authorised person = rec. documents
(must be person Resident in India)
(5) Opening and closing of POB on earlier occasions.
(6) Declaration that none of director / PRI = Convicted = formation / management of Co. = In India / outside India
(7) Approval of RBI + other regulators
(under FEMA)
No approval is required = declaration by PRI = in this regard.
(8) Details of Director and Sec.
(Name, Surname, DOB, spouse name, Father's / mother's name, Nationality, occupation, PAN, Directorships in Indian Co / other Co.), Nationality of origin.
(DIN + CIN of that Co)

383

Every document which is to be provided to foreign Co. shall be delivered

382.

Every foreign Co. shall state
a) Name of Company
b) Country of incorporation
c) Fact that liability is limited

shall be delivered

- To
  - person authorised u/s 380.
- By
  - (1) Hand delivery
  - (2) physical mode
  - (3) Electronic mode

b) country of incorporation
c) Fact that liability is limited

in

- Place of Business — a+b+c → English language, local language
- Prospectus Advertisement — c
- Bill head, letter-paper, Notice — a+b+c

Prospectus Advertisement / Bill head, letter-paper, Notice → English language.

384

- Debenture (71)
- Charges (77-87)
- Inquiry, inspection & investigation (206-229)
- 381 Audit & Auditors (139-147)
- 391 prospectus (34-36)
- 391 winding-up (chapter XX)

→ Provisions of CA, 2013 shall apply mutatis mutandis on foreign Co.

- Annual Return (92)
- CSR (135)

→ Provisions of CA, 2013 shall apply on foreign co. subject to exceptions and modifications
→ AR = 60 days from End of FY (FC-4).

- BOA (128)

→ provisions of CA, 2013 shall apply only in relation to keeping BOA of
a) Rec & payment
b) Asset & Liab.
c) sale & purchase
} place of Business in India

Time Limit

1. Establishment of POB = 30 days = intimation = FC-1
2. Closure of POB = Immediately = "
3. Alteration of docs filed = 30 days = " = FC-2
4. FAB-3 = 6 months* from End of FY = filing = FC-3 = *+3 months
5. Annual Return = 60 days from end of FY = " = FC-4.

393

Foreign Co = Non-compliance = F/s = X
AR = X.

- A
  - purchase of goods. (on credit)
  - → still valid
  - → A can sue the foreign Co
- B.
  - sold goods on credit
  - → F/Co cannot sue B.
- C
  - Loan to FC = ₹5 lacs
  - Goods sold (on credit) = 1 lac
  - → C can file a suit = demanded = ₹5 lacs.
  - −(1 lac)
  - Net liability: 4 lacs = ~~set off & claimed by foreign co~~

IDR.

Tesla. — shares = issued in name of SBI. (10 Cr share) → SBI. = Domestic Depository

deposited physically

100 Cr
(IDR)
10 IDR = 1 share

deposited physically

JP morgan.

Overseas Custodian Bank

IDR

10 IDR = 1 share

Mr Bhalu Bhya

50K IDR = 5K shares.

IDR Holder

Member = X

Can become member
IDR = surrender
Shares = allotted in his name.

381.

Foreign company

① shall prepare F/s for every FY (as per sch-III / nearby) in every calendar year

② shall get F/s Audited By CA / Firm-up of CA (CA + COP)

③ shall make filing (FC-3) (within 6 months from End of FY) → ROC (Delhi)

① FS ② Any other doc. required to be annexed as per section 137 (BR and AR)

③ CFS - parent company

④ RPT -
- ① RP = name
- ② Nature of transaction
- ③ Nature of Relation
- ④ Amount of transac.
- ⑤ Reasons
- ⑥ Declaration = transac is on Arm Length Basis.

⑤ statement of Repatriation
- ① Amt. of profit
- ② Details of Benefi
- ③ mode of Repatri
- ④ purpose of Repat
- ⑤ RBI = Approval
- ⑥ other than country of Residence

⑥ statement of transfer of funds.
- ① Amount of transfer
- ② manner of transfer
- ③ purpose of transfer
- ④ Beneficiary
- ⑤ RBI - Approval.

* Translated copy in English = must be filed.

387 + 388 + 389

Foreign co. (If offering securities in India) — shall issue → prospectus

- shall be attached with application form.
  Exceptions:-
  ① Underwriting Agreement
  ② existing members
  ③ Uniform securities already dealt in the past.
- Dated
- signed — Chairperson + Dir
- Shall contain the annexure
  ① Instrument defining Constitution, statutes.
  ② place of inspection (in India)
  ③ place of business (in India) (if any)
  ④ Enactment, provisions of law = under which it is incorporated
- If contains stat of Expert
  ① Expert has provided written consent
  ② Expert has not withdrawn the consent
  ③ It is stated in the prospectus.

the past.

(in India) (If any)

③ It is stated in the prospectus.

④ Enactment, provisions of law = under which it is incorporated.
(Certified translations)

⑤ Date & Country of Incorp.