



CHAPTER 11:

FOREIGN COMPANY

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Foreign Company [Sec 2(42)]

"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.

(b) conducts any business activity in India in any other manner.

* "Electronic mode" means carrying out electronically, whether main server is installed in India or not including, but not limited to -

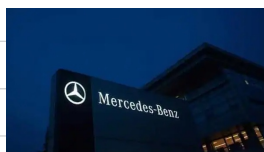
(a) business to business and business to consumer transactions

(b) offerings to accept deposits and securities in India

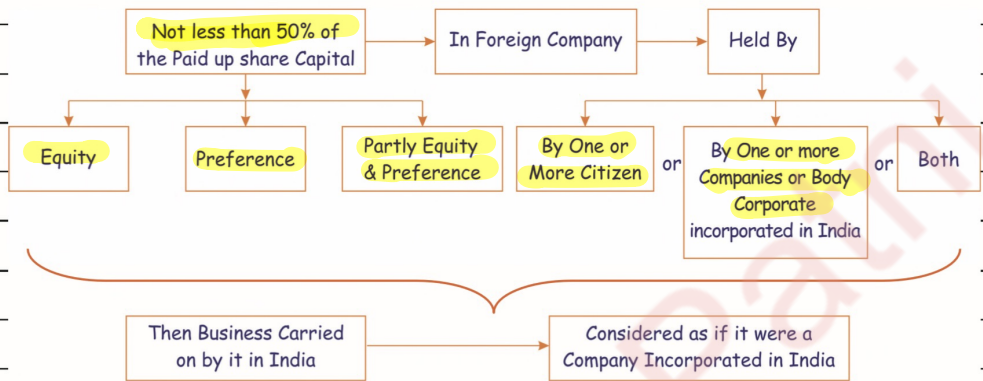
(c) financial settlement, data base services and products

(d) Online services such as telemarketing, telecom, education etc.

(e) all related data services



* Application of Act to foreign co [Sec 379]



* Documents to be delivered to Registrar by foreign co. [Sec 380]



(1) Every foreign co shall file documents with Registrar within 30 days of establishment of place of business in India in form FC-1 such as

(a) Certified copy of charter, Memorandum and Articles of the co.

(b) full address of registered or principal office of co.

(c) List of directors and secretary

(d) Name and address of 1 or more persons resident in India.

(e) Particulars of opening and closing of place of business.

(f) Declaration that none of the directors have been convicted or debarrred.

* Accounts of foreign co [Sec 381]



1. Every foreign co shall
 - (a) Make out **Balance Sheet & P&L A/c**
 - (b) Deliver all such documents to Registrar in every calendar year.

2. As per rules,

- (a) foreign co shall prepare FS as per Sch III and attach the following -
 - (i) Statement of **Related Party transactions**
 - (ii) Statement of **Repatriation of Profits**.
 - (iii) Statement of **transfer of funds**.

• All such documents shall be delivered to Registrar **within 6 months of close of FY.**

3. All such accounts shall be audited by Practising CA, firm or LLP.

* Display of name of foreign co [Sec 382]



1. Every co shall exhibit the name of co. and country in which it is incorporated outside every office.
2. Name of co shall be stated in English characters in all business letter, bill heads and letter paper.
3. State the fact that liability of members is limited.

* Service on foreign co [Sec 383]

Any notices or documents served to office at India will be deemed to be received at foreign co.

* Debentures, Annual Return, Registration of charges, books of accounts, and their Imposition [Sec 384]



- (i) The provisions of Section 71 shall apply mutatis mutandis to a foreign company.
- (ii) The provisions of Section 92 & 135 shall subject to such modifications, exceptions and adaptations



Foreign co shall file an annual Return in form FY within period of 60 days from the last day of FY.

- (iii) The provisions of Sec 128 shall apply to foreign co to the extent of keeping at its principal place of business in India.
- (iv) The provisions of Chapter VII and XIV shall apply mutatis mutandis to foreign co.

* Interpretation [Sec 386]

- (a) "Certified" means certified in the prescribed manner to be a true copy or a correct translation.



(b) "Director" in relation to foreign co, includes any person in accordance with whose directions and instructions the Board of Directors of the co is accustomed to act.



(c) "Place of business" includes a share transfer or registration office

* Dating of Prospectus and Particulars to be contained [Sec. 387]

1. Prospectus to be dated and signed shall contain:

- (a) Instrument defining constitution of co.
- (b) Provisions under which Incorporation of co was effected.
- (c) Address where the copies to be kept and the same shall in English language or if not then shall be in certified translation to English.
- (d) Date on which co is incorporated.
- (e) Address of its principal office in India.



2. Points (a), (b) & (c) shall not apply in case of prospectus issued more than 2 years after date at which co is entitled to commence business.

* Expert's consent on Prospectus [Sec. 388]

1. No person shall issue, circulate or distribute the prospectus of the co Incorporated / to be incorporated outside India, has or

has not, will or will not establish place of business if —

- (a) Expert has not given his consent
- (b) or has withdrawn his consent

2. Expert's statement shall be deemed to be included in prospectus, if it is contained in any report or memorandum.

* Registration of Prospectus [Sec 389]



- No prospectus can be issued unless it is certified by the —
(Chairperson) and two other directors and also required to be register with ROC.

Documents shall also be attached —

- (i) expert's consent
- (ii) appointment of managing director
- (iii) copy of material contracts entered within preceding 2 years.
- (iv) copy of underwriting agreement
- (v) copy of power of attorney.



* Offer of IDR [Sec 390]

CG may make rules applicable to offer of Indian Depository Receipts & manner in which IDR shall be dealt with in depository mode.

* Punishment for Contravention [Sec 392]



If a foreign co contravenes the provision

Company will held liable

$\geq 1,00,000$

$\leq 3,00,000$

Officer will held liable

$\geq 25,000$

$\leq 5,00,000$

In case of continuing default, company will be liable for ₹50,000 per day.

* Further Punishment [Sec 393]

Any failure by company to comply with the provisions then the company cannot sue but can be sued.

