

11. Foreign Companies :-

(4 marks) Day 29/97

Companies Incorporated outside India

Sec 2(42) :-
(Definition)

Foreign Company

Means a company incorporated outside India having:

Place of Business
in India

AND

Conducts any
business activity
in India in
any manner.

↓
Whether by — itself
or
through
an agent

↓
Whether through — Physical
— E-mode

E-mode business?

Carrying out following business electronically
whether or not main service is in India or
outside India :-

- | | |
|----|---|
| a) | <ul style="list-style-type: none"> - B2B transaction (Amazon Business or Udaan) - B2C transaction (Flipkart, Alibaba) - Data Interchange - Digit supply transaction |
| b) | Offering to accept deposits or subscription to securities from Indian citizens. |
| c) | <p>Following services:</p> <ul style="list-style-type: none"> - Financial settlement (Rozorpay) - Web based marketing (Google Ads) - Advisory (Interior designing) - Database services (SAP) - Supply chain mgt. |
| d) | <p>Online services:</p> <ul style="list-style-type: none"> - Tele marketing (Nlaaptop) - Tele computing - Tele medicine - Education (Udemy/Coursera) |
| e) | All related data communication via email, mobile, social media etc. |

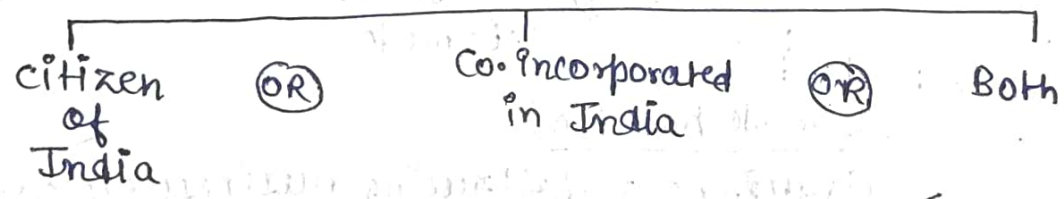
~~e) All related data communication via email etc~~

Section 379 :- Application of Act to foreign companies :-

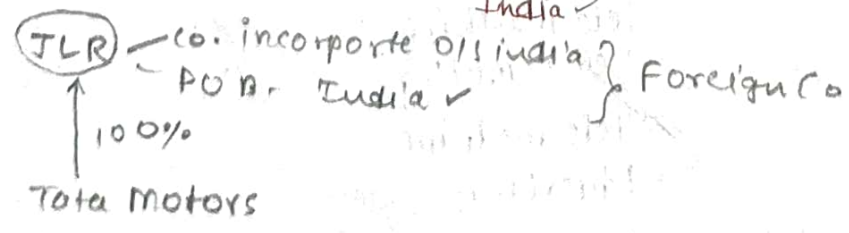
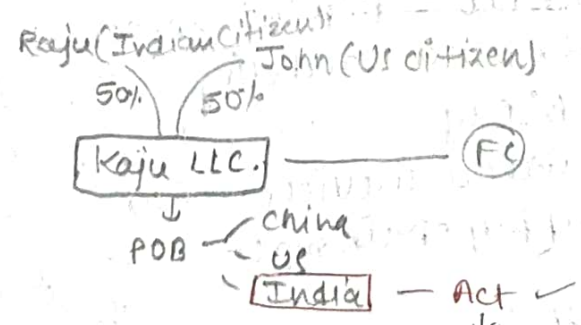
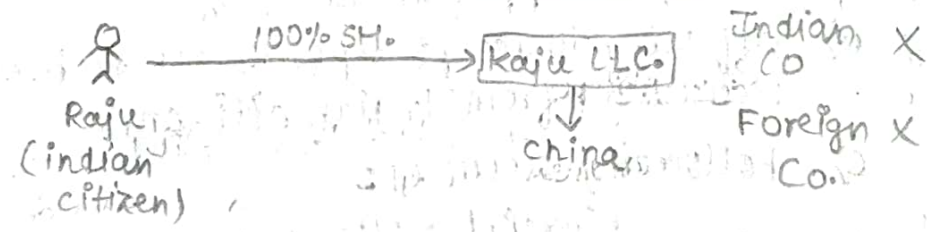
Provision 1. Section 380 to 386 } shall apply to
 387 to 391 } Foreign companies.
 392 to 393 }

380 - 386	387 - 391	392/393
Foreign Co.	Co. inc o/s India FC ↓ Prospectus	Foreign Co.

2. Where not less than 50% of PUS is held by :
 of foreign Co.



Such Co. shall comply with the provision of this chapter and this Act, in respect of its **Indian Business** as if it were co. incorporated **IN INDIA**.



Section 388 - Documents to ~~file~~ filed with ROC :-

1. Foreign co. shall of establishment of POB deliver following docs to ROC (New Delhi)



- a) Certified charter documents — MOA
— AOA
↓
If it is any other language, certified translation in English.
- b) Full Address — Principal office of co.
— Principal POB in India
- c) List of all — Director } — Name
— secretary } — Address
(CS) } etc
- d) Name & Address of a person resident in India
↓
Who is authorised to accept — Notices
served on Fc. (Auth. rep.) — Docs
- e) particulars of — opening } POB in India
— closing } in earlier occasion.
- f) Declaration that — Director
— Authorised Representative
↓
NOT convicted or debarred from ^{(FCI)(RBI)} PFM of co. ^{promotion management}
↓
Formation
- g) Other prescribed information
Summary
• MOA/AOA • Dir/sec } • POB • other
• Address • AR } • Debarred

2. Foreign co. $\xrightarrow[30\text{ day}]{[FC-1]}$ ROC (New Delhi)
↓
Alteration $\xrightarrow[FC-2]{30\text{ days}}$ ROC (New Delhi)

Note :- Above application supported by:
Approval of RBI under FEMA if required (OR) Declaration of AR that such approval is NoA.

Notes:- If FC

Section 381:- Accounts of Foreign Company.

provision Every FC shall, in every CALENDAR YEAR

make $\left. \begin{array}{l} \text{BS} \\ \text{P/L} \end{array} \right\}$ and deliver a copy to ROC
as prescribed

↓
If not in english
= certified translation.

Note:- Along with BS & P/L, FC send list of
POB in India as on BS date to ROC.
[FC-3]

Companies
(Registration
of FC) Rules
2014:-

1. FS of Indian operation to be as per
does as mention in shall be annexed
to FS.
Does not CFs shall also be filed.
↳ ~~Im~~ Consolidated FS.

2. Annex the following docs with FS:
R - statement wrot RPT (Related party Transactions)
P - statement wrot Repatriation of Profit
T - statement wrot Transfer of fund.

3. Time Limit for delivery of above docs to ROC:
Within 6m from close of FY.
(ROC may extend upto 3m)

Time Limit for Annual Return → ROC

↓
FC-4

↓
within 60 days from end of FY

Note: Chp X : Audit and Auditors shall apply.

Section 382:- Display of name of Foreign Companies:

Every foreign co. shall display:

outside every

POB



- Name
- Country of Inc.
- Whether liability is Limited



- English
- Local language (POB)

Business letter heads



- Name
- Country of Inc.
- Whether liability



- English
- Local language

Imp

Section 383:- Service of Foreign Co:

An notice / docs to be served on Foreign Co. shall be deemed to be sufficiently served if:

Addressed
to
AR

AND

sent by

- post
- E-mode

- Hand delivery

Section 384:- Applicability of other section:

71: Debenture

92: Annual Return

125: CSR

128: Accounts of Co.

Chap (VI): Registration of charges

Chap (XV): Inq., insp. & investigation

Imp

Note:- If a person not being FC carrying on business

as FC → shall be liable for investigation u/s 2(10)

Section 386: Interpretation

1. "certified" means certified to be true copy or correct transaction
2. "Place of business" includes:

STO
↓
Share Transfer
Office

SRO
↓
Share Registration
Office

387: 391

Section 387: Dating of Prospectus

No prospectus to subscribe any securities shall be issued ^{by co. incorporated outside India} unless:

a) It is dated & signed

b) contain particulars of following matters:-

- Instrument defining constitution (MOA/ADA)
- Enactment under which co. is incorporated
- Address where above docs - Inspected
- Date & country of incorporation
- Where So. has POB in India - give address

→ Not Applicable if prospectus issued > 2 year after incorp.

c) state matter specified u/s 26

Note 1:- Application form shall be issued with prospectus which is in compliance of this chp.

Note 2:- Section 387 shall N/A

issue is to
existing
member

or

offer security
which is UNIFORM
with securities
issued + Listed

Section 388:- Experts statement

Where prospectus including expert's statements. Such prospectus shall not be issued unless:

- Expert has given written consent,
- has not withdrawn such consent
- statement to that effect appears in the prospectus.

Section 389: Registration of Prospectus

NO prospectus shall be issued unless:

- a) certified copy has been delivered to ROC
 ↳ By chairperson AND 2 directors
- b) Prospectus states on face of it that a copy is delivered to ROC.
- c) Expert's consent to issue is attached
- d) Attached other prescribed info.

Co. (Registration of FC) Rules, 2014:

Following docs shall be annexed:

- a) Expert consent v/s 388
- b) copy of — ^{contract} _{OR} ^{memorandum} } for abt of MD/manager
- c) copy of MATERIAL contract in LAST 2 YEARS NOT in OCOB (ordinary course of Business)
- d) copy of underwriting agreement.
- e) copy of power of attorney if prospectus is signed on behalf of directors

Section 390: Indian Depository Receipts

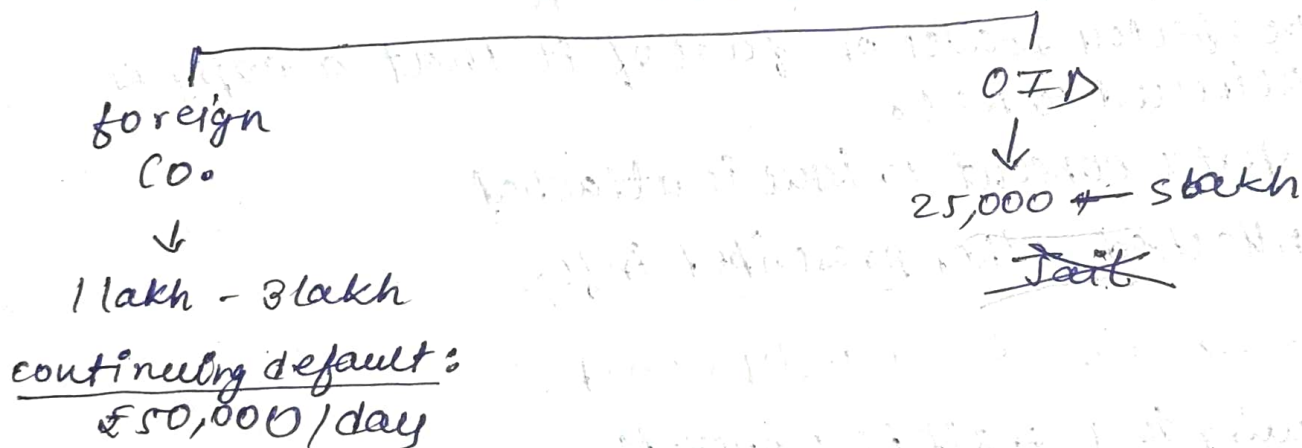
NOT RELEVANT

Section 391: Application of other provision

sec 34: criminal liab
 sec 36: Punishment
 chap XX - winding up
 sec 35: Civil Liability

} shall apply

Section 392: Punishment for contraventions of this chapter



Imp

Sec 393: Validity of Contracts:

Company failure to comply with this chapter shall not affect contracts but such foreign Co. shall not be entitled to bring any suit or make claims until it has complied with this chapter.