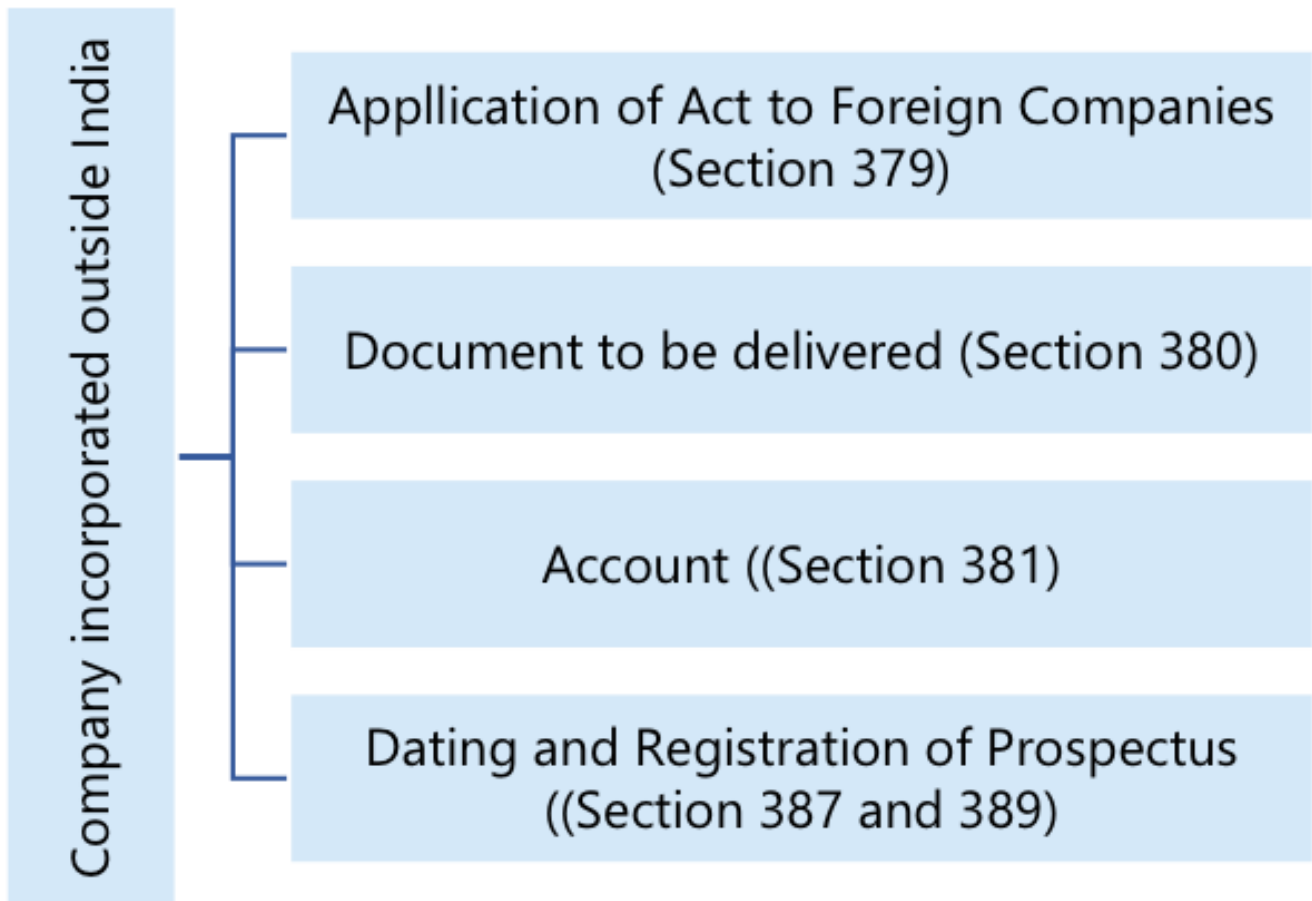


Ch :- 11 Companies incorporated outside India



Foreign company ? { Sec. 2(42) }

> Means a co. or body corporate incorporated outside India, which :-

has a POB in India

by itself / through an agent

physically
or in electronic
mode

(AND)

conducts any
business activity
in India in any
other manner.

meaning of Electronic mode

- > carrying out electronically based, whether main server is installed in India or not, including, but not limited to :-



- > B2B & B2C transactions, data interchange & other digital supply transactions;

- > offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities
- } in India or from citizens of India

This does not include offer of securities, subscription or listing of IFSC securities

- > Financial settlements, web-based marketing, advisory & transactional services, database services & products, supply chain mgt.;
- > online services such as telemarketing, telecommuting, telemedicine, education & info. research, etc.
- > all related communication services;

whether conducted by e-mail, mobile devices, social media, cloud computing, document mgt., voice or data transmission or otherwise.

Test Yourself ! Summary of Foreign Company & Electronic Mode

Section 379 :- Application of Act to Foreign Companies

> Section 380 to 386 { both inclusive } , Section 392 and 393 shall apply to all foreign companies.

320 foreign Companies were Registered in India between 2018 & 2021.

> Paid up Share Capital of the Foreign Company

→ where, at least 50% of PVSC { whether equity or preference } of Foreign Co. are held by one or more:-

• citizens of India;

• cos. or body corporates incorporated in India;

• citizens (+) cos. / body Corp. together

> It shall follow the provisions of this Act as if it were a co. incorporated in India } {for its business in India}.

& Chapter XXII of the Act → applicable on Foreign Cos.

Section 380 :- Documents, etc., to be delivered to Registrar by Foreign Companies

> every foreign co. shall, within 30 days of establishment of its POB in India, deliver to the Registrar :-

1) → certified copy of MOA and AOA
 → if it is not in English →

Then, a certified translation thereof in English language.

2) → Full address of Registered / Principal office of co.

3) → list of directors & secretary of the co., containing the following particulars :-

- Personal name & surname in full,
- Any former name(s) or surname(s) in full,
- Father's / mother's / spouse's Name;
- DOB. ,
- Residential address
- Nationality ;

- Nationality of origin {if different from present nationality}
- Passport No., date & country of issue
- Income tax PAN, Permanent account No.;
- Occupation, if any,
- Whether directorship in any other Indian Co., DIN, Name & CIN of the Co.;
- other directorship(s) held by him;
- membership No. {for Secretary only};
- Email - ID

4) → Name(s) & address(es) of Persons resident in India authorised to accept notices / any other documents on behalf of the Co.;

5) → Full address of the office seemed principal POB in India

6) → Particulars of opening & closing of POB in India;

7) → Declaration that none of the directors / authorised representative of the Co. has been convicted or debarred from formation / mgt. of Co. in India or abroad;

8) → any other information as may be prescribed.

> Form, procedure & time for making application & submission of prescribed documents

→ The above stated info. shall be filed with the Registrar within 30 days of establishment of its POB. in India in Form FC-1. ↘

along with an attested copy of approval from RBI under FEMA act or regulations & also from other regulators.



or declaration of authorised representative in India
{ if no such approval is required }

> office where documents are to be delivered & fee for registration of documents :-

→ to Registrar having jurisdiction over New Delhi.

→ to be accompanied along with prescribed fees;

→ if the co. ceases to have a POB. in India



It shall notify the same to the Registrar



after delivering such notice, the obligation of the co. to deliver any document to Registrar shall cease { provided that it does not have any other POB. in India }

> any foreign co. existing at the commencement of Cos. Act, 2013



that has **not delivered** the info. prescribed under Cos. Act, 1956, to the Registrar



Then it shall deliver such documents & info. in accordance with Cos. Act, 1956.

> Form, procedure & time within which alteration in documents shall be intimated to Registrar

→ within 30 days of such alteration



A **return** containing particulars of such alteration are to be delivered to Registrar in Form FC-2.

Section 381:- Accounts of Foreign company

~> Preparation of Balance Sheet & Profit & Loss Account

• Every foreign co. shall, in **every calendar year** :-

(a) make out a **BS and P&L A/c** in such form, containing such particulars & annexures as may be prescribed;

(b) deliver a copy of these to Registrar.

~> Power of CGr to provide exemption

- CGr may, by notification, direct that in case of a Foreign Co. or class of Foreign Cos.



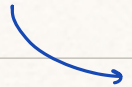
the requirements of clause (a), shall not apply, or shall apply along with such modification or exemption as notified.

~> certified Translation

- > If any such document {as mentioned in sub-section 1} is not in English language }

a certified translation of the same to English shall be annexed along with it.

~> List of all Places of Business in India

- > along with all the documents stated above, a copy of list of all POBs in India shall be filed with Registrar in Form FC-3.  as on the BS date.

~> Rule 4 :- Every Foreign Company shall, along with FS required to be filed with the Registrar, attach the following documents thereto; namely:-

- > Statement of Related Party Transaction;
- > Statement of Repatriation of Profits;
- > Statement of transfer of funds



in relation to transfer b/w the POB. of Foreign Co. in India &

any other related party of the FC. outside India



associate, holding, subsidiary Co.

~> Time limit

- > The documents referred above shall be delivered to the Registrar within 6 months of the closure of the F.Yr. of the foreign Co. to which the documents relate.



Registrar may extend the said period by a period not exceeding 3 months, on an application made by such foreign Co.

~> Audit of accounts of foreign company

- > Every Foreign Co. shall get its accounts audited, pertaining to Indian Business operations by a practicing

CA. in India, or a firm / LLP of practicing CAs.

> Chapter X of Companies Act, 2013 shall apply, mutatis mutandis to the foreign Co.

Section 382 :- Display of Name, etc. of Foreign Company

> Every Foreign Co. shall :-

(a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the Co. & the country in which it is incorporated



in letters easily legible in English characters



& also in characters of the language(s) in general use in the locality in which the office / place is situated

(b) cause the name & country { where the Co. is incorporated } to be stated in legible English letters in all business letters, billheads & letter paper, in all notices & other official publications of the Co.

(c) If the liability of members is limited, cause notice of such fact

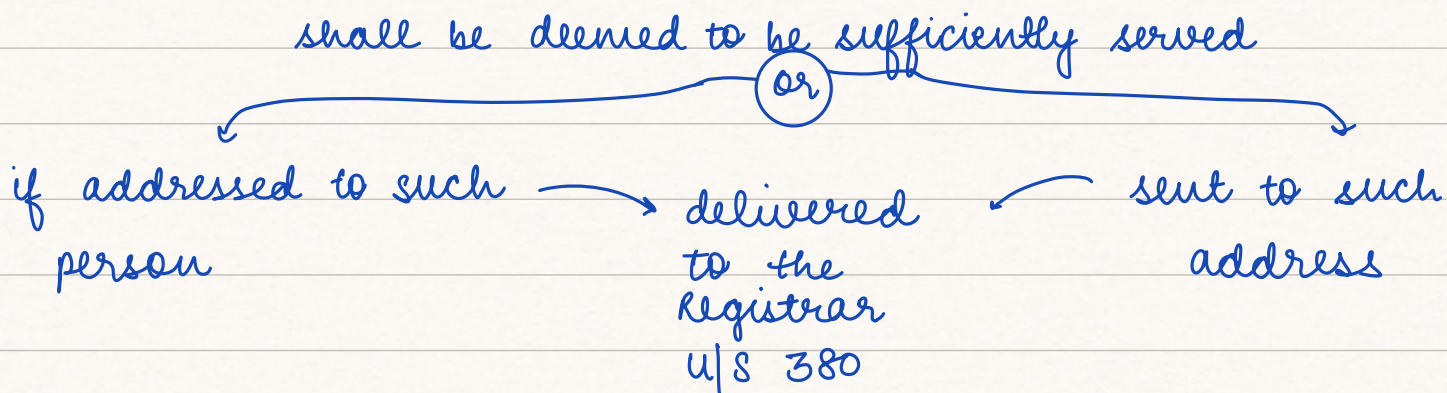
→ in English
to be stated in every prospectus

→ & other documents

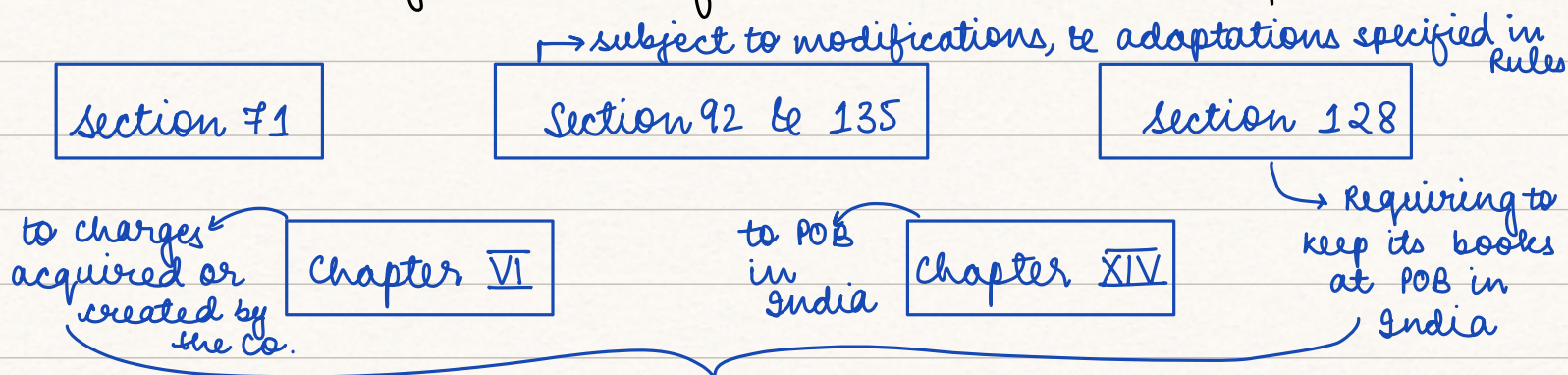
→ in English (+) local language
exhibited outside of every office or POB in India

Section 383 :- service on Foreign company

> any processes, notice or other document required to be served on a foreign co. ↴



Section 384:- Debentures, Annual Return, Registration of Charges, Books of account & their Inspection



shall apply *mutatis mutandis* on the Foreign company

Section 385:- Fee for Registration of documents

> for filing of any documents → fees shall be paid to the Registrar according to Companies (Registration of Foreign Cos.) Rules, 2014

Section 386 :- Interpretation

certified



certified in prescribed manner to be a true copy or a correct translation.

director



includes any person in acc. with whose directions/instructions the BOD of the Co. is accustomed to act

Place of business



Includes a share transfer or registration office

Section 387:- Dating of Prospectus & Particulars to be contained therein

→ Prospectus to be dated & signed {Sec. 387(1)}

> No person shall issue, circulate or distribute in India, any prospectus offering securities of the Foreign Co., {whether it has an established POB. in India or not}, unless it is dated & signed, and :-

(a) contain particulars w.r.t. following matters, namely:-

- instrument constituting or defining the constitution of the Co.;
- the enactments / provisions by or under which the incorporation of the Co. was effected;
- address in India, where the said instruments, enactments

or provisions, or their copies, can be inspected;

↳ + certified copy in English language.

→ the date & country in which the Co. would be or was incorporated; and

→ whether the Co. has an established POB. in India, if so, then the address of its principal office in India.

(b) states the matters specified u/s 26.

These shall not apply in case of a prospectus issued more than 2 years after the date at which the Co. is entitled to commence business.

⇒ No waiver of compliances {sec. 387(2)}

Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed shall be void.

⇒ Form of application for securities to be issued along with prospectus {section 387(3)}

No person shall issue to any person in India, a form of application for securities of such a Co. or intended Co.



unless the form is issued with a prospectus which complies with the provisions of this Chapter & such issue does not contravene the provisions of sec. 388.

Exception → If it is shown that the form of application was issued in connection with bona fide invitation to a person to enter into an underwriting agreement w.r.t. securities.

→ Non-applicability

- > This section shall not apply to the issue, to existing members / debenture holders of a Co., of a prospectus or form of application relating to securities of a Co.
- > Section 387 shall not apply in respect of issue of prospectus dealing with offer of securities which are uniform in all respects which are previously issued securities & are listed on Recognised Stock Exchange.
However, the requirement of Dating of Prospectus shall be applicable.
- > 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 / under this act apart from this Section.

Section 388: - Provisions as to Expert's consent to allotment

> No person shall issue, circulate or distribute in India, any prospectus offering for subscription in securities of a Foreign Company {whether or not having an established POB. in India} :-

(a) if, where the prospectus includes a statement to be made by an expert, however

Expert has not given such statement

(or)

Has withdrawn the consent before delivery of prospectus to Registrar

(or)

Expert has given such consent, but it does not appear in the prospectus

(b) If prospectus does not have the effect of rendering all concerned persons bound by the provisions of Section 33 and Section 40, so far as applicable

> 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.

note to self:

Section 33:-

Section 40:-

Section 389 :- Registration of Prospectus

> No person shall issue, circulate or distribute in India, any prospectus offering for subscription in securities of a foreign co., whether POB established in India or not, unless:-



(a) a copy thereof certified by the chairperson of the co. & 2 other directors of the co. }

having been approved by resolution of the managing body of the co.

(b) the prospectus states on the face of it that a copy has been so delivered ;

(c) there is endorsed on or attached to the copy , any consent to the issue of the prospectus required by section 388 & such prescribed documents

→ Rule 11 :- documents to be annexed to the Prospectus

- > any consent to the issue of the prospectus required from any person as an expert ;
- > a copy of contracts for appointment of managing director or manager
- > a copy of other material contracts but entered within preceding 2 years ;
- > copy of underwriting agreement ;
- > copy of power of attorney .

Section 390 :- Offer of Indian Depository Receipts



Notwithstanding anything contained in any other law for the time being in force, the Co. may make rules applicable for :- { + comply with SEBI Regulations & RBI guidelines }

- > offer of Indian Depository Receipt {IDR};
 - > Requirement of disclosure in prospectus or letter of offer issued in connection with IDR;
 - > the manner in which IDR shall be dealt with in a depository mode & by custodian & underwriters; and
 - > manner of sale, transfer or transmission of IDR
- by a Foreign Co., whether it has an established POB in India or not.

Application of Chapter XV { compromises, arrangements and amalgamation }

- > Chapter XV shall, unless otherwise provided, apply mutatis mutandis on a Foreign Co.

> Provided that, CG. may make rules, in consultation with RBI, in connection with mergers & amalgamations provided under this section.

> section 234(2) states that a foreign Co. may, with the prior approval of CG, merge into any other Co. registered under this Act or vice-versa.

Section 391 :- application of sections 34 to 36 and Chapter XX

> The provisions of Section 34 to 36 shall apply to :-

→ the issue of a prospectus by a Co. incorporated outside India u/s 389 as they apply to prospectus issued by an Indian company;

→ the issue of IDR by a foreign company.

> Subject to the provisions of section 376 {Power to wind up Foreign companies}

the provisions of Chapter XX shall apply *mutatis mutandis* for the closure of POB. of Foreign Company in India, as if it were a Co. incorporated in India



In case, such FC. has raised monies through offer or issue of securities which have not been repaid or redeemed.

Section 392 :- Punishment for contravention

> Subject to provisions of Section 391, if a FC. **contravenes the provisions of this chapter**

Fine on defaulting Co. in the range of Rs. 1 lac to Rs. 3 lacs

Continuing Default
→ **additional fine of Rs. 50,000/day on such foreign Co.**

For officer in Default
↓
Fine → **minimum Rs. 25,000/- , upto Rs. 5,00,000/-**

Section 393 :- company's failure to comply with provisions of this chapter not to affect validity of contracts, etc.

> Any failure by a Co., to comply with the provisions of this chapter :-

→ shall **not affect the validity** of any contract, dealing or transactions entered into by the Co.,

→ or its **liability to be sued** in respect thereof,

→ but the Co. shall **not be entitled to bring any suit**, claim any set-off, make any counter-claim or institute any legal proceedings in respect of any such contract,

→ until the Co. has complied with such applicable provisions.

Exemptions under this chapter { Section 393A }

> CGr may exempt any class of foreign companies from any provision of this chapter by a notification.

> Copy of notification to be laid before both the Houses of Parliament.

> CGr has exempted FCs. from the provisions of Section 387 to 392, so far as, they relate to offering of securities in IFSCs set up under Section 18 of the SEZs Act, 2005.

Rule 12 of
Companies (Registration
of Foreign Companies)
Rules, 2014
↓
Refer Pg. 11.24 of
ICAI Study Mat.