

Registration of the 'Foreign' Company in India

(Under section 379 to 386, 392 and 393 of The Companies Act, 2013)

1. Introduction on a Foreign Company.

(Under section 379 of The Companies Act, 2013)

- India is a developing country and fastest developing country in the world. Other countries are desired to invest in India. India is actually a hub doing business as the cost of production in India is low and also increase the demand curve of a product or service

(i) Definition of a Foreign Company

A company or body corporate as incorporated 'outside India' and having a 'place of business in India' itself, through an agent, physically or through 'electronic mode' and also conducting any business activity in India in any other manner - section 2(42) of the Companies Act, 2013.

(ii) Mode of doing business in India by a Foreign Company

(a) As 'Indian' Company

- A Indian private/public limited company is to be incorporated in India and the shares are to be held by the Foreign Company in the following ways:-

(aa) Wholly Owned Subsidiary (WOS)

A Foreign Company needs to invest 100% FDI in the Indian company through automatic route for the purpose of having WOS in India.

(ab) Joint Venture (JV)

A Foreign Company is to elect a local partner for JV. A Memorandum of Understanding or a Letter of Intent is to be signed as commonly known JV agreement.

(ac) Subsidiary Company

A Foreign Company is required to hold minimum 50.01% shares of the Indian company.

(b) As 'Foreign' Company

A Foreign Company is required to register under the Companies Act, 2013 to start the 'place of business in India' in any of the following ways:-

(ba) Branch Office (BO)

A BO is to be established by Foreign Company in India. Foreign Company must be having large business and to provide proof of profitability outside India.

(bb) Liaison Office (LO)

A LO is to be established for all 'liaison activities in India'. All the expenses of liaison office is to be made through 'direct foreign remittance' from the parent company.

(bc) Project Office (PO)

A PO is to be established to execute projects awarded to a Foreign Company by an Indian Company. Approval from RBI may or may not be required.

(c) Starting a private limited company is the coolest and fastest way to set up in India. Foreign Direct Investment (FDI) up to 100% into a public limited or private limited company is permitted under automatic or approval route of the FDI policy in India.

(iii) Role of Reserve Bank of India (RBI)

Generally remittance of foreign currency is involved, hence the RBI regulations through Foreign Direct Investment (FDI) policy and Foreign Exchange Management Act (FEMA), 1999 are applicable

(iv) Registration with office of the ROC

(a) Every Foreign Company is required to submit 'certain' documents to the office of ROC for registration with in '30' days from date of establishment of 'place of business in India' as WOS, JV, Subsidiary company, BO, LO or PO.

(b) Documents for Registration

- A certified copy of charter, statute, memorandum and articles of company or any 'other' instrument as constituting or defining the constitution of the foreign company

(c) Translation in English language

Following documents are to be translate in English Language where original documents are not in English language

(ca) Address of registered office or principal office of Foreign Company

(cb) List of directors and secretary of Foreign Company along with particulars as may be prescribed

(v) Name of the 'Indian Resident' as authorized person

Foreign Company is required to provide the name and address of resident authorized person in India to accept the service of notice or any 'other' document as required by office of ROC for registration of the Foreign Company

(vi) Address of Place of Business in India

Foreign Company is required to provide the address of the Indian office deemed as 'principal' place of business to the office of ROC for registration of the Foreign Company

(vii) Particulars of Previous Place of Business

Foreign Company is required to provide the particulars of any previous office as opening and closing place of business to the office of ROC for registration of the Foreign Company.

(viii) Declaration by the Foreign Company

Foreign Company is required to provide a declaration that director of company or authorized representative in India is not convicted or debarred from Formation of company and performing management activity in India or outside India

2. Procedure for Registration of the Foreign Company

(Under section 380 of The Companies Act, 2013)

(i) Registration with office of the ROC

(a) Every company is required to file to office of the ROC a Form No. **FC-1** along with 'certain' documents with in '30' days from date of establishment of 'place of business in India' as WOS, JV, Subsidiary company, BO, LO or PO.

(b) Also to submit a copy of approval from RBI or from 'other' regulators, if any approval is required to establish a 'place of business in India' or declaration from authorized representative of the Foreign Company that 'no' approval is required.

(ii) Filing of alteration with office of the ROC

Every company is required to file a Form No. **FC-2** along with 'certain' documents with in '30' days from date of alteration with office of the ROC

3. Financial Statements of the 'Indian' Business Operations of Foreign Company

(Under section 381 of The Companies Act, 2013)

(i) Preparation of the 'Standalone' Financial Statements

(a) Every 'Indian' company is required to prepare the financial statements of the 'Indian business operations' in accordance with Schedule 'III' of Companies Act, 2013

(b) And also to prepare the documents as required in accordance with Chapter 'IX'

(ii) Preparation of the 'Consolidated' Financial Statements

Every 'foreign' company is required to submit with office of the ROC a copy of the latest Consolidated Financial Statements of the 'parent Foreign Company'.

(iii) Statement of Related Party Transactions

(a) Every 'Indian' company is required to submit a statement of the related party transactions under section 2(76) of the Companies Act, 2013

(b) Related party to Includes :-

(ba) The Foreign Company

(bb) The subsidiary company of the Foreign Company

(bc) The holding company of the Foreign Company

(bd) The firm where the Foreign Company is a partner

(be) The firm where subsidiary of the Foreign Company is a partner

(bf) The firm where holding company of the Foreign Company is a partner

(c) Other InFormation's relating to related party to includes :-

(ca) Nature of Relationship

(cb) Description and nature of the transactions

(cc) Amount of the transactions with opening, closing, highest and lowest balances during the year

(cd) Reason for the transactions

(ce) Material impact of the transactions on the 'both' parties

(cf) An Amount of written off or written back against the dues from or to related parties

- (cg) A Declaration that the transactions were carried at Arm's Length Price (ALP)
- (ch) Any 'other' detail as needed to understand the financial impact of the related parties transactions.

(d) Statement of the Repatriation out of the Profits to Includes :-

- (da) An Amount of the profits as repatriated during year
- (db) Recipient of the repatriations
- (dc) Mode of the repatriations
- (dd) Date of the repatriations
- (de) Details of the location of the repatriation made 'other than' the residence country of the beneficiary
- (df) An approval of RBI or any other authority if any needed

(iv) Statement of Transfer of the funds

- (a) A statement of transfer of funds including dividend if any between place of business of the foreign company in India and to any 'other' related party of foreign company 'Outside' India including holding, subsidiary and associate companies
- (b) And also date of transfer and amount of the fund as transferred or received

(v) Filing of the Financial Statements by the Foreign Company

- (a) Foreign Company is required to file the 'standalone' financial statement of the 'Indian' company and 'consolidated' financial statement of the 'foreign' company along with other required attachment with the office of ROC within 6 months from the date of close of the financial year i.e. March 31st every year.
- (b) However ROC is permitted to extend the period 'not' exceeding 3 months against the special reason or application as made in writing by the Foreign Company

(vi) Audit of Accounts of the Foreign Company against 'Indian Business Operations'

Foreign Company is required to get an audit of the accounts related to 'Indian business operations' from the practicing Chartered Accountants firm in India

4. Miscellaneous Provisions

(i) List of Places of Business of the Foreign Company

Foreign Company is required to file a Form No. FC - 3 as list of 'place of the business in India' as on date of the balance sheet along with the financial statements

(ii) Display of Name etc. of the Foreign Company

(Under section 382 of The Companies Act, 2013)

- (a) Foreign Company is required to exhibit the name of company and name of country of incorporation in English and a 'local' language of the state where 'place of business in India'.
- (b) Foreign Company is required to state the name of the company and name of the country of incorporation on the following documents.
 - (ba) Letters
 - (bb) Bills
 - (bc) Letter Papers
 - (bd) Notices
 - (be) Advertisements
 - (bf) Other 'official' Publications of the Company in English

(iii) Service of Notice or Documents on the Foreign Company

(Under section 383 of The Companies Act, 2013)

Any process, notice or any 'other' document is to be treated as 'deemed' served where sent by post or delivered by electronic mode at the address in India as communicated to the office of the ROC by the Foreign Company.

(iv) Filing of the Annual Return by Foreign Company

(Under section 384 of The Companies Act, 2013)

- (a) Every Foreign Company is required to prepare and to file annual return of the company in Form No. **FC-4** within 60 days from the date of close of the financial year i.e. 30th May every year.

(b) Mandatory details for filing of annual return are as under :-

- (ba) Details of the Promoters, Directors and Key managerial personnel and also changes therein since close of the 'previous' financial year
- (bb) Details of the remuneration to the directors and key managerial personnel.
- (bc) Details of the meeting of the members or class of members, board and its various committees along with the details of attendance.
- (bd) Details of the members and debenture holders along with changes therein since the close of 'previous' financial year.
- (be) Details of the holding, subsidiary and associate companies and firms.

(v) Punishment for contravention on the Foreign Company and the officers

(Under section 392 of The Companies Act, 2013))

- (a) Foreign Company is punishable with a minimum fine of Rs. 1 lac and maximum fine of Rs. 3 lacs and also 'additional' maximum fine of Rs. 50 thousands 'per day' after continuity of the contravention
- (b) 'Every officer' of the Foreign Company is also punishable with 'imprisonment' for maximum 6 months or minimum fine of Rs. 25 thousands and maximum fine of Rs. 5 lacs or 'imprisonment and fine both'.

(vi) Cancellation of validity of contracts etc. due to not compliance of the provisions

(Under section 393 of The Companies Act, 2013)

- (a) Any failure of the provisions under section 379 to 386 of The Companies Act, 2013 by the Foreign Company, any contract, dealing or transaction shall be invalid
- (b) And also the Foreign Company shall not be entitled to bring any suit, claim any set off, make any counter claim or institute any legal proceeding against the contract, dealing or transaction until Foreign Company has complied the provisions of the section 379 to 386 of The Companies Act, 2013.

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