



Registration of Foreign Companies in India

(Section 379 to 384, 392 and 393 of the Companies Act, 2013)

1. Introduction on Registration of Foreign Company- Section 379

- **India is a fastest developing country in the world.** Other countries are desired to invest in India. India is actually a hub for doing business as the **cost of production is low and also having lots of domestic demands.**

(i) Definition of Foreign Company - section 2(42)

- (a)** Company or body corporate as incorporated **outside India** and having a **place of business in India** itself or through an agent in physical or in **electronic mode**
- (b)** And also **conducting any business activity** in India in any other manner

(ii) Modes of doing business in India

(a) As Indian (Domestic) Company

- Indian private or public limited **company as incorporated in India** and the shares are held by the Foreign Company/ by companies in the different modes:-

(aa) Wholly Owned Subsidiary (WOS)

Where Foreign Companies need to **mandatory invest minimum 100% Foreign Direct Investments (FDIs)** in the domestic company through the automatic route of the RBI.

(ab) Joint Venture (JV)

Where Foreign Companies are **wish to elect a local partner for the JV.** Memorandum of Understanding (MOU) or a Letter of Intent (LOI) is to be signed which is **commonly known as JV agreement.**

(ac) Subsidiary Company

Where Foreign Companies are mandatory **required to hold minimum 50.01% shares** of the domestic company.

(b) As Foreign Company/ companies

Where Foreign Companies are **mandatory required to register** under the Companies Act, **2013** to start the **place of business in India** in different modes:-

(ba) Branch Office (BO)

BO can be established by the Foreign Companies in India. The Foreign Companies should be having **large business and also good profitability** outside India.

(bb) Liaison Office (LO)

LO can be established for all **liaison activities in India**. All the expenses of liaison office are to be incurred through **direct foreign remittance** from the foreign parent company as located outside India

(bc) Project Office (PO)

PO can be established **to execute the projects as awarded to the Foreign Companies by the Indian Companies** where Approvals from the RBI are mandatory required or **not mandatory required**

(c) Establishing a private limited company is a coolest and fastest way for having any set up in India. Generally **FDIs up to 100% are permitted** into a private limited company or public limited company **under automatic route or approval route** of the FDI policy.

(iii) Roles of the RBI

RBI is **permitting the foreign inward remittances** against the FDIs in accordance to guidelines as issued by the RBI under FEMA, **1999**

(iv) Registration with the office of ROC

(a) 100% Foreign Companies are mandatory **required to submit certain documents** to the office of ROC for registration **within 30 days from the date of establishment of**

place of business in India like WOS, JV, Subsidiary company, BO, LO or PO. Hence domestic company is **not required separately register with ROC** beside where **100%** FDIs are received by the domestic company.

(b) Documents for the Registration with the office of ROC

- The **certified copies are to be submitted against the registration with the office ROC** for the charter, statute, memorandum and articles of the company or any **other instrument as constituting or defining the constitution** of the foreign companies outside India.

(c) Translation in English language

Certain documents are **to be translating 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 the Foreign Companies along with particulars as may be prescribed by the MCA in India.

(v) Name of the Indian Resident as authorized person in India

100% foreign companies are **mandatory required to provide the name and address of resident authorized person** as residing for minimum **180** days in India to accept service of the notices or any **other** document as required by office of ROC **for registration of the Foreign Companies in India.**

(vi) Address of Place of Business in India

100% Foreign Companies are **mandatory required to provide an address of the Indian office** as deemed a principal place of business **to the office of ROC** for registration of the Foreign Companies in India.

(vii) Particulars of Previous Place of Business

100% Foreign Companies are required to provide the particulars to the office of ROC against **any previous office as was opened and closed.**

(viii) Declaration by the Foreign Companies

100% Foreign Companies are required to provide the declaration that director's of the companies or authorized representatives as located in India are **not involved or convicted or debarred from Formation of the company and for performing management activity in India or outside India**

2. Procedure for Registration of the Foreign Company-Section 380

(i) Registration with office of the ROC

(a) 100% foreign companies are required to file to office of the ROC a **Form No. FC-1** along with **certain** documents within **30** days from the date of **establishment of place of business in India** as WOS, JV, Subsidiary company, BO, LO or PO.

(b) And also to submit a copy of approval from the RBI or from any **other** regulator where any approval is required to **establish a place of business in India** or a declaration from the authorized representative of Foreign Companies **that no approval is required.**

(ii) Filing of alteration with office of the ROC

100% companies are 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 Indian Business Operations -Section 381

(i) Preparation of the Standalone Financial Statements

(a) 100% Foreign companies are **required to prepare the financial statements** of the **Indian business operations** in accordance with Schedule **III** of the Companies Act, **2013**

(b) And also to prepare the **documents as required** in accordance with the **Chapter IX** of the Companies Act, **2013**

(ii) Preparation of the Consolidated Financial Statements

100% Foreign companies are required to submit with office of the ROC a **copy of the latest Consolidated Financial Statements** of the parent Foreign Companies.

(iii) Statement of Related Parties Transactions- Section 2(76)

(a) 100% Foreign companies are required to submit a statement of the ***related parties transactions.***

(b) Related parties to Includes :-

(ba) Foreign Company

(bb) Subsidiary company of the Foreign Company

(bc) Holding company of the Foreign Company

(bd) Firm where the Foreign Company is a partner

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

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

(c) Other Information's relating to related parties to includes :-

(ca) Nature of the Relationships

(cb) Description and nature of the transactions

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

(cd) Reasons for the transactions

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

(cf) Amount of written off or written back against dues with related parties

(cg) Declaration that the transactions were carried at Arm's Length Price (ALP)

(ch) Any other detail to understand the impact of related parties transactions.

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

(da) Amount of the profits as repatriated during the financial year

(db) Recipient of the repatriations

(dc) Mode of the repatriations

(dd) Date of the repatriations

*(de) Details of the city where repatriation is **not sent to residence country** of beneficiary*

(df) Approval of the RBI or any other authority if any needed

(iv) Statement of Transfer of the funds

(a) Statement of transfer of funds including dividend is to be prepared between place of business of the foreign company in India and any other related party of the 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 Companies

*(a) **100%** Foreign Companies are required to file a standalone financial statement of the Indian entity and consolidated financial statement of the foreign companies along with other required attachments with the office of ROC **within 6 months** from the date of close of the financial year i.e. up to September **30th** every year.*

*(b) However ROC is permitted to extend the period not exceeding **3 months** i.e. up to December **31st** against the special reasons through filling of an application in writing by the Foreign Companies to office of the ROC*

(vi) Audit of Accounts of Foreign Companies against Indian Business Operations

***100%** Foreign Companies are required to get an audit of the accounts related to Indian business operations from the practicing Chartered Accountants firm as registered with ICAI in India*

4. Miscellaneous Provisions

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

***100%** Foreign Companies are 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 Companies-Section 382

(a) 100% Foreign Companies are **required to exhibit the name of the company and name of country of incorporation** in English and a local language of the Indian state where place of business in India.

(b) 100% Foreign Companies are **required to state the name of the company and name of the country of incorporation** on the documents:

(ba) Letter Heads

(bb) Bills

(bc) Letter Papers

(bd) Notices

(be) Advertisements

(bf) Any other official Publication of the Company

(iii) Service of Notice or Documents on the Foreign Companies -Section 383

Any process, notice or any other document is to be **treated as deemed served** where sent by office of the ROC through **posted or delivered by electronic mode at the Indian address** as communicated to the office of the ROC by the Foreign Companies.

(iv) Filing of Annual Return by the Foreign Companies-Section 384

(a) 100% Foreign Companies are **required to prepare and to file the annual returns** of the Indian business operations 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 the filling of annual returns:-

(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 details of the 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) Imprisonment + Fee for contravention on Foreign Companies-Section 392

(a) 100% Foreign Companies are 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 Companies 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 + fine both.

(vi) Cancellation of validity of contracts etc. for non compliance -Section 393

(a) Any failure of the provisions under section 379 to 384 of the Companies Act, 2013 by the Foreign Companies shall be liable for cancellation of any contract, dealing or transaction with the Indian entities.

(b) And also the Foreign Companies 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 Companies have complied the provisions of the section 379 to 384 of the Companies Act, 2013.

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