

COMPANIES INCORPORATED OUTSIDE INDIA

CA FINAL – LAW

CHAPTER 11

CA AKHIL MITTAL

INTRODUCTION

A. MEANING OF FOREIGN COMPANIES:

Companies which are incorporated outside India but have **offices and places of business in India** are described as **FOREIGN COMPANIES**.

B. APPLICABILITY OF SECTION 592 TO 602 TO FOREIGN COMPANIES

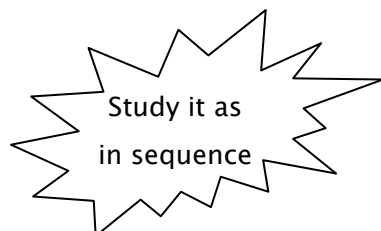
Following companies comes under the definition:

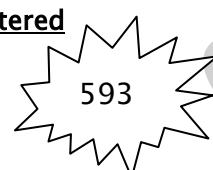
1. Companies incorporated outside India, after the commencement of this act, establish a place of business in India.
2. Companies incorporated outside India, before the commencement of this act, establish a place of business in India and continued to have established business in India at the time of commencement of this act.

Following case to be read:

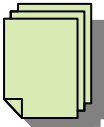
- a. Not less than 50% of paid up share capital (Equity or preference shares or partly paid both shares),
- b. Of a foreign company having established place of business in India is held by,
- c. One or more citizens of India/ Body incorporated in India, whether SINGLY OR IN AGGREGATE.
- d. In such case, company is deemed to be incorporated in India and the related provisions will apply accordingly.

<u>Documents etc to be delivered to the registrar by foreign company</u>	Foreign Companies which established a place of business in India after 01 st April 1956, must within 30 DAYS from the date, file with the registrar having jurisdiction over NEW DELHI & also with the registrar of the state in which principal place of business of the company is situated: [DOCUMENTS NEEDED]
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	1. Certified copy of charter, statutes, memorandum & Article or instruments defining the constitution of the company. 2. Full address of the registered/principal office of business. 3. Full address of office of the company in INDIA, which is to be deemed its principal place of business in India. 4. List of directors & secretary of the company. -- <i>List containing name & surname</i> -- <i>His usual residential address, nationality, business occupation</i> 5. Name(s) & address(s) of person(s) in INDIA who is authorized to ACCEPT service on behalf of the company.
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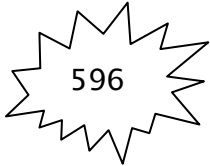
<u>Return to be delivered to registrar where documents are altered</u> 	Under Section 593, if any alteration is made: -- <i>The charter, statute, or memorandum and articles of foreign company</i> -- <i>The registered principal office of foreign company.</i> -- <i>Name/address of any person authorized to ACCEPT service on behalf of the company.</i> -- <i>Principal place of business of the company in India</i>
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The notice of alteration must be communicated to ■ Registrar FIRST 3 CASES: ■ On or before 31st January of the year following the year in which alteration was made. LAST CASE: Within 1 month from the date of alteration.
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<u>Accounts of foreign company</u> 594	Under Section 594, every foreign company in every calendar must --<i>Make a balance sheet, profit & loss account relating to business in India,</i> --In such form, containing such particular/ annexure. --as under provision of the act. --<i>DELIVER 3 COPIES</i> of those documents to the REGISTRAR.
	In case of foreign company, if the world balance sheet & profit & loss account prepared by it in the country of incorporation is in the prescribed SCHEDULE VI to the companies act, Department of Company law administration clarifies that such statement would be accountable in compliance with the section of section 594(1).
<u>Obligation to state name of foreign company</u>	<i>Under this provision:</i> 1. Exhibit the name & country in which it is incorporated & such exhibition must be in English language outside place of business in India.  2. State country of incorporation in every prospectus inviting subscription in India.  3. State name & country in which it is incorporated in all business letters, bill heads, letter papers, notices, advertisement etc. 
595	In case of limited liability of the members of the company, the notice of the fact must be stated in prospectus, letter head, letter papers, etc & to be exhibited outside the place from where business is carried in India in ENGLISH language.

Service on foreign Companies

It means any notice, document etc, if has to be sent to company, then where it is to be sent???



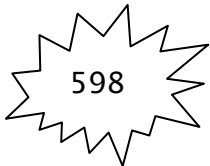
Provision of this section says:

1. Documents deemed to have been served if these are served addressed to **person**, whose name is delivered to REGISTRAR or left/sent by post.



2. But in case, name & addresses of the person(s) resident in India, who has authority to accept services on company's behalf is **NOT GIVEN** or **PERSON(S)** ceased to reside, then documents may be served in the company, by *leaving or sending by post*, any place of business established by the company in India.

PENALTIES



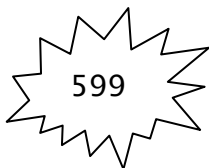
This section prescribes penalty for the

- Company
- Every Officer or agent of the company

For non compliance with any requirement mentioned above

PENALTY	CONTINUE OFFENCE
Rs. 10,000	Penalty with additional fine extending to Rs. 1,000 per day during which default continue

Effect of company's failure to comply with the provisions of Part XI of companies Act 1956 relating to companies incorporated outside India



Provision of this section says:

If foreign company fails to comply with any of the provisions of part XI, such failure

- Will not affect validity of the contract, dealing, transaction
- It will be **LIABLE** to be **SUED** in respect thereof.

Another effect of non compliance:

The company can't bring any suit, claim or institute any legal proceeding in respect of such contract, dealing, transaction.

REGISTRATION OF PROSPECTUS

Section **605** declares that no person **shall issue, circulate or distribute** in India any prospectus **offering for SUBSCRIPTION** the shares, debentures, **UNLESS**:

1. Certified copy of prospectus by **chairman and other 2 directors of the company** having been approved by a resolution of the registrar, **before its issue, circulation or distribution.**
2. The prospectus states on face of it that **a copy has been delivered.**
3. Attached to the copy:
 - **Consent of any expert, if any, to issue of prospectus.**
 - **A copy of contract needed by** Clause 16 of schedule II to be stated in the prospectus.
 - In case of no written contract, **a memorandum giving full particulars.**

REQUIREMENT AS REGARD PROSPECTUS

Following are the provisions in respect of prospectus of a foreign company:

SECTION 603: Prospectus to be issued by an existing / intended(new) foreign company in India must be dated and contain the following particulars:	CODE TO REMEMBER : O-C.A.P. 1. If there is place of business in India, then address of the principal Office. 2. Instrument defining Constitution of the company. 3. Address of the place in India, where such instruments either in English or other foreign language are KEPT and can be inspected. 4. Provisions under which the company is incorporated.
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PENALTIES:

NATURE OF PENALTY	PENALTY
Contravention of any of the provisions contained in section 603, 604, 605 603: Requirement as regard to prospectus 605: Registration of prospectus	Imprisonment for a term extending up to 6 months OR Fine up to Rs. 50,000 (Or Both)

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