

12. Foreign companies

Meaning (Section 591)

As per section 591, company shall be a foreign company if-

- a. It is incorporated outside India; and
- b. It has established a place of business in India.
- If a company incorporated outside India employs agent in India but has no office or place of business in India, it will not be a foreign company.
- For foreign company, a concrete connection between the locality and business of the company is exists. Only mere occasional connection would not be sufficient.
- Where a company incorporated outside India uses the premises in India for storing works of art and for viewing works of art stored there, the company has established a place of business in India.
- A share transfer office or share registration office constitutes a place of business in India.
- As per section 591(2), where not less than 50% of the paid-up share capital (Equity and preference both) of a foreign company is held by a Indian citizen or bodies corporate incorporated in India, whether singly or in the aggregate, such a foreign company will be treated as an Indian company in respect of its Indian business. it shall comply with such provisions of the act as may be prescribed, as if it were a company incorporated in India.
- A company corporate in India shall not be a foreign company even if all its shareholders are foreigners. And therefore all the purpose of the Companies Act, 1956 it shall be treated as an Indian company.

Registrar for Foreign companies (Section 597)

- as per this section, all the returns and documents required to be delivered to the registrar by a foreign company shall sent to-
 - ✓ the registrar of companies, New Delhi; and
 - ✓ The register of the state in which the principal place of the business is situated.

Filing of Documents by a foreign company (Section 592 and 593)

1. legal requirements when place of business is established (Section 592)
 - a. a certified copy of its constitution with an English translation, if it is not in English. The constitution means the charter, statutes, MOA and Articles or other instrument defining the constitution of the company.
 - b. Full address of the RO or PO.
 - c. Full address of the principal place of business.
 - d. Name and address of the one or more person resident in India, authorised to accept service of notice of other documents on behalf of the company.
 - e. A list of the directors and secretary of the company, specifying the following particulars:
 - i. With respect to a director, it shall specify his name, address, surname, former name, residential address, nationality etc.
 - ii. With respect to a secretary, it shall specify his name, surname, former name and residential address.

2. If any alteration is made in any of the documents specified above, such alterations shall be filed with the registrar, however, an alteration need not be intimated to the registrar if the alteration relates only to a change in the *particulars* of a director or secretary.
3. Time limit for filing the alterations (Section 593)
 - a. 31st January of the following year – for below type alteration
 - i. Constitution of the company
 - ii. Address of the RO or PO
 - iii. Director and secretary of the company.
 - b. 30 days – within 30 days of such alterations
 - i. Person authorized to accept service of notice on behalf of the company.
 - ii. Principal place of business in India.

Accounts of a foreign company (Section 594)

1. World accounts

Every foreign company shall, in every *calendar year*, prepare and file with the registrar the following documents. (in triplicate)

 - a. A balance sheet
 - b. A P & L statement
 - c. Documents relating to every subsidiary of the foreign company

➤ The BS and P & L statement shall comply with the following requirements:

 - ✓ form - as per Indian Company
 - ✓ Disclosure of particulars – as per Indian company
 - ✓ Annexure and Attachments – as per Indian Company
 - ✓ Translated copy in English – world documents
2. Indian Business Accounts

➤ The Indian business accounts shall be prepared in Indian rupees as per the requirements of schedule IV.

➤ The Indian business accounts shall be audited by a CA practicing in India.
3. The foreign company shall prepare a list of all the places of business established in India as on the Balance sheet date. The list also filed with registrar.
4. Relaxations by the CG about such accounts are applicable only if it's specified in the notification.
5. The world accounts and Indian business accounts, and list of all the places of business established in India shall be filed with the registrar within 9 months from the close of FY of the foreign company. The registrar at New Delhi may extend the said period by 3 months.
6. The P & L account relating to Indian business of foreign company shall not be open to inspection of any person other than a member, provided that such a foreign company would have been a private company if it had been registered under the Companies Act, 1956.

Issue of prospectus (Section 603)

Where a company incorporated outside India intends to issue shares or debentures in India, it shall issue a prospectus. The provisions in this regard may be explained as below:

1. Contents
 - a. The instrument defining the constitution of the company.
 - b. The enactment under which the company was incorporated.

- c. If the instrument defining the constitution or enactment under which the company is not in English, than a certified translation thereof.
- d. An address in India where inspection of above documents can be made.
- e. The date and country of the incorporations.
- f. The address of its principal office in India, if any
- The provision contained in (a) to (d) above shall not apply if the prospectus is issued more than 2 years after the company had become entitled to commence business.
- 2. Other requirements
 - a. The prospectus shall contain such matters as are specified in schedule II.
 - b. The prospectus shall be dated.
 - c. The prospectus must be registered with the registrar before it is issued.
 - Establishment of a place of business in India is not a necessary condition for issuing shares or debentures in India.

Service of documents on foreign company (Section 596)

- Any notice or other document may be served on a foreign company by addressing the same to a person who has been authorised to accept service of notice on behalf of the company.
- Service at any place of business of the foreign company.
 - ✓ Where the foreign company makes a default in delivering to the registrar the name of the authorised person.
 - ✓ If the authorise person-
 - Is dead; or
 - Has ceased to reside at address given; or
 - Refuses to accept the service of notice; or
 - For any other reason, the service on authorised person is not available.
- The notice may be hand delivered or sent by post.

Provision applicable to foreign companies (section 600)

- a. Creation, modification and satisfaction of charges (section 124 to 145)
 - a. Charges related by a foreign company on properties in India; or
 - b. Charges on properties in India acquired by a foreign company.
- b. Inspection of copies of debenture trust deed (118)
- c. Maintenance of books of account (209)
- d. Inspection of books of account (209A)
- e. Annual return (159)
- f. An order for conducting special audit by the CG (233A)
- g. An order for conducting cost audit by the CG (233B)
- h. The calling of information by the registrar (234)
- i. The provisions relating to investigations (235 to 246)

Consequences of failure to comply with the Act (section 598 and 599)

- If a foreign company fails to comply with any of the provisions applicable to it, the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to Rs. 10,000 and in the case of a continuing offence, with an additional fine which may extend to rs. 1000 for every day during which the default continues.

Miscellaneous

- If a foreign company cease to have a place of business in India, it shall forthwith give notice of the fact of the registrar and thereafter it will have no other obligation to file any document with the registrar, provided it has no other place of business in India. (597)
- Where a foreign company ceases to carry on business in India, it may be wound up as an unregistered company. Winding up is possible even where the company has been dissolved or otherwise ceases to exist under the laws of the country under which it is incorporated.