COMPANIES INCORPORATED OUTSIDE INDIA

- Section 2(42) defines foreign company and sections 379 to 393 deals with such provisions

<u>Definition's:</u> Section 2(42) of the Companies Act, 2013 ("the Act") defines *foreign company* ("FC") as follows: "Foreign Company" means *any company or body corporate* incorporated outside India which;

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner.

The expression "*place of business*" includes a share transfer or registration office as per sec. 386(c) of the Act. "*Electronic mode*" means carrying out electronically based, whether main server is installed in India or not. <u>Applicable sec's:</u> Sec. 379 - Applicability of Act to foreign Companies: Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a FC is held by

- one or more citizens of India or
- one or more companies or bodies corporate incorporated in India or
- one or more citizens of India and one or more companies or bodies corporate incorporated in India

- Foreign company is not a company under companies act 2013 but is a body corporate.
- Registrar means a registrar having jurisdiction over new Delhi
- The expression 'place of business' includes a share transfer office or share registration office

If Indian citizens or/and one or more companies or body corporate incorporated in India hold 50% or more equity/preference paid up capital of foreign company then it shall comply with XXII and rules prescribed by CG in respect of its Indian companies-SEC 379- APPLICATION OF ACT

- Constitution, Address (principal & place of business in India), list of directors, secretary, Authorised officers, declaration (Convicted/barred), opening and closing of business and such other details (Refer in detail) to be delivered to registrar Within 30 days (any alterations too) of establishment of business in India – SEC 380-DOCUMENTS ETC TO BE DELIVERED TO REGISTRAR.- Form FC-1
- If such documents not in English then certified English translation of such documents shall be filled with registrar
- Such translation shall be authenticated by
  - An advocate, attorney or pleader entitled to appear before any high court or
  - An affidavit, of a competent person having , in the opinion of the registrar an adequate knowledge of the language of the original and the English

SEC 381- ACCOUNTS OF FOREIGN COMPANY -Rule 5 provides that every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of section 381 and rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants

- Accounts of foreign companies shall be prepared in prescribed forms(particulars and docs attached) and CG has power to exempt any companies from comply such provisions and it shall be filed within 6 months from the closing of FY and can be extended upto 3 months (ROC discretion)

- Every foreign company shall prepare a list of all the places of business established in India in form FC-3

SEC 382-DISPLAY OF NAME OF FOREIGN COMPANY

- Display of Name of company outside at every place of business and exhibit in documents
- Name, country of incorporation, liability must exhibit in business letters, billheads, notices, official publications with legible characters in English
- Documents may be served by hand/post/electronic mode to person resident in India authorised U/s 380- *SEC 383*
- Provisions applicable (71, 77-87, 92, 206-229, 128- mutatis mutandis) –*SEC 384*
- If any docs required to be registered with ROC 379-393 under prescribed fees-*SEC 385*

SECTION -387 DATING OF PROSPECTUS and particulars contained (Sec 26+ 387) additional docs were constitution, enactment law, date, address of principal office and inspections of documents

- No waiver of compliance – If waive void

SEC 388 PROVISIONS AS TO EXPERTS CONSENT-

- Expert has given his consent, expert has not withdrawn his consent-Condition for including expert statement in prospectus
- If statement is contained in any report included in the prospectus, statement is the prospectus by the way of reference , issued along with prospectus shall be statement deemed to be included in prospectus

OTHER PROVISIONS

- CG has power to make IDR rules
- Prospectus shall be filed with registrar with expert consent and other prescribed documents
- section 34,35, 36 shall also applicable where a company incorporated outside India issues a prospectus in India /offer IDR
- Where a foreign company incorporated outside India issues a prospectus in India the winding up provisions shall mutatis mutandis to such company if it were a company incorporated in India.
- Punishment for contravention of chapter XXII – Company : Fine 1 Lakh to 5 Lakh and additional fees 50000 per day, Officer: 25000 to 5 Lakh , Imprisonment <6 month or both

FORMS

- FC 1 : within 30 days of establishment of place of business within India (ROC, Delhi)
- FC 2 : Return of alteration in the documents filed for registration by foreign company
- FC 3 : Annual accounts along with the list of principal business in India(Within 6 months of closing of FY)
- FC 4 : Annual return of a foreign company (Within 60 days of closure of FY)