



## WIN CORPORATE ADVISORS PRIVATE LIMITED

### COMPANIES ACT, 2013 AND ITS IMPACT ON FOREIGN COMPANY

#### FOREIGN COMPANY

Background: Although the foreign company was recognized as a separate class under Companies Act 1956 and also under Income Tax laws. The Companies Act, 2013(the “**Act**”) has not only widened the definition of Foreign Company so as to include all those companies having a business connection in India but also cast several duties with respect to filing of statutory documents and financial statements with the Regulators. Below we (Win Corporate Advisors Pvt. Ltd. Or Win or WACPL) have analysed the definition of the foreign company and commented upon the various compliances they need follow as per the rules and provisions of the Act. This will give an overview of the changed environment; however the user referring to below mentioned analysis need to check the fact of the case on individual basis.

Definition 2(42) defines Foreign Company as

“**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:

Electronic mode has a very wide connotation. Under Electronic mode, any communication done through on-line, sharing of link, server access, email, mobile communication, cloud computing, social media, document management and voice or data transmission will be included. The implication of this would be that any foreign company or body corporate catering any services or sale of goods, merchandise, books to customer in India will be treated as foreign company under this Act. The companies who sell on-line software, books, merchandise, provide consulting or financial services, music, videos will all be covered under provisions of this Act. It covers those companies which has a place of business in India by themselves (having its own office/employees working in India) of through and agent operating physically in India or through electronic mode or any other mode. Irrespective of situation of main server or quantum of transaction, the companies providing above services will be covered.

We believe the existing foreign companies in following field will be covered.

1. e-commerce company like amazon.com or any web-sites through which Indian consumer buys the product.

2. Companies providing consultancy services for e.g. designing services, engineering services, financial consultancy, data providers like Reuters, Bloomberg which provides services through data download, software download, data -link, e-books etc.

### **Compliances for Foreign Company:**

#### **I) Registration:**

Every Foreign Company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar following documents for registration.

1. **Documents** Certified copy of charter, statues or memorandum and articles of the company
2. The full address of the registered or principal office of the Company
3. The name and address of the persons resident in India authorized to accept on behalf of the company
4. The full address of the office of the company in India which is deemed to be its principal place of business in India
5. Particular of opening and closing of place of business in India.
6. Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred
7. List of directors and secretary of the company.
8. Attested copy or approval from RBI or declaration from authorized representative of foreign company that no such approval is required.
9. Any other documents as may be prescribed.

#### ***Our comment: Each foreign company need to check FEMA compliances also.*****II) Accounts of the company:**

Every foreign company shall, in every calendar year submit Balance sheet and profit/loss account with list of all places where business has been established in India.

#### **III) Display of name, etc., of foreign company:**

Every foreign Company shall exhibit outside of every office or place of business in India, the name of the Company, name of the Country in which it is incorporated in legible in English and in languages in general use in the locality where office is situated.

#### **IV) In case of default:**

Foreign Company shall be liable with punishment with fine of Rs.1,00,000 which may extend to 3,00,000 and Officer in default officer shall be liable with imprisonment for a term extend to 6 months or fine which shall be Rs.25,000 which may extend to Rs.5,00,000

**Conclusion:**

It is now imperative to follow the provisions for all foreign company who had or having any business connection in India by way of purchase/sale or product/services. They are required to get registered and follow other compliances together with filing of required documents for registration.

While this is a welcome step to stop any kind of financial abuse or possible money laundering, this will give a ready data base to Income Tax department to know whether any income is arising in India and liable to be taxed in India. This will open a plethora of tax disputes in future.

**Notes:**

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**Thank You**