

India's Companies Act 2013 Key Aspects for Foreigners

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Preface

Indian economy, despite the setback due to Covid-19, has the potential for fast growth. A large economy with growth potential combined with India's stable political system, free economy and dynamic spirit of the people has been attracting interest from business houses and individuals across the globe.

This Presentation is part of the on-going efforts of Anil Chawla Law Associates LLP to help the world get a better understanding of India and her legal system.

Companies Act, 2013 replaced Companies Act, 1956. The new Act was intended to bring Indian company law in line with global practices. However, the new law did not lead to simplification of procedures. The law has been going through amendments as Government of India tries to make it more business friendly. It is imperative for any foreign national or company to develop an understanding of the law related to companies in India, if it intends to do business in India.

This Presentation is for Indian citizens resident abroad as well as for foreign nationals. It aims to give an overall perspective of the company law in India as relevant to foreigners.

In this Presentation, key points related to a topic are given in one slide and the relevant extract from Companies Act, 2013, as amended to date, is given verbatim in the next slide.

We, Anil Chawla Law Associates LLP, shall be glad to assist a foreign national or company professionally for their venture in India.

Anil Chawla
Senior Partner, Anil Chawla Law Associates LLP

Who is a Foreign Resident?

- The Companies Act, 2013 (the Act) does not define a foreign resident / foreigner.
- Any one (including an Indian citizen) may be treated like a foreign resident if he / she has not been staying in India for continuous period of 12 months immediately preceding the date of his appointment as a managerial person (Schedule V).
- Anyone (including an Indian citizen) who has stayed in India for a total period of less than 182 days during a financial year (1 April to 31 March) will be treated as a foreign resident (Sec. 149(3)).
- A foreign citizen staying in India for >182 days during a financial year may enjoy all rights under the Act while the same rights are not available to a Non-resident Indian citizen.

A. Three Important Points

- A1. Need for a Resident Director
- A2. Appointment of Managing Director
- A3. Attending Board Meetings
- A4. Attending Annual General Meeting

A1. Resident Director

- Every company (whether private or public) needs a resident director.
- Resident Director condition – 182 days.
- For a newly incorporated company, one of the directors should be resident in India for more than half of the days that the company is in existence during the financial year in which the company is incorporated.
- Resident director need not be Indian citizen.

A1. Resident Director (Continued)

²[(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.]

- Total Stay; not continuous days.
- Minimum 182 days stay in India during the FINANCIAL year.
- Necessary even for a newly incorporated company; Stay requirement in proportion to the number of days of existence of the company during a financial year.
- No relaxations / exceptions.

Sub-section 149(3)

A2. Appointment of Managing Director

- Must be a resident of India. If not a resident, Central Government approval necessary.
- Resident not defined; Explanation I lists two categories which are included (a) staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment (b) has come to India for taking up employment in India or for carrying on business or vacation in India. (The word vacation is an obvious mistake. It should have been vocation.)
- Strictly speaking, an Indian citizen who has gone to visit his son in USA and stayed there for, say, two months will need Central Government approval for appointment as MD.
- Proviso does not mention Business Visa.
- A badly drafted Schedule with a typographical error.

A2. Appointment of Managing Director (Continued)

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

(i) for taking up employment in India; or

(ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

Sub-section 196(4) & Schedule V

A3. Attending Meeting of Board of Directors

- Necessary for a Director to attend at least one meeting in a year.
- Participation may be in person or by video conference.
- Physical meetings can be held anywhere in the world.
- Video conference meetings will not be able to take up all issues. The issues that need physical meetings have been specified in Rule 4 of the Companies (Meetings of Board and its powers) Rules, 2014.
- In case quorum (usually two directors) is present physically, other directors can join using video conference. In such a case all matters including issues not allowed under Rule 4 can be taken up.
- Video meetings will need to be recorded (The requirement is not for physical meetings).
- Telephonic conferences (audio only) not recognized.

A3. Attending Meeting of Board of Directors (Continued)

- A small company need to hold minimum two board meetings in a year.
- Practically possible to own a company in India without ever coming to India.

Rule 4 of the Companies (Meetings of Board and its powers) Rules, 2014

4 Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means

- (1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-
- (i) the approval of the annual financial statements;
 - (ii) the approval of the Board's report;
 - (iii) the approval of the prospectus;
 - (iv) the Audit Committee Meetings for ²[consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act]; and
 - (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that where there is quorum presence in a meeting through physical presence of directors, any other director may participate conferencing through video or other audio visual rmeans.

(2) For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June 2021, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3.

A3. Attending Meeting of Board of Directors (Continued)

(2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

²[Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.]

167. (1) The office of a director shall become vacant in case—

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

Sub-sections 173(2) and 167(1)(b)

A4. Attending Annual General Meeting

- Necessary for a company (except one-person company) to hold a meeting of members (AGM) at least once in a year.
- Usually, to be held in the city of registered office.
- For unlisted company, if members agree, AGM can be held at any place in India or can be held by video conferencing.
- Video conference meetings of unlisted companies can take up all issues.
- Advisable for video meetings to be recorded.
- Telephonic conferences (audio only) not recognized.

A4. Attending Annual General Meeting (Continued)

¹[(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

²[Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

Sub-sections 96(1) & 96(2)

B. Points of Interest / Concern

B1. One-Person Company

B2. Financial Year

B3. Promoter

B4. Officer in Default

B5. Control of Company

B6. Resignation by all Directors

B7. Associate Company

B8. Subsidiary Company

B9. Public Company

B1. One Person Company

Initially it appeared to be useful for persons from Western world but the Rules issued in 2014 closed this category to foreign citizens completely. Before 2021, only Indian citizens who were residents of India could set up a one-person company. However, with effect from 1 April 2021 Indian citizens resident outside India are also eligible to set up one-person company.

- (1) Only a natural person who is an Indian citizen ⁴[whether resident in India or otherwise]-
- (a) shall be eligible to incorporate a One Person Company;
 - (b) shall be a nominee for the sole member of a One Person Company.

Explanation I. - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than ³ [one hundred and twenty days] during the immediately preceding financial year.

Explanation II. - For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted.]

B1. One Person Company (Continued)

(62) “One Person Company” means a company which has only one person as a member;

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber’s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Sub-sections 2(62) & 3(1)

B2. Financial Year

- Financial Year in India is 1 April to 31 March.
- An Indian company, which is holding company or subsidiary of a foreign company may apply for adopting a different financial year if needed to consolidate its accounts with the foreign company.
- Application to be made to the Tribunal.
- Corresponding change not made in Income Tax. Section 2(9) of IT Act states - "assessment year" means the period of twelve months commencing on the 1st day of April every year.
- Companies adopting a different F.Y. under Companies Act will still need to prepare accounts for April-March to comply with IT Act.

B2. Financial Year (Continued)

(41) “financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

Sub-section 2(41)

B3. Promoter

- A new concept introduced under India's Companies Act, 2013.
- A foreign company / individual getting into a Joint Venture (JV) with an Indian partner must decide if they want to be known as the Promoter of the Indian company.
- If the foreigner does not want to be a Promoter care should be taken in drafting the JV Agreement regarding their powers in relation to control over the affairs of the Indian company and about powers to give directions to the Board.
- On the other hand, there are clear advantages in becoming a Promoter and the foreigner may be advised to get the status.
- Power of Promoter to give directions to the Board may be cast in stone in the JV Agreement.

B3. Promoter (Continued)

(69) “promoter” means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Sub-section 2(69)

B4. Officer in Default

- Officer in Default includes Directors, Key Managerial Personnel and also Promoters.
- Promoter is likely to be the first to be caught along with the Directors as an Officer in Default, if the company makes some mistakes.
- Officer in Default need not be an individual since the word used is “person” and not an individual. So a foreign company may become Officer in Default.
- Officer need not be an employee of the company. Officer need not even receive any remuneration / benefit from the company.
- The key is “*any person in accordance with whose directions or instructions, the Board of Directors or any one or more of the Directors is or are accustomed to act.*”
- If a foreigner wishes to avoid being Officer in Default, he / she should not become a Director and roles / responsibilities under the JV Agreement should be carefully defined.

B4. Officer in Default - (Continued)

(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key

Sub-sections 2(59) and 2(60)

B4. Officer in Default - (Continued)

managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

Sub-section 2(60) Continued

B5. Control of the Company

- A much wider term than Promoter since many possibilities are covered including due to either of (a) shareholding (b) management rights (c) shareholders' agreement (d) voting agreement (e) any other manner.
- Key is right to (a) appoint majority of the Directors or (b) control management or policy decisions.
- Existence of right will establish control. One may have never exercised the right.
- Adverse effects of being in control are not clear. All punishments and penalties are for officers and not for person in control. So, there need not be any fear of becoming in control.

B5. Control of the Company (Continued)

(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

Sub-section 2(27)

B6. Resignation by all Directors

- A special situation that gives power to Promoter who appoints directors when all directors have resigned.
- Now it is possible for a Promoter to manage a private company with all dummy directors who will hold office at the pleasure of the Promoter.
- Articles of a private co. may provide “*Directors shall hold office at the pleasure of the Promoter and displeasure of the Promoter will be a disqualification under 164 of the Act*”.
- Foreign Investors / Entrepreneurs may take advantage of this to ensure better control on Indian directors.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Sub-section 164(3)

B6. Resignation by all Directors (Continued)

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Sub-sections 167(3-4), 168(3)

B7. Associate Company

- A new concept in Indian law (Was earlier in Accounting Standards).
- A foreign company (FC) owns 20% or more share capital of Indian company (IC) or has control of business decisions. IC is associate of FC but FC is not associate of IC.
- Associate is a one-way relation and not a two-way relationship.
- Often the Indian Joint Venture of a Foreign Company is an Associate Company of the Foreign Company under the Act.
- Need to check from the view of home law of the Foreign Company whether the Indian Company is an Associate. This is important from the view of accounting of the Foreign Company.

B7. Associate Company (Continued)

(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

Sub-section 2(6)

B8. Subsidiary Company

- One of two criteria – (a) control composition of Board of Directors or (b) exercise or control more than half of the total voting power (which generally means equity share capital).
- Restriction on number of layers.
- Controlling composition means one can appoint or remove all or majority of the directors.
- If holding company is a foreign company, the Indian subsidiary will be deemed to be a public limited company – ref. definition of public company, sub-section 2(71).
- Any JV agreement involving a foreign company must mull whether the foreign company wants to create a subsidiary.

B8. Subsidiary Company (Continued)

¹[(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company--

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the ²⁴[total voting power] either at its own or together with one or more of its subsidiary companies:]

¹²[Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.]

¹[Explanation.--For the purposes of this clause,--

Sub-section 2(87)

B8. Subsidiary Company (Continued)

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;]

²[(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;]

Sub-section 2(87) Continued

B9. Public Company

- A subsidiary of any company (which is not a private company) is a public company.
- Definition of private company refers to a company having less than 200 members and where right of members to transfer shares is restricted.
- Definition of company refers only to company registered in India.
- Foreign company, which is parent of the Indian subsidiary company, will be covered under the definition of “holding company” under sub-section 2(46) wherein company includes any body corporate.
- By joining up all definitions, it emerges that any Indian subsidiary of a foreign company will be deemed to be a public company.
- Legal position on this point is in the process of evolution and may change in the years to come.

B9. Public Company (Continued)

(71) “public company” means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital ^{1***} as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(68) “private company” means a company having a minimum paid-up share capital ^{1***} as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

(20) “company” means a company incorporated under this Act or under any previous company law;

Sub-sections 2(71); 2(20) and 2(68)

B10. Authorized Capital

- Authorized capital is the maximum amount of share capital that a company is allowed to raise.
- At the time of incorporation, authorized capital is declared in the Memorandum of Association of the company.
- Increase of authorized capital can be done at any time without much difficulty.
- The Companies (Amendment) Act, 2015 removed the need for a minimum authorized capital for a company.
- A very low (almost zero) capital company is often convenient for foreign citizens who wish to own an Indian entity without committing investments.
- A low capital company is also useful for setting up shell companies for participation in government tenders. Capital of the shell company can be suitably increased if the tender bid is successful.

B10. Authorized Capital (Continued)

¹[(8) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

(i) in clause (68), the words “of one lakh rupees or such higher paid-up share capital” shall be omitted;

(ii) in clause (71), in sub-clause (b), the words “of five lakh rupees or such higher paid-up capital,” shall be omitted.

Sub-section 2(8) of the Act and Section 2 of The Companies Amendment Act, 2015

C. Points for Collaboration

- C1. Additional Matters in Articles of Association
- C2. Merger of Indian Company with Foreign Company

C1. Additional Matters in Articles of Association

- Articles can include all types of restrictive clauses that JV partners wish to include to safeguard their interests.
- For example, one may include a provision in the Articles of a new company that all decisions of Board shall be by consensus.
- For example, one may also include a provision that a Special Resolution / Extra Ordinary General Meeting will need approval of all directors without any absentees.
- Use of standard Articles of Association should be avoided in case of Joint Venture involving foreigners.
- A Shareholders' Agreement / JV Agreement has limited enforceability. Articles of Association is a stronger document and higher care should be taken.
- Entrenchment – a new word in Indian law – needs careful attention. Entrenchment provides for additional restrictions on amendment of Articles of Association. For example, one may provide for alteration of parts or whole of Articles by consensus only.

C1. Additional Matters in Articles (Continued)

(2) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Sub-sections 5(2-5)

C2. Merger of Indian Company with Foreign Co.

- Notified in April 2017.
- Prior approval of Reserve Bank of India is required.
- Permitted with only companies incorporated in jurisdictions specified by Central Government.
- It may be worthwhile for Joint Venture Agreements to provide for the merger of either Indian company with the foreign company or vice versa, subject to such terms as may be provided in the Agreement and also subject to the rules / restrictions under section 234 of the Act.

C2. Merger with a Foreign Company (Continued)

234. (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government:

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

(2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.—For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.

C2. Merger with a Foreign Company (Continued)

“25A. Merger or amalgamation of a foreign company with a Company and vice versa.—(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

“(1A) A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

(2) (a) A company may merge with a foreign company incorporated in any of the jurisdictions specified in Annexure B after obtaining prior approval of the Reserve Bank of India and after complying with provisions of sections 230 to 232 of the Act and these rules.

(b) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230 to section 232 of the Act and these rules after obtaining approvals specified in sub-rule (1) and sub-rule (2), as the case may be.

Rule 25A of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

C2. Merger with a Foreign Company (Continued)

“Annexure B

Jurisdictions referred to in clause (a) of sub-rule (2) of rule 25A

Jurisdictions -

- (i) whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with SEBI, or
- (ii) whose central bank is a member of Bank for International Settlements (BIS), and
- (iii) a jurisdiction, which is not identified in the public statement of Financial Action Task Force (FATF) as:
 - (a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - (b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.”.

Annexure B of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

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