

Foreigner(uk) as director in indian company

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manoj (Account Executive) 27 May 2019

hello my dear colleage,

I just want to know where it is written in companies act,2013 and rules that all document signed by foreigner needs to be apostile and notarised. i did not find . please suggest.

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Kasthuri Rangan (Advocate) 28 May 2019

Please refer Department of Company Affairs (DCA, now MCA) way back in 2003 vide its circular 17/69/2003 CL-V dated 7th January, 2004 If your question is related with appointment of foreign national is one of the Director in Indian Companies, then, the following points may be useful to you. (1) Please check the foreign person's ORIGINAL

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passport about his/her full address / country of origin. (2) Kindly go to below website and check the Status of Country (i.e) whether commonwealth (or) Hague Apostille convention signed country ? <https://thecommonwealth.org/member-countries>
<https://www.gsccca.org/notary-and-apostilles/apostilles/hague-apostille-country-list>
<http://worldpopulationreview.com/countries/hague-convention-countries/> (3) Then check the validity / authenticity of his/her passport in appropriate country's website. For example if UK : <https://www.passport.service.gov.uk/check-a-passport> For example if US : <https://passportstatus.state.gov/> (4) Foreign director may be appointed as an whole time director (executive director) or non whole time director (non – executive director) (5) But, there shall be at least one Director as Indian Nationality and he/she should be Resident Indian. (6) In pursuant to Section 2(34) of the CA, 2013, “Director” means a director appointed to the Board of a company. So, a foreign national person can be appointed as Director in the board of the companies in India (7) As per the requirement of sub rule 5 of rule 13 of companies (incorporation) rules 2014, if the country of foreign national is a part of commonwealth, the documents shall be notarised by a Notary (Public) in that part of the Commonwealth. If the country of foreign national is a part of Hague Apostille Convention 1961, the documents shall notarized before the Notary (Public) of the country of his origin and be duly apostillised in accordance with the said Hague Convention. For more details on the process of notarization you need to check whether the country is part of Hague convention or not (Mostly Gulf countries are not a part of this, so consularization might be needed) (8) Suppose, if the person does not belong to a country which is a part of commonwealth or hague convention, then the documents shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same; where the subscriber to the memorandum is a foreign national his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled. (9) If a foreign director has a valid multiple entry Indian visa or Person of Indian Origin card or Overseas Citizen of India card, then the attestation could also be done by Public Notary / Gazetted Officer in India or a

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practicing chartered accountant / company secretary / cost accountant. In accordance to Rule 13(5)(d) of Companies (Incorporation) Rule 2014 no attestation is required if the documents are executed in India and the Non Resident signing the same arrived in India on a Business Visa. But CA/CS/CMA/Advocate attestation require as usual. (10) Department of Company Affairs (DCA, now MCA) way back in 2003 vide its circular 17/69/2003 CL-V dated 7th January, 2004. DCA came out with this circular in order to prescribe uniform procedure on subscription to MoA by Foreign National. Based on the above circular (i) If the MoA is signed by foreign nationals outside India, their signatures are to be attested before the Indian Embassy in the Country in which subscribers are residing (ii) If the MoA is signed by foreign nationals (who are not resident of India and are on temporary visit) in India, their signatures can be attested by a person in India (professional like Chartered Accountant, Company Secretary, Advocate etc) and proof of their visit to india like passport and visa are to be produced for verification (iii) If the MoA is signed by foreign nationals residing in India for several years / permanently, procedure as at para (b) above is followed and documentary proof of the fact that the subscribers have been residing in india is also insisted upon. The said circular 17/69/2003 CL-V dated 7th January, 2004 by dept of Company affairs valid even now regarding MoA can also be subscribed by suitable authorisation. (11) It may also be noted that an Indian National resident in India can also be authorised by way of Power of Attorney (PoA) to subscribe to the MoA. In that case the PoA should be Notarised and consularised in the country of origin. Also, such PoA should be adequately stamped within 3 months of the document landing in India. (12) If the subscriber is a foreign company, the authorisation shall be by way of Board Resolution which shall also clearly specify the number of shares being subscribed. Such Board Resolution should be notarised and consularised in the country of origin. (13) If the MOA is subscribed in any other language other than the language of the MoA, then an affidavit shall be required stating that the subscriber has understood the contents of the document, i.e. Memorandum and Articles of Association. (14) Stamp as per Indian law after the executed and notarized document has arrived here in India. As regards attestation of MOA/ AOA and all his IDs Proofs', If the foreign national's belongs to the country under Hague Apostille Convention, 1961, accordingly these documents shall be notarized before the Notary (public) of that country and duly apostilled in accordance with the said Hague Convention. Also copy of valid business visa is to be attached. (15) Kindly check the FEMA act too. There will now be no



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lock-in period for FDI investments into hotels and resorts, hospitals, SEZs, educational institutions, old age homes and NRI investments. However FDI will not be permitted in several sectors as indicated in below websites. Kindly refer:

<https://www.investindia.gov.in/foreign-direct-investment>

<https://economictimes.indiatimes.com/small-biz/resources/startup-handbook/appendix-6-prohibited-sectors-for-foreign-direct-investment/articleshow/59630965.cms>

<https://www.ukibc.com/india-guide/how-india/fdi-restrictions/> (16) Subject to the sectoral policy on foreign investments and non-resident holding limits applicable to an Indian company, the entire share capital of a company may be held by non-residents. There is no restriction on a non-resident being a subscriber to the Memorandum of Association, however some procedural aspects under Companies Act needs to be taken care of. While incorporating a company, kindly check FEMA Compliances and FEMA Compliances require after incorporation too. Please Note : I am not responsible to the accuracy of above informations. The above is just basic reference for educational purpose only and you are requested to read Companies Act,2013 / MCA circular / notification and do as per law.



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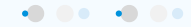
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