

Difference between Old and New Companies Act

Companies Act, 1956

658 Sections

15 Schedules

Few Rules

Companies Act, 2013

470 Sections

7 Schedules

Lot of Rules

Salomon v Salomon & Co. Ltd.



Mr. Salomon was carrying on a boot manufacturing business as sole proprietor

Salomon & Co. Ltd



He sold his business in £38,872 to a Company formed by him along with his wife, a daughter and four sons



Salomon & Co. Ltd



Mr. Salomon was the managing director of the Company and two of his sons were the other directors of the company

Mr. Salomon held Secured Debentures of his Co. worth £10000



Salomon & Co. Ltd



The Company almost immediately ran into difficulties and eventually became insolvent and the winding up commenced

At the time of Winding Up

Total Assets = £6050

Total liabilities =
Secured Debentures £10000
Unsecured Creditors £8000

Salomon & Co. Ltd



Company's assets were used in payment of secured debentures held by Salomon

Salomon & Co. Ltd



Unsecured creditors claimed the whole of Company's assets on ground that Salomon was carrying on business in the name of Salomon & Co. Ltd and the company was a mere agent of Salomon

Decision of the Court



The court held that Salomon & Co. Ltd was a real company fulfilling all the legal requirements.

A **company is a legal person** distinct from its members and could not be regarded as the agent or trustee of Mr. Salomon.

Also the **company's assets must be applied in payment of secured debentures as a secured creditor is entitled to payment out of assets on which his debt is secured in priority to unsecured creditors.**

Lee v Lee Air Farming Ltd

Lee, a qualified pilot, held nearly all the shares in the company, and by its Articles was appointed working director & chief pilot



Lee died while piloting Company's aircraft



His widow claimed compensation under Workmen's Compensation Act

Company opposed the claim stating that Lee was not the worker as same person could not be employer and employee

Decision of the Court

The court held that Lee was a separate person from the company he has formed.

Thus, there was a valid contract of service between Lee and the company.

As Lee was killed in the course of his employment, his widow was entitled to the compensation

Bacha F. Guzdar v Commissioner of Income Tax



Mrs. Guzdar received dividend income in respect of shares held by her in a tea company

Under the Income Tax Act, agricultural income is exempt, from income tax. As income of the tea company is partly agricultural, only 40% of the company's income is treated as income from manufacturing and sale therefore liable to tax



Mrs. Guzdar contented that her dividend income should be treated as agriculture income upto 60% as in the case of tea company, on the ground that dividends received by shareholders represented the income the income of the company and thus should be exempted from tax

Decision of the Court



The Supreme court held that the company was a separate person from its shareholders having its own business and its own income.

The income of the company was partly agricultural and thus exempted from tax.

But the same income when received by the shareholder is dividend income and could not be regarded as agricultural income and thus tax was payable on the dividend income

Company



Section 2(20) of Companies Act, 2013

"Company" means a company incorporated under this Act or under any previous company law



Justice Marshall

- i. Company is Artificial person
- ii. It is invisible & intangible
- iii. It exists in Contemplation of law



Justice James

- i. Company is an Association of Person united for Common Object



Justice Lindley

- i. The Company is association of person

Section 2(71) - Public Company

A public company means a company which:

i. Is not a private company

ii. Has a minimum paid up capital as may be prescribed

iii. Is a private company & which is subsidiary of a public company

Section 2(68) - Private Company

L

Limitation of membership

200 except for OPC

Joint Holders counted as 1

Employees members not counted

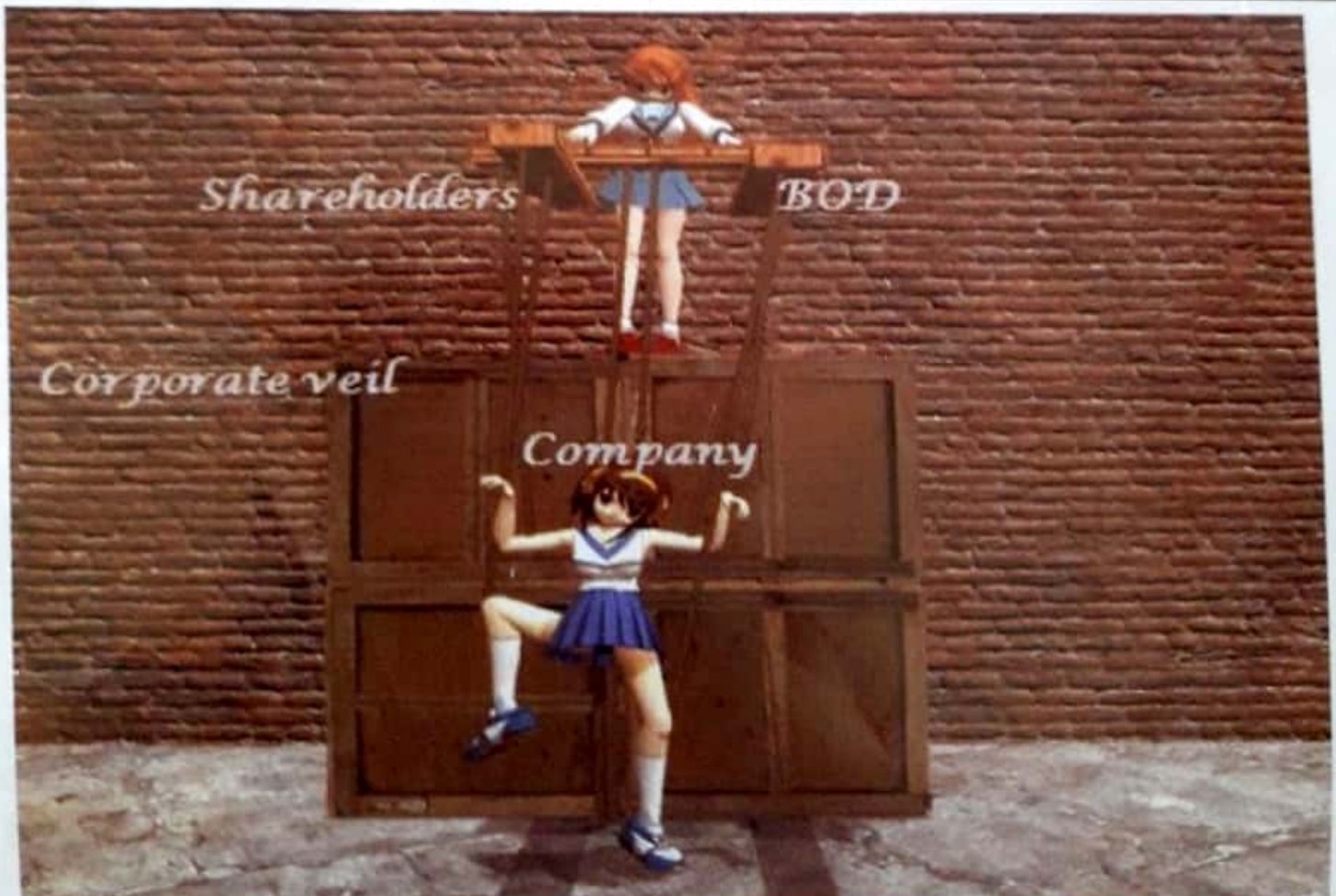
Ex-employees members not counted

R

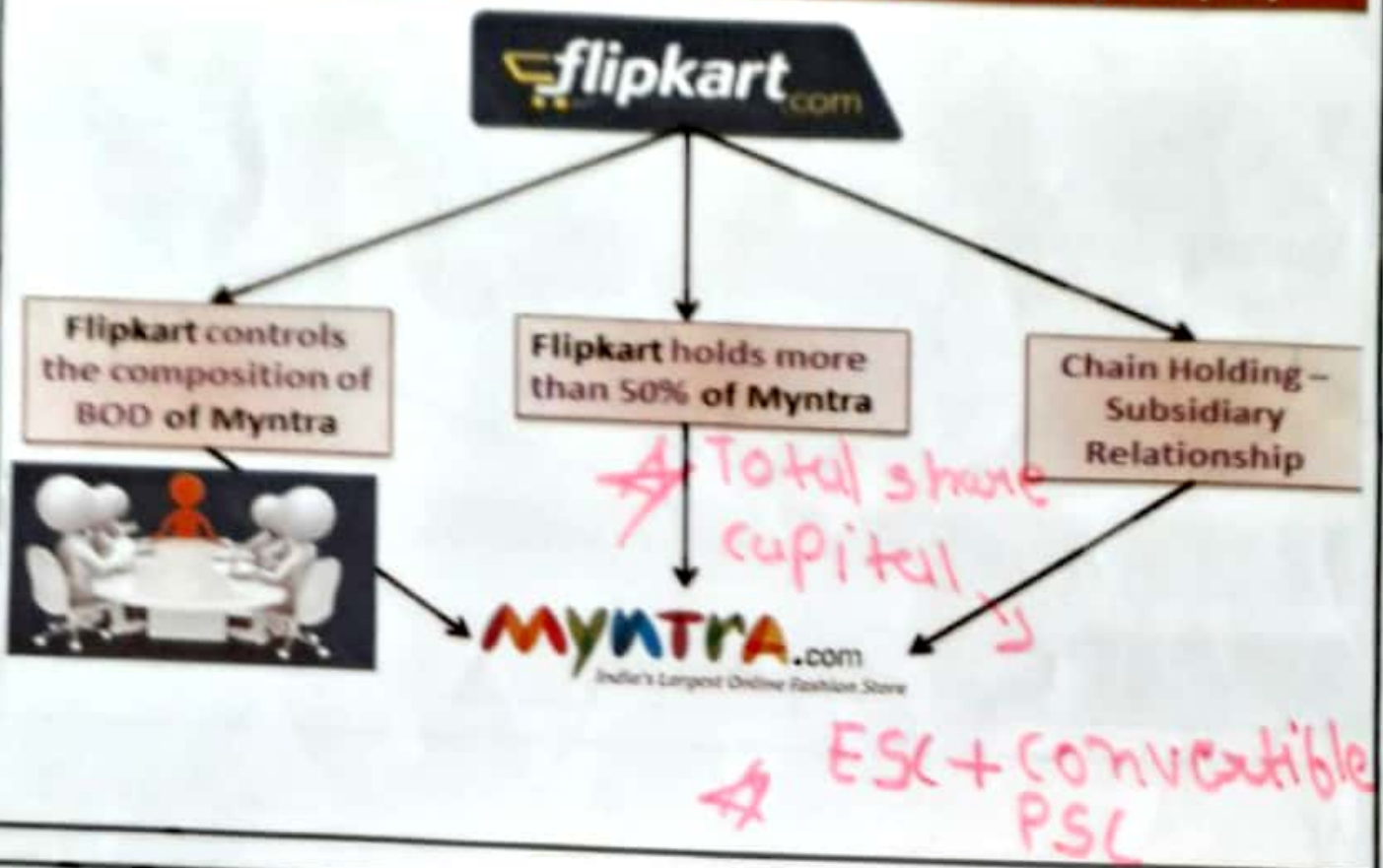
Restriction on the right to transfer its shares

P

Prohibition on making an invitation to public



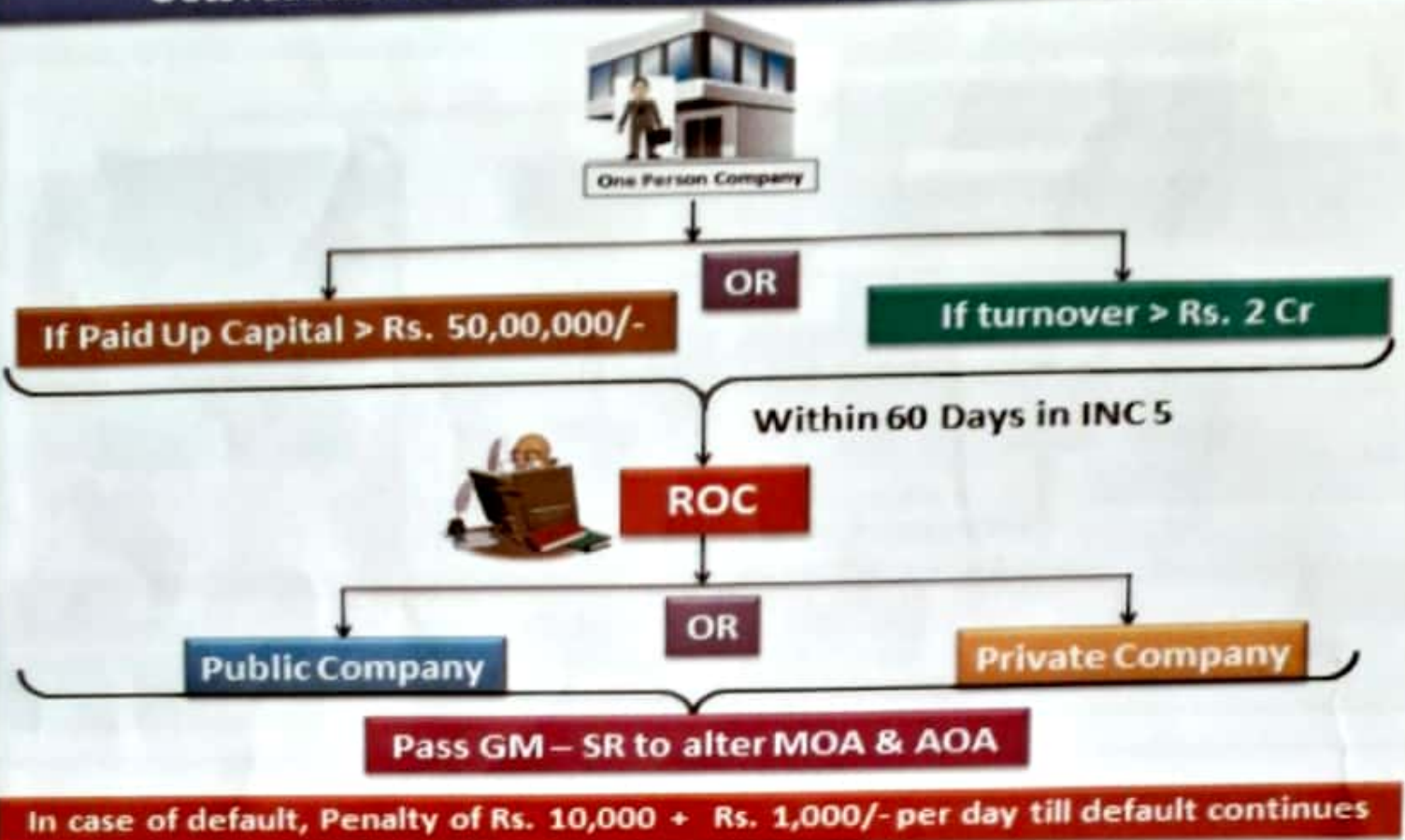
Section 2(46) - Holding Company, Section 2(87) - Subsidiary Company



	No. of Shareholders		
	Public	Private	OPC
Section No.	2(71)	2(68)	2(62)
Minimum	7	2	1
Maximum	No Limit	200	1
Who can be	Any person	Any Person	Individual

	No. of Directors		
	Public	Private	OPC
Section No.	149(1)		
Minimum	3	2	1
Maximum	15 (AOA can provide lower amount)		
Who can be	Individual		

Conversion of OPC into Public / Private Company



Section 2(85) - Small Company

Small company means a company, other than a public company -

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees

AND

(ii) turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees

Provided that nothing in this clause shall apply to -

(A) Holding company or subsidiary company

(B) Company registered under section 8

(C) company or body corporate governed by any special Act

Non-Profit Organisation

Charitable Object

Education, Research, Social Welfare, Environment Protection, Charity Religious Donations, etc.

Income Usage

Net income from the business and donations shall be used only for the Charitable Object

Restriction on Dividend

The Company shall not pay dividend however it can pay Interest on Debentures, Deposits, etc.

MOA + AOA + Details of Company + DIN of Directors
Verified by CA/ CS/ CWA

Either CG will give the written permission to the ROC to register the Company



If application is directly made to ROC then the ROC can give direct approval



Section 8 company will be either public or private



Alteration of Object Clause of MOA by Section 8 Company will require prior approval of CG

Contravention

Company not working as per its Object

Provided wrong information during formation

Consequences

Penalty:

1. For Company
2. For Officer Rs. 25,000/- to Rs. 25 lacs + 3 years of Jail



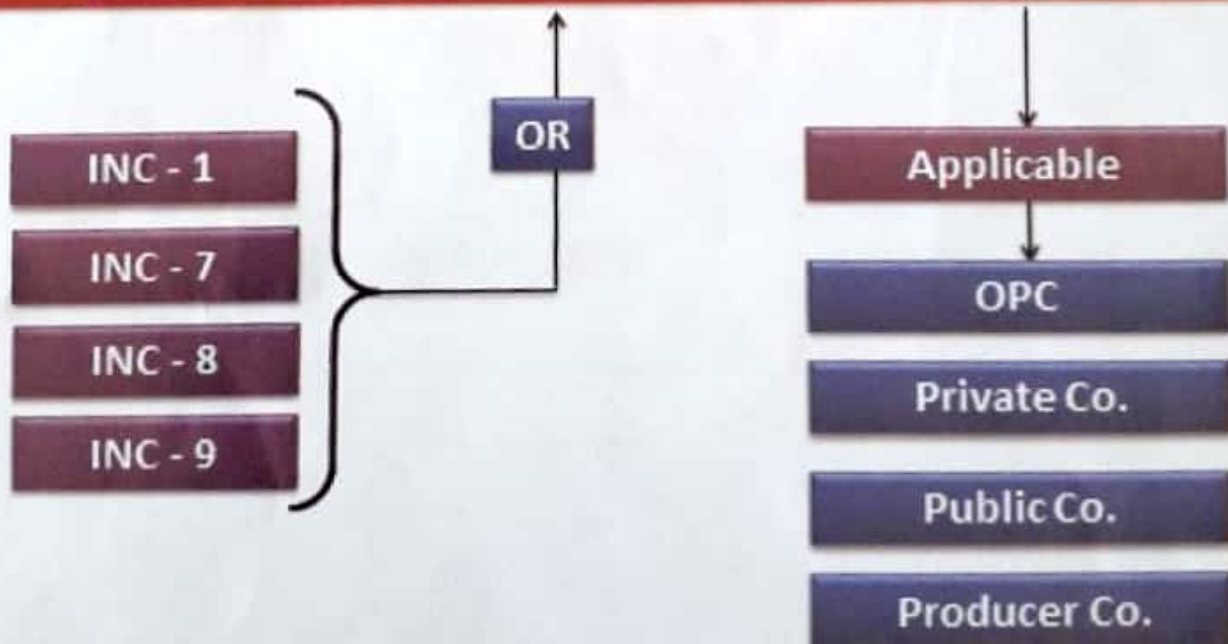
Revocation of license of Section 8 Company. Thus, Company cannot carry any charitable object if future

Company will be:

1. Wound Up; or
2. Amalgamated with other Section 8 Company

INC 32 (SPICE)

Simplified Proforma for Incorporating Company Electronically



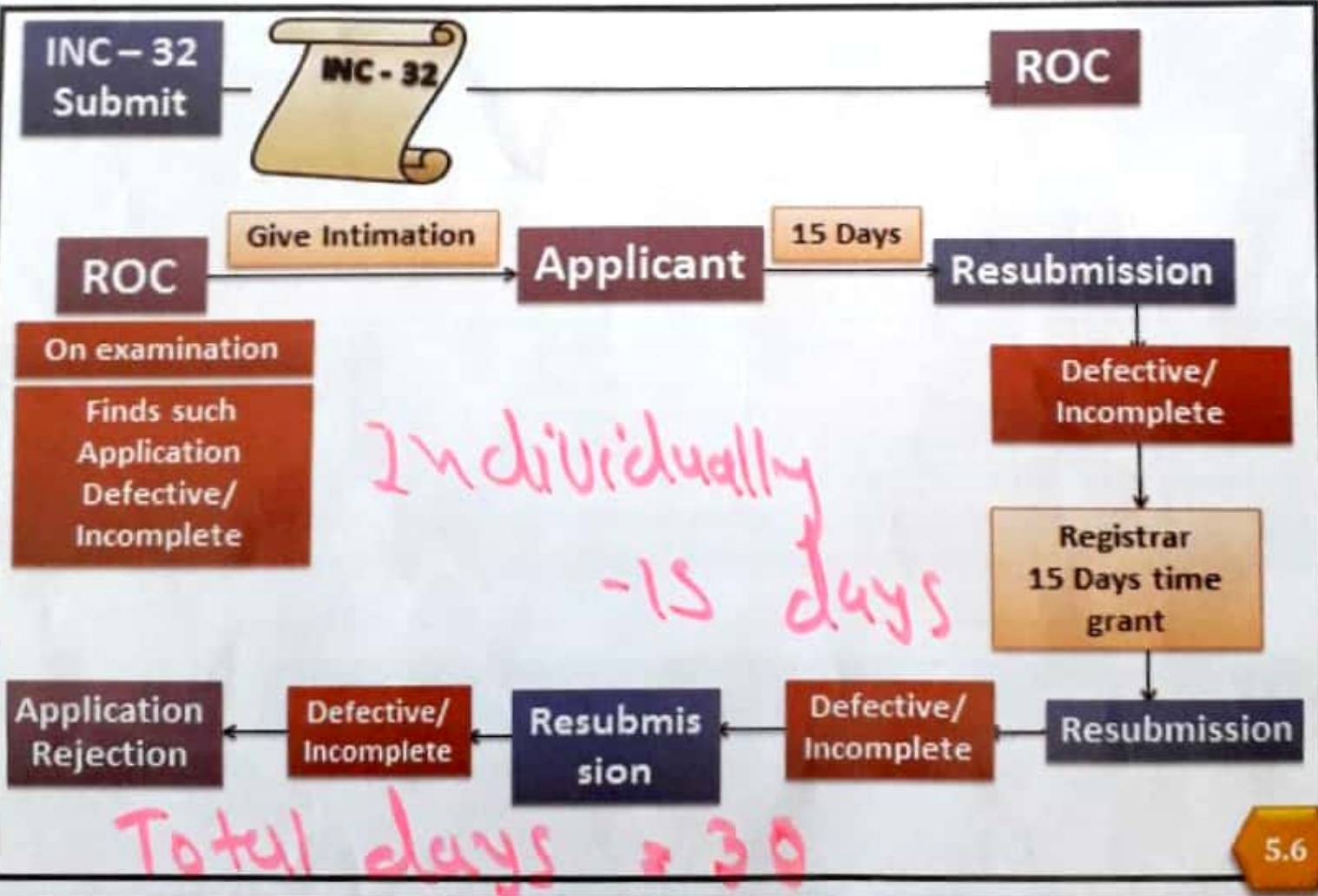
INC - 32 - Max 3 Directors. DIN Apply

Company incorporation request
Max 1 Proposed Name

INC - 33- MOA

INC - 34- AOA

Promoter/Applicant Shall Sign and Witness MOA and AOA and
attach a Scanned copy to e-form INC - 32



Memorandum

Meaning

1. Charter of the Company
2. Defines power & limitations on the power of a company
3. Contains fundamental conditions upon which company is incorporated

Purpose

3rd Parties

To provide information to the third parties as to whether the contacts they are intending to enter into with the company are within the objects clause of the company or not

Shareholders

To provide information to the intending share holder regarding the purpose for which his money is going to be used by the company and the amount of risk he is making in the investment

Content

1. Name Clause
2. Situation Clause
3. Object Clause
4. Liability Clause
5. Capital Clause
6. Association of Subscription Clause
7. Nomination Clause (OPC)

Authorised, Registered

Case Law - Royal British Bank vs. Turquand



Articles of the company stated that the directors of the company could borrow money on behalf of the company, if they are authorized by a resolution passed by shareholders in a General Meeting.



Directors borrowed money from Mr. Turquand without obtaining any authorization from the shareholders

Turquand had lent the money to the company assuming that the authorization from shareholders has been taken



It was held that money borrowed by the directors without the authorization from the shareholders amounted to mere internal irregularity and thus Mr, Turquand could recover the loan.

Case Law - Anand Bihari Lal V Dinshaw & Co. Ltd



An accountant of the company entered into a contract with a third party to sell the property of the company

It was held that the third party could not assume that an accountant can have authority to sell the property of the company.

And thus third party could not enforce such contract against the company even though third party acted in good faith.