

CA Intermediate



LAW Revision Notes



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**Kunal
Mandhania**



Announcing

30 Days

FTR

CA Intermediate

Highlights

- ✓ Flow Charts
- ✓ Shortcuts
- ✓ Easy & Understandable Manner

Audit

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Starting
From

14th
May

05^{.30}
pm

KUNAL
MANDHANIA



PRELIMINARY



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Part -I



Part -II



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Sec. 1 of Companies Act, 2013

Short title

Companies Act, 2013

Extent

Extent to
whole of India

Application

1. Companies defined u/s 2(20)
2. Banking company – Except, if inconsistent with Banking Regulation Act, 1949
3. Insurance company – Except, if inconsistent with Insurance Act, 1938 or IRDA, 1999
4. Electricity company – Except, if inconsistent with Electricity Act, 2003
5. Statutory Company unless inconsistent with its Special Act.

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Characteristics Features of Company

Shortcut → **PLASTIC**

- P** → Perpetual Succession
- L** → Limited Liability
- A** → Artificial person / Separate legal Entity
- S** (a) Separation of Ownership from management
(b) Separate Property
- T** → Transferability of Shares
- I** → Incorporated Association
- C** → (a) Common Seal
(b) Capacity to Sue or being sued

Lifting of Corporate Veil

- Normally Company is treated as a separate Legal Entity but in case of Fraud or any wrong doing, corporate personality of the company is ignored members behind them are punished.
- Concept of Lifting of Corporate Veil means in some situations company will not be treated as separated legal entity.
- Also based on concept of 'ALTER EGO' i.e. company is an artificial person it has no body to be injured or soul to be dammed. So in case of any wrong doing court determine the actual ego of the company i.e. person who are actually defaulting

Lifting of corporate veil

Under Judicial decisions

- PROTECTION OF REVENUE:-
Sir Dinshaw Maneckji Petit, AIR 1972, BOM 371
- DETERMINING ENEMY CHARACTER OF COMPANY:-
Daimler Co. Ltd. V/s Continental tyres Rubber Co. (1916) 2 AC 307
- FRAUD / IMPROPER CONDUCT / COMPANY IS MERE A SHAM:-
Gilford Motors Co. V/s Horne (1933) 1 ch 935
- TO AVOID WELFARE LEGISLATIONS:-
Workmen of associate Rubber Industries V/s Associate Rubber Industries Ltd., (1986) 59 Company Cases 134 (SC)
- AVOIDING CONTRACTUAL OBLIGATIONS:-
Jones V/s Lipman, (1962) All. ER. 342

Under Statutory provision

Sec. 3A

If membership reduce even less than statutory minimum

If it is not repaired till 6 months

Members will be personally liable on all contract after 6 months

Till it is repaired

Note: Only those members will be liable who knew of such fact

Illegal Association [Sec. 464]

CONDITIONS

AOP / BOI who is not a separate legal entity

+

Profit motive

+

Members exceeds 50

EXCEPTIONS

1. Non-profit organization
2. HUF
3. AOP / BOI Governed by separate act



Act permits it
E.g... CA firm

OTHER IMP POINTS

1. Once illegal, always illegal
2. HUF is exempt but joint HUF business is not exempt, here if no of major members exceeds 50 then illegal association
3. Cannot contract
4. Cannot sue or being sued
5. Cannot wound up
6. Liable for tax

Body Corporate [Sec. 2(11)]

Artificial Person

Separate legal entity

Perpetual Succession

E.g.. Company, Foreign company, Trade Union

Note: co-operative society is normally a Body Corporate as per Societies Act but not as per Companies Act.

Types of companies

Unregistered Co.

Registered Co. / Indian Co. / Domestic Co.

Statutory Co.

On the basis of

Membership

- Public Co.
- Private Co.
 - Normal
 - OPC
 - Small Co.

Control

- Holding co.
- Subsidiary co.
- Associate Co.

Listing

- Listed
- Unlisted

Liability

- Ltd. by share
- Ltd. by guarantee
- Ltd. by guarantee having share capital
- Unlimited co.

Other .

- Govt. Co.
- PFI
- Sec. 8.Co.
- Nidhi Co.
- Defunct Co.

Private company [Sec. 2(68)]

1. Prohibits any invitation to the public to subscribe for any securities of the company.
2. Cannot invite deposits from public
3. Restricts the right to transfer its shares;
4. **limits the number of its members to 200**

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Rules for calculation of 200

- 1. Joint members of shares
= 1 member**
- 2. Past and present
employee not counted**

Public company [Section 2(71)]

- Is not a private company
- Is a private company which is a subsidiary of a public company,

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OPC [Sec. 2(62)]



Small Company [Sec. 2 (85)]

Basics

- (1) Paid up share capital - Does not exceed 50 lacs(max 10 cr)
- &**
- (2) Turnover (as per last P &L) - Does not exceed 2 cr. (max 100cr)

Will not be small company

- (a) Public company
- (b) Holding company of any company
- (c) Subsidiary of any company
- (d) Sec. 8 company
- (e) Statutory company

On the basis of control

Holding & Subsidiary Co.

Associate Co.



Relation exist between 2 Co. if

i. A Company

- Itself
- Itself & subsidiary
- Through subsidiaries



Holds more than 50% voting rights in other company

ii. It controls composition of BOD in other company



If other co. hold significant influence in that co.



i.e.. at least 20% of total voting powers

Sec. 8 Company not for Profit

Conditions

- Object to promote Art, Science, sports, Education, Social welfare, etc..
- Apply profit only for its purpose
- No payment of dividend to members

Applications

- To ROC
- ROC issues license

Effect of license

- No use of word Ltd. or Pvt. Ltd.
- Many tax benefits

Revocation of license

- RD may revoke
- If breach in conditions

Effect of Revocation

- Needs to register in any other company

Public Financial Institutions [Sec 2(72)]

Specified

- a) LIC
- b) Infrastructure development finance company ltd.
- c) UTI
- d) Institutions already notified under 1956 Act
- e) Any other notified by CG in consultation with RBI

Notified

Rules to notify

- a) Constituted under any Central or State Act
- b) Not less than 51%



Paid up Capital



CG/SG/ Partly by CG and partly by SG

Government company Sec. 2 (45)

Means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-

- i. the Central Government, or
- ii. by any State Government or Governments, or
- iii. partly by the Central Government and partly by one or more State Governments,

And the section includes a company which is a subsidiary company of such a Government company;

Note : Suffix “Pvt. Ltd. / Ltd.” not required as per notification dated 5/6/15

Foreign Company

Means any company or body corporate incorporated outside India which—

- i. Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- ii. Conducts any business activity in India in any other manner

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Dormant company

- A company which has no significant accounting transaction, is called as a Dormant Company

"Significant accounting transaction" means any transaction other than-

- i. payment of fees by a company to the Registrar;
- ii. payments made by it to fulfil the requirements of this Act or any other law
- iii. allotment of shares to fulfil the requirements of this Act; and
- iv. payments for maintenance of its office and records.

Nidhi Companies [Sec. 403]

- **Company which has been incorporated as a Nidhi with the object of**
 - a) **cultivating the habit of thrift (cost cutting) and savings amongst its members,**
 - b) **receiving deposits from, and lending to, its members only,**
 - c) **for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.**

INCORPORATION OF COMPANY



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Part - I



Part - II



Part - III



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Four Stages of Company Formation

Promotion Stage

Incorporation Stage

Raising of Capital Stage

Commencement of Business Stage

PROMOTION STAGE AND PROMOTER

Meaning of Promoter	Definition of promoter [sec 2(69)] -PACT	Position of promoters	Duties of promoters	Remedies available to the company against the promoters
'Promoter' means a person who generates the idea of incorporating a company and takes all the effective steps to incorporate it.	<ul style="list-style-type: none">• Promoter- means a person—<ol style="list-style-type: none">a) who has been named as such in a Prospectus orb) is identified by the company in the Annual returnc) who has Control over the affairs of the company, directly or indirectlyd) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to Act.	<ul style="list-style-type: none">• neither agent nor trustee of the company,• stands in a fiduciary capacity	<ol style="list-style-type: none">1. Not to make secret profit2. Full and fair disclosure of interest	<ol style="list-style-type: none">1. Rescission2. Recovery of secret profit3. Suit for breach of trust

Formation of a company (Public/Pvt/OPC/Sec 8/others)

Pre-requisite

- (1) Draft MOA and AOA
- (2) Ensure Sec. 3 has been complied i.e..
 - (1) Company made for lawful purpose
 - (2) Min. members requirement fulfilled
 - (3) Min. subscribers requirement fulfilled

Steps to incorporate a company

Name Confirmation

- Reserve NAME through 'spice +' form -Part A service on MCA website
- Option of TWO proposed name
- With prescribed fees
- Reserve name shall be valid till 20 days
- Old companies can change name through RUN scheme, which when available will be reserve for 60 days

Company Registration

NEXT SLIDE

Simplified Performa for Incorporating Company Electronically(SPICe)+

- 1) Within 20 days of name reservation submit Part B (Spice +) Inc-32 includes
 - a) Application for registration
 - b) Declaration of professionals
 - c) Details of subscribers
 - d) Regd. Office details.
 - e) Application of DIN No. (Max. 3 if proposed directors do not have DIN)
- 2) Attach
 - a) e-MOA (INC-33) ,
 - b) e-AOA (INC-34)
 - c) INC-35 –AGILE PRO- application for GSTIN , EPFO , ESIC , bank a/c , Prof.tax
 - d) INC- 8 -Declaration of professionals – that Co. has complied rules
 - e) INC-9 – Declaration of Subscribers & first directors that not convicted in last 5 years for offence involving fraud
- 3) Upload all documents with ROC of jurisdiction.(Central Registration centre)
- 4) If ROC finds documents incomplete or defective it gives time to correct within 15 days.
- 5) If submitted copy still defective, ROC gives more 15 days.
- 6) After 2 options if still incomplete, ROC will reject application to form a company.

Note on Spice

- 1) For OPC – add additional form INC- 3 – Nominee’s consent
- 2) INC- 22 can be submitted either at the time of incorporation or within 30 days of incorporation
- 3) No fees for company incorporating
 - With nominal capital upto 10 lakhs
 - Number of subscribers does not exceed 20
- 4) If more than 7 subscribers

OR

Subscriber is the person outside India



Physically attach MOA and AOA instead of e-MOA & e-AOA

Section 8 Company

Incorporation

Licensing u/s 8

SPICE SCHEME

- INC- 12 : Application licence
- INC- 13: MOA
- INC -14 : Declaration by Professional
- INC -15 : Declaration by subscriber
- Statement of income / Exp. For Future 3 years

INC -16

Licence to new co.

INC -17

Licence to old co.

ROC

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Sec. 9 Effect of Registration

On Incorporation / Registration



COMPANY

Becomes

BODY CORPORATE

SUBSCRIBERS

Becomes

MEMBERS OF COMPANY

MOA & AOA

Binding on members

AS IF THEY THEMSELF HAVE SIGNED

(Sec. 10)

REGISTERED OFFICE

(Sec. 12)

- **COMPANY SHOULD HAVE IT'S REGISTERED ADDRESS WITHIN 30 DAYS & INTIMATE TO ROC**
- **ALSO CHANGE SHOULD ALSO BE NOTIFIED TO ROC WITHIN 30 DAYS**

NAME

(Sec. 12)

- **PAIN & AFFIX IN EVERY PLACE OF BUSINESS**
- **ENGRAVED IN COMMON SEAL**
- **PRINTED ON HUNDIES, PROMISSORY NOTES, BILLS OF EXCHANGE AND ALL OTHER DOCUMENTS**

Every company having share capital incorporated

After companies (amendment) Ordinance, 2019(i.e. from 2nd Nov, 2018)

Can commence business

&

Exercise borrowing power

If

1. A declaration by director is filed with ROC → Within 180 days → In Form no. INC 20A → Verified by CA / CS / CWA in practice → Every subscriber & taken up & paid for shares they subscribe
- AND**
2. Verification of registered office is filed with ROC within 30 days in Form No. INC 22 (If not filed earlier)

Penalty → 50,000 + 1,000 per day (Max 1,00,000)

If not filled till 180 days, then ROC can also wound up company

MEMORANDUM OF ASSOCIATION

Definition

MOA is MOA

Either originally framed

Or

Altered from time to time

Object

2 Fold

1) Outsider

- Object or Scope of Company
- Company deal

✓

X

2) Investor

If they invest their money will be utilized for said purpose

Content

1. Name Clause
2. Situation Clause
3. Object Clause
4. Liability Clause
5. Capital Clause
6. Subscription Clause
7. Nominee Clause (Only for OPC)

Format

Table

A

B

C

D

E

Type of Company

Limited by Shares

Limited by Guarantee

Both

Unlimited company not having share capital

Unlimited company having share capital

Other Imp Points

- Also known as charter of company constitution of Company

- MOA should be:

- ✓ Printed
- ✓ Divided into para
- ✓ Consecutively numbered
- ✓ Signed by required subscribed

OPC – 1 Member

Pvt. Co. - 2 Member

Public Co. – 7 member

Contents of Memorandum

Clauses	Description
1. Name Clause	<ul style="list-style-type: none">• State name of co.• Public co. → Ltd., Pvt. Co. → Pvt. Ltd.• Sec. 8 Co. – not required to use word Pvt. Ltd.• Nidhi Co. → Nidhi Ltd. in end• Govt. Co. → Even if Pvt. Co., no need to use word Pvt.
2. Regd. Office Clause	<ul style="list-style-type: none">• State name of state
3. Object Clause	<ul style="list-style-type: none">• States name of the object
4. Liability Clause	<ul style="list-style-type: none">• States name of liability• In case of Co. Ltd by guarantee, liability clause must state amt every member promise to contribute in event of winding up

Contents of Memorandum

Clauses	Description
5. Capital Clause	<ul style="list-style-type: none">• Mentions<ol style="list-style-type: none">a) Authorize share capitalb) No. and amt per share
6. Subscription Association Clause	<ul style="list-style-type: none">• Details of subscribers

Alteration of name clause

Voluntary(sec 13)



Take approval of shareholders by passing special resolution



Take approval from ROC (INC -24)



File copy of S.R + copy of R.D's government's approval with ROC within 30 days of passing resolution in form no. MGT-14



ROC will issue fresh Certificate of Incorporation (INC- 25)

If name is too identical to existing company and ROC directs to change(sec 16)



If ROC directs- change within 3 months from direction



If ROCdirects on application of Registered Proprietor of trademark(if it is within 3 years of incorporation - change within 6 months of direction

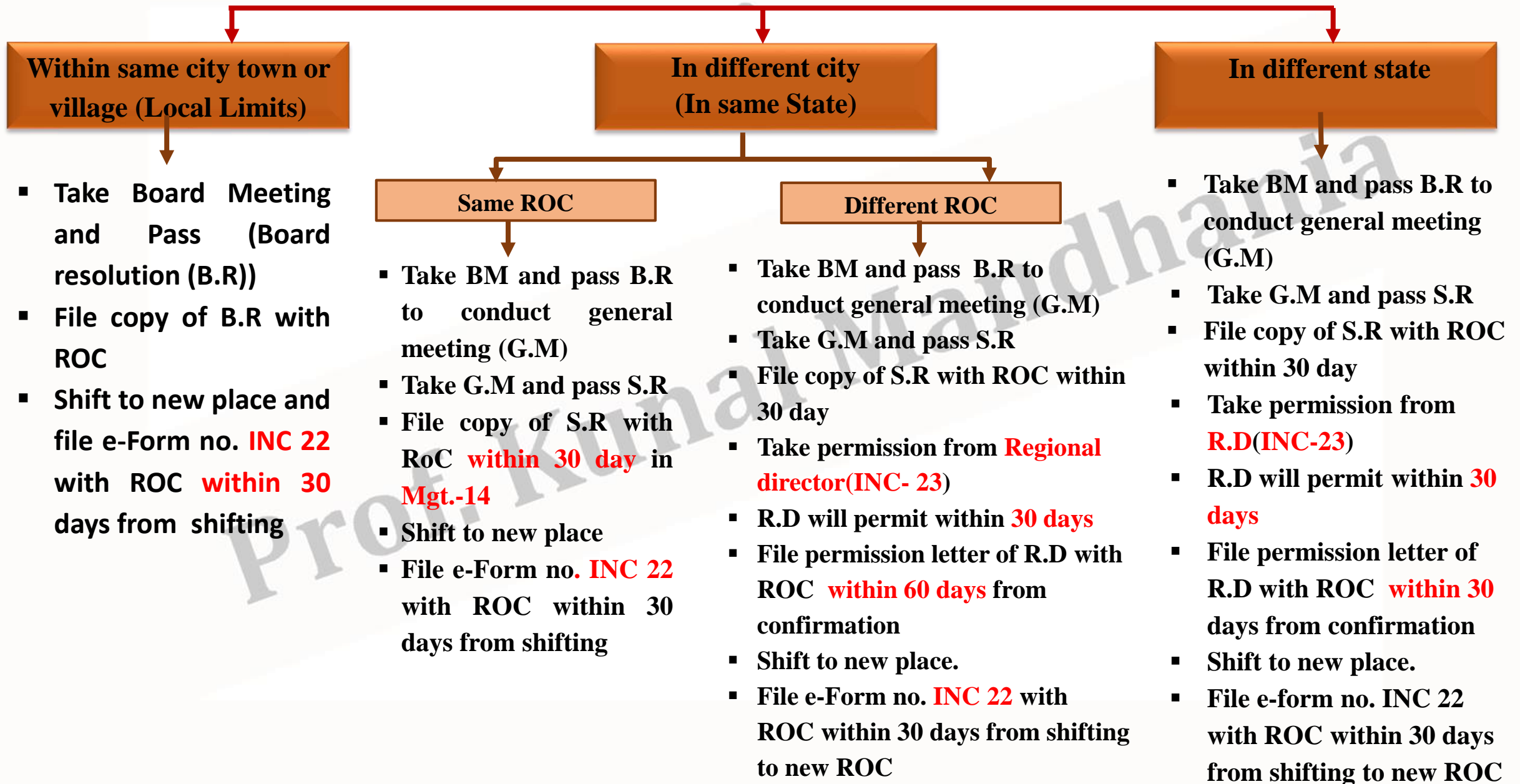


Take approval of shareholders by passing Ordinary resolution and take approval of ROC



File copy of S.R + copy of ROC approval with ROC within 30 days of passing resolution in form no. MGT-14 and obtain fresh certificate of incorporation [INC-25]

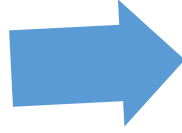
Shifting of Registered Office(sec 12)



Alteration of Obj

Pass S.R

- File copy with ROC within 30 in MGT-14



Publish advertisement in newspaper

- In 1 English and 1 vernacular language



Give exit option to dissenting shareholders

- To protect minority interest

Alteration of Clauses Of MOA

CLAUSE	Permission	Time limit	Resolution	Filing	Other Points
A. NAME CLAUSE					
Normally	ROC - INC-24	-	SR	Copy of SR Altered MOA MGT 14	Apply for New Name
Identical to existing Company					
a) Directed by ROC SUO MOTO	-	3 months	OR	Copy of OR, Altered MOA, MGT 14	Apply for New Name
b) Directed by ROC on application of registered trademark holder	-	3 years – direction 6 months - change	OR	Copy of OR, Altered MOA, MGT 14	Apply for New Name
c) Company SUO MOTO	ROC - INC-24	-	OR	Copy of OR, Altered MOA, MGT 14	Apply for New Name

- Note:**
- 1. Not allowed to alter Name Clause**
 - If not filed AR or FS due for filing with ROC
 - Failed to pay /repay depositor debentures or interest
 - 2. New + old name shall be painted / printed / affixed for 2 years**
 - 3. Change in object – alter name within 6 months**

Alteration of Clauses Of MOA

CLAUSE	Permission	Resolution	Filing
B. SITUATION CLAUSE			
Within Same City, Town or Village	ROC - INC-24	BR	Copy of BR, INC 22 Altered MOA
Different City			
a) Same ROC	ROC - INC-24	SR	Copy of SR, INC 22 MGT 14 Altered MOA
b) Different ROC	ROC - INC-23 (will permit within 30days)	SR	Copy of SR/Permission letter INC 22 Altered MOA
c) Different State	ROC - INC-23 (will permit within 30days)	SR	Copy of SR/Permission letter INC 22 Altered MOA
C. OBJECT CLAUSE			
	-	SR	Altered MOA
D. LIABILITY CLAUSE			
	-	SR	Altered MOA, MGT 14
E. CAPITAL CLAUSE			
	-	OR	Altered MOA, SH 7

**Note: Money Raised and unutilised → cant change object unless SR passed by Postal Ballot
Advertisement & notice on website for exit option**

ARTICLES OF ASSOCIATION

Definition

AOA is AOA

Either originally framed

Or

Altered from time to time

Object

Internal Management of the company

Content

Contains Rules regarding

- Shares
- Debentures
- Prospectus
- Meetings
- BOD
- General powers of company

Format

Table

F

G

H

I

J

Type of Company

Limited by Shares

Both

Limited by Guarantee

Unlimited company having share capital

Unlimited company not having share capital

Other Imp Points

▪ **AOA should be**

- ✓ Printed
- ✓ Divided into paragraphs
- ✓ Consecutively numbered
- ✓ Signed by required Subscribers

OPC – 1 Member

Pvt. Co. - 2 Member

Public Co. – 7 member

Alteration of Articles of Association

Procedure

It can be alter subject to provision of MOA



Call board meeting



Call GM & pass SR



File form MGT 14 with ROC within 30 days



Necessary changes shall be carried out in all copies of AOA



Altered AOA is binding in same way as original AOA

DOCTRINE OF ULTRA VIRES ACT (Beyond the power)

	Meaning	Effect on Contract	Ratification	Other important points
Ultra vires the 'MOA'	Any act not authorised by: a) Companies Act b) Object Clause c) Not incidental or Ancillary to main object	Void-ab-intio	✗	1) Member may obtain injunction 2) Director personally liable if funds misapplies or wasted
Ultra vires the 'AOA'	Any act not authorised or against articles	Voidable @ option of shareholders	can be ratified by altering AOA	
Ultra vires the 'Director'	Any act beyond powers of directors	Voidable @ option of shareholders	can be ratified by altering AOA	

ASHBURY RAILWAY CARRIAGE AND IRON CO. LTD V/S RICHIE

Object clause of company

- a) Make, Sell, lend, hire → railway carriage, wagons
- b) Carry on mechanical engineering & gen contractors
- c) Purchase, lease, work, sell → mine, minerals, land & building

Contract by company

For financing of construction of railway line in Belgium

Decision by court

- ultra vires act
- Financing is different from mechanical engineering
- Even general contractor can define it's meaning from mechanical engineer.

Doctrine of Constructive Notice

- i. MOA, AOA is a public document. It is available to outsiders at a reasonable cost**
- ii. So, it is presumed that anybody dealing with company have read MOA & AOA of the company**
- iii. If not, outsider is at fault and such contract will not be enforceable on company**
- iv. This doctrine operates in favor of company & protects company from outsider**
- v. Ref. Case → Kotla Venkata Swamy vs C. Ram Murti**

Kotal Venkata Swamy vs C. Ram Murthi

Facts

Whether Co. will be liable on contract where AOA specified signature of M.D, Sec. & WTD, However on a mortgage deed, only secretary and WTD signed

Law

Doctrine of Constructive

Conclusion

No contract will not be enforceable on the company

Doctrine of Indoor Management

- i. It is exception to doctrine of constructive notice**
- ii. Although outsider dealing with co. should appraise themselves with MOA, AOA, but they are not require to inquire into internal management of company**
- iii. So, if it is a case of internal irregularity, company is at fault and such contracts will be enforceable on company.**
- iv. This doctrine protects outsider form company and operates in favor of outsiders**
- v. Ref. Case → Royal British Bank vs Turquand**

Royal British Bank vs Turquand

Facts

AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract

Law

Doctrine of Indoor Management

Conclusion

Contract will be liable on company

Exceptions to Indoor Management

1. Knowledge of irregularity

Howard vs Patent Ivory Manufacturing company

**2. Negligence
Suspicious
Circumstances or
unusual magnitude of
transactions**

Anand Bihari Lal vs Dinshaw & Company

3. Forgery

Ruben vs Great Fingall Consolidated Company

**4. No knowledge of
articles**

**Rama Corporation vs Proved Tin & General Investment
Company Ltd.**

**5. Illegal
transactions**

Howard vs Patent Ivory Manufacturing company

AOA specified resolution for borrowing more than Rs. 1000



Co. borrowed money from Directors themselves



But no resolution passed



Held directors had knowledge of irregularity so they cannot claim defense from indoor management



Contract liable only for 1000

Ruben vs Great Fingall Consolidated Company

Secretary issued share certificate by forging signature of 2 directors



Held that in forgery, protection of indoor management will not apply & contract will not be liable on company

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Sec. 18 → Conversion of Company

OPC to Public / Pvt.

1. Take B.M → Pass B.R
2. File INC-5 to Intimate ROC (Mandatory Conversion)
3. G.M, S.R
4. File copy of S.R with ROC (MGT. -14)
5. INC-6 → Application
6. Compliance of
 - Directors
 - Shares
 - Regstd. Office

Pvt to OPC

1. B.M → B.R
2. NOC from members & Secured creditors
3. G.M → S.R for approval
4. MGT- 14
5. INC-6 → Application
6. Compliance of
 - Directors
 - Members

Unlimited to Ltd.

1. B.M → B.R
2. G.M → S.R
3. MGT- 14
4. Publish Notice within 7 days (INC-27A)
5. Application
↓
INC – 27 (within 45 days of S.R)
6. Other compliances

Ltd. by guarantee to shares

Same except 27- A req

Not applicable to Sec. 8 Co

Conversion of Pvt. Co. into Public Co.

- 1. Take B.M & Pass B.R to convene G.M**
- 2. Take G.M & Pass S.R to**
 - a) Remove restrictions u/s 2 (68) in AOA**
 - b) Remove “Pvt.” word**
 - c) Alter MOA / AOA (Where Req.)**
- 3. File copy of S.R with Roc in MGT – 14 within 30 days**
- 4. Match**
 - 1. Increase membership to at least 7**
 - 2. Increase directorship to at least 3**
- 5. Apply to ROC (INC - 27) and obtain Fresh COI.**

Conversion of Public Co. into Pvt co

1. Take B.M & Pass B.R to convene G.M
2. Take G.M & Pass S.R to
 - a) Add restrictions u/s 2 (68) in AOA
 - b) Add "Pvt." word
 - c) Alter MOA / AOA (Where Req.)
3. File copy of S.R with ROC in MGT – 14 within 30 days
4. Application for conversion to be made to C.G (R.D) In form RD-1 within 60 days from passing S.R
5. Co. shall publish notice in newspaper at least 21 days before filing of application (Form INC-25A)
6. Match
 1. Decrease membership till 200
 2. Increase directorship to at least 3
7. Apply to ROC (INC - 28) within 15 days and obtain Fresh COI.

Sec 19

i. Company either by Itself / Nominee



Should not hold shares in holding company

ii. Holding company shall not allot / transfer shares to subsidiary

Exceptions

- a) If subsidiary holds shares even before it becomes subsidiary
- b) If subsidiary holds shares as a
 - i. LR of deceased member
 - ii. Trustee

Sec 20 read with Rule 35

Serving of Document

On Company / or any Officer

On Registrar / Member

At Registered office of Company

By

i. **By Hand (leaving at address)**

ii. **By registered post**

iii. **By speed post**

iv. **By courier**

v. **By electronic mode**

a) **Facsimile telecom**

b) **Email**

c) **Electronic board / network**

d) **Any other electronic system**

That creates

- **Record**
- **Retention**
- **Retrieval**
- **review**

Nidhi Company

→ 1000 Shares or 1% of PUC – Personally

→ other members – Public Notice

Miscellaneous Sections

Section 15

Every Alteration of MOA & AOA → As Footnote with details of meeting, date

Section 17

On request by members



Company should send copy within 7 days

- a) MOA
- b) AOA
- c) Every agreement & resolution as per Sec. 117

Section 21

Any
Document
contracts

Requiring
authorization

Signed by KMP or Officer / employee
authorised by Board

(BOD may authorize any 3rd person by power u/s 179)

Section 22

BOE | Hundi | PN
Deemed to be drawn / accept / endorse
On behalf of company
If person acts within its authority

Other Deeds
Company should authorize in writing
Any person – to execute – either in or
outside India

PROSPECTUS



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Part -I

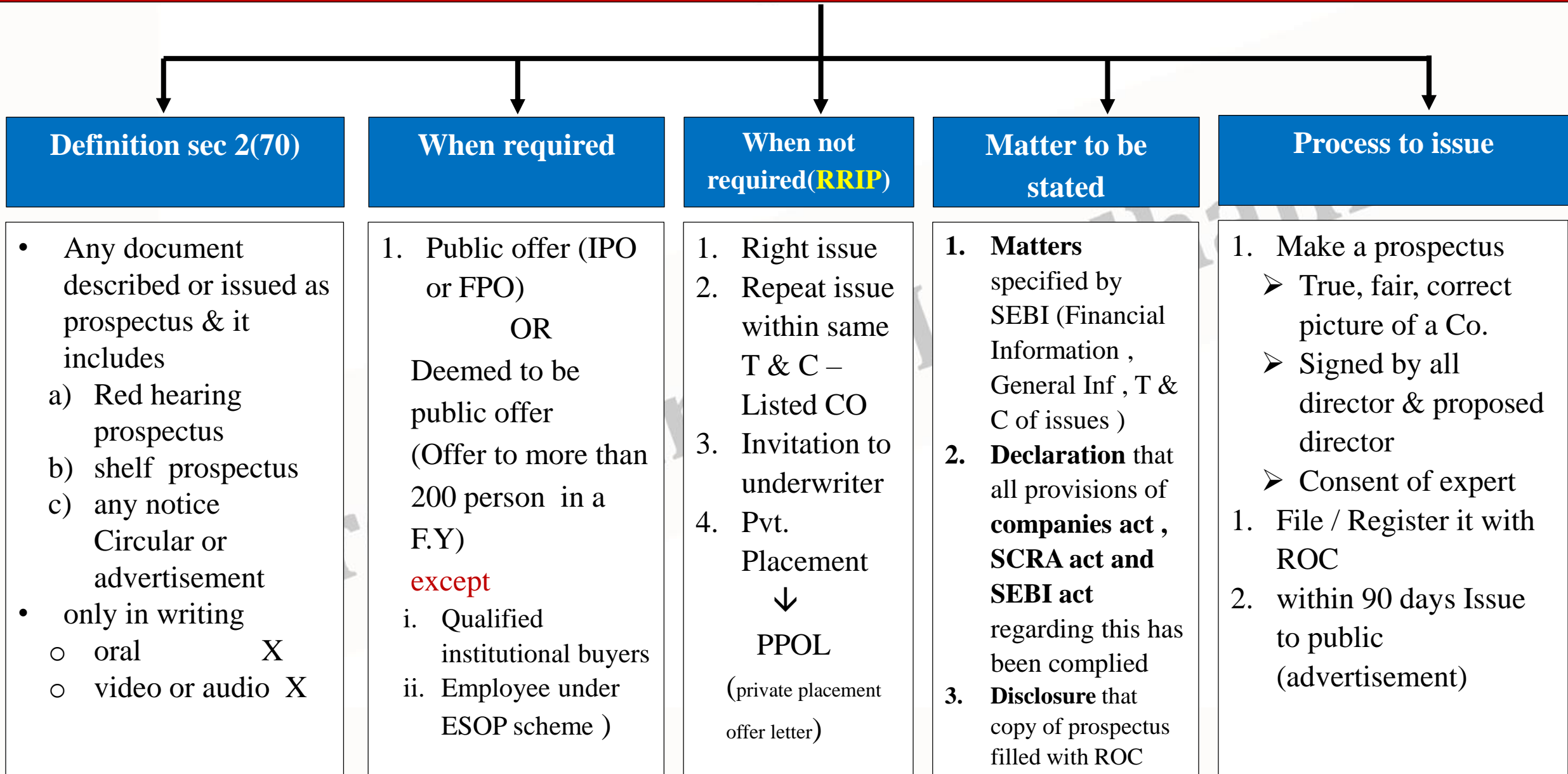


Part -II



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Prospectus (sec 26)



Types of Prospectus

Shelf Prospectus (Sec. 31)

1. Meaning

Prospectus where securities issued for subscription for one or more issue for certain period of time (1 year)

2. Applicability ?

Co. prescribed by SEBI (PFI/Bank/NBFC/Listed Co-fulfilling conditions)

3. Procedure?

- i. File self prospectus at stage of first offer of security – valid for 1 year from opening of first offer
- ii. File Information memorandum (PAS-2) with ROC 1 month prior to second or subsequent offer containing changes from 1st to this issue.
- iii. If Co. received advance subscription before change, intimate change to him or else refund money within 15 days.

Red- Herring prospectus (Sec. 32)

1. Meaning

Prospectus which does not include (a) No. of securities (b) Price of securities

2. Applicable ?

For Co. using book building process / price discovery method / price band method.

3. Procedure ?

- i. Make Red herring prospectus with price band and total issue size
- ii. Invite bids by filling it with ROC at least 3 days prior to opening offer.
- iii. Upon closing of security, file final prospectus with full details to ROC
- iv. Any variation between R-H-Prospectus & final Prospectus shall be highlighted as variation in prospectus.

Deemed prospectus (Sec. 25)

1. Introduction:

Many time Co. appoints underwriters or issue house or merchant bankers to manger share issue. The document (Notice, circular or advertisement) through which it invites subscription from public should contain all the salient features of a prospectus & is termed as deemed prospectus.

2. Conditions:

a) Offer for sale to public was made within 6 months from agreement.

Or

a) Whole consideration has not been received by Co. when offer to public was made (after 6 months)

And

a) should be signed by required authority.

If underwriter is

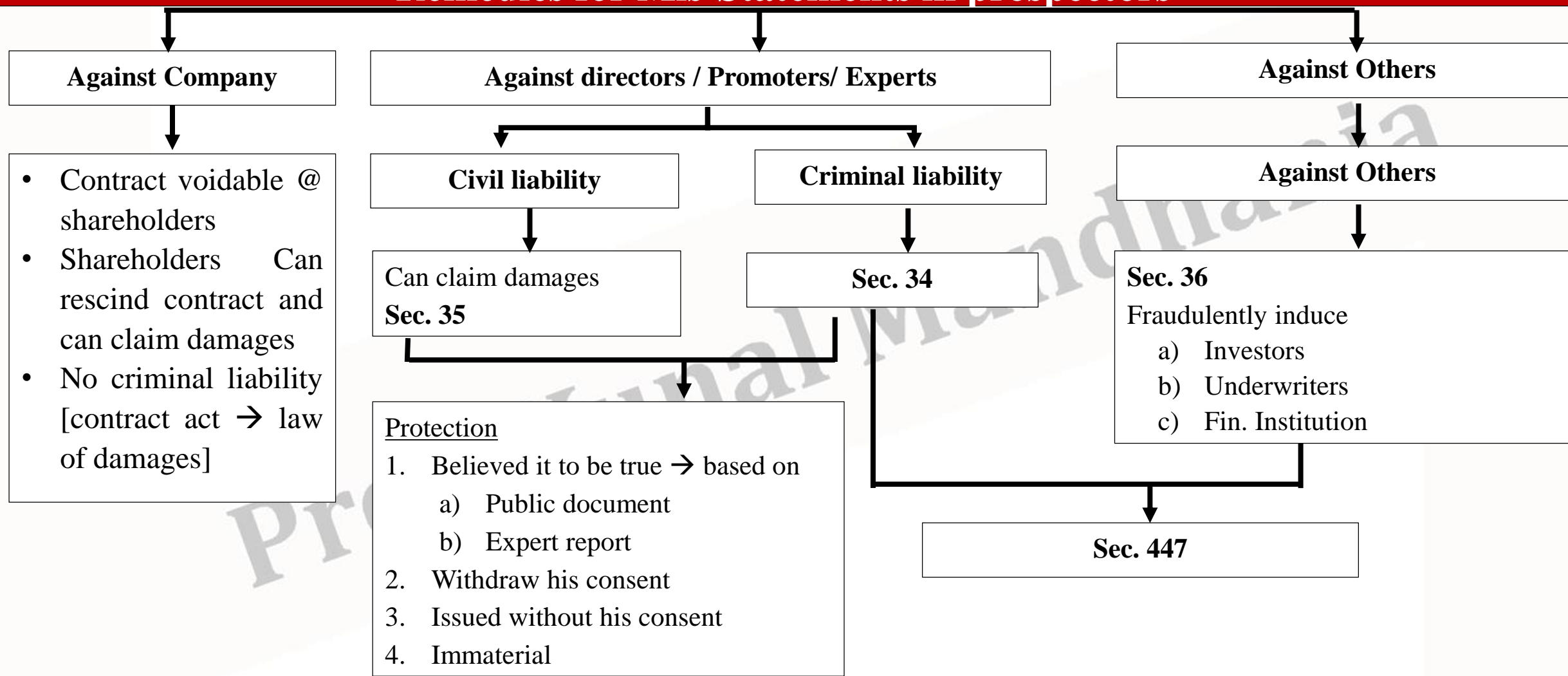
a) Co.- at least 2 directors

b) Firm- At least half of the partners

GOLDEN RULES FOR FRAMING THE PROSPECTUS

- 1) It should show whole picture of the Company.
- 2) No suppression of facts.
- 3) All material facts should be disclosed. (Rex vs Kysant)
- 4) Prospectus should not be misleading / untrue.

Remedies for Mis-Statements in prospectors



Section 447

Punishment u/s 447 for frauds of greater magnitude

Where any person is found guilty of fraud involving an amount of at least Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, he shall be punishable as follows:

	Fraud involves public interest	Any other case
Min. Imprisonment	3 years	6 months
Max. Imprisonment	10 years	
Min. Fine	Amount involved in the fraud	
Max. Fine	3 times the amount involved in the fraud	

Punishment u/s 447 for frauds of lesser magnitude

Where any person is found guilty of fraud involving an amount less than Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, and the fraud does not involve public interest, any person guilty of such fraud shall be punishable with-

- a) Imprisonment upto 5 years; or
- b) Fine upto Rs. 50 lakh; or
- c) Both

Other Imp points regarding Remedies

- Company will not be liable if shares are purchased through secondary market (Stock Exchange) (Peek vs Gurney)
- Remedy only available to allottee and not to transferee of shares

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Allotment of Securities (Sec. 39 & Sec. 40)

Listing Permission

- Before prospectus, make application to one or more stock exchange if public offer
- Mention this in prospectus

Obtain share application money

- At least 5% of nominal value or amount prescribed by SEBI
 - Deposit money in separate bank account
- Can be utilized only for
- Adjusting against allotment
 - Replacement if can not allot shares

Obtain minimum subscription

- As provided in prospectus
- Received within 30 days of issue of prospectus
- If not - repay within 15 days
- If late - 15% p.a. interest

Allot security

File return of allotment

- Within 30days
- With ROC in form no. PAS 3
- Mentioning:
 - a) List of allottee
 - b) Contract copy (if consideration other than cash)
 - c) Copy of resolution (bonus shares)

COMPARISON BETWEEN CO. ACT AND SEBI

	Company Act	SEBI
1. Min. Application Money	At least 5% of FV	At least 25 % of I.P.
2. Min subscriber	As specified in Prospectus	90%
3. Time Limit to obtain min. subscriber	Within 30 days from issue of prospectus	Within 60 days from issues of Prospectus
4. If not obtained then return within	15 days	10 days
5. Or else pay interest @	15% P.A	16% P.A

Sec. 40 Underwriting Commission

Rate

1. SHARES

5% of Issue Price

Or

As per Articles of Association
(w.e.l.)

2. DEBENTURES

2.5% of Issue Price

Or

As per Articles of Association
(w.e.l.)

Conditions

1. Cannot be paid on Private Placement

2. Can be paid out of proceeds of share or profits of company or both

3. Disclose details in prospectus

4. Deliver copy of underwriting agreement to ROC along with Prospectus

PRIVATE PLACEMENT

When	Sec. 42 complied
To whom	Identified person i.e.. selected group of person identified by board.
No	Max 200 in a F.Y. (individual limit for each class of security) excluding a. QIB b. Employees getting share under ESOS
Resolutions	S.R
Procedure	<ul style="list-style-type: none">• PPOL (PAS -4) sent to offeree within 30 days of recording name• Maintain record in PAS -5• File return of allotment within 15 days of allotment in form no PAS-3 with ROC along with complete details of allottee.
Conditions	No other person other than offeree can apply No fresh offer unless previous offer completed / withdrawn/ abandoned.
Mode	Cheque / D.D. /other banking channel but not by cash.

PRIVATE PLACEMENT

Use

- Money can be used after allotment and return filled with ROC.

Time Limit

- Allot securities within 60 days of receipt of application money, Or else
- Repay Money within 15 days of expiry of 60 days, Or else
- Pay interest@ 12% p.a. from and of 60th day

Utilization of money

- Application money to be kept at separate bank Account in scheduled bank and can be used only for
- Adjusting money allotted
 - Repayment if failed to allot

Restriction

Cannot release public advertisement or utilize any media, marketing or distribution channel or agent to inform public at large

Sec. 27 Changing object / terms of contract as specified in Prospectus

After issuing Prospectus, if company

↓
Wants to

- Change object
- Change terms of conditions

↓
For unutilized Money

- Follow following procedure:
1. Pass SR
 2. Publish in newspaper (PAS-1)
 3. Publish in Website
 4. Give dissenting shareholders

exit option @ price specified by SEBI

Sec. 28 → Offer for Sale (MARO)_

Meaning :

Members



Company



Public

Authorised

- BOD
- Procedures in SEBI Should be followed

**Rules/
Registration**

Document through which offer for sale is made



Deemed prospectus [Sec.25]



All rules of prospectus (Chapter III) Applies

**Other IMP
points**

i. If done through intermediary (Issue house)



Sec. 25 applies

i. Consideration received by Co. transferred to concerned shareholders after deducting expense of such issue

Sec. 29: Public Offer in Demat Form

- following companies shall issue and transfer the securities only in dematerialized form by complying with the provisions of Depositories Act, 1996 and the regulations made there under
 - Every company making public offer
 - Every Unlisted public company except
 - A Nidhi company
 - A government company or
 - It s wholly owned subsidiary
- For any other company the issue or conversion of shares in dematerialized form is optional and it may issue its securities in physical form in accordance with the provisions of this Act.

SHARES



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Part - I



Part - II

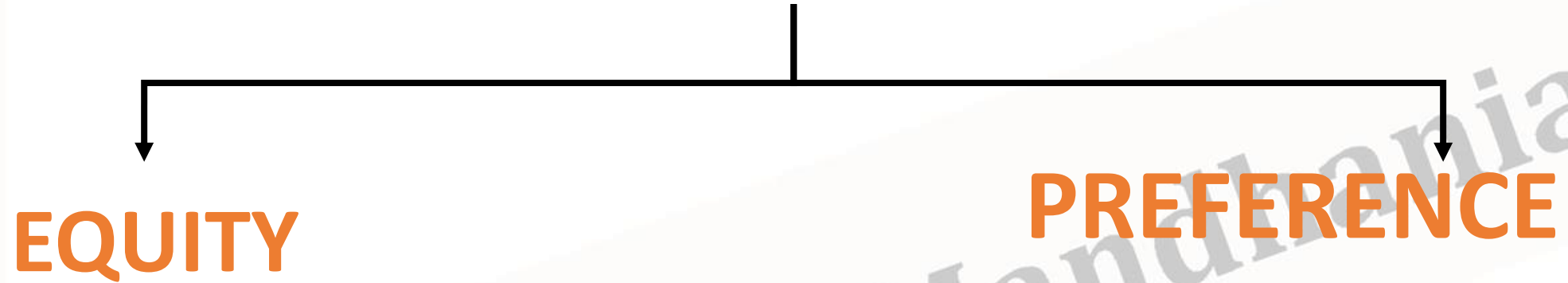


Part - III



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Types of Shares(sec 43)



Comparison Shortcut- Mitrr

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Types of Shares(sec 43)

Basis	Equity Shares	PREFERENCE
Meaning	Means all share Capital which are not preference shares.	Shares having Preferential right with respect to a) Payment of Dividend b) Repayment of Capital @ Winding up
Issue	a) Normal : B.R b) With differential voting right : O.R. + Resolution with Postal ballot (if sec 110 applies)	Power in AOA + S.R
Types	a) Normal b) With differential voting right	See next Slide
Redemption	Buy-Back of shares (see in further slide)	Redemptions of preference shares (see in further slide)
Rights	a) Voting rights in all matters placed in GM b) Right to dividend (flexible)	a) Voting rights in all matters related to them and winding up. b) Right to dividend (fixed)

R → **Redemption**

- Redeemable** → **Max 20 years**
- Irredeemable** → **cannot issue**

P → **Participation**

- Participating** – **in surplus**
- Non-participating**

C → **Conversion**

- Convertible**
- Non Convertible**

} **Into equity shares**

A → **Accumulation of Dividend**

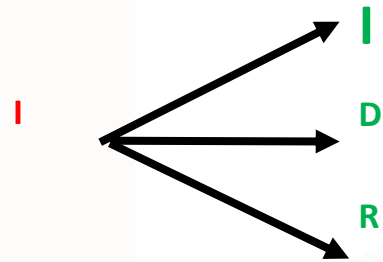
- Cumulative** → **Will get if not paid**
- Non Cumulative** → **if not paid will not get in future**

Equity Shares - With DVR

Shortcut – 3 Annual IPL in RSA

3 → 3 years → Existence

Annual → Annual A/c's & Return (3 years - no default)



- Interest + Amt. (Deposit | Loan | Deb.

- Dividend (declared but not paid)

- Redemption of Pref. Shares

P → Payments

Employees (Statutory)(can issue after 5 YRS)

IEPF

L → Legal non compliance (RBI, SEBI, SCRA, FEMA)

R → Resolution (O.R + Postal Ballot)

S → Shares – Right of Bonus + Right Shares

A → Authorised in AOA

IMP NOTE AND AMENDMENT- DVR

- Total Voting power in shares with DVR should not exceed 74% of total voting powers at any point of time
- Company cannot convert equity shares with DVR into normal shares and vice versa

Buy Back of Shares

Sec. 67



Co. cannot buy (Purchase)
it's own Shares

Nor

Public co. can give Financial
Assistance to purchase

- It's Share
- It's holding's share

Except

- i. Banking co. in ordinary course of business
- ii. To employees (other than director /KMP)



For amt not exceeding their 6 months salary

- iii. For employment benefit trust → SR

Sec. 68



Procedures for buy-
back of shares

Sec. 69



Create CRR



If buy-back out of



- a) Free reserves
- b) Sec. pre A/c



Used for payment
fully paid bonus
shares

Sec. 70



Prohibitions for buy-back



(i) Default for Dep./ Deb/ Pref.
Sh/ Loan. From Bank, F-I



Can do if remedied after 3 years

(ii) Non Compliance



Sec. 92 – Annual Return

Sec. 123 – Dividend

Sec. 127 – Pay Dividend

Sec. 129 – F.S

Redemption/Buy back Equity Shares (Sec 68)

S

A

L

T

Sources

- a) Free reserve
 - b) Security premium
 - c) Proceeds of fresh issue of share
(not of same kind)
- (CRR should be formed of amt. used by a or b)sec 69

Authorisation

- If buyback is upto 10% (paid up capital – free reserve → BR
- If more than 10% → SR

Limits / Restrictions

- Share should be fully paid up
- No default in sec 70
- Maximum buy back 25% of paid up capital + free reserve
- After buyback debt equity ratio should not exceed 2:1.

Time Limit

- Buyback should be completed within 1 year after passing resolution.
- Company can not issue same kind of shares for 6 months after buyback.
- Gap between two buyback should be at least 1 year.
- Maintain security bought back register
- Physical shares should be destroyed within 7 days .
- File declaration of solvency SH-9

Redemption Preference Shares (Sec 55)

S

A

L

T

Sources

Face value
1) Profits / reserves
2) Proceeds of fresh issue of shares

Premium
1) Reserves
2) Sec. premium A/c

Amount used for redemption out of reserves or profit → CRR should be formed.
This CRR shall be used only for issuing bonus shares

Authorisation

If should be authored by AOA.
You will have to pass Board resolution.

Limits / Restrictions

Shares should be fully paid up

Time Limit

Give notice to ROC within 30 days about redemption in prescribed form.

Issue of Shares

At par

At discount (sec 53)

At Premium(sec 52)

Any company cannot issue shares at discount except

- 1) sweat equity shares [Sec. 54]
- 2) Creditor when debt is converted to shares in a debt restructuring scheme.

Company can issue shares at premium subject to Sec. 52

Note : Sec. 53 If Co issue shares with discount it shall also be liable to refund all monies received with interest at the rate of 12% per annum.

Issue of shares at Premium [Sec. 52]

Meaning	Issue of shares at amount more than face value
Authorisation in AOA	Not Required
Resolution Required	Board
Other Special Points	<p>1)No restriction on amount of premium. 2)Amount of premium should be transferred to 'Securities Premium account. 3)Securities Premium account can be used only for.</p> <p>Mnemonic- CP k disc mein jaake buy karo BP</p> <ul style="list-style-type: none">i.commission paid on issue of shares or debenturesii.premium paid on redemption of preference shares or debenturesiii.discount allowed on any issue of shares or debenturesiv.Buy- back of shares u/s 68v.Issue of Bonus sharesvi.Writing off the preliminary expenses

M - Meaning

Sweat Equity Share (Sec. 54)



Equity Shares



Issued to directors or employees at discount or consideration other than cash



For providing know how



Making available rights in nature of intellectual right



Value addition

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Authorisation AOA	Required
Resolution	Special Resolution
Other Special Points	<ol style="list-style-type: none"> 1) It must belong to class of shares already issued. 2) All rights, restrictions, limitation applicable to equity share shall also apply to sweat equity shares. 3) Special Resolution making allotment valid for 12 months from passing. 4) The resolution specifies the number of shares the current market price, consideration, if any and the class or classes of Directors or Employees to whom such equity shares are to be issued. 6) If Equity Shares are listed then issued in accordance with SEBI Regulation & in case of unlisted they are issued as per companies act. 7) Maximum Quantum of issue in a year Higher of : <ul style="list-style-type: none"> ▪15% of the existing paid up equity share capital or ▪Shares of the issue value of Rs. 5 crores, whichever is HIGHER. 8) Lock in period: 3 years from the date of allotment. 9) At any time, the sweat equity shares shall not exceed 25% of the paid-up equity capital of the company. 10) A start-up Company,, may issue sweat equity shares not exceeding 50% of it's paid up capital upto 10 years from the date of its incorporation or registration.

Right shares or Further issue of shares [Sec. 62]

Meaning	Against right of Pre-emption, shares offered to existing shareholders.
Authorisation in AOA	Required
Resolution Required	B.R/ S.R if directly to outsiders
Other Special Points	<p>1) Shares are offered in proportion of shareholding. 2) Existing shareholders can</p> <pre>graph TD; A[Existing shareholders can] --> B[Accept the offer]; A --> C[Decline the offer]; A --> D[Renounce the offer]; B --> E[Time to accept at least 15 days max. 30 days]; C --> F[Deemed to be declined if not accepted]; D --> G[Can give to somebody else (unless articles restrict)];</pre> <p>Accept the offer</p> <p>Decline the offer</p> <p>Renounce the offer</p> <p>Time to accept at least 15 days max. 30 days</p> <p>Deemed to be declined if not accepted</p> <p>Can give to somebody else (unless articles restrict)</p>

Note:

1. In Pvt. Co. it can Prescribe for lesser time if 90% of members give consent.
2. Notice should be given at least 3 days before opening of offer.

3) Cases where new shares directly offered to outsider.

- a) If the company passes a special resolution in the general meeting deciding to offer new shares to the outsiders, or
- b) If the existing shareholders to whom the shares are offered decline to accept the shares.
- c) Conversion of Debentures or loans into shares
- d) Any Re-issue of forfeited shares also can be issued without being offered to the existing shareholder. Since they are does not treated as further allotment of shares.

BONUS SHARES[sec 63]

Meaning	Shares issued free of cost
Authorisation in AOA	Required
Resolution Required	Ordinary Resolution
Other Special Points	<ol style="list-style-type: none">1. Sources<ol style="list-style-type: none">a) Undistributed profits available for dividendb) Security Premium Account (Sec. 52)c) Capital Redemption Reserve (Sec. 55)2. Bonus shares shall not be issued by capitalizing the reserves created by the revaluation of assets3. Bonus shares can be issued only if the company has not defaulted in payment of principal sum or interest on the fixed deposits or debt securities issued by it.4. Bonus shares must be fully paid up5. If there are any partly paid shares, they must be made fully paid up before the issue of bonus shares.6. Bonus shares shall not be issued in lieu of dividend.

- 1) No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.
 - 2) No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares unless—
 - a) it is authorised by its articles;
 - b) it has, on the recommendation of the Board
 - c) been authorised in the general meeting of the company;
 - d) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - e) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - f) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- Note- The bonus shares shall not be issued in lieu of dividend

Change of Capital u/s 61

Ways of change of capital



- Increase of authorized capital
- To consolidate shares of lower value into shares of higher value.
- Conversion of shares into stock or vice versa.
- Subdivide shares of higher value into shares of lower value.
- Cancel unsubscribed part of issued capital (also known as diminution of capital)

Procedure of change of capital

[Section 13 r/w Section 61 and 64]



- Pass **Ordinary resolution**, file MGT-14 [Section 13]
- File e-Form SH -7 with ROC within 30 days of passing resolution
- File amended copy of MOA

➤ **Further Issue of Shares**

Sec 62

Right Issue

Sec. 62(1)(a)

ESOP

Sec. 62(1)(b)

**Preferential
Allotment**

Sec. 62(1)(c)

**Conversion of
deb / loan into
shares**

- a. **Optional conversion**
Sec. 62(3)
- b. **Compulsory conversion**
Sec. 62(4)

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➤ Employee Stock Option Scheme

Meaning

Option / right offered to employee to purchase its shares at a predetermined price in future

Authorisation

- Authorised by AOA
- SR
- OR for private Co. & Specified IFSC public co.
- Separate resolution (OR)

If option \geq 1% of issued capital

Restriction

Min period between Grant of option & Vesting option

1 Year

Other points

- Given to employee as defined in rule 12 (refer notes)
- Lock in period to be decided by company
- Register of ESOS (SH-6)

➤ Preferential Issue of Shares

Sec. 62(1)(c)

Meaning

Issue of shares by Co.



To selected person or Group of person on preferential basis

Authorisation

- Authorised by AOA
- SR
- Listed Co.



SEBI Guidelines

Restriction

Fully Paid up Till Allotment

Other points

Price Determined on basis of Valuation report

Allotment of Security Completed within 12 months of passing SR (otherwise new resolution)

Compulsory conversion Sec. 62(4)

Basis

If debentures issued to /
loan from



Any Government



In public Interest, they
can direct to be
converted into shares



In T&C, Seem reasonable
to govt.

Other points

1. If terms & conditions not acceptable to company
2. They may apply to Tribunal within 60 Days from communication of offer
3. Points to be considered for such action
 - a) Financial position of co.
 - b) Terms of issue of debentures / Loan
 - c) Public interest
 - d) Rate of interest

➤ Reduction of Shares Capital

Sec. 66

Meaning

1. Extinguish / reduce the liability on shares not paid
2. Pay off if in excess of wants of co.
3. Cancel any PUC which is lost or unrepresented by assets

Authorisation

SR

1. Take permission from tribunal
 - a) Tribunal will seek objection from CG, RoC, SEBI, creditors
 - b) Objection can be raised within 3 months
 - c) No representation means, no objection
2. Sec 133 on AS complied
3. No Default w.r.t. Deposits

Restriction

Other points

1. Sec 66 do not Apply to buy back U/s 68
2. Tribunal can impose T&C as it deems fit
3. Application in form RSC-1
4. Notice published in newspaper within 7 days of order (RSC- 4)

➤ Share Certificate

Meaning

Prima facie evidence that person named is true owner of shares

Authorisation

→ BR
→ Compulsory for all company having share capital (Public or Private)

Rules/Restriction

Signed by

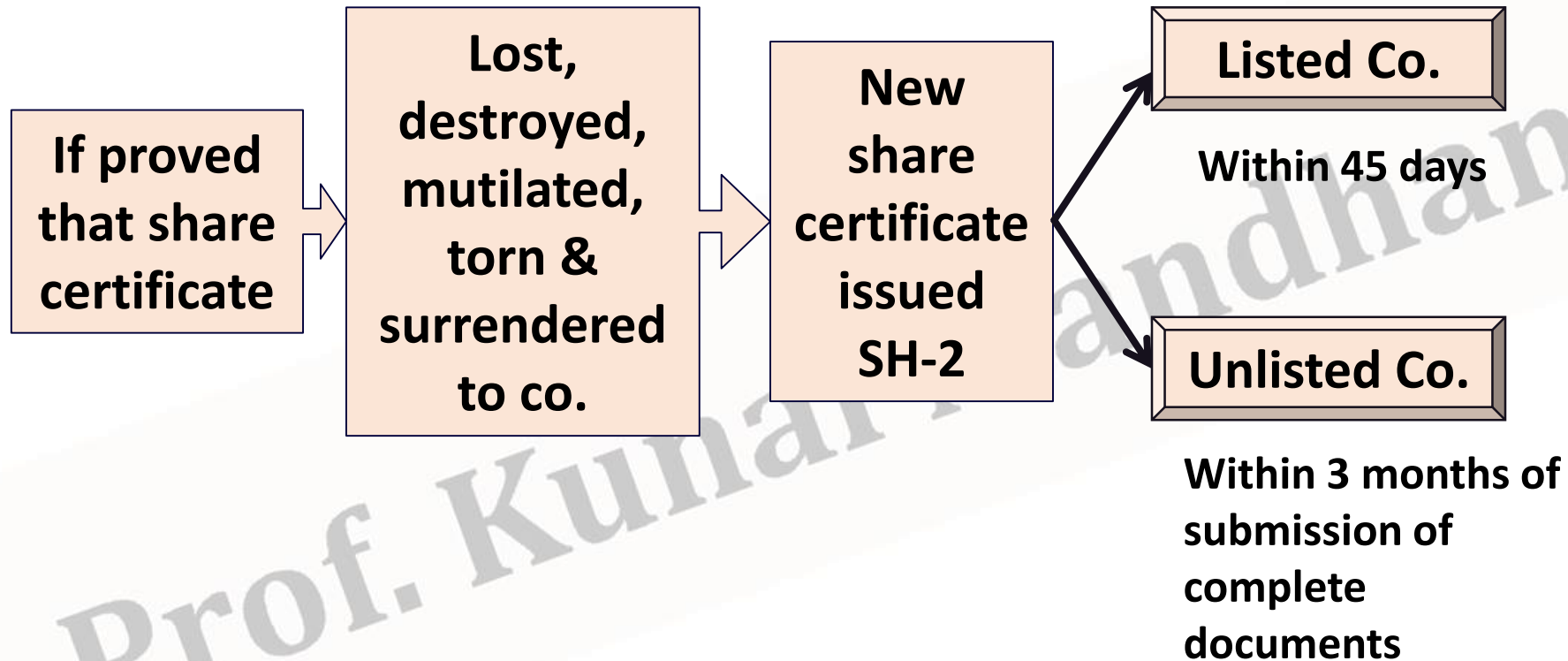
- Common seal ✓
2 directors
+
Secretary or person authorised
- Common seal X
2 director
Or
1 director + CS

Other points

1. Prima facie
 - a) As to title
 - b) Amount paid up
2. Form no. SH-1
3. Shares in Demat form
↓
Register
↓
Prima facie evidence

➤ Duplicate Share Certificate

SH-2



➤ Voting Rights (sec 47)

Equity Shares

- On every resolution placed before company in GM
- In Poll → voting depends upon proportion of his shares to total equity PUC

Preference Shares

- On matters
 - a. Related to them
 - b. Reduction
 - c. Winding up
- In Poll → depends upon his proportion of shares in total preference shares capital in company

Note:

1. Where both equity shareholders & preference share holders vote on a matter
→ Voting rights will be in proportion to equity capital & preference capital in capital
2. If preference shares do not receive dividend for **2 or more years**
→ they can vote on all matters before GM till dividend is paid

➤ Variation of shares Rights Sec. 48

- Variation only if specified in AOA or not prohibited by terms of issue
- Variation by 3/4 th majority + SR (of that class)
- If affects right of other shares → 3/4th majority of that class
- Dissenting shareholders (at least 10% shares of that class)
 $\xrightarrow[\text{SR}]{\text{Apply to within 21 days of}}$ Tribunal
 $\xrightarrow[\text{variation}]{\text{Order to Cancel or Confirm}}$ Company gives notice of decision to ROC within 30 days

➤ Transfer or Transmission of Shares

Sec. 56

Share transfer deed (SH-4)

- Stamped, dated
- Executed (signed) by transferor & transferee

→ Within 60 days of execution

Submit to co.

- Along with death certificate (transmission)
- By transferor & transferee

Company will

Partly Paid up shares

Blank transfer

Forged transfer

Give notice to transferee (SH-5)

Wait for transferee's response

Transferor signature forged

↓
Void ab initio

↓
Co. will

He can object within 2 weeks of transfer

- cancel certificate to transferee
- Restore transferor name

➤ Refusal to transfer shares Sec. 57 & 58

Private Company

Send notice to refusal with reasons
(within 30 days)



Person may appear to tribunal within



30 days
60 days
Of transfer

→ notice received ←
→ notice not received ←

Public Company

Can't refuse without sufficient cause



Person may appeal to tribunal



60 days
90 days

Tribunal will either dismiss appeal or order

1. Transfer within 10 days
2. Rectification of register

Note:

- If forged transfer → if transferee has already transfer shares to innocent purchaser



Company will



Refuse to register new transferee as member

+ pay damages to new transferee

+ claim damages from old transferee

Time limit to issue / transfer share certificate

- Subscribers → within 2 months of incorporation
- Allottee → within 2 months of allotment
- Transferee → within 1 month of transfer
- Debenture → within 6 months of allotment

DEBENTURES



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Steps to issue Debentures

Appoint Debenture Trustee



Issue Prospectus or PPOL



Issue Debentures



Issue debenture certificate



- Within 6 months from allotment
- within 1 month of transfer or transmission

Create debenture trust deed



- Within 60 days of allotment
- Form No. SH-12
- On request provide copy to member or deb-holder within 60 days

Create DRR

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Appointment of Debenture Trustee

Where Compulsory

Public offer

Or

Offer to existing members exceeding 500

When

Before issuing prospectus

Duties

- 1) Protect interest
- 2) Redress grievances
- 3) File petition to tribunal if

- a) Asset insufficient to Pay Debt
- b) No payment of 'P' or 'I' during maturity

Who can be

Next Slide

Unlisted secured deb by Pvt. Placement	Mandatory
Unlisted unsecured deb. by Pvt. Placement	Mandatory <ol style="list-style-type: none">1. Offer to Person exceeds 2002. Offer to members exceeds 500

Eligibility criteria for becoming a Debenture Trustee

- A person shall not be appointed as a debenture trustee, if he-
 - i. Beneficially holds shares in the company
 - ii. Is a promoter, director or key managerial personnel or any other or an employee of the company or its holding, subsidiary or associate company.
 - iii. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.
 - iv. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
 - v. Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or Rs. 50 lacs , whichever is lower, during the 2 immediately preceding financial years or during the current financial year.
 - vi. Is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Appointment and removal of Debenture Trustee (Rule -18)

- The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act.
- Where such **casual vacancy is caused by the resignation** of the debenture trustee, the vacancy shall only be **filled with the written consent of the majority of the debenture holders.**
- Any **debenture trustee may be removed from office before the expiry of his term** only if it is approved by the **holders of not less than three fourth in value of the debentures outstanding, at their meeting.**

Conditions for issuing debentures

- Can issue convertible debenture only after S.R.
- Can be issued at par/premium/discount
- No voting rights (even if specified in AOA)
- Max. Redemption period → 10 years (secured deb.)
- For secured deb. (Redemption period)

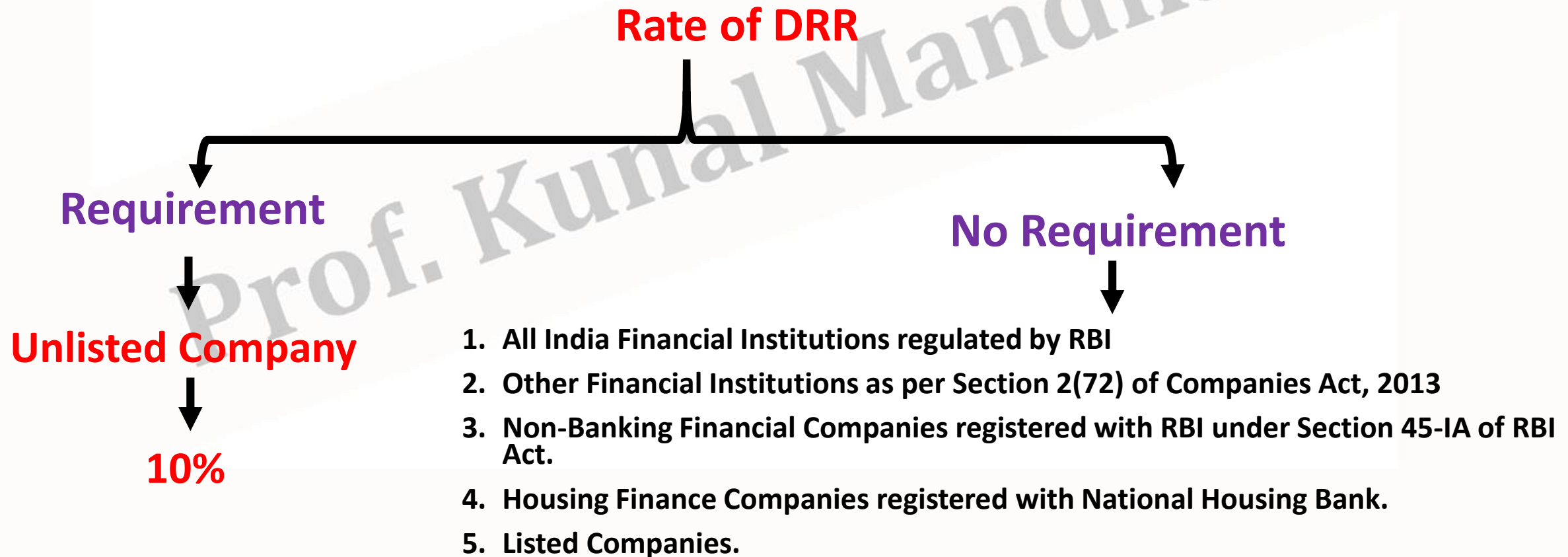
• Normally 10 years

• > 10 years upto 30 years

- Infra finance/projects/Debt fund NBFC
- Permitted by CG/RBI/ NHB/ Statutory body

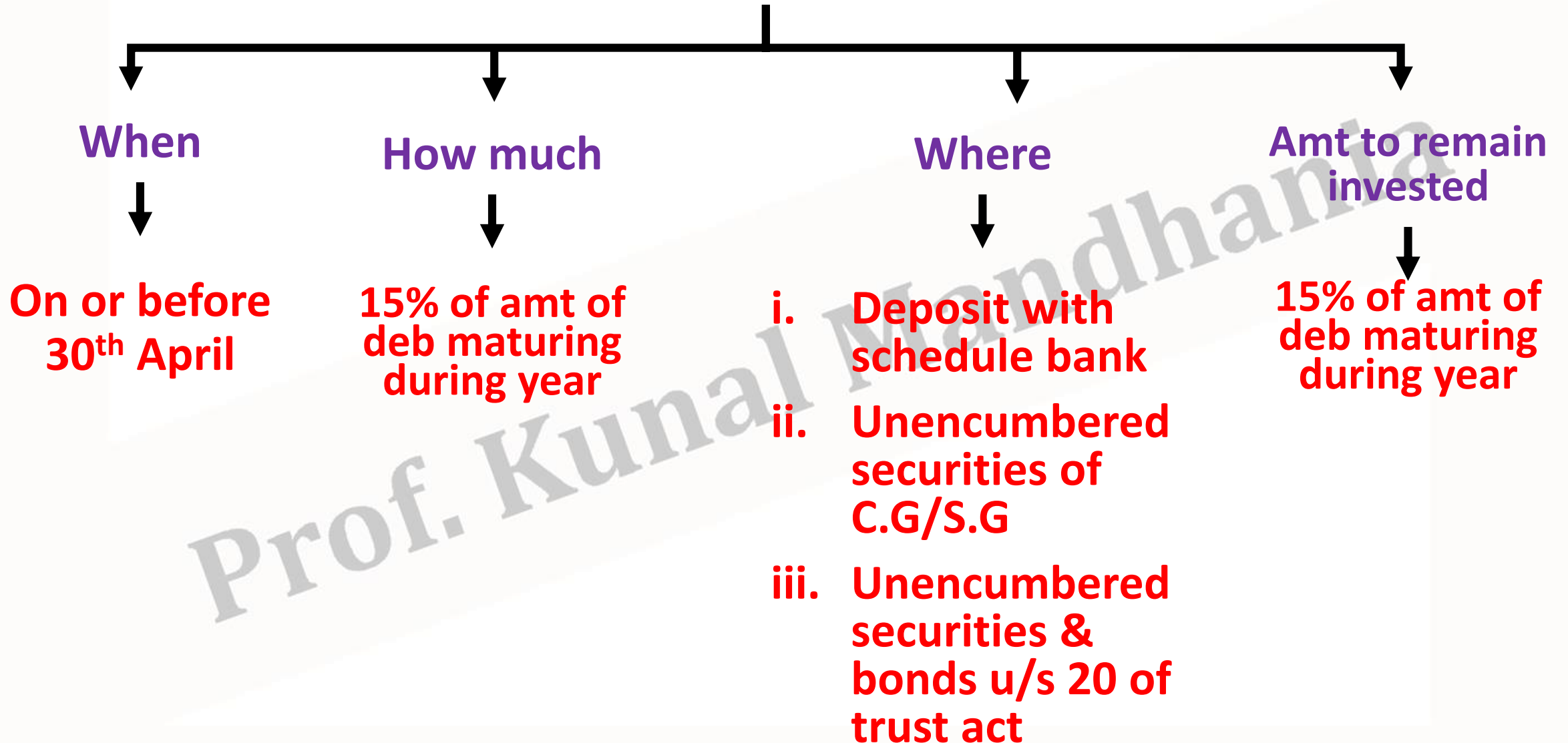
DRR

- Compulsory
- Out of profit available for dividend
- If partly convertible, DRR created for non-convertible part



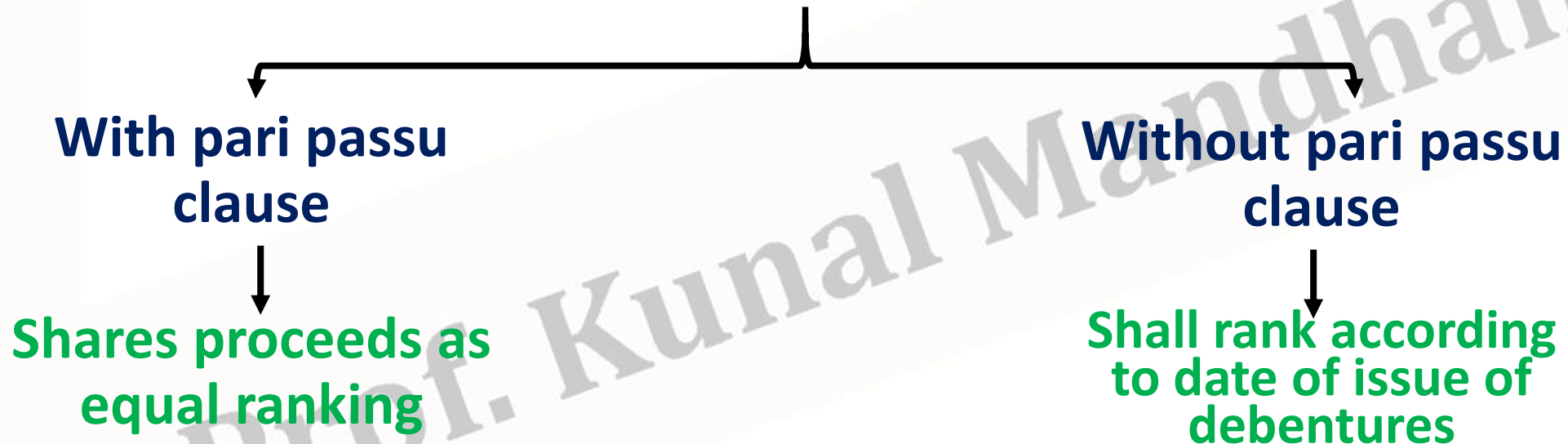
S.No.	Type of Company	Mode of Issue of Debentures	DRR Needed?	How much DRR?	How much DRF?
i.	All India Financial Institutions (AIFI) And Banking Companies	Public Issue or Private Placement	NO.	N/A.	N/A.
ii.	Public Financial Institution (PFI)	Public Issue Private Placement	YES.	Same as before NBFC	N/A.
iii.	Listed Companies except (i)	(A) Public Issue (Listed NBFC/HFC)	NO.	N/A.	15% (*)
		(A) Public Issue (other Listed Co.)	NO.	N/A.	15% (*)
		(B) Private Placement (Listed NBFC/HFC)	NO.	N/A.	15% (*)
		(B) Private Placement (other Listed Co.)	NO.	N/A.	15% (*)
iv.	Unlisted Companies except (i)	(A) Unlisted NBFC/HFC	NO.	N/A	N/A
		(B) Other Unlisted Companies	YES.	10% of O/S Debentures	15% (*)

Debenture Reserve Fund (Investment)



Debentures with Pari Passu Clause

- Pari Passu means ranking equally
- Rights of debenture holders



- Cannot add pari passu clause unless such right is expressed earlier.

DEPOSITS



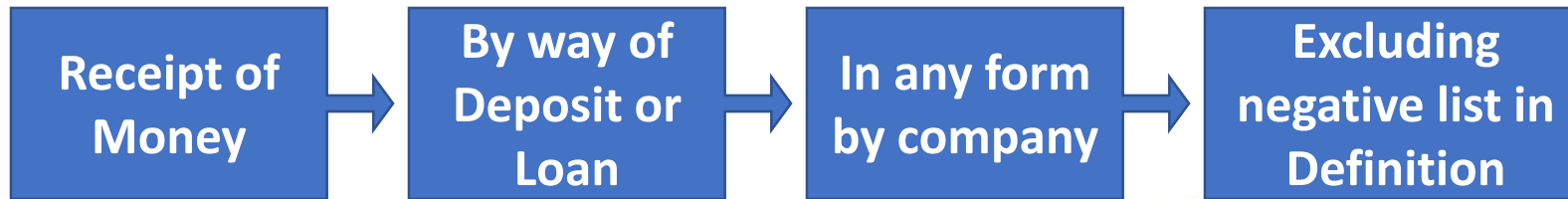
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Deposits



- It is a kind of borrowing made by company
- Covered by chapter V of Companies Act
- Covers Sec. 73 to 76 + Acceptance of deposits Rules, 2014
- Company pays more interest to deposits than bank FD
- Depositor on maturity get matured amount = Principal + interest
- On Winding up they are repaid before shares, Debentures, bonds
- They may be secured or unsecured

- Types of company accepting deposits

- a) Banking Company
- b) NBFC
- c) NBNFC

Chapter V Apply

X

X

✓

- All laws made in consultation with RBI

Sec. 74 Repayment of Deposits before Commencement of this Act (Transition)

- On commencement of Company Act, 2013 (1st April 2014)



Any Deposit accepted by Company on which any amount, interest remains unpaid



1. Give details of existing depositors within 3 months to ROC in Form no. DPT- 4

2. Repay all Deposits within

a) 3 Years

b) Maturity date → w.e.e

- Company can apply to NCLT to extension

Acceptance of Deposits

Sec 73

From Members

Every Company

Ordinary Resolution

**Conditions U/s
73(2)(a,b,c,e,f)**

Sec 74

From Public

Eligible Company

PUBLIC COMPANY having:

a) Net worth \geq 100 Crore

OR

b) Turnover \geq 500 crore

OR / SR

Sec 73(2)(a, b,c,e) + credit rating

+ secured

Sec. 73(2) Accepting Deposit from Member CONDITIONS

- a) Circulate a Circular DPT-1 Among members with all details
- b) File copy of Circular (DPT-1) with ROC within 30 Days before issue of circular to others
- c) Deposit Repayment Reserve A/c (DRRA)



- d) No Subsisting Default → payment of P+I on any earlier deposits
- e) Can be secured or Unsecured

(quoted in every circular)

The conditions mentioned in Section 73(2)(a) to (e) shall not apply to a private company :

- A. Which accepts from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account; or**
- B. Which is a start-up, for 10 years from the date of its incorporation; or**
- C. Which fulfils all of the following conditions, namely;**
 - a) Which is not an associate or a subsidiary company of any other company.**
 - b) If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or Rs 50 crore, whichever is lower; and**
 - c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.**

Note: The above exception shall be applicable only to a private company which has not committed a default in filing its financial statements under Section 137 of Companies Act or Annual Return under Section 92 of the said Act with the Registrar.

Sec. 76 Accepting Deposit from Public

Even this Company needs to follow

- a) Basic Conditions → Sec. 73(2)(a, b,c,e)
- b) Additional Condition 1

Company shall provide for security by way of charge → Sufficient to cover P+I → In favour of trustee

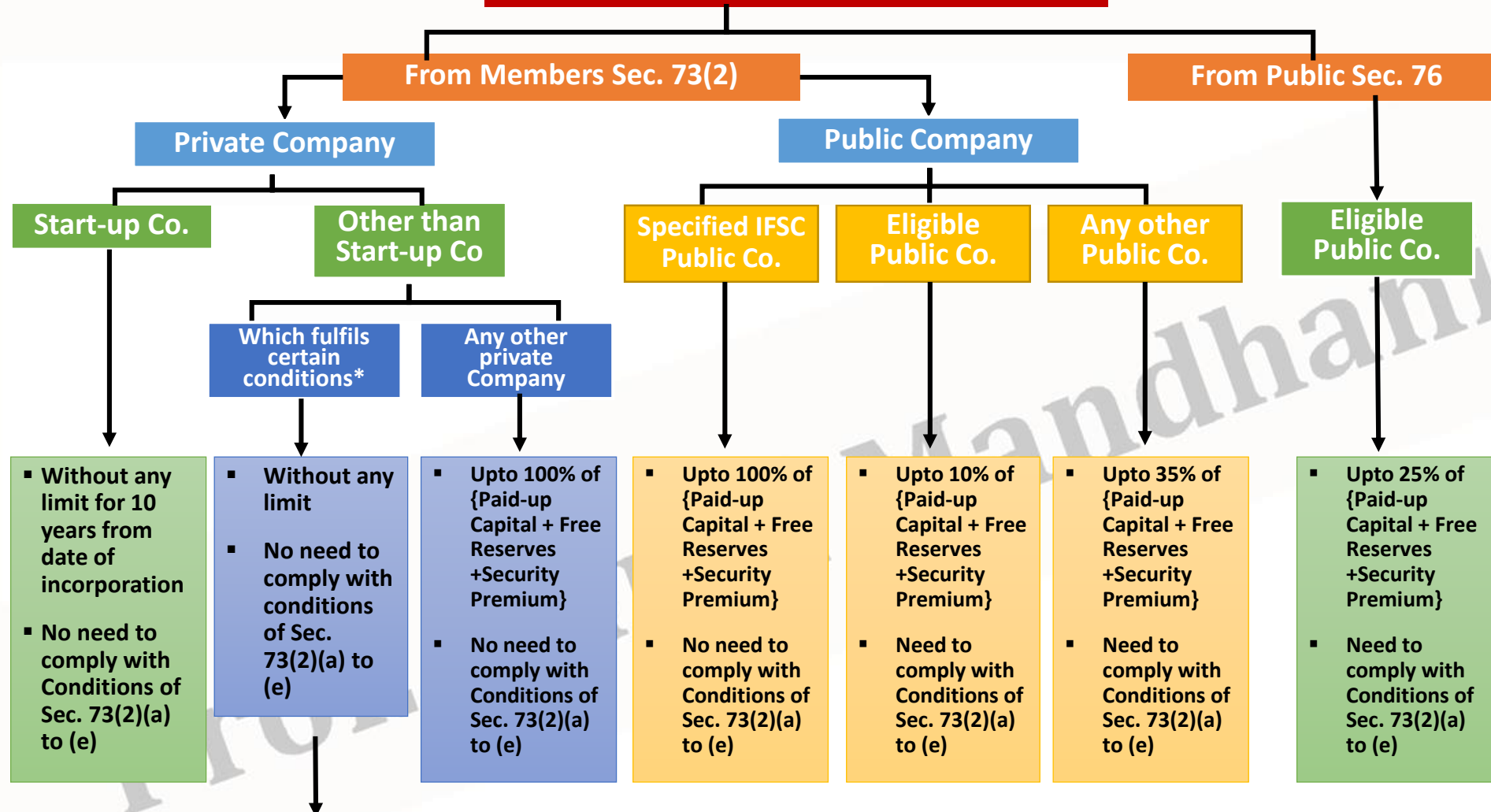
- c) Additional Condition 2

Obtain credit rating from recognised Agency
(before acceptance + every year)

+

Rating should not be below minimum rating for NBFC decided by RBI

Acceptance of Deposit



*Conditions to be fulfilled by a Private Company

- Not an associate or a subsidiary company of any other company.
- Borrowings from Banks or FI or Bod Corp. is less than twice of its Paid-up capital or 50 Crore, w.e is less; and
- Has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits u/s 73

Other Important Points

1. Interest / brokerage cannot be more than as prescribed by RBI for NBFCs (rule 3)
2. Company cannot accept deposit which is repayable
 - a) On Demand
 - b) Less than 6 months
 - c) More than 36 monthsExcept : if deposit → does not exceed 10% (P+F+S) → 6months can be reduced to 3 months
3. Give receipt to depositor / agent within 21 days
4. Every year file a return before 30th June in DPT- 3 (rule- 16)
5. Penal Interest – 18% p.a. (Rule 17)
6. On premature termination – ROI reduced by %

NEGATIVE LIST FOR DEPOSITS

1. Money recd. from directors or relative not deposit



If declaration that find not borrowed by them

2. Security deposit from employee



Deposits if



- i. Exceeds their annual salary
- ii. Interest bearing

3. Amt. in Trust deposits if interest bearing

4. Amt. Received as subscription for **any securities**



Deposit if securities not refundable within 15 days of completion of 60 days (in which share was to be allotted)

5. Unsecured debentures are deposit

6. Debentures will be deposit if not compulsorily converted within 10 years (convertible debenture)

7. If amount recd. As advance for supply of goods



Deposit if



After 15 days from due date it is not refunded

CHARGES



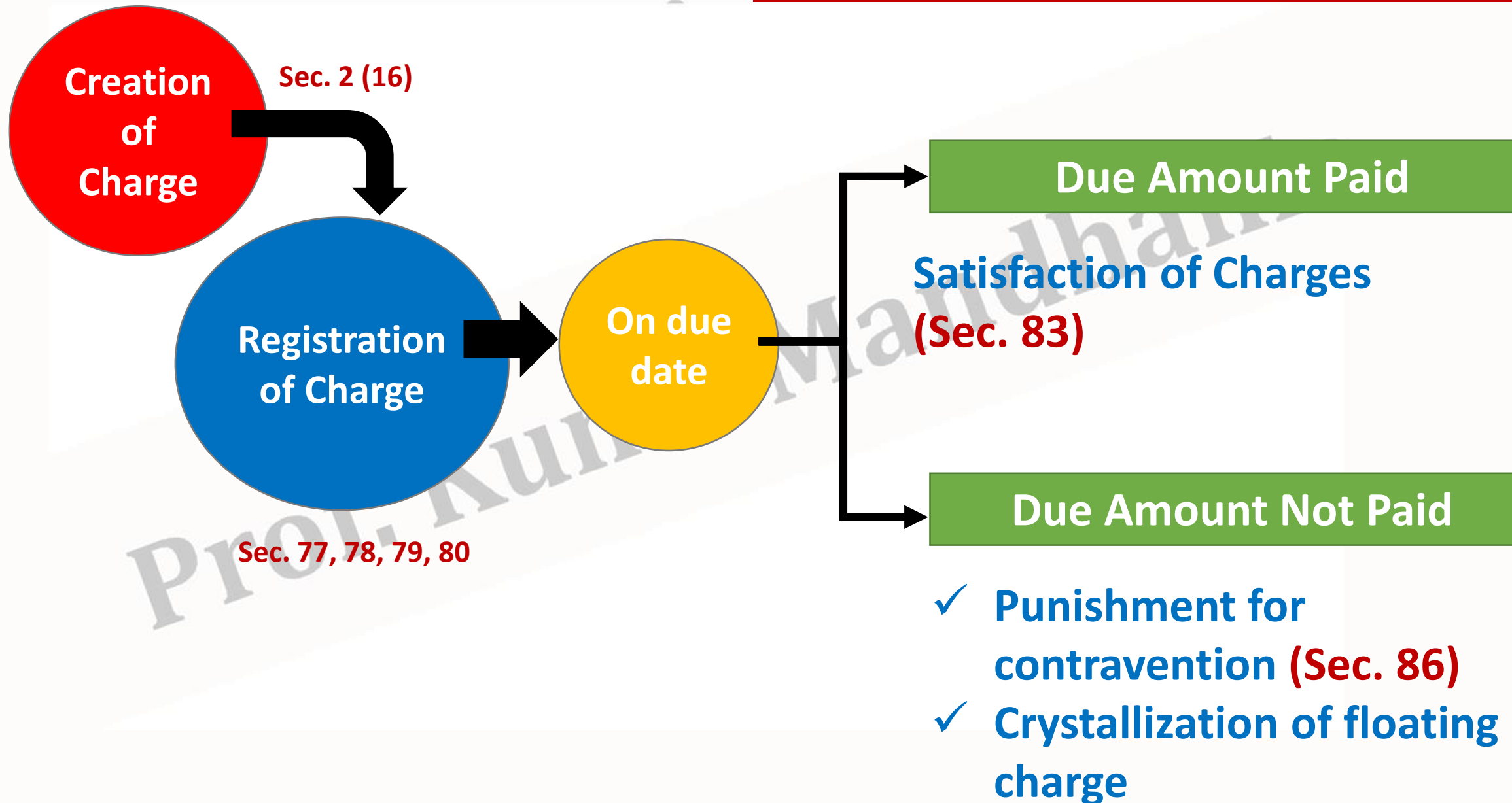
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CHARGES :- Process



Definition → Sec. 2 (16)



Interest / lien created



On property / Assets of Co/ undertaking



As security

✓ Chapter VI

✓ Sec. 77 to Sec. 87

✓ Types of Charge

Fixed Charge



- On definite / ascertained assets of permanent nature
- E.g.. → Land, Building, Machine

Floating Charge

On Assets which may be present or future



Which changes from time to time
E.g.. → Stock Debtors ,Block of Assets

Difference between Fixed & Flexible Charge

Basis	Fixed Charge	Flexible Charge
Meaning	Charge which covers ascertained or definite assets	Charge on assets used by company in its ordinary course of business
Example	Land and Building	Stock in trade, debt
Conversion	Can't be converted into flexible	Can be converted into fixed charge
Risky	Less risky	More risky
Term	Generally long span of charge	Generally, short span of charge
Right to use or dispose off	Co. loses right to dispose such property until unencumbered.	Co. is free to deal with property until secured creditor exercises his right

Registration of Charges with ROC

Once created charge should be registered with ROC



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Registration of Charges by Company

On creation of charges (Movable, immovable, tangible, intangible, within/ outside India)



Register charge with ROC within 30 days of creation

- ✓ In Form No. CHG-1, CHG-9 (Debentures)
- ✓ Instrument Creating Charges



Before 2nd Nov. 2018
[Co. (Amend) Act, 2019]

After 2nd Nov. 2018
[Co. (Amend) Act, 2019]



Within 300 days of creation of charges



X



Additional fees



Advalorem fees



Apply for condonation of delay to C.G



Within 60 days of creation (30 +30)



Within further 60 days (30 +30+60 = 120 days)



X

Sec. 77(2) → On Registration , ROC issues Certificate of Registration → CHG-2

Registration of charges by Charge holders (Sec. 78)

If Co. fails to register charge within 30 days as per Sec. 77(1)



Charge holder may apply to ROC



ROC gives notice to company to register



If Co. doesn't register within 14 days



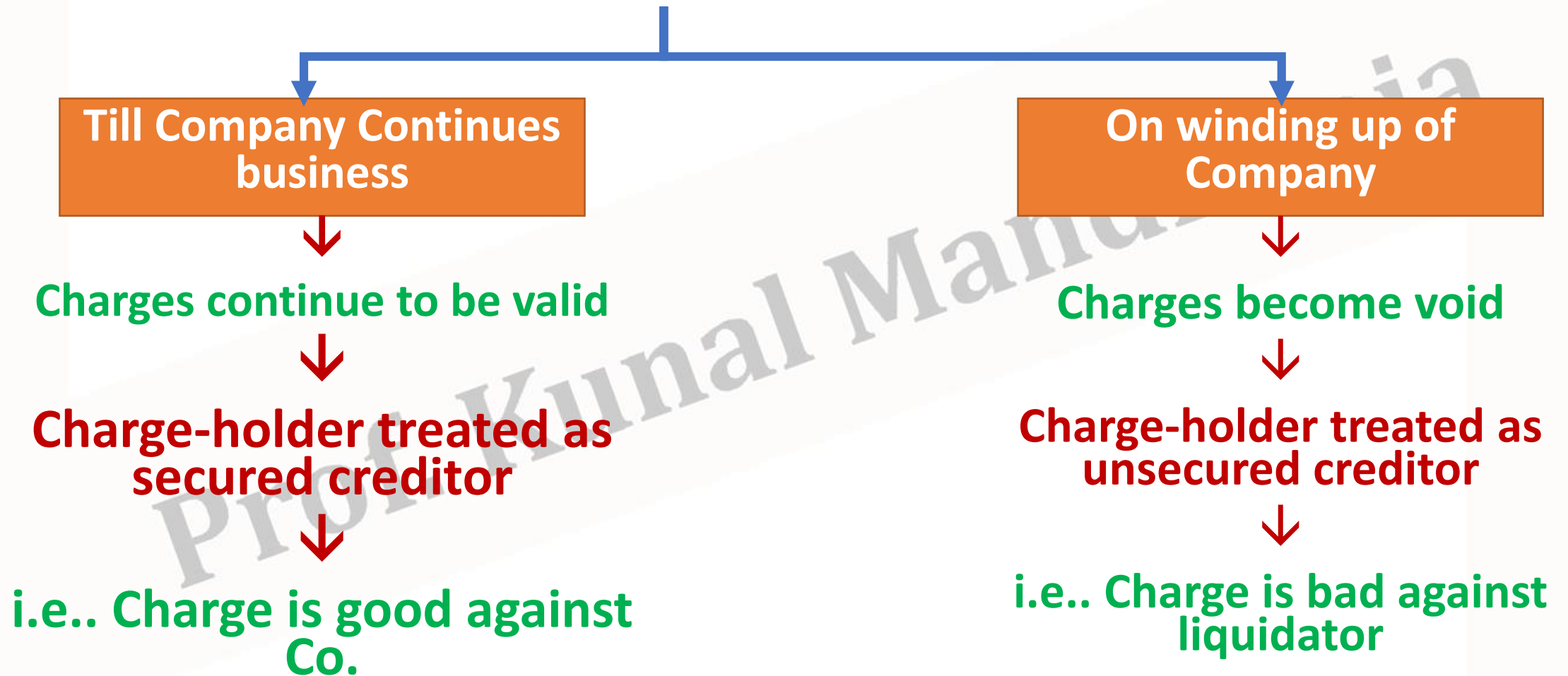
ROC allows registration by Charge holder on Payment of

- Fees
- Additional Fees

Note : Fees paid by charge holder can be recovered from company

Effect of Non-Registration of Charges

If charges created by Co. is not registered



Note : If the company creates a subsequent charge which is registered, such subsequent registered charge shall have priority over the previous unregistered charge.

Modification of Charges [Sec. 79]

Any modification of charges



- E.g..
- i) Change of Interest rate
 - ii) Change in terms
 - iii) Change in limits
 - iv) Change in repayment schedule



Also to be registered with ROC

- Same time limits
- Same Form No



As to Sec. 77



ROC issues Certificate of modification in Form No. **CHG-3**

Satisfaction of Charge [Sec. 82]

On Company Pays / Satisfied Debt For which charges is created



Company will
[Sec. 82(1)]

- Intimate to ROC in Form No. **CHG-4** within **30 days**
- If not, till **300 days** from satisfaction on payment of additional fees
- Beyond **300 days**, power to grant condition lies with **C.G. u/s 87**



ROC will

- Send notice to charge holders and asking show- cause as to why to not register satisfaction (**max time – 14 days**)
- If no show – cause



ROC records satisfaction of charge in register of charges maintained by ROC



Inform to Co. in Form No. **CHG -5**

Note : (i) **CHG-5** nor required if **CHG -4** signed by charge holder too

(ii) Rule of show cause not applicable if charge holder himself register satisfaction

(iii) If ROC himself get acquainted with information of satisfaction

He informs affected parties in **CHG-5** within **30 days** [Sec. 83]

Power of C.G for rectification of register

Company or
Interested
Person



ROC

- a) Omission to give notice of satisfaction within limits
- b) Omission / mis-statement of any particulars filed previously

Apply in CHG-8

- Extend time or rectify mis-statement
- Ground → mis-statement / omission
 - a) Accidental
 - b) Due to inadvertence
 - c) Other sufficient cause

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Notice of Appointment of receiver of manager (Sec. 84)

If any person (receiver) is appointed



To manager Co.'s charged property



Person shall give notice [CHG-6] along with fees
(a) Company (b) ROC

Within 30 days of order / appointment



ROC shall register details in register of charges

Register of Charges by Company [Sec. 85]

- Where → Regd. Office
- Form No. → CHG -7
- Preserve → Permanently
- Inspection → Member / Creditor – No fees
other → Prescribed Fees
- Authentication → Director / Secretary / Person
authorised by board

Note : Copy of Instrument creating charge also to be preserved by Co.

- At regd. office
- For 8 years

Other Imp Points

- i. ROC shall maintain register of charges of each company and open to inspection by any person by paying Prsc. Fees [Sec. 81]

(Omitted from Inter Syllabus)

- ii. Sec. 80 creates a presumption in favor of company



Person dealing with company



Has notice of charge created on particular asset

- iii. If company doesn't pay on due date

- Fixed charges can be used to recover
- Floating charges converted into fixed charge [crystallization] and then use

MANAGEMENT AND ADMINISTRATION



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AGM (SEC. 96)

Meaning

- G.M held once every year
- Compulsory for every company except 'OPC'

Time Limit

First AGM

- Within 9 months from closing of first F.Y.

Subsequent AGM

Whichever is earlier

- 1) One AGM, each calendar year (i.e.. upto 31st Dec)
- 2) Within 6 months from closure of F.Y.(i.e.. till 30th Sep normally)
- 3) Gap bet previous AGM & this AGM does not exceed 15 months. (take 15 months from previous AGM)

When to conduct

- Only during business hours. (9 am to 6 pm)
- On any day except Public holiday (as notified by C.G)

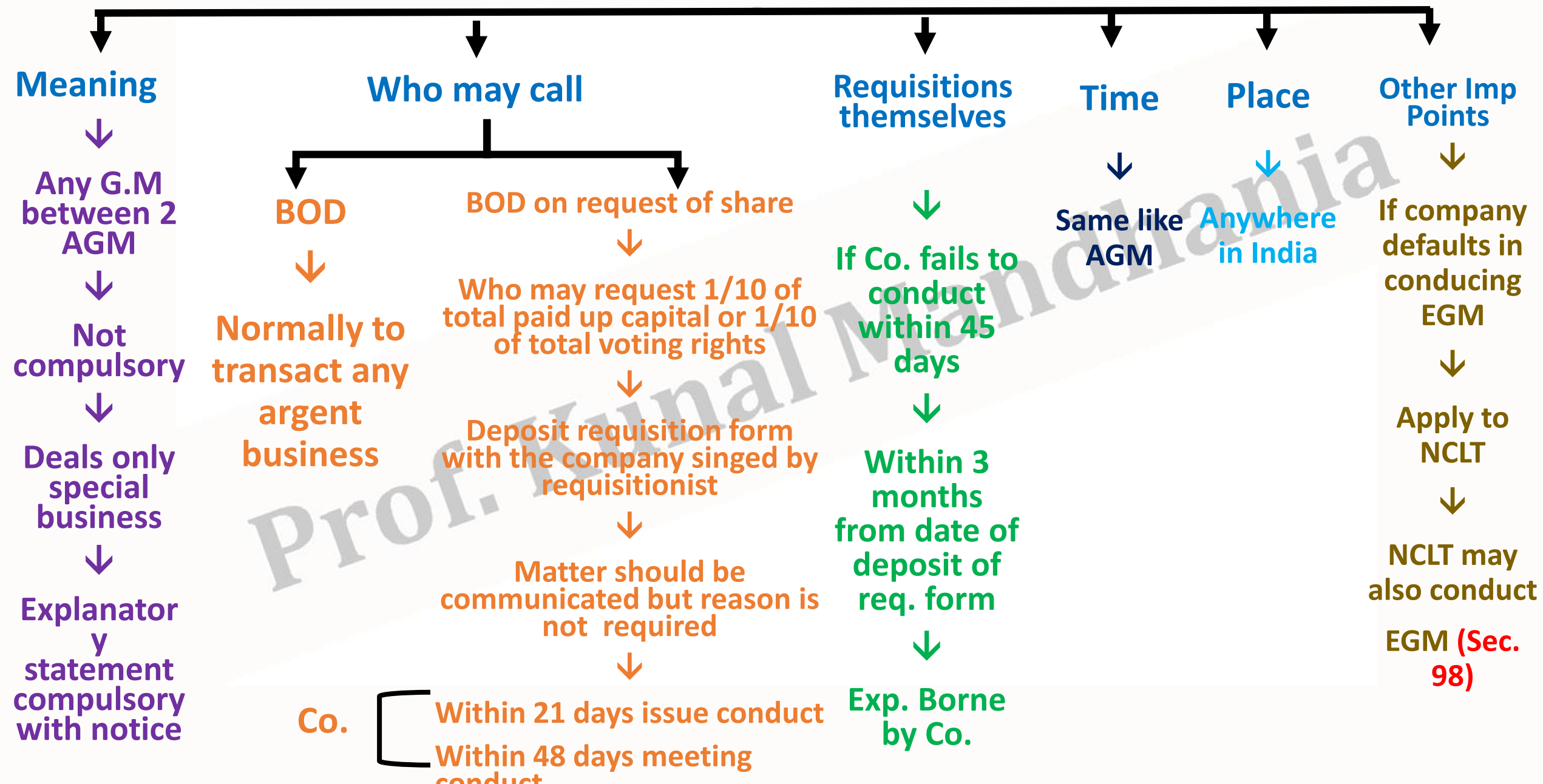
Where to conduct (Place)

- Registered office of Co. City, town , village of Regd. Office.
- AGM of unlisted Co. can be held any where in India with consent of all members in advance. (new amend)

Consequences of default

- Meeting beyond time not void
- Fine – upto 100000 + 5000 per day (sec 99)
- On default tribunal can direct AGM(sec 97)

EGM – Sec. [100]



Notice (SEC. 101)

Meaning

- Intimation to members to attend meeting
- Intimates time, place, date & Agenda of meeting
- Should always be in writing

Who can give?

- BOD
- Can delegate their powers to secretary, manager, etc..
- If secretary or other issue without delegation from BOD, Notice invalid
- However it can be ratified by BOD

Who are entitled to receive notice?

- Every member
- L.R/ Nominee of deceased member
- Official assignee/ receiver of insolvent member
- Auditor & director of Co.

Time limit (length notice)

- Should be sent at least 21 clear days before meeting to calculate clear days
- **For calculating clear days**
 - A) Leave date of sending notice & date of meeting
 - B) If Posted exclude 2 more days
- For Sec. 8 Co., it should be 14 clear days

Serving of Notice

As per
Sec. 20

Content of Notice

- Time, day, date, place of meeting.
 - Agenda (business) of meeting.
 - Notes to Notice
 - Documents accompanying notice
- AGM → F.S, A.R, D.R, Admission Slip, Proxy form.
- EGM – Explanatory Statement, Admission slip, Proxy form.

Ordinary Business [Section 102(2)(a)]

- **For AGM:**

- 1) Consideration of F.s , A.R , D.R
- 2) Declaration of dividend
- 3) Retirement of directors and appointment of directors in place of those retiring
- 4) Retirement , appointment and ratification of auditors and fixing his remuneration

- **For EGM:**

- No business is ordinary.

Special Business [Section 102 (2)(b)]

- **For AGM:**

- All business except the four business is considered special business.

Explanatory Statement (Sec 102)

- 1) All material facts concerning each item of business to enable members to take decisions.**
- 2) The nature of interest of every director, managers, Key Managerial Persons, and relatives of them**
- 3) If any item of the special business affects any other company, then the extent of shareholding of every director and manager in that company in case their shareholding interest is at least 2% of the paid up share capital of the other company.**
- 4) The time when and place where the document to be approved at the meeting can be inspected.**

Quorum [Sec 103]

Meaning

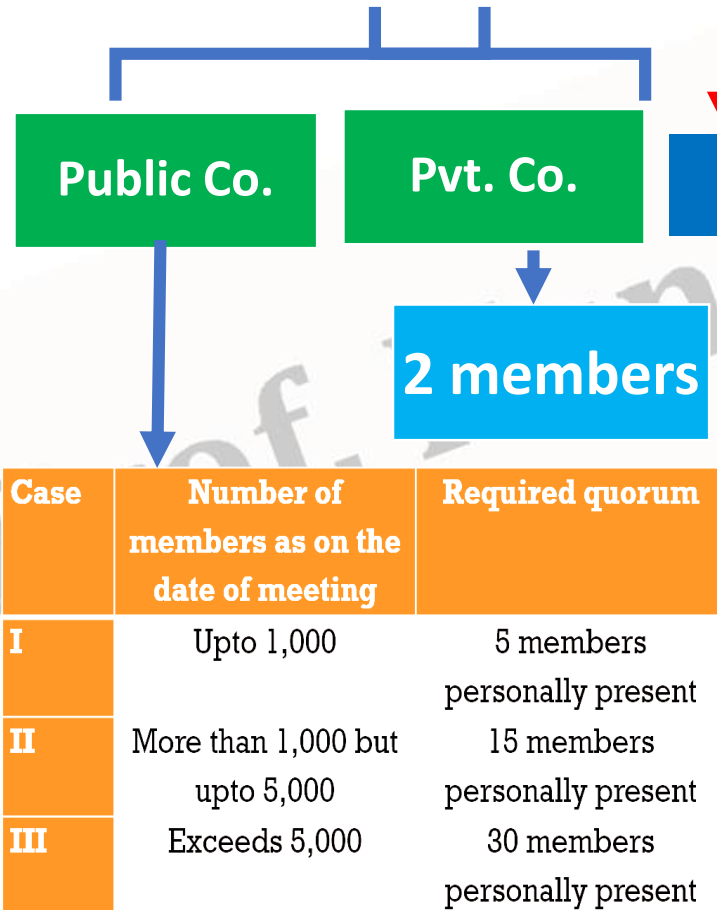
Quorum Required

Counting of Quorum

If No Quorum Present

Other IMP Pts.

- Minimum no. of members that must be present in order to constitute a valid Meeting.



Counted

- Members personally present.
- Representative of
 - President
 - Governor of States
 - Body corporate
- Person in more than one capacity
- Joint-holders of a shares counted as 1

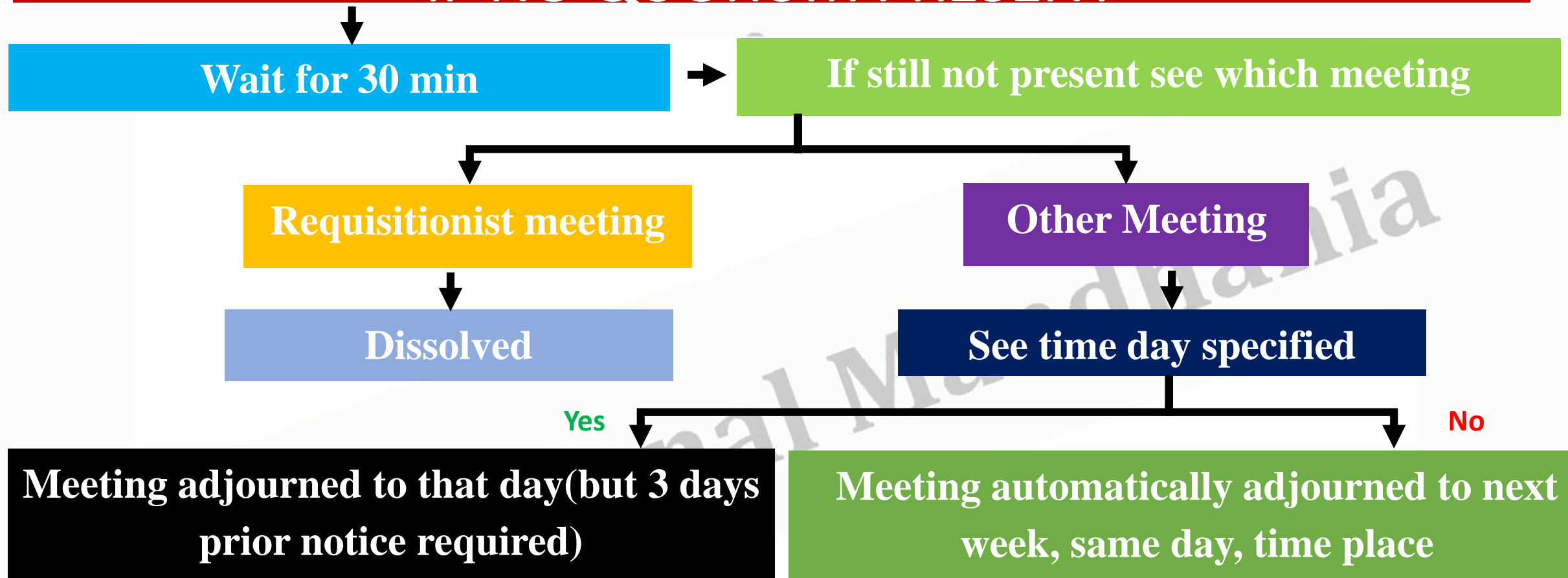
Not Counted

Proxy of a member

See Next slide

- If all the members are present, it is immaterial that the quorum required is more than the total number of members.
- Articles may provide for larger Quorum than prescribed.
- Quorum must be present throughout the meeting

IF NO QUORUM PRESENT



Meeting automatically adjourned to next week, same day, time place

On day of Adjourned meeting → If no Quorum is present

Members present will form Quorum.

[Rule → But there should be at least 2 members]

Proxy [Sec. 105]

Meaning

- Person who is appointed by member to represent themselves to attend and vote
- He is agent of person appointing him
- Also form in which proxy is appointed is called as proxy form.

Who can be appointed as Proxy

- Any person members or not(except sec 8 company)
- A person can act as proxy on behalf of member—
 - i. Not exceeding 50
 - ii. Holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
- A member holding more than 10% of the total share capital of the Company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

Gen. Pts. Regarding Proxy

- Cannot speak at meeting
- Is not counted for counting quorum.
- Cannot vote by show of hand
- Can demand poll and also vote.

Proxy Form

Time to deposit

- At least 48 hrs. before meeting
- Articles may specify less than but not more than 48 hrs..
- If articles specify more than 48 hrs. then rule of 48 hrs. will apply

Inspection

- Any members can inspect
- He has to give 3 days notice
- Can inspect not less than 24 hrs. before meeting till completion of meeting
- Fresh requisition for inspection required if meeting adjourned

Other Imp. Point

- 1) In case of joint holders, holder whose name is first in register of members should sign proxy form
- 2) Company can make its own proxy form or can use form no. Mgt 14
- 3) If member and proxy both vote, members vote will be counted
- 4) Revocation of Proxy
 - If members personally present
 - If members appoint new proxy.
- 5) Proxy will be valid for original meeting + adjournment

Voting Rights (Sec 106)

1) Voting rights cannot be restricted except

- a) If calls unpaid
- b) Company has lien on shares.

2) Voting can be conducted :

- a) By show of hand [107]
- b) By electronic method [108]
- c) By Poll [109]
- d) By Postal ballot (sec 110)

Voting by show of hands (Sec. 107)

1) Voting is conducted by show of hand

- a) Poll demanded
- b) Voting carried out electronically

2) Here – **1** Person = **1** Vote

Sec. 108 – Voting through electronic means

Applicable to

- (a) Every listed co.
- (b) Other co.



Members \geq 1000 members

Preliminary look

- 1) In Notice
 - Give details of meeting
 - How to create login ID, Password
 - Time, process, manner of voting
- 2) Give Advertisement in
 - a) English newspaper
 - b) Vernacular newspaperAt least 21 clear day

Voting rules

- shall remain open for at least 3 days
- Close on 5 pm on date preceding GM
- once voted cannot be changed
- Those who cannot vote can vote in meeting

Scrutinizer

- Appointed by BOD to give result
- Can be CA/CMA /CS /Advocate (Practise)
- Duties
 - Open & close voting
 - Count total votes (through remote e-voting and in G.M)
 - Give result not later than 3 days from meeting

Poll [109]

Who can demand poll

Rules for poll

Co. having share capital

- At least 1/10th voting power or
- Paid up capital of Rs. 5 lac.

Others

At least 1/10th of voting power

- Members vote in ballot/ polling paper (Mgt-12)
- Voting dependent of total paid up capital held
- Votes counted by scrutinizer

Postal Ballot (Sec 110)

For which matter shortcut A² B C² D E F G

All company

(i) OPC

A → Alteration or object clause (clause 3 of MOA)

(ii) Company
having members
upto 200

A → Alteration of AOA to convert private company into public Company

B → Buy Back of shares (Redemption of equity shares)

C → Change in place of registered office outside local limits (Claus 2nd of MOA)

C → Change in object for which money was raised but still has unutilized money.

D → issue of shares with (DVR) differential voting rights

E → Election of small shareholders directors

F → For variation in rights attached to shares or debentures

G → Giving loans guarantee or enactment exceeding amount specified under Sec. 186

Sec. 111	Sec. 112	Sec. 113	Sec. 114
<p>Members may</p> <p>a) Include their business in meeting (at least 6 weeks)</p> <p>b) Circulate any statement (at least 2 weeks)</p> <p style="text-align: center;">↓</p> <p>But by depositing request by members by at least 1/10th of total voting power or 1/10th of total paid up capital (same like IGM)</p>	<p>Governor, of states & President of India if member of company, can appoint representative to attend & vote on their behalf and they will not be treated as proxy and will be deemed to be member.</p>	<p>Same like Sec. 112 but for companies / Corporations</p>	<p>Resolution :</p> <p>Ordinary $\rightarrow V_F > V_A$</p> <p>Special :</p> <ul style="list-style-type: none"> ➤ At least 75% voters in favor ➤ 3/4th majority ➤ $V_F \geq 3 \times V_A$ <p>Note: Votes will be counted only of members present, whose votes are valid and are not abstained to vote.</p>

115 → Resolution Requiring Special Notice

What

→ By shareholders



By Whom

→ 1% of voting powers, or at least 5 lac P.O.C



Time Limit

→ Max- 3 months before meeting

→ Min – at least 14 days before meeting



Reply by Co.

→ At least 7 days before meeting, if not possible publish in newspaper & post in website



E.g.

Director

- Removal

- Appointment

Auditor

- Appointment

- Removal

- Expressly providing that retiring auditor shall not be reappointed

116 → Resolution passed on Adjourned meeting

Although adjourned meeting is an extension to and part of original meeting



But any resolution passed in adjourned meeting



Is deemed to be passed on date of passing and not earlier date

Copy of following resolution

1. S.R.
2. B.R → Application / renewal/ variation of terms → M.D
3. Resolution for winding up
4. Resolution as per Sec. 179(3) (Borrowing power of BOD)
Except
a) Pvt. Co. b) Bank Co. c) IFSC Public Co.
5. [unanimous resolution]
6. Class Resolution [E.g.. → Sec. 48 → variation of class of shareholder]

↓
Filled with ROC within 30 days of passing

↓
MGT-14

* More than 30 days → Penalty

118 & 119 → Minutes

Meaning

- Fair & correct summary of proceeding of meeting
- Official record of event held in meeting

Applicability

- To all Co.
- For all meetings
- Sec. 8 Co. Not req. to have minute book

Signing

- Prepared & entered into min. book within 30 days of meeting
- Every page initialed & last page signed by chairman
- If chairman dies/unavailable
- ↓
- Any director authorize by BOD

Inspection

- Only by members
- ↓
- During business hours
- ↓
- Co. Should reserve at least 2 hrs.
- Copy provided
- ↓
- Presc. Fees (Rs. 10 per page)
- ↓
- Within 7 days (Penalty if failed)
- Note : Refusal to members under any Circ. Not allowed even if B.R passed

Other IMP Points

- i. Chairman can exclude any matter if
 - i. Immaterial
 - ii. Defamatory to person
 - iii. Detrimental to Co.
- ii. Preserve permanently
- iii. Kept at Regd. Office under custody of C/s / Director authorized

120 → Maintenance & Inspection of documents in Elect. form

- Listed co.
- Co. having ≥ 1000
 - Shareholders
 - Debenture holders
 - Sec. holder

• Shall maintain

• In electronic form

• Conditions

• Format → As per law

• Capable of being recorded

• Readable / Retrievable / Reproduced in printed form

• Capable of dated & signed digitally

• Cannot be edited / altered

• Can be updated.

Soft copy / Hard copy

Mandatory

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Sec. 121

Every listed public company



Shall file mgt-15 with ROC within 30 days from AGM



Which contains details of AGM

Sec. 88

Every company whether put or public limit share capital or not shall maintain.

Register
Member

(+)

Register of
Debent not

(+)

Req. of
Sec. hold.

(+)

Foreign
Register



MGT 1



MGT 2

- Kept outside India
- Details of person resident outside India
- MGT 3



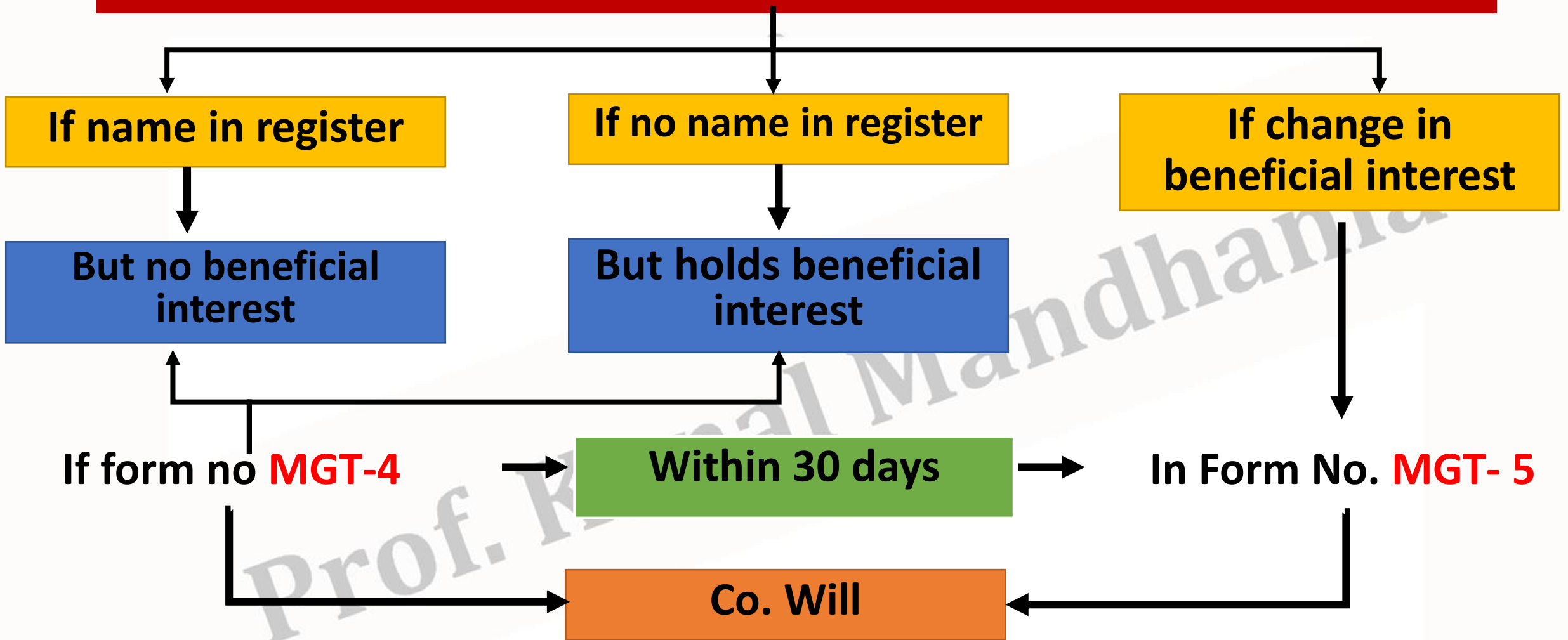
Update to Reqd. office

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General points reg sec 88

- 1. Time limit of making entry :- within 1 days of allotment**
 - :- Read. Office**
 - :- S.R. To shift**
 - :- Shifting outside local limit 1/10th members should reside**
- 2. Every Register shall also now a India if members are 50 or more**
- 3. Register authenticated by → CS or person authorized by board.**

Sec. 89 → File declaration with Co.



1. Make note of it.
2. File return with ROC in **MGT – 6** within 30 days

Sec. 90

→ C.G if required → can order inquiry or investigation



To investigate beneficial ownership of shares

Sec. 91

→ A company can close register of members



Max → 30 days → at one time

Max → 45 days → in a year



By giving notice of at least 7 days prior to closure

Public Co.

Pvt. Co.



- Publish in website
- In newspaper



To all members

Sec. 92

→ Annual Return → MGT-7

Contents

→ Details regarding shares / Deb. / indebtedness / change of member / promoter / directors / KMP/ meeting held / resolution details / penalty on Co. etc..

Signing

→ Director + C.S

→ In OPC + Small co. → only C.S

Certification

→ By Prac. C.S if → P.U.C → 10 cr or more

→ T/O → 50 cr or more

MGT- 8

Preservation

→ 8 years

Time limit of filling

→ Within 60 days of AGM or last date of w.e.e. holders AGM

→ Every listed Company



Shall prepare return → MGT-10



Of no. of shares held by



- Promoter
- Top 10 shareholders



And also file



Increase or decrease of 2% or more of P.U.C.

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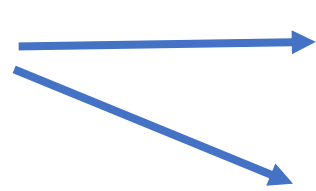
Sec. 94

→ Additional matters → Reg. Returns

→ Inspection

→ At least 2 hrs. every working day

→ Fees



→ Mem/ Deb. Holder / sec. holder → no fees

→ Other → Rs 50

For copy → Rs. 10 per page

→ Period of maintenance

→ Reg. of members → Permanently

→ Reg. of deb. Holder → 8 years from redemption

→ Annual return → 8 years from filling

Sec. 95

→ Reg. u/s 88 and annual return u/s 92 prima facie evidence.

DIVIDEND



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Dividend – Introduction

- Chapter VIII
- Sec. 123 to Sec. 127
- Definition → Sec. 2(35) → Dividend includes interim dividend
- Right to claim dividend arise only when dividend is declared
- Dividends is paid in proportion to the amount paid – up

Dividend

Basics

- Latin word 'Dividend' means a thing to be divided
- Profit available for distribution of dividend known as 'divisible profit'
- It is not debt till it is declared
- It is **appropriation of profit**
- Two Types
 - Final
At AGM
Recommended by BOD
Declared by SHAREHOLDERS
 - Interim
Declared by BOD

Sources (Sec. 123(1))

- Profits of current year
- Accumulated profits of previous years (Reserves)
↓
Follow Rule 3
- Both 1 and 2
- Money by CG / SG
↓
Since they gave guarantee

Mode of Payment

- By cash
- By cheque
- Dividend warrant
- Crediting in bank account
- ECS
- But **Cannot be paid in Kind** i.e. goods, gift or giving bonus share instead of dividend is not allowed

Using Free Reserves

Whenever company uses past profits / reserves / accumulated profits

Rule 3 should be complied

- Rate of dividend cannot be more than

Average rate of preceding 3 years

Note: This rule is not applicable if company has not paid dividend in any year

- Amount that can be drawn from reserves

1/10th of PUC + FR (as per previous F.S)

- Balance to be kept in FR

15% of PUC

Rule 3 does not apply to 100% government company (i.e. all shares held by CG/ SG)

Other points

- Rate of declared dividend **cannot be more than recommended**
- Company may transfer any amount into reserve (not compulsory)
- No dividend to Equity shares if company not comply with Sec. 73 / 74 (Deposits)
- Capital profits can be used for payment if it is actually realised
- If company paying interim dividend and it has incurred loss upto previous quarter end this year ↓
Rate of dividend should not be higher than average rate of preceding 3 years

Note

1. For paying dividend , adjust current year Profit with
 - a) Carried over previous losses and deprecation not provided in previous year or years are set off
 - b) Excludes notional and revaluation profits.
2. Only free reserves can be used, Capital profits can't be used
3. In case of joint shareholders, the dividend may be paid to one of the joint shareholders who is first named in the Register of Members
4. No dividend if Sec. 73 & Sec. 74 (deposits) not complied
5. Provided as per SCH. II
6. Normally dividend paid cannot be revoked except
 - a) declaration ultra vires
 - b) Company ceases to be going concern
7. All rules of normal dividend applies to interim dividend.
8. If loss in current year till end of quarter

Rate of interim
dividend

≤

Avg. rate of dividend of
immediately preceding 3 F.Y

Time limit for payment of Dividend → Final Dividend

Recommended by
BOD



Declared in AGM

By passing OR
Rate of declared dividend → should not be more than → Rate of dividend recommended



Transfer amount to
Separate Bank
Account

Within 5 days of declaration
N.A to 100% government Co.



Pay Amount

Within 30 days of declaration
Or else pay 18% p.a. for period of default



**Transfer unpaid /
Unclaimed amount
in separate bank
account**



**Publish list on
website**



**Transfer unclaimed
amount to Investors
education &
Protection Fund
(IEPF)**

Within 7 days from completion of 30days In unclaimed dividend account
If late then also pay 12% p.a.
N.A. to 100% government co.

Within 90days from transfer to separate account
Of shareholder who have not claimed

If not claimed till 7 years from day it becomes due

Special Point:

If no dividend is claimed for a **SHARE** then such **SHARE** should be transferred to IEPF account.

Investors Education & Protection Fund

SOURCE

APPLICATION

- A →** Application Money not refunded → Refund
- B →** Being Money unpaid of matured deposit, debenture, pref shares & intt there on → Refund
- C →** Company's unclaimed dividend for 7 years
- D →** Donations from CG/SG/any Co./ other institutions
- E →** Earlier Act, 1956
- F →** Fractional shares left unsettled during amalgamation, merger or issue of bonus shares
- G →** Govt. Grants
- H →** Haram ki kamai – Shares or money disgorged by Govt. becoz of fraudulent transaction → Distribution of disgorged amount to aggrieved party
- I →** Investment income from money in fund

Other application of Investors Education & Protection Fund

- Promotion of investors education & awareness
- Helping non-competent by reimbursing legal expenses in case of suit for non-compliances of companies Act.

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ACCOUNTS OF COMPANY

Click to Watch Revision Lectures

Part -I



Part -II



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Books Of Accounts (Sec. 128)

Basics (1)

Every Company shall maintain

- BOA
- Other Book and Papers
- F.S.

Can be kept physically or electronic mode

Maintained at(1)

- Registered office
- Can be shifted at any other place
 - ↓
 - B.R.**
 - ↓
 - File address of new place with ROC within **7 Days (AOC-5)**
- Branch and Foreign books are to be kept there itself
- Only periodical return(QUARTERLY) is to be Submitted to company

Books Maintained by whom[128(6)]

- M.D; or
- WTD; or
- CFO; or
- ANY PERSON AUTHORISED BY BOD

Other Pts

- Accrual basis
- Double entry system
- Should show true and fair view
- Maintain for 8 years(5)

Inspection of BOA by Directors [128(3) r/w Rule 4]

- a) **Inspection by Directors:**
- **Open during business hours**
 - **If books outside India, should be made available in 15 Days from the date of receipt of request**
- a) **Members can check only after BR/OR in GM**
- b) **Directors Can inspect BOA of subsidiary only by resolution of BOD.**

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Maintenance of BOA in electronic form[128(1)r/w Rule 3]

1. BOA to be accessible in India for subsequent use.
2. Info. retained in format in which originally generated.
3. Info. from branch office → not to be altered
4. Info. to be capable of being displayed in legible form
5. Proper system for storage, retrieval, display or printout of electronic records & not disposed unless law permits
6. Intimate to ROC annually while filing F.S.
 - Name of service provider
 - IP address
 - Location of service provider
 - If maintained on cloud, address as provided by service provider

OTHER IMP POINTS

- Director Seeking Information/Inspection Has To Do It **Personally** And Not Through Agent/Attorney/Representative
- In Inspection/Investigation **C.G** Can Ask To Keep Records Even **More Than 8 years**
- **Nature of Transaction to be Recorded(MASC)**
 - M** – MONEY RECD & EXPENDED
 - A** - ASSETS AND LIABILITIES
 - S** - SALE AND PURCHASE
 - C** - COST RECORDS(in case of mfg. co.)

Financial Statements (Sec. 129)

Includes 2(40)

- Balance Sheet
- Profit & loss Account
- Cash Flow Statement
- Notes to Accounts (Explanatory Notes)
- Statement of changes in Equity

Basic requirements

- True and fair view
- Compliance with AS
- As per Schedule III
- Present at every AGM
 - a) Standalone F.S.
 - b) Consolidated F.S. (INCLUDES DATA OF S/A)

Consolidated F.S.

- Along with consolidated F.S., Statement containing Salient features of F.S. of
 - a) Subsidiary
 - b) Associate

↓
AOC - 1
↓

- Consolidated F.S. not required if:
 - a) All members intimate in writing
 - b) Unlisted company
 - c) Ultimate / any Intermediate holding company files consolidated F.S.

Other Pts

- No cash flow statement
 - OPC
 - Small Company
 - Dormant Company
 - Start up Private company
- F.Y. (Sec. 2(41)) Should be
 - a) 1st April to 31st March
 - b) If incorporation on or after 1st Jan
 - ↓
 - Till next 31st March
 - c) Different F.Y. to Consolidate if, H/S/A incorporated outside India with approval of CG

Other Imp Pts

- Co. shall disclose in its F.S, deviation from AS, reasons & effects
- CG may on application exempt Co. from complying with this sec., if its necessary for public interest.
- Provisions applicable to preparation, adoption & audit of F.S of holding Co., mutatis mutandis apply to Consolidated F.S.
- Penalty: M.D/WTD/CFO/Any other charged by the BOD

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RE-OPENING OF ACCOUNTS [Sec. 130]

- ✓ The Central Government
- ✓ Income Tax authorities
- ✓ SEBI
- ✓ Statutory Regulatory body
- ✓ Any person concerned

→ REASONS

1. earlier accounts prepared in a **fraudulent** manner or
2. doubt on reliability of F.S due to **mismanagement**

↓ Applies to

Court / Tribunal

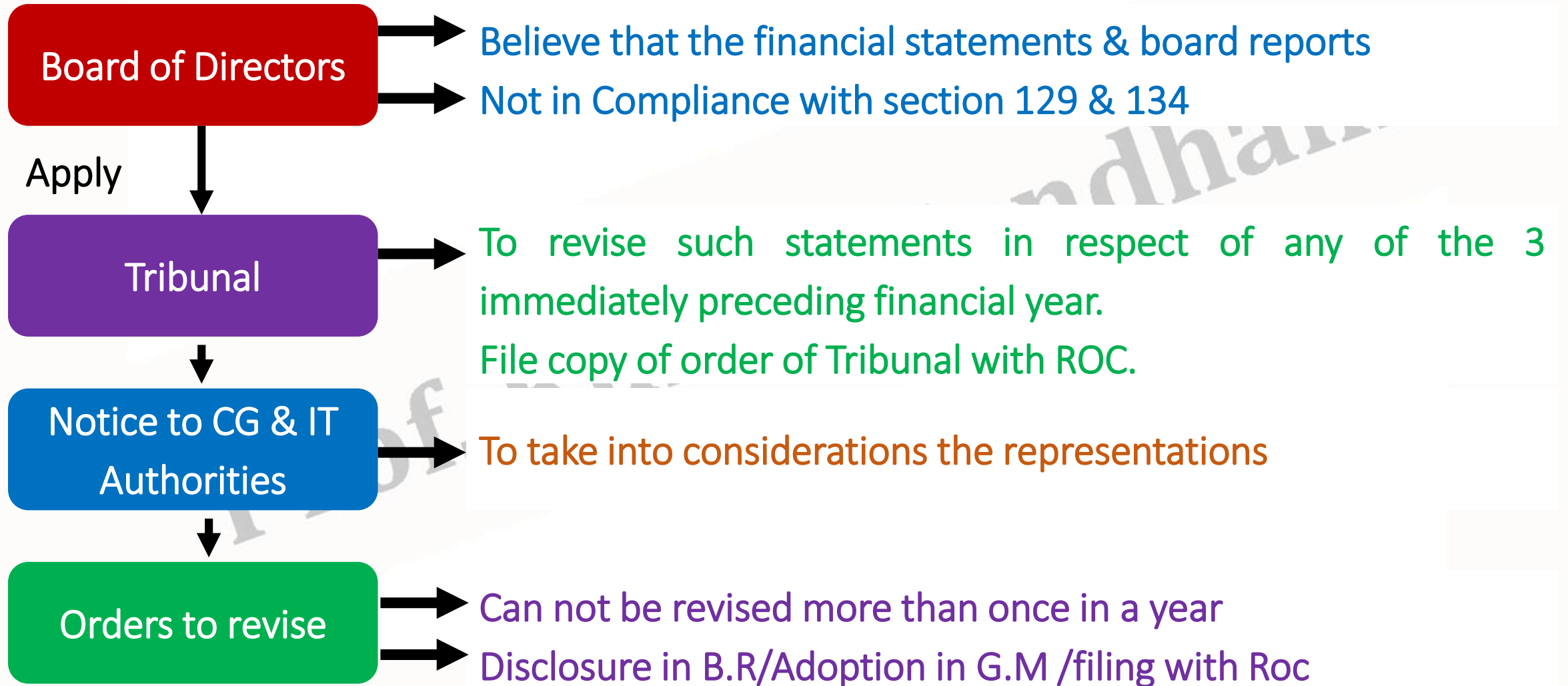


Court passes order



1. and serves notice to the applicant
2. The accounts so revised / re-casted shall be final
3. No order – for period earlier than 8 FY immediately preceding the current FY

VOLUNTARY REVISION [Sec. 131]



National Financial Reporting Authority (Sec. 132)

Duties

- Recommend C.G. on formulation and laying down of A.S. & S.A.
- Monitor & enforce compliance of AS & SA
- Oversee quality of professionals associated with it
- Investigate person under CA Act, 1949

Constitution

- 1 chairman (Appointed by C.G., having expertise in law, audit, Account & finance)
- Other persons
↓
Part time or full time
↓
Not exceeding 15

Disqualification

- Not associated with any audit firm (till holding office and 2 years after that)

Other Pts

- Same power like civil court
- Head office → new Delhi
- Audited by CAG & report forwarded to CG by NFRA.

Other Imp Point

- **Power to investigate any member or CA firm of professional misconduct either suo-moto or on ref. made by CG.**
- **May debar the member/ firm from:**
 - a) **being appointed as auditor/internal auditor of Co./Body corporate or**
 - b) **perform any valuation as per sec 247 for period of 6 months to 10 yrs..**
- **Person aggrieved by order of NFRA may appeal before Appellate Tribunal.**
- **CG may appoint secretary or employees for efficient functioning of NFRA.**
- **NFRA shall maintain books as prescribed by CG in consultation with CAG.**
- **NFRA shall prepare annual report of its activities during the FY & forward a copy to CG.**

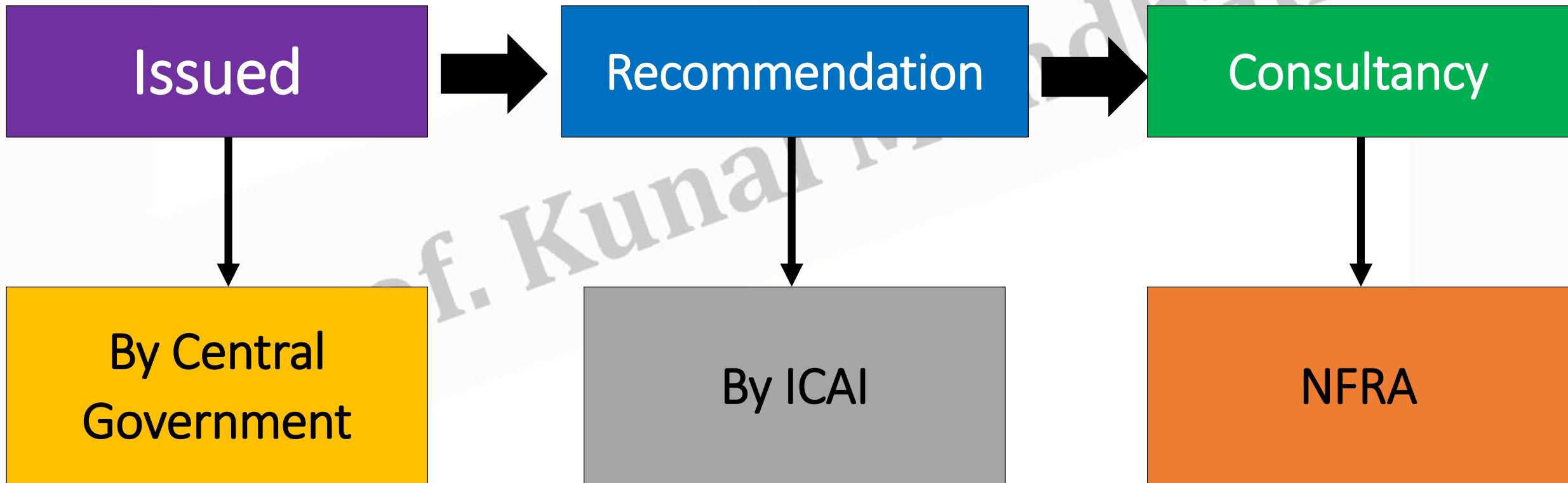
COMPANIES & BODY CORPORATE GOVERNED BY NFRA

- Listed Co.
- Unlisted Public Co. having
 - ✓ PUC \geq Rs. 500 Cr. or
 - ✓ T/O \geq Rs 100 Cr. or
 - ✓ O/s loans, deb, deposits \geq Rs. 500 Cr as on 31 Mar of preceding FY.
- Insurance Co, Banking Co, Electricity Co, Co. under special Act
- Body corporate or company or person as referred to NFRA by CG in public interest.
- Body corporate outside India, being S/A of Co. or Body corporate in India as ref. in a to d above, if the net-worth of such S/A exceeds 20% of consolidated net-worth.

Note:

- 1) Existing body corporate (other than above) shall inform the particulars of auditor to NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1.
- 2) Companies governed by NFRA shall continue to be governed for 3 years after it ceases to be governed as per above conditions.

Power to issue accounting standard [Sec. 133]



Board Report Contents(sec 134)

Contents (**REAL_DIRECTORS**)

- R** – Responsibility statement
- E** – Exact no. of B.M held.
- A** – Annual Return (Extracts)
- L** – Loan/ Guarantee/ Investments (particulars) (Sec. 186)

- D** – Dividend Recommendations
- I** – Independent directors - Comment
- R** – Risk Management Policy
- E** – Expectation/ comments on modified report (Statutory/ Cost/ secretarial audit)
- C** – CSR Spending details
- T** – Transactions with related party
- O** – Overall details of state of company affairs
- R** – Reserve transfer – details
- S** – Subsequent event

Signing of BR & annexures attached to it:

- a. If BoD authorises chairperson then signed by such chairperson.
- b. If BoD does not authorises any chairperson then signed by:

At least 2 directors (1 should be MD, if any) or,

by a director where there is only 1 director.

Directors Responsibility Statement

Shortcut:(**AAAGE**)

- **Should state:**

- 1) Accounting standards has been followed
- 2) Accounting policies are consistently selected and applied
- 3) Maintenance of accounting records
- 4) Going concern is followed
- 5) Ensure compliance of all other related laws

SEC 134

FS approved by BOD
(Sec. 134)

- Before submission to auditor
- Cannot be approved by teleconference / video meeting / circulation
- Signed by → Chairperson or 2 director (1 MD if any) + CEO + CFO + CS
OPC → 1 director

FS Submitted to auditor

Prepare Board Report

- As per contents of section 134 (REAL DIRECTOR)
- Including directors responsibility statement and management discussion analysis report
- Signed by → Chairman (if authorised) / 2 directors (1 MD if any)
- OPC → 1 director

File resolution approving
Board Report & FS with
ROC

MGT-14, within 30 days

SEC 136

Send

- Audited FS
- Board Report
- Auditors report

- To all members, trustee, other entitled
- At least 21 days before meeting → Less time valid if consent by
Share capital co → majority in no. + 95 % PUC
Guarantee co → majority in no. + 95 % voting right

SEC 137 In AGM adopt FS/AR/BR

File with ROC

- With AOC-4, CFS (AOC-4CFS) certified by CA / CS / CMA in practice
- Within 30 days of AGM (+30 Days – additional fees)

CSR [Sec. 135]

Applicable

Any 1

- 1) T/O – 1000 cr. or more
- 2) Net worth – 500 cr or more
- 3) Profit – 5 cr or more

During immediate preceding FY

Consisting of 3 or more directors (at least 1 should be independent director)

Meaning

Project / program specified in Sch. VII

Procedure

Constitute CSR Committee

CSR Committee will

- Formulate
- Recommend

a CSR policy and monitor

Board will ensure recommendation followed

Spend at least

2% of avg. net profit of preceding 3 FY

Sch VII Activity

CSR me Bhege – wo

- 1) C – Contribution to national defense fund / fund by C.G
- 2) S – Slum area develop sports develop (Rural area, Olympic, Paralympic)
- 3) R- Rural development
- 4) B- Basic things like hunger, poverty, malnutrition
- 5) H – Health care promotion
- 6) E- Education (promoting)
- 7) G- Gender equality projects
- 8) E- Environmental program
- 9) N- National heritage (protection)
- 10) G – Ganga clean prof.
- 11) E- Empower women
- 12) W – War widows
- 13) O – Other prescribed by CG

Not CSR Activity

Shortcut – PEON

- 1) P – Political party
- 2) E – Employees of Co. & family
- 3) O – Outside India.
- 4) N – Normal course of business

UNSPENT CSR AMOUNT

- If amt not spent on CSR, transfer such unspent amt to the fund specified in Sch VII, within 6 months of the expiry of FY.(provided it is not amt related to ongoing project)
- Also, if amt is spent in excess then such excess amt shall be adjusted in succeeding FY as may be prescribed.
- Any amt unspent related to ongoing project shall be transferred to Unspent CSR A/C within 30 days from end of the FY in scheduled bank. Such amt shall be utilized by the Co. only for obligation towards CSR within 3 FY from the date of such transfer, failing which the Co. shall transfer to the fund of Sch VII within 30 days from date of completion of the 3rd FY.

ADDITIONS IN SCH VII ACTIVITIES

- a) **Contribution to the PM CARES FUND**
- b) **Contribution to incubators or R&D projects funded by CG or SG or Agency or PSU of CG or SG.**
- c) **Contribution to public funded Universities; IITs; National Laboratories & Autonomous Bodies; Dept. of Biotechnology; Science & Tech; Pharmaceuticals; Ministry of Ayurveda, Yoga & Naturopathy, Homeopathy; Defense R&D Org; Indian Council of Agri. Research; Indian Council of Medical Research;**

Engaged in conducting research in science, tech, engi, medicine aimed at promoting Sustainable Development Goals.

Rights for copy of financial statements [Section 136]

Copy of financial statement, consolidated financial statement, audit report

Other than listed company

A copy is to be send to

1. Every member
 2. Trustee of debenture holders
 3. Other person
- 21 days before the date of meeting

Listed company

Deemed to serve the document if

- Copy made available for inspection at its registered office during the business hours for a period of 21 days before the meeting &
- Statement containing salient features of such documents are send in form AOC-3(AOC-3A for Co. req. to comply IND AS) or full document as the company deems fit delivers it to its members, trustee & other persons at least 21 days before the meeting.

NOTE:

1. Nidhi co. is not required to send notice to members holding
 - a) Shares not more than 1000 FV
 - b) $>1\%$ of PUC

w.e.l.



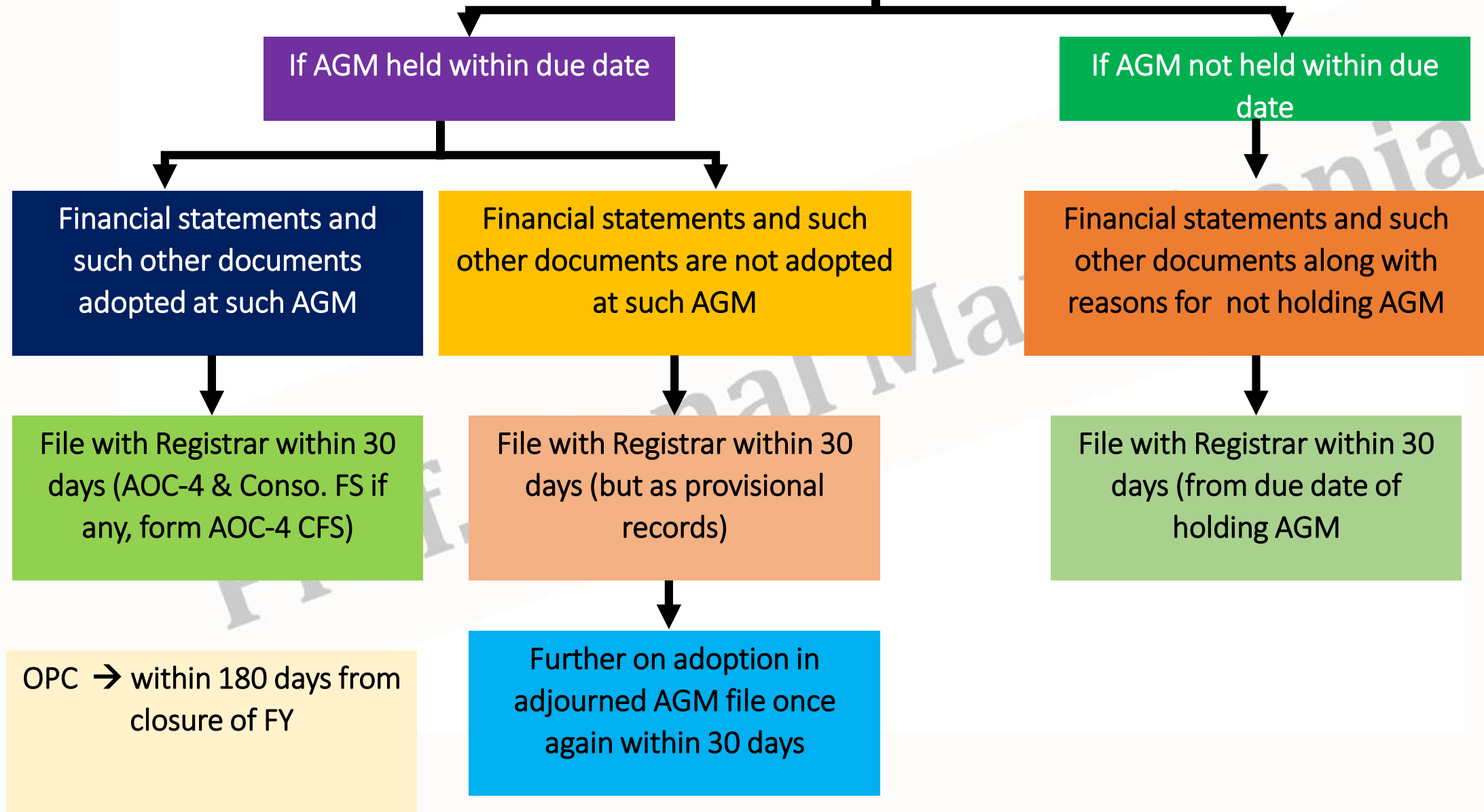
Publish in newspaper (Public Notice- Regional language)

2. In sec. 136, for sec. 8 Co. Instead of 21 days it is 14 days

3. Less than 21 days if agreed by,

- a) Co. having share capital: members holding $\geq 95\%$ of PUSC: OR
- b) Co. not having share capital: Members holding $\geq 95\%$ of total voting rights.

Filing of financial statement [Section 137]



Extensible Business Reporting Language (XBRL)

Meaning

- **Standardized language for comm. in electronic form to express, report or file financial info by Co.**
- **Data rich dialect of XML (Extensible mark up language)**

Benefits

1. **Automation, cost saving, faster, more reliable & more accurate handling of data.**
2. **Improve efficiency**
3. **Extensible & flexible**
4. **Participant in fin-info supply chain can be benefited**
5. **Enable producers & users to switch resources**

Mandatory Requirement for

- **Listed Co. & their Indian Subsidiaries**
- **Co. having PUC \geq 5 cr**
- **Co. having T/O \geq 100 cr**
- **Co. req. to comply with Ind AS**

Internal audit [Section 138]

APPLICABILITY



Following Class of companies are required to appoint an internal auditor (individual or firm or body corp.)

- Listed company
- Unlisted company having
 1. Paid up Capital not less than 50 crore, or
 2. Turnover not less than 200 crore, or
 3. Borrowing from banks or PFI not less than 100 crore, or
 4. Deposits not less than 25 crore
- Private company having
 1. Turnover of not less than 200 crore or
 2. Borrowings from banks or PFI not less than 100 crore.

(All above limits during preceding FY)

QUALIFICATION



- Any person certified as :
 1. Chartered accountant
 2. Cost accountant
 3. Such other professional as may be decided by board.
- May or may not be an employee of the company.
- CA or cost accountant whether in practice or not.



AUDIT & AUDITORS

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Part - I



Part - II



Part - III



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Qualifications of Auditor Sec. 141(1) (2)

- **CA under CA Act, 1949. + Holds COP**
- **Nationality is not imp.**
- **Firm qualified if majority of Partners is Qualified**

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Disqualifications of Auditor [Sec. 141 (3)]

(CA + COP) Still cannot do audit

To Be checked

On appointment

After Appointment

If disq. cannot be appointed as auditor [sec 141(3)]
Shortcut → BIG FIBRE ROPE

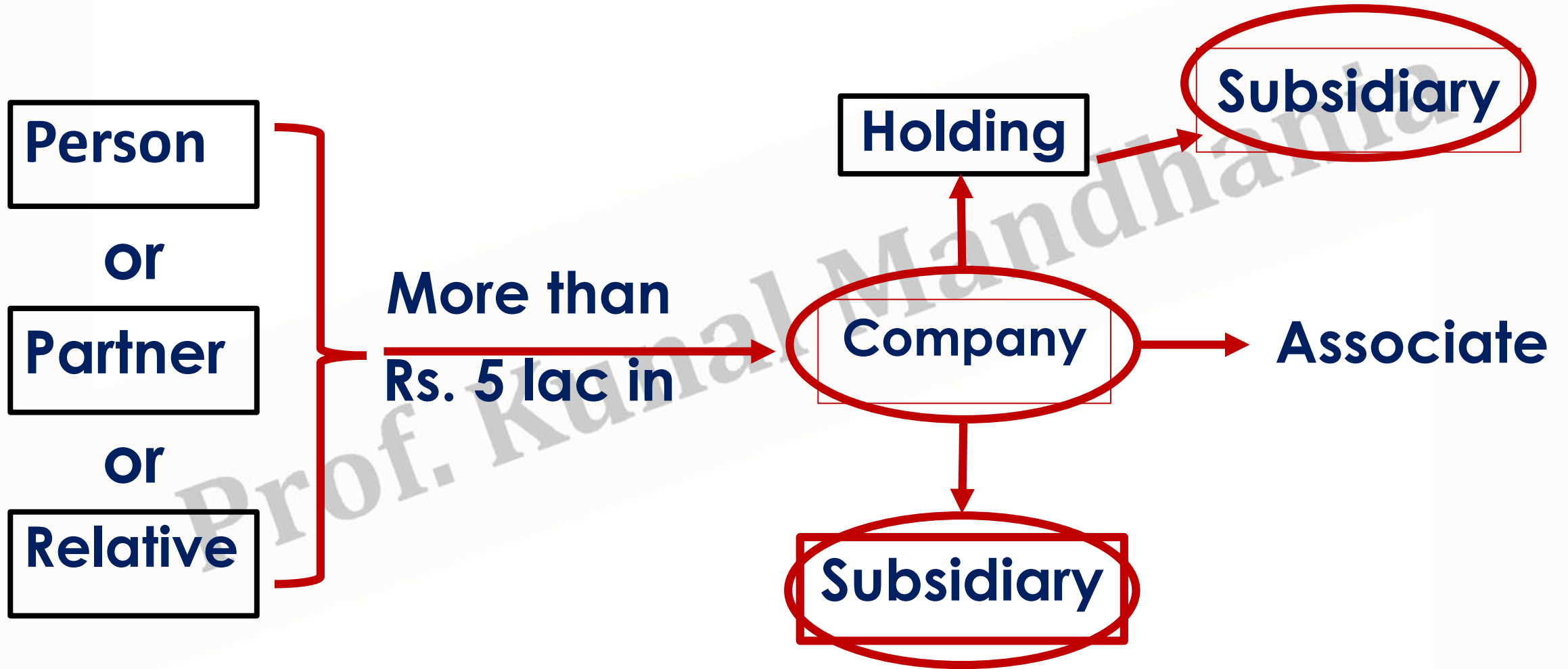
If disq. Attracts will leave office of auditor i.e. casual vacancy [sec 141(4)]

B- Body corporate

- Except L.L.P

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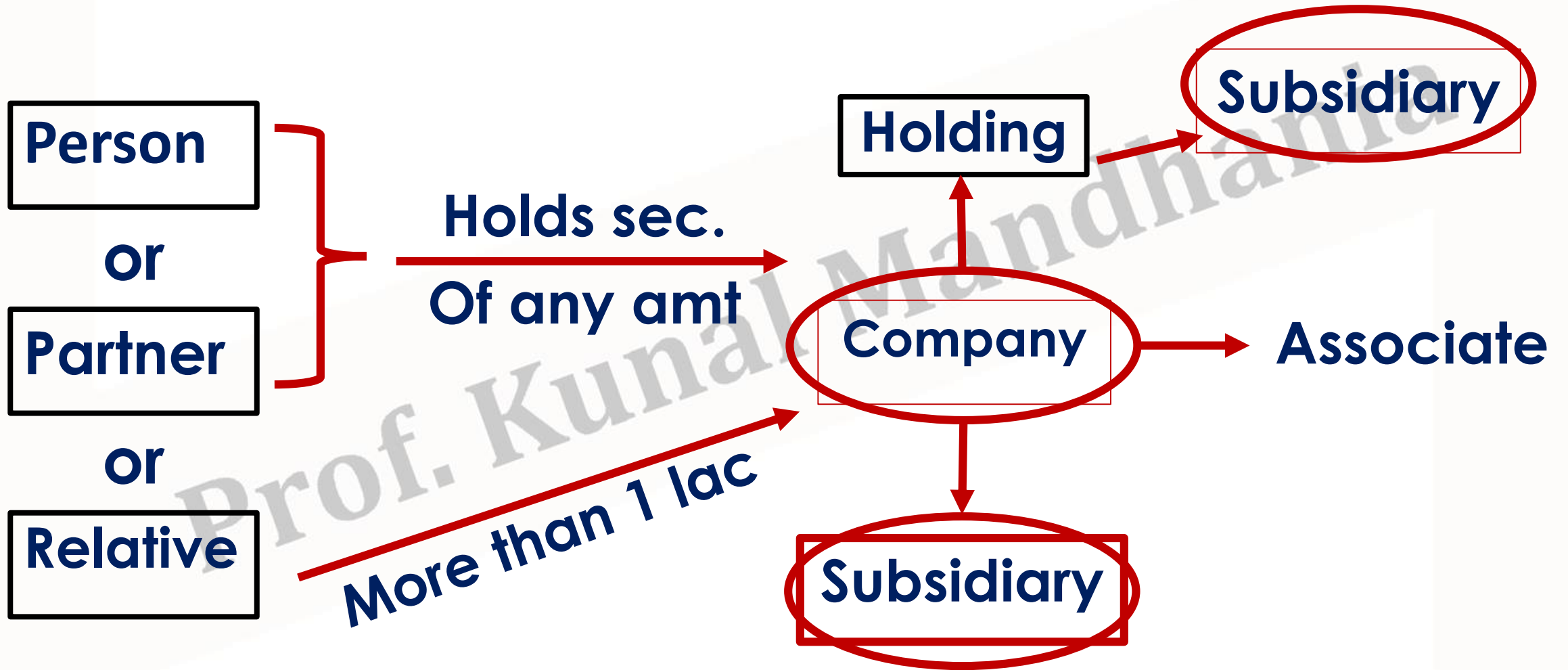
Indebtedness to Company



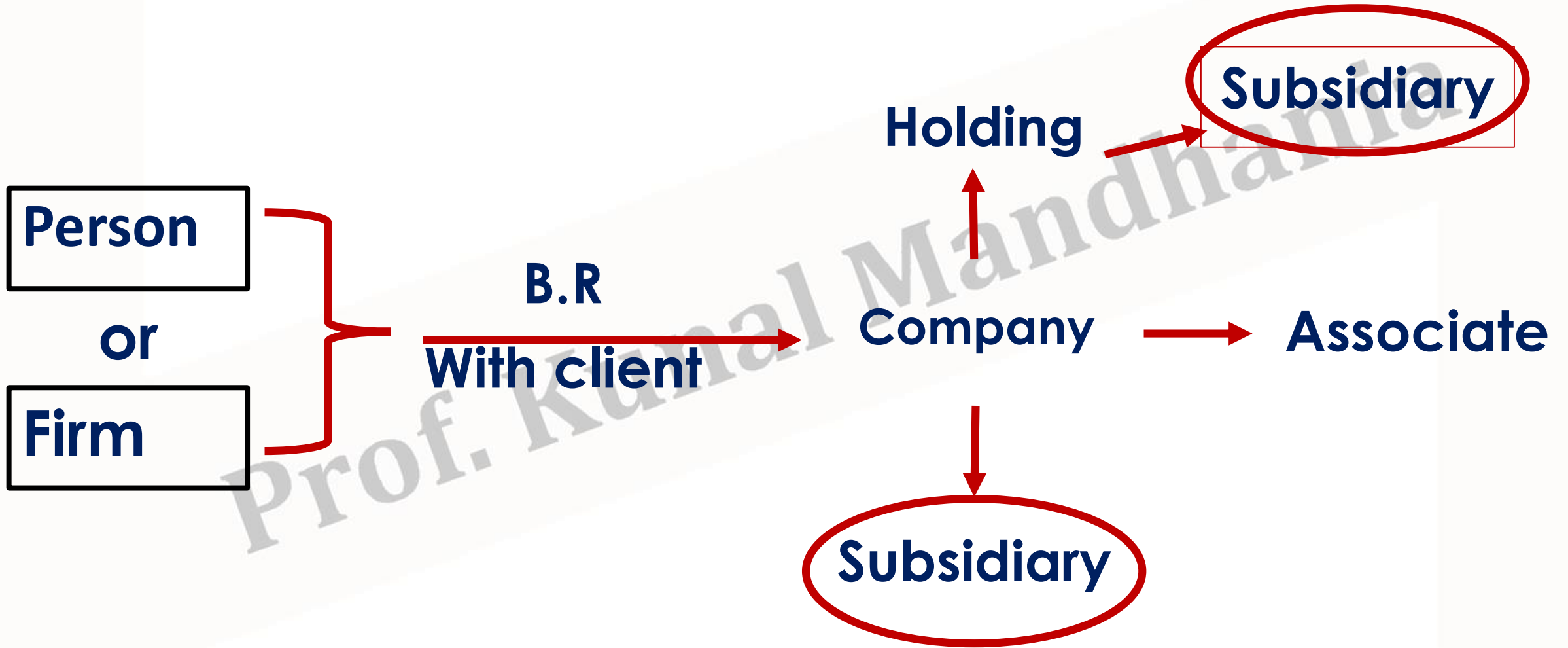
F → Full time Employment

Employment	That Co.	Other Co.
Part- Time	X	✓
Full-Time	X	X

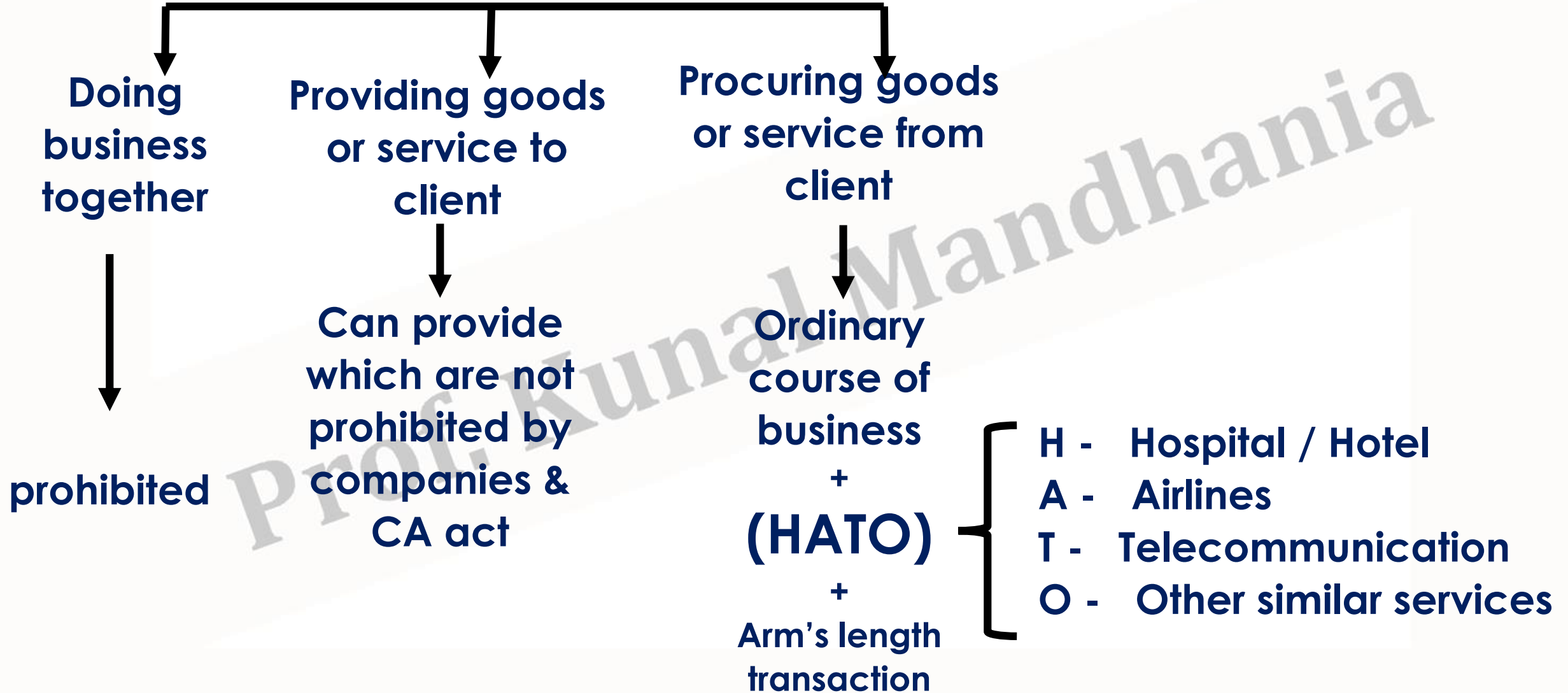
Interest in securities of Company



Business relationship



Business relationship



Relative in company

- a person whose relative is
- a Director or is in the employment of the Company as a director or key Managerial Personnel

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Employee

- an officer or employee of the company
- a person who is a partner, or who is in the employment, of an officer or employee of the company

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Restricted services(section 144).

Shortcut - ACADEMIC

- 1) **accounting** and book keeping services;
- 2) **Carry** out outsourced financial services;
- 3) **actuarial services**;
- 4) **design** and implementation of any financial information system;
- 5) **Engaged** in investment advisory or investment banking services;
- 6) **management** services
- 7) **internal audit**
- 8) **Carry** out any other kind of services as may be prescribed

Overall Limit

- 1 person = 20 company audit

Excludes

1. One person company
2. Dormant company
3. Small company
4. Private company having paid up capital less than 100 cr

Person who is Convict

- a person who has been convicted by a Court of an offence
- involving fraud and
- a period of ten years has not elapsed from the date of such conviction

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Certificate & Consent Letter (Sec 139)

→ Before appointment, auditor shall furnish to company

1. Written Consent

2. Certificate

a) auditor satisfies criteria provided in Sec. 141

b) in accordance with conditions prescribed (Rule 4)

i. Auditor eligible under CA Act, 1949

ii. Proposed appointment as per term under Act

iii. Proposed appointment is within limits under Act

iv. Details of proceedings against auditor pending w.r.t. professional matters as disclosed in certificate is true & correct

Appointment of First Auditor [Tenure till 1st AGM]

Other Company [Sec. 139(6)]

Govt. Company [Sec. 139(7)]

By BOD

If BOD fails

By CAG

If CAG fails

If BOD fails

Within 30 days from incorporation

Intimate to shareholders

Within 60 days from incorp.

By BOD
Within 30 days

Intimate to shareholders

Naming in AOA not sufficient

By shareholders

By shareholders

Within 90 days from intimation in EGM

Within 60 days from intimation in EGM

Take valid B.M & Pass B.R

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Appointment of subsequent Auditor

Other Company [139(1)]

- In AGM
- By shareholders
- By passing O.R.
- Tenure



1 term = 5 years



i.e.. from 1st AGM to 6th AGM

- In intervening AGM's (2nd, 3rd, 4th, 5th) Shareholders ratifies auditor by passing O.R
- After appointment



Co. intimates to ROC within 15 days



(ADT-1)

Govt. Company [139(5)]

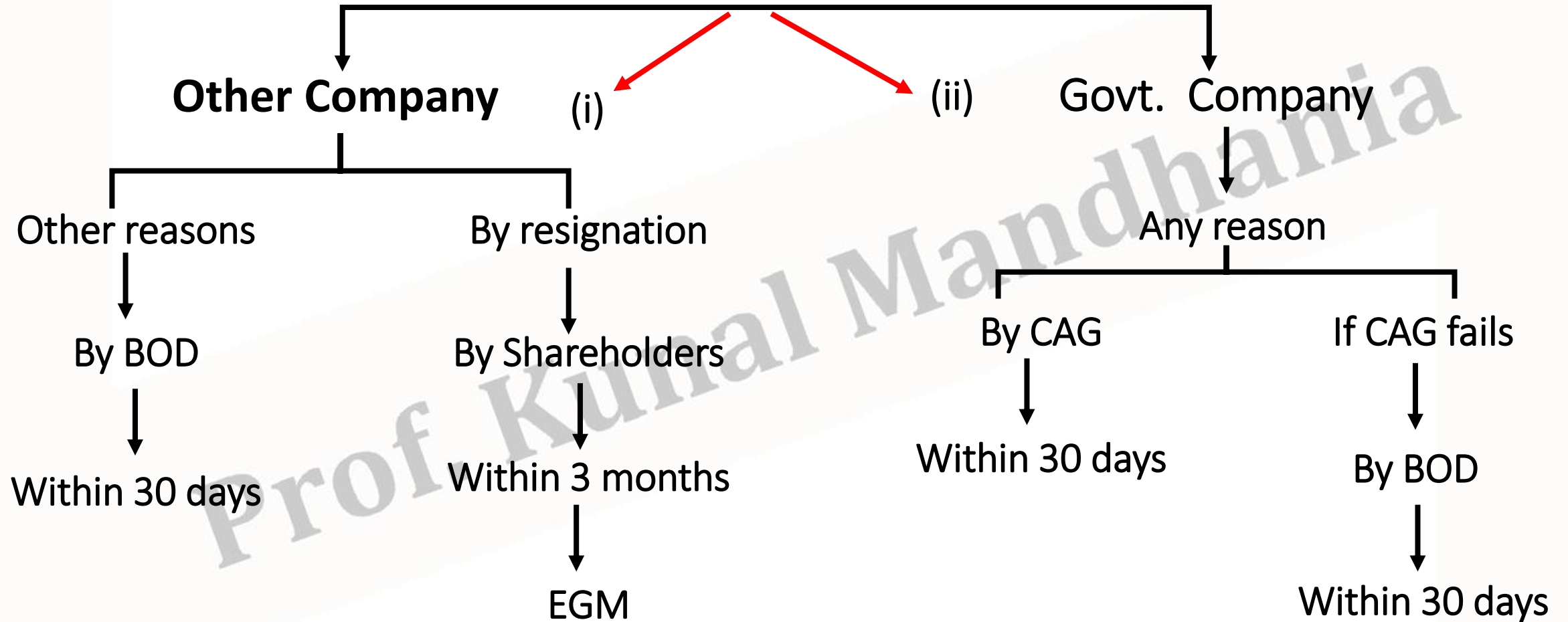
- By CAG
- Within 180 days from commencement of F.Y.

Tenure



AGM to AGM

Appointment in case of Casual vacancy [Sec. 139(8)]



Note :- In case of resignation, Auditor within 30 days intimate to

→ (1) Company, (2) ROC, (3) CAG(Govt. Co.) in form No. – ADT-3

Reappointment of Auditor [139(9)]

Not eligible for reappointment if rotation applicable & term expired (individual – 5yrs / firm – 2 terms i.e.. 10 yrs.)

Same auditor appointed earlier can be reappointed except

- 1) Disqualified [U/s 141(3) + 139(2)(3)(4)]**
- 2) Unwilling to continue**
- 3) Company has appointed somebody else instead of him**

Automatic Reappointment [139(10)]

If no new auditor is appointed

+

**Auditor can be reappointed
[not disqualified u/s 139(9)]**

↓

Existing auditor will be automatically reappointed for next tenure

Note: if no new auditor appointed + retiring auditor cannot be reappointed → Casual vacancy → filled by BOD within 30 days

Manner & Procedure of Selection of Auditors (Rule 3)

General Points

1. Qualification & experience of auditor to be considered by board or AC
2. Board /AC shall pay regards to
 - a) Order of professional misconduct against auditor
 - b) Proceeding of professional misconduct pending against proposed auditor
 - c) Board/ AC may call for other information as they deem fit

Where company is **not** required to constitute Audit Committee

Board



Consider & recommend



Members



In AGM

Where company is required to constitute Audit Committee

1. AC → recommend → Board
2. Board

Agrees



Recommend



Members

Disagrees



Refer AC for reconsideration



AC decides not to reconsider its original recommendation

Board Agrees



Recommend



Members

Board Disagrees



Record reasons
Send its own recommendation to members

Rotation Applicability

Public

Private

Listed

Unlisted

Or

Paid up Capital is 50 cr or more

Always Applicable

Paid up share Capital of 10 cr or more

Public borrowing from

- F.I
- Bank
- Public Deposit

50 cr or more

Rotation – [Sec. 139(2)]

- CA Proprietary firm → Max 1 term
- CA Partnership firm / LLP → Max 2 term
- Cooling period for both → 5 years
- In cooling period cannot appoint
 - a) Same firm
 - b) Other firm with any common partner
 - c) Firm with same network i.e. same brand name , trade name or common control [Sec. 139(4)]
- Sec 139(3) → In same auditing firm → members can decide to rotate partners & term

Removal, Resignation & Special Notice (Sec. 140)

Sec. 140(1)

Before completion of tenure (next AGM)
 ↓
 Pass B.R
 ↓
 Within 30 days take approval from C.G (ADT-2)
 ↓
 Within 60 days of receipt of approval take EGM & pass SR
 ↓
 Follow procedure for app of new auditor

Sec. 140(2) & (3)

Resignation by auditor
 Sec. 140(2): file ADT-3 indicating reasons & facts
file with
 a) Company
 b) Registrar
 c) CAG – if govt co.
 Within 30 days from date of resignation
 Sec. 140(3): Fine
 Min: 50000 or remuneration of auditor, w.e.l.
 Continuing failure → further penalty of 500 per day subj to max 500000

Sec 140(4)

Special Notice for not reappointing retiring auditor

Shareholders

Special Notice (at least 14 clear days) to appoint new auditor

Company

Send Copy

Retiring Auditor and remaining shareholders

Retiring auditor can give representation

Co. will circulate it to all shareholders (at least 7 days before GM) or he can represent in GM

In AGM

Shareholders pass SR to appoint new Auditor

After Appointment

- Retiring auditor will give written consent to new auditor
- Intimate to ROC (ADT-1) in 15 days

Sec. 140(5)

By Tribunal [Sec. 140(5)]

On application of C.G / any person

If tribunal satisfied auditor acted fraudulently

Within 15 days can order auditor to vacate his office

Cannot be auditor in any co. for 5 years

Sec. 447

Remuneration to auditor Sec. 142

Jo appoint karega wohi remuneration bhi fix karega

Other Company →	BOD	-	✓
	Shareholders	-	✓

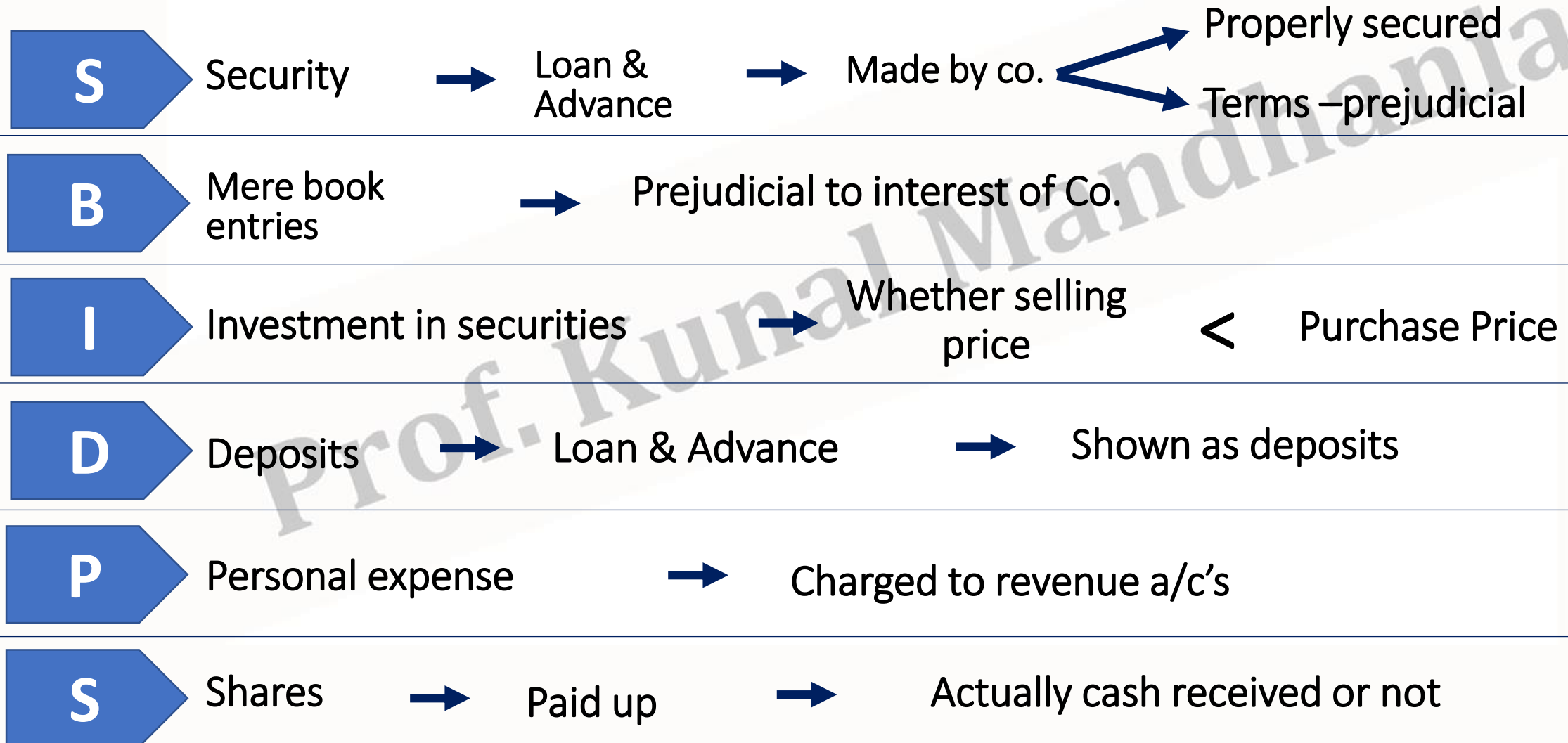
Except Government Company

→ appointed by CAG

→ Remuneration fixed by shareholders

Sec. 143(1) → Duty to enquire

- Enquire means to inquire & report only in case of discrepancy



Sec. 143(3)– Principal Assertions

I

Information &
Explanation



Needed to be
obtained



Has been
obtained

A

A.S



Complied or not

B

Books of accounts



Properly maintained

B

B/s & P&L



In agreement with BOA

B

Branch Audit Report



Timely submitted to H.A

C

Control system



Adequate

D

Directors



Disqualified



u/s 164(2)

Sec. 143(3)– Principal Assertions

E

Effect



Matters having adverse effect on functioning of company

F

Further Points



Pending litigations

Provision made

Delay

Specified bank notes



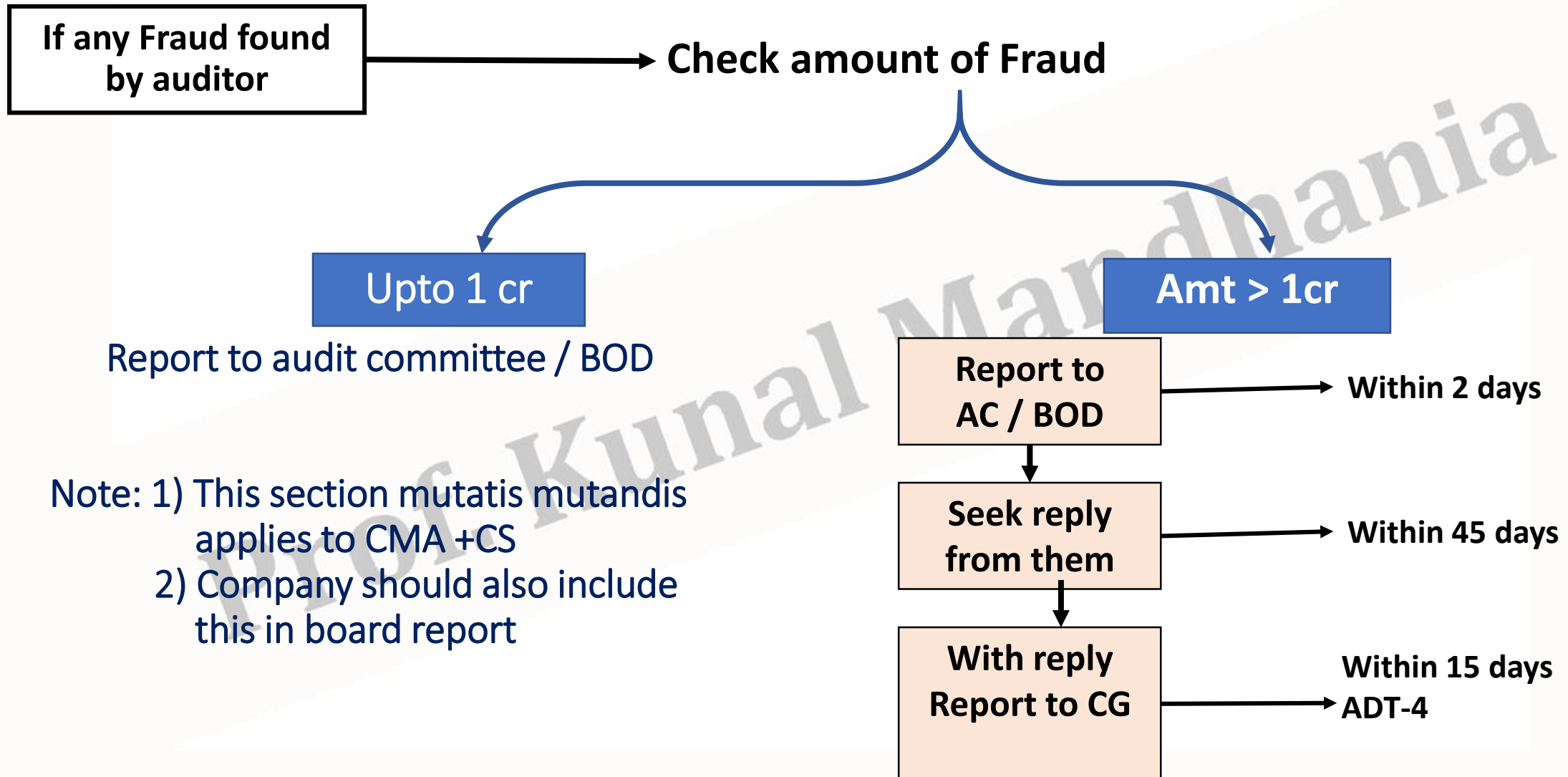
Company has disclosed impact

For material foreseeable losses

In transfer of amount to IEPF

NOT APPLICABLE NOW

Sec. 143 (12) → Fraud Reporting



Audit Committee (Sec 177)

Applicability

- Listed Company
- All Unlisted Public Company satisfying any of the following Condition
 1. PUC \geq 10 Crore
 2. T/o \geq 100 Crore
 3. O/s Loan / borrowing / Debentures / Deposits in aggregate \geq 50 Crore
- AC should have min 3 Directors → independent Director majority
- AC before commencement of Act → Reconstitute within 1 Year
- Auditors & KMP → right to be heard in meeting of AC but not right to vote

Functions

1. Recommend appointment, remuneration & terms of appointment of auditor
2. Review & monitor auditors independence & performance
3. Examination of FS & AR
4. Approval of subsequent modification of transaction of company with related party
5. Scrutiny of inter-corporate loans & investments
6. Valuation of undertaking of company
7. Evaluation of internal financial controls & risk management system
8. Monitoring end use of funds through public offers

Powers

1. Call for comments of auditor on
 - a) internal control system
 - b) scope of audit
 - c) observations made
2. Review FS before submission to BOD
3. Discuss issue w.r.t. FS with Auditor & mgt
4. Authority to investigate into matters relating to any of the above
5. Power to obtain professional advice from external sources & access to records of company

Cost Record applicability

Cost Records (CRA - 1)

Applicable

(1) Having product of Regulated / unregulated sector

+

(2) Overall T/O of C.Y \geq 35 Cr

Not Applicable

(1) Foreign co. having liaison office in India

(2) Micro & small enterprises

Note

(1) Regulated products
(6 product)



S – Sugar

E – Electricity

T – Telecommunication

P – Petroleum

D – Drugs / Pharma

F – Fertilizer

(2) Unregulated Product



33 products

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Cost Audit

Applicable

Not Applicable

(1) Maintaining cost records

(1) Revenue from export

(2)

+
Regulated **Un-regulated**

≥ 75% of Total revenue

(a) Overall T/O

50 Cr or more

100 Cr or more

+

(2) Operating in SEZ (Don't count T/O limit)

(b) Individual T/O

25 Cr or more

35 Cr or more

(3) Engaged in generation of electricity for captive consumption

1. The cost auditor shall be **appointed by the board** on recommendations of audit committee wherever applicable **within 180 days of the commencement of every financial year.**
2. The company shall **inform the cost auditor** of his or its appointment as such and **file a notice of such appointment with the Central Government in Form CRA-2** along with prescribed fee, within a period of:
 - a) 30 days of the board meeting in which such appointment is made; or
 - b) 180 days of the commencement of the financial year **whichever is earlier.**
3. The **term of the cost auditor shall be till the expiry of 180 days from the closure of the financial year or till he submits the cost audit report**
4. Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in **Form CRA-3.**
5. The **duly signed cost audit report shall be submitted to the Board of Directors** of the company **within a period of 180 days from the closure of the financial year**
6. A company shall furnish a copy of the cost audit report **to Central Government along with full information and explanation on every reservation or qualification contained therein, within 30 days** from the date of receipt of the cost audit report in **Form CRA-4 in XBRL format.**

SPECIAL CONTRACTS

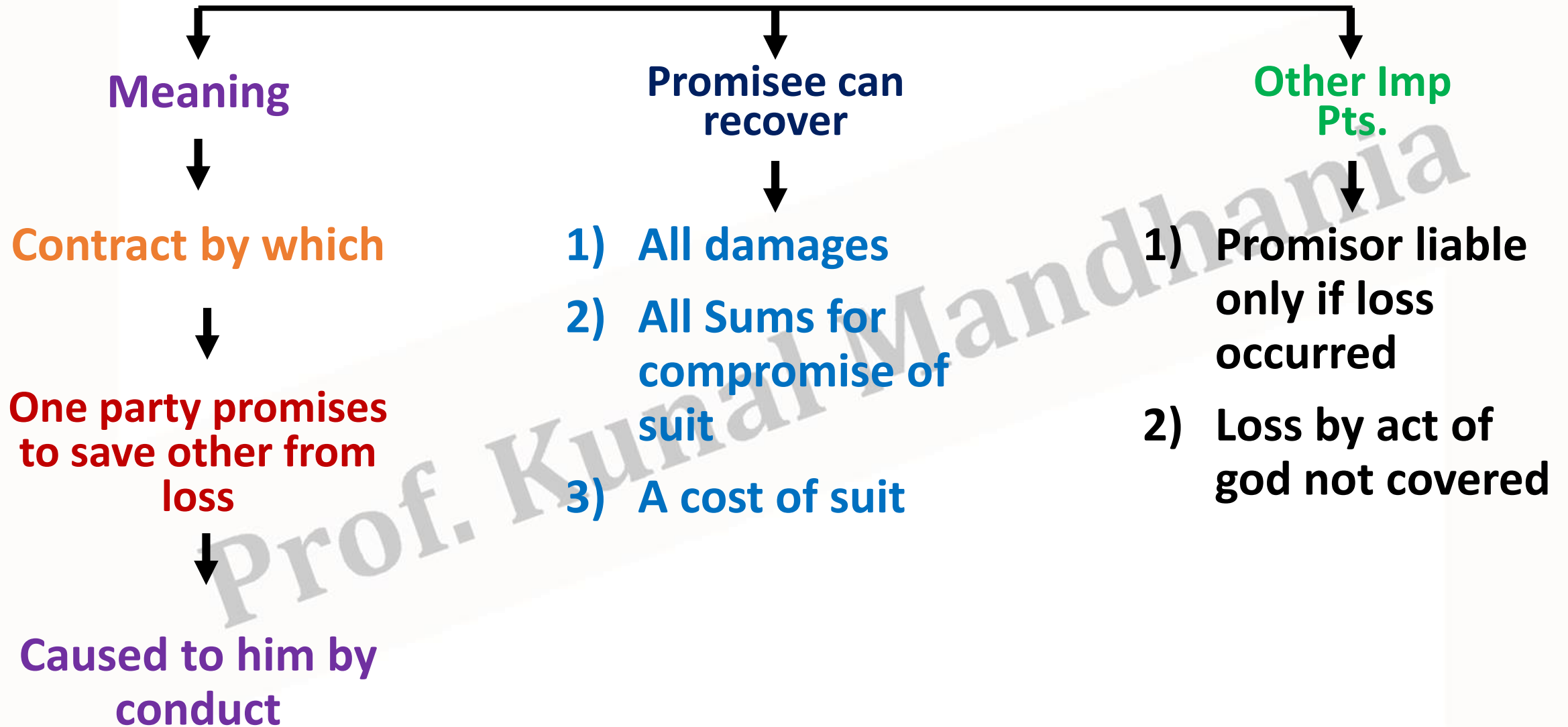
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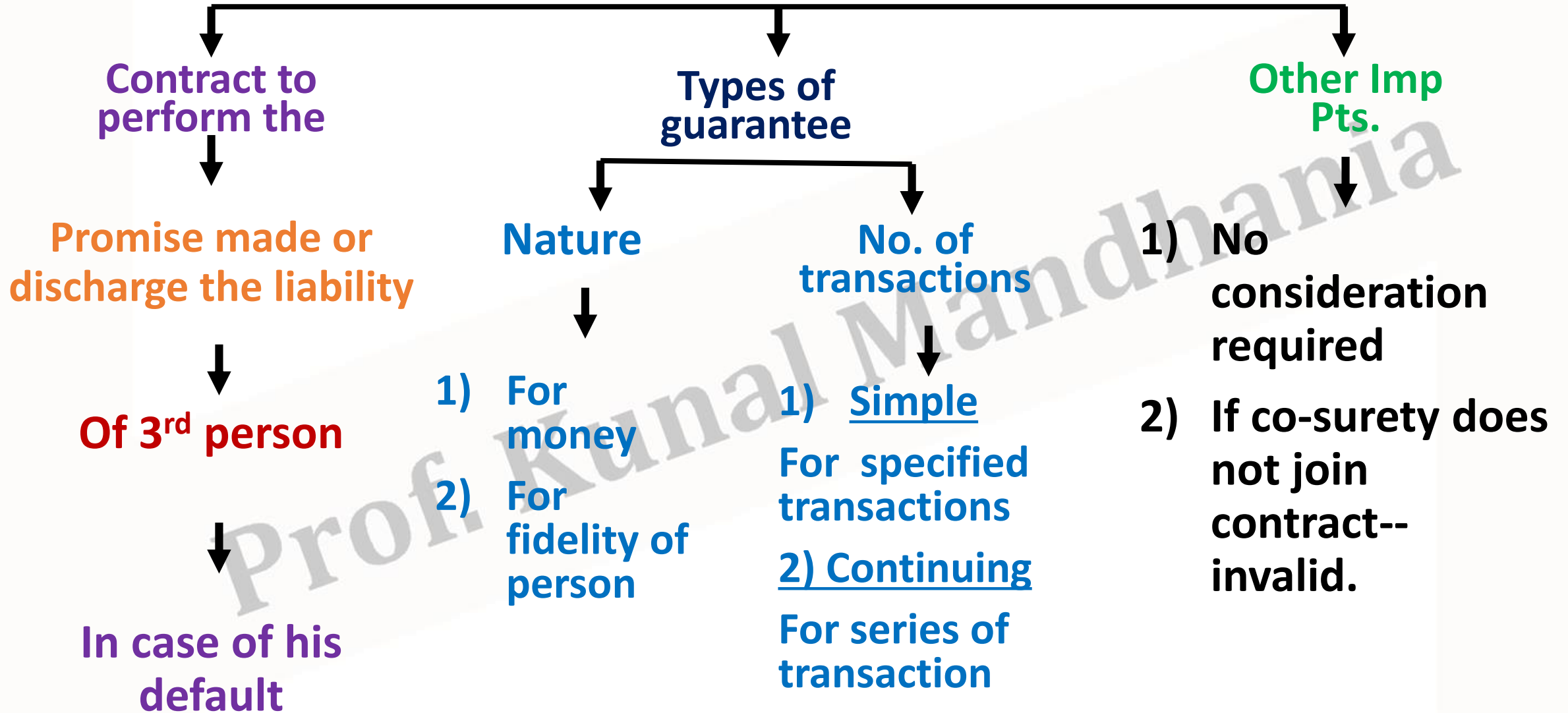


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CONTRACT OF INDEMNITY



CONTRACT OF GUARANTEE



DISCHARGE OF CONTINUOUS GUARANTEE

By Revocation

- 1) By notice of revocation
- 2) By surety's death

By Conduct of creditor

- 1) By variation of terms & conditions
- 2) By release of principal debtor.
- 3) Composition with P.D not to sue
- 4) Creditors act or omission

Invalidation of contract

- 1) Misrepresentation
- 2) Fraud
- 3) Co-surety fails to join

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Note

- 1) Forbearance to sue does not discharge surety
- 2) If agreement made with 3rd person not to sue does not discharge contract.

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Bailment is

Delivery of goods (Only movable goods)

By one person to another for some **Purpose**

Once that purpose is accomplished, goods will be **returned**

- 2 parties → Bailor and Bailee
- Types → Gratuitous and Non-gratuitous

Question

- **Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:**
 - 1) V parks his car at a parking lot, locks it, and keeps the keys with himself.**
 - 2) Seizure of goods by Custom Authorities.**

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Duties of Bailee

1. To take reasonable care
2. No unauthorise use
3. Not to mix goods with own goods
4. To return goods (after purpose accomplished)
5. Duty to deliver accretion

Rights of Bailor

1. Right to claim compensation if bailee does not fulfill duty
2. To terminate bailment (anytime) if unauthorise use
3. Demand return of goods anytime in gratuitous bailment (No compensation except if loss exceed profit.)

Duties of bailor- Disclose faults in goods [Sec.150]

Liability for Defects in Goods

In case of Gratuitous Bailment

Bailor is liable only for those losses which arise due to non-disclosed risks

In case of Non- Gratuitous Bailment

Bailor is liable for damages whether or not he was aware of the existence of faults

Bear Expenses [Sec. 158]

Expenses of Bailment

In case of Gratuitous Bailment

Bailor shall repay to Bailee, all necessary expenses incurred by him for the purpose of Bailment

In case of Non- Gratuitous Bailment

Bailor is liable to repay only extra-ordinary expenses, and not the ordinary expenses.

Indemnify Bailee [Sec. 159 & 164]

To indemnify Bailee

Premature Termination of Gratuitous Bailment

- Bailor has the right to terminate the Gratuitous Bailment even if is for particular period.
- In such a case, Bailor has to indemnify the Bailee the excess of loss over benefit.

When Bailor's title is defective

Bailor is responsible to the Bailee for any loss which the Bailee may sustain by reason that the Bailor was not entitled to make Bailment

Rights of Bailee

- 1) Enforcement of bailor's duties
- 2) Deliver goods to any of the joint bailor
- 3) Deliver goods to bailor (without title) without incurring any liability to true owner
- 4) Particular lien

Finder of goods

Rights

- 1) Can retain possession against anybody except true owner.
- 2) To claim necessary expenses incurred & lien for it
- 3) To claim reward (if announced) & sue for it
- 4) Sale if
 - a) Perishable goods danger of perishing
 - b) Lawful charges amount to $\frac{2}{3}$ rd of total value

Duties

- 1) Take reasonable care
- 2) Find true owner of goods & return
- 3) Deliver accretion
- 4) No unauthorise use
- 5) Not to mix goods

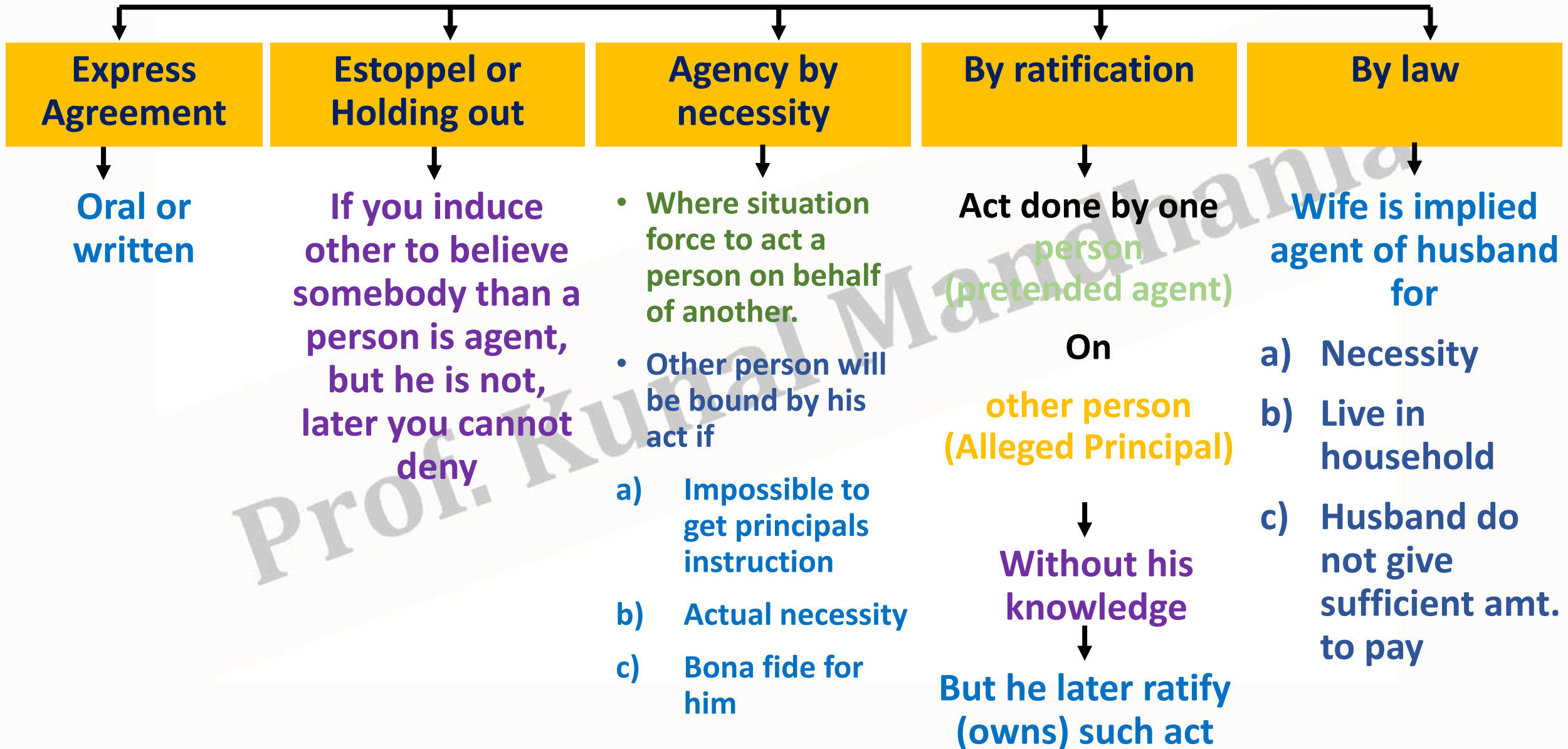
Pledge

- 1) Pledge is bailment only for purpose of keeping goods as security
- 2) It is also bailment so all duties/ rights of bailor and bailee applies to Pawnor and Pawnee
- 3) Pawnee can retain goods for
 - a) Payment
 - b) Interest
 - c) All necessary exp.
- 4) Lien also applicable for fresh advance
- 5) Pawnee can also claim extra ordinary expenses
- 6) If Pawnor makes default, Pawnee can
 - a) Sue pawnor
 - b) Lien
 - c) Re-sell(after notice)

Agency

1. Act of Agent is act of Principal
2. Agent is competent to do what principal can do
3. Principal cannot be minor or person of unsound mind but Agent can
4. Consideration not necessary

Modes of Creating Agency



Rights of agent

- 1) Retain**
 - a) Remuneration
 - b) Money /Expenses paid by him
From total money
- 2) To remuneration**
- 3) Lien until amount is paid
(General lien)**
- 4) Right to be indemnified for**
 - a) Lawful act done
 - b) Injury because of principal's

Duties of Agent

- 1. Act on direction of principal
(otherwise liable for loss)**
- 2. Act with reasonable diligence**
- 3. Render proper accounts when
asked**
- 4. Pay all sums to principal when
asked for**
- 5. In difficulty or unusual cases, ask
for instructions**
- 6. Not to make secret profit. (else
principal will recover)**

Where agent personally liable

Shortcut – **FEATURES**

- F** → **F**oreign principal
- E** → **E**xpressly provides
- A** → **A**gency coupled with interest
- T** → **T**rade usage or custom
- U** → **U**ndisclosed principal
- R** → **R**eceives money or pay money by mistake/fraud
- E** → Principal doesn't **E**xist (e.g. Promoter)
- S** → Principal cannot be **S**ued (e.g. minor, idiot)



NEGOTIABLE INSTRUMENT ACT

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Part -I



Part -II



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Negotiable ⇒ Quick Revision Notes.

① Promissory note (Sec-4).

- Promise to pay. (No acknowledgement of debt)
- unconditional Promise (condition valid if certain to happen) e.g. death.
- Amt certain.
- Promise to pay money only.
- cannot be bearer at all.

② BOE (Sec-5)

- order to pay.
- All rules same like P.N. ~~except~~
- cannot be bearer on demand, can be bearer after specified time.
- Drawee must be certain or atleast capable of being made certain.

③ Distinguish between BOE & P.N.

शुद्धत → Ye same question 100% exam mein aayega or else I promise to give party to bearer of question paper set. ^

particulars/Basis

① Identical / same drawer / payee.

② Acceptance.

③ Promise / order.

④ Parties.

⑤ Bearer.

⑥ sets.

BOE

can be same

Required

order to pay

① Drawer ② drawee
③ Payee.

cannot be bearer on demand.

can be drawn in sets.

P.N.

different.

Not required.

promise to pay.

① maker
② payee.

cannot be bearer at all.

cannot be drawn in sets.

④ cheque :- [Sec. 6].

→ also BOE but where drawee is a banker.

→ IS always a demand instrument, not a time instrument.

→ cheque can be crossed (giving instruction not to pay to over counter)

→ Types of crossing.

① General → cheque paid only to bankers.

② Special → parallel line → cheque paid only to specified banker.
bank name written

③ Not negotiable crossing [Sec. 130] → contains not-negotiable words.
→ Even then negotiable
→ once title gets defective no body can claim good title not even H.D.C

④ A/c Payee crossing / Restrictive crossing. → contains word ~~not negotiable~~ A/c Payee
→ cheque not negotiable.

→ Liability of Bankers

Collecting Banker

Sec. 131

Never liable if
Collection in due course

- (Sec 10)
- (i) As per Apparent tenor.
 - (ii) In good faith.
 - (iii) Without Negligence.

TQ. Paying Banker

Liability ^{Sec. 129.}

- (i) Drawer's signature forged.
- (ii) Gen. crossing paid at counter.
- (iii) Special crossing paid to other banker.

Sec. 86 & 126

Protection

- (i) Any endorser's + PD signature forged.
- (ii) Gen. crossing paid over to banker + PDC.
- (iii) Special crossing paid to specified banker.
- (iv) Bearer cheque

* Non-presentment of cheque within reasonable time (sec. 84). (P.Q).

If Drawer had sufficient bal. when issued cheque → holder fails to present cheque in reasonable time → Banker becomes bankrupt → Drawer is discharged from liability.

* Bouncing / Dishonour of cheque → [sec. 138].
Punishment

Conditions.

(i) Issued cheque to discharge a debt.

(ii) Insufficiency of fund (including stop payment).

(iii) Cheque paid within reasonable time (3 months).

(iv) Notice to drawer → within 30 days.
Time to pay → within 15 days.
Sue in court → -11- 1 month

2 times → fine
cheque amt
or
2 years → Impr.
~~Imprison.~~
or
both.

Note:

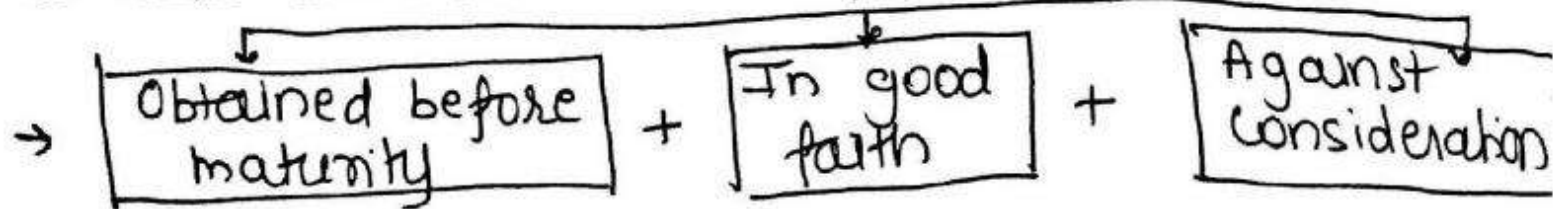
- (i) If cheque issued by company → officer in default will be liable. (Sec. 141).
- (ii) Cheque issued by promoter/officer of Co. having no authority, on behalf of Co.
↓
Neither such person, nor Co. is liable u/s 138 but holder recovers money from promoter or such officer.
- (iii) offence under this act → compoundable.
- (iv) Trf of pending cases. [Sec. 142A].
 - (i) If complaint pending in court of 142(2) → All subsequent cases filed with same court.
 - (ii) If more than 1 case by same payee/HDC against drawer in different courts → All cases trf to court u/s 142(2).

⑤ Holder. [sec. 8].

- Rights $\left\{ \begin{array}{l} \text{to possess instrument in it's own name} \\ \text{to recover amt} \end{array} \right.$
- Gets title of transferor.
- P.O. alert.

- If a party prohibited from court to receive amt he is not holder.
- One who finds cheque is not holder.
- one who steals or forges is not holder.

⑥ HDC [sec. 9]*



- Can claim money in all situations except:

(i) Forgery.

(ii) Non-negotiable crossing → some unlawful mean used.

- Gets better title than transferor.
except subject to stamp duty paid for it.
- can recover from original parties (without prior notice)
- can recover from other prior parties (subject to notice of dishonour)
[Sec. 36] *use in P.D.
- holder who gets instrument from HDC gets good title i.e. title of HDC (sec. 53)*
- HDC gets good title even when transferor's title is defective (sec. 58)* (e.g. fraud)

⑦ Distinguish betⁿ holder and HDC
Shortcut → Same Que. RTMNU - K-Paper #1 - First page 4 chapa thq.

<u>Basis</u>	<u>Holder</u>	<u>HDC</u>
(i) R-Right to recover	original party.	All prior parties (sec-36).
(ii) T- title.	of transferor.	Better title than transferor. → only before maturity.
(iii) m-maturity	even after maturity.	
(iv) N - Nature	write definition of sec-8 & 9	
(v) U - unlawful means. if acquired by prior party	Bad title	Good title except forgery.
(vi) F - Fictitious bill	No title	Good title.
(vii) P → Prior parties privileges.	No special privilege.	Better many special privilege.
(viii) Consideration	Not compulsory	Compulsory.

nia

⑧ Privileges of HDC. → (Shastri) ↓

* Same like IPS officer to claim D.A in FUEL Price hike

- ① I → Inchoate instrument → Can claim full amt subject to stamp duty paid. [sec-20].
- ② P → Prior Parties → Can recover from all prior parties
- ③ S → Sue → HDC can sue on it's own name. [sec-36].
- ④ D → Defects gets eliminated.
- ⑤ A → Unauthorise act of Agent → Can recover money.
- ⑥ F → Fictitious bill → can claim money.
- ⑦ U → Unlawful means → can have good title except [sec-58]
by prior parties forgery.
- ⑧ E → Estoppel.

* Endorsements / Indorsements. → ~~Term~~

<u>Type.</u>	<u>How.</u>	<u>Effect:</u>
① General/blank.	→ sign, without naming endorsee.	→ Order inst. becomes bearer.
② Special/Full.	→ Sign + Also name endorsee.	→ order remains order.
③ Restrictive	→ writing word. only, on pay him on my acc etc.	→ stops further negotiations
④ Partial.	→ transfer only part amount.	→ Invalid. → up except payment in parts and endor. for remaining

⑤ Sans recourse (sec-52) → writing it → Person who makes it not liable to any subseq. endorsee.

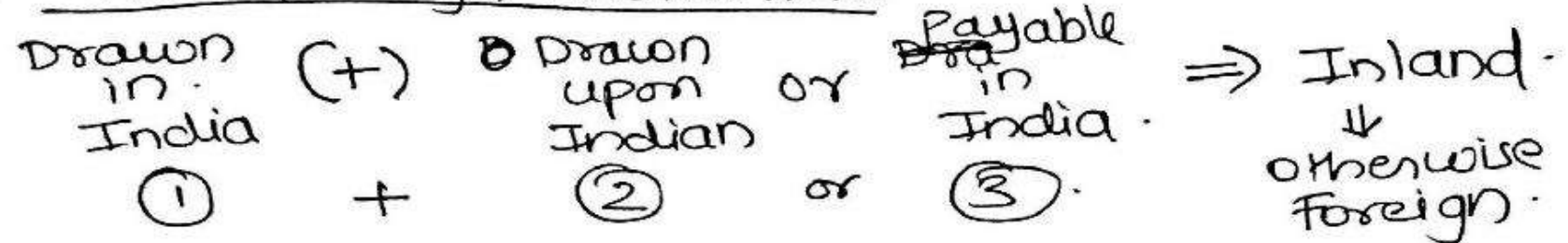
⑥ Facultative end. → writing it →
• Waives right to receive notice of dishonour.
• So, HPL can sue him even if notice not given.

⑦ Sans Frais. → writing it → Endorser relieves himself from any further expense in case of dishonour.

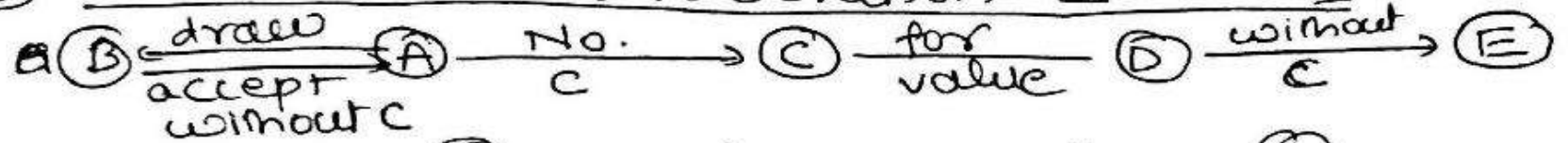
★ Other Imp Points of chapter for Exams.

① Minor can be a party to N.I but can not be held liable under N.I act (Sec.26).

② Inland / Foreign Instrument.

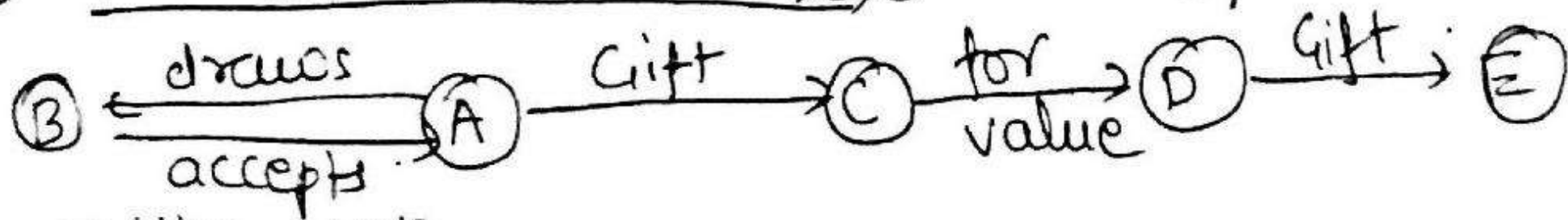


③ N.I without consideration^(c). [Sec.43].



- Conclusion →
- (A) cannot recover from (B).
 - (C) cannot —||— (B) & (A).
 - (D) (HDC) can recover from all prior parties.
 - (E) can recover from all prior parties as it gets title of HDC. (D).
 - (E) cannot recover from (D) as no consideration between immediate parties.

④ Partial Consideration (C) (sec. 44) / Inchoate.



written - 10K.
Actual → 7K.
cons.

Conclusion → A can recover only 7K from B as only 7K consideration betⁿ immediate parties

→ C being just holder gets right of A → so ~~can~~ same like A.

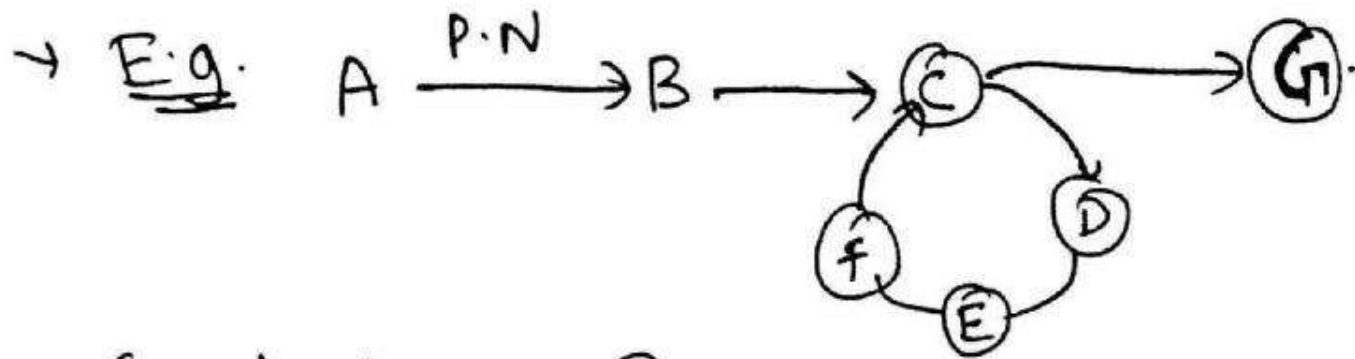
→ D being HDC can recover full 10K.

→ E → holder gets right of D → so same like D.

⑤ Negotiation back [sec. 90].

→ If instrument comes back to any prior endorser.

→ Effect → All parties between circulation discharged from liability.



Conclusion → G can recover only from A, B, C but cannot recover from F, E, D as parties in circulation discharged.

Variation / Exception → If party to whom negotiation back is made, earlier made a sans recourse endorsement, all prior parties even in circulation, continues to be liable.

E.g → In above question, if (C) earlier made sans recourse endorsement, then (G) can recover from A, B, F, E, D but not from (C) has to be made sans recourse endors.

⑥ Material Alteration.

Yes

→ Change of
Time, place, Amt,
Parties; Date.

→ vice-versa.

→ vice-versa.

→ vice-versa.

No

Authorised / Allowed by
Act.

→ Filling blank of
inchoate instrument.

← → Conversion of blank
into full.

← Crossing of cheque

← Conversion of gen. cross
into special, into not-reg.
into A/c Payee.

→ Adding 'or order' in
order instrument.

Effect of material Alteration → All parties who have not consented to material Alteration will be discharged from liability unless it is authorised/allowed by Act.

⑦ If interest rate not specified → then 18% p.a from due-date.

If interest rate specified → then decided rate from date of drawing.

⑧ Dishonour can be for non-acceptance or non-payment.

New → additions & Amendments on Negotiable Instrument

① Bouncing of cheque → complained to be filled

crossed cheque

↓
court ~~situate~~
where

↓
Payee / HDC
• bank
branch
↓
is situated

uncrossed cheque

↓
Court
where

↓
Drawee
bank
branch
↓
situated.

② summary trials → Quick Judgement → sec. 143.

• Court may give

- ↑ Jail → max. 1 year
- ↓ Fine → min. 500.

• Court may give more if he deems fit after:

- Recalling witnesses.
- Hearing / Rehearing.

• Trial to continue day by day until conclusion unless court requires adjournment beyond 1 day with reasons recorded in writing.

• Trial should be concluded within 6 months from complaint

Amendments in N.I.

③ Sec. 147 → All offences punishable under this act will be compoundable i.e. victim can enter into compromise with defendant if require.

④ Interim Compensation. [Sec. 143A].

→ Court can order drawer to pay in

- summary trials → speedy trials
- summons case → small cases.
- other cases → on framing charges.

→ Max → 20% of amount of cheque.

→ Time limit to pay → within 60 days from order + further period + not exceeding 30 days by court

→ If drawer → court can order plaintiff to return within 60 days + 30 days. (same provision like above).

→ court can recover or set-off as per CrPc → ~~the~~ Code of criminal procedure.

Amendments in N.I.

- ⑤ sec. 148 → Power of Appellate court
- can order appellant (drawer) to deposit atleast 20% of fine
 - This amt in addition to interim compensation.
 - Time limit → 60 days + 30 days (like discussed in sec. 143A).
 - A court may direct to release amt anytime at it's discretion.



INTERPRETATION OF STATUTES

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Part -I

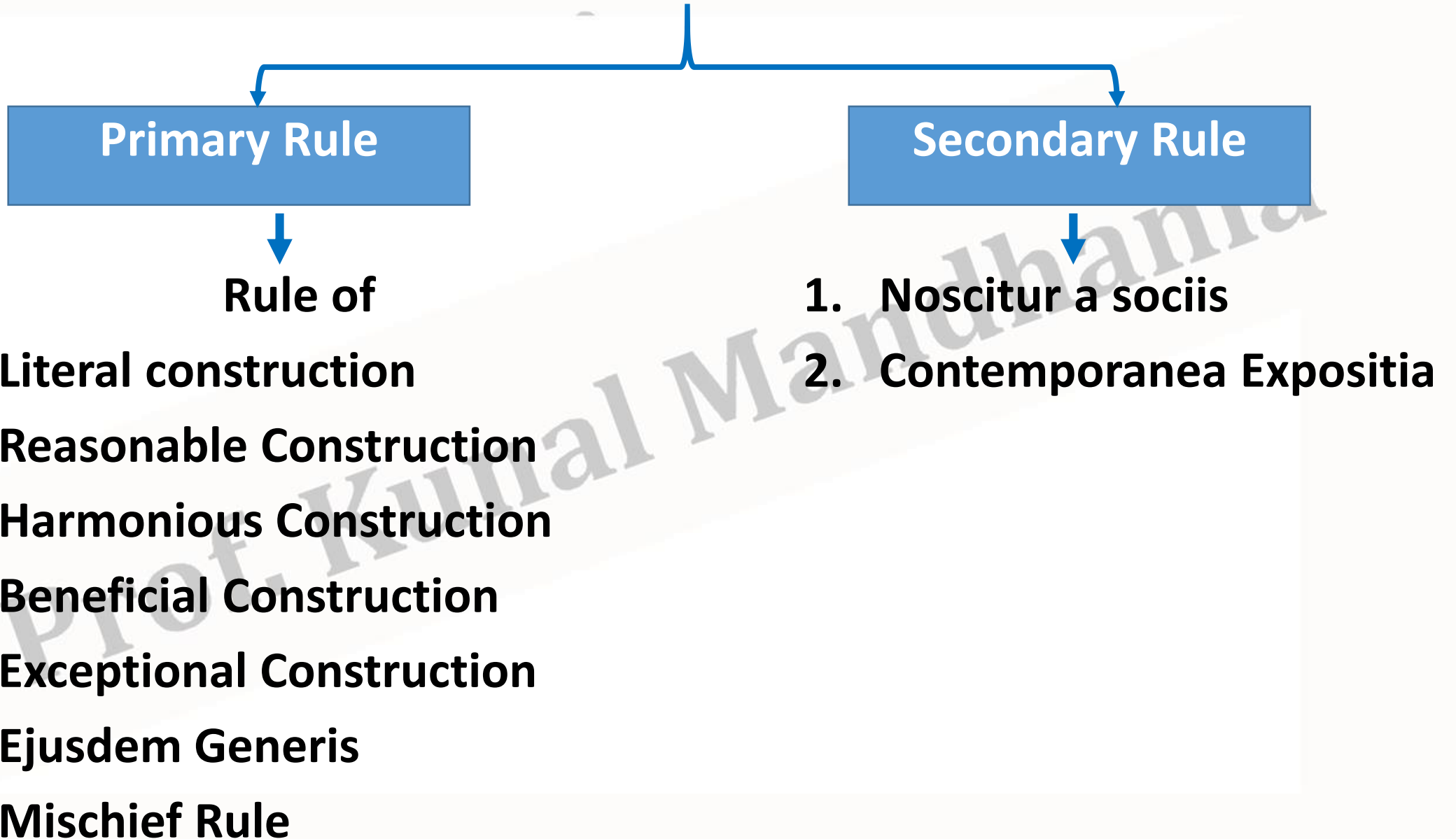


Part -II



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Rules of Interpretation



Shortcut to Remember

ROMAN → **HD**

R



Rule → **Which rule**

O



Other Imp Pts.

M



Meaning

A



Applicable

N



Not applicable

H



How to apply

D



Draftsman

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Rule of Literal / Grammatical Interpretation

(i) R → Rule

- Primary and Cardinal rule
- Entry gate of every interpretation

(ii) Meaning →

Interpret literally & grammatically



Giving words their



Ordinary and natural meaning

(iii) Applicable

- Language → Plain, simple, unambiguous, only 1 meaning

(iv) Not -
Applicable

- If words or law creates ambiguity, in consistency, in completeness

(v) H → How

1. Follow rules of grammar
2. No word to be added or deleted

Rule of Literal / Grammatical Interpretation

(vi) D → Draftsman ➤ Perfect (Assumption)

- (vii) Other Imp Pts → i. Absoluta sententia expositore non indigent
↓
If plain words capable of only one interpretation, no explanation required
↓
ii. If two interpretation – Narrower & Broader → use narrower if broader fails to serve purpose

Rule of Reasonable / Logical Interpretation

(i) Rule	➤ Primary
(ii) Meaning →	If legislature fails to give intended results ↓ Give sensible meaning to it
(iii) Applicable	Words / Provisions ↓ Ambiguous, inconsistent, absurd incomplete or do not give intended results
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	If absurdity ↓ 1. Suppress mischief 2. Advance construction that provide remedy
(vi) Draftsman	Faulty
(vii) Other Imp Pts.	Maxim → Utres magis valeat Quam paret ↓ It is better to have affect then to be made void

Rule of Harmonious Construction

(i) Rule	➤ Primary
(ii) Meaning →	When there is conflict between two or more provisions ↓ Harmonise it to give effect to all provisions
(iii) Applicable	Where there is conflict between . ↓ i. Two statutes of same law ii. Two statutes of different laws iii. Conflict between previous and new law
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	i. Harmonise ii. If not possible give effect to both iii. Still not possible, amended, later act should prevail iv. Specific rule to over-ride general rule
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	Statute should give clear reference of over riding provisions by using words. Subject to, notwithstanding, without prejudice.

Rule of Exceptional Construction

(i) Rule	➤ Primary
(ii) Meaning →	Where statute does not give intended result ↓ Words in statute may be eliminated to give sensible meaning
(iii) Applicable	i. Directors (May) & Mandatory Provisions (Shall) ii. Conjunctive (and) or disjunctive (or)
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	i. 'May' should be treated as directory and 'shall' should be treated as compulsory ii. 'And' means addition whereas 'or' means optional
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	

Mischief Rule / Heydon's Rule

(i) Rule	➤ Primary
(ii) Meaning →	Where statute does not give intended result ↓ Words in statute may be extended to give intended meaning
(iii) Applicable	i. Where actual law is different but intention of lawmaker is different
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	<ul style="list-style-type: none">• Court shall consider:<ul style="list-style-type: none">a) What was earlier lawb) What was mischiefc) What is remedyd) Reason for remedy <p>Then suppress mischief & advance remedy</p>
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	

Rule of Ejusdem Generis

Series of words forming particular class, or category are used & then general word follow them



In such case general words should be construed with reference to the previous words & accordingly meaning should be derived

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Ejusdem Generis - Example

- E.g.. Pineapple juice, orange, mosambi juice, etc. (kya hoga Vodka, gin, whiskey)
- E.g. bread , butter, fruits , vegetable and other things
- Other things means - edibles

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Noscitur A Sociis

(i) Rule	➤ Secondary
(ii) Meaning →	‘Word is known by its associates’ ↓ The meaning of a word is derived from the words found in immediate connection.
(iii) Applicable	When some articles are grouped together, each word in the entry draws color from the other words therein.
(iv) Not - Applicable	➤ It cannot be applied where the meaning of the words was deliberately used in order to make the scope wider.
(v) How to apply	<ul style="list-style-type: none">• 2 or more specific words• One ambiguous specific word• Such ambiguous specific word to derive its meaning from other specific word



GENERAL CLAUSES ACT

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Rules



Definitions



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General Clause Act, 1897

**General Clause Act,
1868
(3rd Jan)**

**General Clause Act,
1887
(14th Jan)**

**Consolidate
+
Extend**

**General Clause Act, 1897
(11th March, 1897)**

Introduction

- Enacted on 11th March 1897
- Contains
 - Definitions
 - General Rule of Interpretation
- It is **'Law of all the laws'**
- Applicable to Central Acts
- Does not define any territorial extent clause
 - where central law applies, it also applies
- Also known as → Interpretation Law of India
- It does not apply to State Acts (they have their own GCA, but they are in line with GCA)

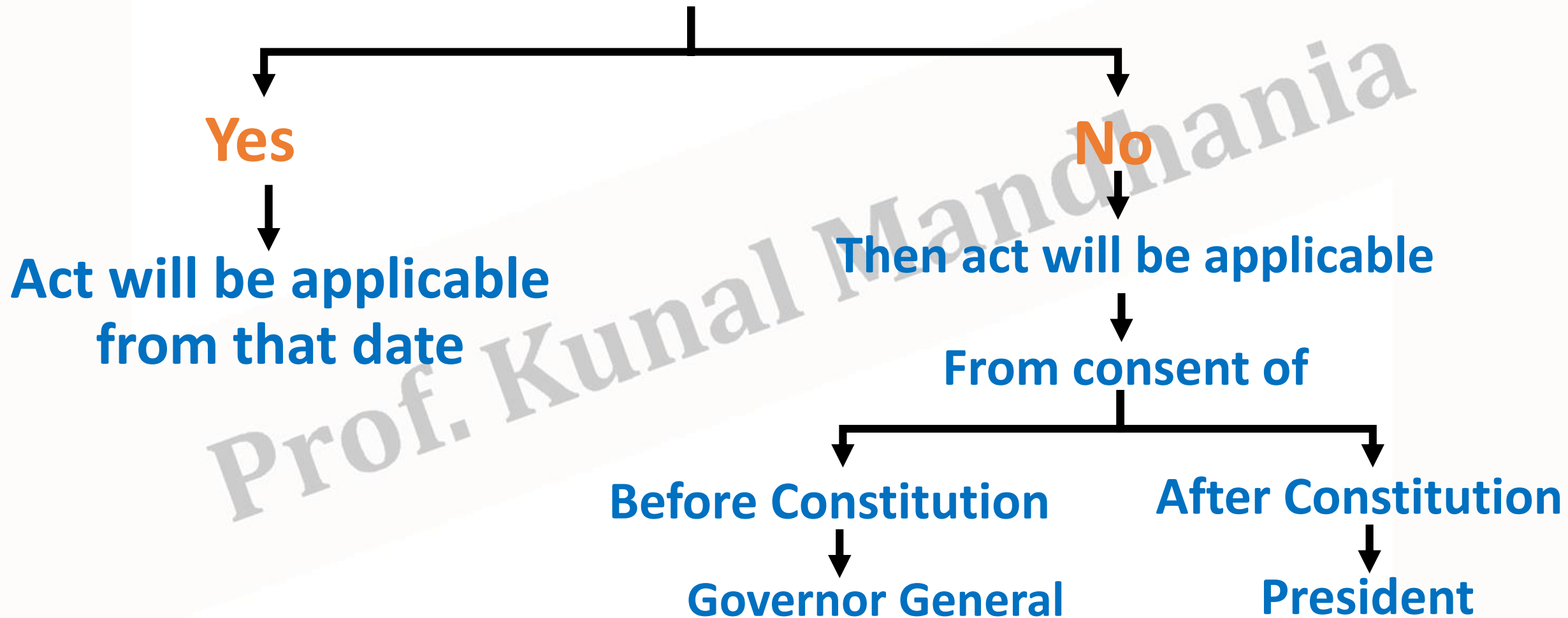
OBJECTS

The General Clauses Act, 1897 has following objects:

- ❖ To **Shorten the language** of Central Acts and regulations
- ❖ To provide **uniformity of expression** in Central Acts by giving definitions of series of terms in common use.

Sec. 5 → Comes into operation

Whether date of operation /commencement is specified



Note :- Act applies from midnight

Note of Sec. 5

1. Rules will be effective rules as published by gazette notification
2. Normally all laws are prospective unless then are expressly made retrospective

Prof. Kunal Mandhania

Sec. 6 Consequences of Repeal

Repeal any enactment, then such repeal shall not →

- a) Revive anything not in force at the time when repeal takes effect
- b) Affect any right, obligation, liability incurred under enactment so Repealed
- c) Affect any penalty, forfeiture or punishment for any offence committed under enactment so repealed
- d) Affect any investigation, legal proceedings

Sec. 6A - All Amendments in repealed Act to Continue

- Where any Central Act or Regulation made after this Act
- Repeal any enactment
- Then such repeal shall not affect the continuance of any amendment / omission / insertion made by enactment so repealed

Companies Act, 2013 → Loan to Director (Sec 185)

1st June 2015 → amendment → whereby Pvt Ltd company were exempted

Company Amendment Act, 2017 → Repealed existing sec 185 & formed new Sec 185

Sec. 6A

Fact of case

Sec. 138 to 142 of NI Act was amended



By Banking , PFI, NI laws amendment Act, 1988



Later o banking, PFI, NI act was repealed

Question

- Will amendment made under NI act will also be repealed

Law

Repeal shall not affect continuance of any amendment made by Act so repealed

Conclusion

Amendment act will remain valid.

Example2: Hindu succession act, (2005)

Sec. 7 – Revival of Repealed Act

- In any Central Act or Regulation made after commencement of this act
- Where any enactment repealed, either wholly or partially has been removed
- Then any such revival shall expressly state the purpose

Company Act, 1956

- Sec 1 to 658

Winding up

- Sec 425 to 560 (Supervision of Court)

Companies Act, 2013

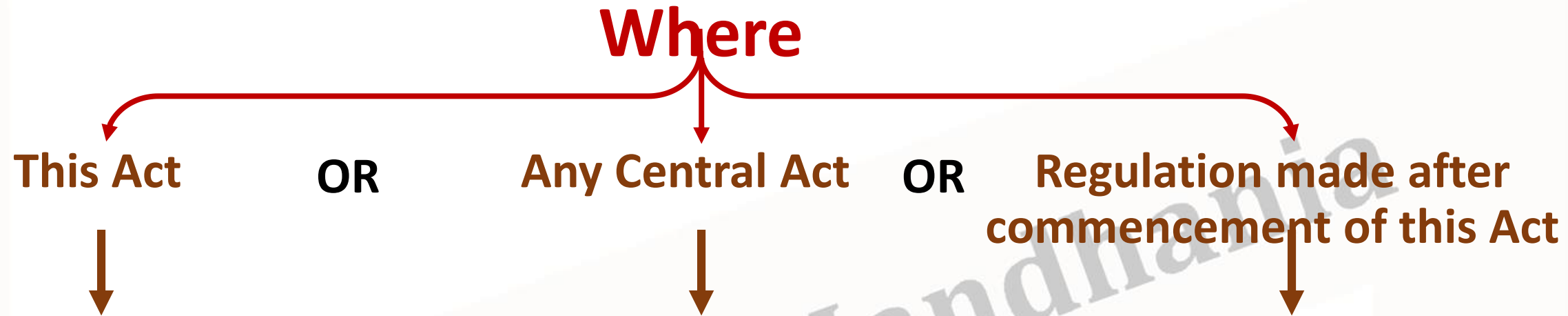
- repealed Company Act, 1956

Winding up U/Co. Act 13

- Sec 271 to 366 (Supervision of NCLT)

However at the formation of Companies Act, 2013, since NCLT was not there, thus Companies Act, 2013 provides for continuance of Sec 271 to 366 of Companies Act, 1956 to facilitate winding up

Sec. 8 Consequences of References to Repealed Act



Repealed & reenacted (Purana hataya naya laya), any provision of previous enactment then any reference in any other Act, above provision so repealed shall, unless a different intention appears be considered as reference to provisions so reenacted.

As per POBA, 1965 – as per sec 2(1) – financial year in relation to company shall have the same meaning as defined under companies act 1956 → since now Companies Act, 1956 repealed & Companies Act, 2013 reenacted after repealed → now any reference about companies Act 1956 means reference to Companies Act 2013

Sec. 9 → Commencement and Termination of time

Fact of case

AGM held on
30-9 &
dividend
declared



Dividend is
paid within
30 days from
declaration



While
calculating
30-9 will be
included or
excluded

Law

While Calculating ,

- a) From → Date will be excluded
- b) To → last date will be included

Conclusion

30-9 will be excluded

Sec. 10

Fact of case

Last day to
sue was 31st
Jan



It was
Sunday &
court was
closed



He sued on
immediately
next day

Question

- Will suit be maintainable

Law

If certain Act/ proceeding was to be done within prescribed time and court/ office is closed on such day, then it is deemed to be done in prescribed time if done on next immediate day when court / office is open.

Conclusion

Yes suit will be maintainable

Sec. 11

- **Any distance will be measured in a straight line on horizontal plane**

Prof. Kunal Mandhanja

Sec. 12 – Duty to be taken pro-rate

Fact of case

Sugar



Custom duty



Rs. 100 for 1000 kg

Calculate the duty for 100kg of Sugar

Law

Any duty / customs / exercise



Leviable on a quantity weigh / measure / value



Like duty is leviable on same rate on any greater / less quantity

Conclusion

$100/1000 * 100 = \text{Rs.}10$

Sec. 13

- 'He' always include 'She'
- 'Singular' always include 'Plural'

Exception 1) If male / female word is expressly mentioned in law

E.g. (1) Male descendants will not include female descendants

(2) Bullock will not include cow.

Exception 2) It will not cover all cases

E.g. (1) Previous year in companies act will not mean previous years

Sec. 14 – Powers Conferred to be exercised from time to time

Fact

Sec. 12 confer power to R.D for permission to shift Regd. Office from one state to another can be do it only once or he can continue to exercise the power

Law

If any power is conferred



Then unless different intention appears



Power may be exercised from time to time as occasion requires

Conclusion

R.D can continue to give permission till he is expressly restricted

Sec. 15 – Power to appoint to appoint power to appoint ex-officio

Facts

President of India appoints CAG



CAG is also chairman of external auditor of U.N



Who appoints chairman of external auditor of U.N

Law

Power to appoint any person



To execute any function



The can be made by name or ex-officio (by virtue of his office)

Conclusion

President of India appoints chairman of external auditor of U.N

Sec. 16 – power to appoint to include power to Suspend / Dismiss

Power to appoint



Includes power to suspend / dismiss



Unless otherwise specified

Prof. Kunal Mandhania

Sec. 17 – Substitution of Functionaries

It shall be sufficient to mention the office title of the officer at present executing the functions of an office for the purpose of indicating the application of law

Prof. Kunal Mandhanla

Sec. 18 – Successors

In ay



Any Central Act

**Regulation made after commencement
of act**

It shall be sufficient for purpose of indicating relation of law to any successor of any functionaries to express its relation to functionaries

Prof. Kunal Malhotra

Sec. 19 – Official Chief & Subordinate

In any



Any Central Act

**Regulation made after commencement
of act**

Any law relating to Chief as senior of any office shall also apply to his deputies / subordinates who is lawfully performing duties of that office in place of their superior

Prof. Kumar Manojhania

Sec. 20 – words used in definition to have same meaning for whole Act

Any **expression** used in



Notification, orders, schemes, rule forms



Shall have same meaning



As in act or regulation

E.g.. Companies Act, 2013 – defined the word ‘Company’ later on certain rules were formed on concerned meeting. These rules also include the word ‘company’ now ‘company’ as used in rules shall have same meaning as assigned in companies Act

Sec. 21 – power to issue include power to amend as well

A power



To issue



Notification/ order, rules, by laws



Include power to



Amend. Vary or rescind them

E.g..

- | | | |
|--------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 1/4/2014 | → | Companies Act, 2013 –existence |
| 24/June/2015 | → | Exemption notification to govt co. by MCA |
| Dec. 2017 | → | MCA amends its exemption notification & provided that govt. co. shall be entitled to exemption only if there is non-compliance of Sec. 137 or 92 |

Sec. 22 – Validity of rules before commencement of Act

Fact of case

Co. Act
↓
Applicable
↓
29th Aug. 2013

Prescribed
provisions
for NCLT

But NCLT was notified in
Dec. 2016

Whether provisions of NCLT applicable from 29th Aug or Dec. 2016?

Law

Rules / Bye law / orders



Issued before will not enforce to



Till commencement of Act/ regulation

Conclusion

Provision of NCLT applicable from Dec. 2010

Sec. 23 – Making of rule or bye-laws after previous publications

Step 1 Make Draft by manner decided by govt. / authority

Step 1 Publish Draft mentioning time for suggestions / objections / comments

↓
Given to

↓
Affected person

↓
Permission authorities

Step 3 Interested person will make objections / suggestions

Step 4 Incorporate / consider suggestions / comments if req.

Step 5 Publish final copy in official gazette / conclusive proof

Sec. 24 – Continuation of orders issued under enactments repealed and reenacted

If a statute is repealed & re-enacted

Same or substantially same terms

Re-enactment neutralizes the previous repeal



Provisions of repealed act continues

E.g.. : Mine act. 1923 repealed & replaced by mines act, 1952



Rules of mines act, 1923 continues till it is changed

Different terms

Provision of re-enacted law continues

Whether fine prescribed in specified law

```
graph TD; A[Whether fine prescribed in specified law] --> B[Yes]; A --> C[No]; B --> D[Same fine will apply]; C --> E[Fines prescribed by]; E --> F[a) Sec. 63 to Sec. 70 of IPC]; E --> G[b) Provisions of code of criminal procedures will apply];
```

Yes

Same fine will apply

No

Fines prescribed by

a) Sec. 63 to Sec. 70 of IPC

b) Provisions of code of criminal procedures will apply

Sec. 26 – Provision as to offence punishable under two or more enactments

- 1. Will not be punished twice / only punish under either of law**
- 2. Trial can be held under different laws, but punishment once**
- 3. If 2 alternative charges in same trial, acquittal from one does not ban conviction from other.**

Prof. Kumar Mandhania

Sec. 27 – Service by Post

1) Deemed to be served by post if :-

**Properly
Addressed**

+

Pre-paid

+

**Posted by
Registered
post**

2) Should be served by post – Acknowledgement due



Unless acknowledgement is not obtained it is not served

Sec. 27

Cases

Due service when done

1) Addressee refuses to accept order

Assumed that done

2) Post return with not available in house / house locked / shop closed

Due service presumed

3) Sec. 138 notice unclaimed

Due service presumed

4) Regd. Post acknowledgment due is instead sent by only regd. Post

Due service cannot be presumed

Definitions

Open for interpretation

Inclusive Definition



Word 'includes' is used



E.g... Body Corporate U/s 2(11)
definition

Body Corporate or corporation
Includes a company incorporated
outside India

Closed for interpretation

Exhaustive Definition



**Word 'means' or 'means &
includes' is used**



E.g... Company U/s 2(20) definition

Company **means** a company
incorporated under this act or
under previous act

Use of Words shall & may

Shall → Imperative or Mandatory

May → Not Mandatory but Directory

Important note:

Sometimes, the word 'may' has to be interpreted as 'shall'.

E.g... Section 3 of the Companies Act, 2013 states that 'a company **may** be formed for any lawful purpose by....'



may will be interpreted as shall

ACT [SECTION 3(2)]

- 'Act' (as per **civil wrong**)
- Shall include a series of acts
- And words which refer to acts done
- Extend also to **illegal omissions**

AFFIDAVIT – SECTION 3(3)

- 'Affidavit' shall include **affirmation and declaration**
- In the case of persons by law
- Allowed to affirm or declare instead of swearing.
- In simple language, affidavit means a
- **Sworn statement in writing**
- Made under **oath or on affirmation**
- Before an **authorized Magistrate or officer.**

Central Act [Sec. 3(7)]

Means

Act of parliament & includes

- Act of dominion legislature (1947 to 1950)
- Indian legislature → passed before constitution
- Act made by Governor General in council or Governor General
- Acting in legislative capacity

Central Government (Sec. 3(8))

Before the commencement of Constitution

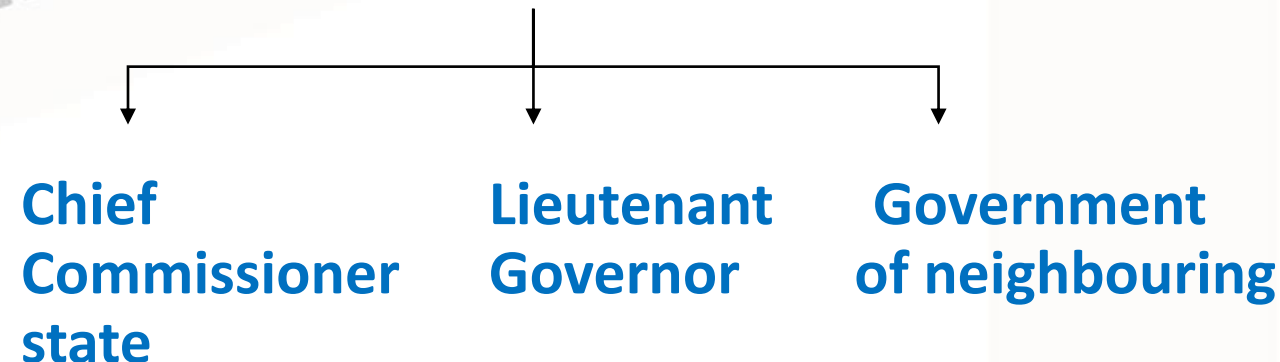
Governor General of Council & shall include:

- 1. Functions - Principal Government, government of province**
- 2. Administration - Chief Commissioner, Chief Commissioner's province (94(3) of GOI Act, 1935)**

After the commencement of Constitution

The President & shall include:

- 1. State Government**
- 2. Part C state before commencement Act, 1956**



- 3. Under territories Administration**

- **‘Commencement’ [Section 3(13)]:**

‘Commencement’ used with reference to an Act or Regulations, shall mean the day on which the Act or Regulations comes into force.

- **‘Document’ [Section 3(18)]:**

‘Document’ shall include any

- **matter** (written, Expressed or described upon)

- **any substance**

- By **means** of letters, figures or marks or by more than one of those means.

- Which is intended to be used or which may be used, for the purpose or **recording** that matter.

ENACTMENT – SECTION 3(19)

- **Enactment include:**
 - ✓ A regulations; and
 - ✓ **Regulation of Bengal, Madras or Bombay code**
- It also include **any provision contained in any Act** or
- **Any regulation**

FINANCIAL YEAR – SECTION 3(21)

- **‘Financial Year’** shall mean the year commencing on the first day of April.
- **‘Year’** means **calendar year** which starts on 1st January and ends on 31st December.

GOOD FAITH [SECTION 3(22)]

- A thing shall be deemed to be done in “good faith” **where**
- **It is in FACT done honestly**, whether it is done negligently or not;
- The question of good faith under the General Clauses Act is **ONE OF FACT**. It is to be determined with reference to be circumstances of each case.

GOVERNMENT –SECTION 3(23)

- Government includes
- Central Government and State Government

GOVERNMENT SECURITIES – SECTION 3(24)

- ‘Government securities’ shall mean **securities of:**
 - i. The Central Government; or
 - ii. Any state government
 - iii. It shall **NOT** include securities of the government of any Part B state for any Act made before commencement of constitution.

IMMOVABLE PROPERTY – SECTION 3 (26)

- **‘Immovable Property’ shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.**
- Example: Building and Land are immovable property.
- **Timber is not immovable property as it is not permanently attached to land.**

**Immovable Property
[Section 3
(26)]**

Shall include

Land

Benefits to arise out of land

Things attached to the earth

**Things permanently fastened
to anything attached to the
earth**

Prof. Kunal Mehandharia

“Imprisonment” [Section 3(27)]:

- **‘Imprisonment’ shall mean imprisonment of either description**
- **rigorous(that is with hard labor) and**
- **simple.**
- **Court may, in its discretion, make the imprisonment rigorous or simple.**

“Movable Property” [Section 3(36)]:

- **Movable Property’ shall mean property of every description, except immovable property.**
- **Thus, any property which is not immovable property is movable property.**
- **Debts, share, electricity are movable property.**

“Oath” [Section 3(37)]:

- **‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.**

“Offence” [Section 3(38)]:

- **‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.**

“Official Gazette” [Section 3(39)]:

‘Official Gazette’ or ‘Gazette’ shall mean:

- (i) The Gazette of India, or**
- (ii) The Official Gazette of a state.**

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

“Person” [Section 3(42)]:

“Person” shall include:

- (i) any company, or**
- (ii) association, or**
- (iii) body of individuals, whether incorporated or not**

“Registered” [Section 3(49)]:

- ‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.**

“Rule” [Section 3(51)]:

- **‘Rule’ shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;**

“Schedule” [Section 3(52)]:

- **‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs;**

“Section” [Section 3(54)]:

- **‘Section’ shall mean a section of the Act or Regulation in which the word occurs;**

“Sub-section” [Section 3(61)]:

- **‘Sub-section’ shall mean a sub-section of the section in which the word occurs;**

Prof. Kunal Mandhania

“Swear” [Section 3(62)]:

“Swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

Note: The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act.

“Writing” [Section 3(65)]:

Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

Prof. Kunal Manohar



*Hope this Revision Notes
Help in your Journey to become
a Chartered Accountant*

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