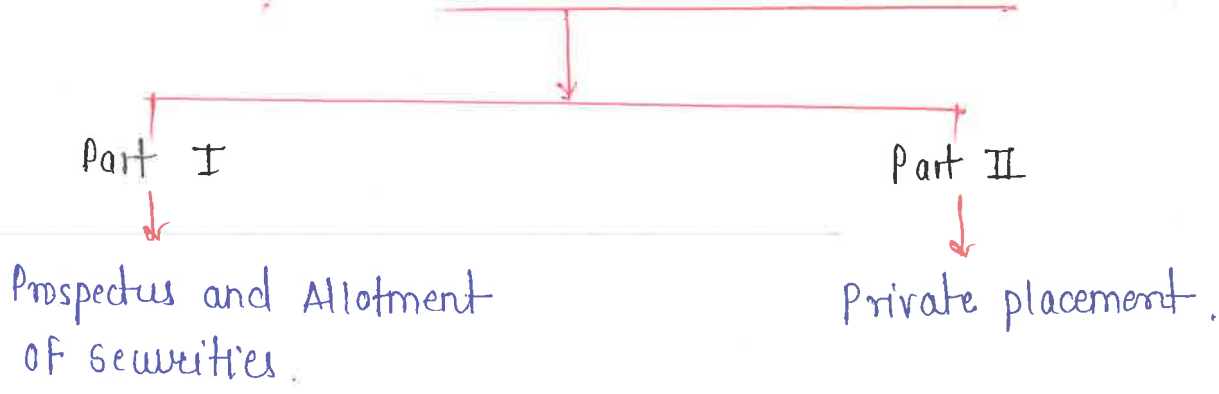


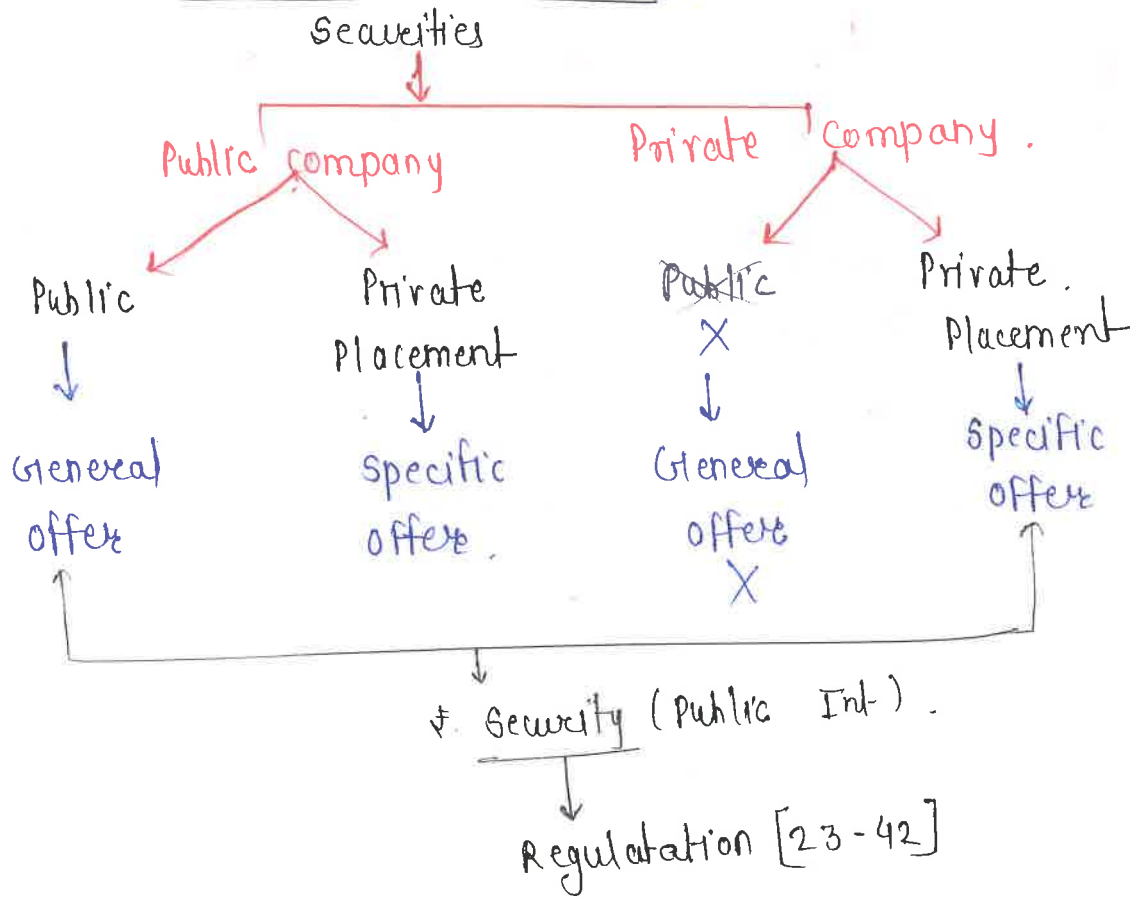
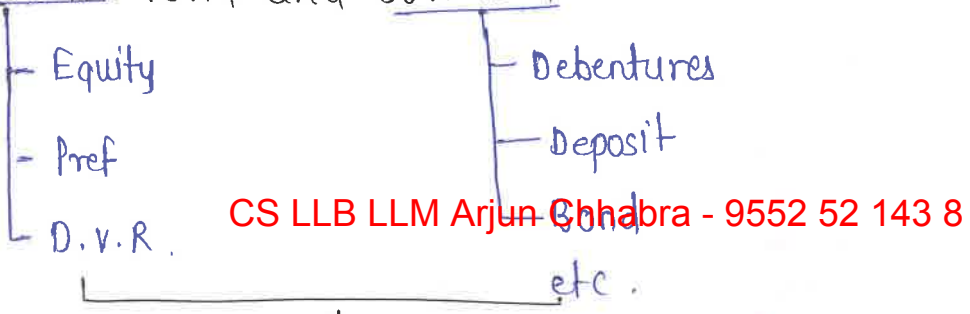
Chapter 3 → Prospectus and Allotment of Securities.

[Sec 23-42] Form → PAS



Background / purpose of this chapter -

- Once the company is incorporated. It requires funding.
- funding, basically by two ways -
- owned fund and borrowed fund.



Prospectus

Public

Misleading statement

Section 34

criminal liability

Section 35

civil liability

Sec 39

10000 shares issued
at least 90% subscribe

fail

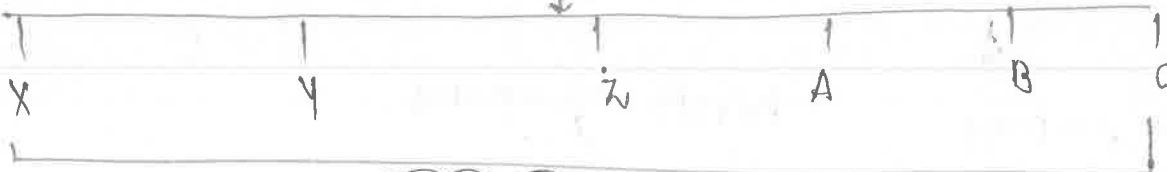
Conclusion - IF co. is raising fund through public or private placement. Regulation made in this chapter makes sure that such fund must be secured.

Section 42 - Private placement

Act Pvt Ltd

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offers.



Identified Person

BOD Recommend

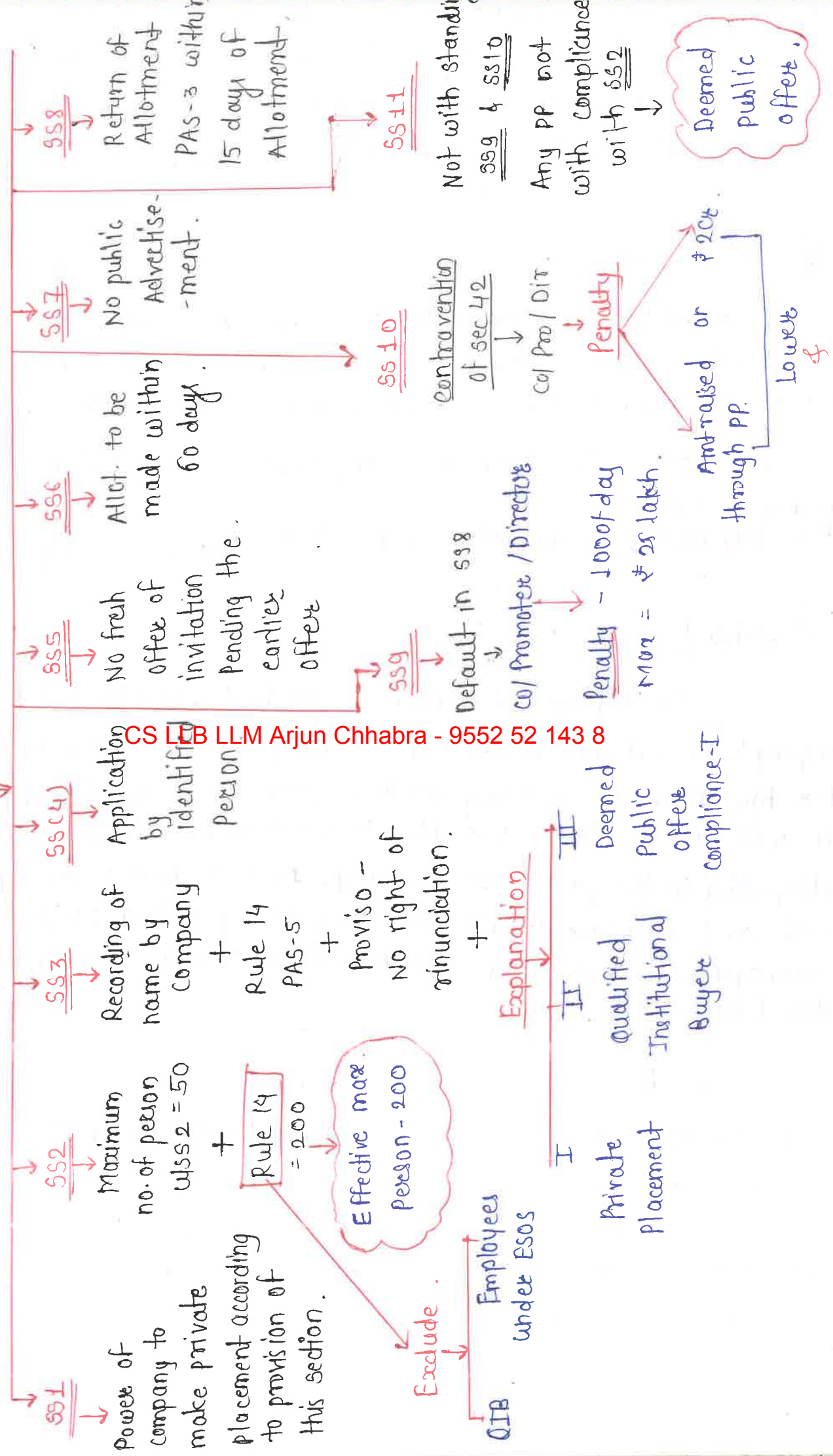
members

SR

Approve

Section 42 - offer or invitation for subscription of securities on

Private placement



Refund all money @ 12% int. p.a.

NOTE SS2 - While computing the no. of persons to whom private placement has been made by company, following shall be excluded;

- ① Qualified Institution buyer ; &
- ② Employees of the Co. under a scheme of employees stock option [ESOs]

* Special Note of SS2 -

refer Q.8

The restrictions with respect to the maximum no. of person to whom private placement can be made reckoned individually for each kind of security, i.e. equity share, pref shares and debentures.

In simple word, Maximum no. of person is restricted with securities.

- Just for knowledge -

* ESOs [Employees stock option scheme] / ESPS [Employees stock purchase scheme]

Logic behind ESOs & ESPS

An employee or director works best when he has 'sense of belonging'. He will put his best if he simply rewarded. One way is to offer him shares of company at low price or at conventional price. This will give him more incentive to work as he will be indirectly participating in the profits of company. It will help to develop keen interest and commitment to work. They develop feeling of 'participation' in management. That's why companies issue shares to its employees under ESOs or ESPS.

ESOs Vs

ESPS

① Employees are given an option to purchase shares at a later date, at predetermined price which is usually lower than current market price.

② Employees are given an option to purchase the shares on the spot at a discounted price.

① The company may specify the lock-in period for the shares issued by exercising an option.

② Share issued under ESOPs shall be locked-in for min-period of 1 year from the date of Allotment.

③ Minimum ~~wait~~ vesting period [Waiting] ESOPs is 1 year

③ No vesting period for ESOPs as shares are offered on the spot.

Section 42 -

① Scope of section 42 -

a) Section 42 empowers a company to make a private placement of securities.

b) Every private placement of securities shall comply with -

i) The provisions of sec 42 ; &

ii) such conditions as may be prescribed in rule 14 of the Companies [Prospectus & Allotment] Rules, 2014.

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② Definition of private placement.

Private placement means any offer or invitation to subscribe or issue of securities to a select group of persons by a company other than by way of public offer through private placement offer-cum-application, which satisfy the conditions specified under this sec.

③ Requirement of Special Resolution -

a) A company shall not make a private placement of ~~list~~ securities unless such proposal has been previously approved by the Shareholders of the company by SR, for each of the offers or invitations.

where in case of offer or invitation for non convertible debentures, shall be sufficient if -

i] The company passes a private SR only once in a year for all the offers or invitation for such debentures during the year, if proposed amount does not exceed [P.U.S.C + FR + SPAC] [Section 181c];

ii] The company passes a resolution in a Board meeting, in an other case.

© iii] A company shall issue private placement offer-cum-application only after the relevant SR or BR has been filed with the registrar.

d) The Explanatory statement shall have following disclosures:-

i) Particulars of offers including the date of BR.

ii) Kind and price of securities offered.

iii) Justification for price.

iv) Amt. which company intended to raise.

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4)* Private placement offer-cum-Application-

i) A private placement shall be made only to identified person.

ii) The private placement offer-cum-application shall be-

① In form no PAS-4

② Serially numbered; and.

③ Sent either in writing or in electronic mode.

5) Recording of Names By the company.

The company shall maintain complete record of private placement offers in form no-PAS 5 & within 30 days of recording sent private placement offer cum application to every identified person.

⑥ Maximum no. of persons,

① The private placement shall not be made, during the entire to more than -

① 50 persons;

② such higher no. of persons as may be prescribed. [The prescribed no. for this purpose is 200]

② Refere note & special note for ss 2.

⑦ Allotment to be made within 60 days -

① A company making private placement shall allot the securities within 60 days of receiving the application money for securities.

② If the co. is not ^{able to} allot the securities within said period of 60 days it shall within next 15 days repay application money to applicants.

③ If the co. fails to repay the application money within the said period of 15 days, it shall be liable to pay interest @ 12% p.a from the expiry of 60th day.

⑧ Monies to be kept in separate Bank A/c -

① All monies received on application shall be kept in separate Bank A/c in scheduled bank.

② All such monies shall be utilised only when the securities have been allotted.

⑨ Monies not to be utilised -

A co. shall not utilise the monies raised through private placement unless -

① The securities have been allotted; &

② The return of Allotment is filed with the registrar.

Form of Allotment -

F.Y.

The return of allotment shall be filed within 15 days of date of allotment in form no PAS-3 containing the following details -

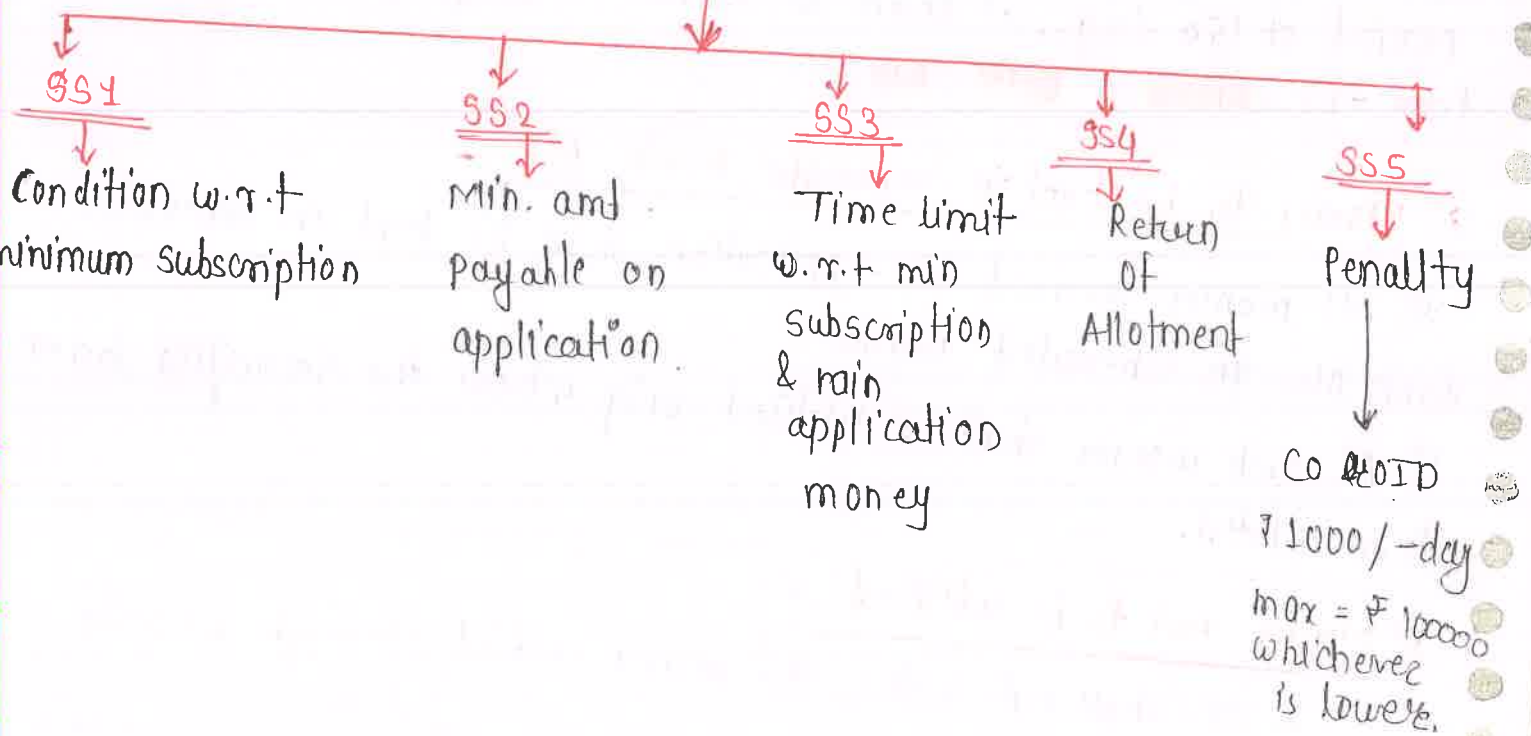
- ① Full name, Address, PAN & Email ID of all the allottees
- ② No. of securities allotted to each allottee.
- ③ Class of securities allotted to each allottee.
- ④ The date of allotment of securities to each allottee.
- ⑤ Nominal value and amt. paid up on securities; and
- ⑥ Particulars of consideration received, if securities were issued for consideration other than cash.

① No fresh offers or Invitation pending the earlier offers -

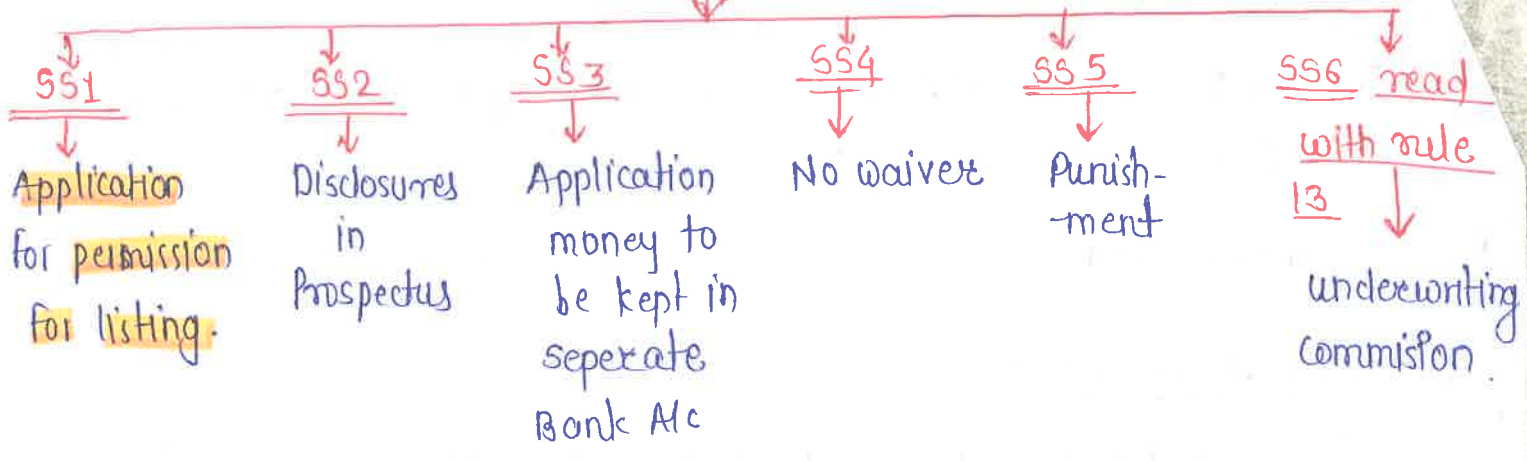
② No public Advertisement.

Sec 39 Allotment of Securities by Company

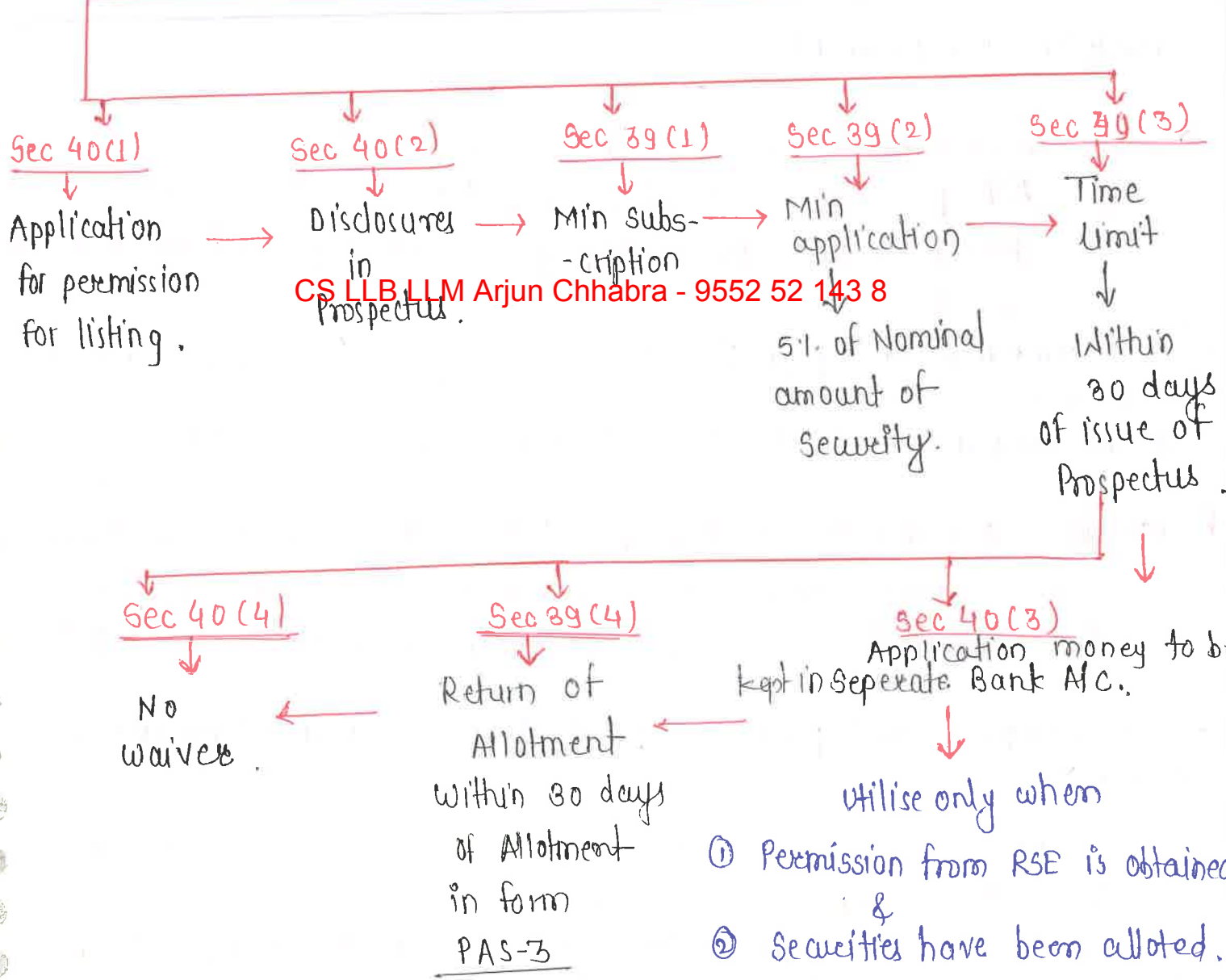
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Sec 40 Securities to be dealt with in stock exchange.



* Conclusion chart of Sec 39 Read with sec 40 -



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Note for sec 40 (1) -
Provision is very clear that not only "company" has to apply for of the securities at RSE but also obtain permission there of from THE STOCK EXCHANGES WHERE IT HAS APPLIED BEFORE MAKING THE PAYMENT PUBLIC OFFER.

* Underwriting Commission [sec 40(6) + Rule no 13] -

Meaning of Underwriter -

Underwriter means an intermediary who undertakes [promise] to subscribe to the securities offered by the company in case this are not subscribed by the public, in case of an underwritten issue.

Conditions for payment -

Case I - Board decide UC = 5% of issue price

AOA prescribe = 3% of Issue price.

Board further decide to pay UC out of proceed of share capital

Decide CS LLB LLM Arjun Chhabra - 9552 52 143 8

→ Company can't pay UC 5% because the maximum permissible UC is 3%.

② The company may pay UC out of proceeds of share capital.

* Case II - Act Ltd decides to pay 2.5% of the value of debentures as underwriting commission but AOA authorized only 2%.

Co. further decide idea to pay UC in the form of professional lecture.
Decide.

→ Company can't pay UC 2.5% since maximum permissible UC is 2%.

② Payment of UC in the form of professional lecture is permissible.

Since the underwriting commission may be paid in cash, kind or in lumpsum or in the way of percentage. Since there is not prohibition on payment of UC in kind.

Case law - Bhoota vs New alicander gold mining co.

Conditions for payment of commission to underwriter.

Underwrite.

- ① Payment of UC shall be authorized by AOA of company.
- ② Source of commission
 - UC may be paid out of the proceeds of the issue or out of the profits of company or both.
- ③ Rate of UC commission
 - ① Name of UW's.
 - ② Rate and amount of commission payable to UW's.
 - ③ No. of securities underwritten by UW's.
- ④ Following disclosures in Prospectus -
 - ① NO UC on securities not offered to Public.
 - ② Copy of UW agreement shall be delivered to ROC at the time of filing of Prospectus.

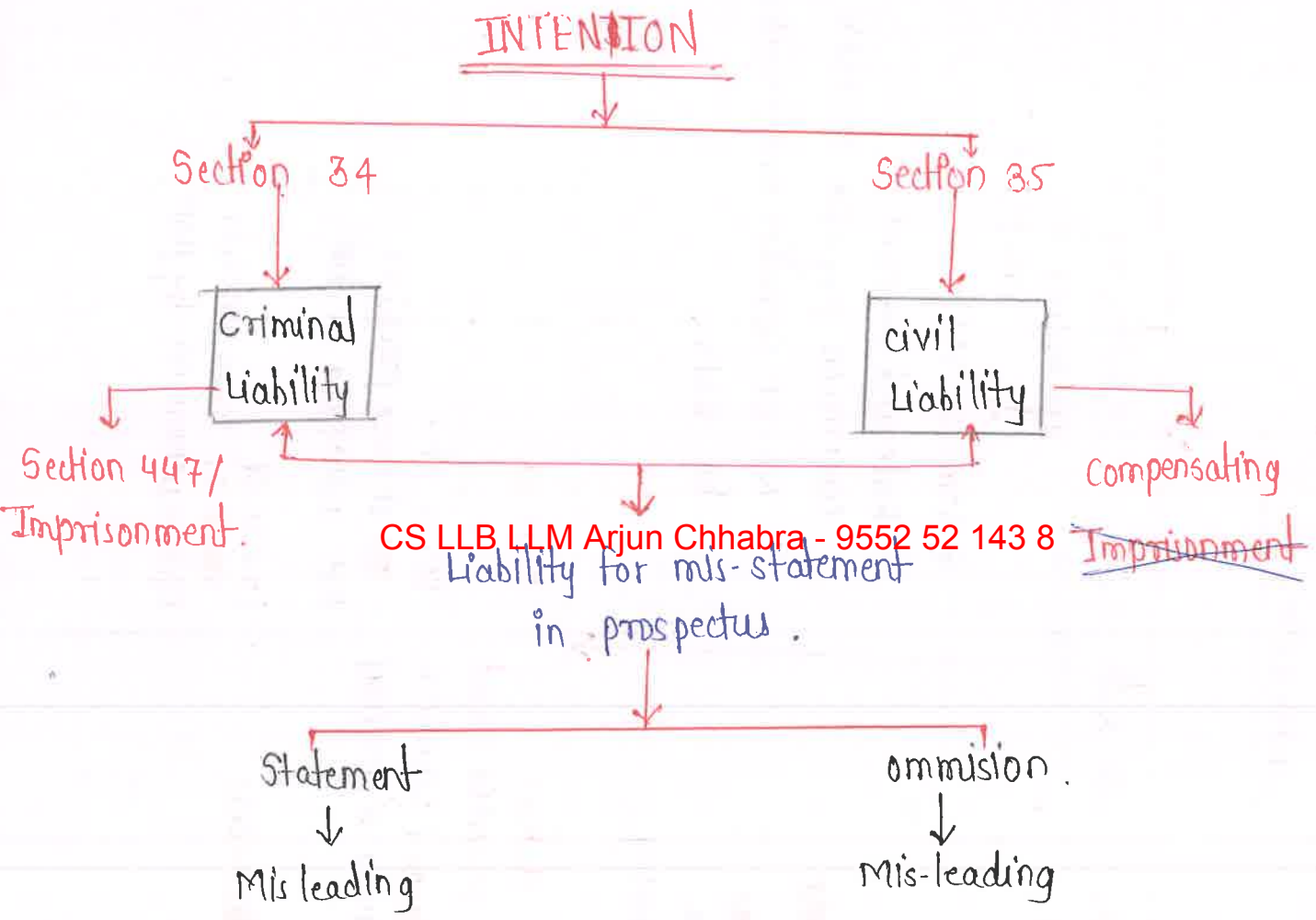
Nature of securities issued	Rate of UC
① Shares [Whether equity or preferred]	Lower of - 5% of issue price; or Rate authorized by AOA.
② Debentures	Lower of - 2.5% of issue price; or Rate authorized by AOA.

Payment of VC in the form of flat is permissible. - st

Underwriting commission may be paid in cash or in kind or lumpsum by way of percentage.

② since there is no prohibition on payment of underwriting commission in kind.

③ since source is prescribed and mode is not prescribed.



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Sec 40(1) Application for permission of listing

Every co. making public offers shall, before making such application, make an application to one or more RSE or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

Sec 40 (2) - Disclosure in prospectus

The prospectus shall state the name or names of the stock exchange in which the securities shall be dealt with.

Sec 39 (1) - Condition w.r.t minimum subscription.

Where a company makes an offer to the public for subscription of its securities, no allotment of any securities shall be made unless the following two conditions are satisfied; -

(a) The amount stated in the prospectus as the minimum subscription is subscribed.

(b) The sum payable on application in respect of minimum subscription is received by the company by check or other instrument.

Sec 39 (2) Amount of Application Money -

The application money on every security shall not be less than -

- 5% of the nominal amount of the security; or
- other percentage as prescribed by SEBI.

Sec 39 (3) Time limit w.r.t min subscription.

(a) The amount stated in the prospectus as the min. subscription must be subscribed and the sum payable on application must be received by the company within -

(1) 30 days of issue of prospectus; or

(2) such other period as may be specified by SEBI.

(b) otherwise, all money received by the company shall be returned within a period of 15 days from the closure of the issue.

Sec 40 (3) - Application money to be kept in separate Bank A/c

All monies received in application from the public for subscription to the securities shall be kept in separate bank A/c in scheduled banks.

(b) All such monies shall be utilised only when -

- ① The securities have been permitted to be dealt within the stock exchange or exchanges specified in the prospectus ; &
- ② The securities have been allotted.

Sec 39 (4) - Return of Allotment.

Whenever a company makes any allotment of securities, it shall file with the registrar a return of allotment in form no PAS 3 within 30 days from the date of Allotment.

Sec 40(4) - No waiver (forcing someone to do wrong thing).

Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

Sec 40(5) - Punishment / Penalty

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Company



Min - 5 lakh

Max - 50 lakh

officer in default



Min - 50000/-

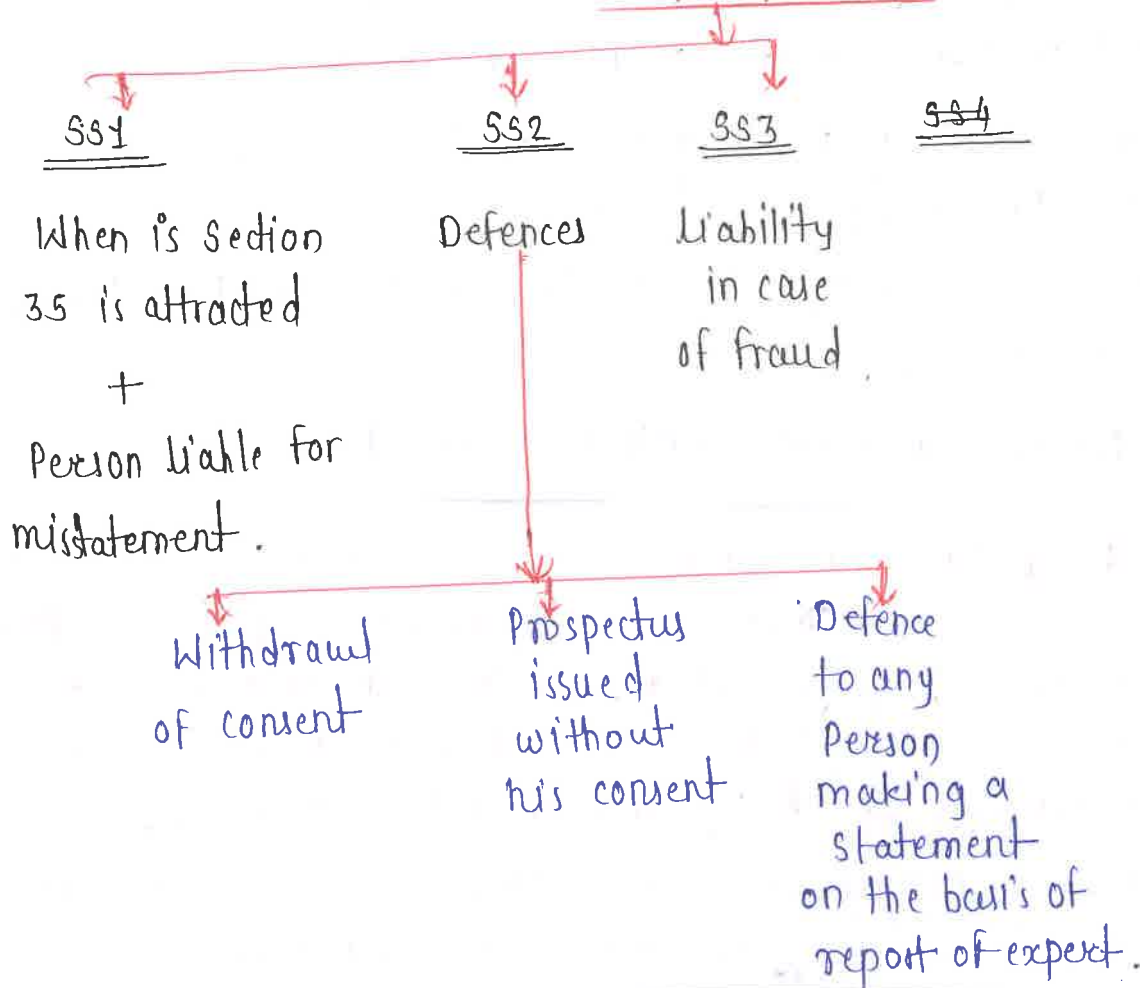
Max - 5 lakh and

Imprisonment - max 1 year.

or

Both.

Sec 35 - Civil liability for mis-statement in prospectus.



CS LLB LLM Arjun Chhabra - 9552 52 143 8

Sec 35 (1) -

Where

- A person has subscribed for securities of company.
- Acting on any statement, which is misleading, or
- omission of any matter, which is misleading
- in the prospectus.
- and such person sustains any loss as consequence thereof, section 35 is attracted.

Case I -

ACT limited issued prospectus inviting public to subscribe its equity shares stating that co. was in good financial health & paying regular dividend of 20% over last 5 years but in fact co. was running in loss from last 3 years and paying dividend from reserve. Mr. Arvind read the prospectus and bought 500 shares. After getting to know about mis-statement he went to resign contract & claim damages.

→ ① The prospectus is misleading since the non disclosure of fact that the company was making losses and dividend paid out of past year profit give a false impression that the company was making profit.

② Since the suppression of such fact might have affected investors decision to subscribe for shares.

③ Since the prospectus does not disclose all material facts truly, honestly and accurately.

④ The allottee of shares are entitled to avoid allotment.

Case II - A prospectus containing some false information in prospectus.

Mr. Vedant read prospectus but did not apply for any share. After completion of allotment, Mr. Vedant bought 4000 shares from stock exchange at higher rate, which later on fell sharply. Mr. Vedant want to claim damages on the ground of false statement.

→ ① Mr. Vedant is not an original allottee of shares, since he purchased shares from market and not from company.

② Mr. Vedant can't claim damages from company because he did not subscribe the shares on the faith of misleading prospectus.

Case III -

Mrs. Sakshi applied for shares on the basis of prospectus which contains mis statement. Shares allotted to her and afterwards she transferred shares to Ishita. Ishita wants to claim damage on the ground of mis statement.

→ ① Mrs. Ishita is not an original allottee of shares, since she obtain shares by transfer from Sakshi.

② Hence, Mrs. Ishita not entitled to claim damages from company.

* Person liable for Mis-statement -

- ① The Company
- ② Every person who -
 - i) Is a director of the company at the time of issue of prospectus.
 - ii) Has authorized himself to be named and is named in the Prospectus as director of the Company.
 - iii) Has agreed to become director of company, either immediately or after an interval of time.
 - iv) Is a promoter of company.
 - v) Authorize the issue of prospectus.
 - vi) Is an expert.

* Punishment -

Every person liable for mis statement shall be liable for -

- ① Payment of compensation to every person who has sustained any loss or damage.
- ② Punishment for fraudulently inducing any person to invest under Sec 36.

552 - Defences

① Withdrawal of Consent

No person shall be liable U/s 35, if he proves that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that prospectus was issued without his authority or consent.

② Prospectus issued without his consent -

No person shall be liable U/s 35 if he proves that the prospectus was issued without his knowledge or consent and on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

③ for Expert -

A person who makes any statement on basis of report of an expert shall not be liable under section 35, if it's proved that -

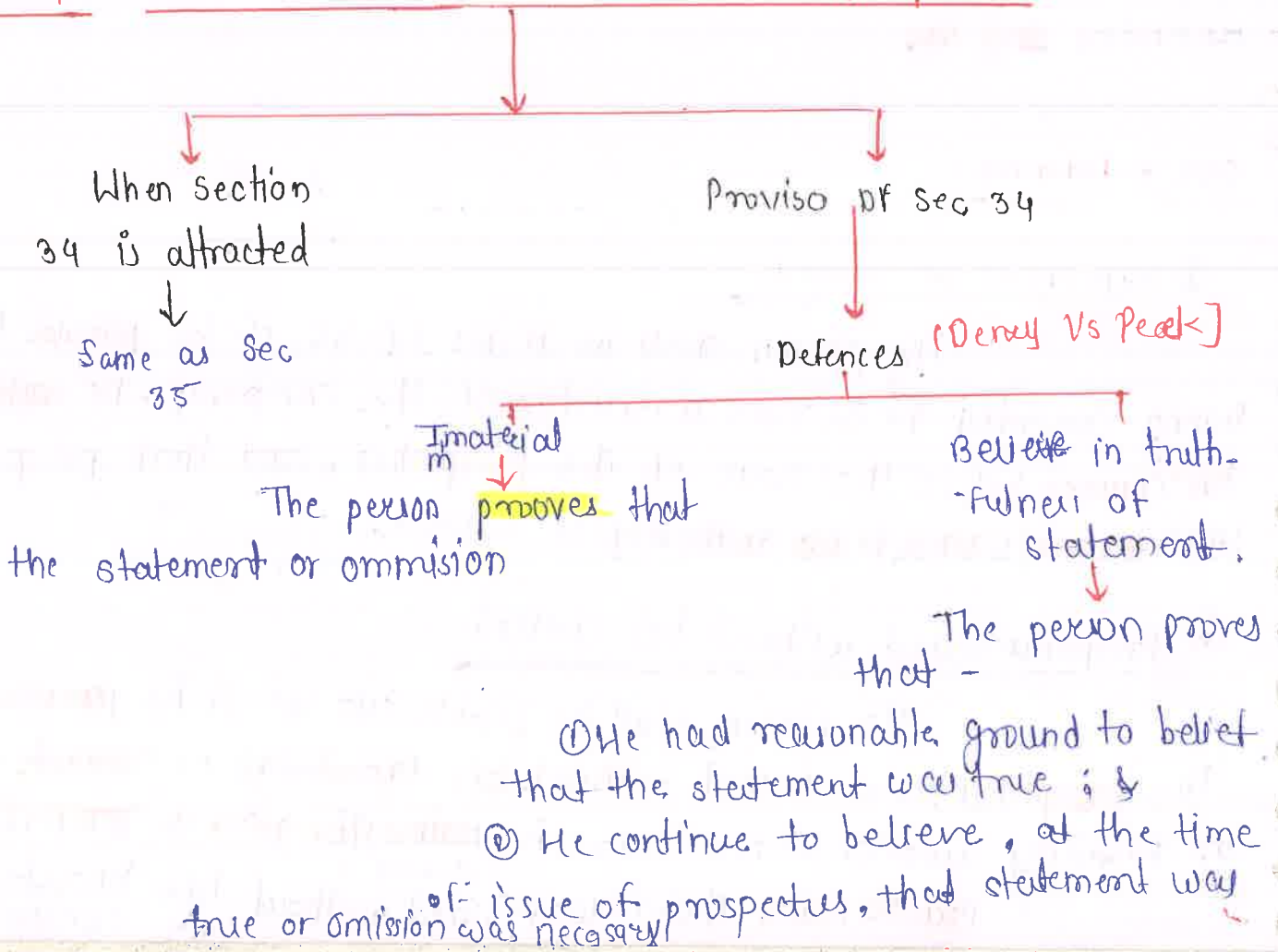
- ⓐ The statement made was a correct and fair representation of the statement made by the expert.
- ⓑ He was having reasonable ground to believe that the expert was competent to make it.
- ⓒ Expert had given his consent.
- ⓓ Expert had not withdrawn his consent before filing of the prospectus with the registrar.

§ 3 - Liability in case of fraud

Every person liable for mis statement shall be personally liable without any limitation of liability to compensate every person who has sustained any losses.

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Sec 34 - Criminal liability for mis statement in prospectus



*Derry vs Peek -

The directors were not guilty of fraud, as they honestly believed that once the parliament had authorised the use of steam, the consent of the Board of Trade practically concluded.

Sec 447 - Punishment for Fraud.

When is Section 447 attracted

Where is any person found guilty of fraud.

Punishment under 447 for fraud of greater value.

fraud involving an amount of min. ₹ 10 lakh or 1% of turnover of the company whichever is lower.

Punishment under 447 for fraud of lesser value

fraud involving an amt. less than ₹ 10 lac

or 1% of T/O of company, whichever is lower.

+ No public interest is involved.

Penalty

- ① Imprisonment upto 5 yrs or
- ② fine upto ₹ 20 lakh or
- ③ Both

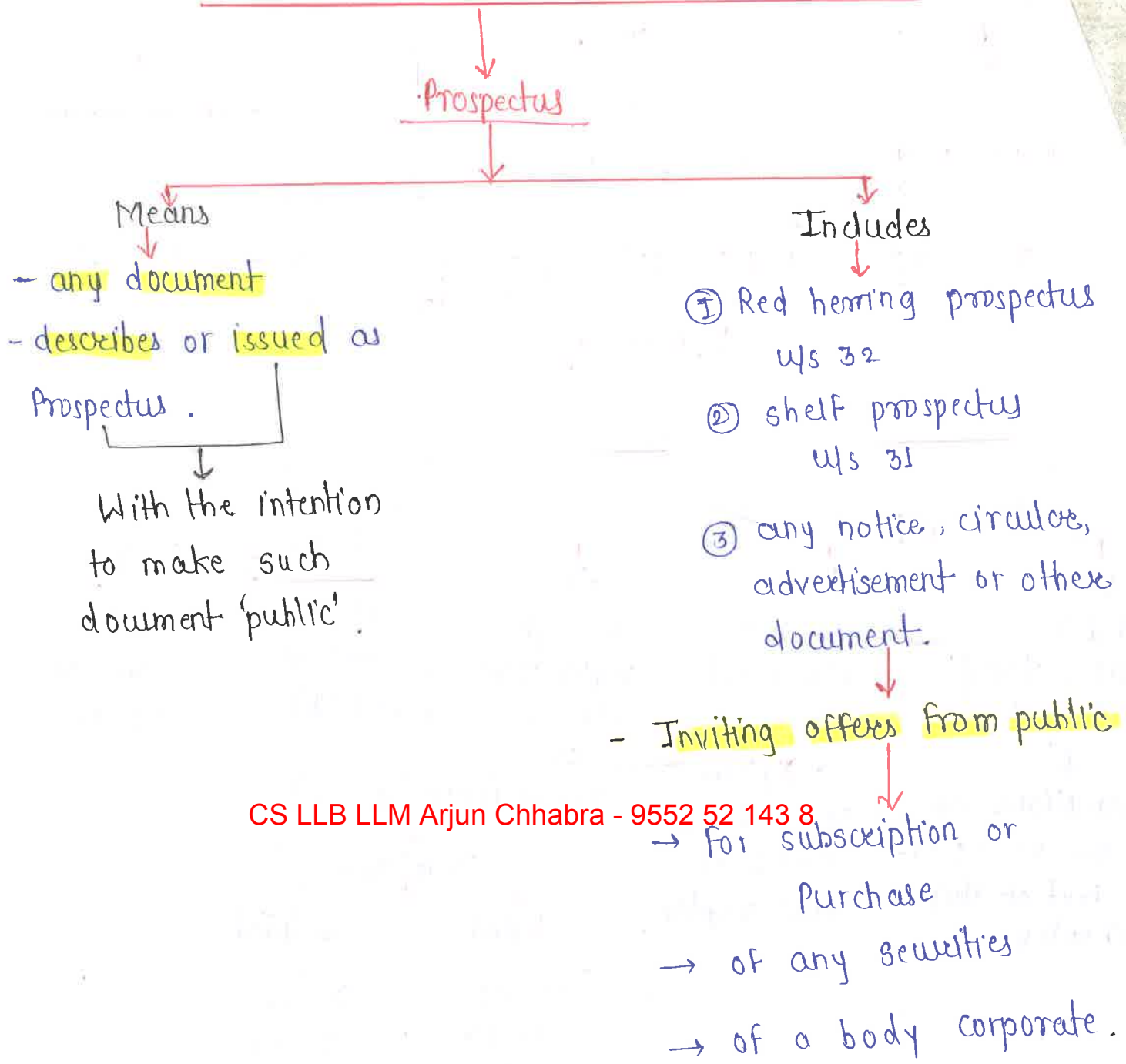
Other liabilities to remain unaffected. Including repayment of any debt.

	fraud involving public interest	Any other case
Min Imp	3 years	6 Month
Max Imp	10 years	
Min fine	Amount involved in the fraud	
Max fine.	3 times of the amount involved in fraud.	

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Basis	Sec 34	Sec 35.
① Applicability	When any statement or omission in the prospectus is misleading.	
② Persons responsible for mis statement.	Any person who authorizes the issue of prospectus shall be u/s 447	Persons as provided u/s 35(1)
③ Defences available.	① Innocence of guilty 2	3
④ Essence Essence of guilty mind where required	✓	X
⑤ Intention of fraud.	CS LLB LLM Arjun Chhabra - 9552 52 143 8 X	
⑥ Remedies available	All the person liable to compensate to every person who has sustained the loss	Persons responsible shall be liable u/s 447.
⑦ Imprisonment	✓	X

Section 2 (70) - Definition of Prospectus.



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In simple words, Any document of the company inviting offers from public for subscription or purchase of any security of the company such document shall be considered as "prospectus".

Nash vs Wynde -

Private communication between business friend does not constitute a prospectus. The case is dismissed.
A single private communication does not satisfy the term "issue".

Case law [Just for knowledge]

Imme gan
Vs
Ranga Ram

Resouth of England
Vs
Natural Gas Ltd

Nash vs Lynde.

sec 23 - Public offer and Pvt. Placement.

Any private communication travelled through various shall not termed as Prospectus.

ss1

Public company

ss2

Private company

- (a)
- (b)
- (c)

Public offer through Prospectus
↓
compliance of sec 23-41 of Part of this chapter

Through Pvt Placement
↓
compliance of Part II of this chapter

Through right issue Sec 62 or bonus issue (sec 63)

- (a) Same as ss1 (b)
- (b) same as ss1 (c)

Compliance
↓
Listed Unlisted
↓ ↓
Sec 62 Sec 62
Sec 63 Sec 63
+ SEBI regulations.

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* Explanation

Public offer

IPO

Initial public offer

When a public co. invites offers from public to subscribe its security for first time through prospectus it is known as IPO

FPO

further P.O.

When a public co. invites offers from public to subscribe its securities other than 1st time through prospectus it is known as FPO

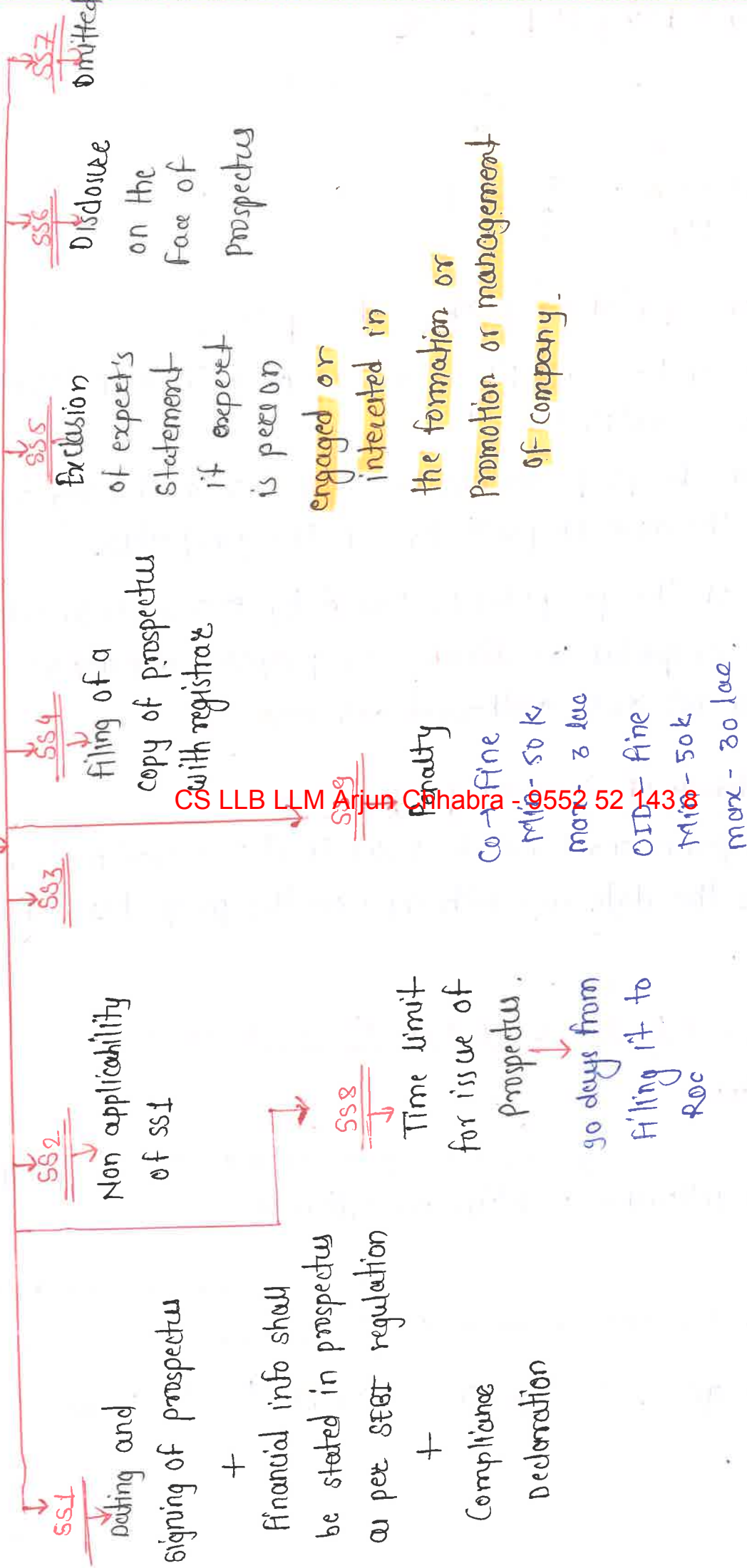
OFS

(offer for sale)

When existing equity st's of co (certain members) (substantial st) proposes to offer their shares for sale to the public it is known as OFS.

{ refer p.n 130 }

Sec 26 - Matters to be stated in prospectus



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SS1 - Dating and filing of prospectus

Ⓐ Every prospectus issued by or on behalf of a public co. shall be dated and signed.

Ⓑ The date indicated in the prospectus shall be deemed to be date of publication.

SS4 - Filing of copy of prospectus with registrar

A prospectus may be issued by a company only if the following two conditions are satisfied -

Ⓐ A copy of the prospectus has been filed with the registrar on or before the date of publication of the prospectus.

Ⓑ such copy of the prospectus is signed by every person who is named in the prospectus as director or proposed director of the company or by his duly authorised attorney.

SS8 - Time limit of issue of prospectus

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A prospectus shall not be valid if it is issued more than 90 days after the date on which copy of the prospectus is filed with registrar.

SS5 - Inclusion / Exclusion of expert's statement in the Prospectus

A statement made by expert may be included in the prospectus, only if all the following conditions are satisfied -

Ⓐ The expert is a person who is not and has not been, engaged or interested in formation / promotion / management of co.

Ⓑ Expert has given his written consent to the issue of prospectus.

© The expert has not withdrawn his consent before date of filing of the copy of the prospectus with the registrar.

© A statement is included in the prospectus that the expert has given his written consent and has not withdrawn such consent.

* Definition of Expert [Sec 2(88)]-

Expert includes an engineer, a valuer, a CA, a CS, a CMA and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

SS1 - Other Particulars of prospectus -

© Prospectus shall contain financial info.

© Prescribed by SEBI & CG.

© A declaration shall be included in the prospectus stating that -

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① The company has complied with provision of The Companies Act, 2013; and

② Nothing in the prospectus is contrary to the provision contained in The Companies Act 2013, The Securities, Contract (Regulation) Act, 1956 and SEBI Act, 1992.

© Every prospectus shall contain following disclosures -

① A statement that a copy of the prospectus has been filed with the registrar.

② A list of all such documents as required to be attached with the prospectus.

552 - Non applicability of Sec 26(1)

(a) Where a prospectus or form of application relating to shares or debentures is issued to the existing members or debenture holder of company as per Sec 62 (Whether a right to renounce the shares in favour of any other person is given or not given).

(b) Where a prospectus or form of application relating to shares or debentures is issued, if such shares or debentures are in all respects uniform with shares or debentures previously issued and such securities being dealt in RSE.

* Irregular Allotment -

(1) Where a company does not issue prospectus in public issue as required by Sec. 23; or

(2) Where prospectus issued by Co. does not include any of the matters required to be included therein under Sec 26(1), or the information given is misleading, faulty and incorrect; or

(3) Where the prospectus has not been filed with the registrar for registration under section 26(4); or

(4) The min. subscription as specified in the prospectus has not been received in terms of section 39; or

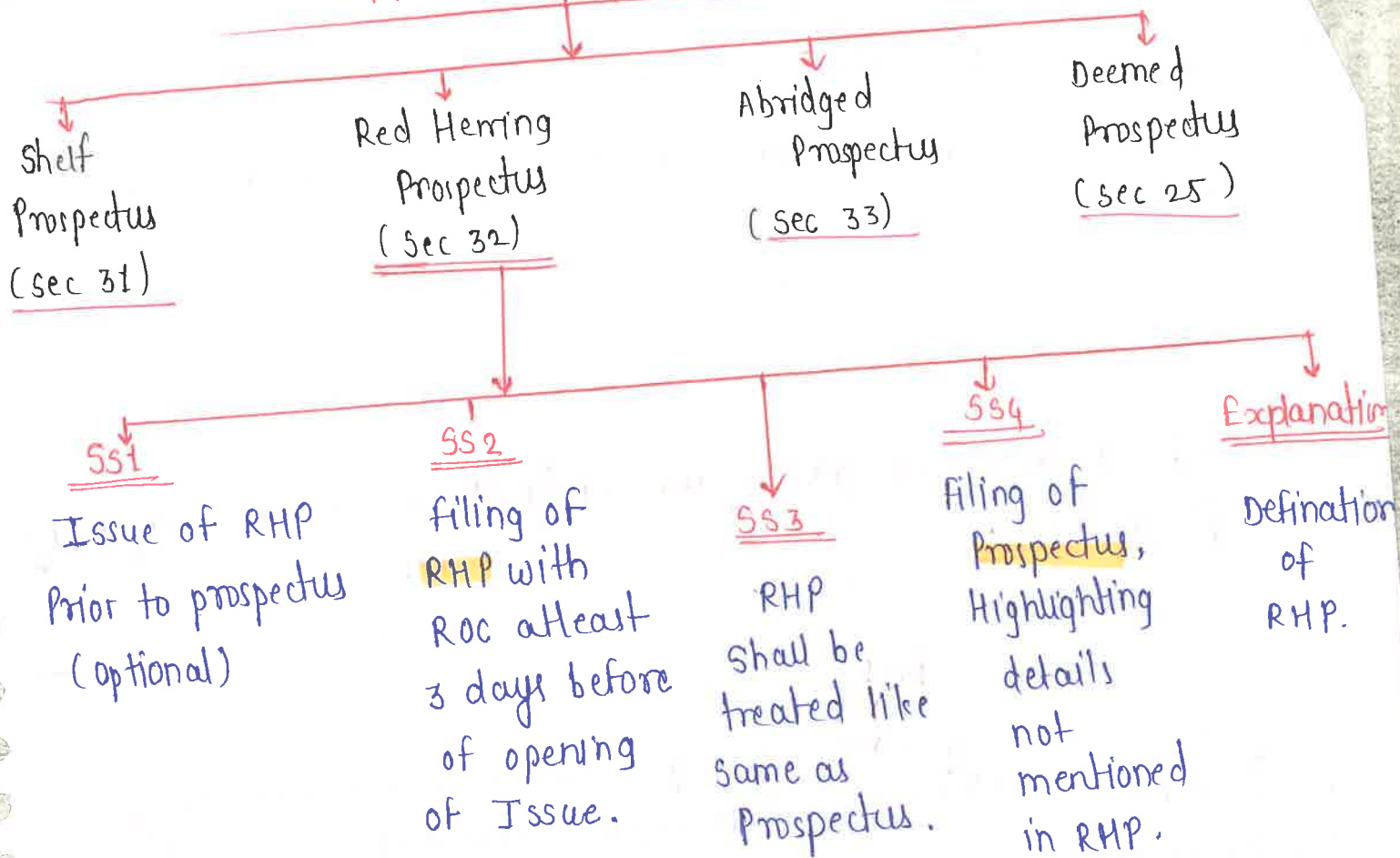
(5) Min. amt receivable on application less than 5% of nominal value of the securities offered or lower than amount prescribed by SEBI in this behalf; or

(6) In case of public issue, approval for listing has not been obtained from one or more of the RSE under Sec 40 of Companies Act, 2013.

(7) Return of Allotment.

(8) Allotment money shall be kept in separate Bank A/c.

Kinds of Prospectus



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* Defination of RHP

The expression 'RHP' means a prospectus which does not include complete particulars of the quantum or the price of the securities included there in.

* Procedure for issue of securities under RHP

① A company proposing to make an offer of securities may issue a RHP prior to the issue of prospectus

② A company proposing to issue a RHP shall file with it (RHP) with the registrar atleast 3 days prior to the opening of the offer.

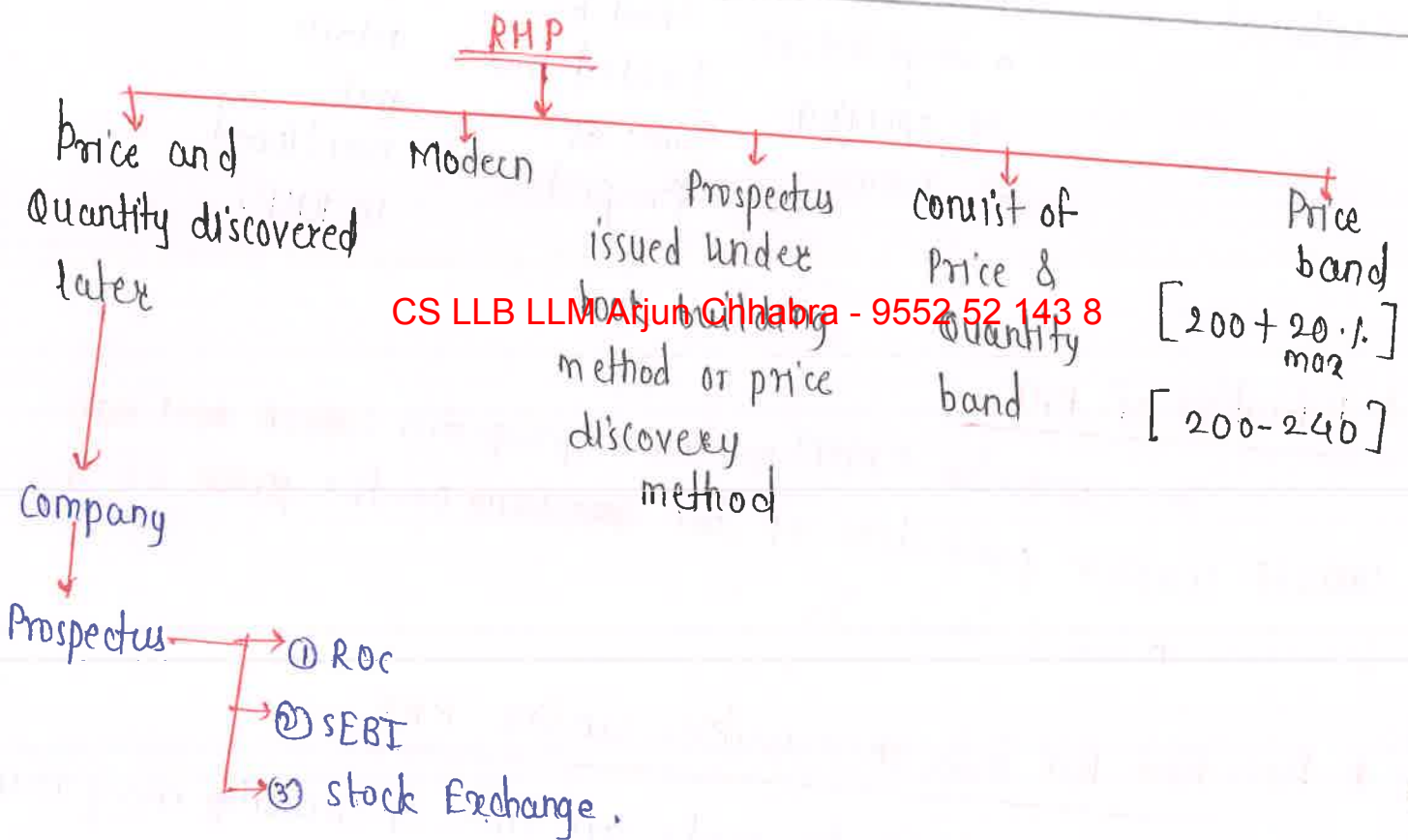
③ upon the closing of the offer of securities, the prospectus shall be filed with the registrar and SEBI.

variation between RHP and prospectus shall be highlighted variations in the prospectus.

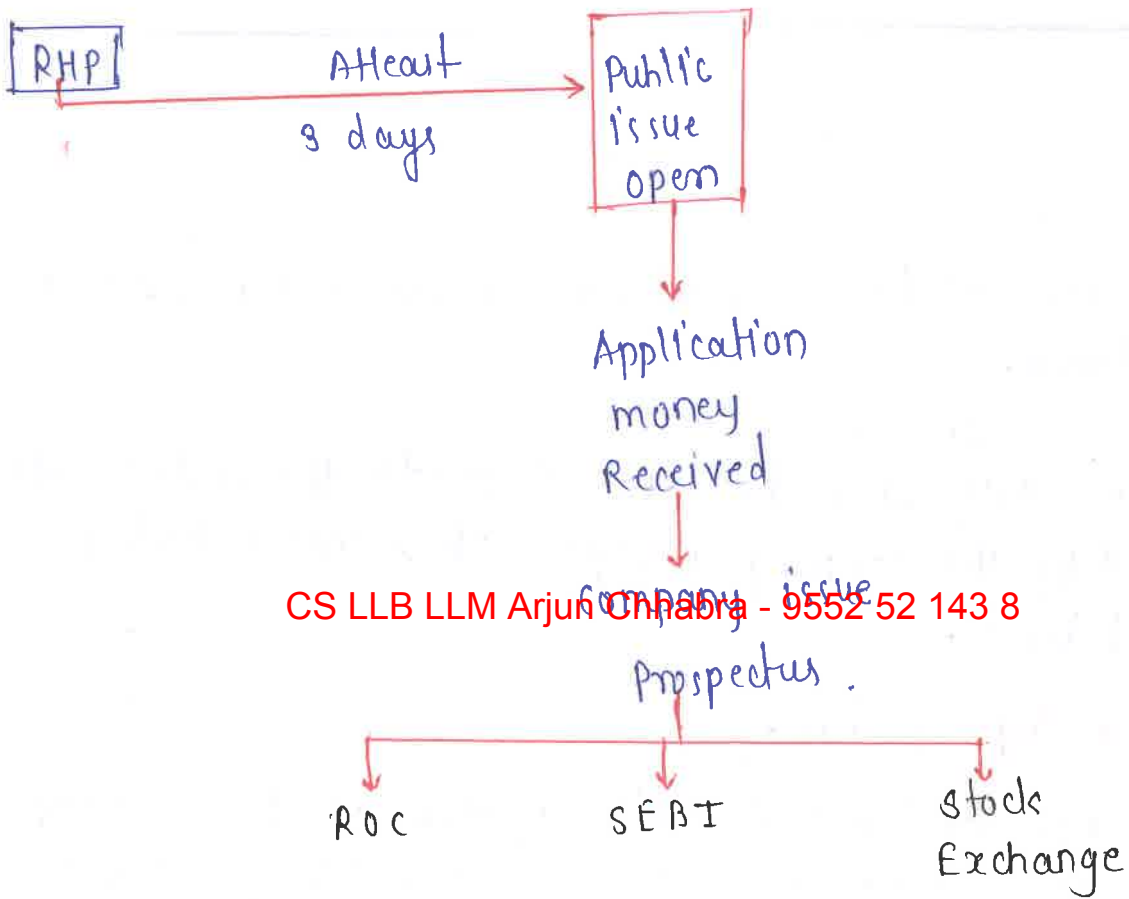
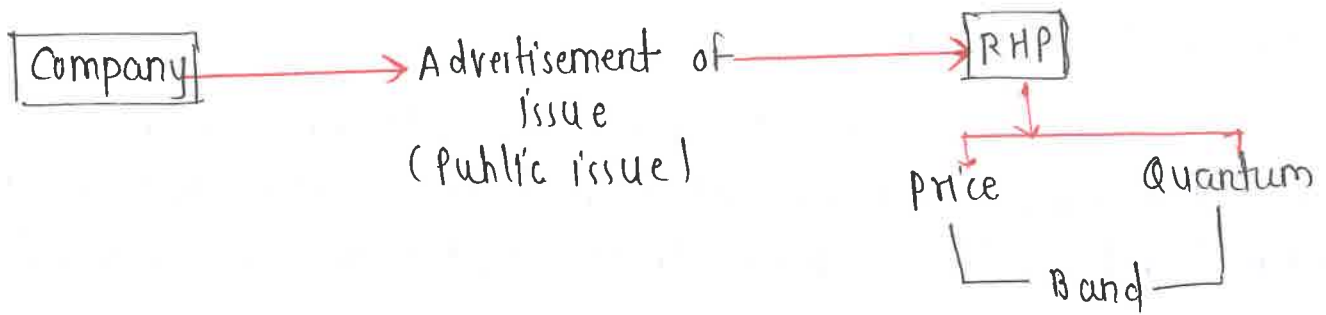
The prospectus shall state :-

- 1] The total capital raised, whether by way of debt or share capital;
- 2] The closing price of the securities; and
- 3] Any other details as were not included in RHP

* A RHP shall carry the same obligations as are applicable to prospectus -

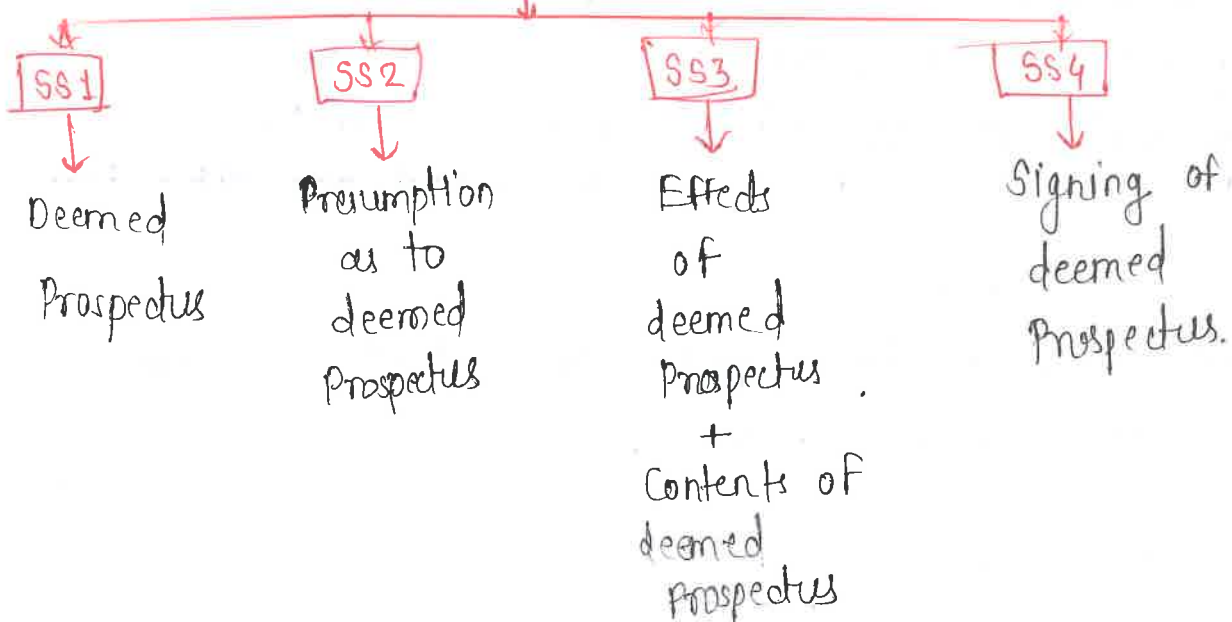


Procedure



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* Sec 25- Deemed prospectus (offer for sale). (refer p. 133 of chart)



① In simple words, it is an exception to the issue of prospectus. Here, the co. allot the shares to issue house which in turn makes an "offer for sale" to the public.

② The document by which offer for sale made by issue house although not being issued by company, shall be deemed to be a prospectus issued by the company. That's why the document by which issue house makes an offer for sale is deemed prospectus.

* Conditions -

In order to constitute offer for sale either of two conditions must be satisfied -

① offer for sale to the public was made within 6 months after the allotment.

OR
② At the date when the offer is made the whole consideration to be received by the company in respect of securities had not been received by it.

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* Effect of Deemed prospectus -

- It shall carry the same obligation as that of the prospectus. i.e. Sec 23, Sec 26, Sec 39, 40, 34, 35 etc will be applicable to deemed prospectus.

- In addition to matters stated in sec 26, deemed prospectus shall also specify the following contents.

① Net consideration received or to be received by the company in respect of securities which are offer for sale to the public.

② Time and place for inspection of contract where under the securities have been allotted.

Signing of Deemed Prospectus

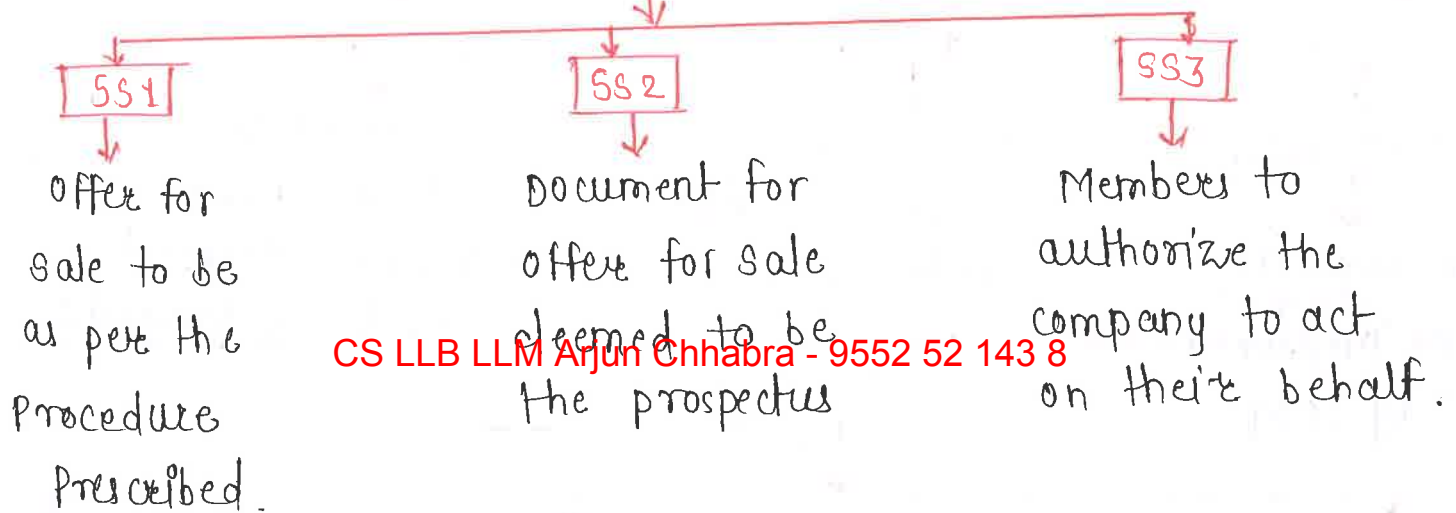
If issued by company
[Issue House]

By two directors of
the company

If issued by a firm

By not less than ~~half~~
of the partners.

Sec 28 - offer for sale of share by certain members of company.



SS1

- Sec 28 is applicable where certain members of company propose to offer for sale to the public, the shares held by them

- Sec 28 empowers such members to do so -

(a) In consultation with BOD;

(b) In accordance with such procedure as may be prescribed.

SS2 - Any document by which the offer for sale to public is made shall be deemed to be A prospectus issued by the company.

Such prospectus shall carry the same obligation as that of the Prospectus.

SS3 The members, whose shares are proposed to be offered to the public shall -

(a) collectively authorize the company to take all actions in respect of offer for sale on their behalf; and

(b) Reimburse the co. all expenses incurred by the company.

Sec 31 - shelf Prospectus and information of Memorandum

SS1

Applicability

On companies

As prescribed by SEBI

SS2

Procedure for issue of securities under shelf Prospectus

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SS3

Information memorandum shall be deemed to be a prospectus.

Filing of shelf prospectus

With registrar at stage of the first offer of securities specified in shelf prospectus.

Validity period of shelf prospectus

A one year from date of opening of 1st offer of securities

+ for 2nd or any subsequent offers during such one year, No further prospectus is required.

Information Memorandum

Prior to 2nd or subsequent offer, company shall file and IM with RoC containing the following details.

Intimation of changes and opportunity to withdraw applications

If co. has received applications for securities along with advance payment, before such

changes, the co. shall - Intimate the changes to such applicants - If they desire to withdraw their application, shall refund all money received in 15 days

Information Memorandum - Details

- ① New charges created
- ② Changes in financial position of company between 1st and subsequent offers.

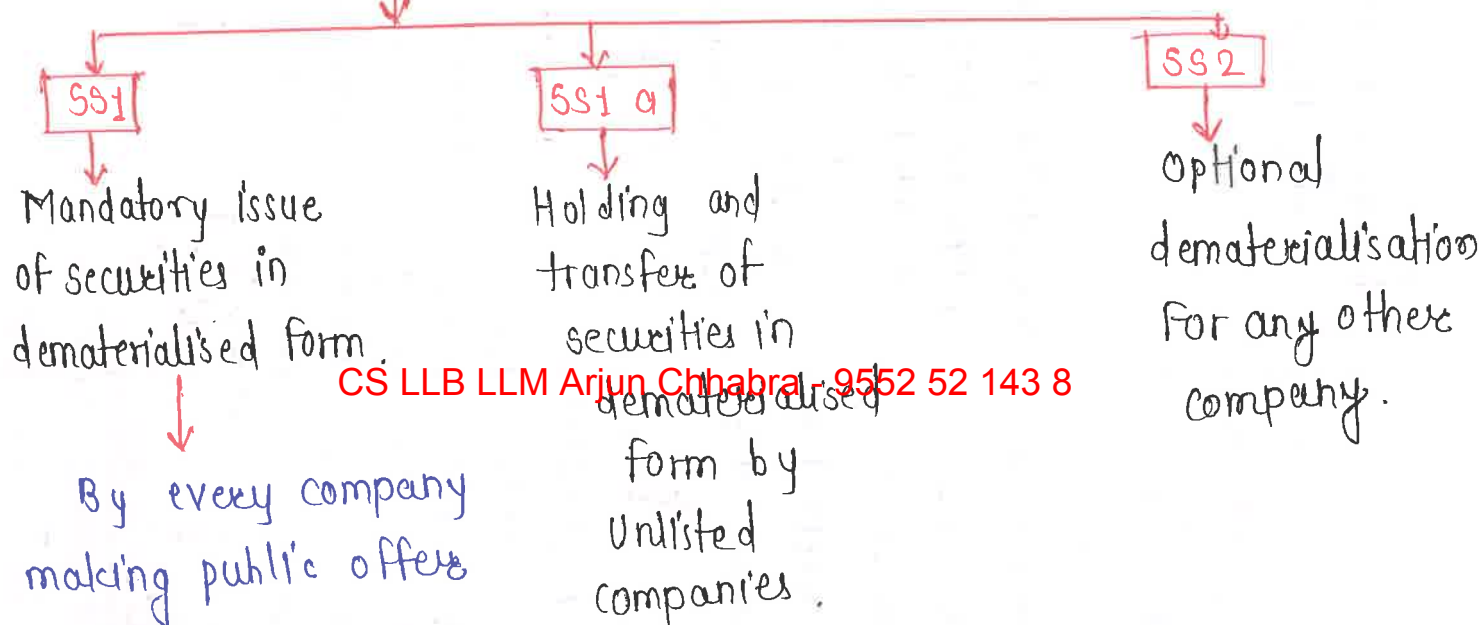
Sec 29 - Public offer of securities to be in dematerialised

Form.

+ Rule 9A of the Companies (Prospectus and allotment of securities) Rules, 2014.

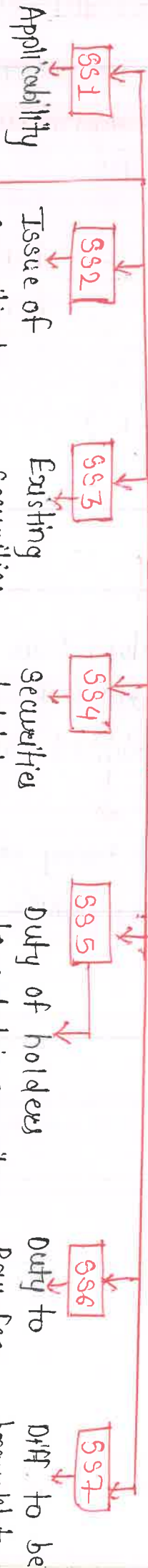
→ Issue of securities in dematerialised form by unlisted public companies.

Refer
131 of
chart book



Rule 9A - Issue of securities in dematerialised form by

Unlisted public company.



851
Applicability

Alignment of
governance of
security
holders before
investor education
and protection
fund [IEPF]

852
Issue of
securities to
be in demate-
rialised form.

By every
unlisted public
company

853

Non applicability
of Rule 9A.

- ① Nidhiie Company
- ② A Govt Company
- ③ A Wholly owned company.

853

Existing
securities
to be
dematerialised

→ UPC shall
facilitate
dematerialisation
of all existing
security

→ UPC shall inform
about such facility to
all existing shareholders.

854

securities
held by
Promoters,
directors and
KMPs to be
in dematerialised
form.

CS LLB LLM Arjun Chhabra - 9552 50 143

855

Duty of holders
to get his securities
dematerialised
before transfer or
subscription

Before it makes
any offer for -

- ① Issue of any
securities ; or
- ② For buy back of
securities ; or
- ③ Right issue
- ④ Bonus issue.

856

Duty to
Pay fee
and main-
tain security
deposit.

on or after
1.10.2018

Every UPC
shall make
timely payment
of fees to the
depository.

② And maintain
Security deposit
of all times of
not less than 2 years
fees.

defaulted can not
make any kind of offer
or security.

857

DRP to be
brought to
notice of
Depository

In its
issued
capital
&
held in
dematerial-
sed form

Sec 27 - Variation in terms of contract or object in

Prospectus. - [Refer P.N 134 of chart book]

Sec 33 - Issue of application form for securities

↓
[Not in syllabus]

[refer page 136 of chart book]

Sec 36 - Punishment for fraudently inducing person to invest money.

- * If a person, either knowingly or recklessly makes any -
 - statement, promise or forecast which is false.
 - Disceptive (धोकेसे) misleading, or deliberately conceals any material fact.
- so as to induce another person to enter into any agreement, such person shall be liable for sec 447

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Sec 37 - Action by affected person / class action suit.

A suit may be filed u/s 34, 35 or 36 by any person or group of persons or any associations of persons affected by any misleading statement or the omission of any matter in the prospectus.

* Coverage of section under this chapter -

- 36 - Punishment for fraudulently inducing person to invest money.
- 2(70) - Prospectus
- 28 - Public offer and Private placement.
- 25 - Deemed prospectus
- 26 - Matters to be stated in prospectus.
- 29 - Public offer of securities to be Dematerialised form.
- 31 - shelf prospectus.
- 32 - Red Herring prospectus
- 28 - offer of sale of shares by certain members of co.
- 27 - Variation in Terms of contract or object in prospectus
- 40 - Securities to be dealt with stock exchange.
- 39 - Allotment of securities by company
- 35 - Criminal liability
- 34 - civil liability
- 42 - offer or Invitation for subscription securities on private placement.
- 447 - Punishment for fraud.
- 33 - Issue of application form for securities.
- 37 - Action by affected person.

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Chapter 4 - Share capital and Debentures

Section → 43-72 Form → SH

Rules → The companies (Share capital & Debentures) Rules, 2014.

Purpose of company to buy back its own securities.

* Meaning -

A procedure which enables a company to go back to holder of its securities and offer to purchase from them the securities specified security that hold.

* Purpose -

① To improve shareholder value /- Buy back generally result in higher earning per share.

② As defense mechanism - Buy Back provides safeguard against Hostile Takeover by increasing promoter holding.

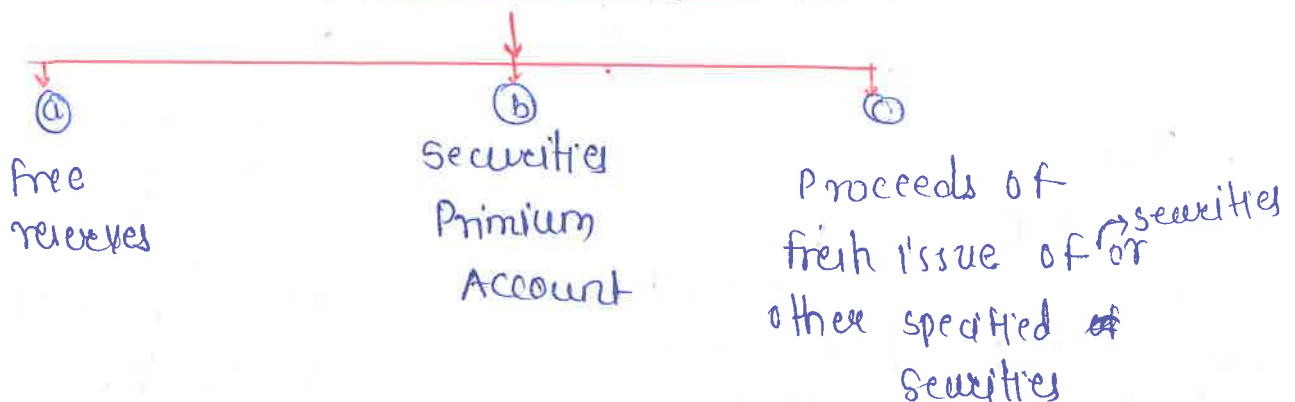
③ To provide an additional exit route to shareholders whose shares are undervalued or thinly traded

④ To return surplus cash to shareholders.

Buy Back of Securities [Sec 68]

(A)

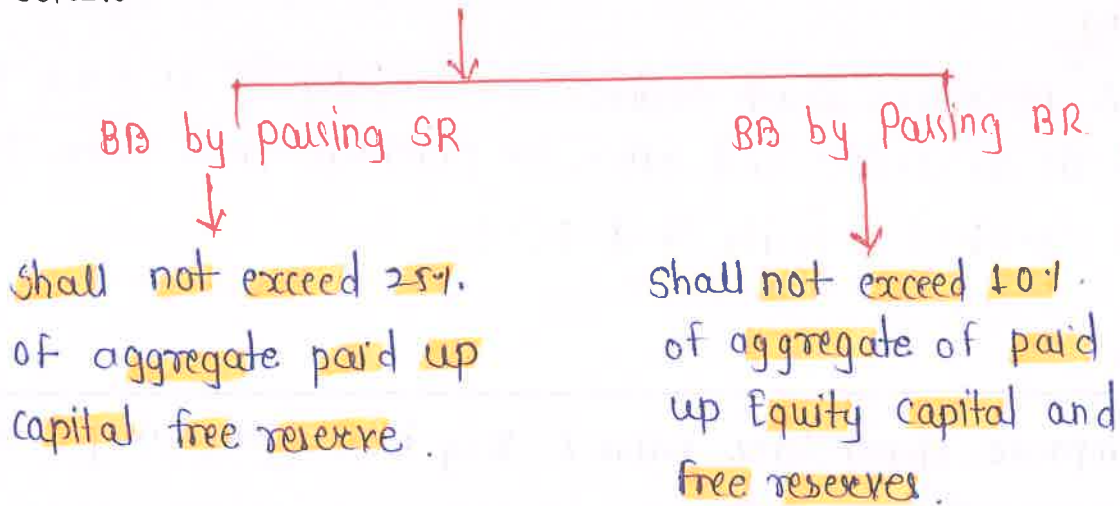
Source of Buy Back



NOTE BB shall ~~not~~ not be allowed out of the proceeds of an earlier issue of same kind of shares or other specified securities.

(B) Condition for Buy Back

- ① Authorisation in Articles
- ② Resolution for BB and limits on BB



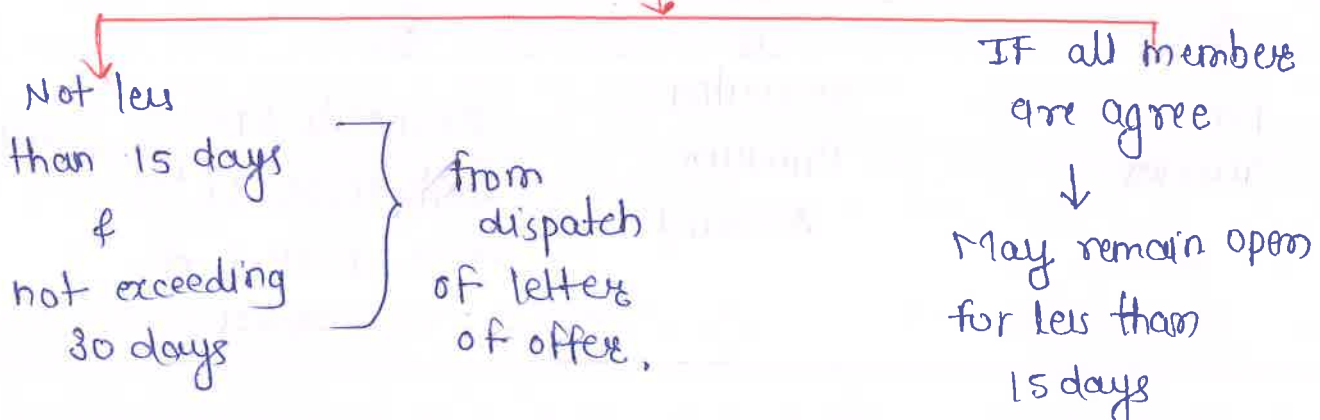
NOTE → BB of equity shares in any FY shall not exceed 25% of its total paid up equity capital in that FY.

③ Debt equity Ratio →
$$\frac{\text{Debt (Secured + Unsecured)}}{\text{Agg P.U.C + FR}} = \frac{2}{1}$$

↓
After BB.

④ Fully paid up shares / securities.

⑤ Time period for offer of BB



⑥ Completion of B.B

Within one year of passing of resolution.

⑦ BB From Whom

from
Existing SH or open Market.

By purchasing shares issued to employees by ESOS or sweat equity.

Different Time lines

Completion of BB
Within 1 yr of resolution.

Declaration of Solvency
company will not be insolvent within next 1 year.

Exinction of shares
physically destroy shares within 7 days of completion of BB.

Buy Back
Within 1 year of closure of BB

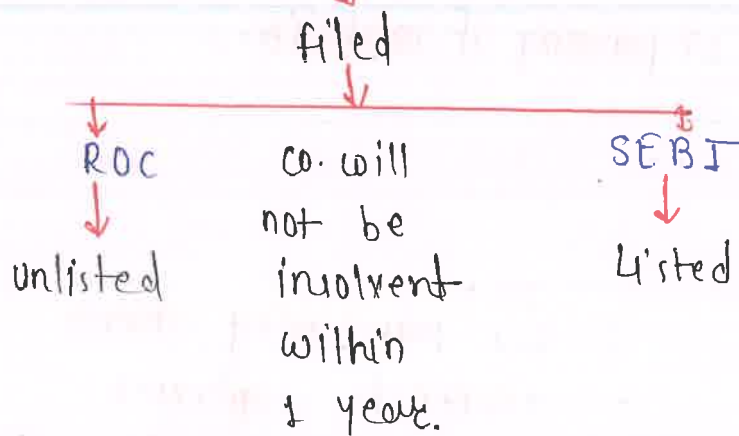
Prohibition on further

Issue of same kind of securities
Within next 6 Months

Except
① Conversion of deb. & pref. share into equity or conversion of warrants.

sweat equity shares.

⑧ Declaration of solvency.



* Practical Example of Maximum Buy Back -

$$\text{Paid up capital} = ₹ 100 \text{ lakhs}$$

[100000 × ₹100]

$$\text{Equity share capital} = ₹ 75 \text{ lakhs}$$

[75000 × ₹100]

$$\text{Pref share capital} = ₹ 25 \text{ lakh}$$

[25000 × ₹100]

$$\text{Free Reserves} = ₹ 100 \text{ lakhs.}$$

$$\rightarrow \text{Max BB} = ₹ 100 \text{ lakh} + ₹ 100 \text{ lakh} = 200 \text{ lakh} \times 25\%$$

\downarrow P.U.S.C \downarrow FR = ₹ 50 lakh

SR

$$\text{Max equity BB in any F.Y} = ₹ 75 \text{ lakh} \times 25\%$$

= 18.75 lakh

BR

$$(75 \text{ lakh} + 100 \text{ lakh}) \times 10\% = ₹ 17.5 \text{ lakh}$$

\downarrow P.E.G \downarrow F.R.

Practical Example of Debt equity ratio 2:1

$$\begin{aligned}\text{Max BB Amount} &= 25\% \cdot [\text{P.U.S.C} + \text{FR}] \\ &= 25\% \cdot [10 + 10] \\ &= ₹ 5 \text{ lakh}\end{aligned}$$

Suppose Co's BB @ ₹ 50/share.

$$\text{So, } \frac{₹ 5 \text{ lakhs}}{₹ 50/\text{share}} = 10000 \text{ shares}$$

↓
company can BB
Max 10000 shares

Maximum post BB ratio

$$\frac{\text{Debt}}{\text{P.U.S.C} + \text{FR}} = \text{can not exceed } 2:1$$

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NOTE - Pre buy back debt or post buy back deb will remain same.

Suppose, Debt is 38 lakh

$$\frac{\text{Post BB } 38 \text{ lakh}}{\text{Post BB P.U.S.C} + \text{FR}} = \frac{2}{1}$$

$$\frac{38 \text{ lakh}}{2} = 19 \text{ lakh}$$

So before BB P.U.S.C + FR = 20 lakh

After BB P.U.S.C + FR = 19 lakh

So the max BB Allowed = 1 lakh.

So the max no. of shares which can be bought back

$$\frac{100000}{50 \text{ per share}} = 2000 \text{ shares / Max shares which can be bought.}$$

Final Answer Max Buy back can be of 2000 shares.

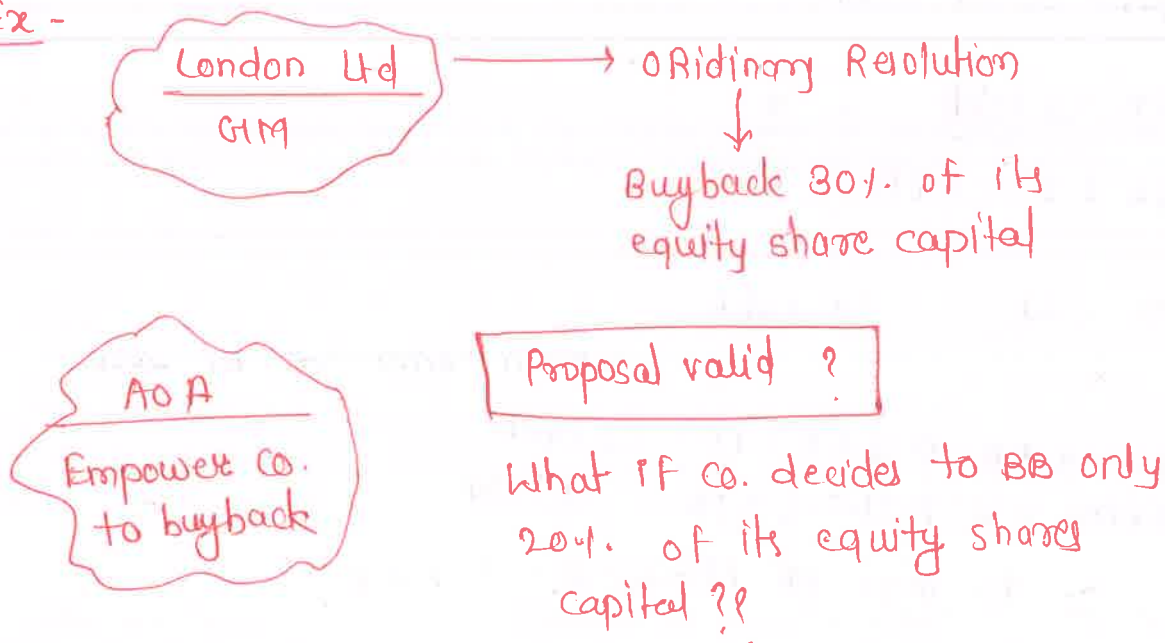
Ex - Xgen Limited

P.U.S.C + F.R = 50 lakh

Co. planning to buy back to the extent = 4.5 lac

- ① SR required ?
 - ② Time limit for completion ?
 - ③ Ratio of debt to paid up capital and FR after buy back ?
- ④ SR is not required to be passed - since the buyback shall not exceed 10% of aggregate P.U.S.C and free reserve.
- ⑤ Within 1 year of passing of resolution for buy back.
 - ⑥ Twice the aggregate p.u.c → free reserve after such buybacks.

Ex -



→ (i) As per sec 68 of The Companies Act, 2013 no Company shall purchase its own shares or other specified securities unless -

(a) The buyback is authorized by its articles.

(b) A SR has been passed at a GM of the authorising buy back.

Provided Nothing above shall apply to a case where -

(i) The buy back is 10% or less than of the total paid up equity capital and free reserves of the Co.; and

(ii) such buyback has been authorised by the board means of resolution passed at its meeting.

(c) The buyback is twenty five percent or less of the aggregate of paid up capital and free reserve of the company.

(i) The proposal of the Co. to buyback its shares is not valid.

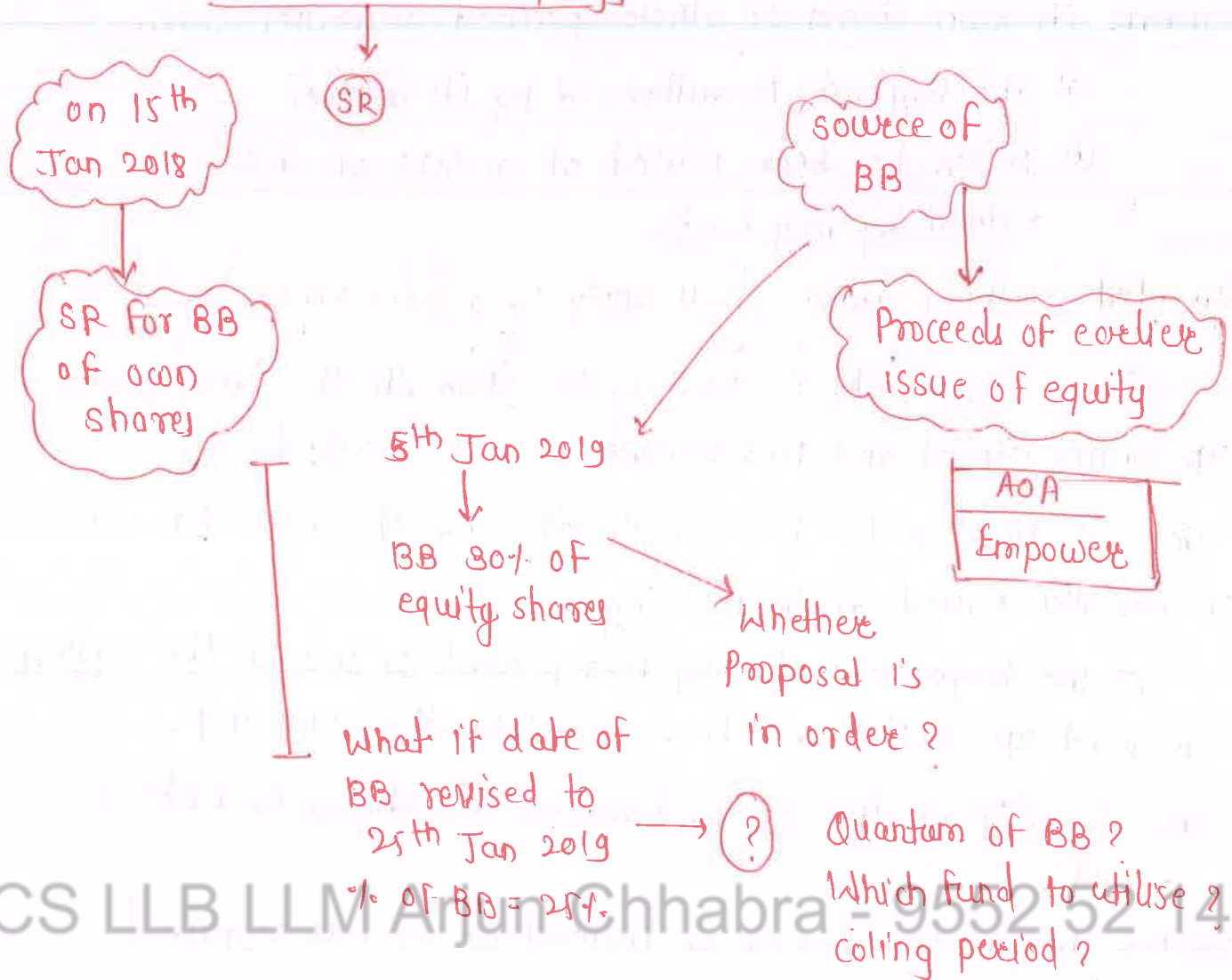
- since the Co. has passed of instead of SR, as required us 68.

- since the Co. proposes to buyback 30% of the equity share capital which exceeds the statutory selling of 25% of total paid up equity capital.

(ii) The decision to buyback 20% of equity share capital shall not be valid.

- since buyback by passing OR is violative of sec 68.

Ex - XYZ [Unlisted Company]



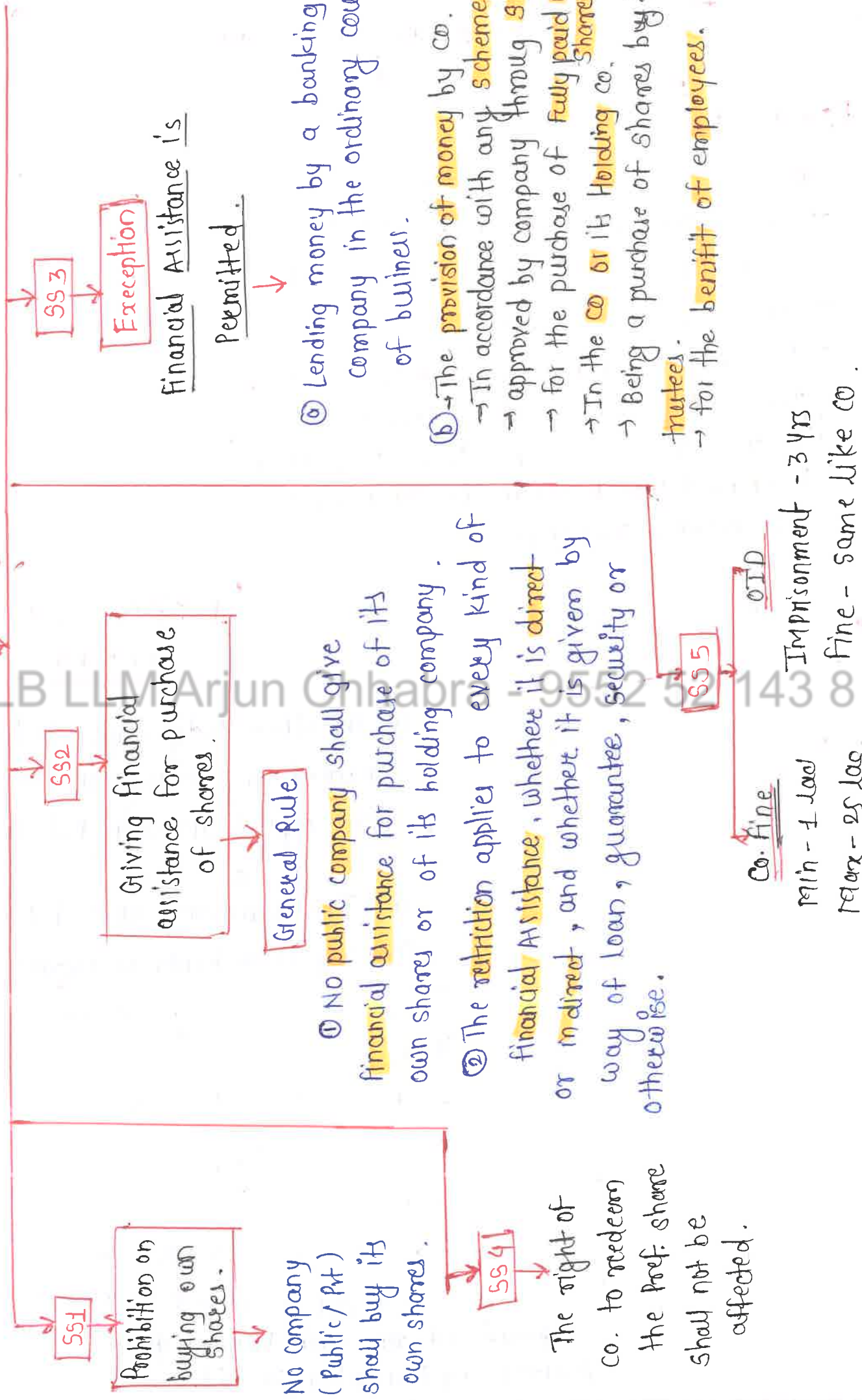
→ @ As per sec 68(2)(c) of Co. Act, 2013 BB of E S shall not exceed 25% of its total paid up equity capital in that F.Y.

(B) Now the co. passed a SR on 5th Jan 2019. This is not valid As no offer shall be made with period of one year from date of closure of first offer.

(C) BB can not be made out of proceeds of an earlier issue of the same issue.

(D) If BB is reduced from 80% to 25%. then also co. proposal is not in order as BB can not be made out of proceeds of an earlier issue of the same share.

Sec 67 - Restriction on purchase by Co. or giving of loans by it for purchase of its shares.



SS1

Prohibition on buying own shares.

No company (Public/Pvt) shall buy its own shares.

SS4

The right of Co. to redeem the Pref. share shall not be affected.

SS2

Giving financial assistance for purchase of shares.

General Rule

1 No public company shall give financial assistance for purchase of its own shares or of its holding company.

2 The restriction applies to every kind of financial assistance, whether it is direct or indirect, and whether it is given by way of loan, guarantee, security or otherwise.

SS5

Co. Fine

Min - 1 lac
Max - 25 lac

OID

Imprisonment - 3 yrs
Fine - same like Co.

SS3

Exception

Financial Assistance is

Permitted.

3 Lending money by a banking company in the ordinary course of business.

4 The provision of money by Co.

-> In accordance with any scheme.

-> approved by company through SR,

for the purchase of fully paid up shares

-> In the Co or its Holding Co.

-> Being a purchase of shares by the trustees.

-> for the benefit of employees.

Sec 67 - Restriction on purchase by Company or giving of loans by it for purchase of its shares

533 - Exception

©

- ⊕ The giving of loans by a company
- To persons in the employment of company
- other than its directors or Mgt
- for an amount not exceeding their salary or wages for period of 6 months.
- With a view to enable them to purchase fully paid up shares in the company or its holding company.

Exception to Pvt company

⊕ No other Body corporate has invested any money in the share capital of such Pvt company

&

⊕ The borrowing of such private Company from banks or financial institution or any Body corporate is less than -

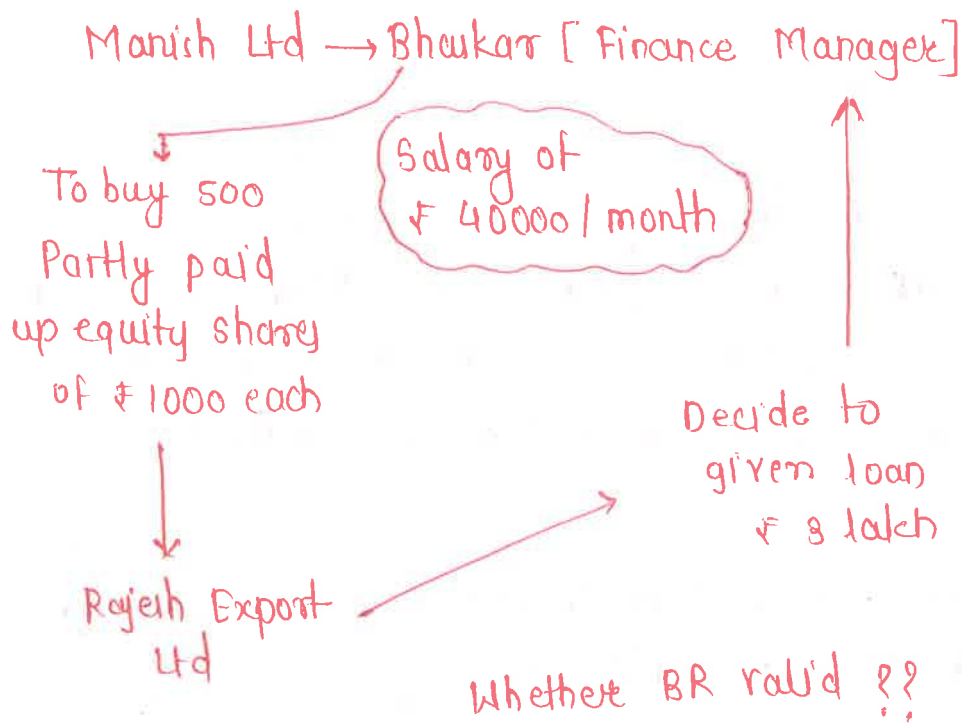
→ Twice its paid up share capital
OR

→ ₹ 50 Cr

whichever is lower &

⊕ such a Pvt Co. is not in default in repayment of such borrowings at the time of making any transaction u/s. 67.

Case study I - Jan 21 [3 Marks]



→ As per Sec 67 (3) (c) of the Companies Act, 2013.

① Loan must be given to employee of company other than Director and company. [Not the employee of the holding company].

Here loan was given to loan employee of .

② Amt of loan shall not exceed employees 6 month salary. Here exceeded.

③ Amount must be utilised by company to purchase fully paid shares. Here the shares are partly paid.

Therefore, resolution of the Board is not valid.

II) The BOD of XYZ Pvt Ltd, decides to grant a loan of ₹ 2 lac to P, the Finance Manager of the co. getting salary of ₹ 30000 p.m to buy 400 partly paid up equity shares of ₹ 1000 each. Examine the validity of Decision.

HINT Ans -

In this case provision of sec 67 shall not apply if the following conditions are satisfied. (Point ①, ② & ③ of exception of Pvt Co)

Case III -

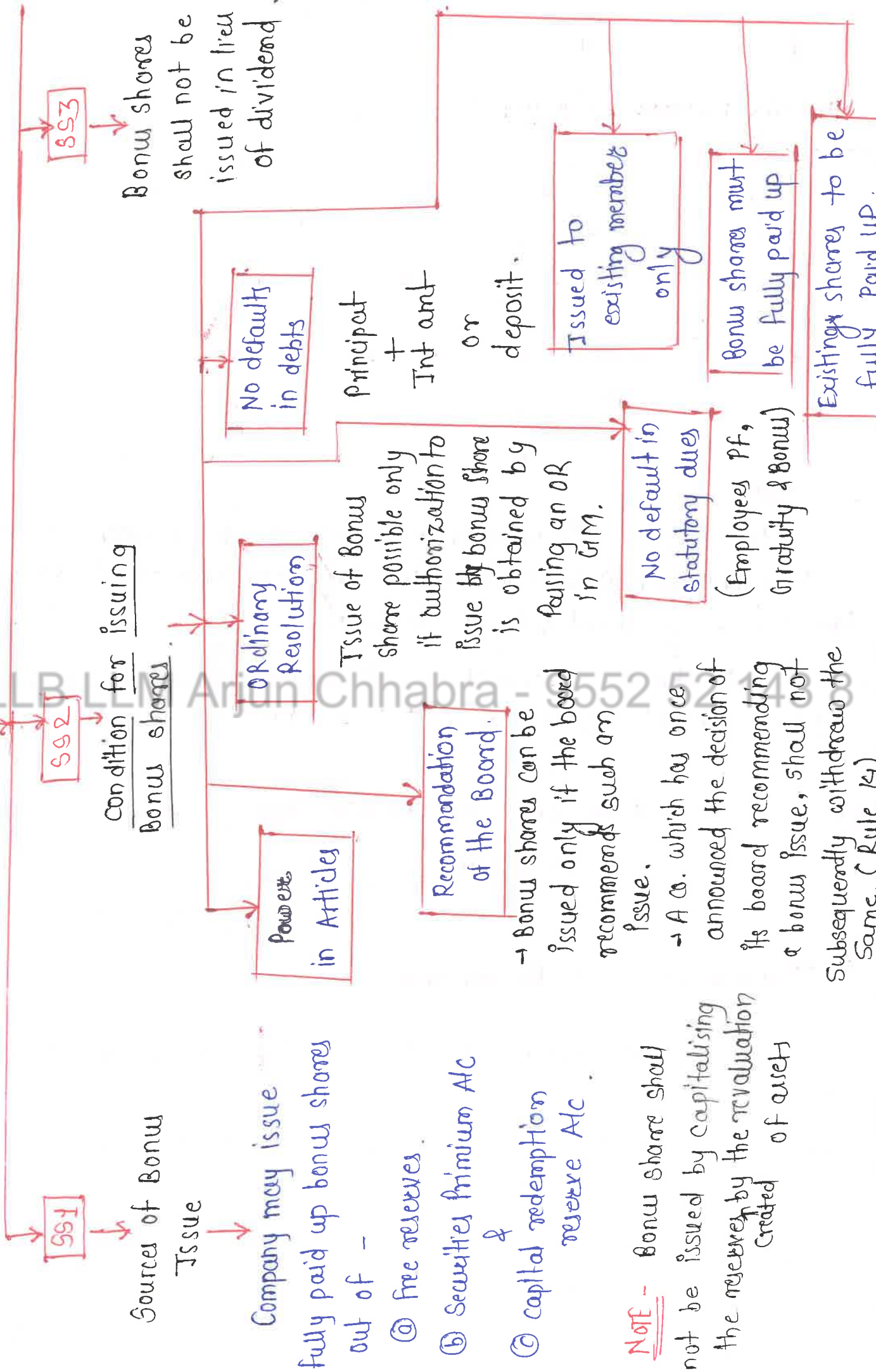
MNO Pvt. Ltd, A subsidiary of POR Ltd decides to give a of ₹ 4 lac to the HR manager, who is not KMP of MNO Pvt Ltd, Drawing a salary of ₹ 30000/month to buy 500 partly paid up equity of ₹ 1000 each in MNO Pvt Ltd. Examine the validity of decision.

Hint Ans - MNO Pvt Ltd shall be treated as public company since its is subsidiary of public co.

② The decision MNO Pvt Ltd is not valid since the loan of ₹ 400000 given to HR Manager exceeds his six months salary and the loan was given to purchase partly paid shares.

Sec 63 - Issue of Bonus Shares

Sec 63 - Issue of Bonus share



Sources of Bonus Issue

Company may issue fully paid up bonus shares out of -

- Ⓐ free reserves.
- Ⓑ Securities Premium A/c &
- Ⓒ capital redemption reserve A/c

NOTE - Bonus share shall not be issued by capitalising the reserves by the revaluation created of assets

→ Bonus shares can be issued only if the board recommends such an issue.

→ A Co. which has once announced the decision of its board recommending a bonus issue, shall not

Subsequently withdraw the same. (Rule 14)

Issue of Bonus share possible only if authorization to issue by bonus share is obtained by passing an OR in GM.

No default in statutory dues (Employees Pf, Gratuity & Bonus)

No defaults in debts

Principal + Int amt or deposit.

Issued to existing members only

Bonus shares must be fully paid up

Existing shares to be fully paid up.

Sec 63

Bonus shares shall not be issued in lieu of dividend.

As on 31st March 2018

- ① E.S.C [3 lakhs E.S x 10] ₹ 30 lakh
- ② FR ₹ 5 lakh
- ③ SPA ₹ 3 lakh
- ④ CRR ₹ 4 lakh
- ⑤ Revaluation Reserve ₹ 3 lakh

Whether co can issue bonus shares.

1:3? 1:2?

→ Hint Ans

For issue of 1:3 bonus shares, there will be requirement of ₹ 10 lakh which is well within the limit available of ₹ 12 lakh. ABC Ltd can go ahead with the bonus issue in the ratio of 1:3.

In the second case there will be requirement of ₹ 15 lakh. The co. can not go ahead with the issue of bonus shares.

Sec 54 - Issue of sweat Equity shares
read with Sec 2(88)

* Meaning of Sweat Equity shares

Sweat equity shares are issued by co. to its directors or its employees are reward to them for their contribution and effort towards the creation of intellectual property rights to the company.

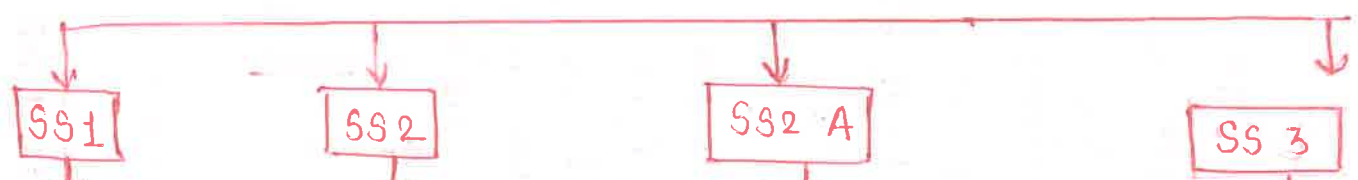
* Definition of sweat equity shares

Sweat equity shares means such equity shares as are issued by company to its directors or employees -

- (a) At a discount; & or
- (b) for consideration, other than cash,

for providing their know how or making available rights in the nature of IPR or value additions, by whatever name called

Sec 53 - Prohibition on Issue of shares At discount.



Prohibition
 Issue of shares at discount is prohibited
 → The prohibition applies to all company.
 [Public/Pvt]

Any issue of shares at a discount shall be void.

No prohibition on issue of shares at a discount in case of conversion of debt.

Notwithstanding anything contained in ss1 & ss2, a co may issue shares at a discount to its creditor when -

Co & OTD
 Amt raised through issue of shares at discount or ₹ 5 lac which is lower.

Company
 Refund all money + Int @ 12% p.a

NO Prohibition on issue sweat equity Shares at discount.
 Issue of SES doesn't fall w/s 53
 A co. may issue SES at discount w/s 59

- Its debt is converted into shares
- In Accordance with debt restructuring scheme
- As per guidelines or directions or regulation specified by RBI under ~~ABT~~ Act, 1934 or Banking (Regulation Act), 1949.

Period of Int from the date of issue of shares to the date of refund.

Sec 54 - Issue of Sweet Equity Shares.

Overriding effect to Sec 53

Same provisions applicable.

Authorization for issue.

① Sweet equity share must belong to a class of share already issued by the company.

② Issue of sweet equity shares must be authorized by passing SR.

③ SR shall specify the following particulars :-

- ④ No. of shares
- ⑤ Current Market price.
- ⑥ Consideration if any.
- ⑦ The class of directors or employees to whom sweet equity shares to be issued.

① The rights, limitation, restriction and provisions, as are applicable to equity shares, shall apply to sweet equity shares.

② The holder of SES shall rank pari passu (in equal standing) with the holders of other equity shares.

Issue of SES to whom?

only to the directors or employees

Employee means

- ① Permanent employee of co working in India or India
- ② Director whether whole time director or not.

③ An employee or director under or of subsidiary, in India or o/s India

of a holding company of the company.

Time limit for making allotment

Within a period of not more than 12 months from date of SR.

Lockin Period

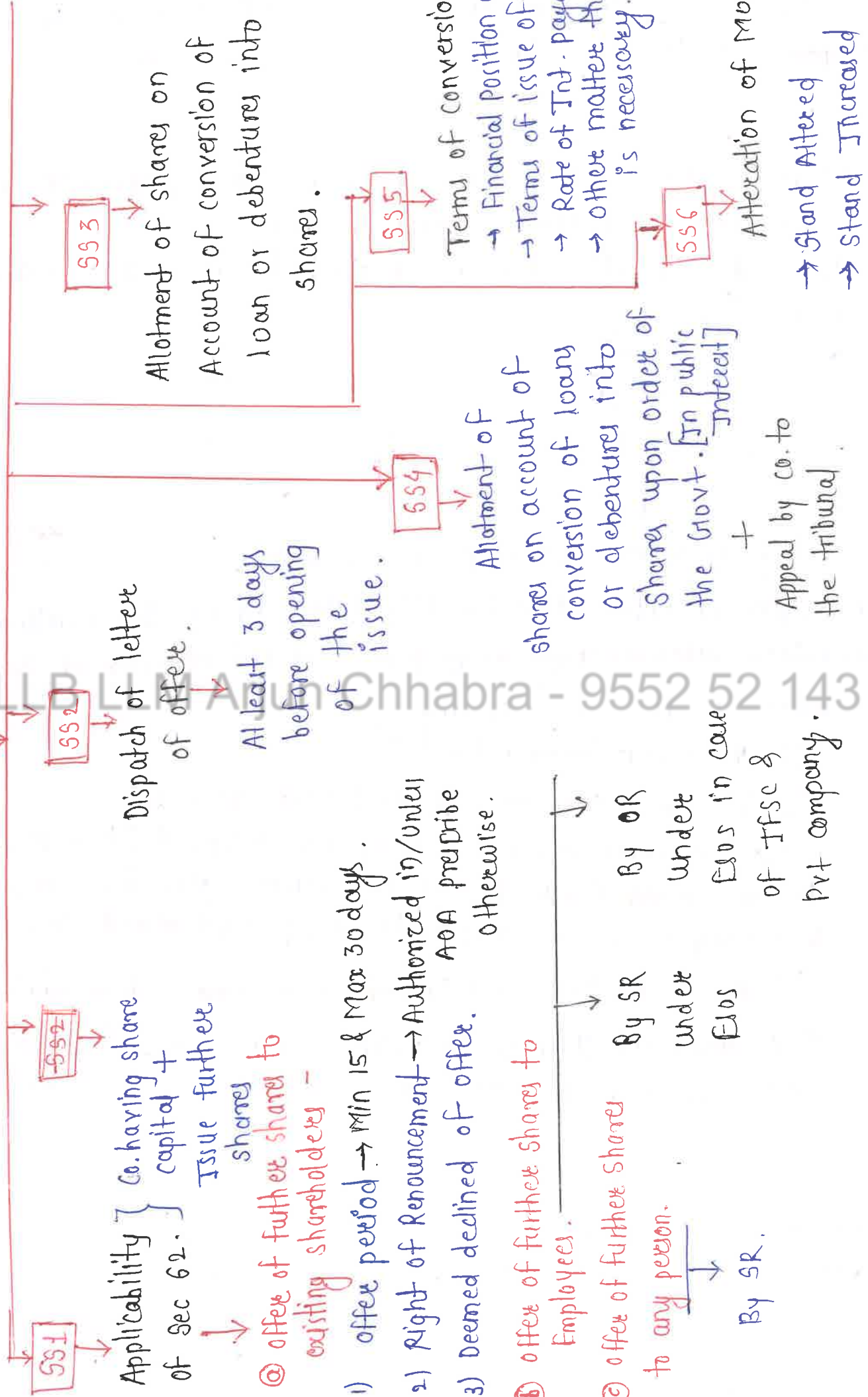
For period of three yrs from the date of Allotment

Limit on sweet equity shares

- ① In the F.Y. SCCE or Not more than 15% of existing P.U.E.S.c
- ② At any time shall not exceed 25% of existing P.U.E.S.c

For start up the limit is 50% upto 5 years from DoIcom

Sec 62 - further issue of share capital



SS1

Applicability of Sec 62. } Co. having share capital + Issue further shares to existing shareholders -

1) offer period -> Min 15 & Max 30 days.

2) Right of Renoucement -> Authorized in/under AOA provide otherwise.

3) offer of further shares to Employees.

By SR Under ELOS

to any person. By SR.

By OR Under ELOS in case of IFSC & Pvt company.

SS2

Dispatch of letter of offer.

At least 3 days before opening of the issue.

SS4

Allotment of shares on account of conversion of loan or debentures into shares upon order of the Govt. [In public interest]

Appeal by Co. to the tribunal.

SS3

Allotment of shares on account of conversion of loan or debentures into shares.

SS5

Terms of conversion
 -> Financial position of Co
 -> Terms of issue of deb
 -> Rate of Int. payable
 -> other matters that is necessary.

SS6

Alteration of MOA
 -> Stand Altered
 -> Stand Increased

further shares shall be offered to the existing equity shareholders in proportion to the paid up share capital held by them.

Subclause (i)

① further shares shall be offered to the existing equity shareholders by sending to each of them a letter of offer.

② The letter of offer shall be dispatched to all the existing shareholders by -

- Ⓐ Registered post ; or
- Ⓑ speed post ; or
- Ⓒ Electronic mode ; or
- Ⓓ Courier ; or
- Ⓔ any other mode having proof of delivery.

③ The letter of offer shall be dispatched to all the existing shareholders at least three days before of the opening of issue.

④ The letter of offer shall specify -

- Ⓐ The no. of shares offered ;
- Ⓑ The Time (Min - 15 days, and Max - 30 days]
 - within which the offer may be accepted [However, in case of pvt. co. if 90% of the members give their consent in writing or in electronic mode, The period lesser than "Minimum 15 days" and "maximum 30 days" shall apply.

Ⓒ A statement that if the offer is not accepted within the time specified in the letter of offer, the offer shall be deemed to have been declined.

Ⓓ A statement that every shareholder has a right to renounce the shares offered to him to any person [unless the articles restrict such right].

Disposal of shares if offer is not accepted -

The shares which remain unsubscribed by the existing shareholders may be disposed off by BOD in such manner which is not disadvantageous to the shareholders and the company.

Subsection - 3

Nothing in sec 62 shall restrict the power of company to allot the shares on account of conversion of loans or debentures into shares, provided that -

- (a) Terms of issue of such debentures contained a term for conversion; and
- (b) The term of issue of such debenture were approved by passing SR.

554 - Allotment of shares on account of conversion of loan or debenture into shares upon order of Govt.

order of Govt concerning conversion Any govt may make an

order that :-

debenture issued to that Govt by company; or
loans obtained from that Govt. by a company

shall be converted into shares in that company.

Terms of Conversion

- (a) The Govt may make such an order even if there is no term for conversion.
- (b) The term of conversion must appear reasonable to Govt.
- (c) The Govt shall have due regard to -

- 1] Financial position of company.
- 2] The terms of issue of debentures or loan, as the case may be.
- 3] Rate of Int payable.
- 4] other matters as may be necessary.

Conditions for Making order of conversion -

- only if it is necessary in the public interest.

Alteration of Memorandum -

If -

The order of the govt. has the effect of increasing the authorized share capital of the company, then -

The memorandum of co. shall stand altered and the authorized share capital of the co. shall stand increased by the amount of debenture or loan converted into the shares.

Appeal by Company to the Tribunal -

If the terms of the conversion is not acceptable to company, The company may prefer an appeal within 60 days from the date of communication of order.

Sec 49 - calls on shares of same class to be made on Uniform Basis.

① Uniform call - A call shall be made uniformly on all the shares falling under same class.

② Meaning of same class -

The shares on which different amount have been paid up shall not be deemed to be the shares falling under same class.

Sec 50 - calls in Advance.

Meaning of calls in Advance.

A Member may, on his own, pay to the company whole or part of the amount remaining unpaid on the shares held by him, even if no part of that amount has been called. Such amount is referred to as 'calls in advance'.

Power to Accept calls in Advance.

Specific power is required in Articles to accept the calls in advance.

voting Right -

- A member is not entitled to any voting right in respect of 'calls in Advance' until that amount has been called up.

51 Payment of Dividend in proportion to Amt paid up -

- i) Generally, dividend is paid as a proportion of nominal value of shares.
- ii) However, the articles of company may provide that the dividend shall be paid in proportion to the amount paid up on each share.
- iii) As per regulation 83 of Table F, The dividend shall be paid in proportion to the amount paid up on each share.

Case I - Karan was holding 5000 equity shares of ₹ 100 each of M/s. Future Ltd. A final call of ₹ 10 per share was not paid by Karan. M/s Future Ltd declared dividend of 10%.

Examine with reference to relevant provision, the amt of dividend Karan should receive.

Ans -

→ Karan holds shares of nominal value of ₹ 500000 Having a paid up value of ₹ 4.5 lakh.

Karan is entitled to receive a dividend of ₹ 45000 if the articles of the company containing a provision that the dividend shall be paid in the proportion to the paid up value of each share or the co. has adopted regulation 83 of Table F.

Section 61

↓
Power of limited company to alter its share capital.

- ↓
- ① limited - S.C
 - ② Authority AOA
 - ③ CIM - OR
 - ④ (a) - (e)
 - ⑤ Notice - SH7
Roc
within 30 days
from
+
Copy of Altered
MOA

Section 66

↓
Reduction of share capital

- ↓
- ① Confirmation of tribunal
 - ② CIM - SR
 - ③ (a) - (b)
 - ④ RSC.

Section 64

↓
Notice to be given to register for alteration of share capital.

- ↓
- ① Sec 61 (1)
↓
a - e
 - ② Section 62 (4) (b)
 - ③ Redeem Pref. shares
 - ④ SH-7 within 30 days
+
Altered copy
↓
ROC.

Section 61 (1)

(a) No. of shares	F.V / N.V	Amount of share capital	
100000	10 ₹	₹ 10 lakh	} - 50 lakh diff.
600000	₹ 10	₹ 60 lakh	
<p>5 lakh } diff</p> <p>} same</p>			
<p>Increase in Authorized share capital</p>			

(b) No. of share	F.V	Amt. of share capital	
10,00,000	₹ 1	₹ 10,00,000	} - same.
100000	₹ 10	₹ 10,00,000	
<p>} diff.</p> <p>} diff</p>			

Consolidate and divide - longer Amt.

$1000000 \times ₹ 1 = ₹ 10,00,000$

$100000 \times ₹ 10 = ₹ 10,00,000$

(d) No. of shares	F.V	Amt. of s.c.	Paid value
100000	₹ 10	₹ 10,00,000	₹ 8.
<p>Contained in capital clause of MOA.</p>		} same	} same
10,00,000	₹ 1		

Sub divided - smaller Amount

Proportion of amount **paid up** on shares.
 [Before Alteration] ₹ 8
 ₹ 80 paise [After Alteration]

Amt. remaining **unpaid** on shares.
 ₹ 2 [Before Alteration]
 ₹ 20 [After Alteration]

shall **remain same** as was before such alteration.

e

No. of shares	f.v	Amt. of s.c.	No. of shares issued by co.
100000	₹ 10	₹ 1000000	70000
70000	₹ 10	₹ 700000	70000

Not been taken

or

to be taken by any person.



cancel shares

Which have not been taken or agreed to be taken by any person



Cancel ← Diminish the amt of its share capital by the sec 6(L)(e) amount of the shares so cancelled.

Cancellation } of shares. ✓
 Diminution } ✓
 Reduction } X

(c) No. of shares	F.V	Amt of s.c	P.V.
100000	₹ 10	₹ 10,00,000	₹ 10.
<i>Reconvert stock shares</i>			
No. of shares	F.V	Amt	P.V
—	₹ —	₹ 10 Lakh	—

shares - stock

Sec - 66 (1) (a)

I - Extinguishment

ACT Ltd

$$100000 \times \text{F.V} = ₹ 10 = 10,00,000.$$

$$100000 \times \text{P.V} = ₹ 6 = 6,00,000$$

$$100000 \times \text{U.C.V} = ₹ 4/\text{share}$$

Extinguish.

$$100000 \times$$

+

II Reduction

$$100000 \times 10 = ₹ 10,00,000$$

\downarrow
 No. of shares

\downarrow
 F.V

$$100000 \times ₹ 6/\text{share} = ₹ 600000$$

\downarrow
 P.V.

$$100000 \times \cancel{₹ 6} ₹ 7/\text{share} = 700000$$

\downarrow
 P.V

100000

Sec (a)(b) (1)

ACT Ltd

B/S

ESC	40 Lac	Bank	15 Lac
Loan	20 Lac		

100000 x ₹ 10 fully paid

With
Extinguishment
B/S

ESC	₹ 4 lac	Bank	₹ 9L
Loan	₹ 20L		

$$100000 \times ₹ 6 / \text{share} = 600000$$

$$F.V = ₹ 10 / \text{share}$$

↓

$$F.V = ₹ 4 / \text{share}$$

100000 x ₹ 4 / fully paid

Without
Extinguishment
B/S

ESC	₹ 4 lakh	Bank	9L
Loan	₹ 20L		

$$100000 \times ₹ 6 / \text{share} = 600000$$

$$F.V = ₹ 10 / \text{share}$$

↓

$$F.V = ₹ 10 / \text{share}$$

$$100000 \times ₹ 4$$

[Partly paid]

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XYZ Ltd

B/S

Before
Cancellation

ESC Loans	₹ 10 Lac ₹ 20 L.	Banks P/L Alc	₹ 12 L. ₹ 4 lac
-----------	---------------------	------------------	--------------------

100000 x ₹ 10 / each - fully paid up

After
Cancellation

Esc Loan	₹ 6 lakh ₹ 20 lac	Banks P/L	12 Lac NIL
----------	----------------------	--------------	---------------

F.V = ₹ 10 / share.

100000 x ₹ 6 / share

F.V = ₹ 10 / share.

Liability extinguish = No.

100000 x ₹ 6 / share

fully paid

F.V = ₹ 6 / share.

Liability Extinguish - Yes.

Sec 66 - Reduction in share capital.

SS1

Confirmation of tribunal
 + SR - GIM
 + Modes of reduction.
 Proviso → No default w.r.t deposit

SS2

Notice by the tribunal to Ct, ROC, SEBT and creditors

+ Representation by Ct, ROC, SEBT and creditors within 3 months of notice.

+ If no objection received within 3 months

Presumed no objection to reduction.

SS3

Tribunal shall secure int. of creditors

The tribunal may make an order if it satisfy that every creditor -

(a) Has given his consent; or
 (b) Has been discharged; or
 (c) Has been given security.

+ Accounting treatment must be in conformity in Acc standard as specified in Sec 133.

SS4

Publication of order of tribunal in a manner prescribed by tribunal

SS5

Obligation of co. to deliver certified true copy of the order of tribunal. and minutes approved by tribunal to ROC within 30 days of receipt of order.

+ Registration by ROC and certificate to that effect.

SS6

Non applicability of this sec on buy backs.

SS10

If any officer of the company acting fraudently he shall be under section 447.

Refee chart
 P.N-152
 of chart book

Special Note -

- Cancelling paid up share capital is Reduction.
- Cancelling uncalled share capital is also reduction.
- Cancelling unsubscribed share capital is Alteration.

Difference between stock and shares

Basis	Stock	Shares
<u>Nature</u>	Stock Means a bundle of shares express in lumpsum . It mean aggregate of fully paid up shares of members merged in one fund.	A share a smallest unit into which the capital of co. is divided .
<u>Time of Issue</u>	A co. cannot issue a stock in very beginning. i.e. A co. can not make an original issue of stock.	Shares can be issue in first instance.
<u>Paid up value</u>	stock shall be always fully paid.	shares may be fully paid or partly paid.
<u>Nominal Value</u>	A stock has no nominal value	Shares has nominal value.
<u>Transfer in fraction</u>	Stock can be transferred in fractional Amt.	shares can not be transferred in fractional Amt.
<u>Distinctive Number</u>	stock has no distinctive no.	Every share has Des' no. except in depositary
<u>Authorization for issue</u>	A company may convert its fully paid shares into stock only if Authorized in AOA	No. Authorization in article required for issue

Sec 44 - Nature of shares.

The shares and debenture shall be—

- a) Movable property
- b) Transferable in the manner provided by the articles of the company.

Sec 45 - Numbering of shares.

- Every share shall be distinguished by its distinctive number.
- ↳ Exception - Shares held in depository system shall not have distinctive number.

Sec 46 - Share Certificate read with Sec 56



Sec 2 (55)

Definition of Member

i) Every subscriber to Memorandum

+

name entered in register of members.

ii) Every other person writing agree to become member of Company.

+

name entered in ROM.

iii) Every person - name - Register of beneficial owners in the records of depository.

Sec 46 - Share Certificate

§§1

Meaning

A share certificate is prima facie evidence of the fact that the person named thereon is the owner of such no. of shares as are specified therein.

Signing Requirement

Common Seal

If shall be affixed in the presence of person required to sign the certificate.

~~Common seal~~

every certificate shall be signed by 2 directors or by director & c/s if any.

§§2

Duplicate share Certificate

Can be issued if it is

Proved that the sc has been lost or destroyed;

Defaced, mutilated or torn & surrendered to Company.

Listed

within 48 days

unlisted

within 3 Months.

of submission of complete document with the complete document.

§§3

Rules by CG

- Manner of issue of share Certificate (Sec)
- manner of issue of duplicate sc.
- Form of sc.
- Particulars to be entered in SC
- other matters.

SH-1

§§4

Shares held in
D-mat form

The record of depository
is the prima facie
evidence of the interest of
beneficial owner i.e. no need
to issue share certificate.

§§5

Penalty

Company

No less than
5 times of FV
of shares

Max - 10 times of
FV or } ↑
10 cr

OID

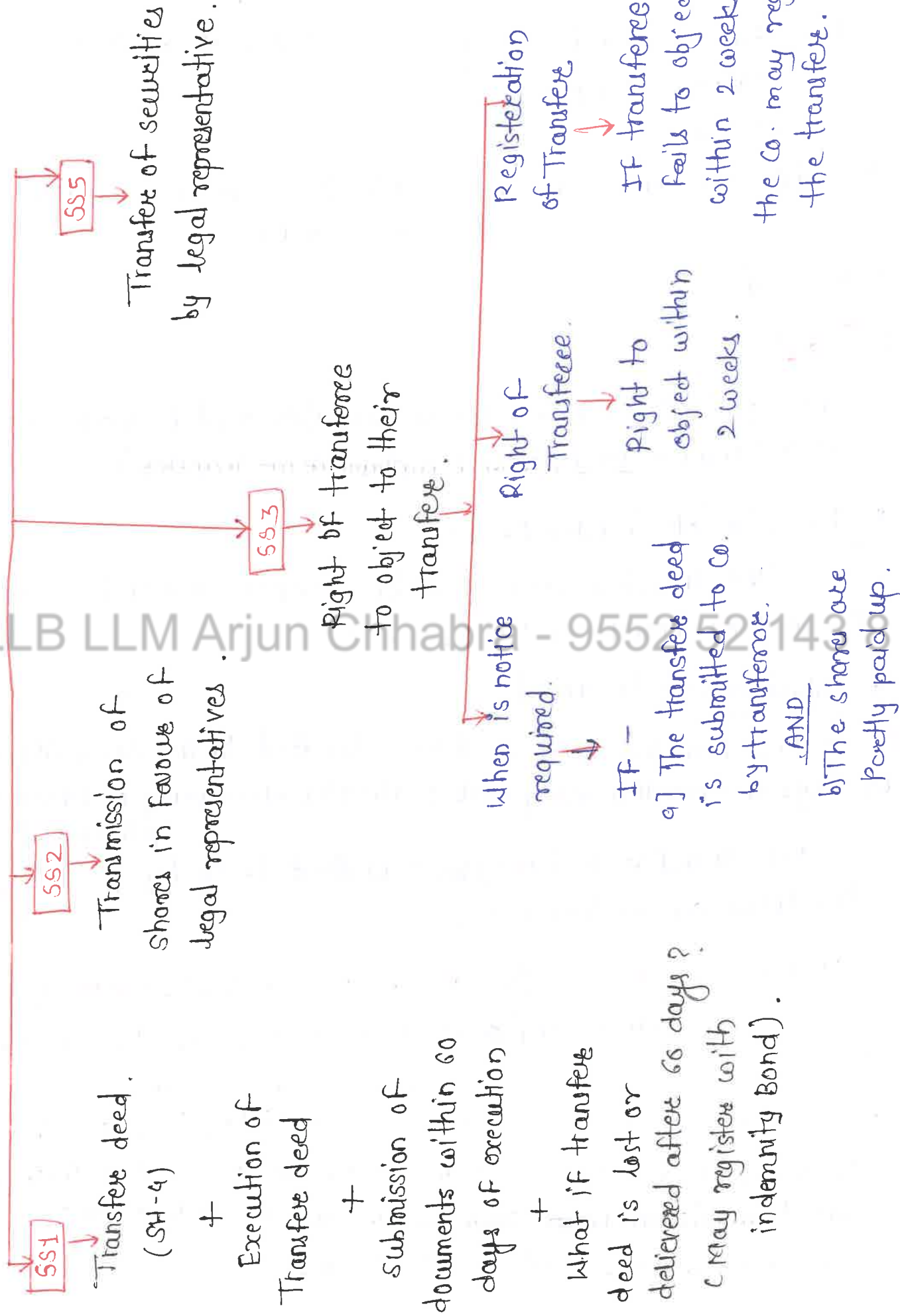
Liable
u/s
447

56 - Transfer and Transmission of securities

§§4 - Time limits for delivery of certificate

- (a) subscribers to memorandum within 2 months of incorporation
- (b) Allotment of shares - within 2 months of Allotment.
- (c) Allotment of Debentures - within 6 months of allotment.
- (d) Transfer or Transmission of securities -
within one month of receipt of transfer or intimation of

Sec 56 - Transfer and Transmission of Securities.



Subsection-4 conclusion

- 1) Transfer deed - SH4 + share certificate
- 2) Execution of Transfer deed. + letter of allotment.
 - Date, stamp &
 - sign.
- 3) submission of document → within 60 days of execution of company.

* Detailed Provision

1) Transfer Deed

- The application for transfer of securities must be made in form SH-4 (Transfer deed / form / Instrument of transfer).

* Execution of Transfer Deed -

The transfer deed shall be stamped, dated & executed (signed by transferor & transferee).

* submission of document.

- The transfer deed shall be submitted to the co. within 60 days of execution along with certificates of security or letters of Allotment.
- The transfer deed may be submitted to co by the transferor or transferee.

② Transmission of shares in favour of legal representatives

Where any person acquires any right to securities by operation of any law (eg. nominee or official receiver by order of court), the co. may register the transmission of shares in favour of such person if co. receives intimation of transmission from such person, and in such a case, no transfer deed shall be necessary.

555 - Transfer of securities by legal representative.

In case of death of holder, of any security, the transfer of such security by the legal representative of the deceased shall be valid -

- even though the legal representative is not the holder of such security.
- as if the legal representative were the holder of such security.

Death → 500 shares

Mrs. X → Application
+
share certificate
+
death certificate
+
Affidavit
+
Indemnity Bond
+
NOC by other legal representative
+
Expenses of investigation.

Transfer

- ① Voluntary
- ② SH-4 - Transfer deed.
- ③ stamp duty.
- ④ May or may not have consideration.
- ⑤ In favour of any person.

Transmission

- ① By operation of law.
- ② Intimation
- ③ No stamp duty
- ④ No consideration.
- ⑤ In favour of nominee only.

IMP # Sec 58 - Refusal to register transfer or transmission of securities.

Refusal to register

the transfer or transmission by private company.

Compulsory issue of Notice.

→ If a prt co refuses (in pursuance of any power under its articles or otherwise) to register.

→ Transfer of any securities; or

→ Transmission of any securities.

If shall give a notice of such refusal.

58.1

Notice to whom?

→ Transferees & Transferee; OR

→ Person giving intimation of transmission.

Time limit for sending notice.

within 30 days from which the -

1) Transferee dead OR

2) Intimation of transmission was delivered to the company.

Content of notice.

Reason for refusal to register the transfer or transmission.

58.3

Appeal against Refusal.

Appeal to whom?

- The appeal may be filed before tribunal.

Appeal by whom?

- Transferee; or
- Person giving intimation of transmission.

Time limit

within 30 days of receipt of notice of refusal
what if notice is sent by co?
within 30 days of delivery of Transferee deed or intimation of Transmission

Sec 58

SS4

Appeal against Refusal

① To whom and by whom
Same as SS(3)

Against public company

Time limit

Ground of Appeal

Company has
without sufficient cause
refused to register the transfer
or transmission of securities.

Notice of refusal sent by C.
↓
60 days of refusal.

Notice not sent by Co.
↓
90 days of delivery of document.

SS5

order of Tribunal.

→ The tribunal shall hear the parties to appeal.

→ Tribunal may dismiss the appeal

→ tribunal may, by order, direct that transfer or transmission shall be registered by company.

→ The company shall comply with such order within 10 days of receipt of order of tribunal.

→ The tribunal may direct the Co. to pay damages, if any, sustained by any aggrieved party.

SS6

Punishment for

Contravention
Imprisonment & Fine

Min - 1 yr

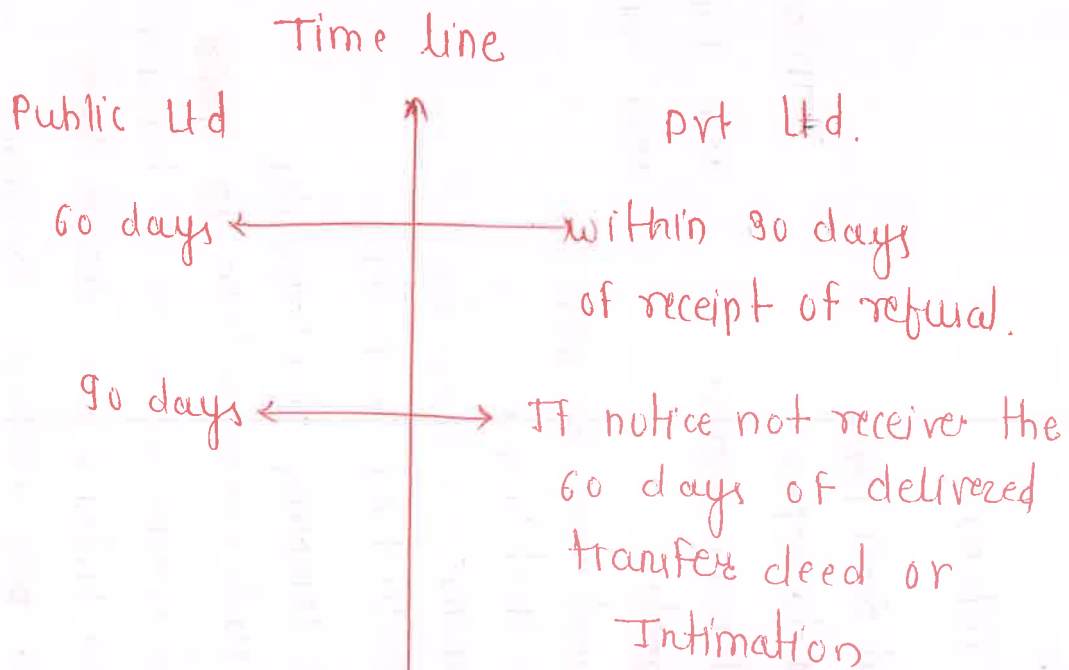
Min - 1 lac

Max - 3yr

Max - 5lac

Appeal provision

Intimating person / Transferee .



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NCLT

↓ order

within 10 days of passing of order

↓

co. Compliance.

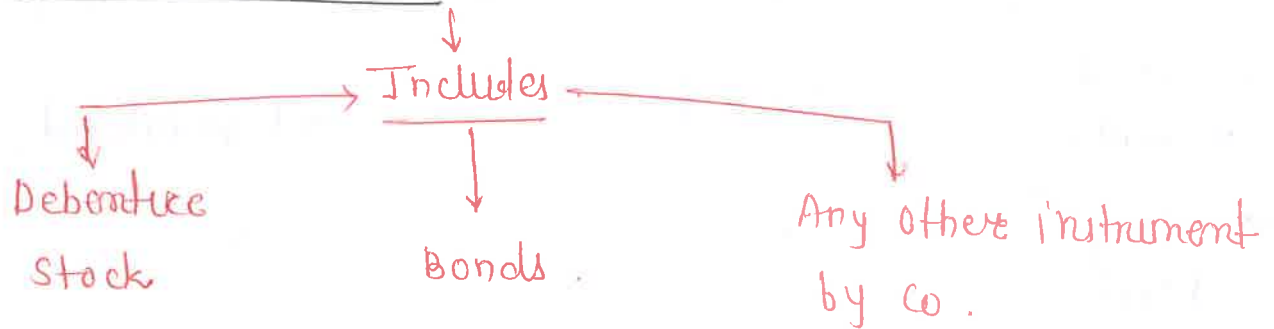
Sec 71 - Debentures read with sec 2(30)

↓
legal provision with
debentures.

↓
Definition of
debentures.

[Bonds → when co. takes loan from bank & issues an instrument its called bond]

Sec 2(30) - Debentures

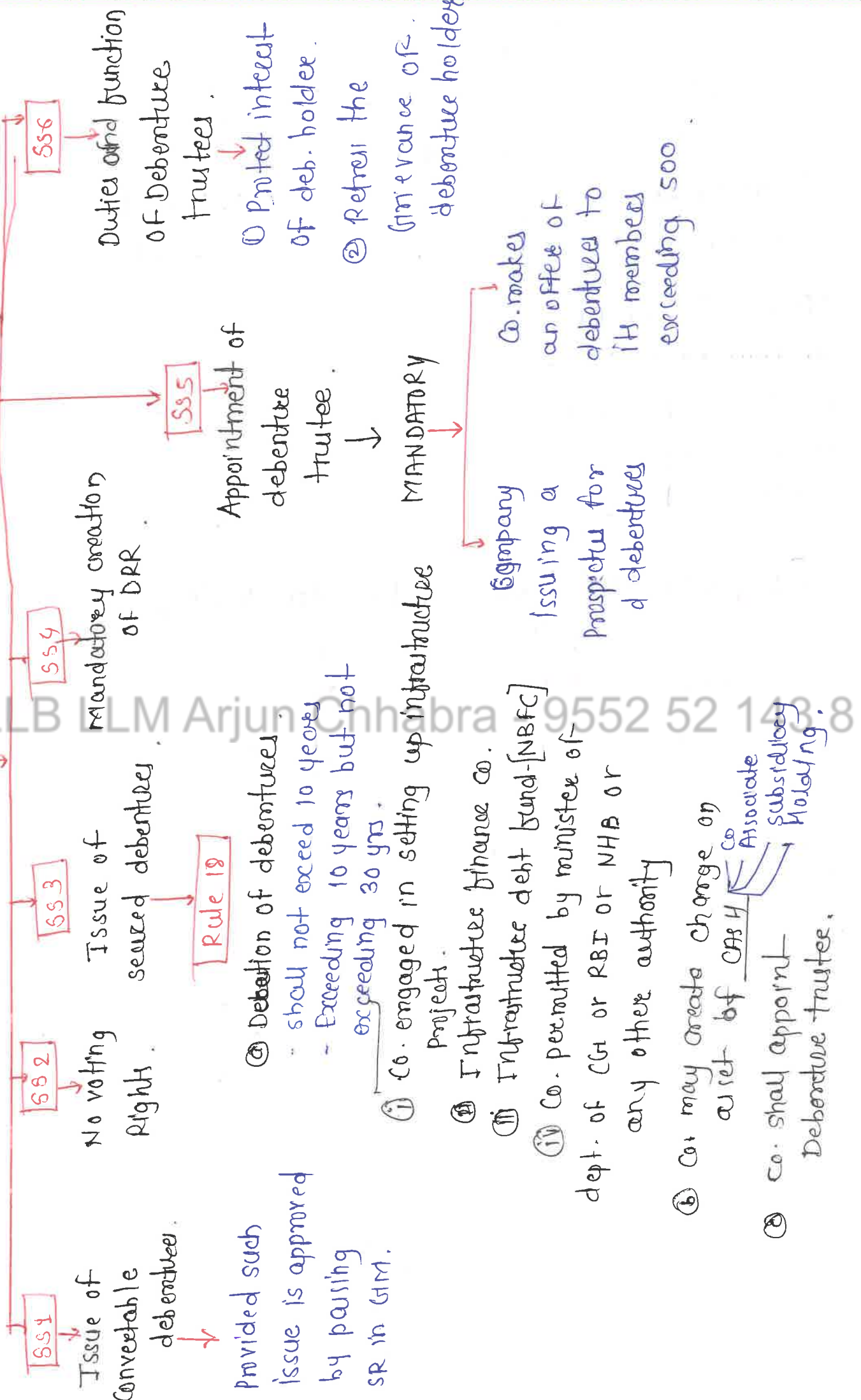


Evidencing Debt, whether constituting
charge on the asset of co. or not.

- Debenture, holders are creditors of company.
- No debenture can carry any voting Right.
- The debenture specifying the payment of specified sum payable at certain rate of Int.

Basis	Shares.	Debentures
① Capital V/s Debt.	Represents the capital of company	Represents the indebtedness of company.
② form of return.	Dividend ↓	Interest. ↓
③ Legal effect	Appropriation of profit	Charge on profit
④ Variation in Return	D. varies with quantum of profit	Int. fixed irrespective of quantum of profit
⑤ Issue at discount.	Prohibited	Not prohibited.
⑥ Voting Right.	✓	X
⑦ Purchase of own sec. or.	✓	✓
⑧ security for payment.	No security is created in favour of shareholders	Generally, security is created here.
⑨ Trust deed	X	✓
⑩ Redemption	Equity - Irredeemable Preference - Redeemable	may be both.
⑪ conversion	can not converted into any other security	may be converted into shares if the terms of issue so provide.
⑫ Repayment in winding up.	Repaid after all liabilities	Get priority over shares.

Sec 71 - Debentures



71(1)

Issue of Convertible debentures.

Provided such issue is approved by passing SR in GM.

71(2)

No voting Rights.

Co. may create charge on asset of CHS H
Associate Subsidiary Holding

Co. shall appoint Debenture trustee.

71(3)

Issue of secured debentures

Rule 18

Debt of debentures shall not exceed 10 years - Exceeding 10 years but not exceeding 30 yrs.

71(4)

Mandatory creation of DRR.

Company Issuing a prospectus for debentures

Co. makes an offer of debentures to its members exceeding 500

71(5)

Appointment of debenture trustee.

MANDATORY

71(6)

Duties and function of Trustees.

Protect interest of deb. holder.
Refrain the convenience of debenture holder.

Section 71

§ 97

Liability of
Debenture trustees.

IF DT's is guilty
of Trust or fails to
show the care and
diligence, he shall be
liable for damages.

§ 98

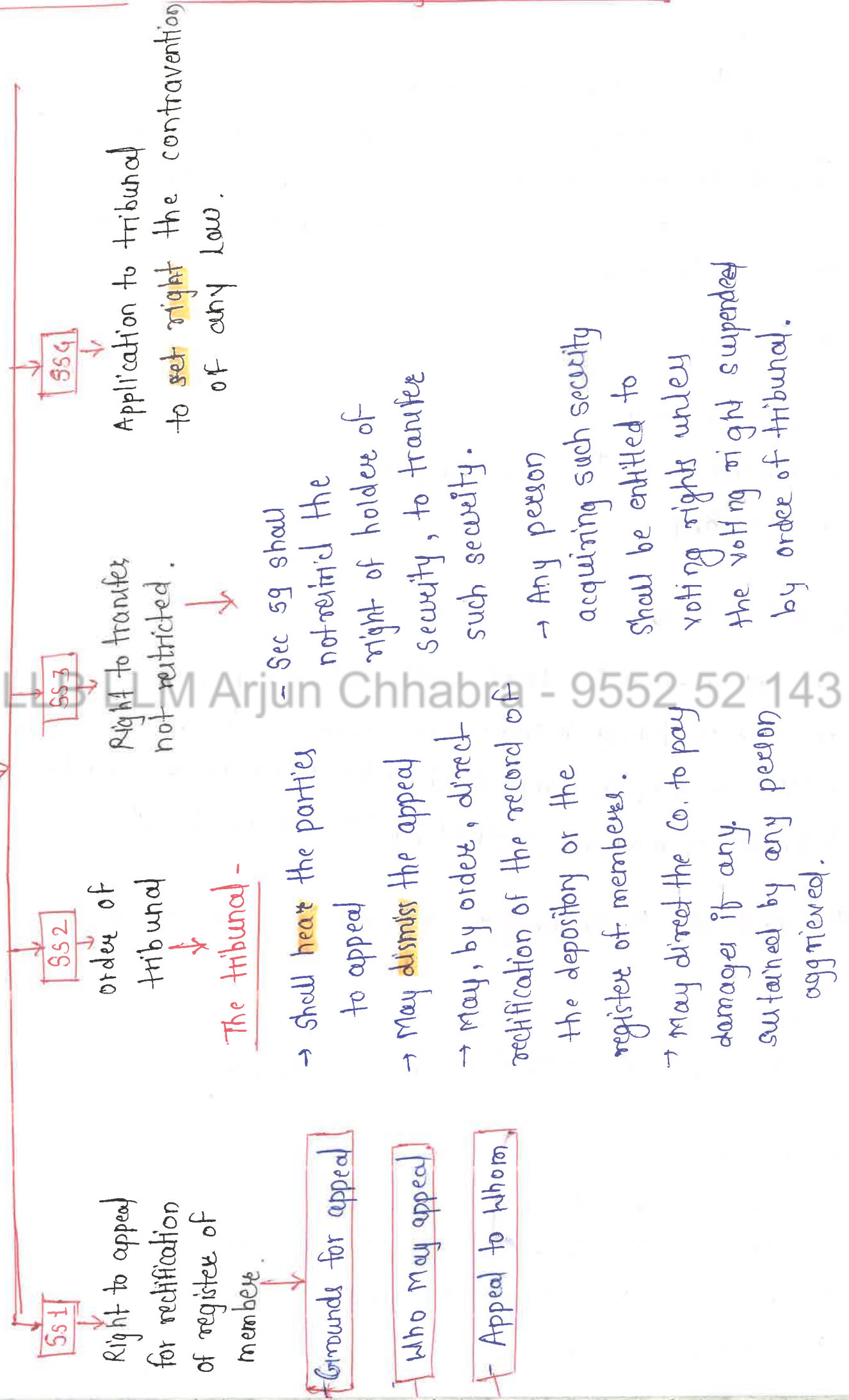
Duty to make
payment.

[Disqualification → who can't be deb. trustee]

Page no. - 157
of Chart book

Sec 59 - Rectification of Register of Members.

Sec 59



* Grounds for Appeal

Without any sufficient cause -

- 1) The name of any person is entered in the ROM; or
- 2) The name of any person is omitted in the ROM; or
- 3) Default or unnecessary delay is being made in entering in the register of members, the fact of any person having become / ceased to be a member.

* Who may appeal -

- 1) The person aggrieved; or
- 2) Any member of the company; or
- 3) The company.

* Appeal to Whom -

- 1) The appeal shall be filed with the tribunal.
- 2) In case of foreign members or debenture holders residing outside India, the appeal shall be filed in a competent court or India as may be specified by CCI by notification.

[554] - Application to tribunal to set right the contravention of any law

① Applicability of Sec 59 (a) -

Sec 59 554 is attracted where a transfer of securities is affected by the Co, but such transfer was in contravention of provision of -

- 1) The Companies Act, 2013; or
- 2) The Securities Contract Regulation Act, 1956; or
- 3) The Securities & Exchange Board of India, 1992; or
- 4) Any other law for time being in force.

② Right Conferred: Sec 59(4)

Right to make an application for rectification of registers and records, and to set right the contravention.

③ Application by Whom -

- Company
- The depository
- The depository participate
- The Securities & Exchange Board
- The holder of the securities

④ Application to Whom - Tribunal

⑤ Order of Tribunal

The tribunal may direct the company or the depository to set right the contravention and rectify its registers or records.

Sec 72 - Nomination of securities / Power to Nominate

SS1

Applicability
(All companies)
+

Optional

+

Nomination

by

whom.

→ Any holder of securities

→ By all joint holders acting collectively. - SS2

SS

SS3

Overriding effect
of Sec 72

SS4

Who can be a
nominee.

Sec 72(4) - Who can be nominee -

- Any person may be named as nominee.
- A minor may be named as nominee, if some other person is appointed in prescribed manner. (By filing form no. SH3) to become entitled to securities, in the event of death of the holder of security during minority of the minor.

Variation or cancellation -

At any time, a nomination may be -

- Ⓐ cancelled in the prescribed manner (by filing form no SH14); or
- Ⓑ varied in the prescribed manner (by filing form no SH14).

Consequences in case of death -

- ① In case of death of the holder of security, all the rights in the security shall vest in nominee.
- ② In case of securities held by two or more persons jointly all the rights in the security shall vest in nominee only if all the joint holders die.
- ③ No person other than the nominee shall be entitled to ^{any} right in the securities, not with standing anything contained in -
 - Ⓐ Any other law for the time being in force; or
 - Ⓑ Any will made by holder of security.

70 - Prohibition for buy back in certain circumstances.

① Prohibition in case of defaults of payment.

No company shall directly or indirectly buy back its own shares or other specified securities, if default is made by the company in -

- Ⓐ Repayment of deposit or interest payable there on.
- Ⓑ Redemption of debentures.
- Ⓒ Redemption of preference share.
- Ⓓ Payment of dividend to any shareholders.
- Ⓔ Repayment of any term loan or interest payable there on to any financial institution or Bank.

NOTE - The Buy back is not prohibited if the default is remedied and period of three years has lapsed after such default ceased to subsist.

Ⓕ Other prohibitions -

No co. shall directly or indirectly buy back its own shares or other specified securities -

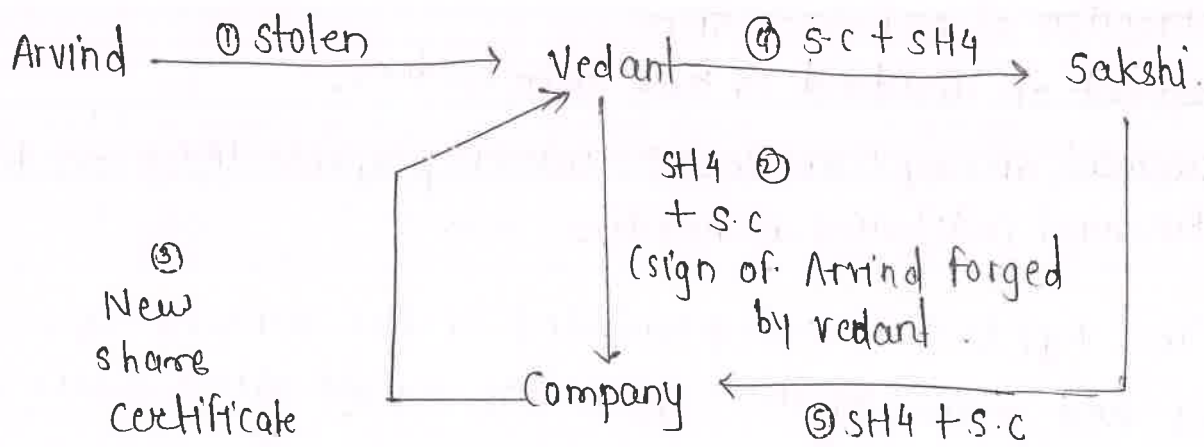
- Ⓐ Through any subsidiary co. including its own subsidiary co.; or
- Ⓑ through any investment co. or group of investment company

Ⓖ Prohibition in case of non compliances -

No co. shall directly or indirectly buy back its own shares if it has not complied with the provisions of -

- Ⓐ Sec 92 (Filing of Annual return);
- Ⓑ Sec 123 (provision related to declaration of dividend); or
- Ⓒ Sec 127 (Payment of dividend within 30 days);
- Ⓓ Sec 129 (Provisions related to financial statement).

Forged Transfers -



* Forgery in law is 'Nulity and void.'

* Meaning

- forged transfers means transfers of shares on the basis of transfer deed on which transferor signature is forged.

* Effect of forged transfers

① A forged transfer is void ab initio i.e. nullity i.e. without any legal effect..

② In simple words forged transfers leaves the ownership of shares exactly where it was i.e. ownership remains with true owner and he remains entitled to all the benefits in respect of shares.

Case law

A holding 500 equity shares in XYZ Ltd and those shares were acquired by B. but the signature of A on the transfer deed was forged.

Mr. B after getting the shares ^{registered} in his name, sold 200 equity shares to Mr. C. Mr. B and Mr. C were not aware of forgery. What are rights of Mr. A, Mr. B and Mr. C against the company?

→ Right of Mr. A

He can compel the company to restore his name in RoM.

Liability of Mr. B

B is liable to compensate the loss caused to the company since he had lodged forged transfer deed even though he was not aware of the forgery.

Rights of C

The company can refuse to register C as a member. The company is liable to C since the company had issued the share certificate to B and therefore the company shall be stopped from denying the liability accruing to itself from its own default.

Sec 69 - Transfer of certain sum to capital redemption

reserve A/c

The company -

- ① Purchase its own shares.
- ② Source - free reserves and Securities Premium A/c
- ③ Transfer - sum equal to nominal value.
- ④ CRR
- ⑤ End use - Unissued shares, fully paid bonus shares.

Sec 60 - Publication of authorised, subscribed and paid up capital.

Where in any document of co. which contains a statement of the amount of authorised share capital of co., such document shall also contain a statement IN AN EQUALLY PROMINENT POSITION AND IN EQUALLY CONSPICUOUS CHARACTER of the amount of the capital which has been subscribed and amount is paid up.

Sec 57 - Punishment for personation of shareholder

If any person deceitfully (fraudently) personates as an owner of any security and thereby obtains any money from the person, he shall be punishable -

Imprisonment

Min - 1 yr

Max - 5 yr

Fine

Min - 1 lakh

Max - 5 lakh

Sec 52 - Application of premium received on issue of shares

(A) Application of premium received on issue of shares

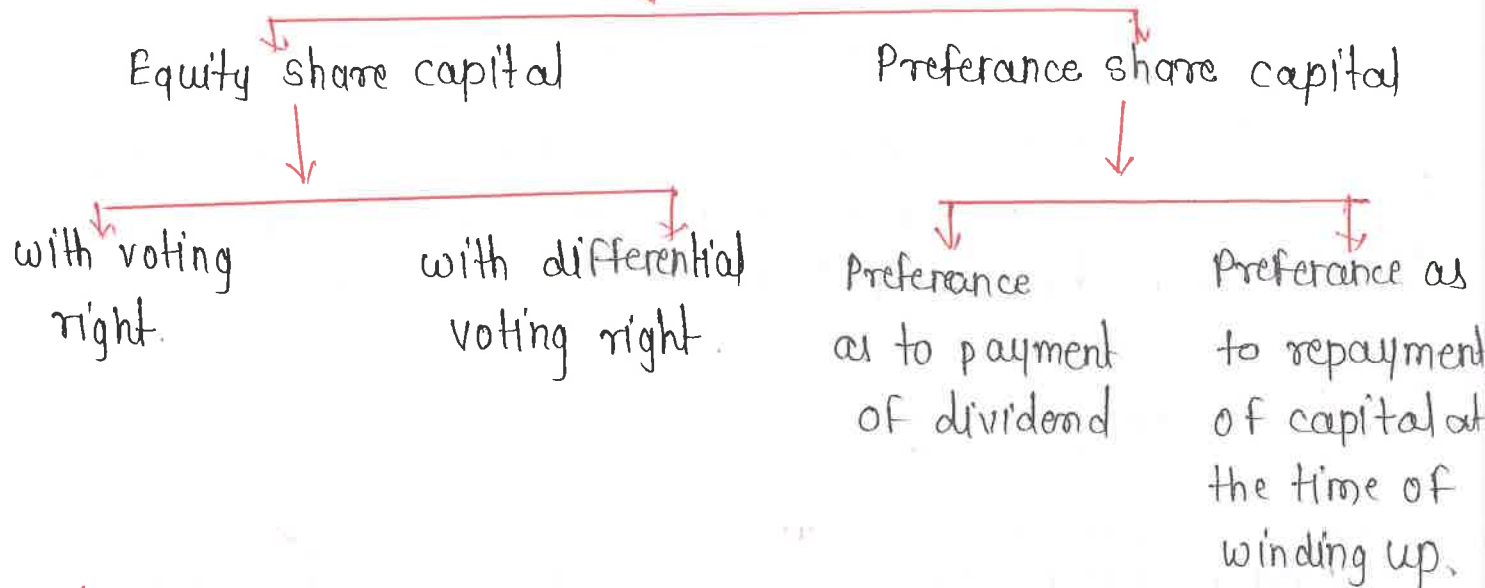
Meaning of securities premium A/c

If shares issued above face value. The extra proceeds above face value is Security Premium.

Utilisation of premium

- ① Issuing fully paid bonus shares.
- ② for buy back of shares u/s 68
- ③ ~~Write~~ Write off preliminary expense
- ④ Write off the expenses ~~paid~~ and commission paid or discount allowed or issued for share and debentures.
e.g Underwriting commission or redemption of debenture.
- ⑤ Premium on redemption of preference shares.

#sec 43 - kinds of share capital.



Legal requirements for issue of shares with differential voting right.

Applicability

- ① On Unlisted public company
- ② Private company.
- ③ Listed company to extent it is not consistent with SEBI guidelines.

Above co. can issue equity share with DVR only when several conditions are satisfied.

- ① AoA must authorize issue of DVR
- ② OR in GM
- ③ Differential share can have voting rights max 74% of total voting right.
- ④ Co. has not defaulted in filing financial statements and annual return in immediately preceding 3 financial years.
- ⑤ Co. has not contravened any provision of FEMA Act, 1999, SEBI Act 1992, SCRA Act 1954, RBI Act 1934, in immediately preceding 3 F.Y.
- ⑥ There is no subsisting default in repayment of deposit & debenture or int. there on or equity dividend or Pref. share capital.

7. Co. should not have defaulted in payment of pref. dividend, loans of PFT or state financial institution or interest there on or statutory dues of employees or transfers to IEPF.

However if co. makes default good, then after 5 years from end of f.y in which the default made good, co. may issue equity shares with DVR.

Sec 47 - Voting Rights.

Equity shareholders.

Have right to vote on every resolution placed before the company

Preference shareholder.

Every pref. shareholder shall have right to vote. - ↓

- ① on such resolution which directly affects the right.
- ② on any resolution for winding up of company.
- ③ on any resolution for the repayment or reduction of share capital.

* voting of pref. shareholders on every matter

If the dividend to pref. shareholders is not paid for two years or more then every pref. shareholder shall have right to vote on every resolution placed before the co.

* Applicability

① Sec 47 is applicable to all company whether pvt ltd or ltd.

However the provisions of sec 47 shall not apply to pvt co. whose MOA or AOA so provides.

Sec 48 - Variation of share holder's right.

P.N - 142

Sec 55 - Issue and redemption of preference shares

P.N - 147

Basis	Members	Shareholders.
① Definition	Defined into 2 (55)	Shareholders not defined in Companies Act, 2013
② Meaning	Member generally means a person whose name is entered in ROM.	SH means a person who holds shares in a company.
③ Nature of Co.	Every co. shall have min. no. of members.	only a co. having share capital can have share holder.
④ Subscriber to Memorandum	A person who signs MoA is deemed to be a member from the date of registration of the company.	A person who signs the MoA becomes a shareholder only when the shares are actually allotted to him.
⑤ Transferor of shares until change in the register.	A transferor of shares continues to be member until his name is removed from register of Member.	Where a person transfers his shares, he immediately ceases to be a shareholder even though his name continues to appear in the ROM.

* Modes of acquiring of Membership.

By subscribing to Memorandum.

By Allotment of shares

By transfer

By transmission.

By becoming a beneficial owner of shares.

* capacity to become a member

a) Minor ✓

b) company ✓

c) cooperative society ✓

d) Trade union ✓

e) Partnership firm X (except Sec 8 Co)

f) HUF X

g) Trust ✓

h) Joint holders ✓

i) foreigners ✓ (as per FEMA Act, 1992)

j) Govt ✓ (President or Governor)

k) Insolvent X (until discharge).

Coverage of Sec. under this chapter

- 1] Sec 43 - kinds of share capital.
- 2] Sec 44 - Nature of shares and debentures.
- 3] Sec 45 - Nature and Numbering
- 4] Sec 46 - Certificate of shares.
- 5] Sec 47 - voting rights.
- 6] Sec 48 - Variation of SH's right.
- 7] Sec 49 - calls on share of same class to be made on uniform basis.
- 8] Sec 50 - company to accept unpaid share capital, Although not called up.
- 9] Sec 51 - Payment of dividend in proportion to amt. paid up.
- 10] Sec 52 - Application of Premium received on issue of shares.
- 11] Sec 53 - Prohibition on issue of shares at discount.
- 12] Sec 54 - Issue of sweat equity shares.
- 13] Sec 55 - Issue & redemption of pref share.
- 14] Sec 56 - Transfer & transmission of securities.
- 15] Sec 57 - Punishment for personation of shareholder.
- 16] Sec 58 - Refusal to register transfer or transmission of securities.
- 17] Sec 59 - Rectification of register of member.
- 18] Sec 60 - omitted
- 19] Sec 61 - Alteration of share capital
- 20] Sec 66 - Reduction of share capital
- 21] Sec 62 - Further issue of share capital
- 22] Sec 68 - Issue of bonus share.
- 23] Sec 67 - Restriction on purchase by co. or giving loan by it for purchase of its shares
- 24] Sec 68 - Power of co. to purchase its own securities.
- 25] Sec 69 - Transfer of certain sums to capital redemption reserve A/c
- 26] Sec 70 - prohibition for buy back in certain circumstances
- 27] Sec 71 - Debentures
- 28] Sec 72 - Power to Nominate
- 29] Sec 74 - Notice to be given to registrar for Alteration of share capital.

Chapter 5 - Acceptance of Deposits By Companies

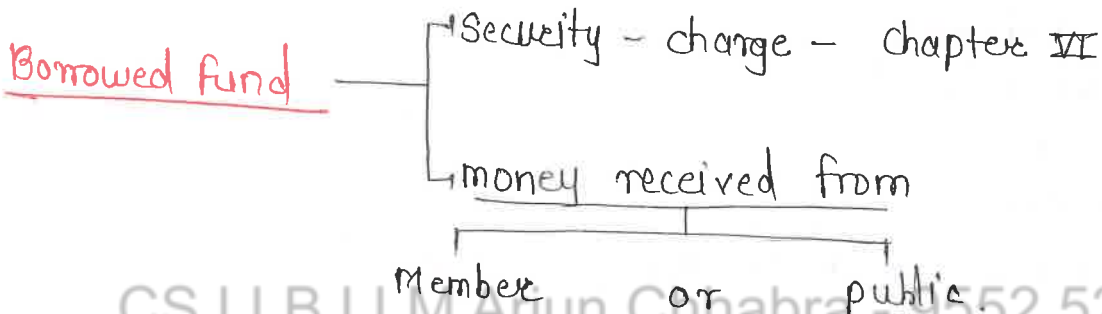
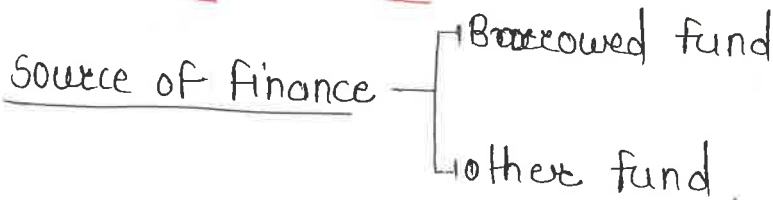
+

The companies [Acceptance of Deposits] Rules, 2014.

Section = 2(81) + section 73 to 76A.

forms = DPT

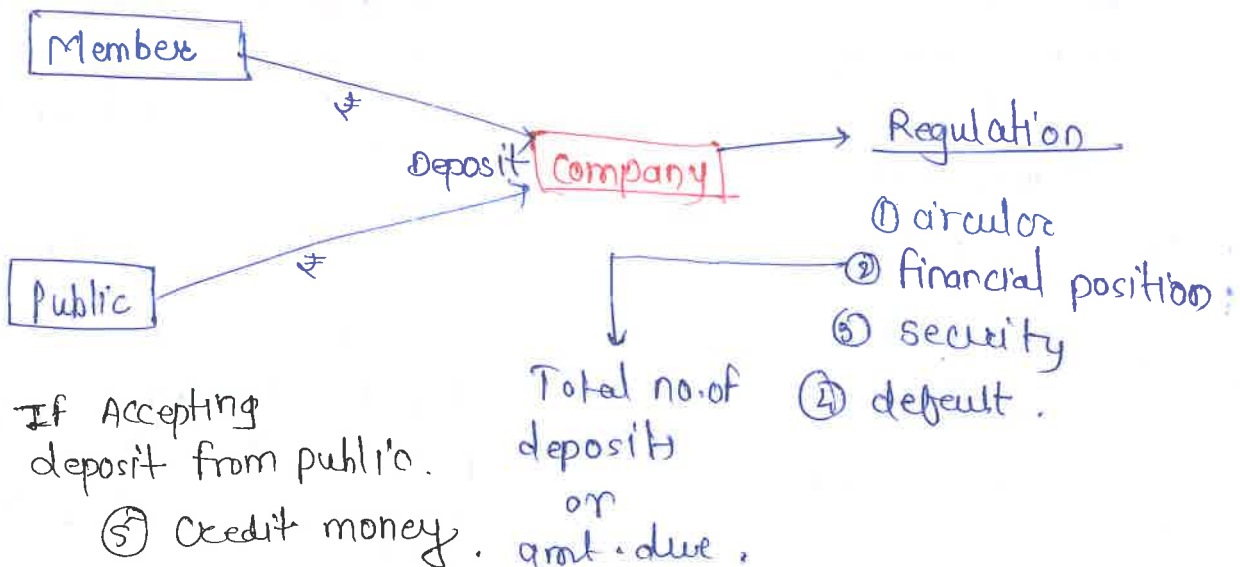
Background / Purpose



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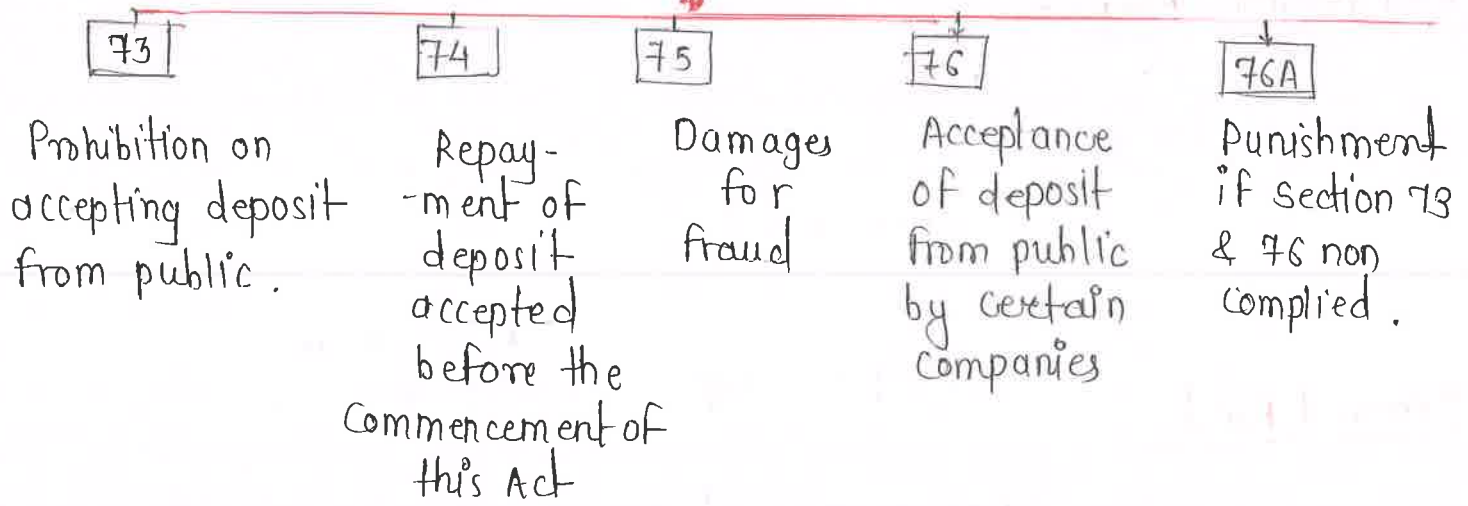
Sec 2(81) - Deposit includes any receipt of money by company.

Excludes → Later



Purpose :- Any money received by Company from public or members must be secured. And there should be complete transparency regarding the whereabouts of the company. So that public and members before giving money or deposit can take a rational decision.

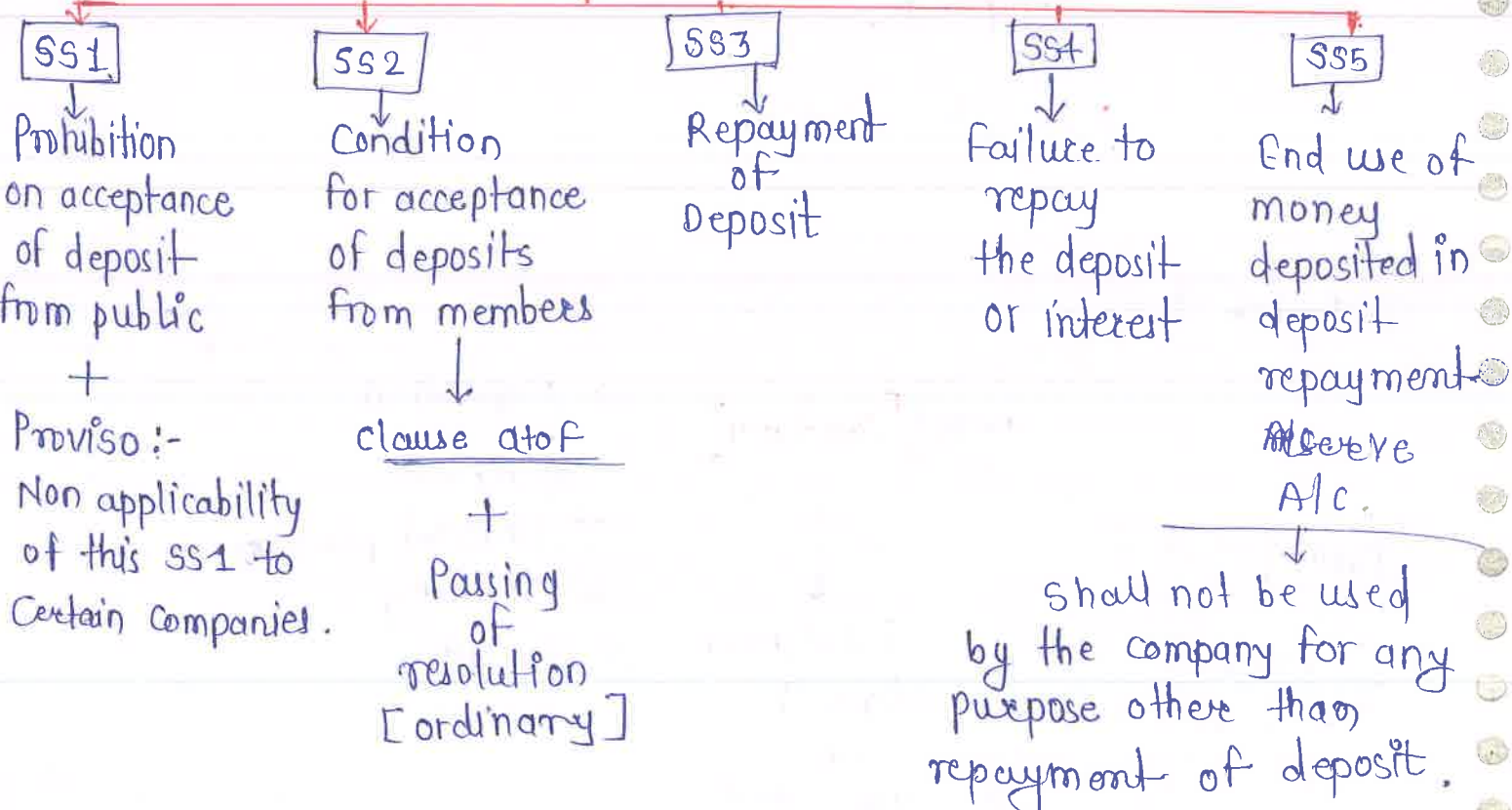
Sections



[Transition period]
 [Refer page - 99 chartbook]

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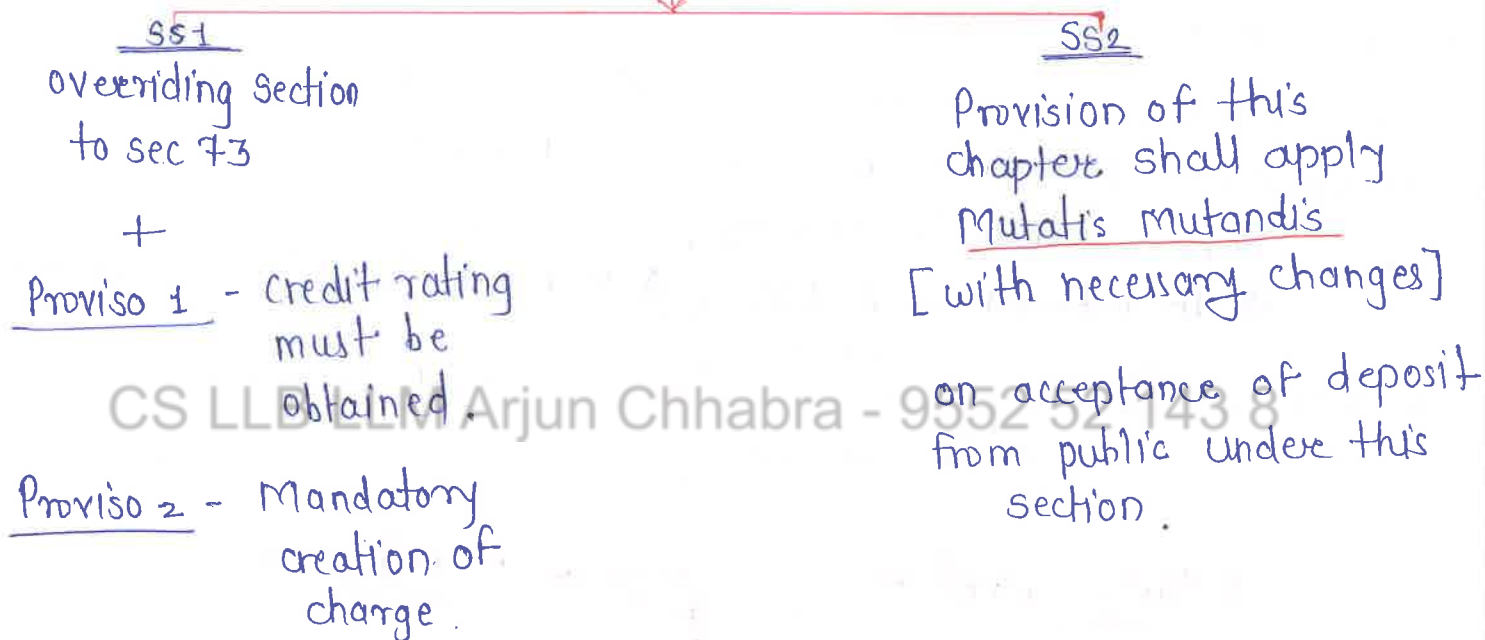
Section 73



clause (a)-(f)

- a] Issue of circular to the members [DPT-1]
- b] Filing of circular with ROC
- c] Deposit repayment reserve A/c.
- d] Omitted
- e] Certification of no default [By auditor]
- f] Security with respect to deposit.

Section 76 - Acceptance of Deposits from public by certain companies.



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Section

73(1)
on an after the commencement of this Act, no Company shall -
Invite - accept or - Renew deposits under this act from the public except in a manner provided under this Act.

76(1)
Notwithstanding anything contained in sec 73, A public company, having such networth or turnover (eligible company) as may be prescribed, may accept deposits from persons other than its members
↓
subject to compliance with
↓
Section 73(2) + rules made by Cg in consultation with RBI

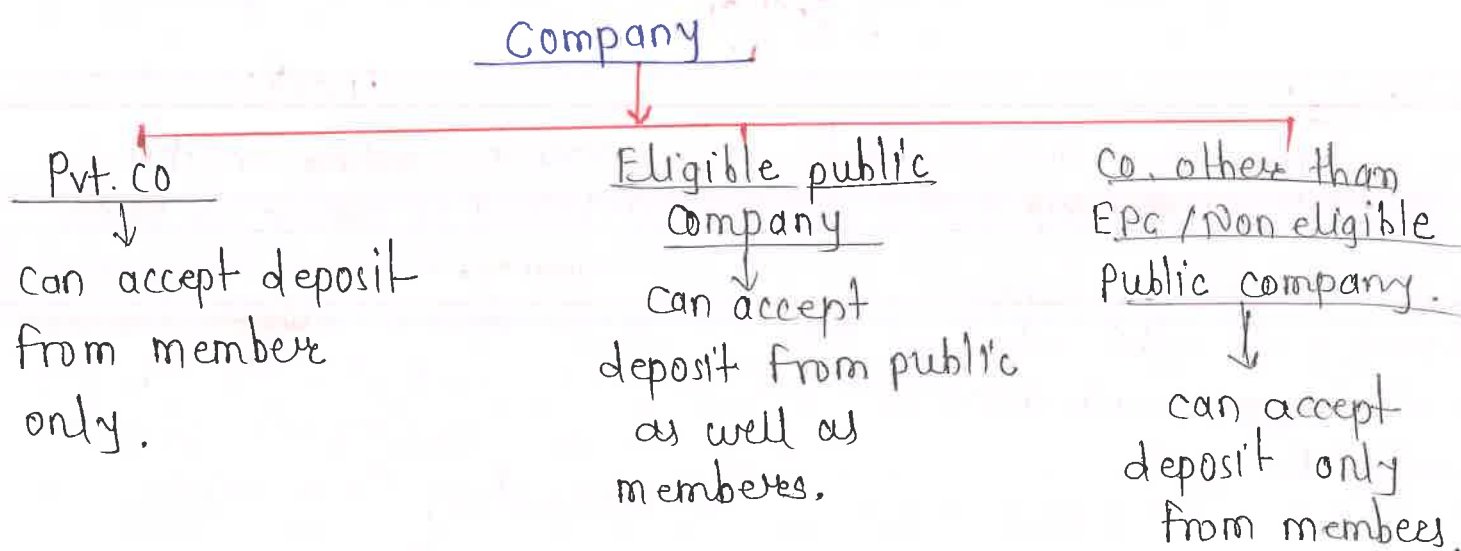
Interpretation of Sec 73(1)

- ① Company may invite, accept or renew deposit under this Act from its members.
- ② Company may invite, accept or renew deposits under this Act from the public by complying sec 73(2) + read with sec 73(1) along with the rules prescribed by CBI in consultation with RBI.

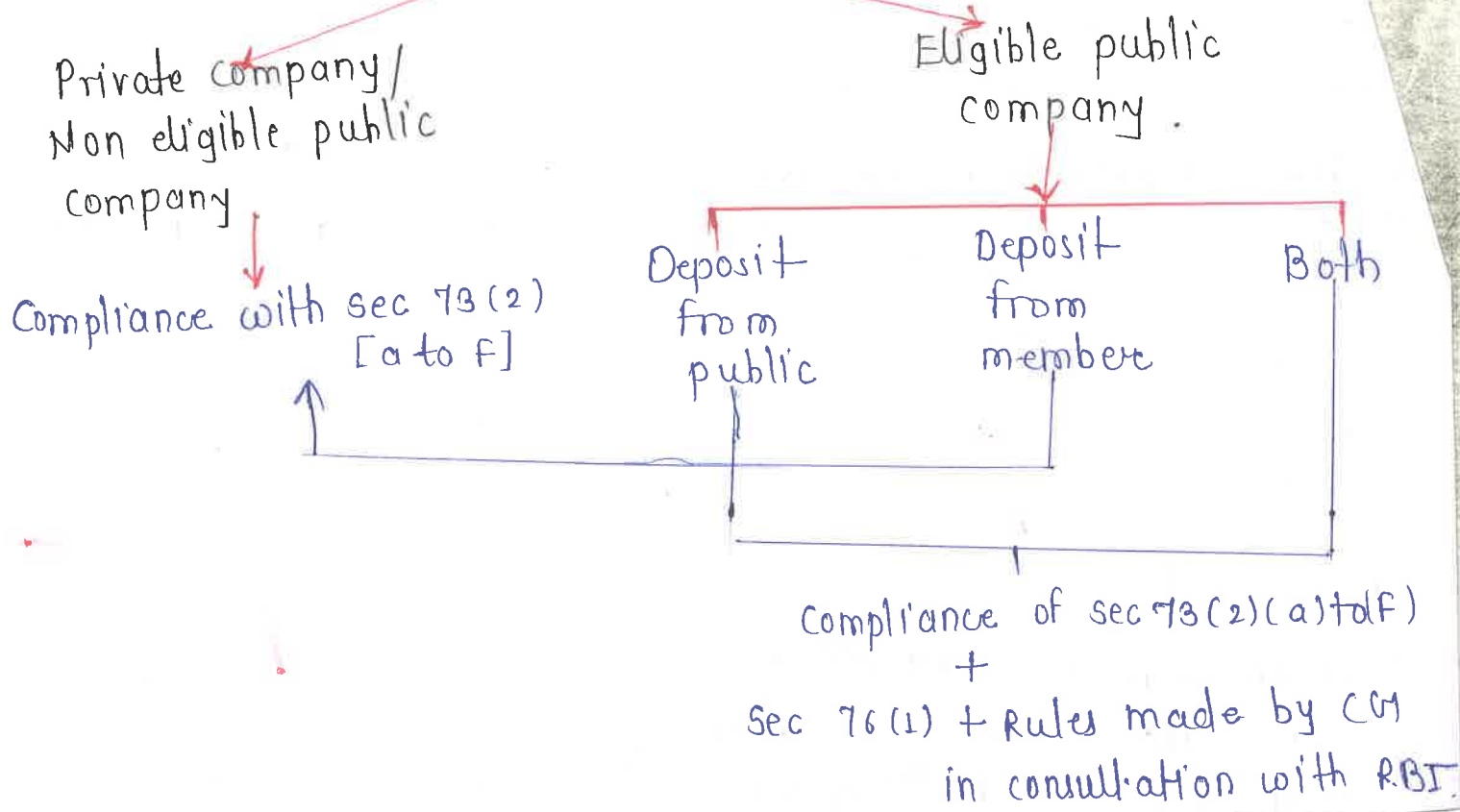
Interpretation Sec 76(1)

- ① Private company shall not invite, accept or renew deposit from public
- ② It means pvt company can invite, accept or renew deposit under this Act from its member only.
- ③ A company may accept, deposit from person other than its members, only if it is an eligible company i.e -
 - a) It is a public company.
 - b) Its networth is ₹ 100 cr or turnover is ₹ 500 cr or more.
- ④ It means eligible public company may accept deposit from public as well as by members.

Conclusion chart of sec 73 read with section 76



Compliance chart for Accepting deposit



Section 73(2) - condition for accepting deposit from members

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- A resolution is passed in GM.

clause

a) Issue of circular to members.

The company shall issue a circular to the members inviting deposits from them in form no- DPT 1 with following information.

1] financial position of company.

2] credit rating obtained by company.

3] Total no. of depositors and amt. due towards deposits.

4] in respect of any previous deposits accepted by the company.

4] such other particulars, in such form as may be prescribed.

ing of circular :-

The circular along with the informations, shall be filed with the company with the registrar, atleast 30 days prior to the date of the circular to the members.

c] Deposit repayment reserve A/c -

① The company shall deposit in scheduled bank in a separate bank account a sum equal to 20% of amount of deposits maturing during the following financial year. such amt shall be deposited on or before the 30th day of April each year.

② such a/c shall be called as DRR A/c.

d] omitted

e] Certification of no default -

- The company shall certify that it has not defaulted in repayment of any deposit or interest there on.

- However, where a company has defaulted in repayment of any deposit or interest there on, the company shall certify that it has made good the default and a period of five years had lapsed since the date of making good the default.

f] Security with respect to deposit -

- The company may provide security for the due repayment of deposits and interest payable there on, and create a charge on its assets for this purpose.

- If Co. doesn't secure the deposit or secures them partly, then, such deposit shall be termed as 'unsecured deposit' in every circular, formed, advertisement or documents through which the deposits are invited or accepted.

SS3 - Repayment of Deposit

In accordance with ~~terms~~ terms and condition of such deposit.

SS4 - Failure to Repay the deposits or interest

Application to the tribunal

If a company fails to repay any deposit or interest thereon in accordance with the terms and conditions of such deposit, the depositor concerned may make an application to the tribunal.

orders of the tribunal

① The tribunal may order the company to pay to the depositor

Any sum due to him; and

Any loss or damage incurred by him.

CS LLB LLM Arjun Chhabra - 9552 52 143 8

② The tribunal may make such other order as it may deem fit.

Sec 76

SS1 - Acceptance of deposits companies only.

~~from~~ ^{certain} public by eligible

- c] It has obtained the prior consent of the members by means of—
- 1] An ordinary resolution if the deposits are within the limit specified u/s 181 c. [i.e 100% of the aggregate of its paid up share capital, free Reserves & securities premium A/c]; or
 - 2] A Special resolution, any other case.
- d] It has filed a copy of the ordinary Resolution - special resolution with registrar before making any invitation to the public for acceptance of deposits.
-

* Conditions for acceptance of deposit from public.

① Compliance of Sec 73(2).

② Compliance with rules - Prescribed by CGT in consultation with RBI.

③ Rating of deposit -

- 1] The company shall obtain rating with respect to its deposits.
 - 2] The rating shall include the networth of the company, liquidity and ability of company to repay the deposits on the due date.
 - 3] The rating ensures adequate safety.
 - 4] The rating shall obtain from a recognised credit rating agency.
 - 5] The rating given to the company shall be informed to the public at the time of inviting deposits.
 - 6] The rating shall be obtained every year during tenure of deposits.
-

④ Registration of charge, in case of secured deposit -

Where a company accept secured deposit from the public -

- 1] It shall within 30 days, create a charge on its assets in the favour of deposit holder;
- 2] The value of asset so charged shall not be less than the amt. of deposits accepted by it.

Credit Rating

- 1] AAA - highest safety.
- 2] AA - high safety
- 3] A - Adequate safety.
- 4] BBB - Moderate safety
- 5] BB - Inadequate safety
- 6] B - High risk.
- 7] BCC - substantial risk.
- 8] D - default.

Credit Rating Agency

- ① CRISAL
- ② BRICKWORK.
- ③ IKRA
- ④ SAMAIRA

Sec 76A - Punishment for contravention of Sec 73 or 76.

Company accepting deposit in contravention of Sec 73 or 76 or rules made there under.

or

Company fails to repay the deposit or part thereof or any interest due within the time specified. u/s 73 or 76 or rules made there under.

Officers in default

Imprisonment ↓ Max - 7 years	Fine	
	Min	Max
	Rupees 25,00,000 (25 lakh)	Rupees 20,00,000 (2 Cr)

Company

Min: fine	Max fine.
Lower of - ₹ 1 Cr; or twice the amt of deposits accepted in Contravention of Sec 73 or 76.	₹ 10 Cr

NOTE

- Every officer in default will be liable for action u/s 447, if it is proved that he has contravened such provisions knowingly or willfully with the intention to deceive - ① The company; or ② Its shareholders; or ③ Its depository; or ④ Its creditors; or ⑤ Tax authorities.

Banking Co / NBFC etc

The restriction on invitation, acceptance shall not apply to -

- ① a Banking Company ;
- ② A non-banking financial Company
- ③ A housing finance Company registered with the national housing bank ; &
- ④ Such other companies as may specified by Govt.

Exemptions

Exemption to Pvt companies.

Condition as contained in clause (a) to (e) of SS2 of Sec 73 shall not apply to

IFSC Public Co.

Exempted from clause (a) to (e) same as Pvt. Company.

If accepting deposit from its members not exceeding 100% of Paid up share capital / Free reserve / securities premium A/c.

A Pvt. Co. accepting deposits from its members not exceeding 100% of - [P.V.S.C / FRISPAK]

It has not defaulted in the repayment of such borrowing subsisting at the time of accepting deposits.

① It is not an associate or a subsidiary of any other company

② The borrowing of such a Co. from banks or financial institution or any other body

③ Twice of its paid up share capital is so etc, which is lower; &

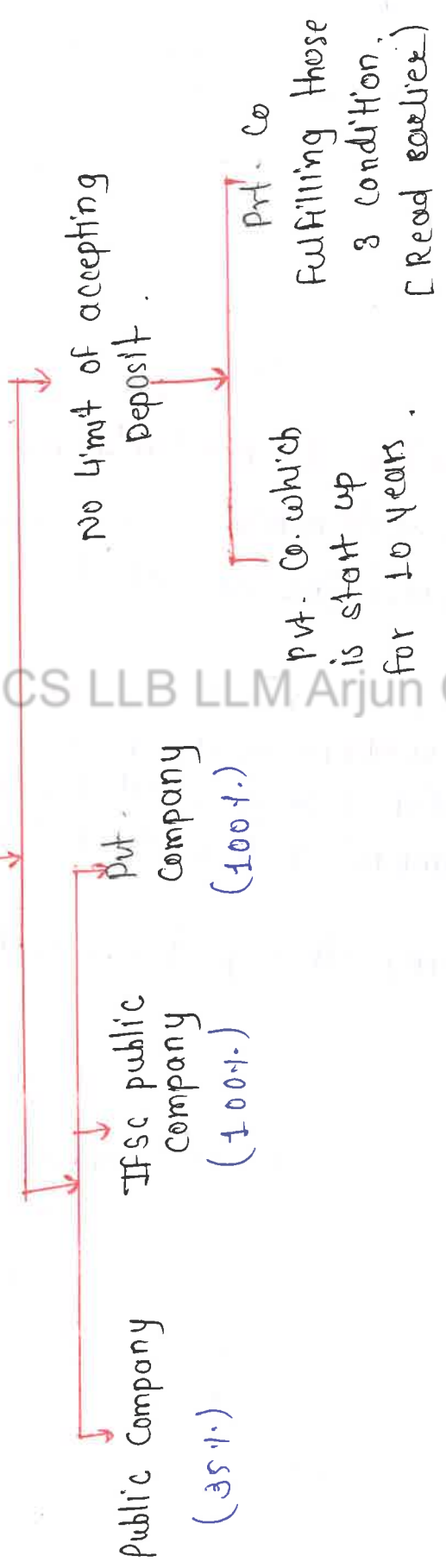
A Pvt. Co. which is start-up, for five years from date of its incorporation.

Pvt. Co. which fulfills all following condition -

NOTE - The exempted pvt. co. & IFSC companies mentioned above, shall file the details of deposits accepted by it to ROC in

DPT 3

Maximum limits on Deposit - Refere 98 [By Members]



Maximum Amt. of Deposit from public by Eligible Pub. Co.

Eligible public company

Govt. Co.

85%

Non Govt. Co.

a) Maximum 10% from members
b) Max 25% from public.

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Deposit - [Sec 2 (31)]

Includes

- Any receipt of money
- by Company
- by way of
- deposit ; or [2 (31)]
- loan ; or
- in any other form.

Does not Include [Excludes]

such categories of amt. [Rule 2(1)(c)]
as may be prescribed
in consultation with RBI.

Rule 2(1)(c) - Exclusions i.e. Amounts - Not a deposit

① Amt received as subscription to any securities (i.e. Application money) -

a) Any amount received towards subscription to any securities if such amount is appropriated only against the amount due on allotment of securities applied for.

b) It is clarified that if the securities for which the application money received, are not allotted within 60 days of the receipt of application money, then, such application money shall be refunded within next 15 days, otherwise such amount shall be treated as deposit.

c) If such amount is adjusted for any other purpose, such amt shall be treated as deposit.

Jan 2001

case study

R.S Ltd

1.6.2019
Received 50 lakh
as share application money

30.7.19

₹ 5 lakh was refunded to
Mr. Khanna a customer of
co. as adjustment towards
dues payable by him.

CS of co reports
to the BOB that
entire amount of
₹ 50 lakh shall be
deemed to be
deposit.

Advice ??

→ Hint Answer

1] 60 days will end on 31/7/2019 and the company has more 15 days to refund.

Hence the cs of Rs Ltd not correct to consider the entire amt of ₹ 50 lakh as deposit on 31/07/2019.

2] The amt. of ₹ 5 lac adjusted against payment due to be received from Mr. Khanna can not be treated as refund.

Special Note - Here the term "refund" means actual refund. adjustment does not amount to refund.

② Amt. brought by the promoters -

Any amt. brought in by the promoters of the co. by way of unsecured loan because of stipulation (condition) of any lending financial institution or a bank, subject to fulfillment of the following conditions:-

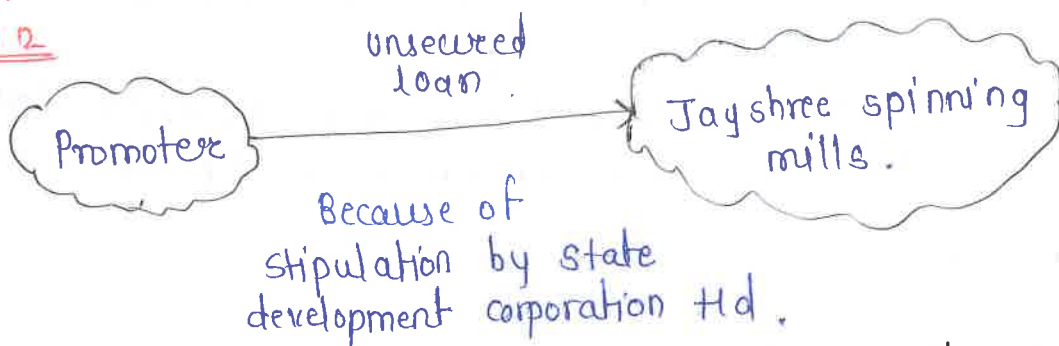
① The loan is provided by the promoters themselves or by their relatives or by both.

② The loan is brought in because of the stipulation imposed by the lending institution on the promoters to contribute such finance.

③ Such exemption shall be available only till the loans of financial institutions or bank are repaid and not thereafter.

[July 2021]

case study 2



Q1) Whether that unsecured loan amounts to deposit ??

Q2) What if, the entire loan obtained from SIDCL is paid ?

→ Unsecured loan contributed by promoter will not be regarded as deposit bco the loan was bought as per stipulation imposed by lending institution.

→ The loan is not regarded as deposit till it is repaid.

③ Amt. received by Start up Company -

An amount of ₹ 25 lakh or more received by a startup company by way of convertible note (convertible into equity shares or repayable within a period not exceeding 10 years from issue) in a single tranche, from a person.

Convertible Note - Means an instrument evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start up company as per the terms and condition indicated in instrument.

Dec 21

Ex

maan Technology prt Ltd
(start up company)

Bhupendra (director of Co.)

Request to send ₹ 20 lakh in single tranche by way of convertible note repayable within period of 6 years from the date of its issue.

Paras (close friend of Bhul)

The amount received is below threshold limit of ₹ 25 lakh. Hence the amount of ₹ 20 lakh shall be considered as deposit.

④ Amt. received from Director -

Any amount received from -

- a) A director of the company (whether private or public) or
- b) A relative of the director of a prt. company

Condition for receiving such amt -

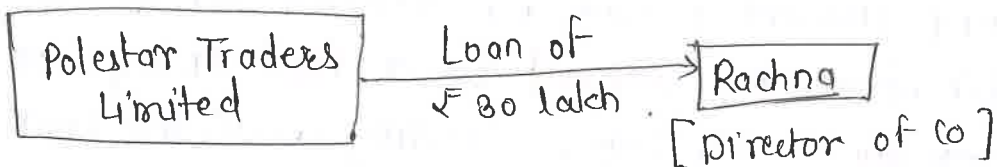
a) The **person** from whom the money is received (i.e. the director of the company or the relative of the director of a prt. company) shall **furnish** to the company at the time of giving of money, A ~~return~~ ^{written} **declaration** that the **amt** is **not** being given out of the funds required by him **by borrowing** or accepting loans or deposits from **others**

b) Company shall disclose the details of money so accepted in boards report.

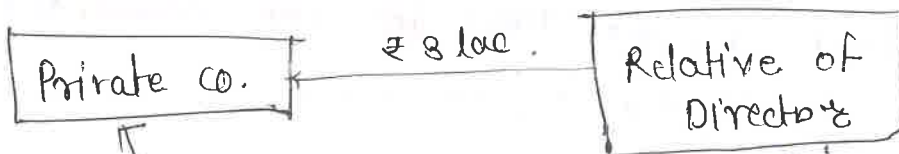
c) Every company shall disclose in its financial statement, by way of notes, about the money received from the directors & relatives of directors.

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Ex



Deposit ??



furnished a declaration that he said money received by him as gift from mother.

* Deposit ??

* Hint Answer

Assuming that rachna has furnished to the Company, ^{written} ~~return~~ declaration and company had disclosed the details of money in board reports. ₹ 80 lac received from rachna shall not be considered as deposit.

₹ 8 lac received from relative of director of Pvt. company will not be considered as deposit, if return declaration as per 2(1)(c) is furnished.

⑤ Security deposit received from an employee -

Any security deposit received from an employee of the company, any if the following two conditions are satisfied;

- The security deposit is not interest bearing.
- The amt. of security deposit shall not exceed annual salary of such employee.

⑥ Amt. raised by issue of secured debenture -

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Any amount raised by secured debentures if -

- The debentures are secured by a first charge or a charge ranking paripassu (with same standing) with the first charge.
- The charge created on any asset excluding intangible asset; and
- The amount of such debentures does not exceed the market value of such assets as assessed by registered valuer.

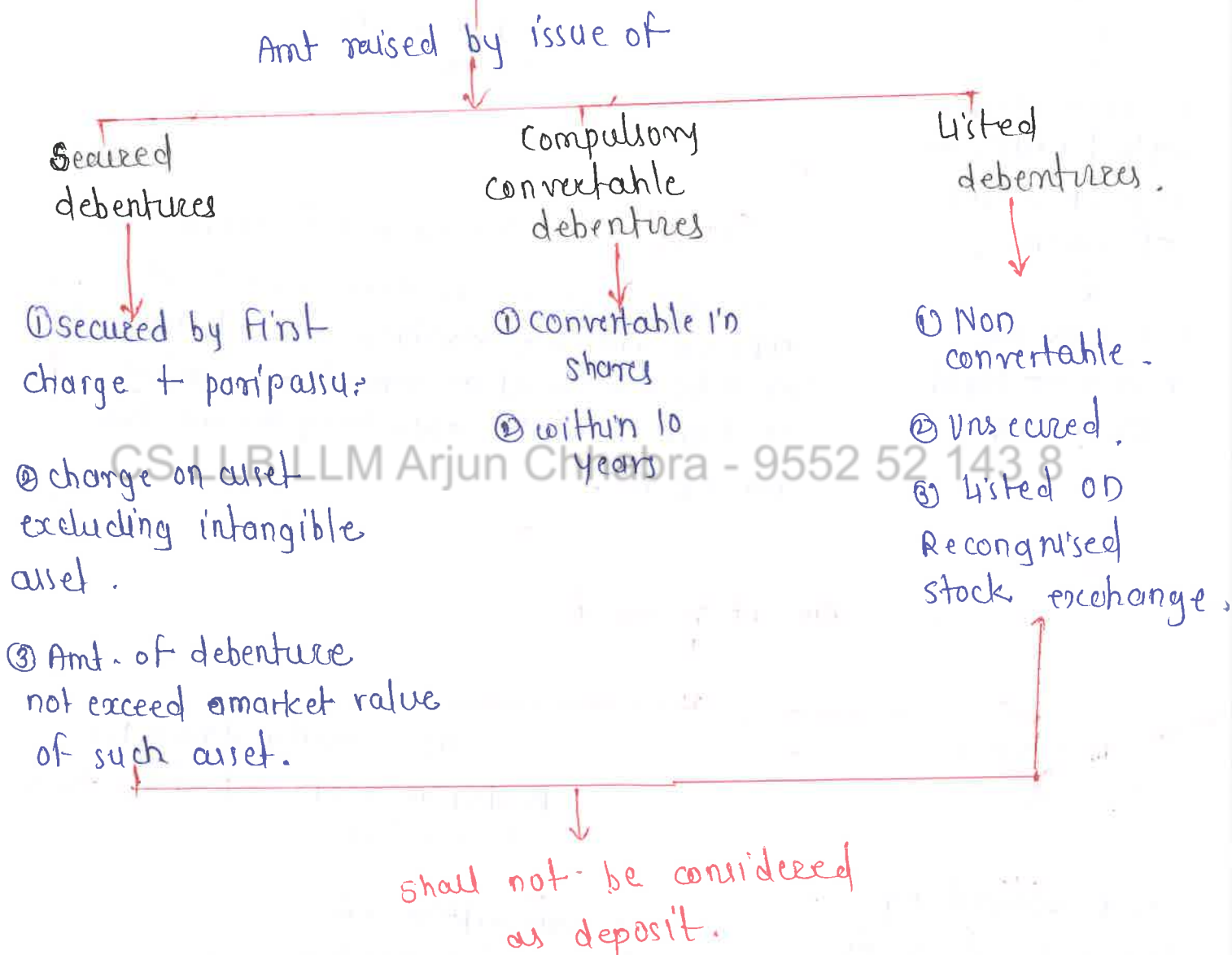
⑦ Amount raised by compulsorily convertible debenture -

- Any amount raised by issue for debenture such debentures are compulsorily convertible into shares of the company; &
- such conversion shall take place within 10 years.

⑧ Amt raised by issue of listed debenture -

Any amount raised by issue of non convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per applicable regulations made by SEBI.

* Conclusion chart of point no 6, 7 and 8 -



Any amount received for the purpose of business of company

As an advance.

(12) (a) for the supply of goods or provision of services.

↓
Provided advance applied within 365 days of receipt of advance.

↓
Not applicable in case of legal proceedings.

(11) (b) Received for an immovable property.

(10) (c) for providing future services as warranty or maintenance as per written agreement.

(9) (d) Received for supply of capital goods.

NOTE - for (a) (b) and (d) above :- if amount becomes refundable due to non-approval wherever required amount received shall be considered as deposit on expiry of 15 days from the date they become due for refund.

Amount received

(10) as advance

And allowed by any sectorial regulator or in accordance with direction of CCI or SEI.

(12) as security deposit for performance of contract for goods & services.

↓
for subscription of publication (in print or electronic mode)

↓
adjusted against receipt of such publication.

Miscellaneous

(15)

Any amount received by Co.

way of subscription
in chit fund
or
by Nidhi Co.

under any
collective investment
scheme

from SEBI
regulated
funds.

(16) Amount received from govt. etc.

a] central Govt; or.

b] Any state govt.; or

c] Any local authority;

d] A statutory authority constituted under an act of parliament or a state legislature; or.

e] any amount whose repayment is guaranteed by Govt or SGT.

(17) loan from banks

(18) loan from PFI [Public financial institution]

(19) Amount received from foreign govt.

-subject to FEMA regulation.

a) foreign govt; or.

b) foreign or international banks; or.

c) foreign collaborators; or.

d) foreign financial institution; or.

e) foreign body corporate and foreign citizen.

(20) Amount received from another company.

(21) Any amount (non-interest bearing received and held in trust by a company).

Provisions contained in the Companies (acceptance of deposit) Rules 2014

Rule 3 - Tenure of Deposit

* (a) A company shall not accept or renew any deposit which is -

- a) Repayable on demand; or
- b) Repayable upon receiving a notice.

(b) Maximum tenure of deposit shall be 36 months.

(c) Min. tenure of deposit shall be 6 months. However, A company may accept such short term deposit which are repayable earlier than 6 months from date of acceptance of such deposit, subject to fulfillment of all the following conditions:-

- 1] Such deposits are repayable not earlier than 3 months from date of acceptance of such deposit.
- 2] Such deposits are accepted for the purpose of meeting any short term requirement of funds.
- 3] Such deposit shall not exceed 10% of the aggregate of the paid up share capital, free reserve, security premium A/c.

Tenure

company shall not accept or renew any deposit which is payable on demand.

Duration

Earlier than 6 months

Min. 6 months

Max 36 months

Conditions -

- ① Not earlier than 3 months.
- ② For short term requirement.
- ③ maximum limit shall not exceed 10% of [P.V.sc + F.R + S.P.A/c]

Rule 4 - form of circulars.

a] Every company intending to invite deposit from its members shall issue a circular. [In form DPT 1] to all its members by registered post with acknowledgement due, or speed post or by electronic mode.

The date of dispatch of circulars to the members shall be deemed to be the date of issue of circular to the members.

b] In addition to issue of such circulars to all members the circulars may be published in English in an English newspaper and in vernacular language in vernacular newspapers having wide circulation in state in which RO of Co. is situated.

c] Certification of no default.

d] Every eligible company intending to invite deposit from public shall issue a circular in the form of an advertisement in form DPT-1.

The date of issue of the newspaper in which the advertisement appears shall be taken as the date of issue of advertisement.

The advertisement shall be issued in -

- ① same as above. EL in EN having country wide circulation; &
- ② same as above VL in VN having wide circulation in state in which RO of Co. is situated.

e] Every eligible company inviting deposit from public shall place the circulars on website of company, if any.

f] The circulars in the form of advertisement shall be valid till -

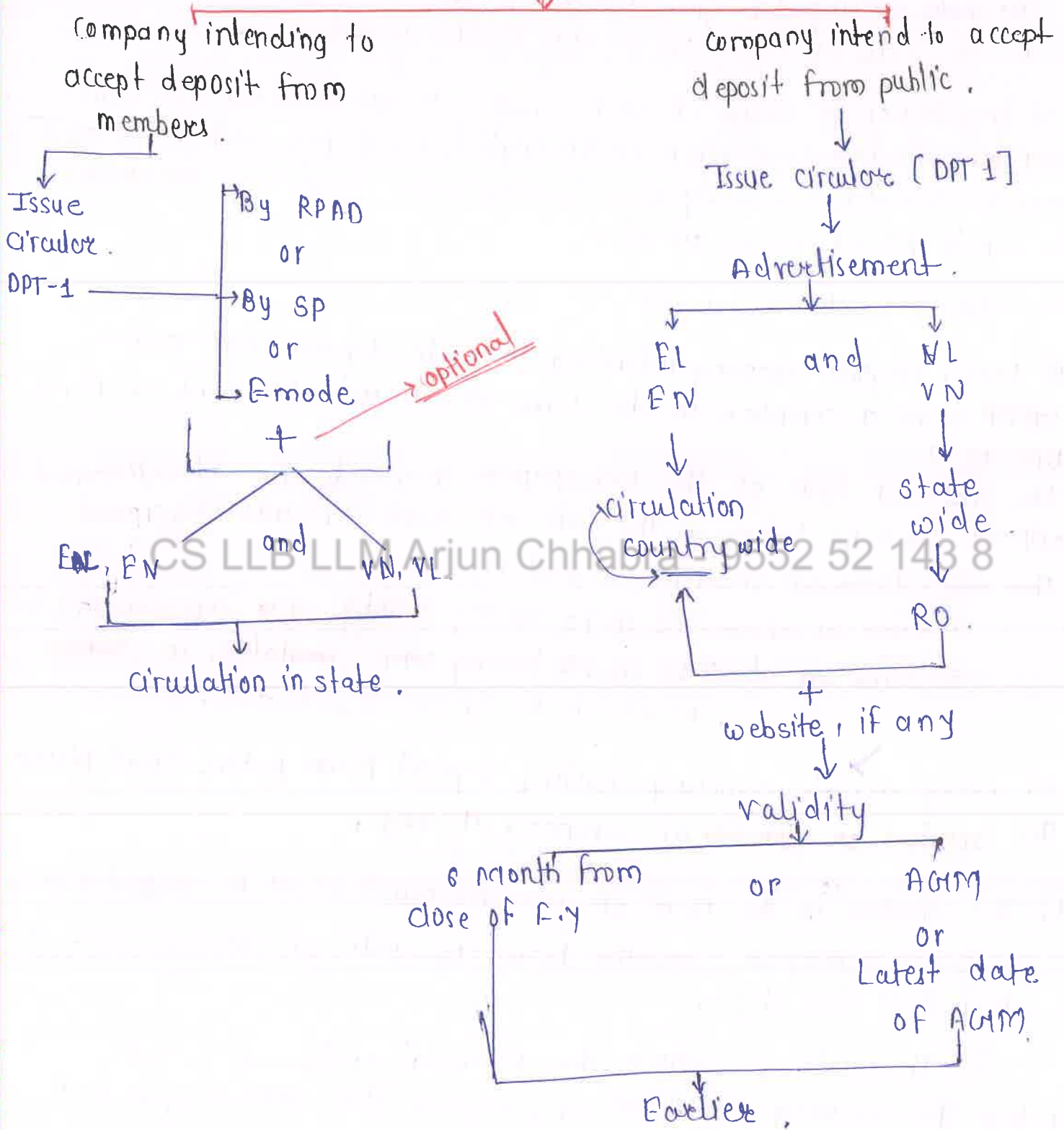
① The expiry of 6 months from the date of closure of f.y in which it is issued; or

② The date on which the financial statement is laid before the company in AGM or, where the annual general meeting for has not been held, the latest day on which AGM should have been held in accordance with the provision of this Act.

whichever is earlier.

A fresh circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

Forms of circular



* Appointment of trustee for Depositors. - Rule 7

a] A Company shall not issue any circular or advertisement inviting secured deposit unless the company has appointed one or more trustees for depositors.

b] A ~~written~~ consent shall be obtained from the trustee for the depositor before his / their appointment.

c] A statement shall appear in the circular in the form of advertisement with reasonable prominence to the effect that the trustee for depositors has / have given his / their consent to the Company to be so appointed.

d] The company shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing the circular.

e] A person (including a company) i.e. in the business of providing trusteeship services shall not be appointed as a trustee for the depositors, if the proposed trustee:-

① Is a depositor in the company;

② Is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary, associate company (cash);

③ Is indebted to the co., ASH (CASH);

④ Has any material pecuniary (पैसेचे संबंधित);

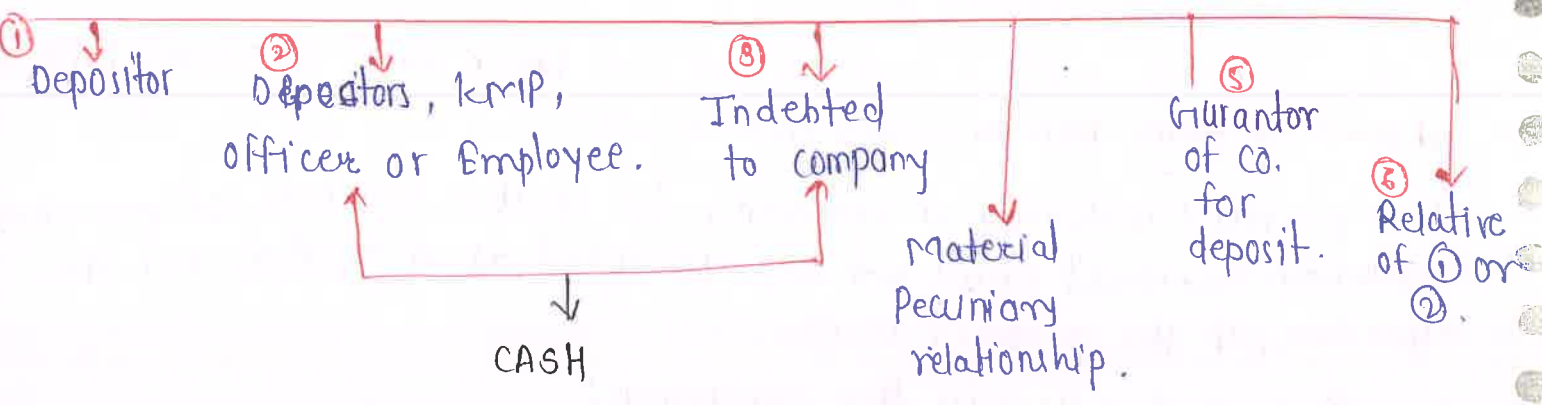
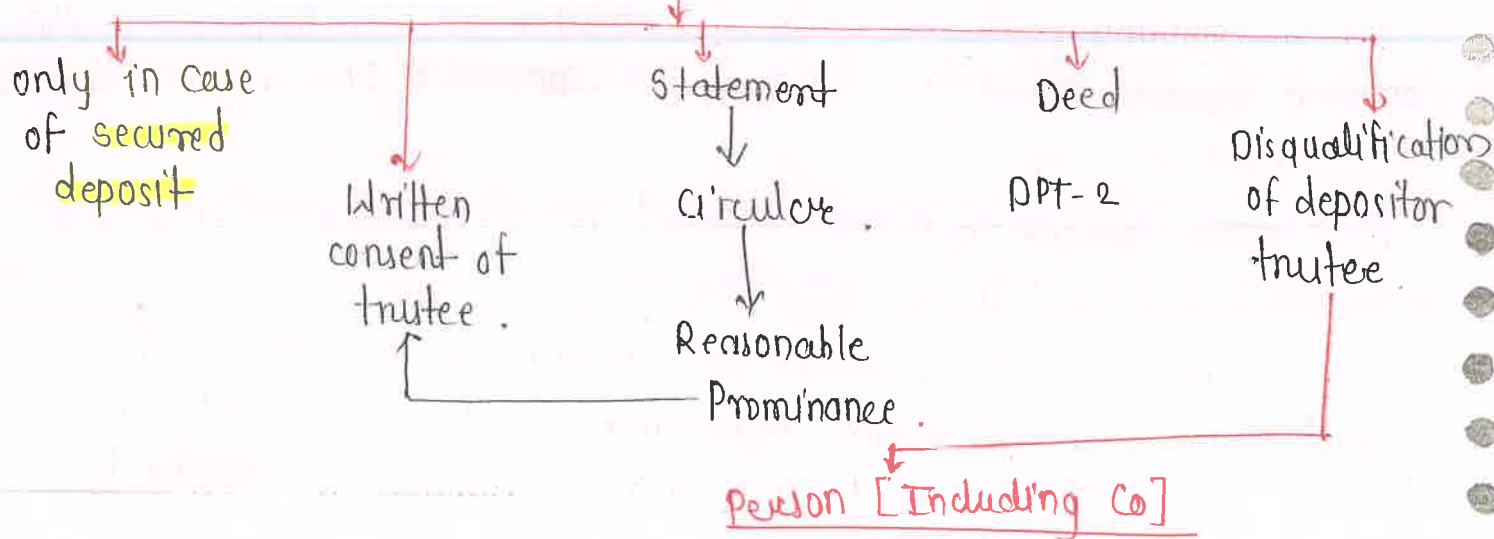
⑤ Has given any guarantee in respect of deposits accepted by the company or interest there on.

⑥ Is related to any person specified in point ① or ② above.

f] No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present in a board meeting. [Unanimous resolution.]

[as per sec 149(4)]
further, in case the co. is required to have independent directors, at least one independent director shall be present in such board meeting.

Appointm^t of trustee for depositors



* Rule 10 - Application form for deposit - 9552 52 143 8

a] A Co. shall not accept or renew any deposit, whether secured or unsecured unless an application is submitted by the depositor for acceptance of such deposit.

b] The application form shall contain a declaration by depositor that the deposit amount is not a borrowed fund.

* Rule 12 - Furnishing of Deposit receipt to depositors

shall be furnished to the depositor within 21 days from the date of receipt of money and shall be signed by an officer authorised by board.

* Rule-16 Returns of deposits to be filed with registrar.

Every company shall on or before the 30th day of June every year file with registrar, a return in Form no DPT-3

* Rule 17 Penal rate of Interest

Failure of company to repay deposit and interest there on will cause a company a penal rate of interest of 18% p.a. for the overdue period.

* Rule 21 - Punishment for Contravention -

Where no punishment is provided for contravention of this rules.

Company & officers in default shall punishable with -

(a) Fine, Max- 5000/- ; &

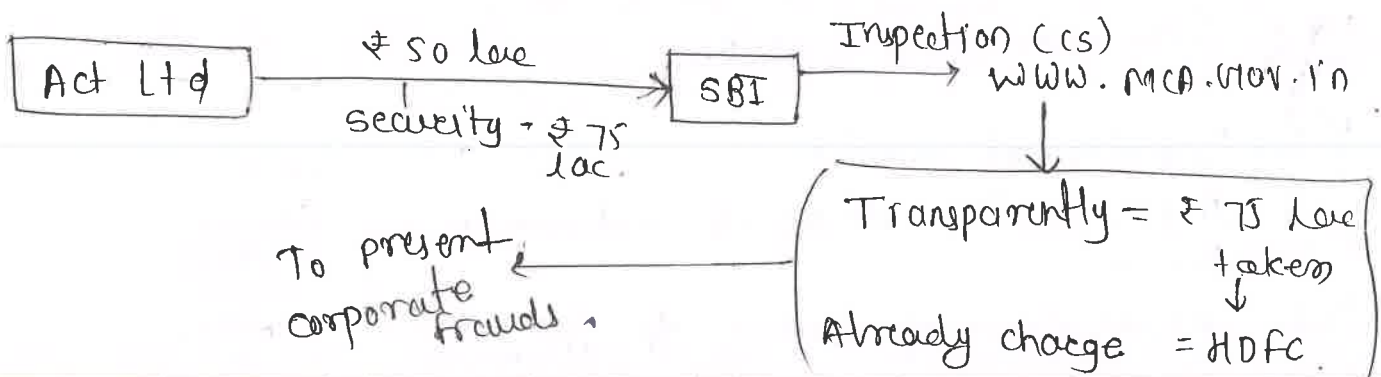
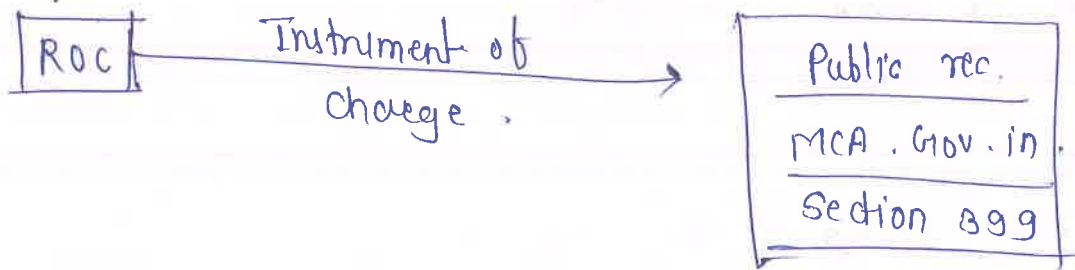
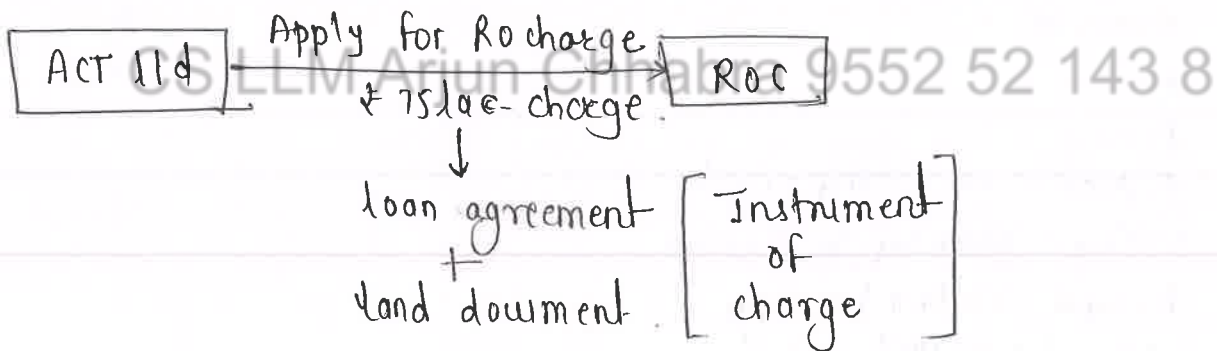
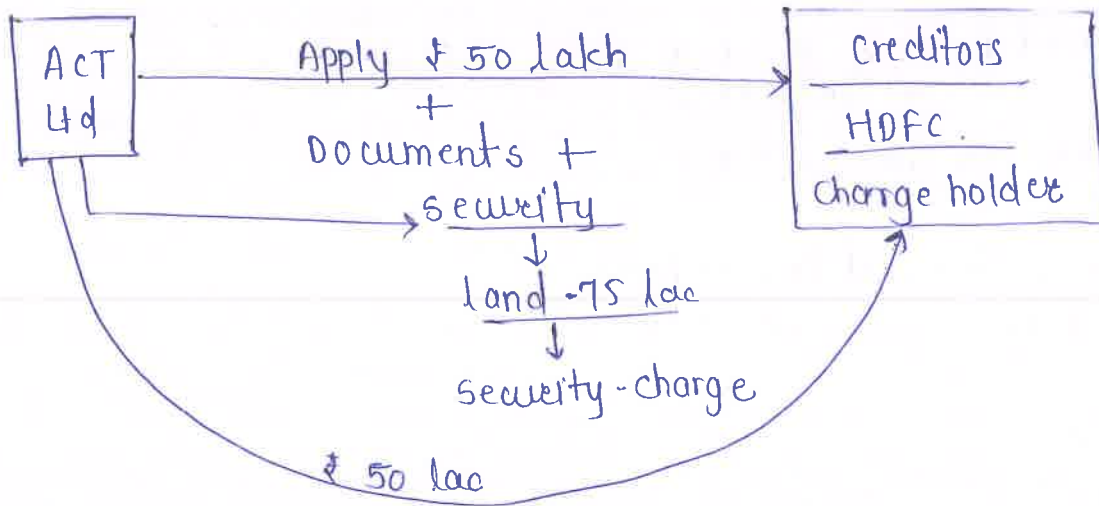
(b) Further fine ₹ 500/- per day till contravention continuous.

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Chapter 6 - Registration of charges (Sec 77-87)

+
The companies (Registration of charges) Rules, 2014.
[Forms = CH1 - CH9]

Background / purpose



Charge

Meaning

· Definition
[sec 2(16)]

Pledge

Mortgage

Hypothecation

When security is created on goods.
+
Possession of goods delivered

When security is on immovable property

[Goods]
Possession is with borrower

Means

Includes

Interest

or

Lien

Mortgage.

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on the

Property or asset

or

any of the undertaking

or

Both

as a security

of the Company.

Section 77 - Duty to register charges, etc.

(1)

Legal obligation of every company to register charge within 30 days of creation to ROC.

+

(2)

Certificate of registration of charges.

(3) + (4)

Effects of non-registration of charges.

+

Sec 86

↓
Penal provision.

① Proviso - condonation of delay for non-registration within 30 days.

+

② Proviso - condonation further time.

+

③ Proviso - What if charge is not registered but any subsequent charge is registered.

+

④ Proviso - Non-applicability of this section to certain charges.

Time limit for registration of charges.

Before
2.11.18

on or after
2.11.18

Original time =
30 days from
creation + Normal fees

— " —

↓
300 days from
creation +
Add. fees or
6 months from
2.11.18

↓
within 60 days
from creation +
Additional fees
↓
further 60 days
+ Advalorem fees.

* History

① 2.11.2018 → Companies (Amendment) ordinance, 2018.

② 12.1.2019 → Companies (Amendment) ordinance, 2019

③ 31.7.2019 → Companies (Amendment) Act, 2019.

↳ Effect → Retrospective → 2.11.2018

- a] Where a Company creates a charge on any of its asset, property or undertaking, it shall be the duty of co. to register such charge.
- b] Sec 77 requires registration of every charge created on any property of the company, whether such property is -
 - i] Movable or immovable.
 - ii] Tangible or intangible.
 - iii] situated in india or outside india.
- c] The charge shall be registered with the registrar within 30 days of its creation.
- d] The charge shall be registered in form no. CHG 1 [for deposits other than debenture] or form no. CHG 9 [for debentures including rectification].
- e] The prescribed Form containing the particulars of charge shall be signed by the company and the chargeholder.
- f] The instrument creating the charge [for ex. - loan agreement] if any, shall also be filed with the registrar.

[Provision 1 & 2] Condonation of delay for non-registration within 30 days.

Case I

charge created before the commencement of the Companies [Amendment], Act 2019.

[Before 2.11.2018]

- The company may make an application to the registrar for condonation of delay.
- The registrar may allow the registration of the charge after 30 days of its creation, but within 300 days of creation of charge.
- The company shall pay addition fees as may be prescribed.
- If the charge is not registered within 300 days of creation of charge as per point a, b & c above, the charge shall be registered within 6 months from the date of commencement of companies (Amendment), on payment of addition fees as prescribed.

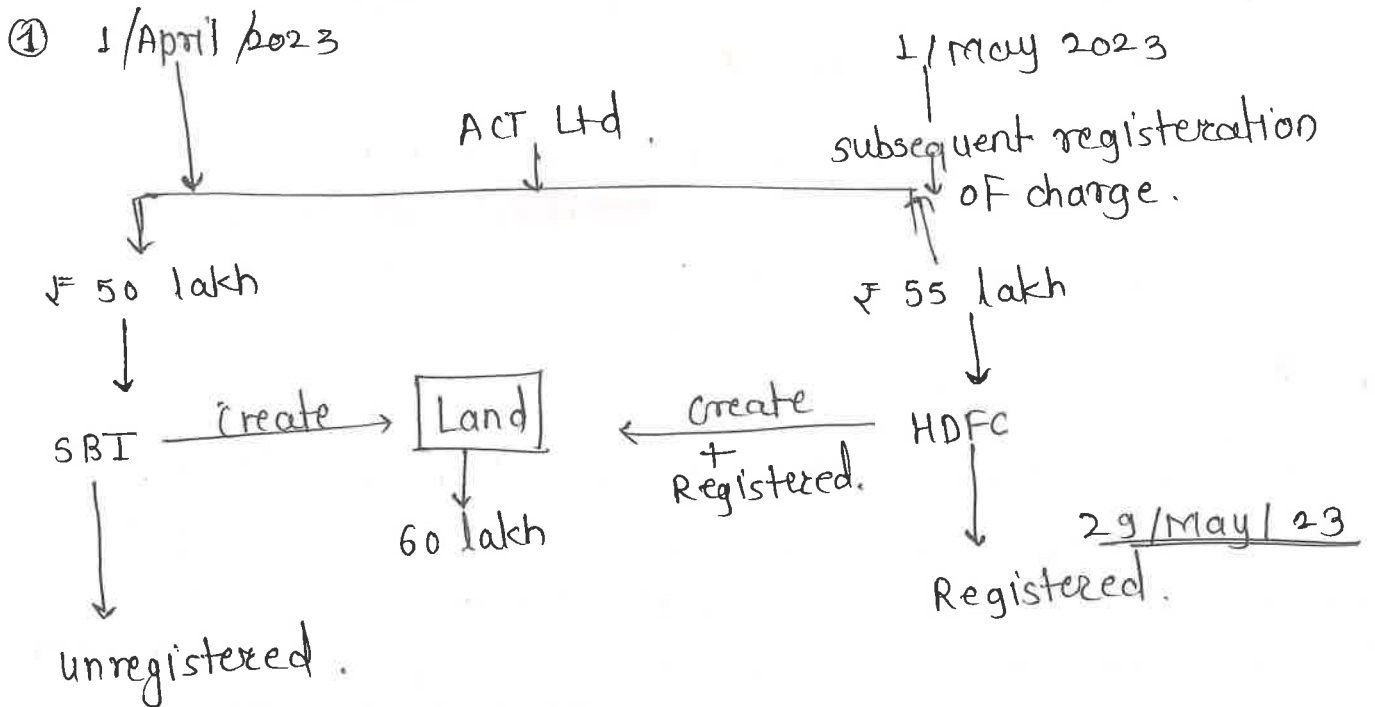
Case II

on or after 2.11.2018

- " —
- The registrar may allow the registration of charge after 30 days of its creation but within 60 days of creation of charge, on payment of such additional fees by the company as may be prescribed.
- If the charge is not registered within 60 days of creation of charge the registrar may on an application, allow such registration to be made within further period of 60 days after payment of such additional fees as may be prescribed.

SS 1 Proviso-3

Provided also that any subsequent registration of charge shall not prejudice (harm/affect) any right acquired in respect of any property before the charge is actually registered.



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ACT - liquidation

55 lakh → Right of HDFC to recover.

In simple words

If the company creates a subsequent charge (i.e. even if it is registered within the extended period instead of original 30 days), such subsequent registered charge shall have priority over the previous unregistered charge.

Proviso 4

Provided also that non-applicability of sec 77 to such charge as may be prescribed by CA in consultation with RBI.

10x a charge is registered with the registrar ws 77 or 78, registrar shall issue a certificate of registration of a charge in form no CHG-2

b] Where the particulars of modification of charge is registered ws 79, the registrar shall issue a certificate of modification of charge in form no CHG 3

c] certificate of registration of charge and modification of charge issued by Roc shall be conclusive evidence that requirement of chapter 6 have been complied with.

Subsection 3

Notwithstanding anything contained in any other law for the time being in force, no charge created by company shall be taken into account by the liquidator appointed under this Act ~~or~~ IBC 2016, as the case may be or any other creditor unless it is duly registered ws 1 and certificate of registration is given by registrar.

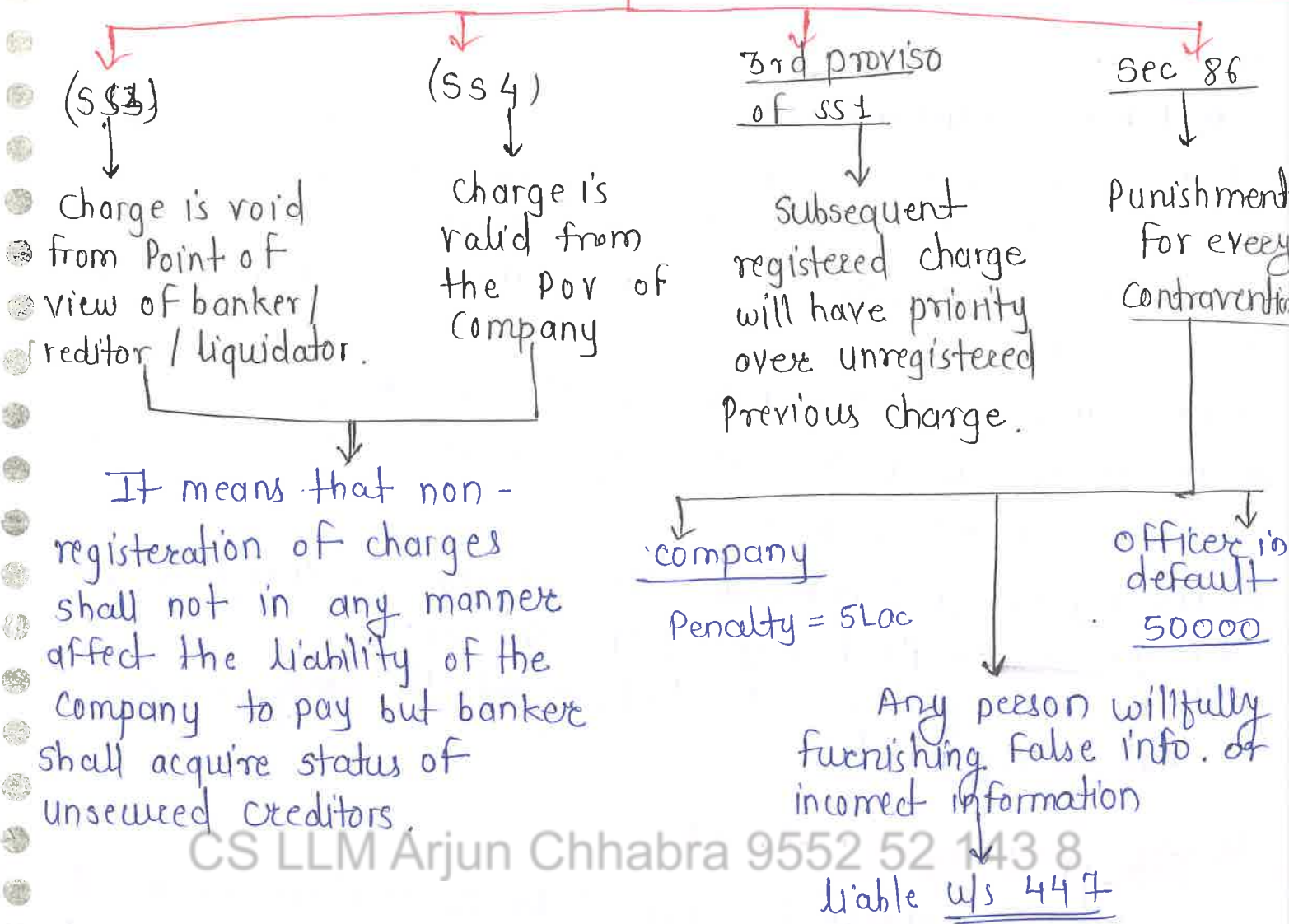
In simple words, this means the charge will become void against the liquidator and other creditors of the company. At the time of winding up, the creditor whose charges has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will have legal recognition to a charge that is not registered.

Subsection 4

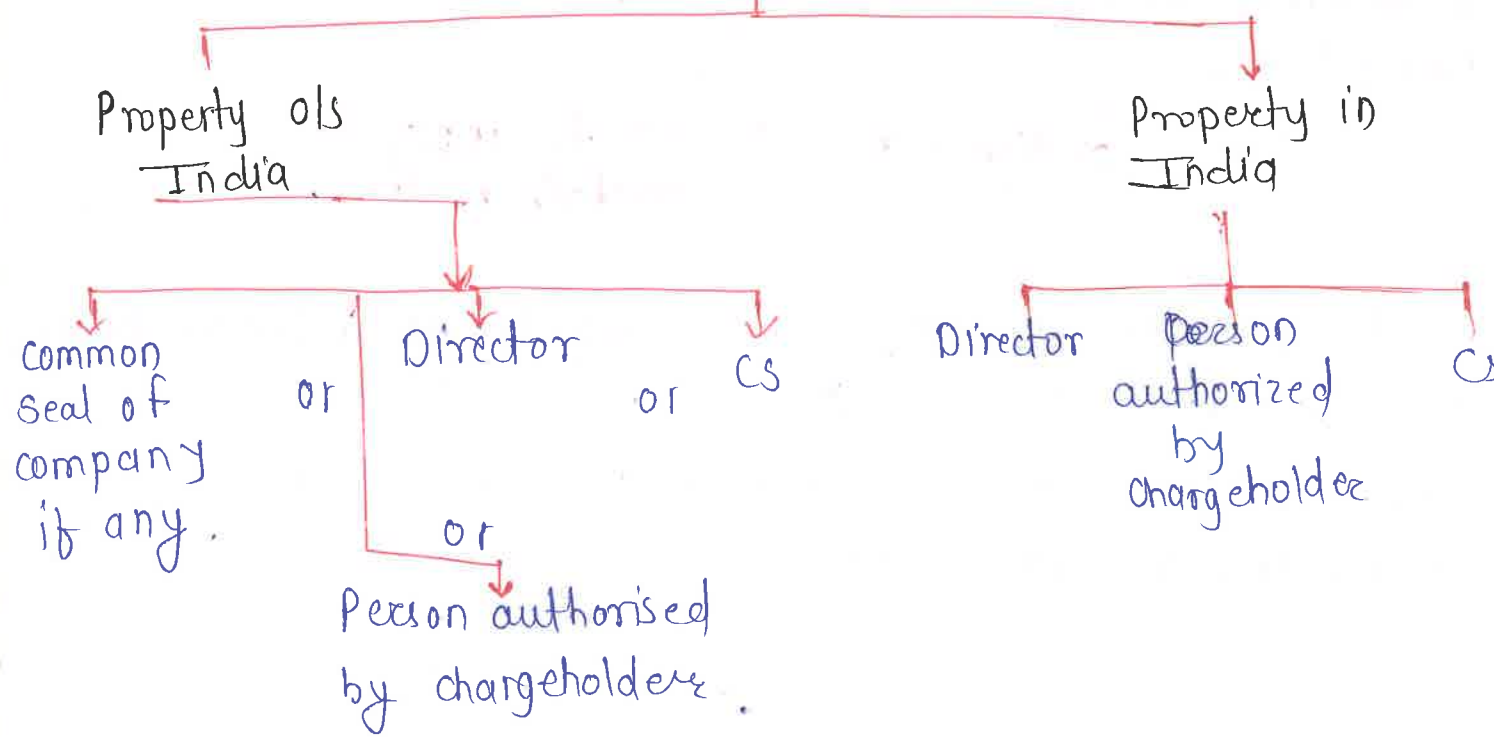
Nothing in ss3 shall prejudice any contract or obligation for the repayment of money secured by a charge.

In simple words, this means that the debt valid and may be enforced against the company through the courts by filing a suit, but the security is lost.

Conclusion Chart - ss 3 & ss 4 - consequences of non registration of charge



Verification of Instrument of charge



Section 78 - Application for registration of charge.

Legal provisions relating to registration of charge by charge holder -

- a] Where a company fails to register any within 30 days of its creation, the charge holder may make an application to the registrar for registration of charge.
- b] The application shall be made in the same form, manner, time as prescribed.
- c] The registrar shall give notice to the company.
- d] The registrar may, within 14 days, allow the registration of the charge, on payment of such fees as may be prescribed.
- e] The registrar shall not allow the application of chargeholder ⇒
 - a] The company itself registers the charges; or
 - b] The company shows sufficient cause that the charge should not be registered.

Proviso - Recovery of fees paid

Where a charge is registered by the registrar on an application made by the chargeholder, the chargeholder shall be entitled to recover from company the fees paid by him to registrar.

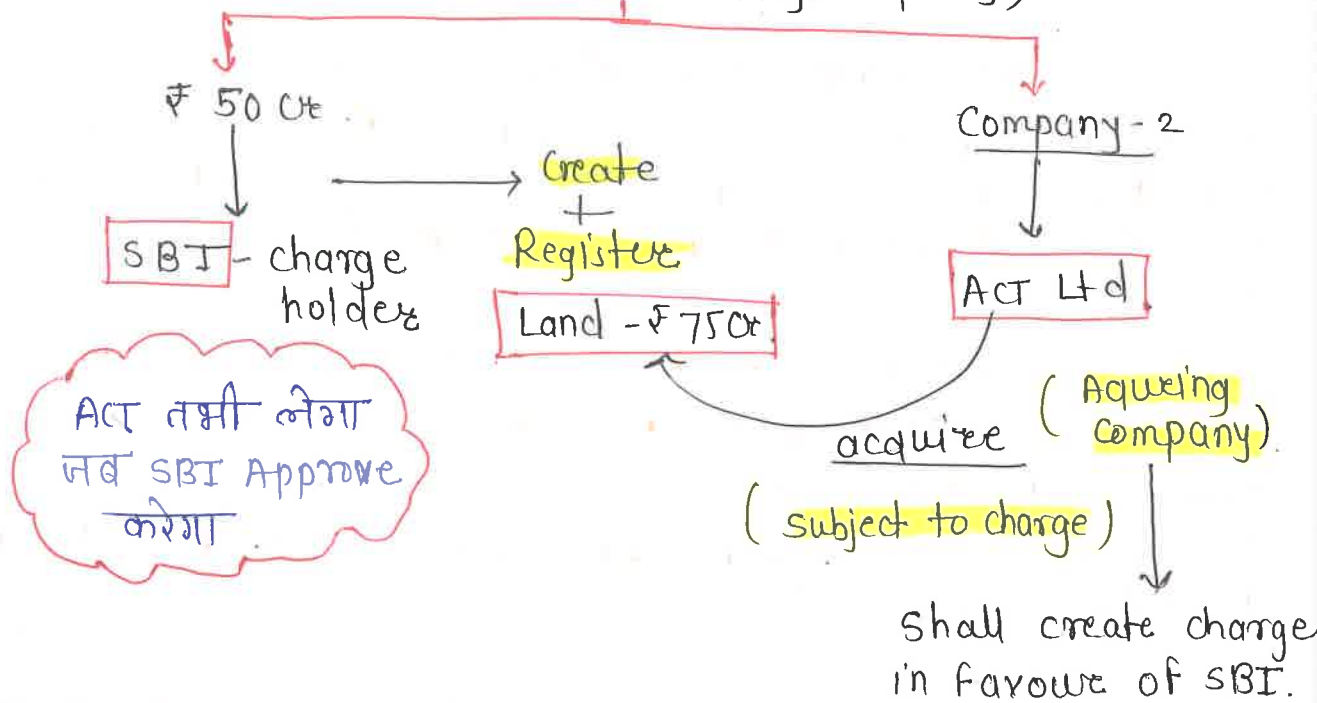
Section 79 - Sec 77 to apply in certain matters

The provision of section 77 relating to registration of charges shall, so far as may be, apply to -

- a] A company acquiring any property subject to a charge within the meaning of that section.

Example -

Reliance Industries Ltd (charge creating company)



In simple Words,

→ In case of property where charge is registered & if it is sold with the permission of holder of charge it shall be duty of company acquiring it to get charge registered as per Sec 77.

→ In other words, the earlier charge should get vacated and, in its place, new charge should get registered by co. which has acquired it.

★ Any modification in terms or condition or the extent or operation of any charge registered under that section.

Special Note - Change in Interest by RBI does not amount to modification in terms and conditions of charge, department of companies affairs has also advised the same.

Sec 80 - Register of charges to be kept by Registrar.

[Read with section 399 of Act]

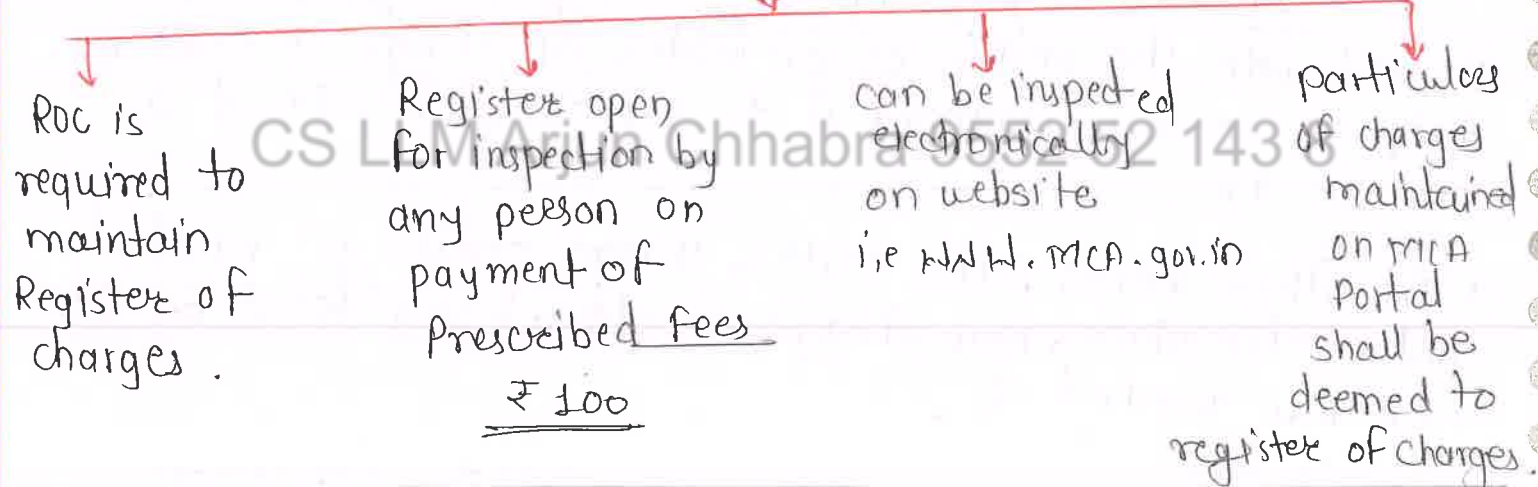
Date of Notice of charge.

All charges registered with the registrar are public documents. This means that any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA portal and find out if there is any charge created on that asset.

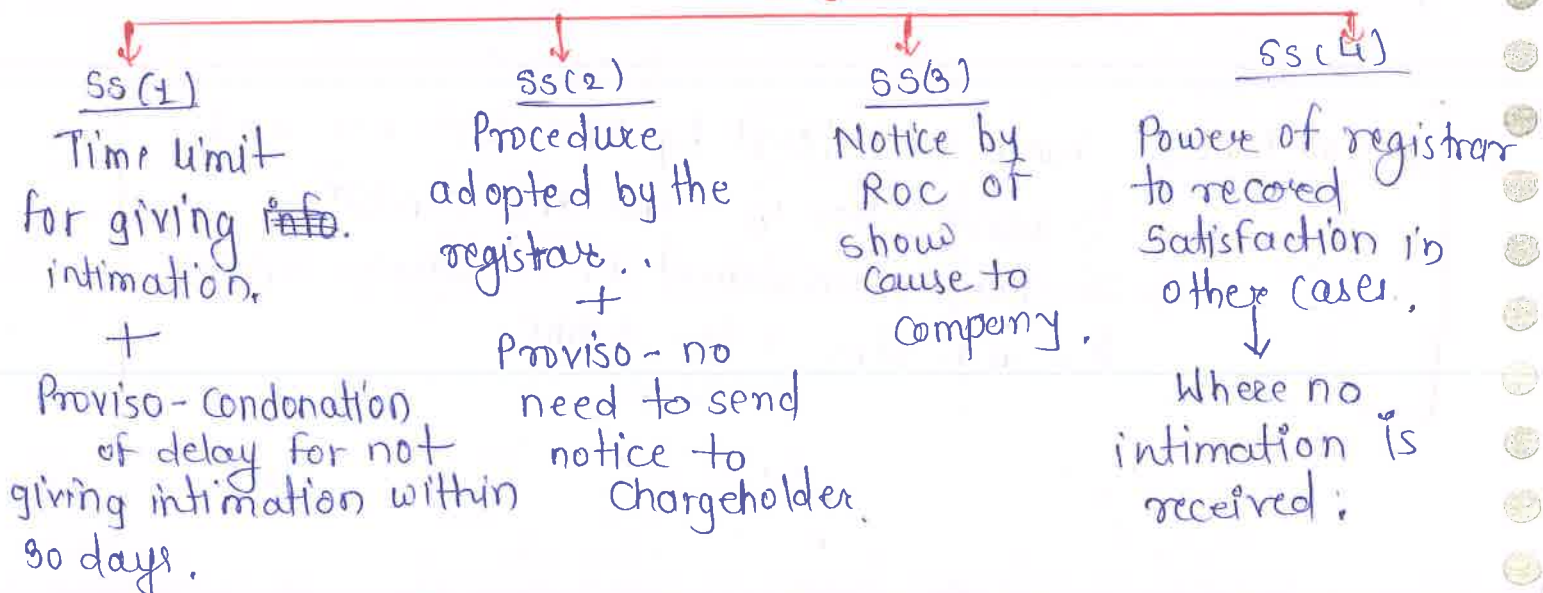
In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, He cannot claim the loss from the company for it.

Such person shall be deemed that he had notice of charge from the date of such registration.

Sec 81 - Register of charges to be kept by Registrar



Section 82 - Company to report satisfaction of charge.



SS1 Time limit

a] Where a registered charge paid or satisfied in full, the company shall give an intimation to the registrar or in case of default by company the chargeholder shall intimate to the registrar.

b] The intimation shall be given in CHG-4 within 30 days from the date of such payment or satisfaction.

c] Where the registrar enters a memorandum of satisfaction of charge in full in pursuance of sec 82 or 83, He shall issue a certificate of registration of satisfaction of charge in form no. CHG 5.

Proviso -

a] Where a registered charge paid and satisfied in full, but the co. does not give to registrar an intimation of such payment or satisfaction within 30 days, the company or the chargeholder may make an application to the registrar on condonation of delay.

b] The registrar may allow such intimation of payment or satisfaction to be made within 300 days of such payment or satisfaction.

c] The company or the chargeholder, as the case may be, shall pay such additional fees as may be prescribed.

SS2 - Procedure adopted by registrar.

a] on receipt of such intimation, the registrar shall issue a notice to the chargeholder requiring him to show cause as to why the satisfaction of charge should not be recorded.

b] If the chargeholder does not show cause within the time specified in the notice (not being more than 14 days), the registrar shall -

1] Record the satisfaction of charge in the registrar of charges maintained by him; and

2] Inform the company that the satisfaction of charge has been recorded.

c) Notice to the chargeholder is not required where the intimation to the registrar is given in CHG-4 and is signed by the chargeholder.

SS3 - Where any cause shown by chargeholder

Where any cause is shown by chargeholder, the registrar shall -

① Record a note to that effect in the registers of charges maintained by him.

② Inform the company regarding the cause shown by chargeholder.

SS4

The power of the registrar to record satisfaction of charges w/s 82 shall not affect -

① The power of the registrar to record satisfaction of charges w/s 83; or

② The power of the registrar to record satisfaction of charges otherwise than on receipt of any intimation from Company.

Section 83 - Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

SS1

Case where registrar may record satisfaction of charges in the absence of intimation of company.

SS2

Notice to Party

Within 30 days of recording satisfaction of charge in the registers of charges, The registrar shall inform the affected parties regarding recording of satisfaction of charge.

551 - If,

the registrar is satisfied (on the basis of evidence) produced before him that in relation to a registered charge -

- 1] That has been repaid in full; or
- 2] The property charged has been released from the charge; or
- 3] The property charged has ceased to be the property of the company.

then -

- 1] The registrar may record the satisfaction of charge in the register of charges maintained by him.
- 2] Notwithstanding the fact that no intimation of satisfaction of charge has been given to him by the company.

Sec 84 - Intimation of appointment of receiver or manager.

551 - Notice of Appointment of receiver or manager.

If -

a] Any person obtains an order from the court to appoint a person as a receiver or manager of any property of the company which is subject to charge; or

b] Any person, by any power contained in any instrument, appoints a person as a receiver or manager of any property of the company, which is subject to charge.

then -

1] Such person shall, within 30 days, give a notice to the company and the registrar along with a copy of such order or such instrument; and

2] The registrar shall register the same.

3] The notice of appointment or cessation shall be in form no. CHG-6.

552 If the person appointed as a receiver or manager ceases to hold his office,

1] He shall give a notice of such fact to the co. & the registrar; &

2] The registrar shall register the same.

Section 85 - Company's Register of Charges

Every company shall.

Every company shall

SS1

keep at its R.O registers
of charges in form no CH07

+

Copy of instrument
creating the charge.

SS2

Inspection open
during (business hours)

without
fees

↓
members
or
creditors

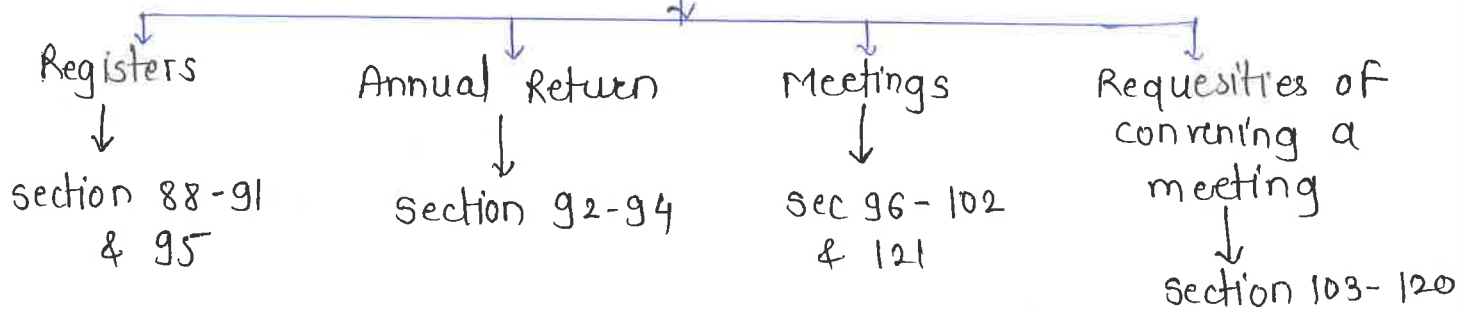
with fees
prescribed in

AOA

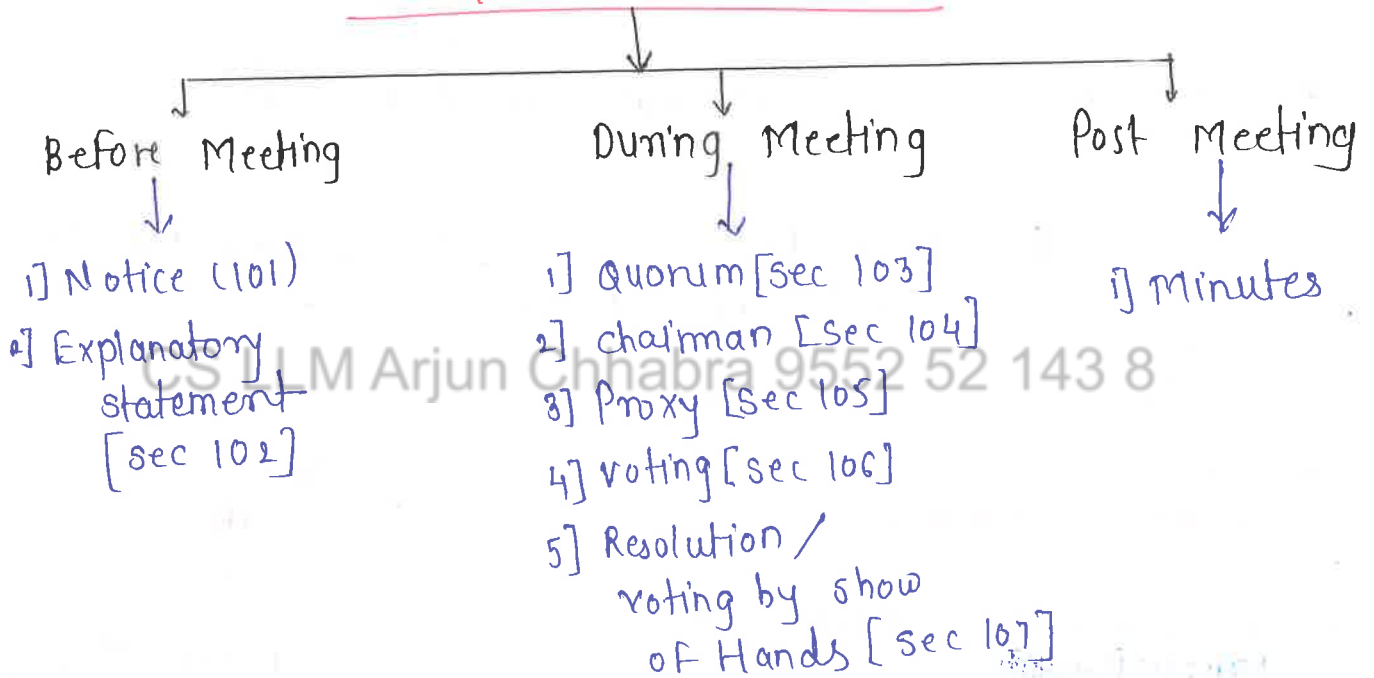
↓
other
person,

Chapter 7 - Management And Administration

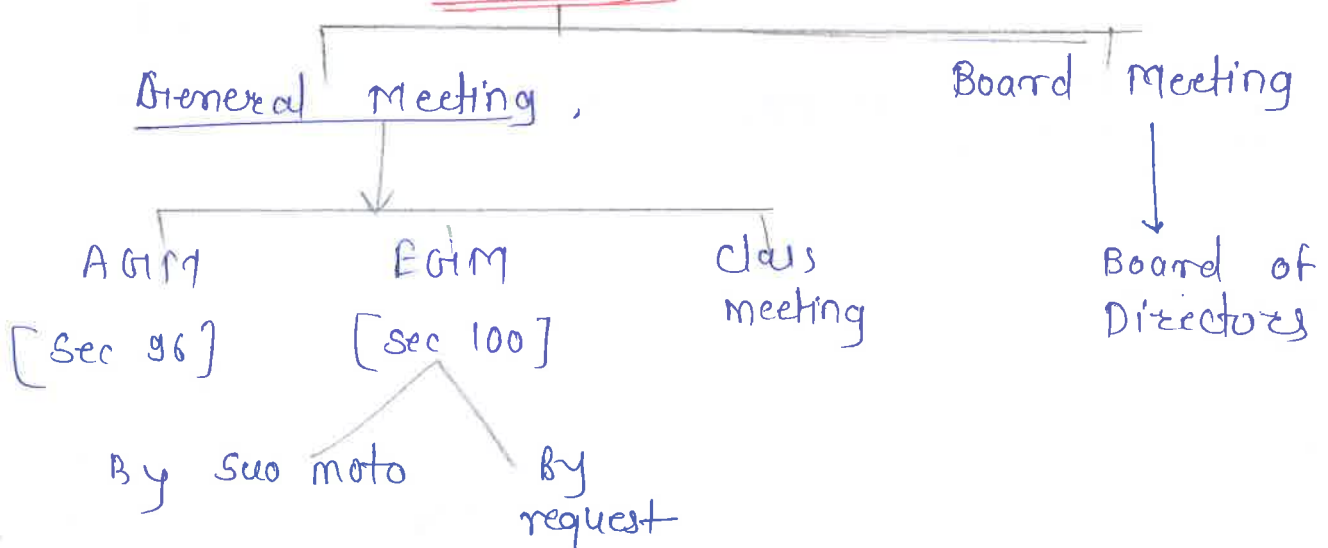
[Section 88 - 122] Read with Companies (management and Administration) Rule , 2014 .



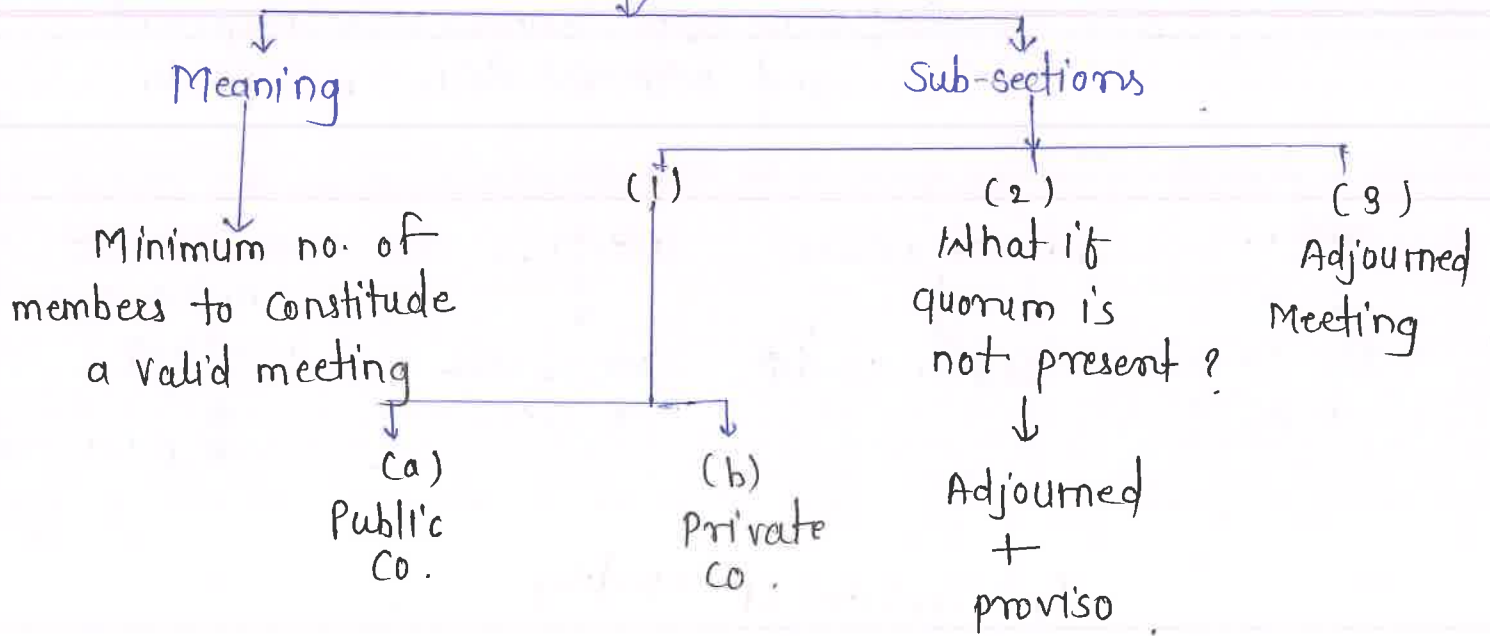
Pre requisites of Meeting



Meeting



Quorum [Sec 103]



* Articles of Association - Internal Rules & Regulations.

[Sec 103 (1)] :- Unless the articles of a company provide for larger number.

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[a] In case of Public Company.

[b] In case of Private Company

↓
2 members personally present
↓
shall be the quorum.

Case	No. of members <u>as on D.O.M.</u>	Required member.
I	upto 1000	5 MPP.
II	more than 1000 but upto 5000	15 MPP.
III	more than 5000	30 MPP.

Ex:- Notice 1/June/2023
1005 M.

30/July/2023.
Date of Meeting
995 Members

5 MPP will be Quorum

[Sec 103(2)]

Date of Notice

↓
1 / June / 2023

DOM

1 / Aug / 2023

Thursday / 11:00 AM /

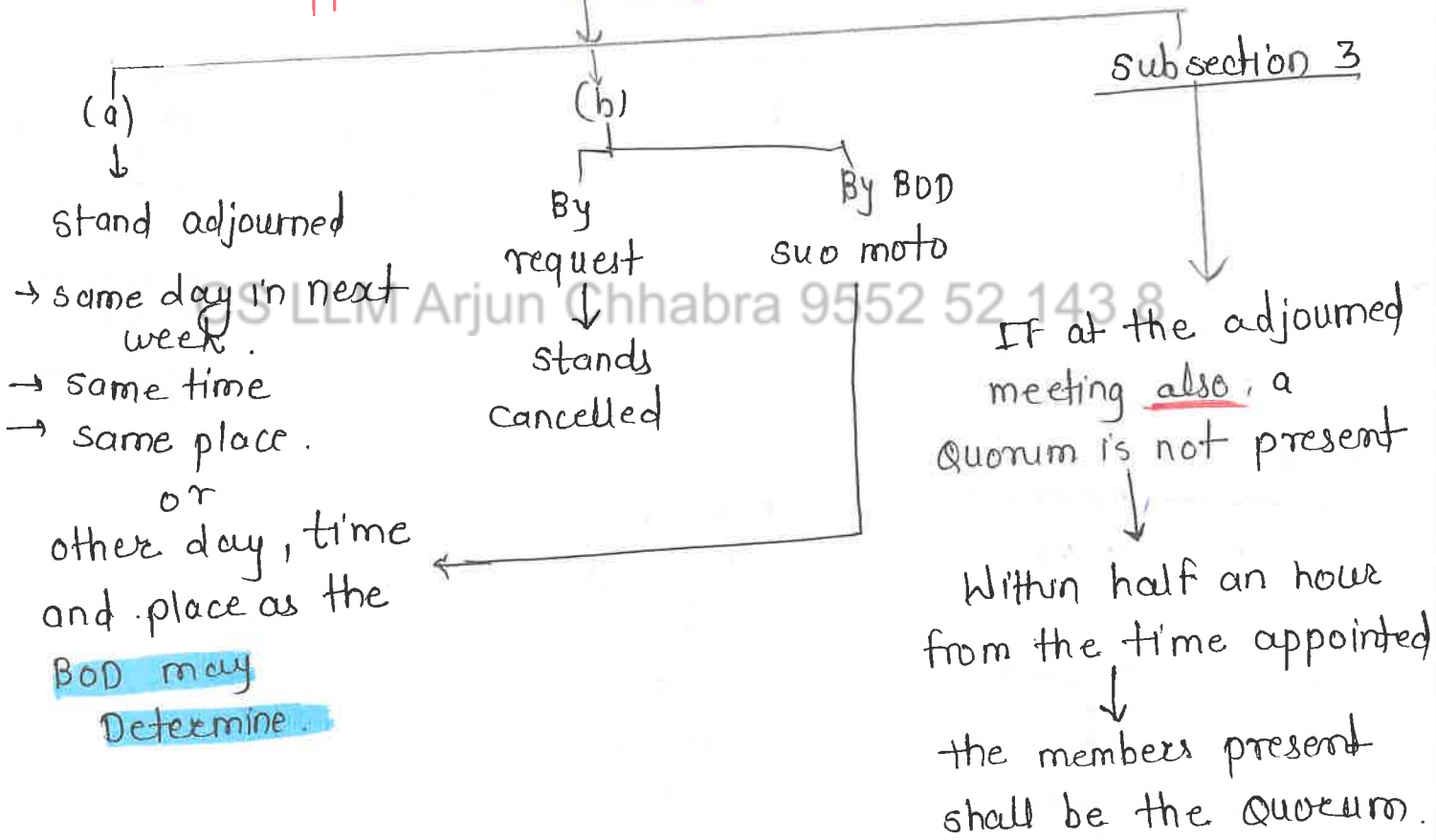
Obseoi hotel

Pune

Appointed time

If the Quorum is not present.

↓
Within half hour from the time appointed for holding a meeting of Co.



* Section 103(2)(a) + Proviso,

Not less than 3 days notice to members.

Individually

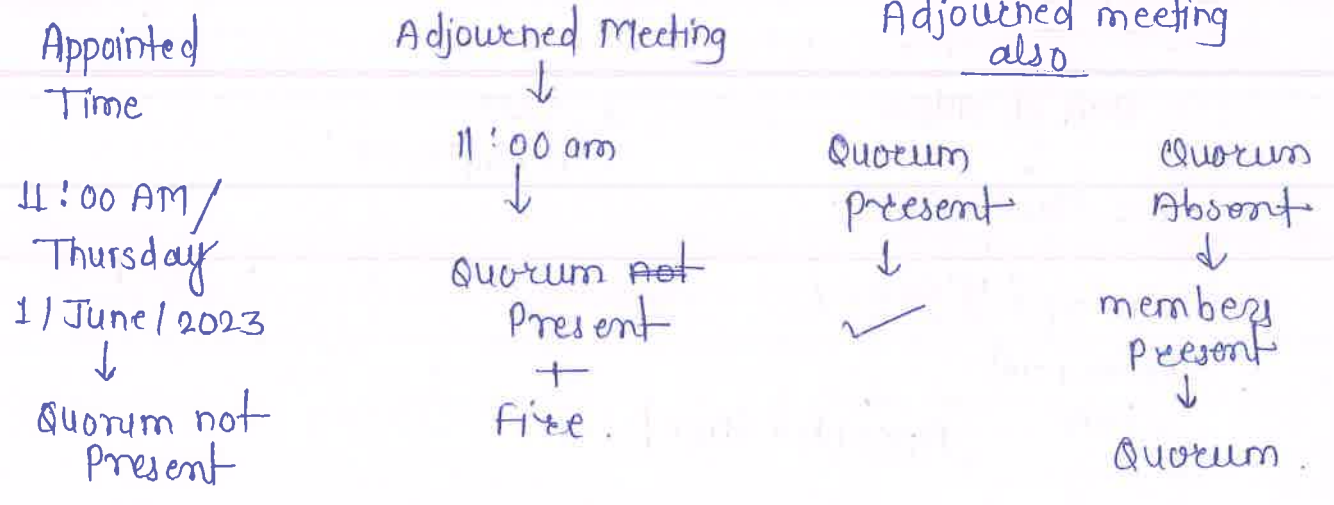
OR

By publishing an ad in NP.

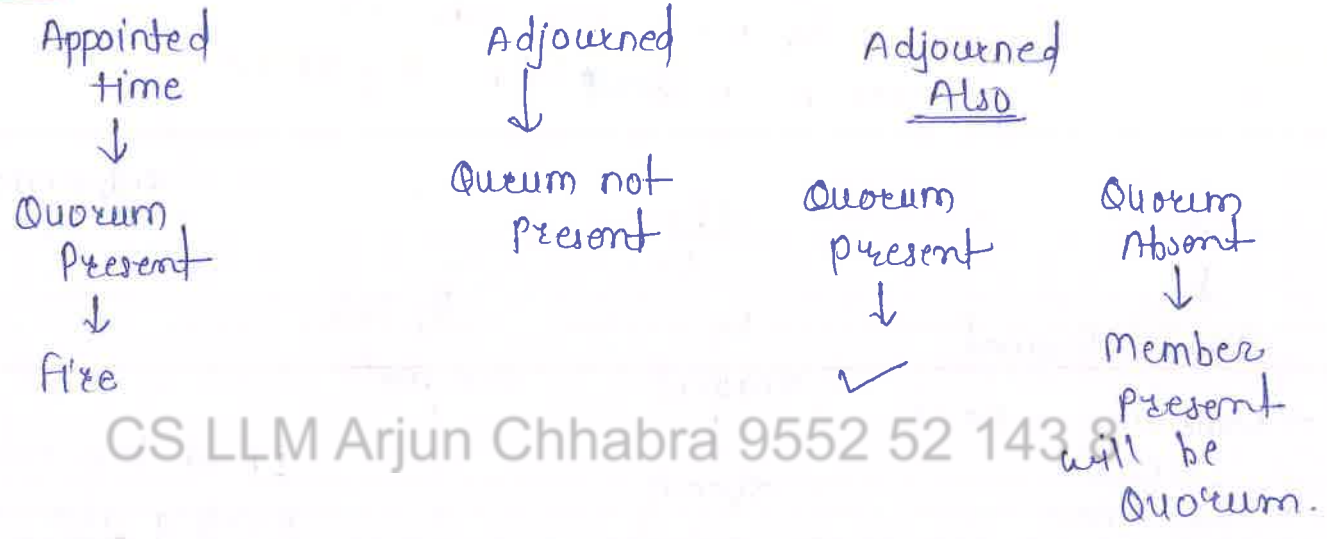
Eng & vernacular

circulation - place - co - Registered office situated.

Case I

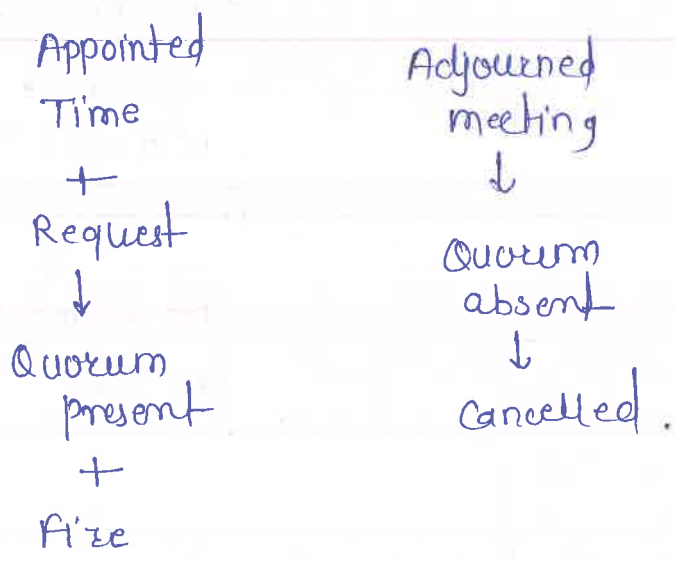


Case II



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Case III



Case IV

What if, In case Board determines to adjourn the meeting within 3 days of appointed date & time of original meeting.

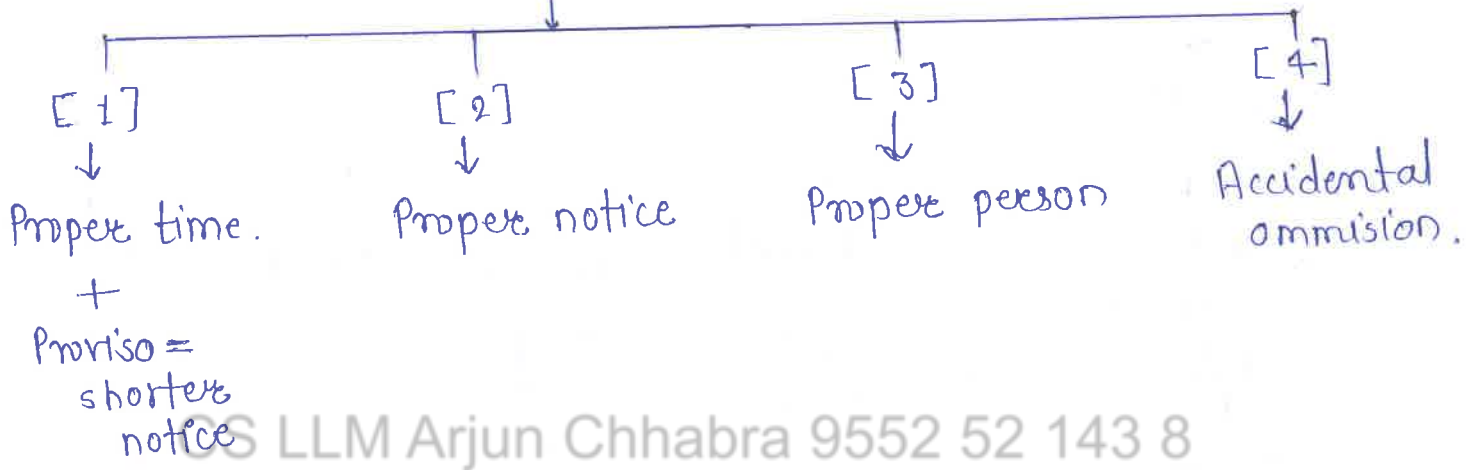
How company will comply Sec 109 (2) (a) + proviso.

→ In that case company has to comply secretarial standard 2. Secretarial standards are formulated by the Secretarial Standards Board, which was constituted by ICSI in the year 2000, and those standards are also approved by the COI u/s 118(10) of the Companies Act 2013.

If meeting is adjourned, "within 3 days of appointed date and time → the company may **opt** to give notice as per sec 103(2)(a) + proviso even within 3 days.

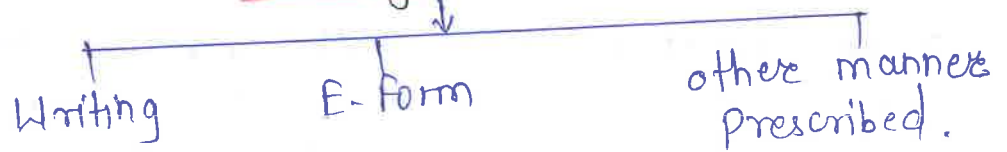
Notice of Meeting [Sec 101]

Lec-8

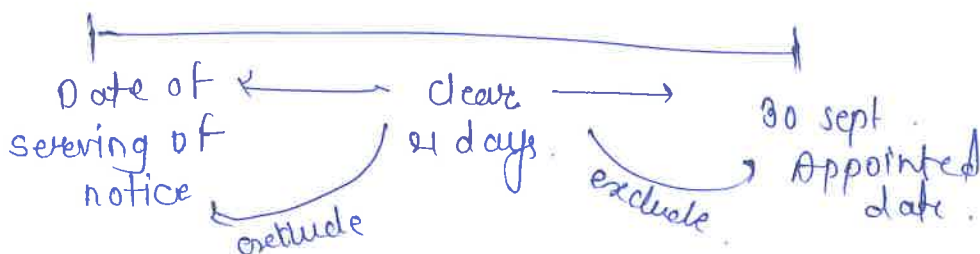


- (i) AGM
- (ii) other GM.

Subsection 1 - A General meeting of a company may be called by giving not less than 21 days notice.

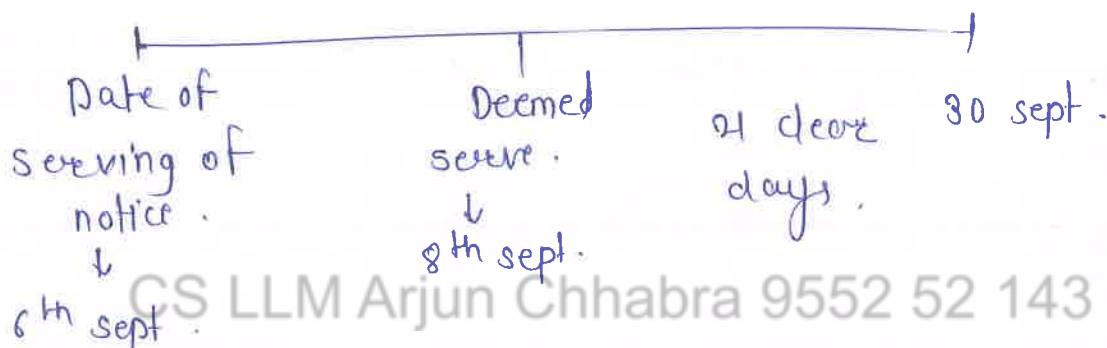
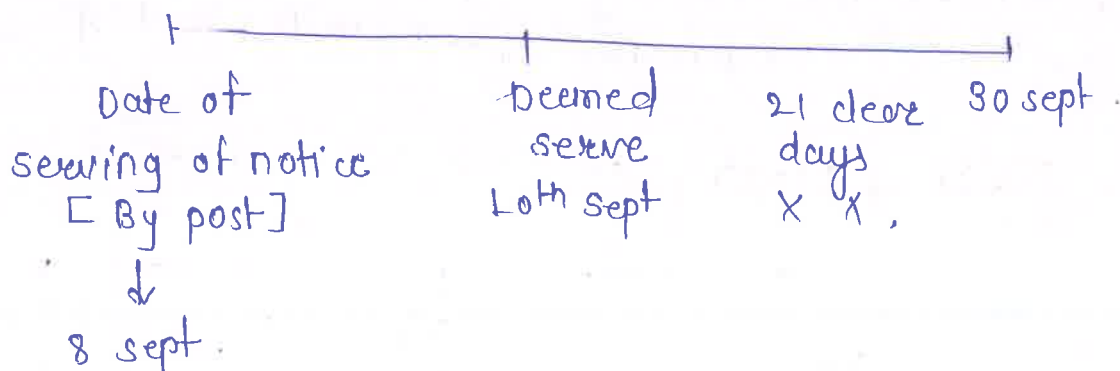


Ex - Appointed date - 30th sept.
Appointed time - 11.00 AM.



* Rule 85 (6) of the Companies Incorporation Rule, (2014) -

Where a notice of GM is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted.



Exception -

- Sec 101 shall apply on prt. company unless the articles of the company provide otherwise.
- In case of section 8 Company, subsection 1 of section 101 for the words "21 days", the words "14 days" shall be substituted.

Proviso -

Shorter Notice

Consent in writing
or
By electronic mode.

(i)
AGM.

By not less than
ninety five percent of
members entitled to
vote there at [AGM]

ex:- Act Ltd - having s.c.
1000 members
P.U.S.C = ₹ 10 lakh.

501 + 950P
members + 50P
entitled to vote
lakh
↓
voting
right.

(ii)
any other GM.

Having share
capital

- Majority in no. of members.
- Entitled to vote.
- Who represents not less than ninety five percent of P.D.S.C of co. giving right to vote of meeting.

Not having
share capital.

↓
Not less than
ninety five of
total voting
power.

Subsection [2] :- Every Notice of meeting shall specify the

- Place
- Date
- Day
- Hour of meeting
- statement of Business to be transacted.

Subsection [3] - Proper person

The notice of every meeting shall be given to.

(a)
Every member
of company
OR
ER of deceased
member
OR
Assignee of insolvent
member

(b)
The Auditor
↓
To disclose errors
of Account

(c)
Every director
of co.
↓
To be accountable
to shares.

Subsection - 4

OMISSION

Accidental

Deliberate

To give notice
or

Invalid

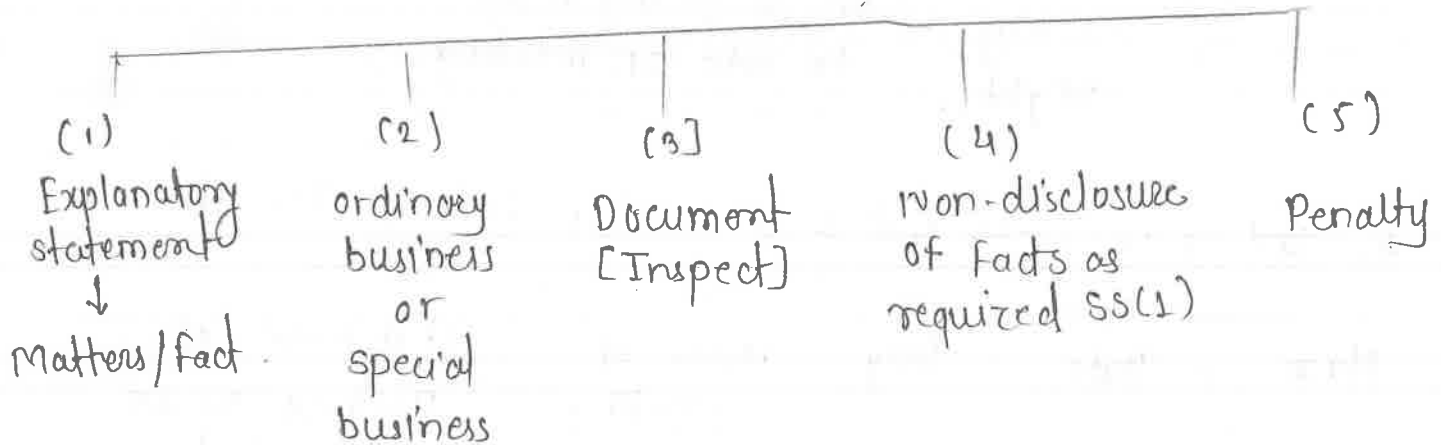
Non receipt of such
notice by any member
or other person entitled
to such notice.

shall ~~not~~ invalidate
the proceeding of
meeting.

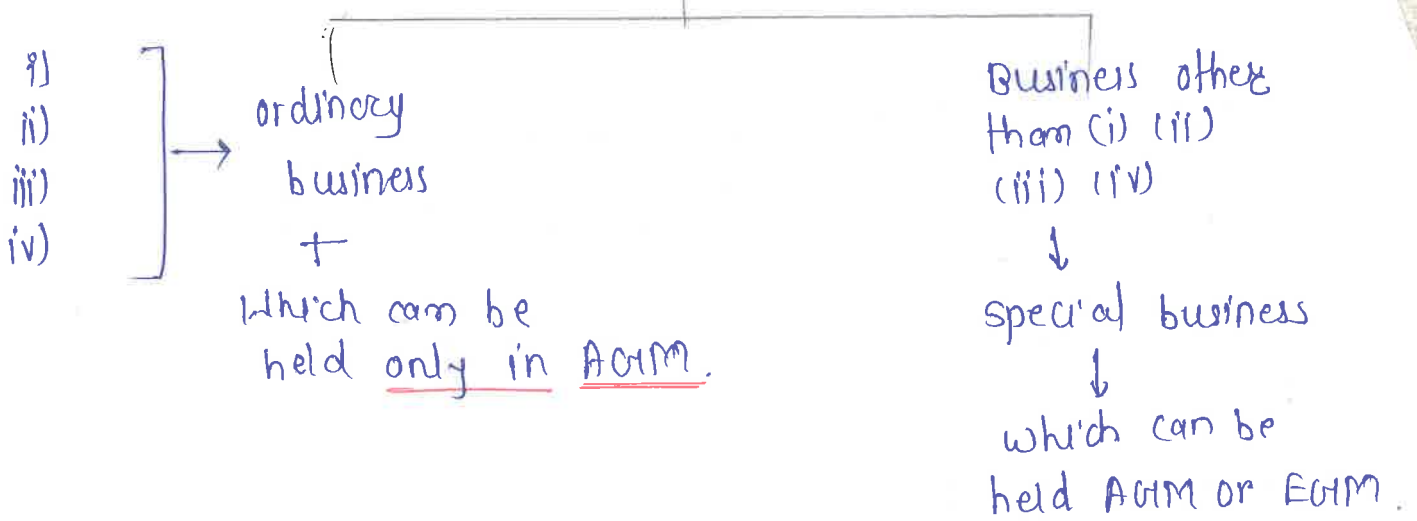
Explanatory statement Sec(102)

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statement to be annexed to notice.

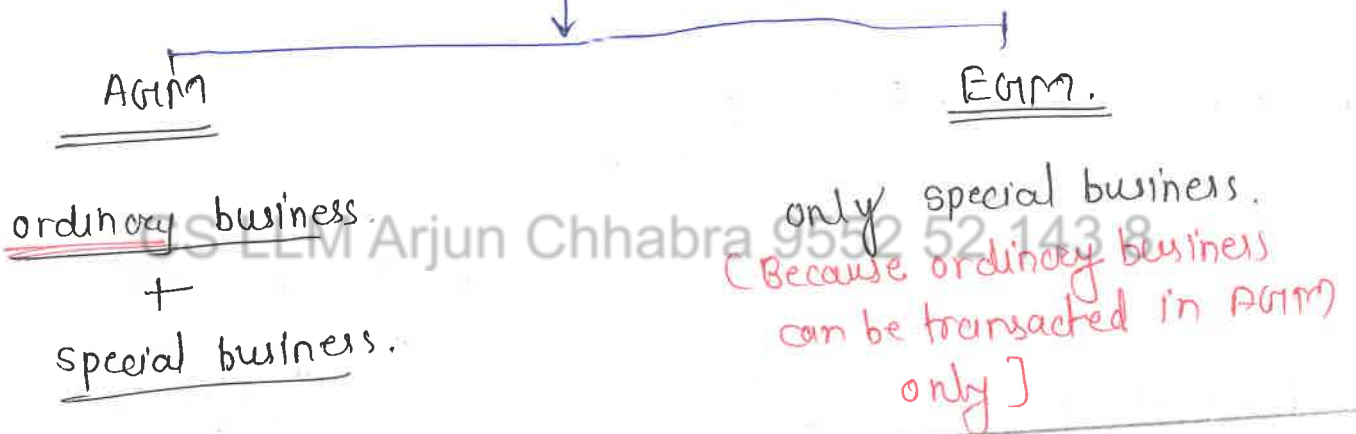


① Conclusion of Sec 102 (2) (a) (i) (ii) (iii) (iv)



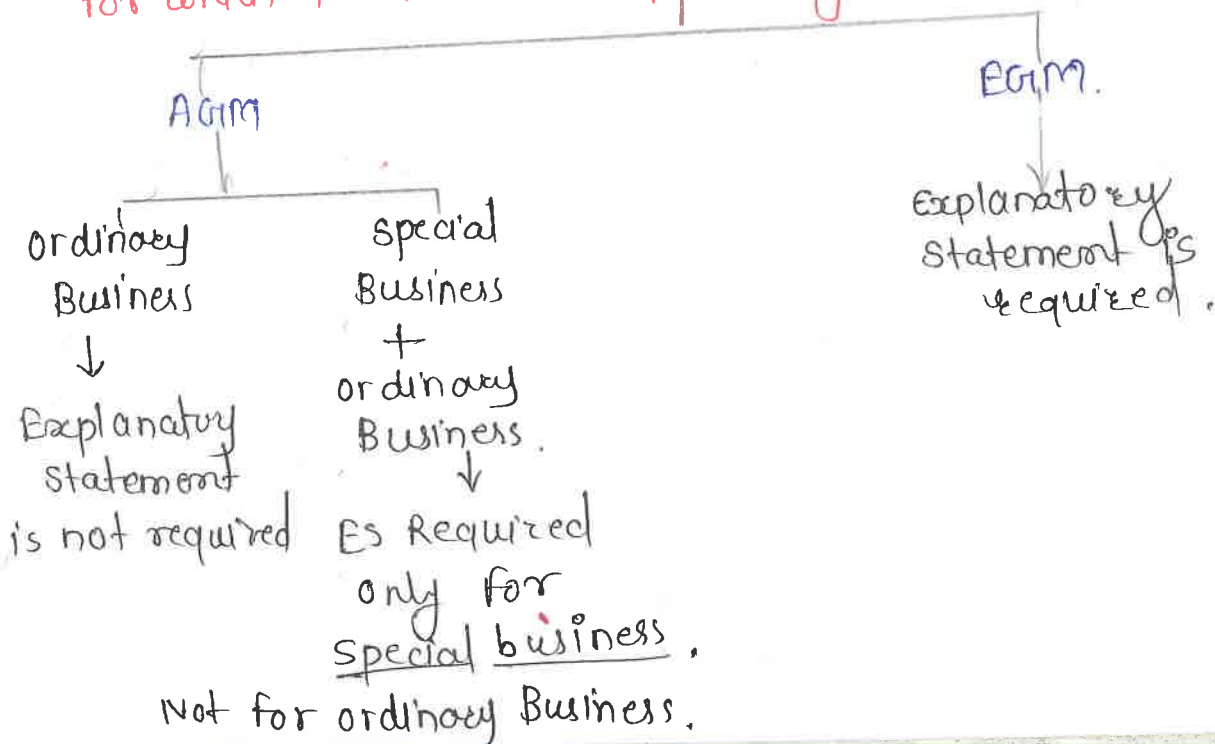
② Conclusion

Which kind of business transacted in AGM & EGM -



③ Conclusion

for which kind business explanatory statement is required.



specify time & place where such document can be inspect.

Sub section 4 - Non-disclosure as per SSC 1)

- Any benefit accrues to above person shall hold such benefit in trust.
- Liable to compensate the co. to extent benefit received by him.

Subsection 5 - Penalty

→ Liable to penalty of ₹ 50000 or 5 time of benefit whichever is higher.

Refer Q.1 - Chapter-7

(Proxy) Sec 105

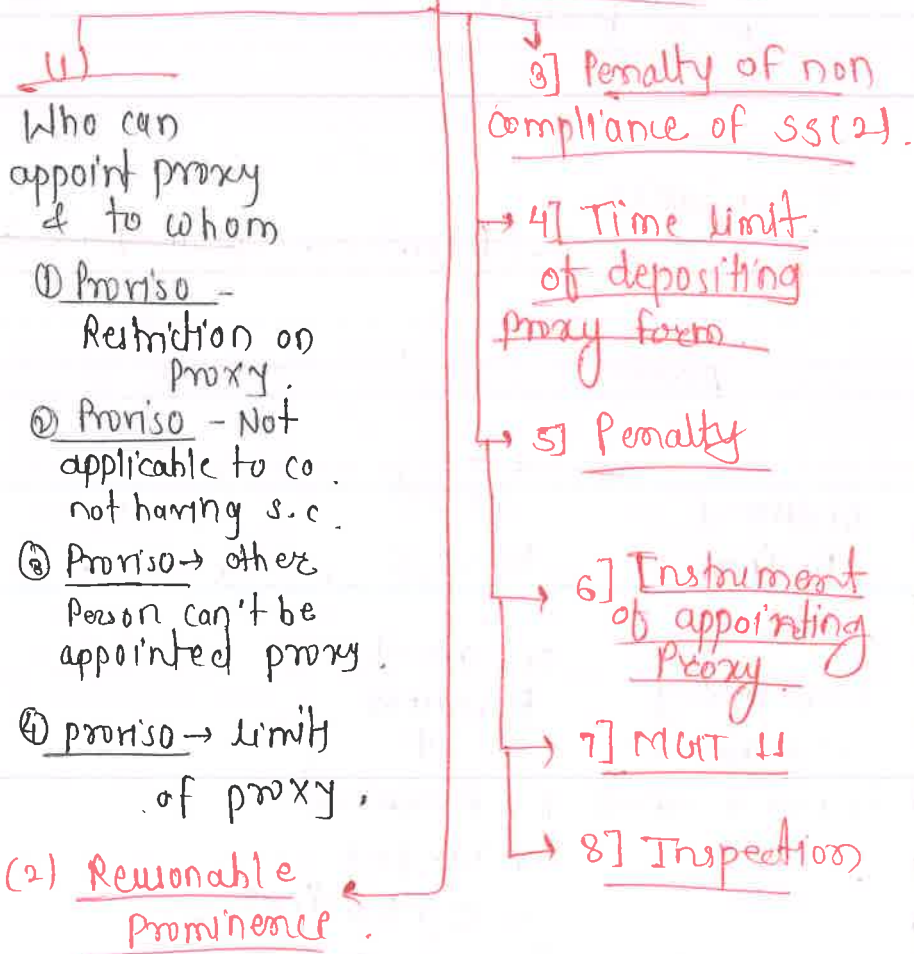
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Meaning

A person who is appointed by a member to attend & vote at a meeting in the absence of the member at the meeting is termed as proxy.

A proxy is an agent of member appointing him

Total subsections



Sub Section 1

* Who can appoint proxy ?

- Any member of company entitled to attend & vote at a meeting of company.
- shall be entitled to appoint another person [Need not be member]
- As his proxy
- To attend & vote instead of himself

Proviso 1 - Restriction/Disabilities on proxy

- ① A proxy has no right to speak at the meeting.
- ② Proxy can not vote on show of hands except poll.
- ③ A proxy is not counted for the purpose of Quorum [sec (103)]

Proviso-2 -

unless the article otherwise provide -

A member of company having no share capital shall not be entitled to appoint a proxy

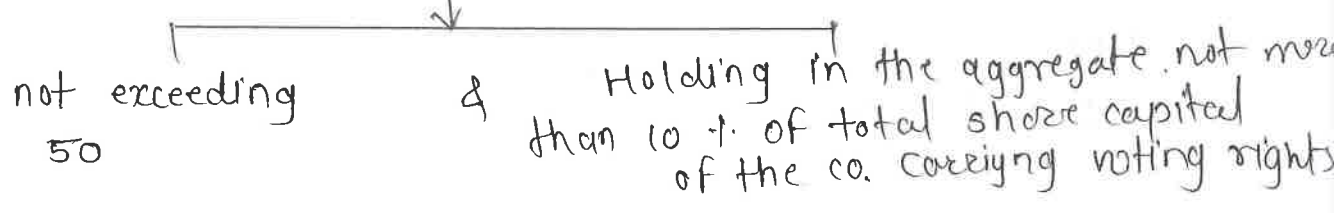
The provisions relating to proxy shall not apply to company having no share capital.

Proviso-3 - Restriction on proxy

A member of a company registered w/s non profit co) shall not be entitled to appoint any other person as his proxy unless such other person also member of such co.

Proviso 4 - Limits of proxy

A person can act as proxy on behalf of members -



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.

Subsection - 2 - Disclosures required in notice of general meeting.

- In every notice calling a meeting of company there shall appear with reasonable prominence a statement that member entitled to attend & vote is entitled to appoint a proxy to attend and vote instead of himself and that a proxy need not be a member.

Subsection 3 - Penalty for default in complying subsection 2
- officer in default. - ₹ 5000.

Subsection 4 - Deposits of proxy forms.

- Any provision contained in the articles which specifies or requires a longer period than 48 hours before a meeting of the company, for depositing with company any instrument appointing a proxy, shall have effect as if a period of 48 hours had been specified such deposit.

Subsection 6 - legal requirements of proxy form

- shall be in writing &
- signed by the member.

Subsection 7 - No special requirements in proxy form.

- If an instrument appointing a proxy is in the form as may be prescribed (MGT 11)

Subsection 8 - Inspection of proxies

Appointed date - 30th sept.

Appointed time :- 11:00 AM.

Before ← 24 hrs. Appointed Time → Till conclusion of meeting.
→ provided not less than 3 days notice in writing.

Sec 112 & Sec 113

Sec 112

Representation of the president and governor's

If the president of India or Governor of state is a member in any other company He may be authorize such person as he thinks fit to act as his representative at any general meeting or class meeting of such company.

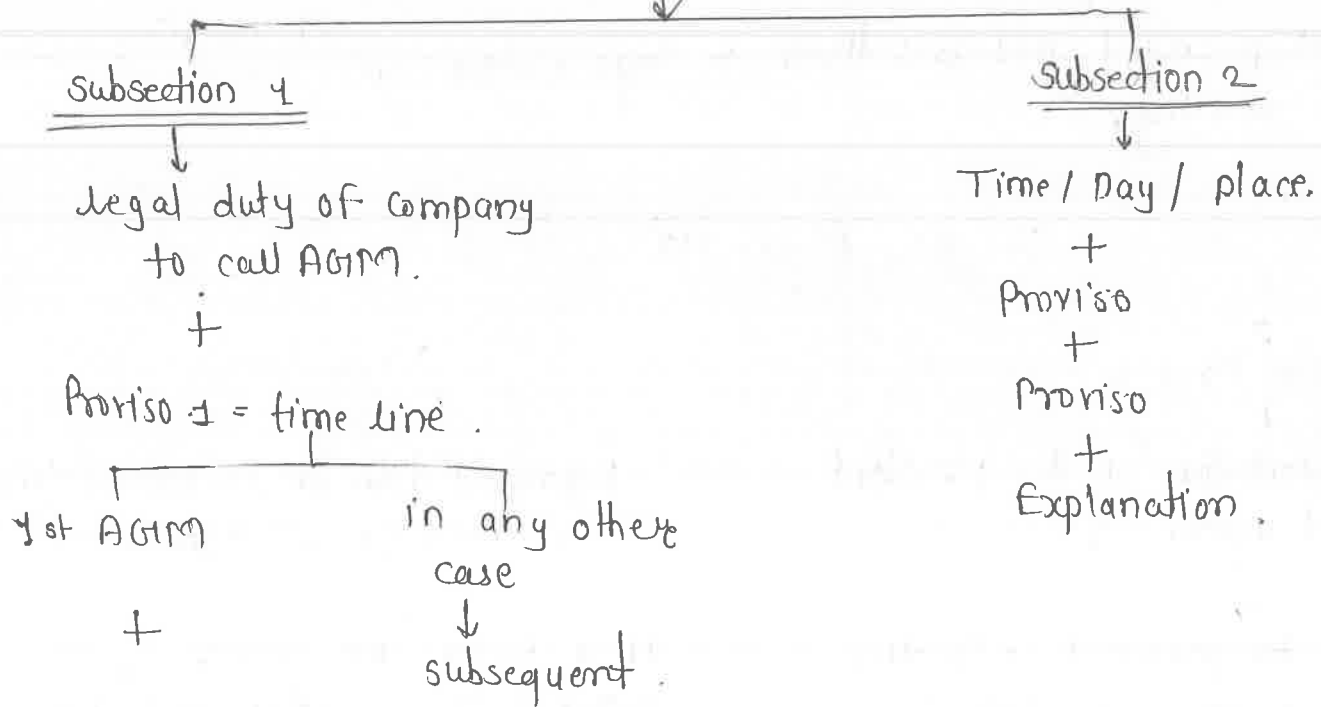
Sec 113

Representation of co-operations at meetings of companies

If a body Corporate is a member or creditor including debenture holder in any other company. it may, by resolution of its board of directors authorise such person as it thinks fit to act as its representative at any general meeting or class meeting of such company.

A person appointed as a representative is entitled to exercise the same rights and powers (including the right to vote by proxy or postal ballot) as if he were a member of the company.

Annual General Meeting [Sec 96]



Proviso 2 : whether it is necessary to hold AGM in year of Inc.

Proviso 3 : Power of Roc to grant extension of time to hold AGM.

Subsection 1 ① Applicability of sec 96

- section 96 applies to all companies except ope.

② legal requirement with respect to notice of AGM.

- The notice of AGM shall comply requirement of Sec 101.
- The notice of AGM shall specify that the meeting is AGM.

Proviso 1 - last date for holding 1st AGM

* Time limit

- First AGM to be held within 9 months of close of first financial year.
- If first AGM is so held there is no need to hold AGM in the year of incorporation.

* No Extension

- The registrar has no discretion to grant any extension for holding 1st AGM.

② last date for holding any other AGM. (subsequent AGM)

* Time limit without extension.

- AGM is to be held within 6 months of close of relevant financial year.
- Not more than fifteen months shall elapse between the date of one AGM and that of the next i.e. AGM is to be held within fifteen months of last AGM.
- which means subsequent AGM must be held within fifteen months from the date of last AGM or six months from close of financial year whichever is earlier.
(refered chart notes).

* Extension

- The registrar may for any special reason, extend the time for holding the AGM by any period not exceeding 3 months.

Sec 2(41) Financial year

Financial year in relation to any company or body corporate means the period ending 31st March every year, and where it has been incorporated on or after the 1st day of January of year, the period ending 31st day of the following year.

company incorporated on 31/12/2021.

A-y close → 31st March 2022 FY 21-22

↓ 9 months

upto 31st Dec 2022

AGM-held on → 31st Dec 2022

↓ subsequent

FY 22-23

15 months from last AGM
↓
31st March 2024

6 months from FY close
↓
30th Sept. 2023

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Subsection - 2

Hours / Time
↓
Business Hours
(9 AM to 6 PM)

Day
↓
Any Day
↓
That is not
national
holiday.

place
↓
Registered office
or
other place
city / town / village
where within registered
office situated.

① Proviso,

Unlisted Co - Any place in India.

consent $\left\{ \begin{array}{l} \rightarrow \text{In writing} \\ \rightarrow \text{E-mode} \end{array} \right\}$ All members in advance.

② Proviso -

Central govt may exempt some Co. (Page 46 of Handwritten notes)

Refer [0.11, 0.15, 0.21]

* In case of sec 8 Company, the time, Date, place of each AGM are decided upon before hand by the board of directors having regard to the directions, if any given in this regard by Company in its G.M.

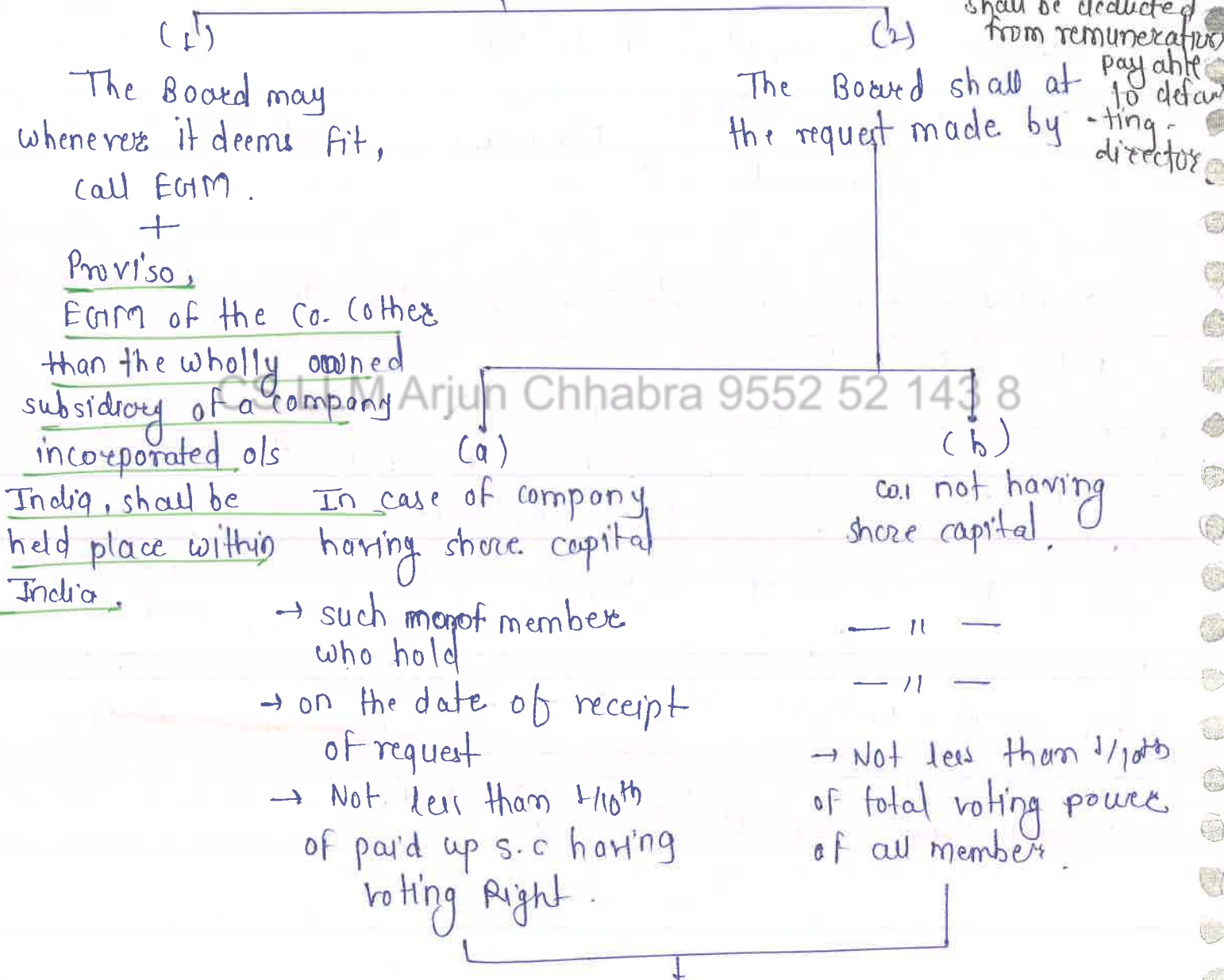
* In case of Govt. Company, the govt. Co. may hold its meeting within a city, town or village in which the registered office is situated or such other place as the central govt. may approve in this behalf.

Extra ordinary General Meeting [Sec 100]

- (1) calling of EGM by BOD by suo Moto.
- (2) calling of EGM by request of members
- (3) valid request
→ matters
+
→ sign
+
→ sent R.O.
- (4) calling EGM by member themselves
- (5) same manner
- (6) Reimbursement of reasonable exp. in calling meeting by co. to requisition.

→ the sums so paid shall be deducted from remuneration payable to director

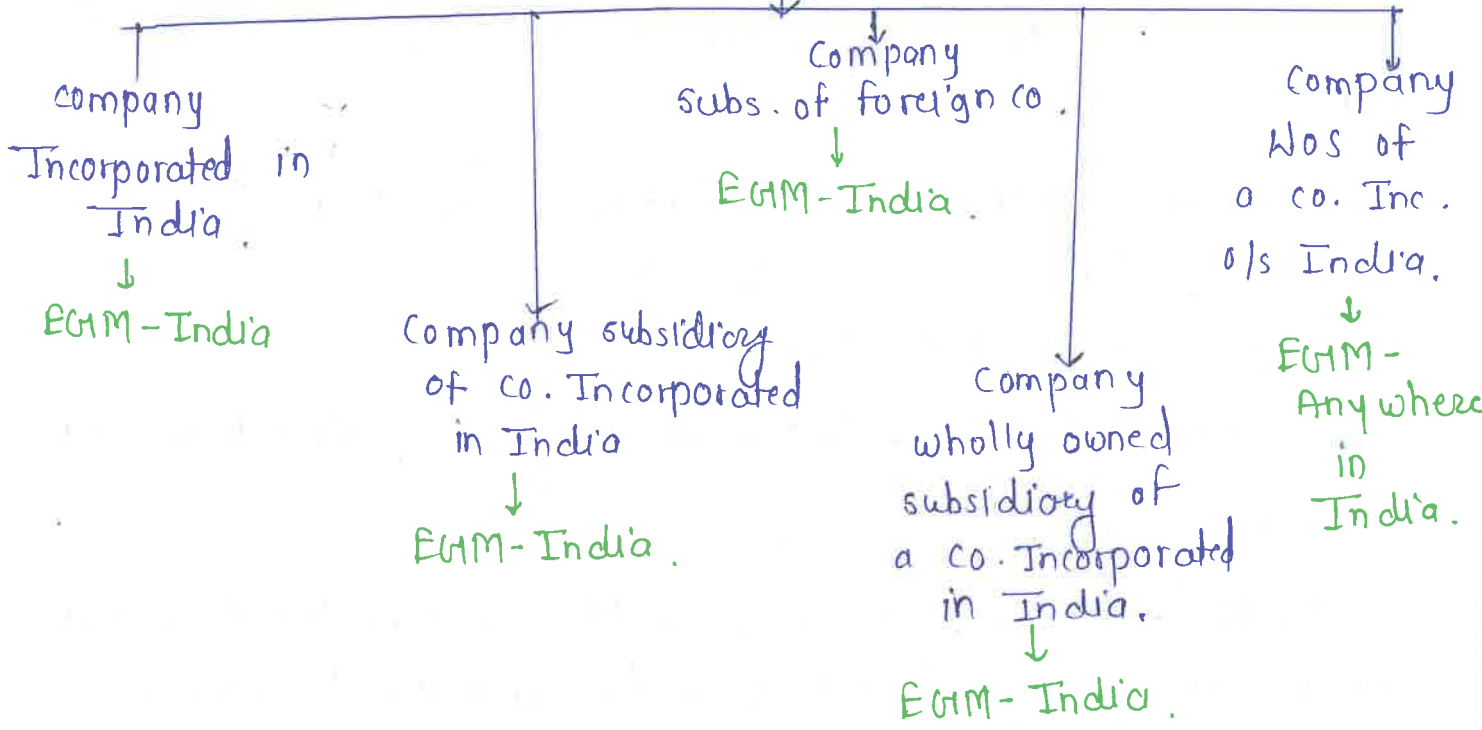
Subsection



Call EGM of Co. within the period specified under

Proviso of Subsection 1 - place of EGM.

Q.10 & Q.85



Subsection - 4

CS LLM Arjun Chhabra 9552 52 143 8

on receipt of valid request

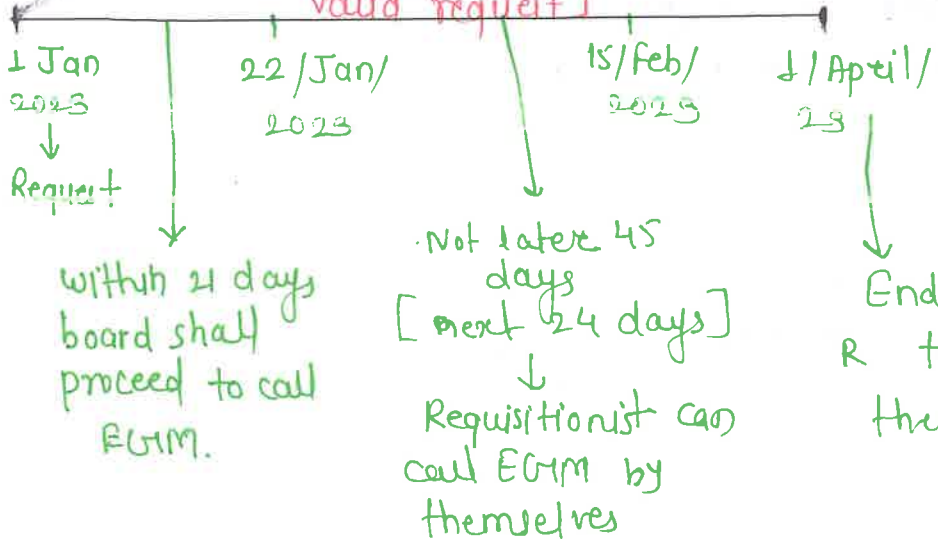
Board shall proceed to call EGM within 21 days.

Board proceed within 21 days

Board not Proceed

Next 24 days

Ex- [All the time lines i.e 21 day, 45 days, 3 months are counted from date of valid request]



Not later than 45 days requisition may call EGM by themselves.

But within 3 months.

Exception of Section 100

In case of specified IFSC pvt co. - The board may subject to the consent of all the shareholders convene its EGM at any place within or outside India,

- International financial service centres (Hub) - this is place. i.e. designated Area. Designed by Govt.

To provide financial services

- ① Banking
- ② Insurance
- ③ Mutual fund
- ④ Lending Borrowing
- ⑤ stock market.

To the customers o/s to jurisdiction of domestic economy i.e. foreign customers / clients with the objective to increase foreign investment.

① USA has IFSC in New York.

② China - Shanghai.

③ UK - London.

④ India - Gandhinagar (2015)

⑤ Singapore - Singapore.

* World Bank [2008-9] Report

India needs of IFSC in Mumbai that time Govt. was of Congress.

* Exemption -

① Income tax exempted for 5 yrs.

② Companies act 2013 sec 101 to 107 & 109

sec 101 to sec 107 & 109
not applicable to pvt. co.
article otherwise provide.

Power of tribunal to call.

AGM

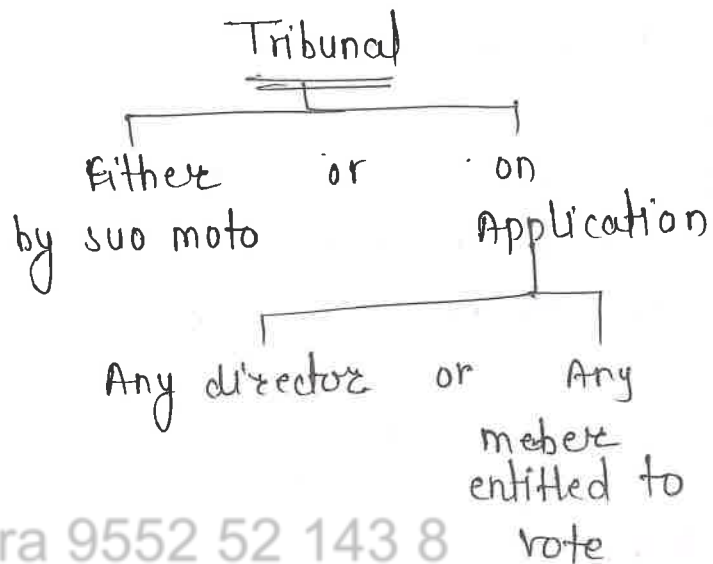
1] Default in holding AGM u/s (96) ~~Nothing~~
Not with standing any thing contained in the act or articles.

→ Tribunal may
→ on the request/application of any members.
→ call or direct AGM.

Proviso - such direction may include that one member of co. represent in person or by proxy shall be deemed to constitute meeting.

EGM

(1) If for any other reason it is incapable to call EGM.



section 99 - Punishment for default in complying with provision of s(96) to sec (98).

- 96 - AGM
- 97 - power of tribunal to call AGM.
- 98 - power of tribunal to call EGM.

Company and every officers of co. in default → punishable.
fine → which may extent to ₹ 100000.
Continuing → fine may extend to ₹ 5000/day till default continue.

* Difference between fine & penalty -

Fine

- ① Imposed by court of law, tribunal.
- ② Appeal to high court, NCLAT.
- ③ Involves prosecution.
- ④ Can be accompanied with imprisonment.
- ⑤ Time consuming process.
- ⑥ Costly.
- ⑦ for more serious offense.
- ⑧ Increase work load of NCLT courts.

Penalty

- ① Imposed by Adjudicating Authority (ROC)
- ② Appeal to Regional director.
- ③ Not involve prosecution.
- ④ Not accompanied with imprisonment.
- ⑤ Less time consuming.
- ⑥ Less costly.
- ⑦ for less serious offences.
- ⑧ Reduce work load of NCLT courts & give more power to ROC / CG.

* Diff. between voting poll vs show of hands

Voting by poll.

- ① Voting right given on basis of no. of shares held by member.
- ② 1 share = 1 vote.
- ③ Proxy can vote.
- ④ polling paper form no MCA 12.
- ⑤ Not possible having no share capital.

Voting by show of hands.

- ① Every member gets same vote i.e 1 vote.
- ② 1 member = 1 vote.
- ③ Proxy can not vote.
- ④ No form
- ⑤ possible in every company.

Sec (104) chairman of Meetings.

SS

Chairman of Board meeting shall be the chairman of General Meeting.

SS2

Para 5

But if he is not present within 15 minutes of appointed time.

IF he is present but does not wish to take chair.

Then directors present shall elect one among themselves as chairman of G.M.

But if none of the directors present within 15 mins of appointed time.

or
If they are present but they don't want to take the chair.

Then the chairman shall be elected as per articles.

SS-1

But if the articles are silent.

Then members present among themselves shall elect one by show of hands.

Sec 104 Summary Notes

Sec 104 (1) - Read with BS2. para 5 @ appointment of chairman.

The chairman shall be appointed as per the above provision.

① Appointment as per given under sec 104 -

If the articles do not contain any provision regarding the appointment of chairman then, the chairman shall be appointed as follows.

- A] Members personally present shall elect one of themselves to be the chairman.
- B] Election of chairman shall be made by voting on show of Hands...

Sec 104 (2)

① If a poll is demanded on election of chairman, it shall be taken forthwith.

② During the poll, the chairman elected as a result of show of Hand shall continue to be the chairman.

③ If some other person is elected as a chairman as a result of the poll, he shall be the chairman for the rest of the meeting.

Q.1) Whether poll can demanded after am by SOH?

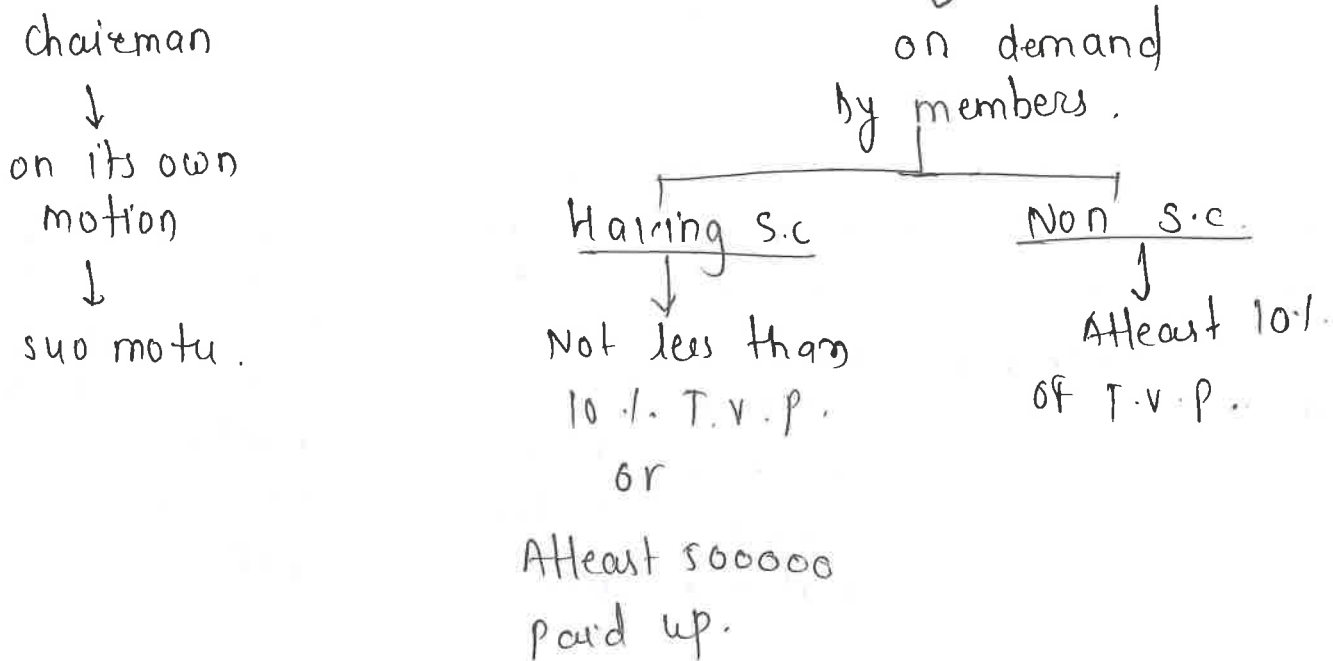
→ Yes (sec 107 read with section 109)

Q.2) Who can demand poll?

→ Section 109 $\begin{cases} \text{Chairman (suo moto)} \\ \text{on demand} \end{cases}$

Q.3) who will be

Section 109 - Demand for poll



Section 107 - Voting by show of Hands.

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(1)
Mode of voting
in meeting

(2)
Declaration of
Passing resolution

Ss 1 - At any GM, a resolution put to vote of meeting, unless a poll is demanded w/s 109 or the voting is carried on electronically, be decided on show of Hands.

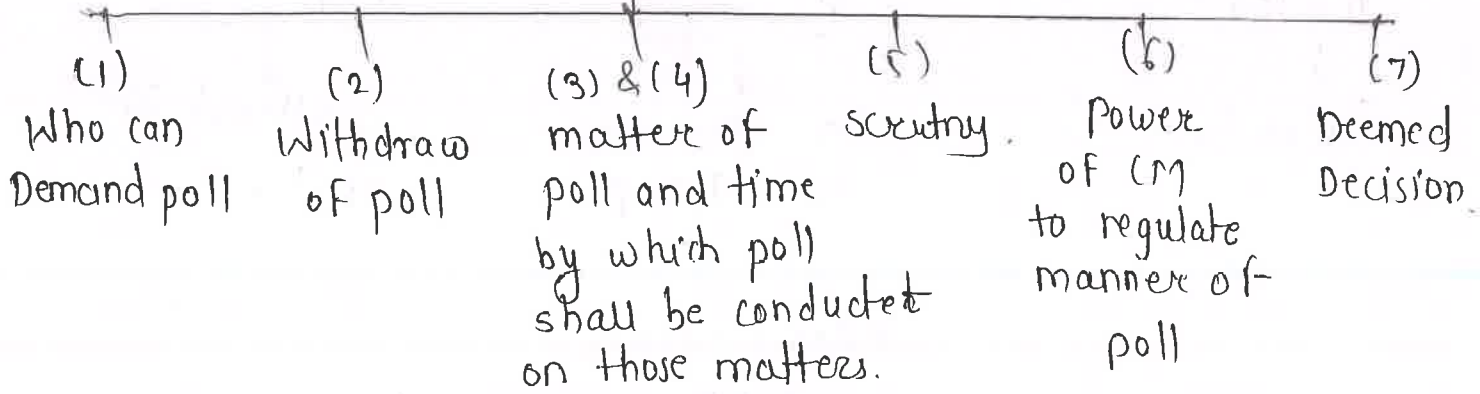
Interpretation Ss 2

A declaration of the result of a resolution (that the resolution has been passed or failed, as the case may be) on soft. by GM & an entry of the same (whether resolution passed or failed) in the minutes book shall be ~~stat~~ conclusive evidence of such fact.

No proof of no. of votes cast in favour of and against the resolution is required.

Meaning of conclusive evidence - When one fact is declared by law to be conclusive proof of another, the court shall not allow evidence to be given for the purpose of disproving it.

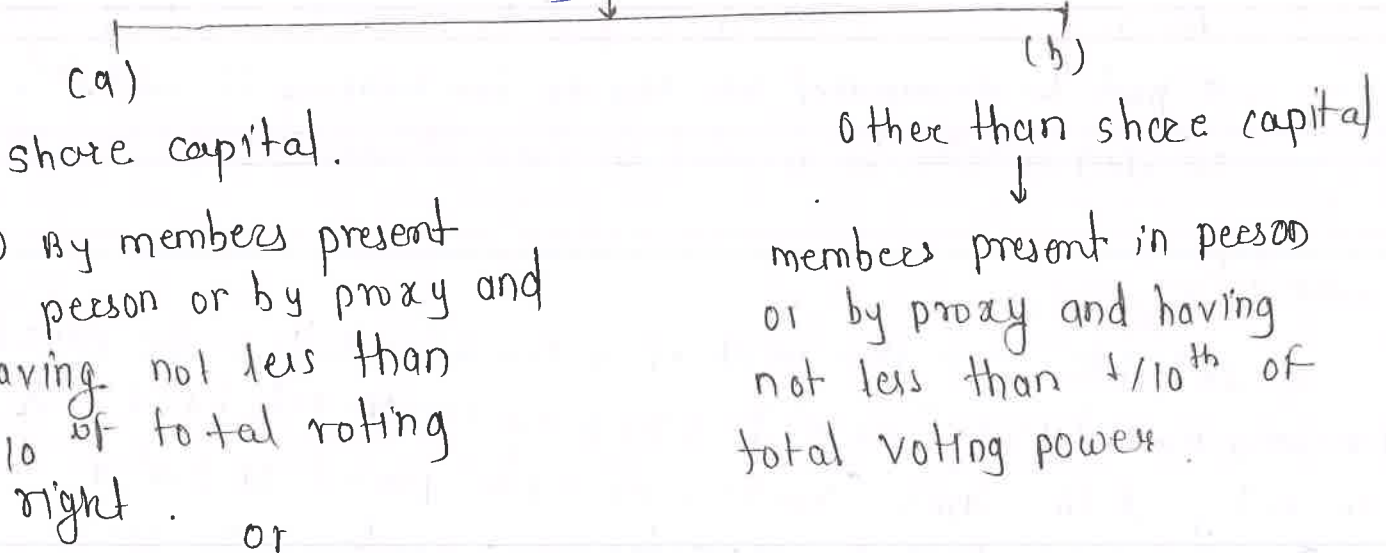
Section 109 - Demand for poll



Subsection 1 - Before or on declaration of the result of the voting or any resolution ~~can~~ on show of hands a poll may be ordered to be taken by CM on his own motion.

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and
shall be ordered to be taken by him on demand made by



holding shares on which an aggregate sum of not less than 5 lakh or higher amount as prescribed been paid up by Co.

Ex - Reliance Industries Ltd

Case I

Case II

Name	Shares	Demand of poll
X	10000	✓
Y	50000	✓
Z	5000	X

↓
100000 shares.

FV = ₹ 10

Name	Shares	Demand for poll
X	10000	X
Y	50000	✓
Z	5000	X

↓
10,00,000 shares.

FV = ₹ 10.

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Section 108

Applicability

Equity
shares listed



Pref. shares
listed



X

Debenture
listed



X

Pref &
Debenture



X

Equity listed

7 member



Equity } listed
+ }
Pref }

+
7 member



unlisted
+
7 member



X

Pref-shares
+
1001 member



unlisted
+
1000 member



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Section 108 - voting through Electronic Means -

1] Applicability -

① Sec 108 shall apply to such companies as may be prescribed by CG.

② As per rule no. 20 of the Companies (Management & Administration) rules 2014, The prescribed classes of companies for this purpose, are -

1) all companies whose equity shares are listed on a RSE

and

2) All companies having thousand or more members.

2] Legal Requirement -

A company to which section 108 is applicable, shall provide to its members facility to exercise the right to vote at C/M by electronic means.

2) once a resolution is proposed at G.M it shall not be withdrawn.

3] Modes of sending Notice of G.M -

- By registered post or speed post.
- through electronic means, registered email id of the members or recipient.
- By Courier service.

4] Display of Notice at Website -

- The notice of General meeting shall also be placed on the website of any of the company after it is sent to the members.

5] Disclosures in Notice sent to the members by the co: -

- The notice shall disclose that -

① The company is providing facility for voting by electronic means

② The facility for voting by polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote voting shall be able to exercise their right at the meeting.

However, the members who have already voted may also attend the meeting but shall not be entitled to cast their votes again.

6] Additional disclosures -

The notice shall indicate the process and manner for voting by electronic means

b) Indicate the time schedule during which votes may be cast by remote voting.

c) Provide the details about log id & password

7] persons entitled to notice -

- ① Members
- ② Directors
- ③ Auditors

8] Public notice by way of Advertisement -

- Immediately on completion of dispatch of notice of G.M., the public notice shall be published at least 21 days before the date of G.M.

At in one vernacular language circulating in district in which the registered office of co. is situated.

At least in on english newspaper having country wide circulation.

- The public notice shall specify the following details -
① statement that the business may be transacted through electronic means.

② The date and time of commencement of remote voting.

③ The date & time of end of remote voting.

④ cut off date

* The manner in which person who has acquired shares & become members of the co. after dispatch of notice, may obtain login id & password.

9] Remote E-voting -

1] The facility for remote e voting shall remain open for not less than 3 days & shall close at 5 P.M on the date preceeding the date of G.M.

10] Declaration of Result of voting :-

a] The scrutineers appointed by chairman shall immediately after the conclusion of meeting, first count the votes at G.M. & shall unblock the votes cast through remote voting in the presence of atleast two witness not in the employment of the company.

b] The scrutineers shall make, not later than three days of the conclusion of G.M., a consolidated scrutineers report to the chairman.

The report shall contain total votes cast in favour & against of the resolution
The chairman shall declare the result of the voting forthwith

If the requisites no. of votes are cast in favour of the resolution, the resolution shall be deemed to be passed on the date of the general meeting.

Section 110 :- Postal Ballot
+
Rule 22.

Means instead of transacting business matter in G.M. company will send draft resolution of the matter to all members giving them 30 days to reply with the assent or dissent through post, courier or email.

sub-section 1 - Notwithstanding anything contained in this act, a company -

(a) shall in respect of such items of business as the C.M. may by notification declare to be transacted only by means of postal ballot.

material business transaction

(b) MAY, in respect of any item of business other than ordinary business and any business where opportunity being heard to given to Directors auditor

Transacted by means of postal ballot as may be prescribed instead of transacting such business at G.M.

Provided that, Any item of business required to be transacted by means of postal ballot under clause (a) may be transacted at G.M. by company which is required to provide facility to members to

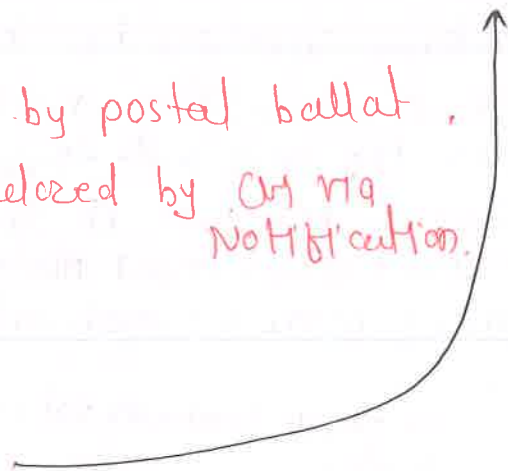
note u/s 108 by Em.

Rule 22 Business to be transacted by postal ballot.

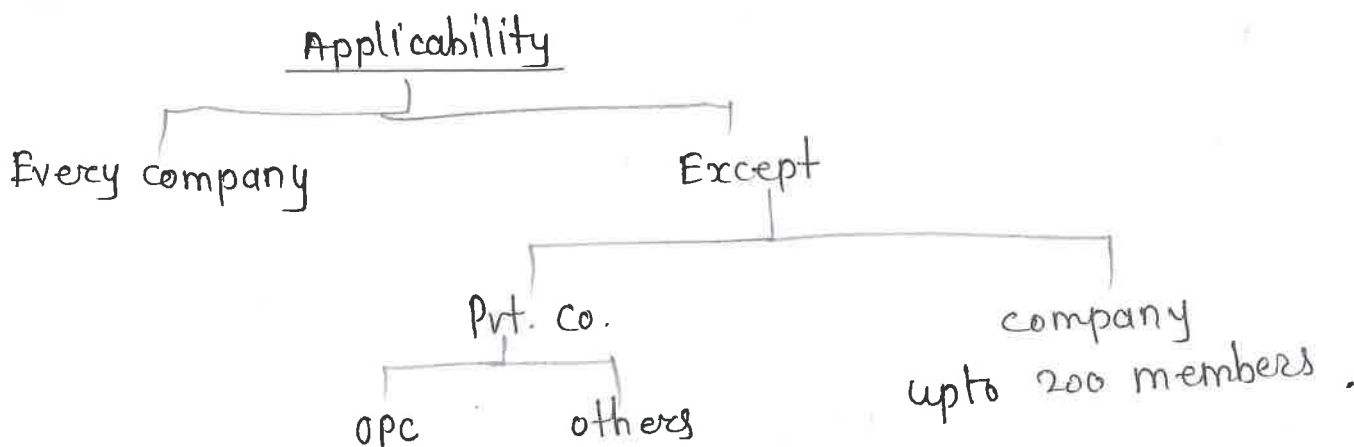
sub rule → material business declared by C.M. via notification.

1) proviso → Applicability

2) provided → additional details further



② proviso - Conclusion



* Diff between E-voting & postal ballot .

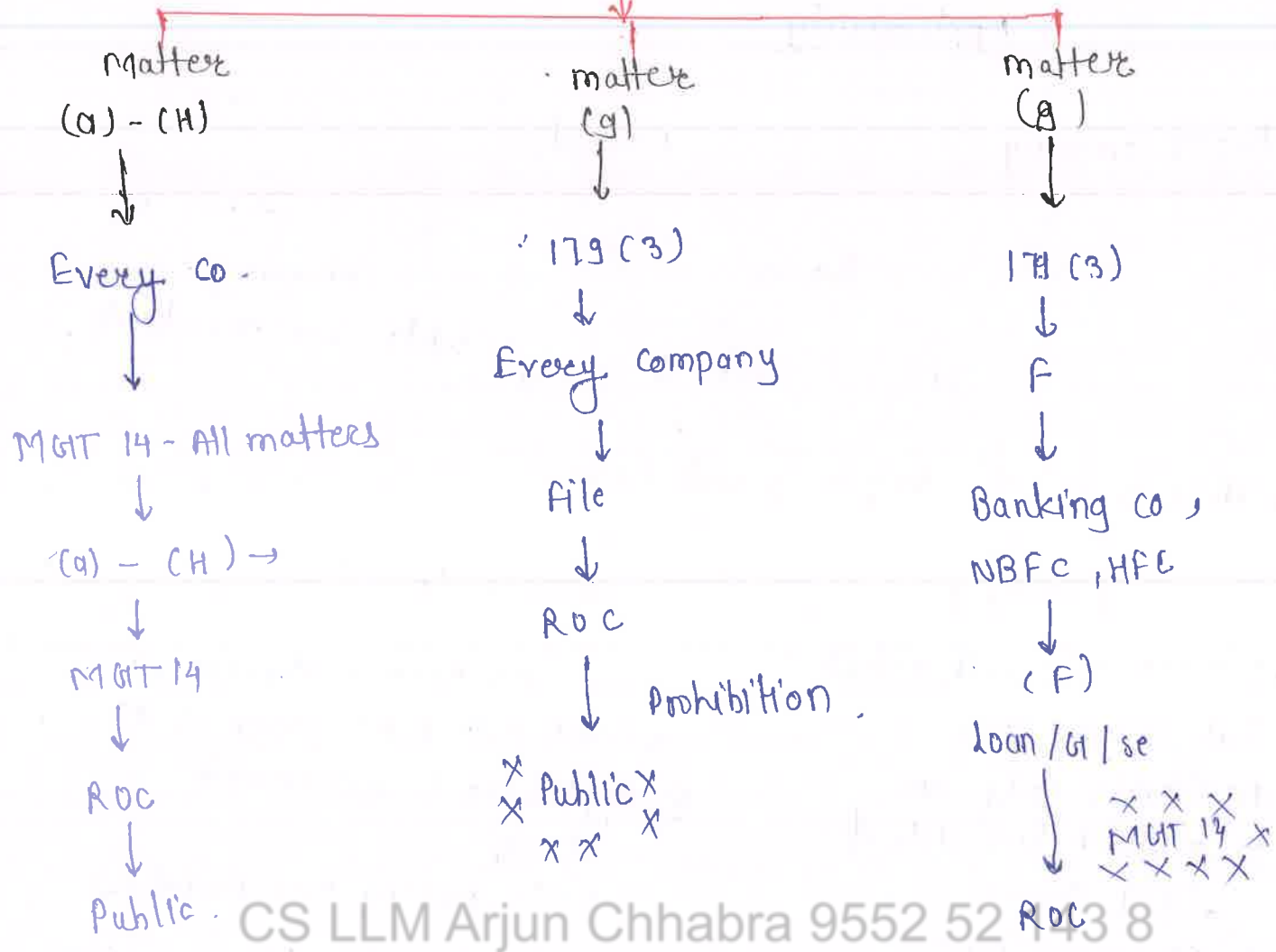
E-voting

- ① sec 108 Read with rules
- ② Take place OIM.
- ③ Applicable only on
 - a) co. which has listed eqty shares
 - b) co. having min 1000 or more members.
- ④ scrutinise complete counting within 3 days of meeting.

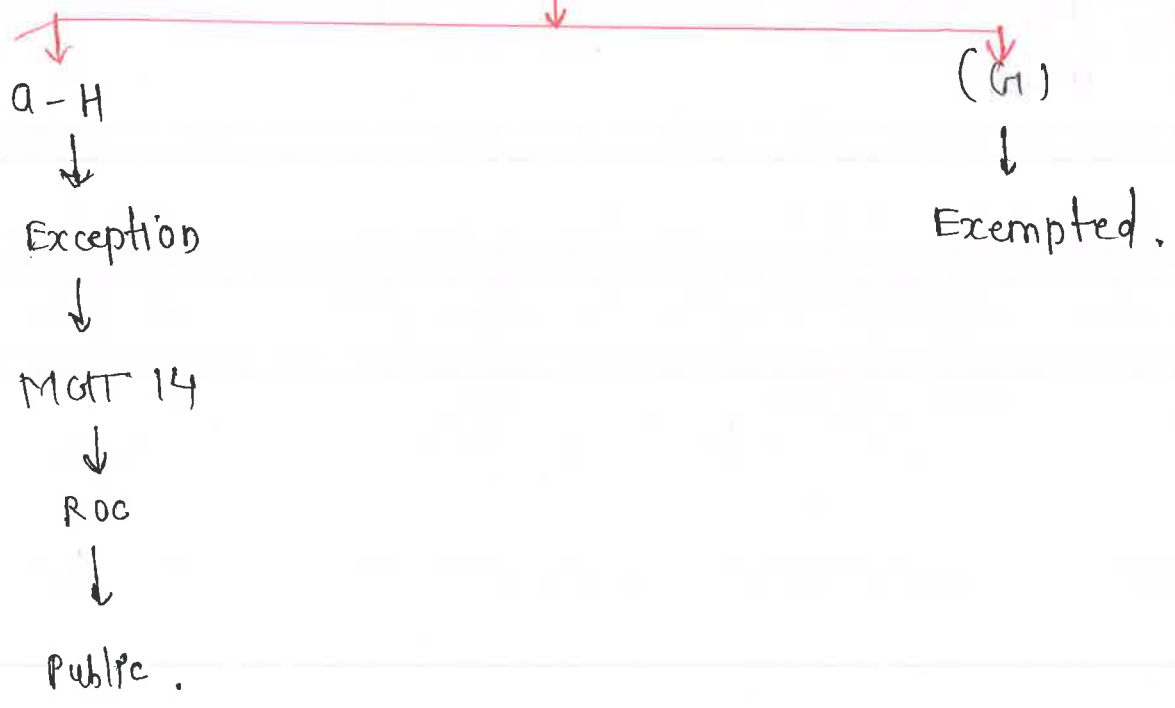
Postal Ballot .

- ① sec 110 Read with rule 22.
- ② Does not take place OIM
- ③ Applicable to all except
 - a) opc
 - b) co. having 200 members.
- ④ scrutinise complete counting within 7 days on completion of 30 days.

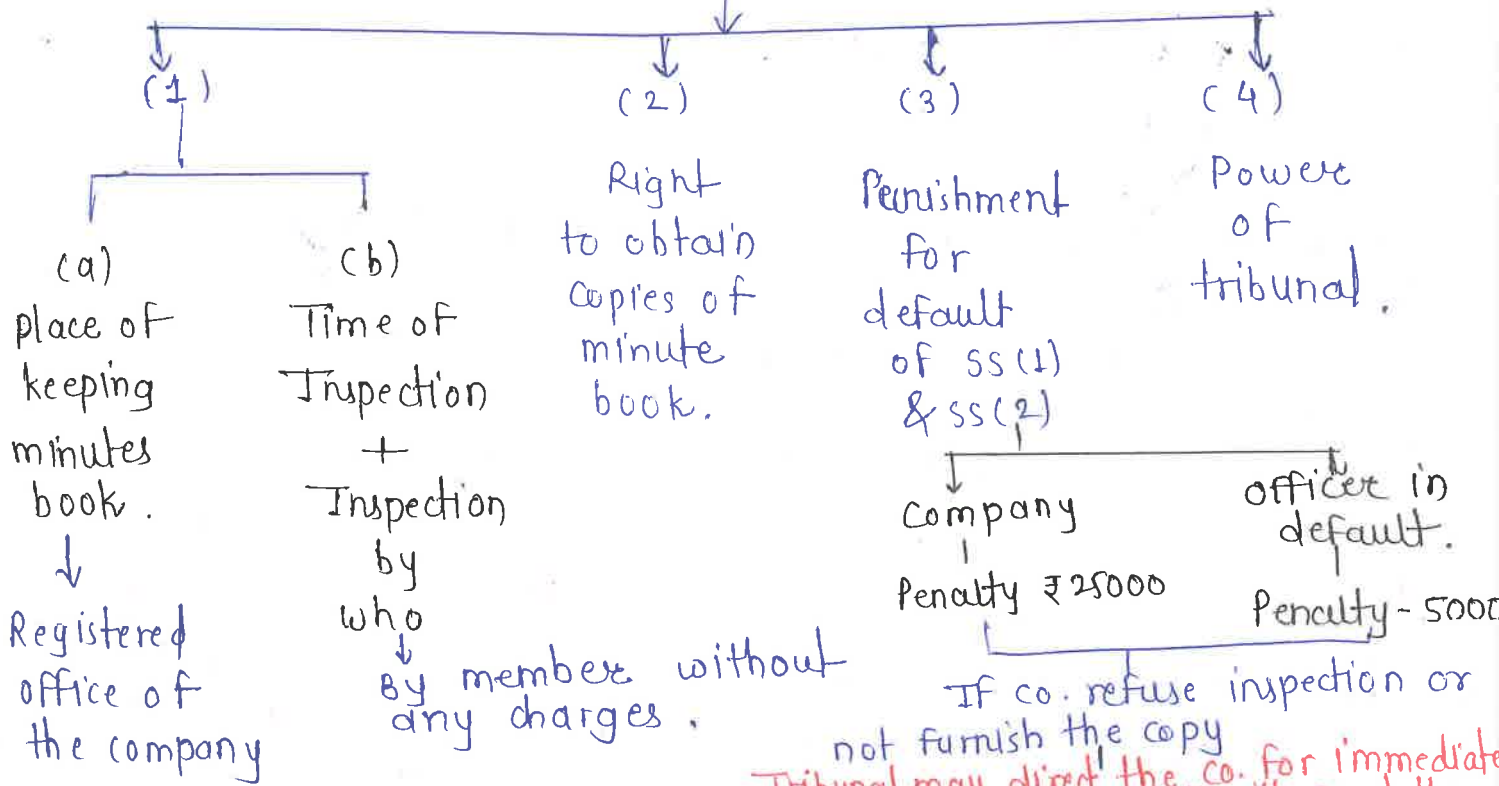
Conclusion chapter 17 (3)



Pvt / IFSC



Sec 119 → Inspection of minutes book of G.M.



Sec 119 (1) (b) - Inspection can be made during business hours, (subject to reasonable restriction through the articles or a resolution passed in G.M.) so that atleast two hours in each business day are allowed for inspection.

Sec 119 (2) - The copies of the minute book of any G.M. shall be made available by the company to any member within 7 working days to any member on payment of prescribed fees.

such sum as prescribed in the articles of the company, but not exceeding ₹ 10 per page or part of page.

free of cost, in case the member has made a request for obtaining soft copy of minutes of any G.M. held during immediate preceding three financial year.

Section 120 - Maintenance & inspection of documents in electronic form.

Section 122 - Applicability of this chapter to OPC.

Q. based on Sec 122 (1) -

Which of the following section is applicable to OPC?

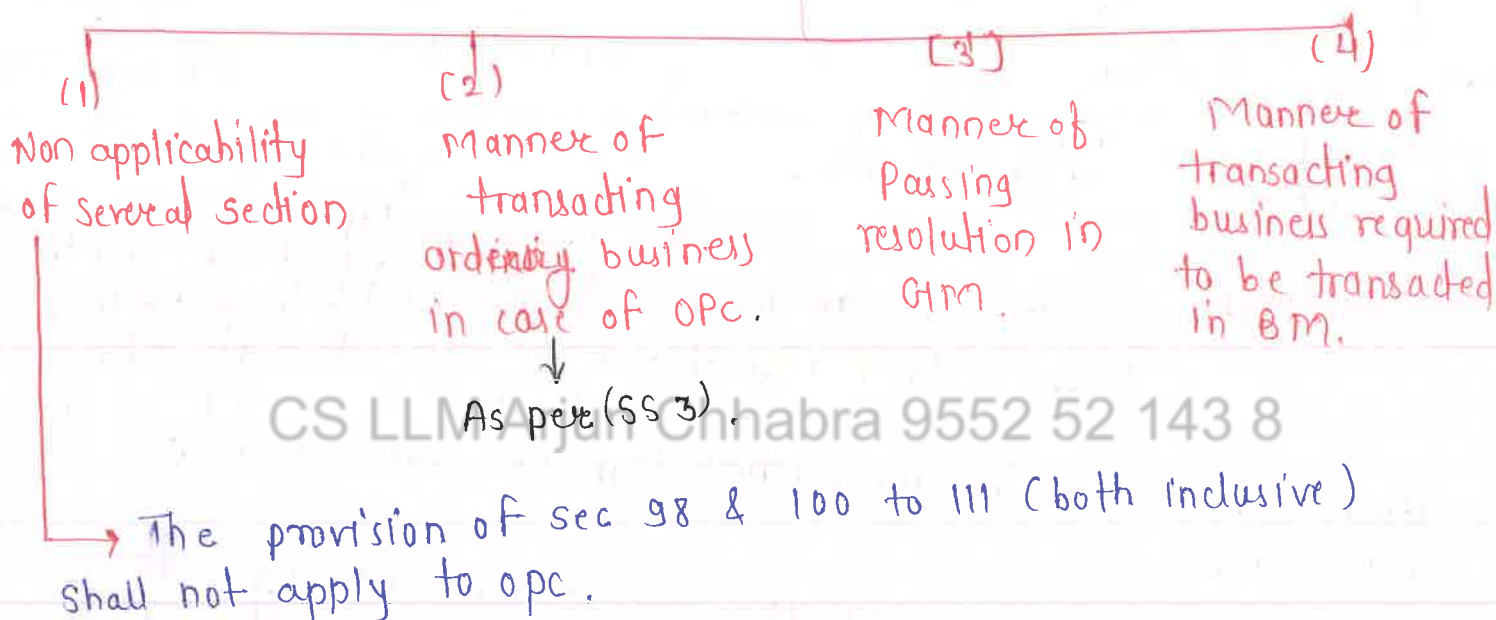
a] Sec 98, 100 to 111

b] Sec 96,

c] Sec 97 & 99

d] none of the above.

Special NOTE - Sec 96 to sec 111 is not applicable to OPC.



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SS 3 - In case of OPC, for the purpose transacting any business (whether ordinary or special) at any AGM (whether AGM or EGM) by means of any resolution (O.R or SR), it shall be sufficient if →

The resolution is communicate by the member to the Company

The resolution is entered in the minutes book

The minutes book is signed & dated by member

The date of signing the minutes book by the member shall be deemed to be the date of the meeting for all the purposes under this act.

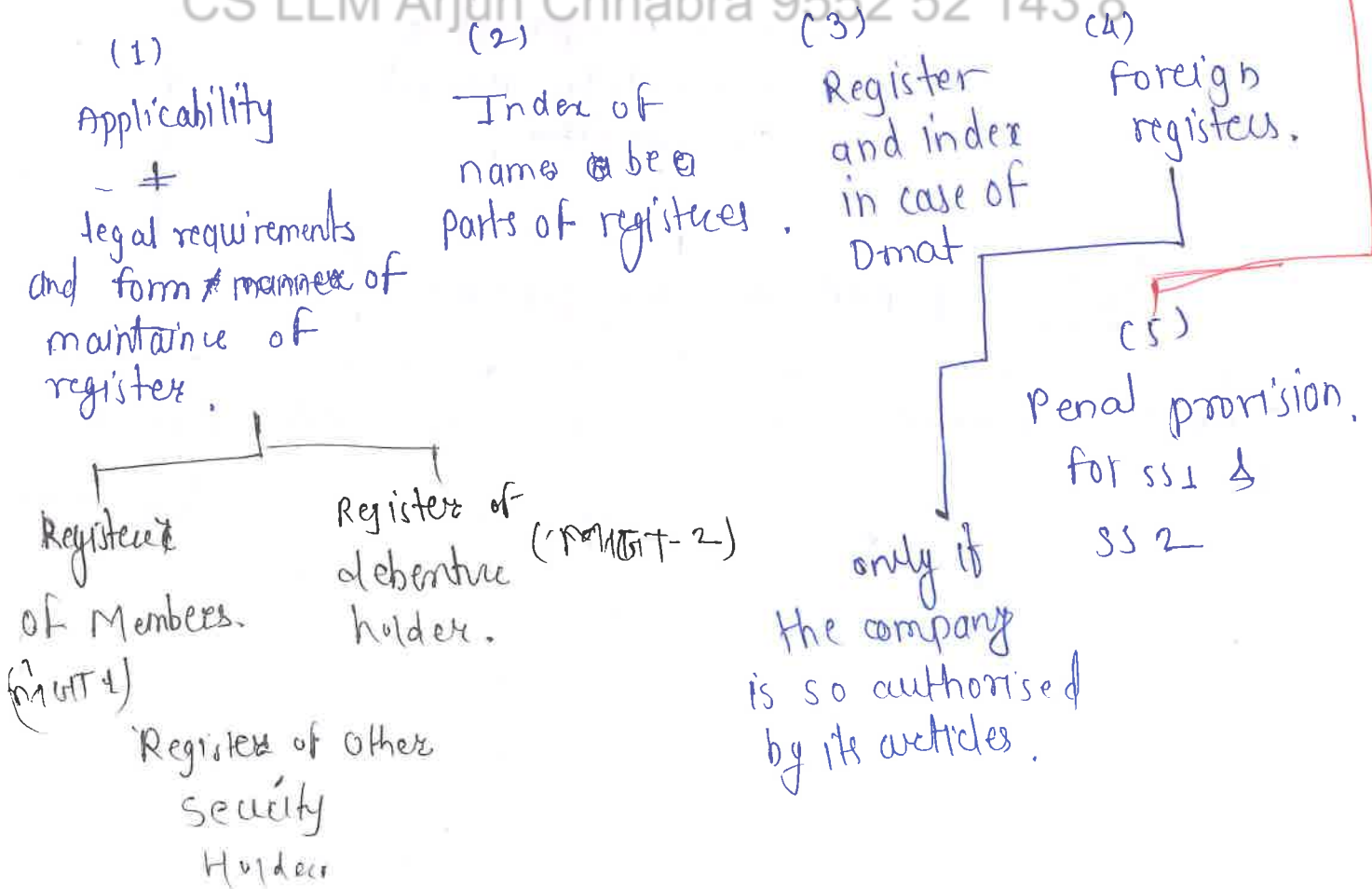
(a) In case there is only one director in op, any business which is required to be transacted at a board meeting, it shall be sufficient if.

The date of signing the minutes book by directors shall be deemed to be the date of the meeting for all the purposes under this act.

→ The resolution is entered in the minutes book
and
→ The minutes book is signed and dated by such director.

Section 88 - Register of Members

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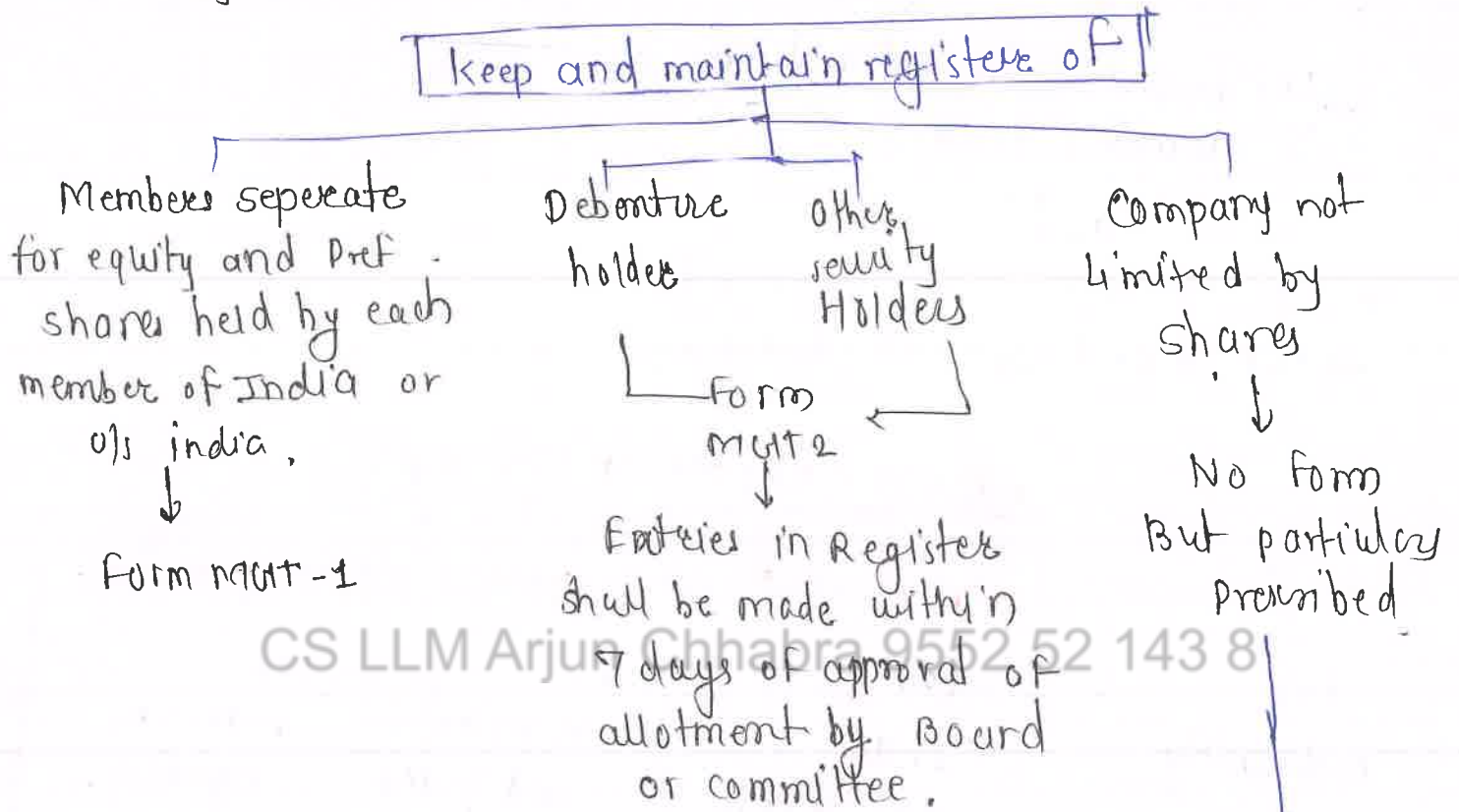


SSS penalty -

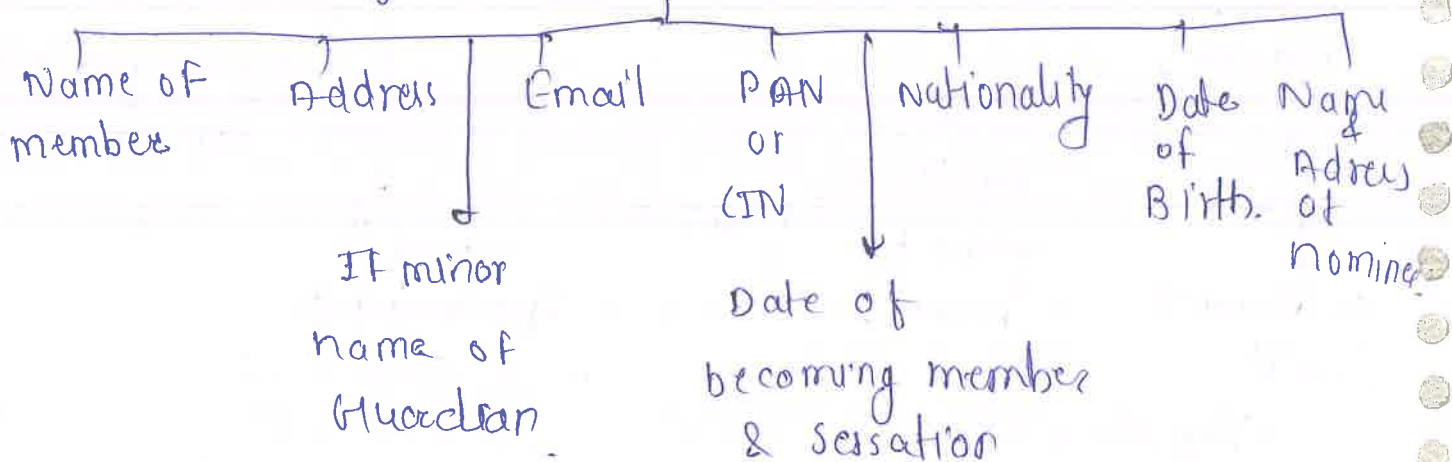
Company → ₹ 3 Lacs
Officer in default = ₹ 50000

* Maintenance of registers of members - Rule 5 -

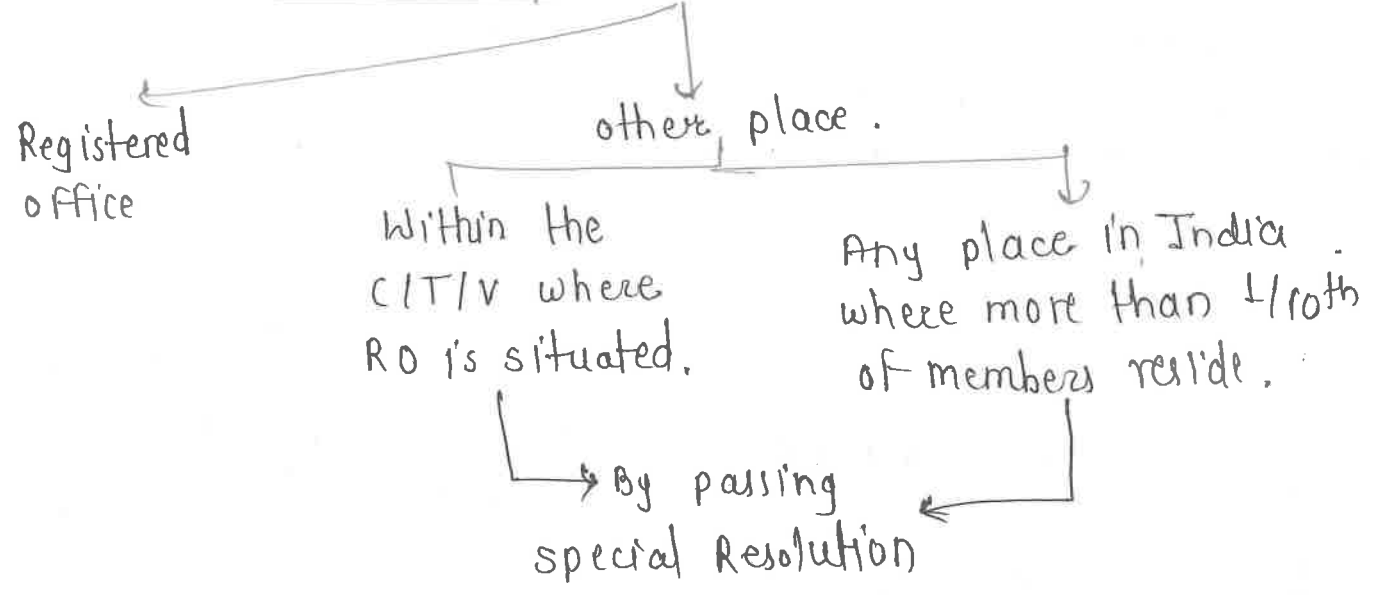
Register of Members [Sec 88] Applicable for every Co.



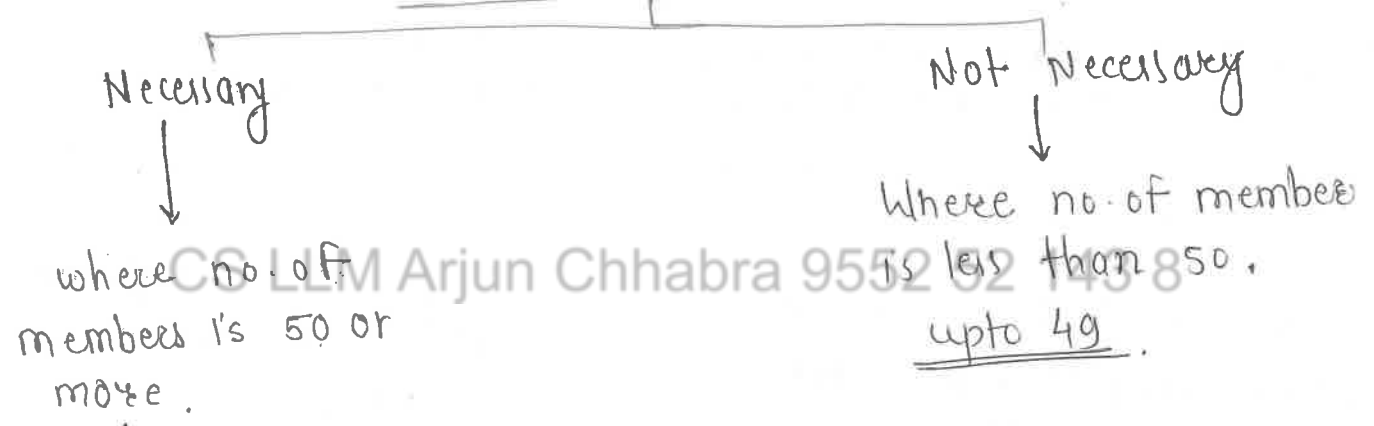
Following particulars are prescribed



Place where Register shall be maintained



Index of names in Register [88 (3)]



Register and index of Beneficial owners maintained by depository shall be deemed to be the register and index of this Act.

Foreign Register - Section 88(4) read with rule 7

A company if so authorised by its Articles keep in any country outside india a part of register of members, DH, other security holder resident in that country, known as foreign register.

Deemed to be the Part of principal Register

shall be open for inspection and may be closed extracts may be taken in the same manner as of principal register.

Provision relating to closure of FR will come along with sec 91 later.

shall be maintained in the same format as Principal register.

Entries in foreign register shall be made simultaneously after approval of BOD or committee.

The Company shall

Transmit to Ro copy of every entry in F.R within 15 days after the entry is made

keep at Ro duplicate register of every FR,

The company shall inform Roc the situation,

The company shall within 30 days from date of

opening

change of situation

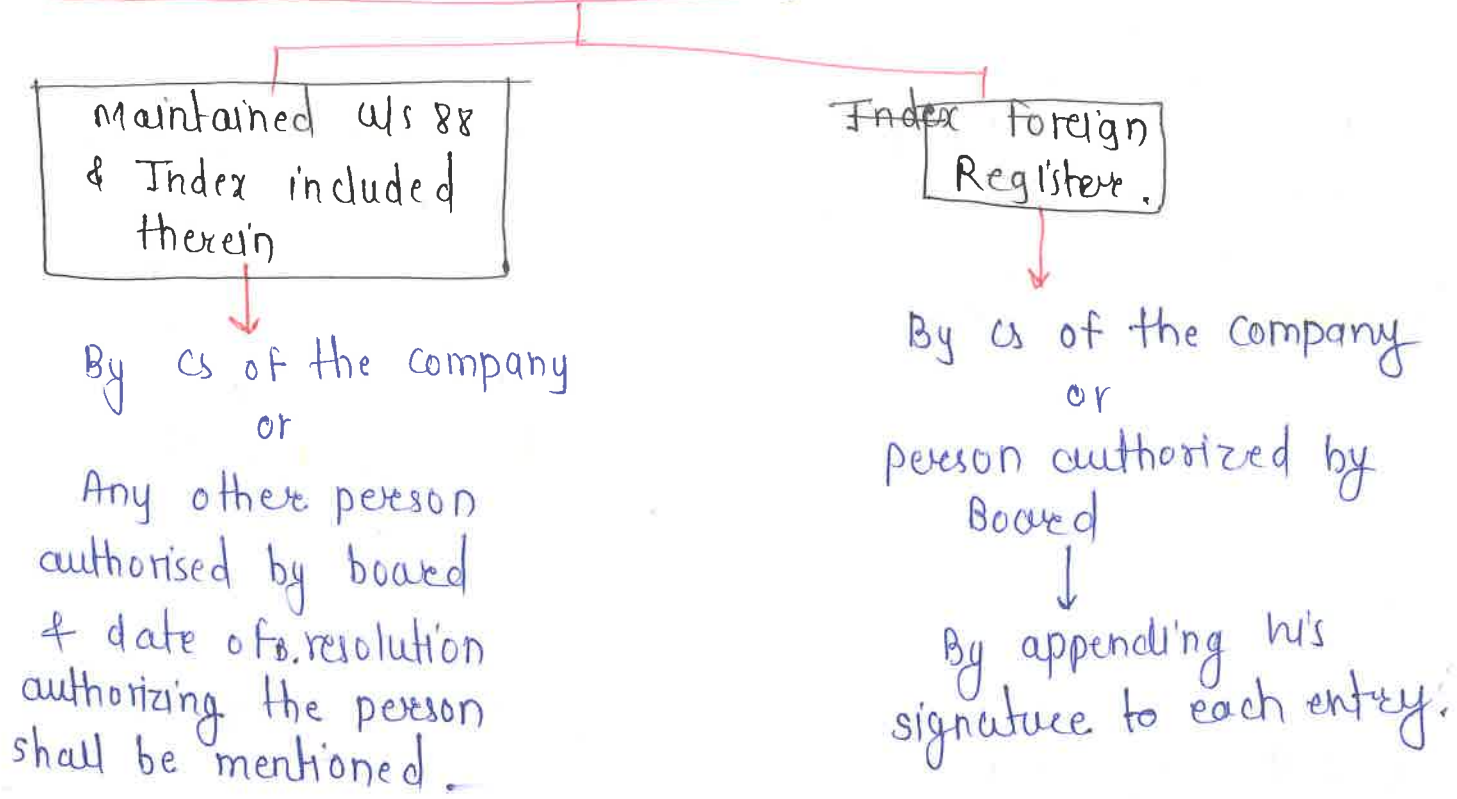
Discontinuance

foreign register.

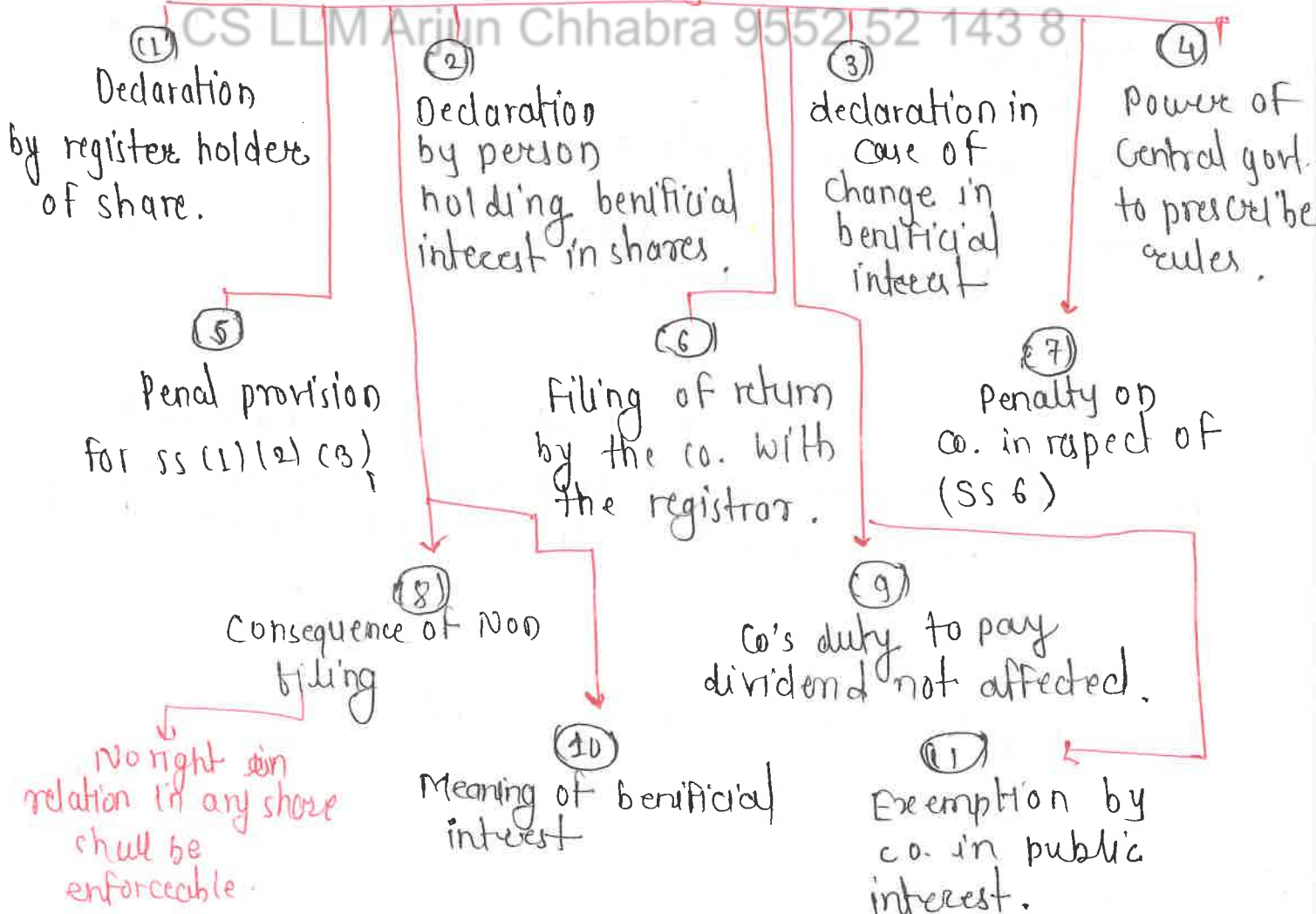
inform Roc in form MGT 3

All entries in that register shall be transferred to other FR or to PR.

Authentication of Entries in the registers :-



Section 89 - Declaration in respect of beneficial interest in any share.



The name of person is entered in the register of members as a holder of any shares in the company (Registered owner), but

He doesn't hold any beneficial interest in such shares, then -
He shall file declaration with a company in form MGT-4 within period of 30 days from the date of becoming registered owner.

Subsection 2

IF -
a) IF the name of person is not entered in the register of members, but -

He holds beneficial interest (beneficial owner), then he shall file a declaration with the company, specifying -

- a) Nature of his interest.
- b) Particulars of the person in whose name shares have been registered.
- c) other prescribed particulars

In form no-MGT-5 after 30 days after acquiring beneficial interest.

Subsection-3

Any change occurs in beneficial interest, the registered owner/beneficial owner shall within a period of 30 days of such change, make a declaration of such change to the company in form no-MGT-4 & MGT-5 resp.

Subsection 5

Any person fails to make declaration

Penalty ₹ 50000
200 per day
max ₹ 5 lacs

Subsection 6

Where any declaration is filed with a company, the company shall

- i) make a note of such declaration in the relevant register.
- Within 30 days from the date of receipt of declaration, file a return in prescribed form with the registrar. in form no MGT 6

Subsection 7

Company & officer in default.

Penalty - ₹ 1000 per day.

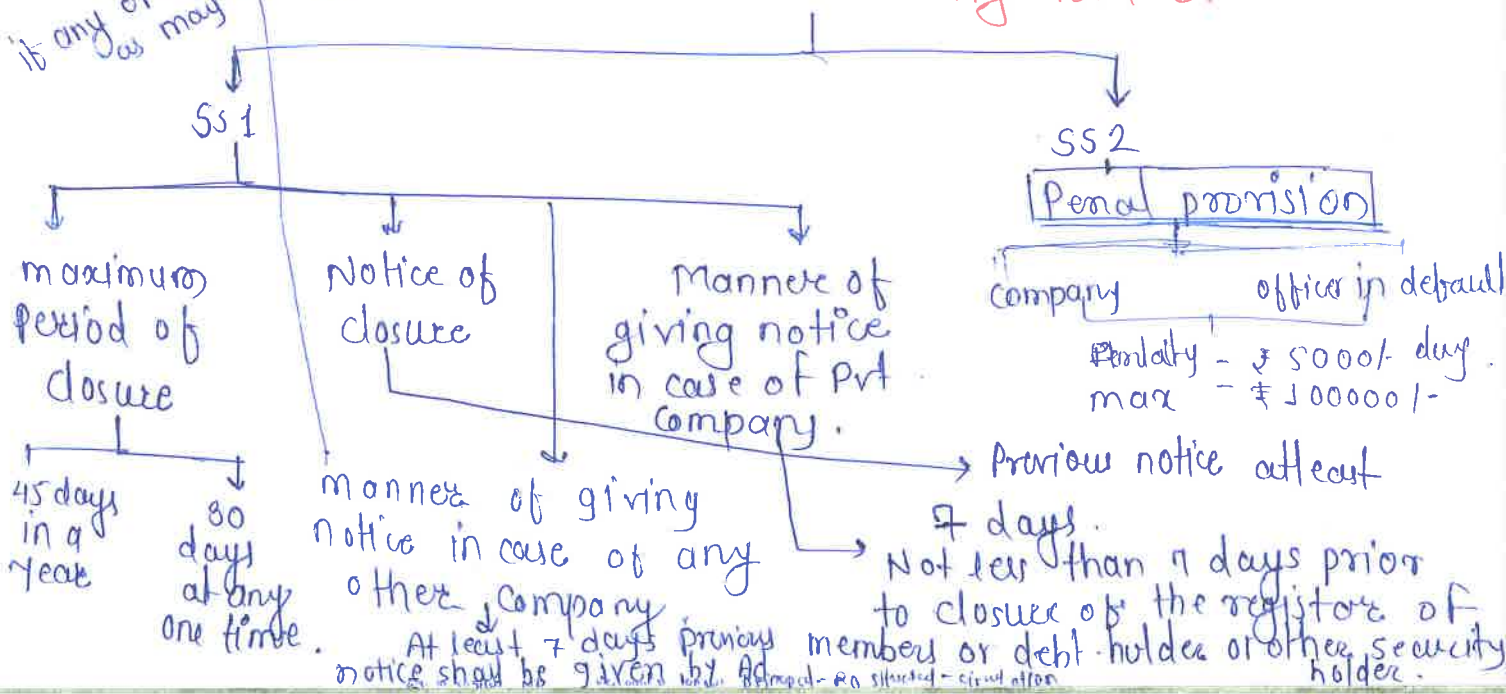
Max - 5 lac. max - 2 lac

Subsection 11

Exemption - Nothing contained in this rule shall apply to trust created to set up mutual fund or venture capital fund or other fund approved by SEBI.

Notice shall also be published on the website if any of the company & its officers may be notified by CBI.

Section 91 - Power to close register of members or debenture holders or other security holders.



SS 1

Legal obligation of every company to prepare annual return.

+

Particulars of annual return + signing of annual return.

+

Proviso 1 + signing of annual return in case of OPC and small company

+

Proviso 2 → Abridged form of annual return for OPC and small company

SS 2

Certification of Annual return in case of listed company or other prescribed companies.

SS 3

Every co. shall place copy of annual return on website of co, if any and web link of such annual return shall be disclosed in Board's report.

SS 4

Time limit for filing

SS 6

Penalty to CS.

SS 5

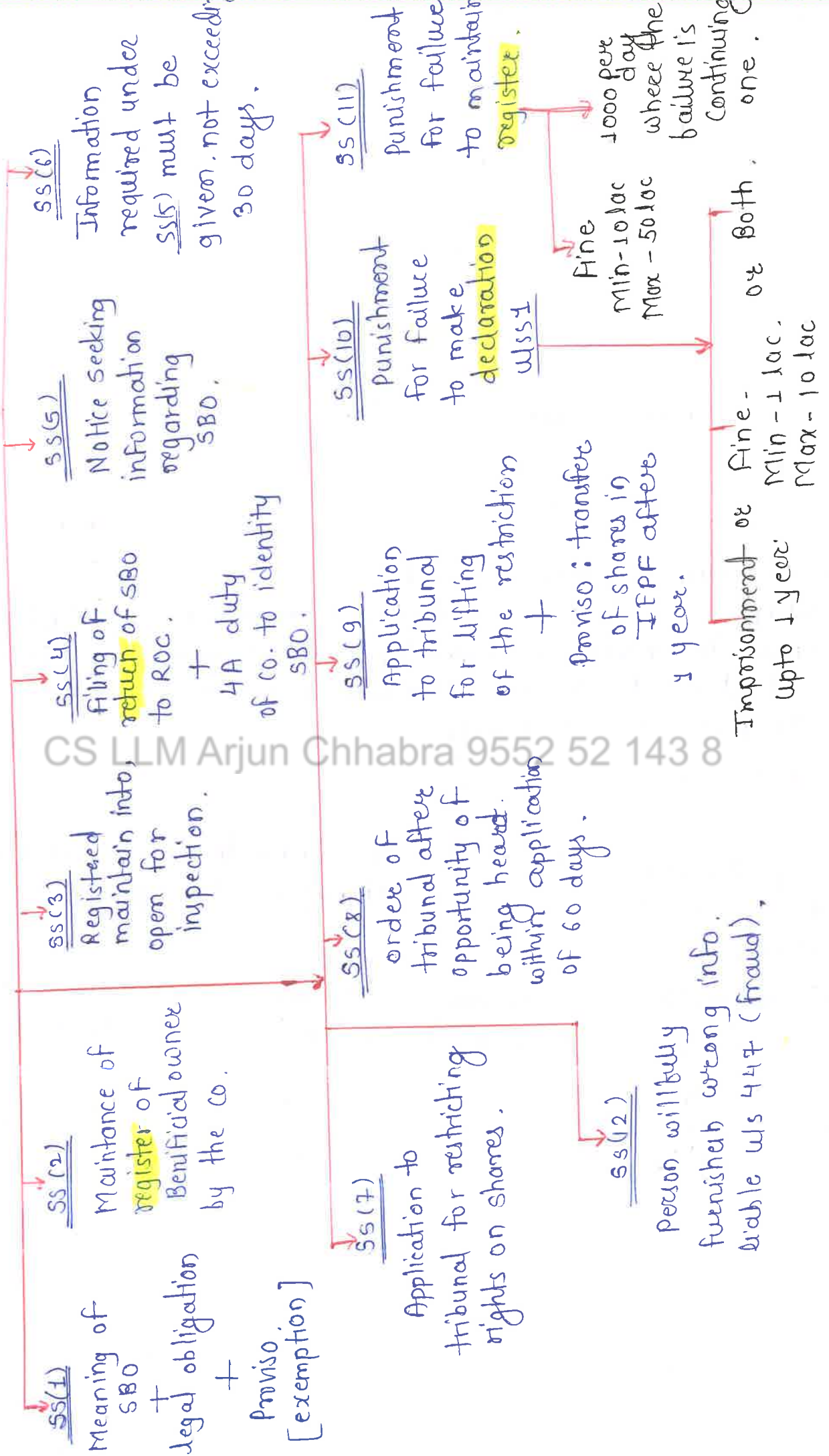
Penal Provision for SS 4

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Section 90 - Register of significant beneficial owners in a company

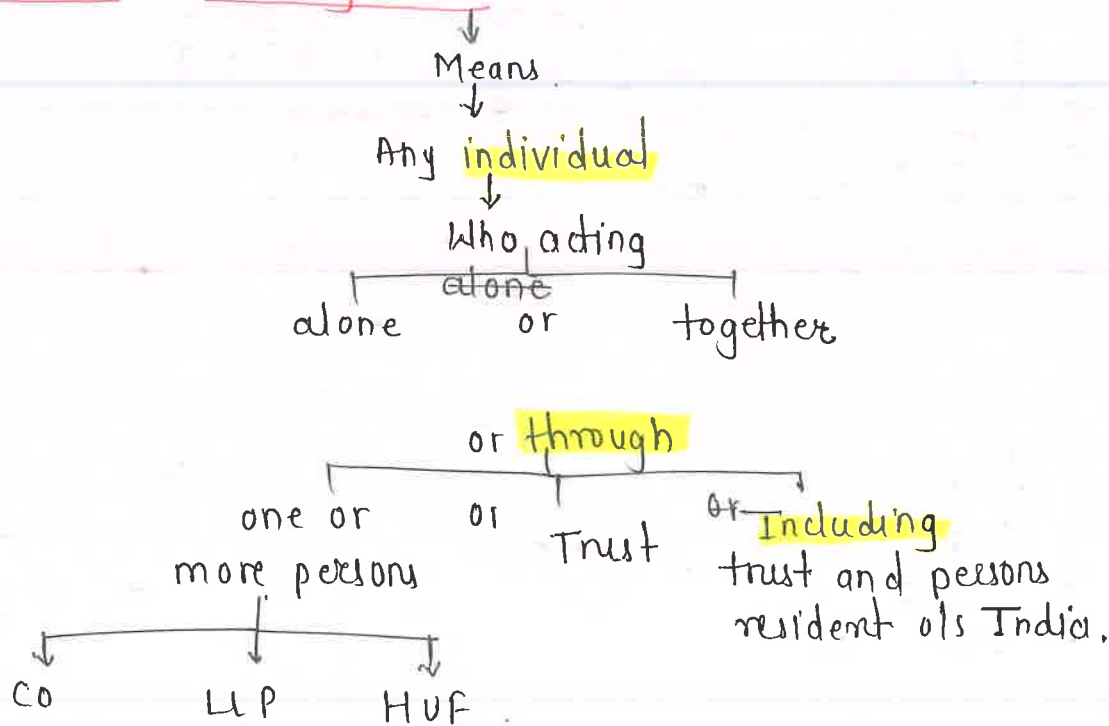
(1, 5, 7, 9)

Section 90 - Register of significant beneficial owners in company.



CS LLM Arjun Chhabra 9552 52 143 8

Subsection 1 - Meaning of SBO



- a) Holds beneficial interest of not less than 25% or such other percentage as may be prescribed, in shares of company; Holds the right to exercise or actually exercises significant influence or control [control to appoint ~~and~~ remove majority of Board of directors] over the company.

Legal obligation of SBO -

- a] Every SBO shall make a declaration to the company, specifying the nature of his interest or other particulars.
- b] The declaration shall be made in form no. BEN-1 within 30 days of acquisition of beneficial interest or rights and any change thereof.
- c] However, central Govt. may prescribe a class or classes of persons who shall not be required to make such declarations.
Ex- CG, SG or any local authority.

52- Maintenance of Register of SBO

- a] Every Company shall maintain a register in which the Particulars of interest declared by SBO shall be recorded.
- b] Any changes in particulars of interest declared by SBO shall also be recorded in such register.
- c] The register shall include -

- 1) The name of SBO
- 2) His date of birth
- 3) His address
- 4) Details of ownership in co.
- 5) other Particulars as Prescribed

The register shall be open for inspection by any member of company.

54 - Filing of return of SBO by company

- a] Every co. shall file a return of SBO of the Co. and changes therein with ROC containing -

- 1] Name of SBO
- 2] Their addresses
- 3] other particulars as prescribed.

- b] The written shall be filed within 30 days in form no. BEN-2.

55 - Notice seeking

A company shall give notice in the prescribed manner, to any person [member or non member] whom the company knows or has reasonable cause to believe.

- 1) To be a SBO.
- 2) Having knowledge of identity of SBO or another person likely to have such knowledge.
- 3) To have been a SBO at any time during the three years immediately preceding the date of notice and who is not registered as SBO, with the company.

(b) Information required by notice shall be given within a period not exceeding 30 days.

SS 7 - Application of tribunal for restricting rights on shares

The company shall apply to tribunal within period of 15 days of the expiry of the period specify in the notice, where -

1) That person fails to give the company the information required by the notice within the time specified there in.

OR

The info: given is not satisfactory.

In the application made to the tribunal, the company shall seek an order of the tribunal directing that the shares in question be subject to restrictions, with regard to -

- Transfer of interest.
- suspension of all rights attached to shares.
- other matters as may be prescribed.

SS 8 - order of tribunal

on any application made to the tribunal, the tribunal may, after giving opportunity of being heard to party concerned, make such order restricting the rights attached with the shares within period of 60 days of receipt of application.

SS 9 - Application to tribunal to lifting up restriction

a) The company or the person aggrieved by the order of the tribunal may make an application to the tribunal for relaxation or lifting of the restrictions placed by the tribunal.

b) such an application may be made within a period of 1 year from the date of the order placing such restrictions.

Proviso- However, IF no such application is made within a period of one year from the date of the order placing such restriction, such shares will be transferred, without any restrictions, to the authority constituted to administer the investor education & protection fund, IIEPF

Amendment rules, 2019

Rule 2(4)(h) of SBO rules - SBO

SBO is an individual who either alone or together with other individual or trust exercises right or entitlements in the reporting company by way of -

- 1] Holding 10% shares or 10% voting rights or
- 2] Right to receive 10% or more dividend.

Though both direct and indirect holdings or right taken together or such individual exercise significant influence are controlled, indirectly or along with direct holding in the reporting company,

Declaration By SBO

Individual who is SBO on the date of commencement of amendment rule.

↓
shall file declaration in form BEN 1 within 90 days from such commencement.

Individual who subsequently becomes SBO

↓
shall file declaration in form no - BEN 1 within such 30 days of such acquisition or change.

* Non applicability -

- 1] IEPF
- 2] The CG, any SG or any local authority
- 3] An entity, body corporate controlled wholly or partly by CG, and / or SG

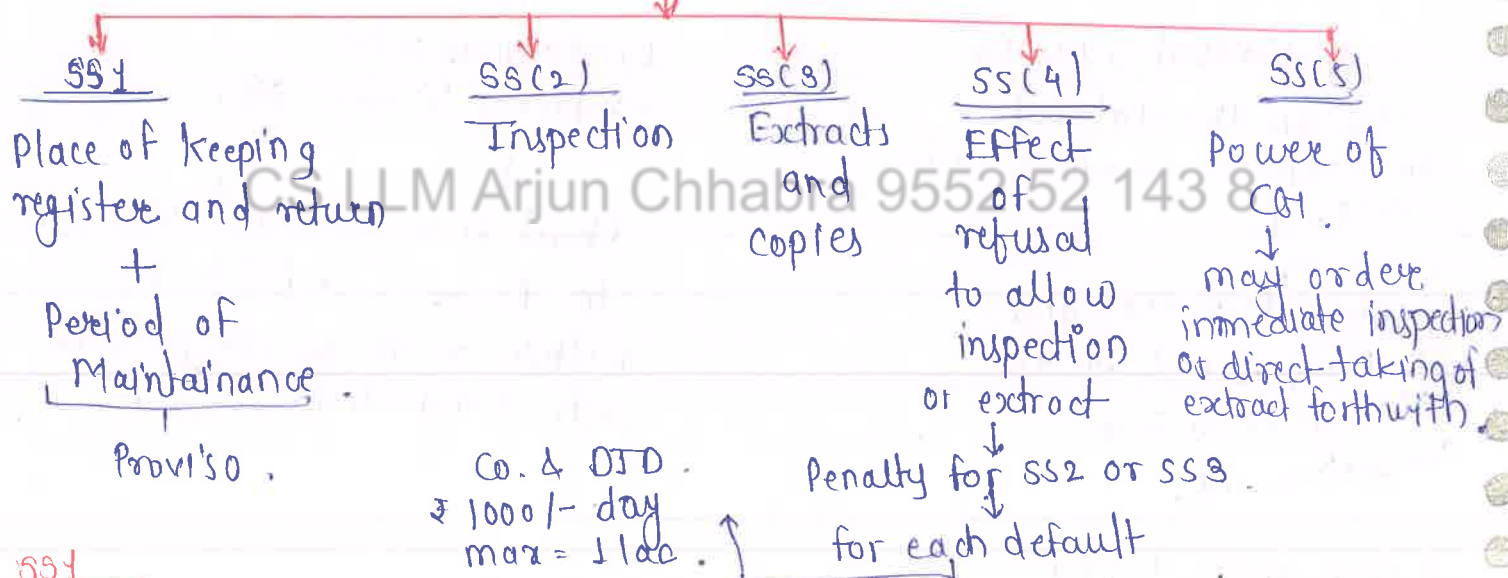
* Special Note -

sec 90 shall not apply to Govt. co which has not committed a default of sec 1837 (financial statements) or sec 92 (annual return).

Summary of percentage & forms w/s + Rules

- * → Percentage of SBO given w/s 1 of sec 90 - 25% or more.
- Percentage of SBO given under SBO rules - 10% or more.
- Current & effective percentage of SBO - 10% or more.
- * → Declaration by SBO in form BEN 1.
- Filing of SBO returns by reporting company to RoC in form BEN 2.
- Maintenance of registers by reporting company in form BEN 3.
- Application to tribunal for ~~uplifting the restricting~~ in form no BEN-4 Company within 15 days of notice.

Sec 94 - Place of keeping and inspection of registers, returns etc.



SS(1)

The registers and indices (required to be maintained w/s 88) and copies of annual return (Filed w/s 92) shall be kept at -

- The registered office of the company; or
- Any other place in India, if -
 - More than 10% of the total no. of members reside at such place; and
 - SR is passed in GM.

- a] The registers, indices and copies of annual return shall be open for inspection by -
- ① Any member or debenture holder, other security holder, without any fees.
 - ② Any other person on payment of fees not exceeding ₹ 50 each inspection.
- b] same as minutes - Inspection of registers, indices and copies of annual returns may be made during business hours.

553 Extract & copies.

- a) Any person may take extracts from the registers, indices and annual return, without payment of any fees.
- b] Any person may require a copy of the registers, indices and annual return on payment of such fees specified in articles but not exceeding ₹ 10 per page.
- c] such copy shall be supplied within 7 days of payment of fees.

Period of Maintenance

[A] The registers of members and index of members shall be -

- (i) Preserved Permanently
- (ii) In custody of cs of Co. or Any other Person authorized by board.

[B] The registers of debenture holders or other security holders and their index shall be

- (i) Preserved for period of 8 years from the date of redemption of debentures or securities.
- (ii) some as registers of members.

[C] Copies of annual return shall be preserved for period of 8 years from date of filing to ROC.

[D] The foreign registers of

Member shall be preserved permanently unless discontinued.

custody same as RoM

Debtentee Holder shall be preserved for period of 8 years from date of redemption

Coverage of see in this chapter.

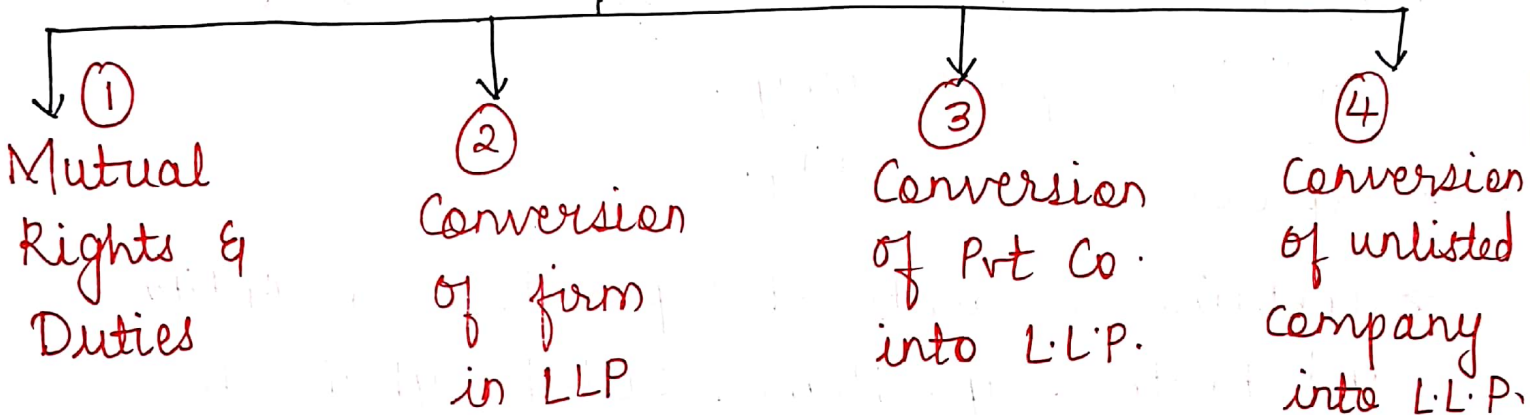
- 88 → ROM
- 89 → declaration by BO & RO.
- 90 → - - - by SBO
- 91 → power of Co. to close ROM.
- 92 - Annual return.
- 93 - omitted
- 94 - place of keeping members, ROM, Deb. holder & inspection.
- 95 → Register etc to evidence.
- 96 → AGM
- 97 → Power of tribunal to call AGM.
- 98 → Power of - - - call EGM.
- 99 → Fine.
- 100 → EGM.
- 101 → Notice
- 102 → Explanatory stat.
- 103 - Quorum
- 104 - Chairman
- 105 - proxy
- 106 - Restriction on voting right.
- 107 - voting ~~right~~ by SOH rules
- 108 - demand voting by EM.
- 109 demand for poll
- 110 - Postal ballot.
- 111 - Circulation of members's resolution.
- 112 - Representative of Present /- Group.
- 113 -
- 114 - SR & OR
- 115 - Resolution requiring special notice
- 116 - Resolution passed in Adjourned GM.
- 117 - Resolution filed with ROC.
- 118 - minutes
- 119 - Inspection of minute.
- 120 - Inspection, copies to be in electronic form.
- 121 - Report AGM.
- 122 → Applicability of chapter to OPC.

Limited Liability Partnership Act, 2008

LLP Act, 2008

81 Sections

4 Schedules (list)



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* Meaning & Concept

Company

Features:-

- Limited liability
- Perpetual Succession
- Separate legal entity

Partnership

Unlimited X

X X

X X

LLP

* Meaning

- New form of legal business with limited liability.
- Alternative corporate business form.
- Allows its partners flexibility in a traditional partnership.
- Separate legal entity.
- Contains elements of Separate legal Entity and Partnership. Hence, called hybrid of both.

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* Body Corporate includes :-

- (i) LLP under this Act.
- (ii) LLP outside this Act.
- (iii) Company incorporated outside India.

* Does not include :-

- (i) Corporation sole.
- (ii) Co-operative Society.
- (iii) Other Companies notified by Govt.

* L.L.P Agreement

Non - applicability of Partnership Act, 1932.

Who can become partner? of LLP? [sec 5]

- Individual
or
- Body Corporate.

Who cannot?

- unsound mind
- undischarged insolvent → insolvent but not discharged by court
- Applied to be declared as insolvent but application is pending.

* Minimum number of Partners [Sec 6]

- At least two partners.
- If anytime number of partners below 2 and more than 6 month lapsed. Lone partner shall be liable. LLP can be dissolved.

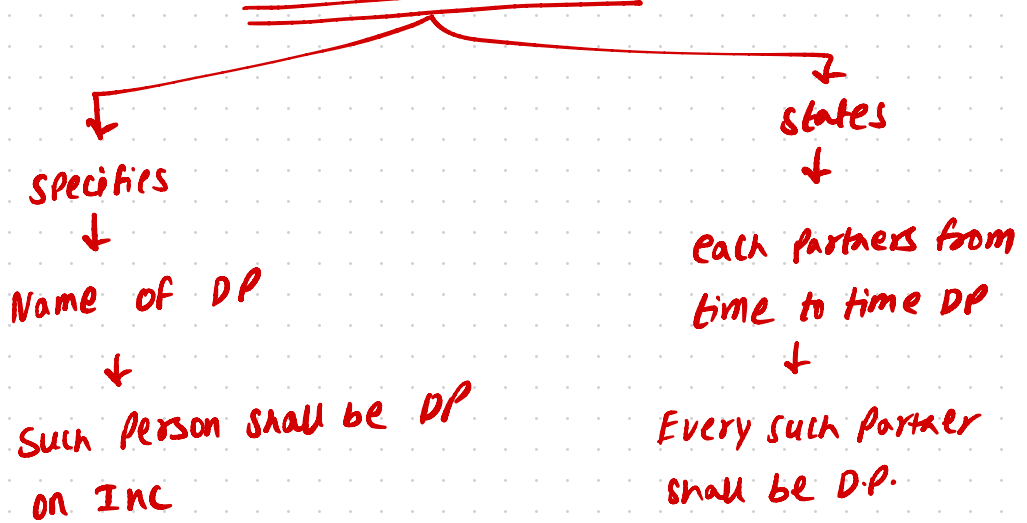
* Designated Partner [sec 7]

- Every LLP shall have atleast 2 D.P.

Who are **INDIVIDUALS**, out of which one should be **resident (India)**

↳ **Min 120 days** during F.Y.

Incorporation document



- Prior written consent required.
- MUST have DPIN.

Liabilities of designated partners [section 8]

- Responsible for all acts
 - Compliance
 - Filing of any document
 - return
 - statement
- Liable for all penalties imposed on LLP

Changes in designated Partners [sec 9]



Vacancy arising for any reason



LLP may appoint DP
within 30 days of vacancy

+

Prior written consent.

NO DP appointed
or

if at any time there
is only one DP



Each partner shall be
deemed DP.

[sec 10]

Punishment for contravention of section 7 and 9



LLP

Contravenes - section 7(1)



LLP + every Partner



Penalty ₹10000 + ₹100/day

Max = ₹1 lakh

max = ₹50k.

Contravenes - section 7(4)



Non filing of consent
of DP within 30 days.



LLP + Every DP



Penalty ₹ 5000 + ₹ 100/day

Max LLP = 50000

Max DP = ₹ 25k

Contravention of Section 7(5) and Section 9

↓
Non eligible to
become DP.

↓
Non filling of
vacancy within 30 days.

↓

LLP + every Partner

↓

penalty = ₹ 10,000

+

₹ 100/day

→ Max = ₹ 1 lakh

↓

Max = ₹ 50000

* Characteristics

- ① LLP is a body corporate.
- ② Perpetual Succession
- ③ Separate Legal Entity
- ④ Mutual Agency
 - Partners will be the agents of LLP alone
 - No Partner can bind other Partner.
- ⑤ Artificial legal person.
- ⑥ Common seal. (optional as in co.)
- ⑦ Limited liability
- ⑧ Management of business. (D.P.)
- ⑨ Minimum & Maximum partners.
- ⑩ Business for Profit only.

* Advantages

- ① Organised and operates on the basis of agreement.
- ② Provides flexibility and no detailed legal and procedural requirements.
- ③ Easy to form.
- ④ All partners enjoy limited liability.
- ⑤ Easy to dissolve.

* Incorporated of LLP [sec 11]

(1) Requirements

- (a) Two or more person → Lawful business
Subscribe name to an incorporation document.
- (b) Incorporation document filed such ~~man~~ manner,
such fees — prescribed.
- (c) Statement to be filed
- Prescribed form
 - Made by either
 - Advocate
 - CS or CA or CWA/CMA
- Engaged in formation of LLP
and
Anyone who subscribed his
name to incorporation document is complied.
- All requirement of this Act and rules for incorporation is complied.

(2) Incorporation document shall

- (a) in forms as prescribed.
- (b) State name of LLP
- (c) State proposed business.

(d) State address of registered office.

(e) Name & address of each Partners and D.P.

(3) Person making statement as discussed above which he :-

(a) Knows to be false

(b) Does not believe to be true

Punishable

→ Imprisonment → upto 2 years
and

→ Fine → not less than

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₹ 10,000 and upto
₹ 5,00,000

* Incorporation by Registration [Section 12]

(1) On fulfillment of requirement of Sec 11 Registrar retain incorporation document and shall within a period of 14 days

(a) Register the incorporation document.

(b) Give a certificate in name of LLP.

(2) Sufficient evidence → that requirements are complied.

(3) Certificate → Authenticated by his Office Seal.

(4) Conclusive evidence → certificate → LLP existence

* Registered Office and Changes :- [Sec 13]

- ① Every LLP must Registered office for all correspondence.
- ② LLP may change the place in accordance with LLP Act.
- ③ LLP contravenes → this section
Fine → ₹500/d-y max = ₹50,000

* Effect of Registration [Sec 14]

- Suing and being sued
- Acquire, own, hold and develop or dispose property.
- Have a common seal.

* Name [Sec 15]

- ① Every LLP → Have words either
 - Limited Liability Partnership.
 - LLP

Section 13

R.O. LLP

(1) Every LLP shall have R.O. ↓ communication + Notices

(2) LLP Partner DP } Doc Serve ↓ Post → reg. post → other prescribed manner. Address to Roc or other declared place ✓

(3) Change Notice of Change ↓ ROC

(4) Penalty ₹ 500 per day max ₹ 50000

- Sec 2(1)(n) → LLP
2(1)(d) → BC
5 → Partner?
7 → DP
11 → Inc. doc
12 → Inc. by reg.
13 → R.O.

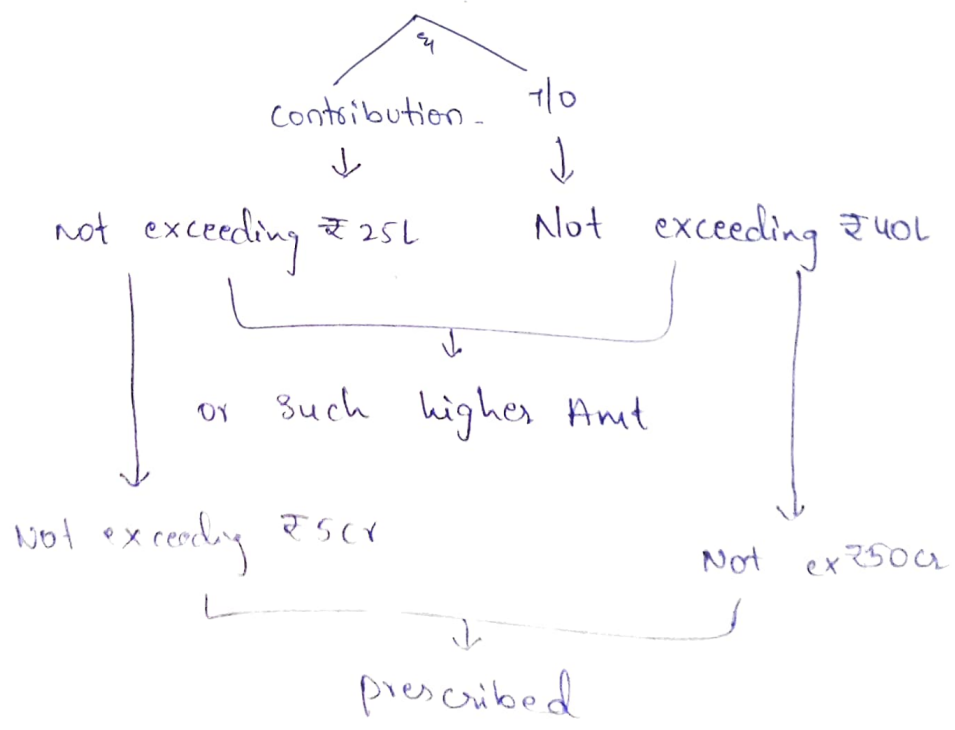
Sec 2(1)(m) → Foreign LLP

Sec 2(1)(ta) → small LLP

Small Co. (Sec 2(85))



Sec 2(1)(ta)



(2) ^[Sub sec 2] LLP cannot be registered with name.

(a) Undesirable

(b) Identical or too nearly resembles with
name LLP or **company**
or registered trademark

* Reservation of Name [Sec 16]

(1) A person may apply to Registrar for
→ Reservation of name of proposed LLP.
→ Change the name of LLP.

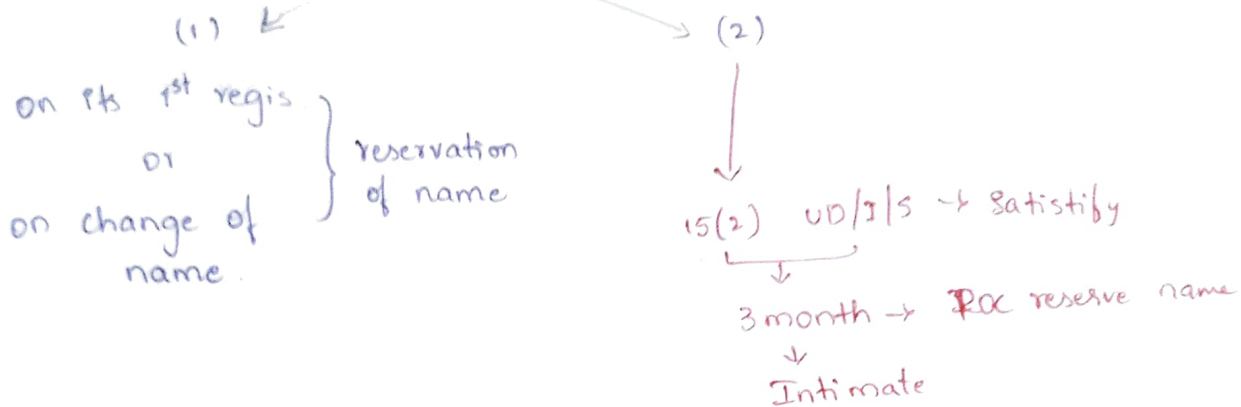
(2) Registrar on satisfaction that Sub Sec(2)
of Sec 15 is complied with
→ Reserve the name for a period of
3 months from date of intimation by
Registrar.

* Change of name of LLP [Sec 17]

(1) ~~Not~~ Notwithstanding anything contained
in sections 15 and 16.

- If C.G satisfied that LLP is registered with name referred in Sub Sec 2 of Sec 15.
- C.G may direct such LLP to change its name.

Sec 16 → Reservation of name



Imp for
exam

Sec 17

Sec 16
TCA 2013

Rectification of name by CG

(1)
Rectification of
name of LLP by
order of CG
within 3 months
from the date of
order of CG.

(2)
LLP → L.O
↓
15 days from
change of
name

↓
Notice - Roc
↓
fresh certificate
of new name

(3)
LLP does not comply

ss(1)
↓
CG Allot new
name

ROC - enter - new name

ROC issue fresh
certificate new
name

+
LLP may change its
name subsequently

Sec 17 *

LLP

1st registration on change of its name

Register - by such name

Identical

too nearly resemble

with the name of

Other LLP

Other CO.

registered or TM of proprietor

on application by

concerned Person

or

registered proprietor

CGI direct + LLP

Change name

within 3 months from order

LLP

does not change name

name change

notice with 15 days

CGI

ROC

Allot new name

ROC enter - new name

new name - enter

fresh certificate

Fresh Certificate

New name

within 30 days

Rectification of name by CGI. Sec 17

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- LLP shall comply with such direction within 3 months after date of direction or longer period as prescribed by C.G.

~~(2) If LLP fails
Punishment → Net less than 10K
Max = 25K~~

* Steps to Incorporate LLP ✓

Name Reservation → First Step

Applicant has to file e-form 1 for availability and Reservation of LLP's name.

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Incorporate LLP → Second Step

Applicant has to file e-form 2 for incorporating New LLP.

Contents of this same is almost same as statement.

LLP Agreement → Third Step

To be filed with Registrar in e-form 3 within 30 days of incorporation of LLP.

Section 22

→ person + subscribe name + Inc doc = Partners

→ other person may become partner in a/c with LLP agreement.

* Partners & their Relations [Section 23]

(1) Mutual rights and duties of

- Partners of LLP, and
- LLP and its partners
- Governed by LLP Agreement.

(2) Any changes in mutual rights and duties shall be filed with Registrar.

(3) In the absence of agreement

↓
Partnership shall be governed by provisions contained in first schedule.

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* Cessation of Partnership Interest [Sec 24]

① In accordance with agreement with other partner.

In absence of agreement by giving notice ^{in writing} of not less than 30 days of intention to resign as partner.

② (a) On his death ✓

(b) Declared unsound mind by competent court.

(c) Applied to be adjudicated as insolvent or declared insolvent.

③ Former Partner / Ceased Partner still be regarded as Partner of LLP until

(a) Notice is given.

(b) Notice is delivered to Registrar.

④ Past obligation will not be affected by cessation of Partner.

⑤ In case of death or insolvency of former partner

→ Former partner or any person entitled to received.

→ Amount equal to the contribution of former partner actually made.

→ Share in accumulated profit after deducting accumulated loss.

* Registration of Changes in Partners [Sec 25]

① Every Partner inform LLP [sub sec 1]
→ any change in his name or address.
→ within a period of 15 days of change

② LLP shall [sub sec 2]

(a) Where

- Person become partner
or
- Ceases to be a partner

→ File notice with ROC within
30 days of such event

(b) When change in address of partner
(same provisions as above).

③ (a) Prescribed form or fees.

(b) Signed by D.P and authenticated
as prescribed.

(c) If notice relates to incoming partner →
→ consent of partner → signed and
authenticated

④ If LLP contravenes. Sub sec(2)
LLP and every ~~other~~ designated partner

~~→ Fine not less than 2K~~

~~→ Max 25K~~

Penalty = ₹10,000

⑤ If Partner contravenes Sub Sec (1)
(same provisions as above)

(6) Partner may himself file notice if he has reasonable cause to believe that LLP may not file the notice

In such case

ROC shall take confirmation of ~~an~~ same from LLP

Note :- No confirmation within 15 days → Registrar shall register notice

* Extent and Limitation of Liability of LLP and Partners

Partner as agent

Section 26

OF LLP

Extent of liability of LLP

- ① LLP not bound by act of Partner if
- (a) Partner has no authority to act.
 - (b) Third person knows that partner has no authority

OR

does not know whether he is dealing with partner.

- ② LLP liable for act of Partner if it.
→ is within his authority.
→ is in ordinary course of business.

③ An obligation of LLP is solely the obligation of LLP.

④ Liabilities of LLP shall be met out of property of LLP.

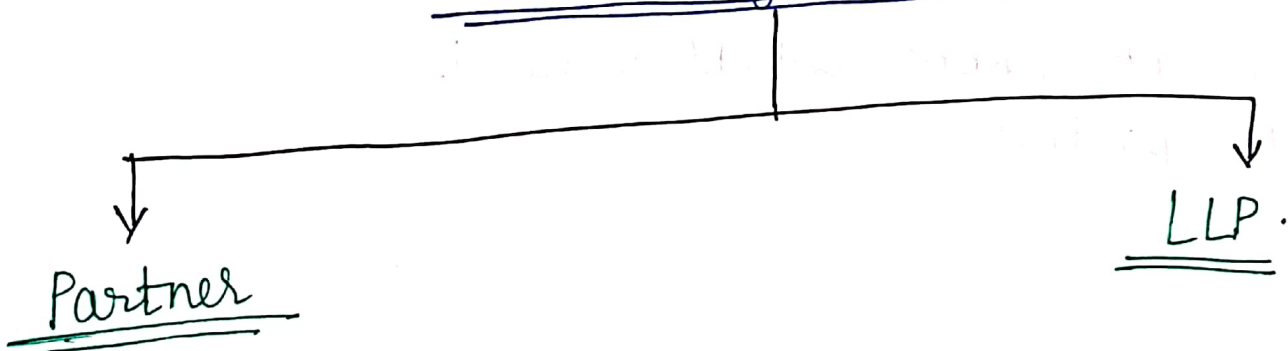
Extent of liability of Partner [sec 28]

① A Partner is not personally liable for obligation of LLP.

② But a partner is personally liable for his wrongful act or omission done outside his authority.

③ Partner not liable for act of any other partner.

Partner by Holding Out



*imp * Holding Out [Sec 29]

① Any person who

- by any manner written/oral
- represents himself or knowingly permits himself to be represented as partner in LLP
- is liable to any person natural/artificial
- who on such faith given credit to firm.

Note :-

If credit is received by LLP. Both, the partner by estoppel/holding out as well as LLP is liable for the credit or benefit arising from it. ✓

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② Where after partner's death

- business is continued in the same LLP name
- continued use of firm's name or name of deceased partner will not make his legal representative liable.

* Unlimited liability in case of fraud [Sec 30]

(1) If the act is done by

→ LLP (implied to be D.P.)
or

→ by any partner (other partners besides D.P.)

With intention

→ defraud creditors of LLP
or
any other person

→ for fraudulent purpose

The liability of such LLP and Partner
shall be unlimited for all debts and
liabilities.

Note :- If the act is done ^(in LLP agreement) without knowledge
of authority of LLP, Partner alone
is liable.

(2) If act is done as mentioned in
Sub Section ~~(1)~~ (1)

→ Every person party to such act.

→ imprisonment → upto 5 years ✓

→ fine → not less than 50K upto 5 lakh ✓

(3) If LLP or partner or DP or employee
of such LLP done some act in fraudulent
manner

→ apart from criminal proceeding

→ They are liable to pay compensation to all those who suffered loss for such conduct.

Note :- LLP not liable if act is conducted without knowledge of LLP.

* ^{imp} Whistle Blowing [Sec 31]

(1) court or tribunal may

→ reduce or waive

→ any penalty

→ charged against any partner or employee of LLP.

If such Partner or Employee provided useful information for investigation of LLP.

(2) Partner or employee shall not be discharged, demoted, suspended, threatened, harassed or discriminated merely because he is providing information for such investigation.

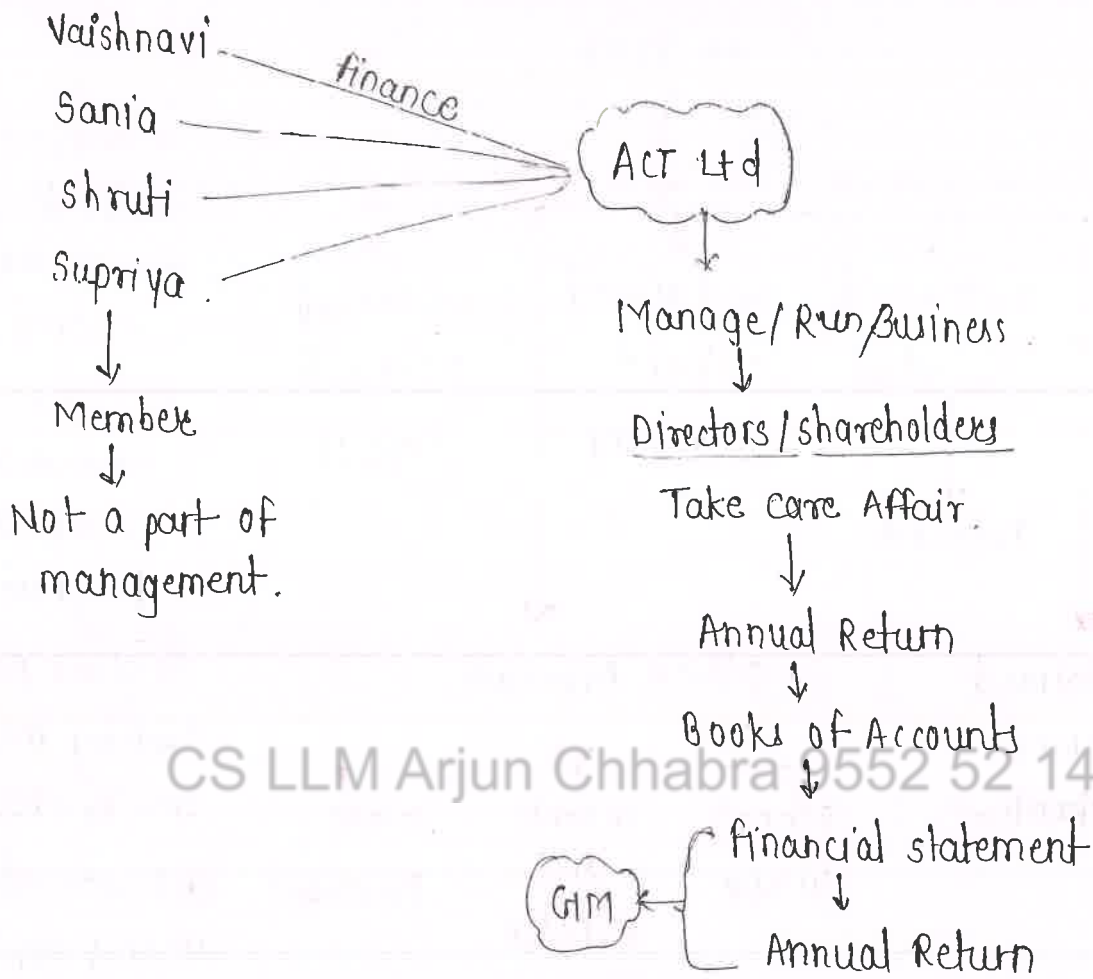
* Winding Up and Dissolution [63 or 64]

- (a) If LLP decides to be wound up by tribunal.
- (b) Number of partners reduced below 2 for more than 6 months.
- (c) LLP unable to pay its debt.
- (d) LLP acted against the sovereignty and integrity of India, security of state of public order.
- (e) Made default in filing with Registrar
→ State of A/c of solvency (5 consecutive fin. yr)
or
→ Annual returns for 5 consecutive financial years.
- (f) In the opinion of tribunal it is just and equitable to wound up LLP.

Chapter 9 - Accounts of Companies.

[Section 128-138]

Background -



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Purpose of chapter / Introduction

Shareholders would like to know utilization of funds.

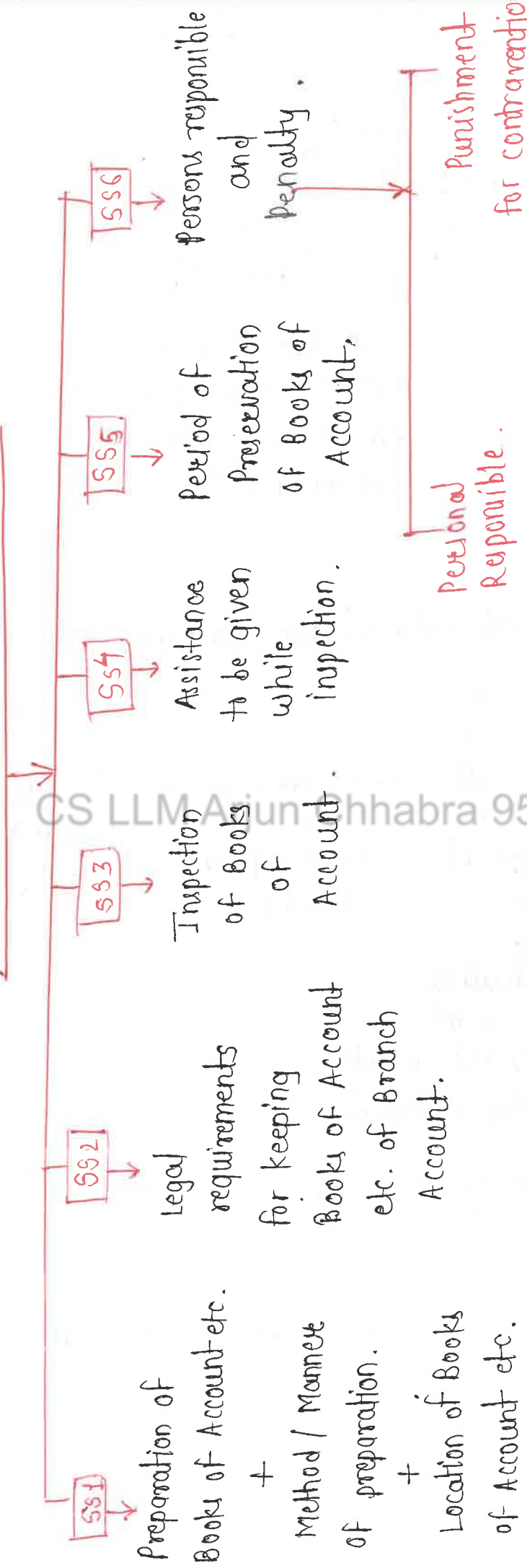
All shareholders can not become part of management of company.

compulsory disclosure through Annual Return.

company must maintain Books of Account to Prepare Annual Report.

Sec 128 - Location / Manner / Period of Maintenance / &

Inspection of Books of Accounts.



① Managing director.

② Whole time director in charge of finance.

③ Chief financial officer.

④ Any other person of

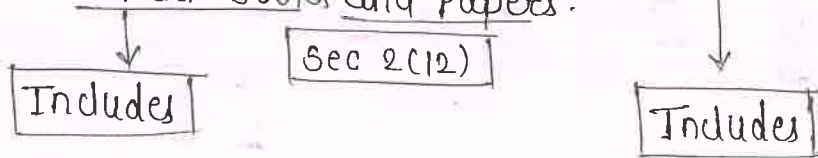
⑤. charged by the board with such duty.

Min. 50000/-

Max. 5 lakh

Q5 ① Preparation of Books of Accounts.

→ Every Company
→ shall prepare and keep books of A/c → Section 2(13)
and other Relevant Books and Papers.



- Books of A/c.
- Vouchers.
- Deed
- Document.
- Statutory Register.
- Minutes
- etc.

- All sums of money received.
- All sales and purchases.
- Assets and Liabilities
- Items of cost.

And Financial statement for Every year.

Sec 2(40)

Financial statements for every year include:

- Books of Financial Year.
- P&L A/c
- Cash Flow Statement
- Statement of change in Equity
- Explanatory Note.

Opco / small co. and Dormant co. may not include cash flow statement.

Q6 ② Ss 1 - Proviso - Location of Books of Accounts.

(A) Registered office -

The Books of A/c etc shall be kept at the registered office of the company.

③ Any other place in India -

- All or any of the Books of A/c etc may be kept at such other Place in India at the Board of Directors may decide.

- In such a case, the company shall file with the registrar a notice containing the full address of such other place. The notice shall be filed within 7 days in form no AOC-5.

④ Branch office -

Where a company has branch office (whether in India or o/s India), The books of A/c etc. relating to transaction affected at the branch office may be kept at the Branch office.

⑤ Legal requirement for keeping Books of A/c etc at branch office.

SS2
In such a case, proper summarized returns must be periodically sent by the branch office at -

- ① The registered office of the company ; or.
- ② such other place where books of A/c etc are kept.

③ SS3 - Inspection of Books of A/c

① The Books of A/c etc. maintained with'in India shall be open for inspection by any director -

- At the registered office of the co. or at such other place in india where the books have been kept.
- During business hrs.

② Financial information maintained o/s India may be inspected by any director subject to such condition as may be prescribed. (Rule 4) :-

- The summarized returns of the Books of A/c of the co. kept and maintained o/s India shall be sent to the registered office at quarterly intervals. Such summarized returns shall be kept & maintained at the registered office of co. and kept open for to director for inspection.

② Where any other financial information maintained outside the country is required by director, the director shall furnish a request to a company setting out the full details of financial information sought and the period for which such information is sought.

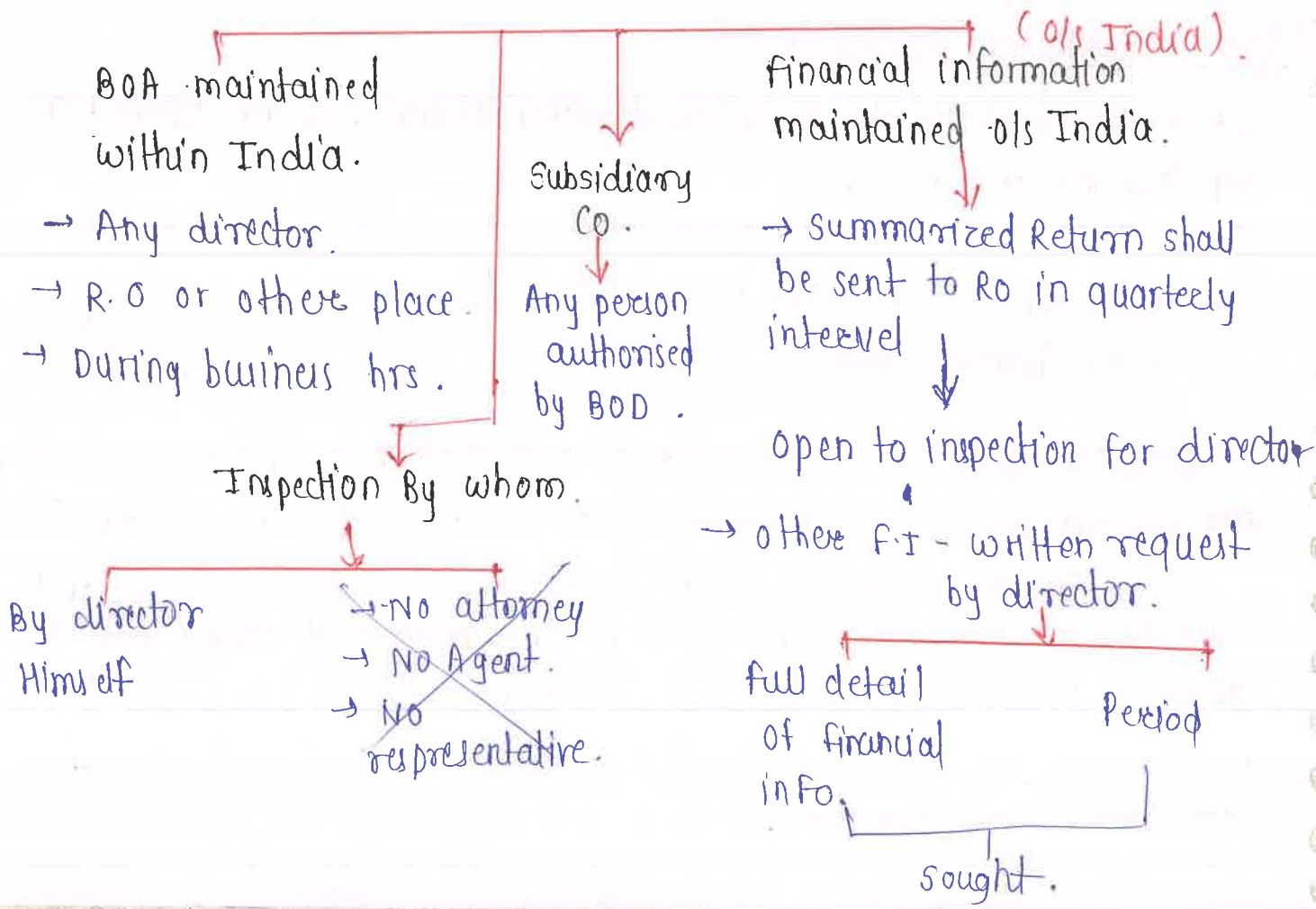
③ The co. shall produce such financial info. to the director within 15 days of the date of receipt of return request.

④ The financial info. required under subrule ② & ③ shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

⑤ The inspection of books of A/c of any subsidiary shall be made only by the person authorized by a resolution of the BOD.

⑥ It shall be the duty of every officer and employee of the company to give to the person making inspection all reasonable assistance in connection with the inspection. [554]

CS II MAJUR of Companies Act 1956 - 52 143 8



Sought.

within
15 days.

Produce information.
to
Director.

955 - Period of Preservation of Books of A/c

- Every company shall preserve the books of A/c together with the relevant vouchers. The time period for preservation shall be →

Ⓒ Not less than 8 F.Y immediately preceding the relevant F.Y; or

Ⓓ If the co. has ~~not~~ been in existence for less than 8 F.Y, then for the entire period of its existence.

Ⓔ Where an investigation of co. is ordered, Cr. may direct that the books of A/c shall be kept for such longer period as may be directed by Cr.

Preservation of Books of

A/c ↓

8 years
or
years of
Existence.

Cr. may direct
Company to preserve
A/c for longer period
if conducted investigation
inspection.

* Method/Manner of Preparation.

The books of A/c etc. shall -

- a) Give a true and fair view of state of affairs of company, including its branch office;
- b) Explain the transaction affected at the registered office and its branch office;
- c) Be prepared on accrual basis;
- d) Be prepared according to the double entry system of Accounting.

* Manner of Maintenance of Books of A/c in electronic Mode -

The books of Account and other relevant papers may be kept in electronic mode in such manner as may be prescribed.

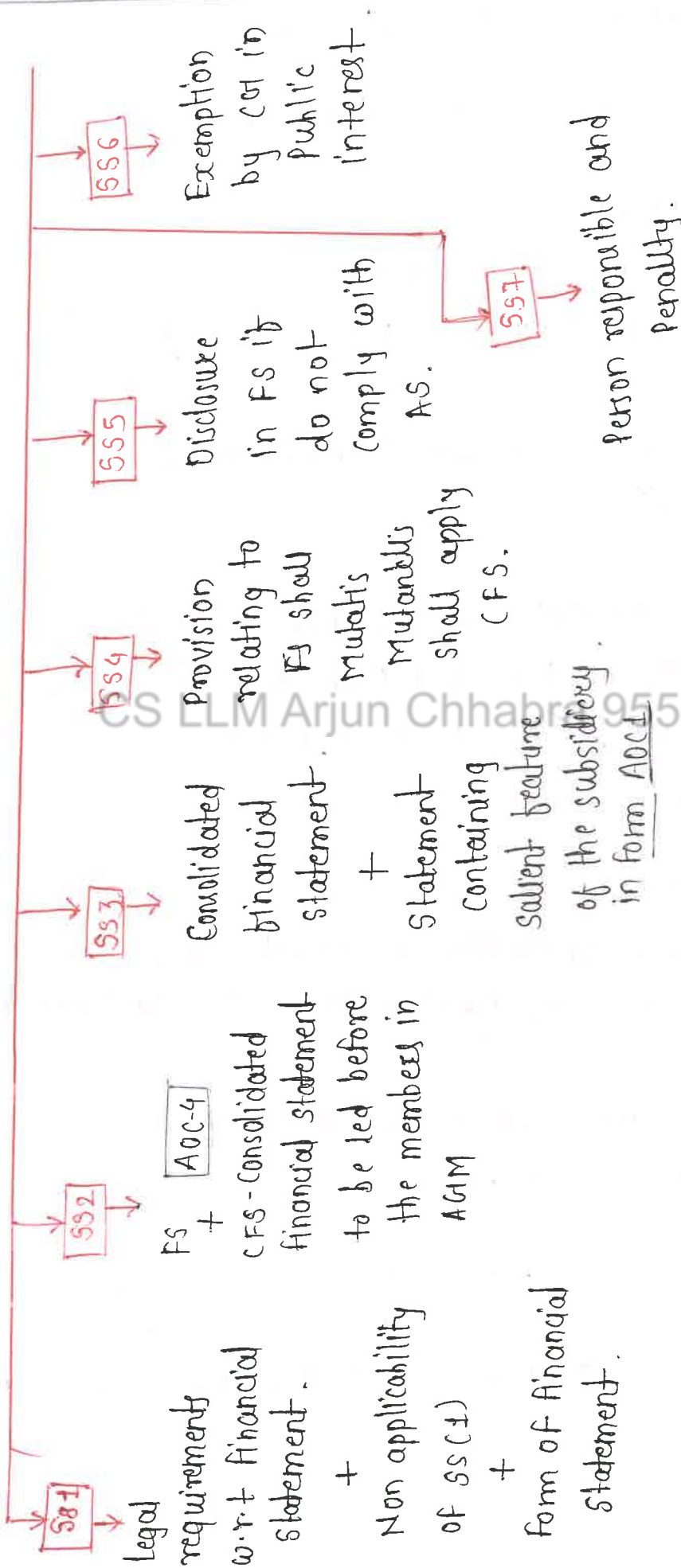
Rule 3 prescribed the following manner -

- Ⓐ The books of A/c etc shall remain accessible in india.
- Ⓑ The books of A/c etc shall be retained completely in the original format.
- Ⓒ The information contained in the electronic records shall remain complete and unaltered.
- Ⓓ The info. contained in the electronic records shall be legible.
- Ⓔ There shall be proper system for storage, retrieval, display or print out of the electronic records as audit committee, if any, or the board may deem appropriate.
- Ⓕ The electronic records shall not be disposed off unless permitted by law.
- Ⓖ The backup of electronic records shall be kept in servers physically located in India on a periodic basis.
- Ⓖ The co. shall intimate to registrar on an annual basis.
 - Ⓐ The name of service provider;
 - Ⓑ The internet protocol address of service provider;

③ The location of the service provider.

④ Where the books of A/c etc are maintained on cloud, such address as is provided by the service provider.

Sec 129 Financial Statement



SS1 - legal requirement w.r.t Financial statement.

- ① The FS shall give a **true** and **fair** view of the state of **affairs** of the **company**.
- ② The FS shall comply with AS notified w/s 133.

SS5 - If FS do not comply with AS, the company shall disclose in the FS, -

- ① The **deviation** from AS;
- ② The **reasons** for such deviations; and
- ③ The **financial effects**, if any, **arising** out of such deviation.

* Non applicability of SS1 -

Nothing contained in Sec 129 (1) shall apply to -

- ① Any **insurance** company; or
- ② Any **Banking** Company;
- ③ Any co. engaged in the generation and supply of **electricity**;
- ④ Any **other class** of **company** for which form of **FS** has been specified in the **Act** governing such class of company.

* Form of FS + CFS : → AOC 4

SS3-consolidated financial statement -

① Where co. has **one or more subsidiaries** or **associate companies**, it shall also prepare **CFS** of the **company** and of all its **subsidiaries** and **associate companies**.

② CFS shall be prepared in the **same form** and **manner** in which the FS of the company are prepared.

③ The **provision** relating to the **preparation**, **adoption** and **audit** of the **FS** of holding co. shall, **mutatis mutandis**, apply to the **CFS**.

④ The FS as well as a CFS shall be led before the members in ~~SS2~~ the AGM.

As per rule 6 preparation of CFS shall not be required if all the following conditions are satisfied. [Exception CFS]

① The Co. was, or partially owned subsidiary of another co. and all of its other members, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not preparing the CFS.

② It is Co. whose securities are not listed and not in the process of listing on any stock exchange, whether in India or outside India.

③ Its ultimate or any intermediate holding company files CFS with the registrar which are in compliance with the applicable AS.

Statement containing salient feature of subsidiary -

The Company shall also attach along with its FS, a separate statement containing the salient feature of FS of its subsidiary or subsidiaries in such form as may be prescribed i.e. Form AOC 1.

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557 - Person responsible and penalty

Person responsible

- ① Managing director.
- ② Whole time director in charge of finance.
- ③ Chief financial officer.
- ④ Any other person of Co. charged by board with such duty.
- ⑤ All the directors in the absence of any of officers mentioned above.

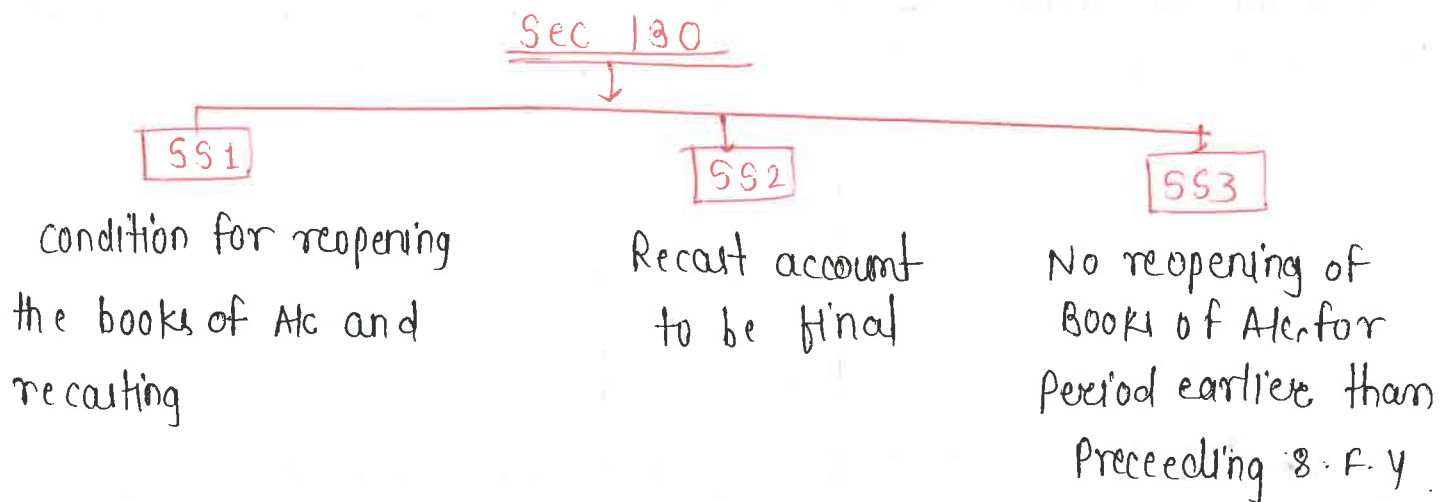
Penalty

Imprisonment upto 1 yr.
or
Min fine - 50000
Max - 5 lakh

Both

<p style="text-align: center;"><u>Sec 130</u> ↓</p>		<p style="text-align: center;"><u>Sec 131</u> ↓</p>
<p>Re-opening of Accounts on Court's or Tribunal's order.</p>		<p>Voluntary revision of FS or Board's report.</p>
<p>Compulsory reopening of BOA and recasting of FS.</p>	<p>Deals with</p>	<p>voluntary revision of FS or board report.</p>
<p>CI, SEBI, ROC, Income tax department or any other statutory body. e.g. CIT deptt.</p>	<p>Applicability / Power</p>	<p>Board of Directors.</p>
<p><u>Any of 2</u> BOA have been prepared in <u>fraudulent manner</u>. OR Affairs were casting a doubt on reliability of FS.</p>	<p>Condition</p>	<p>Financial statement is not complying with sec 129, Board report not complying with sec 134</p>
<p>There is no restriction on reopening or recasting.</p>	<p>Restriction</p>	<p>Limited to revision of FS and BR</p>
<p>Any period</p>	<p>Period of reopening / Revision.</p>	<p>Immediately preceding three financial years.</p>

Sec 130 (1) - Condition for reopening -'



Sec 130 (1)

- (A) An application shall be made to the court or tribunal by →
- i] CGT ; or
 - ii] SEBI ; or
 - iii] The Income tax authorities ; or
 - iv] Any other statutory regulatory body or authority ; or
 - v] Any person concerned.
- (B) An order is made by court or tribunal to the effect that -
- ① The relevant earlier A/c were prepared in fraudulent manner;
 - ② The affairs of the company were mismanaged during the relevant period, because of which doubts are raised as to whether the A/c are reliable or not.
- (C) Before passing any order, the court or the tribunal shall give notice to, and shall take into consideration the representation if any, made by -
- Same as above (A).

Sec 130 (3) -

- (A) No order shall be made by the court or tribunal in respect of reopening of BOA relating to a period earlier than 8 F.Y immediately preceding the current F.Y.

(B) However, where a direction has been issued by CWT U/s 128 that the Co. shall keep the BOA for a period longer than 8 years, the BOA may be ordered to be reopened within such longer period.

Section 131

SSJ - Condition for voluntary Revision

The BOD may decide to prepare the revised FS or revised Board's report if the following conditions are satisfied -

- (A) The Board is of the opinion that -
 - (1) The FS do not comply with provisions of Sec 129; or
 - (2) The Board's report does not comply with provision of Sec 134.
- (B) The FS or the Board's report may be revised only in respect of any of preceding three F.Y.
- (C) The revision of FS or Board's report may be made only after obtaining the approval of the tribunal.
 - (1) The Co. shall make an application to tribunal.
 - (2) Before passing any order, the tribunal shall give notice to **CG and income tax authorities**, and shall take into consideration the representation, if any, made by CG and income tax authorities.
- (D) The revised FS or the revised Board's Report **shall not be prepared more than once** in financial year.
- (E) The detailed **reasons** for revision of FS or the Board's report shall be disclosed in the Board's report prepared for the relevant F.Y., i.e. In the F.Y. in which such revision is made.

Sec 133 - Central Govt. to prescribe AS.

① Power with whom -

The power to prescribe AS rest with Cg.

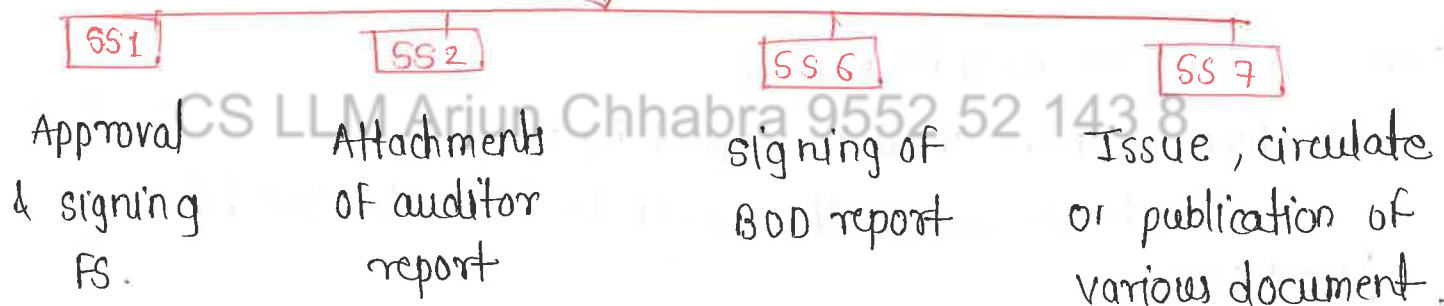
② Procedure for prescribing AS -

Cg may prescribe the standards of Accounting as recommended by ICAI, In consultation with an after examination of the recommendation made by NAFRA: [National Financial Reporting Authority]

③ Position until AS are prescribed.

The standard of Accounting as specified under Companies Act 1956 shall be deemed to be AS specified by Cg.

Sec 134 - Financial statement, Board's report etc.



SS1 - Approval and signing FS.

① Approval -

The FS, including CFS, if any, shall be approved by the board of director before they are signed on behalf of the board.

② signing -

② The FS, including CFS, if any, shall be signed by chairperson of the co, where he is authorised by the board.

⑥ If the chairperson of the co- is not so authorised by the board, the FS, including CFS, if any shall be signed by -

- ① Two directors, one of whom shall be MD, if any; &
- ② CEO, CFO and CA, wherever they are appointed.

⑦ In case of OPC, the FS, including CFS, if any, shall be signed by one director only.

⑧ Submission -

The FS, including CFS, if any shall be submitted to the auditor after they have been approved by the board and signed on behalf of board.

⑨ Attachment of Auditors report (SS2) -

- The auditors report shall be attached to every FS.

SS6 - signing of Board's Report -

① The Board's report shall be signed by -

① The chairperson of the co, if he is authorised by board; or.

② At least two directors, one of whom shall be MD, if the chairperson of the co- is not so authorised.

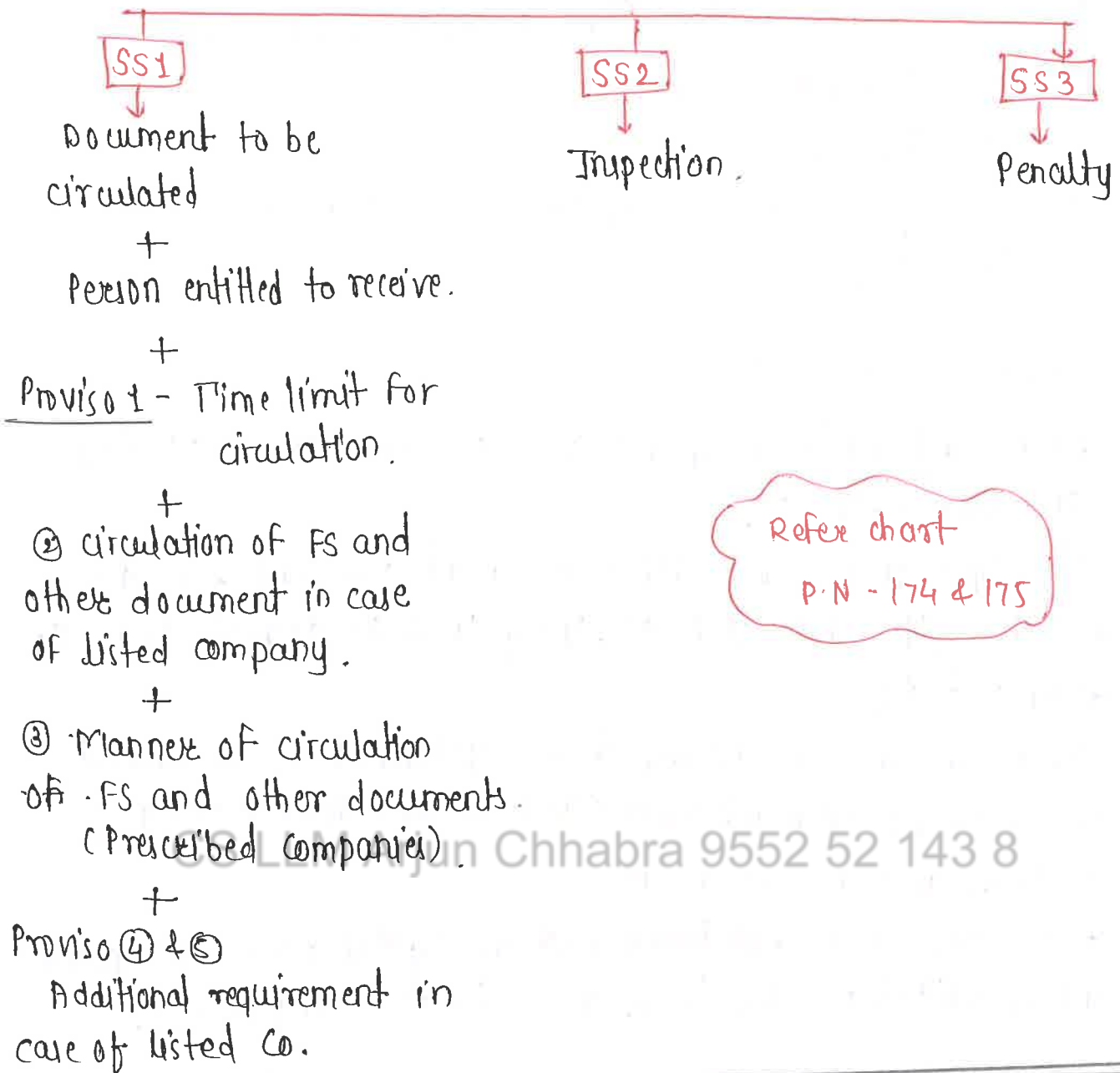
③ In case there is only one director, the Board's report shall be signed by such director.

SS7 - Issue circulation ~~or~~ publication of various document -

A signed copy of every FS, including CFS, if any shall be issued, circulated or published along with copy of -

- (a) Any notes of such FS
- (b) The Auditor's report; and
- (c) The Board's report.

Sec 136 - Right of Members to Copies of Audited FS.



1) Document to be circulated -

A copy of following documents is required to be sent by the Co -

- 1) FS
- 2) CFS, if any
- 3) Auditor's report.
- 4) Any other document which are required to be attached to FS.

② Person Entitled -

Above document shall be sent to following persons -

- ① Every member of the co.
- ② Every debenture trustee.
- ③ Every person who is entitled to receive notice of AGM.

③ Time limit for circulation -

① The fs and other documents shall be sent atleast 21 days before the date of AGM.

② If the copies of fs and other document are sent less than 21 days before the date of AGM, they shall be deemed to have been duly sent if -

① In case of a co. having share capital, it is so agreed by majority in no. of members entitled to vote and having not less than 95% P.O.S.C ; or

② In case of co. not having share capital it is so agreed by members entitled not less than 95% total voting power.

④ Circulation of fs and other document in case of Listed co -

In case of listed co, it shall be a sufficient compliance with the provision of sec 136, if -

① The copies of fs and other document are made available for inspection at its RO during working hrs, for a period of 21 days before date of AGM ; And

② A statement containing the salient feature of fs and other document is sent, unless the shareholder asks for full fs and other document.

⑤ Manner of circulation of FS and other documents -

Rule 11 makes the following provision in this regard -

① Applicability -

Rule 11 applies to -

- ① All listed companies; and
- ② public companies having net worth of more than ₹ 1 Cr and turnover of more than ₹ 10 Cr.

② Manner of circulation -

In case of above companies, the FS and other documents, shall be circulated -

① By e-mode, in following two cases -

① Where member holds shares in dematerialised form and his email-id is registered with depository.

② Where a member does not hold shares in dematerialised form, but he has positively consented in writing for receiving such document by e-mode.

② By dispatch of physical copies through any recognised mode of delivery as specified w/s 20 in all other cases.

③ Additional requirement in case of listed co -

① Every listed co. shall place its FS and other documents on its website.

② Every listed company having a subsidiary or subsidiaries shall have on its website, separate audited A/c in respect of each such subsidiary.

© Where listed company has a subsidiary incorporated outside India (foreign subsidiary) and such foreign subsidiary is required to prepare FS under the law of country of its incorporation, it shall be sufficient if the listed co. places on its website, FS of such subsidiary.

© Where a listed co. has a subsidiary incorporated outside India (foreign subs.) but such subsidiary is not required to get its FS audited under any law of country of its incorporation, the holding Indian listed co. may place such unaudited FS on its website and where such FS is in language other than English, a translated copy of FS in English shall be placed on website.

⊕ Inspection -

© Every company shall allow every member and debenture trustee to inspect the FS and other documents at its Ro during business hrs.

© Every co. having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited FS to any member of the co. who asks for it.

sec 137 - filing of FS and other documents with Registrar.

SS 1

Where FS are adopted at AGM

+

Where FS are not adopted at AGM

+

Filing in case of open

+

Relaxation w.r.t audit of foreign subsidiary.

SS 2

Where AGM is not held

SS 3

Punishment for contravention

Refer chart PN 177

551 - Where FS are adopted At AGM.

① Documents to be filed -

- ① FS
- ② CFS, if any
- ③ The A/c of its subsidiary which have been incorporated in India which have not published any place of business in India
- ④ All the documents which are required to be attached to FS.

② Time limit for filing -

The FS and other document shall be filed with the registrar within 30 days of date of AGM.

② Where FS are not adopted at the AGM

① Filing of unadopted documents

Where FS are not adopted at AGM or adjourned AGM, such unadopted FS and other document shall be held with registrar within 30 days of date of AGM.

② Unadopted documents to be provisional

The registrar shall take the unadopted FS and other document in his records as provisional till FS filed with him after their adoption in Adjourned AGM.

③ Filing of adopted document

The FS and other document adopted in adjourned AGM shall be filed with the registrar within 30 days of date of such Adjourned AGM.

③ filing in case of OPC.

opc shall file a copy of FS duly adopted by its members, along with all documents attached to such FS, within 180 days from closure of the F.Y.

④ Relaxation w.r.t audit of foreign subsidiary -

In case of subsidiary which has been incorporated o/s India (foreign subsidiary), which is not required to get its FS audited under foreign law, it shall be sufficient if the holding Indian Co. files such unaudited FS and where such FS is in language other than English, along with translated copy in English.

592 - Where AGM is not held.

① Filing of documents -

① The FS and other documents.

② statement of facts and reasons for not holding the AGM.

② Time limit for filing.

The FS and other document shall be filed with the registrar within 30 days of the last date upto which the AGM should have been held.

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Rule 12 - Forms and Fees.

[XBRL - Extensible Business Reporting language]

① The class of companies as may be notified by CCI from time to time, shall mandatorily file their FS and other documents in extensible Business Reporting language (XBRL) format.

The term "Extensible Business Reporting Language" means a standardised language for communication in electronic form to express, report or file financial information by Co.

As per Rule 3 of the Companies (Filing of document and form in Extensible Business language) Rule, 2015, the following class of Co. shall file their FS and other document as 137 of Act with registrar in E form.

AOC4 - XBRL -

- ① All companies listed with stock exchange in India and their Indian subsidiary.
- ② All companies having paid up capital of 5 crore or more.
- ③ All companies having T/O of ₹ 100 crore or more.
- ④ All companies which are required to prepare their FS in accordance with the Companies (Indian Accounting Standard) Rules, 2015. However, a Non Banking Financial Co. Housing Finance company engaged in the business of banking and insurance are exempted from filing FS in XBRL.
- ⑤ The companies which have filed their FS and other documents under point A above shall continue to file their FS and other documents though they may not fall under the specified class of companies in succeeding years.

SS3 - Punishment for contravention.

Sec 138 - Internal Audit (refer chart P. No - 178)

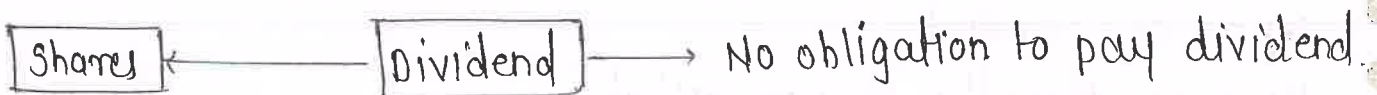
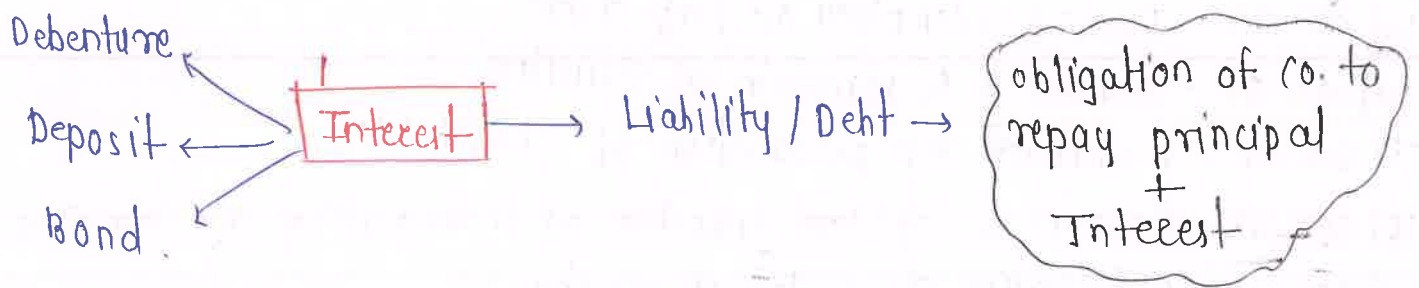
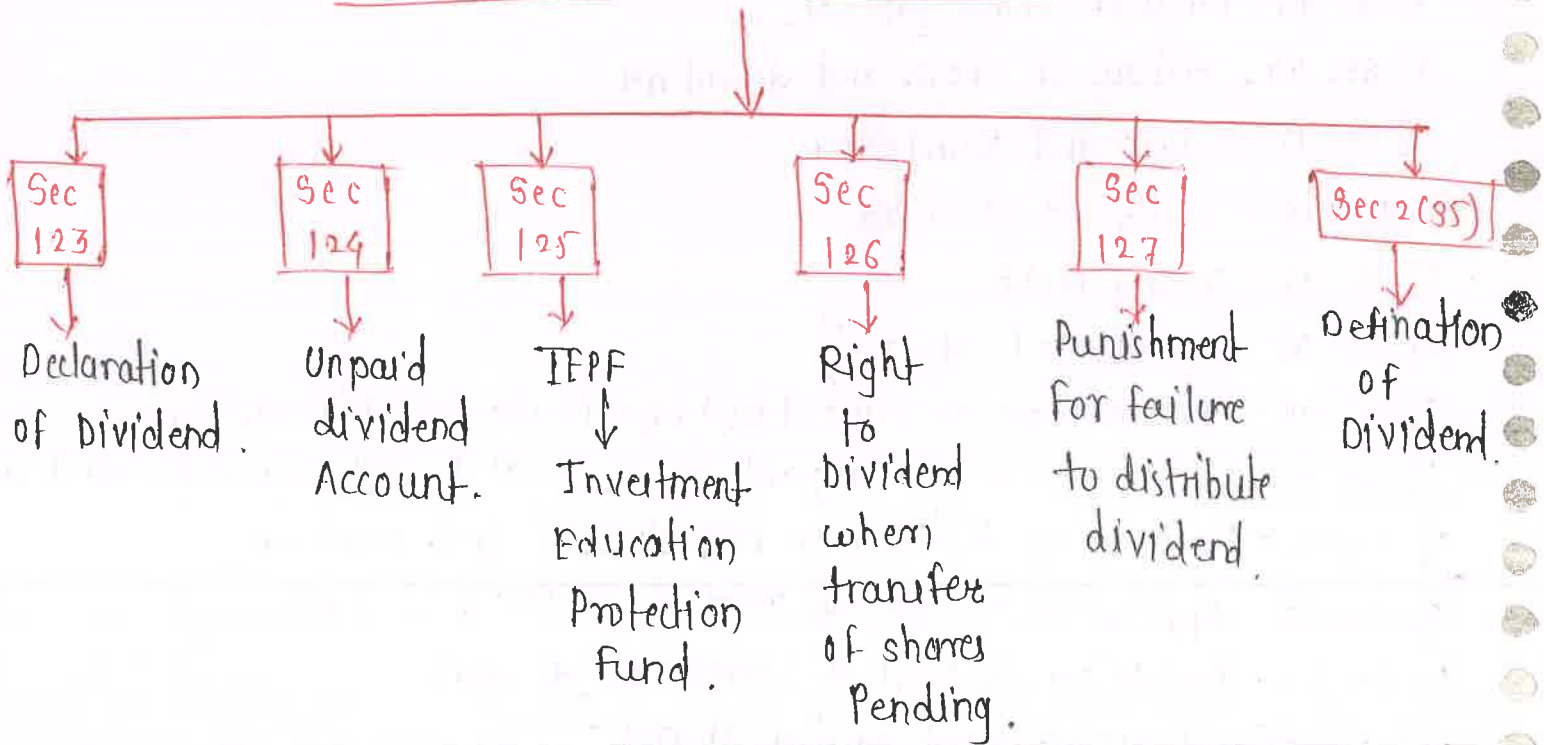
(0.12)

Sec 135 - Corporate Social Responsibility (refer C.P. no 171)

Sec 134 (3) (4) (5) - refer chart P. No - 167.

Sec 132 - NFRA (refer chart P. No 179 & 180).

Section 123- 127 + Sec 2(35)



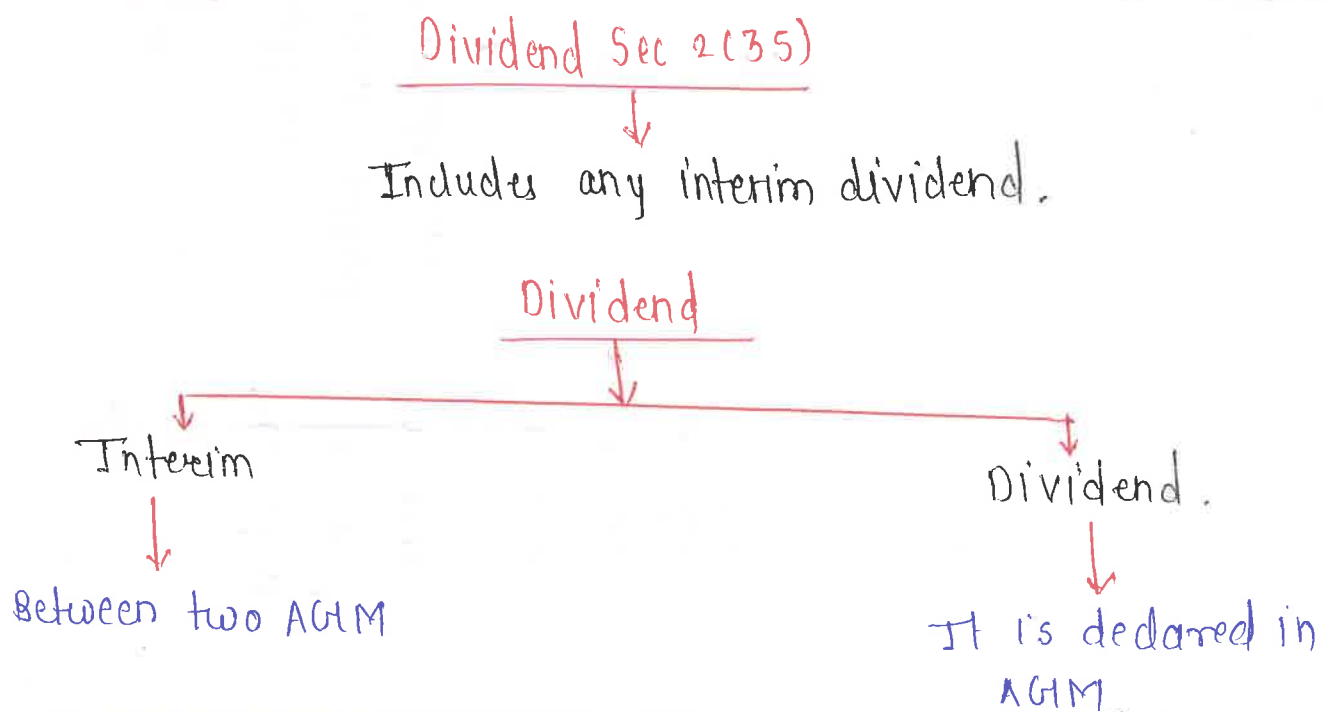
→ Dividend once declared becomes debt of company.

* General Points in relation to Declaration of Dividend.

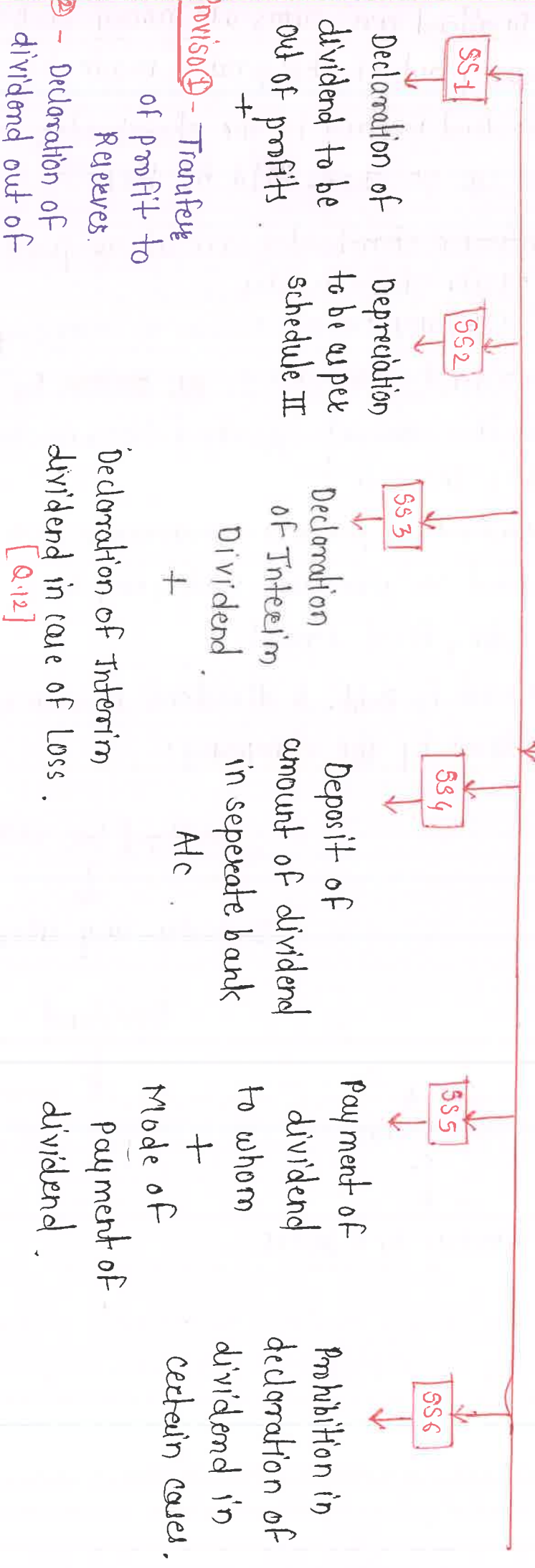
→ The power to pay dividend is inherent in a company and is not derived from Companies Act, 2013 or the MoA or AOA although the act and AOA regulate the manner in which dividends are to be declared.

→ Dividend can be defined to mean the share received by a shareholder of a company, profits legally available for distribution and divided amongs the shareholders.

- Dividend are sums of money to be paid to the members of the company out of the profits made by company.
- Dividend is paid to the shareholder on proportion to the amount paid up on shares held by them.
- Preference shareholder are always paid dividend in preference to equity share holder.
- All company except section 8 company can declare dividend.
- Dividend warrant is an order by the company to its bankers to pay the amount specified therein to shareholder whose name is written there in.
- Dividend is paid on preference and equity shares whereas interest is paid on debenture and long term and short term loan/borrowing including fixed deposit.
- Interest is Debt. A dividend however becomes debt only after it declared by the company.



Section 123 - Declaration of Dividend



Proviso 1 - Transfers of profit to Reserves.

- 2) - Declaration of dividend out of reserves + Rule 3
- 3) No declaration of dividend out of other reserves.
- 4) Set off of previous losses and depreciation.

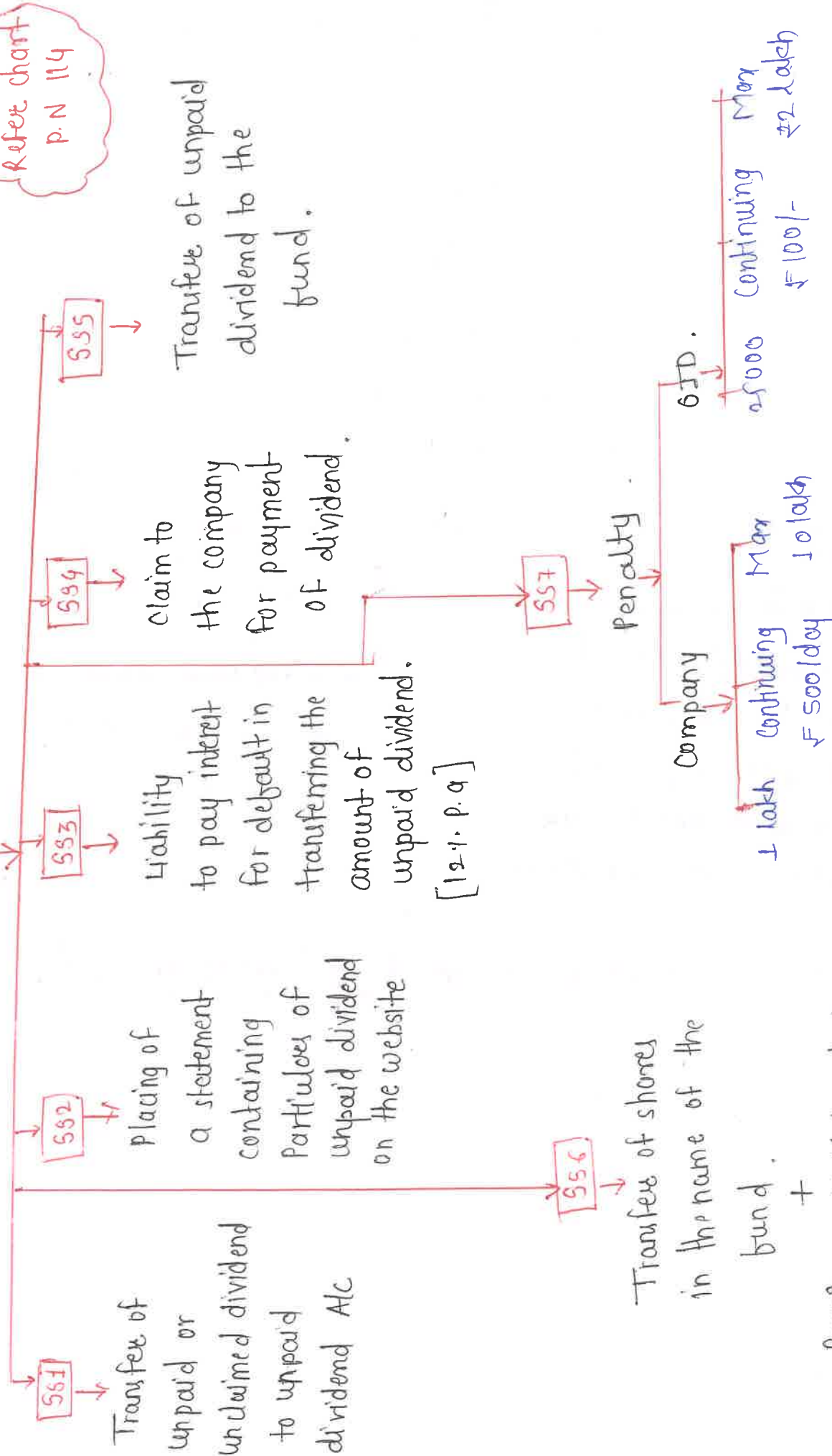
Declaration of Interim dividend in case of loss. [Q.12]

Refer chart PN 107

Sec 124 - Unpaid Dividend Account.

Refer chart P.N 114

Sec 124



Proviso - Right to claim the transferred Shares + Explanation → Shares not to be transferred, if dividend is paid for any year.

Section No - 126 Right to dividend, rights shares and bonus

Shares to be held in abeyance pending registration of transfer of shares

{Temporary suspend}

Registration of transfer of shares is pending

Not with standing anything contained in any other provision of this Act

clause (a)

Transfer the dividend amount to unpaid dividend A/c unless the companies authorised by the registered shareholders in writing to pay such dividend to the transferee.

clause (b)

keeping abeyance

- ① Right issue offers
- ② Bonus issue offers

Sec 127 - Punishment for failure to distribute dividend.

Refer chart P.N 116

Sec 125 - Investment Education And Protection fund

Established by
CoT by notification
of official
gazette.

Following Amt
to be credited
to IEPF.

fund
utilization.

Unclaimed
redemption
amt. on
Preference
Share.

Unclaimed
dividend
↓
Interest

Unclaimed
refund
Amount.

Unclaimed
Matured
deposit

Unclaimed
matured
deposits.

Other Amounts.

Other
income

Grants
and
Donation

Other
Prescribed

① Refund of
application
money and
interest.

② Investor
education &
awareness
Program

③ class Action
Suit by members
etc. by NCLT

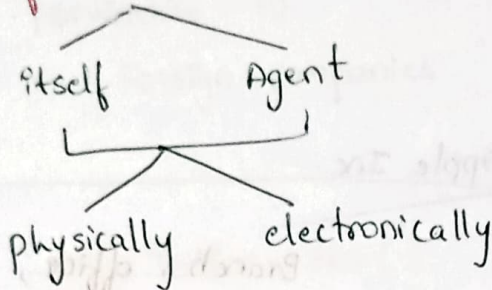
④ Disgorged amt.
among applicants
for wrong action
of any person.

Company Incorporated outside India.

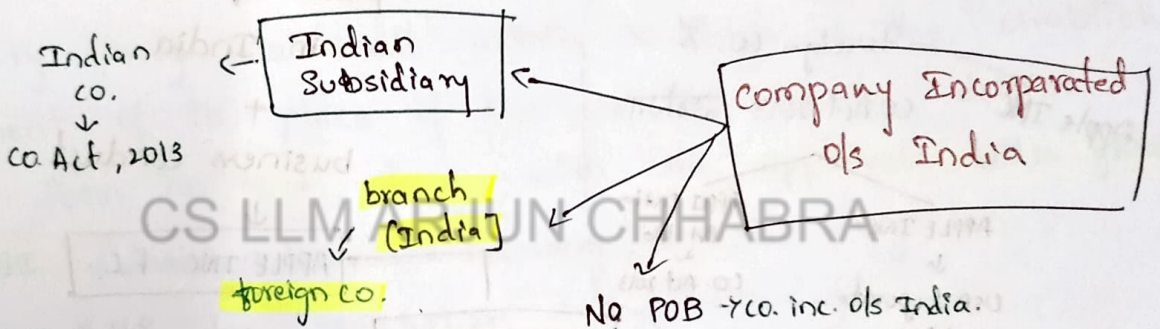
foreign co. 2(42)

① co. Inc of India

② place of business - India

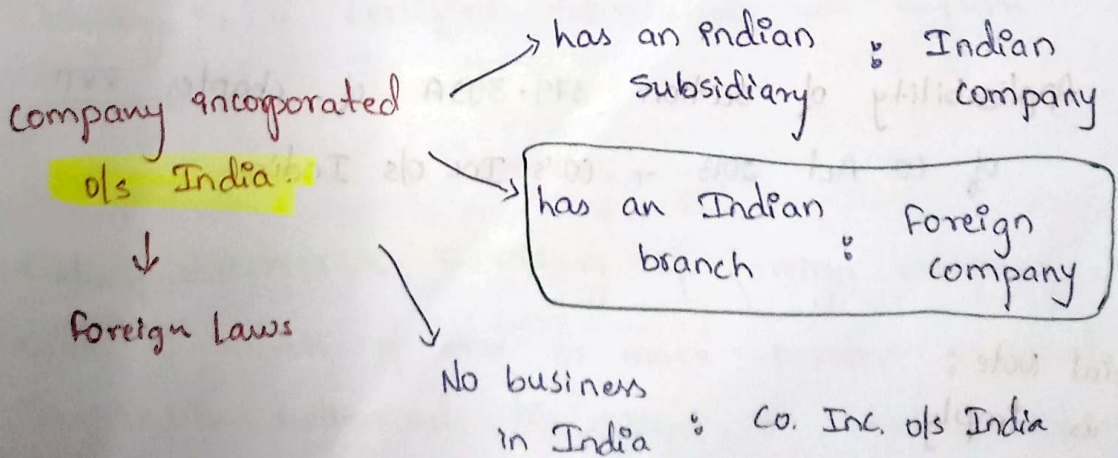


③ conduct business in India → Assumed

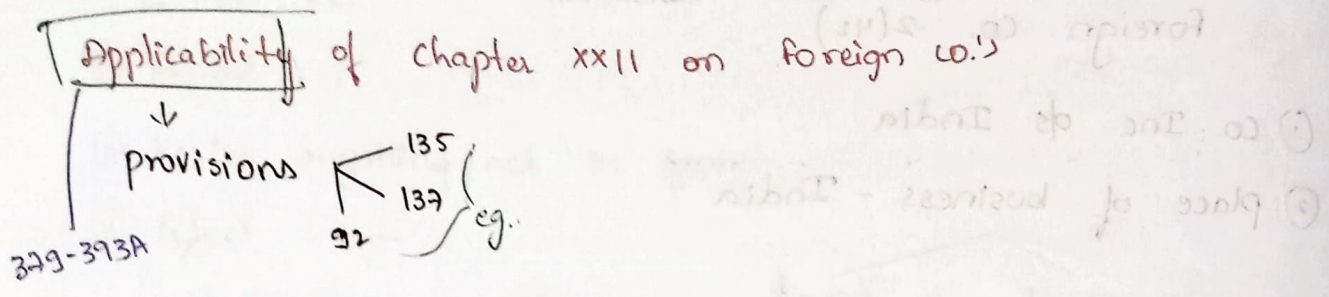


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Summary



definition Sec 2(42) - F.C - different concept



CIOI - Apple Inc.



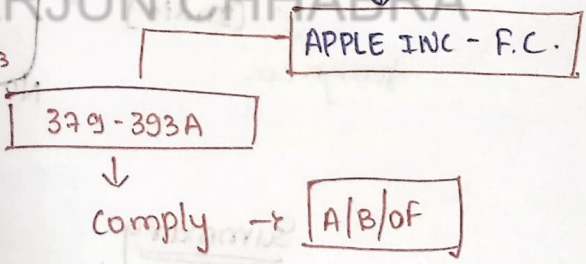
Apple India (Pvt) Ltd
 ↓
 Co. Ltd 2013
 ↓
 Foreign Co. 2013

Branch, office,
 Agency
 ↓
 place of business
 in India
 +
 business conduct

NO POB
 in India
 ↓
 CIOI
 X

Apple INC.
 ↓
 USA corporate law

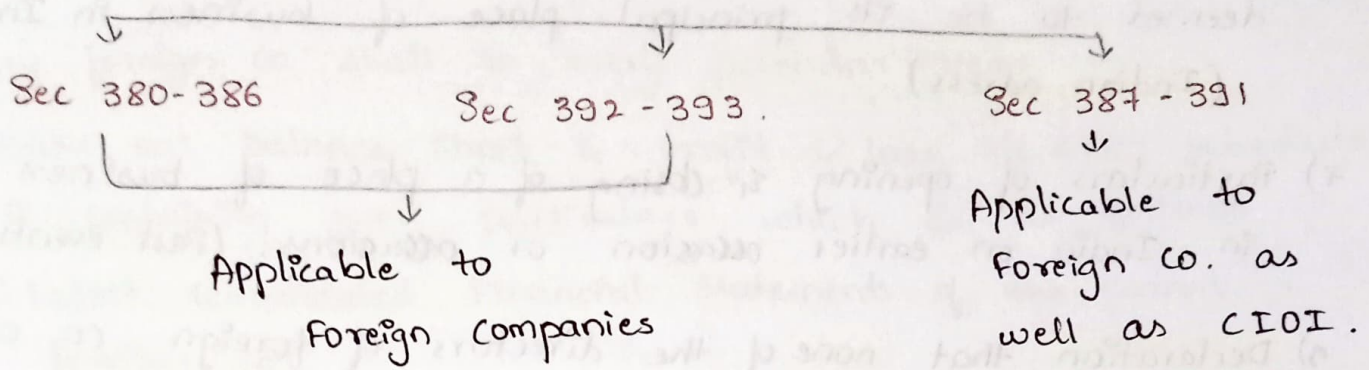
APPLE India Pvt Ltd
 ↓
 Co. Act 2013



Applicability of section 379-393A of chapter XXII of Co. Act 2013 → Co.'s Inc o/s India

Special Note:
 F.C is simply an Indian branch of CIOI

Application of Act to Foreign Companies [Section 379]



Section 380 (1)

Documents to be filed at the time of establishing place of business in India.

Every foreign co. shall within 30 days of the establishment of its place of business in India, deliver in form no. **FC-1** along with the **approval letter from RBI**. (whenever wherever necessary) to the registrar, New Delhi for registration.

- MDA** & **AOA** (certified copy) of the foreign company.
& if the instrument is not in the english language, a certified translation in english language.
- foreign address** of company.
- List of directors & Secretary** of foreign company
- Name & address of one or more persons resident in India. authorised to accept on behalf of company any notice or document to be served on the behalf of co. (**Indian representation**)

e) Full address of the office of co. in India which is deemed to be its principal place of business in India
(Indian address)

f) Particulars of opening & closing of a place of business in India on earlier occasion or occasions. (Past events)

g) Declaration that none of the directors of foreign co. or authorised representative in India has ever been convicted or de-based from formation & management of company in India or abroad.

Sec 380(2) + ~~omitted~~ (No Role)

Sec 380(3)

Any alteration in the documents / information filed with ROC under sub-Sec (1) shall be delivered to ROC, New Delhi FC-2 form within 30 days.

Sec 380

Annual Filing

Type of Document/ Filing.	Foreign company	Indian company
Financial statement	Sec 381, in form FC-3- 6 month from end of Financial yr.	Sec 137, form No. AOC-4 within 30 days from the date of AGM
Annual Return	Sec 384, form no. FC-4 60 days from the end of FY.	Sec 92, form no. MGT-7 60 days from AGM.
ROC	Registrar, New Delhi	State ROC of state in which the co. is situated.

Accounts of Foreign Company Sec 381

Every foreign co. shall in every calendar year -

- a) make out balance sheet & profit & loss a/c as per schedule III containing such particulars which is as follows
- i) latest consolidated financial statements of the parent foreign co.
 - ii) Statement of related party transaction.
 - iii) Statement of repatriation of profits.
 - iv) Statement of transfer of funds. plw place of business in India. & any other related party of the foreign company ols India including its holding, subsidiary & associate company.
 - v) Audit report of the PCA in India
 - vi) Deliver a copy of those documents to the registrar, New-Delhi in form no. FC-3. within a period of 6 months. from the close of financial year of the foreign company.

381 (2)

Translated in English language copy.

381 (3)

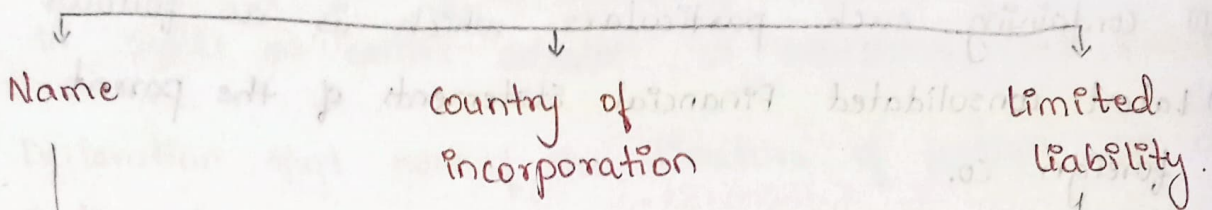
Every foreign company shall send to the registrar a copy of a list of all places of business established by the company in India.

Sec 382

Display of Name, etc of Foreign Co.



Foreign Co.



Display of office

mention in letter head

↓
in English + Vernacular
Language

in office documents

↓
in English Language

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Sec 383

If any document, notice required to be served on a foreign co., then it shall be sufficient to deliver such document

or notice to Indian representative whose name is delivered to ROC u/s 380. by

hand delivery, post to the address

which has been delivered or by electro

-nic mode.

Questions

1] State whether following Companies can be considered as Foreign Co.

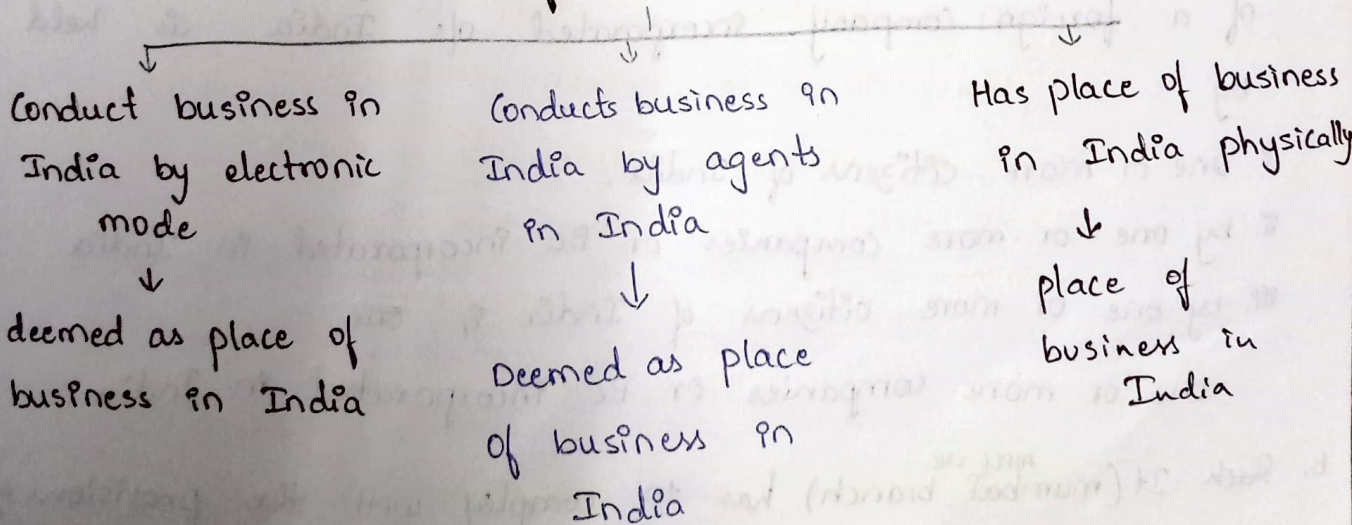
A) A co. incorporated in Russia has installed its main server in Russia for maintaining office automation software by cloud computing for its clients in India. Yes, Foreign Company

B) A co. which is incorporated in India employs agent in India but has no place of business in India and does not conduct any business activity in India. No, FC

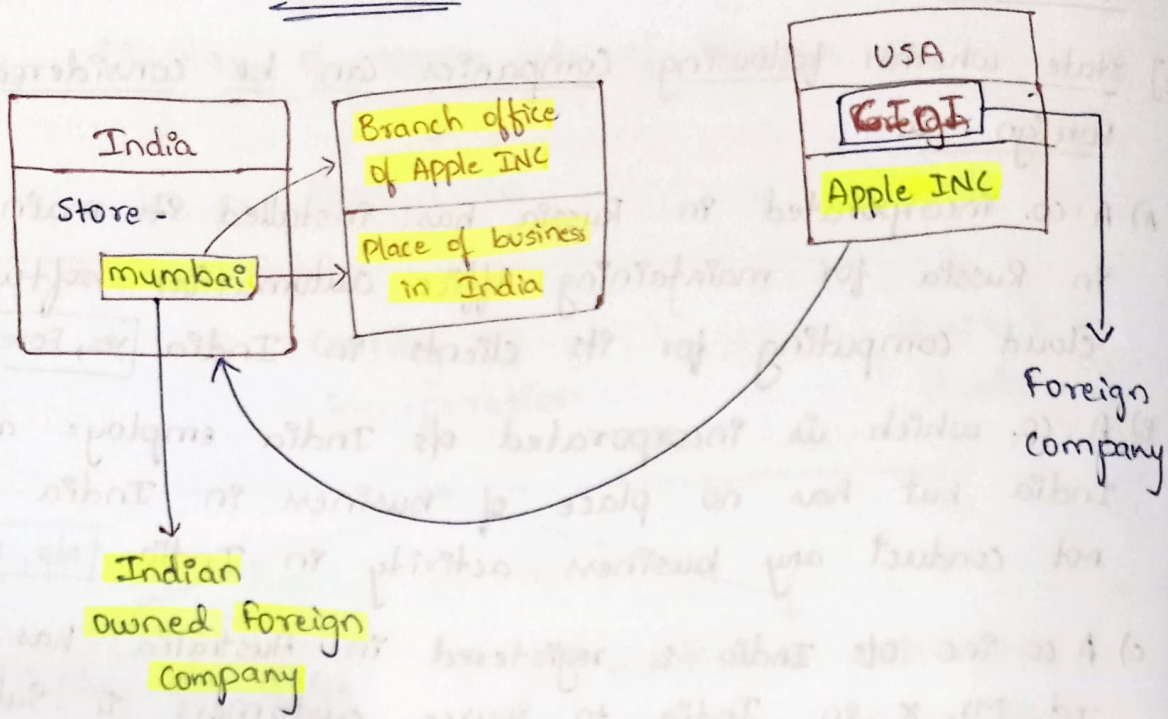
C) A co. inc in India is registered in Australia has authorised Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the company. Yes, FC

D) A co. inc in India is its registered office is in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the board meetings held only in India. No, FC

Place of Business in India



Sec 379 (2)



Applicable **prescribed**
Chapter XXII of **provisions** of
CO. Act, 2013 CO. Act, 2013
↓
CIOI

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1. CIOI

a. Not less than 50% of paid up capital (equity or capital) pref. of a foreign company. incorporated of India is held by

- i. One or more citizens of India.
- ii. by one or more companies or BC incorporated in India
- iii. by one or more citizens of India & one or more companies or BC incorporated in India.

b. Such It (^{APPLE INC} Mumbai branch) has to **comply** with the provisions of

- i. **this chapter (379-393A)**
- ii. other **prescribed provisions** of companies Act, **2013** in respect of its Indian business, **as if it was mc. in India**

Questions

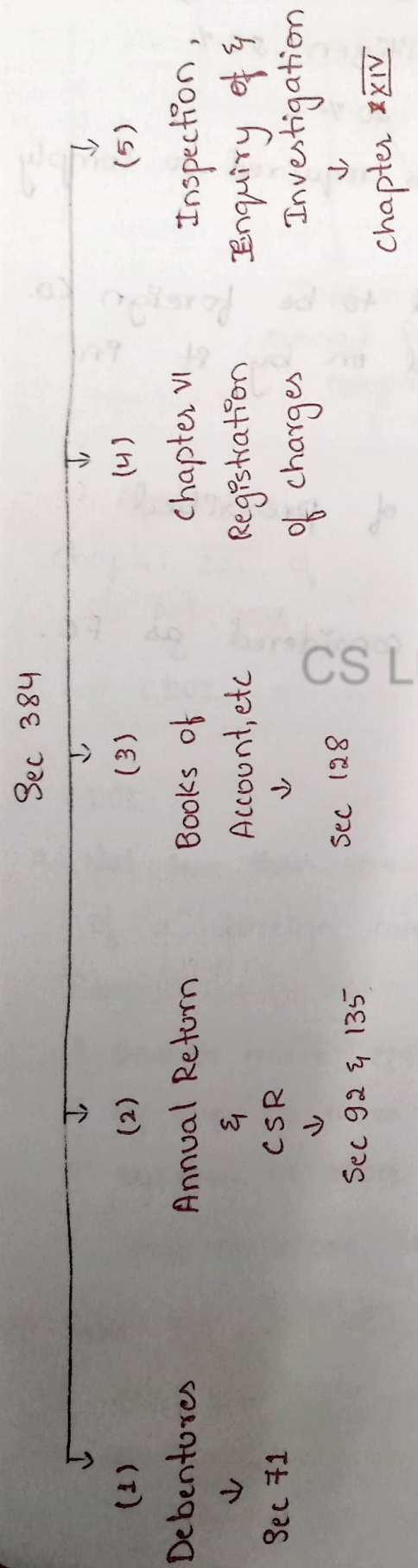
1. Kids toys Ltd inc. in Japan, branch office in Mumbai for business in India. Structure of p.u.s.c is as follows-
- a). pref. share capital held by samadhan, Indian citizen 10%.
 - Equity share held by sania, Indian citizen 20%.
 - Equity share capital held by AET Ltd. 20%.
- i. Whether for such Indian business it is required to comply Co. Act. 2013 ?
- ii. Whether Kids toys Ltd shall be deemed to be foreign Co or Indian Co. for the business carried on by it in India.

→ i. Compliance of Sec 379 - 393 A & also of prescribed provisions of Co. Act, 2013.

ii. Kids toys Ltd shall be considered as FC.

Sec 384

Debentures, Annual Return, Registration of charges, Books of Account & their Inspection.



The provisions of Sec 71, 92, 135, Chapter VI & Chapter XIV shall apply mutatis - mutandis (with necessary changes) to the Indian business of a foreign co. as they apply to a co. inc in India.

The provisions of Sec 128 shall apply to a foreign co. to the extent of requiring it to keep books of accounts at its principal place of business in India. The books of accounts referred in that section, with respect to money's recd. & spent, sales & purchase made, & assets & liabilities, in the course of or in relation to its business in India (Indian Business)

Fee for Registration of Documents (Section 385)

As prescribed in the companies (Registration offices & Fees) Rules, 2014.

Sec 392 Punishment for Contravention

Foreign Company

min. 1,00,000

max. 3,00,000

If continuing

₹ 50,000 per day

on officer in Default
(Indian Representative)

min. 25,000

max. 5,00,000

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Sec 386 Interpretation

refer class material.

page no. 9 of chapter 11.

Sec 393 Company's failure to comply with provisions of

this chapter Not to affect validity of contracts.

refer class material

page no. 13

Questions

1. Z Ltd, a foreign co. inc. in UK has a branch office in Pune. Ram, Indian citizen holds pref. shares in Z Ltd of 10% of PUSC of the co. ACT Ltd in India holds equity shares in Z Ltd of 45% of PUSC. In 1920, there has been alteration in the documents filed with ROC under sec 380. Analyse the consequences of failure on validity of any contract entered by FC.

Sec 379(2) ^{Indian owned FC} is applicable.

As per sec 393, the validity of any contract entered into by the FC shall not be affected. However, the company may be sued in respect of such contract but shall not be entitled to bring any suit in respect of such contract until the company has complied with the provisions of this Act applicable to it.

2. Apple Inc is a foreign co. registered in USA & has established a place of business in India. FS in relation to Indian business were prepared by the company. Advise the Co. on following matters.

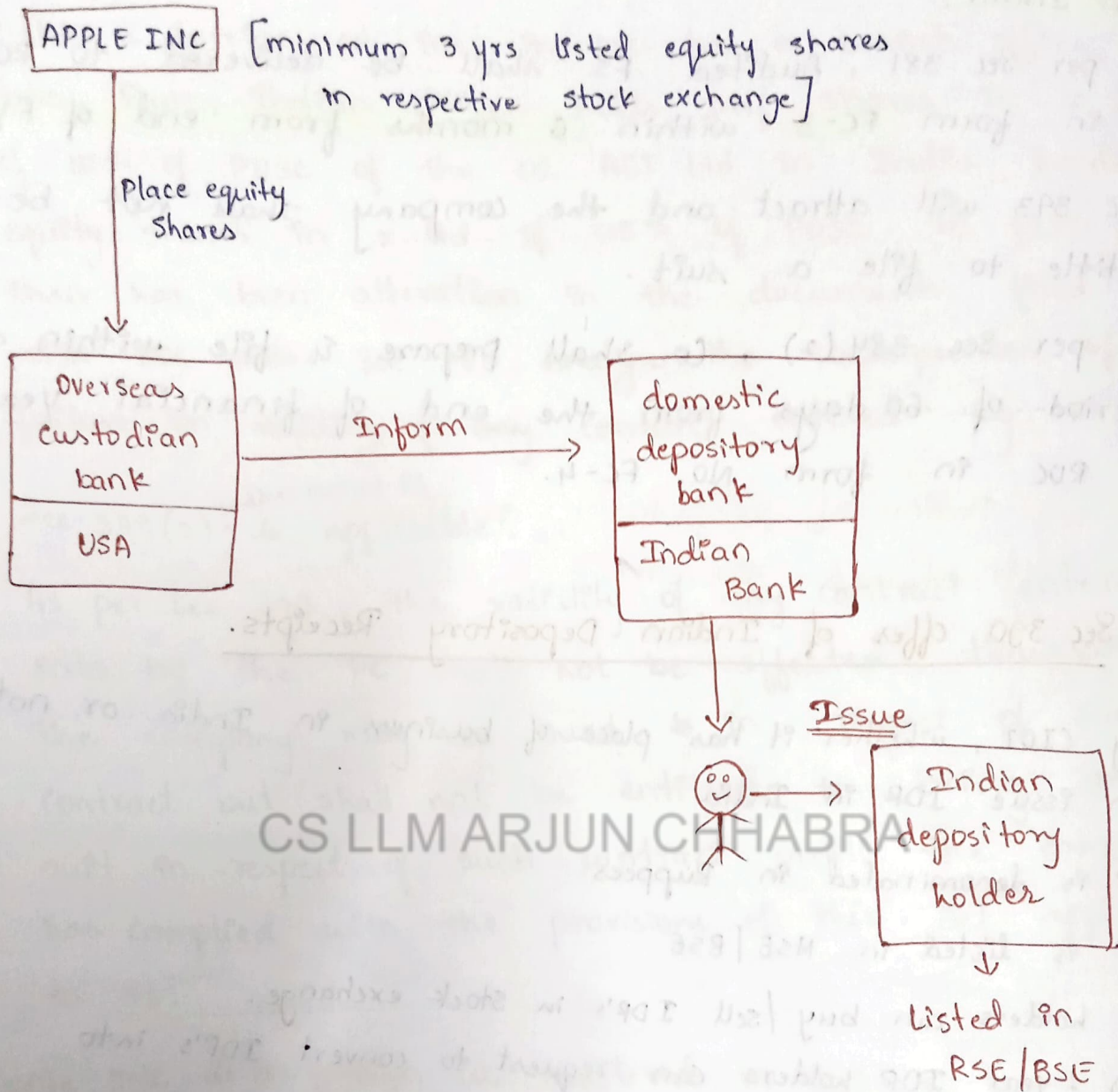
- i. whether the accounts is required to be audited. if
- ii. yes. by whom?
- iii. What is the due date of filing audited financial statements with ROC?
- iv. What is the effect of non filing of FS with ROC
- v. In which e-form & within what period, the annual Return of foreign co. shall be filed with ROC.

- i. Yes, as per Sec 381 Accounts shall be audited by PCA in India.
- ii. As per Sec 381, Audited FS shall be delivered to ROC & in form FC-3 within 6 months from end of FY.
- iii. Sec 393 will attract and the company shall not be entitle to file a suit.
- iv. As per Sec 384(2), Co. shall prepare & file within a period of 60 days from the end of financial year to ROC in form No. FC-4.

Sec 390 offer of Indian Depository Receipts.

1. Any CIOI, whether it has place of business in India or not can issue IDR in India
2. IDR is denominated in Rupees
3. IDR is listed in NSE/BSE
4. IDR holders can buy/sell IDR's in stock exchange.
5. After 1 year IDR holders can request to convert IDR's into equity shares.
6. The domestic depository bank (Indian bank) issues IDR in India.
7. The following parties are involved
 - i. Foreign issuer company
 - ii. Oversees Custodian bank
 - iii. domestic depository bank
 - iv. Underwriters
 - v. stock exchange
 - vi. Indian depository holders.

Process



CS LLM ARJUN CHHABRA

Indian Co. -> Public offer

Foreign Co. -> CIOI

Indian co. before issuing prospectus to public files such prospectus to ROC & the content of the prospectus is as prescribed under Sec 26.

Compliance of Sec 23 - 41

CIOI shall file its prospectus with ROC for issuing IDR's

Compliance of Sec 387 - 391

Sec 387 Dating of prospectus & particulars to be contained therein.

i) Contents of prospectus for issuing IDR's.

All the particulars / contents specified in sec 26 & apart from contents of sec 26 the following information should be there

a) Memorandum & article of association of CIOI

b) Foreign statute - enactments or provisions under which CIOI is incorporated

c) Address where copies of a) & b) can be obtained (Indian address)

d) Incorporation date & country of CIOI

e) place of business in India.

Note 6

a, b & c above is not required / shall not apply in the case of prospectus issued more than 2yrs after the date at which the co. is entitled to commence business.

iii) No waiver of compliance in prospectus

Any condition in prospectus requiring any applicant to waive compliance of any requirement under Sec 387 (i) shall be void.

iii) Prospectus should be accompanied by Application form

iv) Sec 384(4) is same as sub sec 2 of Sec 26

Sec 388 provisions as to expert's consent & Allotment

1. Obtain experts consent who is not & has not been engaged or interested in formation / promotion / management of co.
2. Obtain written consent of expert + expert should not have withdrawn his consent.
3. File experts consent with Roc along with prospectus
4. Mention compliance of 1, 2 & 3 above in the prospectus

Sec 389 Registration of Prospectus

CIOI shall file the prospectus with Roc, New Delhi

~~A co. Incorporated~~

A CIOI shall not issue, circulate or distribute in India any prospectus offering for subscription of its securities unless the following conditions are satisfied:

- The prospectus is approved by BOD.
- The prospectus is certified by chair person & 2 other directors.
- It has been delivered to Registrar for registration
- The prospectus states on the face of it that the copy has been delivered to Roc.

• The prospectus contains the prescribed attachments as given below :

- a) Experts consent
- b) MD's appointment contract
- c) Other material contract
- d) Underwriting agreement
- e) Power of attorney.

Sec 391 Application of Sections 34 to 36 & Chapter XX

The penal provisions for mis-statement in prospectus shall also apply to prospectus / IDR -

a) Sec 34 →

Criminal liability for mis-statement in prospectus (Sec 447)

b) Sec 35 →

Civil liability for mis-statement in prospectus (only compensation)

c) Sec 36 →

Punishment for fraudulently inducing investors (Sec 447)

The provisions of Chapter XX (winding up) shall apply for closure of a place of business of a foreign company in India as if it was an Indian Co, in case such foreign Co. fails to repay / redeem the money raised through public offer of securities.

Exemptions under this chapter

* IFSC

Special Economic Zone is a designated area in India which promotes exports & inflow of dollars, employment.

IFSC - International Financial Service Centre, It is an area inside SEZ.

eg. GIFT City - Ahmedabad = Gujarat International Finance Centre city (GIFT)

IFSC Co. is a Co. located in IFSC centres in SEZ.

Their banks, FI providing International Financial Services like -

- Conversion of dollar to Rupees, Rupees to dollar etc
- export - import credit.
- Foreign Currency loan
- Leasing of equipments, etc.

Sec 393A Exemption under this chapter

Issue of Securities by CIOI in IFSC center is exempted from sec 387 - 392.

place of business - Electronic Mode

- a) B2B, B2C
- b) IDR issue
- c) Supply chain
- d) tele-marketing
- e) data communication like cloud.

Explanation to Sec 2(42)

offering of securities by CIOI in IFSC centre is not considered as business by electronic mode.

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Chapter 2 - Incorporation of Company and Matters incidental thereto.

(Related)

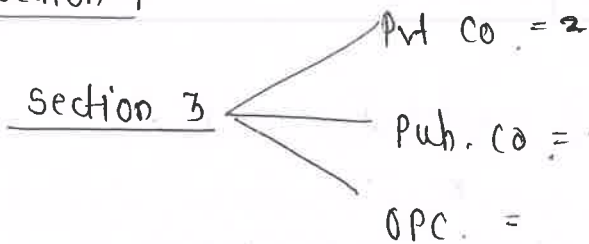
Incorporation
↓
Registration/
formation of company.

and

Matters incidental
there to.

- sec 3 → sec 10A
- sec 4 → sec 13
- sec 5 → sec 14
- sec 6 → sec 16.

Section 7



RPC
CS LLB LLM Arjun Chhabra - 9552 52 143 8

overriding
effect
of Act.

Incorporate

Section 6 → 20 clear day → void for public co.

MOA → 6 clauses

- ① Name clause.
- ② Registered office clause.
- ③ object clause
- ④ Liability clause.
- ⑤ capital clause
- ⑥ Association / subscription clause.

Section 13 → Alteration of MOA

Section 14 → Alteration of AOA

Section 16 - Rectification of name.

Chapter 2 Incorporation of Company and matters

incidental thereto. [Sec 3 - Sec 22]

[Read with The Companies (Incorporation) Rules, 2014]

- Background/purpose of this chapter -

In this chapter, we will learn the procedure for incorporation of company u/s 7 of the Act. To incorporate a company, we must aware of the related matters like -

a) statutory minimum no. of members required to incorporate a company [sec 3]

b) The name of the company shall not be identical or too nearly resemble with existing company. [sec 4]

c) Alteration of name, registered office, object etc. [sec 12, 13, 14]

d) Rectification of name of company in case the company is registered in the name of existing company. [sec 16]

e) Overriding effect of this Act. [sec 6]

f) Effect of registration of co. [sec 5] CS LLB LLM Arjun Chhabra - 9552 52 143 8

g) Declaration for commencement of business of company. [sec 10A]

h) Registered office of the company. [sec 12]

i) Service of document. [sec 20]

j) Authentication / signing of contract on behalf of company [sec 21]

k) Execution of Bills of exchange, promissory note, Hundi etc on behalf of company.

Provisions relating to incorporation of company is given u/s 7 of the Act. Apart from Sec 7, remaining provisions talk about the matters relating to the incorporation of company.

Section 3 - Formation of Company.

SS1

Minimum no. of members to incorporate a company

+

① Proviso - Appointment of nominee by members of OPC at the time of incorporation.

+

Prior written consent of nominee.

② Proviso - withdrawal of consent by nominee.

③ Proviso - change of nominee by member of OPC.

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④ Proviso - Intimation of change of nominee by member to OPC, then OPC to ROC.

⑤ Proviso - Effect of change of nominee in MOA.

SS2

Types of liability of company.

* forms required under this section & rules -

① INC 32 ['Spice'] -

for incorporation of OPC

+

Name of nominee

+

Prior written consent of nominee.

② INC 4 -

Intimation of change of nominee to ROC

+

Prior written consent.

③ INC - 3

~~Prior written consent of nominee.~~

Special Note - Now, In form no. INC 4 itself prior written consent of nominee is given.

Section 3 (LCC)

OPC - Memorandum

Name of member

+

INC 32

At the time of incorporation

Name of Nominee

+

Prior written consent.

Who in the event of death / incapacity of members

Nominee will become member

Within 15 days of becoming member, nominate another person as nominee.

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Prior consent in written

Notice

OPC

INC-4

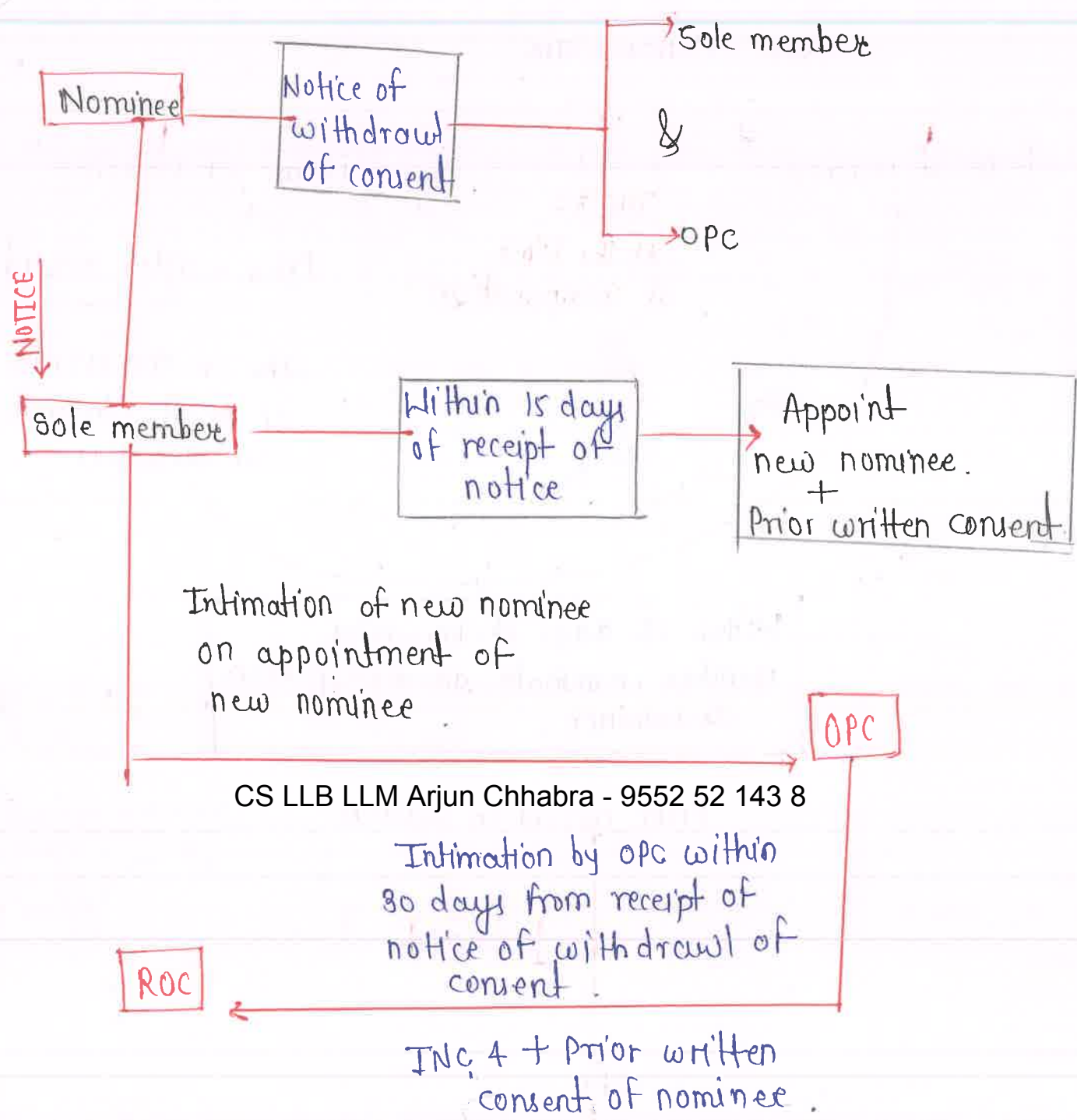
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Prior written consent.

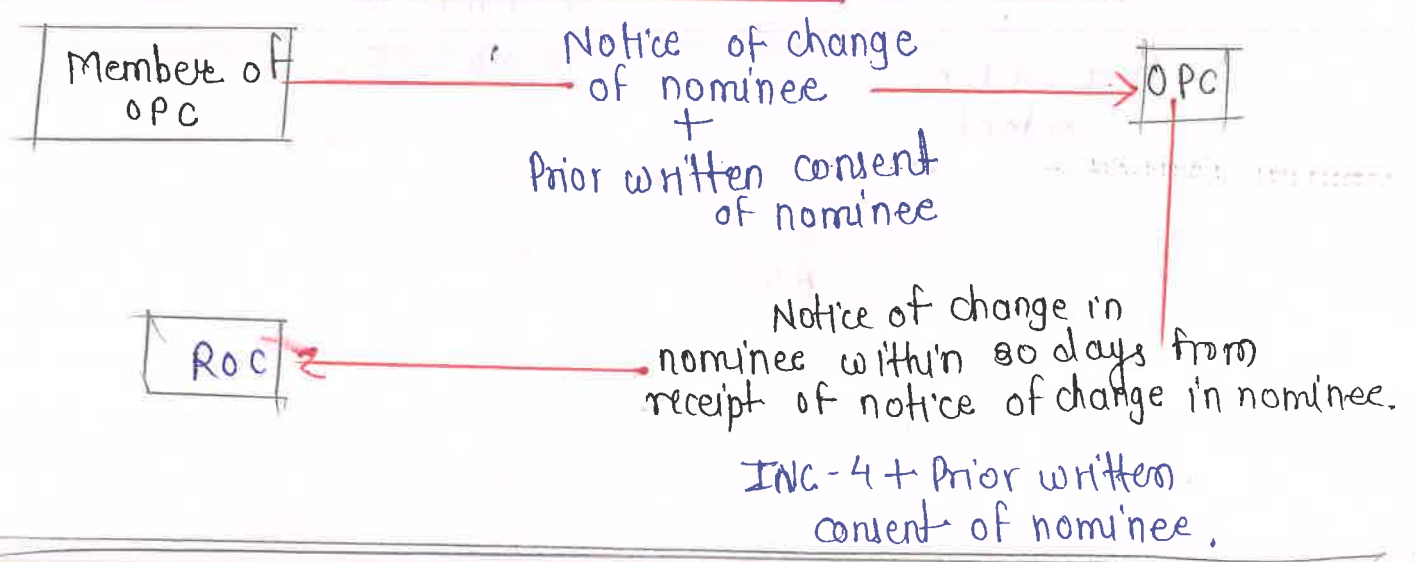
Within 30 days of change in membership.

ROC

Withdrawal of consent by nominee -> Proviso 2



* Change of nominee by member of OPC - Proviso 3

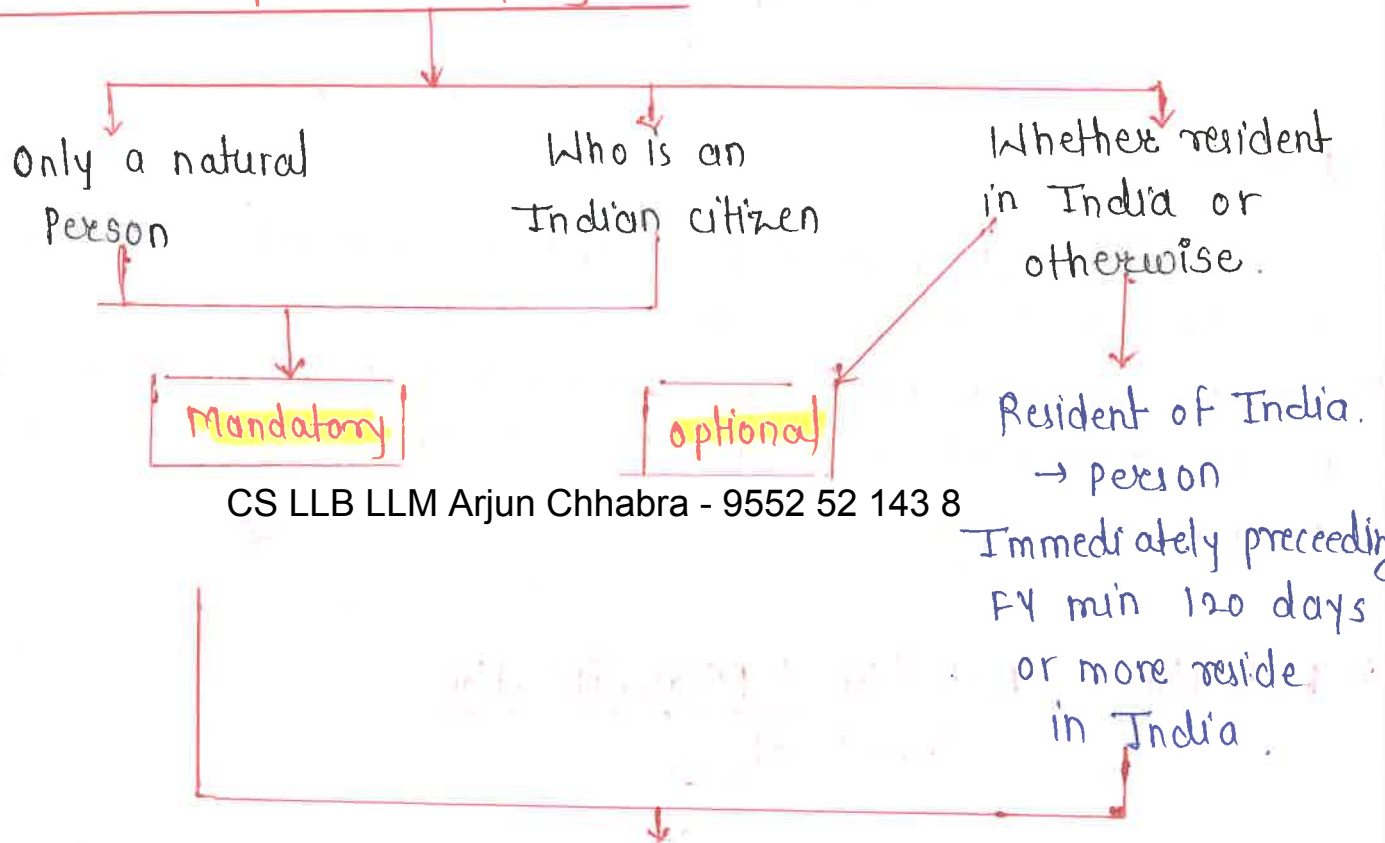


- Proviso 5 Any change Effect of change of nominee in MOA.

Any change in the name of the person [change of nominee] shall not be deemed to be an alteration of the memorandum

In simple words, Although there is actual change in Memorandum but it shall be assumed that there is no change in MOA to skip the procedural compliance.

* Rule 3(1) - One person Company

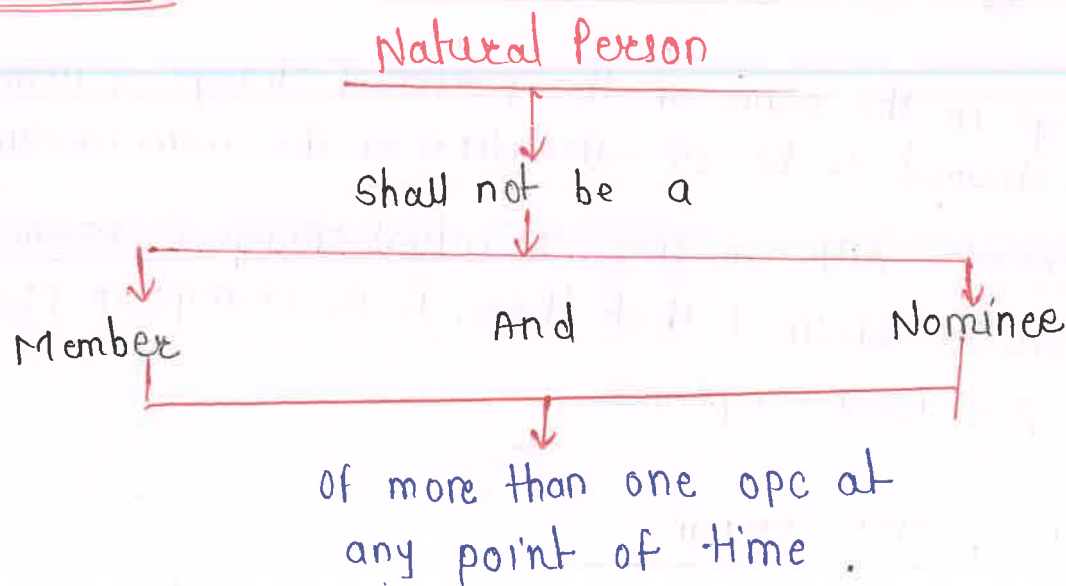


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Member - shall be eligible to incorporate OPC ;

Nominee - shall be nominee for the sole member of OPC.

Rule 3(2)



Rule 3(3)

Where a natural person, being a member of OPC in accordance with this rules becomes a member in another such company by virtue of his being a nominee in other OPC, such person shall meet the eligibility criteria specified in sub rule 2 within 180 days.

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* Restriction

Restriction / Disqualification

w.r.t OPC

Rule 3(4)

Minor can not become member and nominee of OPC, or can not hold share with beneficial interest.

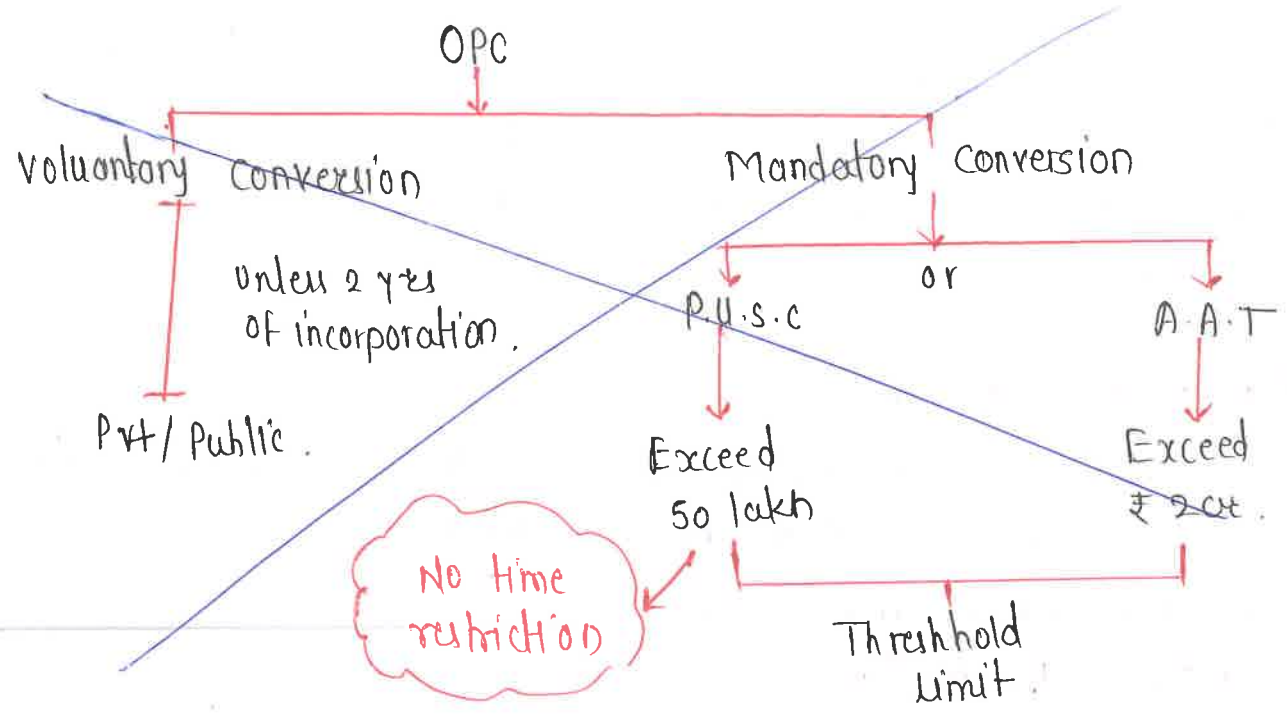
Rule 3(5)

OPC can not be incorporated or converted into a company u/s of the Act.

Rule 3(6)

Can not carry on non banking financial investment activities including investment in securities of any body corporate.

Rule 3 (7)

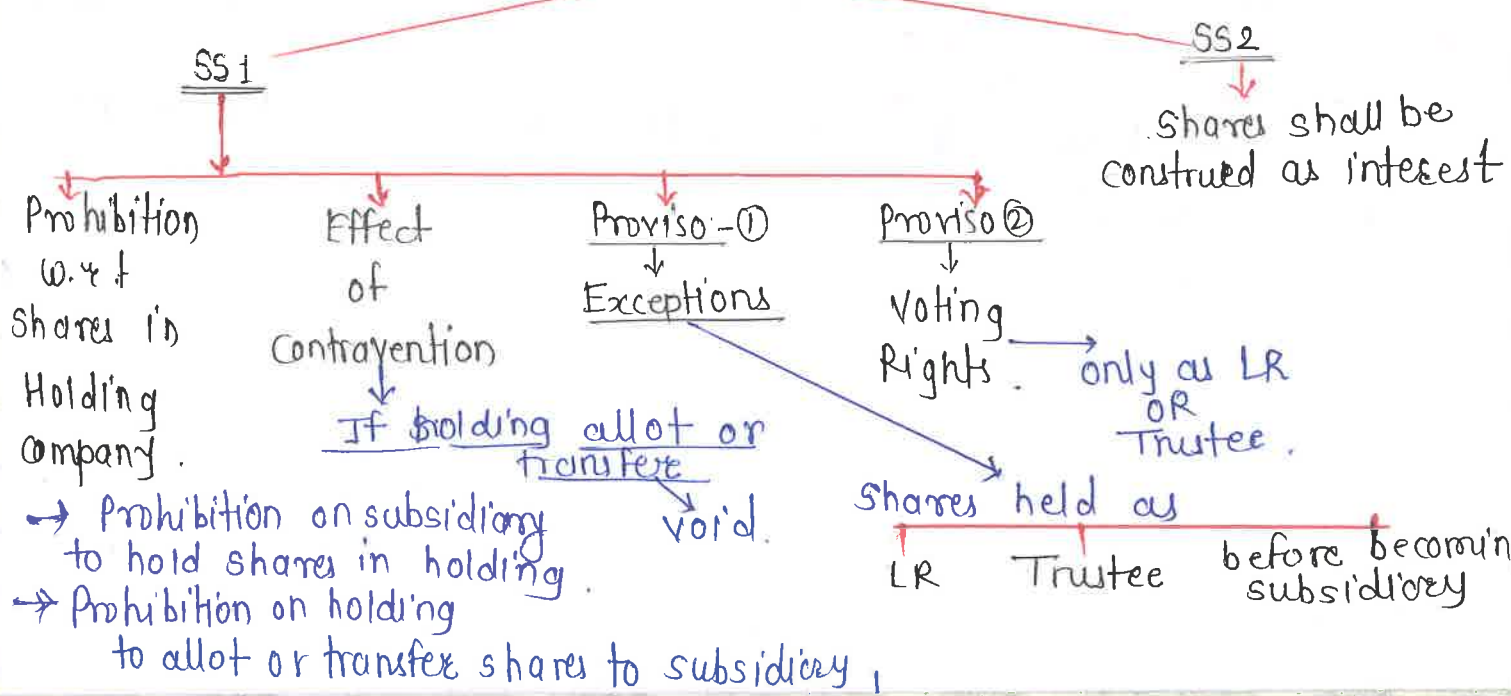


* Effect of omission of sub rule 7 -

It means, now there is no time restriction of 2 years for voluntary conversion of OPC into any other kind of OPC. Also, even if the paid up share capital exceeds ₹ 2 cr. OPC is not required to convert itself mandatorily into any kind of Company.

* Sec 19 - Subsidiary Company not to hold shares in its Holding company

(S.10)



Prohibition w.r.t in shares in Holding Company -

a) A company shall not (either by itself or through its nominee) hold any shares in its holding company.

b) A holding company shall not allot or transfer its shares to any of its subsidiary companies.

Effects of Contravention -

Any allotment or transfer of its shares by a holding company to any of its subsidiary company shall be void.

Exception - Proviso ①

① Shares held as legal representative

Where the subsidiary co. holds such shares as the **LR** of **deceased member** of the holding company

② shares held as trustee CS LLB LLM Arjun Chhabra - 9552 52 143 8

Where the subsidiary company holds such shares as a trustee.

③ shares held before a company become subsidiary -

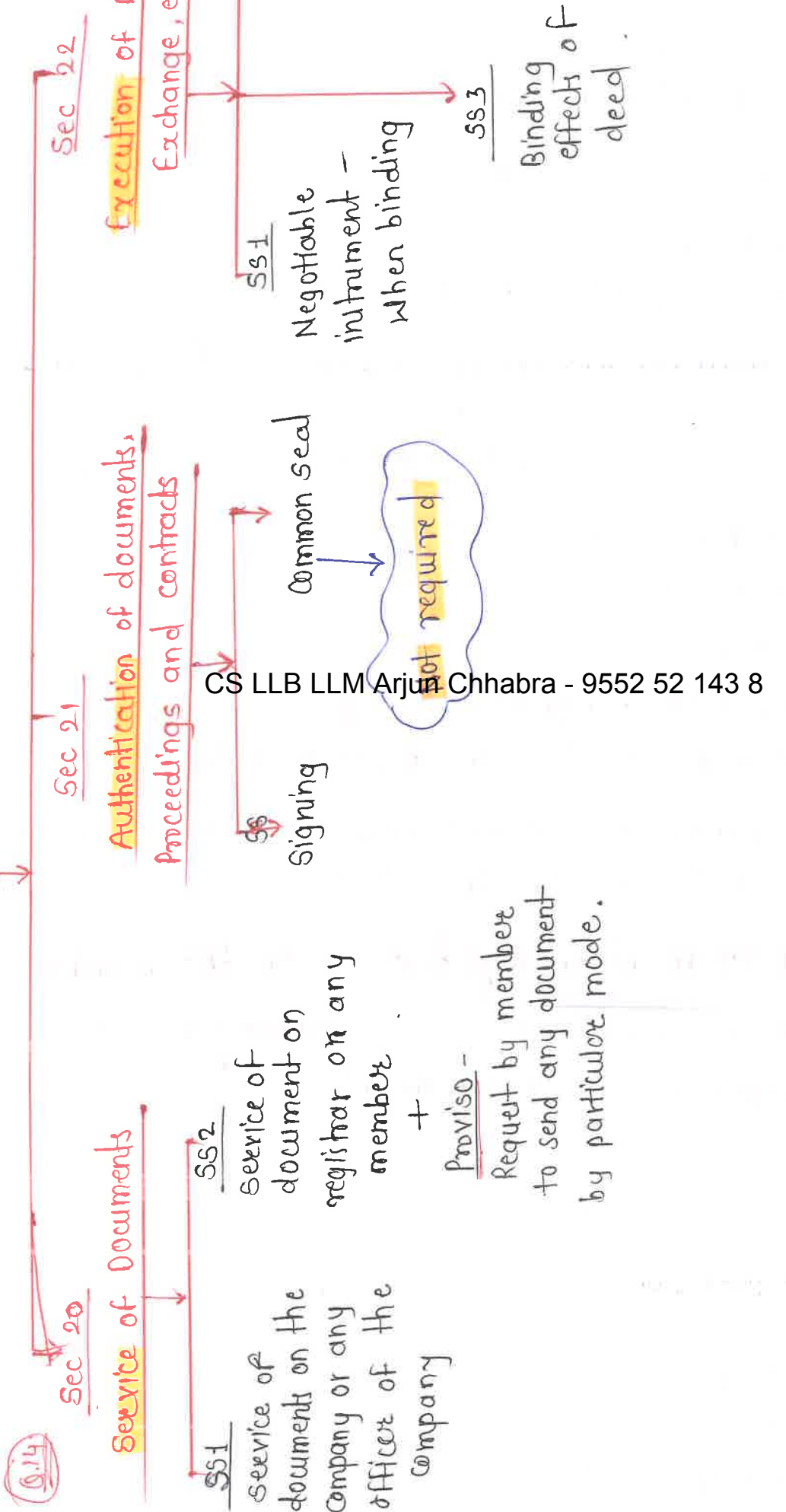
Where the subsidiary co. is a shareholder even before it became subsidiary co. of the holding co.

Proviso ② (Voting Rights)

out of above three cases, the subsidiary shall have a right to vote at a meeting of the holding company only in case (a) & case (b).

Section 20, 21 and 22

Q.16



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Sec 20(1) - Service of Document on the Company or any other officer of Company.

a] Sec 20(1) apply when any document is to be served on -
The Company ; or
any officer of the company .

b] The document shall be addressed to
i] The Company ; or
ii] Any officer of the company .

c] The document shall be sent at the registered office of the company .

d] The document shall be send by, mode -

i] Registered post ; or

ii] speed post ; or

iii] courier ; or

iv] Leaving CS LLB LL.M Arjun Chhabra - 9552.52.143 8
at the registered office ; or

v] such electronic or other mode , as may be prescribed .

e] The records of beneficial ownership may be sent by the depository to the company by electronic or other mode.

352 Service of document on registrar or on the members

a) Sec 20(2) applies where any document is to be served on the registrar or on any member.

b] The document shall be sent by

① Registered post ; or

② speed post ; or

③ courier ; or

④ Post ; or

⑤ Delivery at the address of the member, or delivering at office of registrar.

* Saving clause -

Where any provision of the act or the rules requires that a document shall be served on the registrar by electronic mode only, then, such document shall be served on the registrar by electronic mode only.

* Proviso -

A member may request the company to deliver to him any document by a particular mode, for this purpose, he shall have to pay such fees as may be determined by the members in the AGM.

* Provisions contained in Rule 35 of the companies (Incorporation) rules, 2014 -

a) Where a notice of meeting is sent by post, it shall be deemed to have been served at the expiration of 48 hrs after the letter containing such notice is posted.

b) Where any other document is sent by post, it shall be deemed to have been served at the time at which the letter containing such document would be delivered in the ordinary course of post.

Ex - IF, notice of document is sent by post on 1st April 2023, and as per custom of the market notice will be delivered on 9th - 10th April. The notice shall be deemed to have been served on 10th April 2023.

Answer of Q.14 -

In the present case, vijay being a member of company requested the company in writing that the notice of meeting must be sent to him by registered post at his residential address at kanpur and also deposited sufficient money for the same. However company sent notice to him by ordinary mail.

In the light of the above provision and the facts of the instant case contention of vijay is absolutely correct because he made a valid request as per sec 20(2) which is in writing along with the sufficient amount.

on the other hand, the answer will be the same because company is obliged to send the notice by registered post irrespective of the fact whether vijay remains in london or in konpure during the notice of the meeting.

Section 21

* Signing -

Except as otherwise provided in this act, -

- a) a document or proceeding requiring authentication by a company; or
 - b) Contracts made by or on behalf of company,
- may be signed by =

- ① Any KMP [key Managerial personnel] [sec 2(51)] ; or
- ② Any officer or employee of company duly authorized by board in this behalf.

Sec 22

① A negotiable instrument CS LLB LLM Arjun Chhabra 9552 52 143 8

A negotiable instrument have been deemed to have been accepted, drawn or endorsed on behalf of company if it is made, accepted, drawn or endorsed on behalf of the company by any person acting under its authority, express or implied.

② Authorisation to execute deed -

A company may authorize any person as its attorney to execute deeds on its behalf in any place either in india or outside india.

Such authorisation may be made -

① By writing under the common seal of the company, if company has common seal.

② By director and CS, if the company doesn't have common seal, but it has appointed a CS.

③ By two directors, if does not have a common seal and it has not appointed a CS.

③ Binding Effects of deed -

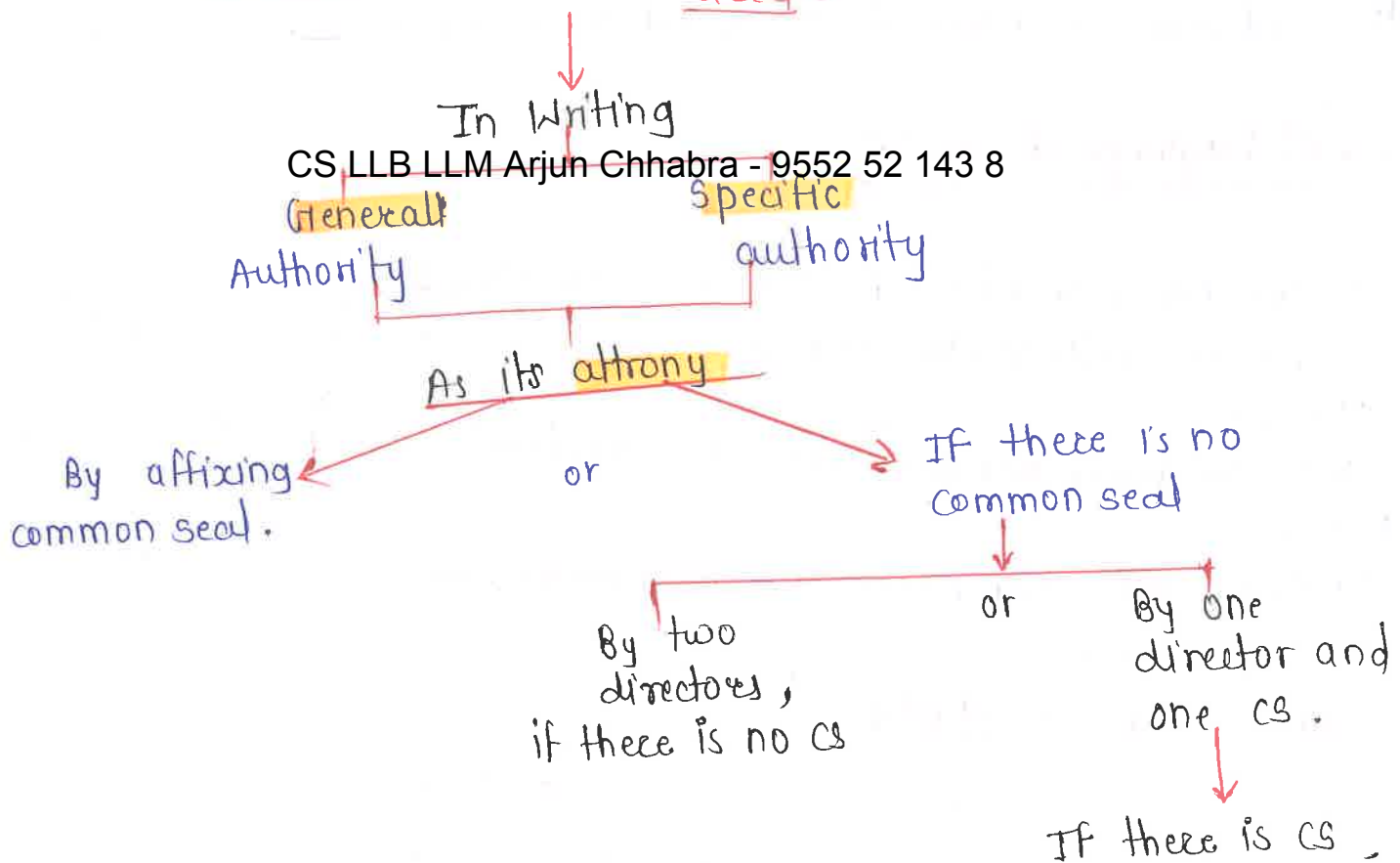
A deed signed by such an attorney on behalf of company and under its seal shall be binding on the company.

Answer of Q.16

In the present case parag was not legally entitled to enter into a partnership deed on behalf of the company, he was neither authorised by common seal of the company nor authorised by the directors or CS of the company.

Therefore as per sec 22(3) Company is not bound by deed signed by Mr. parag and company can deny its liability as partner.

Sec 22 (2) - Authorisation to execute deed.



Sec 3A - Members severally liable in certain cases

Case study - UMC Ltd. has only 7 shareholders having fully paid up shares. On 30th April 2017, all shares of X [shareholder of company] are sold to Y. (another shareholder of the co.) in an auction by the order of court.

Z (a shareholder of co) was in USA for business trip from January and not aware of the developments.

The co. continues to carry on its business. In Dec 2017, the company borrowed a sum of ₹ 5 lacs from the Unique bank. Later, the company wound up and the assets of the company were not sufficient for payment of its liability.

The bank filed a suit against Y and Z for recovery of the said loan from them. Decide the liabilities of Y and Z under the provisions of Companies Act, 2013. Would your answer be the same, if the said loan was taken in the month of March 2017.

→ Lucid language of Sec 3A

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If -

- The no. of members falls below statutory minimum;
- The co. continues to carry on business for more than 6 months.

then, -

- The remaining members who are cognisant (aware) of such fact.
- Shall be personally liable [severally liable] for the debts contracted after 6 months

→ Answer of case study -

Y is personally liable for loan taken from unique bank, because no. of members has reduced below 7 and the company continues to carry on business for more than 6 months i.e. after 31st Oct 2017 and also Y is cognisant of the fact of reduction in no. of members.

Since the loan from unique bank was taken by company after 6 months of the date the no. of members was reduced below 7 i.e 31st Oct 2017.

Z is not personally liable for loan taken from unique bank as he was not cognisant of the fact of reduction in members, as he was not in India.

Limitation on liability of Y - Y shall be liable only for such of the debts as have been incurred by UMC limited after a period of 6 months. i.e After 31st Oct 2017.

Y shall not be personally liable if the loan was obtained by the company, March 2017 because the personal liability w/s 3A arises only for such of the debts as are incurred by the company after period of 6 months from the date of reduction of members below statutory minimum, i.e for such of the debts as have been incurred by UMC limited after 31st Oct 2017.

Sec 4 - Memorandum of Association -

CS LLB LLM Arjun Chhabra - 9552 52 143 8

Sec 4 Memorandum of Association

SS1

Particulars of Memorandum.

- a] Name clause.
- b] Registered office clause
- c] object clause.
- d] Liability clause.
- e] Limited by share capital
- f] Nomination clause.

SS2

Provisions relating to name of the company

SS3

Approval of CG in case use of certain names.

SS4

Application to ROC for reservation of new name as well as reservation of name of existing company.

SS5

Reservation of name by ROC.

SS6

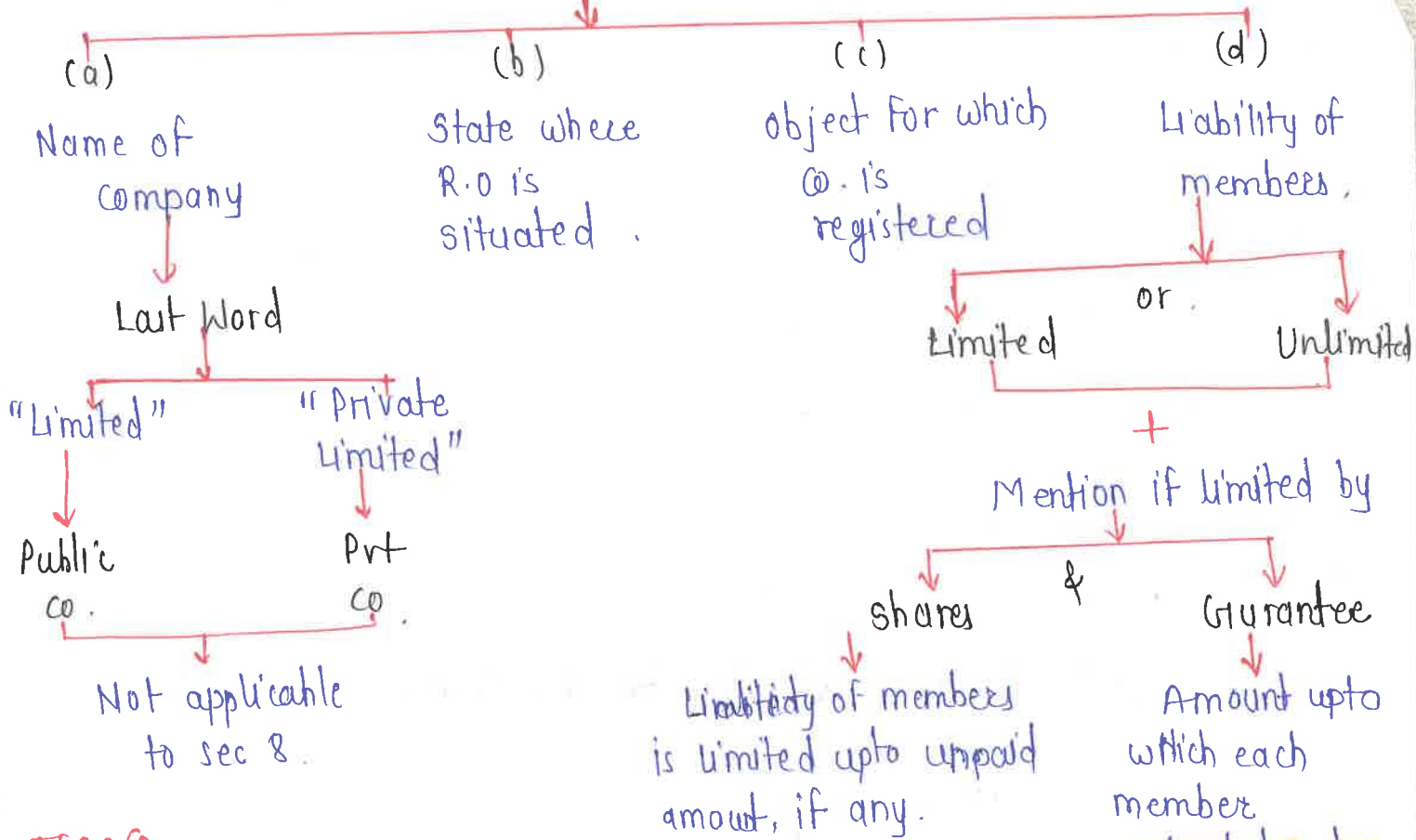
Forms of MDA

Table A - E

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- 20 days for new company
- 60 days for existing company
+ Provision for reserving name by giving false information.

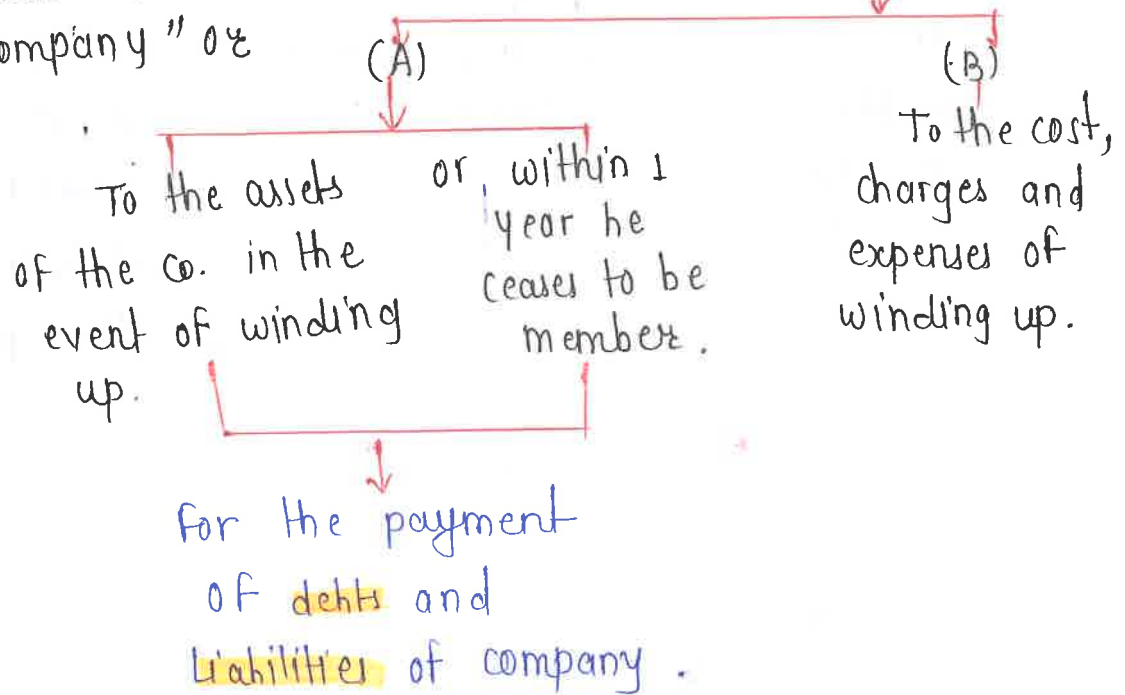
#SS1 Particulars of MOA



IFSC Co.

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IFSC Co. shall have the suffix, "International financial service company" or "IFSC".



In case of

[E]

Company having share capital, state-

- i) Amount of registered share capital.
- ii) Division of share capital into shares of fixed amount; &
- iii) No. of shares which subs. to MOA agreed to subscribe, which shall not be less than one share.

[P]

one person company, state-

- Name of the person
- Who in the event of death of subscriber
- shall become members of the company.

SS-2 Provision relating to the Name.

Name shall not be

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(b)

(a) Identical with or resemble too nearly

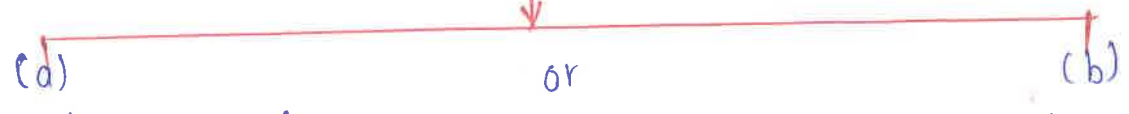
To the existing registered Company.

such that its use by company-

- (i) will constitute an offence; or
- (ii) is undesirable in the opinion of C.O

SS-(3) Additional provisions relating to the name of the company

A Company shall not be registered with a name which contains



Any words or expression
- Which is likely to give the impression.

- that the company is in any way connected with, or

- having patronage of,

- i) CG, → (Privilege)
- ii) SG, or
- iii) Local authority
- iv) corporation or body constituted by CG or any S.G.

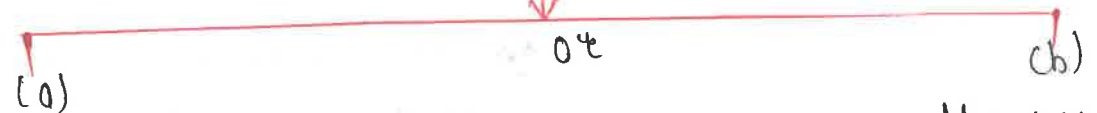
Such words or expression as may be prescribed

Rule 8B of Companies (Incorporation) Rules, 2014.

under previous approval of CG is obtained

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SS 4 Application to ROC for reservation of



Name of the proposed company

the name to which the co. provides to change its name

SS-5 Resurrection of name by ROC on receipt of Application

(i)

for 20 days from date of Approval

for 60 days from the date of Approval

↓
In case of name change

(ii)

Where name got reserved by ~~furnished~~ ~~for~~ furnishing wrong or incorrect info, then -

↓
IF the company has

Not been incorporated

been incorporated

↓
→ reserved name shall be cancelled, and

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↓
→ ROC may, after giving an opportunity being heard

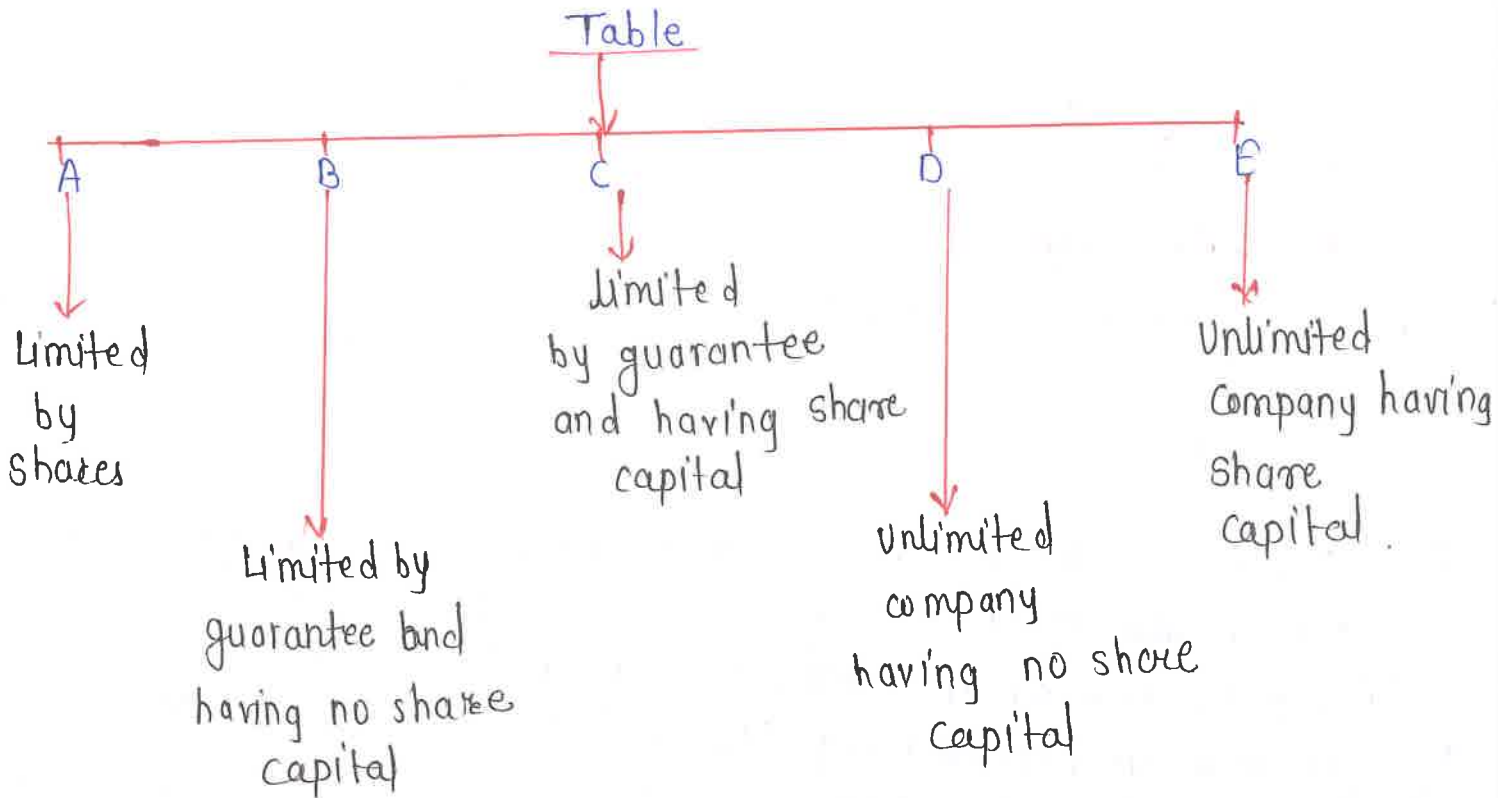
→ Person making application is liable to a penalty of may ₹ 1 lakh.

(i) either direct the co to change its name within a period of 3 months, after passing ordinary Resolution;

(ii) take action for striking off the name of co.

(iii) make petition for winding up of the company

SS 6 - Forms of MOA



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Sec 6 Act to override memorandum, Articles etc.

A
Act to have overriding effect

B
Inconsistent provision to be void.

* Act to have overriding effect

The provisions of the co. ^{Act 2013} shall have effect not with standing anything to the contrary content in -

- a) Memorandum of Company ; or
- b) Articles of company ; or
- c) Any agreement executed by a company ; or
- d) Any resolution passed by co. in GM ; or

any resolution passed by Co. in board meeting

* Inconsistent provisions to be void -

If any provisions contained in the point (a) - (e) above is inconsistent with the provision contained in the Act, then such provision shall be void to the extent to such inconsistency

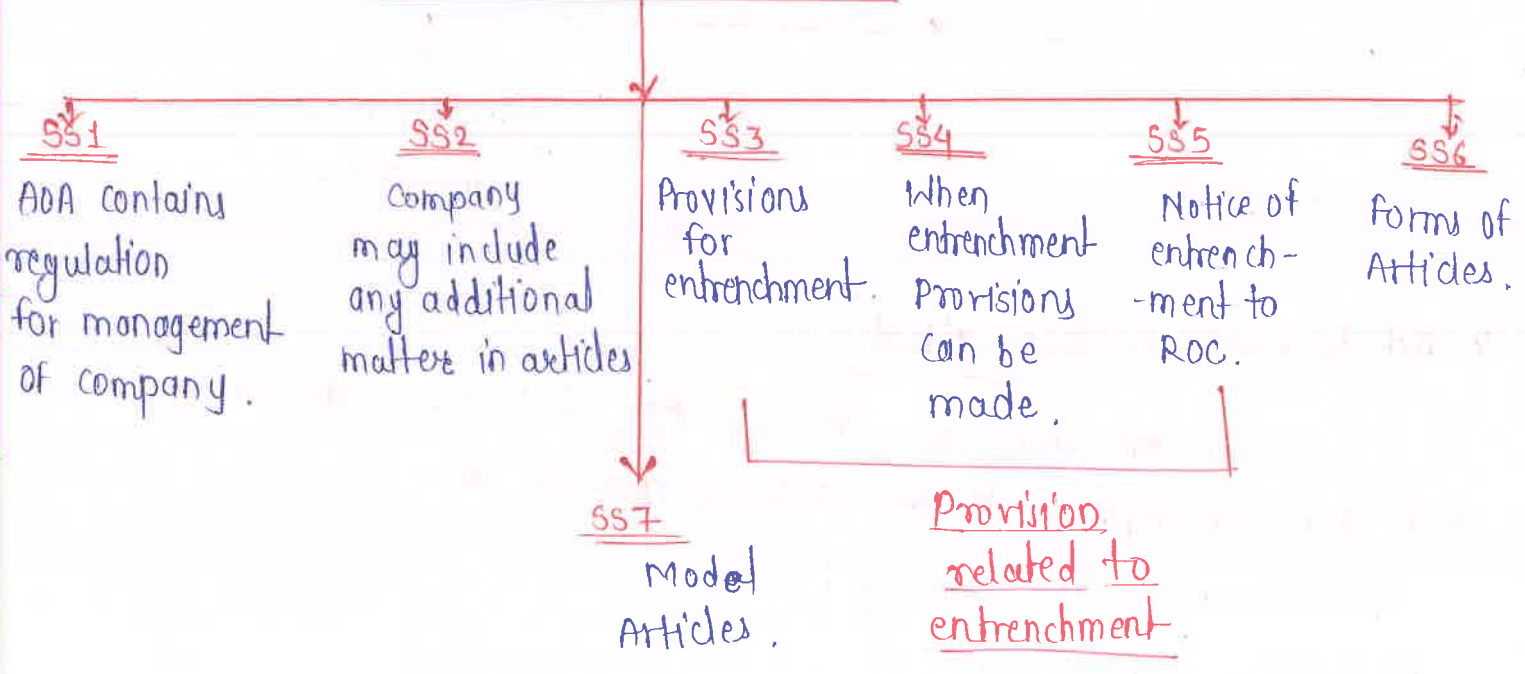
In simple words, The provision of this chapter have overriding effect but keep in mind that this sec start with "save as otherwise". It means that if any other section of the says the article is superior then we will treat it accordingly.

Ex - Sec 47 of the Act deals with voting powers of members and a notification dated 5th June 2015 says that sec 47 is applicable to a prt. company if articles of company so provide.

Now IF AoA of prt. company says that sec 47 is not applicable to it then, in this case AoA will become superior and sec 47 of the will not be applicable

on the other hand if the public co. does same as above, Provisions contained in AoA shall be void as per Sec (6) of the Act.

Section 5 - Articles



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SS5 - Notice of Entrenchment to ROC.

SS3

Provision for Entrenchment

The articles may contain provision for entrenchment to the effect that specified provisions of the articles may be altered only if -

- Ⓐ Conditions or procedures
 - Ⓑ That are more restrictive
 - Ⓒ Then those applicable in case of SR.
- are met or complied with.

SS4

When Entrenchment provisions can be made

Provisions for entrenchment shall be made only -

Ⓐ

Either on formation of a company ; or

By an amendment in the AOA agreed to -

- i) By all members of the company is case of pvt. company.
- ii) By SR in case of public company.

Ⓑ

SS5

Notice to ROC

The company shall give notice, in -

Ⓐ

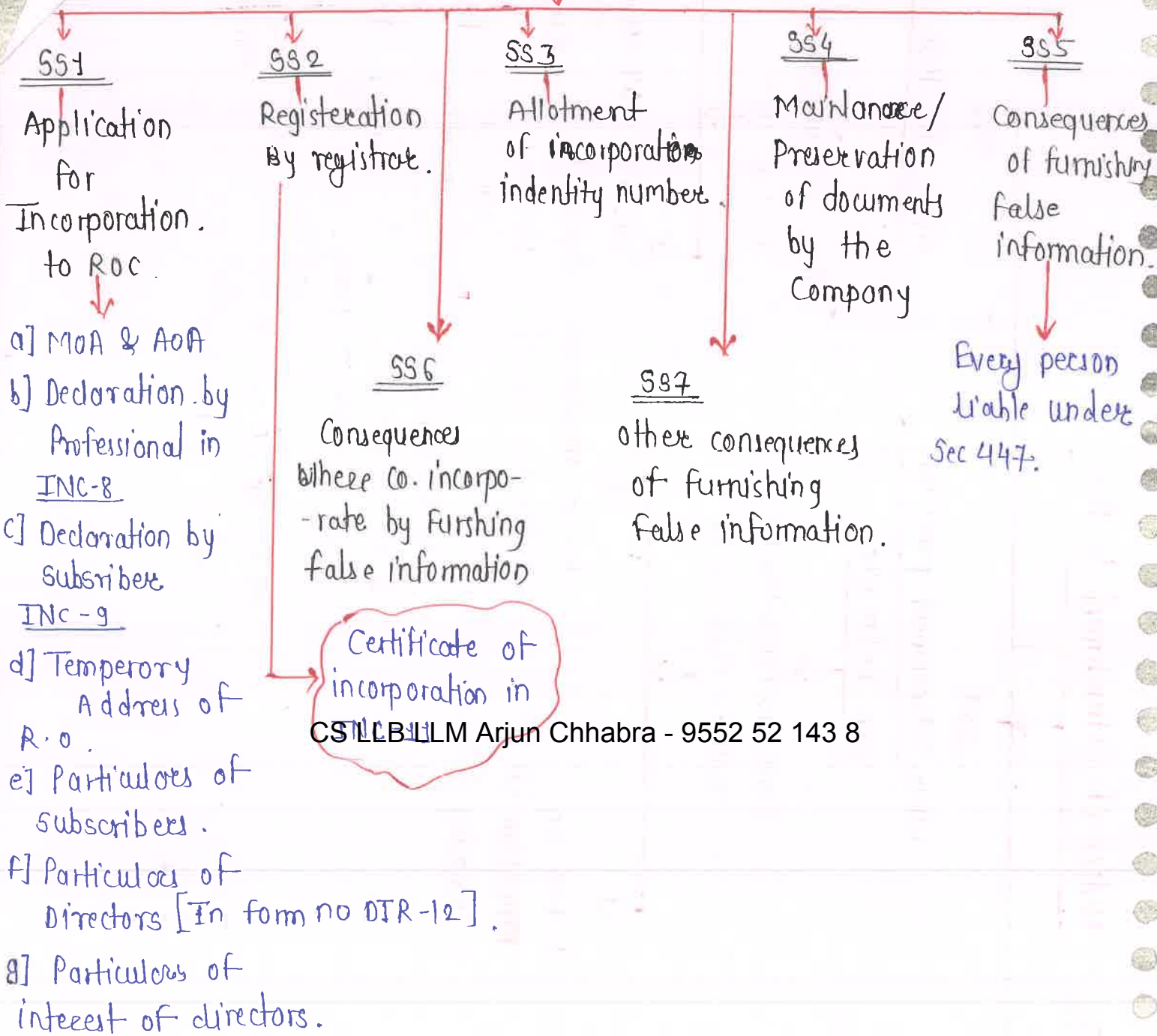
TNC 32 (Spice+)

At the time of incorporation of company.

Ⓑ

or Form no MGT-40, Filed within 80 days from the date of Entrenchment of AOA in case of existing co.

Section 7 - Incorporation of Company



Certificate of incorporation in

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[Application shall be in form no INC-32 (spice+)]

+ Approval from sectoral regulators. and declaration of the same.

Before

vs

After

- ~~① INC-1 - Name reservation~~
- ~~② INC-2 - OPC name reservation~~
- ~~③ INC-7 - Incorporation form~~
- ④ DIR-3 - DIN
[Director identification no]

जन्म से हराया

INC 1 / INC

RUN service

INC-32 + INC-35

Spice+

AGILE

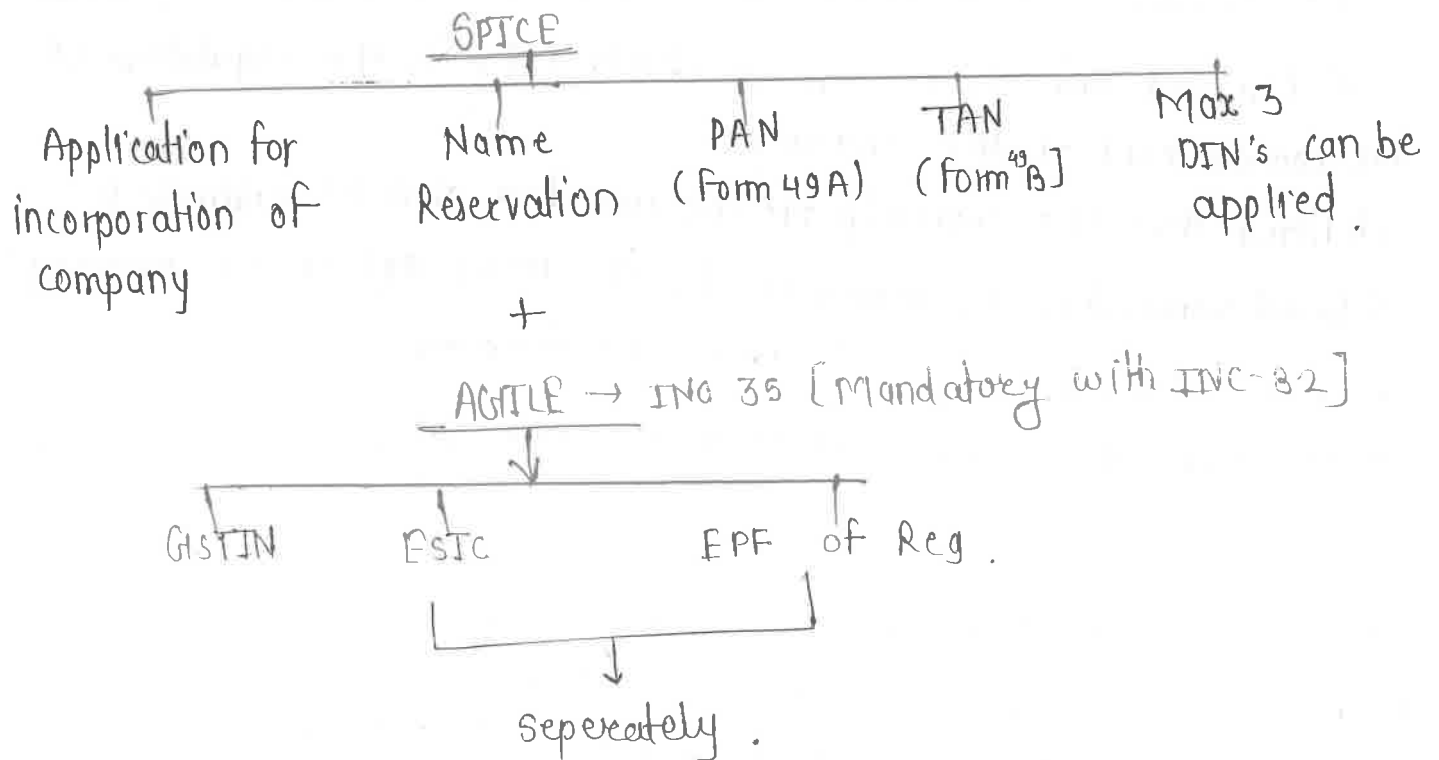
Simplified proforma for incorporation of company electronically.

upto 3 DIN apply

Reserve Unique Name

→ जन्म से उसका Existing नाम करना चाहती है तो वो ये service form use करेगी

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AGILE - Application for Goods or service Tax Identification

555 - Consequences of furnishing false information

Every person who furnishes any false or incorrect information, suppresses any material information shall be liable u/s 447.

556 - Consequences where company incorporated by furnishing false information

If it is proved that a company was incorporated by furnishing false or incorrect information, or by suppressing any material fact or by any fraudulent activity then the following shall be held liable u/s 447.

- (a) Every promoter;
- (b) Every person named in the article as first director; &
- (c) Every person who made a declaration that the requirements of the act and rules were complied with.

556 Other consequences of furnishing false information / order of tribunal where company got incorporated by furnishing false information

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The tribunal may, on being satisfied that the situation so warrants -

- (a) Pass such orders, as it may think fit, for the regulation of the management of the company; or
- (b) Direct that the liability of the members shall be unlimited;
- (c) Direct removal of the name of the Co. from registers of company; or
- (d) Pass an order for winding up of the company.
- (e) Pass such other order as it may deem fit.

Before passing any order -

- (a) The Co. shall be given a reasonable opportunity of being heard;
- (b) The tribunal shall take into consideration -
 - The transactions entered into by the company,
 - Including the obligation, if any contracted or payment of any liability.

* Summary of Incorporation of Co.

Step 1 - Decide which co. to form.

Step 2 - Application for reservation of name of proposed company, incorporation etc in form no. INC 32 (Spice+). Also known as single window clearance form.

New co. incorporation = 20 days for NR

existing co. name change = RUN service → 60 days NR.

Step 3 - Filing of forms/ Attachment of forms in INC 32.

① INC 33 EMA

② INC 34 EAOA

③ INC 35 - AGILE

④ INC 38 Declaration by CA, CS, advocate.

⑤ INC 9 - Declaration by subs. of MOA & first director.

⑥ DIR 12 - Particulars of directors.

⑦ No form - Particulars of subscribers

Step 4 - Certificate of Incorporation by Registrar
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INC-11

Step 5 - verification of registered office of co.

INC-22 - within 30 days from date of inc. of co.

Special NOTE - INC 22 is not required if the address of the registered office in INC 32 itself. i.e. permanent office.

* Additional requirements in certain cases.

OPC

- Consent of nominee shall also be attached INC-32

Sec 8

→ EMOA - INC 13

→ EAOA - INC 14

sectorial co.

Approval from Sectoral regulator shall also be attached.

Sec 12 - Registered office of company

Regional Director

§ 1

Mandatory to have registered office.

+ Communications to be sent at registered office.

§ 2

Verification of registered office. INC-22 within 80 days of incorporation

§ 8

Penalty for contravention of sec 12

Company & every officer in default - ₹ 1000/per day max - 1 lac

§ 9

Removal of name of company by ROC.

§ 3

① Name to be engraved in common seal, if any.

+ Name, address & to be printed on official publication

+ Name and address to be painted on the office of co. Additional requirements in case of OPC.

§ 4

Notice of change of registered office.

§ 5

change of registered office or city

+ change of registered office from jurisdiction of one ROC another ROC within the same state.

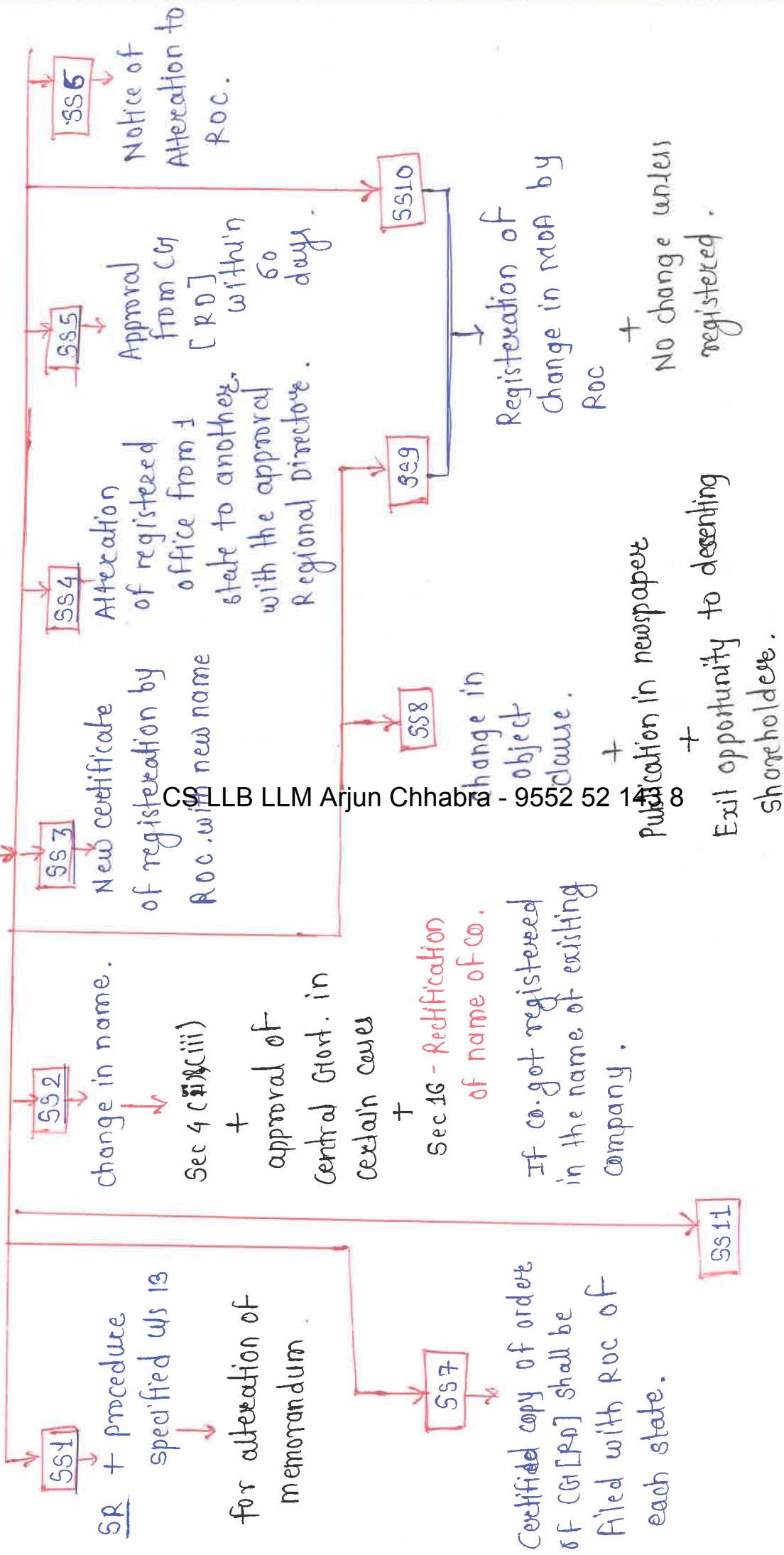
§ 6

Confirmation from RD shall be communicated within 30 days to company & company shall communicate the same to ROC within 60 days. & ROC shall give certificate within 30 days.

§ 7

Certificate in § 6 shall be conclusive evidence.

Sec 13 - Alteration of MOA



CS LLB LLM Arjun Chhabra - 9552 52 14 08

Sec 13 - Alteration of Memorandum

Alteration of Name clause



- ① Pass SR and follow Procedure as given in Sec 13 (1)
- ② Compliance with sec 4 (2) & (3)
- ③ Rectification of the name of the company by order of CO as per sec 16 if co. got registered in the name of existing company.
- ④ Approval of CO ^{Shareholders} ~~CS~~ ~~LLB~~ ~~LLM~~ Arjun Chhabra - 9552 52 143 8 change in name in certain cases.

Alteration of object clause:

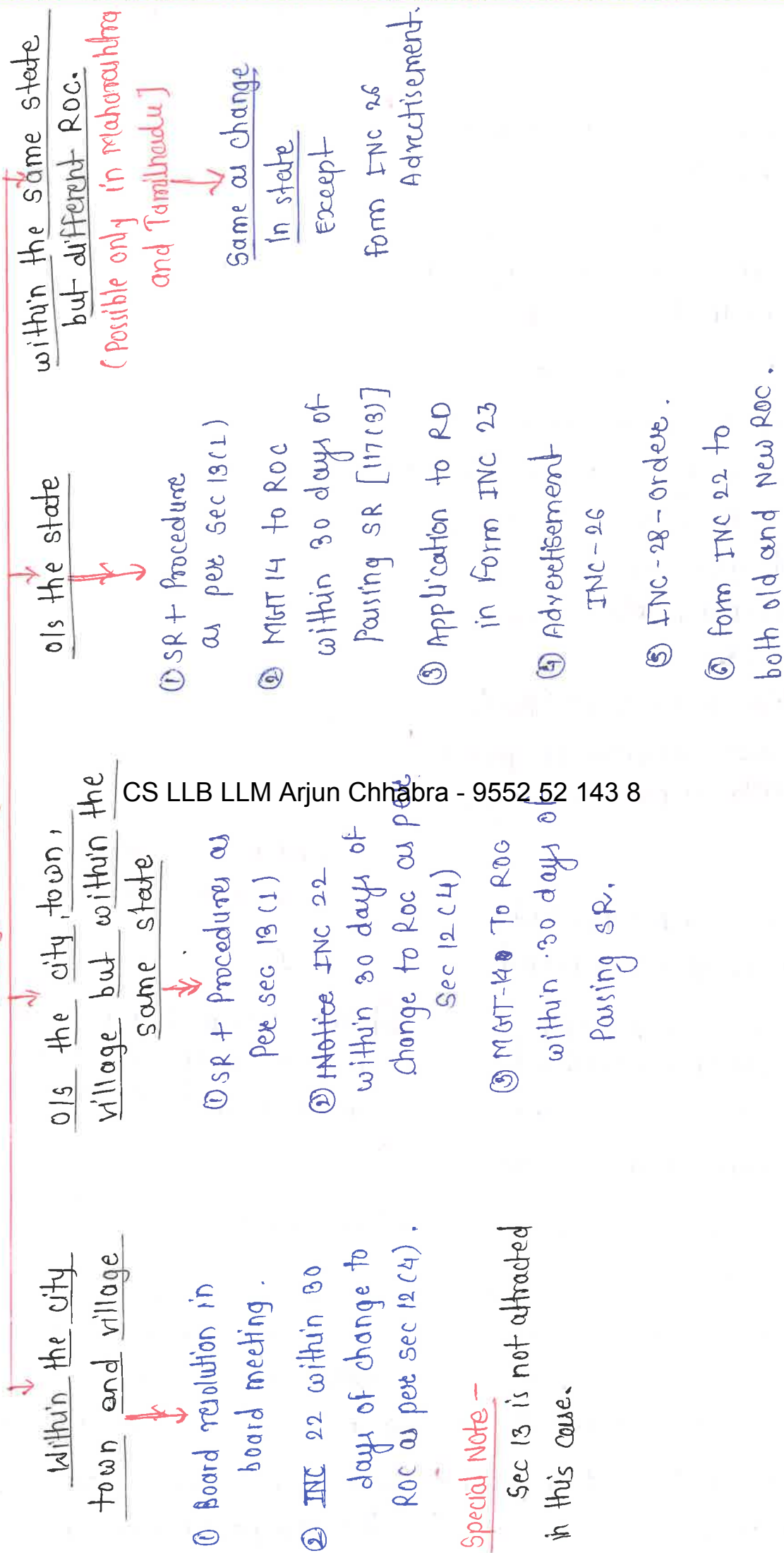


- ① Pass SR ~~as per sec~~ and follow Procedure as per Sec 13(1)
- ② Publication for change in object clause into newspaper. also place on website if any.
- ③ Above publication is required if company has raised money through prospectus and still has unutilised amount.
- ④ Exist opportunity to dissenting

Shareholders

Sec 13 Alteration of MoA.

change in Registered office.



13(2)

14(1)

(a) A company may change its name by passing SR.

(b) The change in name shall not have any effect unless the approval of Cg is obtained. (Proviso 1)

(c) The approval of Cg is not required if the only change in the name of the company is -

1] Deletion of the word 'Pvt', consequent upon conversion of a private company into a public company ; or

2] Addition of the word 'Pvt', consequent upon conversion of public company into a private company

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Example -

① ACT Ltd → ACT Pvt Ltd.
No Approval of Cg required.

② ACT Ltd → Acc Ltd
Approval of Cg required

③ ACT Pvt. Ltd → ACT Ltd
No Approval of Cg required

④ ACT Pvt Ltd → Acc Pvt Ltd.
Approval of Cg required.

(d) The change in name shall be subject the provision of sec 4 (The name shall not be undesirable)

(e) The company shall file with the registrar.

13(6)

Compliance conclusion →
13(1) + 13(2) + 13(6) + 13(3)

(g) The change in name shall become complete on effective from date of issue of fresh certificate of incorporation.
13(8)

(f) The registrar shall -
① Enter the new name of company in register of co ; &
② Issue a fresh certificate of incorporation to the co.

① A copy of special Resolution ; &
② A copy of order of Cg, approving the change of name;

Sec 14 - Alteration of Article

SS1 Alteration to be subject to the act and memorandum

Every alteration of articles shall be subject to the provision contained in the Act and the memorandum.

SS1 Resolution required -

SR is required for every alteration of articles, including alteration of Articles for the purpose of -

- a] Conversion of Pvt. Co into public Co ; &
- b] Conversion of public Co. into Pvt. Co.

(Proviso) ① - Conversion of Pvt. Co into public company,

a] A private company may get converted into a public company, by altering its articles. [By passing a SR] in such a manner that its articles no longer include the restriction and limitation required to be included in the articles of a Pvt. company as per sec 2 (68).

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b] The conversion from Pvt. Co. into a public company shall take effect from date of alteration of articles.

Proviso 2 - conversion of public Co. into Pvt. Co.

a] A public may get converted into a Pvt. Co., by -
① Altering its articles (By passing SR) so as to include there in the restrictions and limitation required to be included in articles of Pvt. Co as per sec 2 (68) ;
② obtaining the approval of Ct.

b] For obtaining the approval of Ct, the Co. shall make an application to Ct.

SS2 Filing of Alteration.

Where any alteration is made in the article i.e conversion is approved by Ct, or any other alteration, the Co. shall, within 15 days file with the registrar -

- ① A copy of order of Ct approving the alteration ; &
- ② A printed copy of altered articles.
- ③ in case of alteration of article other than conversion from public to private, a copy of altered articles. [It can be electronically]

Sec 14(3) Effect of Alteration.

Every alteration of articles which is registered by the registrar, shall be as valid as if it were originally contained in the articles

* Conclusion for conversion of public co. into Pvt. Co.

- ① As per sec 13(2) if the alteration in name is only the addition or deletion of the word "Pvt", then approval of Ct is not required.
- ② As per sec 14(1) if the company is altering the articles in a manner to convert itself from a public co. to a Pvt. company, then approval of Ct is required.
- ③ It means as per sec 13(2) read with sec 14(1) if converting itself from public co. to Pvt. Co., Ct approval is required.

Alteration of object clause of the company - { 8.8 P.N-31 }

- 13(1)
- ① A company may alter its object clause by passing SR.
 - ② If company has raised money from public by issue of prospectus and any part of such money remains unutilised with the company, then, the company shall not alter the object for which it raised the money through prospectus unless -
 - i] The company has published the prescribed details and justification for such alteration in two newspapers [one English & one vernacular language] circulating at the place where the registered office of the company is situated ;
 - ii] The prescribed details and justification for such change have been placed on the website of co. if any ;

⑧ The dissenting shareholders have been given an exit opportunity by promoters and shareholders having controls in accordance with regulation of SEBI

⑨ The company shall within 30 days file with registrar a copy of SR us 13 (6).

⑩ The registrar shall, within 30 days, register the alteration, and issue a certificate of registration. w per sec 13 (9).

⑪ The Alteration shall not be effective until it has been duly registered by the registrar. [sec 13 (10)]

Sec 16 - Rectification of name of company.

SS1

① Where name is identical or similar to name of company already registered.

SS2

filing requirements

CS LLB LLM Arjun Chhabra - 9552 52 143 8

SS3

Penalty.

Company

Fine - 1000/- day till default continues.

IND

Fine - 5000 may extend to 1 lakh rupees.

② Where name is identical or similar to name of a registered trademark.

* Sec 16 (1) (a) -

Where a company is registered [whether on its 1st registration or afterwards, on its registration by new name] by name, which in the opinion of COI, -

- Is identical with, or
- to nearly resembles, } The name of Co. previously registered,

then COI may direct the company to rectify its name.

When such direction is given the co. shall, within 3 months rectify its name by ordinary resolution.

SS 2 (b) (a.15 p.no)

(a) The proprietor of a registered trademark may make an application to CR that the name of a company is identical with or too nearly resembles, the registered trademark of which he is the proprietor.

(b) such an application may be made by the proprietor of the registered trademark within 3 years of -

(1) Registration of co. by such name; or

(2) Registration of the co. by such new name.

(c) On receipt of such an application, if CR is of the opinion that the name of co. is so identical with, or too nearly resembles the registered trademark, the proprietor of which is the applicant then CR may direct the co. to rectify its name.

(d) When such a direction is given, the co. shall, within 3 months rectify its name by passing an OR.

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Subsection 2 - Filing requirement

Within 15 days of passing an OR for rectification of name the co. shall file with the registrar:

(1) Notice of the order of rectification of name; and

(2) A copy of the order of CR.

The registrar shall make necessary changes in -

(1) The memorandum; and

(2) The certificate of incorporation.

Subsection 3 - penal provision

IF default is made under SS 1

(1) 40 - fine → 1000 p. day till default continues.

(2) OED - min - 5000/- max = 100000/-

Alteration of situation clause

Case I - change of RO from one state to another state

- (a) A company may change the place of its RO from one state to another state by passing SR.
- (b) Such change shall not have any effect unless the approval of CG (CRD) is obtained.
- (c) For obtaining the approval of CG, the co. shall make an application to CG in form no INC 23.
- (d) CG shall dispose of the application within 60 days.
- (e) Before passing any order, CG shall satisfy itself that -
 - (i) The creditors, debenture holders and other persons concerned with the co. have consented to such alteration; or
 - (ii) The co. has made sufficient provision for the discharge of all its debts and obligation; or
 - (iii) The co. has provided adequate security for the discharge of all its debts & obligation.
- (f) The co. shall within 30 days of file with the registrar of each state a copy of the order of CG in INC 28 approving the change.
- (g) The registrar shall register the order of CG.
- (h) The registrar of the state in which the RO is to be shifted shall issue a fresh certificate of Inc. indicating there in such alteration within 30 days.
- (i) The change shall not be affective until it has been duly registered by registrar.

Case II - change of Ro from one city to another city within same state but different Roc.

② A Co. shall not change its registered office from the jurisdiction of one registrar to the jurisdiction of another registrar within the same state, unless -

- ① The Co. so authorized by a SR passed in GM; and
- ② The Co. has obtained the confirmation of the regional director.

③ For obtaining the confirmation of RD, the Co. shall make an application to RD in form No INC 23.

④ The confirmation of change of registered office shall be communicated -

- Within 30 days from the date of receipt of application by RD to the company; and

- The Co. shall file the confirmation with the registrar within a period of 60 days of date of confirmation.

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* Alteration of capital clause -

The capital clause of memorandum may be altered by complying with the requirements of sec 61 which we will learn in chapter 4 i.e. share capital & debentures,

* Alteration of other clauses -

Any other clause of MOA may be altered by -

① passing SR; and

② complying with procedure specified in this section.

Sec 12 - Registered office of co.

* SS1 -

Every co. shall have its RO within thirty days of its incorporation. All communication shall be sent to RO.

* SS2 -

The co. shall file in form no. INC 22, verification of RO within 30 days of incorporation to ROC.

* SS3 -

Every co. shall give notice of change of RO to ROC in form no INC 22 within 30 days of the change.

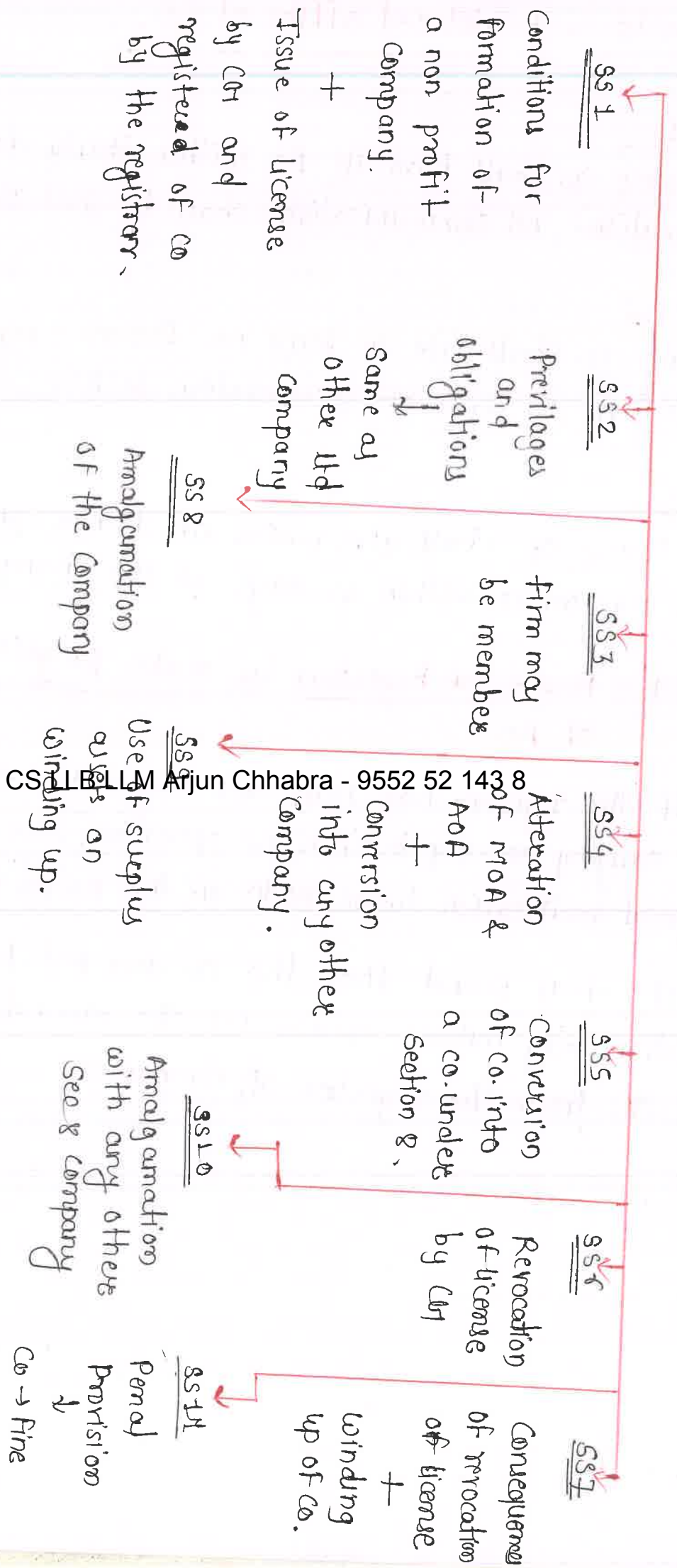
* SS9 - Power of Registrar to make physical verification of RO.

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① IF the registrar has reasonable cause to believe that a co. not carrying on any business or operations, he may cause a physical verification to be made of the RO of the co.

② IF it is found that the co. does not have a RO, the registrar may initiate action for the removal of the name of the co. from the register of companies.

Sec 8 - Formation of companies with charitable object etc.



551
 Conditions for formation of a non profit company.
 +
 Issue of license by Ct and registered of co by the registrar.

552
 Privileges and obligations
 ↓
 Same as other ltd company

553
 firm may be member
 Amalgamation of the company

554
 Alteration of MOA & AOA + Conversion into any other company.
 Use of surplus assets on winding up.

555
 Conversion of Co. into a co. under section 8.

556
 Revocation of license by Ct

557
 Consequences of revocation of license + winding up of co.

558
 Amalgamation of the company

559
 Use of surplus assets on winding up.

5510
 Amalgamation with any others See 8 company

5511
 Penal Provision
 ↓
 Co -> Fine
 min = 10 la.
 max = 1 cr

OID
 min - 25000/-
 max -> 25 lac

Sec 447 1n

certain cases.

* SS 1

① A Co. may be formed u/s 8 if -

i) The object of the Co. are to promote -

- ① Commerce
- ② Art
- ③ Science
- ④ sports
- ⑤ Education
- ⑥ Research
- ⑦ social welfare.
- ⑧ Religion.
- ⑨ charity
- ⑩ Protection of environment etc.

ii) The Co. intends to apply its profit in promoting its object; &

iii) The Co. intends to prohibit the payment to its members.

② @ Where it is proved to the satisfaction of Crt where than an association of person proposed to be registered under this act as a Ltd. Co. satisfies all the condition given u/s 8, Crt may -

① By issue of license.

② Allow, that the company may be registered as Ltd Co., but without using the words 'Ltd' or 'Part' Ltd.

③ Upon issue of such license by Crt, the registrar shall, on application made to him, register such association of persons as Co u/s 8.

* SS 4

- A section 8 company may alter its MOA and AOA by complying same legal requirements and obtaining previous approval of Crt.

- A sec 8 company may convert itself into any other co.

* SS 6 -

Where Crt satisfied -

① A Ltd. Co was formed under the Companies Act 2013 or under any previous co. law, otherwise than under sec 8, and

② Such company fulfills all conditions for formation of a Co. u/s 8.

It may issue of license allow such co. to be registered u/s 8.

* SS 6 -

① CrI may revoke license issued to the co, if -

① The co. contravenes any of the provision of sec 8 or any condition subject to which the license was issued; or

② The affairs of the co. are carried on fraudulently or prejudicial to the public interest.

③ Before passing any order of revocation, an OBH must be given.

* SS 7 -

① Co. shall convert its status.

② CrI shall order the co. to add words Ltd or Pvt Ltd.

③ Co. shall file with Roc a copy of order of CrI.

- CrI may order that the co. shall be wound up. Co. must be given an OBH.

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* SS 8 -

CrI, may order that the co. shall be amalgamated with any other co. registered u/s 8, if it is necessary in the pub. interest. Co. must be given OBH.

* SS 9 -

① Surplus assets after winding up i/e after the payments of all the debts and liabilities shall be transferred to any other Co. registered u/s 8 and having similar object OR

② sold, and proceeds of the sale shall be credited to IBC fund.

Sec 9 - Effect of Registration.

1] Date of Incorporation - The date mentioned in the Certificate of incorporation issued by the registrar, shall be the date of incorporation of company.

2] Body Corporate - from the date mentioned in the certificate of incorporation, the subscribers to memorandum and all other persons as may, from time to time, become members of the company, shall be a body corporate.

3] Name - The name, as mentioned in the memorandum, shall be the name of the company, ~~except~~

4] Capacity to function - The co. shall become capable of exercising all the functions of incorporated company.

5] Perpetual succession - The company shall have perpetual succession.

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6] Common seal - The co. may or may not have common seal.

7] Power to acquire property -

The company shall have the power to acquire, hold and dispose of the property of any kind, whether movable or immovable, tangible or intangible.

8] Power to contract -

The company shall have the power to contract in its own name.

9] Capacity to sue or be sued -

The company shall have power to sue in its own name, and the co. can be sued in its own name.

Case Law based on Section 9

Case-I

Hornagore Sugarmill Ltd

Vs

S.S. Thunhinwala

from the date of Inc. mentioned in COI, the Co. becomes a separate legal entity.

Case II

State trading corporation of India

Vs

Commercial Tax Officer

A Company on registration acquires a separate existence distinct from its members.

Case III

Spencer & Co. Ltd Madras

Vs

CMT Madras.

Merely because a company purchases all shares of another company, it will not and the corporate character of another company.

Case IV

Heavy electrical union

Vs

State of Bihar.

mere fact that the entire share-capital has been contributed by Co. and held by President of India does not make any difference in the character of the company. and it doesn't make a company an agent of President or Co.

Sec 10 - Effect of Memorandum & Article.

ss 1

- ① Company is bound to members.
- ② Members are ^{not} bound to company.
- ③ Members are not bound with each other.
- ④ Company is not bound with outsiders.

ss 2

Members are bound to ~~company~~. All monies payable by members to company shall be ~~debt~~ debt to from him to company.

① Company is bound to Members -

Every member is given some individual rights under the Act and the Articles. if a company deprives any of its members of such right, such a member can sue the company for enforcement of his right.

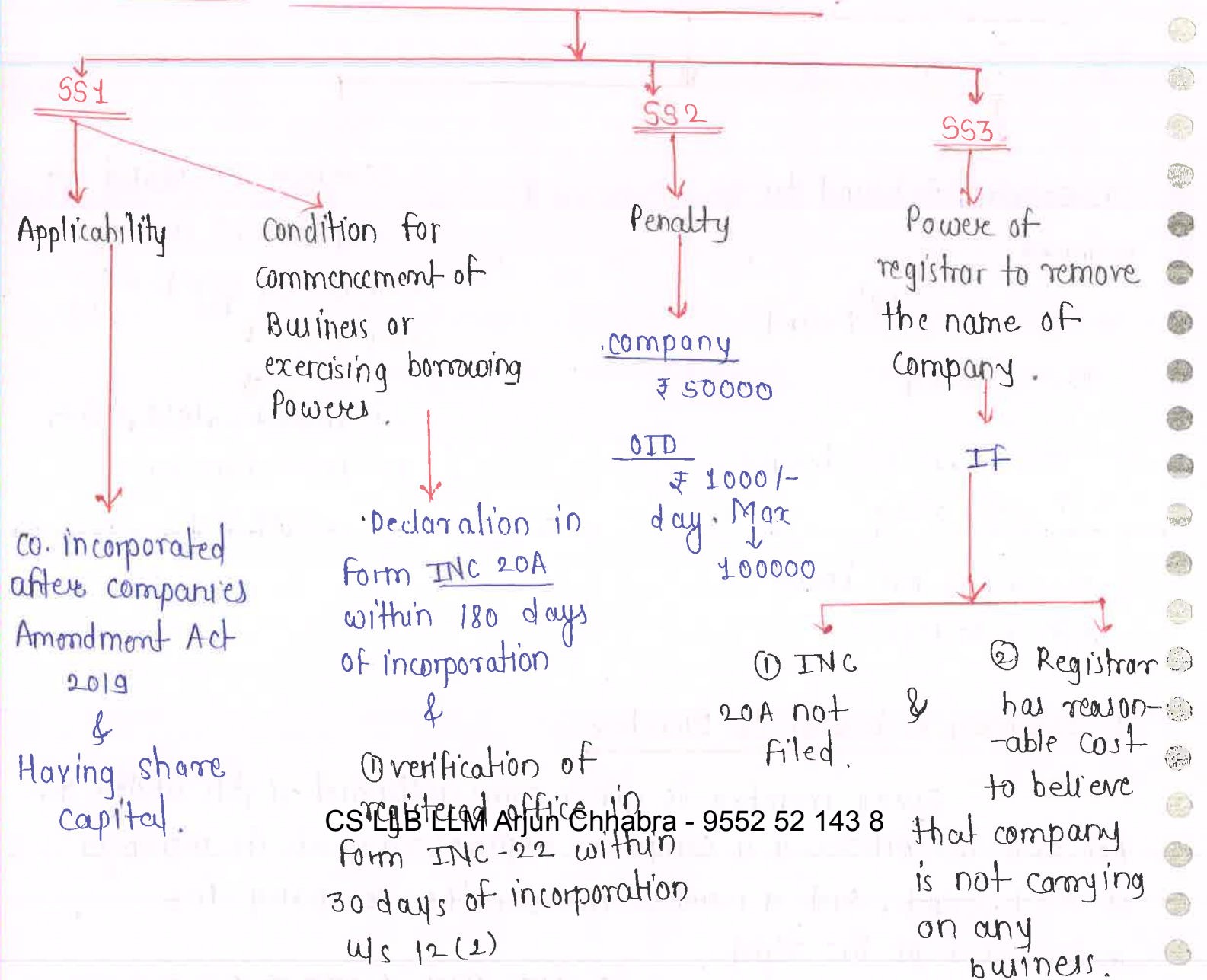
② Members are not bound to each other -

There is no privity of contract between the members.

③ Company is not bound with outsiders -

The memorandum & Articles do not bind a company to the outsiders. This is based on the general rule of law that stranger to contract does not acquire any rights under the contract. Therefore, an outsider can not take help of the articles to establish a contract with the company.

Sec 10A - commencement of Business etc



* Conditions for commencement of Business or exercising borrowing

Power -

① Filing of declaration w.r.t payment of money for shares subscribed by subscribers to MOA.

1] A declaration shall be filed by directors with the registrar that every subscriber to MOA has paid the value of the shares agreed to be taken by him.

② The declaration shall be filed within 180 days of the date of incorporation of the company.

③ The declaration shall be in form no INC-20A.

④ The contents of form no INC 20A shall be verified by a CA/CS, or CMA, in practice.

② Filing of verification of register office in form INC-22 within 30 days to ROC as per sec 12(2).

SS3 -

The registrar may initiate action for the removal of the name of the company from the register of companies, if -

① The declaration is not filed with the registrar within 180 days of the date of incorporation; and

② The registrar has reasonable cause to believe that the company is not carrying on any business.

Sec 15 - Alteration of Memorandum or articles to be noted in every copy.

SS1

Alteration to CS No. BLM Arjun Chhabra - 9552 52 1438
in every copy of MOA or
AOA

SS2

Penalty
Co. & OTD - ₹1000/- copy
without such alteration.

Sec 17 - Copies of Memorandum or articles etc to be given to Member.

SS1

- Any member of company may request from the company -
① Copy of MOA;
② Copy of AOA; &
③ Copy of every agreement and every resolution referred up to, which is not embodied in MOA or AOA.

SS2

Penalty

Co. & OTD - 4000/- day
or
max - 100000 whichever
is lower.

- The company shall furnish the same to member within 7 days of request.

Sec 18 - Conversion of Company already registered.

SS1

Legal requirements for conversion.

- ① Alter MOA or AOA according to this chapter.
- ② Comply the provisions of this chapter.
- ③ Make an application to Roc for conversion.

SS2

Issue of fresh Certificate of Incorporation

- By Roc. (यशदा)
- ① Close the former registration of the company;
 - ② Register the documents filed with it; &
 - ③ Issue of fresh COI

SS3

Effects of fresh registration

- Does not affect any
- debts,
 - liability,
 - obligations or contracts of the company prior to such conversion.

*Coverage of Sec under this chapter :-

- Section 3 - Formation of CS LLP LLM Arjun Chhabra - 9552 52 143 8
- Section 4 - MOA [INC 33-e] Intimation of appointment, change in nominee.
- Section 5 - AOA [INC 34-e]
- Section 6 - Act to override MOA, AOA etc.
- Section 7 - Incorporation of company [INC 32] [EMOA-INC 33] [EOA-INC 34]
- Section 8 - formation of co. with charitable object, etc. [INC 35 - AGILE] [INC 8 - declared by profess]
- Section 9 - Effect of Registration [INC 9 - declaration by subscriber & 1st director]
- Section 10 - Effect of registration of MOA or AOA. [DIR 12 - Particulars of Directors]
- Section 10 A - Commencement of business etc [INC -] [INC 11 - certificate of Incorporation]
- Section 11 - omitted. [INC 32 - verification of registered office]

Section 12 - Registered office.

Section 13 - Alteration of MOA.

MGT 140

INC 20 - Application to RD.

INC 26 - Advertisement.

INC 28 - Certified true copy of the order of RD.

INC 22 -

Section 14 - Alteration of AOA.

Section 15 - Alteration to be noted in every copy
of MOA, AOA.

Section 16 - Rectification of name of CO.

Section 17 - Copies of MOA, AOA to be given to Members.

Sec 18 - Conversion of CO. Already registered.

Sec 19 - Subsidiary CO. not to hold shares in Holding CO.

Sec 20 - Services of BLM Arjun Chhabra - 9552 52 143 8

Sec 21 - Authentication of document, proceeding & contract.

Sec 21 - Execution of BOE, etc.
