

# CA Intermediate

As per ICAI Latest Syllabus

Corporate & other  
laws

Chart Book



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## MODULE – 1

### Chapter-2: Incorporation of Company and Matters Incidental thereto

#### I. Types of Company based on Formation (Sec 3)

##### Private Limited Company 2(68)

A company which by its articles:

1. **Restricts** the right to transfer its shares.
2. **Limits** number of members to **200** except in case of OPC; **provided:**
  - a) **Joint Shareholders to be treated as one**
  - b) Past and Present employees being members are to be excluded.
3. **Prohibits** invitation to public to subscribe.

##### Public Company 2(71)

A company which is not a private company; **provided**, subsidiary of public company, which is a private company **shall be deemed to be public company.**

##### OPC 2(62)

#### II. Definitions

##### Small Company [Sec 2(85)]

A company other than **Public Company** having

**Paid up share capital** not exceeding **Rs. 50 lakh** or such higher amount as may be prescribed **Rs. 10 crore**

and

**Turnover** of preceding financial year does not exceed **Rs. 2 crore** or such higher amount as may be prescribed **Rs. 100 crore**

##### Subsidiary Company [Sec 2(87)]

A company in which holding company

(i) **Controls** composition of BOD  
↓  
Power to appoint or remove **majority** of directors

(OR)

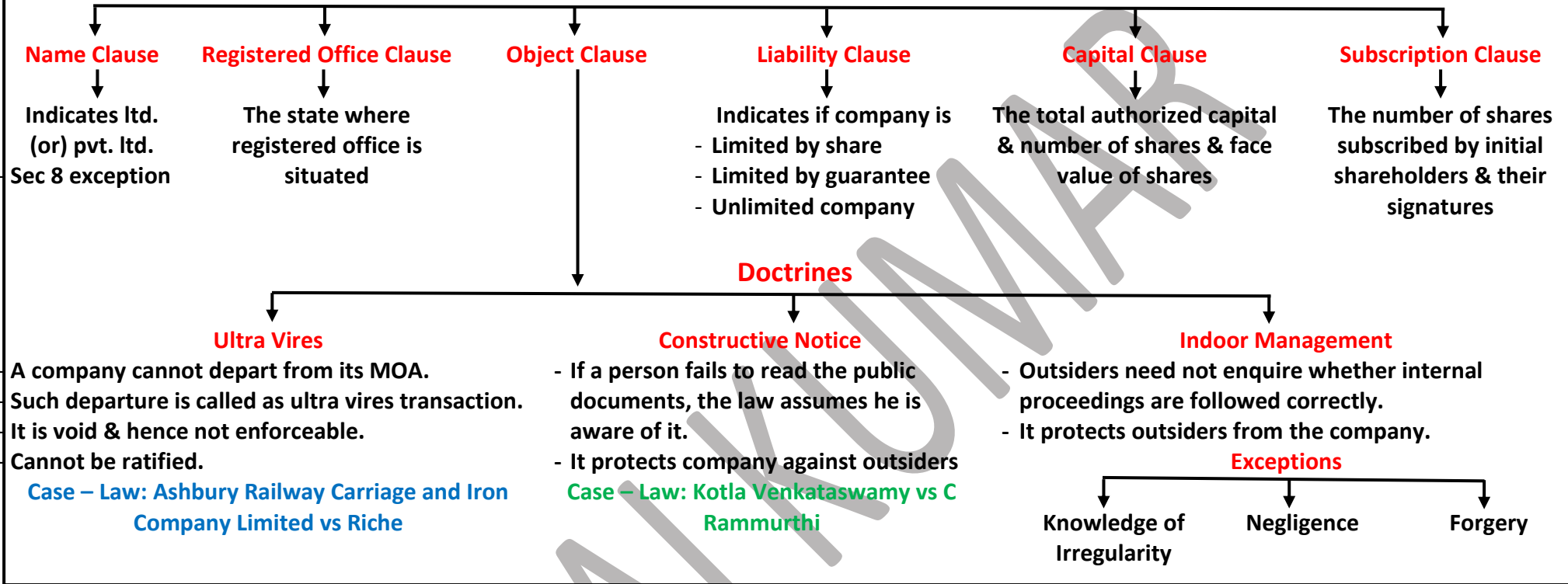
(ii) **Controls** more than **one-half** of total voting power  
↓  
(Singly or together with its substitutes)

(OR)

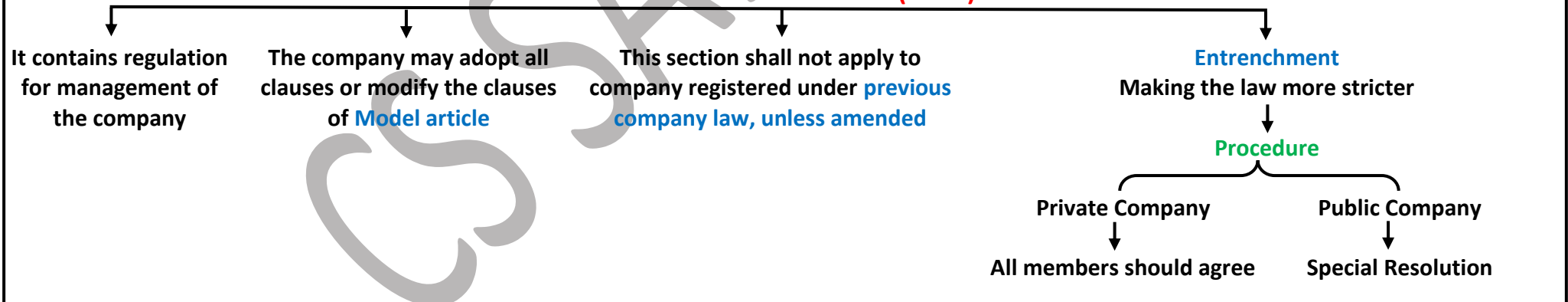
**Deemed Subsidiary**  
↓  
When (i) or (ii) is of another subsidiary of holding company

### III. Memorandum of Association (Sec 4)

It consists 6 clauses



### IV. Articles of Association (Sec 5)



### V. Effect of Registered MOA & AOA (Sec 10)

Company is liable to members

Members are liable to company

Members not liable to each other

Money payable by any member under MOA/AOA shall be a debt due to company

### VI. Commencement of Business [Sec 10(A)]

Declaration to be filed by director within 180 days of incorporation, that every subscriber of share has paid the value agreed by him

company has file with ROC its registered office address

To be certified by PCA / PCS / PCMA

Failure to file may lead to

- Penalty
- Removal of name from Register of Companies by ROC

### VII. Incorporation of Company (Sec 7)

#### Stage - I

Care to be taken while choosing name of company  
Rule 8, 8A, 8B

#### Stage - II

Reservation of Name

Application to

Reserve name of proposed company

(OR)

Change of Name

It shall be reserved for 20 days

It shall be reserved for 60 days

If it is found that name was reserved by giving wrong information; then

If company is not Incorporated

- a) Reserved name shall be cancelled
- b) Penalty of Rs. 1 lakh

If company is Incorporated

- a) Direct for change of name; (or)
- b) Action for strike off; (or)
- c) Winding up

### Stage – III

Documents & Information to be prepared  
(Documents to be preserved until Dissolution)

- 1) MOA & AOA duly signed by all subscribers.
- 2) Declaration by subscribers & 1<sup>st</sup> Directors; that
  - not convicted of any offence in formation of company
  - not found guilty of any fraud during last 5 years
  - All documents filed is correct & complete
- 3) Certificate from a professional (Advocate / PCS / CA / CMA)
- 4) Subscriber & Director details
- 5) Correspondence Address of the office

All the information is filed with ROC in Form SPICE(+)

### Stage – IV

If all the information is correct,  
the ROC shall issue

Certificate of Incorporation

It shall have

- a) CIN
- b) Date of Incorporation

The name of the company shall  
be entered in Register of  
Companies

### Stage – V

Order of Tribunal

If company is incorporated by furnishing false  
information, an application made to Tribunal in this  
regard, Tribunal may pass such order

- a) For regulation of management of company
- b) Changes in MOA & AOA
- c) Liability is unlimited
- d) Removal of name from register
- e) Order for winding up

## VIII. Alteration of Name of Company

Suo – Moto  
[Sec 13(2)]

Rectification of Name of Company (Sec 16)

If the name of registered company is identical or nearly resembles the name of already existing company

Central Government  
(Suo – Moto)

It shall direct the company to rectify its name within  
3 months of such direction by passing ordinary  
resolution

Application by proprietor of Trade Mark

He should approach Central Government within 3 years of incorporation /  
change of name of such company

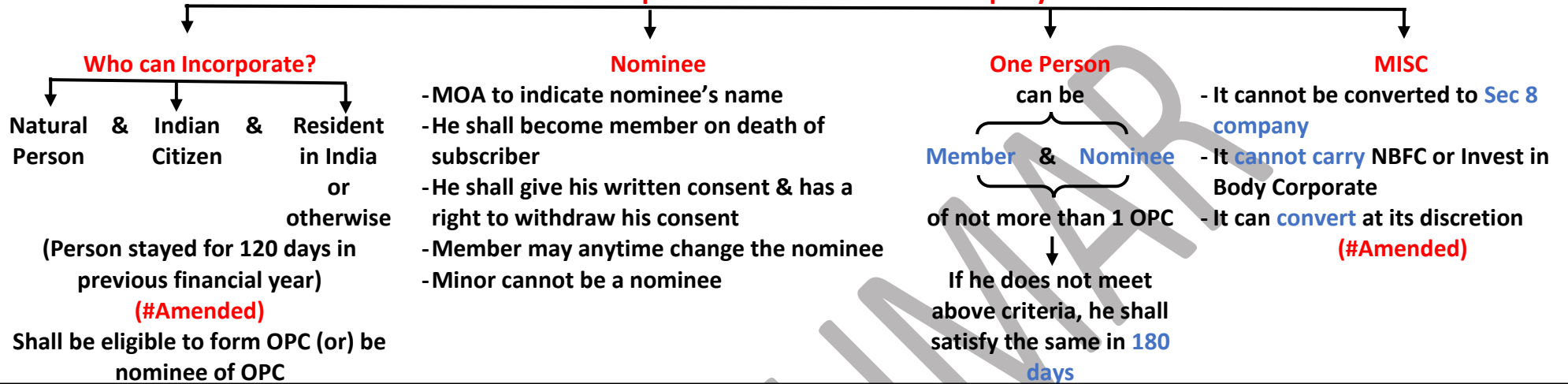
If Central Government is satisfied, then it may direct to change the name in 3  
months [#Amended]

Note: If company obtains new name → Intimate ROC within 15 days  
If company fails to comply with Central Government [#Amended]

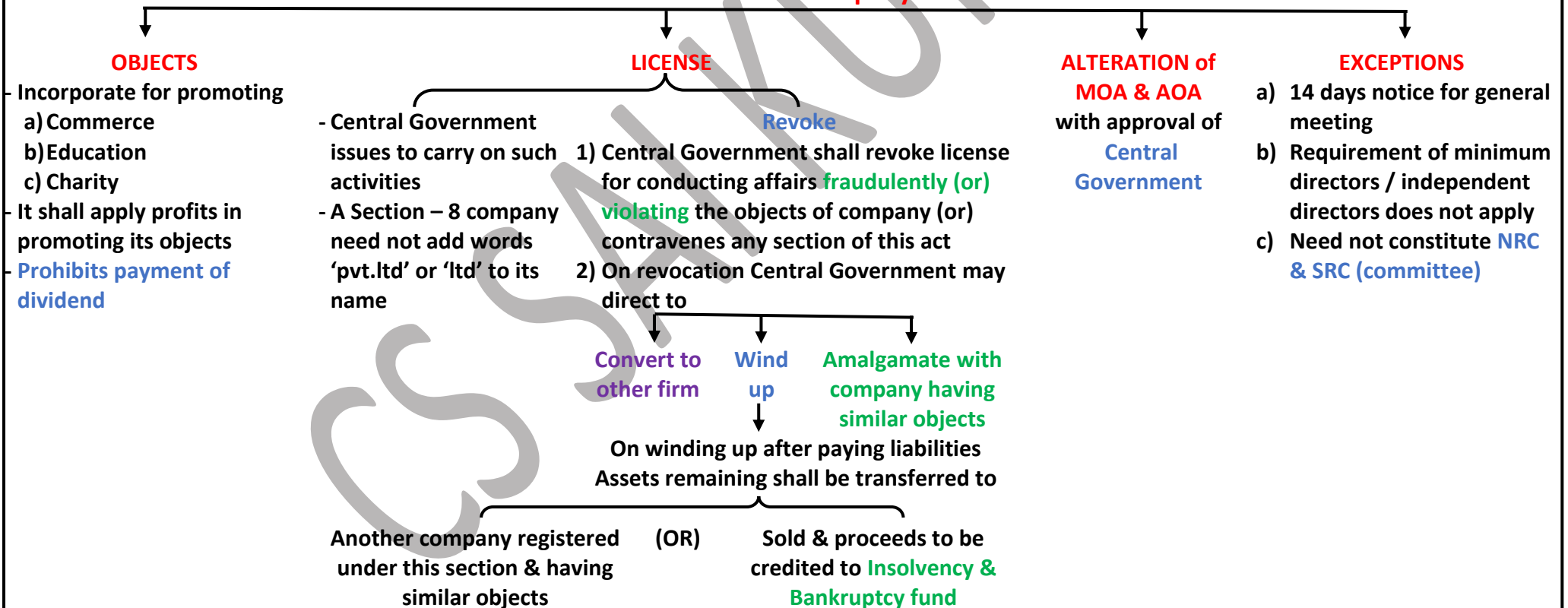
The Central Government shall allot a new name to company & ROC shall enter the new name in Register of Companies in place of old  
name & issue fresh Certificate of Incorporation

Note: A company shall change its name at its discretion

## IX. Incorporation of One Person Company



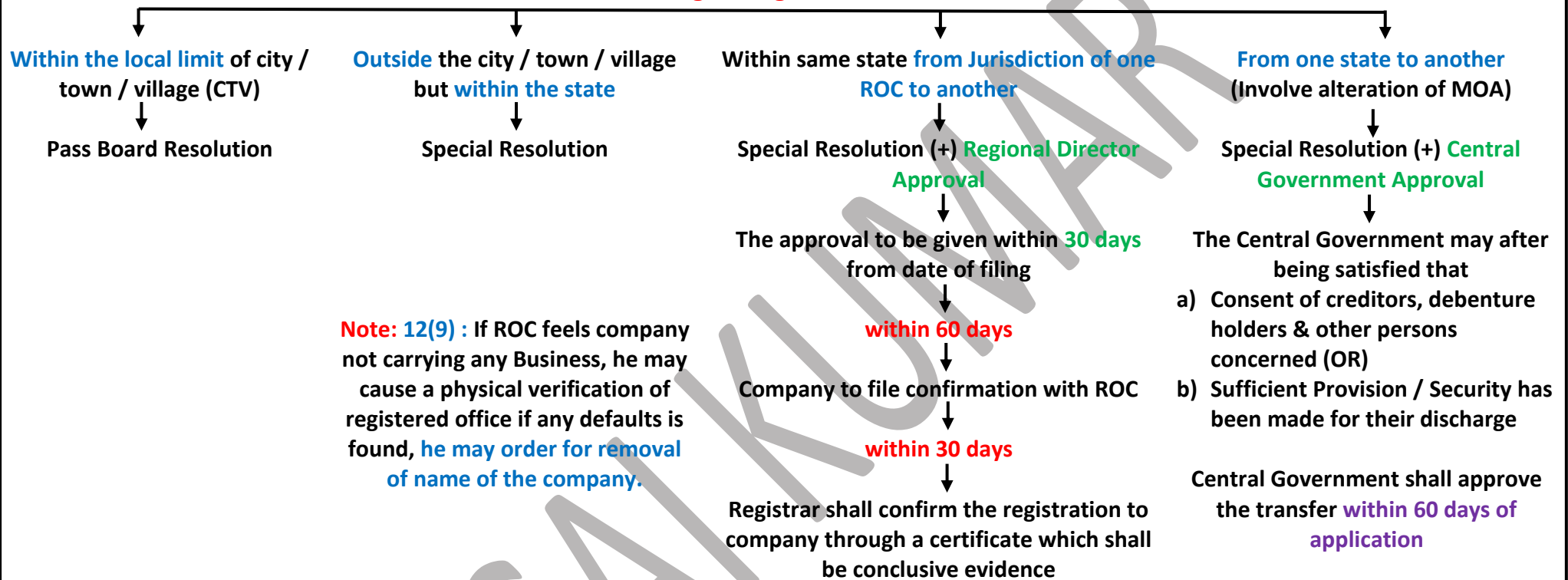
## X. Section 8 Company



## XI. Registered Office of Company (Sec 12)

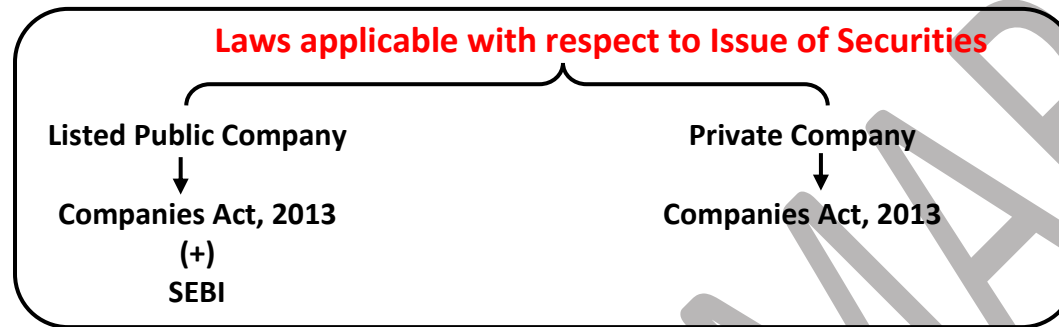
Company shall have registered office within 30 days of Incorporation

### Shifting of Registered Office



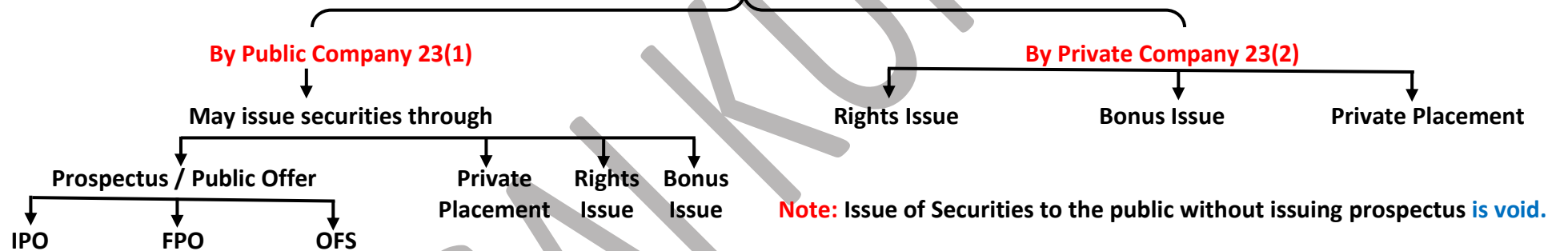


# Chapter-3: Prospectus and Allotment of Securities

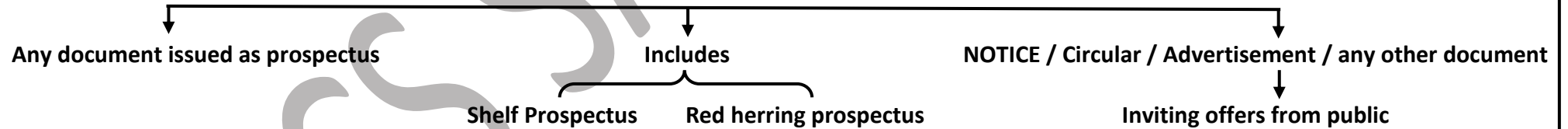


## I. Public Offer and Private Placement (Sec 23)

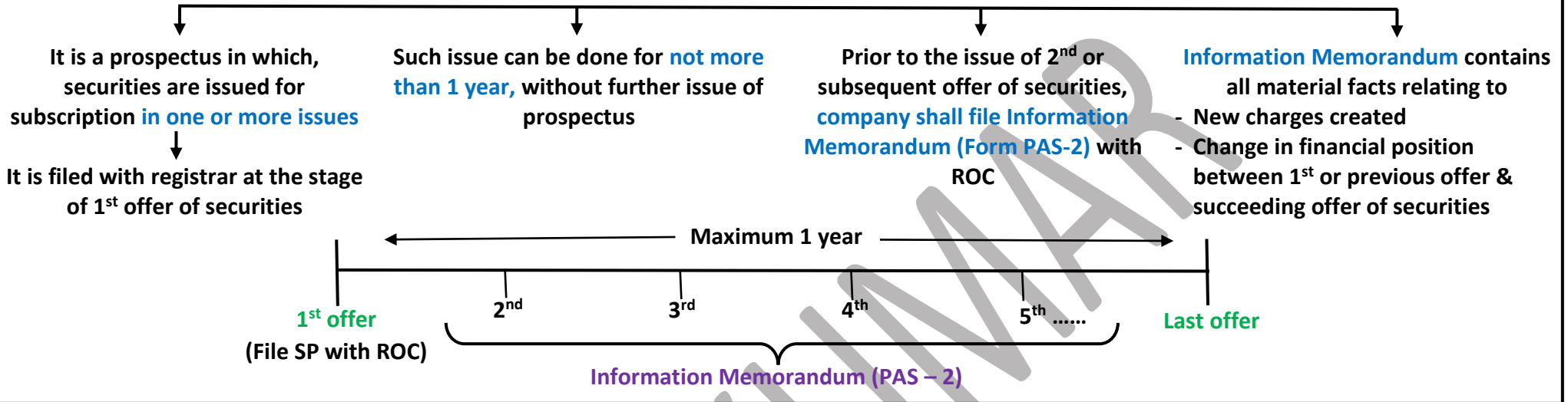
### Issue of Securities



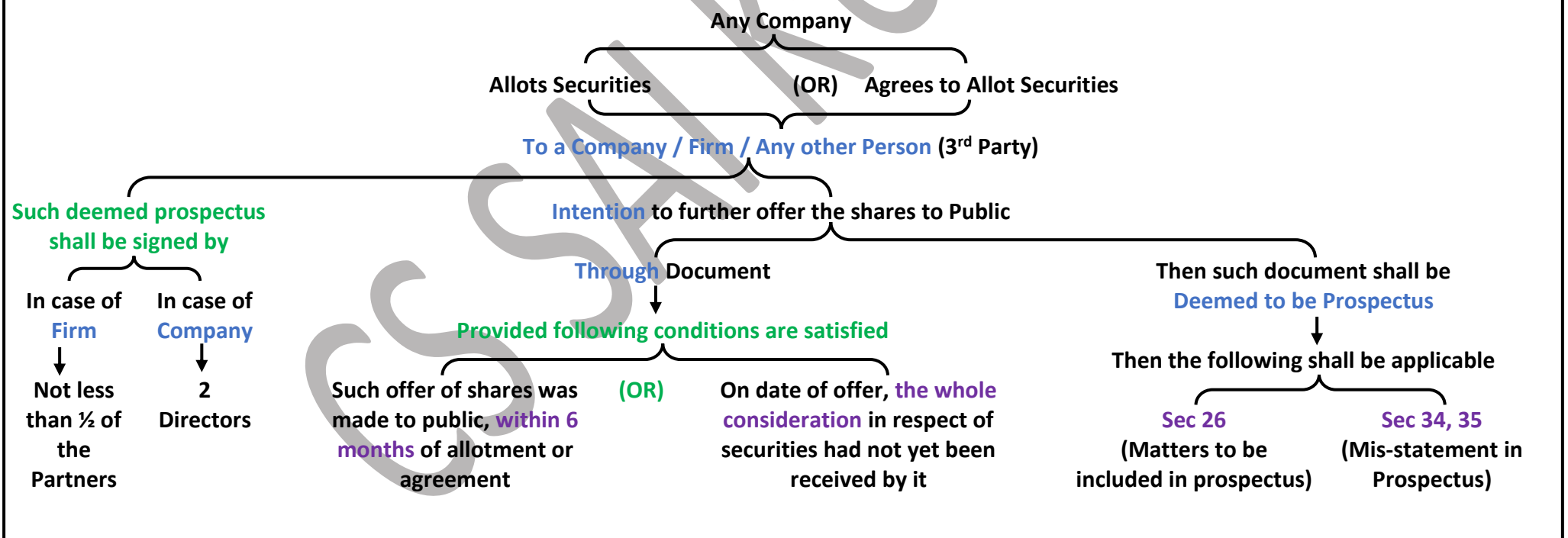
### Prospectus [Sec 2(70)]



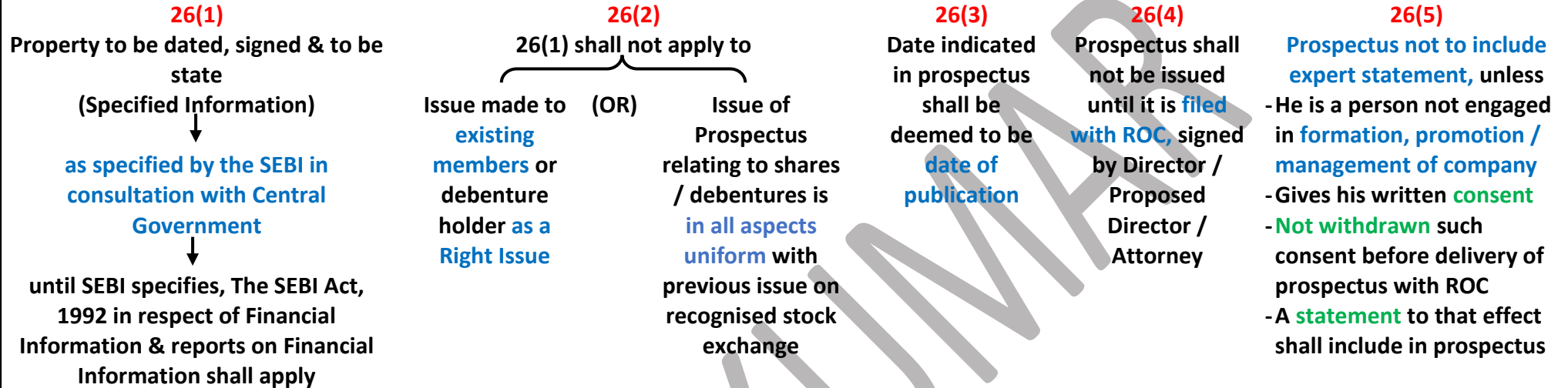
## II. Shelf Prospectus (Sec 31)



## III. Deemed Prospectus (Sec 25)



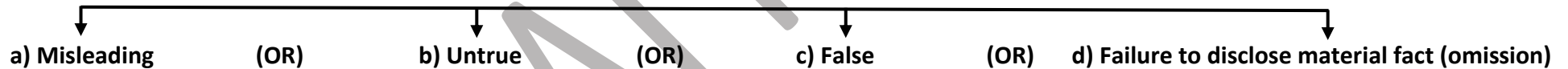
#### IV. Matters to be stated in Prospectus(Sec 26)



**Note: 26(8):** Prospectus shall not be valid if it is issued after 90 days from date of filing with ROC.

#### V. Mis – Statements in Prospectus

Any information provided in prospectus is:



Which would attract  
1. Criminal Liability (Sec 34)

Every person who authorizes such issue, shall be liable under Sec 447

Exceptions:

- 1) If the person proves that such statement/ omission was immaterial; (OR)
- 2) He had reasonable grounds to believe up to time of issue that statements was true (or) such inclusion / omission was necessary

## 2. Civil Liability (Sec 35)

Where a person has subscribed to securities relying on any statement included / omission of any matter in prospectus which is misleading & suffered loss; then company & every person who

- a) is a director of company during issue
- b) has authorised himself or has agreed to become director
- c) is Promoter of company
- d) has authorised issue of prospectus
- e) is an expert as per Sec 26(5)

↓  
And  
↓

It is proved that it has been issued to defraud the applicant, then every person mentioned above shall be personally & unlimitedly liable

↓  
Exceptions:

No person shall be liable, if he proves

↓  
To pay compensation to every person who has suffered loss / damage

↓  
that he withdrew his consent to become director before issue of prospectus (OR)

↓  
that prospectus was issued without his knowledge / consent, on becoming aware he forth with gave public notice that issue was without his consent

(OR) ↓  
that the statement made by expert was correct & fair to his knowledge

## VI. Punishment of Fraud (Sec 447)

(This is in addition to returning of the liability or repayment)

Amount involved is more than Rs. 10 lakhs (OR) 1% of turn-over of company, which ever is less Punishable with

Imprisonment

&

Fine

Minimum of 6 months

Maximum up to 10 years

Minimum Amount involved in the fraud

Maximum 3 times amount of fraud

Amount involved is less than Rs. 10 lakhs (OR) 1% of turn-over of company, which ever is less & does not involve public interest

↓  
Punishable with

Imprisonment up to 5 years

(OR) Fine up to 50,00,000 (fifty lakhs)

(OR) Both

↓  
If fraud involved Public Interest, minimum imprisonment shall be not less than 3 years

## VII. Offer of Sale of Shares by Certain Members (Sec 28)

Where certain members of a company propose in consultation with BOD offer their shares to public

Such members shall authorise the company whose shares are offered for sale, to take all actions in respect of offer of sale & reimburse the company all expenses

Any document by which offer of sale to public is made shall be deemed to be Prospectus → (Contents & Mis – Statements shall apply)

### Rule 8 of Companies (PAS) Rules, 2014

All the provisions of this chapter is applicable to offer of sale

Except

Minimum Subscription

Minimum Application Value

Statement to be made by BOD in respect of utilization of money

Any other information which cannot be compelled & justification

## VIII. Public Offer of Securities to be in Dematerialised Form (Sec 29)

29(1)

Every company making public offer & such other companies shall issue securities only in De-materialised form by complying with Depositories Act, 1996 & Promoters of public company making public offer of convertible securities may hold securities only in De-mat form

29(1A)

Such class of unlisted companies as may be prescribed, the securities shall be held (or) transferred only in De-mat form

Rule 9A of (PAS) Rules, 2014

## IX. Rule 9A

### 1. Every unlisted public company shall

Issue securities only in De-mat form & Facilitate dematerialisation of all existing securities

### 2. Every unlisted public company making

- an offer for issue of securities
- Buy-back of securities
- Issue of Bonus Shares
- Rights offer

↓  
Before such offer, ensure dematerialisation of promoters, KMP, Director holding

### 3. Every security holder of unlisted public company

Wants to Transfer securities on or after 2<sup>nd</sup> October, 2018

↓  
Gets shares / securities dematerialised before transfer

Wants to subscribe to securities of unlisted public company on or after 2<sup>nd</sup> October, 2018

↓  
Shall ensure all his existing securities are held in De-mat form before subscription

### 4. Every unlisted public company shall facilitate dematerialisation of all its existing securities

↓  
Application to Depository & secure International Security Identification Number (ISIN)

↓  
Inform all existing security holders about such facility

### 5. Every unlisted public company to ensure that

- Timely payment of fees to Depositors, Registrar to issue, share transfer agent
- Maintain Security Deposit of minimum 2 years fees with Depositors, Registrar to issue, share transfer agent
- Complies with regulation issued by SEBI or Depository

### 6. No Unlisted Public Company shall make

- Offer of securities
  - Buy Back
  - Bonus
  - Rights Issue
- Till 9A(5) Payments are made

### 7. Unlisted Public Company to submit Form PAS – 6 to ROC within 60 days from closure of each half year

### 8. Security holders shall file their grievances of Unlisted Public Company before IEPF Authority

## X. Allotment of Securities (Sec 39)

by Company

of a Public Offer

### Minimum Subscription

- To be stated in the prospectus
- No allotment shall be made if minimum subscription is not received

The received amount shall be refunded if not subscribed with in 30 days

To be refunded within 15 days from closure

Failure = 15% interest to be paid by Directors

### Minimum Application Money

It shall not be less than 5% of nominal amount (Face Value) or % of amount prescribed by SEBI

### Return of Allotment

On every allotment made by company, it shall file Form PAS – 3 within 30 days of allotment

#### Attachments:

- List of allottees
- Registered Valuer's Report
- Consideration other than cash : a copy of contract duly signed

### Penalty

Company & its officer shall be liable

Rs. 1,000 for each day

Maximum of Rs. 1 lakh

## XI. Securities to be dealt within Stock Exchange (Sec 40)

Every Company making Public Offer shall make an application to one or more recognised stock exchange

All monies received from Public Offer shall be kept in a separate scheduled Bank Account

Shall be used for

Allotment of Securities

Repayment of Monies

Rate of Commission

In case of Shares

Maximum 5% (OR) Rate as per of Issue Price (OR) Rate as per AOA

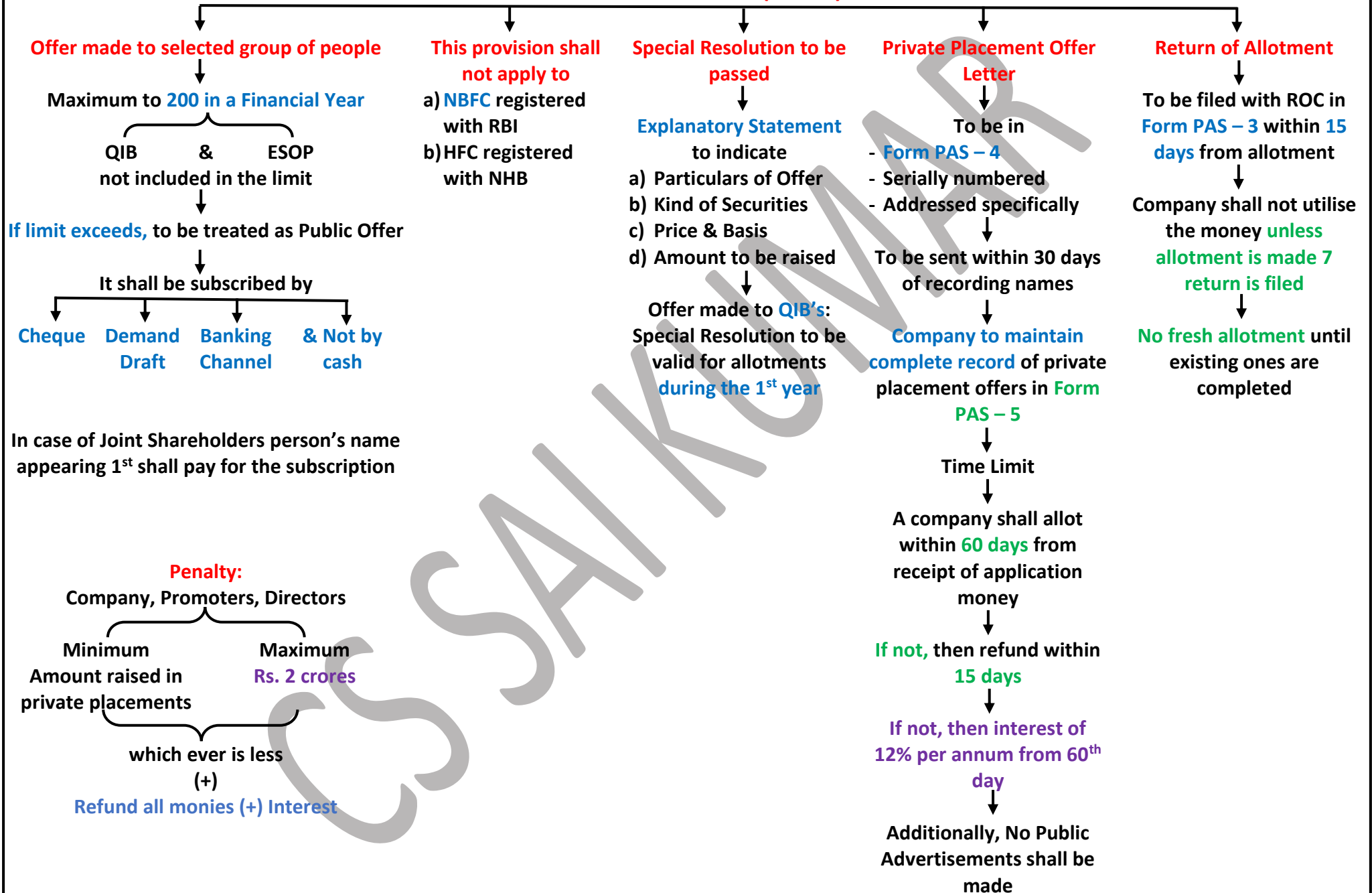
which ever is less

In case of Debentures

Maximum 2.5% (OR) Rate as per of Issue Price (OR) Rate as per AOA

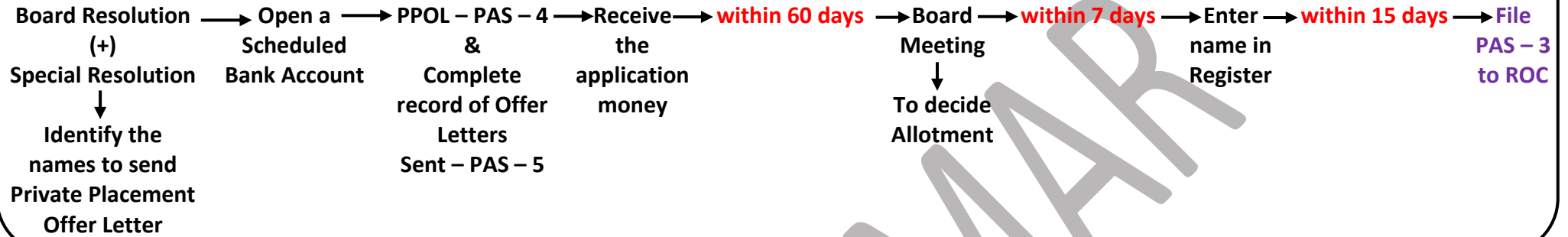
which ever is less

## XII. Private Placement (Sec 42)





### XIII. Procedure

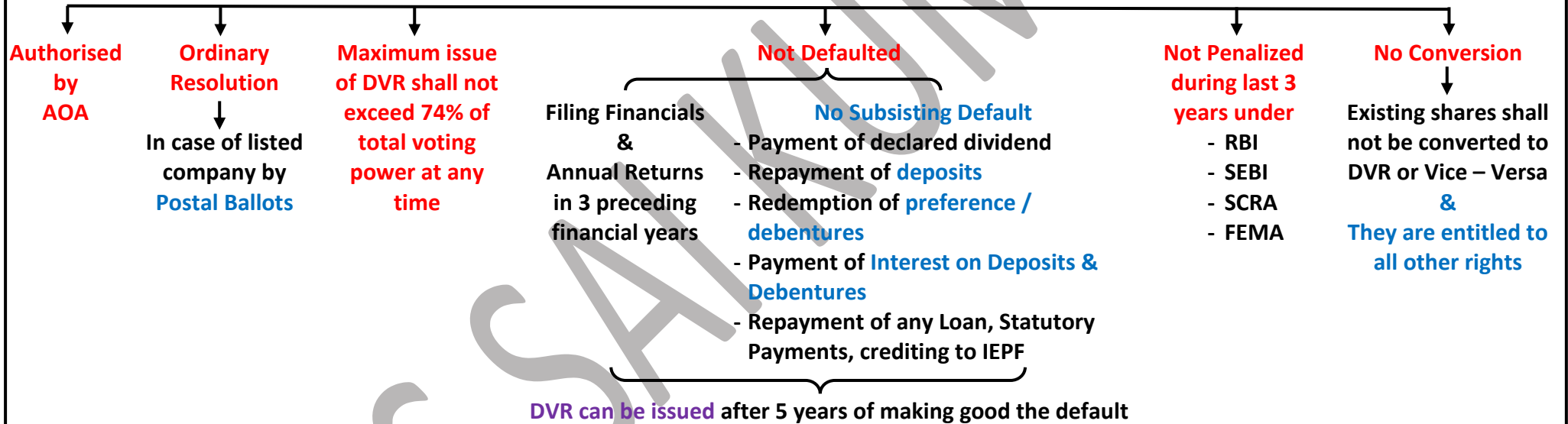


# Chapter-4: Share Capital and Debentures

## I. Types of Share Capital (Sec 43)



## II. Conditions

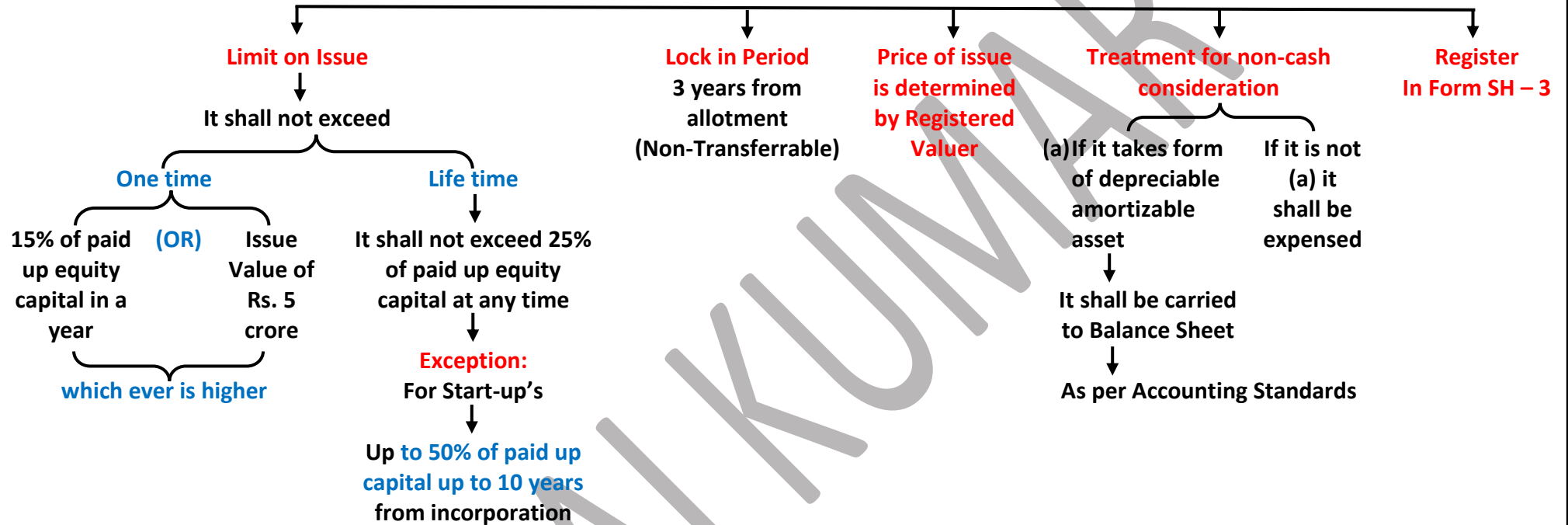


### III. Sweat Equity Shares (Sec 54)

Rank PARI PASSU

(Special Resolution)

valid for 12 months to make allotment

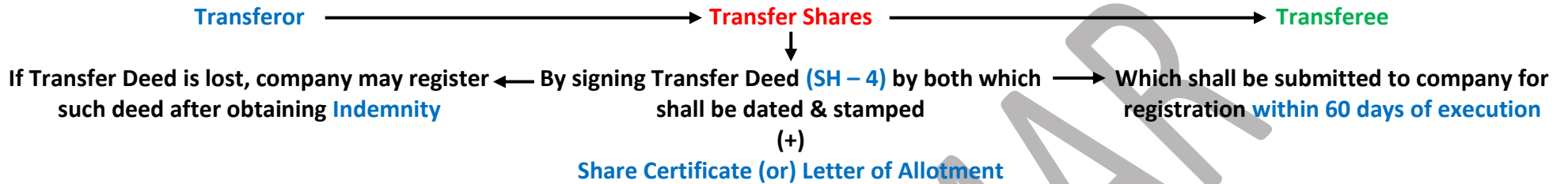


#### Sec 2(88)

**Sweat Equity Shares are shares issued**

- TO** → Director or employees
- AT** → Discount or For Consideration other than cash
- FOR** → Providing
  - a) Know how (OR)
  - b) IPR (OR)
  - c) Value Additions

#### IV. Transfer and Transmission of Securities (Sec 56)



**Note:**

- 1) In case of **partly paid shares**, company shall send notice (**Form SH - 5**) to Transferee for any objection in **2 weeks**
- 2) Transfer Deed is not required in case of **De - Mat Shares**

#### V. Refusal of Registration and Appeal Against Refusal

Private Company refuses to Register the Transfer / Transmission

**within 30 days of delivery of Instrument**

The company shall give notice to Transferor, Transferee & Person giving Intimation

If no notice sent, then

**within 30 days of receipt of notice**

**within 60 days of delivery of Instrument with company**

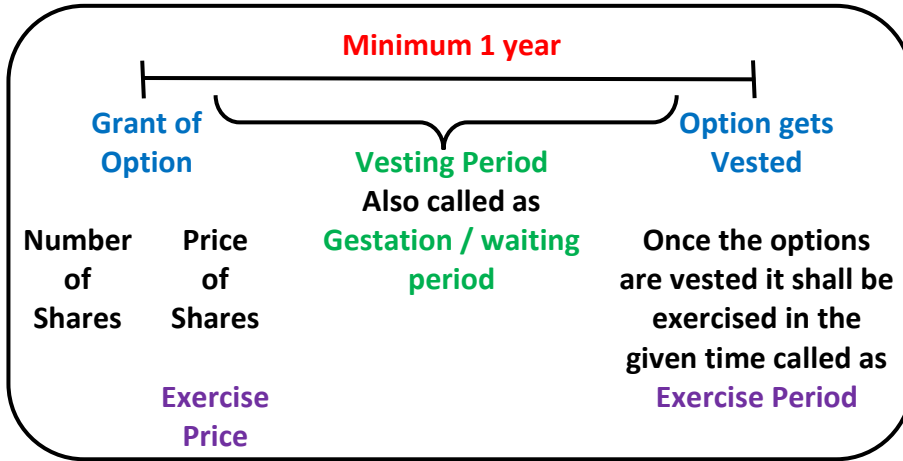
The transferee may appeal to **Tribunal** against the refusal

The Tribunal may order for the following:

- a) Dismiss the appeal
- b) Direct to Register the Transfer / Transmission **within 10 days of order**
- c) Rectification of Registrar (+) **Damages to be paid to aggrieved party**

**[Note: For public company the days will be constituted as 60 & 90]**

## VI. ESOP [Sec 62(1)(b)]



- Points:**
- (a) Public Company (Special Resolution) & Private Company (Ordinary Resolution)
  - (b) **Restriction:**
    - No Vote
    - No Dividend
    - No Sale / Transfer
    - No Pledge / Hypothecation
  - (c) **Right:**
    - **On Death / Disablement** it shall immediately vest
  - (d) **Register of ESOP: SH – 6**

## VII. Reduction of Share Capital (Sec 66)

[Board Resolution (+) Special Resolution (+) Tribunal Approval]



## VIII. Buy Back of Security (Sec 68)

### 1. Sources of Buy Back

- Free Reserve
- Securities Premium
- Proceeds of fresh issue (not of same kind)

### 2. Post Debt Equity Ratio

Not to be more than 2:1

### 3. All securities shall be fully paid up

### 4. No further Buy Back shall be made within 1 year

### 5. Company shall not issue same kind of securities within next six months

- Bonus Issue
- Conversion of debenture / preference into equity
- Sweat Equity

### 6. Register of Buy Back (SH - 10)

### 7. Extent of Buy Back

#### Board Resolution

10% of paid up equity share capital (+) Free Reserve

#### Special Resolution

BB of equity share capital  
25% of paid up equity share capital

Any other security  
25% of paid up share capital (+) Free Reserve

### 8. Declaration of Solvency

By Director

Company will not be insolvent in 1 year

Form SH - 9

### 9. Return of Buy Back

Unlisted company to file it with ROC

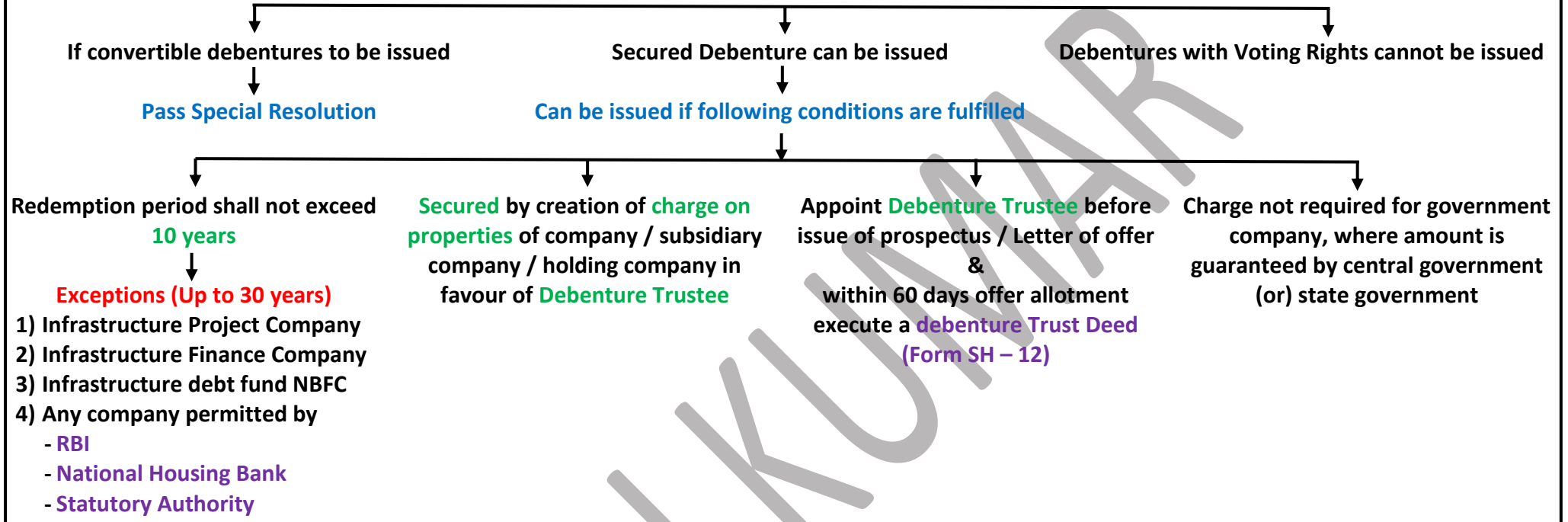
Listed Company  
ROC (+) SEBI

Form SH -11

### 10. Extinguishment of Securities

The bought back shares shall be destroyed in 7 days

## IX. Debentures (Sec 71)



## X. Debenture Redemption Fund / Investment

Every company required to create DRF is required to deposit **15%** of amount of debentures **maturing on 31<sup>st</sup> March of next year.**

E.g.: 01/04/2020 – 31/03/2021

to be deposited by 30/04/2020

It shall be deposited by **30<sup>th</sup> April of each year.**

It shall be deposited in,

- Scheduled Bank
- Unencumbered Securities of Government
- Unencumbered Securities mentioned in Indian Trust Act, 1882
- Unencumbered Bonds issued by company under Indian Trust Act

Such money shall not be used for any purpose other than **Redemption**

<b>Companies</b>	<b>DRR Required or Not</b>	<b>DRF Required or Not</b>
<b>I. Listed Company:</b>		
1. All India Financial Institutions (AIFI) (+) Banks	NO	NO
2. Other Financial Institutions (PFI)	NO	NO
3. Other Listed Companies:		
a) Private Placement	NO	NO
b) Public Issue:		
(i) NBFC & HFC	NO	YES = 15%
(ii) Remaining Listed Companies	NO	YES = 15%
<b>II. Unlisted Company:</b>		
1. All India Financial Institutions (AIFI) (+) Banks	NO	NO
2. Other Financial Institutions (PFI)	NO	NO
3. Other Unlisted Companies:		
a) NBFC & HFC	NO	NO
b) Remaining Unlisted Companies	YES = 10%	YES = 15%



# Chapter-5: Acceptance of Deposits by Companies

## I. Deposits [Sec 2(31)]

### What is Deposit?

It includes any receipt of money by way of deposit (or) loan (or) in any other form by a company, but does not include

### Deposits

From Members (Sec 73)

From Public (Sec 76)

### What is not a Deposit?

If considered as deposit

It shall comply with provision of Companies Act

If not, company shall receive money without having to follow deposit provisions

## II. Prohibition on Acceptance of Deposit from Public (Sec 73)

This Restriction shall not apply to

Banking Companies

NBFC

HFC

Other Companies specified by Central Government

However, any company may accept deposits from its members, subject to

Resolution in General Meeting approving such acceptance is passed

### Circular (DPT - 1)

### 73(2)(a)

Issue circular to members inviting deposits from them & include a statement containing

- a) Financial Position
- b) Credit rating
- c) Total number of outstanding deposits

Such circulars to be published in News Paper (English + Vernacular)

[Offer to Members = News Paper is optional (&) Offer to Public = News Paper is Mandatory]

Such Advertisement shall remain valid till, the earliest of the following

6 months from closure of Financial Year

(OR)

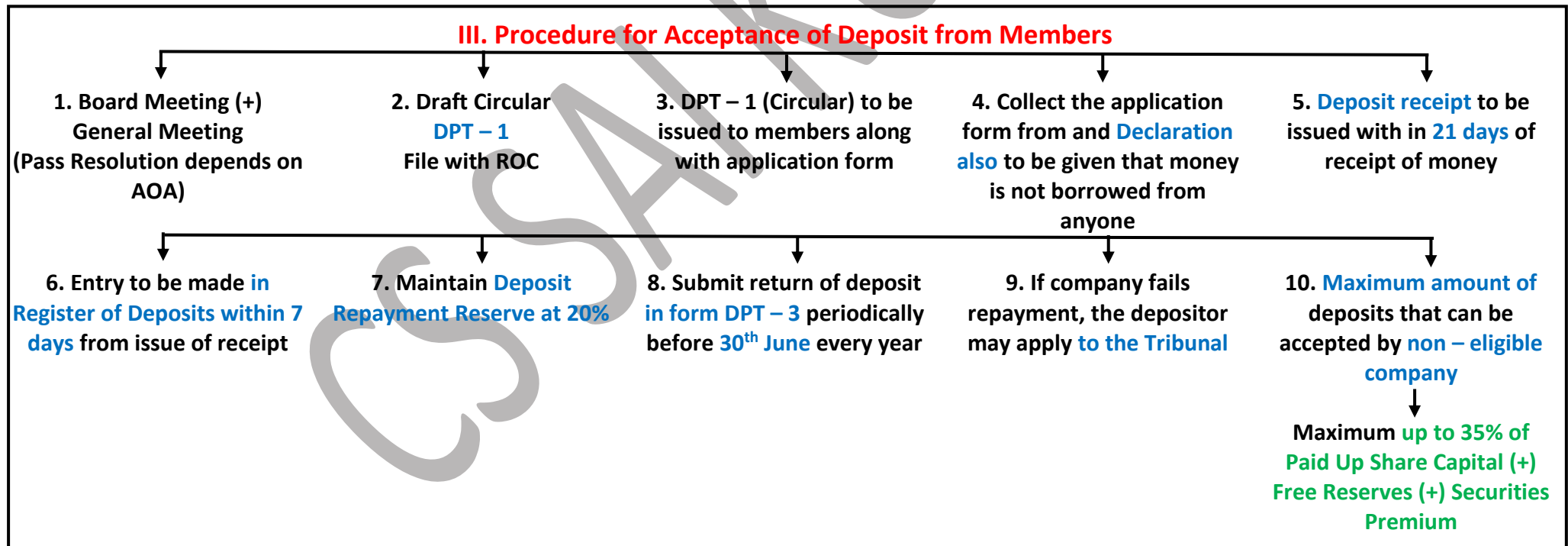
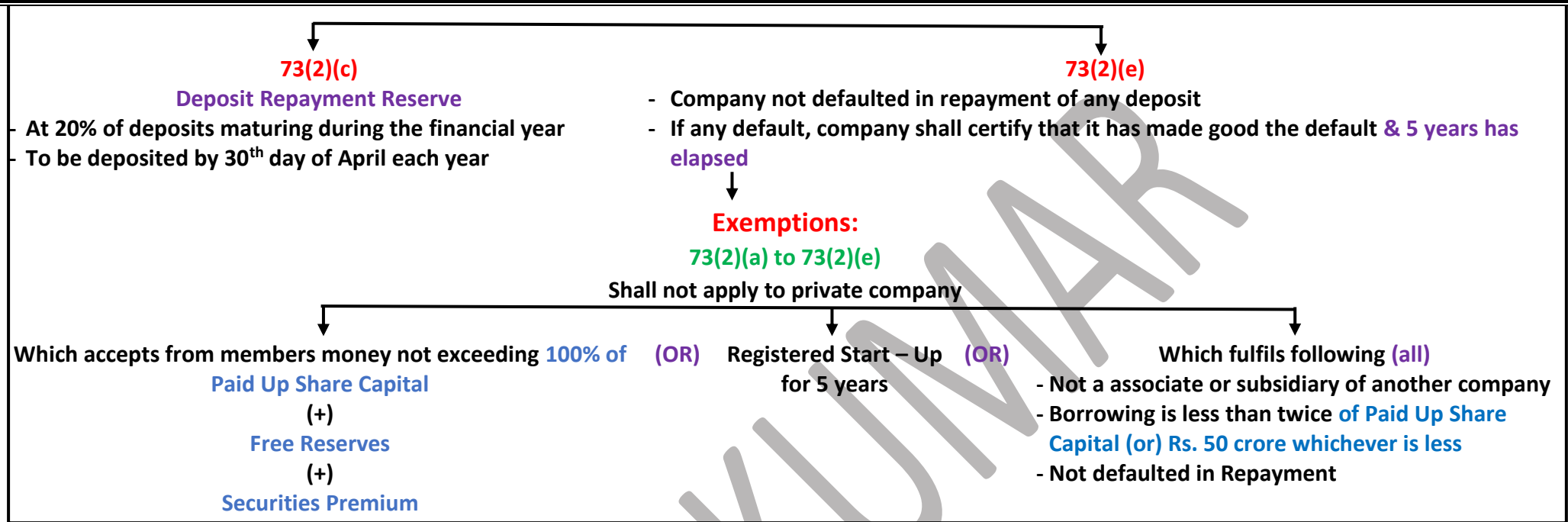
Date of Annual General Meeting (or) Due date of Annual General Meeting

### 73(2)(b)

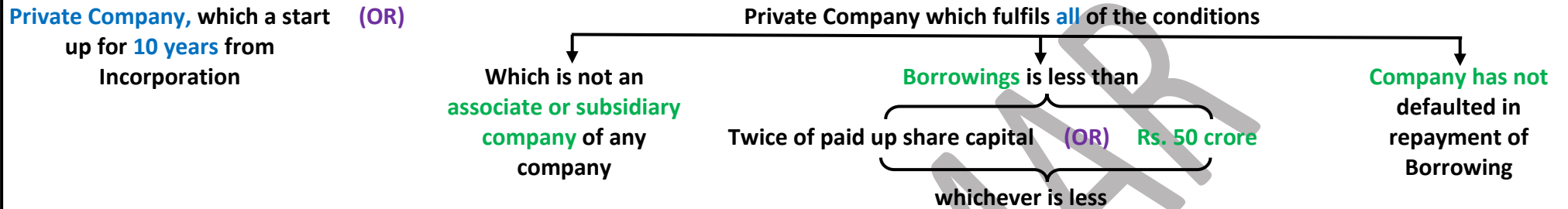
Circular (+) Statement

30 days prior to issue to members

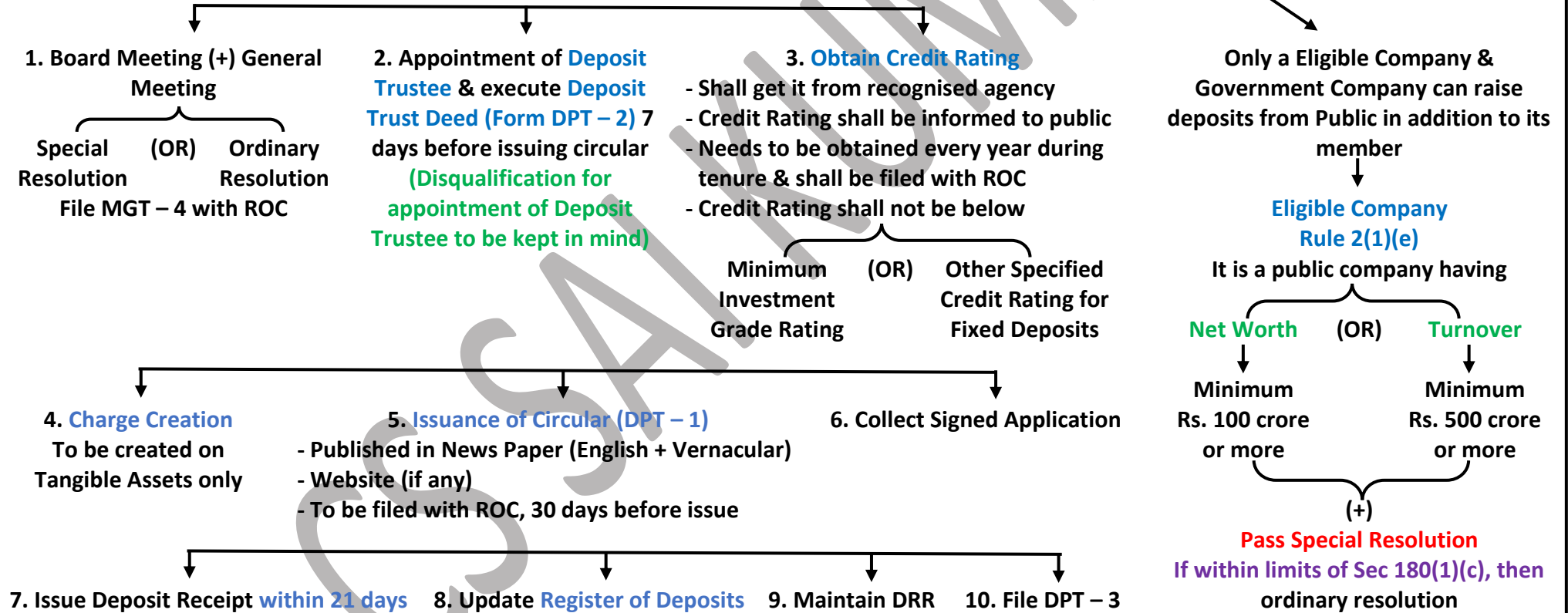
ROC



**Exceptions: The maximum limit shall not apply to the following clauses of Private Company**

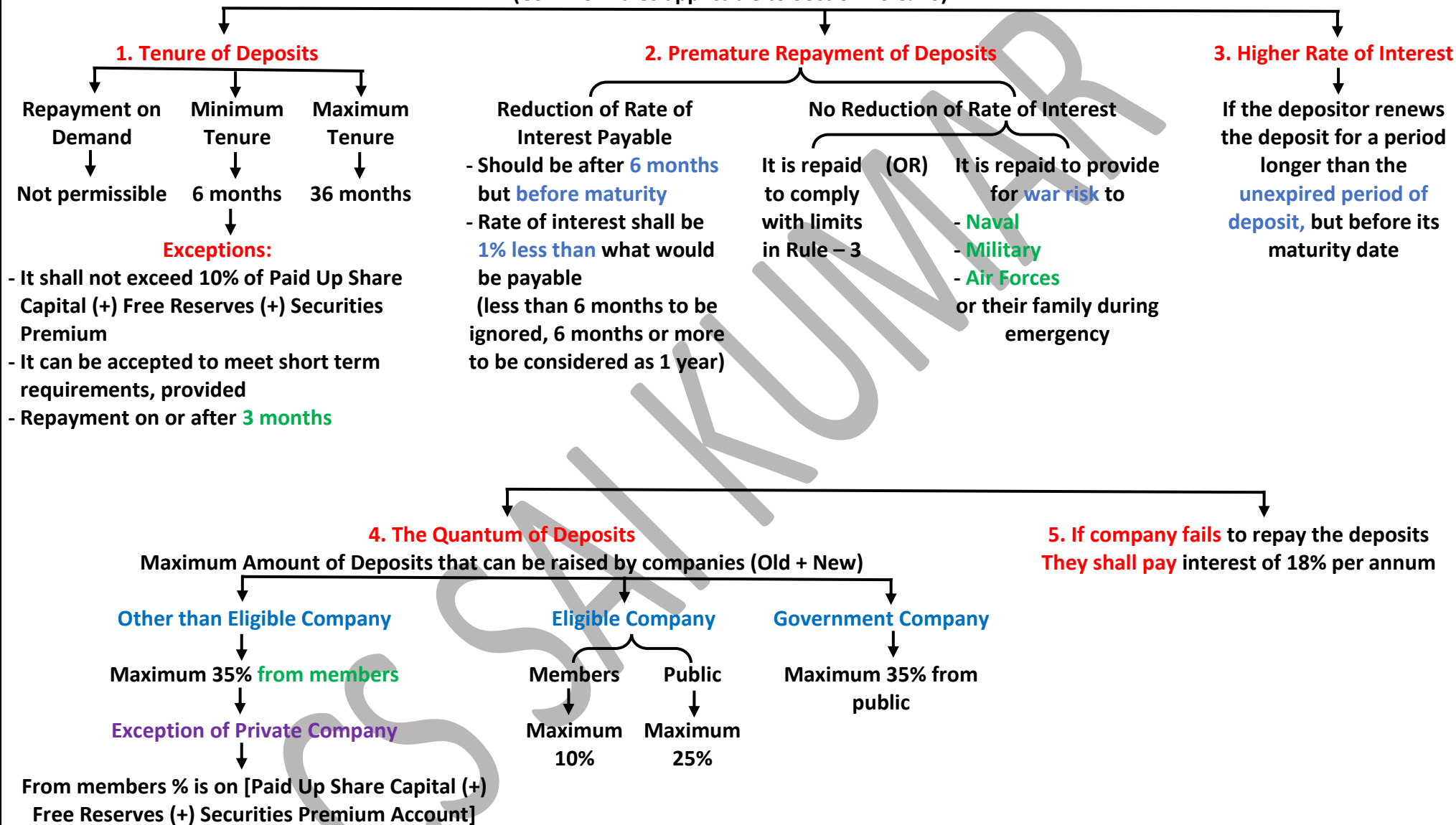


**IV. Provision regarding Acceptance of Deposits from Public by Eligible Companies**



## V. Companies (Acceptance of Deposit) rules, 2014

(Common rules applicable to Section 73 & 76)

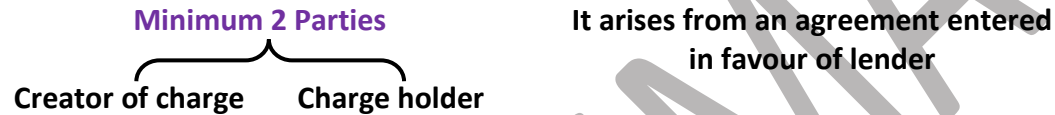


## Chapter-6: Registration of Charges

### Charge [Sec 2(16)]

It means an 'Interest' (or) 'Lien' created on property / assets of company or its undertaking as security & includes a mortgage

### Charges has following essential features



### Why Charge?

To ensure all encumbrances made by company on its assets are made public    To protect the Interest of the Lenders

### I. Kinds of Charge

#### Fixed Charge

- 1) It is a charge created on specific assets of borrowing company
- 2) It is identified at the time of creation
- 3) Borrowing company cannot sell such asset, but it may be used
- 4) **Example:** Fixed Assets, Land & Building, Plant & Machinery, etc.

#### Floating Charge

- 1) It is created on assets which are fluctuating
- 2) It is not attached to any definite property
- 3) Company may sell such property without any approval
- 4) **Example:** Stock in Trade, Debtors, etc.
- 5) Until the charge gets **crystallised**, the security remains dormant

### II. When does Floating Charge gets Crystallised?

When company goes into **Liquidation**

Company **ceases to** carry on Business

Creditors / Debenture Holders takes **steps to enforce** security

Happening of **event specified** in deed

### III. Consequences of Non – Registration of Charge

Where a charge created by the company but not filed with ROC leads to

#### Void Against Liquidator

The liquidator can ignore the charge & can treat the creditor as unsecured creditor

#### Void Against Creditor

If any subsequent charge is created on same property, the earlier charge will have no right & later charge will enjoy priority

However, it does not discharge the company from its liability

### IV. Duty to register Charge (Sec 77)

Where a company creates charge on any property (Movable / Immovable , Tangible / Intangible) whether in (or) outside India

To be verified by

Property situated outside India

Property situated in India  
(Whole / Part)

1. Company Seal (OR)

2. Director (or) Company Secretary (or) Authorised officer of charge holder (OR)

3. Some person other than company who is interested in Mortgage

(1) or (2)

Charge shall be registered with Registrar **within 30 days** of creation

Failure to register **in 30 days**

**The same provision shall apply to Modification of Charge as well**

**Date of creation of Charge**

**Before Commencement** of Companies (Amendment) Second Ordinance, 2019

**On or After Commencement** of Companies (Amendment) Second Ordinance, 2019

**Effective date is 02/11/2018**

Company to apply for **condonation of delay**

Company to apply for condonation of delay

**within 300 days of creation of charge**

**After 30 days, but within 60 days of creation of charge**

To be filed with ROC by paying such **additional fees**

To be filed with ROC by paying such **additional fees**

Failure to register within 300 days, it shall be done **within 6 months** from 02/11/2018

If not registered within 60 days (+) **60 days time** subject to **Advalorem Fees**

Registrar shall issue a **Certificate of Registration of Charge (CHG - 2)**

to  
**Company** **Charge Holder**

In case of modification  
**CHG - 3**

**Form to be Filed**

**CHG - 1**

**CHG -**

Any other case

In case of Debentures

### **V. Application for Registration of Charge by Charge Holder (Sec 78)**

As per Sec 77, if the company fails to register charge within 30 days, **charge holder may** apply to ROC for Registration.

ROC shall give notice to company & **if no objection is received within 14 days**, allow such registration.

When application is made by charge holder, he shall have right to **recover from company any amount paid as fees / additional fees to register charge.**

## VI. Company to report Satisfaction of Charge (Sec 82)

When Registered Charge is Repaid / Satisfied

Company shall give intimation to ROC **within 30 days**

**If Notice is given**

1) On Receipt of such intimation, ROC shall issue notice to charge holder requiring him to **show cause** why satisfaction should not be recovered

**Note:** Notice to Charge Holder is not required if **intimation to ROC is signed by** such Charge Holder as well

2) Charge Holder shall show cause **within 14 days**

**Responds**

ROC shall

- a) Record a note to that effect in Register of Charges;
- b) Inform the company about the cause shown

**Does Not Respond**

ROC shall

- a) Record the satisfaction of charge in Register
- b) Inform company about such recording

Registrar shall issue Memorandum of Satisfaction of Charge

**Form No. CHG – 5**

**If Notice is not given**

**Within 300 days of such payment**

Company / Charge Holder to make application for **condonation of delay (+)**  
**Additional Fees**

**Note:** Instrument creating charge / modification shall be preserved for **8 years from satisfaction**

## VII. Rectification by Central Government in Register of Charges (Sec 87)

An Application can be made to Central Government, in case of

**Shall be filed in Form CHG – 8**

Omission in giving **intimation to ROC** with respect to **payment / satisfaction**

(OR)

Omission (or) Mis – Statement **of any particulars** in filing made to ROC

If Central Government is satisfied that it was not intentional

**Direct Extension of Time** if filing was not made **within 300 days from payment / satisfaction**

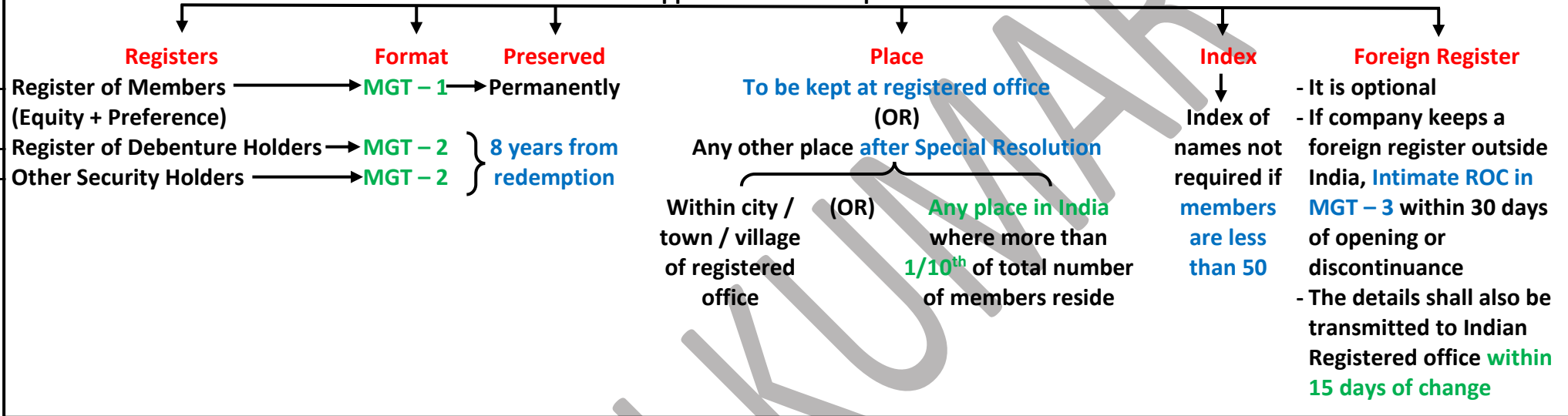
Direct for rectification of any particulars in any filing previously recorder with ROC



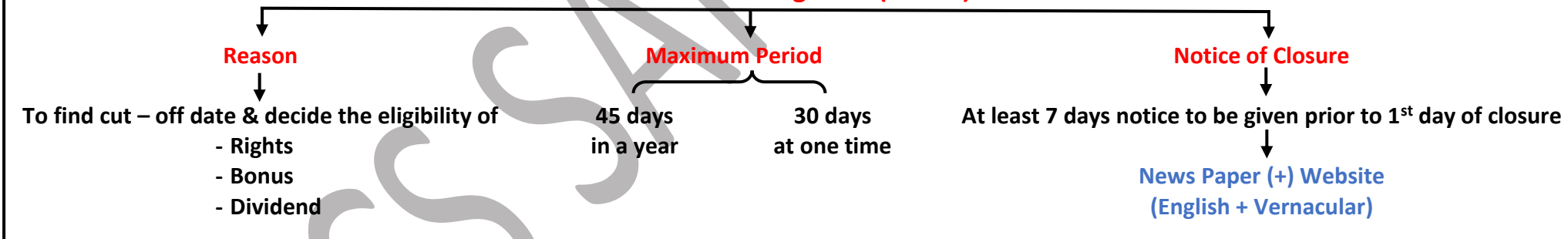
# Chapter-7: Management and Administration

## I. Register of Members (Sec 88)

Applicable to all Companies



## II. Closure of Registers (Sec 91)



### III. Declaration in respect of Beneficial Interest in Shares (Sec 89)

Exception to  
Government Company

Declaration to be filed by

Registered Holder of Shares & **Not Beneficial Owners**  
in MGT - 4

within 30 days of entering his name

File declaration with company specifying particulars of person who holds **Beneficial Interest**

Person Holding Beneficial Interest & **Not Registered Owners in MGT - 5**

within 30 days of acquiring beneficial interest

File declaration with company specifying

Nature of his interest & Particulars of Registered Owner

Change in Beneficial Interest to be intimated to company within 30 days of change

Company after making a note of such declaration

MGT - 6  
within 30 days of receipt of declaration → ROC

#### Consequences of non - filing

Rights with respect to such shares shall not be enforceable

#### Penalty

##### Person

Minimum  
Rs. 50,000

Continuous Default  
Rs. 200 per day

Maximum  
Rs. 5 lakh

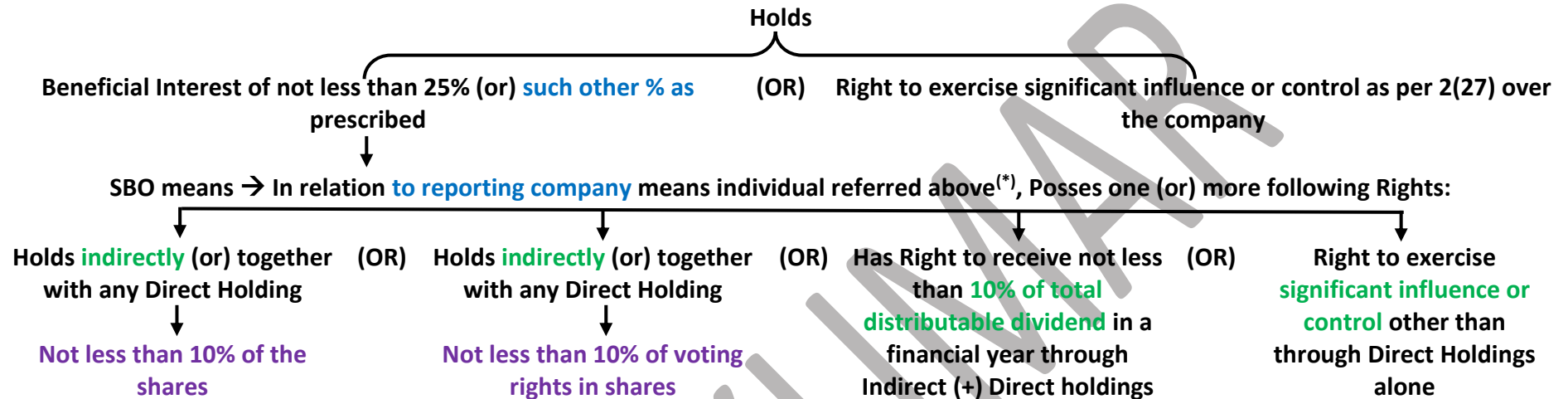
##### Company: Failure to file return

Company  
Maximum of  
Rs. 5 lakh

& Every Officer  
Maximum of  
Rs. 2 lakh

## IV. Register of Significant Beneficial Owner in a Company & Companies (SBO) Rules, 2018 (Sec 90)

(\*) Every Individual Acting alone (or) together (or) through one (or) more persons (or) Trust & Person Resident Outside India



Every SBO shall make declaration in Form BEN – 1 within

90 days of commencement of these rules i.e., 08/02/2019

30 days of becoming SBO (or) Any changes in his SBO

Based on the information received, the company shall file BEN – 2 within 30 days of receipt with ROC

The company shall maintain a Register of all the details in Form BEN – 3

Details include:

- 1) Name of SBO
- 2) Date of becoming SBO
- 3) Address
- 4) Details of Ownership

Notice Seeking Information regarding SBO, to be given by company in Form BEN – 4 to any person (whether a member or not) whom company knows (or) has reasonable cause to believe

- a) To be SBO of company
- b) To having knowledge of identity of SBO
- c) To have been a SBO of company at anytime during preceding 3 years to the date of issue of notice & not registered as SBO

Information shall be given by **concerned person within 30 days**

In case of **failure**

Company shall **apply to Tribunal** within **15 days** of expiry of

- a) Person fails to respond
- b) Information is not satisfactory

**In application to Tribunal:** Company shall seek shares in question be restricted with respect to **Transfer & such other rights attached to it.**

**within 60 days** of application

After giving opportunity of being heard, Tribunal shall pass such order as it deems fit

**within 1 year** from order

Company / Person may make application to Tribunal **for Relaxation (or) Lifting of Restriction**

If no application filed **within 1 year**

Shares shall be transferred to **IEPF**

### Penalty

**If person fails to give disclosure**

**Fine**

Minimum of  
Rs. 50,000

Continuous Default  
Rs. 1,000 per day

Maximum of  
Rs. 2 lakh

**Company (Fine)**

Minimum of  
Rs. 1 lakh

Continuous Default  
Rs. 500 per day  
&

Maximum of  
Rs. 5 lakh

**Officer (Fine)**

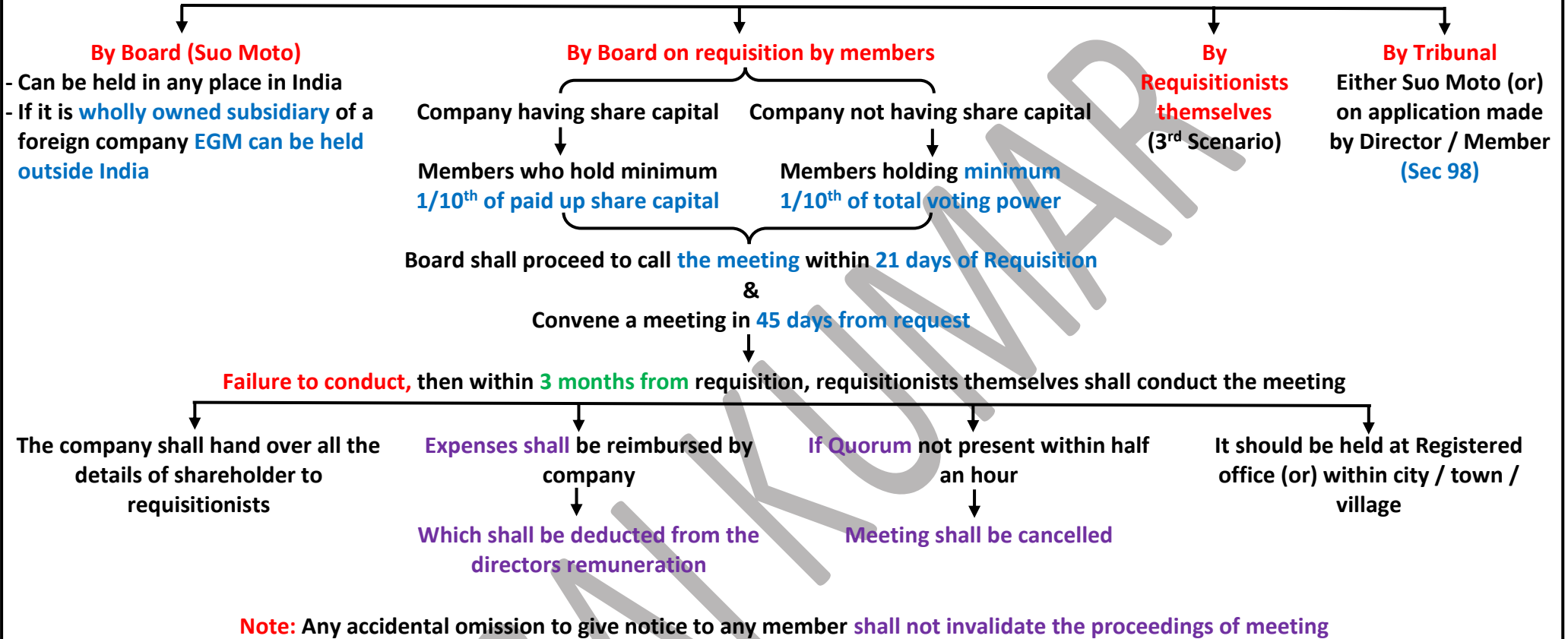
Minimum of  
Rs. 25,000

Continuous Default  
Rs. 200 per day

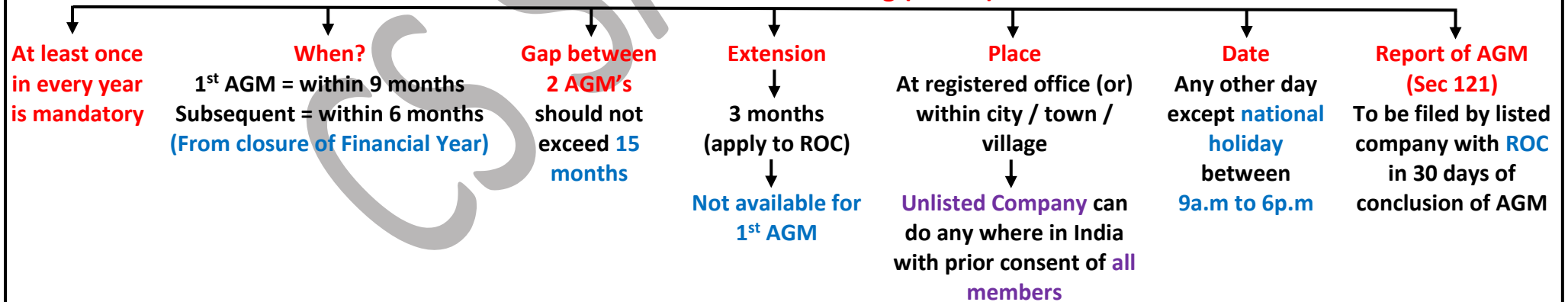
Maximum of  
Rs. 1 lakh

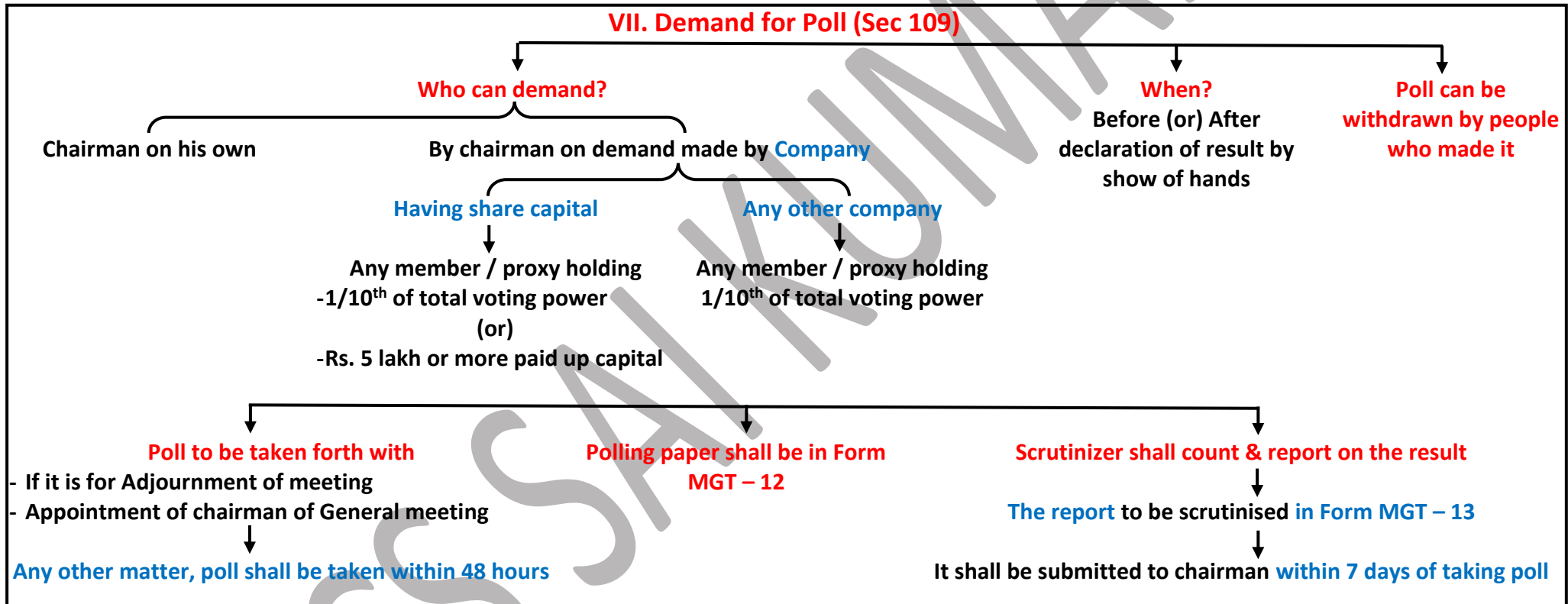
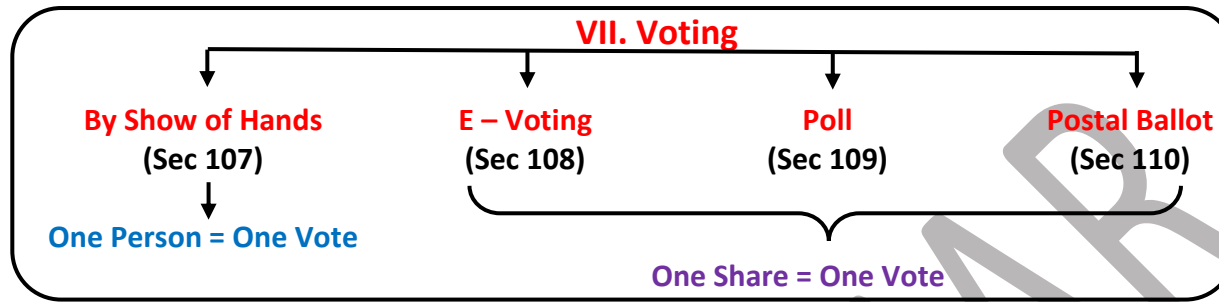
**Note:** Any person wilfully gives false information = liable under section 447

## V. Extra – Ordinary General Meeting (Sec 100)

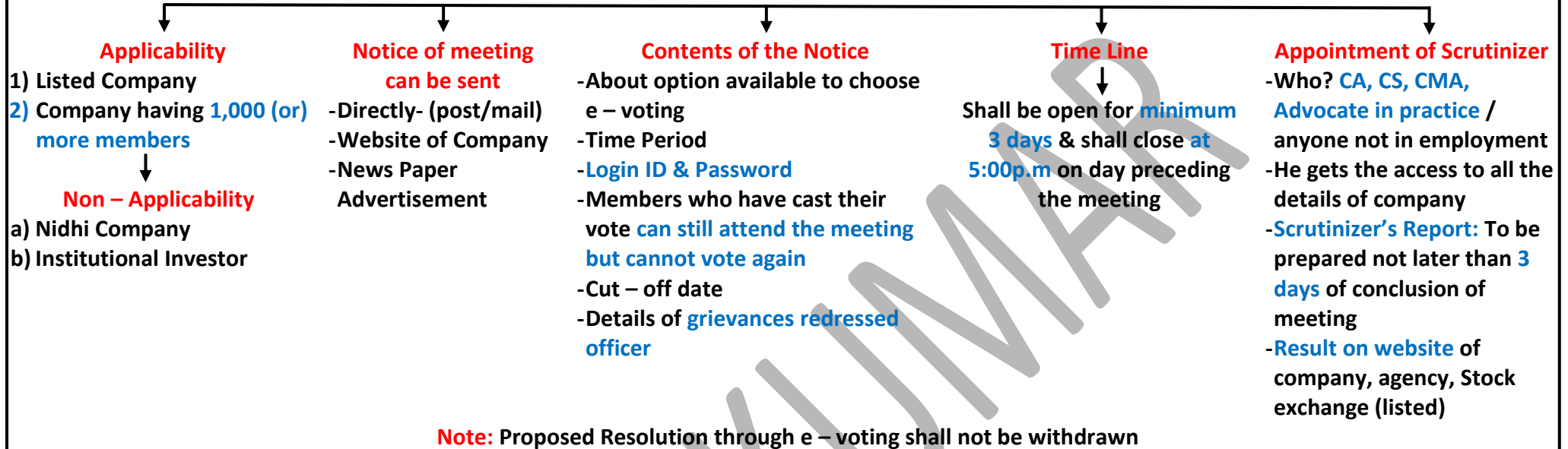


## VI. Annual General Meeting (Sec 96)

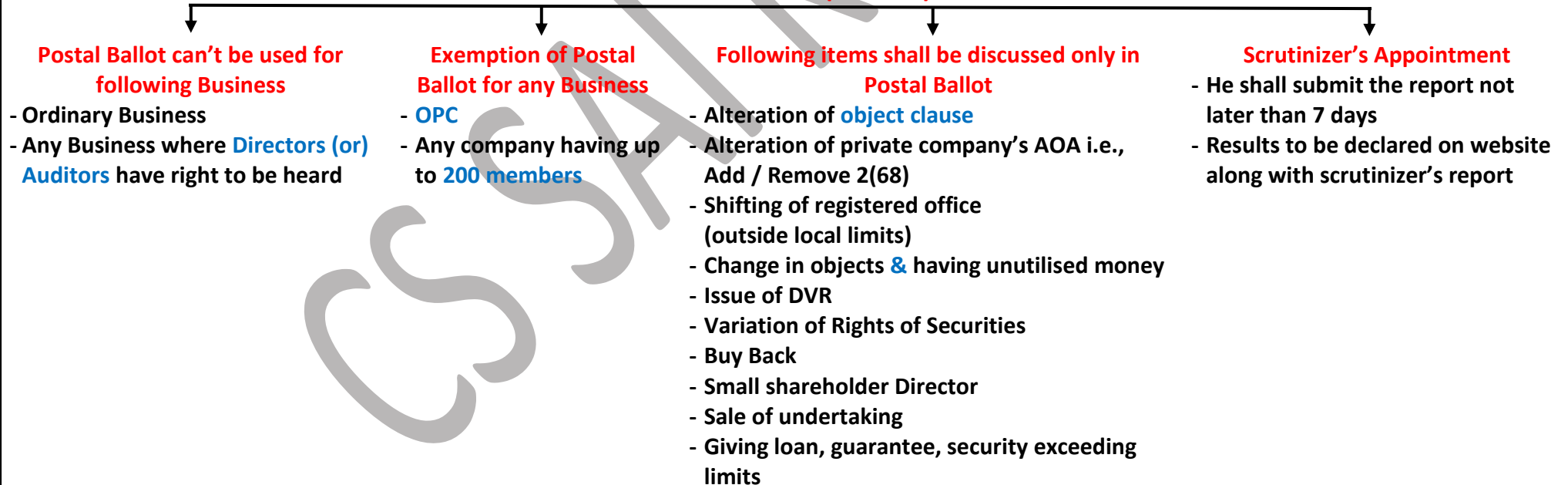




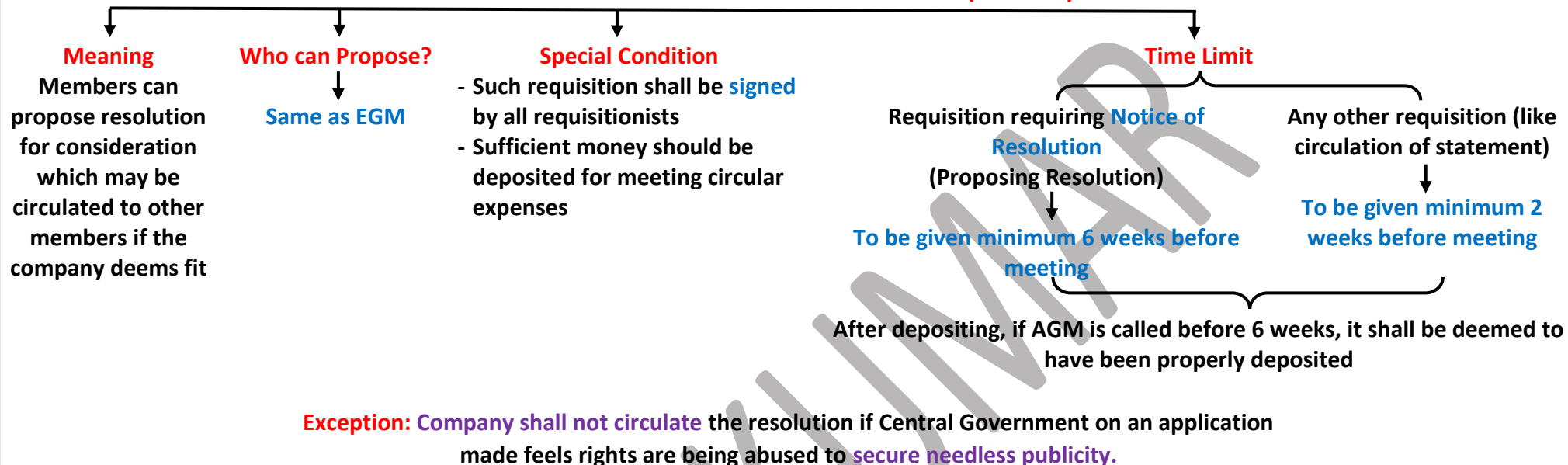
## IX. Voting Through Electronic Means (Sec 108)



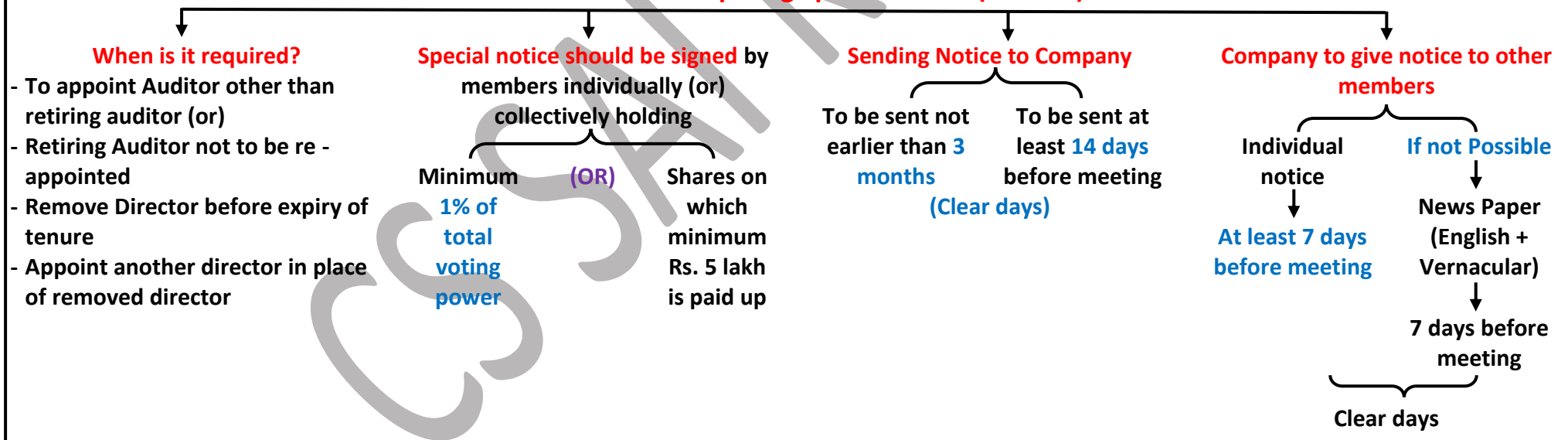
## X. Postal Ballot (Sec 110)



## XI. Circulation of Members Resolution (Sec 111)



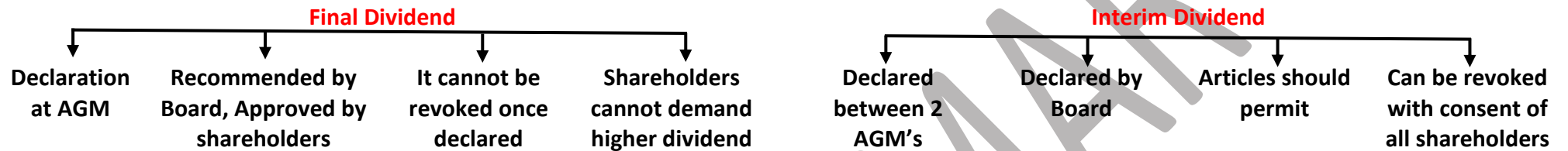
## XII. Resolution Requiring Special Notice (Sec 115)





## Chapter-8: Declaration and payment of Dividend

### I. Types of Dividend



### II. Declaration of Dividend (Sec 123)

#### 1. Sources of Dividend

Out of the **profits** of the company after deducting depreciation

From money provided by Central or State **Government**

of the **current** Financial Year

(OR)

of **previous** Financial Year (Free Reserve)

(OR)

Both

**(Note:** Free Reserve does not include statutory or revaluation reserve)

#### 2. Before declaration of any dividend, the following should be deducted / set – off

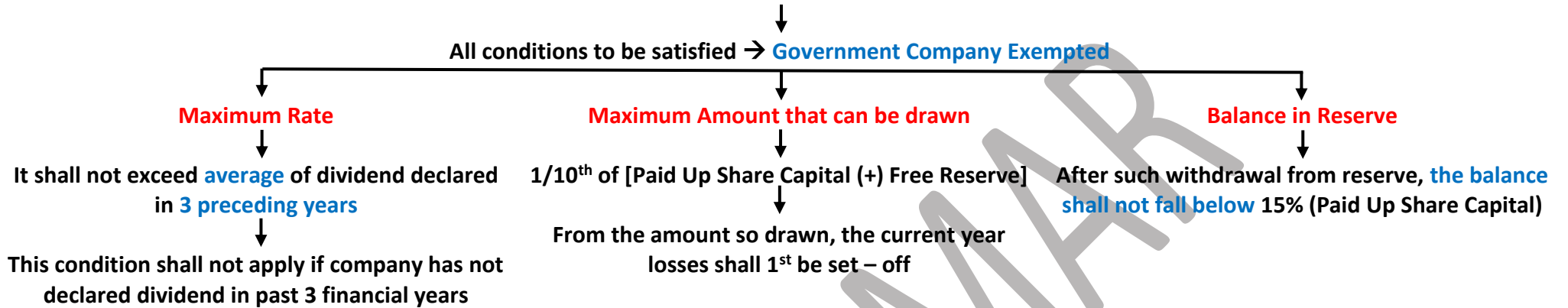
a) previous year losses

&

b) Depreciation of previous year

#### 3. Transfer of money to reserves is not mandatory & its company's discretion

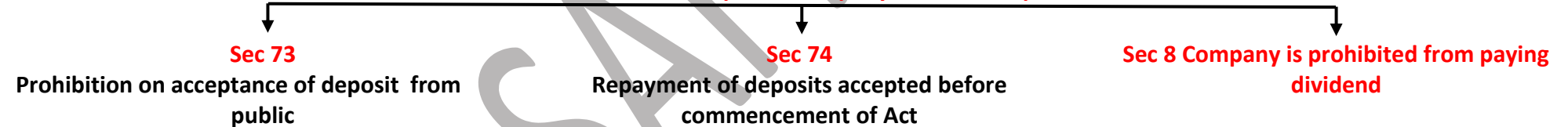
**4. (Rule – 3) Declaration of Dividend out of profits of previous year / when there is inadequacy of profit / absence of profit**



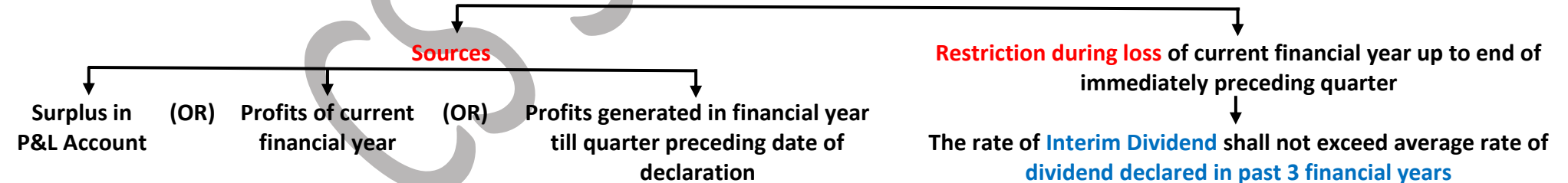
**5. Payment of Dividend**



**6. Dividend shall not be paid if company has not complied with**



**7. Interim Dividend [Sec 123(3) & (4)]**



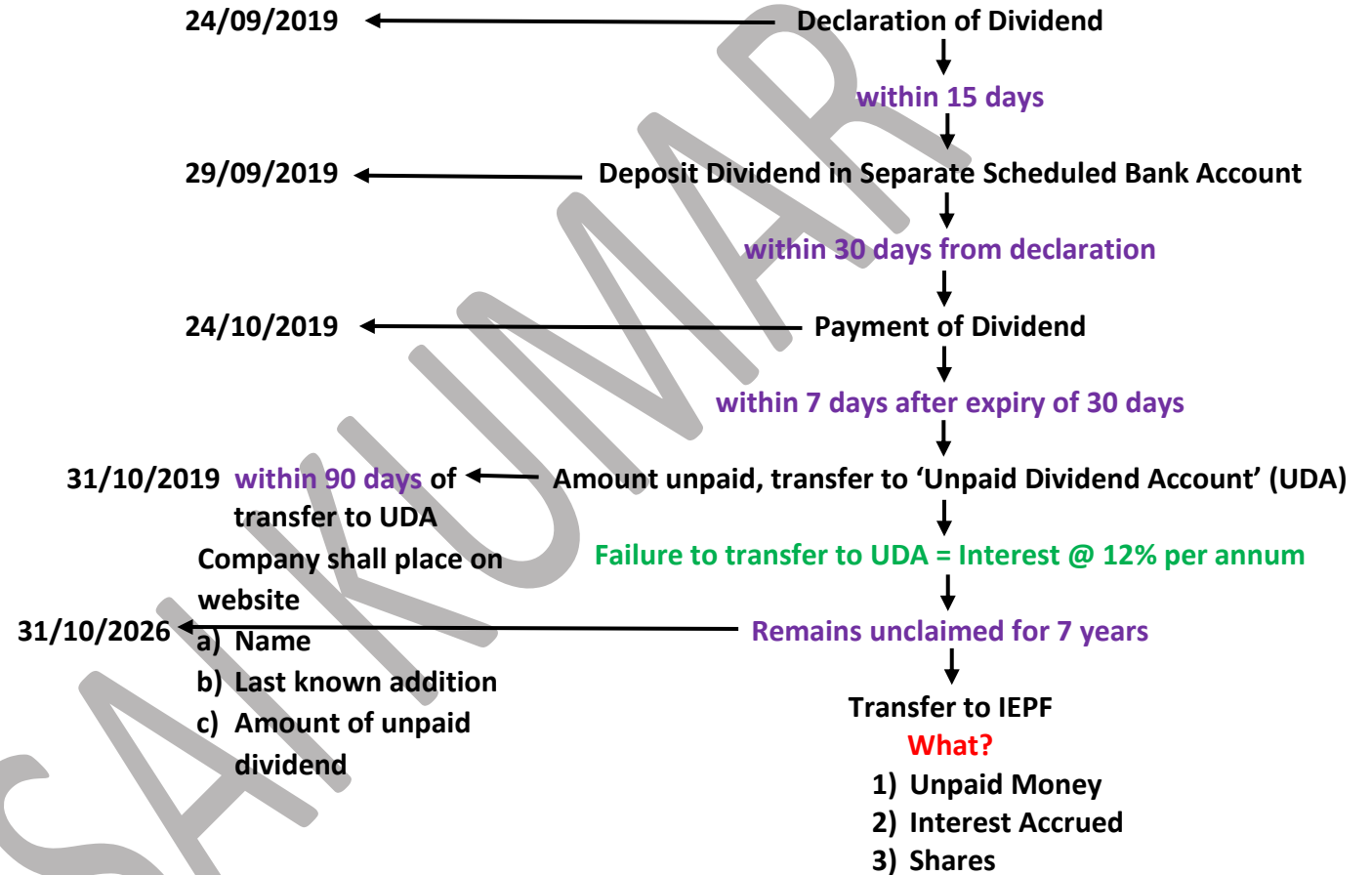
**8. Declared dividend to be deposited in a separate Scheduled Bank Account**

### III. Unpaid Dividend Account (Time Line) [Sec 124]

#### Illustration

**Note:**

- 1) While money is in UDA, any person may apply to company for payment
- 2) Any dividend is claimed in any year during the 7 years, the shares shall not be transferred to IEPF
- 3) Once amount is transferred to IEPF, any person may apply to authority for payment of money
- 4) **As per General Clauses Act**, the word 'from' indicates that, 1<sup>st</sup> day shall be excluded (in this case 24/09/2019)



## IV. Investor Education and Protection fund (Sec 125)

### 1. It is the fund established by Central Government

#### Fund is credited with

- 1) Grants by Central Government
- 2) Donations by Central Government / State Government / Company / Institution
- 3) General Revenue Account of Central Government
- 4) Amount in IEPF under Companies Act, 1956
- 5) Interest / Income received from investments made out of fund
- 6) Disgorgement order money received
- 7) Unpaid Dividend Amount
- 8) Security Application Money
- 9) Matured Deposits
- 10) Matured Debentures
- 11) Redemption Amount of preference shares
- 12) Interest Accrued (8) to (10)

Remaining  
unpaid for 7  
years

#### Fund is debited with

- 1) Refund in respect of (7) to (11)
- 2) Promotion of awareness among investors
- 3) Educating investors
- 4) Protection of interest of investors
- 5) Distribution of disgorgement amount to persons who suffered loss due to wrong action by any person
- 6) Reimburse legal expenses under class action suit

### 2. Authority to Administer the Fund

The Secretary, Ministry of Corporate Affairs  
Ex – Officio shall be the chairperson

Constitution

6 members  
(Maximum Limit 7)

CEO, shall be the convenor of the authority

### 3. Power of Authority

Administer the Fund

Maintain separate account and records in relation to fund

To spend money out of fund

### 4. Audit

Account of fund to be audited by Comptroller and Audit-General (CAG)

Audited Accounts & Annual Report shall be sent to Central Government

### 5. Annual Report

The authority shall prepare

It shall cover activities during financial year

Annual Report & Audit Report shall be laid before both houses of parliament

### V. Dividend to be held in Abeyance (Sec 126)

Applicability

Transfer Deed is delivered to the company for registration

But

Transfer is not registered by company

Dividend of such shares shall be transferred to unpaid dividend account, if the shareholder has not authorised the transferee of such dividend &

Keep in abeyance in relation to such shares all the rights / bonus if issued

### VI. Punishment for Failure to Distribute Dividend within 30 days (Sec 127)

Liable for Punishment  
Penalty

Exemption

Company = 18% p.a.

Director

Due to operation of Law

Shareholders direction of payment could not be complied & same has been communicated

Adjusted against sum due from shareholder

Dispute in Right to receive dividend

Non Payment is not due to default of company

Imprisonment  
Maximum 2 years

Fine  
Rs. 1,000 per day of default

**Note:** Dividend once declared becomes a debt to the company & cannot be revoked

# Chapter-9: Accounts of Companies

## I. Books of Accounts to be kept by Company (Sec 128)

### 1. Every company shall maintain for every financial year

#### Books of Accounts 2(13)

- Includes records maintained in respect of
- All amounts received & expended
  - Assets & Liabilities of company
  - Sales & Purchases of goods & services
  - Items of cost (as per 148)

#### Books (or) Paper 2(12)

##### Books and Paper

It includes:

- Statutory Registers
- Minutes
- Books of Accounts
- Deeds, Vouchers
- Writings, Documents in paper / electronic form

#### Financial Statements 2(40)

It includes:

- Balance Sheet
- Profit & Loss Account
- Income & Expenditure Account in case of NPO
- Cash Flow Statement
- Statement of changes in Equity
- Explanatory Note

### 2. General Requirements in Preparation of Books of Accounts

It should give **True & Fair view**

Shall be prepared **every financial year**

Explain transactions of Registered & Branch Office

Accounts must be kept in **Accrual Basis & Double Entry System**

### 3. Place of Maintenance of Books of Accounts, Books & Paper, Financial Statements

At the registered office of the company

(OR)

Any other place in India **after passing Board Resolution**

(+)

Intimate **ROC** about new address in **AOC – 5 in 7 days**

#### Note: Books of Branch Office:

Whether in India or Outside, the books shall be kept at branch office itself, **provided summarized returns** shall be sent to Registered Office at **Quarterly Intervals**

#### 4. Inspection by Directors

Any Director can inspect the Books during Business Hours

He can inspect Books of Subsidiary only after authorisation by BOD

Financial information maintained outside India, can be requested by Director to Company & it shall be provided in 15 days

He shall seek information directly & not through any agent

#### 5. Period of Reservation

Books of Accounts (+) Vouchers = Minimum 8 years preceding financial year  
If company incorporated newly, than such period of existence

#### 6. Person responsible to maintain Books of Accounts

Managing Director

Whole time Director in charge of Finance

Chief Financial officer

Any other person authorised by BOD

## II. Financial Statements (Sec 129)

### 1. How to maintain Financial Statements

It shall give true & fair view of affairs of company

Comply with Accounting Standards

Shall be in the format as per Schedule III of Companies Act, 2013

If Not Complied, then disclose

Deviation of such Accounting Standard

Reason for such Deviation

What will be the Financial Effects of Deviation

### 2. Non – Applicability

Insurance Company

Banking Company

Company engages in supply of electricity

Any other company for which financial statements are specified

**3. Board shall lay full documents in Annual General meeting**

Financial statements of Company (+) Consolidated Financial Statements (CFS) of all Subsidiary and Associate Company

To be prepared as per Accounting Standards

**Exemption to prepare Consolidated Financial Statements (CFS)**

It is a unlisted company (or) not in process of listing in or outside India

Its Ultimate (or) Intermediary holding company files CFS with ROC

It is a wholly (or) partly owned subsidiary of another company & all its members have not given NO Objection on Non Presentment of CFS

**4. Exemption by Central Government to comply with Section 129**

Suo Moto

(OR)

On application by company & involves public interest

**III. Re – Opening of Accounts (Sec 130)**

To Re-Open & Re-Cast its Financial Statements

Application to be made by

- (a) Central Government
- (b) SEBI
- (c) Income Tax Authority
- (d) Statutory Authority
- (e) Any person concerned

To  
Competent Court / Tribunal  
Before passing order,  
it shall give notice  
to for any representation

**Only Reason for re-opening**

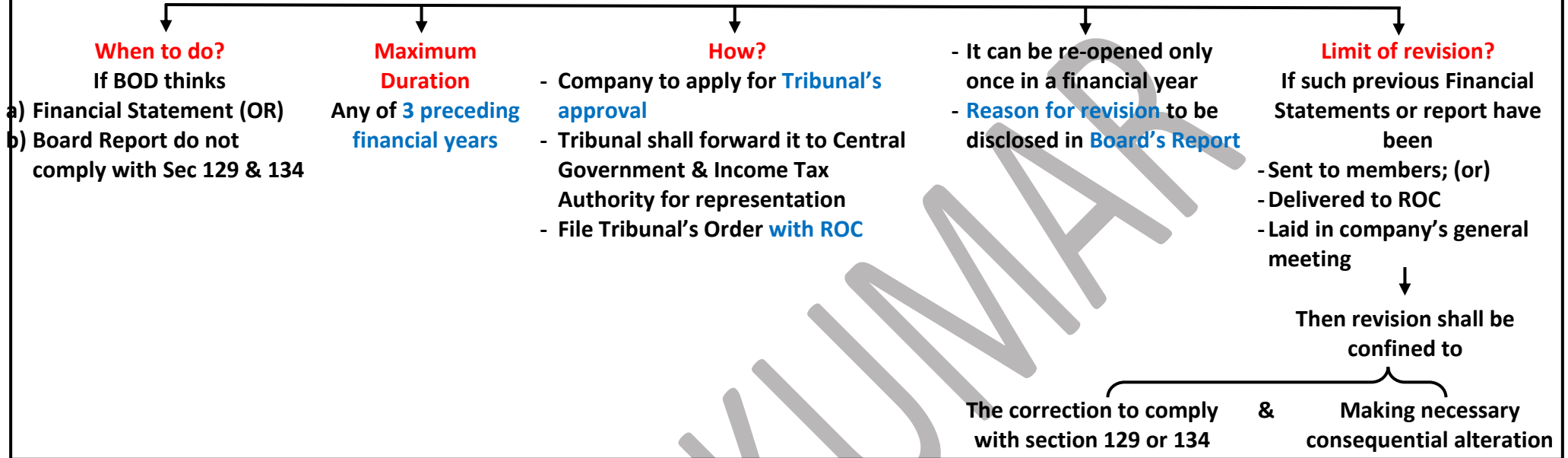
- 1) Accounts were prepared in **Fraudulent Manner**
- (OR)
- 2) Affairs of company were **mis-managed** & there is doubt on reliability of Financial Statements

**Note:**

- 1) Books cannot be re-opened for a period earlier than **8 financial year's** preceding current financial year
- 2) It can be re-opened if there is direction issued by central government that books shall be maintained for more than 8 years
- 3) **The accounts once revised shall be final**



#### IV. Voluntary Revision of Financial Statements (or) Board Report (Sec 131)



#### V. Constitution of National Financing Reporting Authority (Sec 132)

→ Central Government  
Constituted NFRA on 01/10/2018

##### 1. Composition

Chair Person

Who is eminent person having experience in Accounts, Audit, Finance, Law

Such Part - Time & Full - Time Members not exceeding 15

##### Note:

- 1) Chair Person & Members shall declare to Central Government regarding **no lack of Independence / Conflict of Interest** in their appointment
- 2) Chair Person & Members in full – time employment, shall not be associated
  - a) With any audit firm **during their tenure** &
  - b) **2 years** after such ceasing to be member & chairperson

##### 2. Functions of NFRA

**Make recommendation** to central government on formulation of **Accounting & Auditing Policies & Standards**

**Monitor & enforce** compliance of **Accounting & Auditing Standards**

**Oversee the quality of service of professionals** with respect to such standards & suggest change to improve quality

**Perform such other functions** as may be prescribed

### 3. Power to Investigate Service of Auditors of Companies & Body Corporates governed by NFRA

(Class of Companies given under Rule – 3 of NFRA Rules, 2018)

**1. Listed Companies**  
in (or) outside India

**2. Unlisted Public Company having**  
-Paid Up Capital of **minimum 500 crore**  
(or)  
-Turn Over of **minimum 1,000 crore**  
(or)  
-Aggregate (Loan, Debenture, Deposit)  
of **minimum 500 crore**

**3. Insurance Company**  
- Banking Company  
- Company engaged in  
electricity  
- Company under special  
act

**4. Body corporate /**  
Company on a reference  
made by central  
government in **public**  
**interest** to NFRA

Body corporate registered  
outside India, which is  
subsidiary or associate of **(1)**  
**to (4)** & if its income / net  
worth **exceeds 20%** net  
worth of such company /  
banking company

#### Note:

1) NFRA Rules shall continue to apply for **3 years** after it ceases to be

- Listed
- Exceed limit mentioned in point (2)

2) Every such body corporate shall inform **the particulars of their auditors** in **Form NFRA – 1**, within 30 days of commencement of rules

#### 4. Penalty

On such investigation, if a professional mis-conduct is proved, then NFRA shall

##### Impose Penalty

If it is Individual

Minimum  
Rs. 1 lakh

May extend to 5 times  
of fees received

In case of Firm

Minimum  
Rs. 5 lakh

May extend to 10  
times of fees received

Aggrieved Person  
can appeal to Appellate Tribunal

##### Debar the member / firm from

Being an

- Auditor
- Internal Auditor
- Undertaking Audit

Performing any Valuation

Minimum = 6 months  
Maximum up to 10 years

#### 5. Audit & Annual Report

Audit of NFRA is conducted by Comptroller and  
Audit-General (CAG)

Annual Report specifies activities done during  
the year

Both reports shall be submitted to Central  
Government, which will again be laid in **both the**  
**houses of Parliament**

## VI. Financial Statement, Board's Report (Sec 134)

### Authentication of Financial Statements by

- Chairperson, if authorised by BOD, (or)
- 2 Directors (1 shall be MD, if any)
- CEO, CFO & CS if appointed
- OPC – 1 Director

### Contents of Board Report

- Number of Board Meetings
- Frauds reported by auditors under 143(12)
- Amount of dividend recommended
- Amount proposed to carry to reserves
- CSR initiatives
- Particulars of contracts / arrangements with related parties
- Director's Responsibility Statement
- Financial Statement summary
- Web Address where Annual return is available
- DVR
- Sweat eq.
- ESOP
- Deposit - Accepted, Repaid, default during the year if any.
- Statement that the company complied with POSH

### Director's Responsibility Statement

- In preparing annual accounts applicable **accounting standards** are followed (Reason+deviation Statement)
- Directors have selected **accounting policies** that are reasonable to give true & fair view
- Maintenance of adequate Accounting Records
- Accounts prepared on **going concern basis**
- Listed companies has adequate **internal financial controls**

## VII. Corporate Social Responsibility (Sec 135)

### Applicability

- Net Worth = 500 crore (or) more
- Turn Over = 1,000 crore (or) more
- Net Profit = 5 crore (or) more

↓  
during previous financial years shall constitute **CSR Committee**

↓  
shall consist **3 (or) more directors** in which 1 shall be **independent**.

\*Private Company can have with only 2 directors

### Non Applicability

If a company ceases to meet the requirement for **3 consecutive financial years**, not be required to constitute CSR committee

### CSR Expenditure

2% of average net profits of company made during **3 preceding financial years**

### Schedule VII

- Eradicating Hunger
- Promoting Education
- Promoting Gender Equality
- Protection of national heritage
- Contribution to **PM Cares Fund**
- Slum area development

### Implementation of CSR

- Sec 8 / Trust / Society established by company
- Sec 8 / Trust / Society established by Central Government (or) State Government
- Sec 8 / Trust / Society shall have established track record of 3 years

### Exception of CSR

- If any spend o/s india
- Any thing spend to your employee's
- If 2% of ANP is not exceeds 50Cr. CSR Committee is not necessary.

### CSR committee

- Atleast 3 directors or more should be there. (including 1 independent director).
- If It is Foreign company, At least One resident director

Section 136 - Rights of members to receive audited FS

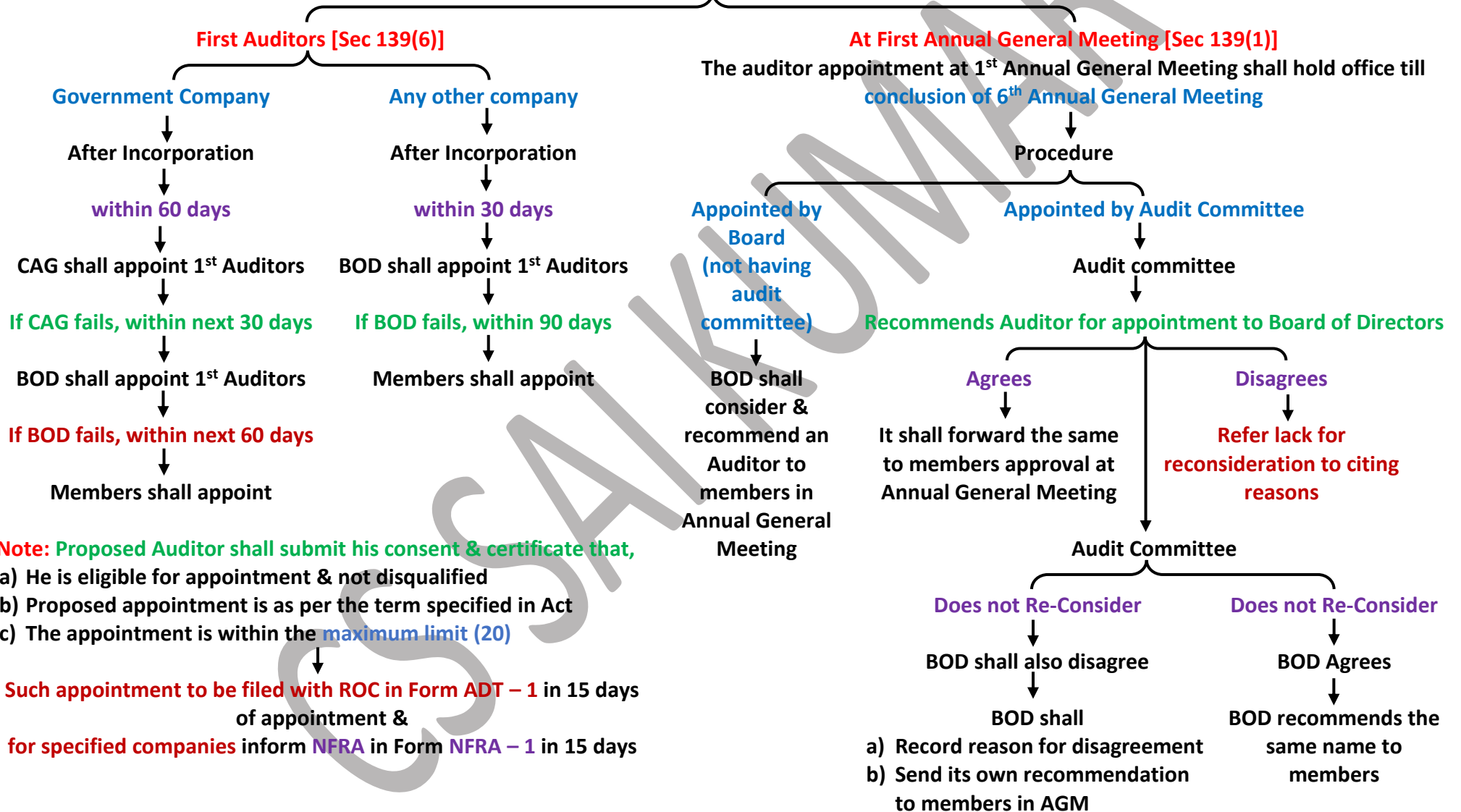
Section 137 - Copy of FS to be filed with ROC\*



# Chapter-10: Audit and Auditors

## I. Appointment of Auditors (Sec 139)

### 1. Appointment of Auditors of Company

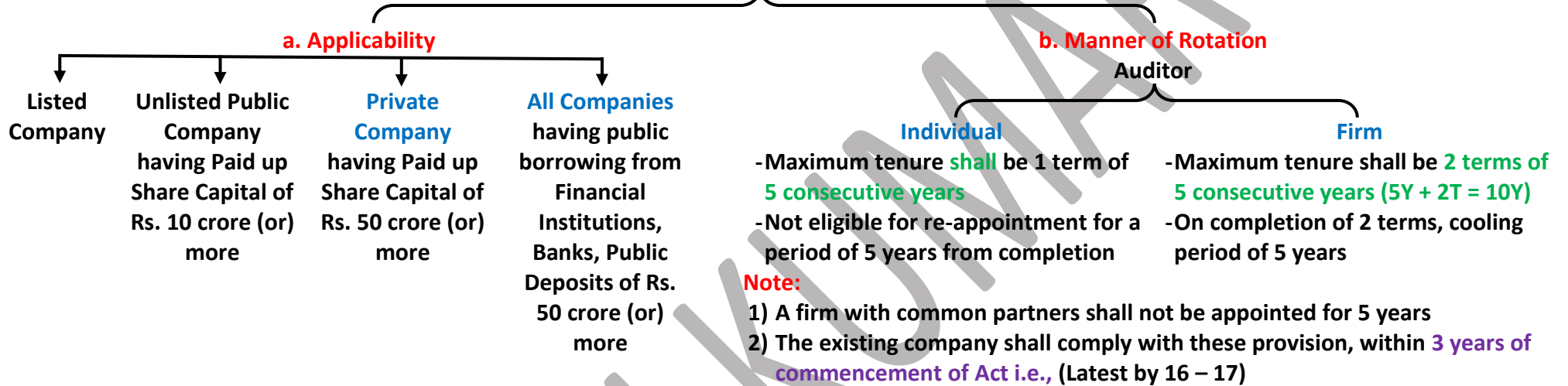


**Note:** BOD / Audit committee shall consider following details while appointing Auditor

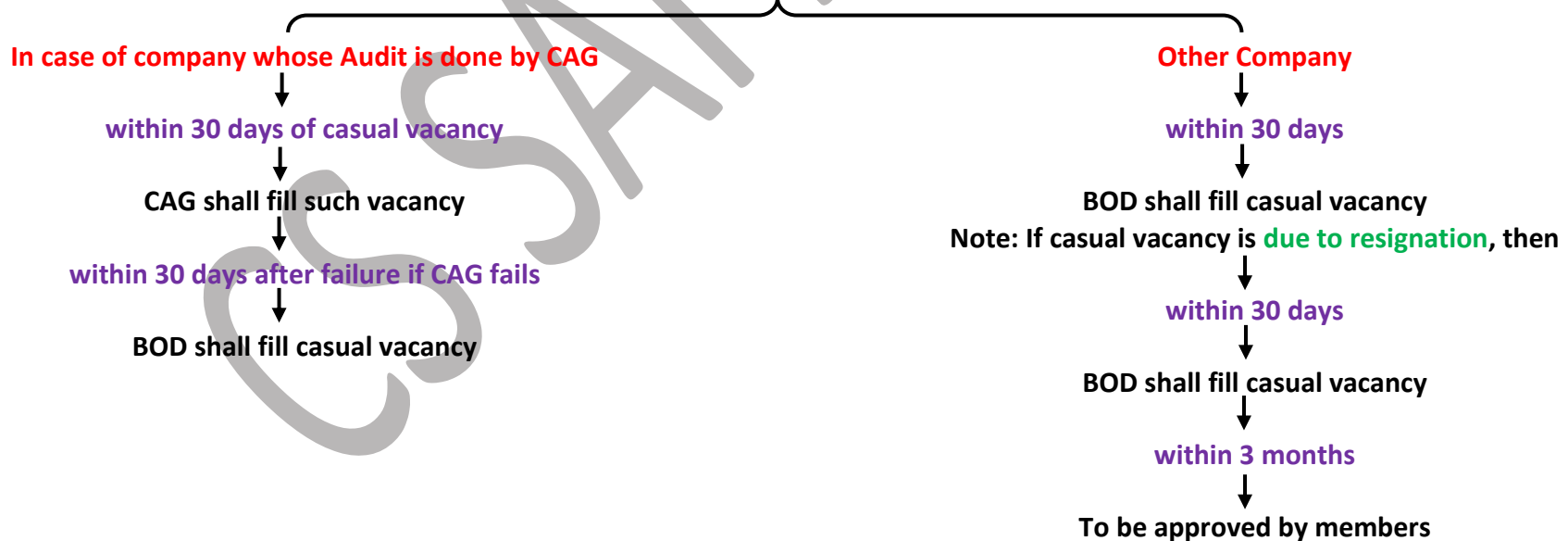
a) Qualification & Experience

b) Any proceedings of pending professional misconduct

**2. Tenure / Rotation of Auditor [Sec 139(2) & (4)]**

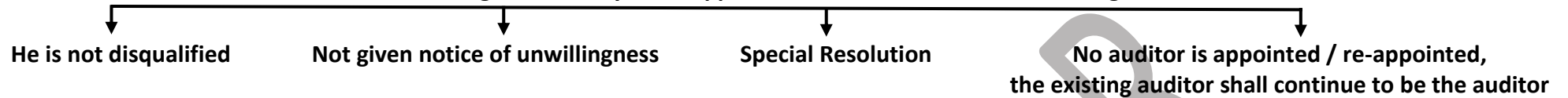


**3. Casual Vacancy of Auditors [Sec 139(8)]**

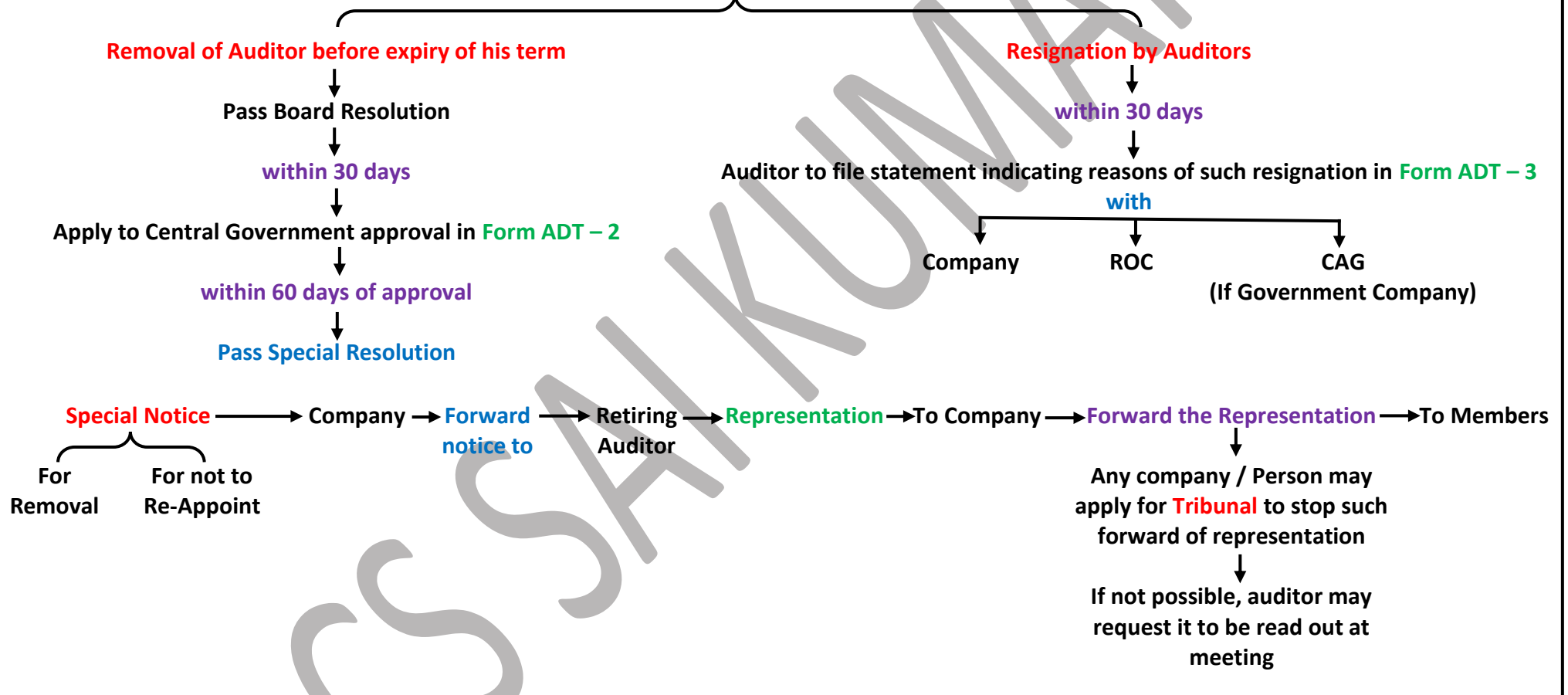


#### 4. Re-appointment of Retiring Auditor

A retiring auditor may be re-appointed at an Annual General Meeting if



#### II. Removal, Resignation of Auditor and Giving of Special Notice (115) (Sec 140)



### III. Eligibility, Qualification & Disqualification of Auditors (Sec 141)

#### Qualification

- CA
- Firm (Majority of partners to be CA)  
Only CA's are authorised to act & sign

#### Disqualification [Sec141(3)]

(I)

- **Body Corporate** (except LLP)
- **Officer / Employee** of Company
- **Partner / Employment** of Officer / Employee of company
- Person who renders services under Section 144
- Person / Firm has Direct / Indirect **Business Relationship** with CASH

Does not include

Professional Services Rendered

Ordinary Course of Business at Arm's length price

(II)

- A person / his relation / Partner
- **Security in Cash** (He can't, but Relatives up to Rs. 1 lakh)
- **Indebted to Cash** excess of Rs. 5 lakh
- **Guarantee to Cash** excess of Rs. 1 lakh
- Person whose relative is **Director / KMP**
- Person / Partner holding more than **20 companies as auditor** (Dormant, OPC, Small Company, Private Company Paid Up Share Capital less than Rs. 100 crore) not included in limit

#### Vacation of Office

If an auditor incurs any disqualification after his appointment as per Sec 141(3), then he shall vacate the office



#### IV. Reporting of Fraud by Auditors [Sec 143(12)]

If fraud involved is Rs. 1 crore (or) more

within 2 days of knowledge of Fraud

The auditor should report the matter to  
**Audit Company / BOD**

Need to reply within 45 days

To Auditor

within 15 days

Forward to Central Government

- a) His Report
- b) Reply of Audit Committee / BOD
- c) If no reply received, then to be informed

To,  
**The Secretary,  
Ministry of Corporate Affairs,  
(in sealed cover by post &  
e-mail in Form ADT – 4)**

If fraud involved is less than Rs. 1 crore

within 2 days of knowledge of Fraud

The auditor should report to Audit Company / BOD

- (a) Nature of Fraud
- (b) Amount Involved
- (c) Parties Involved

Company shall disclose details in Board's Report  
**(a) to (c) & (d) Remedial Action Taken**

This process is same for Cost & Secretarial Auditor

## V. Central Government to specify Audit of items of Cost in Certain Companies (Sec 148)

### 1. Cost Record

Mandatory for company engaged in production / supply of goods & services as prescribed  
E.g.: Telecom, Electricity, etc.

### Maintenance

Mandatory only if Central Government makes order (Company under special act, central government to consult regulatory authority)

### What is to be maintained?

Particulars relating to

- 1) Utilisation of material
- 2) Utilisation of labour
- 3) Other items of cost

### 2. Cost Audit

Mandatory only if Central Government makes an order for company with such Turn Over (or) Net Worth as prescribed

### 3. Appointment of Cost Auditor

If company has audit committee, they shall recommend to Board & Remuneration shall be approved by members.

If company does not have audit committee, BOD shall appoint & remuneration shall be fixed by Board & approval of members is required.

### 4. Who shall be Cost Auditor?

- a) It shall be done by Cost Accountant
- b) Auditor under Sec 139 shall not be appointed as Cost Auditor
- c) Comply with Cost Audit Standard (By ICWA)
- d) Qualification, Disqualification, Rights shall apply to Cost Auditor (Sec 141 & 143)

### 5. Cost Audit Report (CAR)

Cost Auditor

Submit his report to BOD

within 30 days of receipt

Forward to Central Government  
Central Government may ask for such other information

A copy of CAR in XBRL form  
i.e., Form CRA - 4

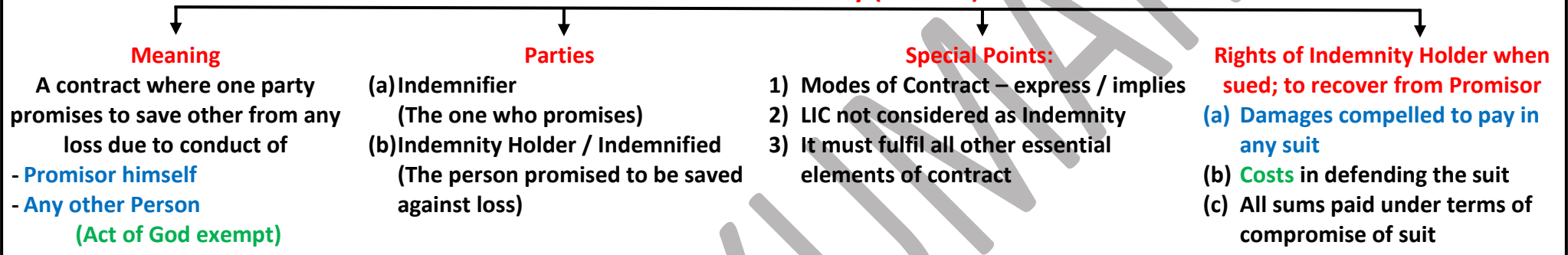
Applicable to company for  
financial years commencing from  
01/04/2014

## MODULE – 2

### Chapter-1: The Indian Contract Act, 1872

#### Unit-1: Contract of Indemnity and Guarantee

##### I. Contract of Indemnity (Sec 124)



##### II. Contract of Guarantee

###### 1. In Guarantee

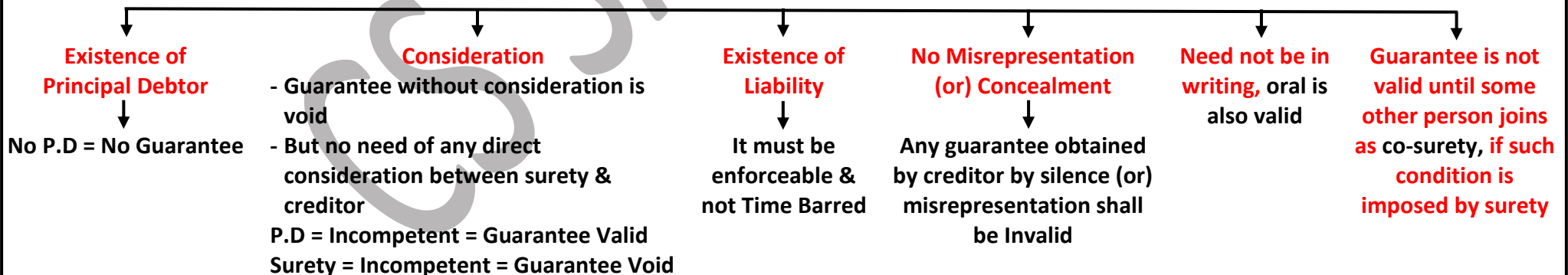
There are 3 Parties involved

- 1) **Surety** – Person who gives guarantee
- 2) **Principal Debtor** – Against whom guarantee is given
- 3) **Creditor** – To whom guarantee is given

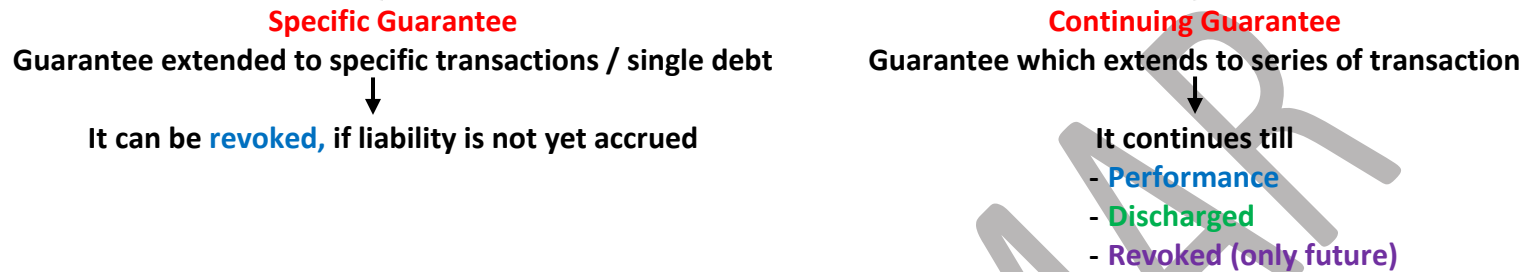
There are 3 contracts in Contract of Guarantee

- 1) **Principal Contract** = Principal Debtor (+) Creditor
- 2) **Secondary Contract** = Creditor (+) Surety
- 3) **Implied Contract** = Surety (+) Principal Debtor

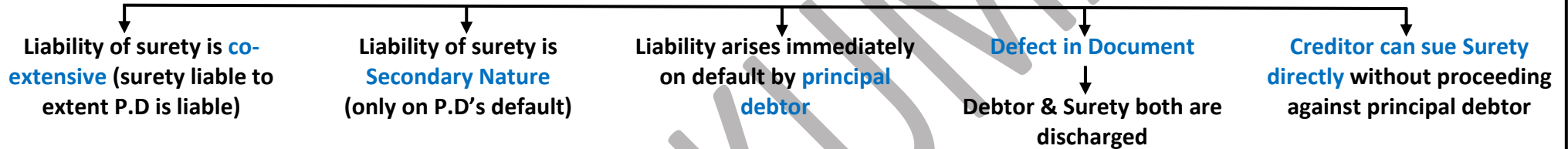
###### 2. Essential Features of Guarantee



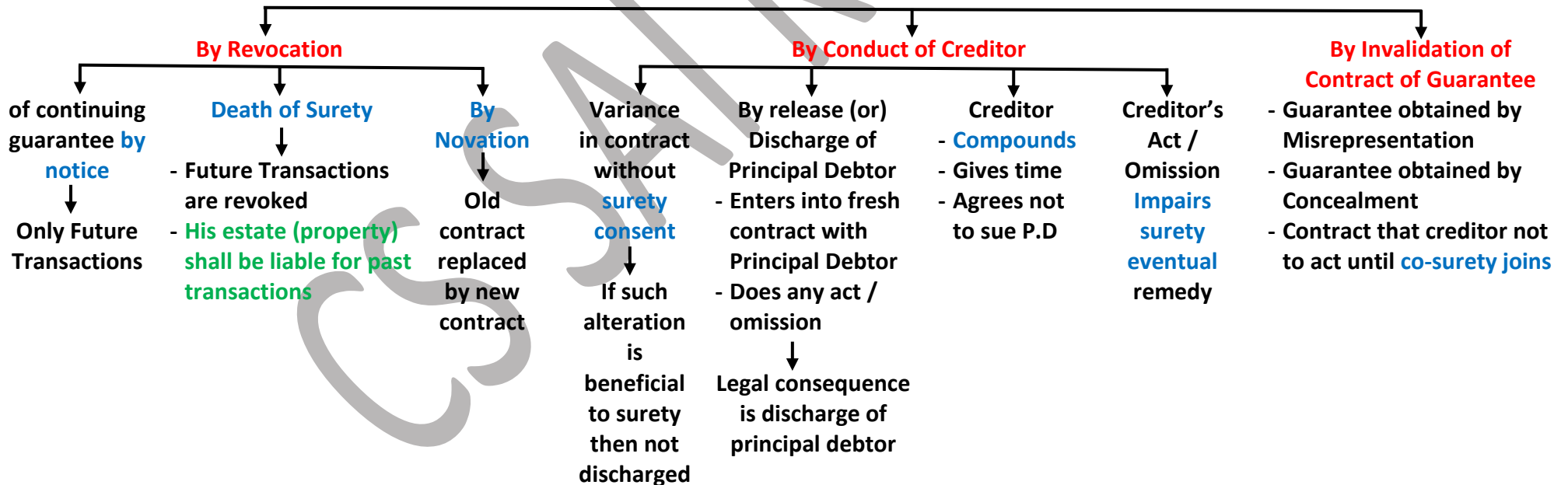
### 3. Types of Guarantee



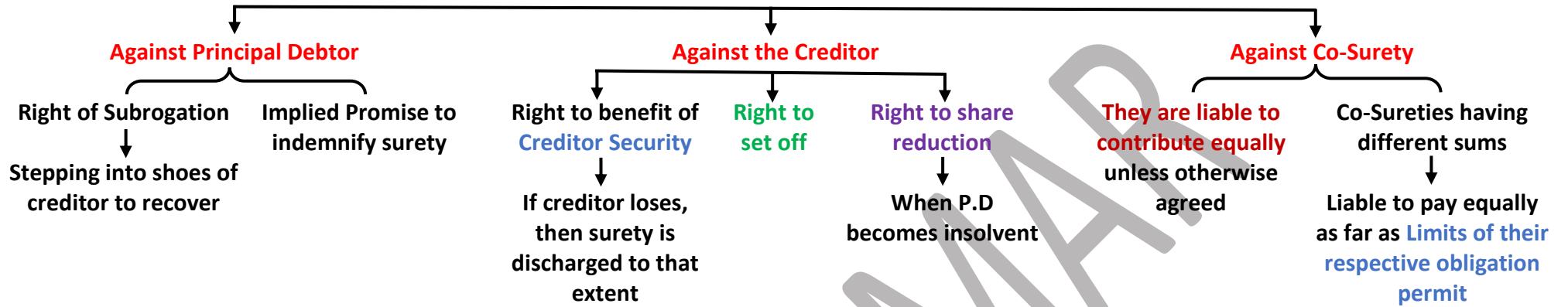
### 4. Nature & Extent of Surety's Liability



### 5. Discharge of Surety



## 6. Rights of a Surety



## Unit-2: Bailment and Pledge

### I. Bailment

#### Meaning

Delivery of goods by one person to another for **some purpose**, when the purpose is accomplished the goods be returned

#### Parties

**Bailor** – Person delivering the goods  
**Bailee** – Person to whom they are delivered

#### Essential Elements of a Bailment

- **Contract:** Express / Implied, consideration is not mandatory
- **Delivery of Goods:** Only Movable
  - a) Actual Delivery
  - b) Constructive delivery
- **Purpose**
- **Possession:** having just custody is different from possession
- **Return of Goods**

#### Classification of Bailment based on Reward

- Gratuitous Bailment (Free)
- Non Gratuitous Bailment (Both parties get benefit)

### II. Rights of Bailor

- 1) **To Terminate the Bailment:** If Bailee acted inconsistent with terms of contract
- 2) **Premature Termination:** In gratuitous bailment, Bailor can demand goods at anytime, need not to compensate bailee in case of Loss
- 3) **Suit against Wrong doer:** If a 3<sup>rd</sup> person does any injury to goods in possession of bailee, Bailor may file a suit against such person
- 4) **Right to sue the Bailee for:**
  - (a) Compensation for loss by negligence of bailee
  - (b) Compensation for **unauthorised mixing** of goods
  - (c) Compensation for **unauthorised use** of goods
  - (d) To demand back the goods
  - (e) Right to **accretion to the goods**, bailed

### III. Duties of Bailee (Includes Pawnee)

- 1) **Take reasonable care of goods**
- 2) **Not to setup adverse title**
- 3) **Not to make inconsistent use of goods**
- 4) **Return an Accretion from goods**
- 5) **Return the goods:** according to Bailor's direction on (or) before the promised date. **If not**, he shall be liable for any loss.
- 6) **Not to mix the goods:** If bailee mixes it with his own goods

Possible to Separate

Impossible to Separate

Bailor to bear the cost of separation

Bailor is entitled to compensation

#### IV. Finder of Lost Goods

He has no right to sue the owner for compensation of **expenses incurred voluntarily**

But he may retain goods against such expenses

If owner has **offered a specific reward**

Finder of Lost Goods may sue the owner for such reward

#### Finder of Lost Goods has Right to Sell Property, when?

Owner cannot be found

Owner refuses to pay the lawful charges &

They are perishable in nature

(OR)

Lawful charges in finding owner amounts to **2/3<sup>rd</sup> of value** of the thing

#### V. Rights of Bailee

- 1) To deliver the goods to anyone of **Joint Bailor**
- 2) **Right to Indemnity**: If bailor has no title & bailee delivers them back to Bailor
- 3) Claim **Compensation in case of faulty goods**. Bailee gets a right if **Bailor fails to disclose the fault known to him (Gratuitous)**
- Note**: If Bailment is for Hire, Bailee is liable even if he is not aware of it. (Non Gratuitous)
- 4) **Claim extra ordinary expenses**
- 5) Right to apply to court to decide the **Title of Goods**
- 6) **Right to Lien**

##### Particular Lien

Only when service of skill (or) labour is involved

Right to retain until remuneration received

##### General Lien

Banker, Factor, Wharfingers, Attorney of High Court, Policy Broker alone are entitled for such lien

By express agreement others may also have general lien

#### VI. Duties of Bailor

- 1) To receive back the goods **after time & purpose**
  - 2) To indemnify any **loss suffered**
  - 3) Duty to **disclose faults** in goods bailed
- Same
- 4) Pay **necessary expenses**
  - 5) Indemnify bailee for **Premature Termination**

#### VII. Termination of Bailment

On Expiry of period stipulated

On Fulfilment of Purpose

By Notice

Gratuitous

Non Gratuitous

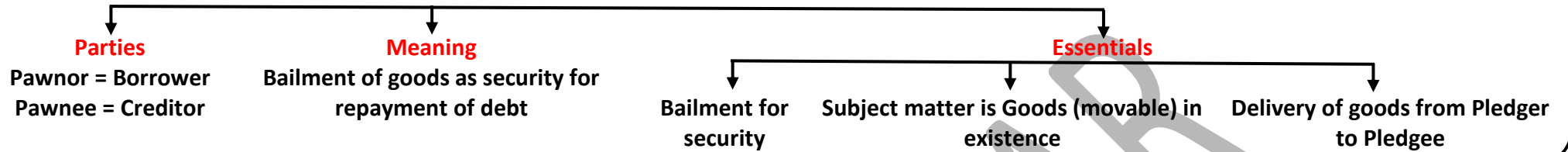
Anytime by Notice

Bailee acts inconsistent with contract

By Death of Bailee / Bailor in case of gratuitous bailment

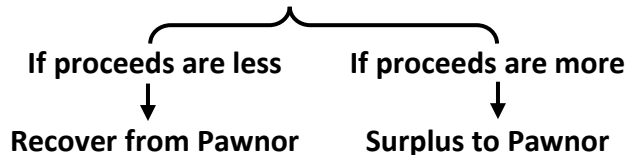
On Destruction of subject matter

## VIII. Pledge



## IX. Pawnee's Rights

- 1) Right to retain pledged goods (For Principal, Interest, Expenses)
- 2) Right to retention of subsequent debt
- 3) Right to extra ordinary expenses – he can't retain goods for it
- 4) When **Pawnor makes default**
  - (a) File suit & retain goods
  - (b) Sell goods **after giving notice**



## X. Duties of Pawnor

- 1) Liable to pay the debt
- 2) Disclose all the faults
- 3) Pay extra ordinary expenses
- 4) Indemnify Pawnee if loss occurs
- 5) Pay deficit if Pawnee sells the goods due to default

## XI. Pledge by Non-Owners

1. Pledge by Mercantile Agent
2. Person in possession under **voidable contract**
3. Pawnor has limited interest
4. Pledge by **co-owner** in possession
5. Pledge by Seller / Buyer in possession



## Unit-3: Agency

### Agent

Agent is a person employed to do any act for another (or) represent another in dealing with 3<sup>rd</sup> person

### I. Parties

#### Principal

Should be **Competent Person** (Major + Sound Mind)

#### Agent

Any person can become an agent

If **Incompetent**, then Principal shall be liable even for unauthorised acts

### II. How is an Agency created?

#### Express Authority

By words  
(oral / written)

#### Implied Authority

Based on circumstances

#### Estoppel

Principal make representation  
that agent has authority

#### Necessity

For Emergencies

#### Ratification

- (a) It can be express / implied
- (b) Complete knowledge for valid ratification
- (c) Rectifying in **entirety** & not in part
- (d) To be done in **reasonable time**
- (e) Should be communicated to other party
- (f) Act should not be **void / illegal**

### III. Appointment of Sub – Agent

i.e., An Agent cannot further delegate

**“Delegatus Non Potest Delegare”**

#### Sub – Agent

#### Legal Validity

If properly appointed

Principal shall be liable to 3<sup>rd</sup>  
Parties

No authority to appoint

Agent shall stand in relation of  
Principal & Principal is not liable

#### Exceptions

Terms of appointment  
allowed it

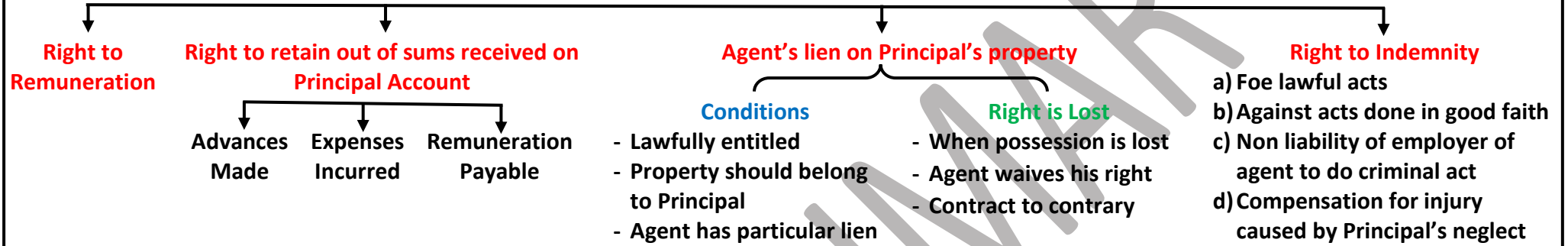
Custom of trades  
provides for  
appointment

Unforeseen  
Emergency

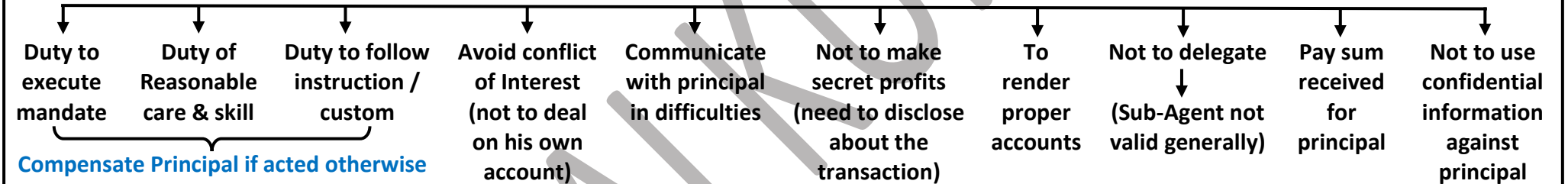
## Substituted Agent

They are appointed by Agents for Principal with knowledge & consent of principal

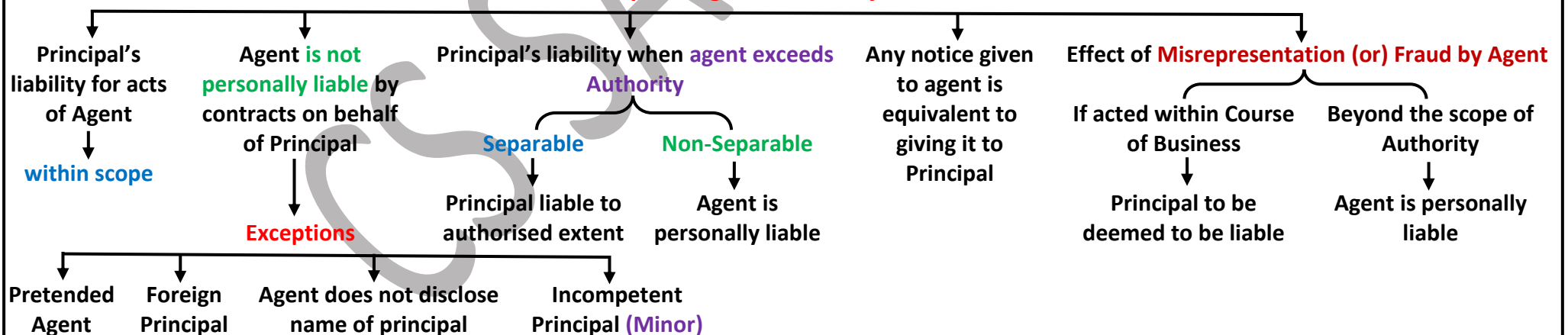
### IV. Rights of an Agent



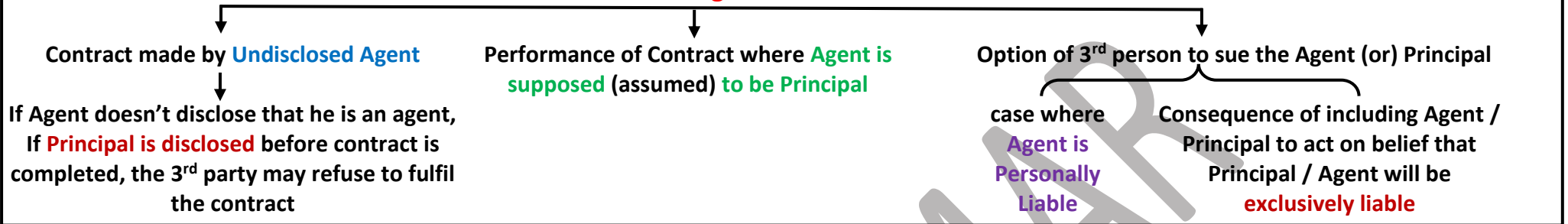
### V. Duties of Agent



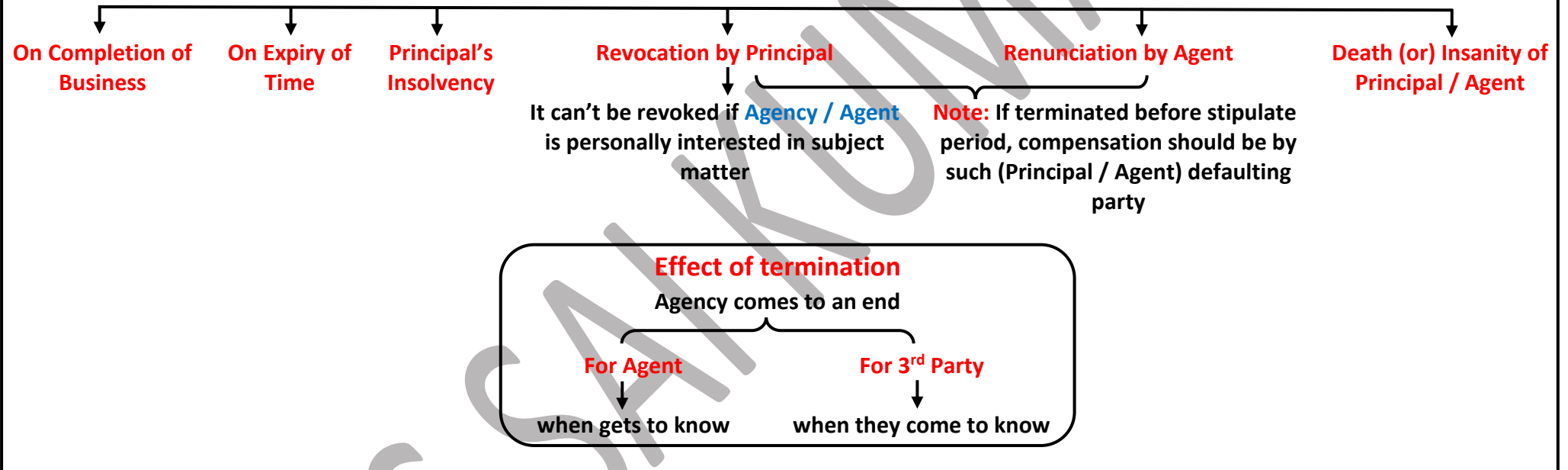
### VI. Principal / Agent's Liability to 3<sup>rd</sup> Parties



## VII. Rights of 3<sup>rd</sup> Parties



## VIII. Termination of Agency



## Chapter-2: The Negotiable Instruments Act, 1881

The Act does not define what is a Negotiable Instrument.  
However, **Section 13** provides for **3 kinds of Negotiable Instruments**

1. Promissory Note (Sec 4)

2. Bill of Exchange (Sec 5)

3. Cheque (Sec 6)

### I. Essential Characteristics of Negotiable Instruments

In writing

Signed

Freely transferrable up to satisfaction

Unconditional promise<sup>(\*)</sup>

(Things which are certain is an exception)

To pay money only

Instrument must be delivered

### II. Promissory Note (Sec 4)

#### Meaning

It is an **unconditional undertaking** signed by the maker to pay a certain sum of money only to (or) to the order of certain person (or) Bearer of Instrument

#### Parties

Maker

Debtor

Payee

Creditor

#### Characteristics

- In writing, signed by the maker
- Express promise to pay, mere acknowledgement is not sufficient
- The sum payable should be **definite & unconditional**
- Pay **money only**
- It should be **stamped**
- Maker & Payee to be certain & **different person**

**Note:** A promissory note cannot be made **payable to Bearer (only RBI / Central Government has the power)** → **Sec 31 of RBI Act, 1934**

### III. Bill of Exchange (Sec 5)

#### Meaning

It is an instrument in writing containing an unconditional order signed by drawer, directing a person to pay a certain sum of money to order (or) order of certain person (or) to Bearer of Instrument

#### Parties

- (a) **Drawer:** Maker of a Bill (Creditor / Seller)
- (b) **Drawee:** A person directed by drawer to pay (he is a person on whom Bill is drawn) [Debtor / Buyer]
- (c) **Payee:** to whom money is to be paid, it can be even drawer himself
- (d) **Acceptor:** Drawee who has signed & accepted the bill drawn on him
- (e) **Acceptor for honor:** whom Bill of Exchange is dishonoured by non acceptance & any person accept it for honor of the drawer (such other person)

#### Characteristics

Same as Promissory Note

### IV. Essentials

Holder must consent to acceptance for honor

Bill must have been noted (or) protested for non - acceptance

Can be made by a person who is not already liable on the bill

Must be for whole amount

Must be in writing before the bill is over due

### V. Rights & Liabilities of Acceptance for Honour (Sec 111 & Sec 112)

Binds himself liable to all subsequent parties to pay if drawee doesn't pay

All prior parties are liable to compensate Acceptor for honor for all loss sustained

Acceptor For Honor, is not liable if bill is presented later than day after the day of its maturity

#### Holder (Sec 8)

- Entitled in his name to possession
- Acquired before maturity
- Example: Gift, Inheritance

#### Holder for Value

- Entitled in his name to possession
- Acquired before maturity
- Got the instrument for consideration

#### Holder in Due Course (Sec 9)

- Entitled in his name to possession
- Acquired before maturity
- It must be obtained in Good Faith, without negligence

### VI. Privileges of holder in Due Course

#### In case of Inchoate Instrument

Holder in Due Course can recover money up to stamp duty covered

#### In case of Fictitious Bill

Drawer is not relieved from payment to Holding in Due Course

#### Holder in Due Course gets title free from all defects

Lost Instrument      Fraud      Unlawful Consideration

## VII. Classification of Negotiable Instrument

### 1. Based on Parties

#### Bearer Instrument

The amount to be payable to person **in possession of Bill**

Example:

- (a) Where payee is left blank
- (b) Blank Endorsement
- (c) Written as Bearer

#### Order Instrument

Payable to person whose name is appearing on bill

### 2. Based on Validity

#### Inchoate Instrument

Person delivers a Blank instrument to complete with appropriate amount up to stamp values of Instrument

#### Holder

He cannot recover the amount in excess of what was intended

#### Holder in Due Course

Can recover any amount on such instrument up to the stamp duty affixed

#### Ambiguous Instrument

- (a) Where an instrument can be treated as Bill of Exchange / Promissory Note at the option of holder
- (b) When the drawer & drawee are same person it becomes Ambiguous Instrument
- (c) Once bill is treated as Bill of Exchange / Promissory Note cannot later on be treated other wise

**Note:** Amount stated different in words & figures **follow words**

### 3. Based on Place

#### Inland Instruments

Drawn in India

**AND**

Payable in India **(OR)** Drawee resides in India

#### Foreign Instruments

Drawn outside India

**AND**

Payable in (or) outside India **(OR)** Drawee resides in India (or) outside

**(OR)**

Drawn in India

**AND**

Payable outside India **&** Drawee outside India

#### **Note:**

- 1) Foreign Instrument is regulated by the law of place where **he made the instrument**
- 2) If **Bill is endorsed**; the law of **place where instrument is made is payable**

## 4. Based on Time

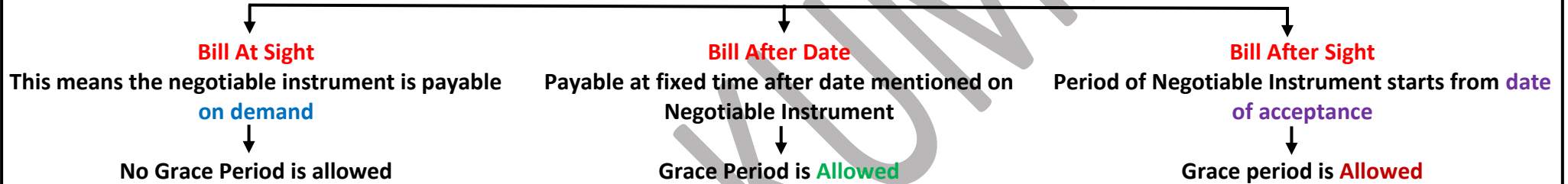
### Demand Instrument (Sec 19)

- (a) A Negotiable Instrument in which **no time** is mentioned then it shall **be payable on demand**
- (b) **Cheques** are always **payable on demand**
- (c) **Bill of Exchange / Promissory Note** is payable on demand if it is mentioned as
  - Payable on Demand; (or)
  - At Sight; (or)
  - At Presentment

### Time Instrument (Sec 22)

- A Negotiable Instrument which is payable
- (a) After fixed period / After date
  - (b) After Sight
  - (c) On Special day
  - (d) On happening of certain event

## VIII. Maturity of Negotiable Instrument



## IX. Grace Period (Sec 22)

A Bill **not** payable on demand, at sight, on presentment i.e., a **Time Instrument** is allowed 3 days of grace period from the date it is due  
If 3<sup>rd</sup> Day is

**Public Holiday (or) Sunday as declared by Central Government in Official Gazette**

Preceding day to be considered (previous)

**Emergency Holiday**

Succeeding Day of 3<sup>rd</sup> day (next day)

**Example:** A Bill drawn on 01/06/2021, payable 120 days after date

**Solution:** Days to be excluded : Date on which Bill was drawn i.e., 01/06/2021

Remaining days in June = 29

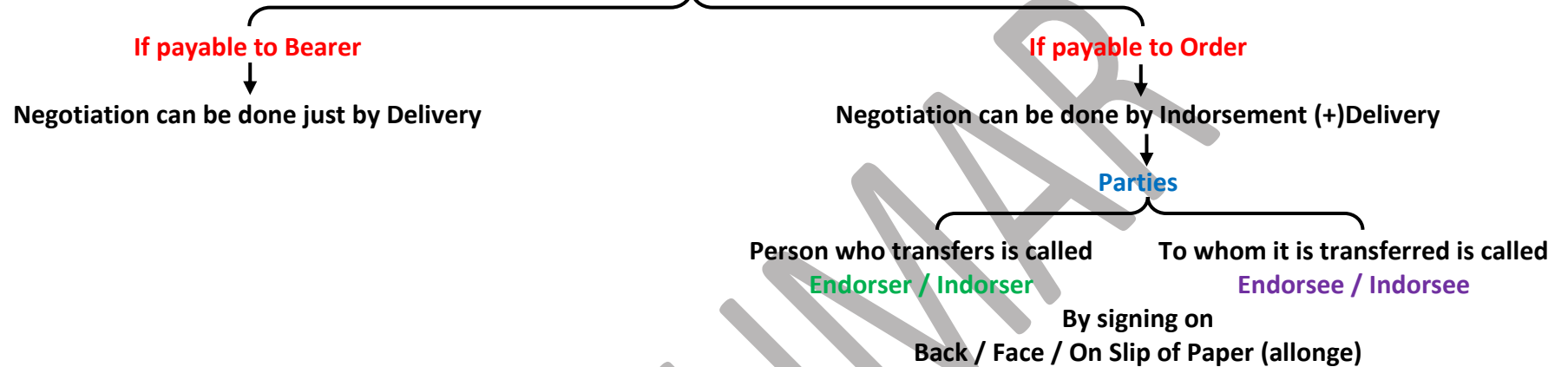
July = 31

August = 31 ; 120<sup>th</sup> day ends on September 29<sup>th</sup>, 2021 (+) 3 days = 2<sup>nd</sup> October, 2021

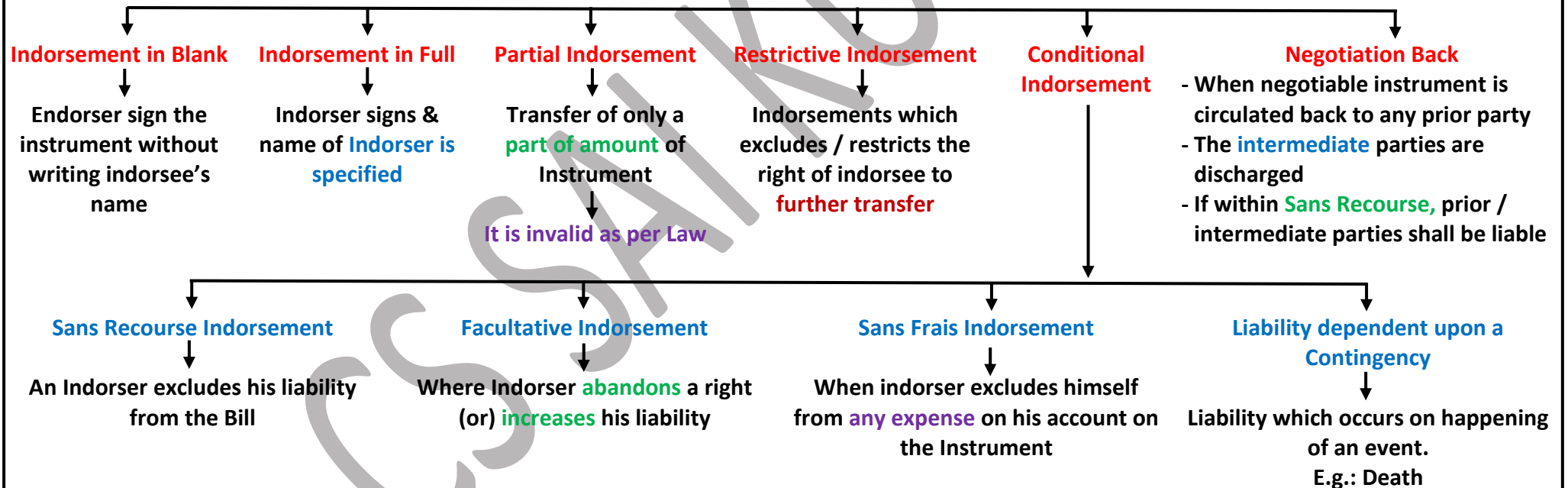
As it is a public holiday consider the preceding Business day; i.e., 1<sup>st</sup> October, 2021

## X. Negotiation of negotiable Instruments

### Mode of Negotiation of Negotiable Instrument

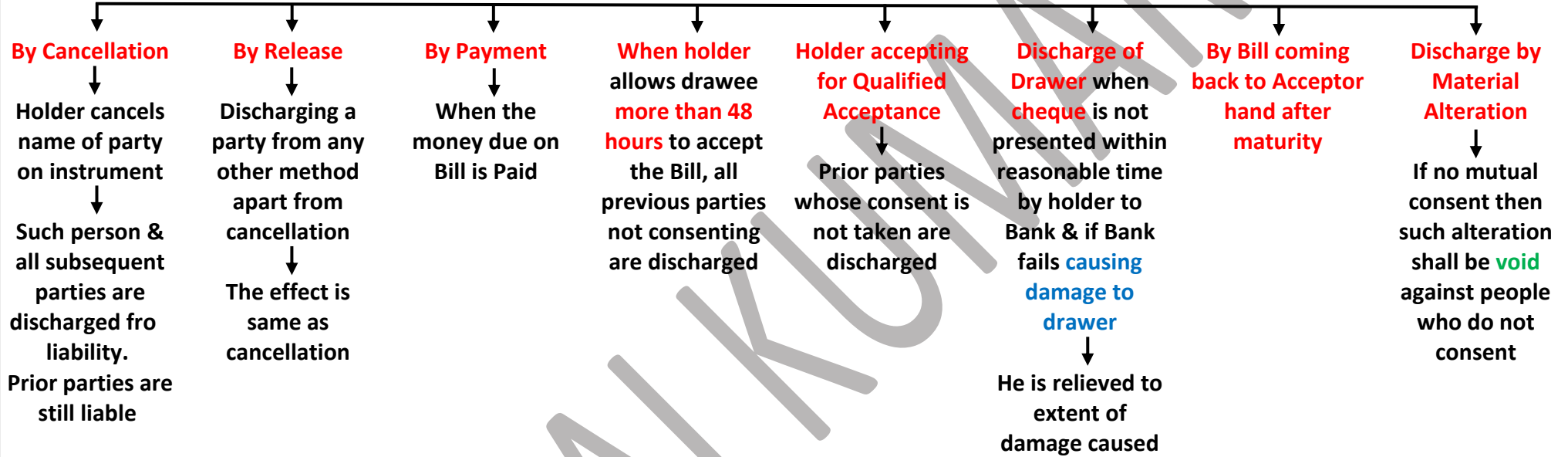


## XI. Various Kinds of Indorsement

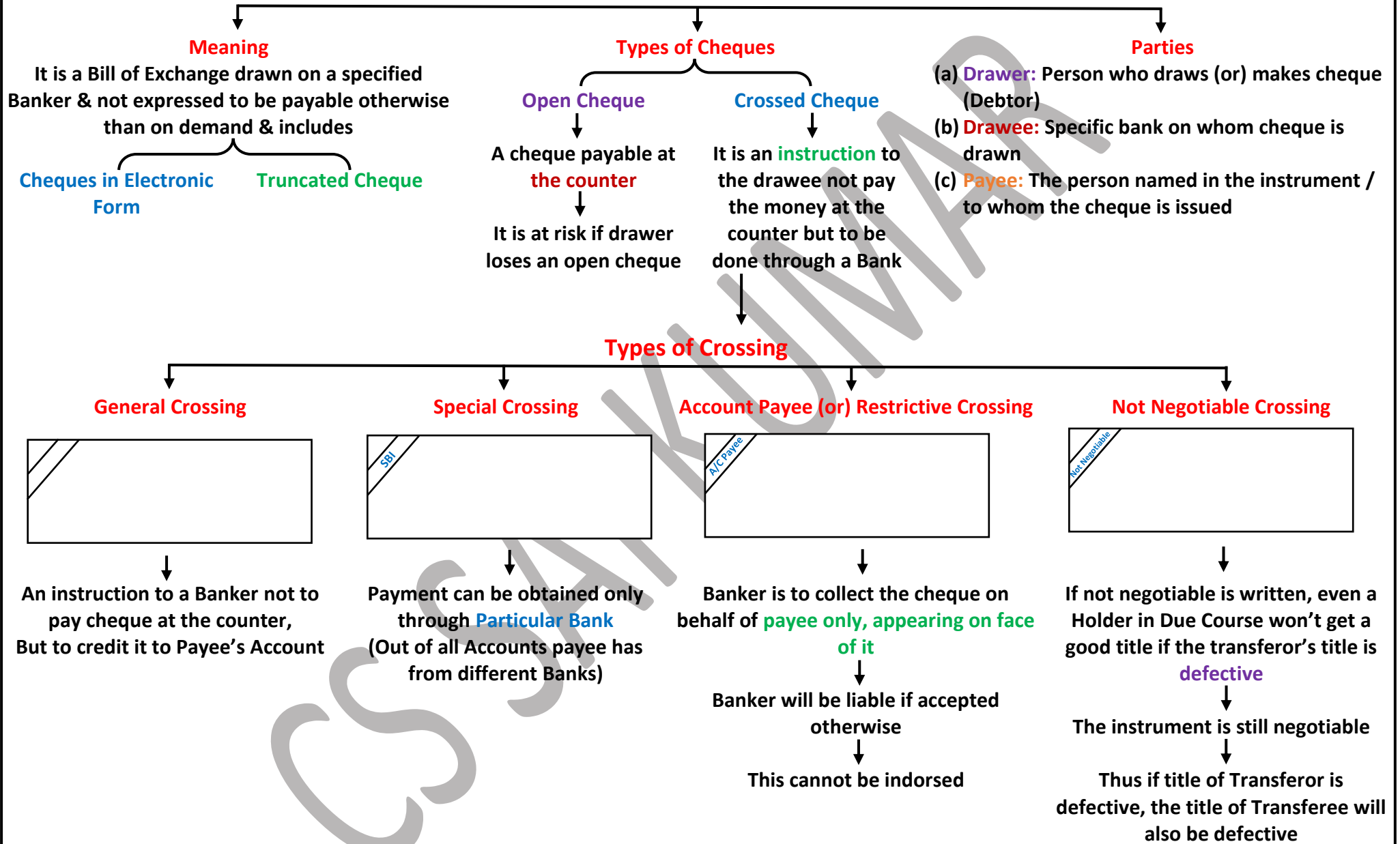




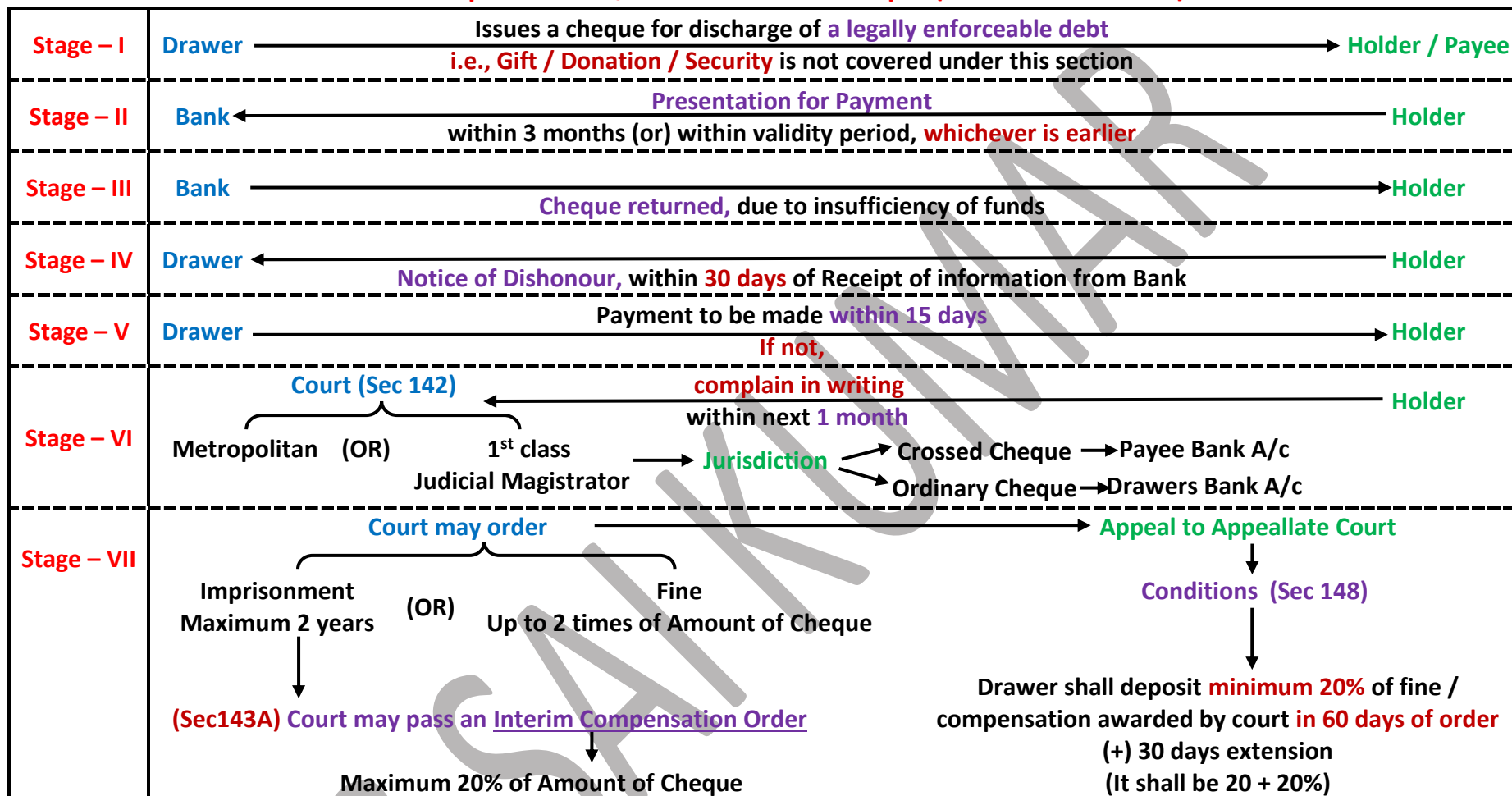
## XII. Modes of Discharge from Liability on Instruments



### XIII. Cheque (Sec 6)

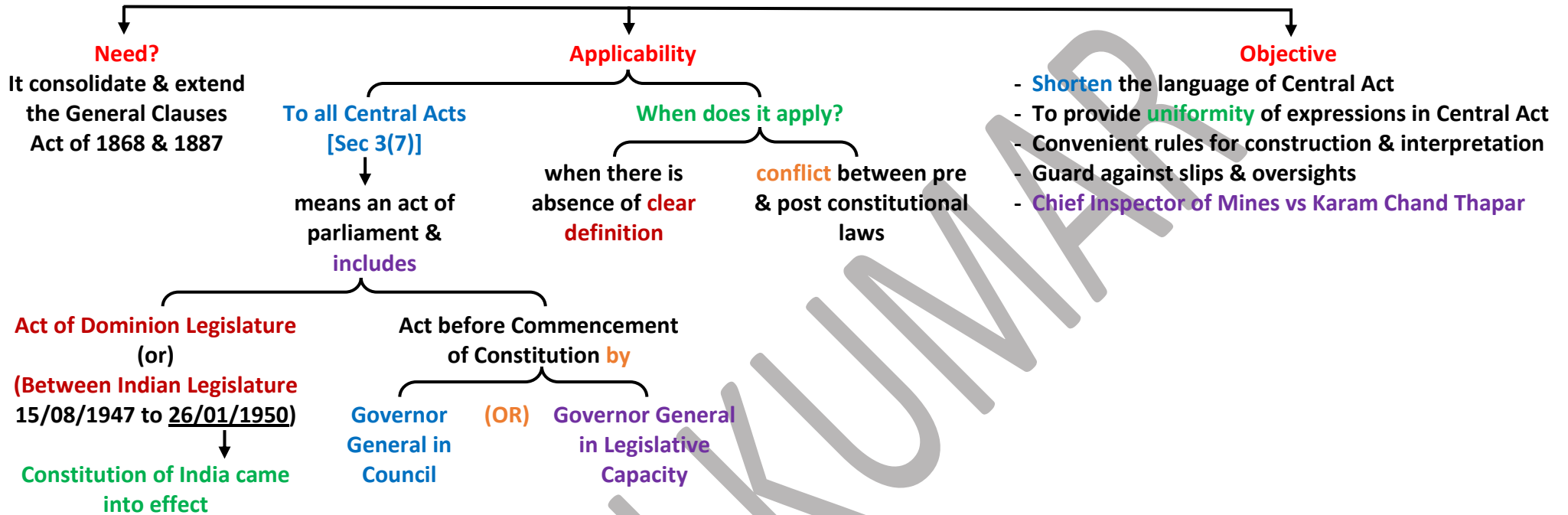


### XIV. Cheque Bounce / Dishonour of a Cheque (Sec 138 to Sec 142)



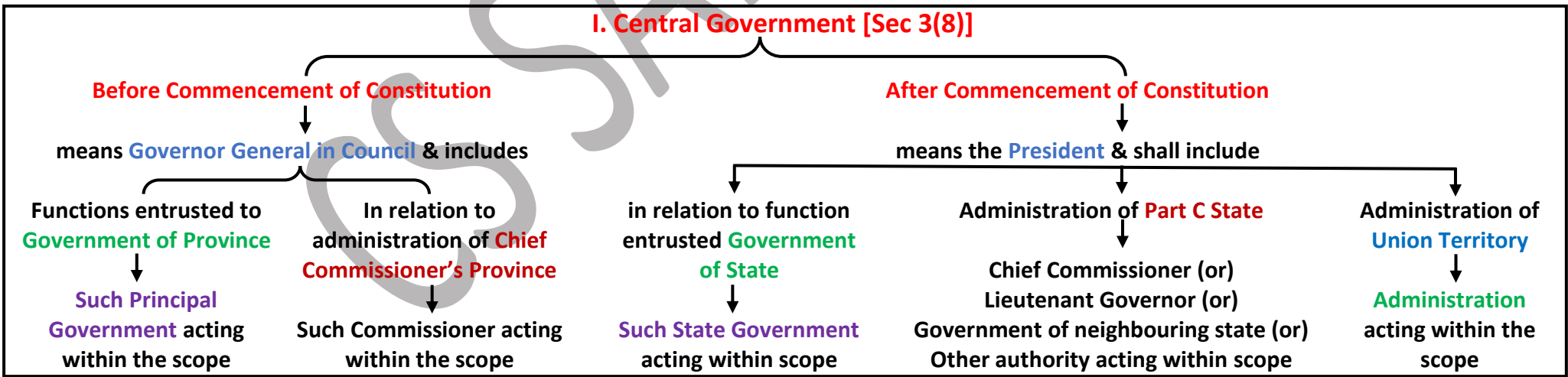
<b>(Sec 142A)</b>	- Any new cases against the same drawer, the cases shall be filed / transferred to the court where the initial case is going on (Sec 142) - After Negotiable Instrument (Amended) Act, 2015; multiple cases against same drawer shall be transferred to court where 1 <sup>st</sup> case was filed
<b>(Sec 147)</b>	Every offence punishable under this act is compoundable
<b>(Sec 141)</b>	Where Drawer is a company, then company (+) person in charge (+) Director / Manager, Secretary shall be punishable if guilty This condition shall not apply to director nominated by virtue of his position / employment in Central Government (or) State Government

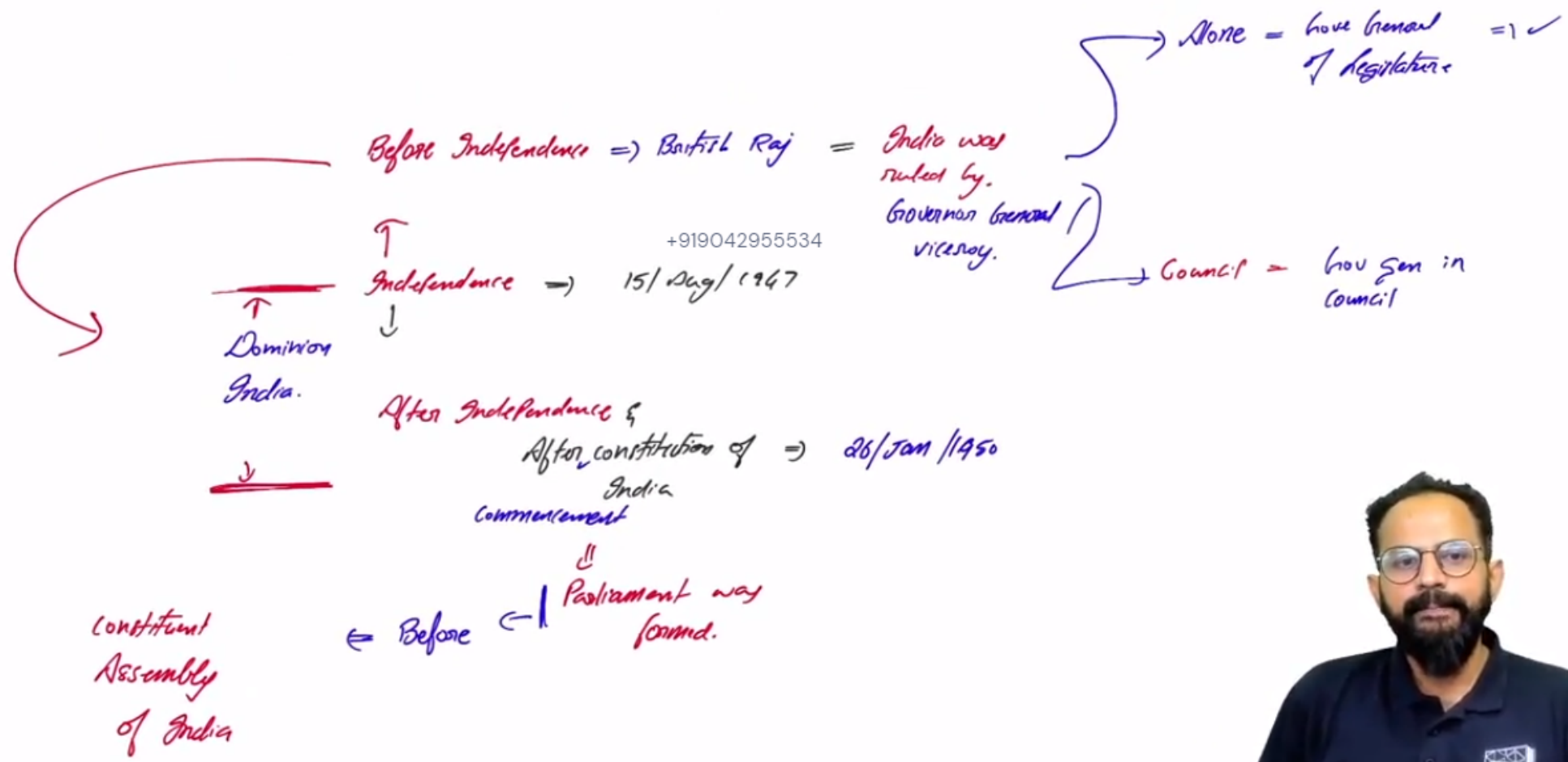
## Chapter-3: The General Clauses Act, 1897



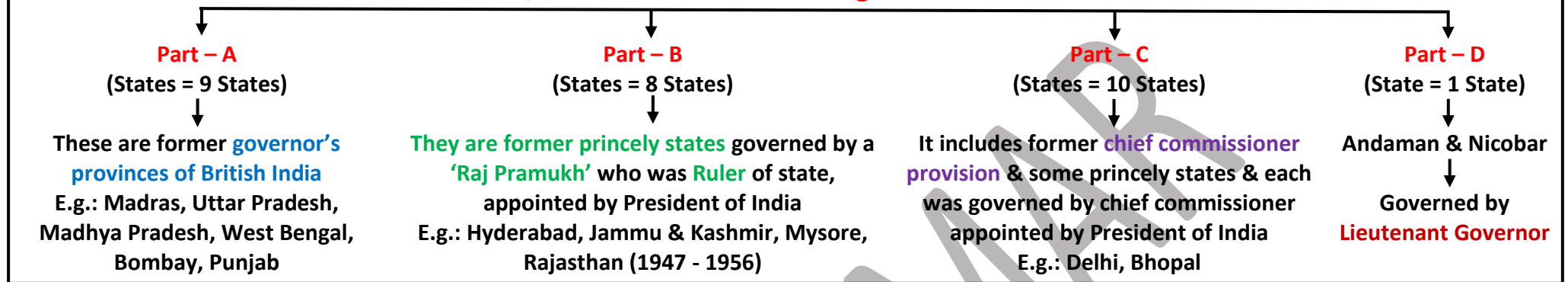
**History:** India when governed by British, Governor General / Viceroy were appointed as the representative of monarch of United Kingdom (came to end on 26/01/1950)

### I. Central Government [Sec 3(8)]

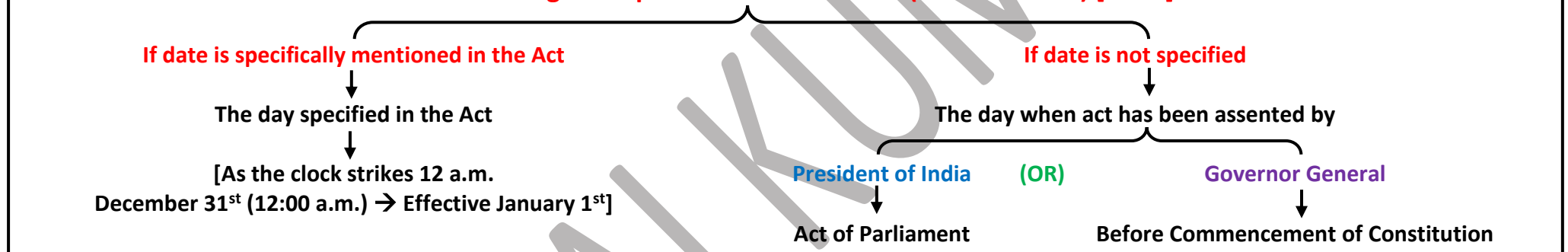




## II. In 1950, Constitution of India distinguished India into 4 Parts



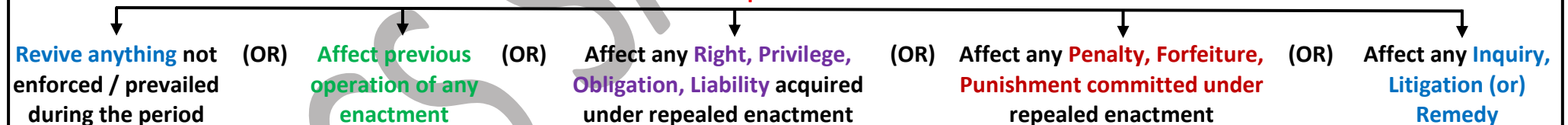
## III. Act coming into operation of enactment (effective date) [Sec 5]



## IV. Effect of Repeal (Sec 6)

Where a Act made after commencement of this Act repeals anu act made,

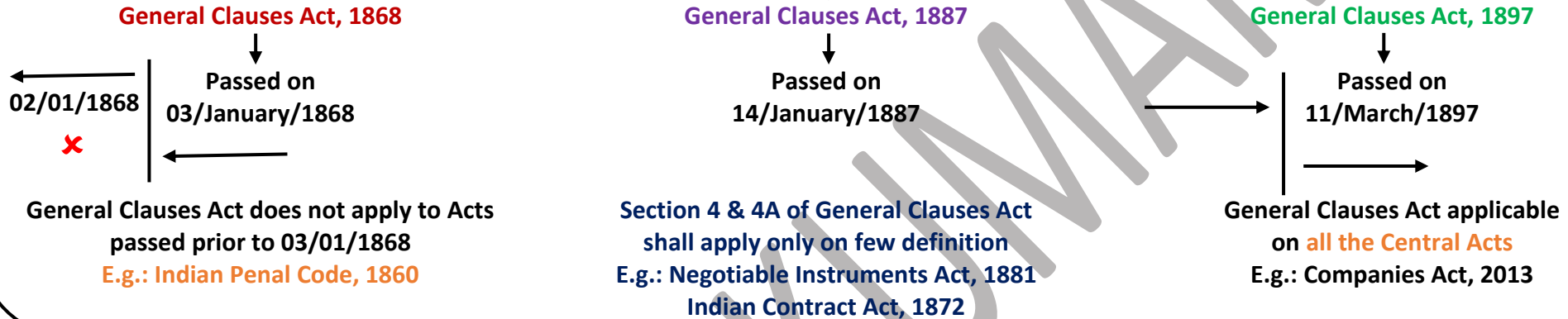
**The repeal shall not**



## V. General Clauses Act, 1897

Application of foregoing sections

### Applicability on the Act



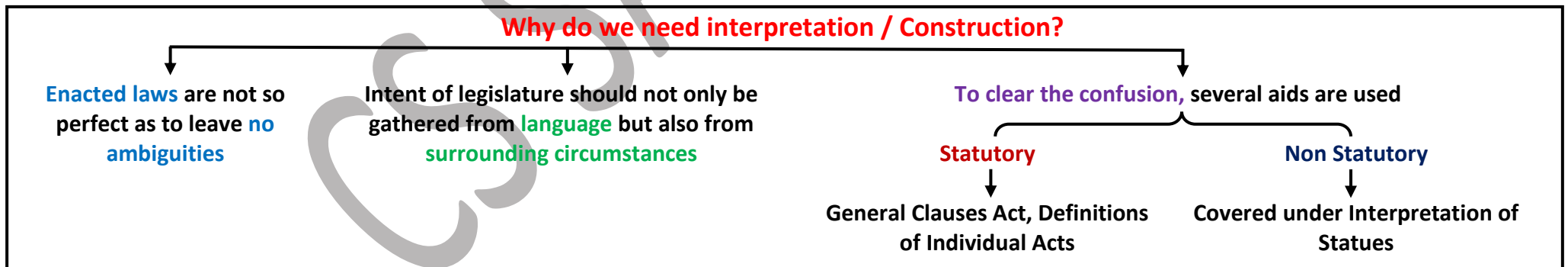
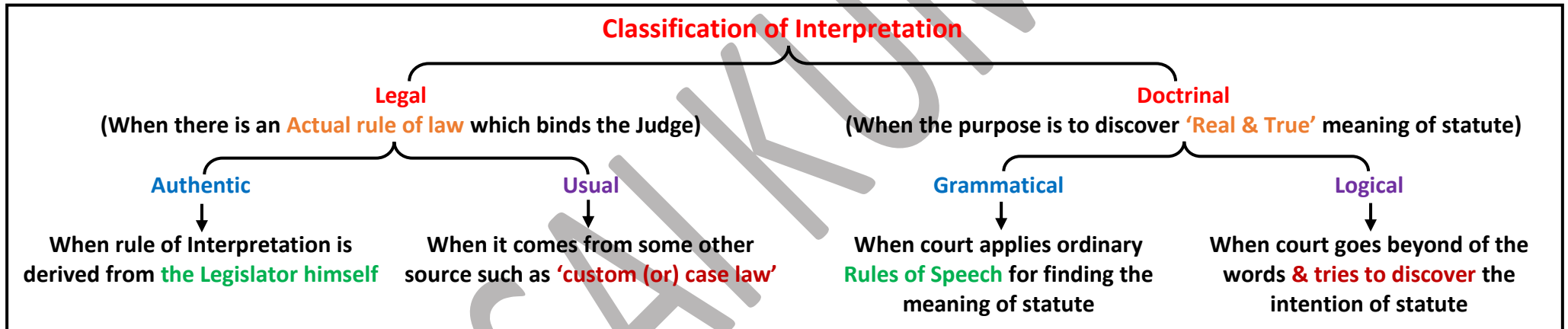
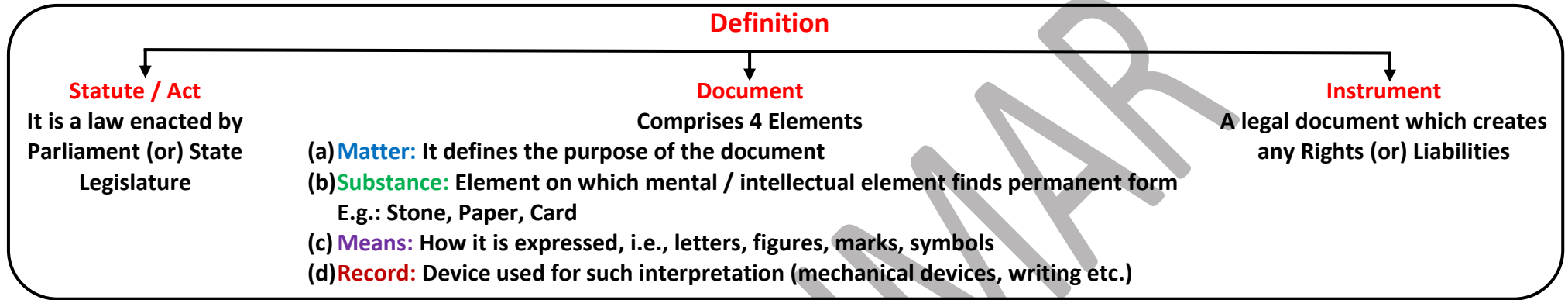
### In short Provisions of General Clauses Act

Sections	
Sec 7	Revival of Repealed Enactments (Partially / Wholly) can be done after providing purpose
Sec 8	In case of Repeal & Re-enactment, references in any other enactment shall be considered as references to the provisions so re-enacted (unless a different intention is expressed)
Sec 9	Commencement & termination of Time: 1 <sup>st</sup> day to be excluded – when written as from & last date to be included
Sec 10	If the court / office is closed on last day, if closed then day next court opens
Sec 11	Measurement of Distance: To be taken in straight line on horizontal plane
Sec 12	Duty take Pro-Rate on greater (or) lesser quantity
Sec 13	Gender: Masculine shall include females Number: Singular includes plural } Unless otherwise provided in the Act
Sec 14	Power conferred may be exercised by authority from time to time

Sec 15	Power to appoint may be made <b>by name (or) by ex-officio</b>
Sec 16	Power to appoint include <b>Power to suspend (or) dismiss</b>
Sec 17	To indicate the application of Law to Person executing function of an office, it shall be sufficient to mention <b>official title</b>
Sec 18	To indicate relation of Law to Successors of functionaries (or) corporation ( <b>having perpetual succession</b> ) express its relation to such functionaries (or) corporation
Sec 19	Law relative to <b>chief or superior</b> shall apply to <b>deputies (or)subordinates</b> to same extent
Sec 20	Notification / Order / Scheme / Rules shall have same respective meaning as per the Act
Sec 21	<b>Power</b> to issue include power to <b>add, amend, vary (or) rescind notification / rules / Bye Laws etc.</b>
Sec 22	Establishment of <b>any court / Appointment of Judge / Fees</b> with respect to Act which has not come into force, it shall not be effective until commencement of Act / Regulation
Sec 23	Making of rules / Bye – laws after <b>Previous Publication</b> <ul style="list-style-type: none"> <li>- <b>Publish a draft</b> of proposal rules</li> <li>- Publication as specified</li> <li>- Notice specifying <b>date for taking into consideration</b></li> <li>- Sanction / approval of <b>another Authority</b></li> <li>- Make suitable changes to Draft</li> <li>- Publication <b>in Official Gazette</b></li> </ul>
Sec 24	<b>Order, Scheme, Rules, Bye – laws</b> of repealed enactment shall continue to <b>Re-enacted law</b> unless otherwise specified
Sec 25	<b>Recovery of fines</b> as per Sec 63 to 70 of <b>Indian Penal Code &amp; Code of Criminal Procedure</b>
Sec 26	One Person shall not be punished for same offence under <b>2 different laws</b>
Sec 27	<b>Service by Post:</b> deemed to be effected by <ul style="list-style-type: none"> <li>(a) Properly Addressing</li> <li>(b) Pre – Paying</li> <li>(c) Posting by registered post</li> </ul>
Sec 28	<b>Citation of enactments</b> one law can give a reference to another enactment
Sec 29	General Clauses Act shall not apply <b>to laws existing before commencement</b> of General clauses Act



## Chapter-4: Interpretation of Statutes



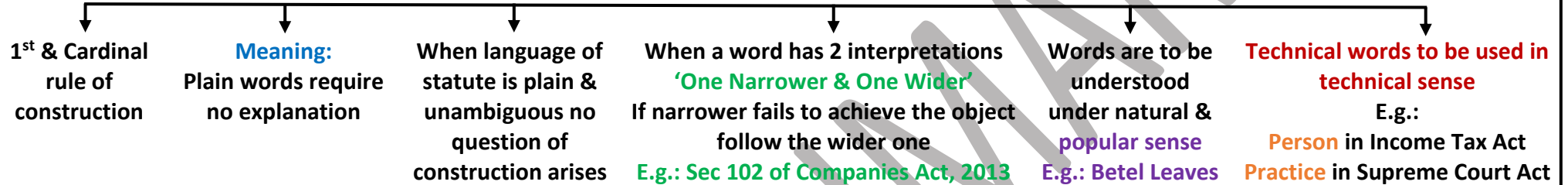
# I. Rules of Interpretation / Construction

Primary Rules

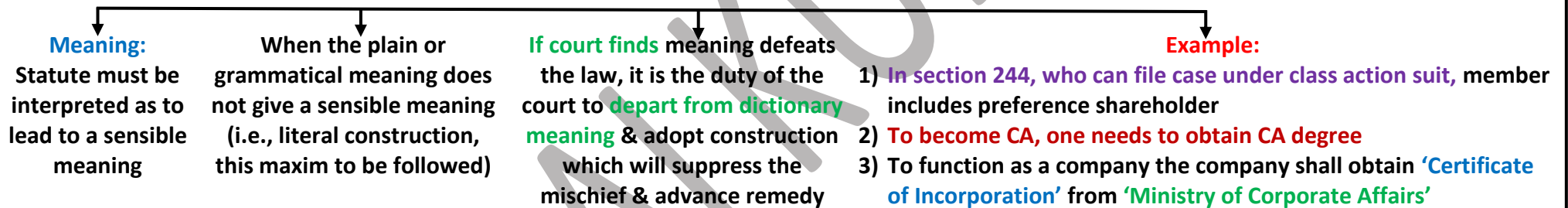
Secondary Rules

## A. Primary Rules

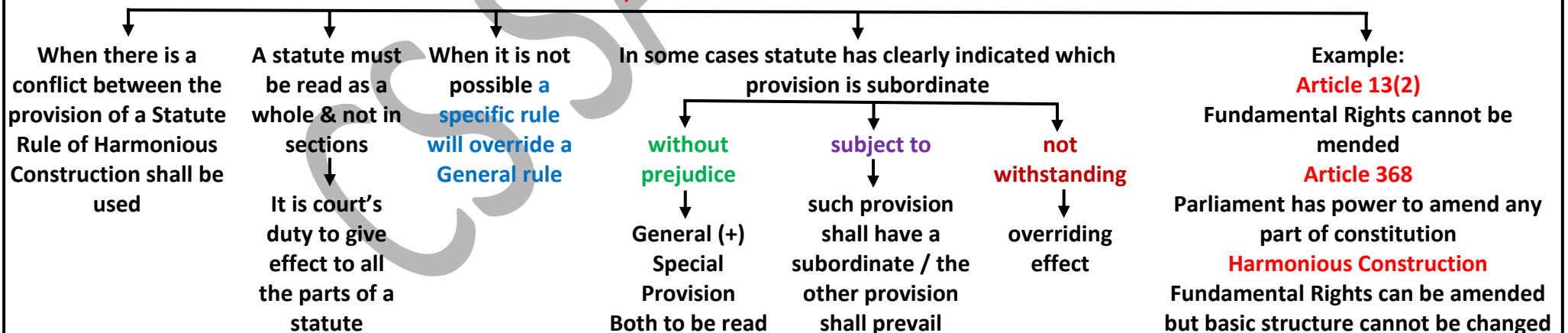
### 1) Rule of Literal Construction (Maxim – Absolute Sententia Expositore Non Indigent)



### 2) Rule of Reasonable Construction (Maxim – Ut Res Magis Valeat Quam Pereat)



### 3) Rule of Harmonious Construction



#### 4) Rule of Beneficial Construction / Heydon's Rule / Purposive Construction / Mischief Rule (1584)

If language in statute is capable of more than one Interpretation this can be referred

##### 4 matters to be considered

- 1) What was the law before making the Act?
- 2) What was **Mischief** (defect) law did not provide?
- 3) What is the **remedy** the Act has provided?
- 4) What is the **reason** for remedy?

##### Example:

- 1) Prize Competition Act
- 2) For Understanding don't write this in exam '**Smith vs Hughes**'
  - Street Offences Act, 1959
  - It shall be an offence if prostitute solicit people in street (or) public place
  - Was held liable

#### 5) Rule of Exceptional Construction / Common Sense Rule

General rule is that effect must be given to every word of statute, however if no sensible meaning can be derived from such word, **it can be eliminated**

##### Exception

E.g.: Official Secrets Act, 1920

##### Conjunctive (or) Disjunctive Words

**AND**

Conjunctive, both words shall be applicable

**OR**

Disjunctive anyone to be satisfied

can be used vice versa as an exception

**MAY**

Directors in nature  
optional & not strictly observed

**MUST / SHALL**

Mandatory in nature  
compulsory & strictly observed

can be used vice versa as an exception

#### 6) Rule of Eiusdem Generis

##### Meaning:

Same Kind (or) Same Species

##### Understanding

When **general words** are followed by **specific words**, the general words take the color of specific words

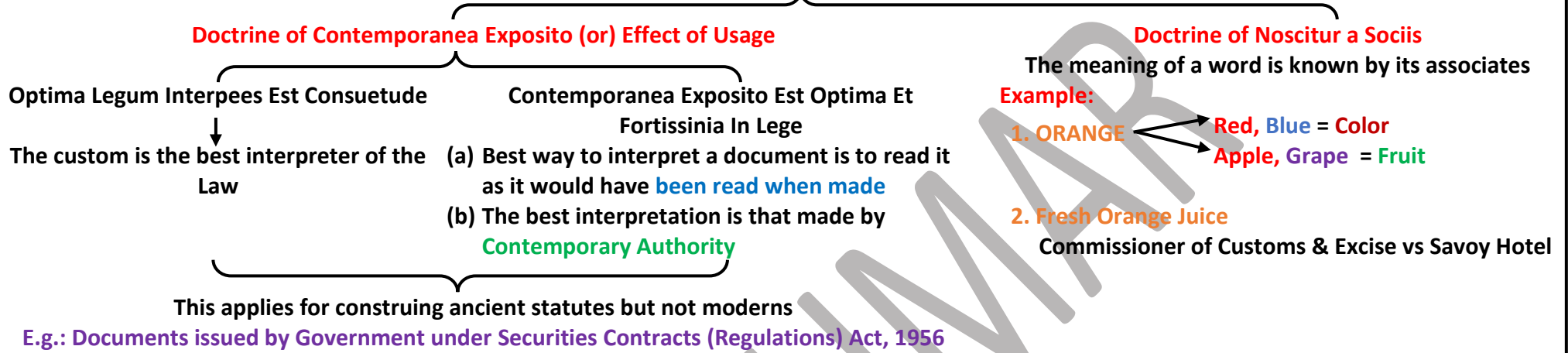
##### When Applicable?

- (a) Enumeration of **specific words**
- (b) Enumeration constitutes a category
- (c) Such class / category is **not exhausted**
- (d) **General Terms** follow enumeration
- (e) No different **legislature intent**

##### Example:

Arms, ammunition, gun powder, any other goods

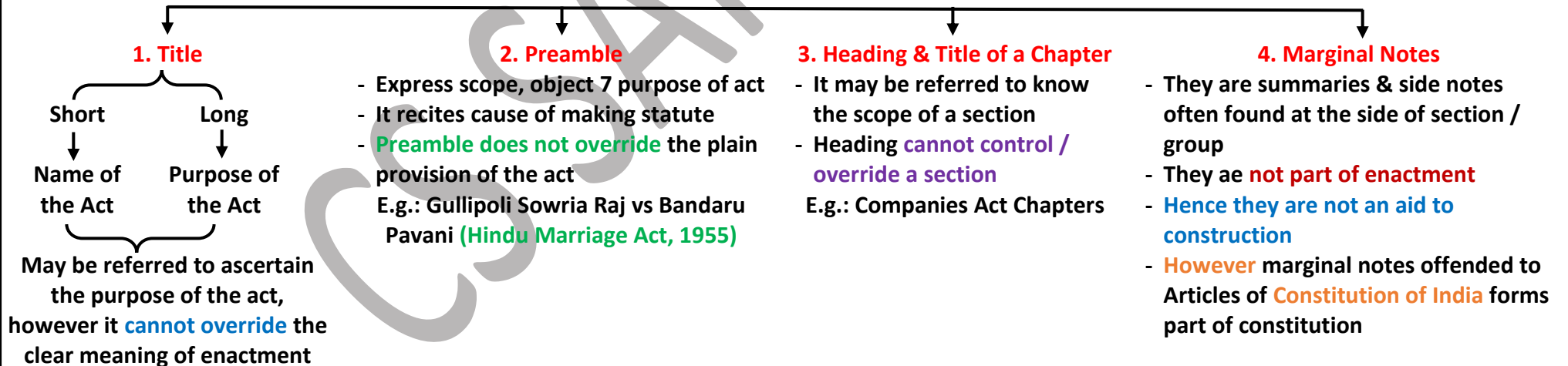
## B. Secondary Rules

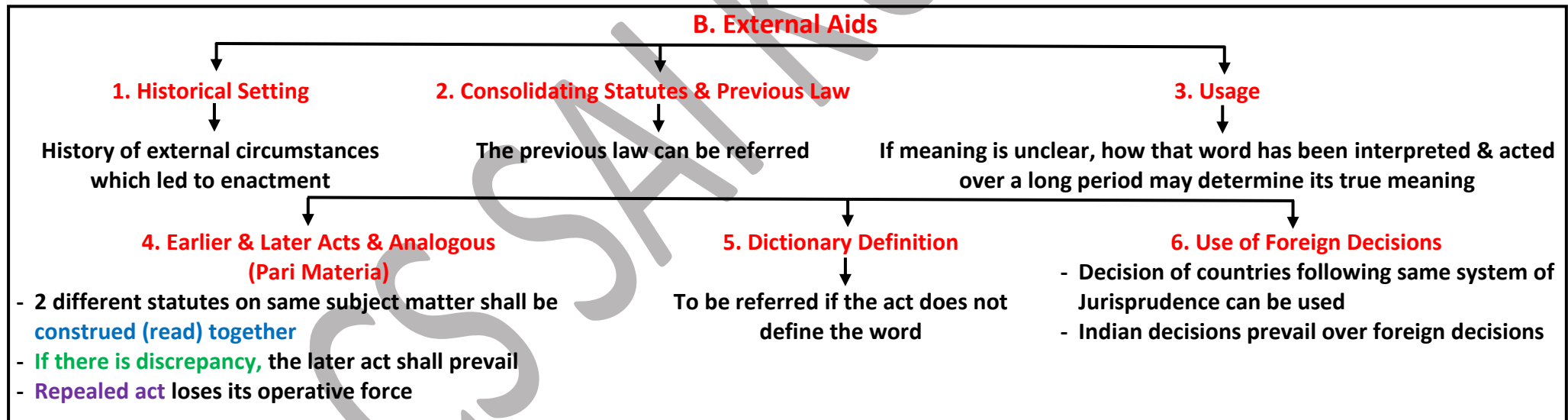
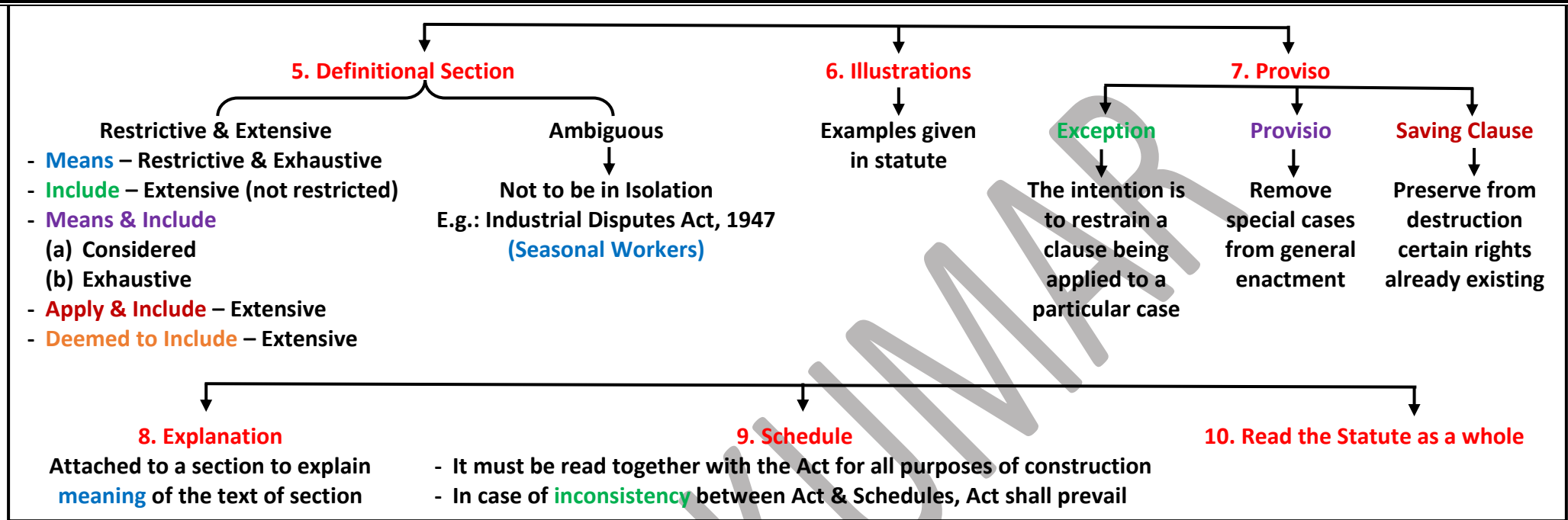


## II. Aids to Interpretation / Construction



### A. Internal Aids





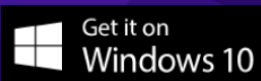


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