

Chapter 2: Incorporation of a company and matters relating thereto

Section 3: Formation of a company:

A Co. may be formed for legal purpose by:

- Not less than 7 members in case of public co,
- Not less than 2 members in case of private co, &
- One member in case of OPC

by subscribing to the MOA of the co.

One person company:

- (subject to written consent)
- MOA of the co. shall indicate name of person who shall become member of co.
In the event of $\left. \begin{array}{l} \text{Death} \\ \text{Incapacity} \end{array} \right\}$ sole member.
 - Nominee may be change in following cases:

Withdrawal

- Nominee $\xrightarrow{\text{notice}}$ sole member
OPC
- sole member to obtain INC-3 from new nominee
sole member $\xrightarrow[15 \text{ days}]{\text{New nominee}}$ OPC
- OPC $\xrightarrow[30 \text{ days}]{\text{INC-4}}$ ROC

Replacement

- member $\left\{ \begin{array}{l} \text{Nominee} \\ \text{OPC} \end{array} \right.$
+ INC-3 of new nominee
 \downarrow
prior intimation
- OPC $\xrightarrow[30 \text{ d.}]{\text{INC 4}}$ ROC

Nominee becomes member

- New nominee \rightarrow OPC
(INC-3)
- OPC $\xrightarrow[30 \text{ d}]{\text{INC 4}}$ ROC

15 days

30 days

③ Eligibility of sole member & nominee

Natural person + Indian citizen + Resident of India
or otherwise

↓
Resident ≥ 120 days
in last FY

Note: A person can be sole member in 1 OPC
& nominee in 1 OPC at the same time

④ Where a nominee (who is member in another OPC) becomes member in such co. by virtue of death, etc. of the member → such nominee to meet eligibility criteria within 180d

⑤ No minor can become member/nominee.

⑥ Conversion

- OPC can be converted into private/public co.
- OPC **cannot** be converted into Sec 8 co.

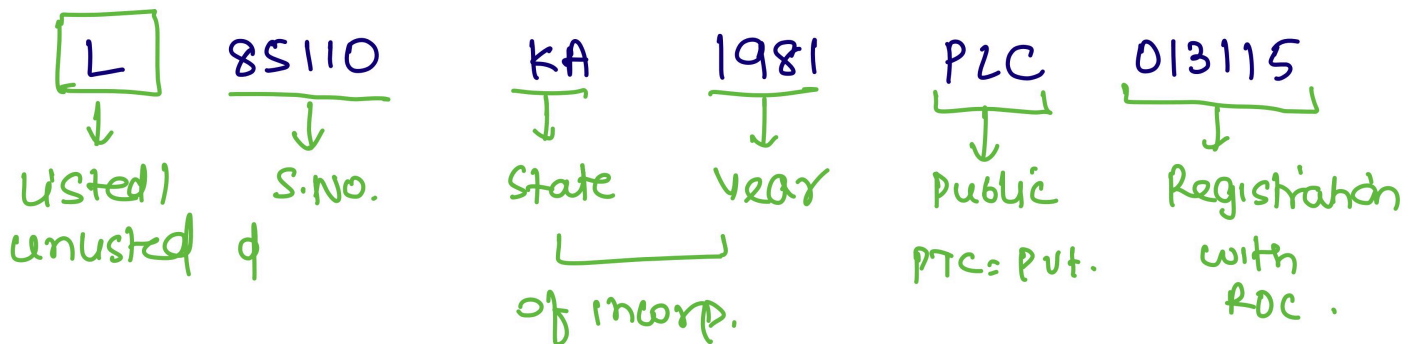
* Prohibition:

OPC is prohibited from:

- Non banking financial investment activities,
- Investment in securities of B.C.

Section 7: Incorporation of a company:

How to read a CIN: [21 digits]



① Following documents is to be filed with ROC in whose jurisdiction, RO is proposed to be established:

(a) MOA (MOA) duly signed.
(INC - 33) (INC - 34)

(b) Address for correspondence till RO is estb.

(c) Particulars of — Subscribers
(d) — First Directors } Name, Address, Nationality, DIN & ID proof

(e) Related to first director

- Interest in other firm/Be
- consent** to act as dir.
- Dir $\xrightarrow{\text{DIR-2}}$ Co $\xrightarrow{\text{DIR-12}}$ ROC

INC-8

(f) **Declaration** w.r.t compliance with provision of Act:
— Advocate, CA, CS, CMA in Practice engaged

in formation, and

- Person named in AOA as director, manager.

INC-9

(9) Declaration from each subscriber & director:

NOT convicted
of offence
relating to
PFM of Co.

Not guilty of
- fraud
- misfeasance
- Breach of trust

↓
Preceding 5 years

All documents
sent to
ROC is
correct,
complete
& true

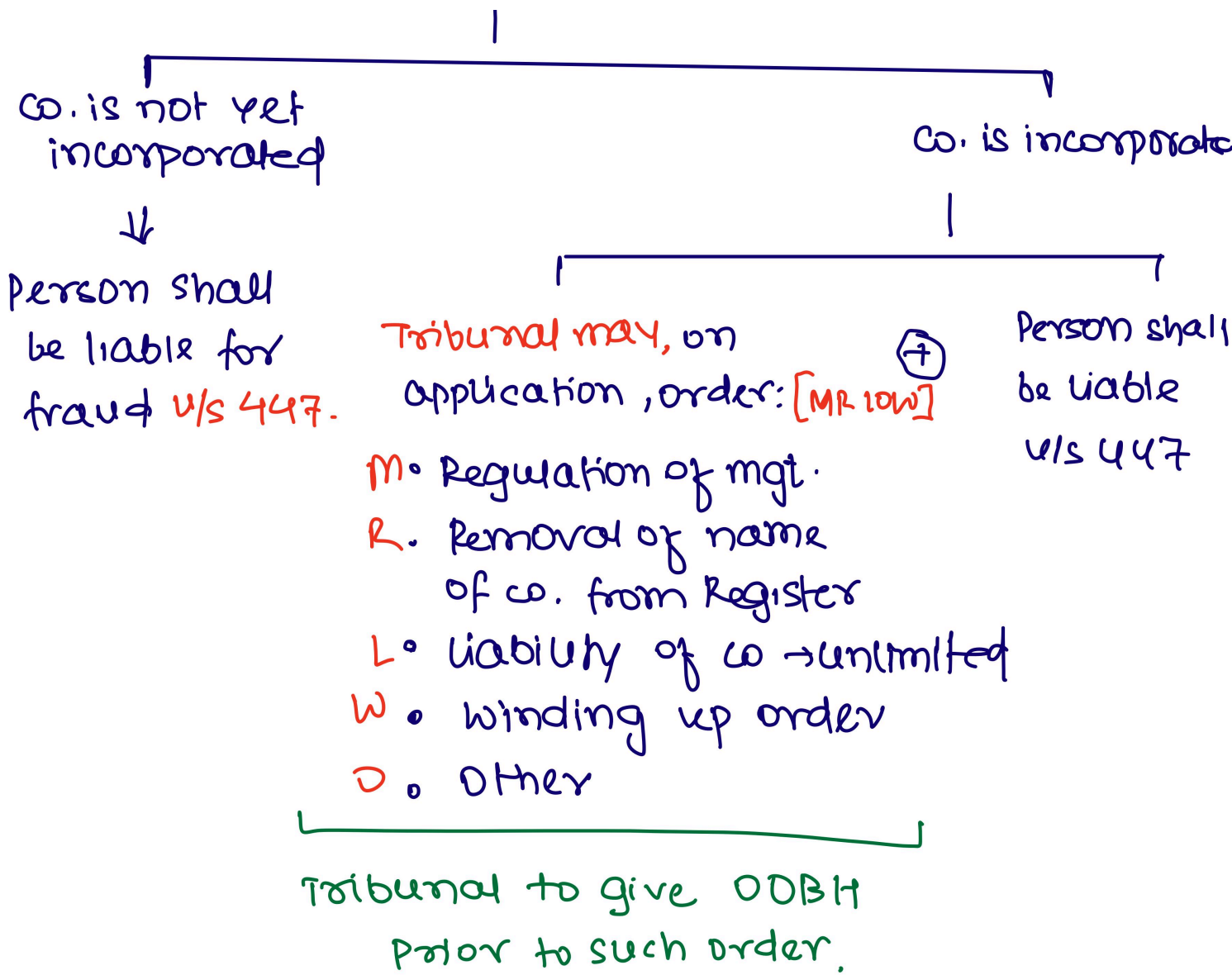
Note: Written consent of nominee (Form INC-3) is to be filed along with incorp. documents.

2. SPICE⁺ (INC-32) - Simplified Proforma for incorp. of a company electronically

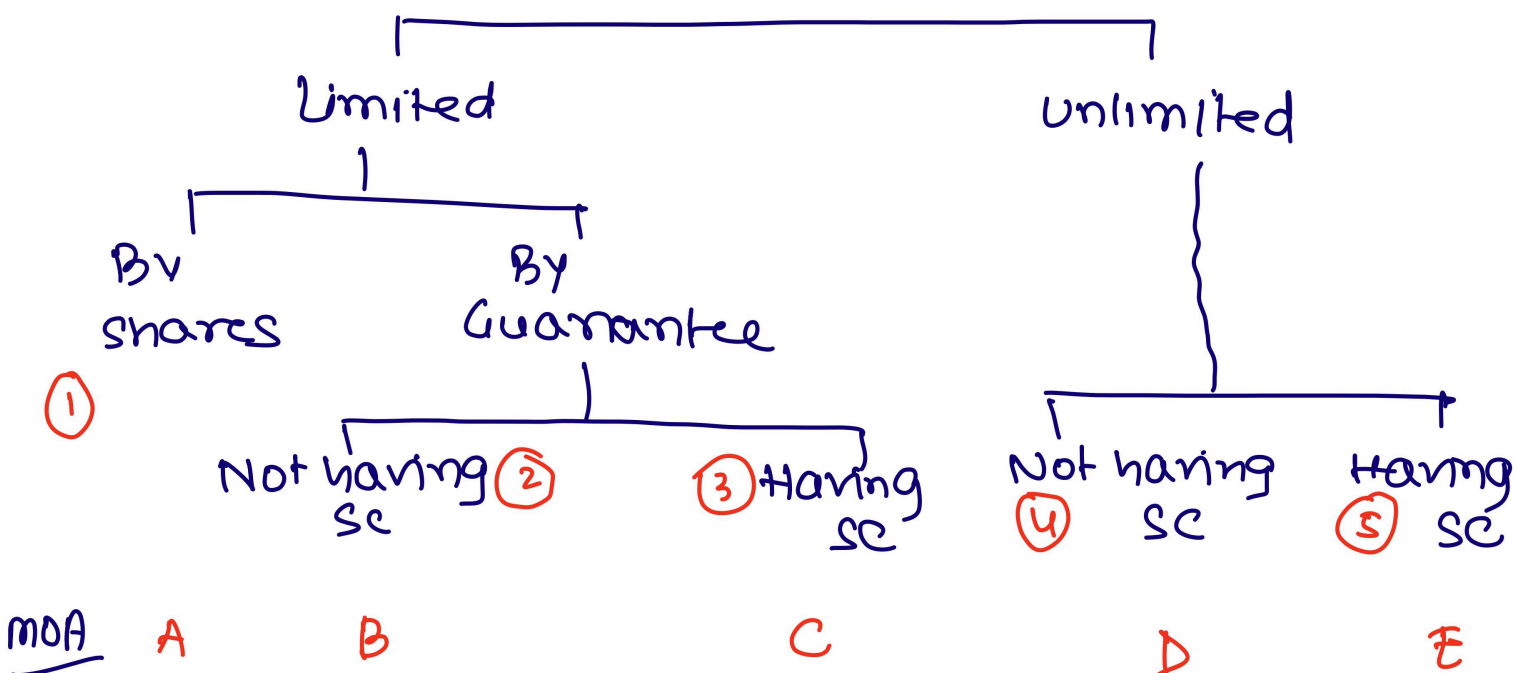
This form is used for incorporation of a company electronically.

* ROC $\xrightarrow[\text{+ CIN}]{\text{Certificate of Incorp.}} \text{INC-11}$

* In case where a person has
|
- submitted false documents
- suppressed material info.



Type of companies:



AOA F H 9 I I

Provision related to signing of MOA/AOA

- MOA/AOA shall be duly signed by the subscribers to memorandum.
- Each subscriber shall state - Name, address, description and occupation & shall be signed in presence of at least 1 witness
- Other cases:
 - Illiterate — Affix thumb.
 - BC — Authorised director, officer.
 - LLP — Authorised partner
 - Foreign national — Notarize
 - visiting india → valid business visa

Section 4: Memorandum of Association:

Basic points:

- Also called as constitutional/charter documents
- It is a public document as per section 399
- Any person dealing with the co. is presumed to have knowledge of content therein

Provision:

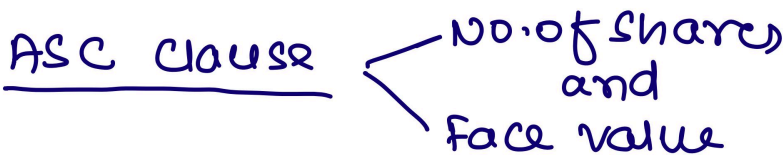
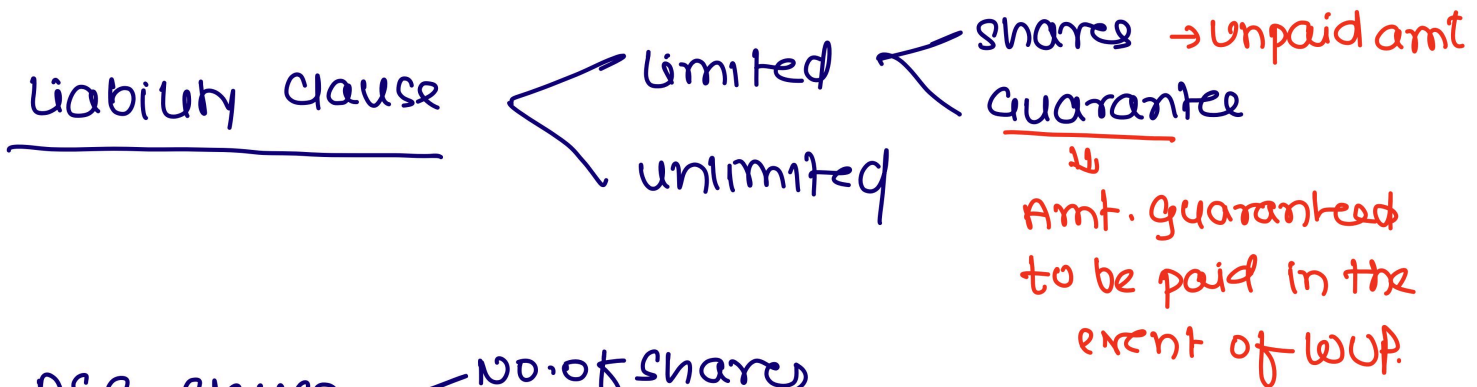
(1) MoA shall state:

- Name
- state of RO
- Objects
- Liability
- Auth. SC
- Subscribers
- Nominee (OPC).

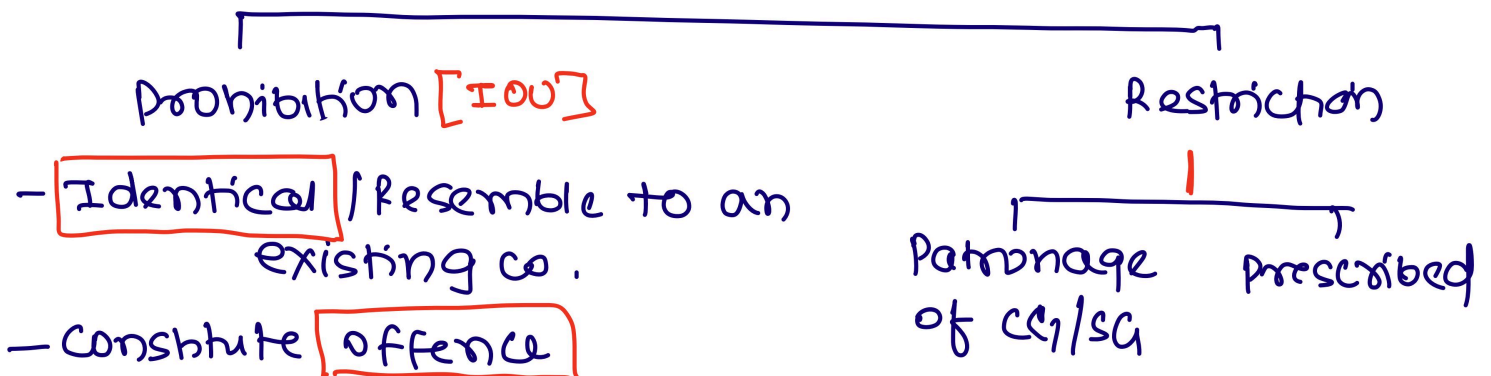
Name clause:

Suffix:

- Section 8 co. → NO Suffix
- Govt. co. → NO Suffix
- OPC co. → ABC (OPC) Pvt. Ltd.



(2) Name clause:



- Undesirable in opinion
of CG [power delegated
to ROC]

↓
prior approval
of CG.

Sec 4 over
DUV

Ashubum

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Rajendra Nath Datta vs. Shikendra Nath Mukherjee:

An act that is intra-vires to the co. but not outside the object clause (i.e. not ultra vires) may be ratified.

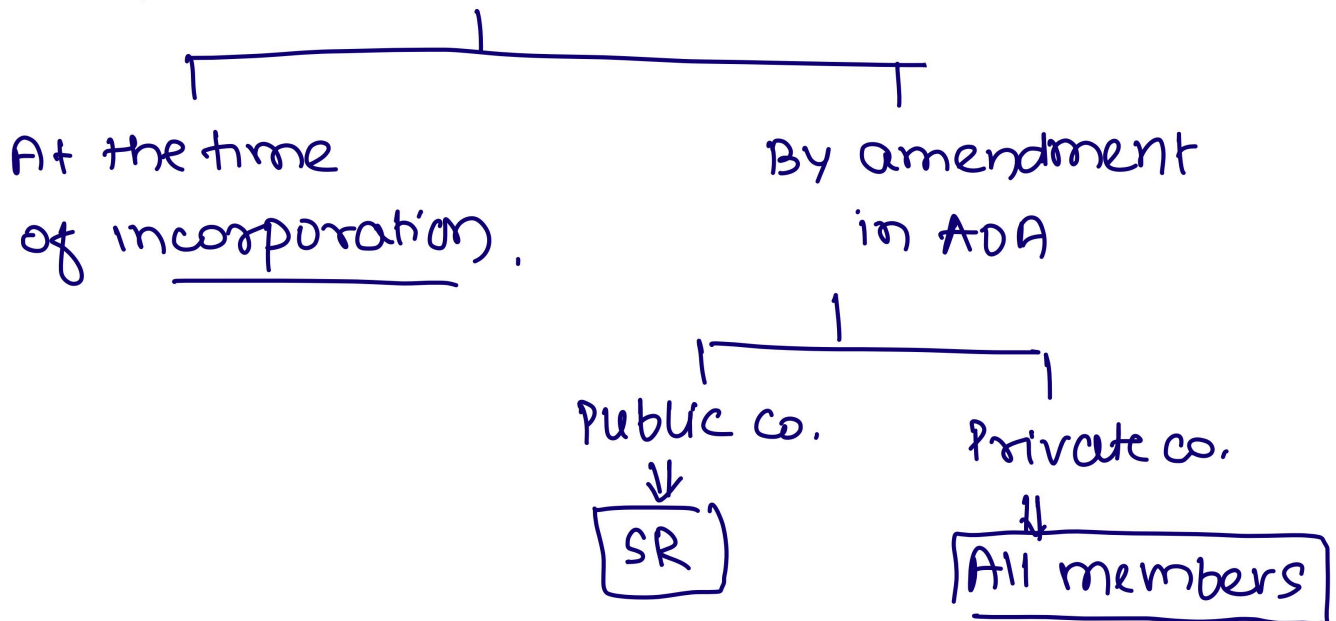
Section 5: Article of association.

1. These are internal rules and regulations of the company.

2. Entrenchment Provision:

• Effect: AOA may be altered, only if procedure, more restrictive than SR is complied with.

• Such provision may be added:



• Notice to ROC:
New co. → SPICe+
Existing → MGT-14 within 30d

Doctrine of indoor management [DIM]

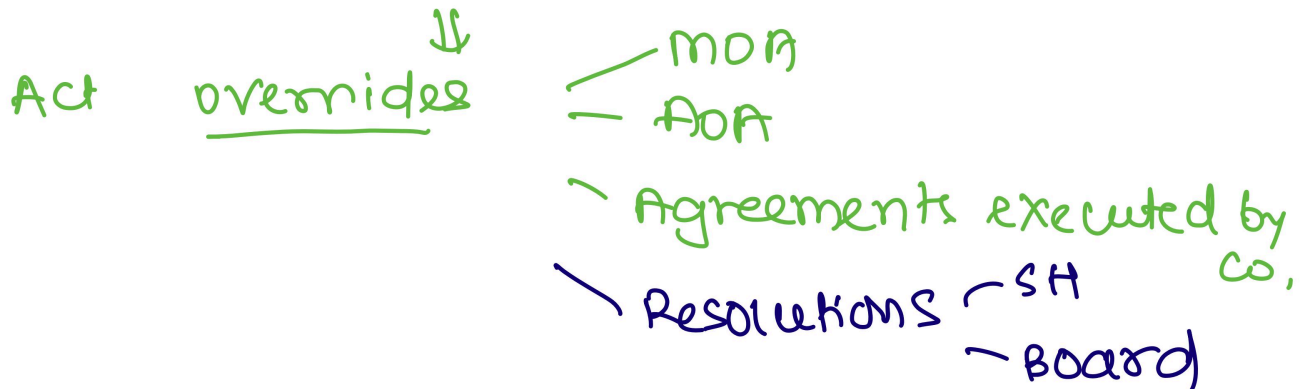
[Turquand rule] [Exception to doctrine of Constructive Notice]

- Royal British Bank vs Turquand
[Appellant] [Co] [Defendant]
[Lawdator.]

- Directors of the Co. were authorised to issue bonds subject to SR in GM
- Directors issued such bond without SR
- Is such bond binding on the Co? → Yes

Section 6: Act to override MOA / AOA:

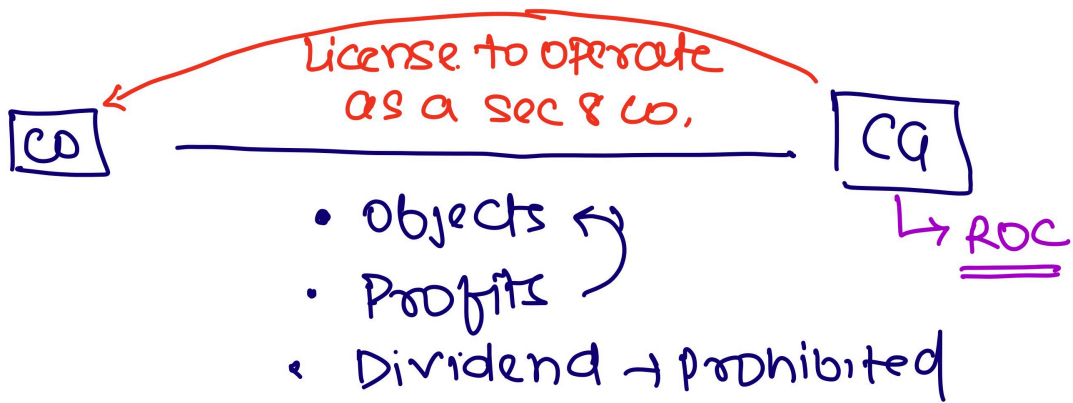
Save as otherwise provided in this Act,
(matlab -- Is act mein kahi aur kuch aur krha
toh, toh uski baat man lena)



Any provision in MOA etc. that is **repugnant**
to the Act, shall be void ↓
(Contradictory)

Section 8: company with charitable objects

(1)

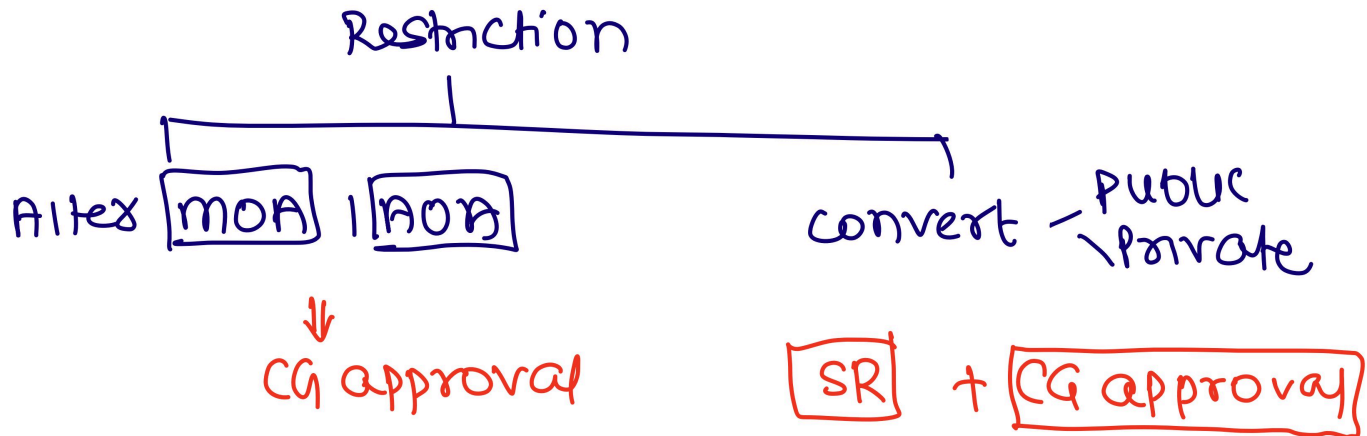


No suffix required in case of sec 8 co.

(2) sec 8 co → Privileges of a limited liab co.

(3) Firm → sec 8 member ✓

(4)

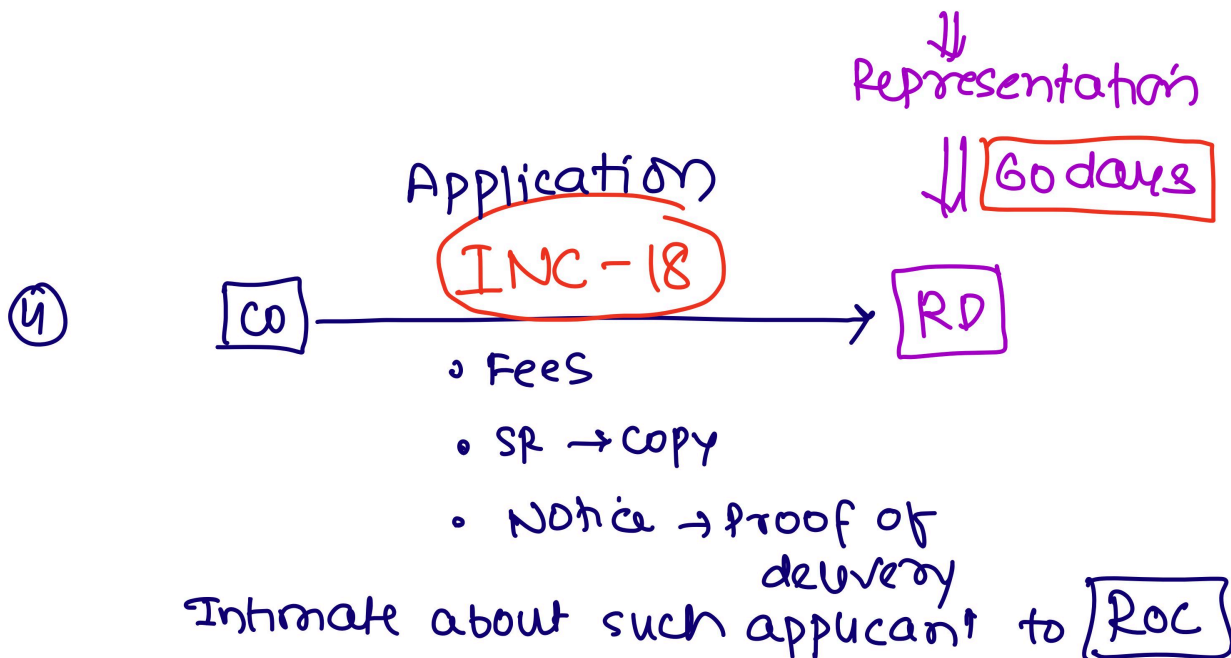
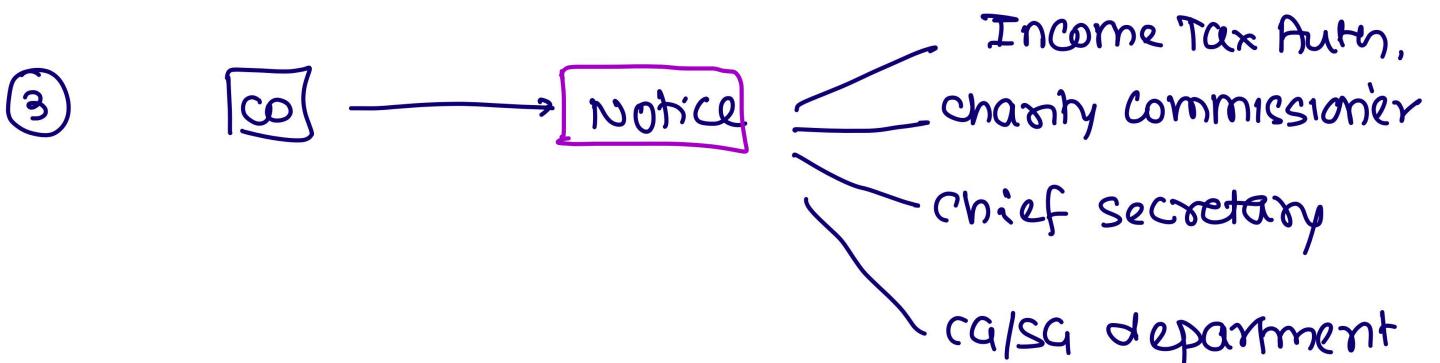
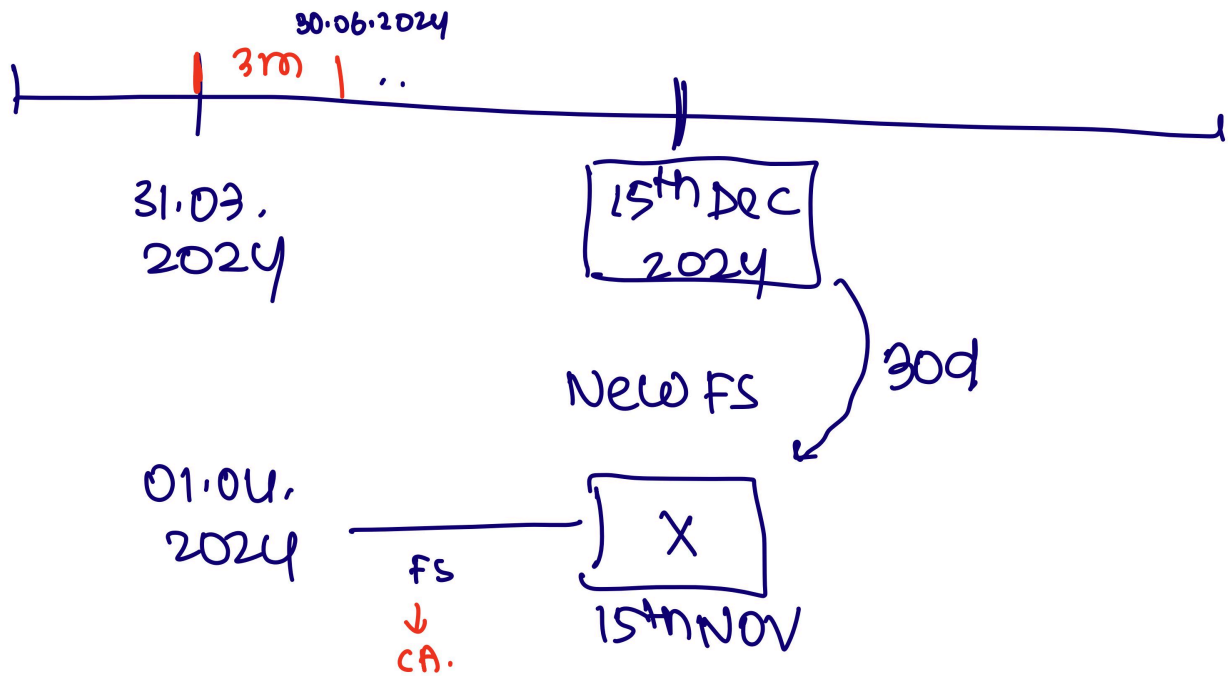


Rule 21 & 22: Process of conversion:

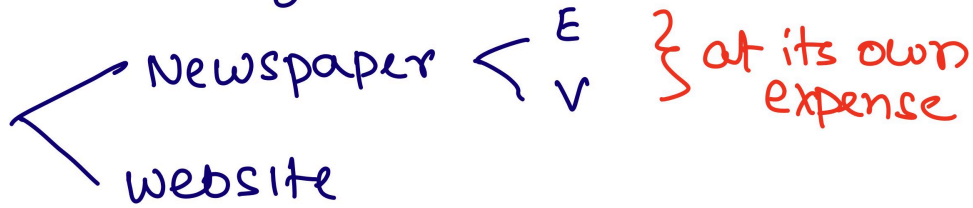
① SR + Explanatory statement (ES)

② $\left\{ \begin{array}{l} \text{Financial Stat. (137)} \\ \text{Annual Return (192)} \end{array} \right\} \rightarrow \text{file}$

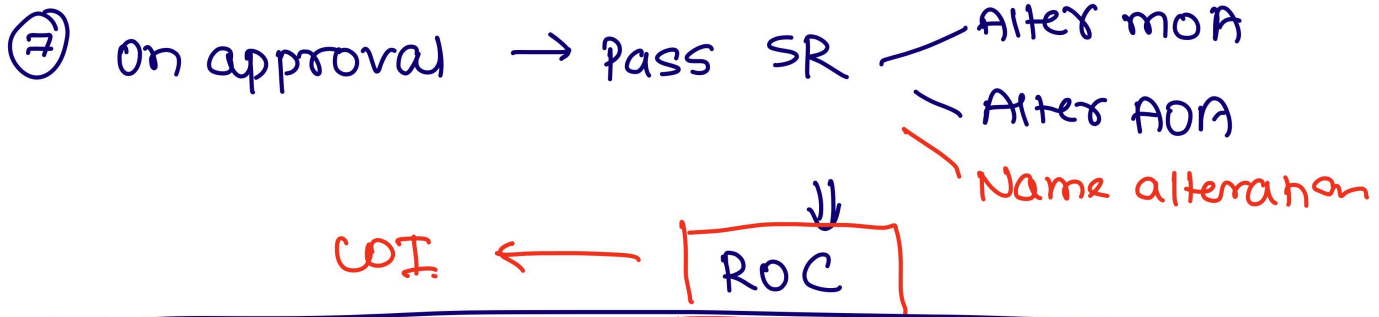
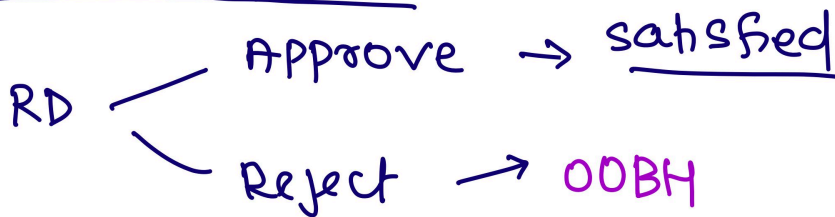
Where application is made after 3m from end of latest fy, attach a FS upto date not > 30 days of filing such applⁿ duly signed by CA.



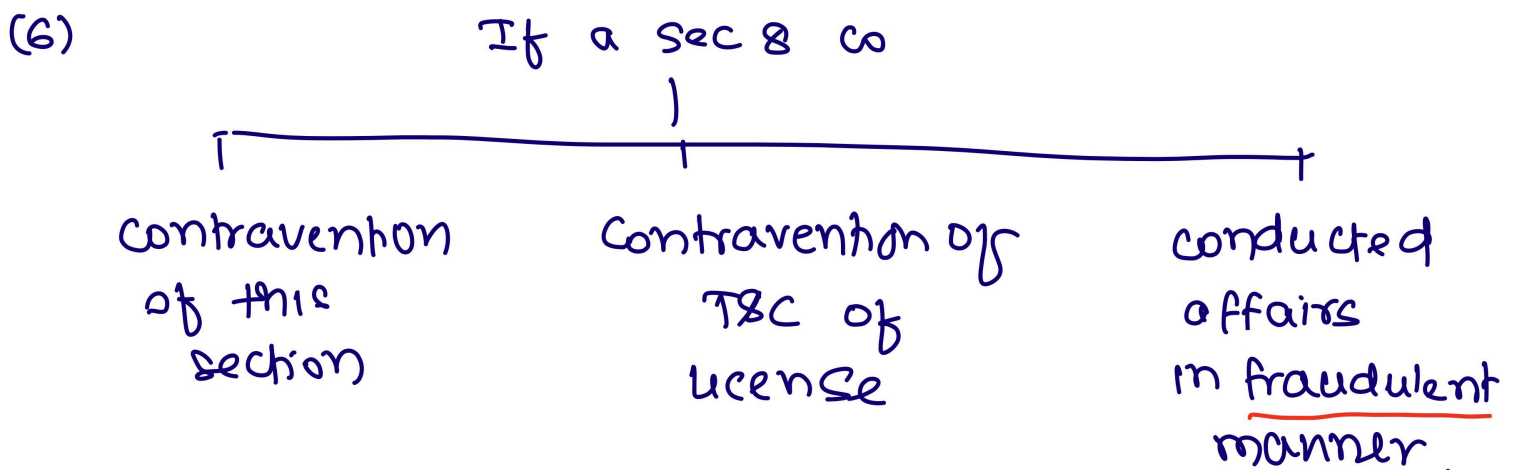
⑤ within 1 week of such application, co shall:

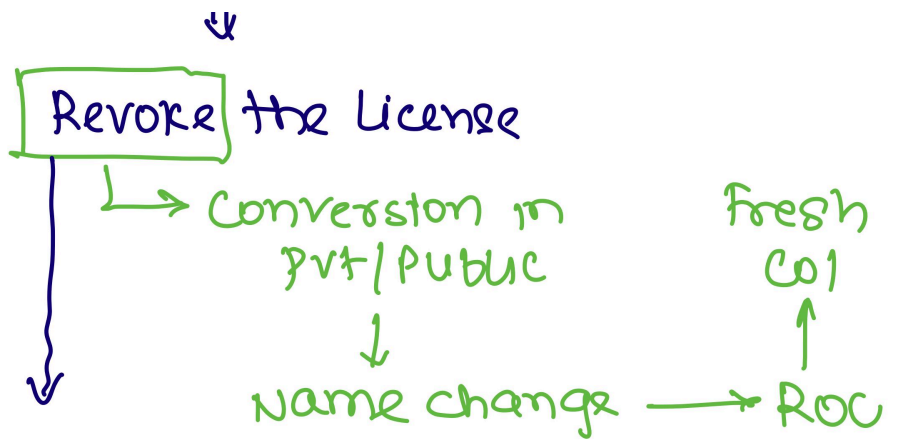


⑥ Approval of RD

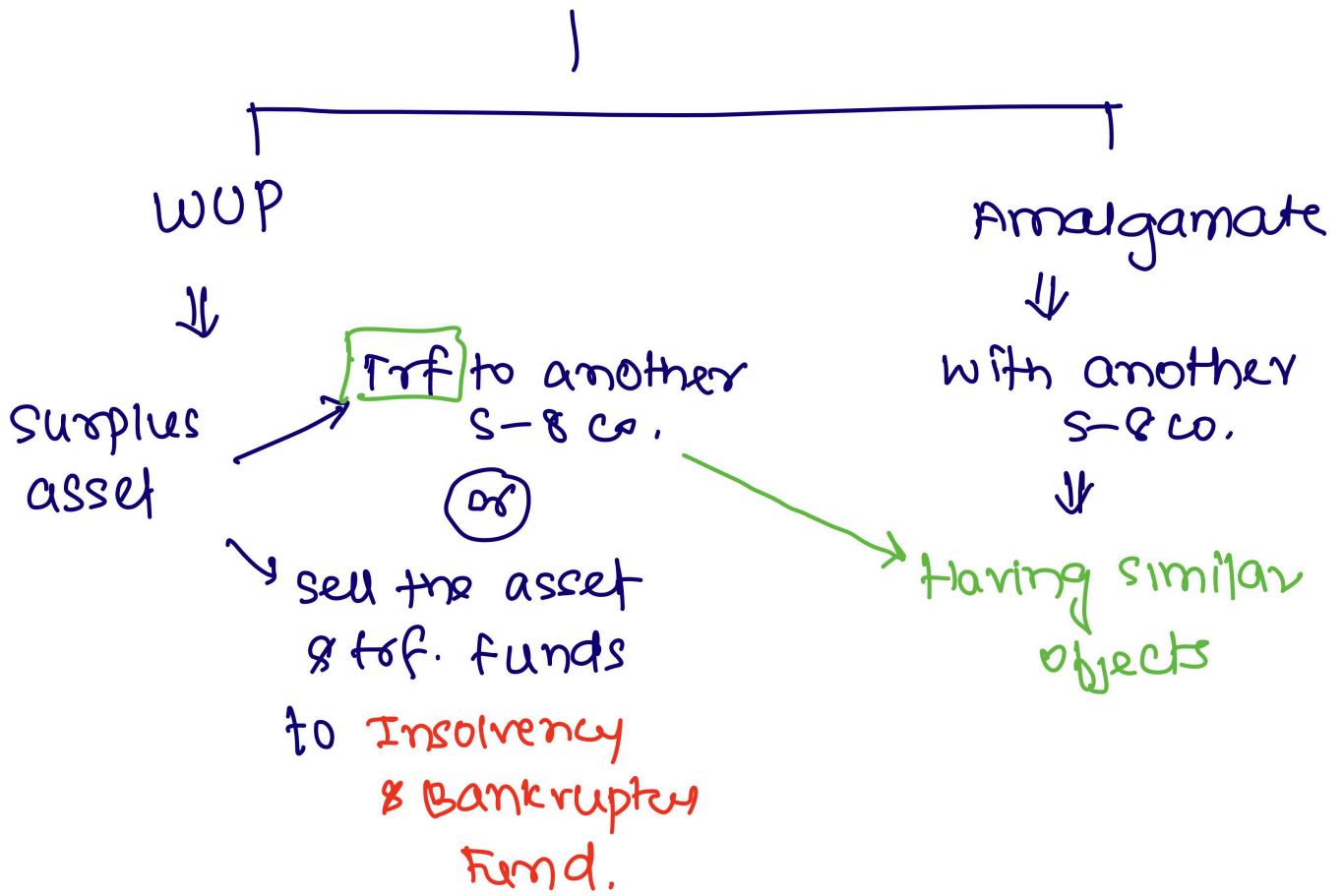


⑥ CG may, suo motu (on its own motion) issue license u/s 8 to existing public int co.

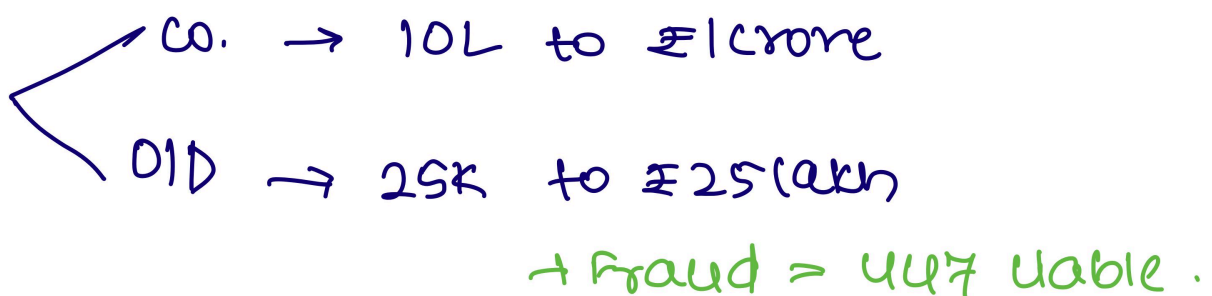




CG may, in public interest, order:



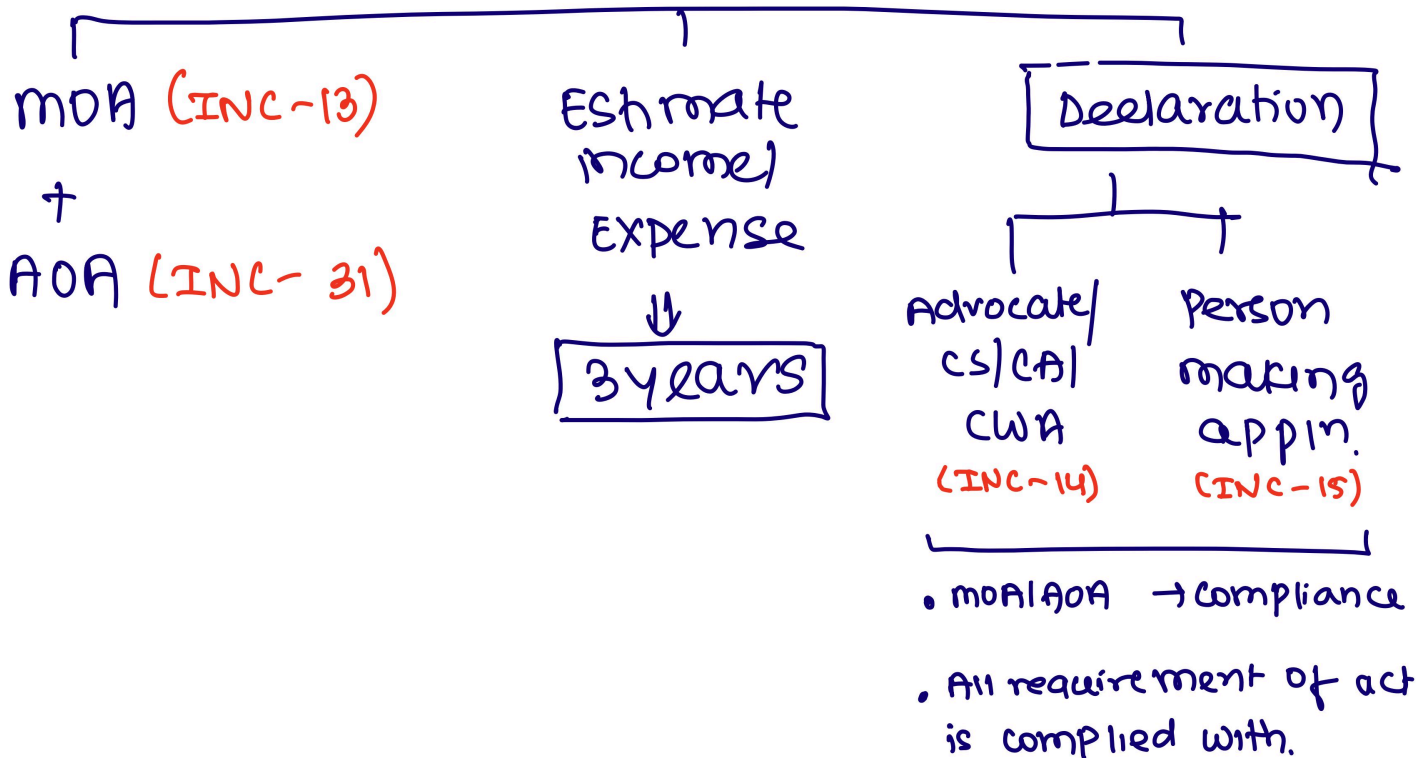
(7) Punishment- for contravention:



Steps to incorporate a sec 8 co:

① Apply to ROC → SPICe+ (INC-32)

② Documents to be attached:



Section 10A: Commencement of business:

(1) A company shall NOT commence business or exercise borrowing power

unless:

INC-20A + CA sign

Declaration by director within 180 days that subscribers have paid the value.

Ro verified within 30 days.

(2) Default → CO → ₹50,000
→ DID → ₹1000/day upto ₹1 lakh

(3) If no declaration within 180 day
⊕
ROC has reasons to believe
that no business
is conducted. } → Physical
verification
+
Removal
of name

Note: Where applicable, attach approval of sectorial
regulator along with declaration

imp. -
Section 12: Registered office

(1) Within 30 days
 └─ RO establish
 └─ RO verify → ROC

(2) Every co shall:

Where:

Office or biz. place

Seal (if any)

Business letter

NI (BOE, PN)

What:

- Name & RO address

- Name engrave

- Name, add, CIN, Phone no.

- Name print.

└─ conspicuous
└─ legible
└─ language

Affix former name as well → If changed in last 2 years

OPC - write OPC below the name.

(3) Change in RO:

written in one note

,

,

,

,

,

,

(4) Object clause: → Pass **SR** + Intrmate ROC
↳ 30 days to certify.

Where co. has raised money from public (+) has unused amount (+) Intends to change Objects:

(a) Pass SR

(b) Publish
 ↙ Newspaper
 ↘ website
 ↙ E
 ↘ V

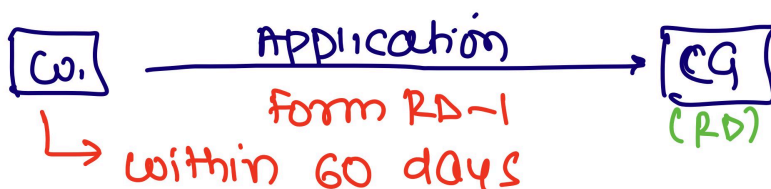
(c) Exit option to dissenting SH
 ↙ Promoter
 ↘ Controlling SH

Section 14: Alteration of AOA:

1) Pass **SR**

Alteration includes **conversion**
 ↗ Pvt. Co → Public
 ↘ **Public Co. → Pvt. Co.**
 ↓
 subject to approval of CG

2) Process for approval of CG:



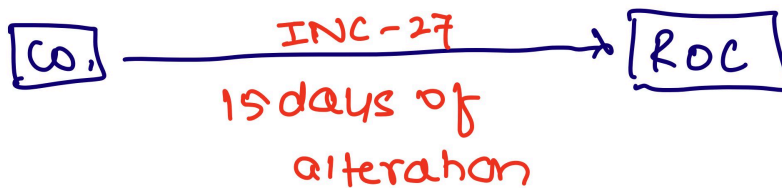


Attach docs:

- Draft AOA/MOA with changes
- COPY of minute of Gm - SR
- COPY of BR
- Declaration by Kmp of compliances.

Provided that: Where a private co. alters its AOA and thereby removes the restriction from AOA, it shall cease to be pvt. co.

3) Intimate to ROC:



- Alteration of AOA
- Printed AOA
- Approval of CA. (if any)

4) Any alteration in AOA., when registered by ROC shall be valid as if it were originally made in the AOA.

Andrew vs. Gas Meter co:

Held that → a company cannot divest from its power to alter AOA.

Section 15:

- Alteration u/s 13/14 to be noted in every co.
- Default → Co. + O/D → ₹1,000 for every copy issued.
(no maximum limit)

Section 16: Rectification of name

- If through inadvertence or otherwise, if in the opinion of Cg,
→ (GaitH se)
- the name of a co. is identical to or too closely resemble to the name of an existing co.
- Cg may direct the company to change its name.
- on receipt of such direction, company shall change its name within 3 months by passing ordinary resolution.
- Such opinion of Cg may be formed due to:
 - (i) suo-motu. i.e. on its own motion
 - (ii) On application by Registered Proprietor of a trademark within 3 years.

Where company complies with the direction:

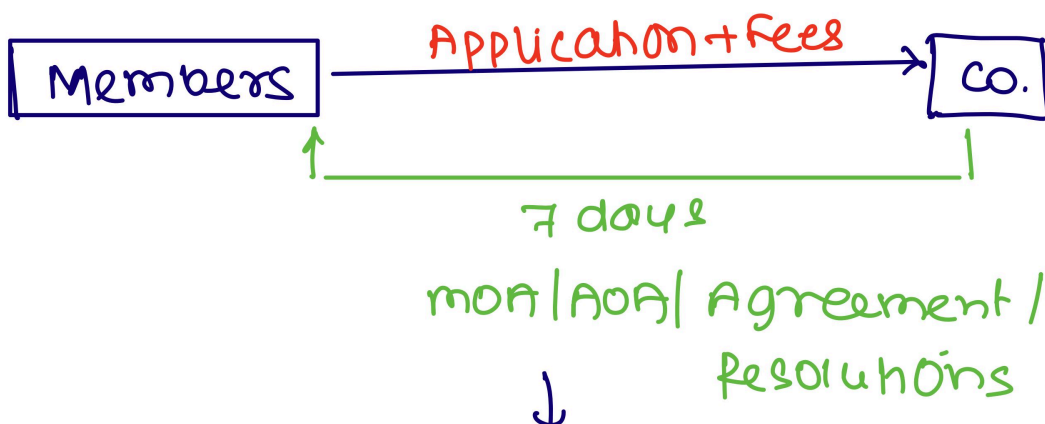
- Where co. changes its name → Inform ROC within 15 days
↓
ROC to make necessary changes {
COI
MOA

Where co. fails to comply:

- CG to allot new name
- ROC to enter new name in Register of Cos. and issue COI.

Note: company may, thereafter, change its name u/s 13. (by passing SR).

Section 17: Copies of MOA/AOA:



Default → 1000 day upto ₹ 1 Lakh.

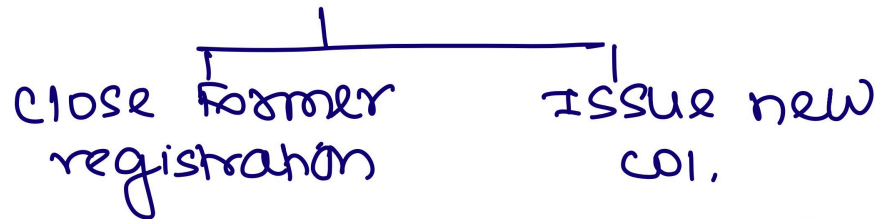
Section 18: Conversion of co. already registered:

1) co. may convert from one class to another by alteration of M.O.A.

2) On such conversion → Apply to ROC

↓

If ROC is satisfied w.r.t. compliance



3) Such conversion shall not affect

↓

that existed before conversion.

→ Debts
→ Liabilities
→ Obligations
→ Contracts

Section 19: sub sy co. not to hold shares of H co.

1. Provision:

- NO sub sy. co shall hold shares in H. co, and
- NO H. co. shall allot shares to S. co.
- Such allot / holding → void.

Exception:

1. Where S holds shares of H as a legal representative of a deceased member of H.

2. Where S holds such shares as a trustee

3. Where such co. was a shareholder even before it became subsidiary.

Note: voting power shall be available only in case (1) & (2) above [i.e., LP/trustee].

Section 20: Service of documents:

1) member/ROC → [Co] [Co] → ROC/member

→ Regt. Post

→ Speed post

→ Courier

→ Leave at RO

→ E-mode

Post

"

"

"

Deliver at address.

"

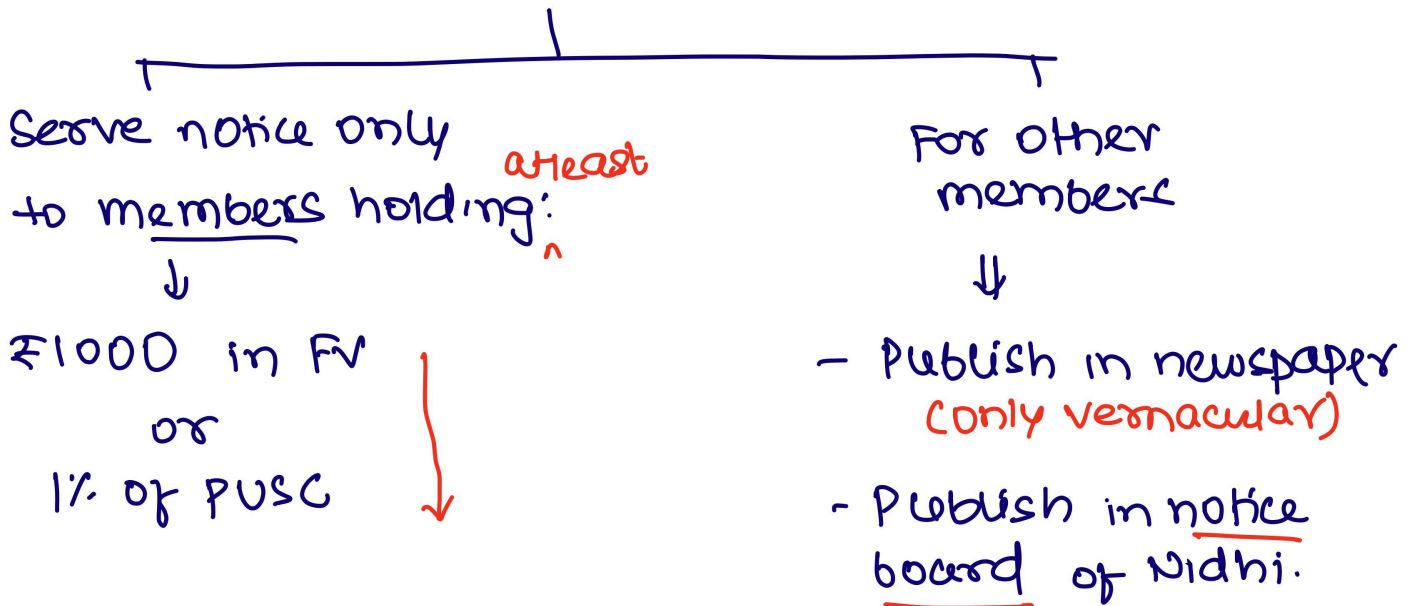
Note: Depository may serve "Register of beneficial owner to co. through e-mode"

Note 2: A member may request delivery through a particular mode by paying fees.

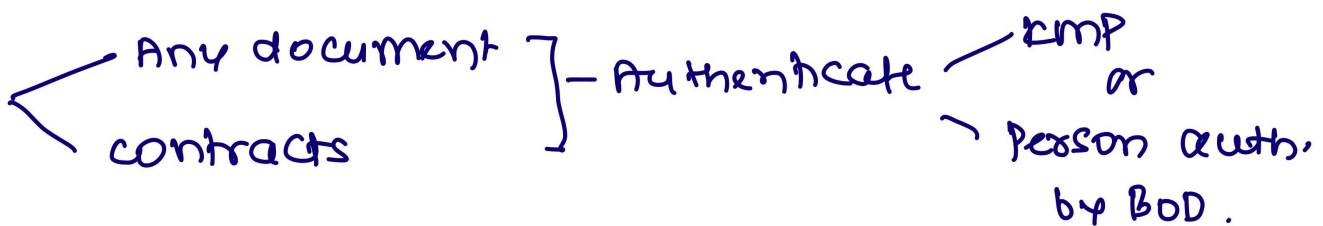
However, it shall still be sent at registered address. TO be decided in AGM.

Note 3: In case where notice of GM is sent via post, it shall be deemed to be serve within 48 hours after the same is post.

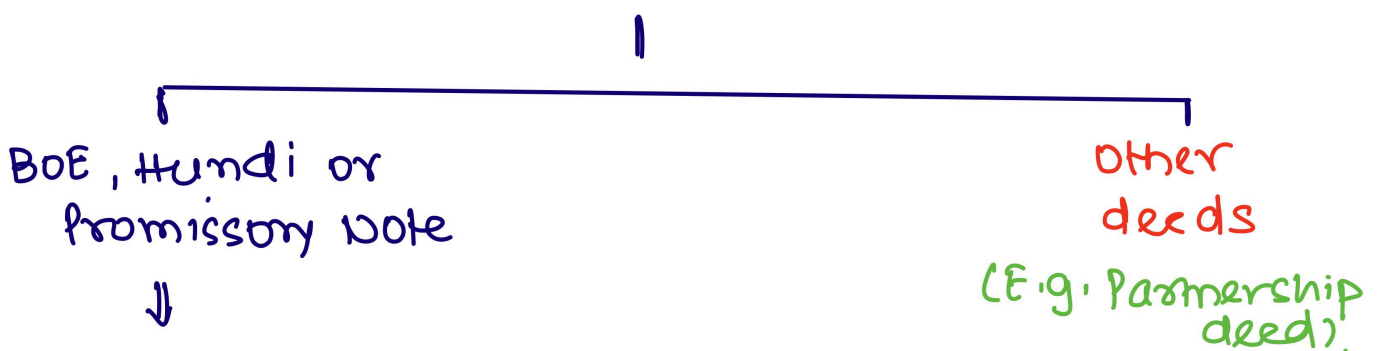
Note 4: In case of Nidhi co:



Section 21: Authentication of doc.



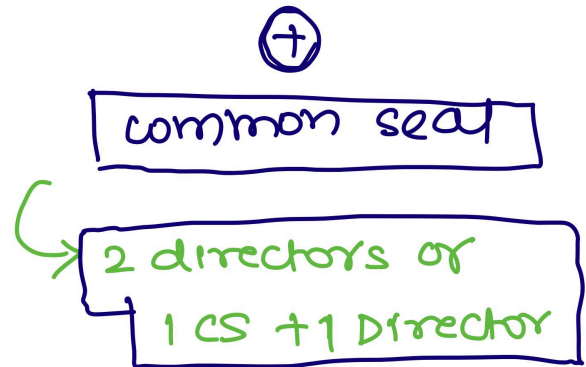
Section 22: Execution of BOE, etc:



made or drawn
by authorised person

Express Implied

↓
Executed by
person authorised
in writing (Express
auth.),



A deed signed by such person
under his seal shall bind
the company.

Section 9: Effect of registration:

From the date of incorporation mentioned in Col :

- Each subscribers to memorandum shall become members
- The company shall be a body corporate incorporated under this Act :
 - capable of exercising functions, and
 - having perpetual succession
 - with power to hold property, enter into contracts, sue & be sued.

Section 10: Effect of MOA/AOA:

- 1) When MOA/AOA is registered, it binds the company & members thereof.
- 2) All monies payable by a member to the co. shall be a debt due from him to the co.

Note: Co. & member are bound to each other. But members are not bound inter se. (apas mein)

(ICAI module mein galat diya hai),