



# इकाइ

Last Mile Referencer for

**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)

**Board of Studies**

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INTERMEDIATE

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GROUP-I

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PAPER 2

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CORPORATE  
AND  
OTHER LAWS

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## **Saransh – Last Mile Referencer for Intermediate Paper 2: Corporate And Other Laws**

While due care has been taken in preparing this booklet, if any errors or omissions are noticed, the same may be brought to the notice of the Joint Director, Board of Studies. The Council of the Institute is not responsible in any way for the correctness or otherwise of the matter published herein.

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Published in September 2024 by:

**Board of Studies**

**The Institute of Chartered Accountants of India**

**“ICAI Bhawan” A-29, Sector-62,**

**Noida 201 309**

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# PREFACE

Board of Studies, the student wing of the Institute, does not leave any stone unturned in providing best-in-class services to its students. It imparts quality academic education through its value added study materials, and other educational inputs. BoS also conducts live virtual classes through eminent faculty for its students across the length and breadth of the country.

In a pursuit to provide quality academic inputs to the students to help them grasp the intricate aspects of the subjects, the Board of Studies has been publishing crisp and concise capsules in its monthly Students' Journal "The Chartered Accountant Student" wherein the concepts and provisions are presented in attractive colours in the form of tables, diagrams and flow charts for facilitating easy retention and quick revision of topics.

To reach out to its students and members across the nation, the BoS has come out with a comprehensive booklet 'Saransh - Last Mile Referencer' for different papers at various levels of Chartered Accountancy Course. In continuation, BoS is coming out with Saransh for Paper 2- Corporate and Other Laws. This booklet encapsulates significant provisions and concepts related to the Companies Act, 2013, the Limited Liability Partnership Act, 2008, the General Clauses Act, 1897, Interpretation of Statutes and the Foreign Exchange Management Act, 1999 by way of diagrams, flow charts, tables and pictorial representation.

However, the students are advised to refer the Study material, Bare Act, Rules and Regulations for thorough and comprehensive study of the subject.

The subject matter of this booklet is based on the provisions of the abovementioned topics as amended by the notifications and circulars issued as well as with the amendments made upto 30th June 2024.

This booklet will surely enable the readers in easy retention and quick revision of the provisions and concepts of Corporate and other laws.

Happy Reading!

# President Message



It is with immense pride that I introduce the Saransh booklets, a meticulously curated resource available across the Foundation, Intermediate, and Final levels of the Chartered Accountancy course. ICAI has always been dedicated to providing our students with the best possible resources to succeed in their studies and careers, and Saransh is a demonstration of this commitment.

The Saransh – Last Mile Referencers have been thoughtfully designed by the Board of Studies (BoS) to serve as an invaluable companion for your studies and exam preparation. Our aim is to simplify complex concepts and provisions, making them easier to understand, memorize, and revise. However, Saransh is not a substitute for the detailed BoS study material but a supplementary tool to complement your in-depth study.

The newly revamped Saransh booklets have been updated not only in content but also in their presentation. With a more logical and organized structure, enhanced visual appeal, and a user-friendly layout, these booklets are now more effective in aiding your studies.

We have extended the Saransh series to cover all core areas of the Chartered Accountancy course. Whether you are studying Direct Tax Laws and International Taxation, Indirect Tax Laws, Accounting Standards, Indian Accounting Standards, Auditing, Cost and Management Accounting, Strategic Cost Management and Performance Evaluation, Company Law, or Financial Management and Strategic Management, you will find a Saransh booklet for each subject.

Saransh is designed not only to help you grasp and recall essential concepts but also to guide you in approaching each subject strategically. The insights provided in these booklets will help you develop a structured approach to your studies, ensuring that you are well-prepared for your examinations.

I urge you to make the most of the Saransh booklets. While these booklets will support you, it is your dedication, perseverance, and hard work that will ultimately determine your success.

I wish each of you the very best in your studies and future careers.

Warm regards,

CA. Ranjeet Kumar Agarwal  
President, ICAI



# The Institute of Chartered Accountants of India

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Board of Studies

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**PART I**

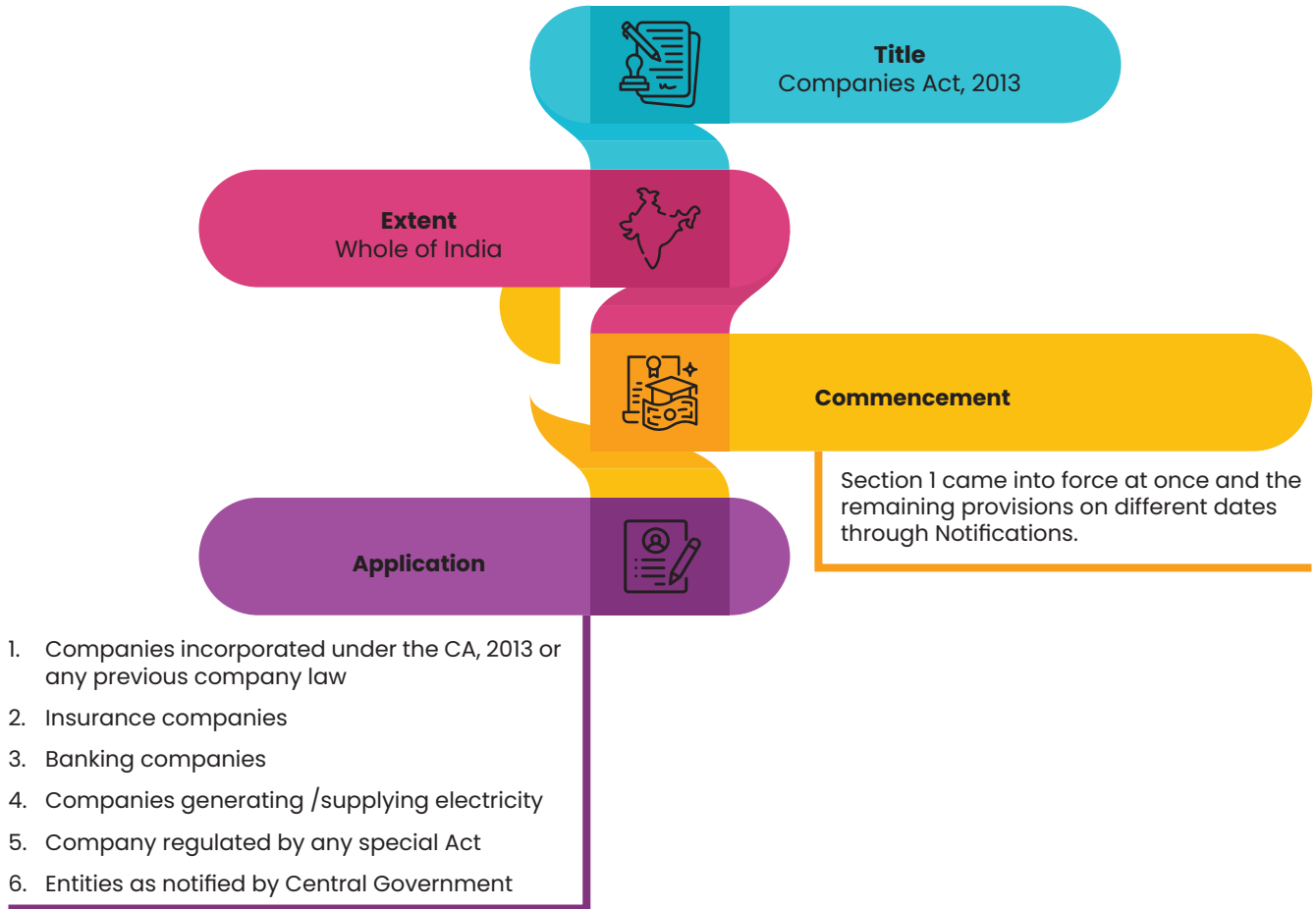
**The Companies Act, 2013**



# Companies Act, 2013

## Chapter - 1

### Preliminary



**What is a Company:** Company means a company incorporated under this Act or under any previous Company Law.

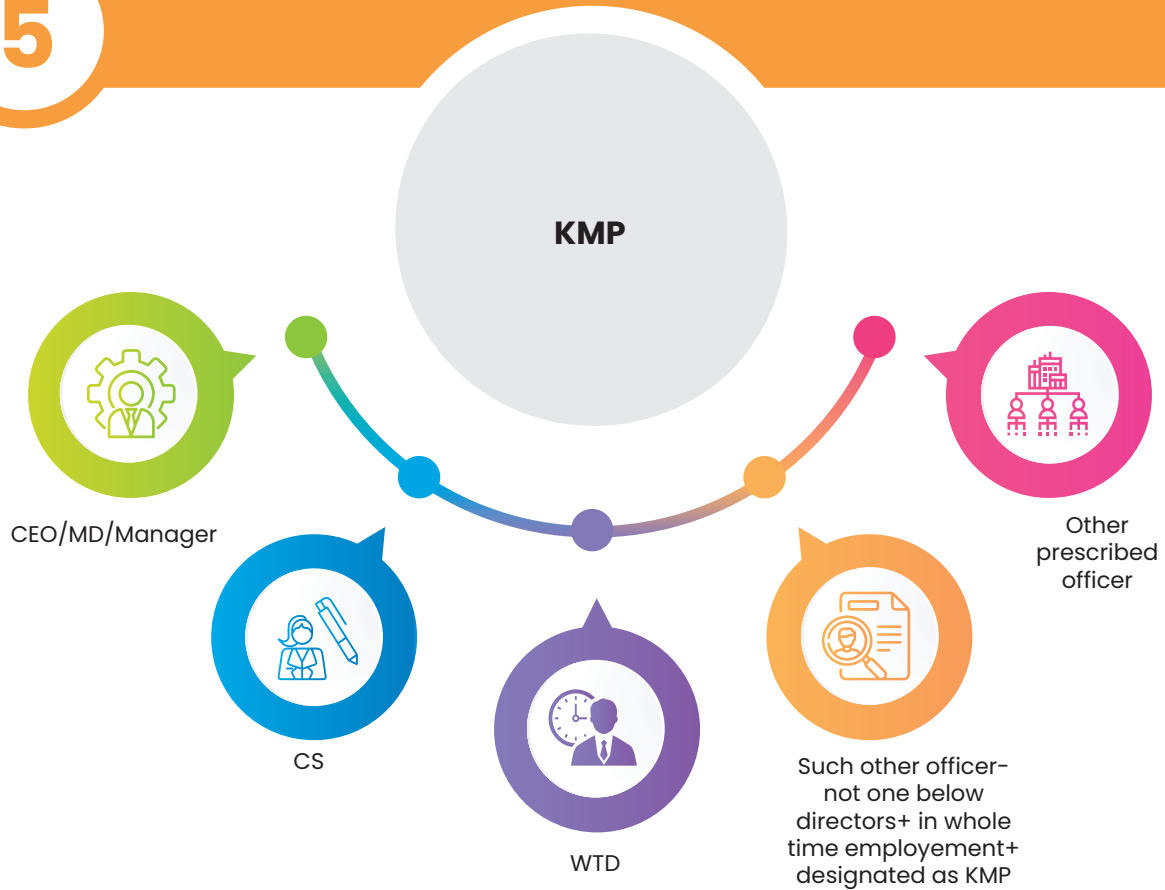
## Major Definitions



Includes a company which is a subsidiary company of such Government company.

Here, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

5



6

**Listed company**

Which has any of its securities listed on any recognised stock exchange

Here, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with SEBI, shall not be considered as listed companies.



7

**Holding company:** Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.



8

**Subsidiary company:** means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

**Explanation**

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company.
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.



9

**One Person company (OPC):** means a company which has only one person as a member.



10

**Private Company**

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company



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**Public Company**

- Is not a private company (Articles do not have the restricting clauses)
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company



12

**Related party**, with reference to a company, means—

- (i) a **director** or his relative;
- (ii) a **key managerial personnel** or his relative;
- (iii) a **firm**, in which a director, manager or his relative is a partner;
- (iv) a **private company** in which a director or manager or his relative is a member or director;
- (v) a **public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any **body corporate** whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) **any person** on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any **body corporate** which is-
  - (A) a holding, subsidiary or an associate company of such company;
  - (B) a subsidiary of a holding company to which it is also a subsidiary; or
  - (C) an investing company or the venturer of the company;
 Note: Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company.
- (ix) such other person as may be prescribed.



### Small Company

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- A private company

- Paid-up capital – not more than ₹ 4 crore or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and Turnover (as per P&L A/c of immediate preceding FY) – not more than ₹ 40 crore or such higher amount as may be prescribed which shall not be more than 100 crore rupees.

- Should not be
  - A Section 8 company
  - Holding or a Subsidiary company
  - a company or body corporate governed by any special Act

14

**Total voting power**, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.



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**Unlimited Company [Section 2(92)]**

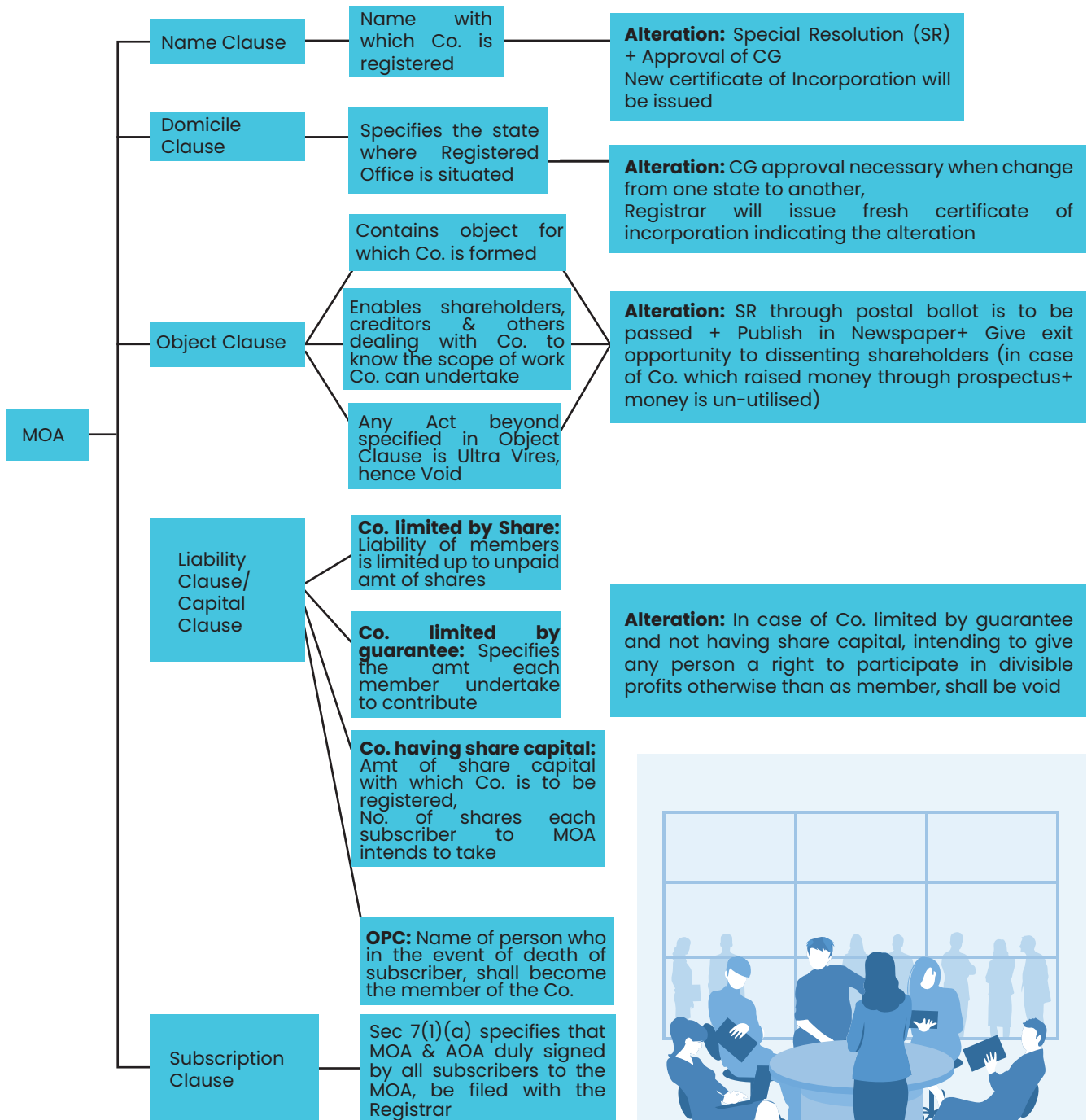
- No limit on the liability of members
- The liability ceases when he ceases to be a member



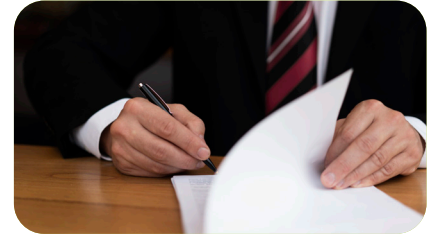
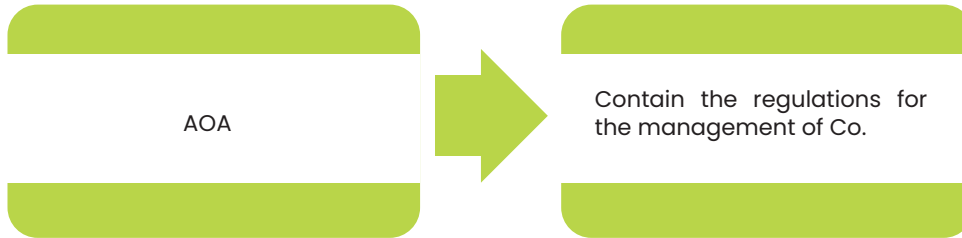
## Chapter 2

### Incorporation of Company and Matters Incidental thereto

#### I. Memorandum of Association (MOA)



## II. Articles of Association (AOA)



### Alteration Of AOA



- (i) Alteration is effected by SR
- (ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of CG is necessary.
- (iii) Alteration of AOA+ Approval of CG (if any) to be filed with ROC within 15 days
- (iv) Alterations once registered will be valid as if it were originally contained in AOA

## III. Steps for Incorporation of Company

- Reservation of name by filing e-application
- Drafting & signing of MOA and AOA and its submission to ROC. These documents have to be e- filed and e- stamped
- Consent of persons nominated as directors to act as directors to be submitted electronically
- Submission of 'statutory declaration of compliance' and other declarations
- Pay fees
- Obtain certificate of incorporation digitally signed by ROC
- File declaration about address of Registered office



Note: New requirement of submitting declaration that 'all subscribers have paid the value of shares agreed to be taken by him' and 'verification of Registered office has been filed' has been inserted vide section 10A. This requirement is needed to be complied with before the commencement of business



## IV. One Person company (OPC)



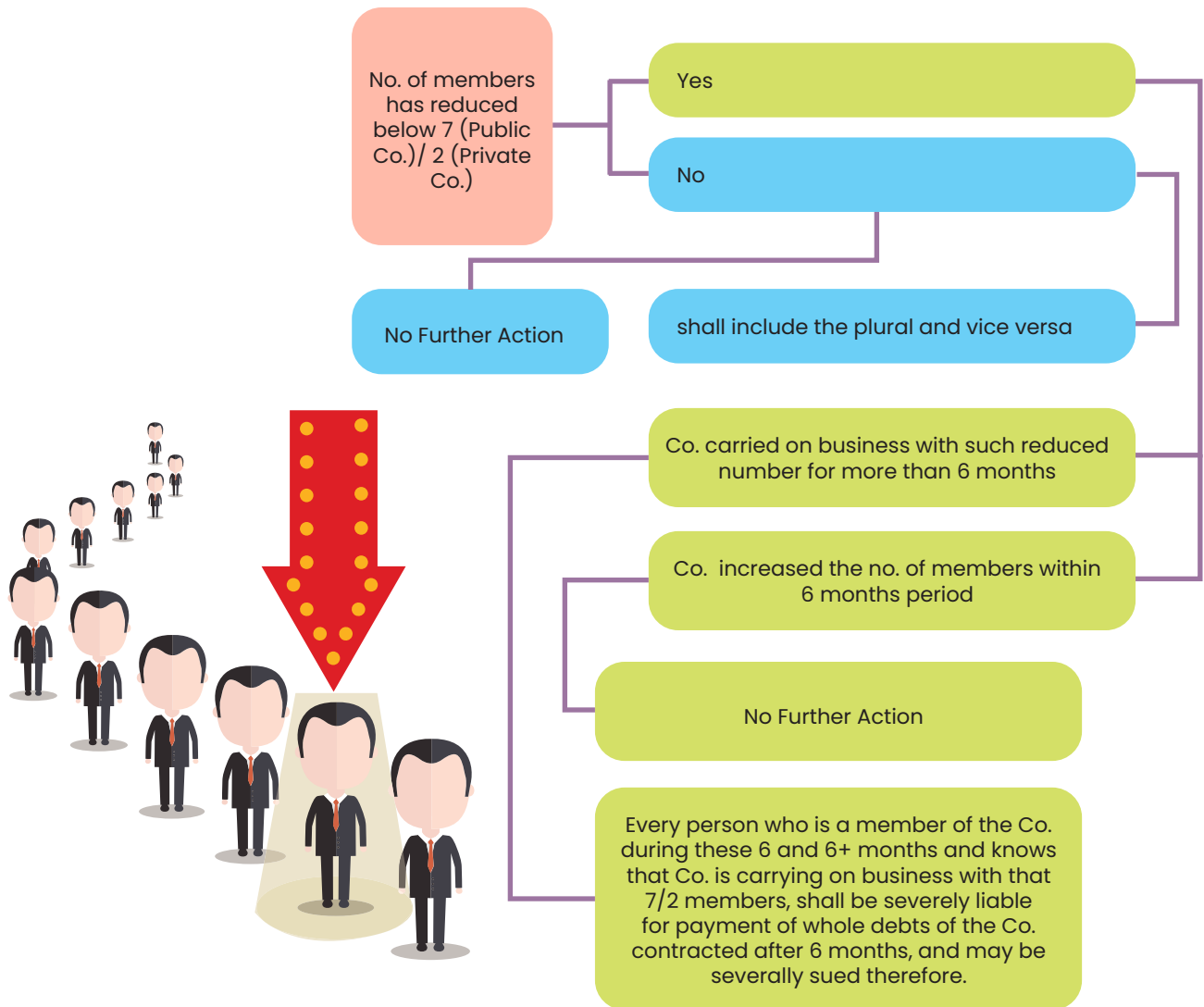
- Only one person as member.
- Minimum paid up capital – no limit prescribed
- The MOA shall indicate the name of the other person (nominee), who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of the company
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

## V. Formation of companies with charitable objects etc.



- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Enjoy same privileges and obligations as of a limited company
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

VI. Company to Maintain Minimum Number of Members



VII. Commencement of Business Etc



Co. incorporated after the commencement of the Companies (Amendment) Act, 2019 + having a share capital shall not commence any business or exercise any borrowing powers unless—

1. Declaration is signed by director
  - Within 180 days of the date of incorporation with the Registrar
  - that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration
2. The Co. has filed with the Registrar a verification of its registered office
3. If no declaration has been filed with the Registrar within a period of said 180 days and the Registrar has reasonable cause to believe that the Co. is not carrying on any business or operations,
  - Registrar may, initiate action for the removal of the name of Co. from the register of companies under Chapter XVIII.

## VIII. Registered office (RO) of Company

### 1. Need for RO

- It is a physical office, capable of receiving & acknowledging all communication and notices.
- Domicile & nationality of Co. is determined by the place of RO

#### Time Limit

- A Co. within 30 days of its incorporation and at all times thereafter, must have RO

#### Verification of RO

- Within 30 days of incorporation furnish to ROC verification of RO

#### Labeling of company: Every company shall—

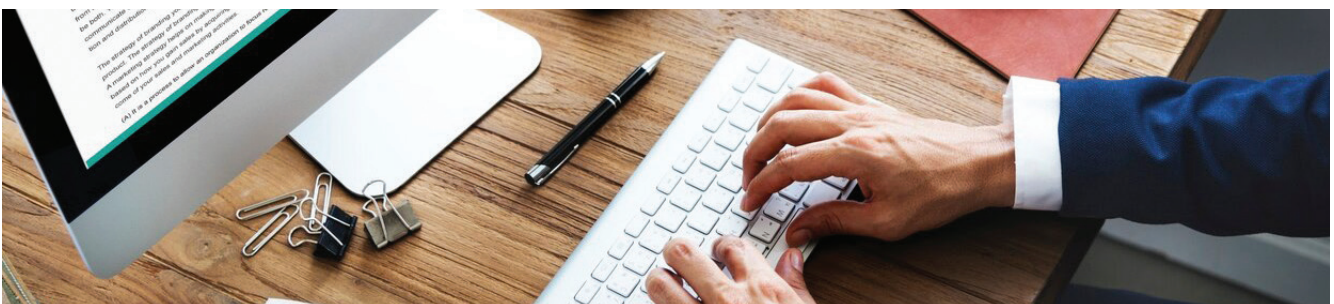
- Paint/ affix its name, address of RO on the outside of every office / place of business, in a conspicuous position, in legible letters, and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.
- have its name engraved in legible characters on its seal, if any;
- get its name, address of RO and the CIN along with Ph no., fax no., if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- have its name printed on hundies, promissory notes, bills of exchange and other prescribed documents

#### Name change by the company during the last two years

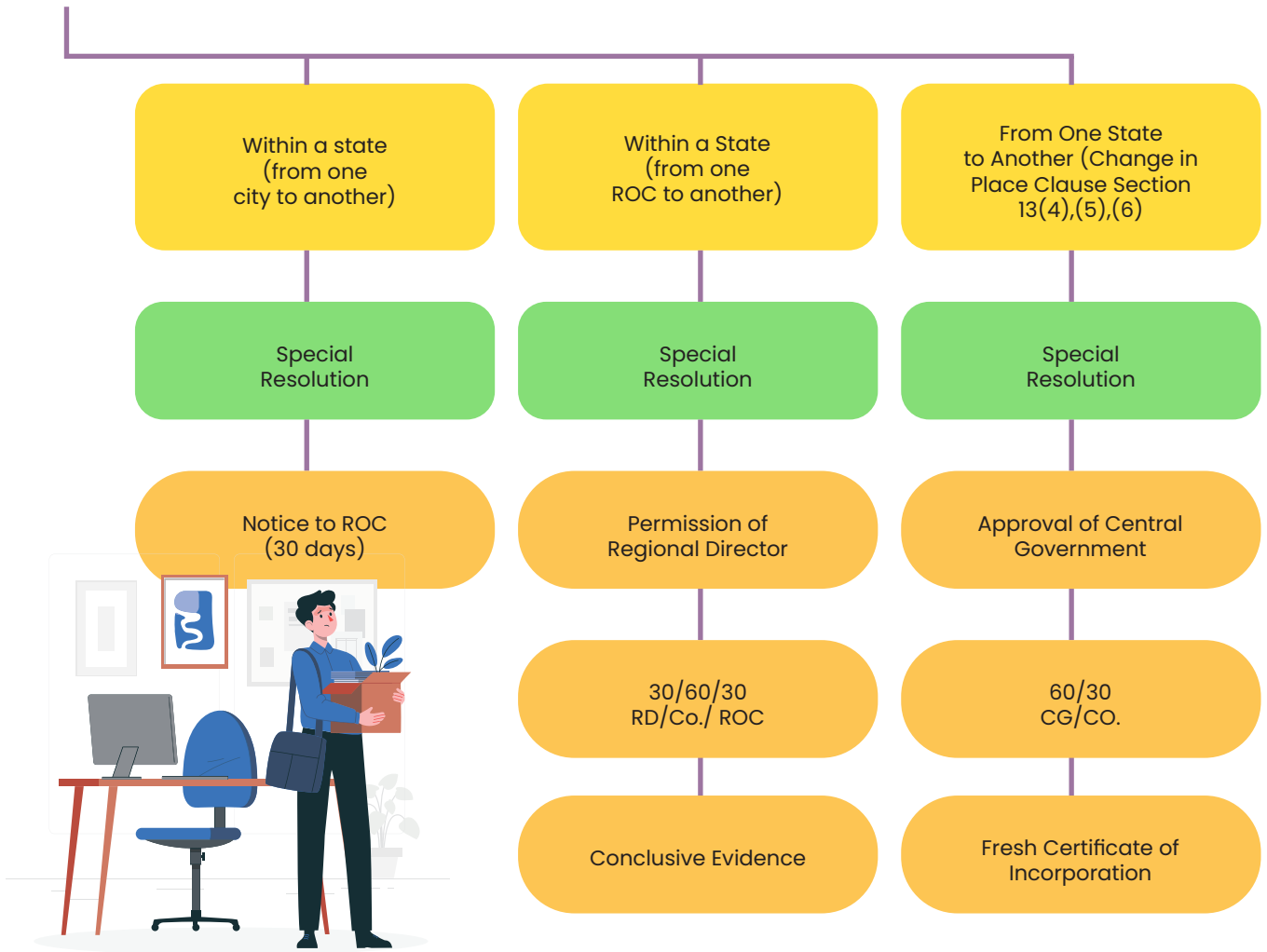
- Co. shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

#### In case of OPC

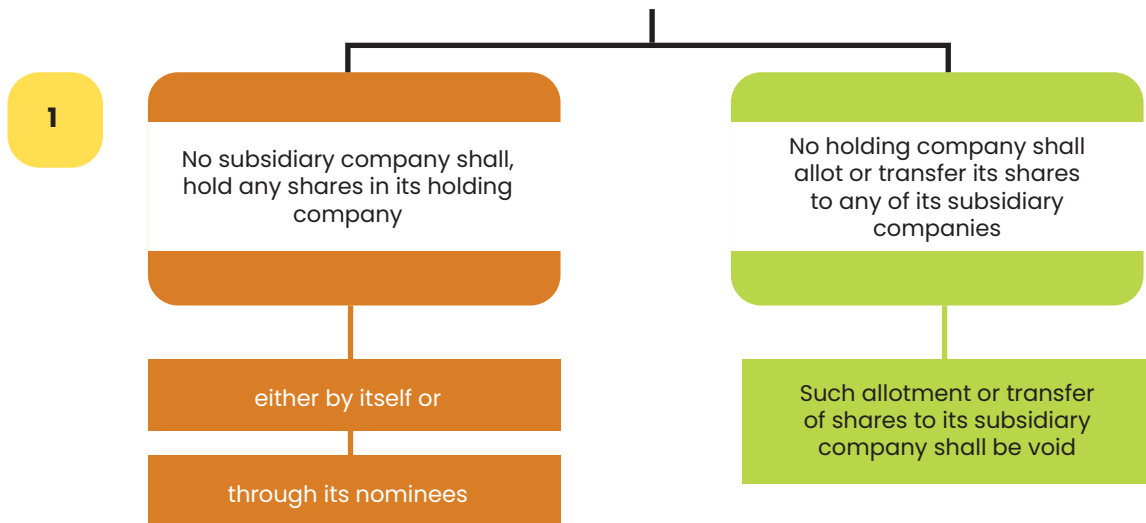
- The words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.



2. Change in Place of Registered office



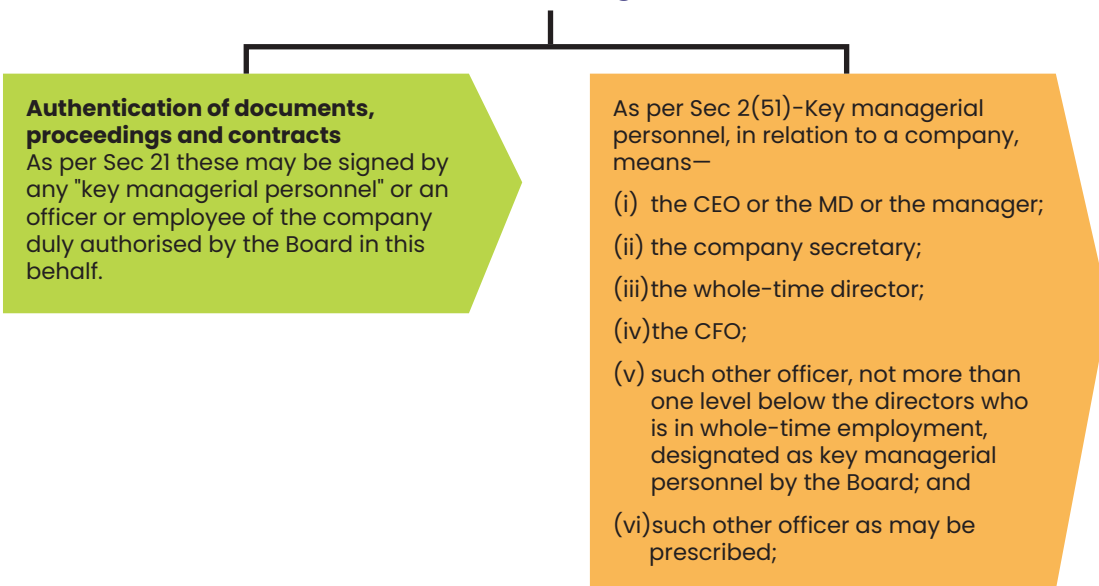
IX. Subsidiary Company not to Hold Shares in its Holding Company



2 Exceptions to point (1)

- ➔ where the subsidiary company holds such share as the **legal representative of a deceased** member of the holding company; or
- ➔ where the subsidiary company holds such shares as a **trustee**; or
- ➔ where the subsidiary company is a shareholder even **before it became a subsidiary** company of the holding company.

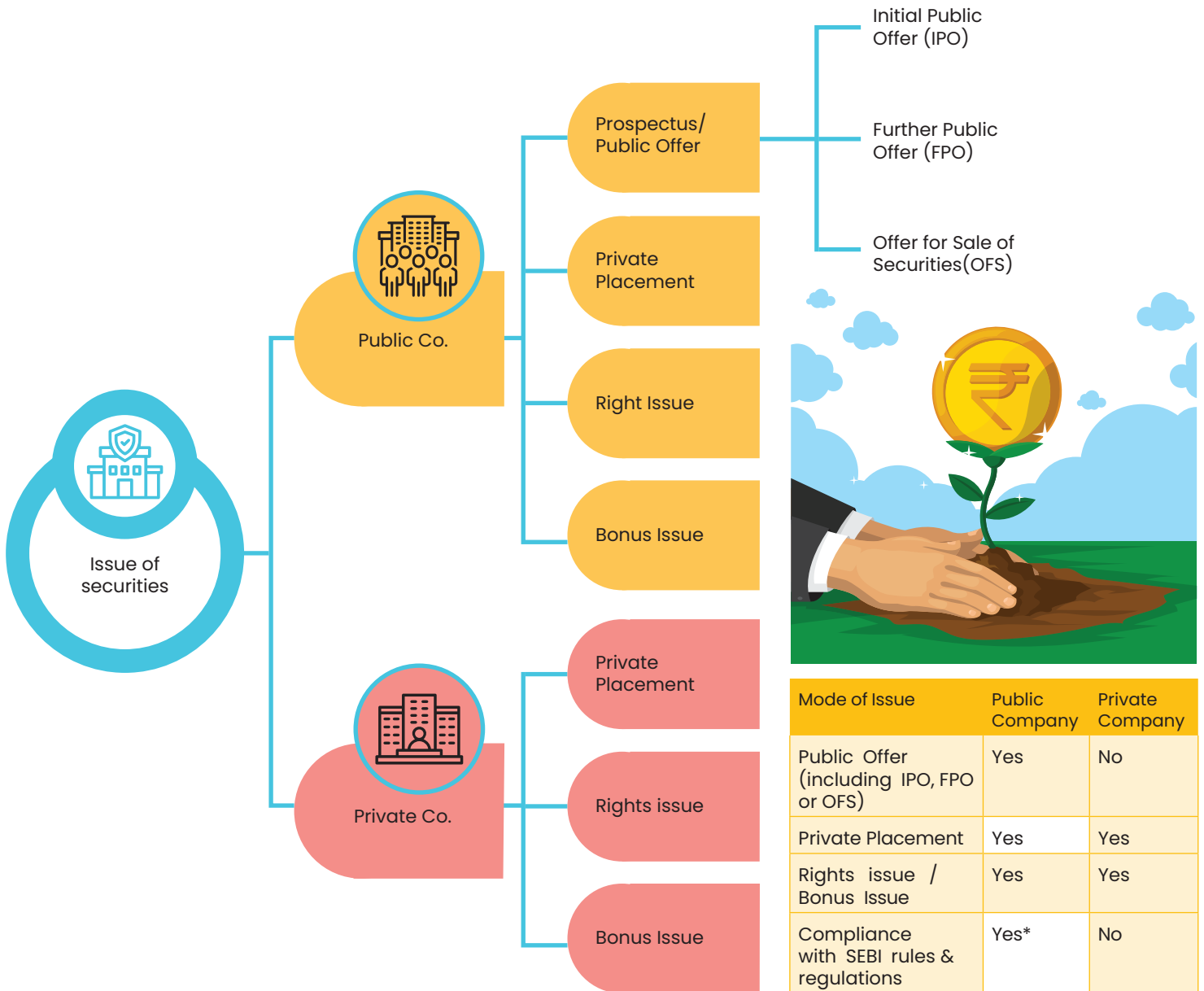
X. Authentication of Documents, Proceedings and Contracts



## Chapter – 3

### Prospectus and Allotment of Securities

#### I. Modes For Issue of Securities



\*For a listed company or a company proposed to be listed.

II. Prospectus

1.



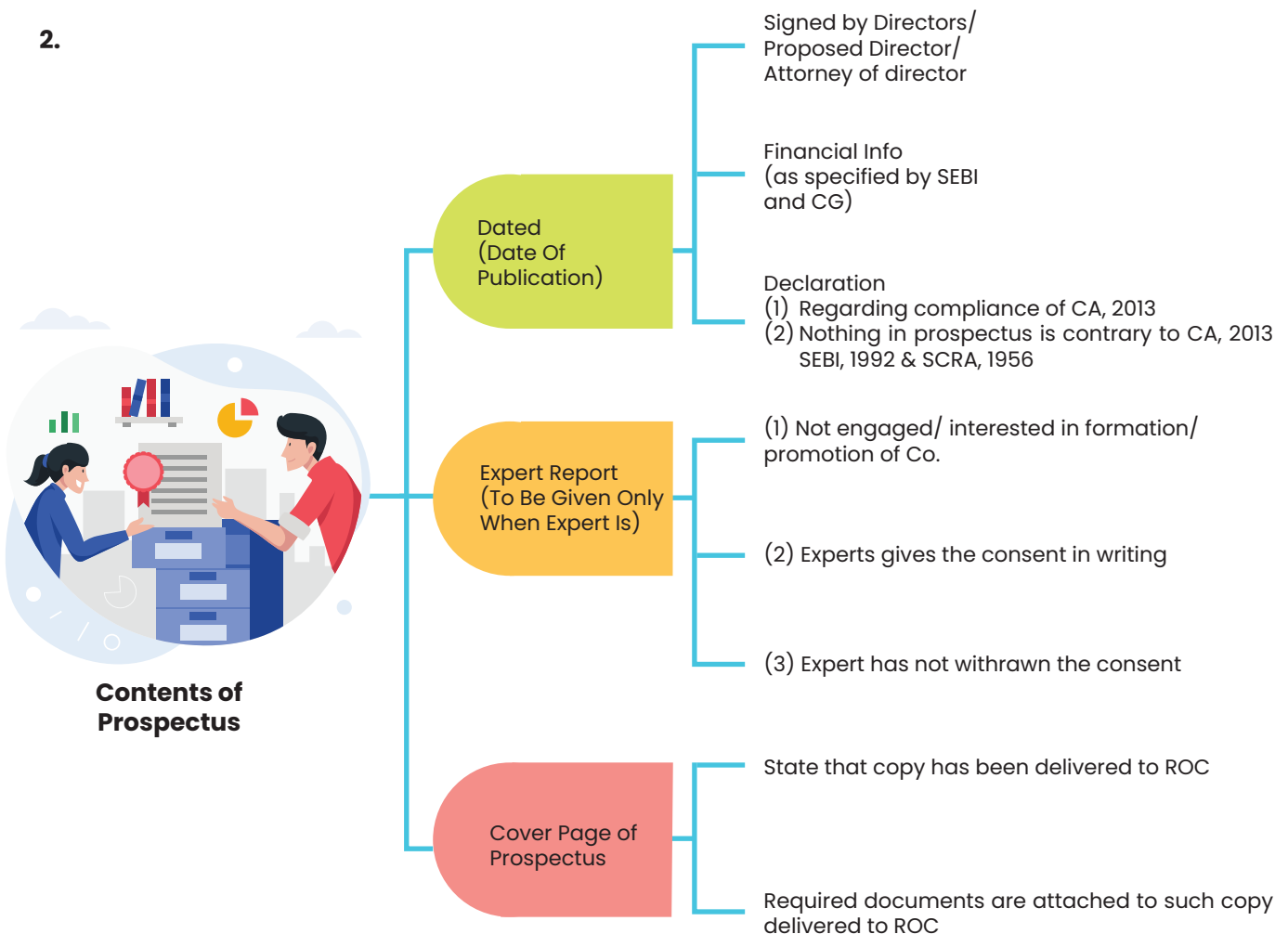
**Prospectus**

- Document described or issued as a prospectus
- for subscription of any securities of body corporate

**Includes**

- Red herring prospectus referred to in section 32, or
- Shelf prospectus referred to in section 31, or
- any notice, circular, advertisement or other document inviting offers from the public

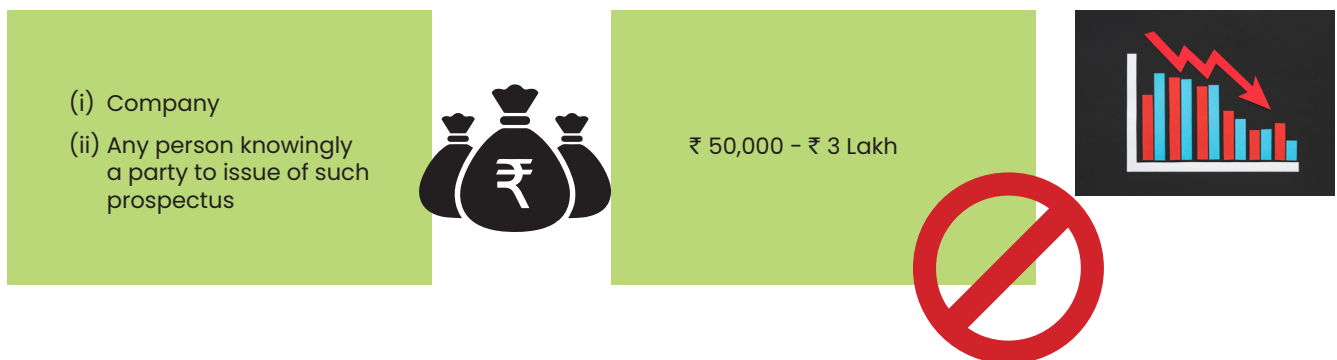
2.



**3. Process for Variation in terms of Contract or Objects of Prospectus**



**4. Punishment for Issuing Prospectus in Contravention**



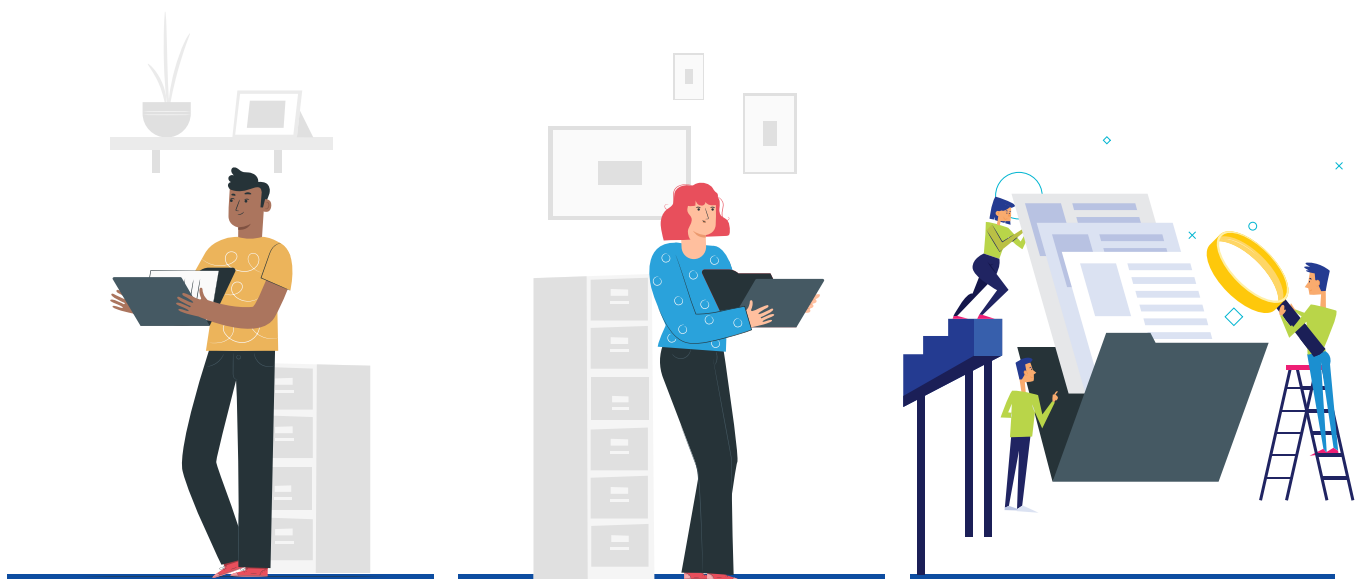
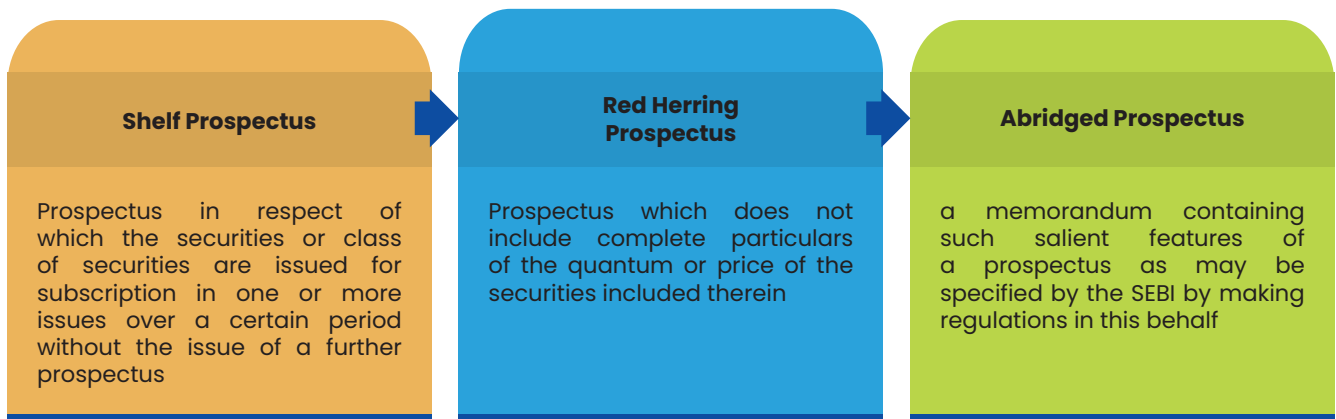


**5. Advertisement of Prospectus**

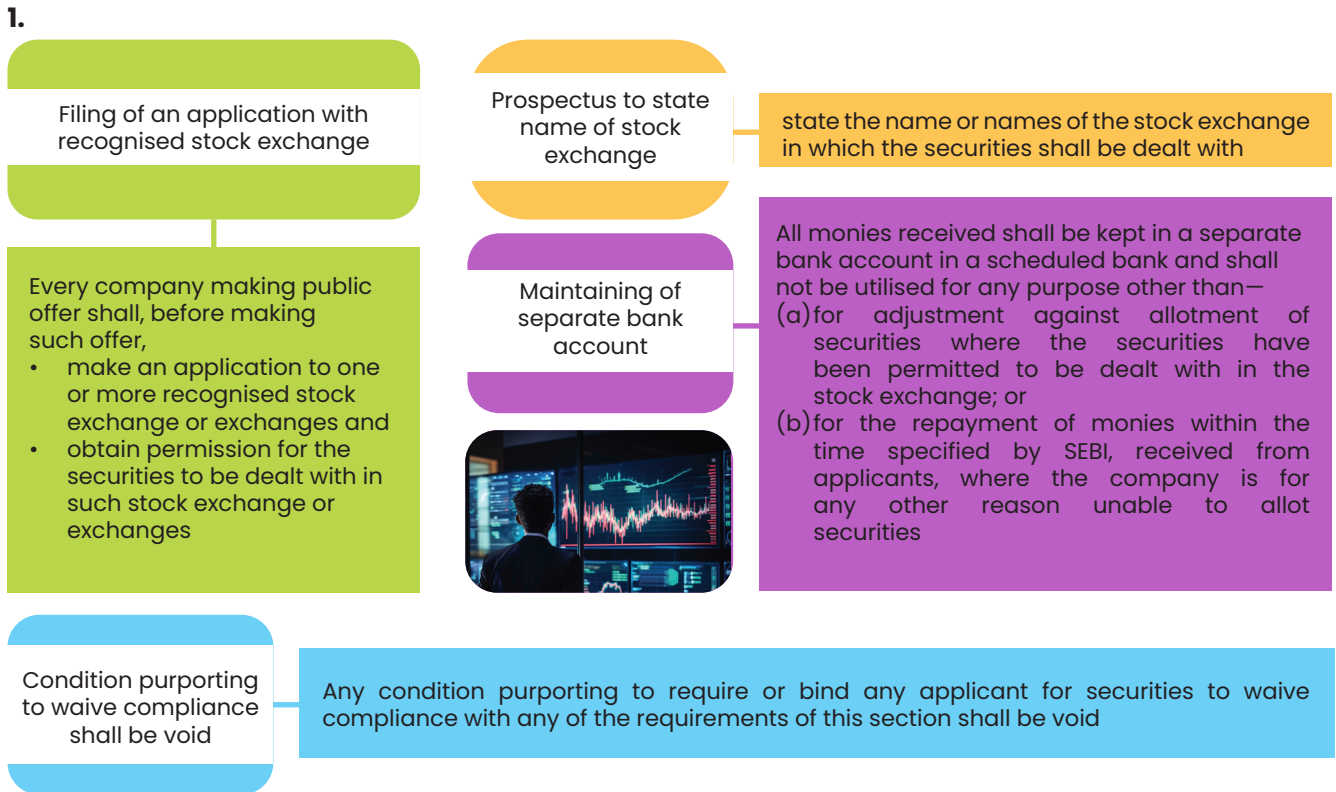
Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:

- ▶ the objects,
- ▶ the liability of members and the amount of share capital of the company,
- ▶ the names of the signatories to the memorandum,
- ▶ the number of shares subscribed for by the signatories, and
- ▶ the capital structure of the company.

**III. Shelf Prospectus, Red Herring Prospectus and Abridged Prospectus**



IV. Securities to be Dealt With In Stock Exchanges



**3. Payment of Commission**

A company may pay commission to any person in connection with the subscription to its securities subject to the prescribed conditions.

- Authorisation →

  - The payment of such commission shall be authorized in the company's AOA
  
- Source →

  - The commission may be paid out of:
    - (i) proceeds of the issue or
    - (ii) the profit of the company or
    - (iii) both
  
- Disclosure of particulars →

  - The prospectus of the company shall disclose the following particulars:
    - (i) the name of the underwriters;
    - (ii) the rate and amount of the commission payable to the underwriter; and
    - (iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
  
- When no commission is to be paid →

  - There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription
  
- Copy of payment of commission to be delivered to Registrar →

  - A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

**4. Rate of commission Following are the rates of commission:**

**in case of shares**

- shall not exceed 5% of the price at which the shares are issued, or
- a rate authorised by the Articles,
- whichever is less

**in case of debentures**

- shall not exceed 2.5% of the price at which the debentures are issued, or
- as specified in the company's Articles,
- whichever is less



V. Allotment of Securities



Allotment of securities

Minimum amount subscribed, and

application money has been paid and received by the company

application money shall not be less than 5% or such other % or amount as specified by SEBI

Minimum amount not subscribed and application money not received

within 30 days from date of issue of prospectus, or

Such other period as specified by SEBI

amount received shall be returned within 15 days from the closure of issue

Where company makes an allotment of securities

It shall file a return of allotment with the Registrar

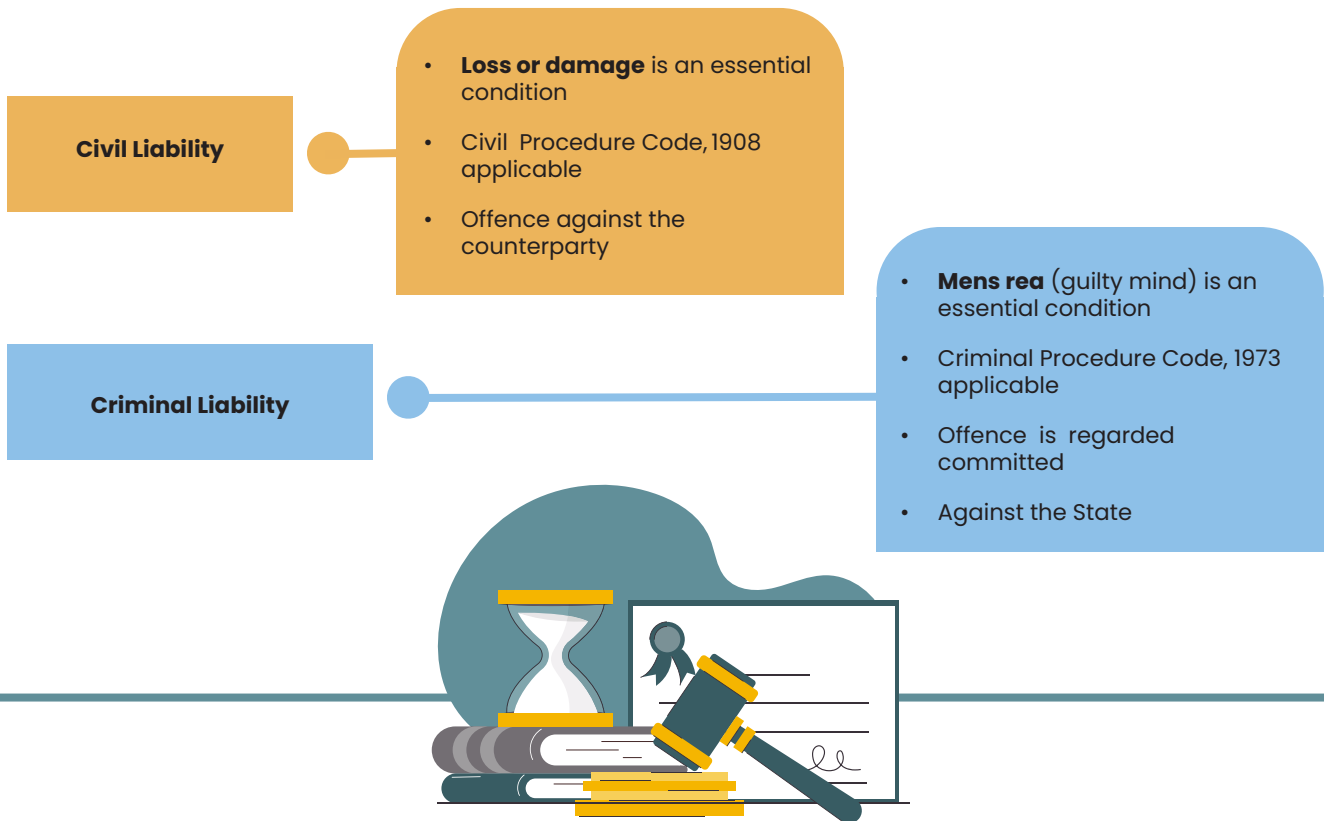
In case of default

Company shall pay penalty of ₹ 1000 for each day during which such default continues, or

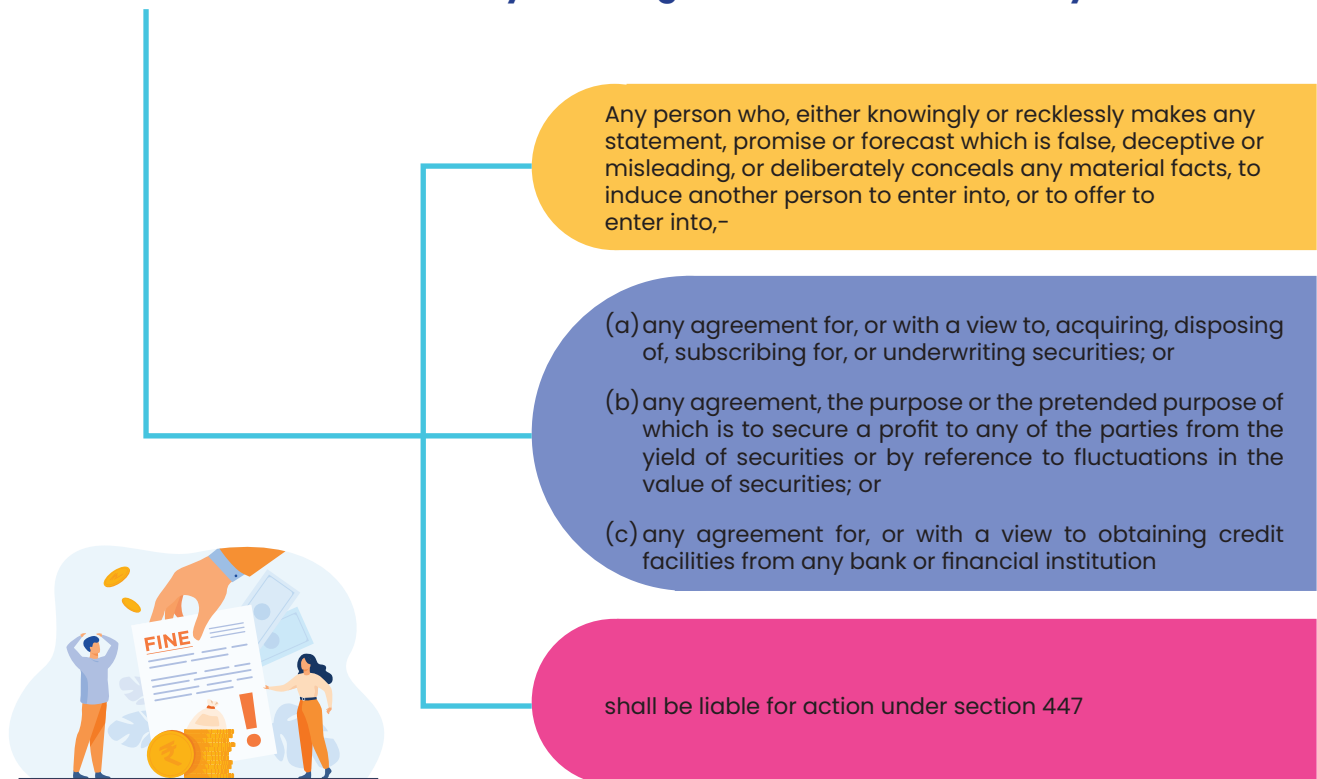
₹ 1 lakh

which ever is less

## VI. Liability in case of Mis-Statements in Prospectus



## VII. Punishment For Fraudulently Inducing Persons To Invest Money



VIII. Punishment for Fraud

Punishment for Fraud as given under section 447

Quantum of Fraud	Fine		Imprisonment
(i) Fraud involving less than 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Up to ₹ 50 lakh	or/ and	Up to 5 years
(ii) Fraud involving at least 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Minimum fine equal to amount of fraud; and Maximum fine 3 times of amount of fraud	and	Minimum 6 months; and Maximum 10 Years
(iii) Fraud at (ii) involves public interest	Minimum fine equal to amount of fraud; and Maximum fine 3 times of amount of fraud	and	Minimum 3 years; and Maximum 10 Years



Meaning Of Certain Terms<sup>1</sup>

Fraud



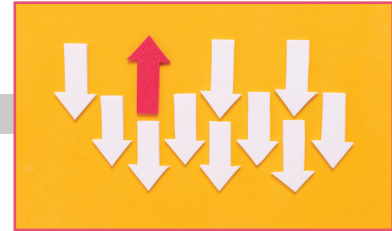
- The term 'fraud' in relation to affairs of a company or any body corporate, includes-
  - any act,
  - omission,
  - concealment of any fact, or
  - abuse of position
- committed by any person, or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss

Wrongful Gain



- The gain by unlawful means of property to which the person gaining is not legally entitled

Wrongful Loss



- The loss by unlawful means of property to which the person losing is legally entitled

IX. Private Placement

What is Private Placement?

Private Placement



- A private placement is a way of raising capital that involves the sale of securities to a relatively small number of select investors.
- A private placement is different from a public issue in which securities are made available for sale on the open market to any type of investor.

Private Placement

- any offer or invitation to subscribe or issue of securities
- to a select group of persons by a company (other than by way of public offer)
- through private placement offer-cum-application

To whom can the private placement be made?

- only to a select group of persons
- identified by the Board ("identified persons")

**Maximum No. of persons to whom offer can be made**

- not more than 200 in the aggregate in a financial year

**Exclusions from the list of 200 members**

- qualified institutional buyers, or
- employees of the company under a scheme of employees stock option [Sec 62(1)(b)]

**Application for Private Placement**

- Identified person may subscribe to the private placement issue shall apply in the private placement
- application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash

**Utilisation of Money received in private placement**

- Co. shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar

**Return of allotment**

- Co. shall file with the Registrar a return of allotment within 15 days from the date of the allotment

**Co. shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry**

- Private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under 179(3)(c)

**Any private placement issue not made in compliance of the provisions shall be deemed to be a public offer**



**X. Allotment of Securities under Private Placement**

within 60 days from the date of receipt of the application money

If Co. does not allot within 60 days

shall repay the application money to the subscribers within fifteen days from the expiry of sixty days

If Co. does not repay within prescribed period

Co. liable to repay that money with interest at the rate of 12% per annum from the expiry of the sixtieth day



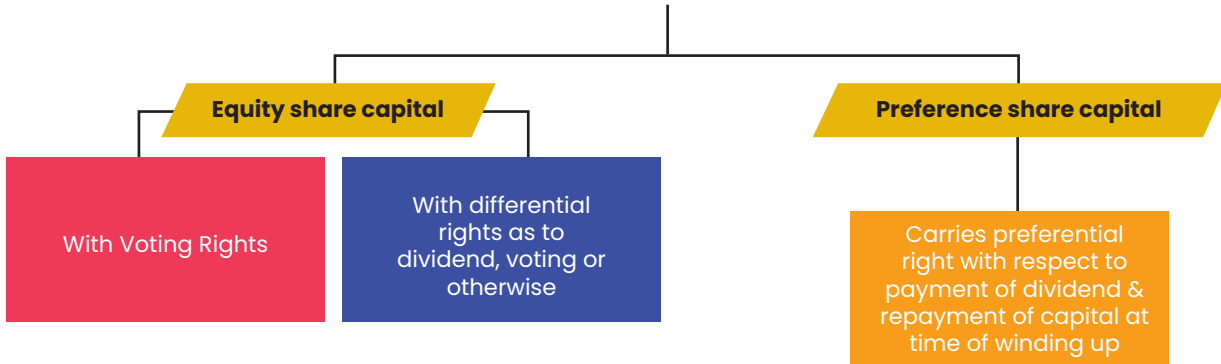
## Chapter 4 Share Capital and Debentures

### I. Share – Definition and Description

Section 2(84)- Share means a share in the share capital of a company and includes stock. Capital of a company is termed as share capital, which is divided into units; having a certain face value. Each such unit is termed as share.

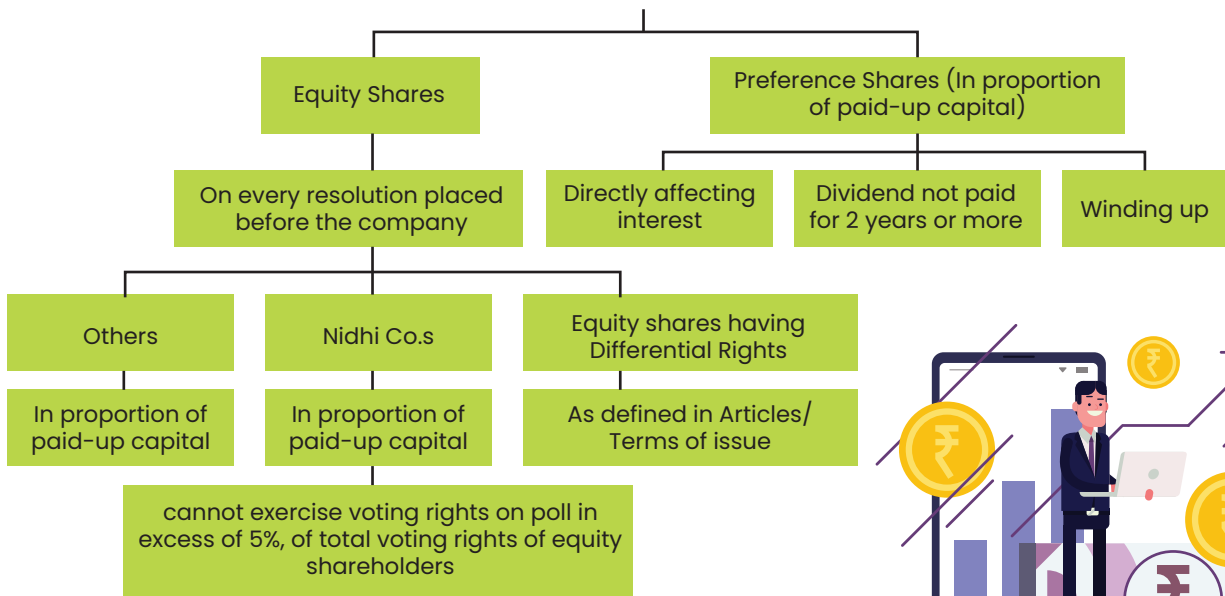


#### Kinds of share capital



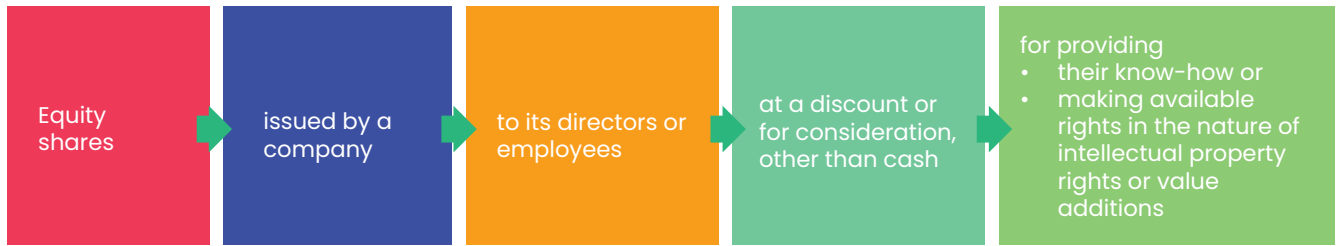
### II. Voting Rights

#### Voting Rights



## III. Issue of Sweat Equity Shares and meaning of ‘Sweat Equity Shares’

1.



Section 53 provides that except the issue of ‘Sweat Equity Shares’ under section 54, a company shall not issue shares at discount.

### 2. Conditions for Issue of Sweat Equity Shares

**Company may issue Sweat Equity shares of that class**

which are already issued

**Issue is authorised by a special resolution passed by the company**

- In case of co. whose shares are not listed- SR authorising the issue is valid for making the allotment within a period of not more than twelve months from the date of passing

**Resolution to specify the details regarding:**

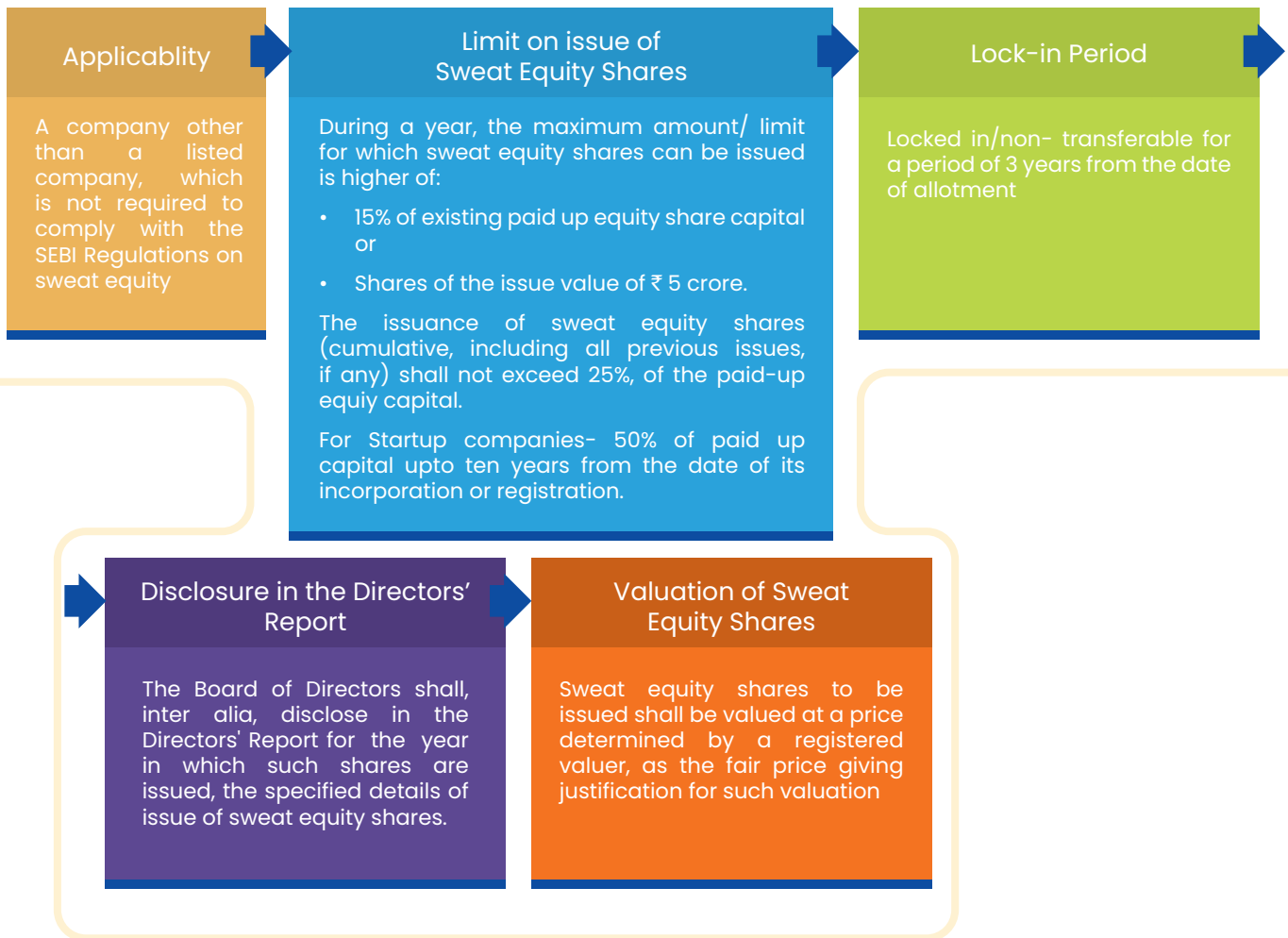
- No. of shares,
- current market price,
- consideration, if any, and
- class or classes of directors or employees to whom such equity shares are to be issued

**Issue of sweat equity shares must be in accordance with regulations/rules**

- When shares are Listed on Recognised Stock Exchange- by SEBI
- Other than above- Rule 8



3. Rule-8



IV. Punishment for Personation of Shareholder

<p>If any person deceitfully personates</p> <ul style="list-style-type: none"> <li>• as an owner of any security or</li> <li>• interest in a company, or</li> <li>• as an owner of any share warrant or coupon issued in pursuance of this Act</li> </ul>	<p>And, thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner</p>
	<p>Such person shall be punishable with</p> <ul style="list-style-type: none"> <li>• Imprisonment: 1 year - 3 years, AND</li> <li>• Fine: ₹ 1 Lakh - ₹ 5 Lakh</li> </ul>



## V. Refusal of Registration and appeal against refusal

It contains the procedure which needs to be followed by a company while refusing to register the transfer of securities. It also contains process of filing appeal against such refusal.

Refusal to transfer of shares/transmission of the right to any securities or interest of a member

### Private Company

- Send notice of refusal with reasons
- Within 30 days from the date the instrument of transfer/ the intimation of such transmission, delivered to the company
- Appeal to Tribunal:
  - Notice served- in 30 days
  - No notice-in 60 days

### Public Company

- Can't refuse without sufficient cause
- may refuse to register the transfer within 30 days from the date the instrument of transfer/ the intimation of such transmission, delivered to the company
- Appeal to Tribunal:
  - in 60 days-of such refusal
  - in 90 days-of the delivery of the instrument of transfer/ intimation of transmission



Tribunal will either dismiss appeal or order the following:

- Transfer/transmission to be registered by company within 10 days of the receipt of order
- Rectification of Register and also direct the company to pay damages, if any

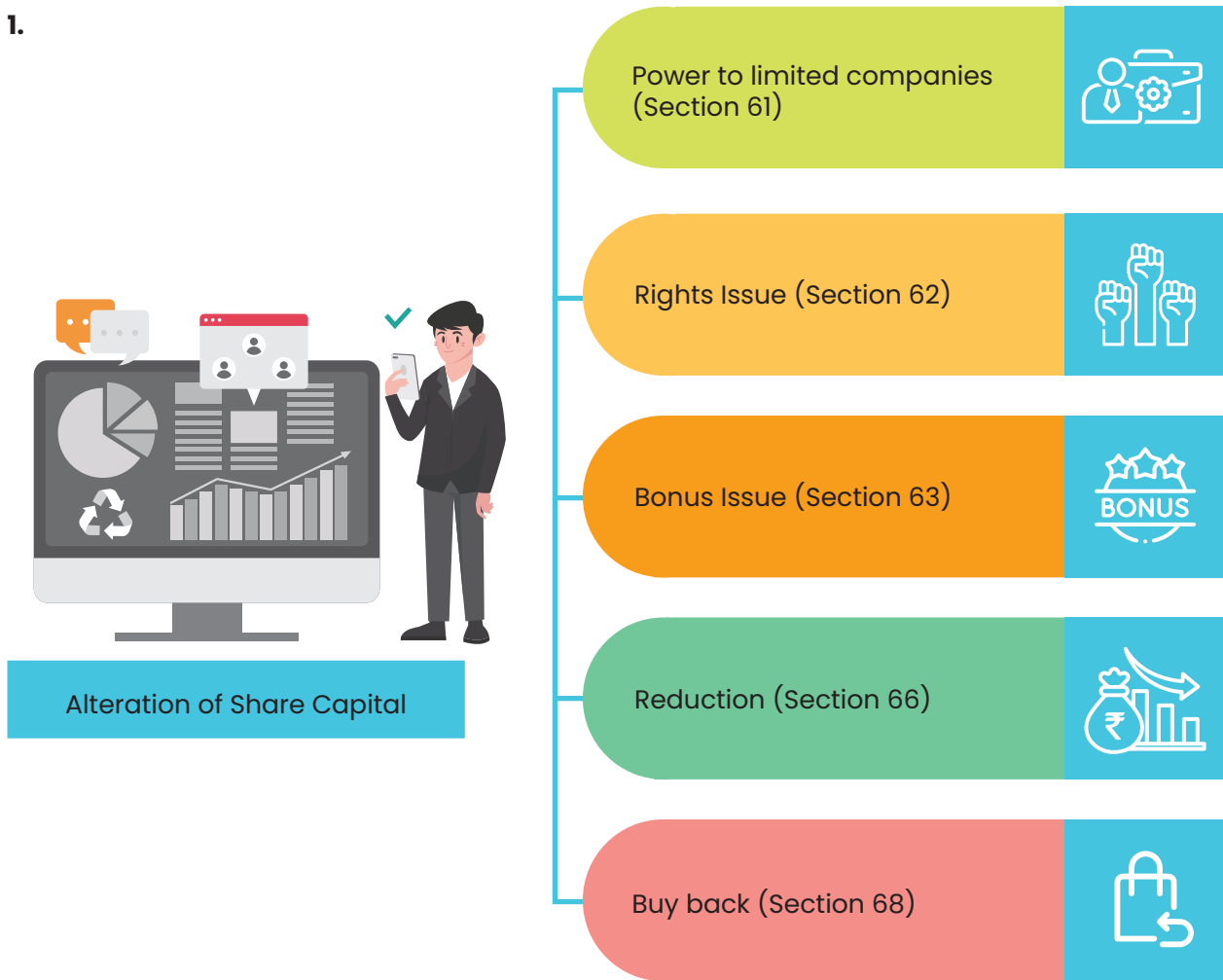
Section 59 entrusts right to appeal with aggrieved person, apart from vesting power in tribunal to order for rectification of register of members.

In case of contravention of order:

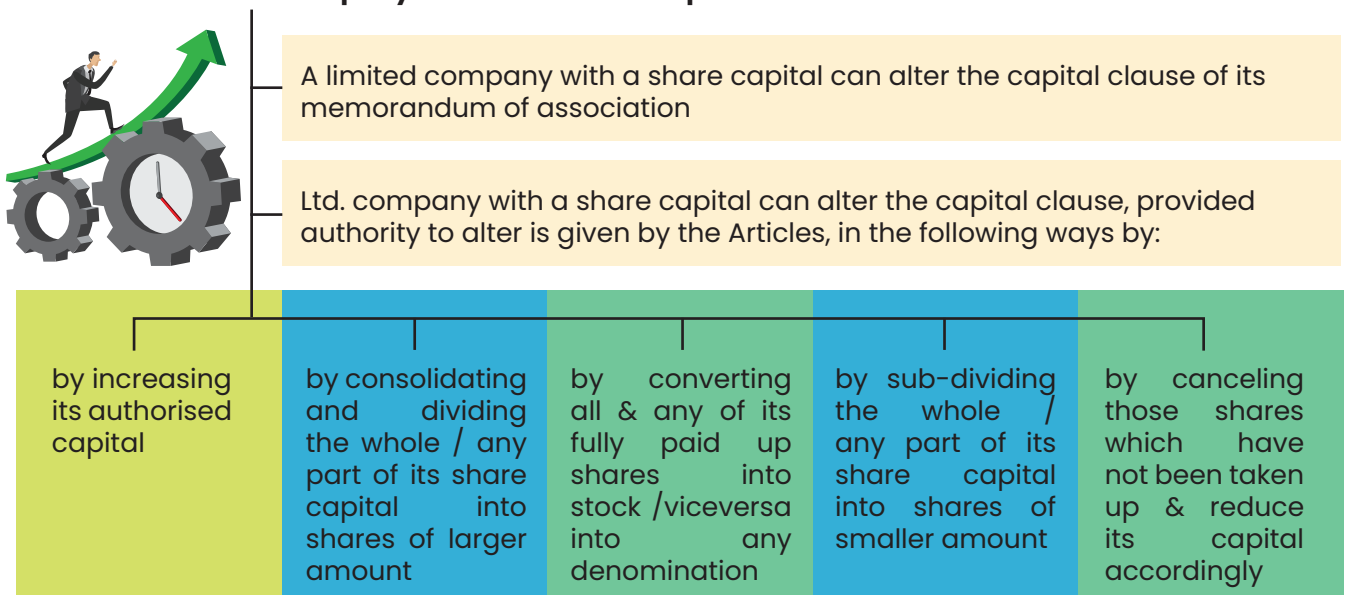
- Fine and Imprisonment

VI. Alteration Of Share Capital

1.

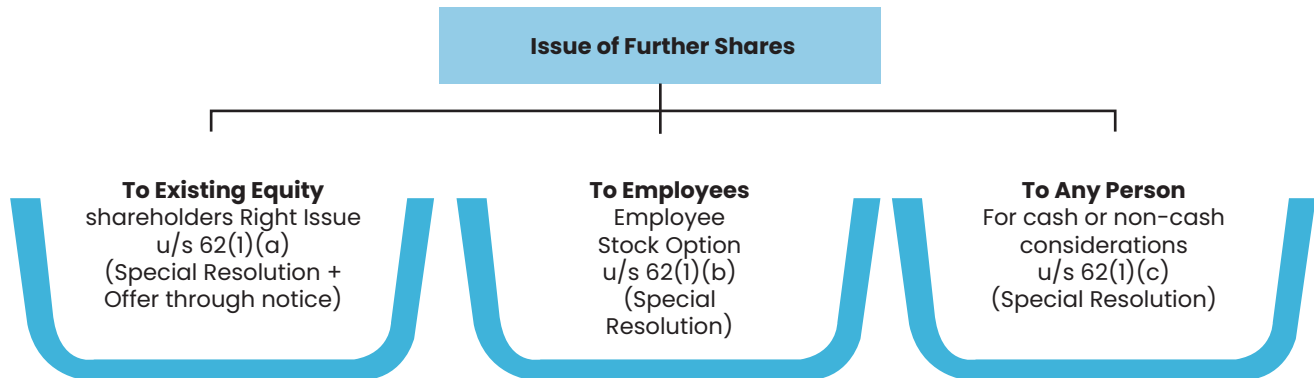


2. Power of Limited Company to Alter its Share Capital



### 3. Further Issue of Share Capital – Rights Issue; Preferential Allotment

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders.



Notice shall be dispatched to all the existing shareholders at least 3 days before the opening of the rights issue.

In case of a Private Company shorter notice (less than 3 days) shall be served, on 90% consent of the members in writing/ in electronic mode.

### 4.



### 5.

Company may capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, in compliance with following conditions:

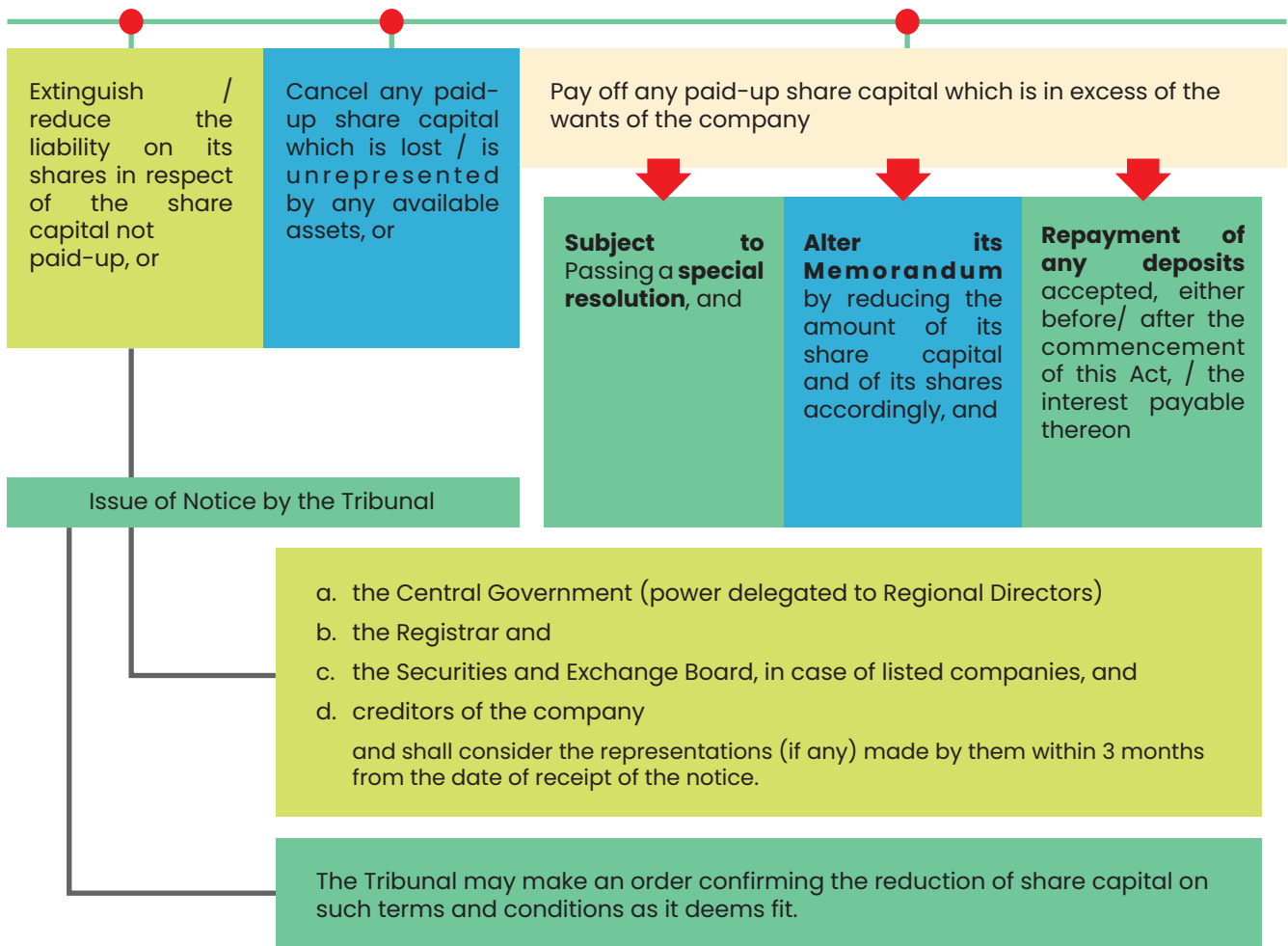
- ▶ Authorised by its Articles,
- ▶ On the recommendation of the Board, been authorised in the GM of the company:
- ▶ Not defaulted in payment of interest / principal in respect of fixed deposits/ debt securities issued by it:
- ▶ Not defaulted in payment of statutory dues of the employees
- ▶ the outstanding partly paid-up shares, if any, on the date of allotment, are made fully paid-up;
- ▶ Complies with Rule 14 of the Companies (Share capital and Debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same

6. Reduction of Share Capital

Maintenance of capital is one of the main principles of company law, because any reduction of capital diminishes the fund, out of which creditor and other debt holders are to be paid, therefore adversely impacting them. But sometimes it may become necessary for the company to bring about a reduction in its capital.



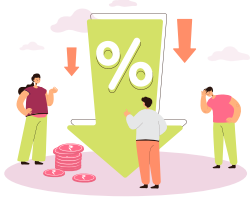
Company being 'company limited by shares' or 'company limited by guarantee and having a share capital' may reduce the share capital in the following manner:





## Restriction on Purchase by Company or giving of loans by it for Purchase of its Shares

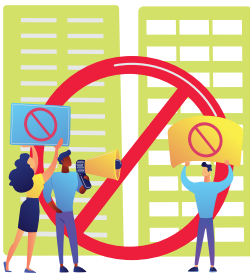
A company cannot buy its own shares because reduction of capital, results in diminishing the fund out of which creditors are to be paid; hence adversely affecting the creditors. However, this restriction is not absolute.



1

### Reduction according to the applicable Provisions

Company limited by shares/company by guarantee that having a share capital shall not buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act



2

### Restriction on giving Loan, Guarantee or provision of Security, etc.

- Public company shall not give any financial assistance;
  - Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise
  - For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.



3

### Exceptions

- Company may provide the financial assistance, in following case:
  - Lending of money by a banking company in the **ordinary course of its business**;
  - The provision of money for the purchase of fully paid shares in the company/ its holding company by trustees for and on behalf of the company's employees in accordance with Employee share schemes approved by company through special resolution as per Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014,
  - **Lending** money by a company to **its employees, not exceeding six month salary** of the employees to enable them to buy or subscribe **fully paid shares in the company/ its holding** company and to hold them by way of **beneficial ownership**

## Non-Applicability

1. **Private companies** (if not defaulted in filing its financial statements under Section 137 and Annual Return under Section 92) in whose case all of following 3 condition are fulfilled;
  - a. in whose share capital no other body corporate has invested any money;
  - b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paidup share capital or fifty crore rupees, whichever is lower; and
  - c. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
2. **Nidhi Companies**, when shares are purchased by the company from a member on his ceasing to be a depositor / borrower, shall not be considered as reduction of capital under Section 66 of the Companies Act, 2013.

**Power of Company to Purchase its own Securities – Buy Back of Securities**

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors. Section 68 contains provisions which describe the power of a company to purchase its own securities subject to the applicable conditions.



# Share Capital and Debentures

## Prohibition for Buy Back in certain circumstances

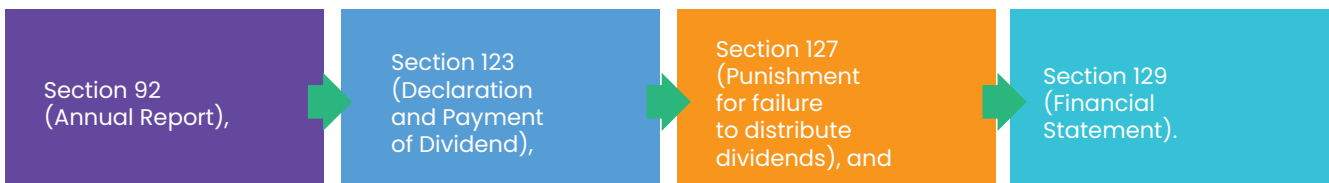
No company shall directly or indirectly purchase its own shares or other specified securities under the specified circumstances.

### Prohibition for purchase of its own shares-

- Through any **Subsidiary Company** including one's own; or
- Through any **Investment Company/** group of investment companies; or
- If a default, is made by the company, in-
  - repayment of deposits/ interest thereon, or
  - redemption of debentures, or
  - redemption of preference shares or
  - payment of dividend to any shareholder or
  - repayment of any term loan/ interest thereon to FI's or banking company



Also prohibition on the company to purchase its own shares or other specified securities in case such company has not complied with provisions of:



## VII. Debenture

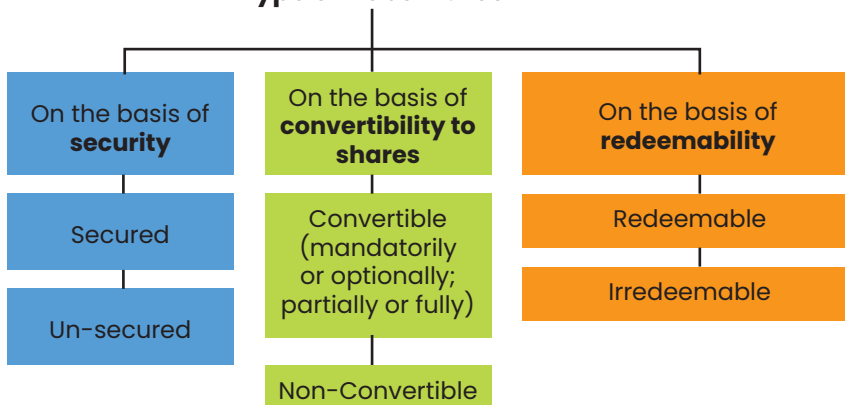
### Debenture Includes

- Debenture stock Bonds
- Any other instrument of a company evidencing a debt
- Whether constituting a charge on the assets of the company or not

### Debenture Excludes

- Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934
- Such other instrument, as may be prescribed by the Central Government

### Type of Debentures



## Chapter 5

### Acceptance of Deposits by Companies

#### I. Important Terms

##### 1. Deposits

'Deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

**(i)** The above definition of 'deposit' is inclusive one.

**(ii)** It includes any money received by way of:  
a) deposit; or  
b) loan; or  
c) in any other form.

**(iii)** Repayment of 'deposit' is time-bound.

**(iv)** It can be secured or unsecured.

**(v)** It does not include prescribed categories of amounts (as stated in the 'Acceptance of Deposits' Rules).

**(vi)** It may be accepted in joint names not exceeding three persons.

**(vii)** A depositor may nominate any person at any time.

**(viii)** Every deposit accepted by the company shall be repaid with interest.

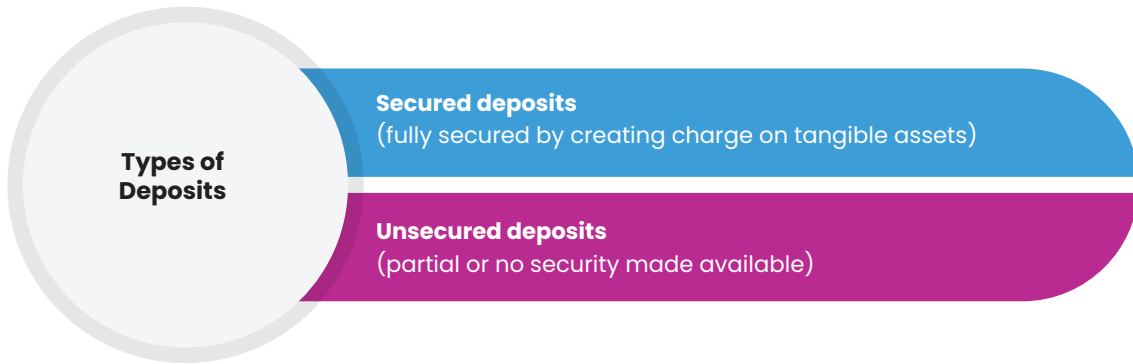
**(ix)** Premature repayment of a deposit can be made by the company.

**(x)** A private company can accept deposits from its members only.

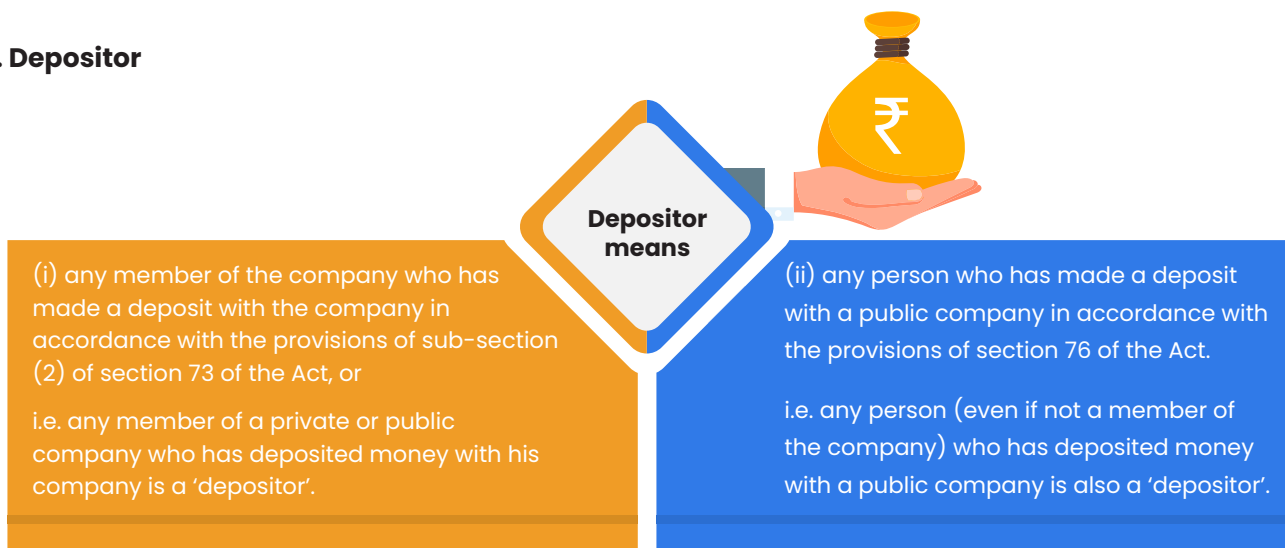
**(xi)** A public company can accept deposits from its members and also from the public if it fulfills certain parameters.



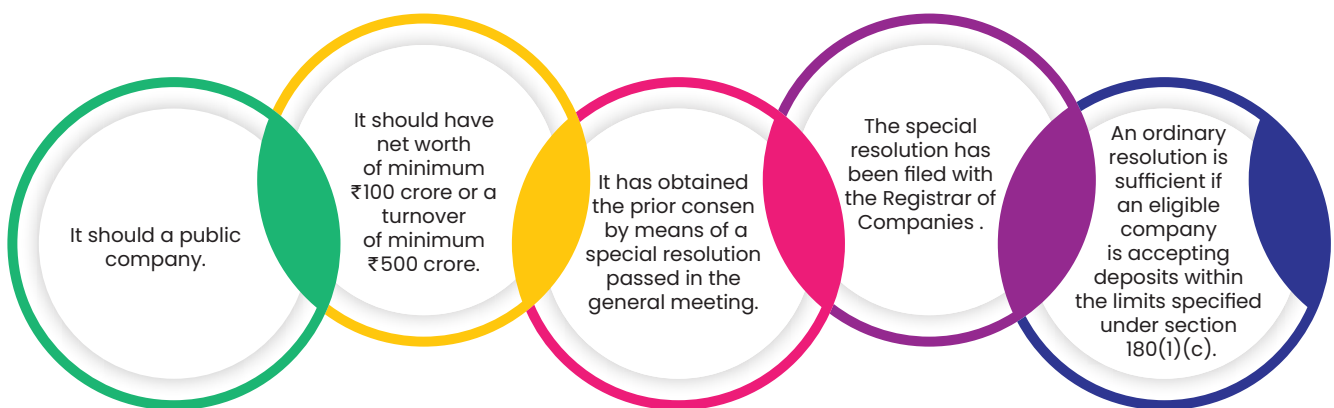
## 2. Types of Deposits



## 3. Depositor



## 4. Eligible Company



## I. Amounts Not To Be Considered As Deposits

[Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

### Amount received

From Central Government or a state Government, or from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

From foreign Governments, foreign or international banks, multilateral financial institutions etc. subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder

as a loan or facility from any banking company or from State Bank of India or its subsidiary banks or from a notified banking institution or from any co-operative bank

as a loan or financial assistance from Public Financial Institutions

against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the RBI

by a company from any other company

pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities (including share application money or advance towards allotment of securities, pending allotment), so long as such amount is appropriated only against the amount due on allotment of the securities applied for

from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company

- The director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by **borrowing or accepting loans or deposits** from others

by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within 10 years

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

from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit

as non-interest bearing amount and held in trust

## Amount received

for the purposes of, the business of the company–

- a. as an **advance for the supply of goods or provision of services**
- b. as advance in connection with **consideration for an immovable property**
- c. as **security deposit** for the performance of the contract
- d. as advance received under **long term projects** for **supply of capital goods** except as **consideration for an immovable property**
- e. as an advance towards consideration for providing **future services** in the form of a warranty or maintenance contract as per written agreement or arrangement
- f. as an advance received and as allowed by any **sectoral regulator** or in accordance with directions of Central or State Government
- g. as an advance for **subscription towards publication**
  - However, it is clarified that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.
  - Further, by way of Explanation it is clarified that for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

From promoters of company subject to the fulfillment of following conditions:

- the loan is brought in because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
- the loan is provided by the promoters themselves or by their relatives or by both; and
- such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

by a **Nidhi** company in accordance with the rules made under section 406 of the Act

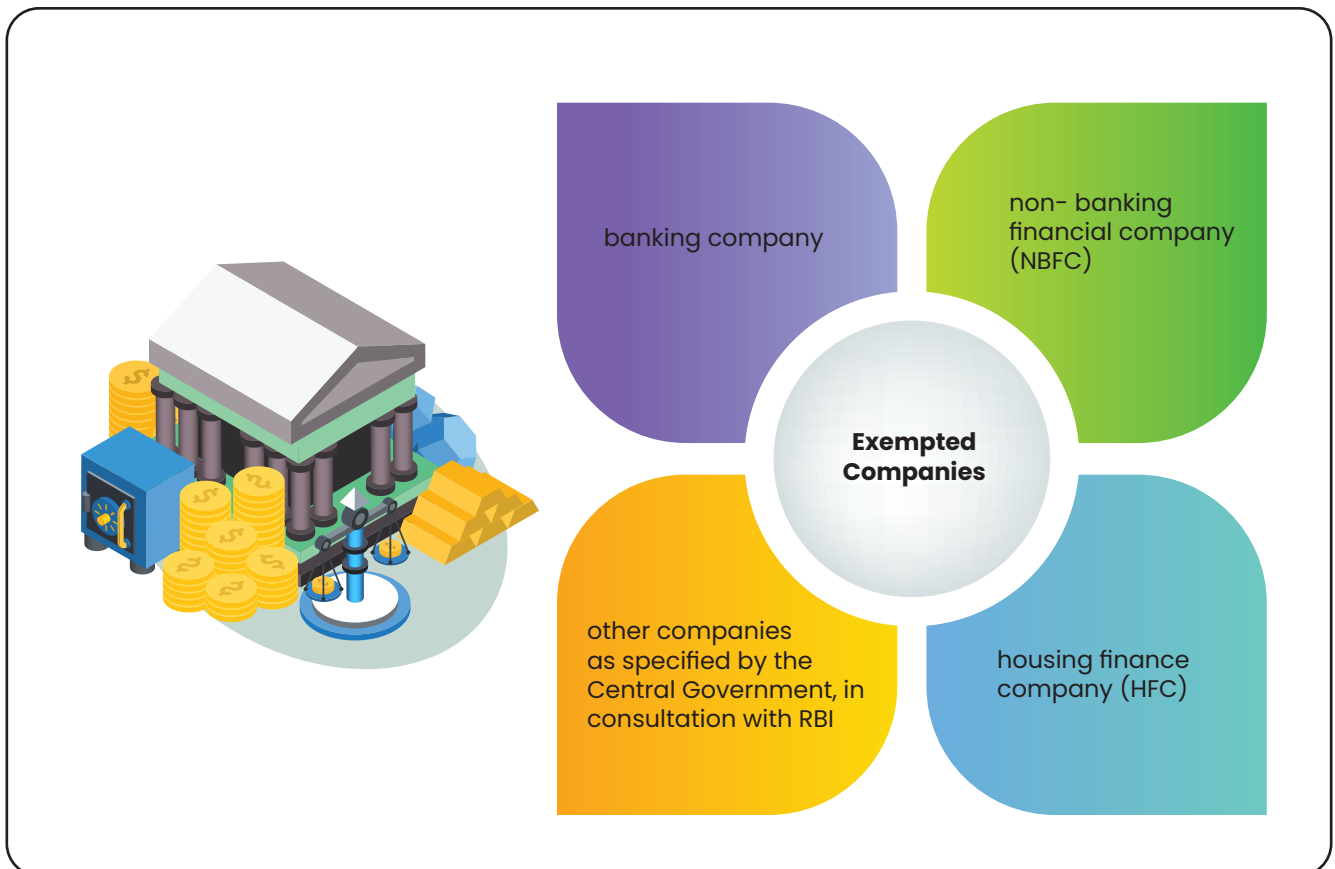
by way of subscription in respect of a **chit** under the Chit Fund Act, 1982

by the company under any **collective investment scheme** in compliance with regulations framed by the SEBI

of 25 lakh rupees or more by a **start-up company**, by way of a **convertible note repayable within a period not exceeding 10 YEARS** in a single tranche, from a person

by a company from Funds registered with the SEBI in accordance with regulations made by it.

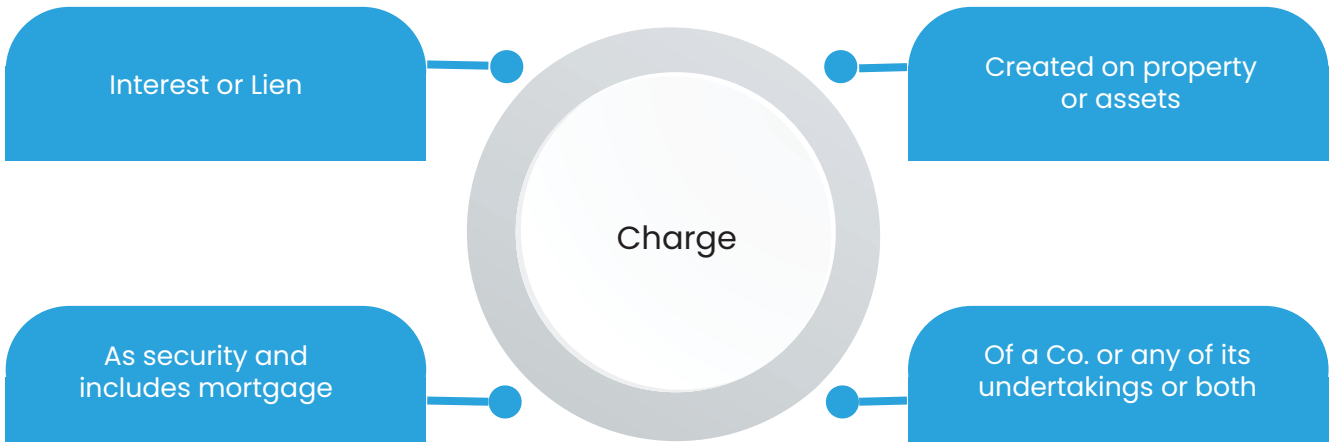
II. Prohibitive Provisions And Exempted Companies



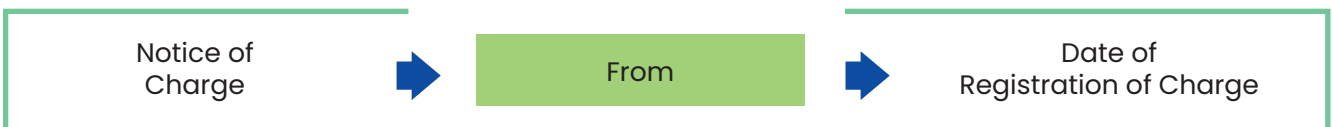


## Chapter 6 Registration of Charges

### I. Definition of Charge

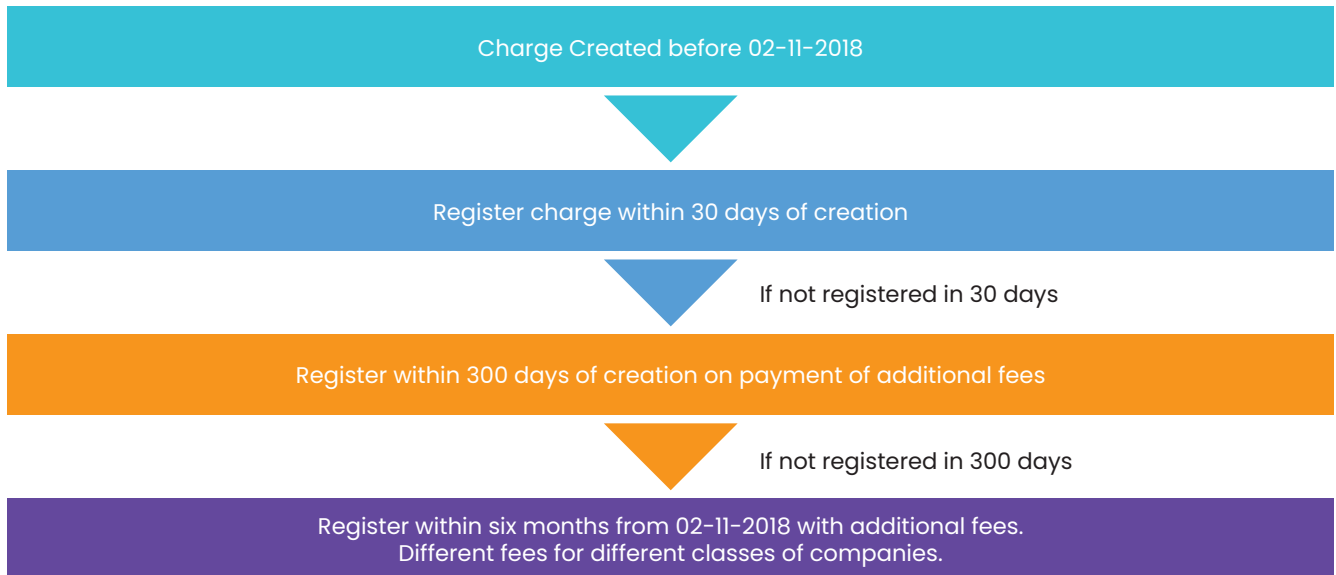


### II. Notice of Charge

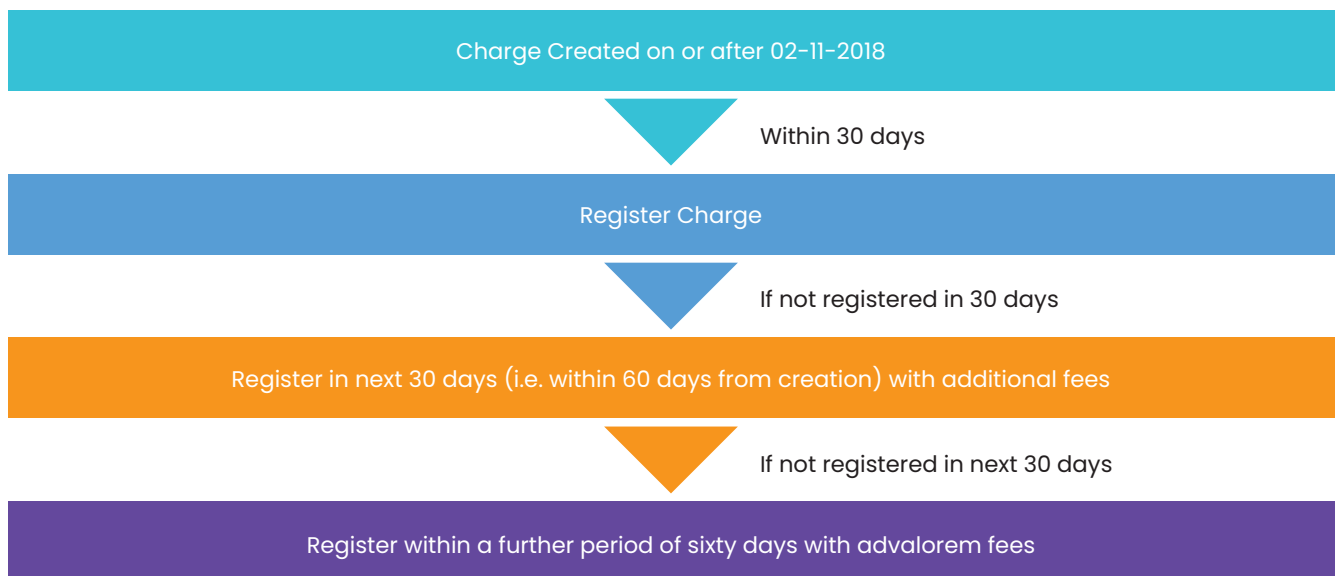


III. Process of Registration of Charge

1

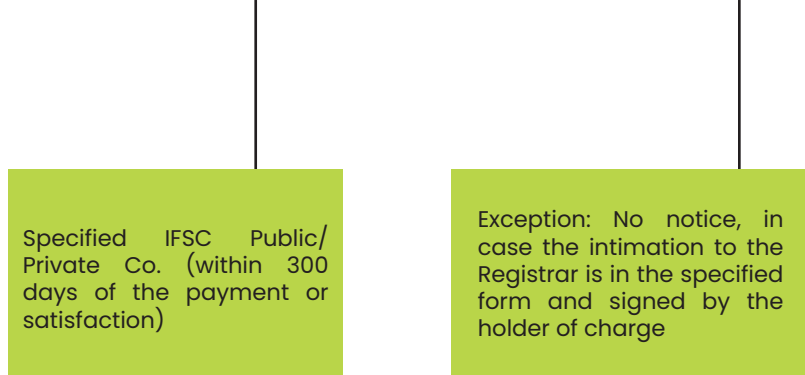
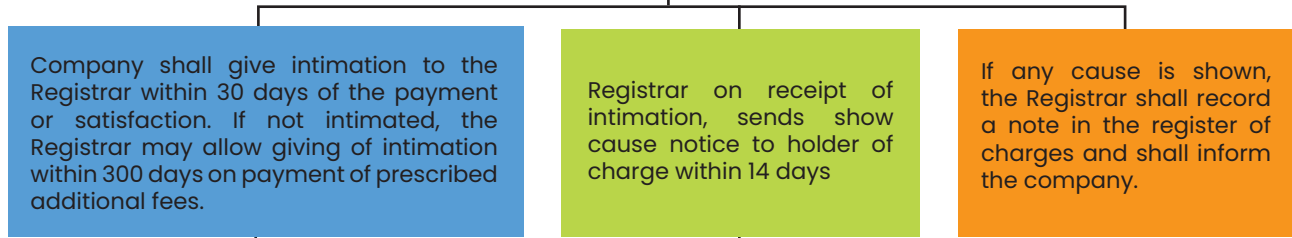


2



## IV. Satisfaction of Charge

### Satisfaction of Charge

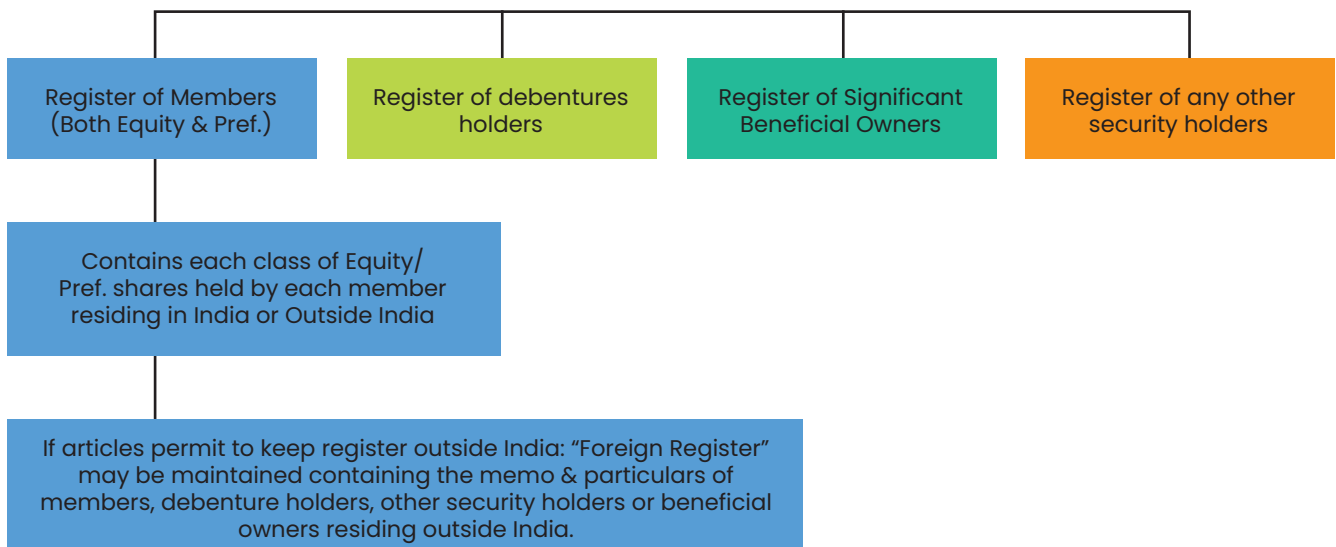


## Chapter 7 Management and Administration

### I. General Meetings



### II. Types Of Registers



## III. Annual Return

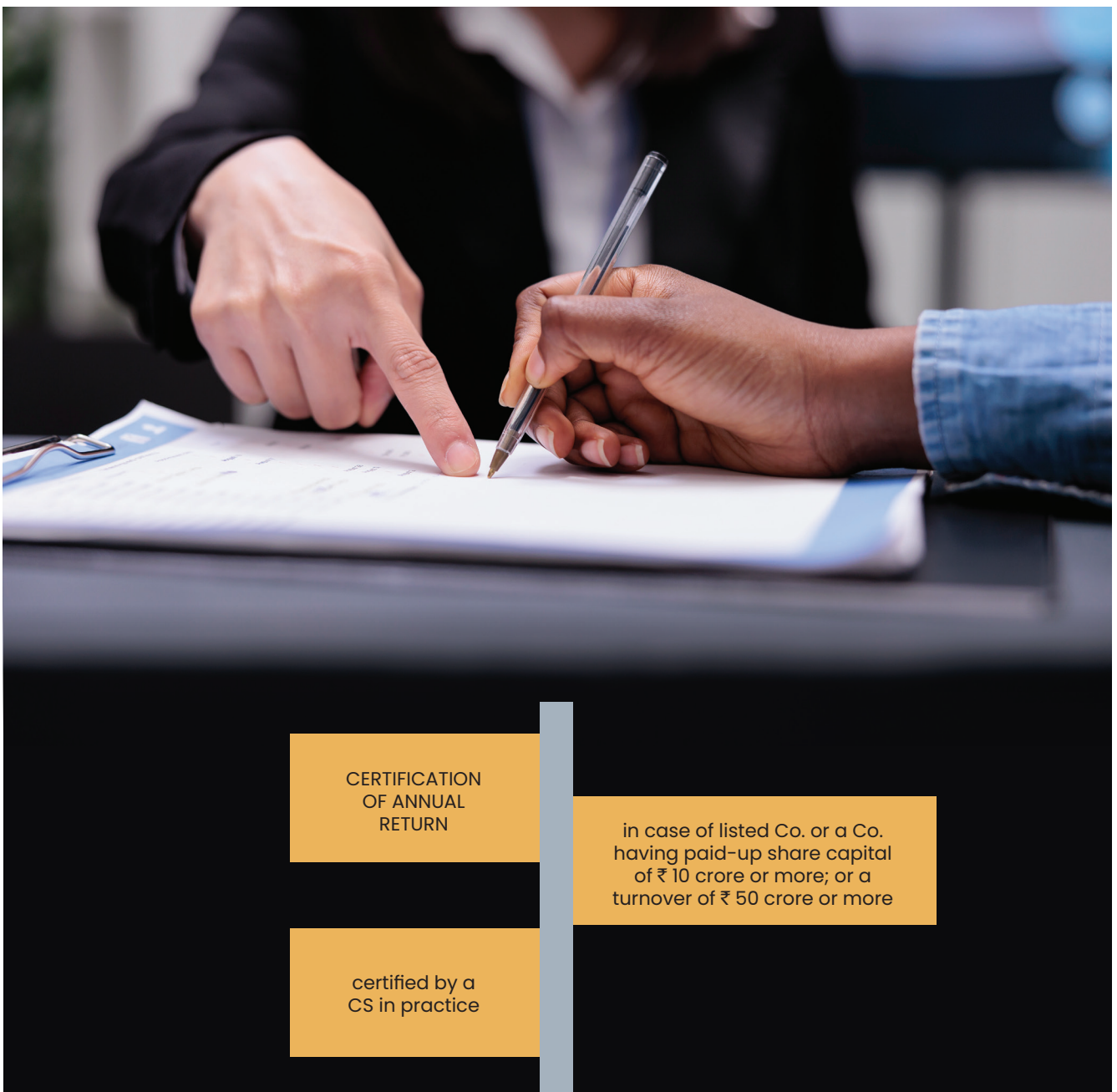
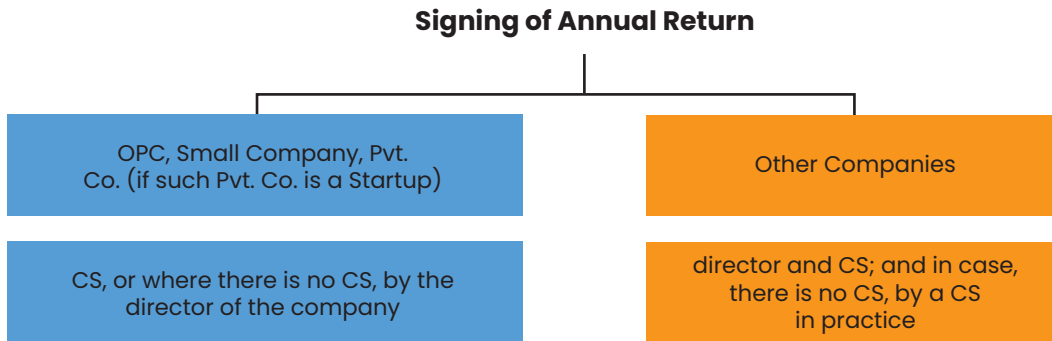


### 1. Particulars to be contained in the Annual Return as they stood on close of Financial Year

1. Company's registered office, principal business activities, particulars of its holding, subsidiary and associate companies
2. Its shares, debentures and other securities and shareholding pattern
3. Its members and debenture-holders along with the changes therein since the close of the PFY
4. Its promoters, directors, key managerial personnel along with changes therein since the close of the PFY
5. Meetings of members or a class thereof, Board and its various committees along with attendance details
6. Remuneration of directors and key managerial personnel  
In case of Private Company - "aggregate amount of remuneration drawn by directors;".
7. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment
8. Matters relating to certification of compliances, disclosures
9. Details in respect of shares held by or on behalf of the Foreign Institutional Investors



2. Signing of Annual Return



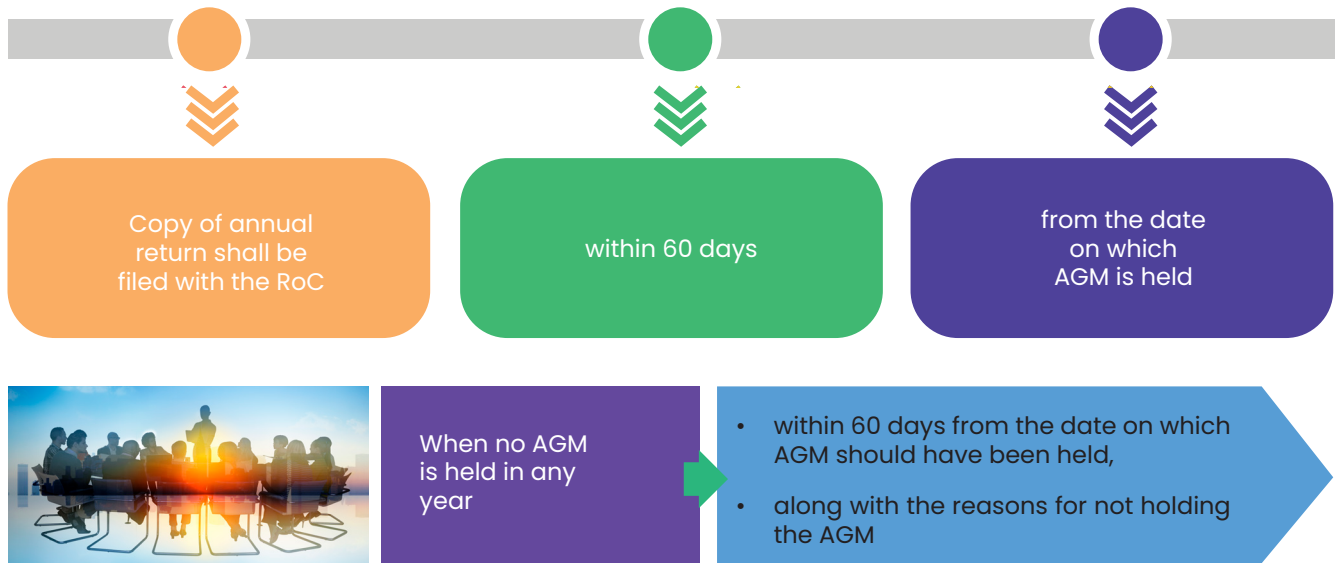
CERTIFICATION OF ANNUAL RETURN

in case of listed Co. or a Co. having paid-up share capital of ₹ 10 crore or more; or a turnover of ₹ 50 crore or more

certified by a CS in practice

# Management and Administration

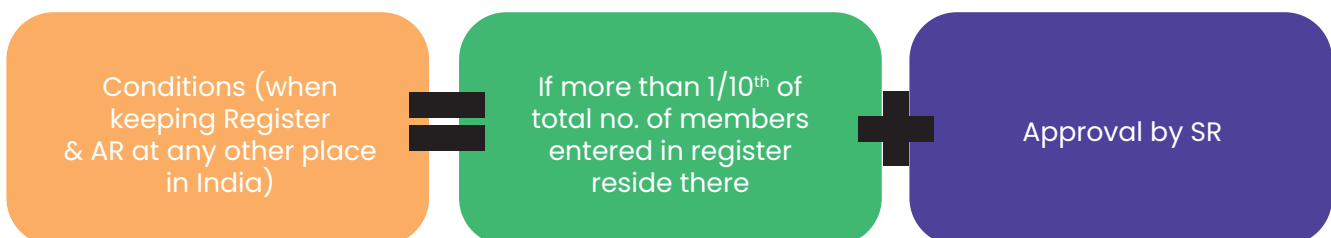
## 3. Filing of Annual Return



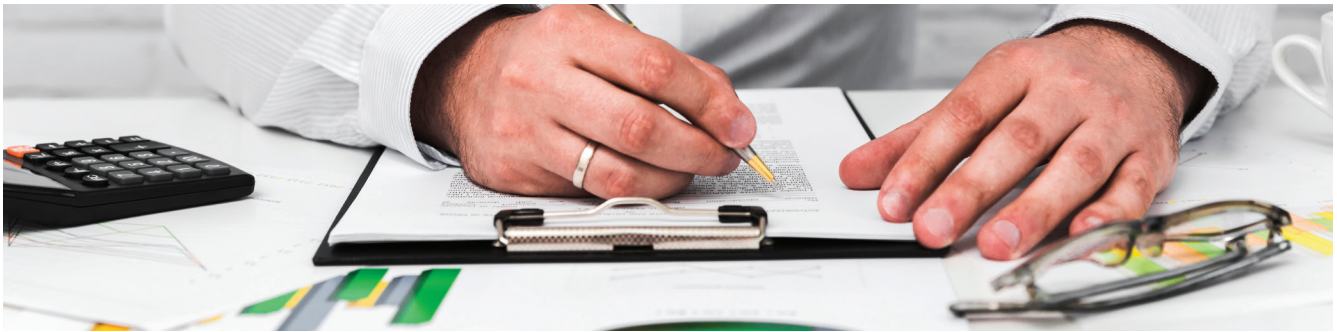
## IV. Place of keeping of Registers and Annual Returns



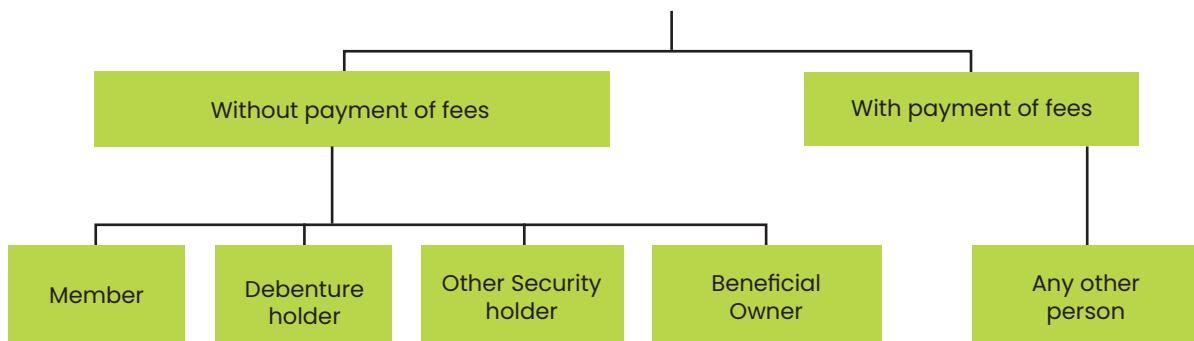
Question	Answer
What is the Place of keeping of Registers and Annual Returns?	Registered Office (RO)
Can the Registers and Annual Returns be kept at any other place in India?	Yes



V. Inspection



**Persons Who Can Inspect Registers & their Indices & Annual Return (During Business Hours)**



VI. Meetings of Members

1. AGM

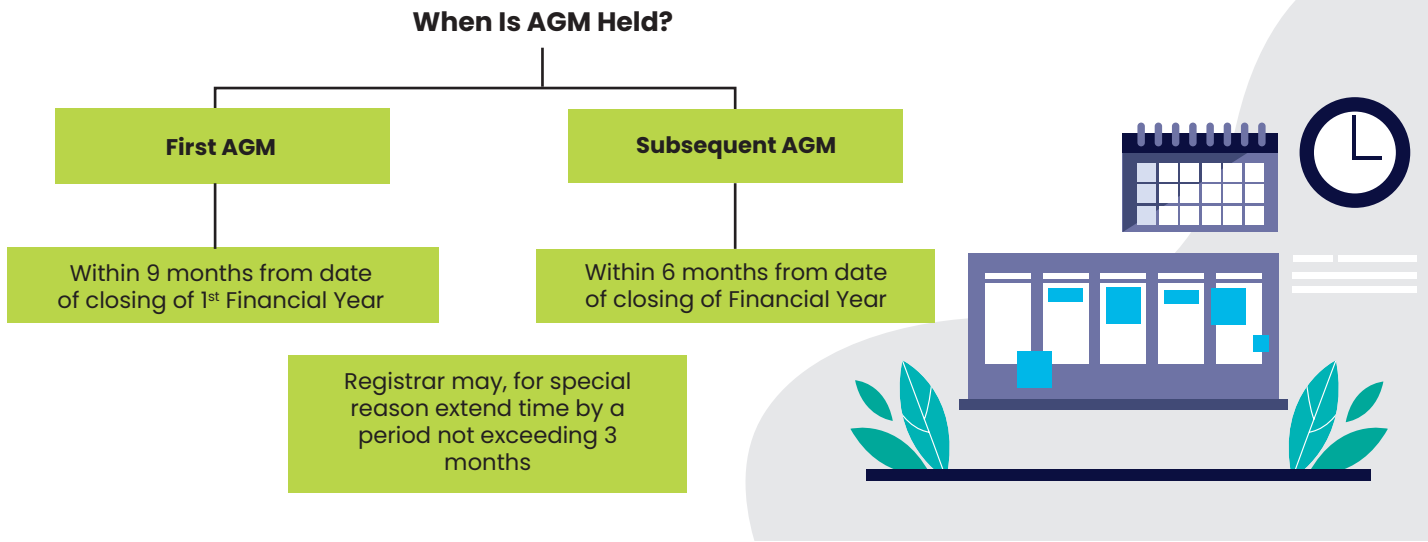
Question	Answer
Maximum time duration between two AGMs	15 months + 3 months (for special reasons)
Date of AGM	Any day except National Holiday





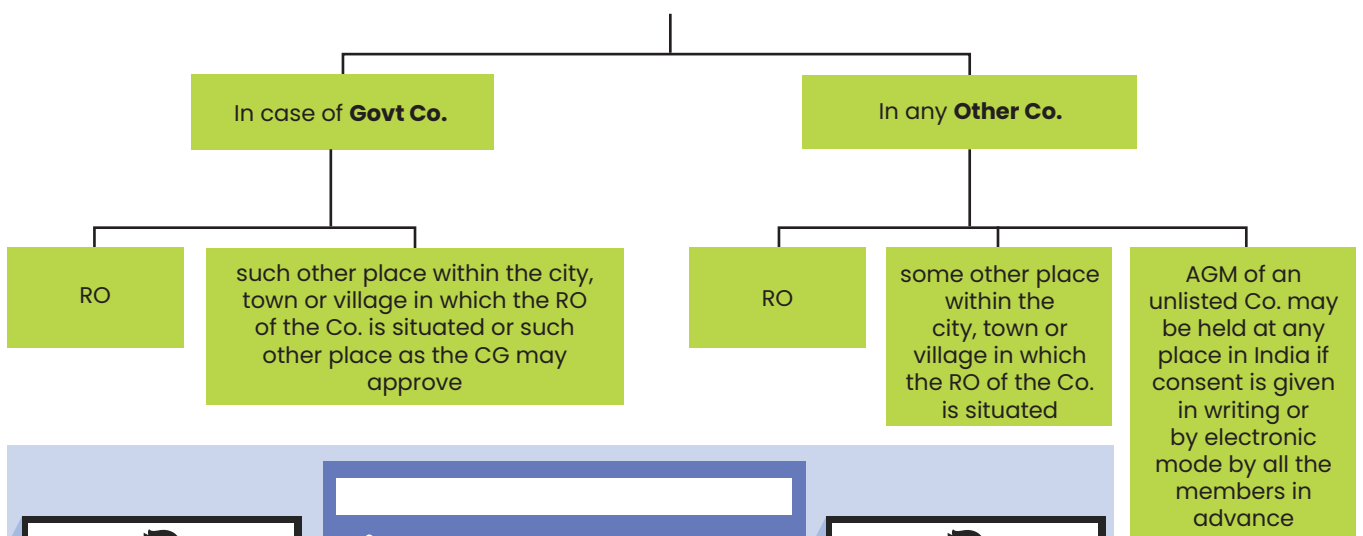
# Management and Administration

## 2. Holding of AGM



## 3.

### Place of AGM



#### 4. Calling of EGM

The Board shall call EGM on requisition made by

Shareholders holding not less than  $1/10^{\text{th}}$  of paid up capital (in case of co. having share capital)

Such Number of members having not less than  $1/10^{\text{th}}$  of total voting power of all members (in case of Co. NOT having share capital)



#### 5. Period of Holding EGM

If board within 21 days from the date of receipt of Requisition does not

proceed to call EGM on a day not later than 45 days of receipt of requisition

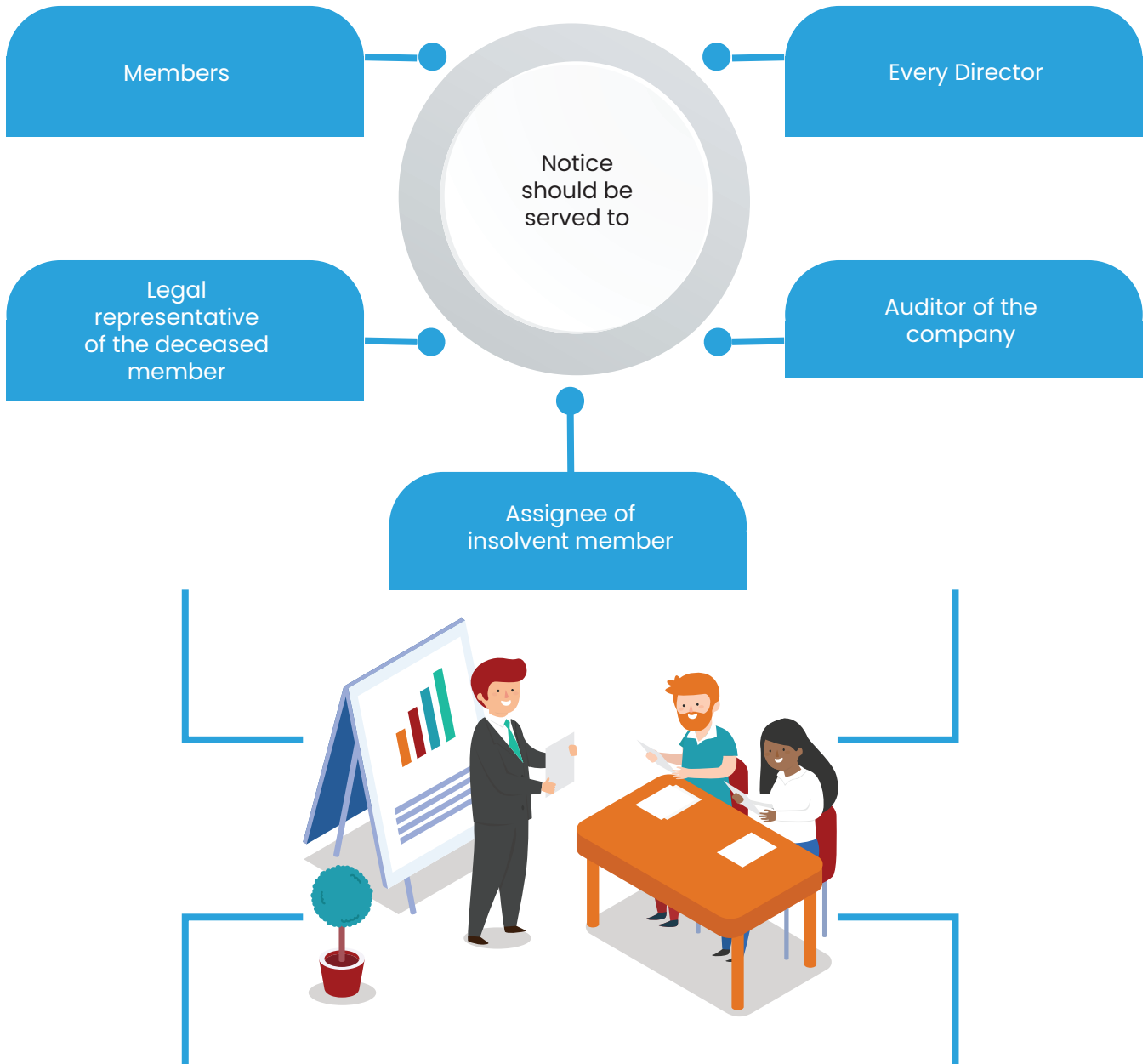
meeting may be called & held by requisitionists themselves within 3 months from the date of requisition

#### 6. Place of Holding EGM

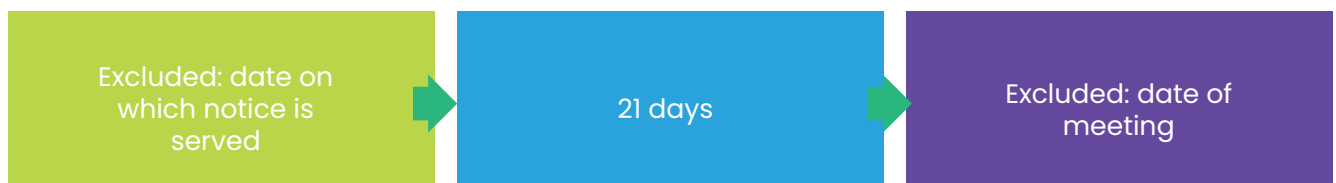
EGM of the company, other than of the wholly owned subsidiary of a Co. incorporated outside India, shall be held at a place within India

VII. Notice of Meeting

1.



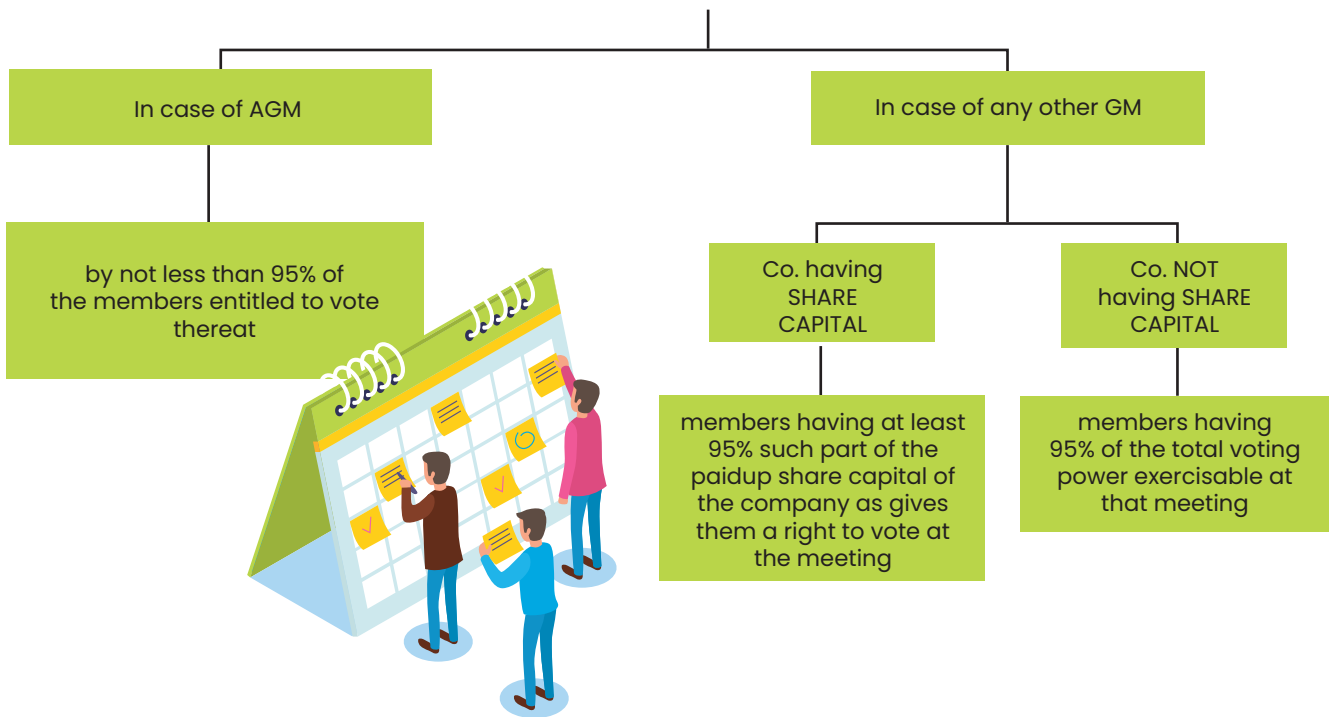
2. Length of Service of Notice - 21 clear days'



As per Rule 35 of Companies (Incorporation) Rules, 2014, in case of notice of a meeting (when delivery is by post), such service shall be deemed to have been effected at the expiration of 48 hours after the letter containing the same is posted.

3. Meetings held at shorter notice less than 21 clear days'

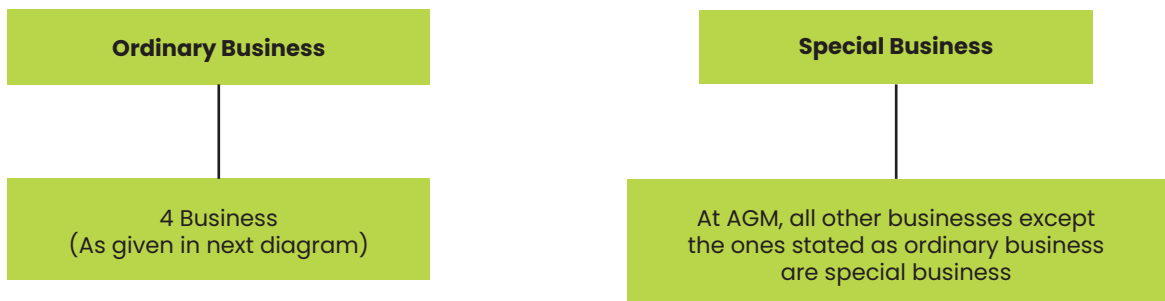
Meeting can be called at shorter notice  
(if consent, in writing or by electronic mode, is accorded thereto-)



VIII. Types of Business Transacted in AGM



1.

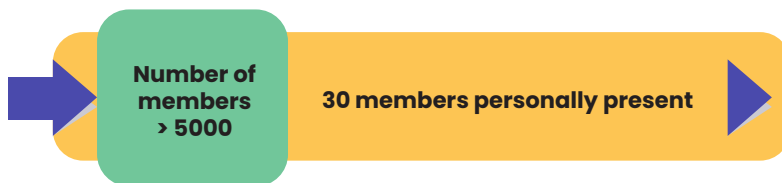
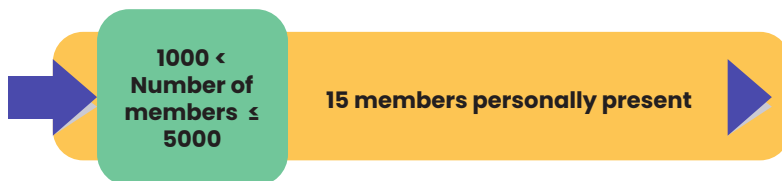
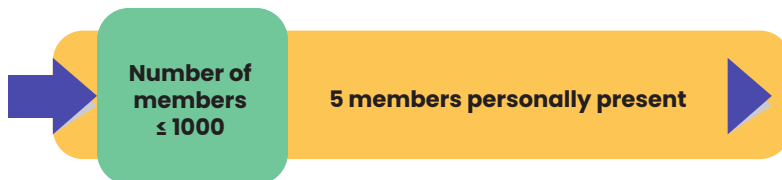


2.

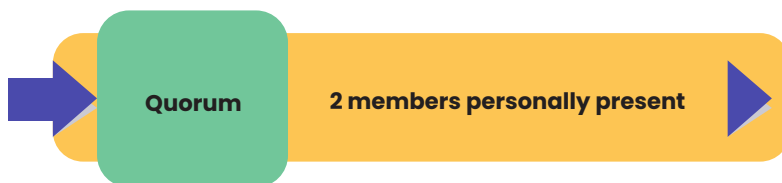


## IX. Quorum for Meetings [Section 103]

### Public Company



### Private Company



## X. Proxies

**PROXIES:** Any member of a Co. entitled to attend and vote at a meeting of the Co. shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

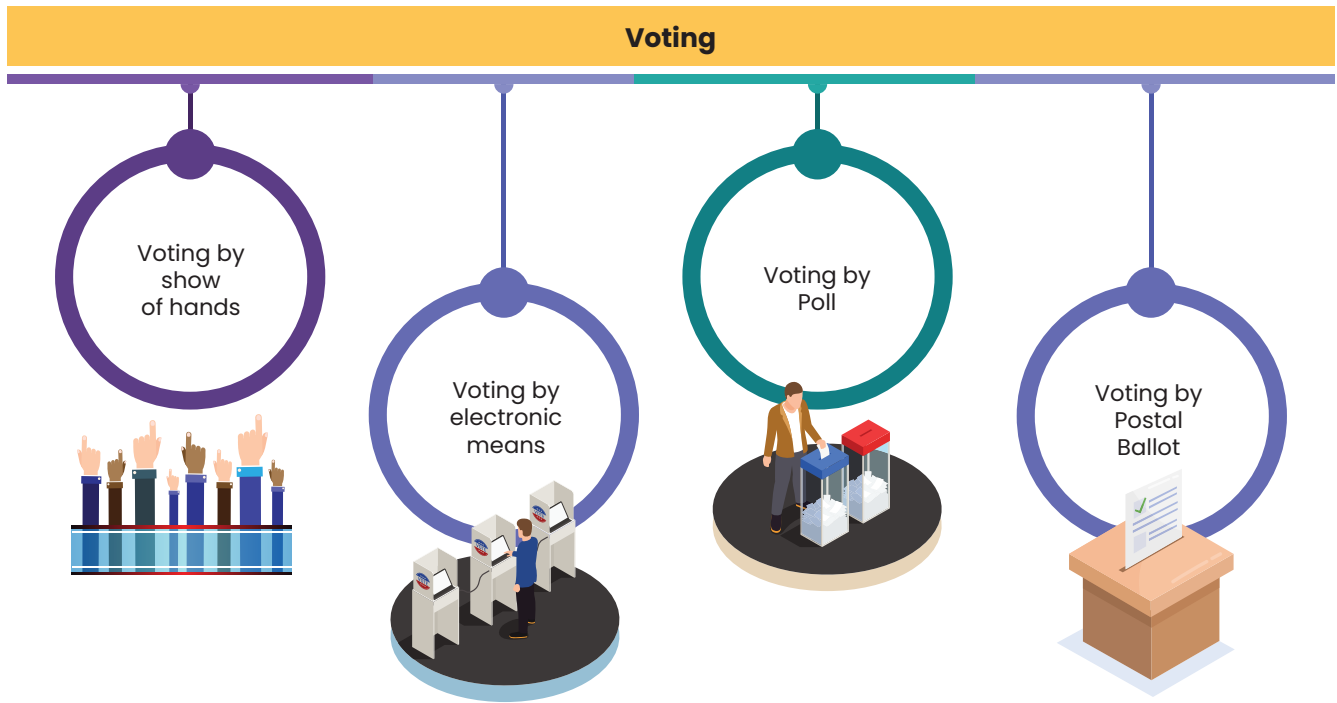
A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights

A proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

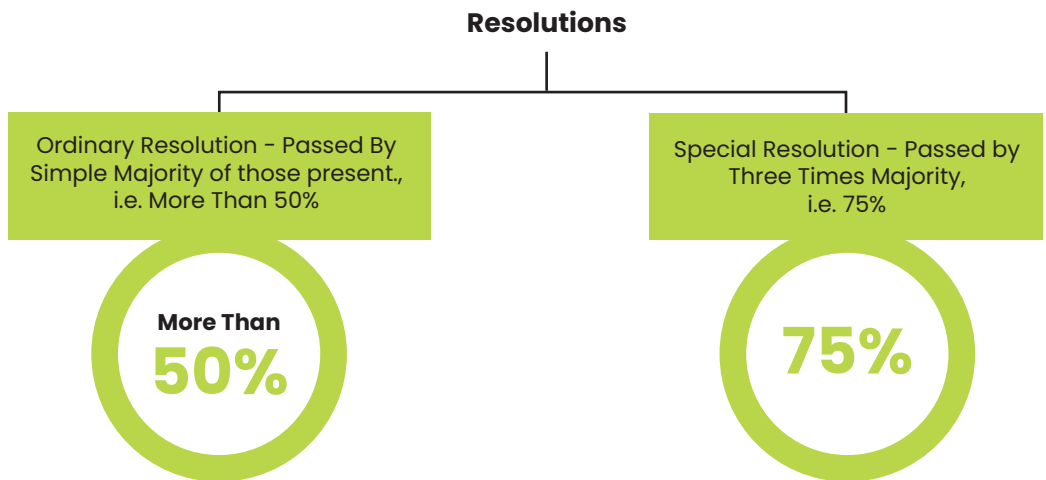
The instrument appointing a proxy shall be in writing

**XI. Voting**



**XII. Types of Resolution**

1.



**2. Characteristics of Special Resolution**

1. Passed by three times majority
2. Resolution shall be set out in the notice
3. Proper notice of 21 days is given for holding the meeting
4. Explanatory Statement should be annexed to the notice for conducting special business

## XIII. Minutes



Minutes of the proceedings of meeting shall be kept within 30 days of the conclusion of every such meeting concerned or passing of resolution by postal ballot in minute books.

The minute book shall be consecutively numbered.

The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting.

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain –

- The names of the directors present at the meeting; and in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting –

- Is or could reasonably be regarded as defamatory of any person; or
- Is irrelevant or immaterial to the proceedings; or
- Is detrimental to the interests of the company

The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.

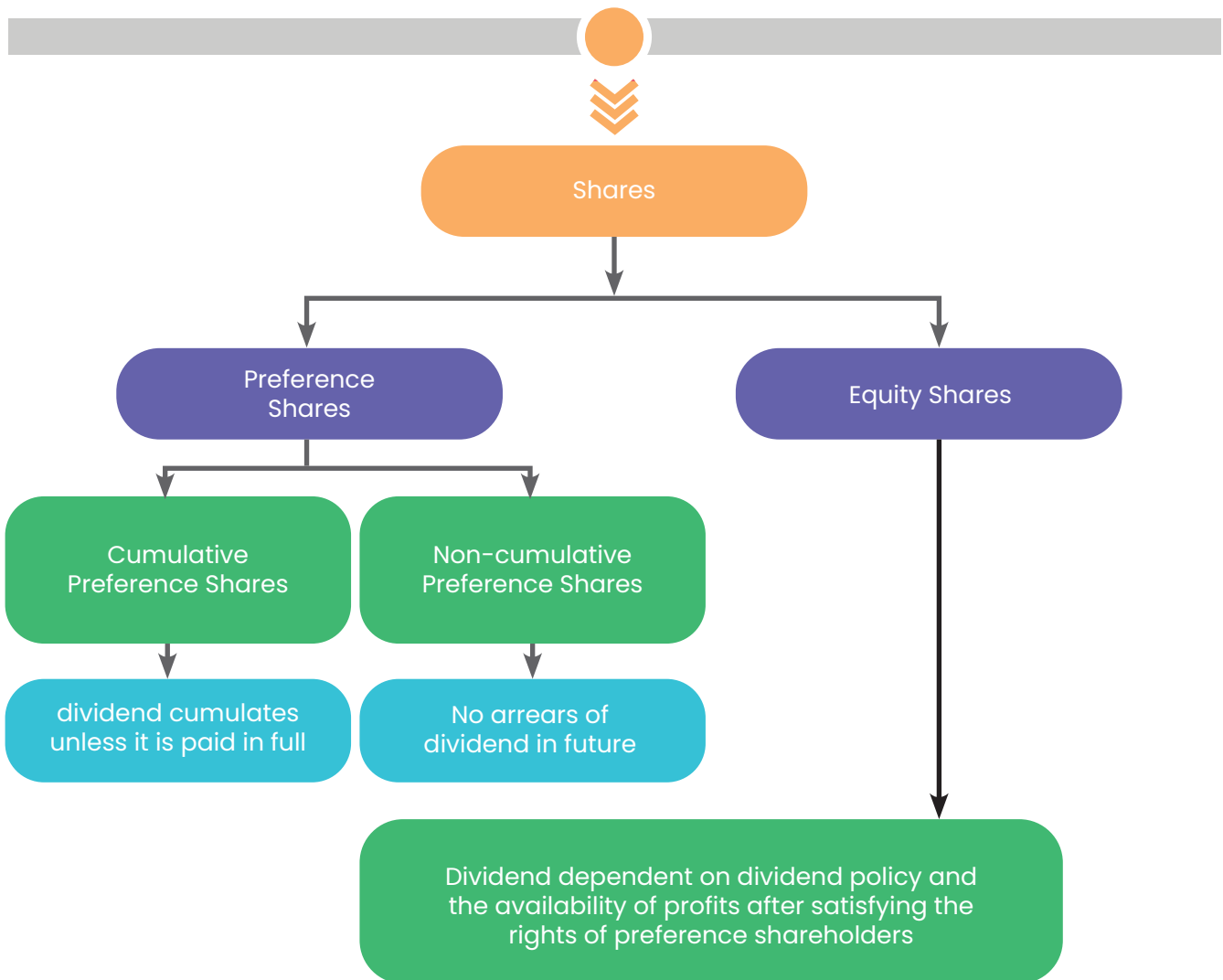
The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.



## Chapter 8

### Declaration and Payment of Dividend

#### I. Dividend Payable On Different Types Of Shares

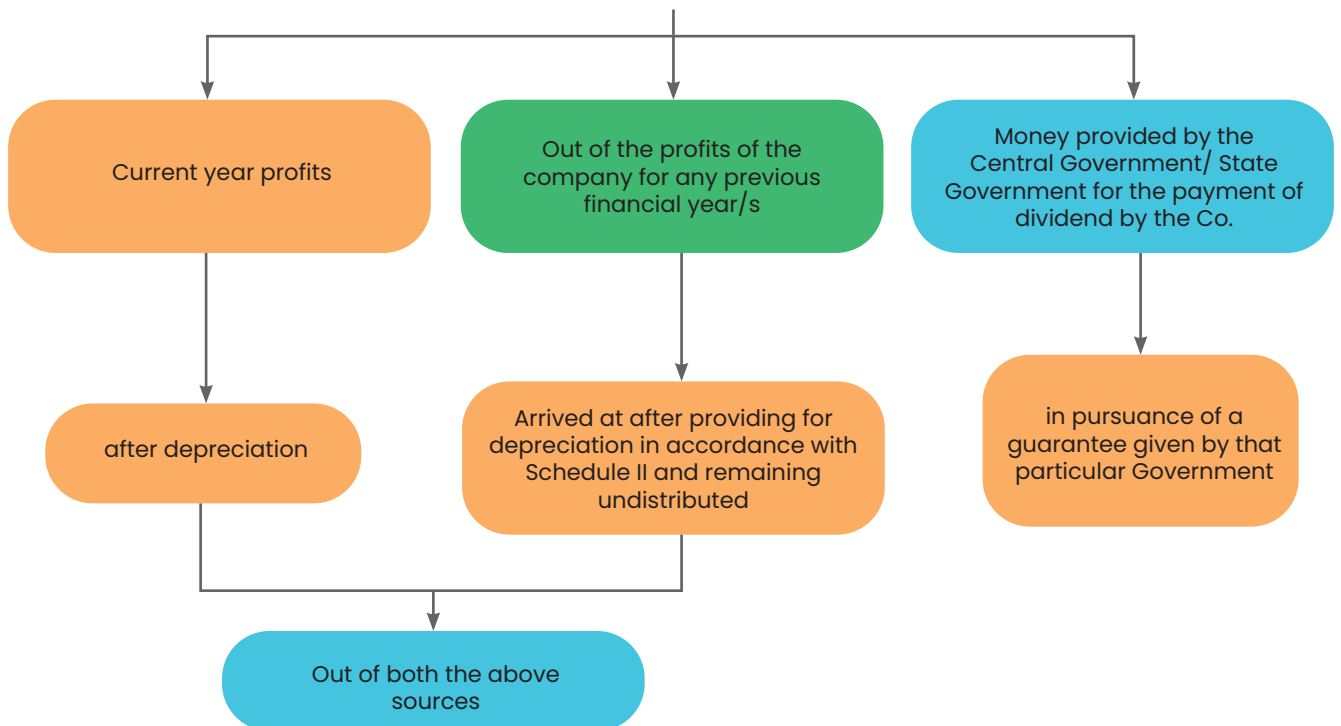


II. Provisions regarding Declaration of Dividend

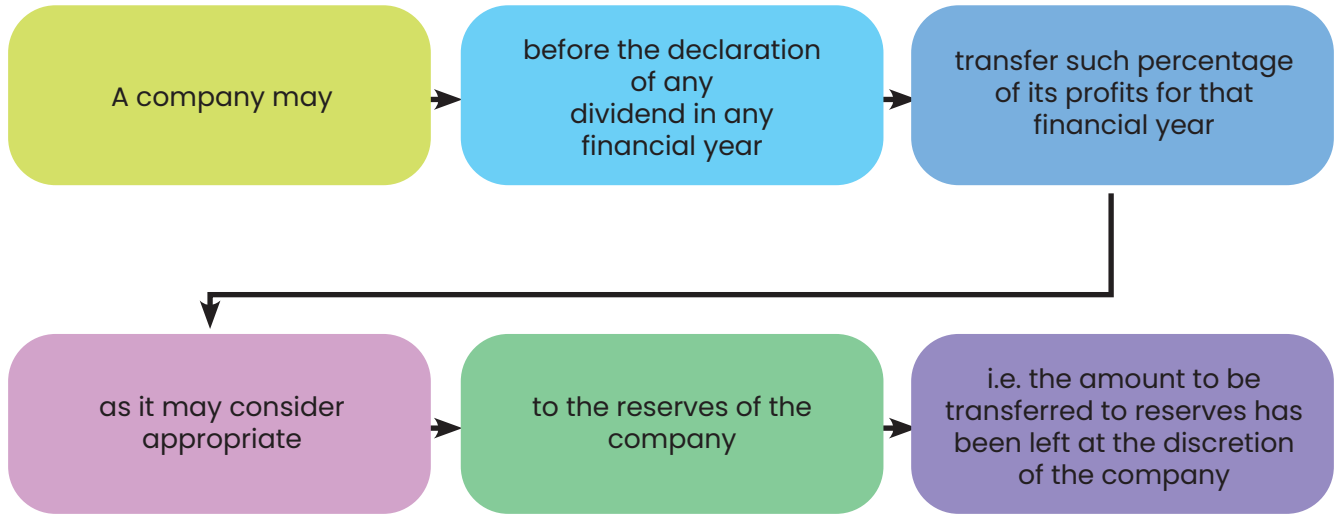


1. Sources

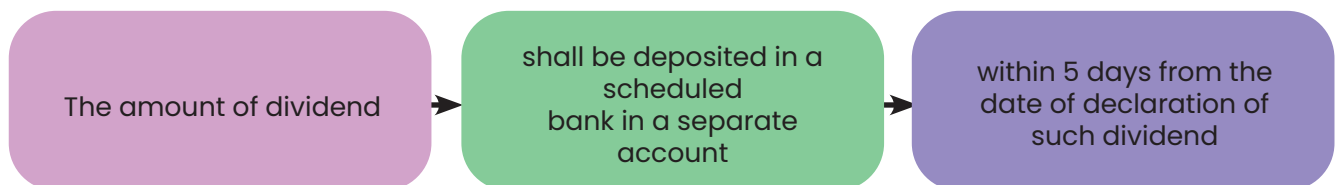
Dividend can be declared out of following sources



## 2. Transfer to Reserve



## 3. Depositing amount of Dividend



### III. Declaration of Dividend in Case of Inadequate/No Profits



#### 1. Declaring dividend out of past year profits

Where, owing to inadequacy or absence of profits in any financial year

Company may propose to declare dividend

out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves

Such declaration of dividend shall be made in accordance with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014

#### 2. Amounts not treated as free reserves

Amounts representing unrealised gains

Notional gains

Revaluation of assets, whether shown as reserve or otherwise

Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in P&L Account on measurement of the asset or the liability at fair value

### 3. Rules to be followed while declaring dividend in case of inadequacy/ absence of profits

Rate of Dividend  $\leq (RD1 + RD2 + RD3) / 3$ . Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year

However, this condition will not apply if a company has not declared any dividend in each of the 3 preceding financial years

Total amount that can be drawn from accumulated profits

not exceed  $1/10^{\text{th}}$  of its paid up share capital + free reserves

As per latest audited financial statement

Drawn amount must be first utilized to set off losses incurred in FY in which dividend is declared

Balance of reserves after such withdrawal

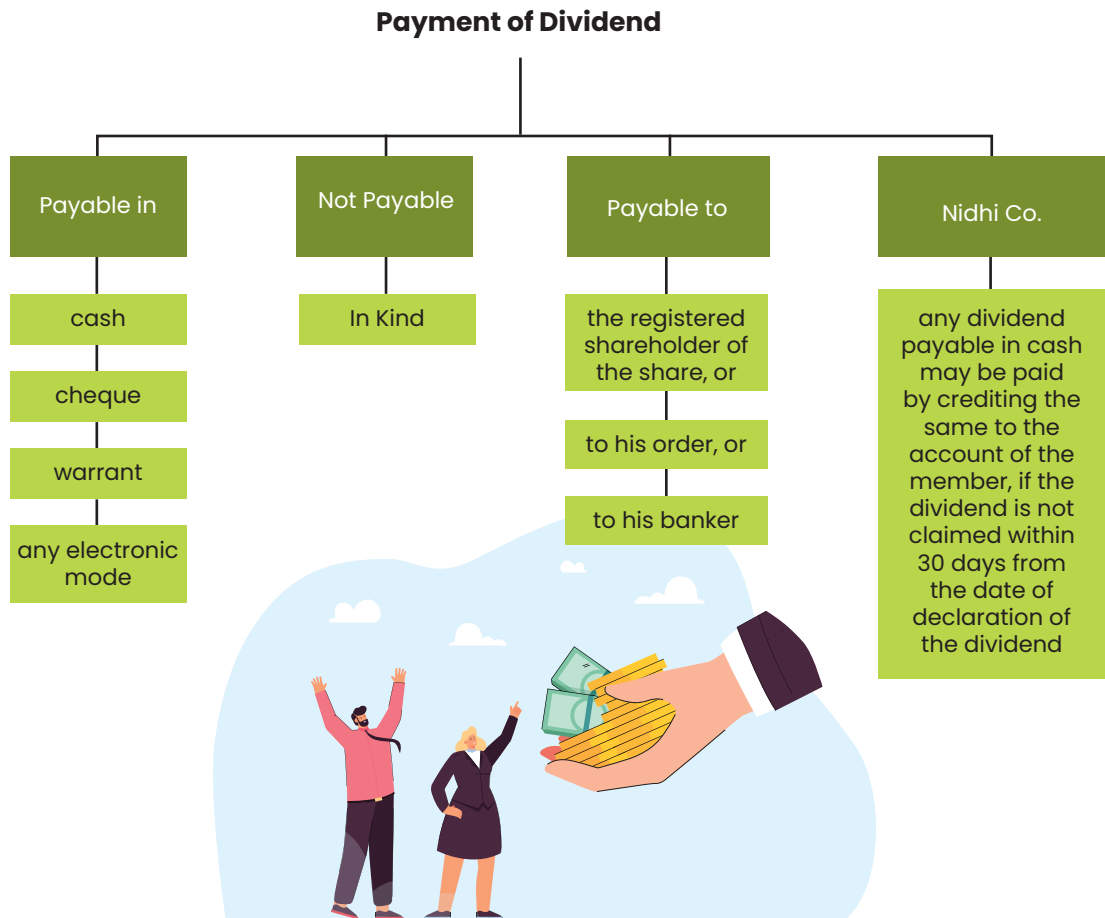
not fall below 15% of its paid up share capital

As per latest audited financial statement

These rules are not applicable to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments



IV. Payment of Dividend



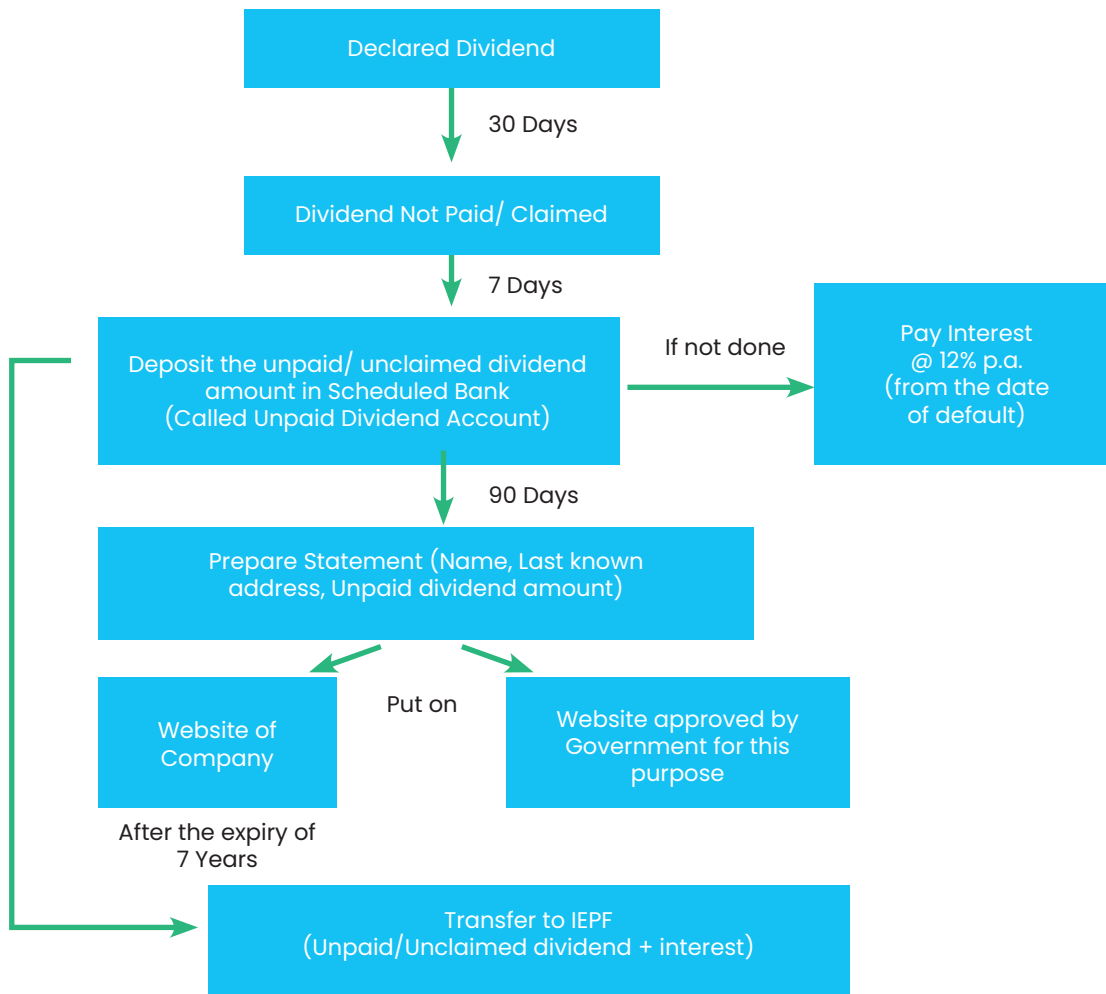
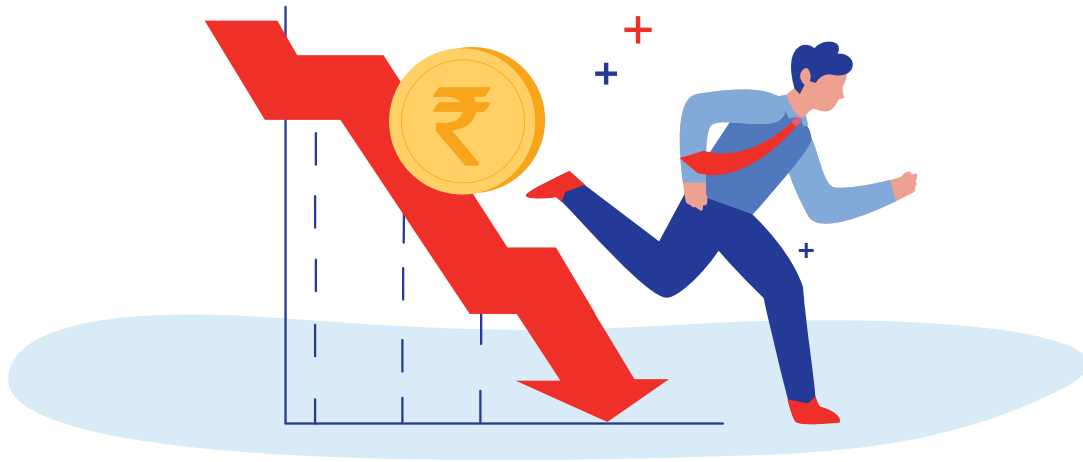
V. Prohibition on Declaration of Dividend



- A company fails to comply with-
- provisions of section 73 and 74 of the Companies Act

- A company with licence under section 8
- Its profits are applied only in promoting the objects for which it is formed.

## VI. Unpaid Dividend Account (UPA)



Any person claiming for the amount transferred in UPA may apply to Co. for the payment of money claimed

## VII. Investor Education and Protection Fund (IEPF)

### 1. Amounts to be credited to the Fund

#### Amount given by the Central Government

- by way of grants after due appropriation made by Parliament

#### Donations given by the Central Government, State Governments, companies or any other institution

- for the purposes of the Fund

#### Amount lying in the Unpaid Dividend Account

#### Amount in the General Revenue Account of the Central Government

- that had been transferred to that account under section 205A(5) of the Companies Act, 1956 and remaining unpaid or unclaimed on the commencement of the Companies Act, 2013

#### Amount in IEPF

- as per section 205C of the Companies Act, 1956

#### Interest or other income

- received out of investments made from the Fund

#### Amount received through disgorgement or disposal of Securities

- seized from a person who has been convicted for personation for acquisition of securities

#### Application Money

- for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment)

#### Matured Deposits

#### Matured Debentures

#### Interest

- accrued on the amounts mentioned as Application money, Matured deposits and matured debentures and interest thereon



## Amount received from Sale Proceeds

- of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years

## Redemption amount of preference shares

- remaining unpaid or unclaimed for 7 or more years

## Other amounts

- (a) amounts payable as mentioned in clause (a) to (n) of section 125 (2)
- (b) shares in whose case dividends have not been claimed or paid for 7 consecutive years or more
- (c) all the resultant benefits arising out of shares held by the Authority under clause (b) above
- (d) all grants, fees and charges received by the Authority
- (e) all sums received by the Authority from such other sources as may be decided upon by the Central Government
- (f) all income earned by the Authority in any year
- (fa) all shares held by the Authority in accordance with proviso of sub-section section 90(9)
- (g) all amounts payable as mentioned in section 10B(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, section 38A(3) of the State Bank of India Act, 1955 and section 40A of the State Bank of India (Subsidiary Bank) Act, 1959
- (h) all other sums of money collected by the Authority as envisaged in the Act



## 2. Utilization of the Fund

The fund shall be utilised for:

refund of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon

promotion of investors' education, awareness and protection

distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures by, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement

reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal

any other purpose incidental thereto

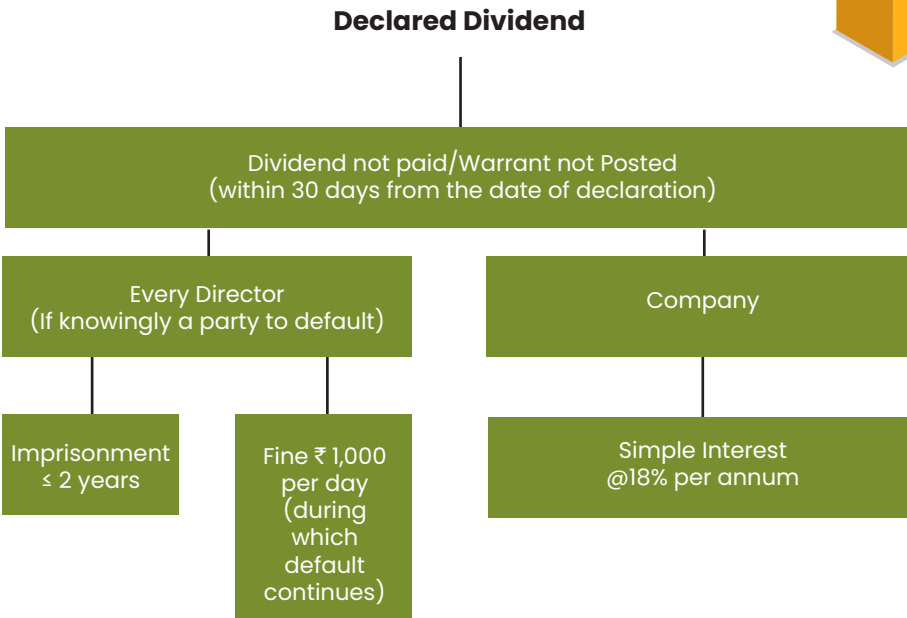


# Declaration and Payment of Dividend

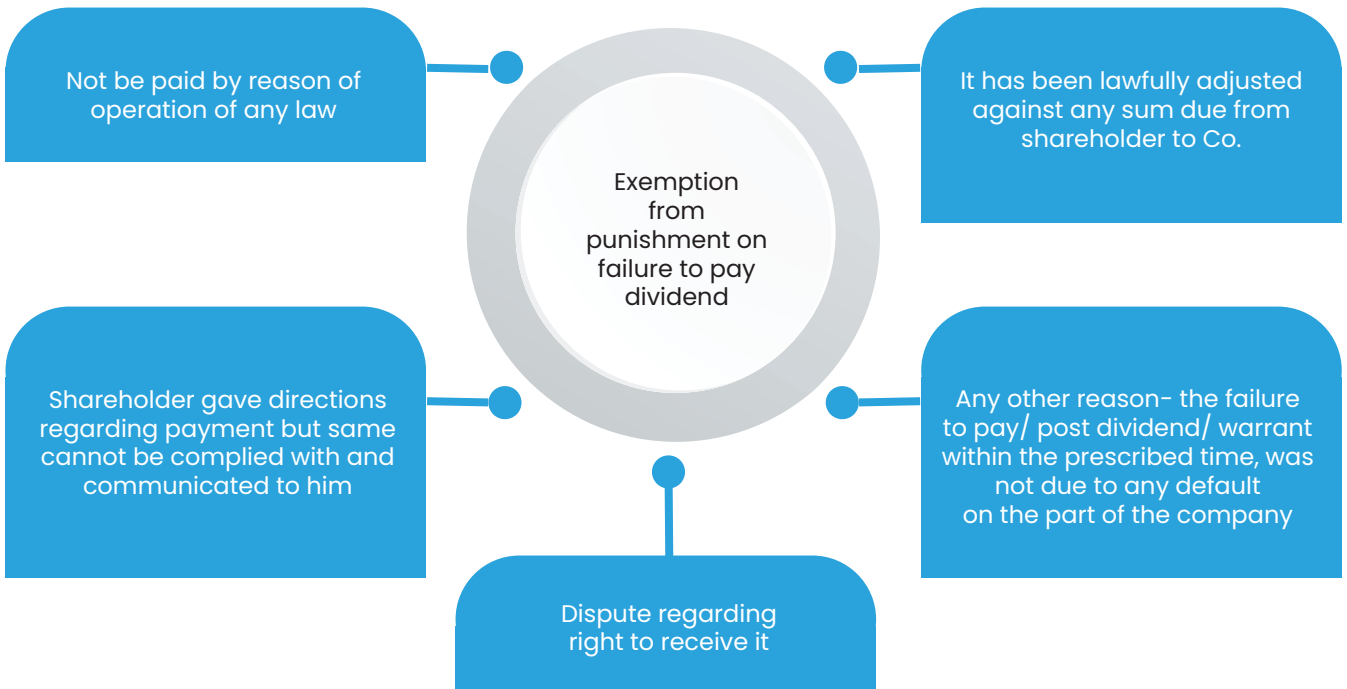
## VIII. Punishment for failure to Distribute Dividends



### 1. Punishment and liability



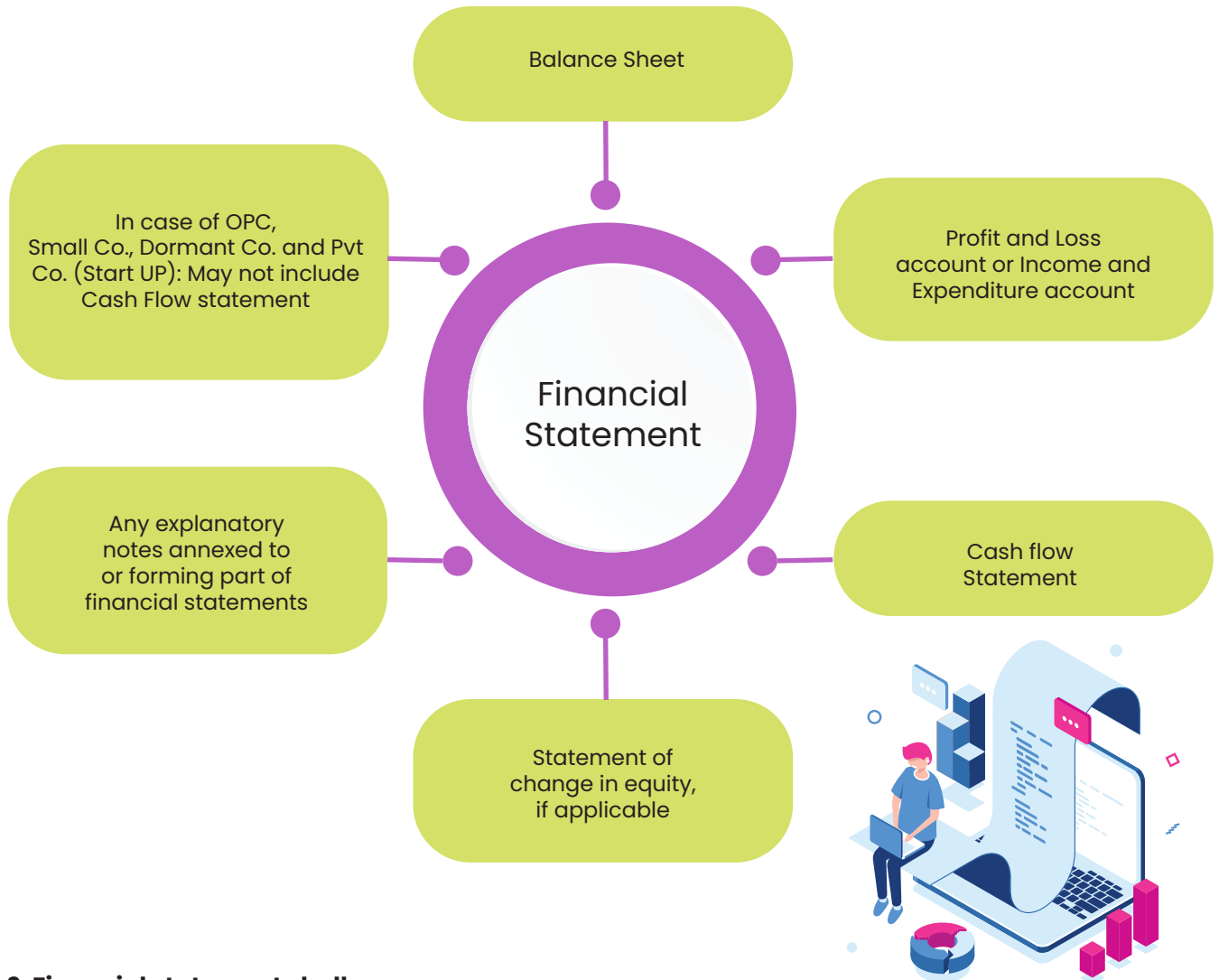
### 2. Exceptions under which no offence shall be deemed to have been committed



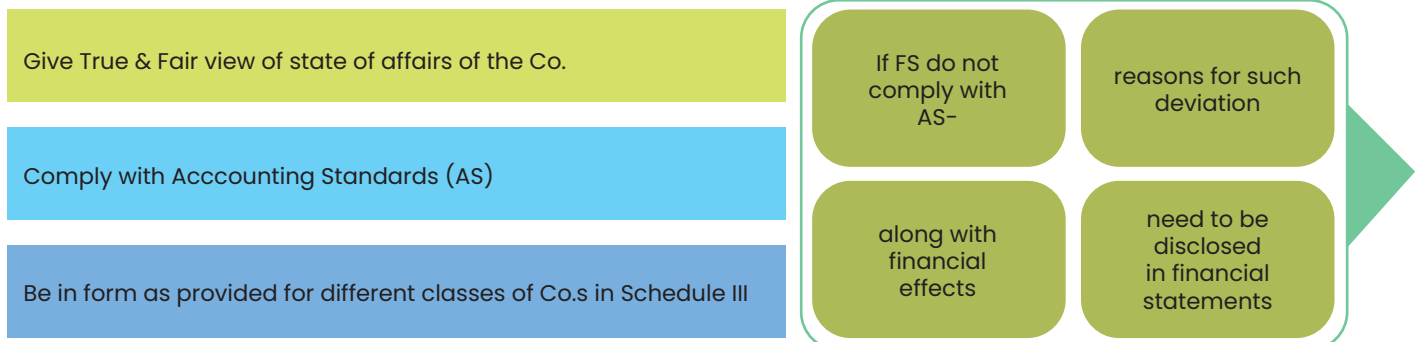
## Chapter 9 Accounts of Companies

### I. Financial Statement (FS)

1. Financial statement is defined under section 2 (40), to include –



2. Financial statement shall:



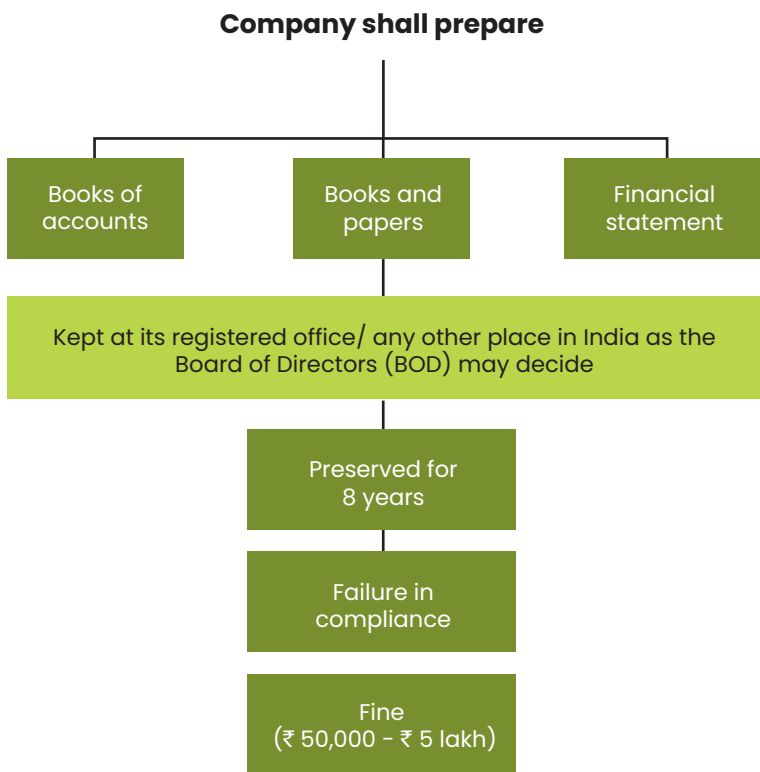
### 3. Laying of Financial statement

At each AGM, the Board of Directors (BOD) shall lay the FS for the FY

If the Co. has subsidiary or associate or Joint Venture, Consolidated Financial Statement (CFS) is also to be laid before AGM



### 4. Maintenance of Books of Accounts



II. Periodical Financial Results

The Central Government may, require unlisted companies

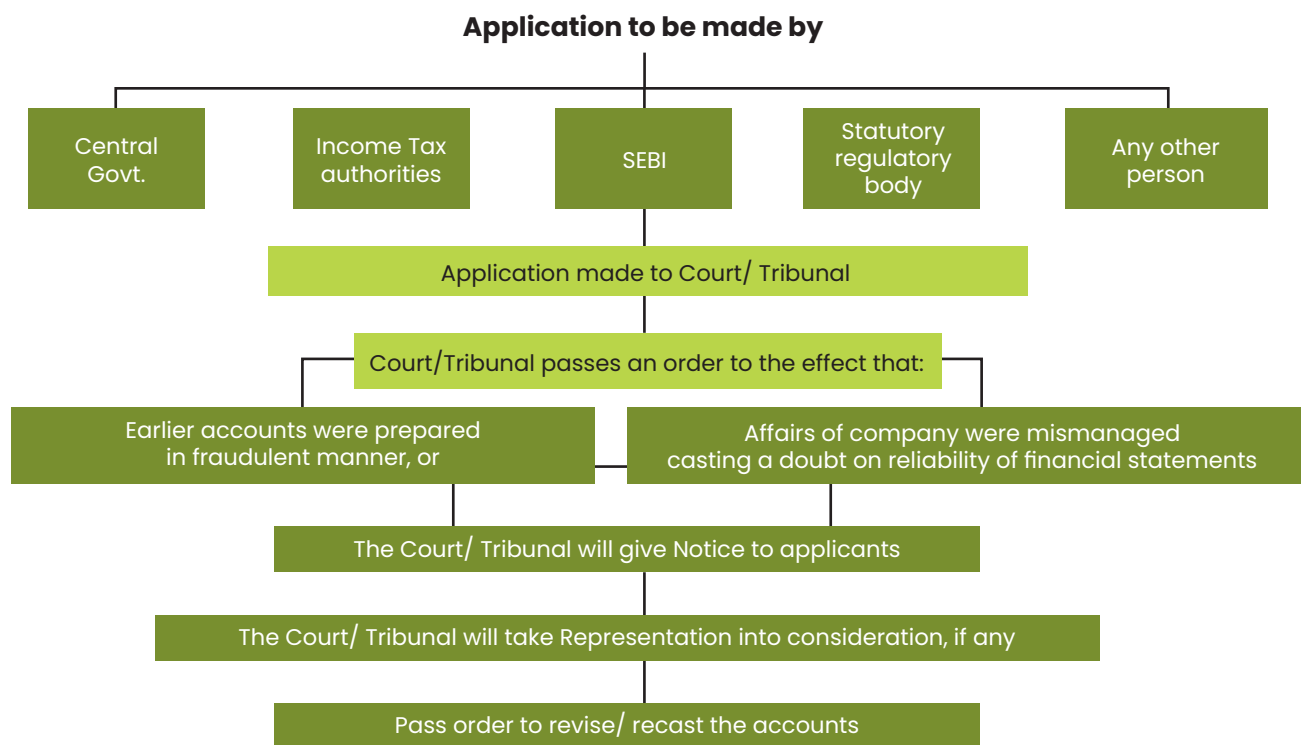
To prepare the financial results of the company on periodical basis in prescribed form

To obtain approval of the BOD and complete audit/ limited review of such periodical financial results

File a copy with the Registrar within a period of 30 days of completion of the relevant period on payment of fees

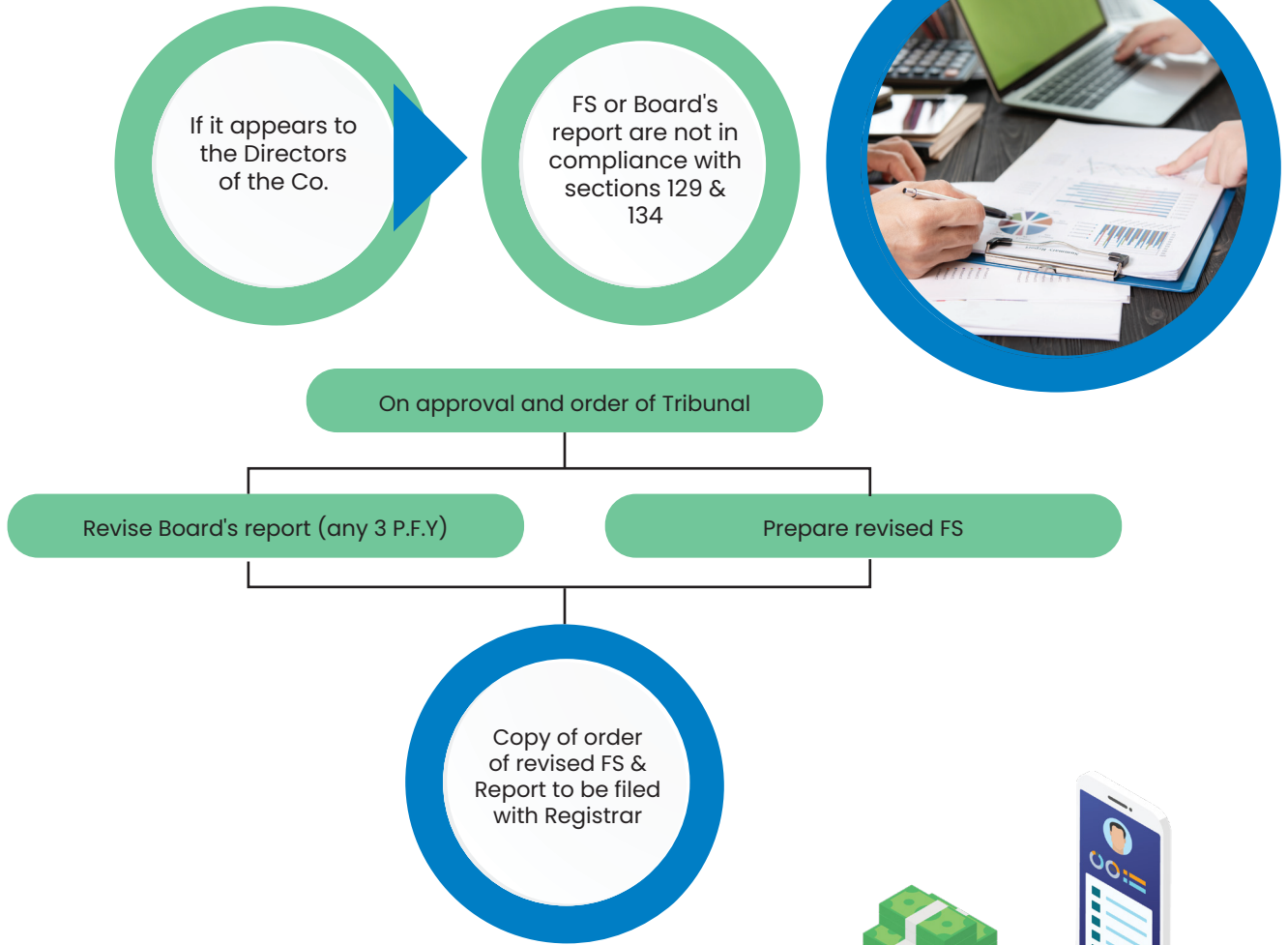


III. Re-opening of Accounts on Court's or Tribunal Orders

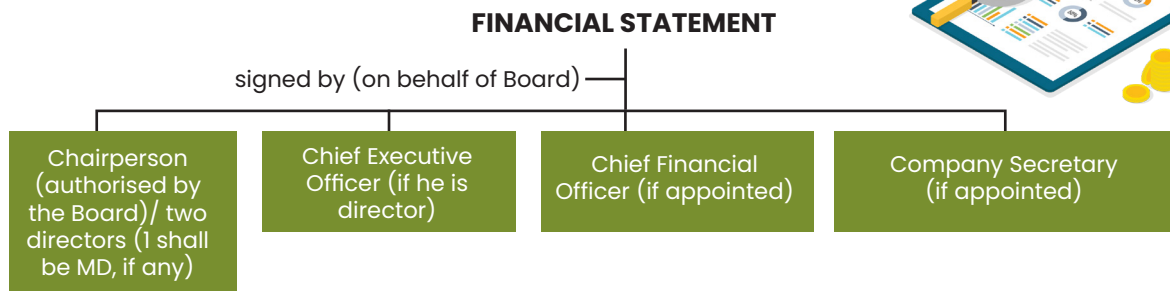


Time limit for reopening: Order of re-opening of books of account shall only relate to 8 financial years immediately preceding the current financial year. Except on direction of the Central Government, BOA's may be kept for a period longer than 8 years and accordingly may be ordered of re-opening for such period.

**IV. Voluntary Revision of Financial Statements or Board’s Report:**



**V. Authentication of Financial Statements**



Significant points: Signed copy of every FS, shall be including consolidated financial statement, if any. It shall be issued, circulated or published along with a copy of –any notes annexed to or forming part of such financial statement; the auditor’s report; and the Board’s report

In the case of One Person Company financial statements shall be approved only by one director



VI. Contents of Board Report

Board Report shall include:

Web address, if any, where annual return has been placed	number of meetings of the Board
Directors' Responsibility Statement	Details of fraud reported by auditors
Declaration by ID's	Companies policy on directors appointment and remuneration (in case of companies having NRCS)
Comments by Board on remarks made by auditor and CS	Particulars of loans, guarantees or investments
Particulars of contracts or arrangements with related parties	State of Company's affairs
Amounts of carrying reserves or paid by way of dividend	Material change affecting on financial position
Conservation of energy, technology absorption, foreign exchange	Development and implementation of risk management
CSR policy and initiatives	Other matters as prescribed*

Listed and other public companies (paid up share capital of ₹ 25 crore or more)- shall contain statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made

Significant point: The Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report. The Board's report and any annexures, shall be signed by its chairperson, if he is authorised by the Board. Where chairperson is not so authorised, shall be signed by at least 2 directors, one of whom shall be a managing director, or by the director where there is one director.

**\* Other prescribed matters**

- i. The financial summary or highlights
- ii. The change in the nature of business, if any
- iii. The details of directors or Key Management Personnel (KMP) who were appointed or have resigned during the year
- iiia. A statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year
- iv. The names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year
- v. The details relating to deposits (accepted during the year; remained unpaid or unclaimed as at the end of the year; any default in repayment of deposits or payment of interest thereon during the year)
- vi. The details of deposits which are not in compliance with the requirements of Chapter V (i.e., Acceptance of Deposits by Companies) of the Act
- vii. The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future
- viii. The details in respect of adequacy of internal financial controls with reference to the Financial Statements
- ix. A disclosure, as to whether maintenance of cost records is required and accordingly such accounts and records are made and maintained
- x. A statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- xi. The details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along-with their status as at the end of the financial year
- xii. The details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof

VII. Director’s Responsibility Statement



Applicable accounting standards had been followed in the preparation of annual accounts and explanation for material departures (if any)

Director’s selection of accounting policies and applying them consistently to give a true and fair view of the state of affairs of the company and of the P&L of the company

Directors had taken care for the maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities

The directors had prepared the annual accounts on a going concern basis

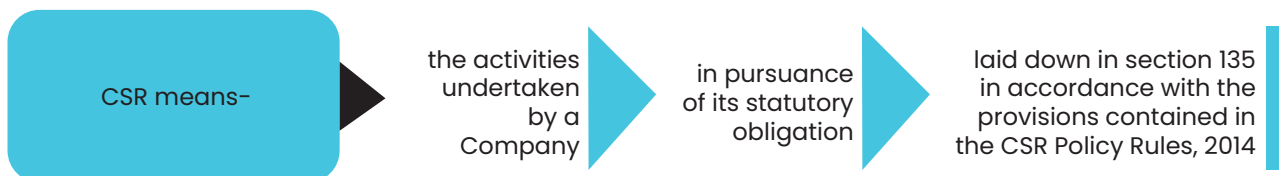
The directors, in the case of a listed company, had laid down internal financial controls (IFC) and that IFC are adequate and were operating effectively

The directors had devised proper systems to ensure compliance with the provisions of all applicable laws operating effectively

## VIII. Corporate Social Responsibility (CSR)



## 1. Meaning and activities which are specifically excluded:



## CSR shall not include the following activities:-

## (i) activities undertaken in pursuance of normal course of business of the company

- Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that:
  - (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
  - (b) details of such activity shall be disclosed separately in the Annual report on CSR in the Board's Report

## (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union Territory at national level or India at international level

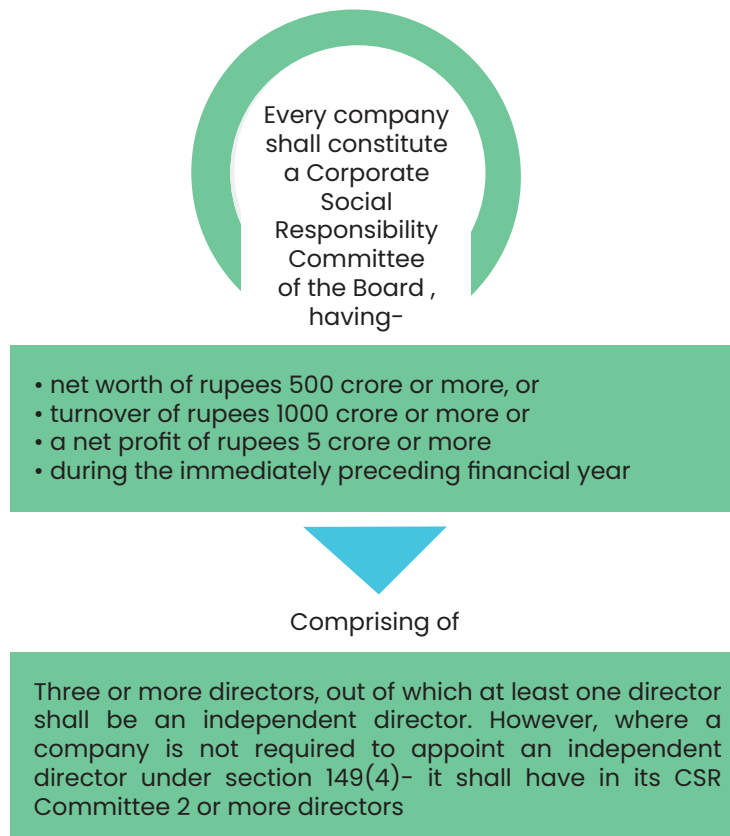
## (iii) Contribution of any amount directly or indirectly to any political party

(iv) Activities benefitting employees of the company (as defined in the Code on Wages, 2019)

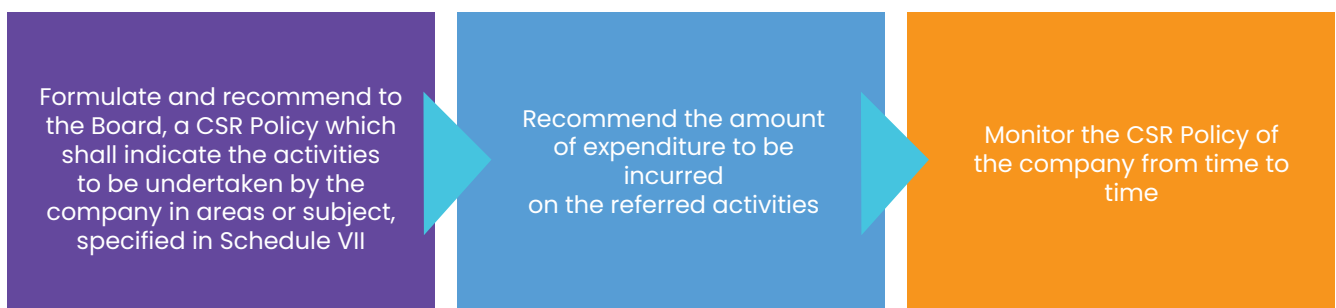
(v) Activities supported by the companies on sponsorship basis for deriving marketing benefits

(vi) Activities carried out for fulfilment of any other statutory obligations under any law in India

## 2. Companies required to constitute CSR committee and its composition



## 3. Duties of CSR Committee



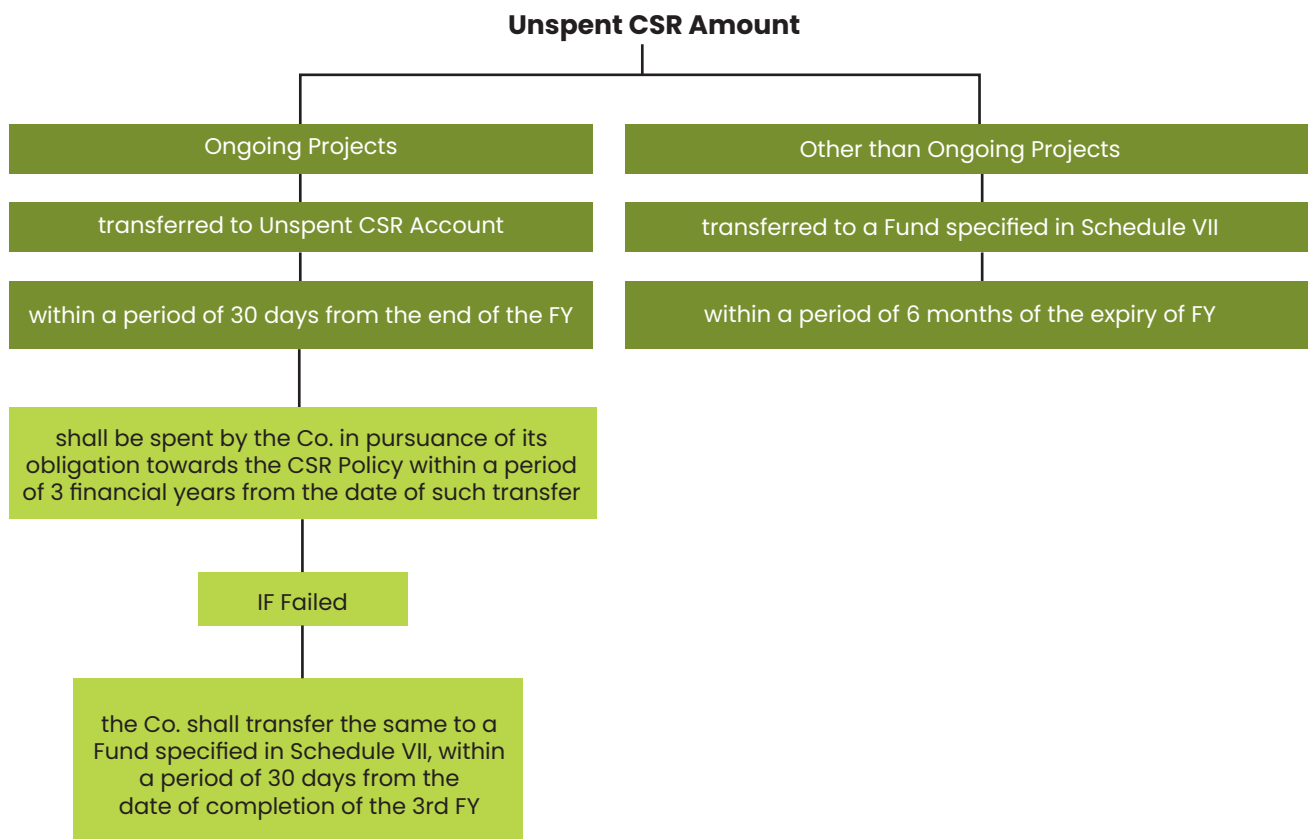
**4. Amount of Contribution Towards CSR**

The Board shall ensure that the company spends, in every financial year,  
 • at least 2% of the average net profits of the co. during the 3 immediately P.F.Ys

Where the company has not completed the period of 3 F.Ys, since its incorporation,  
 • atleast 2% during such immediately preceding financial years

Where the company spends an amount in excess of the requirements  
 • such company may set off such excess amount against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed

**5. Transfer of unspent CSR amount to special account**



**6. When it is not necessary to constitute CSR Committee**

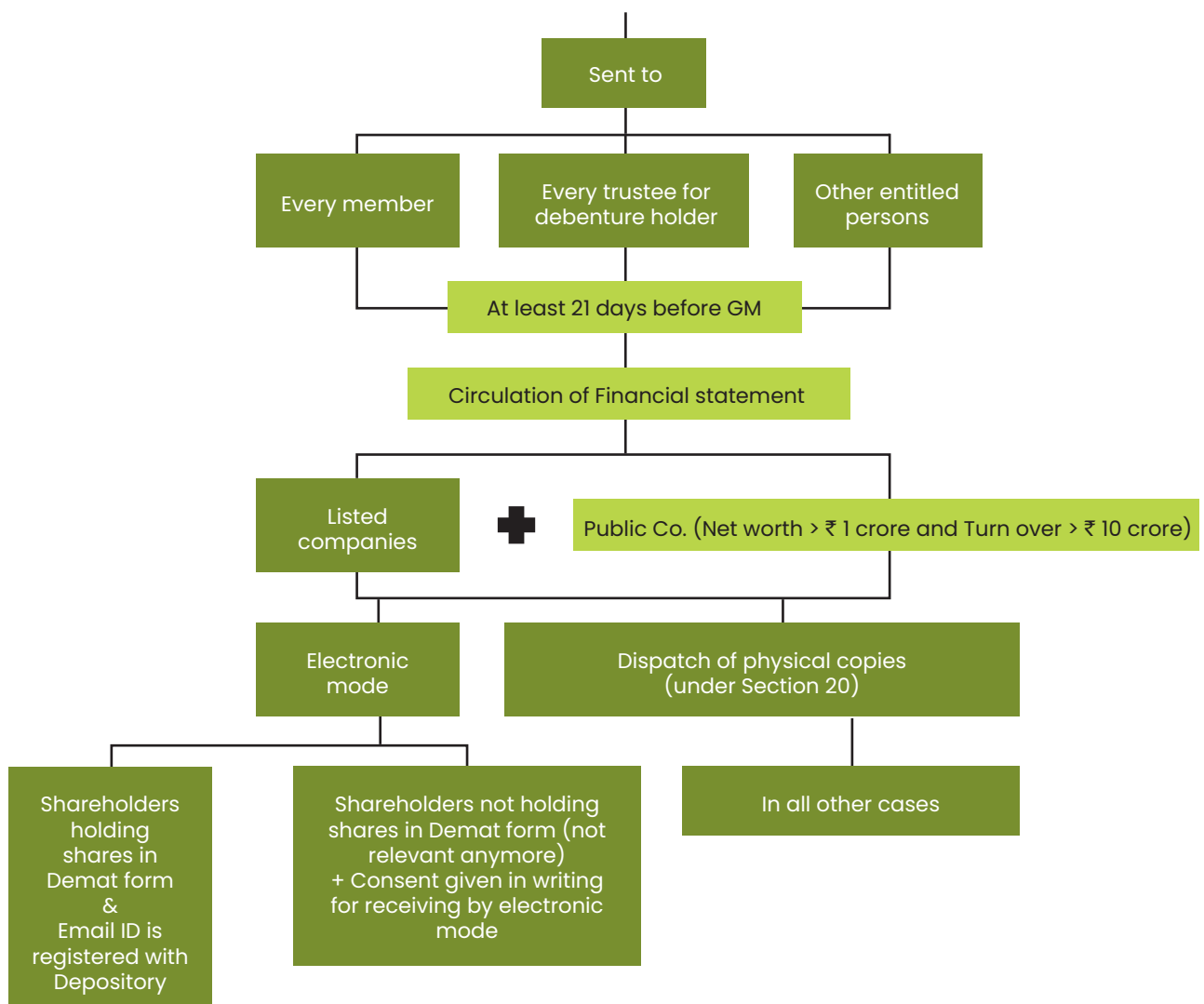


IX. Entitlement of Members to Receive Financial Statement



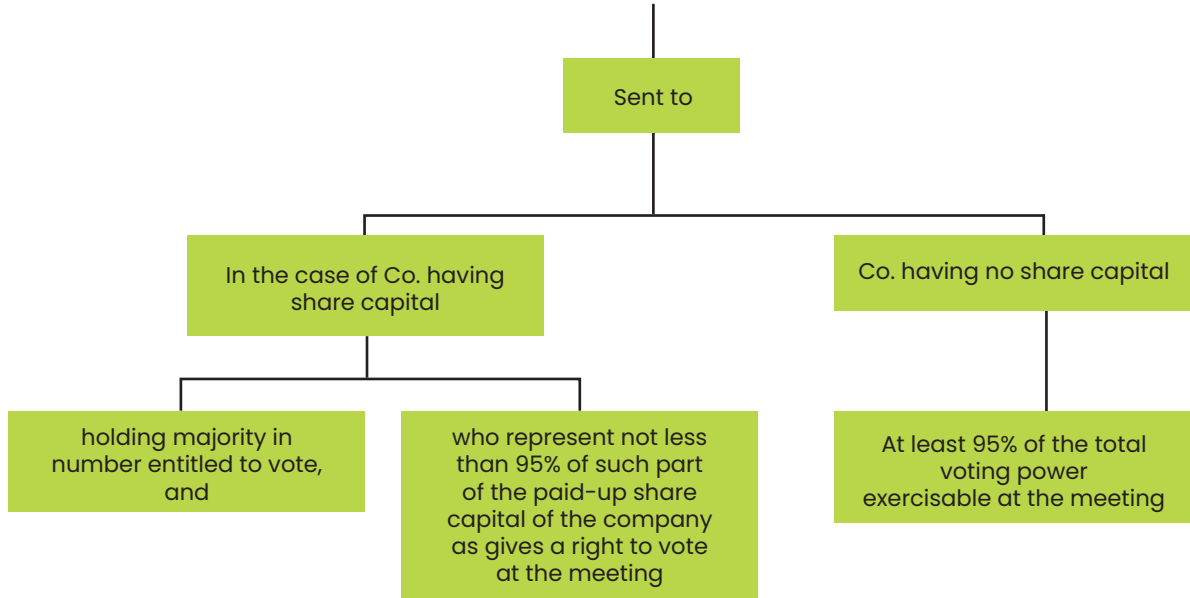
1. Time period for serving of copies of audited financial statement

Copies of audited FS + CFS (if any) + Audit Report + other document

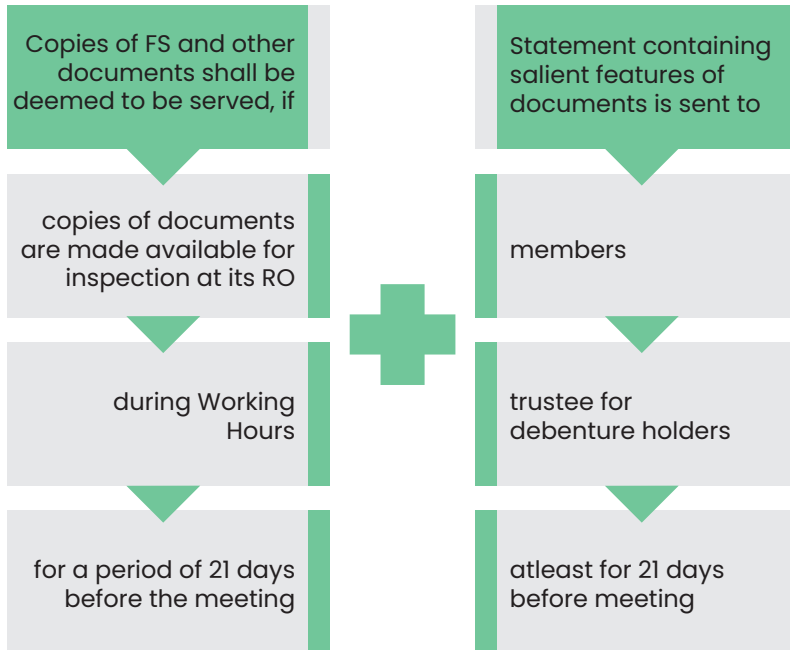


2. Circumstances when a period can be less than prescribed period

Circumstances when a period of less than 21 days be deemed to have been duly sent if it is so agreed by members:

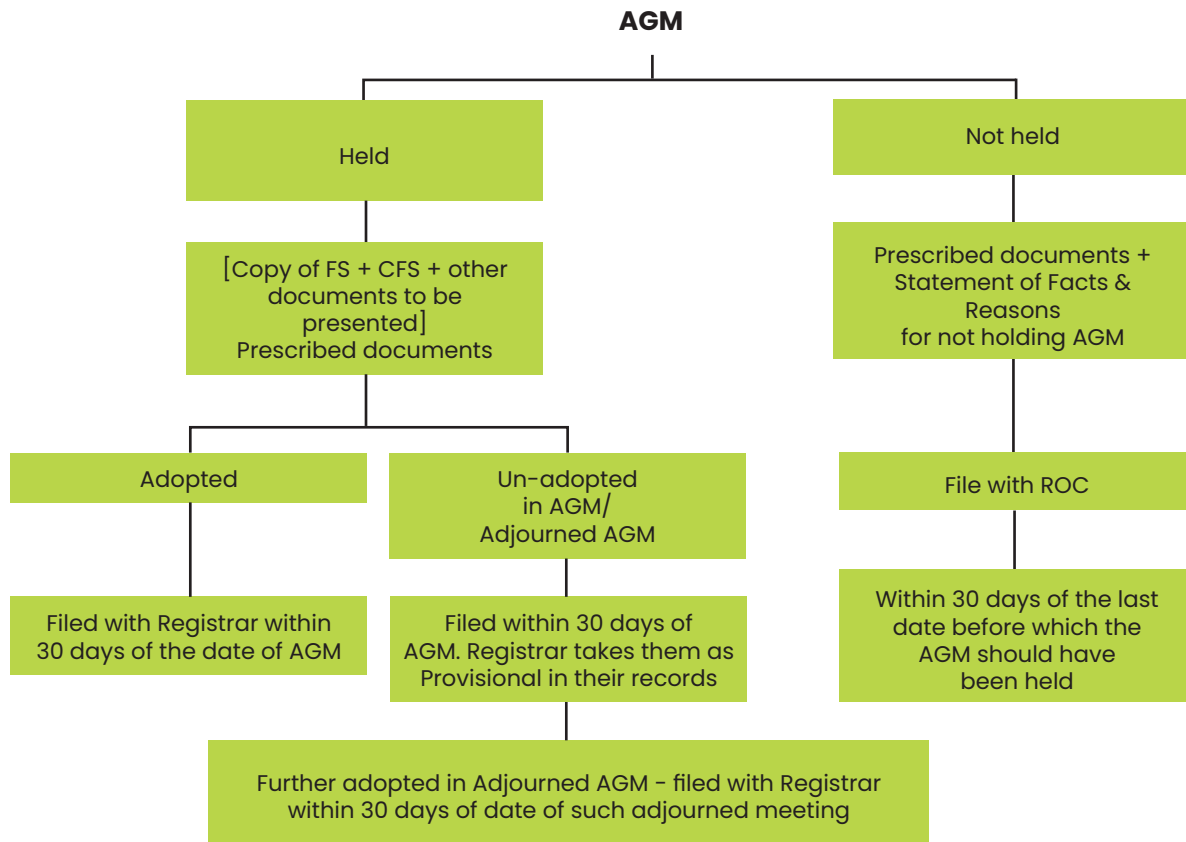


3. In case of listed companies:





X. Financial Statements to be filed with Registrar



- **In case of OPC**, it shall file a copy of the financial statements duly adopted by its members, along with the required documents attached to such financial statements, within **180 days from the closure of the financial year**.
- **In case of companies having subsidiary/s**: A company shall, along with its financial statements to be filed with the Registrar, attach accounts of its subsidiary/s which have been incorporated outside India and which have not established their place of business in India.
- In the case of a subsidiary which has been incorporated outside India (“foreign subsidiary”), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso to section 137(1), shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.



**XI. Internal Audit**

**1. Who can be internal auditor?**



a Chartered Accountant or

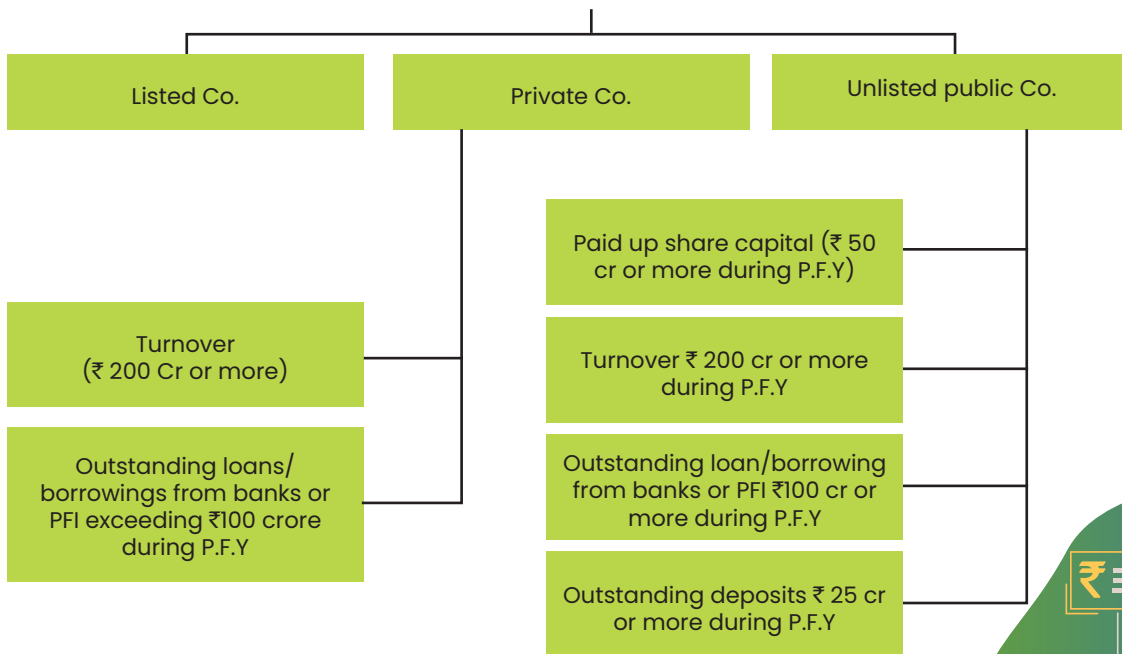
a Cost Accountant, or

such other professional, as may be decided by the Board to conduct internal audit of the functions and activities of the company

Significant point: Internal auditor may be either an individual or a partnership firm or a body corporate. Internal auditor may or may not be an employee of the company

**2. Companies required to conduct internal audit**

**Companies eligible for internal audit**



**3. Scope of Work of Internal Auditor**

The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor-

Formulate the scope,functioning, periodicity and methodology for conducting the internal audit



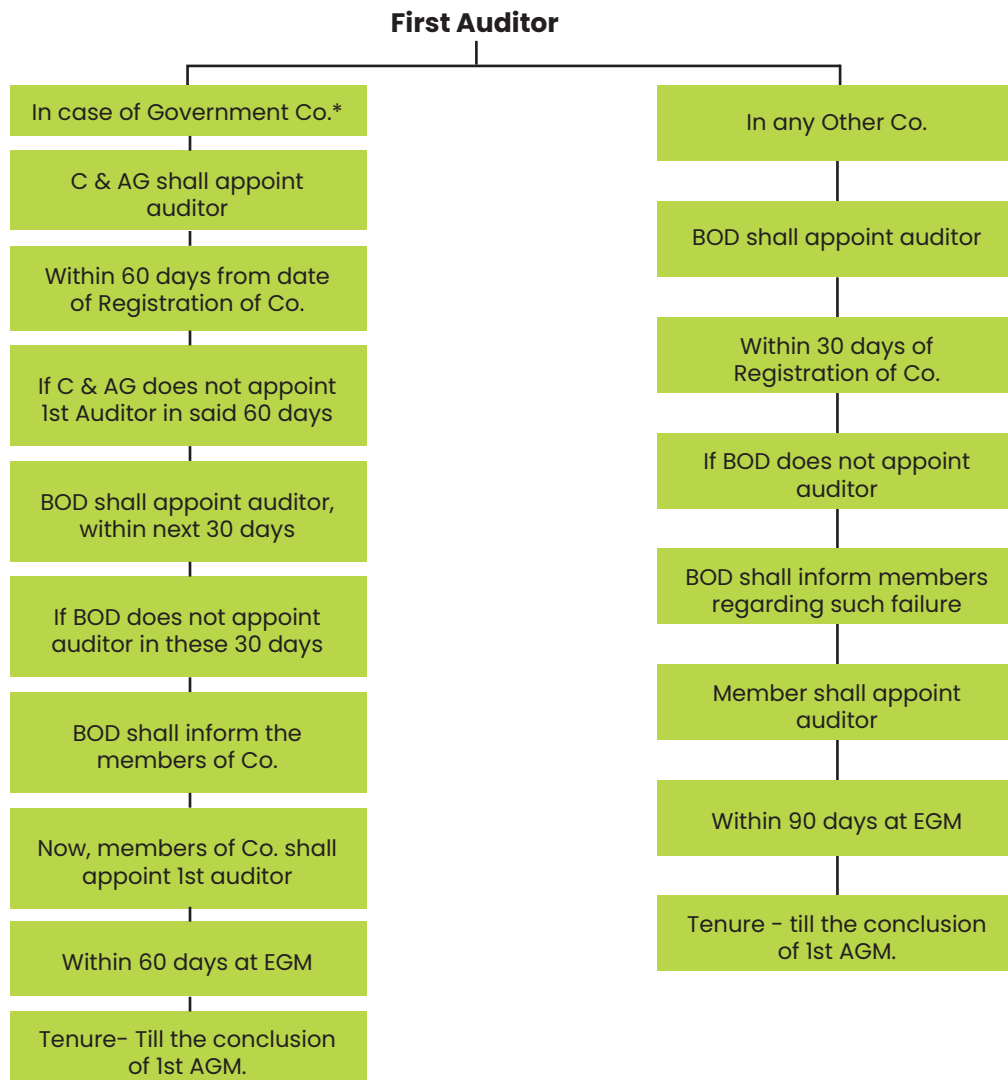
# Chapter 10

## Audit and Auditors

### I. Who Can Be Appointed As An Auditor?

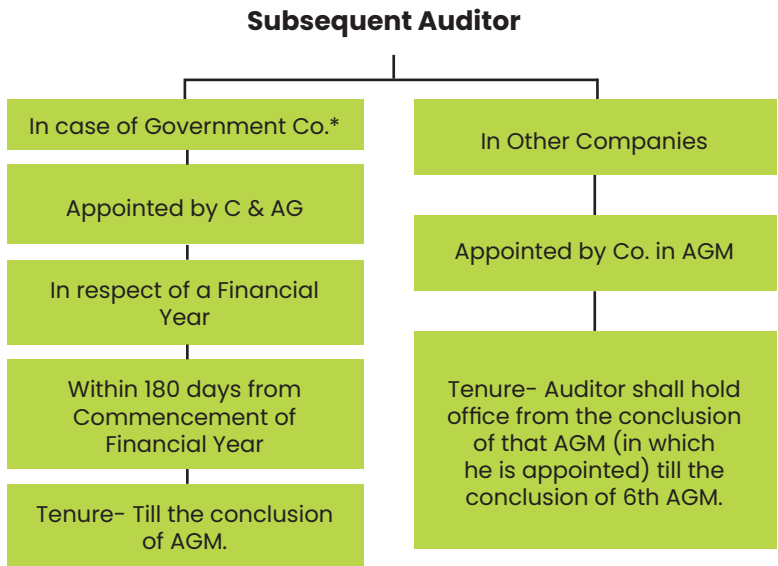


### II. Appointment of First Auditor



\*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

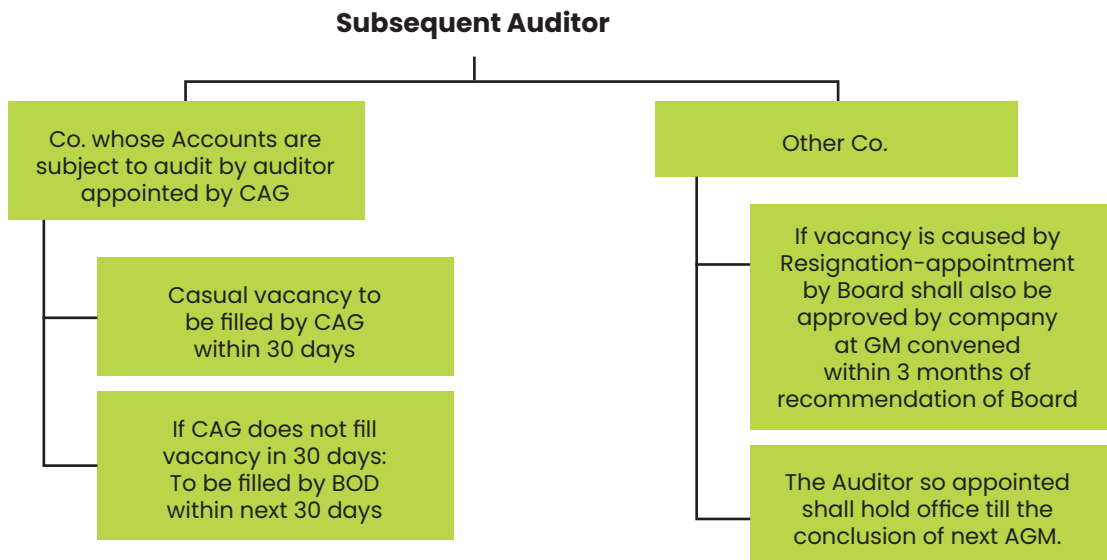
### III. Appointment of Subsequent Auditor



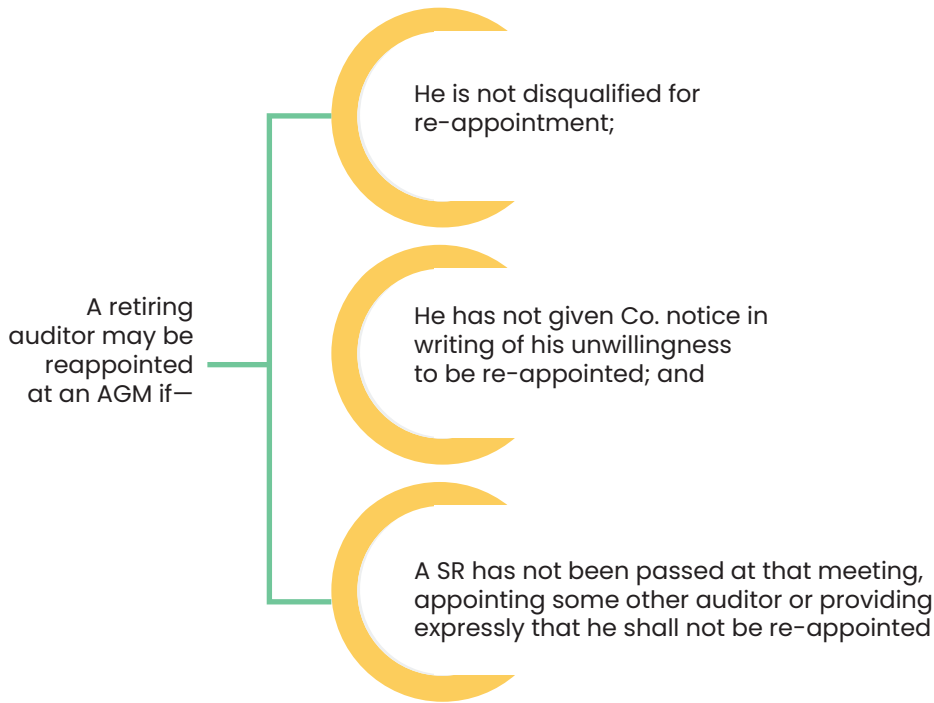
Here, 'appointment' includes re-appointment.

\*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

### IV. Casual Vacancy of Auditor



V. Re-Appointment of Retiring Auditor



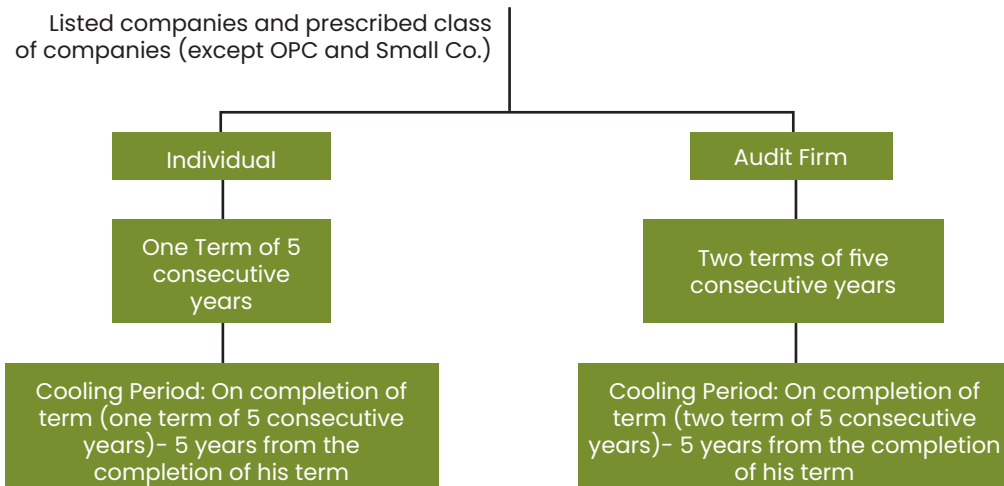
Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company



VI. Term of Auditor

1.

Appointment or Re-appointment as Auditor



2.

#Specified/  
Prescribed  
Class of  
Companies

- (a) unlisted public companies having paid up share capital of rupees 10 crore or more
- (b) Pvt Ltd. companies having paid up share capital of rupees fifty crore or more
- (c) companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

## VII. Disqualification of Auditors

Body Corporate

- Except LLP

Officer or employee of Co.

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

- is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. (Relative may hold security or interest in the company of face value not exceeding ₹ 1 lakh)
- is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 lakh; or
- has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 lakh

a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company

- 'business relationship' shall be construed as any transaction entered into for a commercial purpose, except—
  - (A) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
  - (B) commercial transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses

a person whose relative is a director or is in the employment of the company as a director or key managerial personnel

a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies dormant companies, small companies and private companies having paid-up share capital less than 100 crore rupees

a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction

a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company

## VIII. Steps for Removal of Auditor

A Special Notice is received for Removal of auditor

A board meeting will be held

(To decide about removal and then authorising the filing of application to CG)

Application to CG (To be made in ADT-2), within 30 days of Board meeting

Approval of CG received

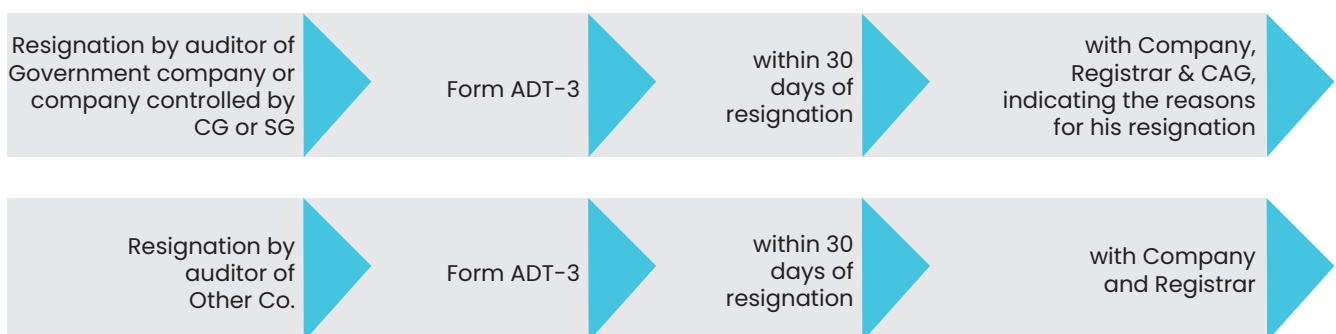
After approval from CG, Special Notice to be sent for GM

Auditor shall be given a reasonable opportunity of being heard

Auditor removal can be done only through Special Resolution

Auditor will be removed

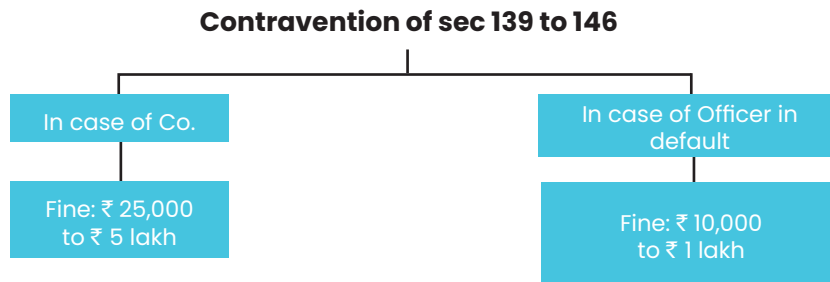
## IX. Resignation by Auditor



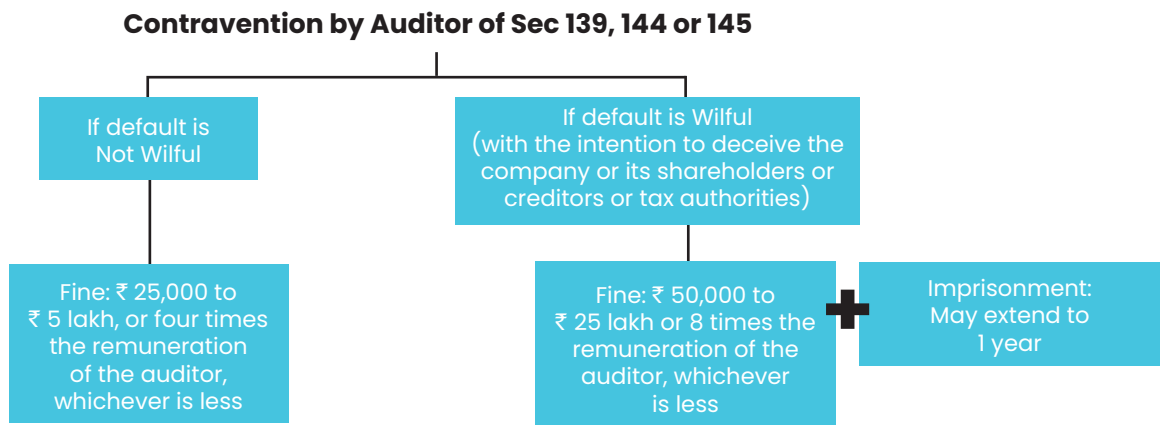
**X. Punishment under Section 147**



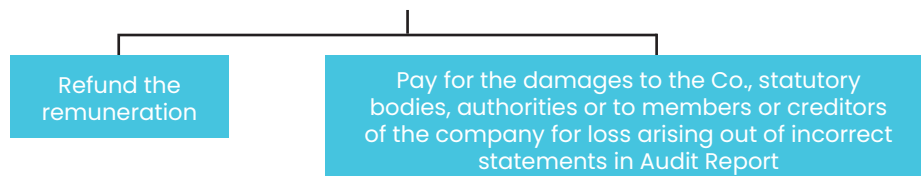
**1. In case of company and officer of company**



**2. In case of auditor**



**If the Auditor has been convicted, he shall also be liable to:**





### 3. In case of audit of a co. conducted by an audit firm

Where the partner/s of the audit firm has / have acted in a -  
fraudulent manner / abetted / colluded in any fraud by, or

in relation to or by - the company / its directors / officers,

the liability (whether civil /criminal) under this Act or in any other law in force,

for such act shall be of the  
• partner / partners concerned of the audit firm • of the firm jointly and severally

in case of criminal liability of an audit firm (in respect of liability other than fine)-  
the concerned partner/s, who acted in a fraudulent manner/ abetted / as the case may be colluded  
in any fraud-

shall only be liable

## Chapter 11

### Companies Incorporated outside India



#### I. Foreign Company

Any company or body corporate incorporated outside India

has a place of business in India whether by itself or through an agent, physically or through electronic mode

conducts any business activity in India in any other manner

electronic mode carrying out electronically based, whether main server is installed in India or not, including, but not limited to

business to business and business to consumer transactions, data interchange and other digital supply transactions;

offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

online services such as telemarketing, telecommuting, telemedicine, education and information research; and

all related data communication services

whether conducted by:

e-mail

mobile devices

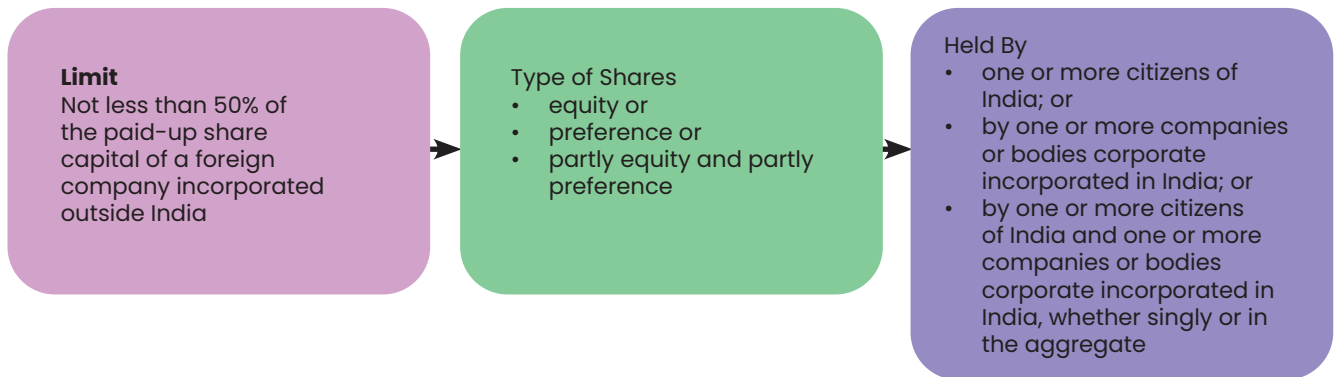
social media

cloud computing

document management

voice or data transmission or otherwise

## II. Applicability of provisions of Chapter XXII to foreign companies

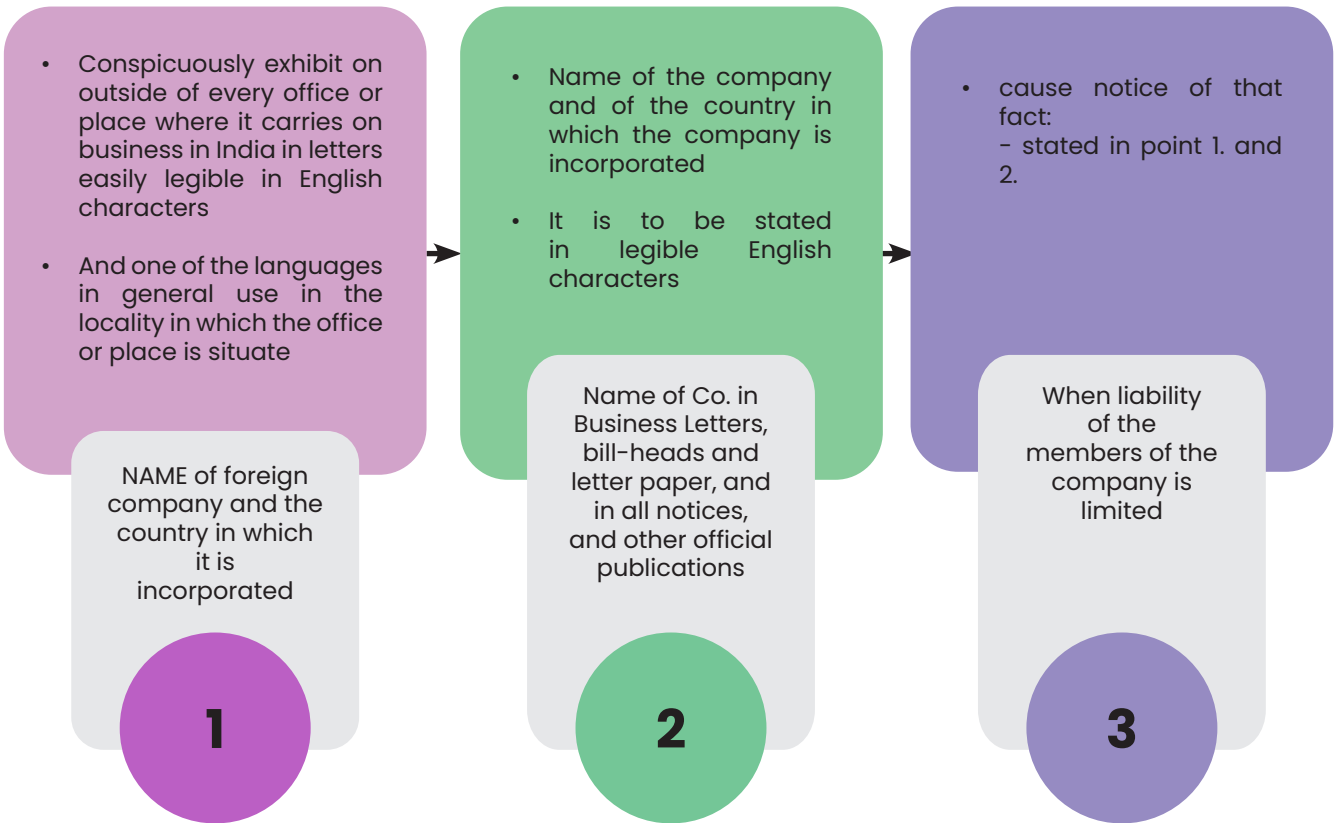


## III. Documents, etc., to be delivered to Registrar by Foreign Companies

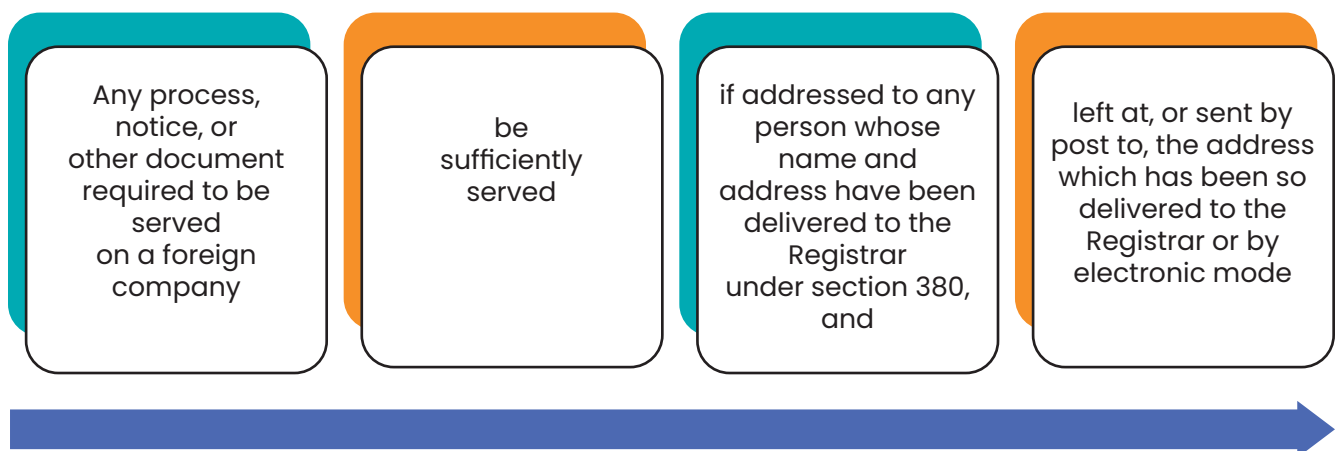
Every foreign company within 30 days of establishment of place of business in India, deliver to the Registrar for registration	Other Points
<ul style="list-style-type: none"> <li>• certified copy of the charter, statutes or memorandum and articles (in English language)</li> <li>• full address of the registered office</li> <li>• list of the directors and secretary of the company</li> <li>• name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company any notices or other documents required to be served on the company</li> <li>• full address of principal place of business in India</li> <li>• particulars of opening and closing of a place of business in India on earlier occasion/s</li> <li>• declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad</li> </ul>	<ul style="list-style-type: none"> <li>• Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi</li> <li>• If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India</li> <li>• Any alteration in the documents is to be delivered to the Registrar within 30 days of such alteration (a return containing the particulars of the alteration)</li> </ul>



#### IV. Display of name, etc., of foreign company



#### V. Service on foreign company



## VI. Registration of prospectus

### 1. Signing and delivery of prospectus

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

copy of prospectus certified by the chairperson of the company and 2 other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and

states on the face of it that a copy has been so delivered, and

there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.



## 2. Documents to be annexed to the prospectus

any consent to the issue of the prospectus required from any person as an expert;

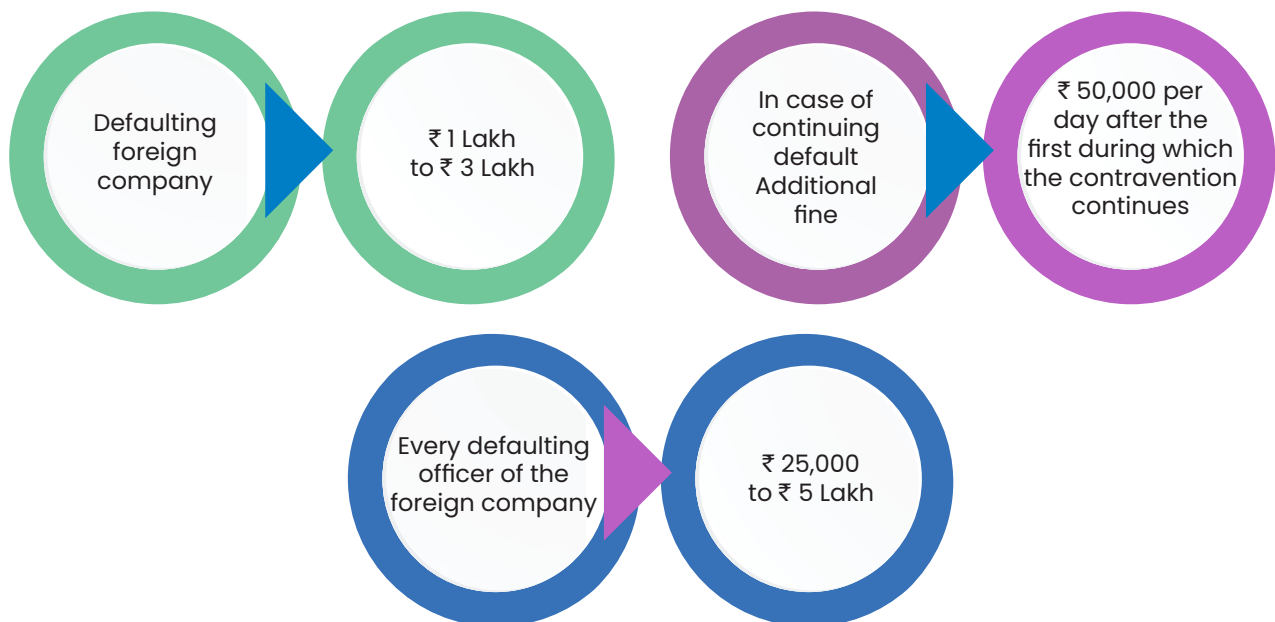
copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;

a copy of underwriting agreement; and

a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

## VII. Punishment in case of failure to comply with provisions of this Chapter



## VIII. Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

### Not affecting the validity of

- any contract, dealing or transaction entered into by the company
- its liability to be sued in respect thereof

### The Co. shall not be entitled to

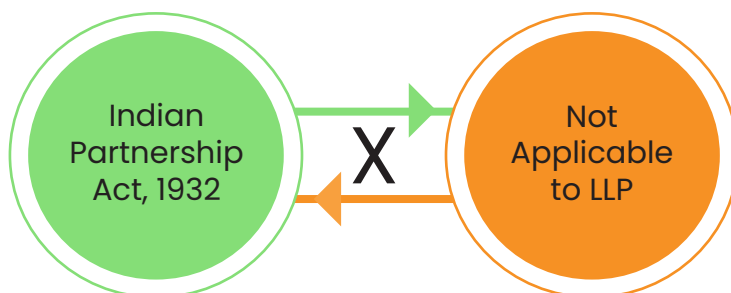
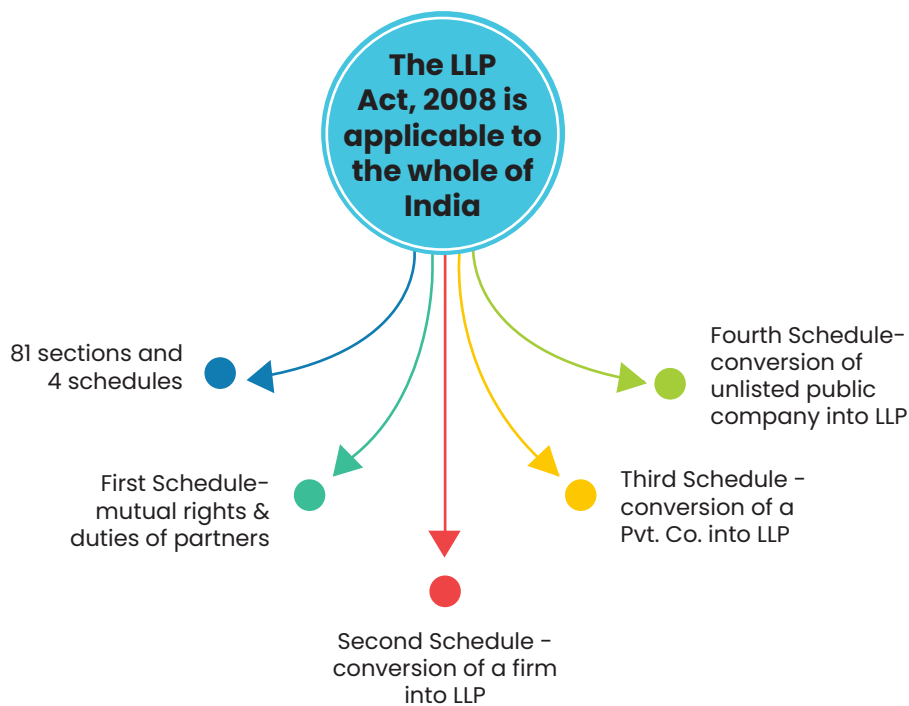
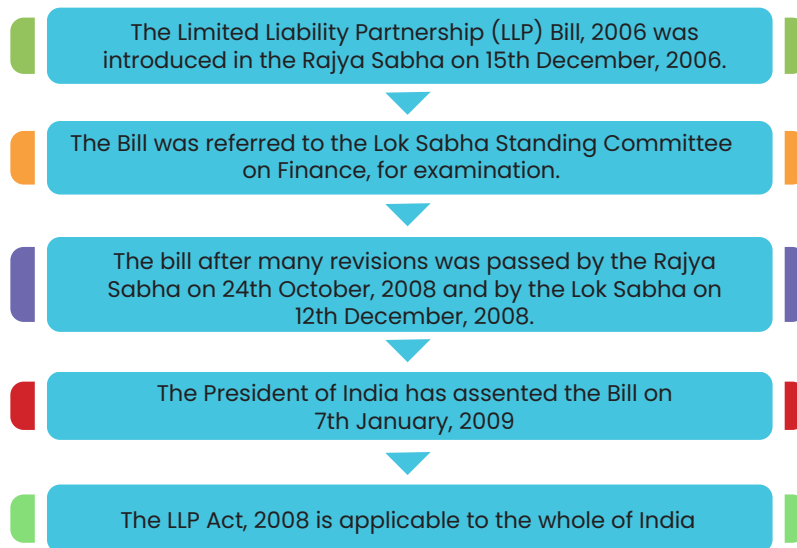
- bring any suit,
- claim any set-off,
- make any counter-claim
- institute any legal proceeding in respect of any such contract, dealing or transaction
- until the company has complied with the provisions of the Companies Act, 2013, applicable to it

**The Limited Liability Partnership Act, 2008**

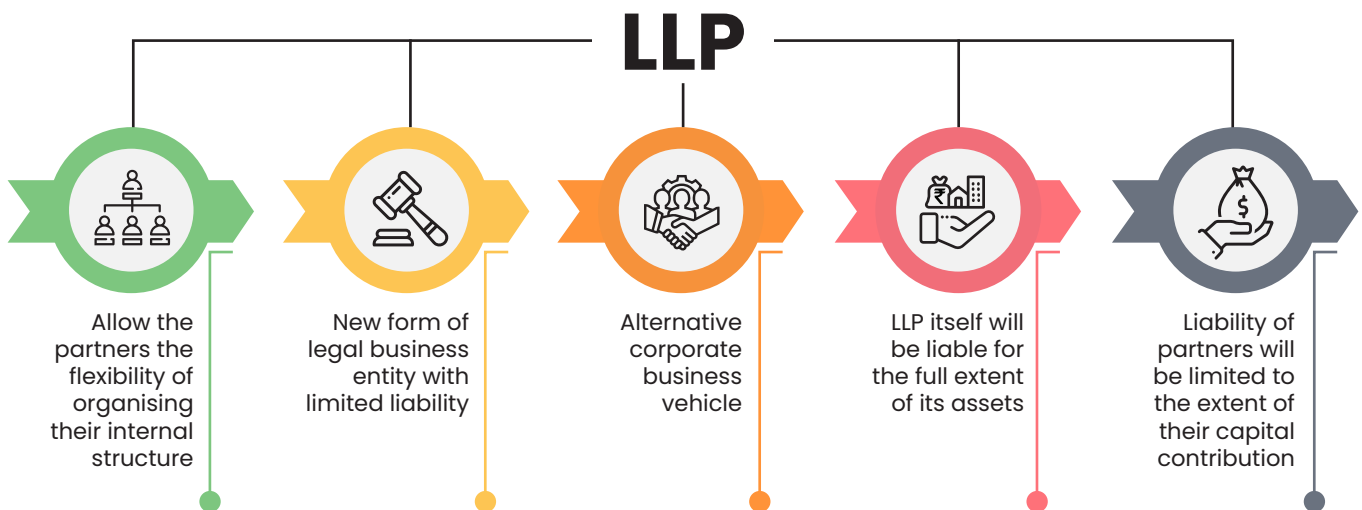


## Chapter 12

### The Limited Liability Partnership Act, 2008



## I. What Is LLP



## II. Need & Advantages of LLP

### Need for LLP

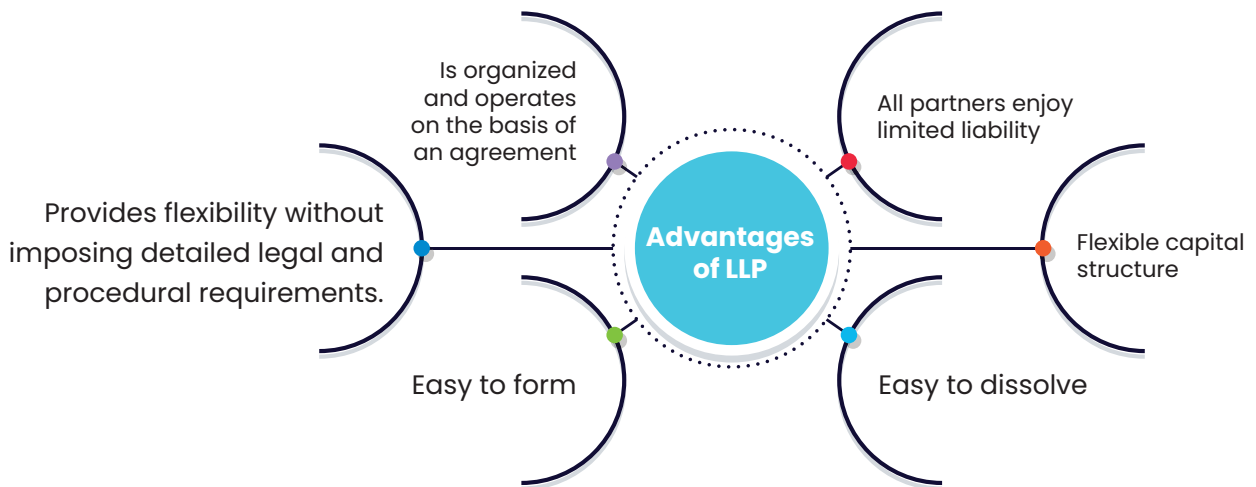
A need for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand.

In order to enable professional expertise and entrepreneurial initiative and combine, organize and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.

LLP provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

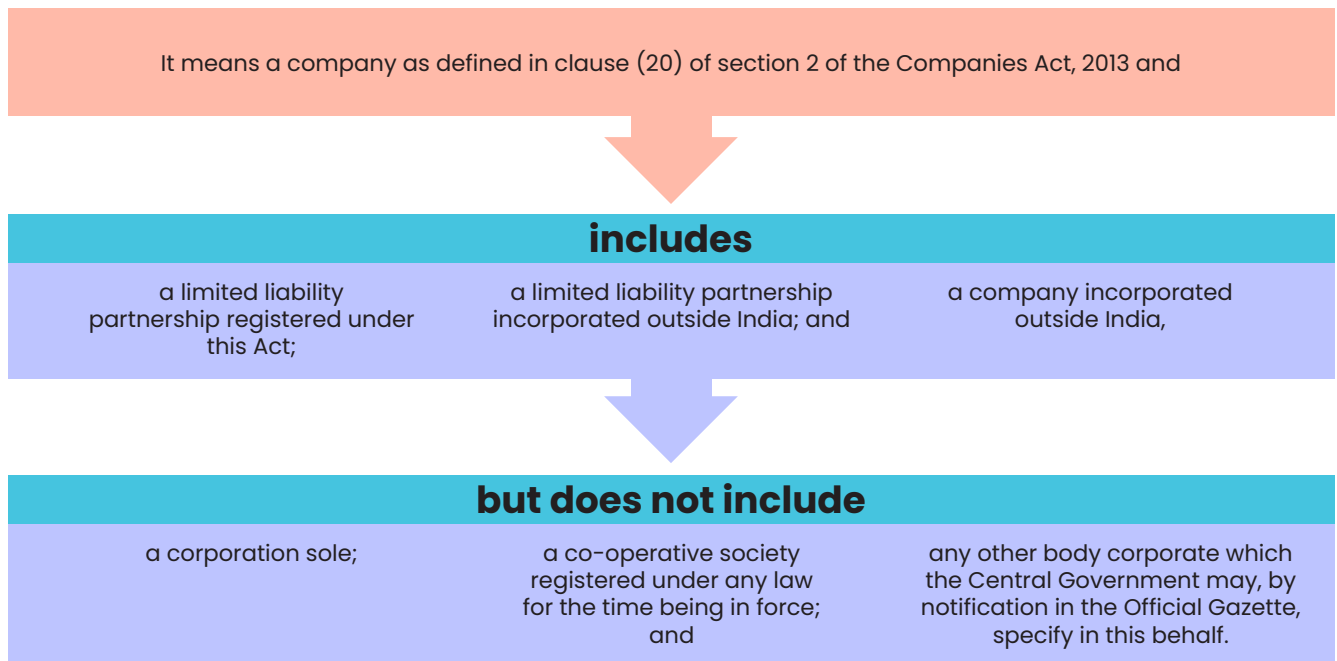


## III. Major Definitions


### 1. Address



### 2. Body Corporate




3. Business



includes every trade, profession, service and occupation	except any activity which the Central Government may, by notification, exclude.
--	---

4. Financial Year




**Financial Year**

The period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

5. Foreign LLP



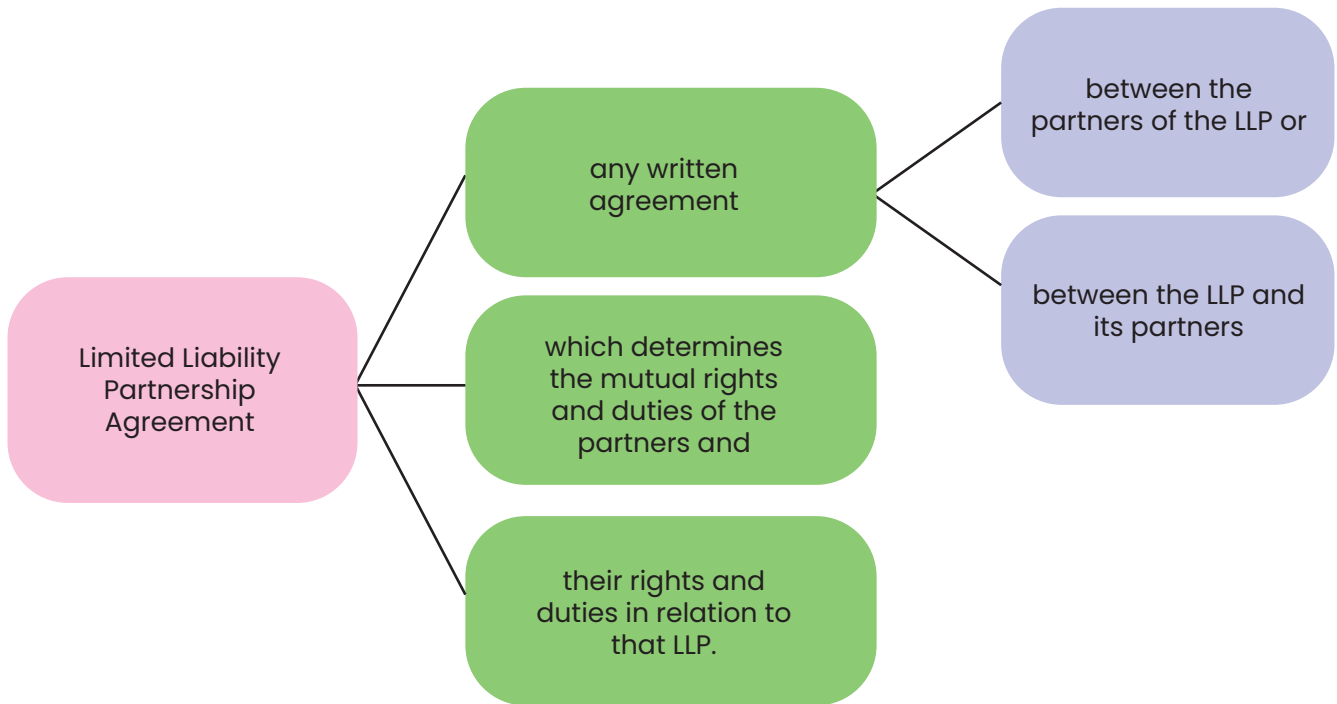
LLP

- formed
- incorporated
- registered
- OUTSIDE INDIA

Establishes a place of business

WITHIN INDIA

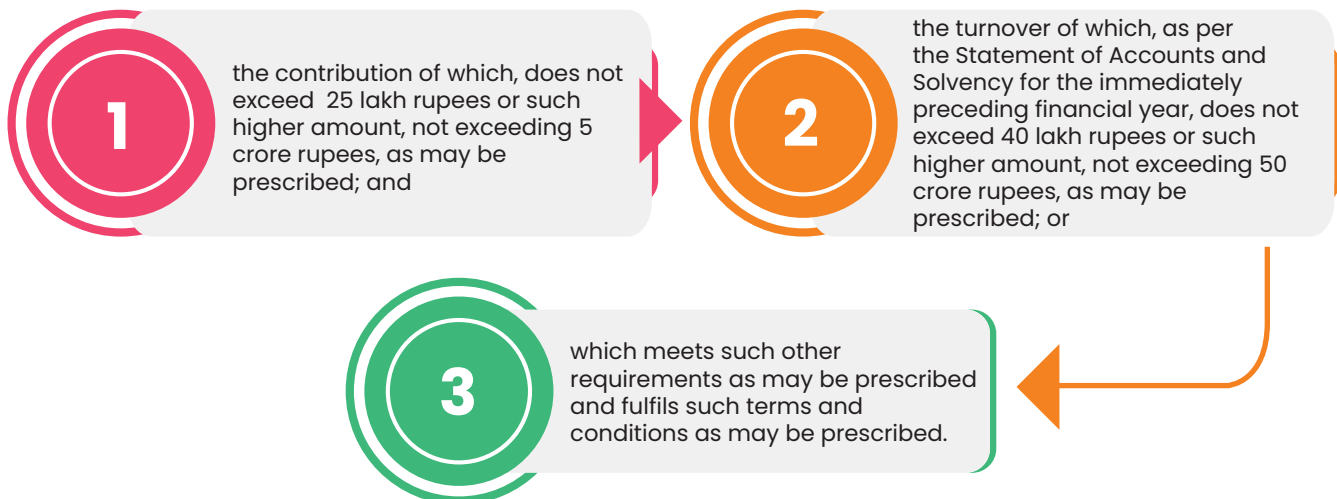
6. Limited Liability partnership agreement



7. Small Limited Liability partnership



It means a LLP—



## IV. Partners

### Partners

Any individual or body corporate may be a partner in a LLP

However, an individual shall not be capable of becoming a partner of a LLP, if—

he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

he is an undischarged insolvent; or

he has applied to be adjudicated as an insolvent and his application is pending

### 1. Minimum Number Of Partners

Every LLP shall have at least two partners



If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced,

the person, who is the only partner of the LLP during the time that it so carries on business after those six months and

has the knowledge of the fact that it is carrying on business with him alone,

shall be liable personally for the obligations of the LLP incurred during that period.

### 2. Designated Partners

Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

**Resident in India:** For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

## V. Incorporation

### 1. Incorporation Document

For a LLP to be incorporated:

two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

Statement to be filed:

statement in the prescribed form,

made by either an advocate, or a CS or a CA or a Cost Accountant, who is engaged in the formation of the LLP and

by any one who subscribed his name to the incorporation document,

that all the requirements of this Act and the rules made thereunder have been complied with,

in respect of incorporation and matters precedent and incidental thereto.

**The incorporation document shall—**



be in a form as may be prescribed;

state the name of the LLP;

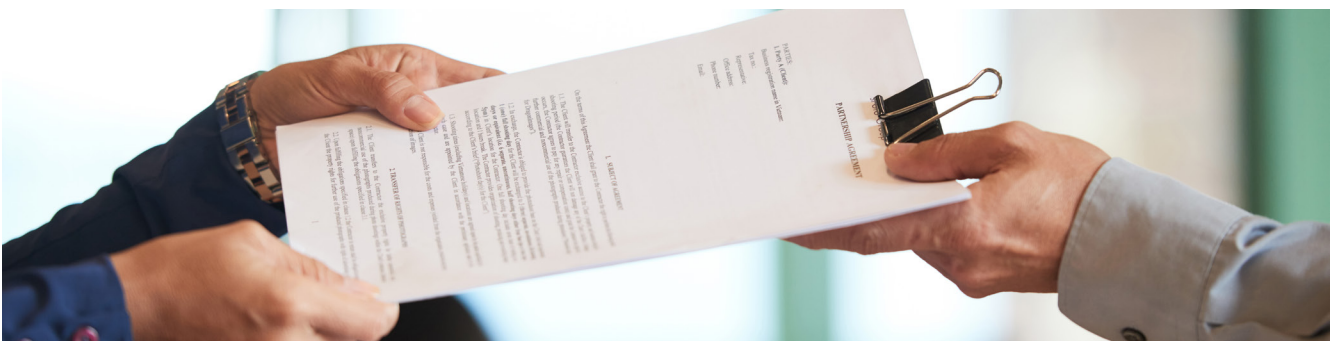
state the proposed business of the LLP;

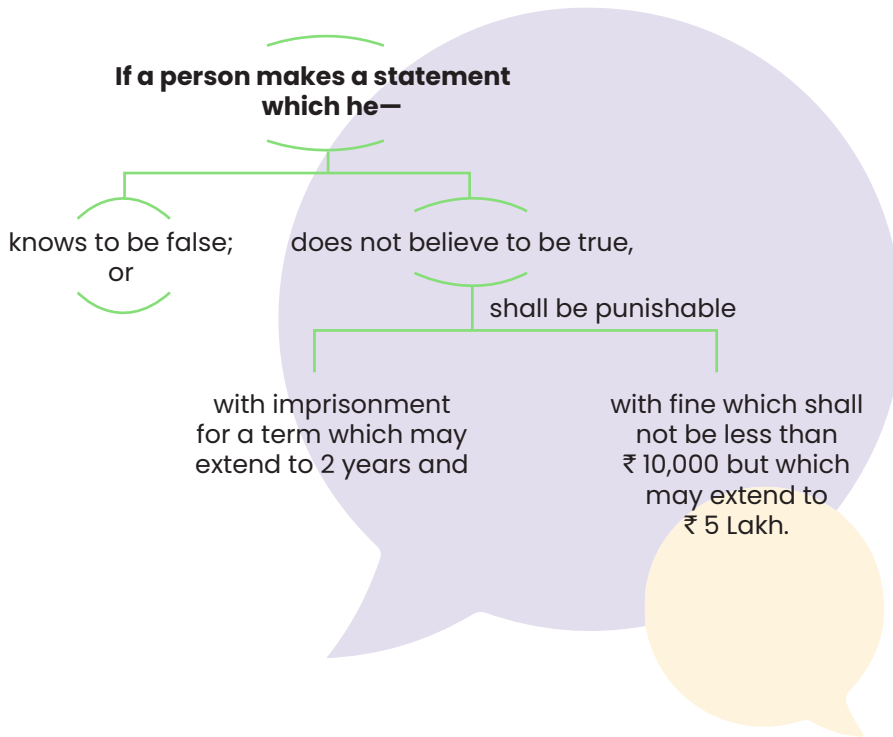
state the address of the registered office of the LLP;

state the name and address of each of the persons who are to be partners of the LLP on incorporation;

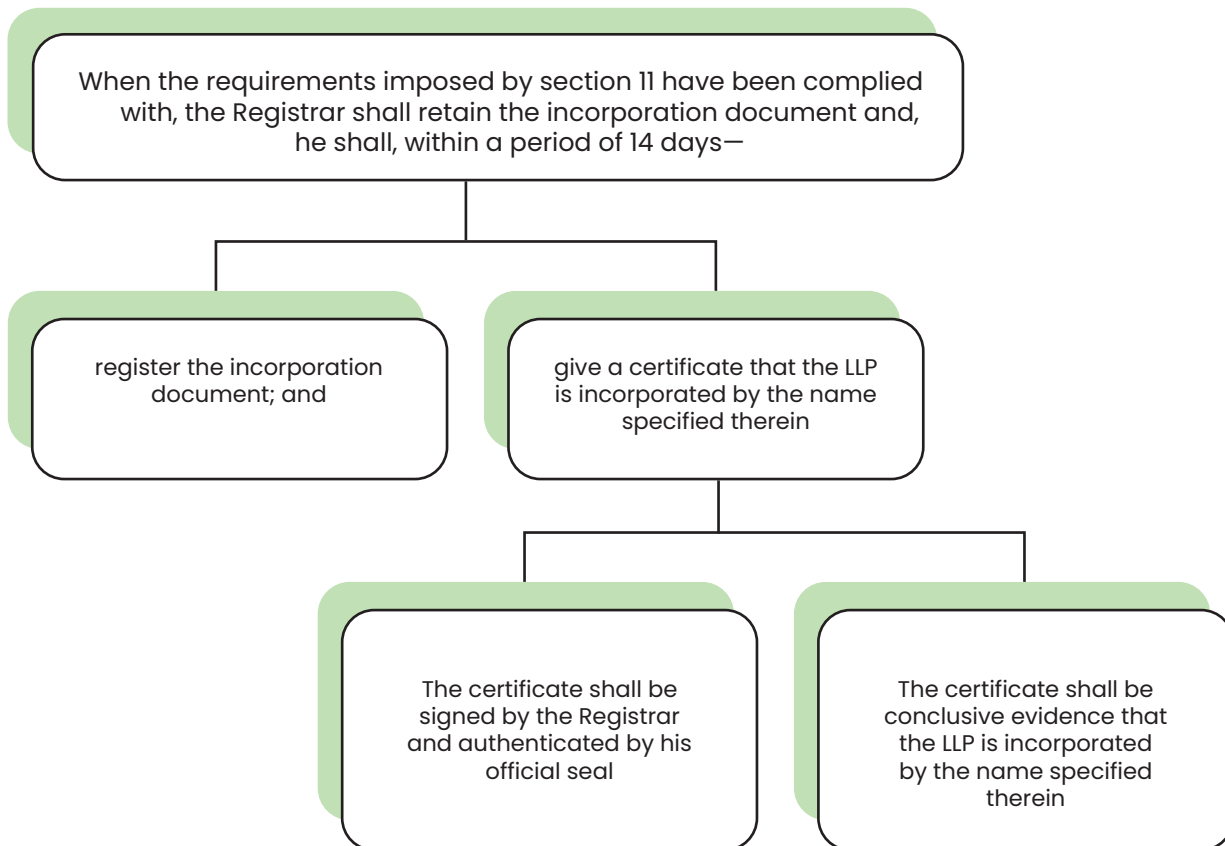
state the name and address of the persons who are to be designated partners of the LLP on incorporation;

contain such other information concerning the proposed LLP as may be prescribed.





**2. Incorporation By Registration**





## 3. Registered office of LLP and change therein

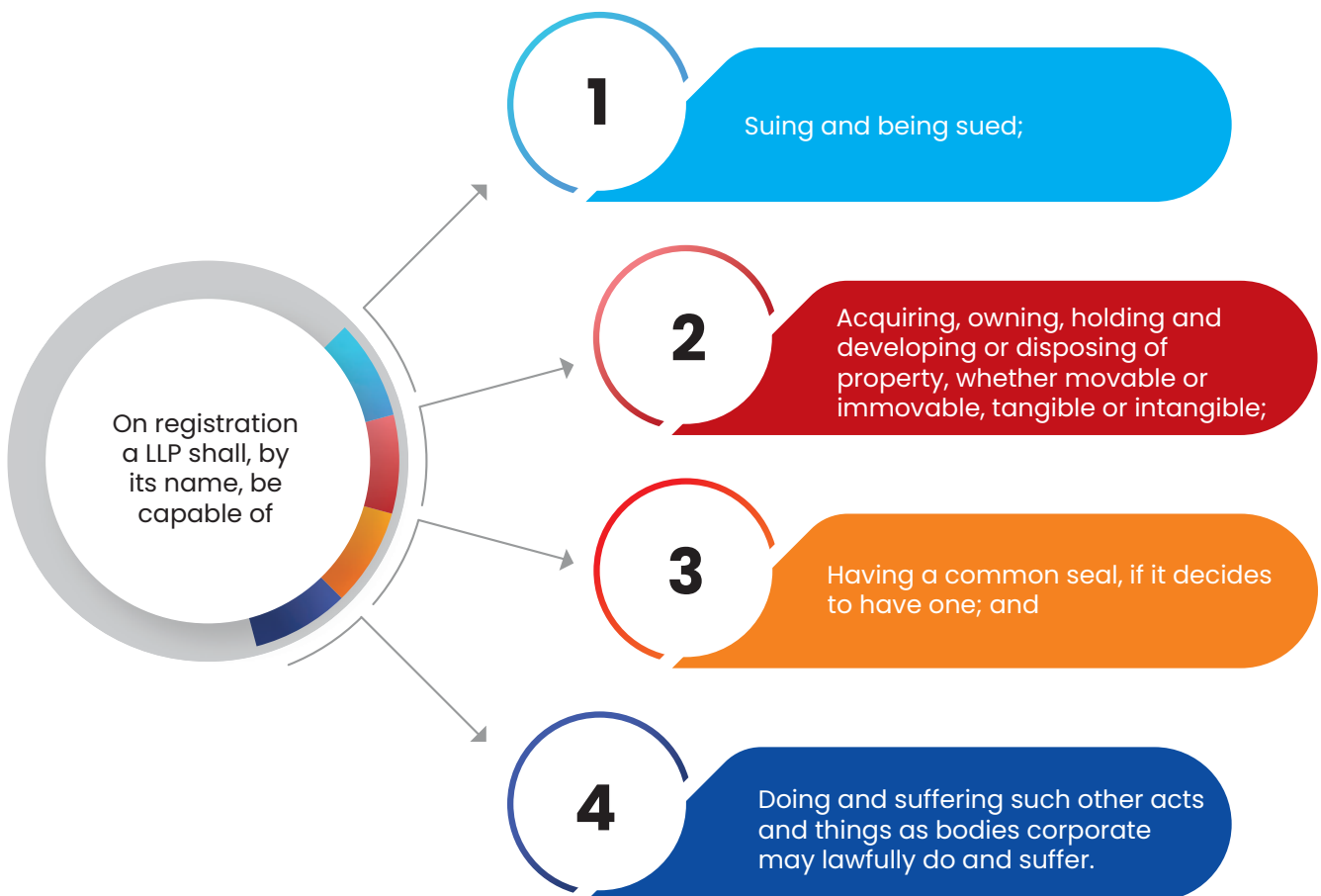
Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose.

A LLP may change the place of its registered office and file the notice of such change with the Registrar and any such change shall take effect only upon such filing.

If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000 for the LLP and its every partner.

## 4. Effect of registration



**Every limited liability partnership shall have either the words**

- “limited liability partnership” or
- the acronym “LLP” as the last words of its name.

**No LLP shall be registered by a name which, in the opinion of the Central Government is—**

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

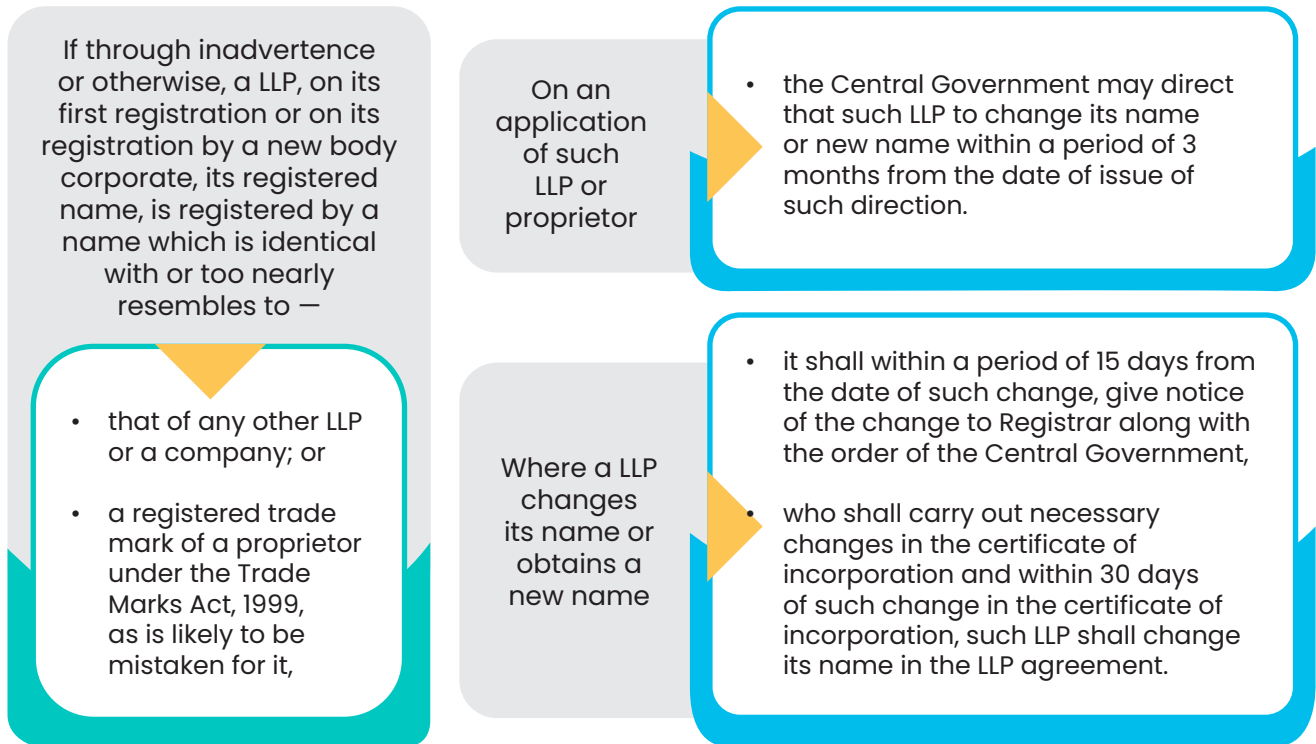
### 5. Reservation of name

A person may apply in such form and manner and accompanied by prescribed fee to the Registrar for the reservation of a name set out in the application as—

- the name of a proposed LLP; or
- the name to which a LLP proposes to change its name.

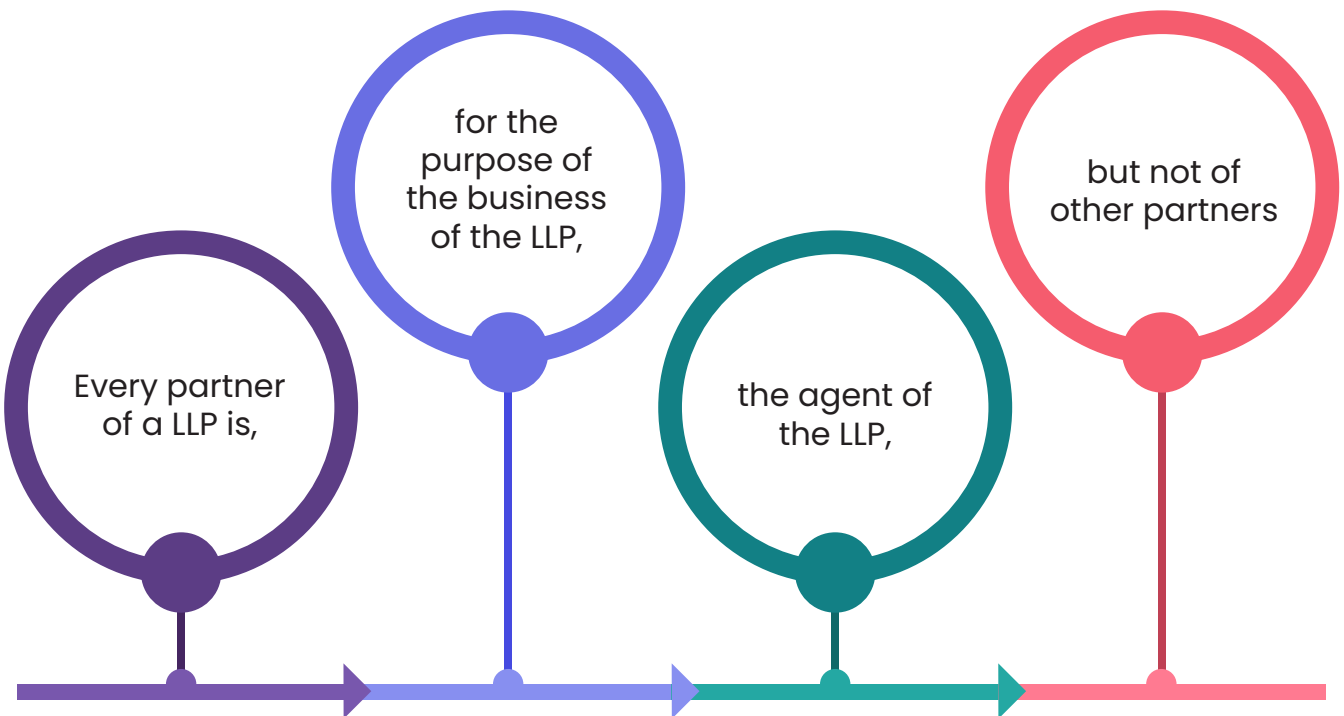
Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied reserve the name for a period of 3 months from the date of intimation by the Registrar.

**6. Rectification of name of LLP**

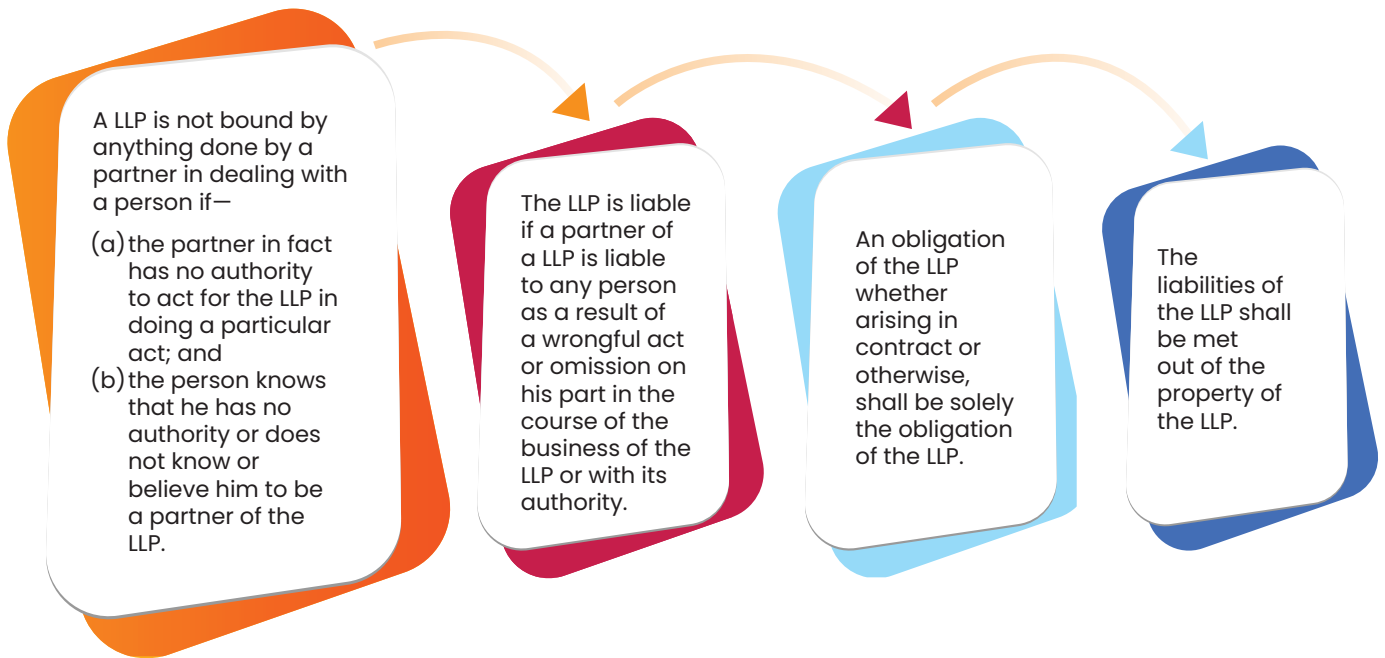


**VI. Extent and limitation of liability of LLP and partner**

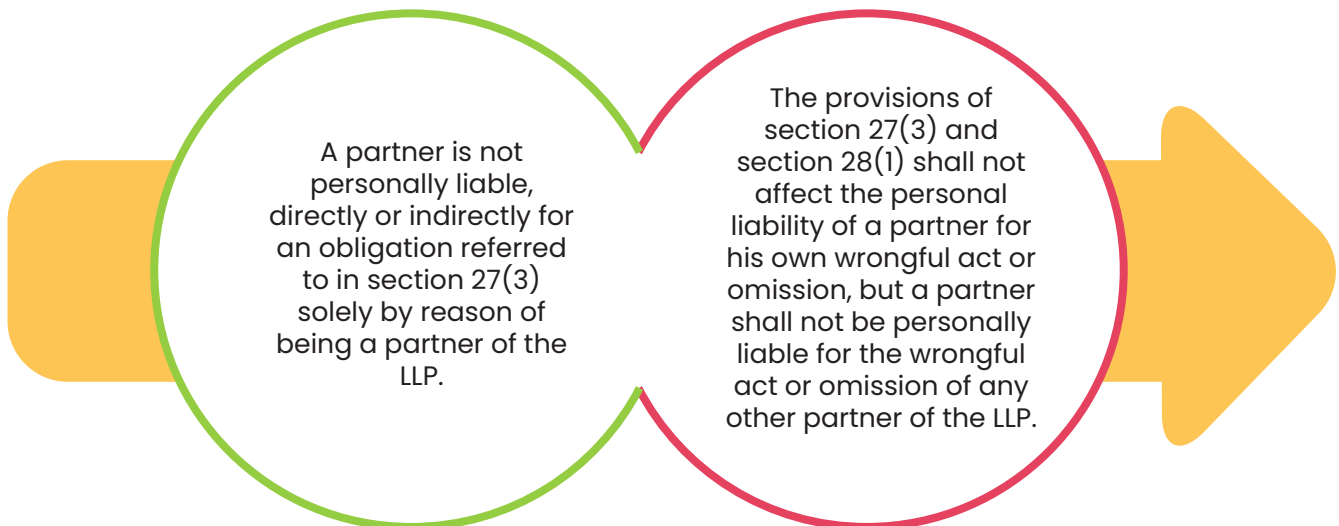
**1. Partner as agent**



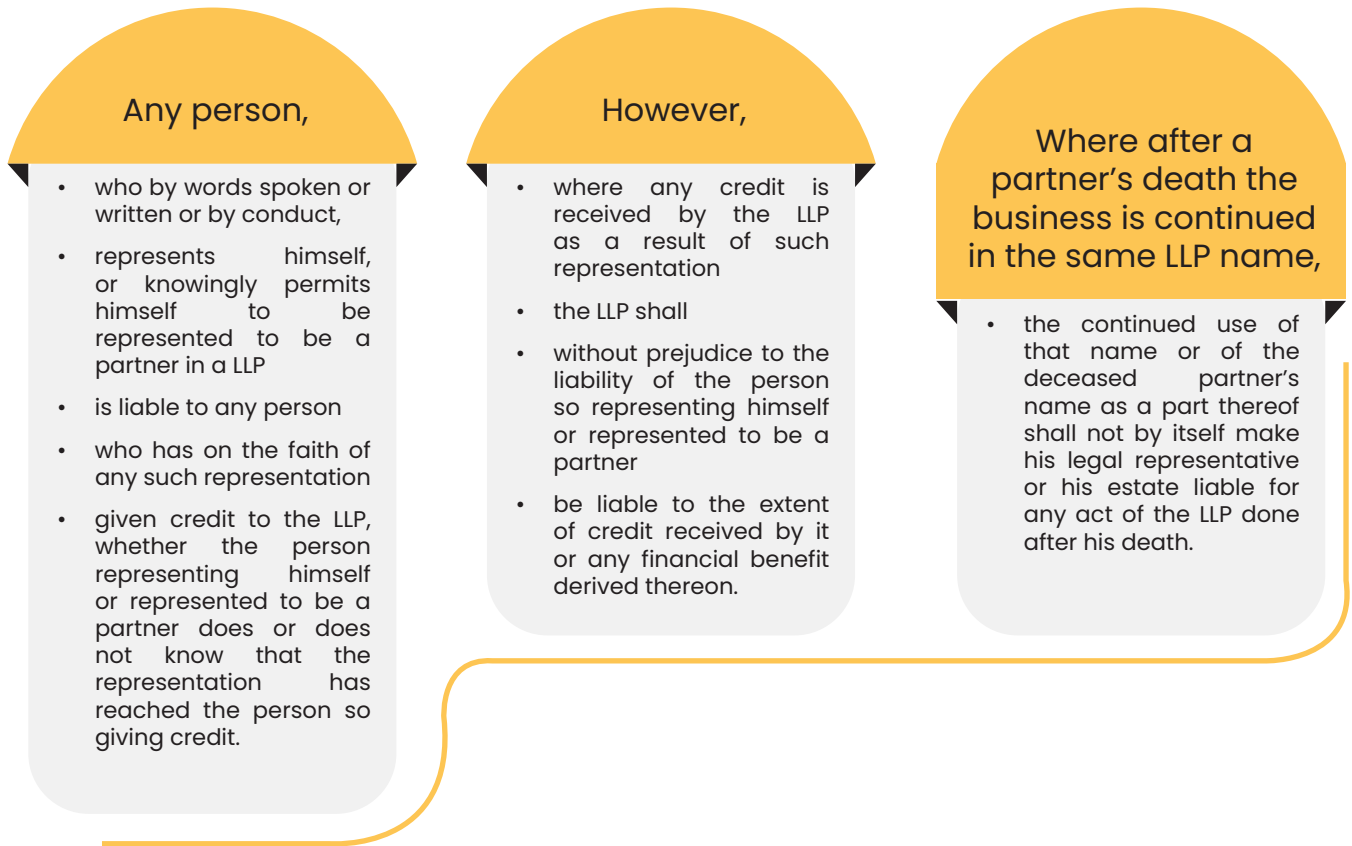
## 2. Extent of liability of LLP



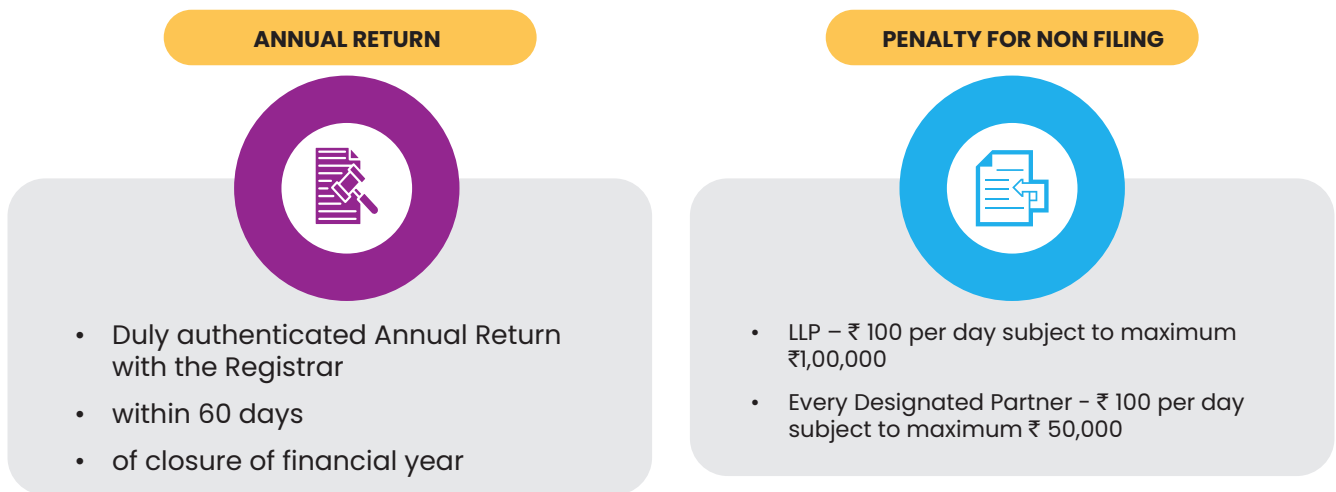
## 3. Extent of liability of partner



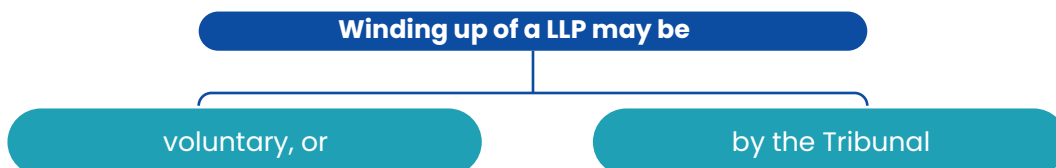
## VII. Holding out



## VIII. Annual Return



## IX. Winding Up of LLP



### Circumstances in which LLP may be wound up by Tribunal

if the LLP decides that LLP be wound up by the Tribunal

if, for a period of more than 6 months, the number of partners of the LLP is reduced below 2

if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order

if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years

### X. Distinction between LLP and Partnership Firm

	Basis	LLP	Partnership firm
1.	<b>Regulating Act</b>	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	<b>Body corporate</b>	It is a body corporate.	It is not a body corporate.
3.	<b>Separate legal entity</b>	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	<b>Creation</b>	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	<b>Registration</b>	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	<b>Perpetual succession</b>	The death, insanity, retirement or insolvency of the partner(s) does not affect existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	<b>Name</b>	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	<b>Liability</b>	Liability of each partner limited to the extent of agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.

9.	<b>Mutual agency</b>	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	<b>Designated partners</b>	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	<b>Legal compliances</b>	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
12.	<b>Annual filing of documents</b>	LLP is required to file: (i) Statement of accounts and solvency (to be filed annually) (ii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
13.	<b>Minor as partner</b>	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

## XI. Distinction Between LLP and Company

	Basis	LLP	Company
1.	<b>Regulating Act</b>	The Limited Liability Partnership Act, 2008.	The Companies Act, 2013.
2.	<b>Members/ Partners</b>	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	<b>Name</b>	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
4.	<b>No. of members/ partners</b>	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.

5.	<b>Liability of members/ partners</b>	Liability of each partner limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
6.	<b>Management</b>	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.







## **PART II**

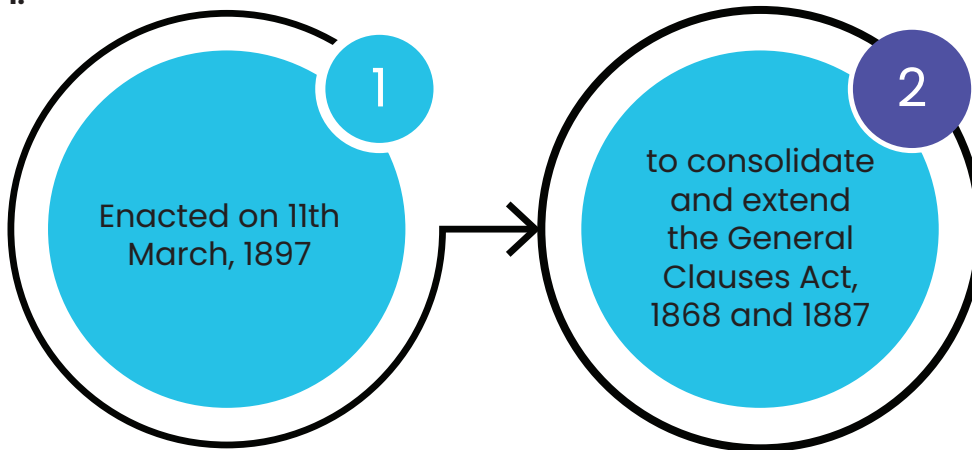
**The General Clauses Act, 1897**

## Chapter 1

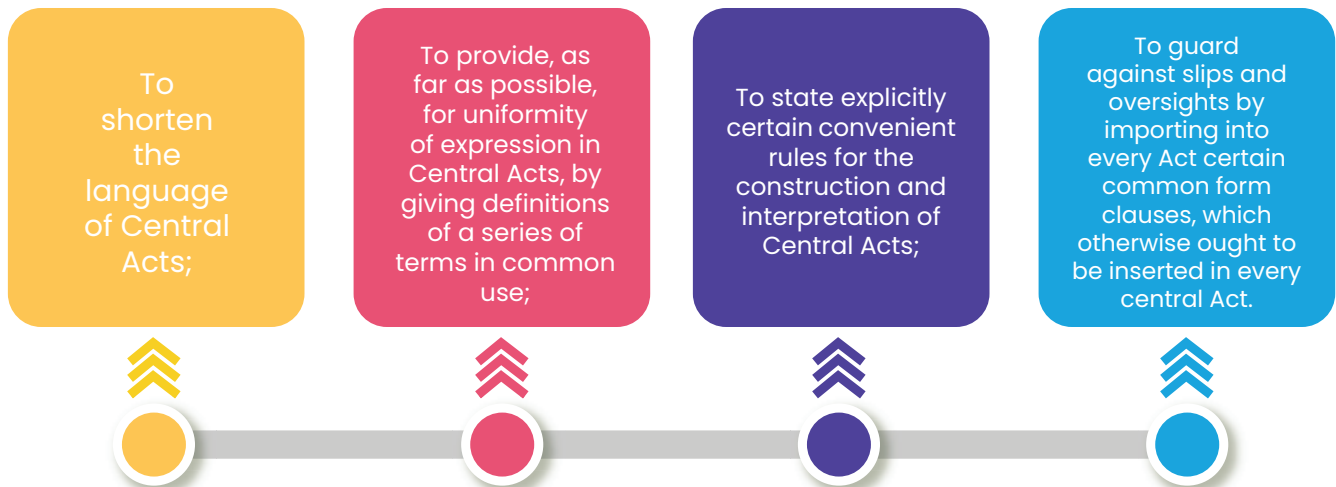
### The General Clauses Act, 1897

#### I. Introduction

1.



#### 2. Object of the General Clauses Act, 1897

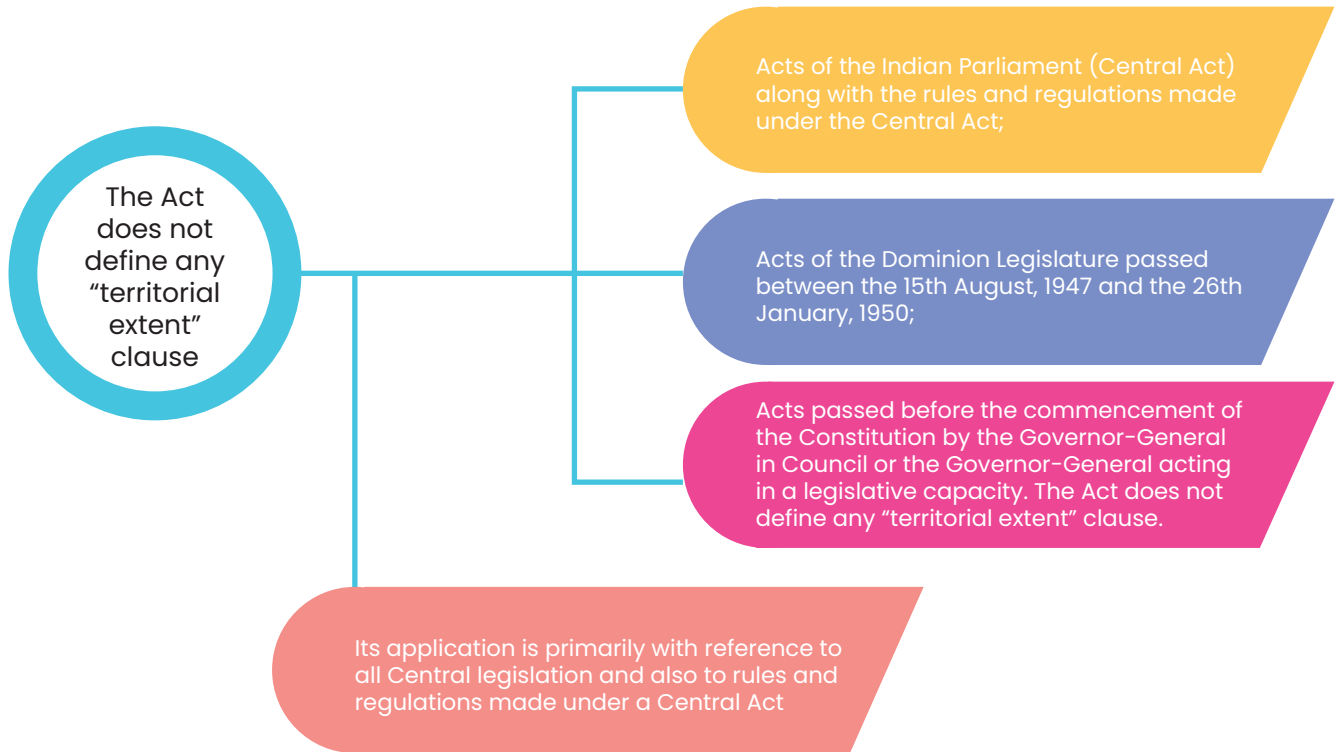


#### 3. Purpose of the General Clauses Act, 1897

To place in one single statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations.

The General Clauses Act, 1897 also comes for a rescue in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post-constitutional laws. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

4. Applicability of the General Clauses Act, 1897

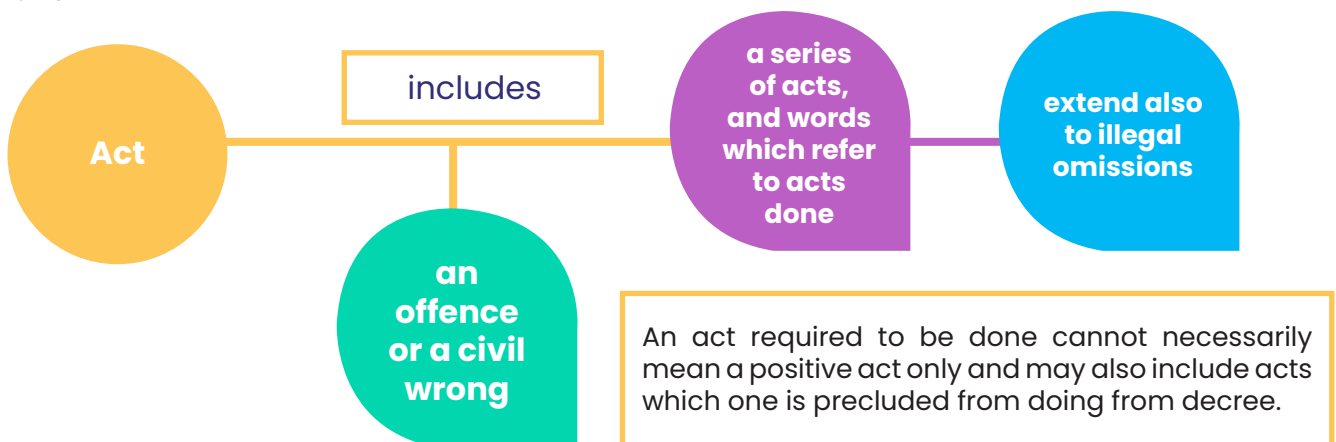


II. Major Definitions

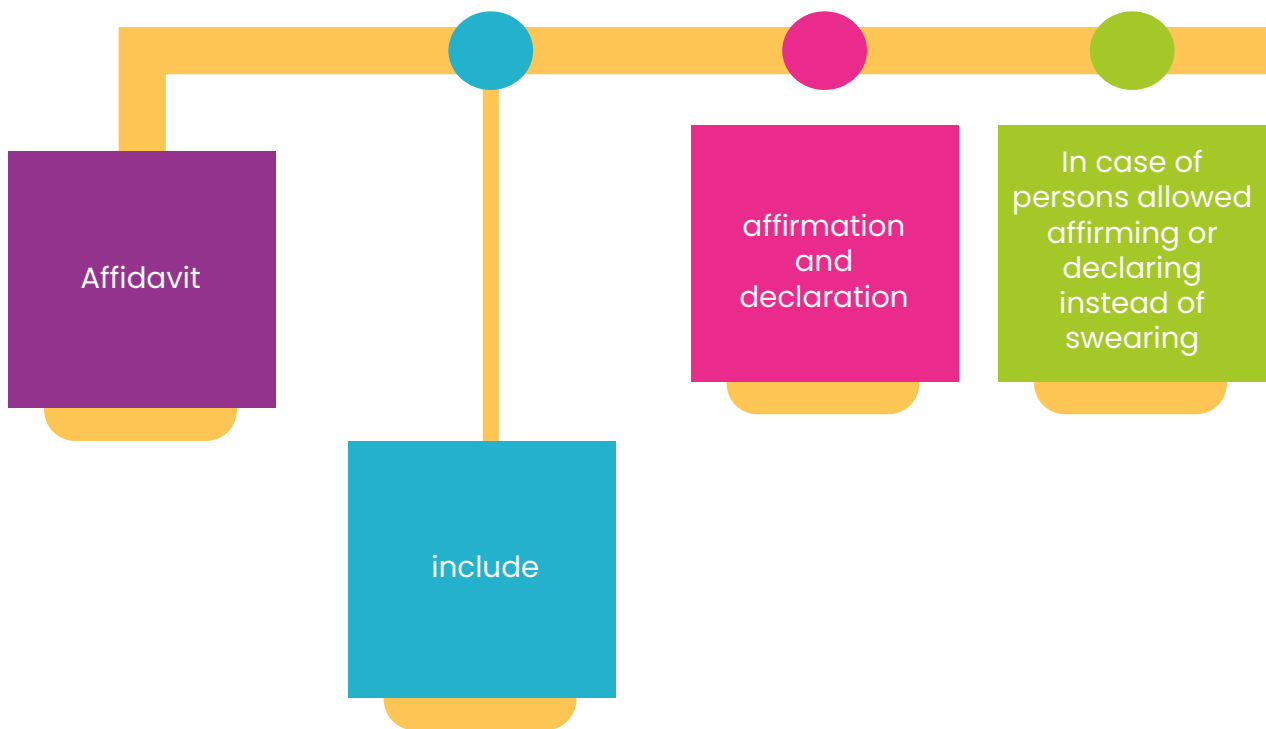
Three sections of the General Clauses Act, i.e., section 3 (Definitions), 4 (application of foregoing definitions to previous enactment) and 4A (Application of certain definitions to Indian laws), contain general definitions.

Section 3 seeks to define 67 phrases and terms commonly used in enactments and are intended to serve as a dictionary for the phrases.

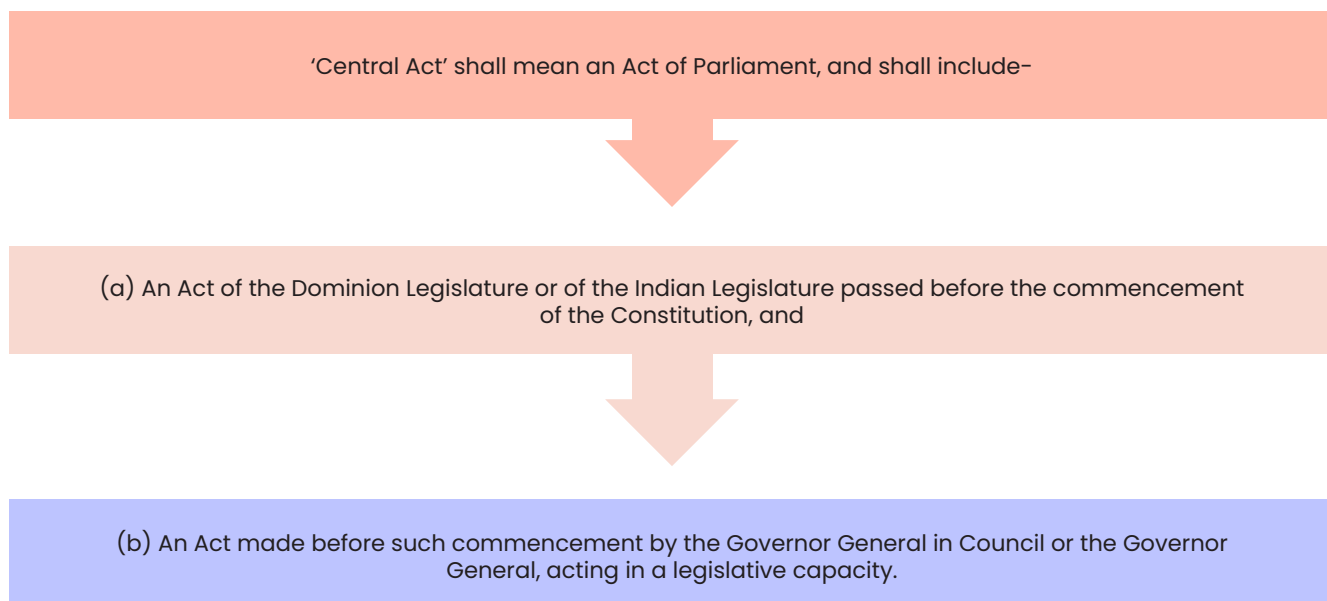
1. Act



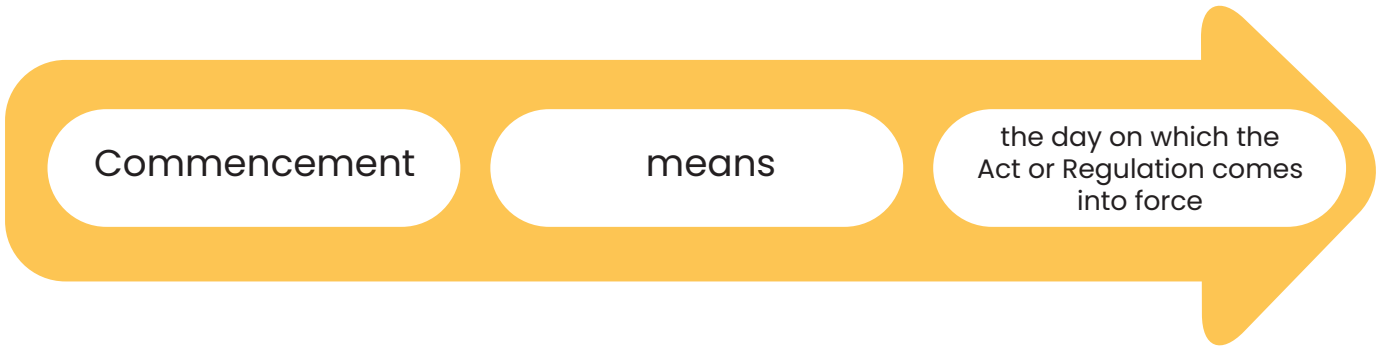
## 2. Affidavit



## 3. Central Act

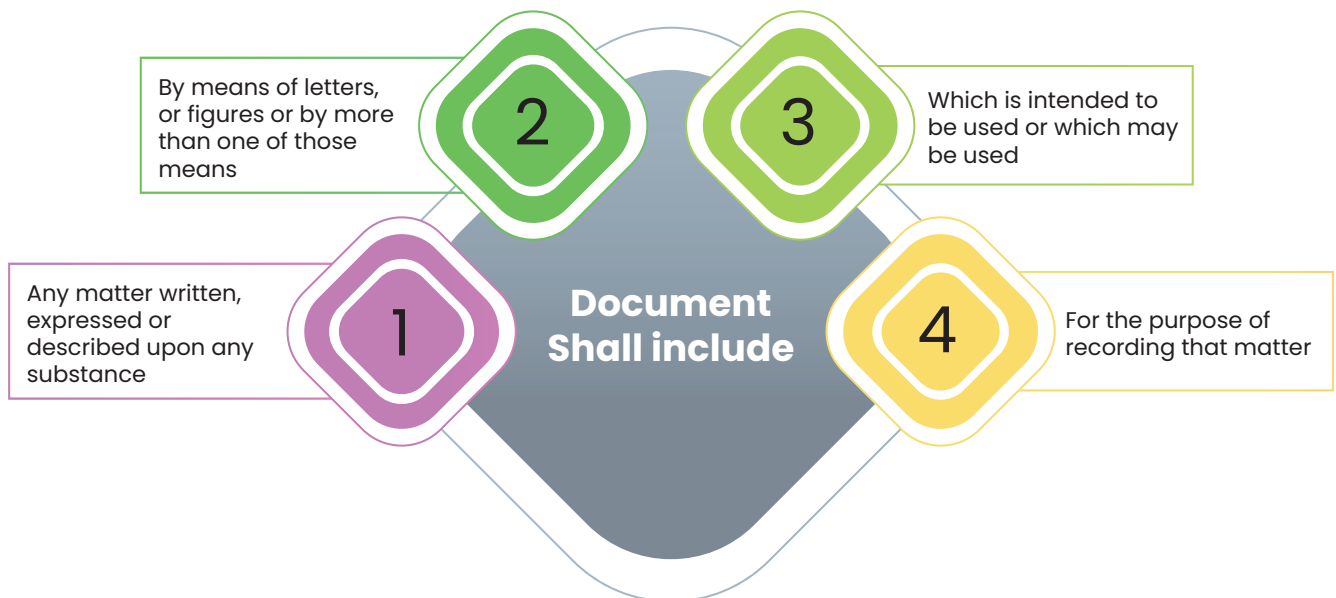


**4. Commencement**



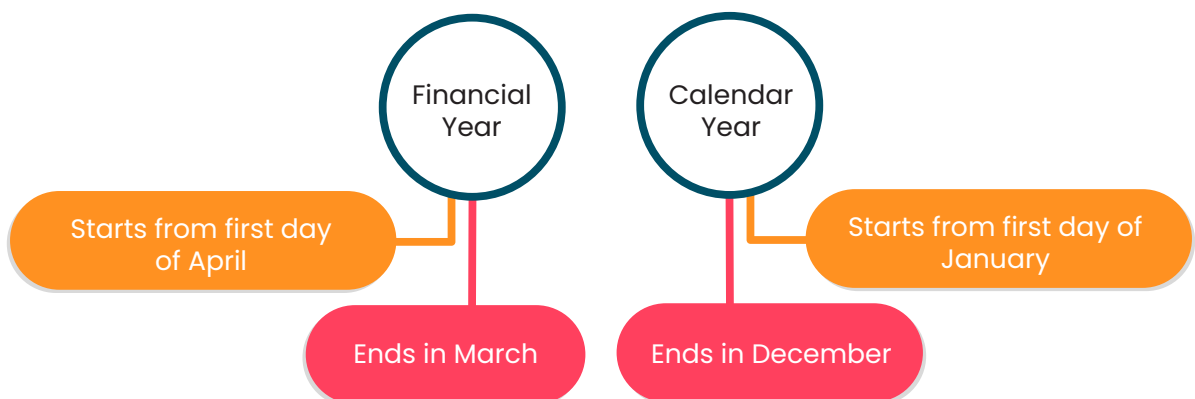
A Law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation.

**5. Document**

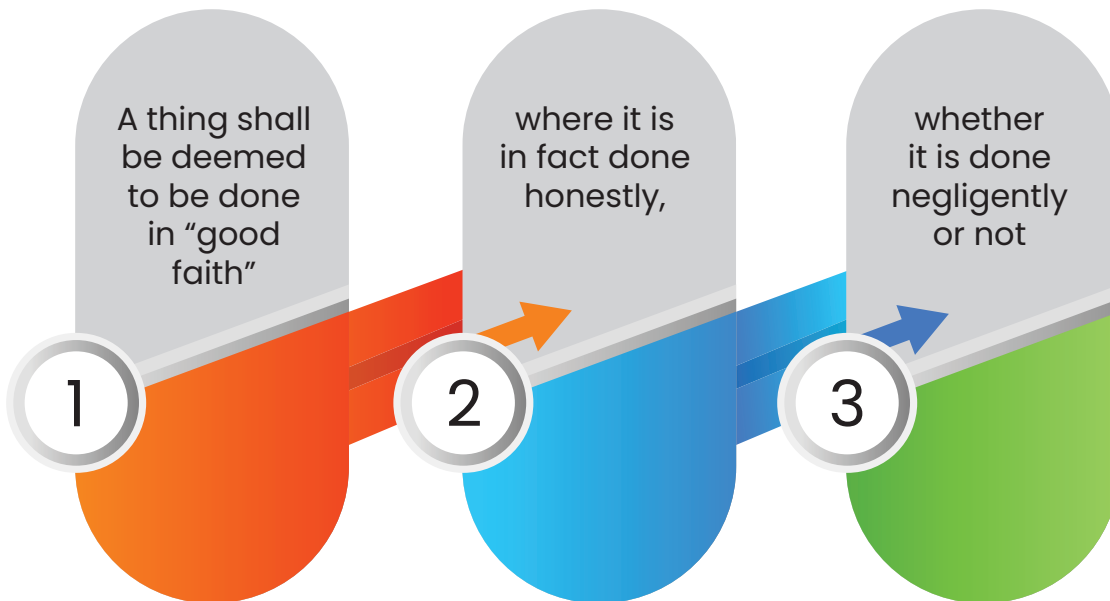


**6. Year**

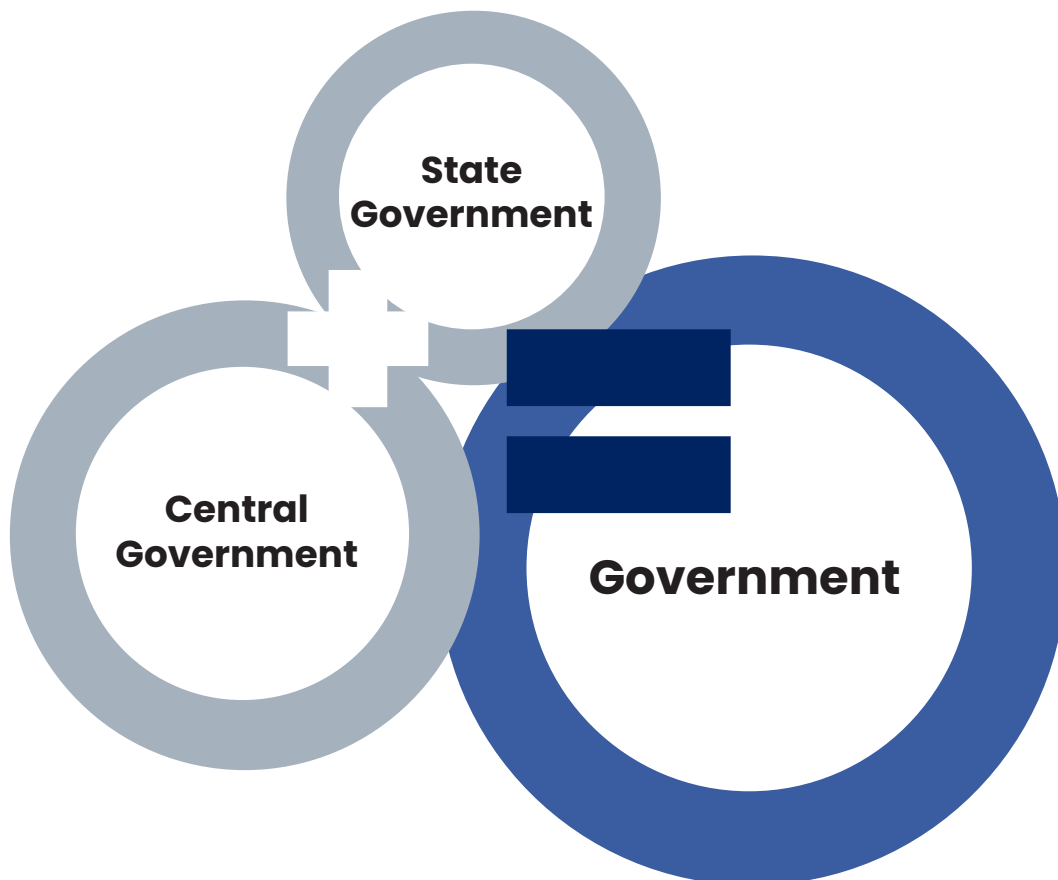
A year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.



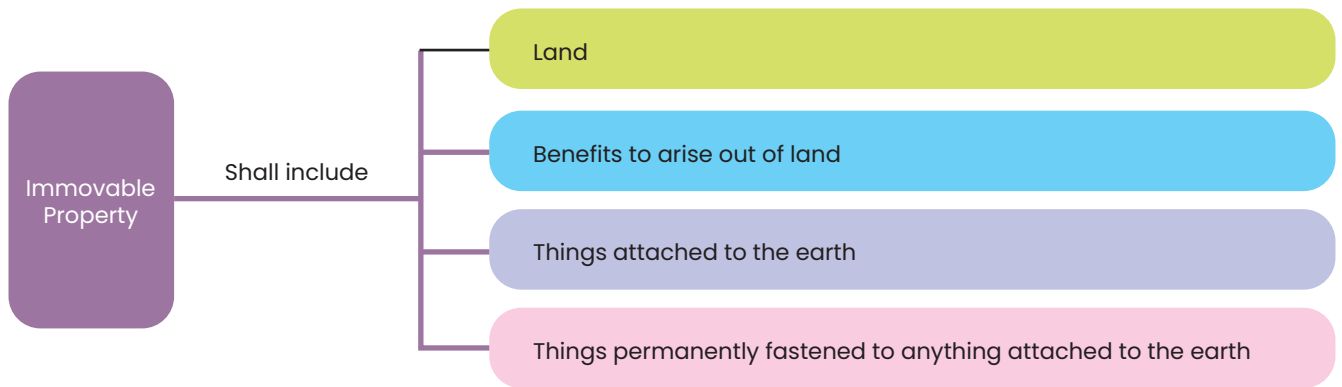
7. Good Faith



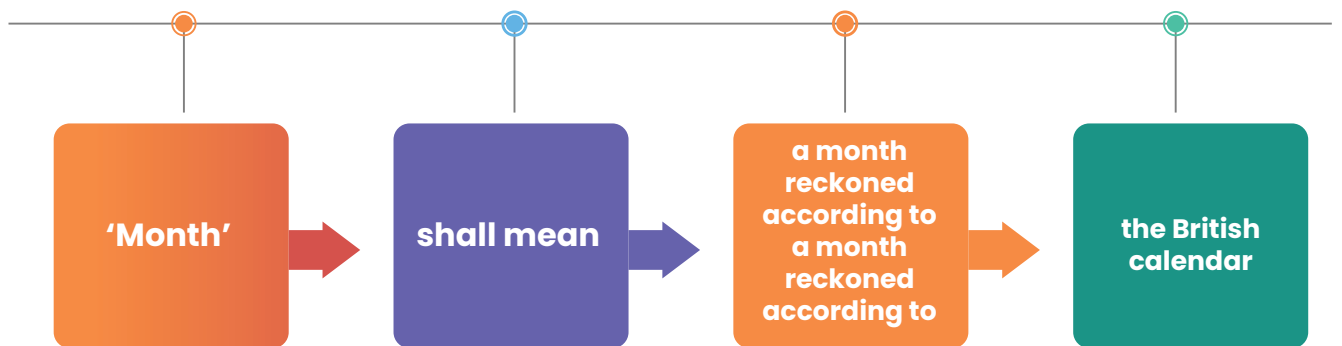
8. Government



9. Immovable Property



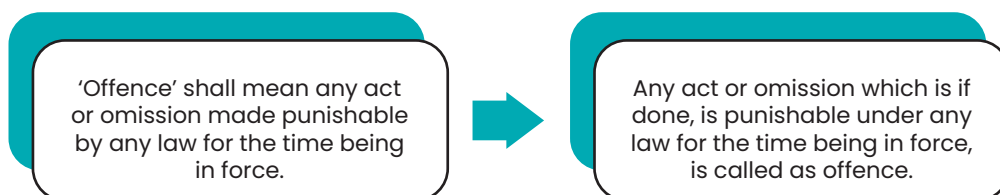
10. Month



11. Movable Property

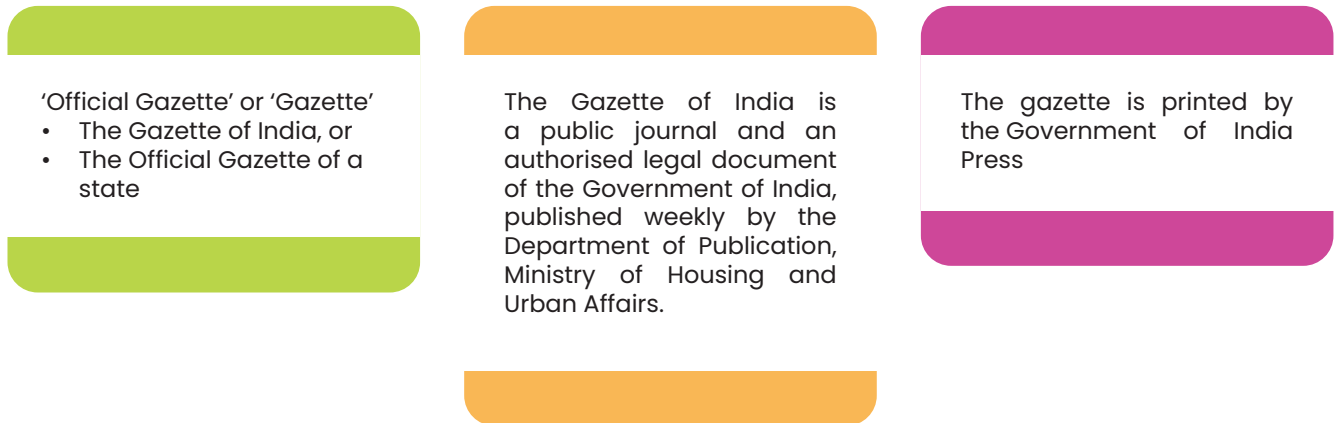
**'Movable Property'**  
shall mean  
property of every description,  
except immovable property

12. Offence

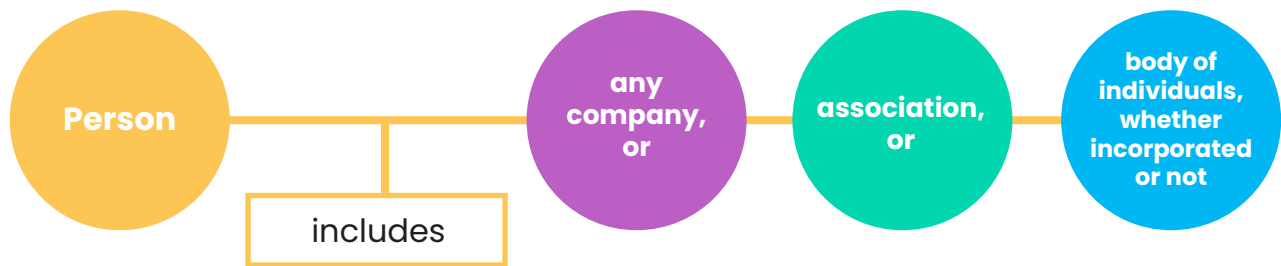




## 13. Official Gazette

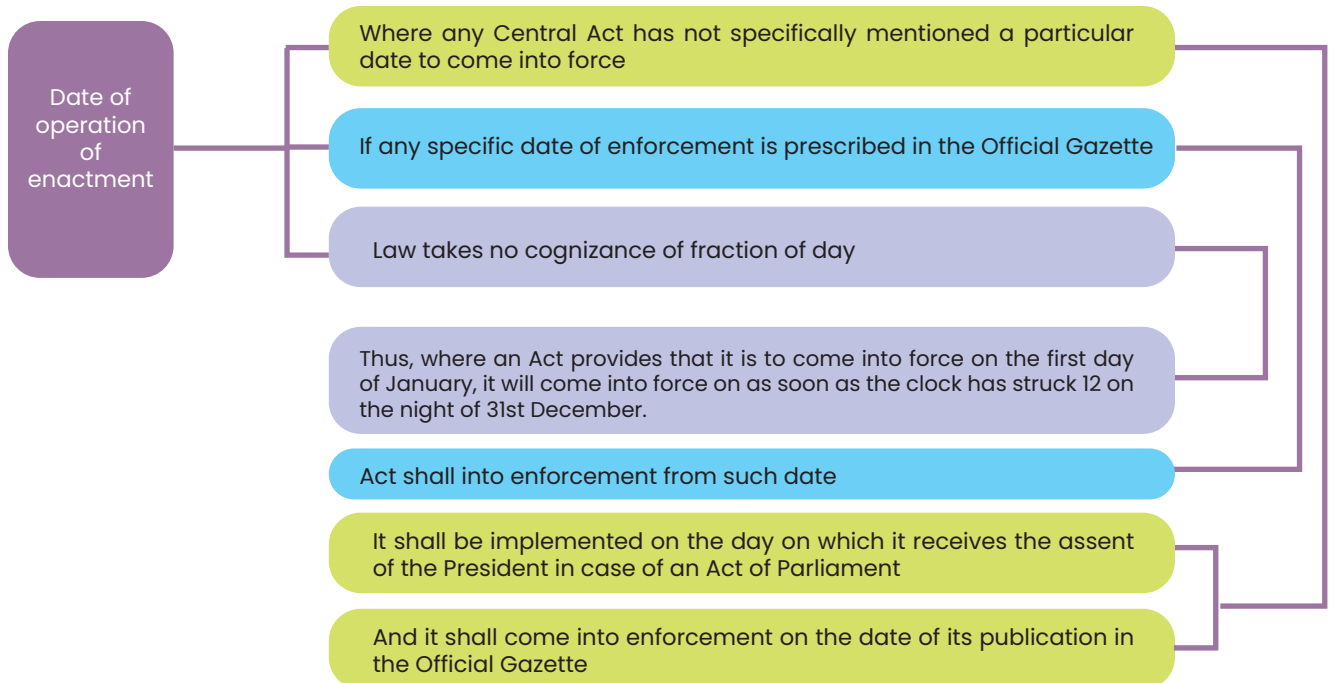


## 14. Person



## III. Other Provisions

### 1. Coming into operation of enactment



## 2. Commencement and termination of time

### Use the word "from"

- exclude the first in a series of days or any other period of time

### Use the word "to"

- include the last in a series of days or any other period of time

## 3. Computation of time

Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then,

if the Court or office is closed on that day or last day of the prescribed period,

the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

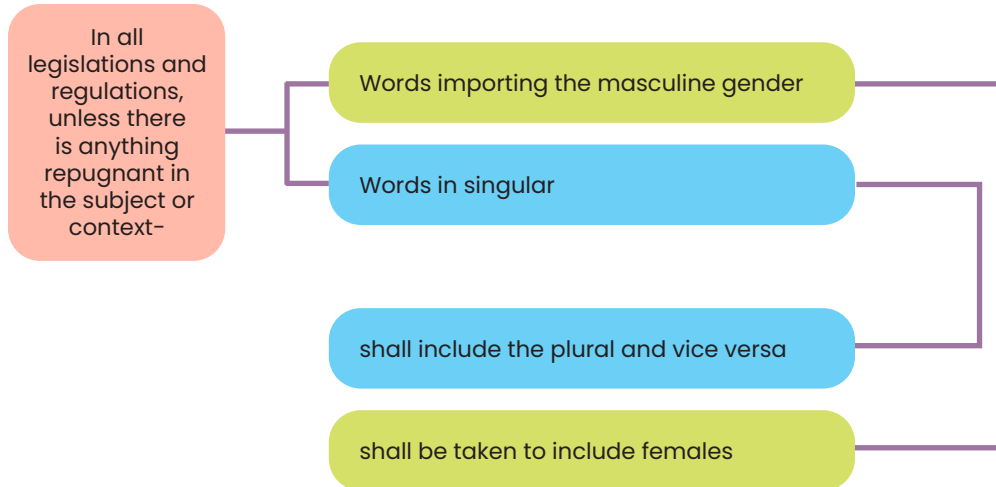
## 4. Measurement of Distances

In the measurement of any distance,

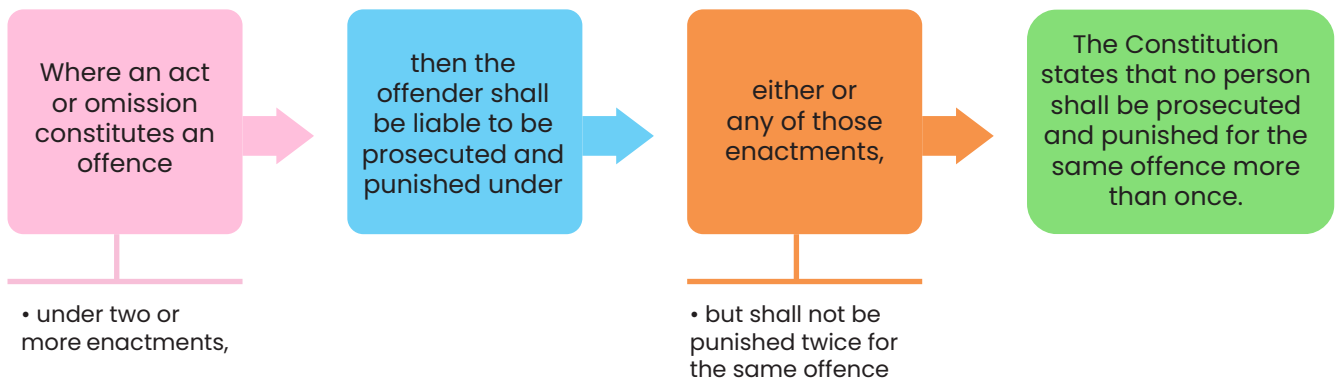
that distance shall, unless a different intention appears, be measured in

a straight line on a horizontal plane

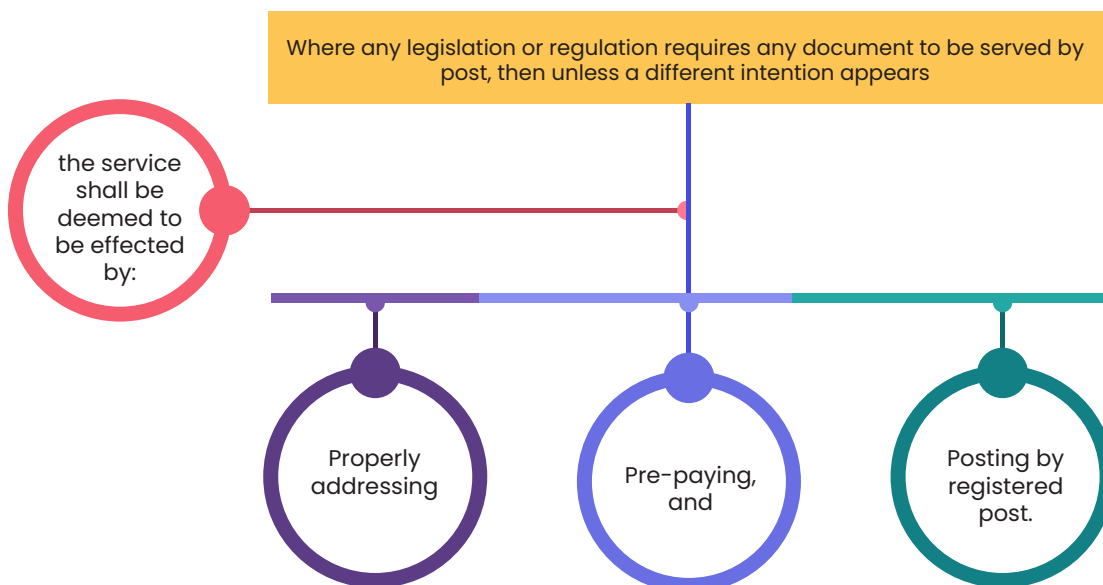
5. Gender and number



6. Provision as to offence punishable under two or more enactments



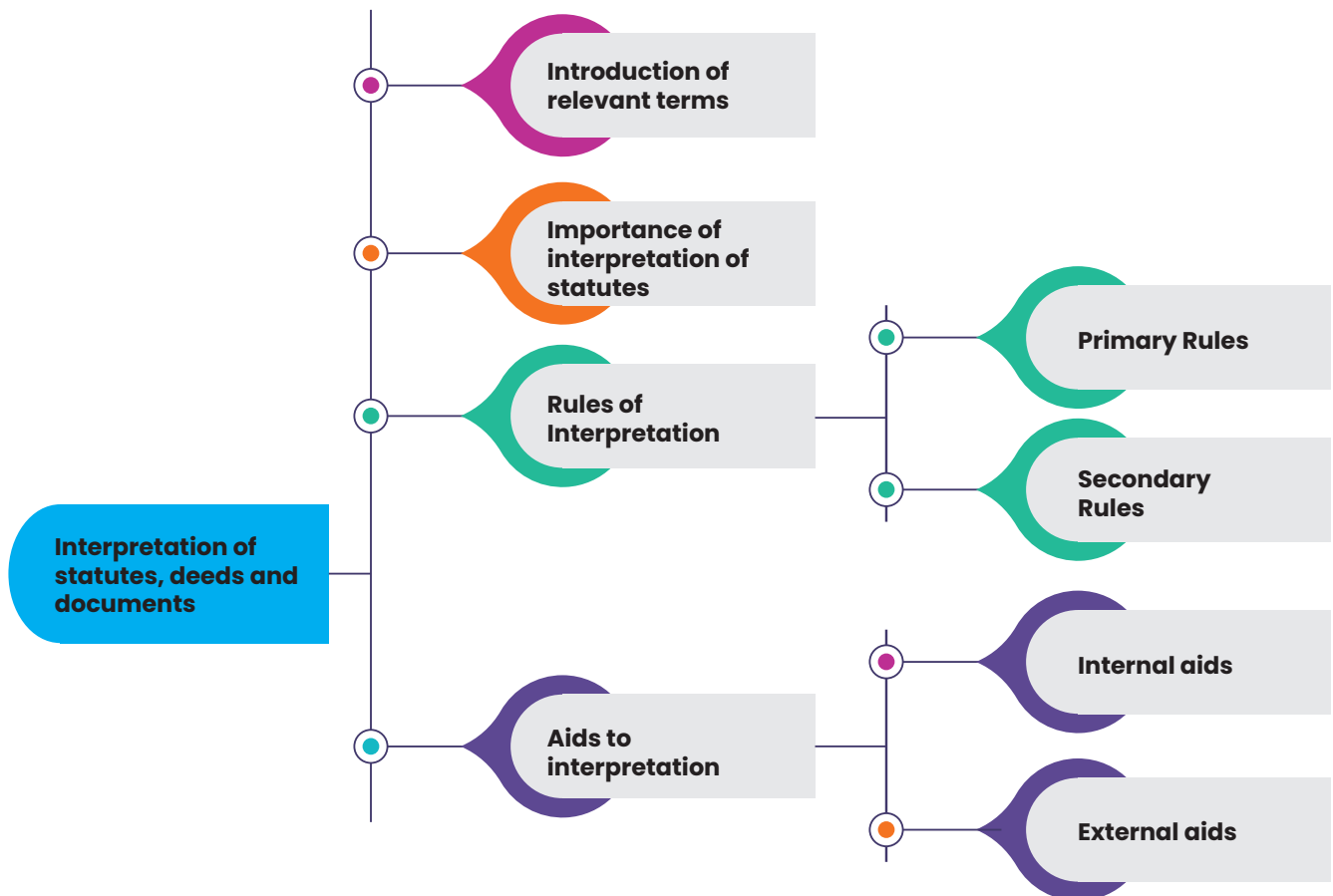
7. Meaning of Service by post



**Interpretation of Statutes**

## Chapter 2 Interpretation of Statutes

### I. Chapter Overview



### II. Basic Terms

#### 1. Statute

Written law, as against  
unwritten law



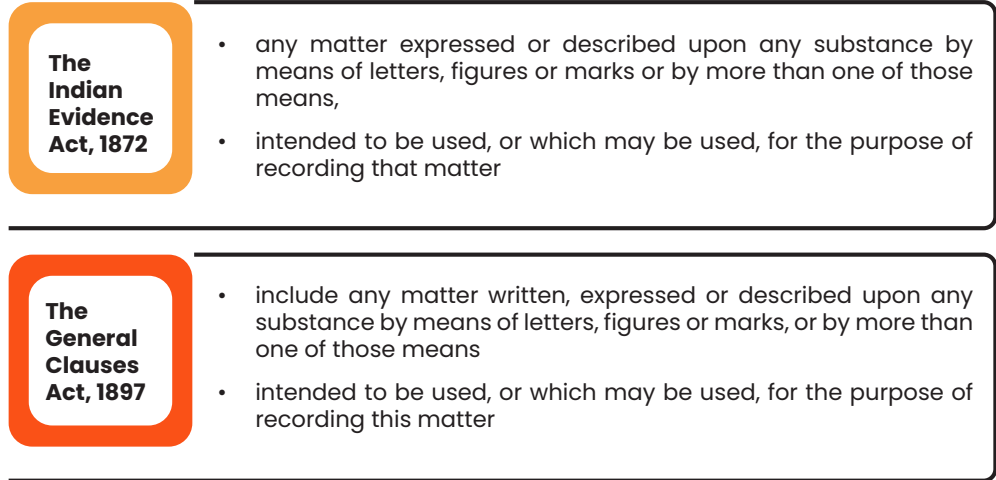
laws and regulations  
of various kinds  
irrespective of the  
source from which  
they emanate

Enacted law i.e. the  
law either enacted  
by the Parliament  
or by the State  
Legislature

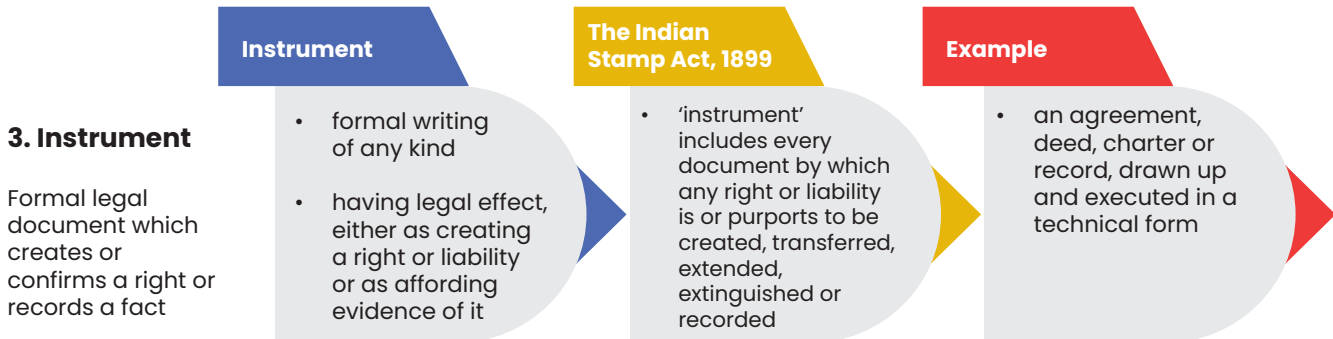
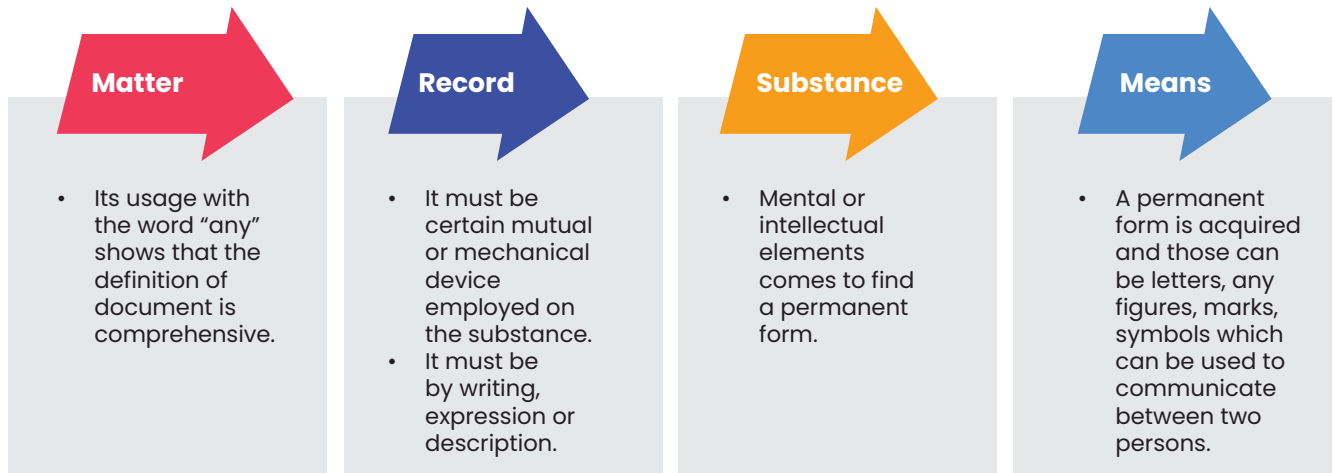


**2. Document**

A paper or other material thing giving information, proof or evidence of anything



**Elements of Documents**



## 4. Deed

• an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition

• In India- no distinction is made between instruments and deeds  
 • deeds are instruments though all instruments may not be deeds

## 5. Interpretation

Process by which the Courts seek to ascertain the meaning of the legislature through the medium of the words in which it is expressed

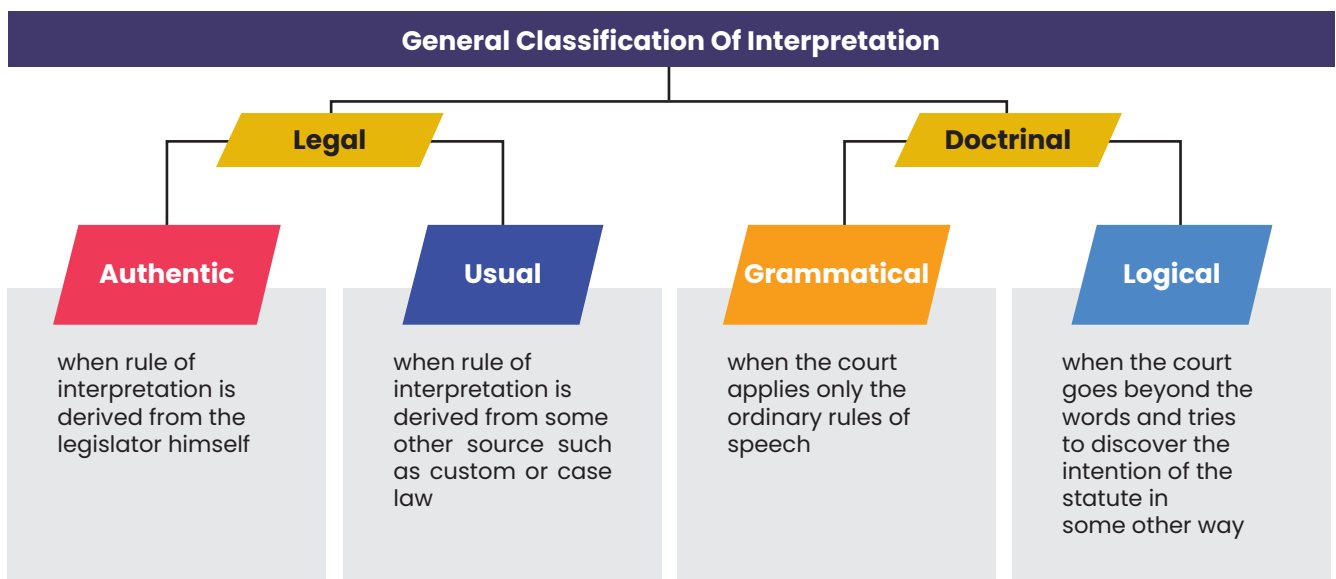
**Need for interpretation**

- process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it is ascertained
- to resolve any ambiguity in the statute.
- It is the art of finding out the true sense of words -sense in which their author intended to convey the subject matter.

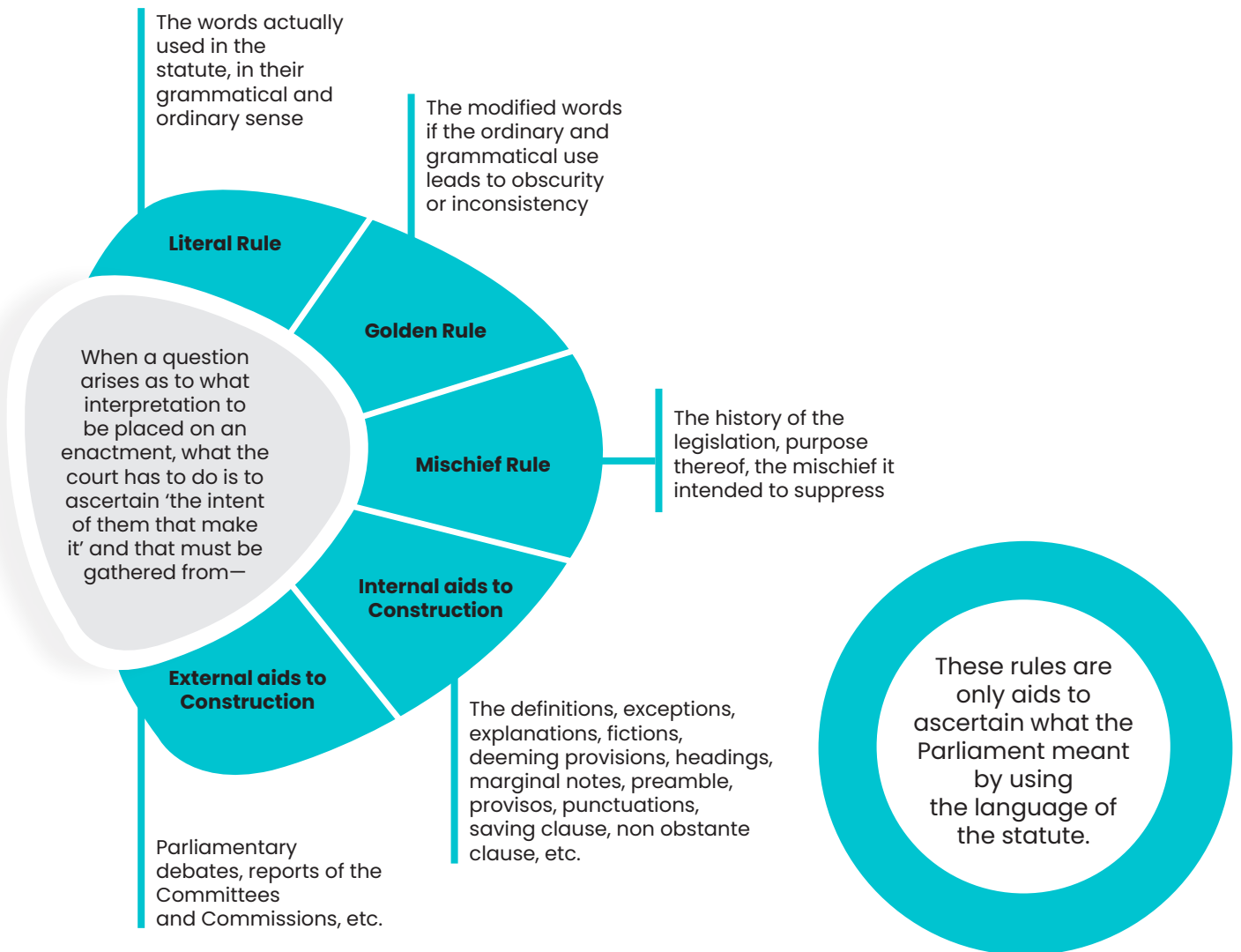
**Importance of interpretation**

- Interpretation serves as the bridge of understanding between the process of statute making and the process of interpretation of statutes

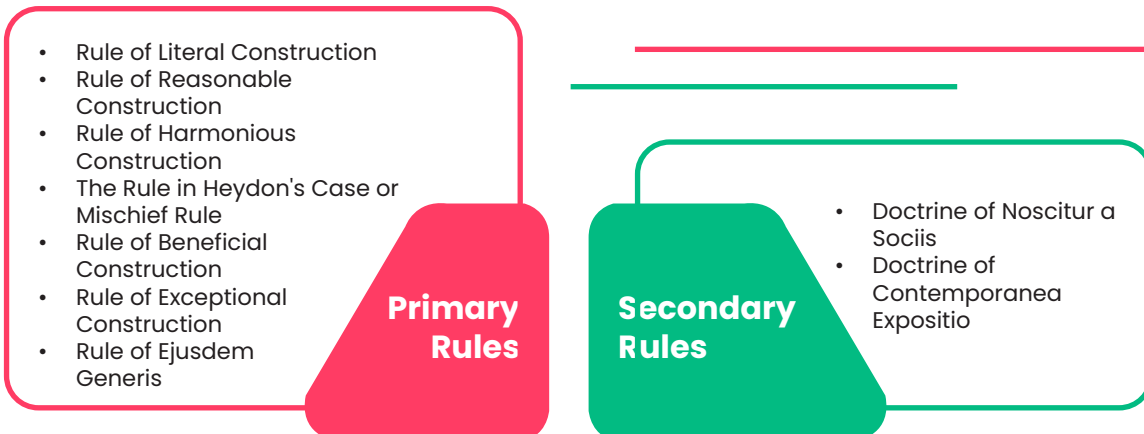
### Classification of Interpretation:



III. How to Interpret Law applying the Rules of Interpretations



IV. Rules of Interpretation/Construction





## 1. Rule of Literal Construction

A statute must be construed literally and grammatically giving the words their ordinary and natural meaning

interpret the words used in legislation according to their ordinary grammatical meaning in the absence of any ambiguity or doubt

where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction

This Rule of literal interpretation can be read and understood under the following headings:

### Natural and grammatical meaning

- Statutes are to be understood in their natural, ordinary, or popular sense
- Must be construed according to their plain, literal and grammatical meaning.
- If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further.

### Technical words are to be understood in technical sense

- technical words are understood in the technical sense only

## 2. Rule of Reasonable Construction

words of statute must be construed so as to lead to a sensible meaning or to avoid absurdity

If a statute is having two interpretations, where one is completely vague and absurd and other is perfectly making sense then that meaningful interpretation should be used

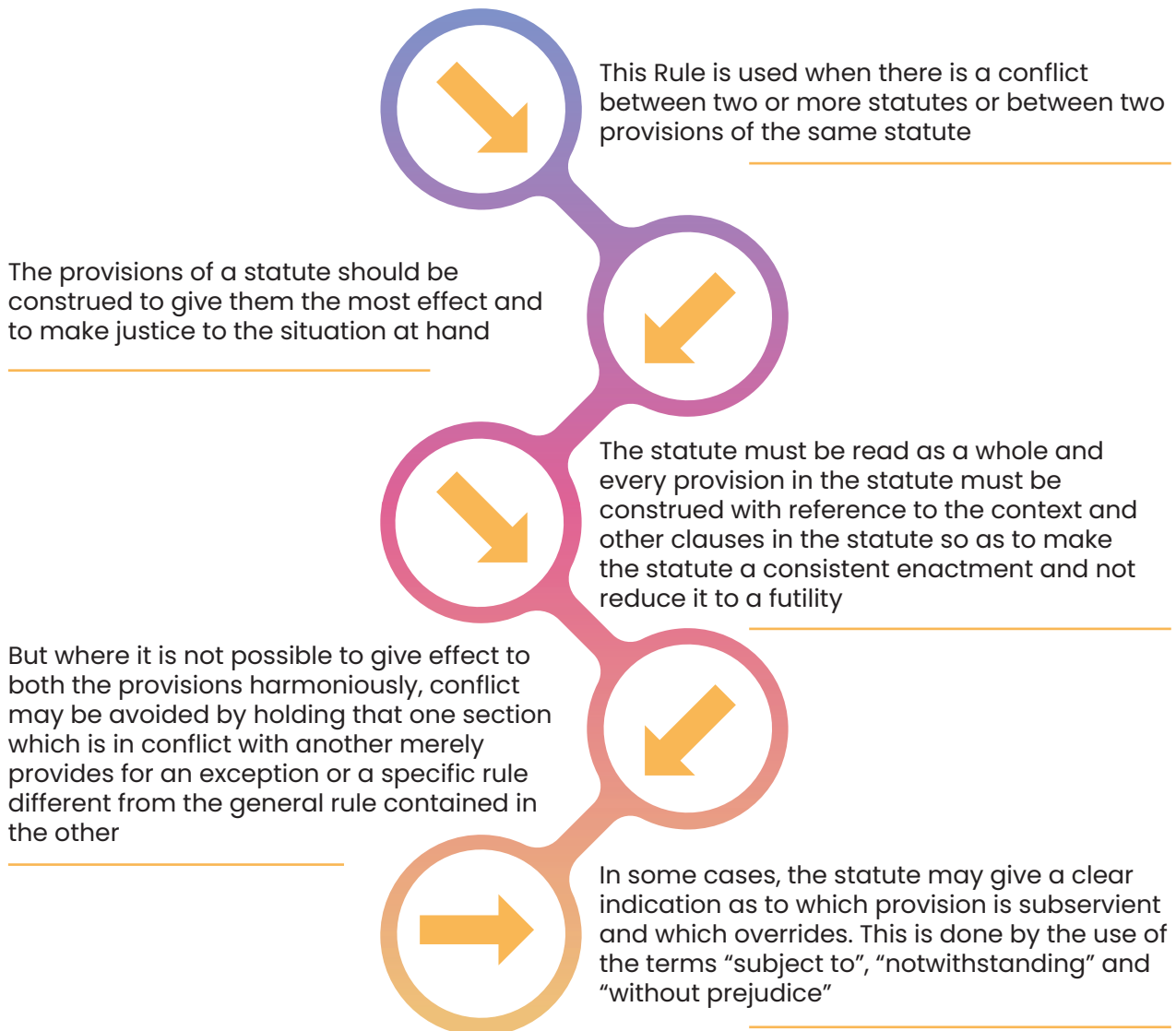
Interpretation, which furthers the object, can be preferred to that which is likely to defeat or impair the policy or object.

### Golden Rule of Interpretation

- When the grammatical interpretation leads to absurdity then the courts shall interpret the statute so as to resolve the inconsistency and make the enactment a consistent whole.
- This departure from the grammatical construction is permissible only to the extent it avoids such absurdity and no further.

### 3. Rule of Harmonious Construction

Expressions used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute or to avoid absurdity

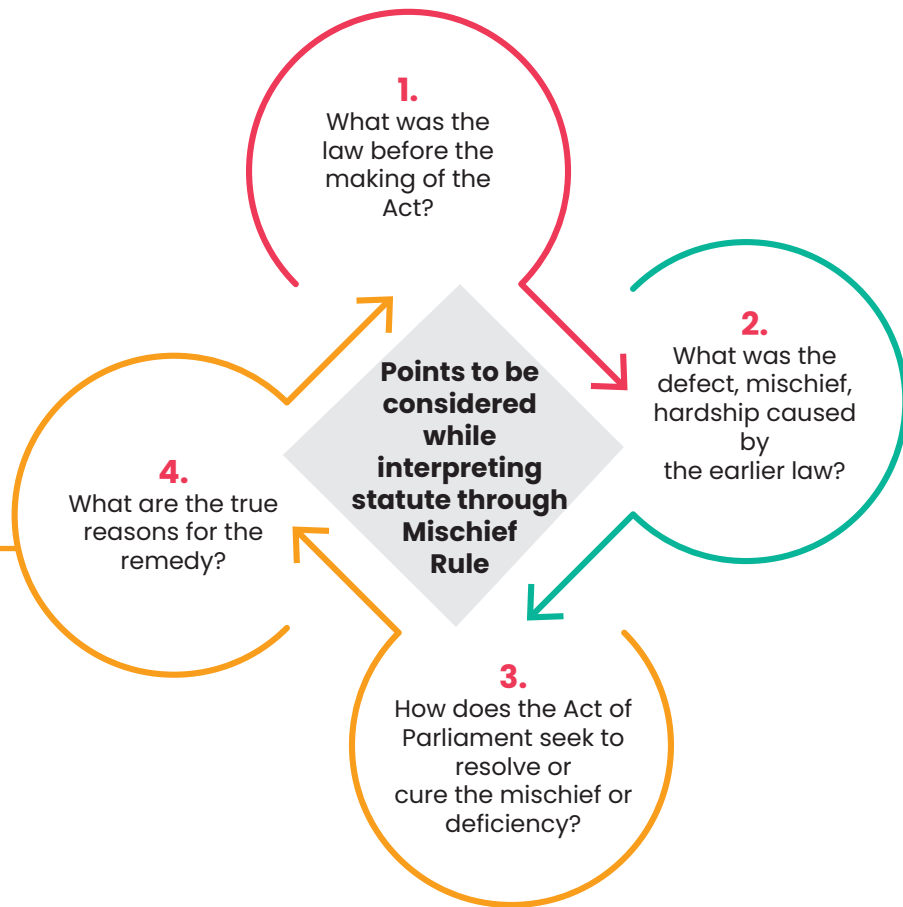


### 4. The Rule in Heydon's Case or Mischief Rule

To make such construction as shall suppress the mischief and advance the remedy according to the true intention of the legislation.

Where the language used in a statute is capable of more than one interpretation

Mischief rule can be applied only if there is any ambiguity in the present law



**5. Rule of Beneficial Construction**

Give the widest meaning to the statute in order to protect the interest of the parties

**1** Whenever there is an ambiguity or when the interpretation would take the benefit away from effected parties, an interpretation that would benefit the parties should be adopted

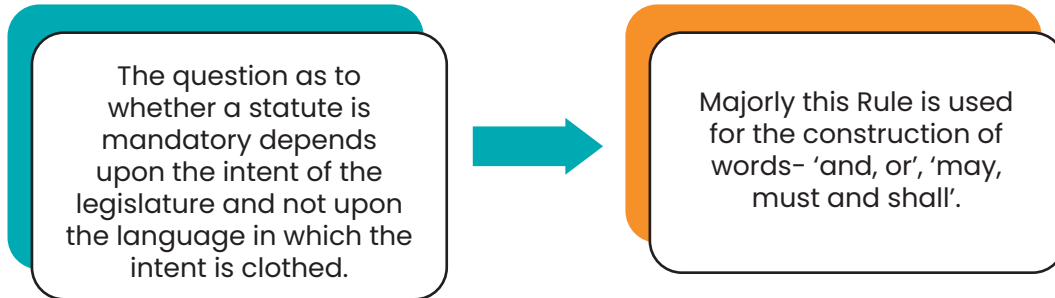
**2** In such cases it is permissible to give an extended meaning to words or clauses in enactments

**3** This method can only be used when two constructions are reasonably possible and not when the words in a statute are quite clear

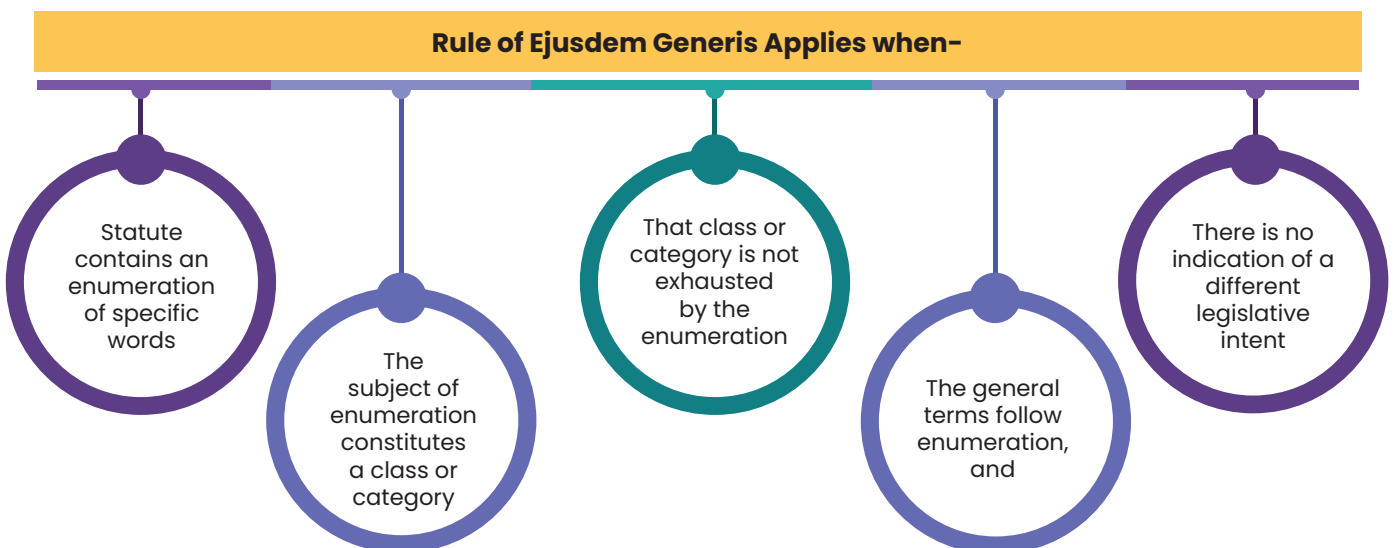
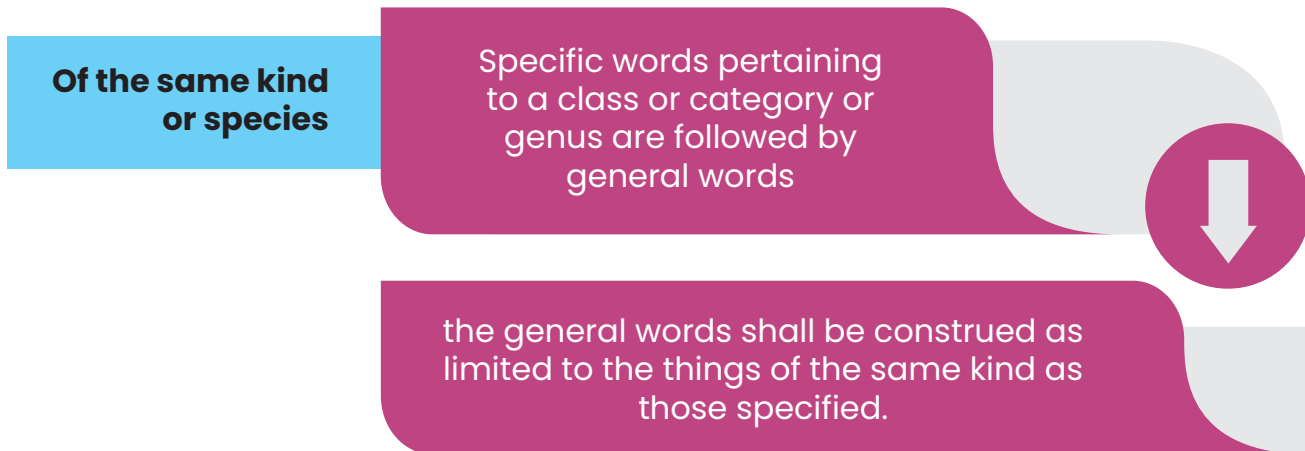
**4** This Rule ought to be used to interpret the provisions that were brought into effect for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past

**6. Rule of Exceptional Construction**

The rule of exceptional construction stands for the elimination of statutes and words in a statute which defeat the real objective of the statute or make no sense.

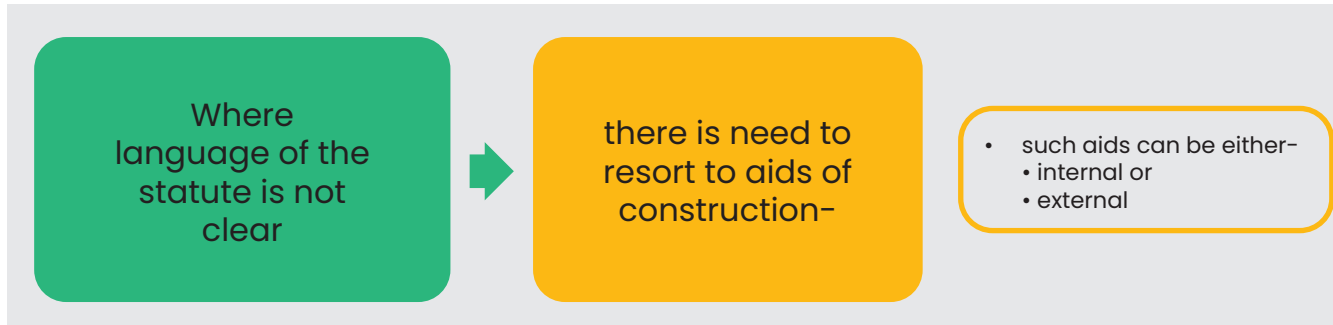


**7. Rule of Ejusdem Generis**

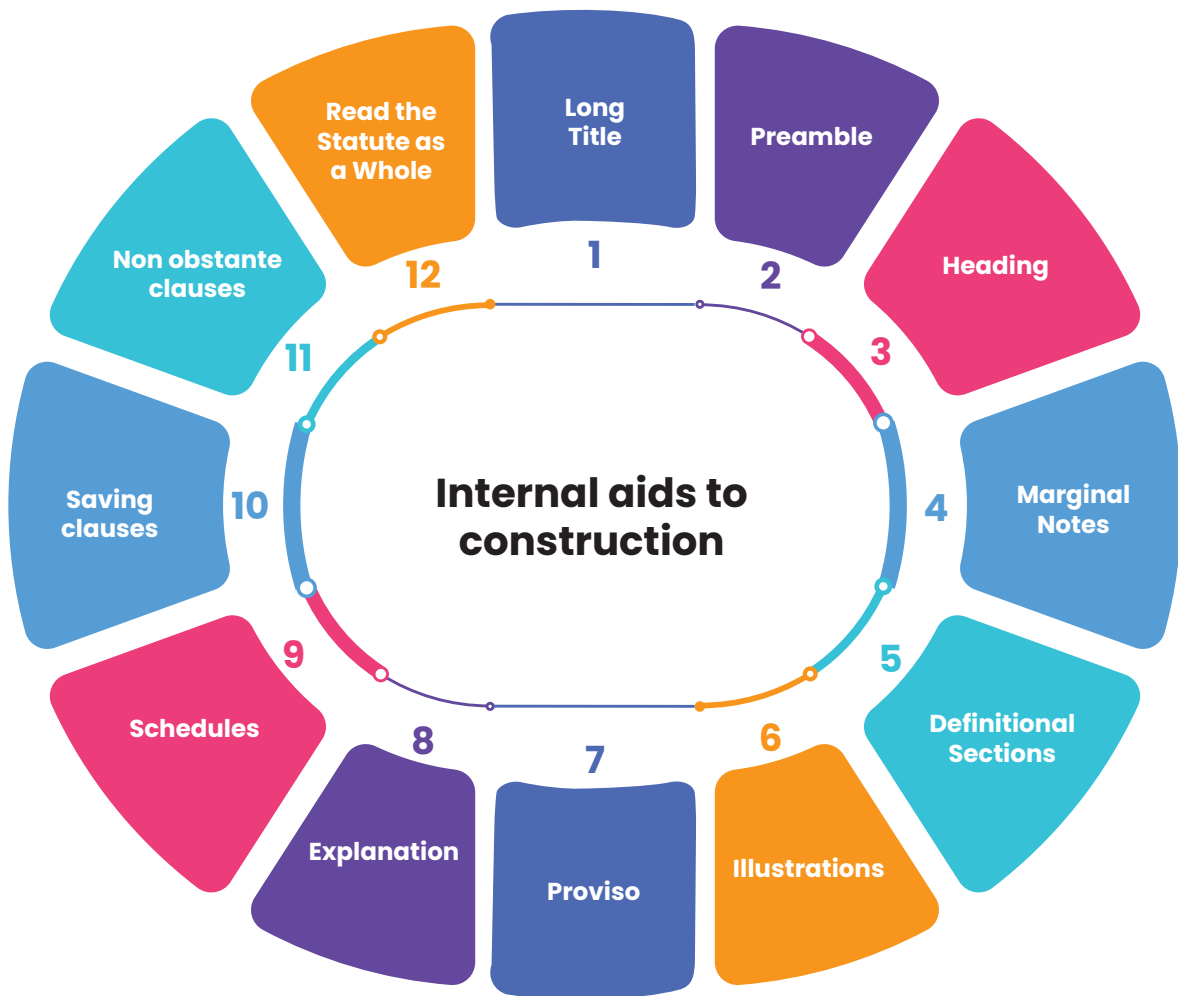


## Interpretation of Statutes

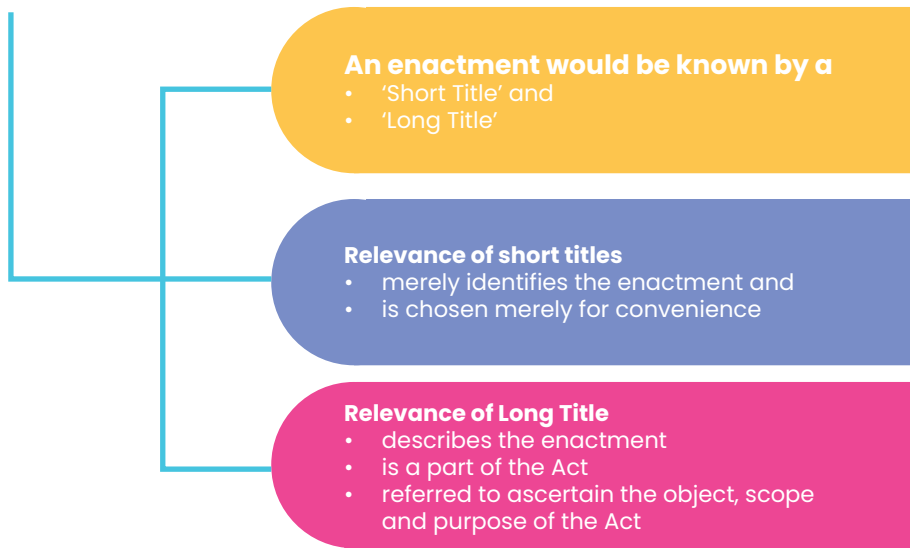
### V. Aids to Interpretation And Construction



### VI. Internal Aids to Interpretation/Construction

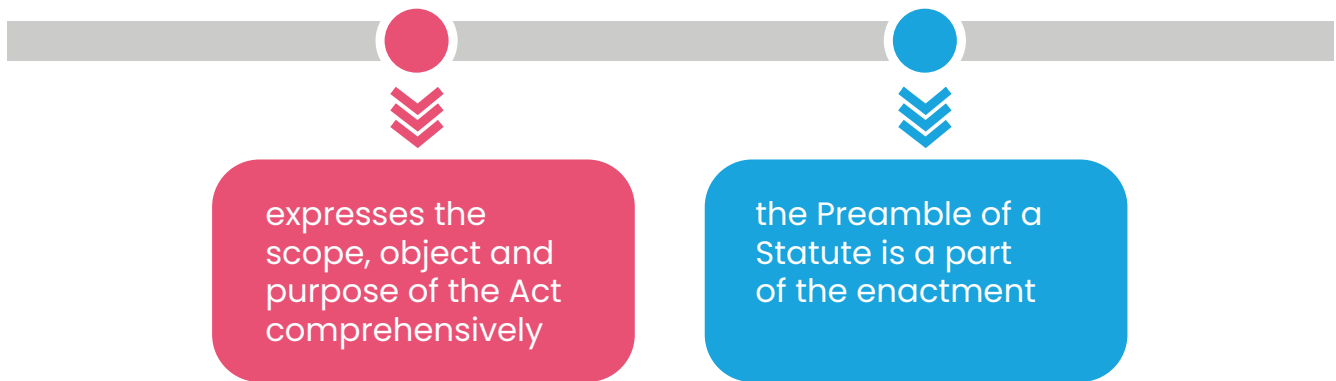


1. Long Title

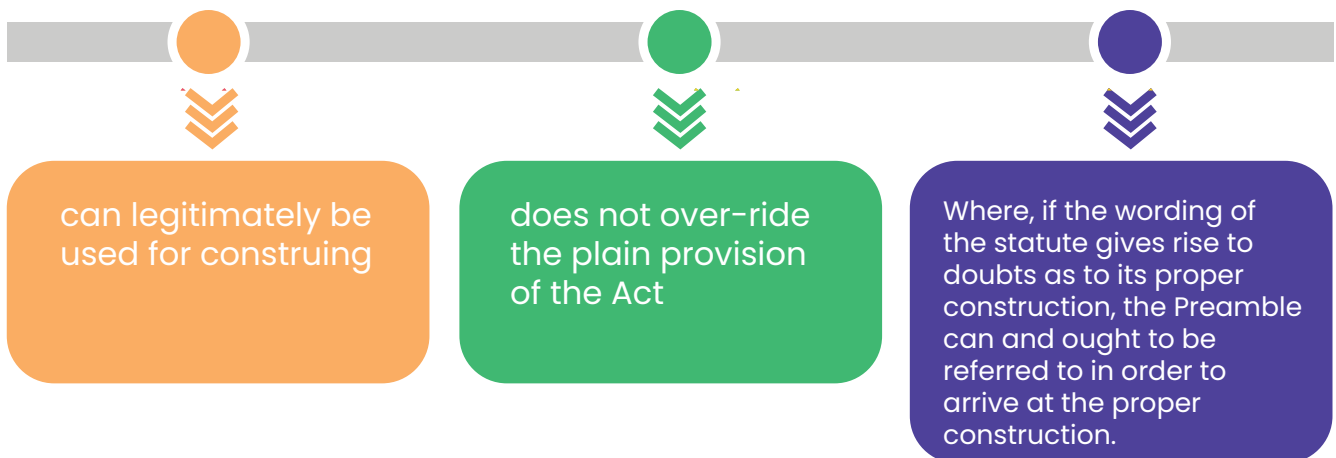


2. Preamble

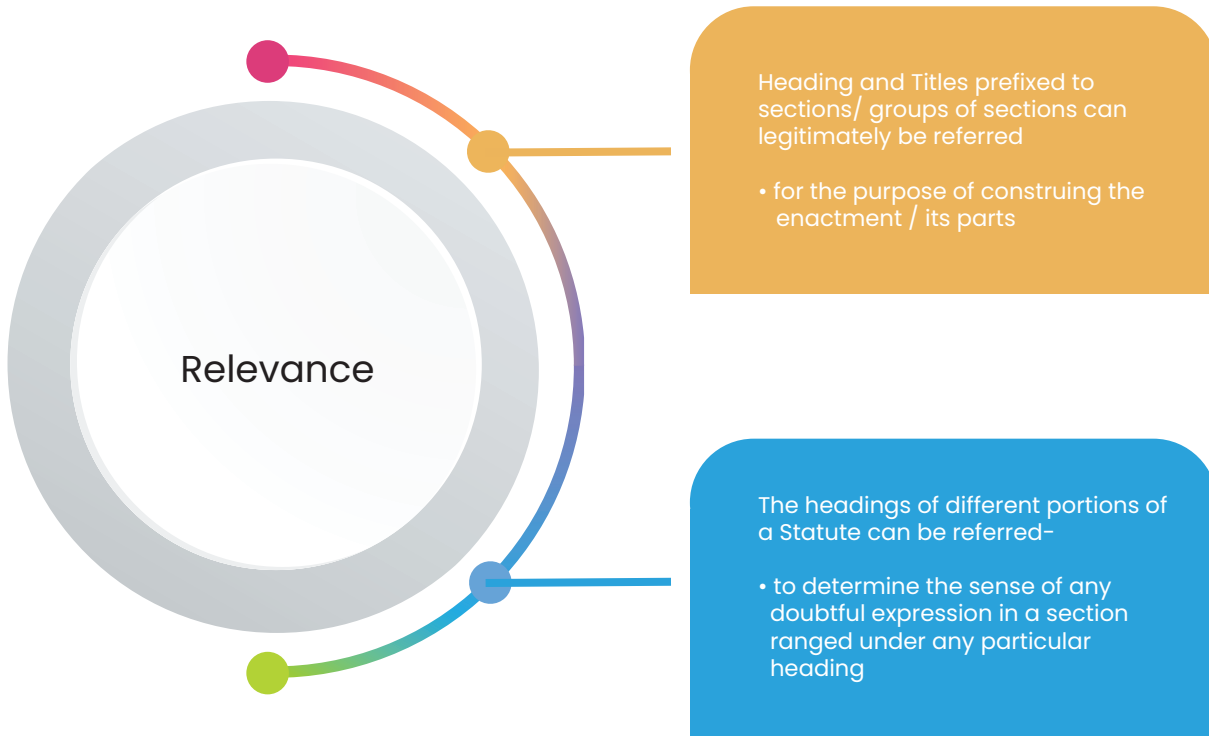
Relevance



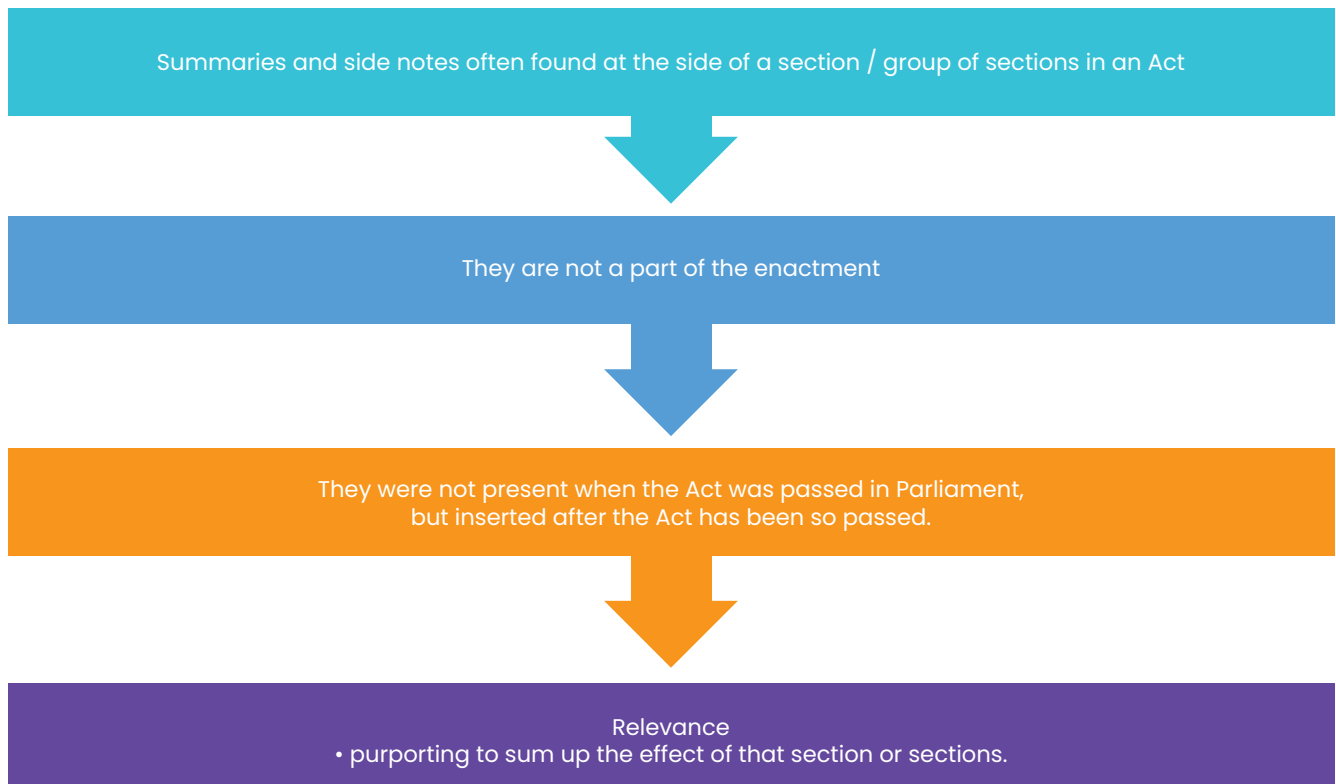
Significance



### 3. Heading and Title of a Chapter



### 4. Marginal notes



## 5. Definitional Sections/Interpretation Clauses

Meaning -When a word / phrase is defined as having a particular meaning in the enactment

- It is an exhaustive definition
  - it is that meaning alone which must be given to it in interpreting a Section of the Act
- Purpose
  - to provide a key to the proper interpretation of the enactment
  - to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part.
- Types
  - Restrictive and extensive definitions
    - definition of a word / expression in the definition section may restricting of its ordinary meaning or may be extensive of the same
  - Ambiguous definitions
    - sometimes the definition section may itself be ambiguous, and
    - so have to be interpreted in the light of other provisions of the Act
    - having regard to the ordinary meaning of the word defined.
    - Such type of definition is not to be read in isolation.
    - It must be read in the context of the phrase which it defines, to give accuracy and certainty to a word or phrase
- Definitions subject to a contrary context
  - When a word is defined to bear a number of inclusive meanings
  - then the sense in which the word is used in a particular provision
    - must be ascertained from the context of the scheme of the Act,
    - the language of the provision and
    - the object intended to be served thereby

## 6. Illustrations

Follow the text  
of the Sections

Do not form a part of  
the Sections

Not all sections have  
illustrations appended  
to them

It cannot have the effect of  
modifying the language of  
the section

Neither can curtail nor  
expand the ambit of  
the section

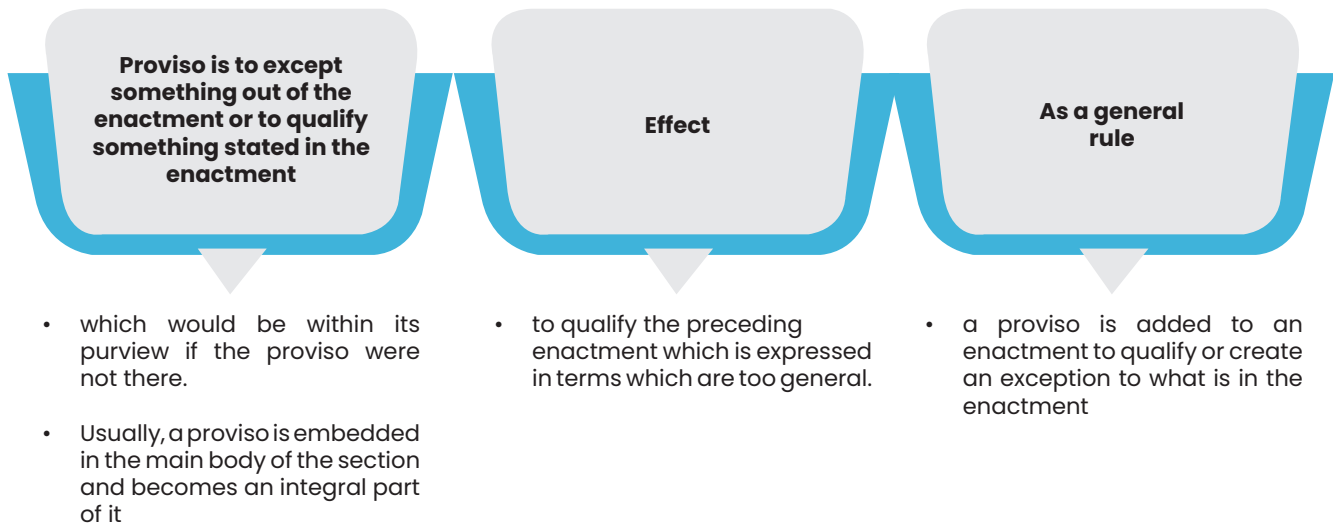
### Relevance

- Illustrations do form a part of the statute
- considered to be of relevance and value in construing the text of the sections

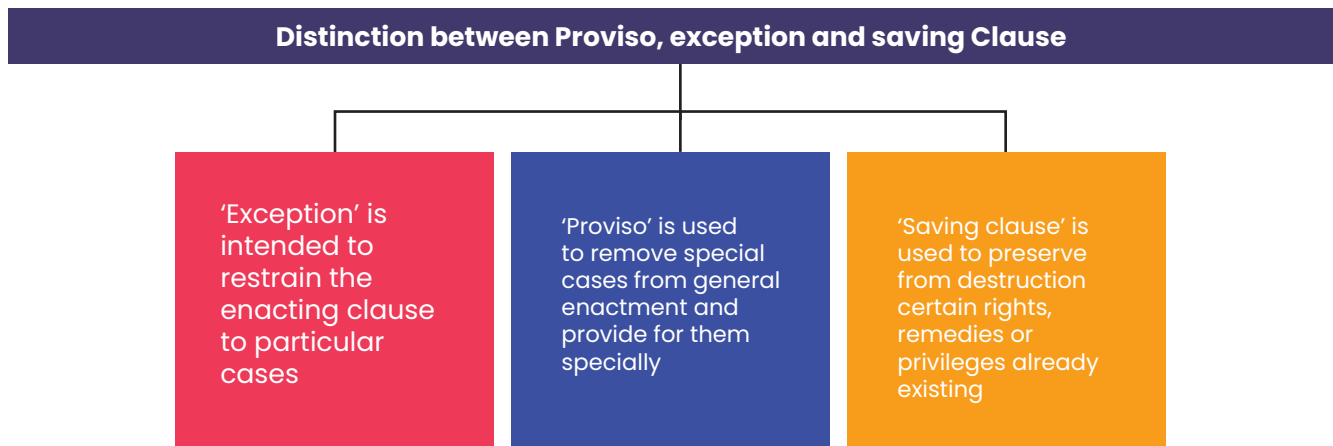


## Interpretation of Statutes

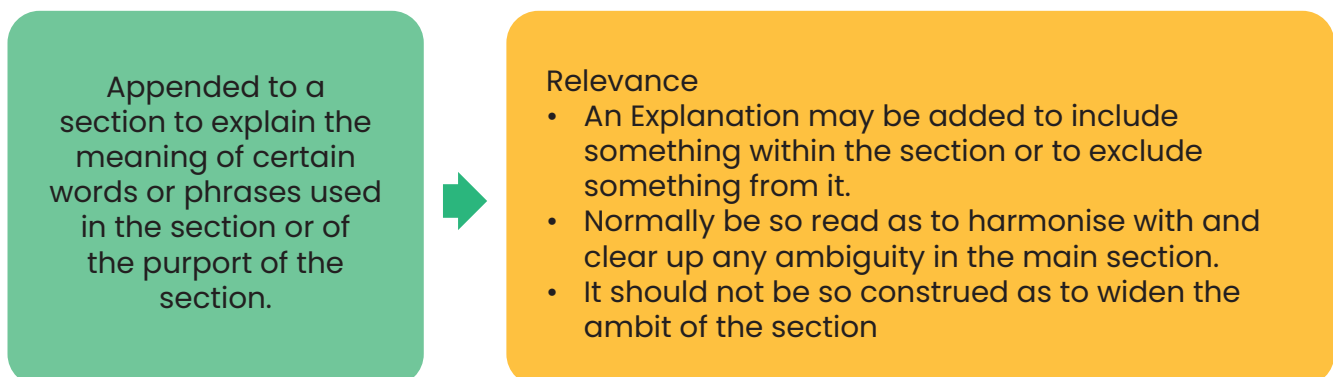
### 7. Proviso



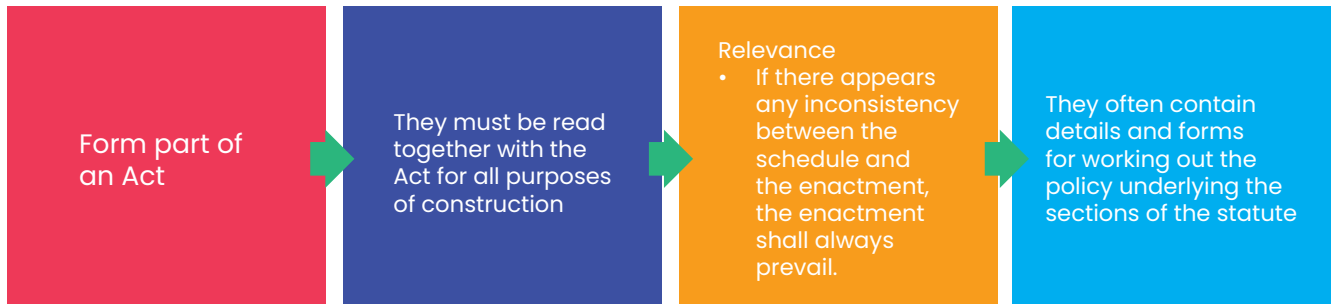
### 8. Difference with related terms



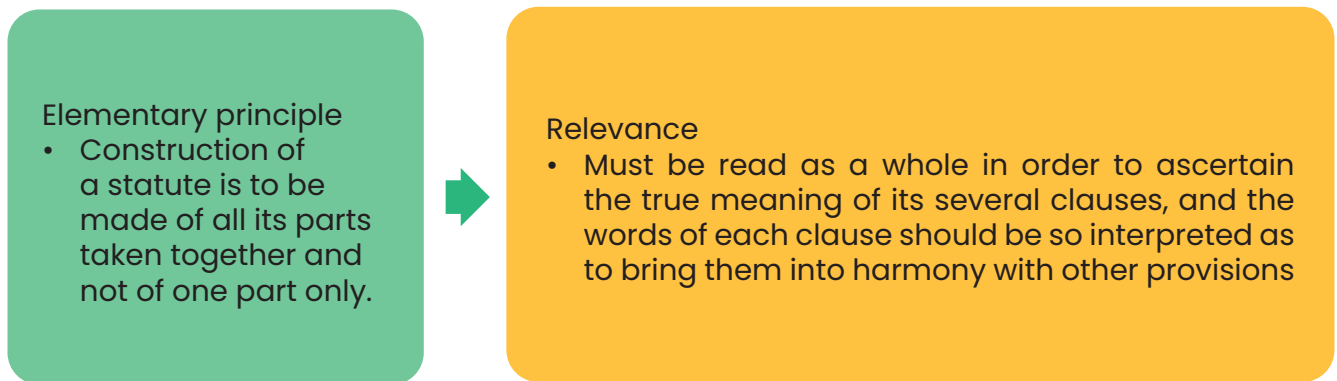
### 9. Explanation



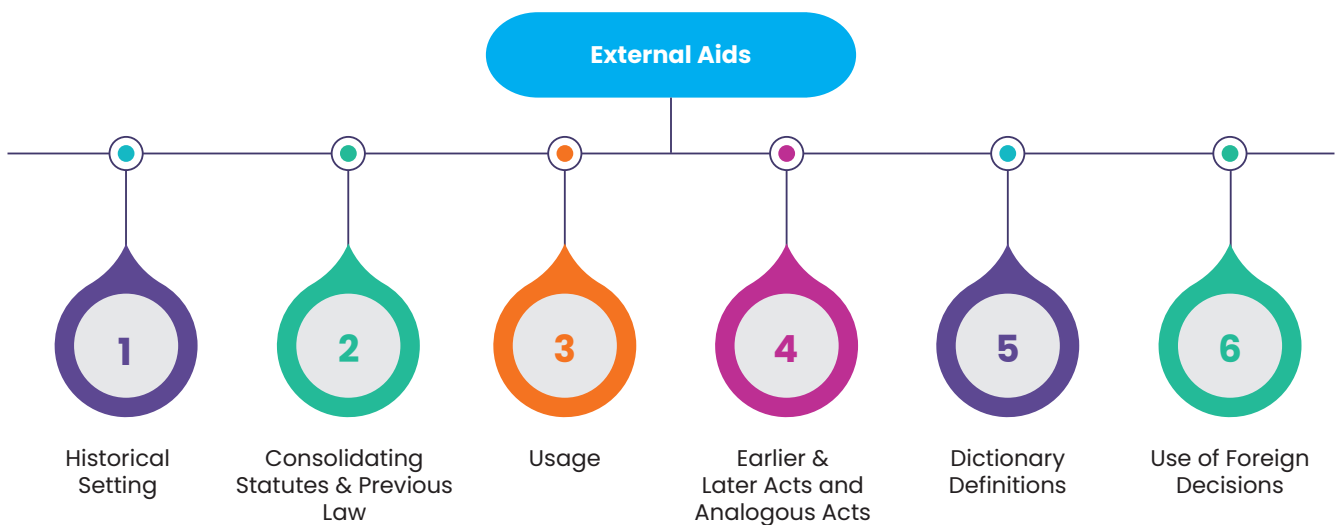
10. Schedules



11. Read the Statute as a Whole



VII. External Aids To Interpretation/Construction



## 1. Historical Setting

History of the external circumstances which led to the enactment

- is of much significance in construing any enactment

### Purpose

- necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
- History in general (Parliamentary History in particular), ancient statutes, contemporary or other authentic works and writings are helpful in interpreting and construing an Act

## 2. Consolidating Statutes & Previous Law

- The Preambles to many statutes contain expressions such as “An Act to consolidate” the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law.
- They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction

## 3. Usage

### Relevance

- Where the meaning of the language in a statute is doubtful, usage helps in how that language has been interpreted and acted upon over a long period
- May determine its true meaning.
- When a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public,
  - The Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so

## 4. Earlier & Later Acts and Analogous Acts

### Reference to Analogous Act:

- Different statutes (that are in similar nature), may shall be construed together as one system and as explanatory of each other
- They can be used even though they may be made at different times, or may have repealed and may not referring to each other

## 5. Dictionary Definitions

- First refer to the Act in question to find out if any particular word or expression is defined in it.
- If word is not defined in the Act itself, refer dictionaries to find out the general sense in which that word is commonly understood
- In selecting one out of the several meanings of a word, always consider the context in which it is used in the Act
- For technical terms refer technical dictionaries
- judicial decisions laying down the meaning of words will have greater weight than the meaning furnished by dictionaries

## 6. Use of Foreign Decisions

- Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours, can be used for interpretation
- Prime importance is always to be given to the language of the Indian statute

## VIII. Major Latin Maxims

**Rule of Literal Construction**  
*absoluta sententia expositore non indiget*

- an absolute sentence or preposition needs not an expositor
- plain words require no explanation

**Rule of Reasonable Construction and Rule of Exceptional Construction**  
*ut res magis valeat quam pereat*

- words of statute must be construed so as to lead to a sensible meaning

**Rule of Reasonable Construction**  
*Interpretatio fienda est ut res magis valeat quam pereat*

- words of a statute must be construed reasonably so as to give effect to the enactment rather than reduce it to a futility

**Rule of Harmonious Construction**  
*generalia specialibus non derogant*

- A specific rule will override a general rule.

**Doctrine of Noscitur a Sociis**  
*Noscitur a Sociis*

- Meaning of doubtful word may be ascertained by reference to word associated with it

**Doctrine of Contemporanea Expositio**  
*Contemporanea Expositio est optima et fortissima in lege*

- law should be understood in the sense in which it was understood at the time when it was passed

**Doctrine of Contemporanea Expositio**  
*optima legum interpretis est consuetudo*

- Custom is the best interpreter of law

**Non-obstante clause**

- notwithstanding anything contained

**Earlier Act Explained by the Later Act**  
*pari materia*

- in a similar case

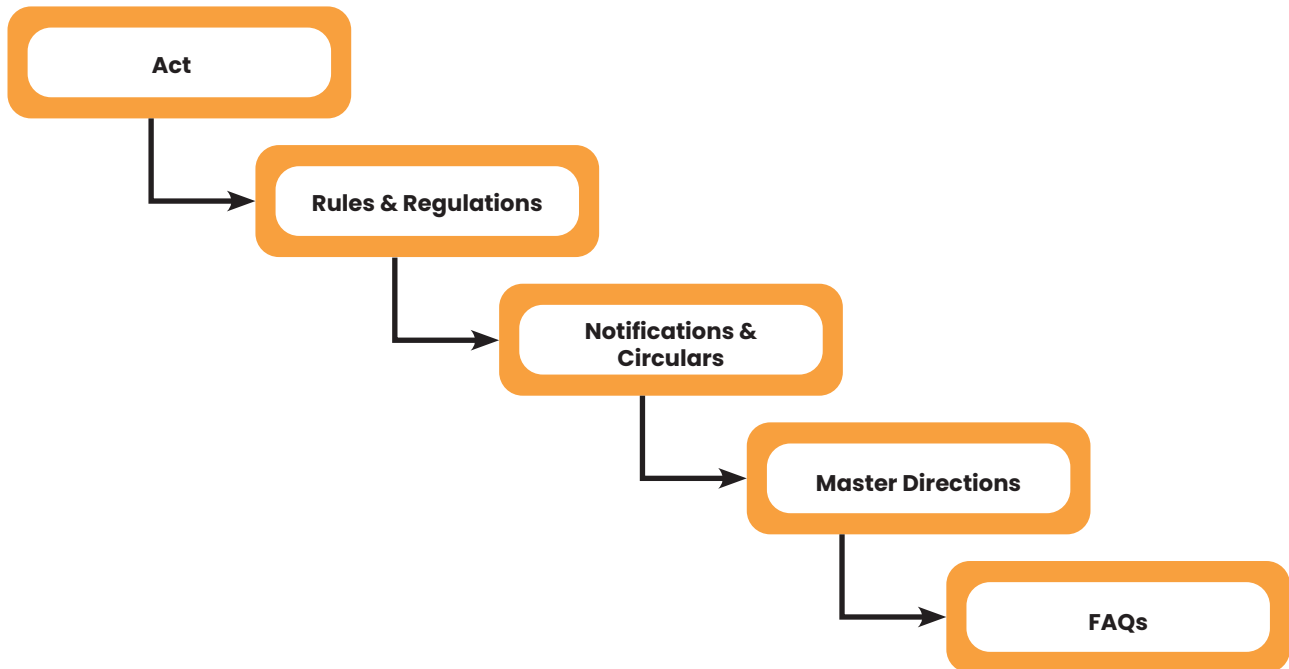
**The Foreign Exchange Management Act, 1999**

## Chapter 3

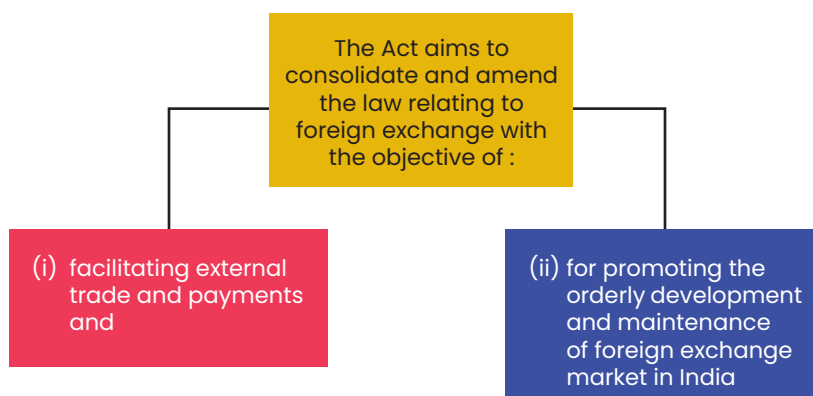
# The Foreign Exchange Management Act, 1999

## I. Introduction

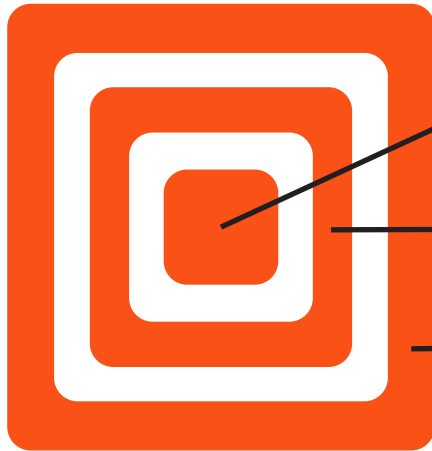
### 1. How to Read FEMA



### 2. Preamble of FEMA



### 3. Extent and Application of FEMA



Extends to the whole of India

Also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India

Also to any contravention thereunder committed outside India by any person to whom this Act applies

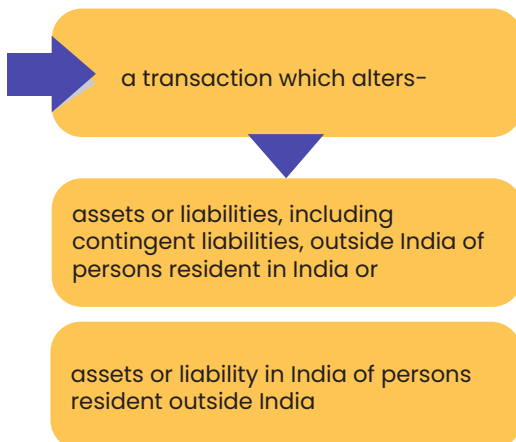
## II. Definitions

### 1. Authorised Person

means

- an authorised dealer,
- money changer,
- off-shore banking unit or
- any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities

### 2. Capital Account Transactions





### 3. Currency

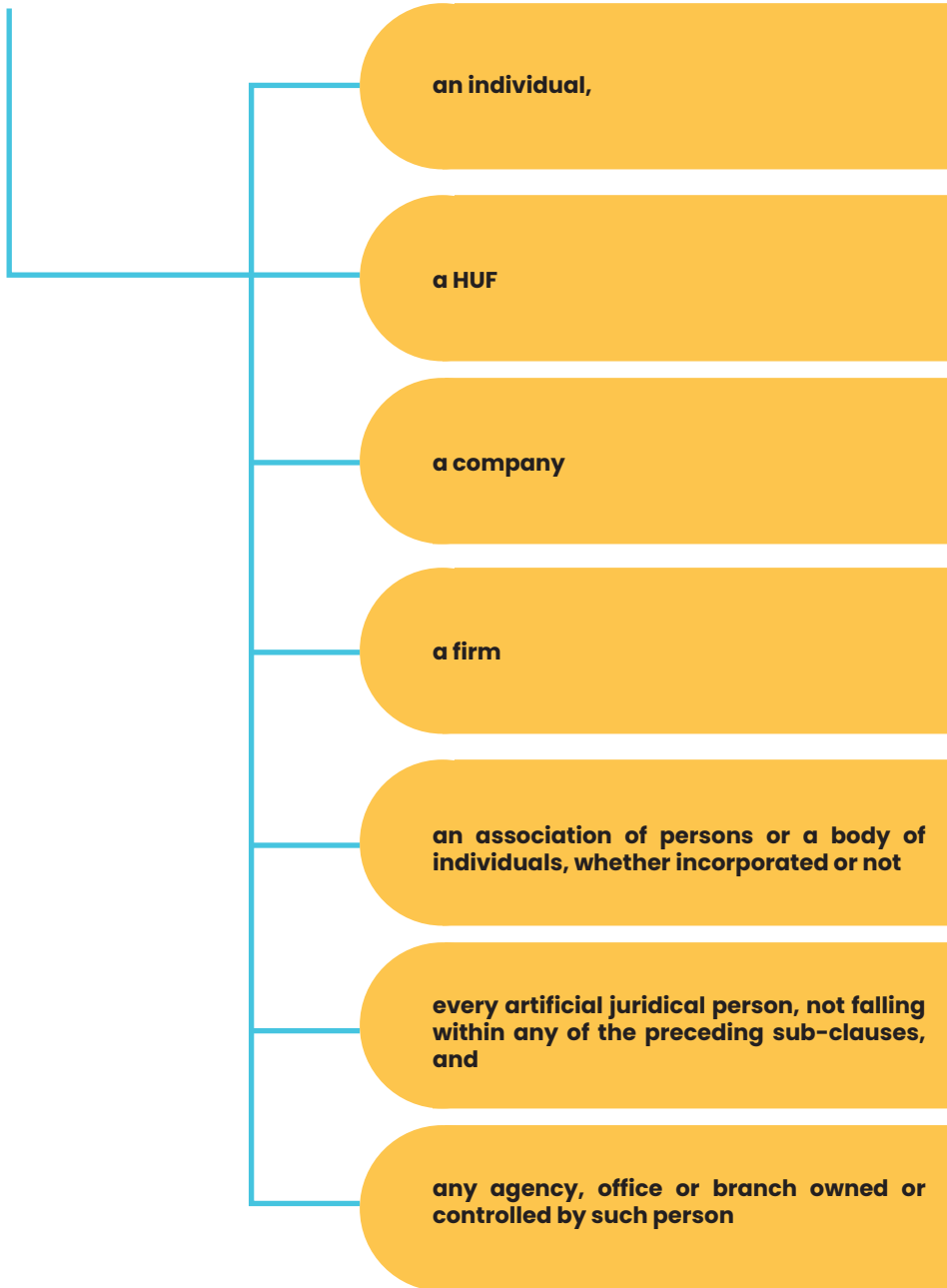


### 4. Current Account Transaction

• means a transaction (other than a capital account transaction) and without prejudice to the generality of the foregoing such transaction includes,

- payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- payments due as interest on loans and as net income from investments.
- remittances for living expenses of parents, spouse and children residing abroad, and
- expenses in connection with foreign travel, education and medical care of parents, spouse and children;

5. Person



## 6. Person Resident in India

**means**



(i) a person residing in India for more than 182 days in the PFY but does not include—

(A) a person who has gone out of India / who stays outside India, in either case for—

- (a) employment outside India, or
- (b) business or vocation outside India, or
- (c) for any other purpose, for an uncertain period;

(B) a person who has come to / stays in India, in either case, otherwise than for:

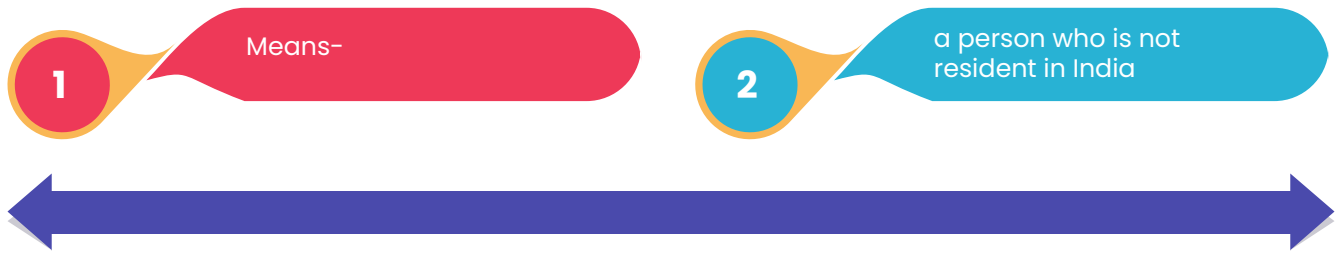
- (a) employment in India, or
- (b) business or vocation in India, or
- (c) for any other purpose, for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

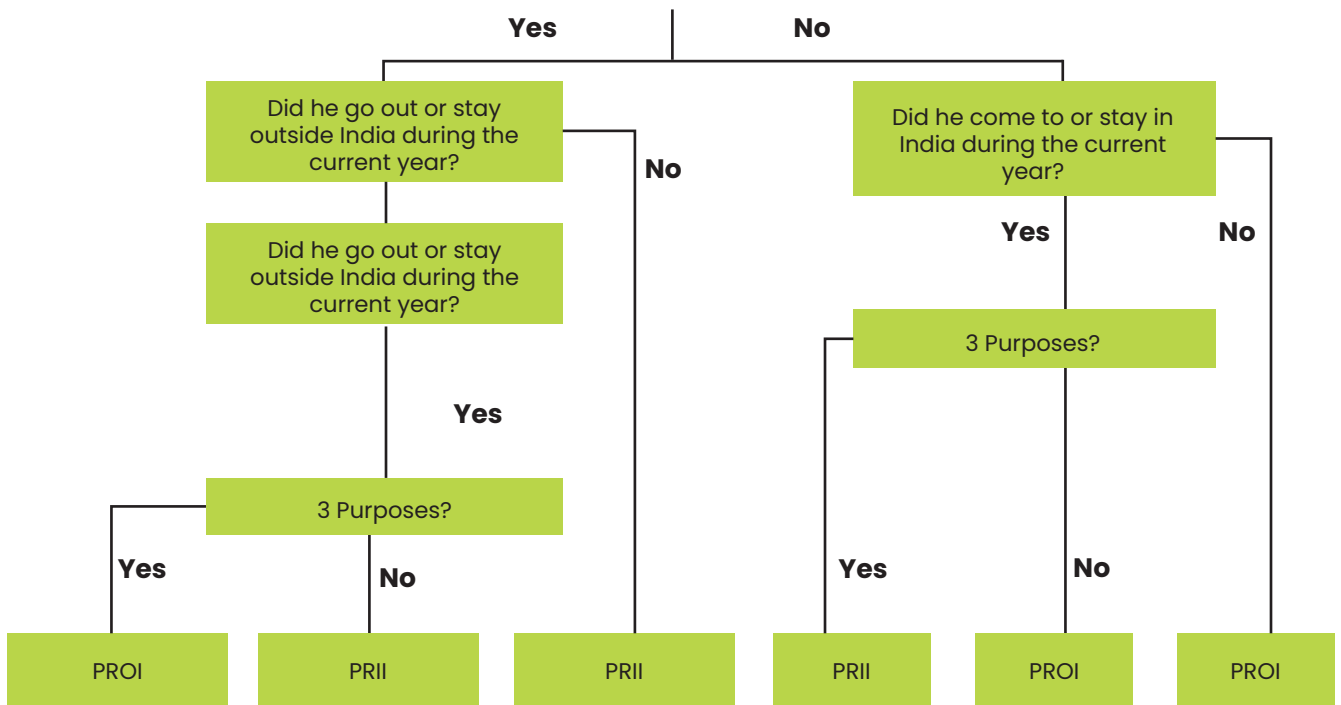
7. Person resident outside India



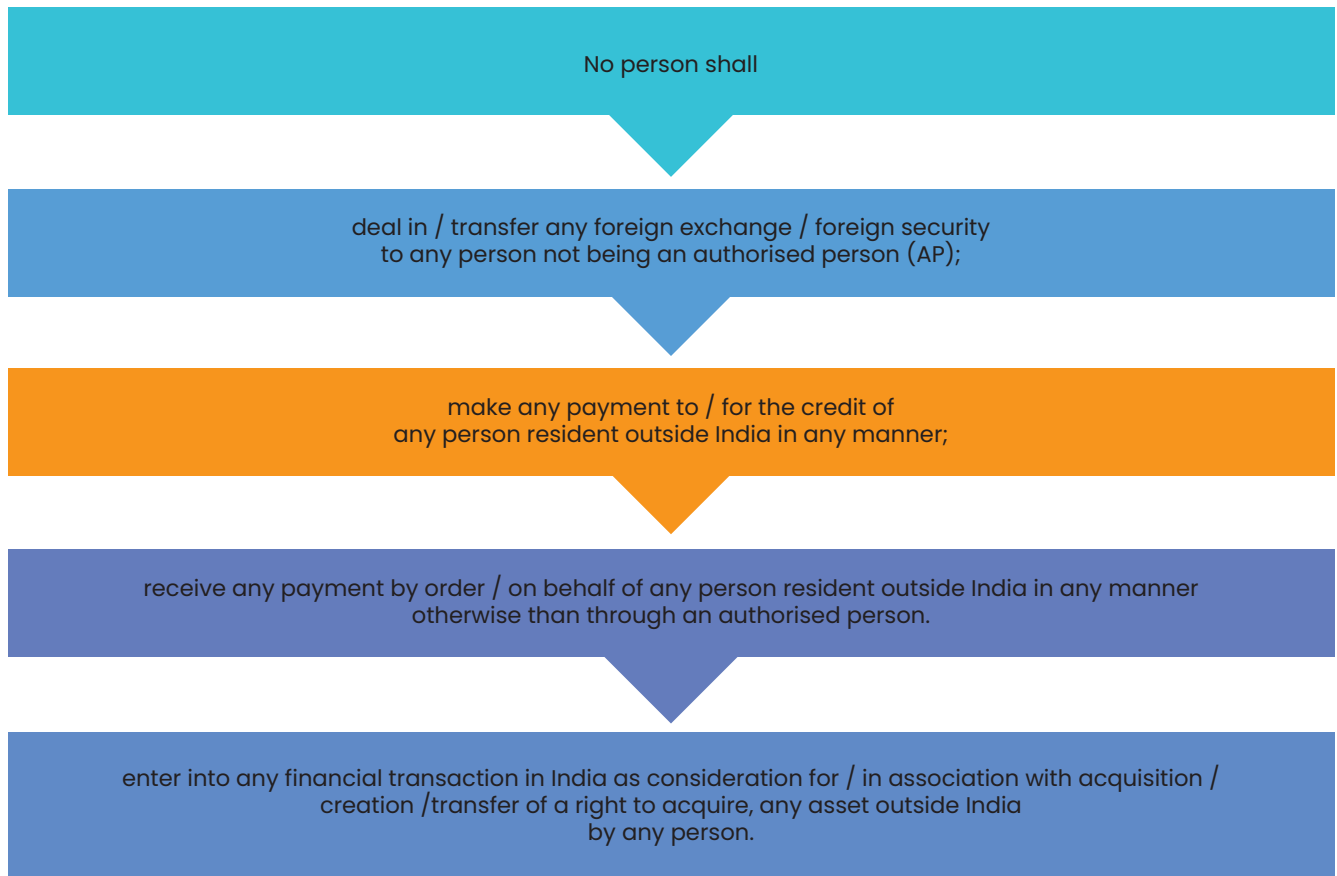
III. Determination of Residential Status

Person resident outside India means a person who is **not** resident in India

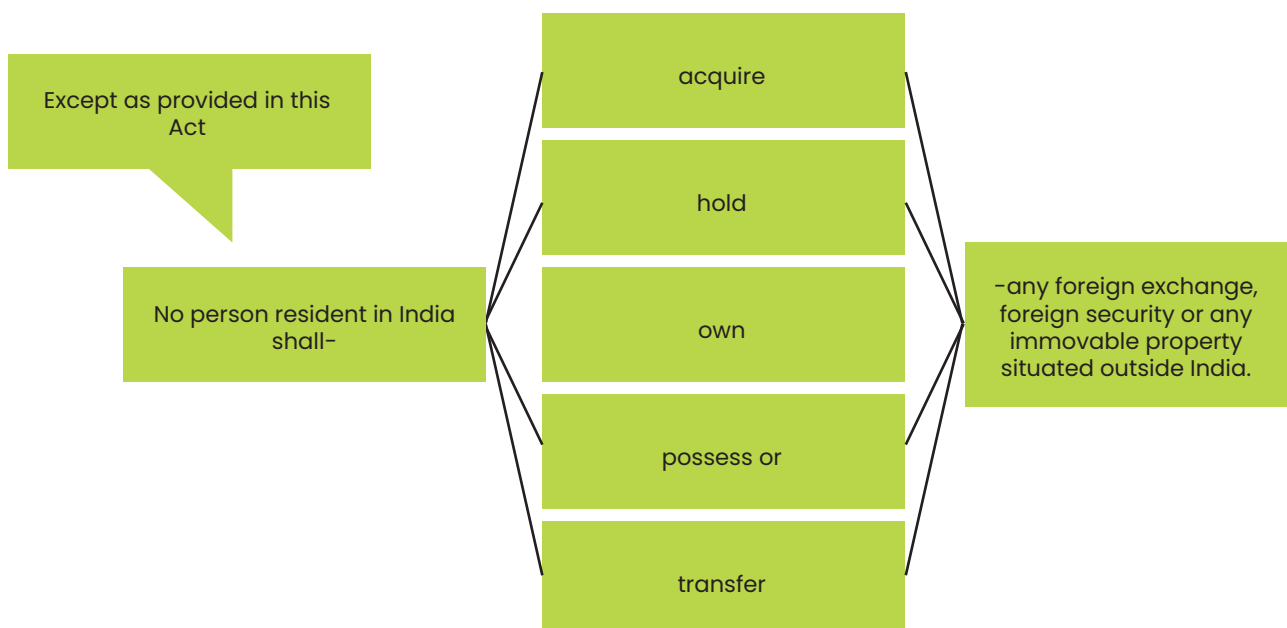
During the relevant previous year did he reside in India for more than 182 days



## IV. Dealing In Foreign Exchange, Etc.



## V. Holding Of Foreign Exchange



## VI. Current Account Transactions

### Reasonable Restrictions on Current Account Transactions as per the FEMA (Current Account Transactions) Rules, 2000

Who may impose restrictions	The Central Government may, in public interest and in consultation with the Reserve Bank,
Current Account transactions	are freely permitted unless specifically prohibited
Relevant section	Section 5 read with the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
Schedules	lay down the restrictions

#### Schedule I

(i)	Remittance out of lottery winnings.
(ii)	Remittance of income from racing/riding, etc., or any other hobby.
(iii)	Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
(iv)	Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies.
(v)	Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
(vi)	Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
(vii)	Payment related to "Call Back Services" of telephones.
(viii)	Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

## Schedule II

Transactions which require RBI's prior approval for drawal of foreign exchange:

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
Remittance of hiring charges of transponders by (a) TV Channels (b) Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology.
Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State Level sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

## Schedule III

Transactions which require RBI's prior approval for drawal of foreign exchange:

Facilities for individuals	Facilities for persons other than individual
Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 250,000 only:	following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:
<ul style="list-style-type: none"> <li>(i) Private visits to any country (except Nepal and Bhutan)</li> <li>(ii) Gift or donation.</li> <li>(iii) Going abroad for employment</li> <li>(iv) Emigration</li> <li>(v) Maintenance of close relatives abroad</li> <li>(vi) Travel for business or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.</li> <li>(vii) Expenses in connection with medical treatment abroad</li> <li>(viii) Studies abroad</li> <li>(ix) Any other current account transaction</li> </ul>	<ul style="list-style-type: none"> <li>(i) Donations exceeding 1% of their foreign exchange earnings during the previous three financial years / USD 5,000,000, whichever is less, for-               <ul style="list-style-type: none"> <li>a. creation of Chairs in reputed educational institutes,</li> <li>b. contribution to funds (not being an investment fund) promoted by educational institutes; and</li> <li>c. contribution to a technical institution or body or association in the field of activity of the donor Company.</li> </ul> </li> <li>(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 / 5% of the inward remittance whichever is more.</li> <li>(iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.</li> <li>(iv) Remittances exceeding 5% of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.</li> </ul>
Any additional remittance in excess shall require prior approval of the Reserve Bank of India.	
for the item numbers (iv), (vii) and (viii) above, the individual may avail of exchange facility for an amount in excess of the limit prescribed if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:	



**VII. Capital Account Transactions**

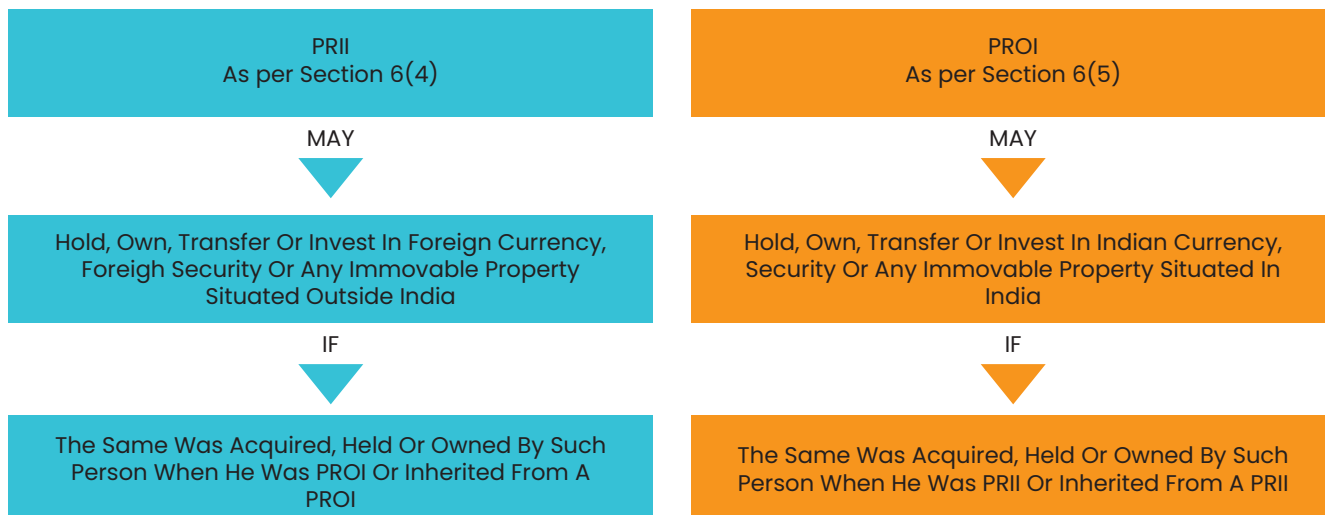
Who may impose restrictions	The Reserve Bank of India may by regulations place restrictions on various specified capital account transactions
Capital Account transactions	are prohibited unless specifically or generally permitted
Relevant section	Section 6 read with the Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000
Schedules	lay down the prohibitions- (I) transaction, which are permissible in respect of persons resident in India and outside India. (II) transaction on which restrictions cannot be imposed; and (III) transactions, which are prohibited.

**Legal Provisions**

Section no	Legal requirements
6(1)	Any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
6(2)	Reserve Bank had the power to specify the Capital Account transactions which are permitted and the relevant limits, terms and conditions. (a) any class or classes of capital account transactions, involving debt instruments, which are permissible; (b) the limit up to which foreign exchange shall be admissible for such transactions; (c) any conditions which may be placed on such transactions;
6(2A)	The Central Government may, in consultation with the Reserve Bank, prescribe— (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible; (b) the limit up to which foreign exchange shall be admissible for such transactions; and (c) any conditions which may be placed on such transactions.
6(3)	Deleted

6(4)	A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
6(5)	A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by a such person when he was resident in India or inherited from a person who was resident in India.
6(6)	the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.
6(7)	The term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

**Capital Account Transactions**



### Schedule

I. Permissible Transactions	
SCHEDULE I	SCHEDULE II
<p>The list of permissible classes of transactions made by persons resident in India is:</p> <p>(a) Investment by a person resident in India in foreign securities.</p> <p>(b) Foreign currency loans raised in India and abroad by a person resident in India.</p> <p>(c) Transfer of immovable property outside India by a person resident in India.</p> <p>(d) Guarantees issued by a person resident in India in favour of a person resident outside India.</p> <p>(e) Export, import and holding of currency/currency notes.</p> <p>(f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.</p> <p>(g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.</p> <p>(h) Taking out of insurance policy by a person resident in India from an insurance company outside India.</p> <p>(i) Loans and overdrafts by a person resident in India to a person resident outside India.</p> <p>(j) Remittance outside India of capital assets of a person resident in India.</p> <p>(k) Undertake derivative contracts</p>	<p>The list of permissible classes of transactions made by persons resident outside India is:</p> <p>(a) Investment in India by a person resident outside India, that is to say,</p> <p>(i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and</p> <p>(ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India.</p> <p>(b) Acquisition and transfer of immovable property in India by a person resident outside India.</p> <p>(c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.</p> <p>(d) Import and export of currency/currency notes into/ from India by a person resident outside India.</p> <p>(e) Deposits between a person resident in India and a person resident outside India.</p> <p>(f) Foreign currency accounts in India of a person resident outside India.</p> <p>(g) Remittance outside India of capital assets in India of a person resident outside India.</p> <p>(h) Undertake derivative contracts</p>
Prohibited Transactions	
<p>(a) No person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction-</p>	<p>(i) ,a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.</p> <p>(ii) Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 250,000 per financial year, or as decided by Reserve Bank from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.</p>
<p>b) The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:</p>	<p>(i) In the business of chit fund</p> <p>(ii) (ii) As Nidhi company;</p> <p>(iii) (iii) In agricultural or plantation activities;</p> <p>(iv) (iv) In real estate business, or construction of farm houses or</p> <p>(v) In trading in Transferable Development Rights (TDRs).</p>
<p>(c) No person resident in India shall undertake any capital account transaction which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs-</p>	<p>with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction</p>

<p>(d) The existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs -</p>	<p>shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period."</p>
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# The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

## Board of Studies

**The Institute of Chartered Accountants of India**

**ICAI Bhawan, A-29,**

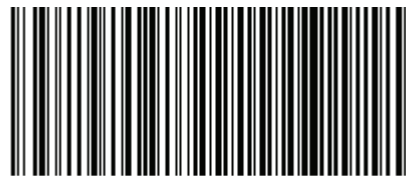
**Sector-62, Noida 201 309**

**E-mail: [bosnoida@icai.in](mailto:bosnoida@icai.in)**

**Phone: 0120 - 3045930**

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