

CA INTER LAW

Handwritten Charts

PART I:

**COMPANY LAW
& LLP**



*By CA
Shivangi Agrawal*

Corporate & Other Laws

Paper: 2

For CA- Inter

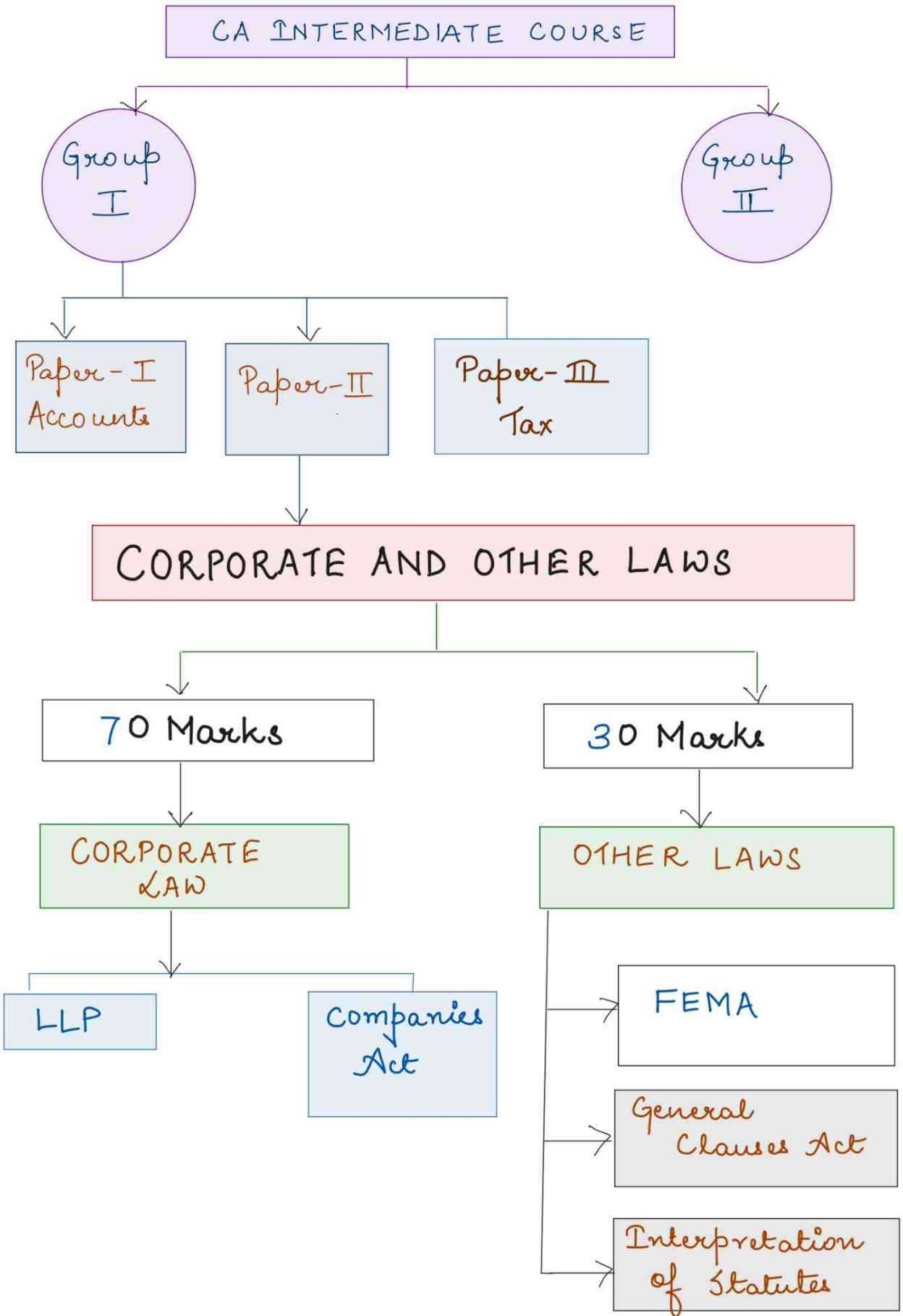
New Syllabus

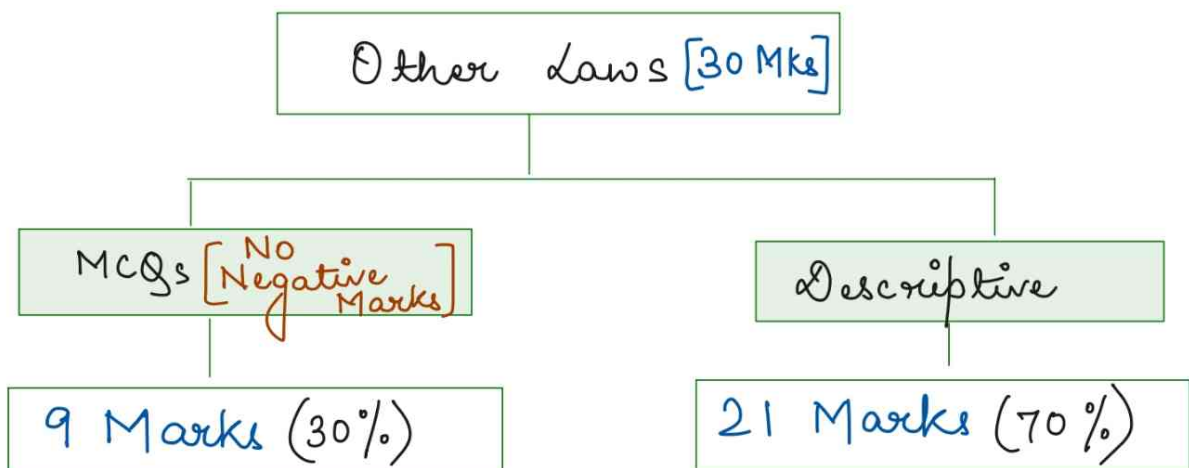
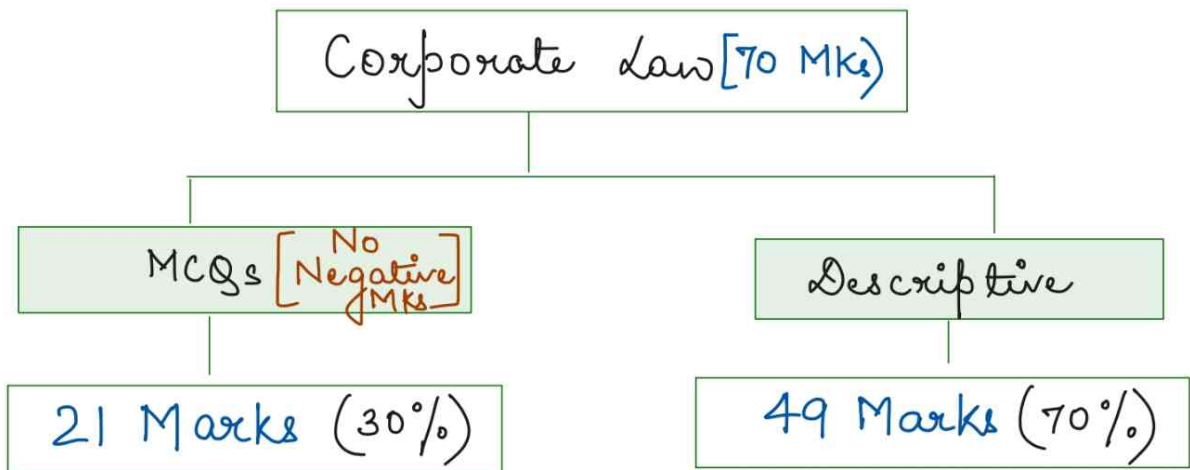
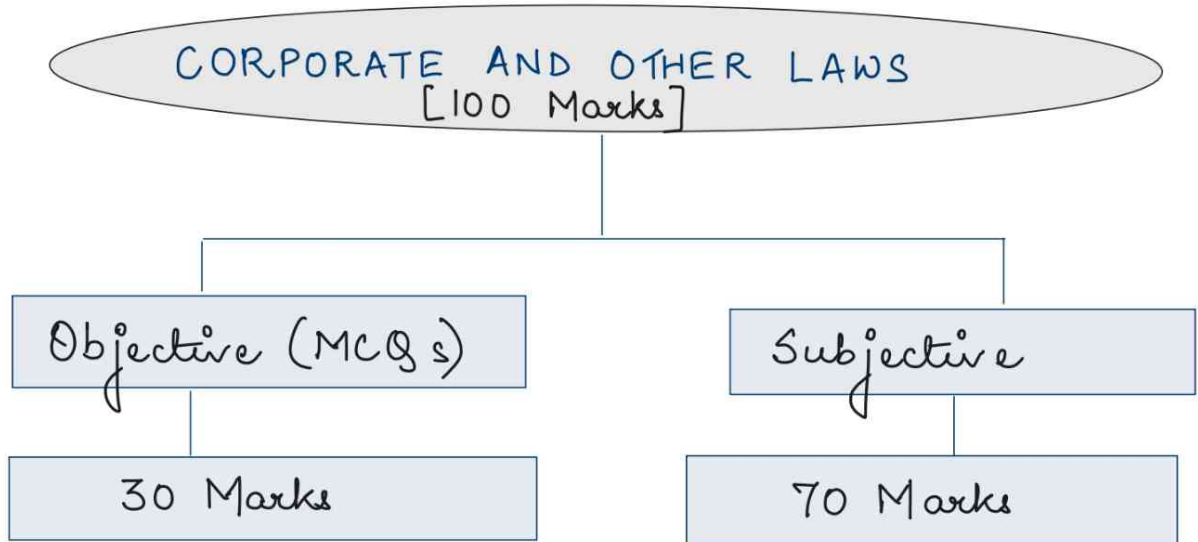
Chart Book – Company Law & LLP

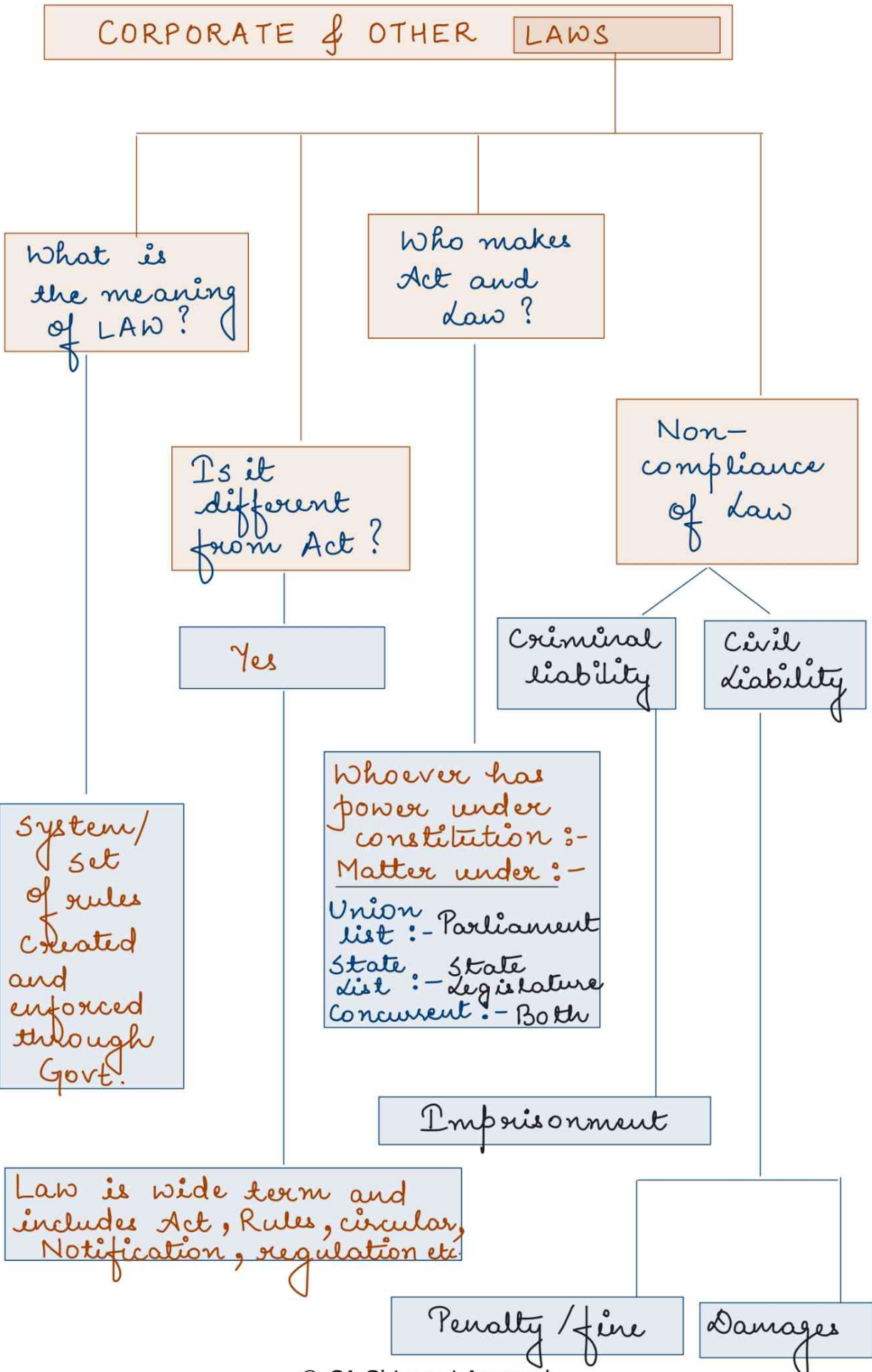
CA Shivangi Agrawal

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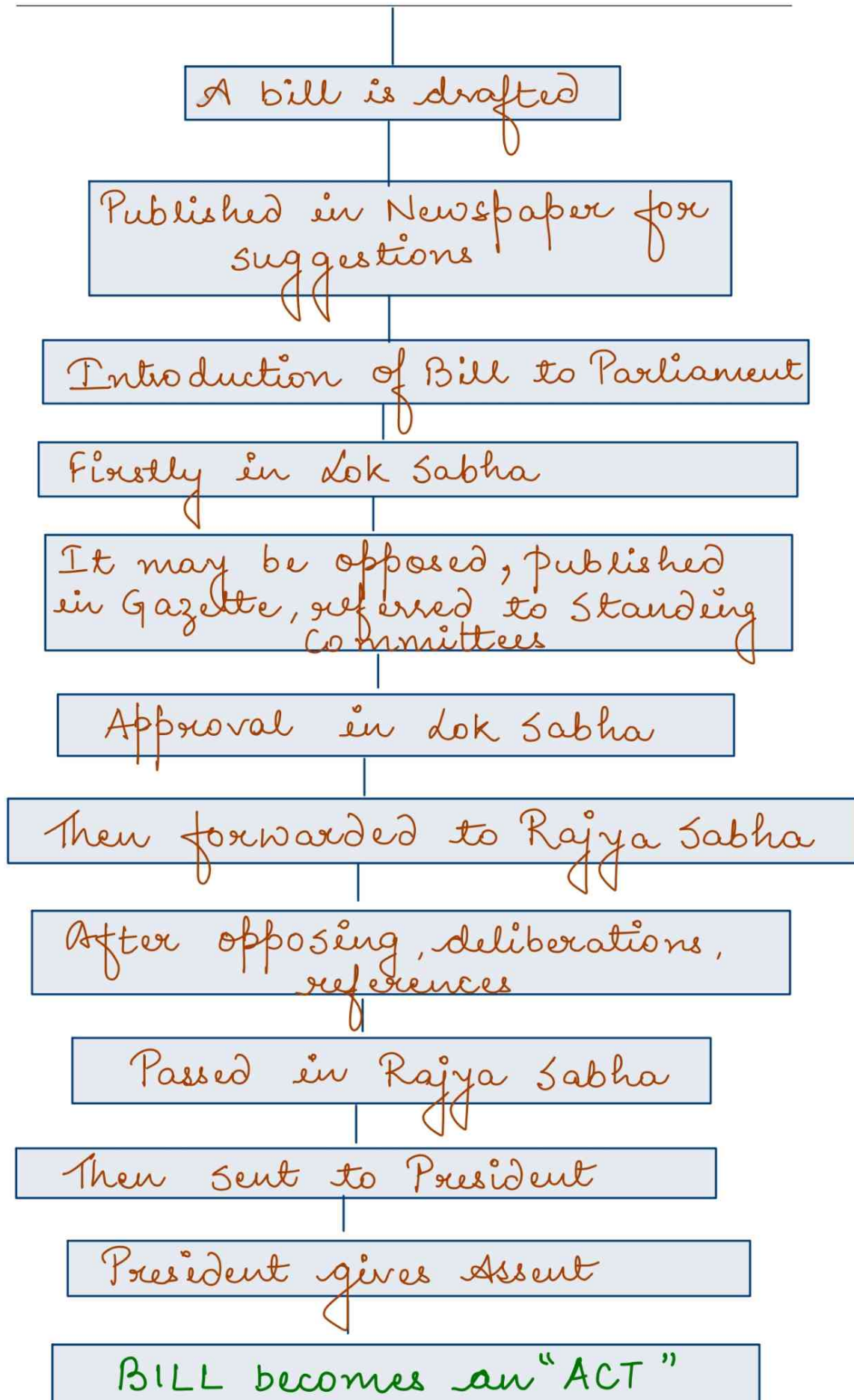


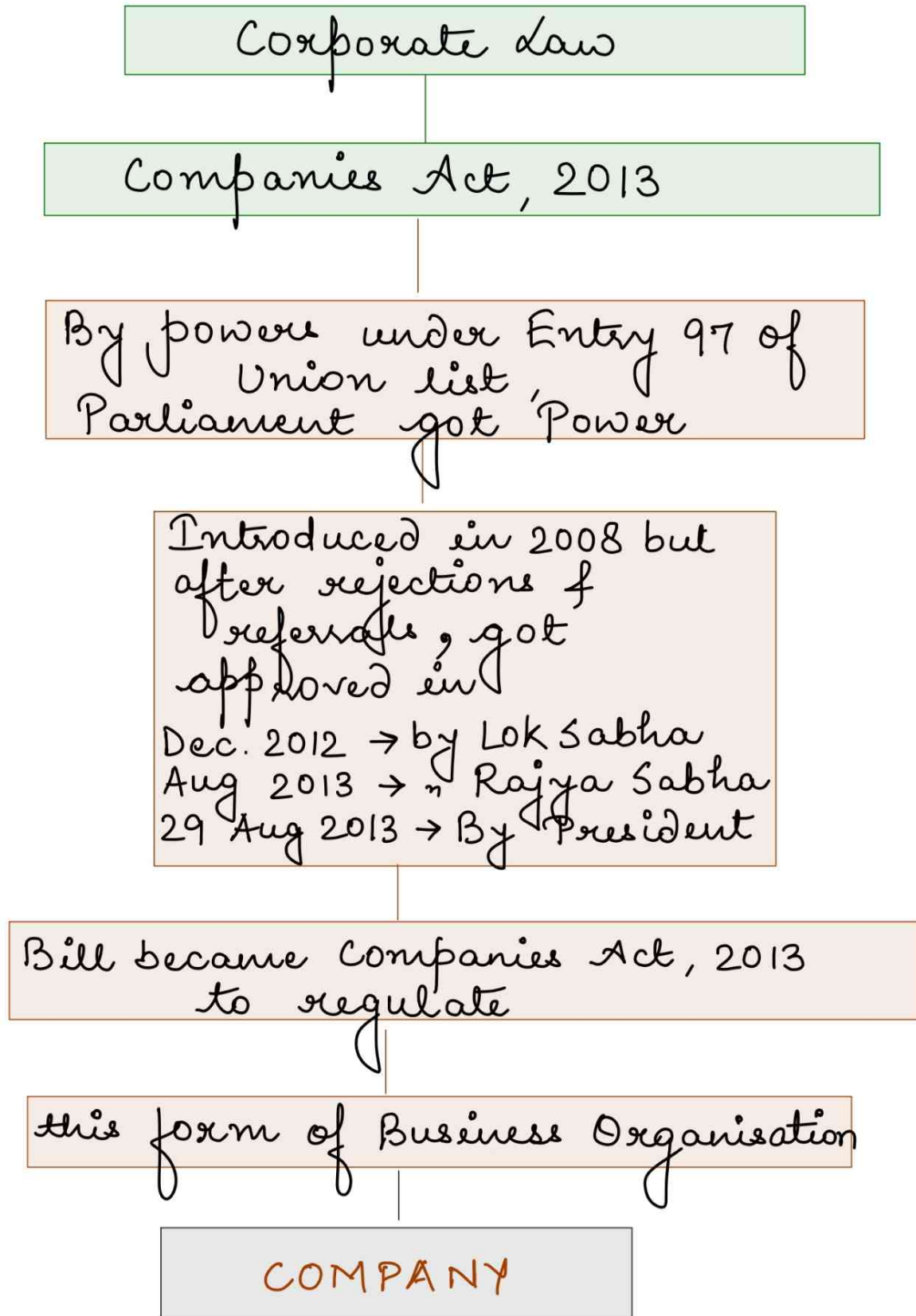


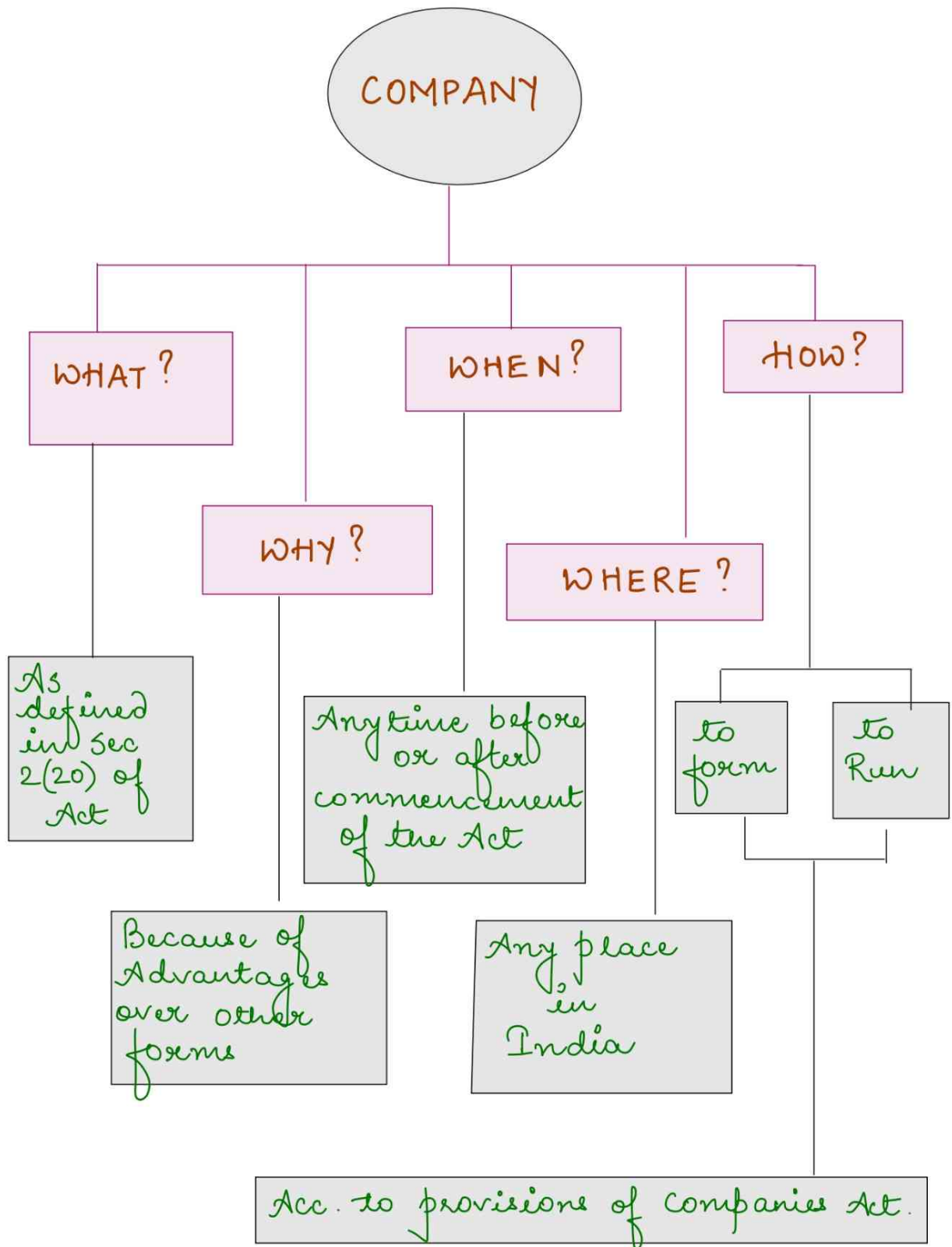


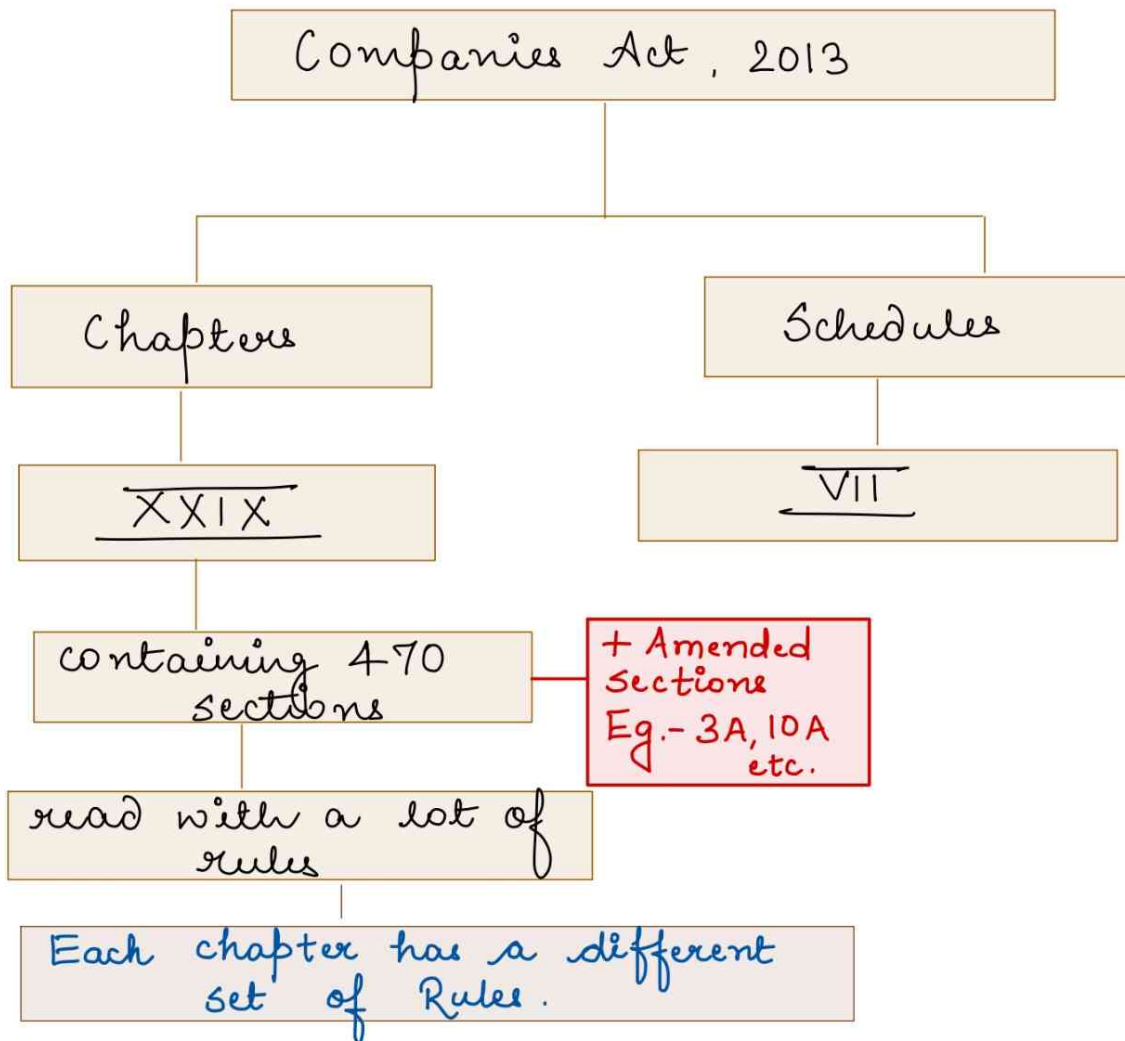
How an Act is Passed ?

4









In CA - Inter Syllabus

containing sections 1-148 + 379-393A
(chapters I to X) + (Chapter XXII)
with relevant rules

Act was notified in Parts :-
 Section 1 notified on 30th Aug 2013
 98 sections " " 12th Sep. 2013
 183 " " " 1st April 2014 and so on..

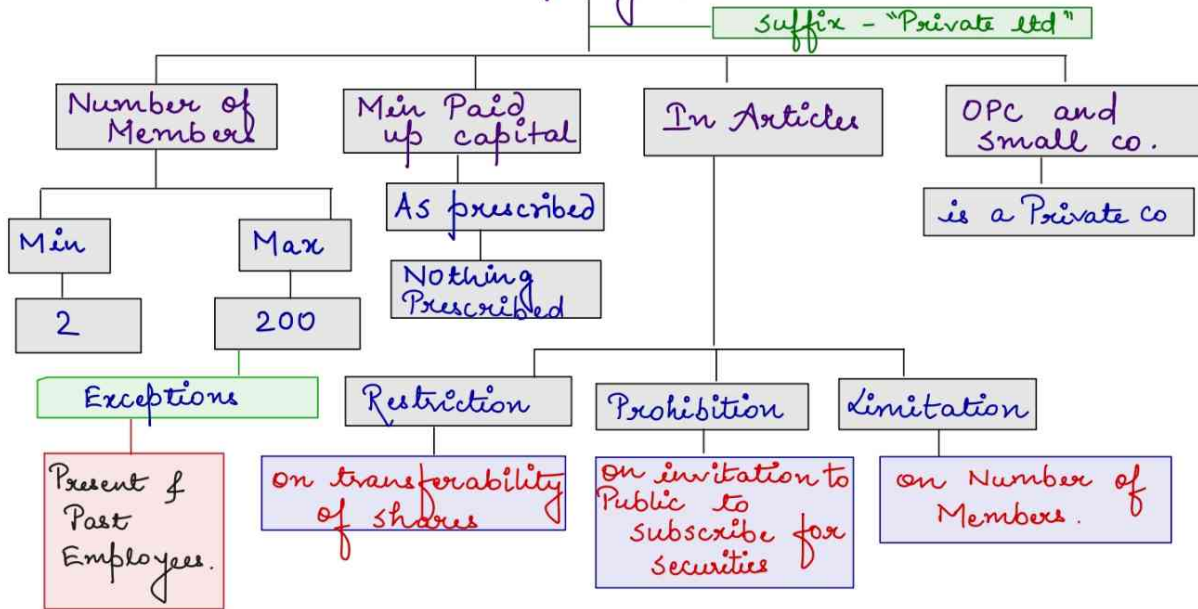
Companies Act, 1956 has been completely repealed and New Act has been now implemented completely.

Extends to whole of India. Applicable also to Banking, Insurance, Electricity co.'s so far provisions are consistent with respective Laws

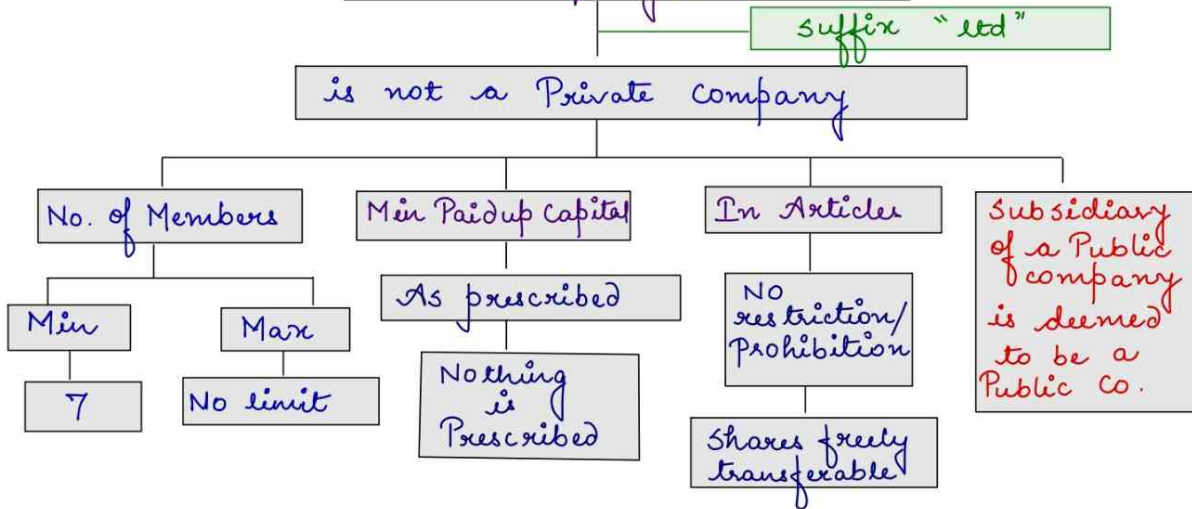
Chapter I ~ Preliminary [Section 1 & 2]

Section 2 :- Definitions

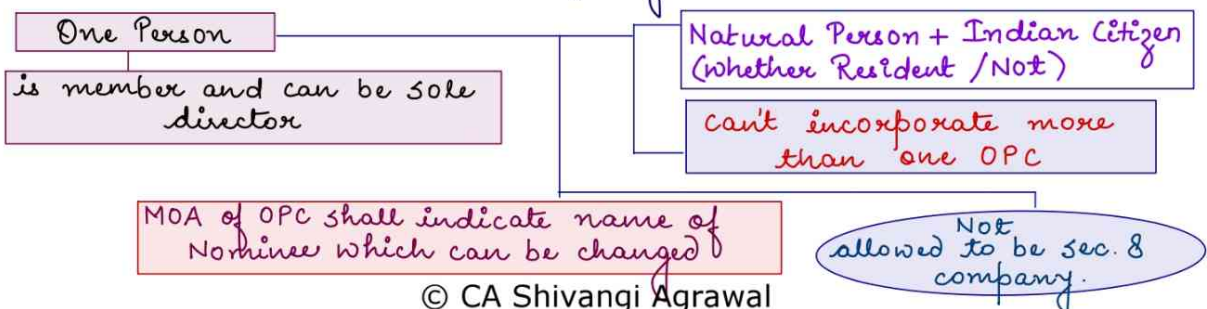
Private Company [Section 2(68)]



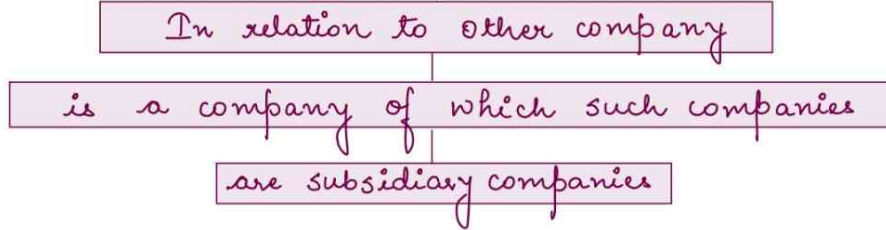
Public Company [Section 2(71)]



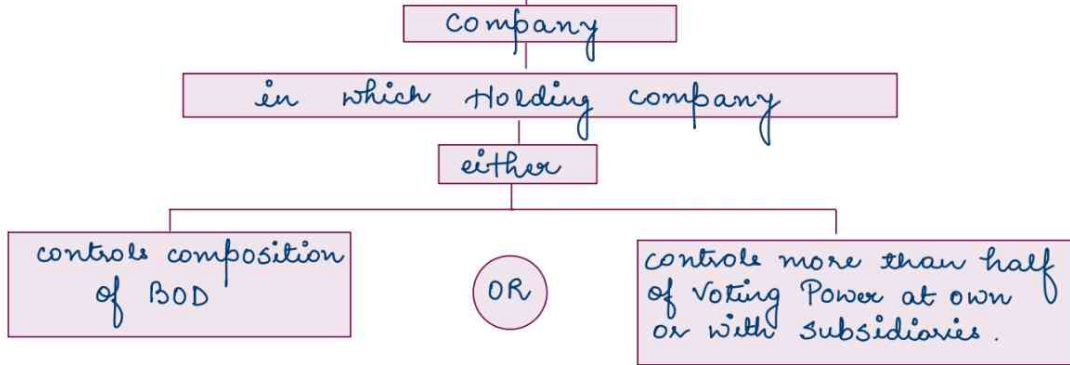
One Person Company [Section 2(62)]



Holding Company [Section 2(46)]

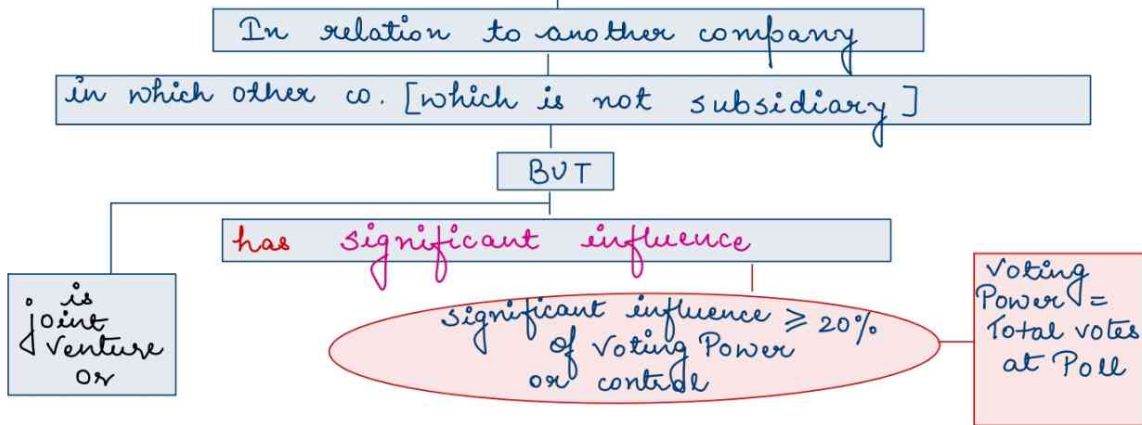


Subsidiary Company [Section 2(87)]

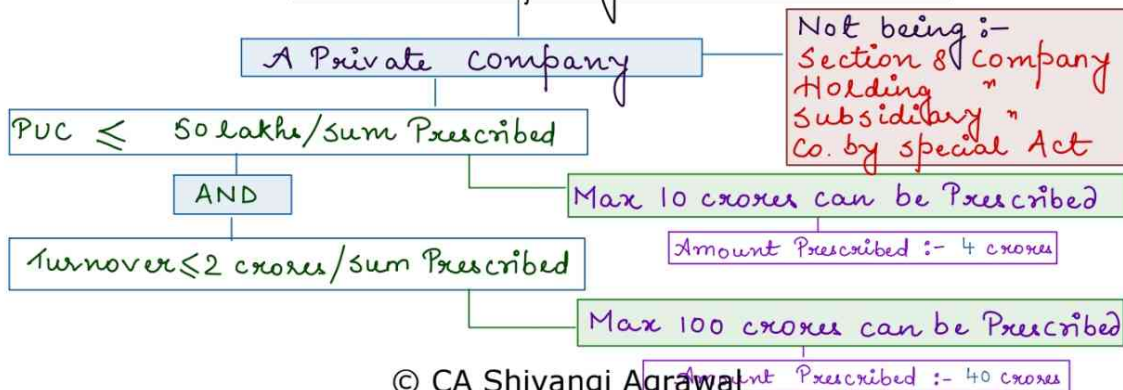


No company shall have more than 2 layers of subsidiaries.

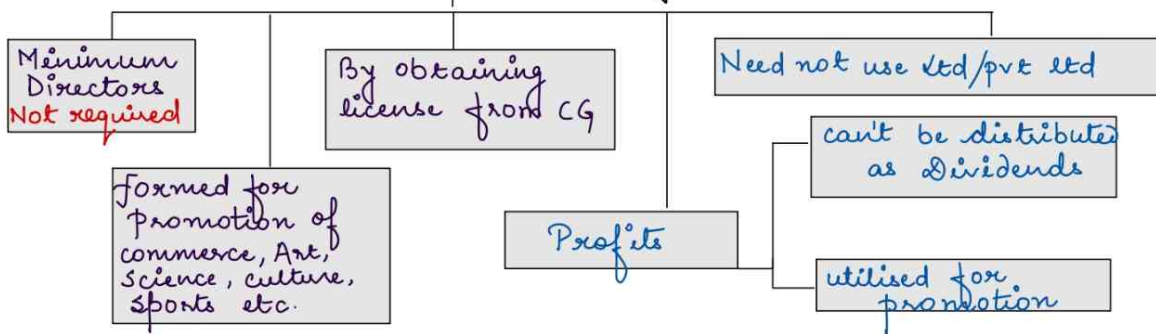
Associate Company [Section 2(6)]



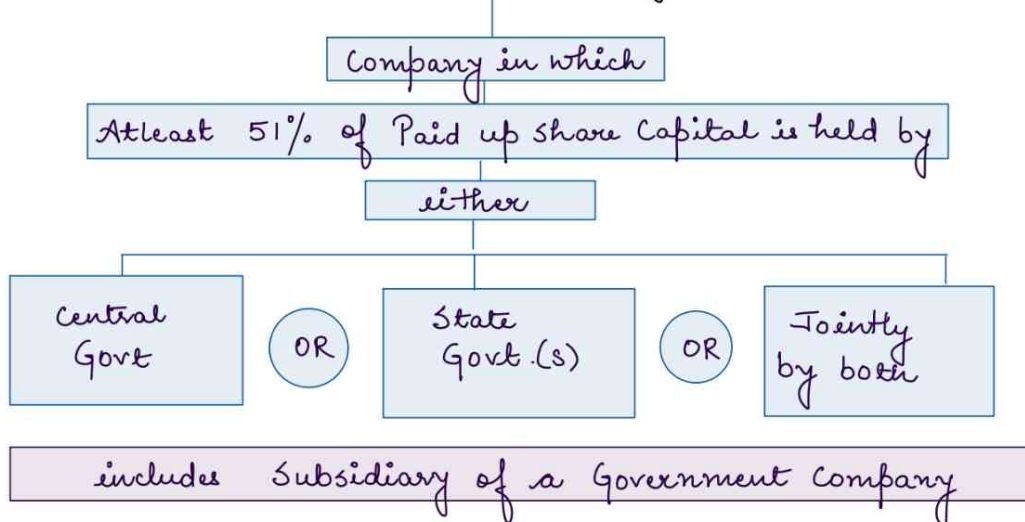
Small Company [Section 2(85)]



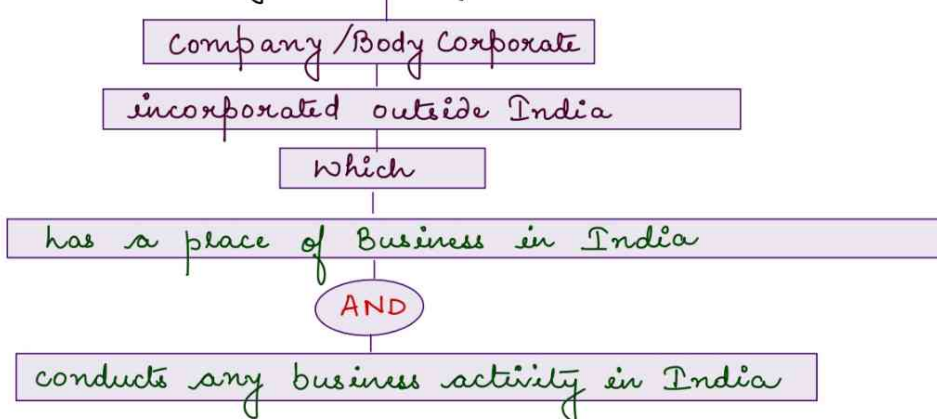
Section 8 Company



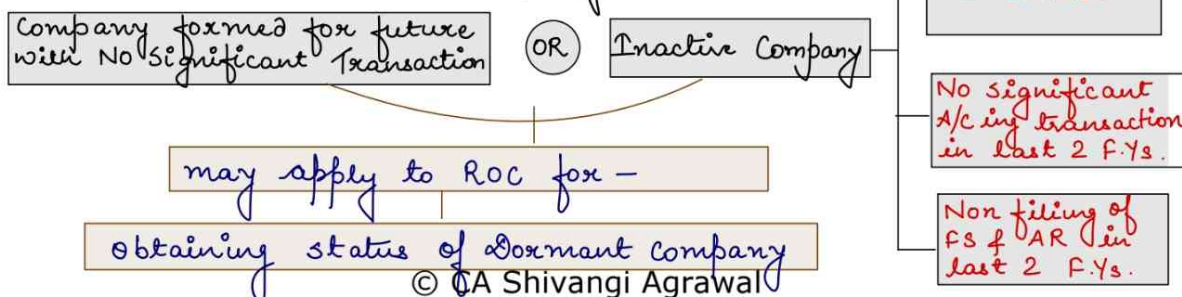
Government Company [Section 2(45)]



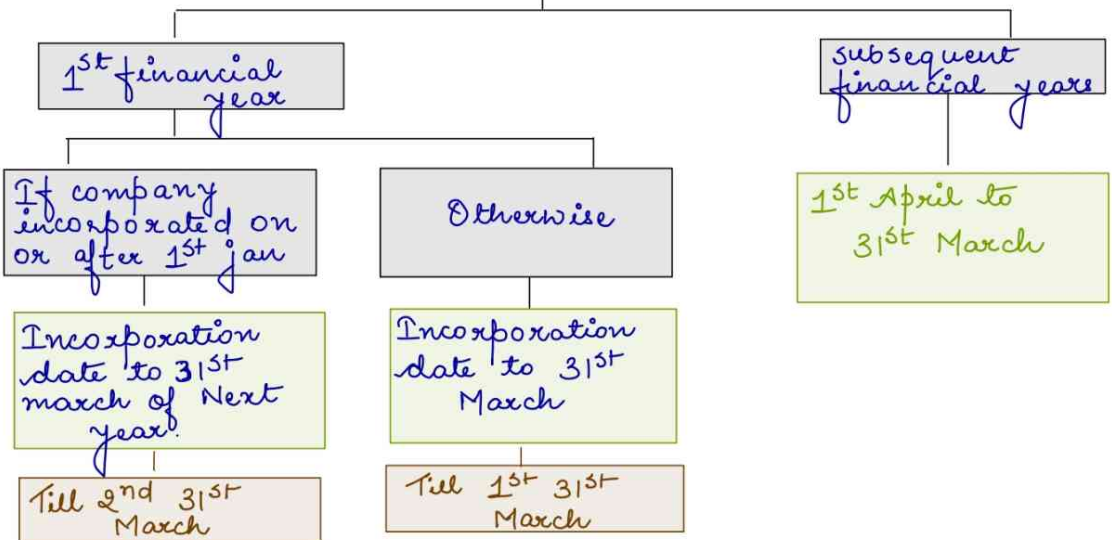
Foreign Company [Section 2(42)]



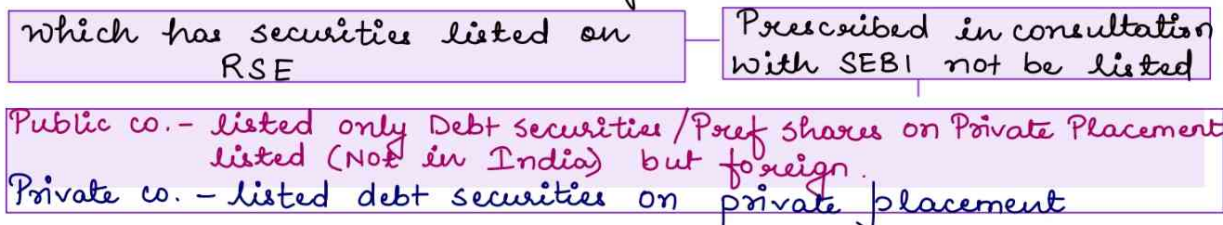
Dormant Company [Sec. 455]



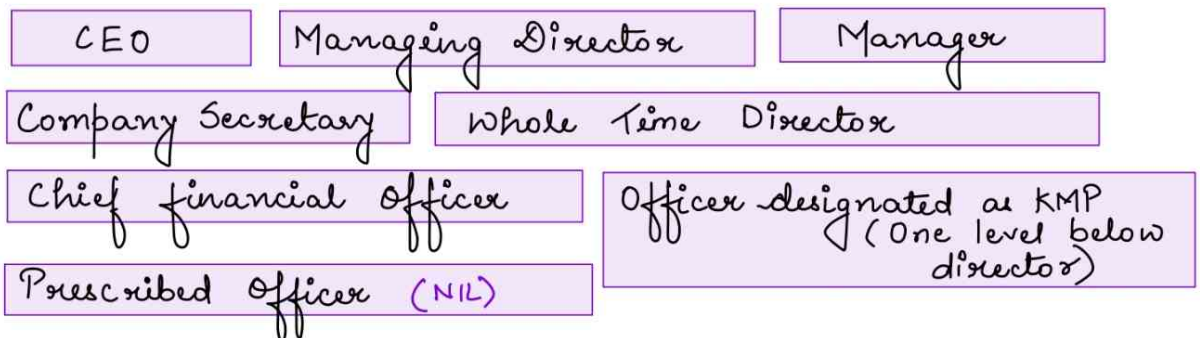
Financial Year [Section 2(41)]



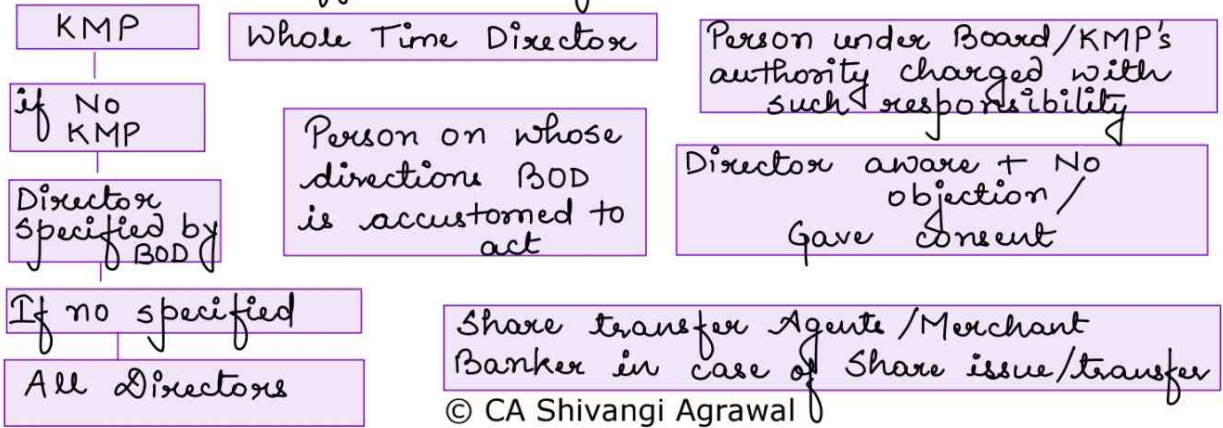
Listed Company [Section 2(52)]



Key Managerial Personnel [Sec. 2(51)]



Officer in Default [Sec. 2(60)]



Related Party [Section 2(76)]

Company = C

Director = D

Relative of Director = DR

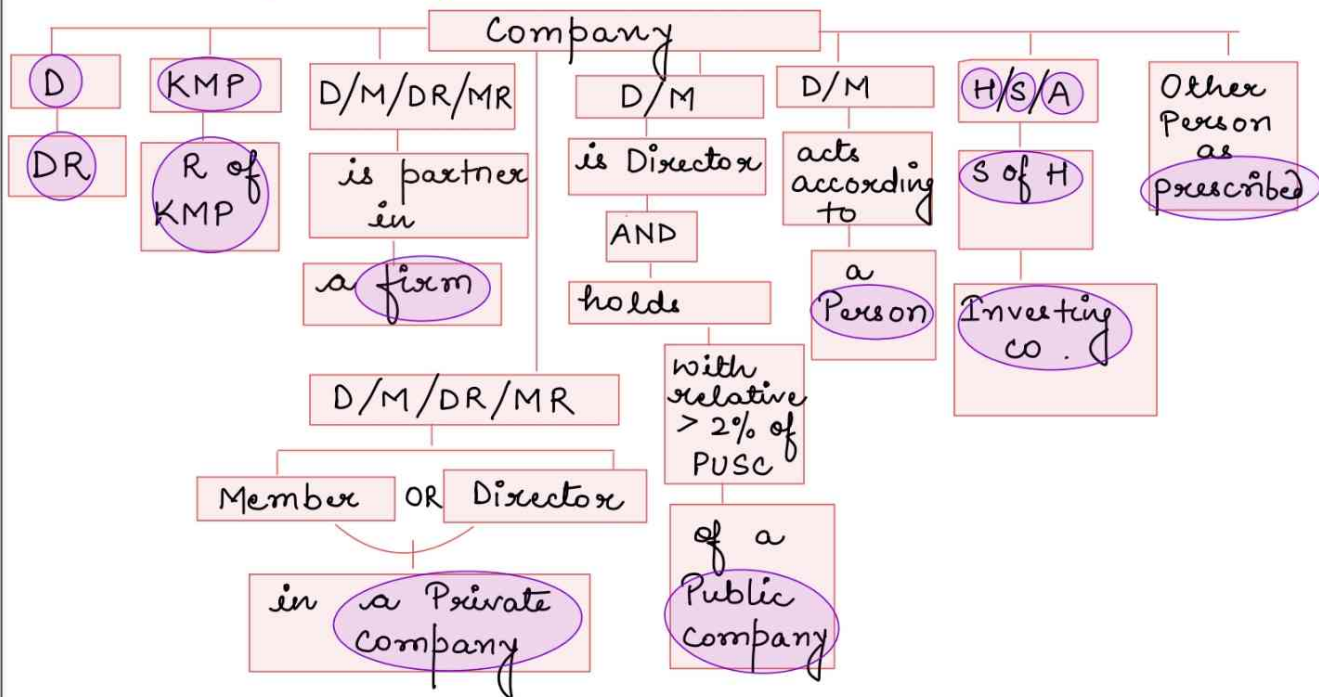
Manager = M

Relative of Manager = MR

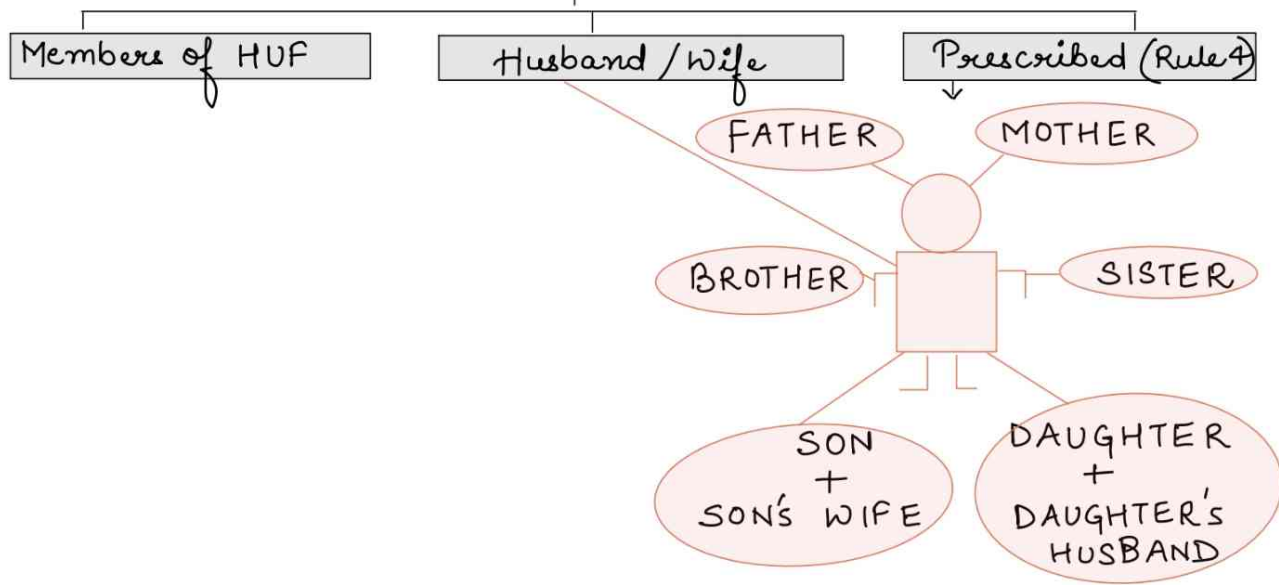
Holding co. = H

Subsidiary co. = S

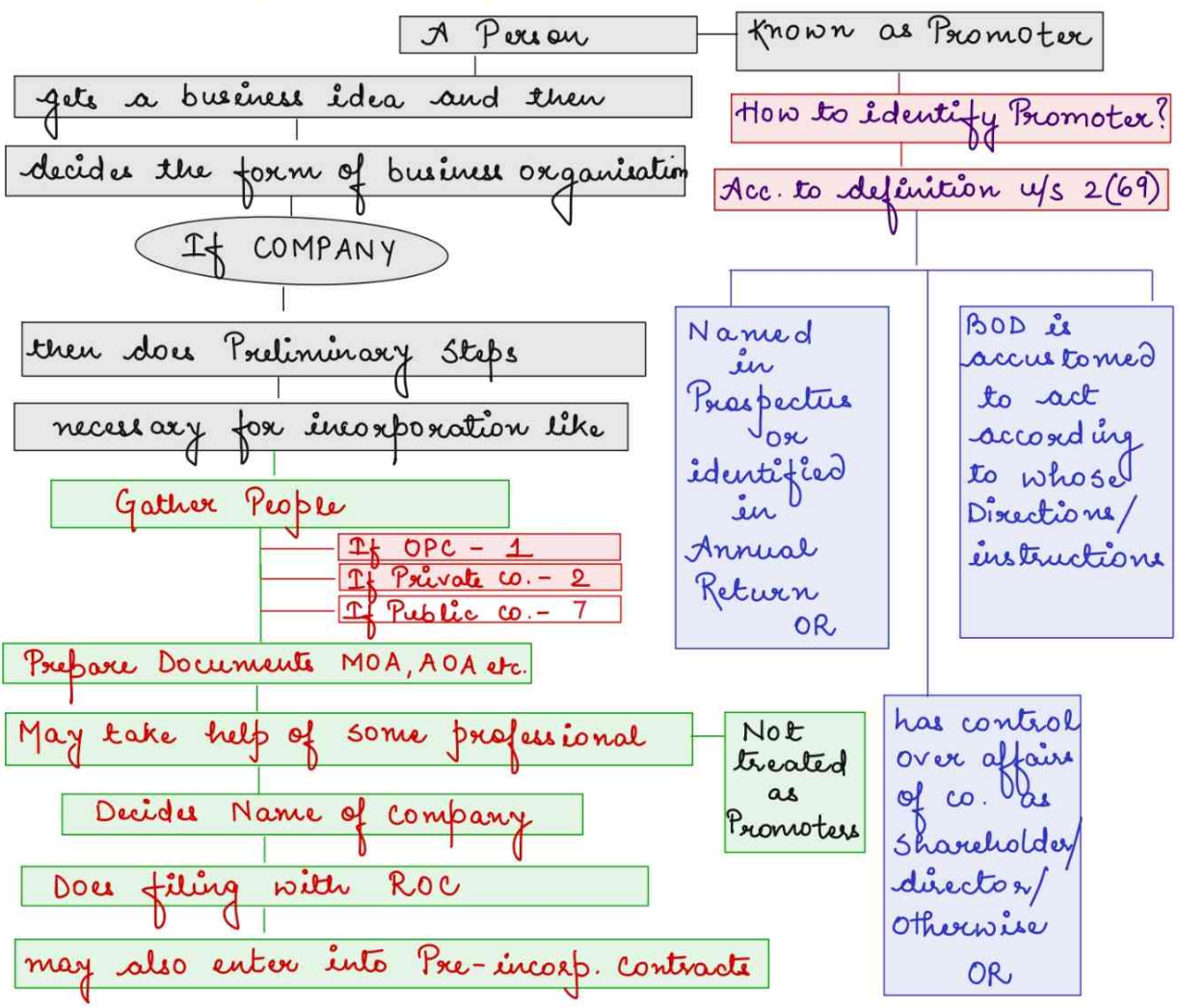
Associate co. = A



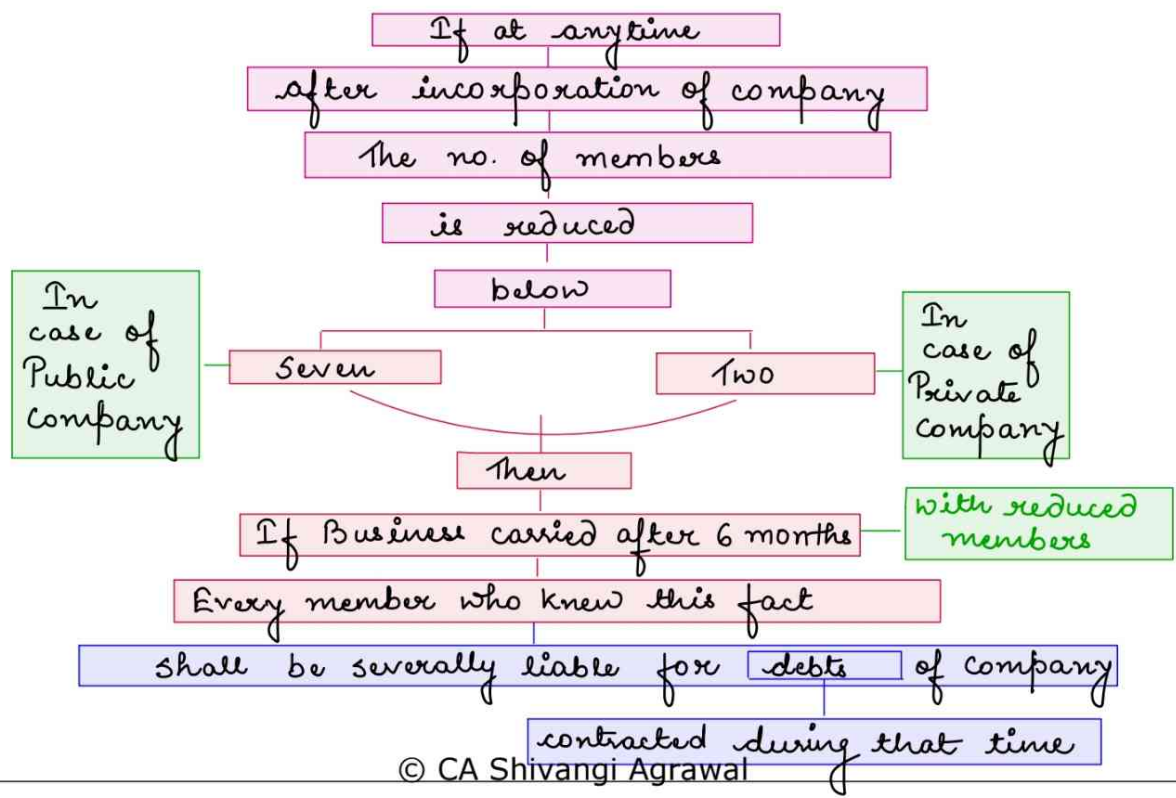
Relative [Section 2(77)]



Incorporation of Company and Matters Incidental thereto

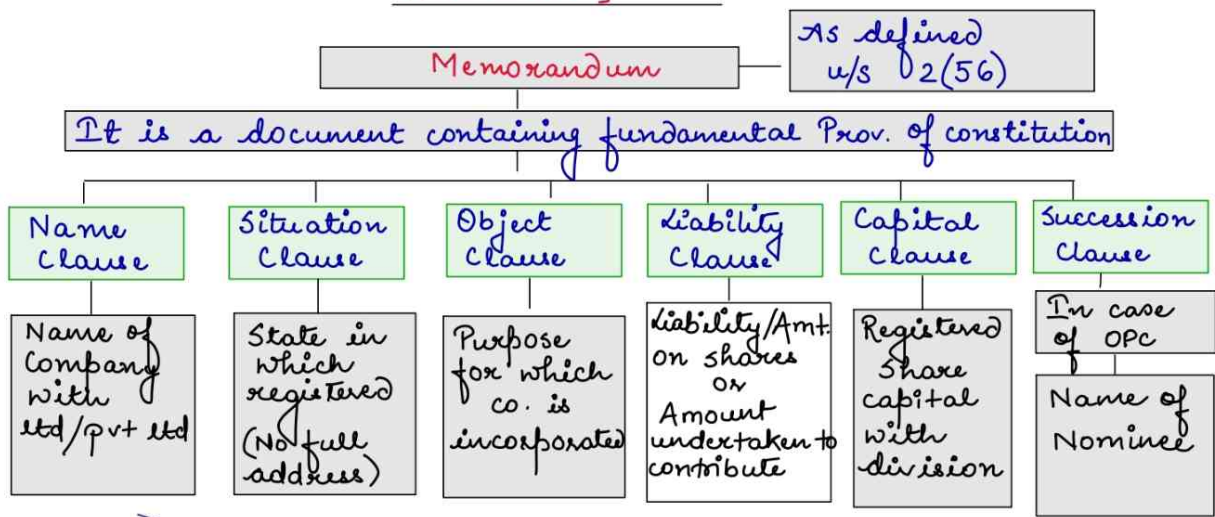


Members liable in Certain Cases [Section 3A]



Memorandum of Association

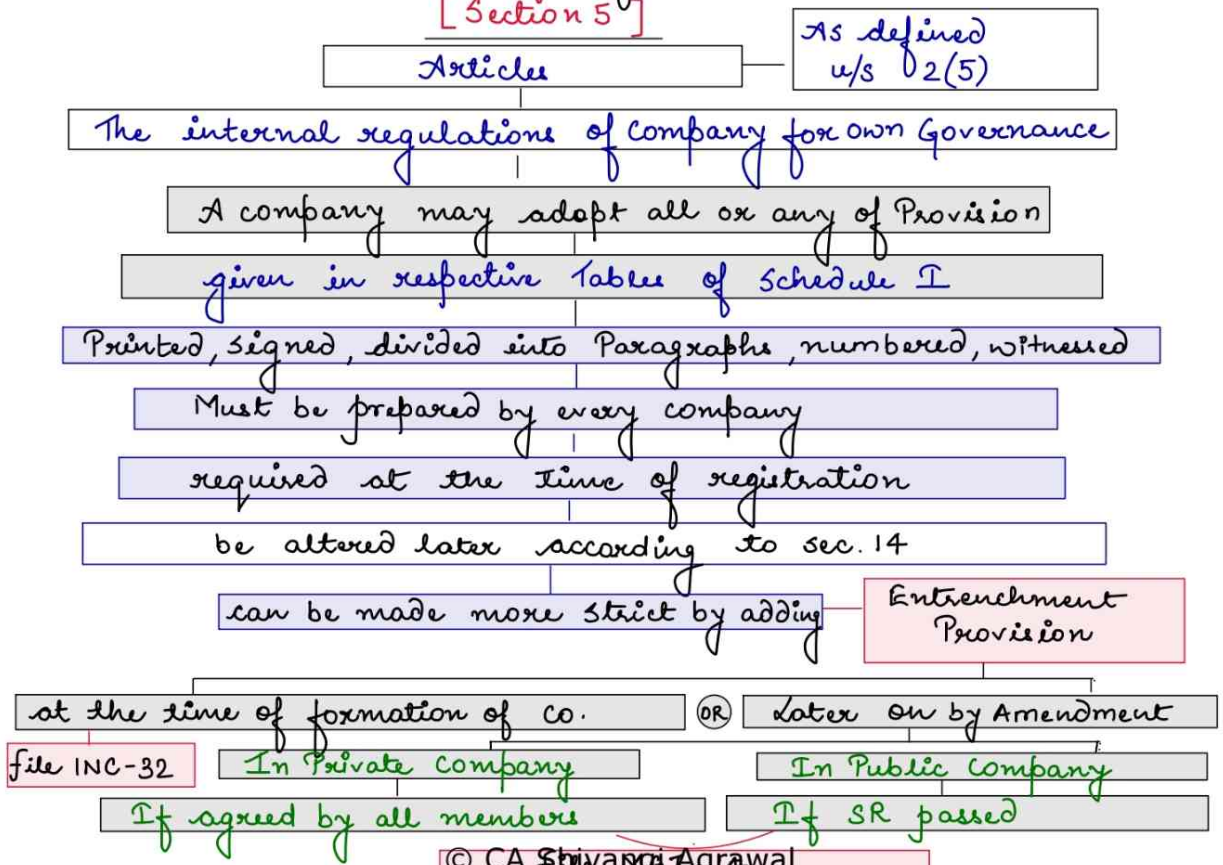
[Section 4]



- Respective forms specified in Schedule I
- Printed, signed, divided into Paragraphs, numbered, witnessed
- Must be prepared by every company
- required at the time of registration
- can be altered later according to sec. 13

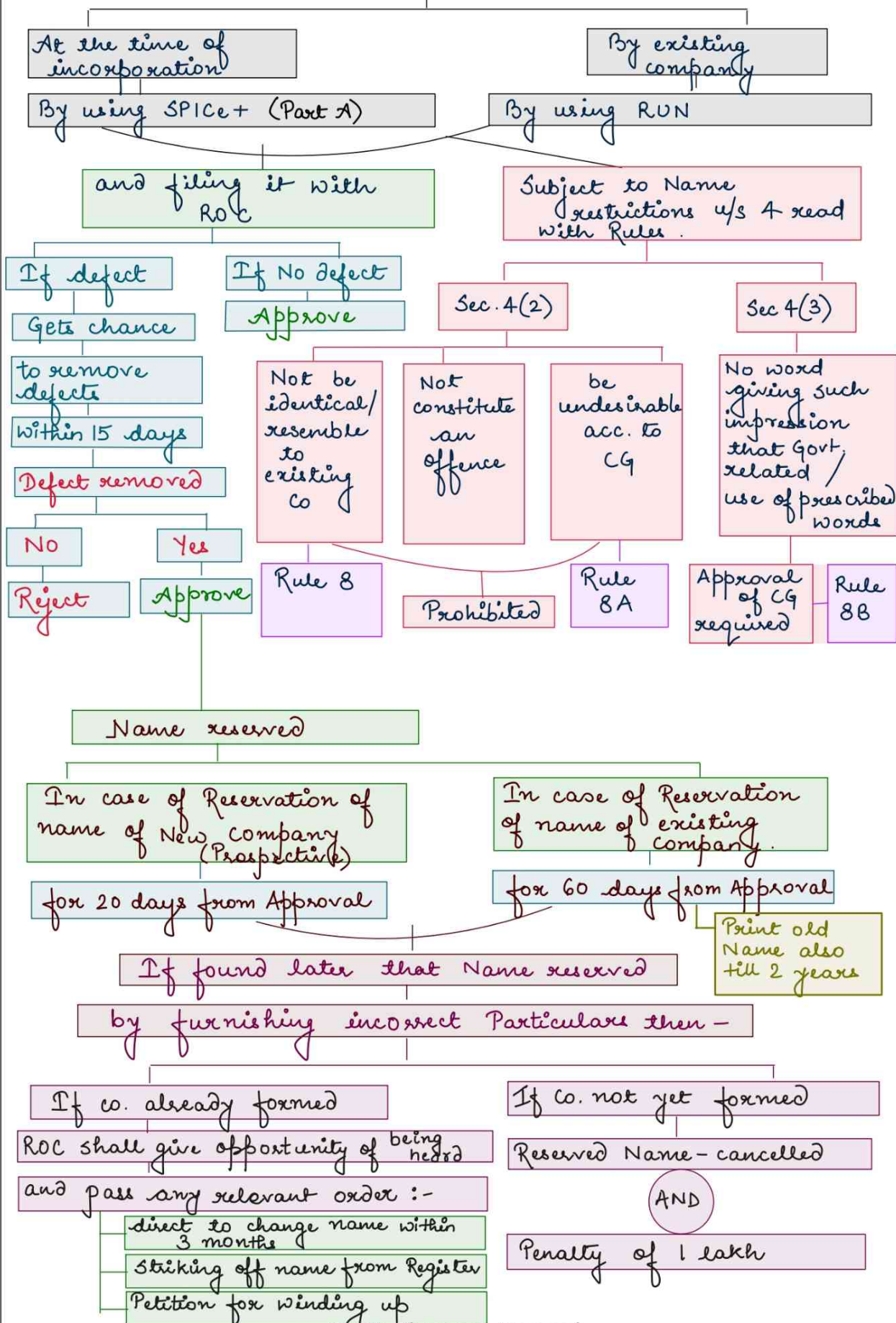
Articles of Association

[Section 5]



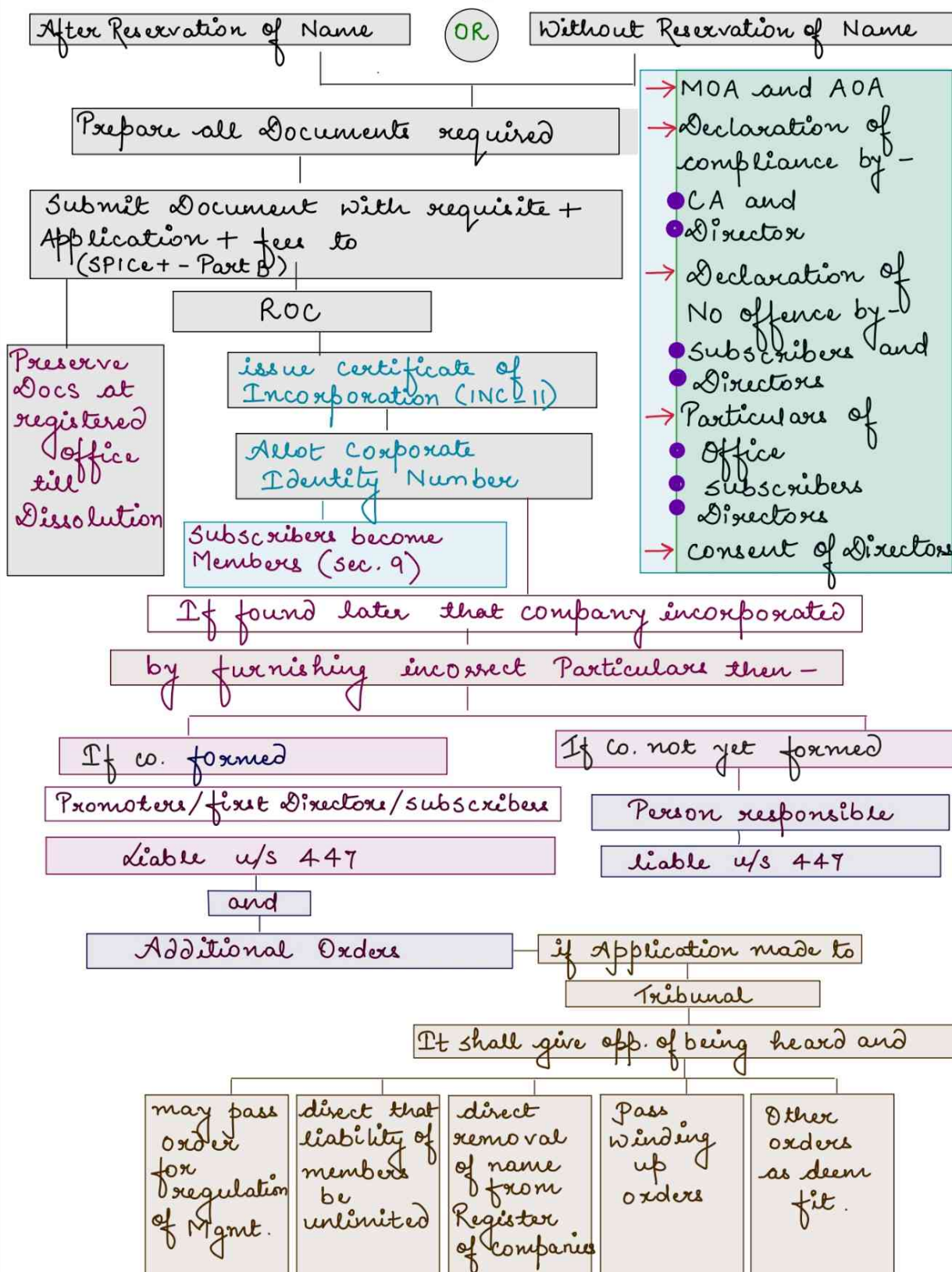
Process of Incorporation

Step 1:- Name Reservation

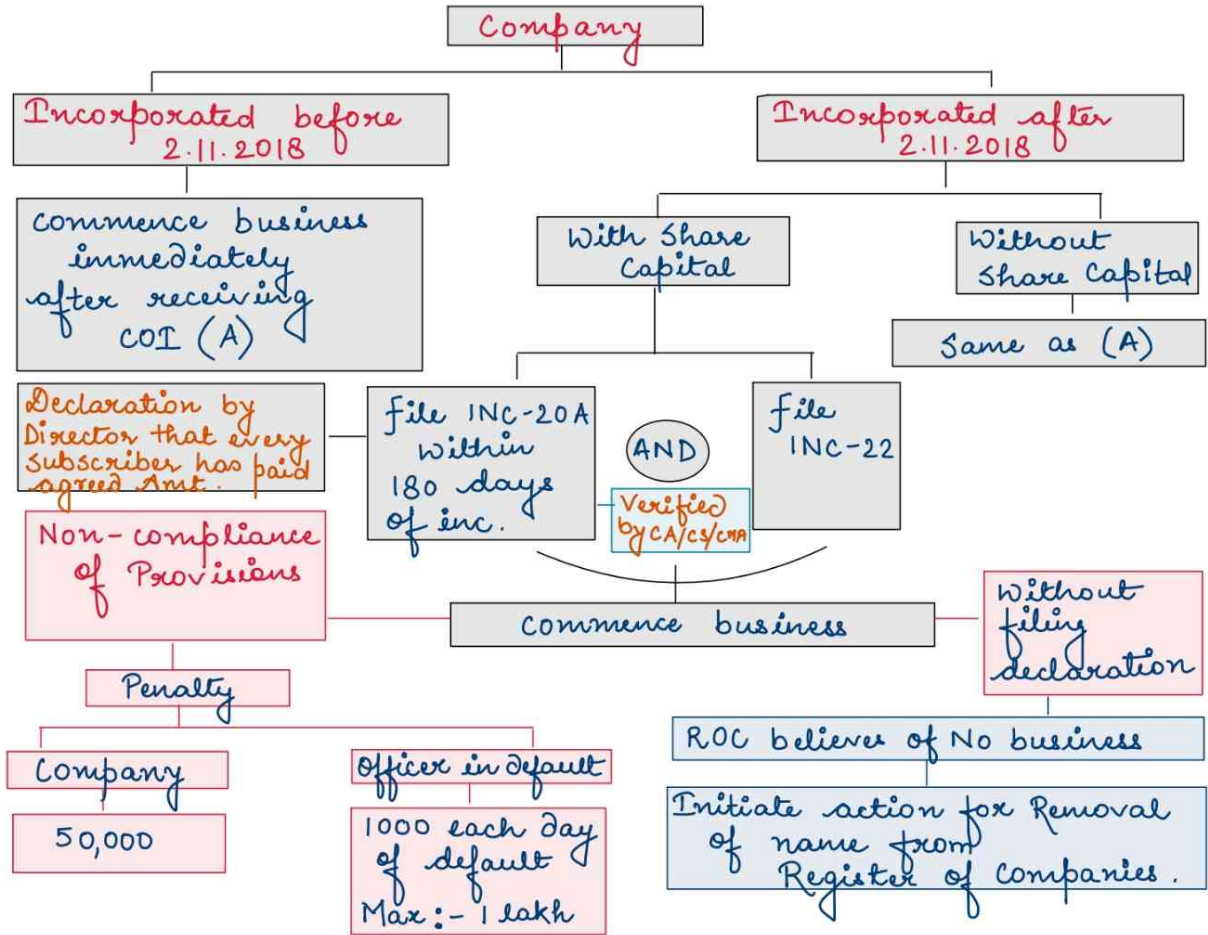


Process of Incorporation

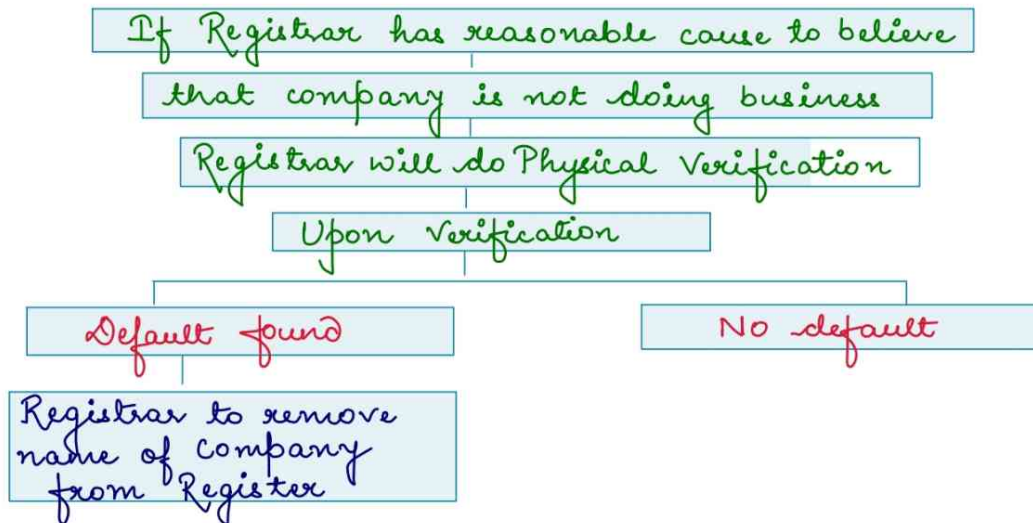
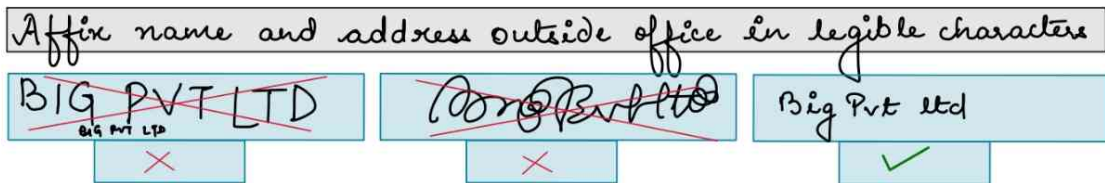
Other steps



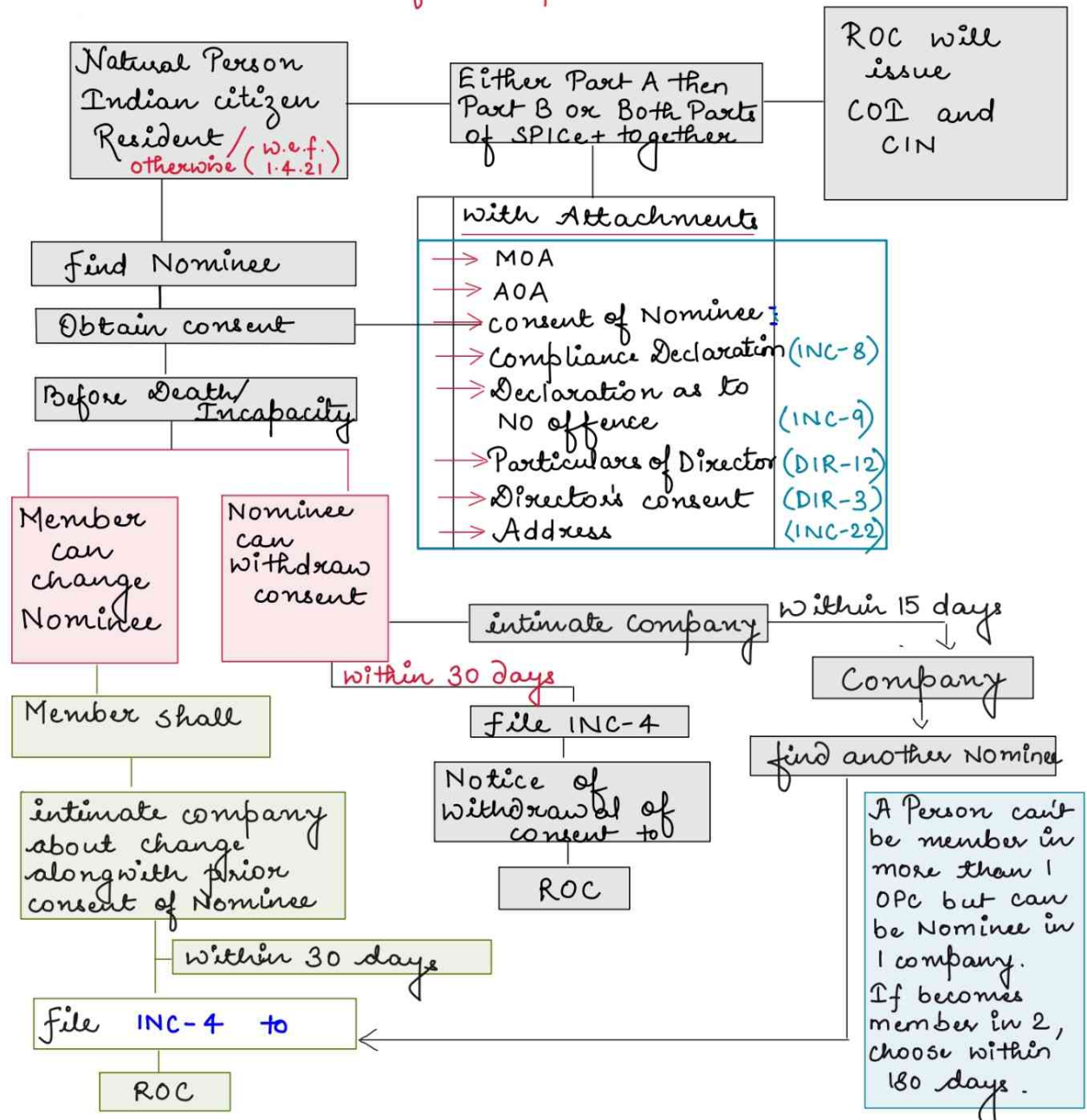
Commencement of Business [Section 10A]



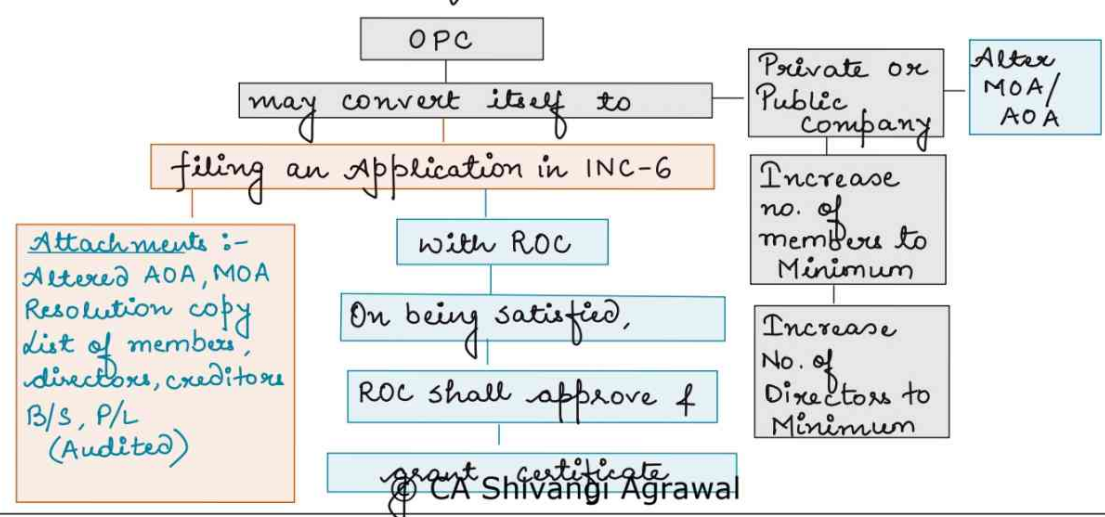
Publication of Name & Registered office [Section 12]



One Person Company Procedure of Incorporation



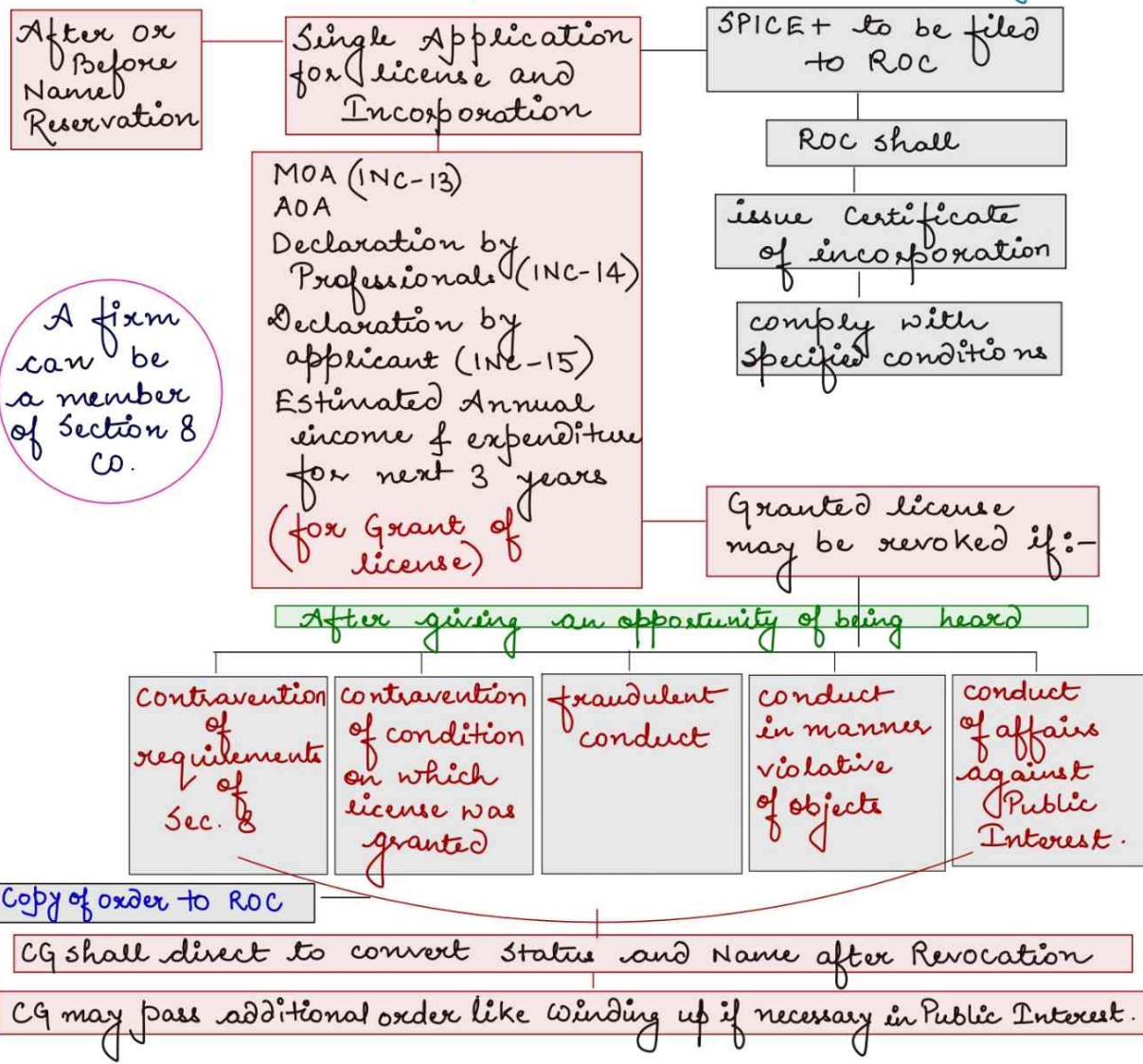
Conversion of OPC [Rule 6] w.e.f. 1st April 2021



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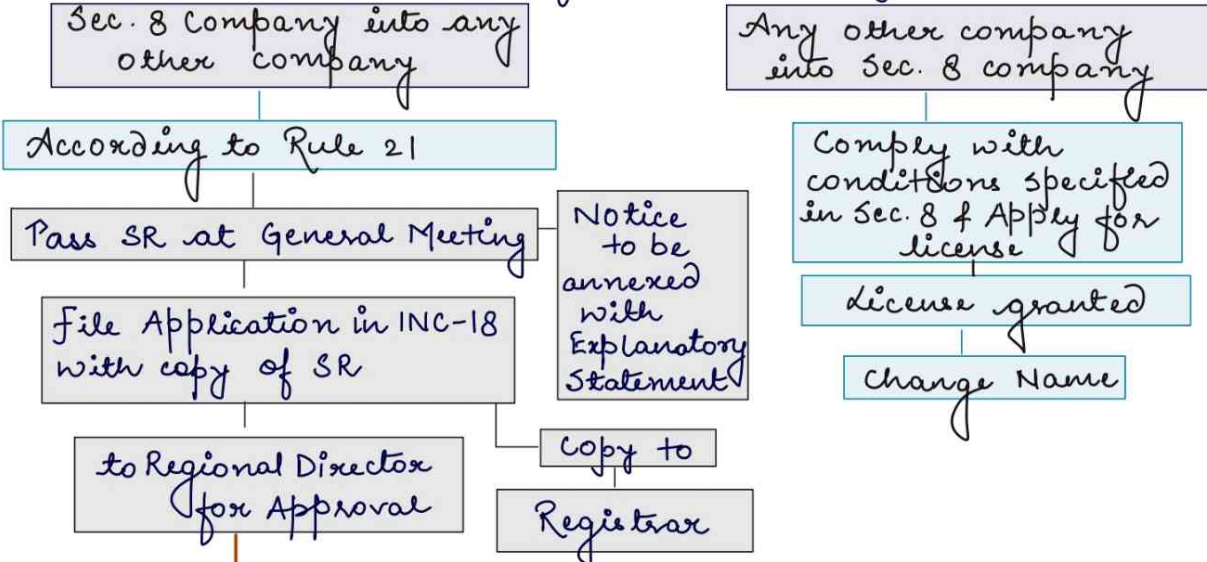
Section 8 Company Procedure of Incorporation

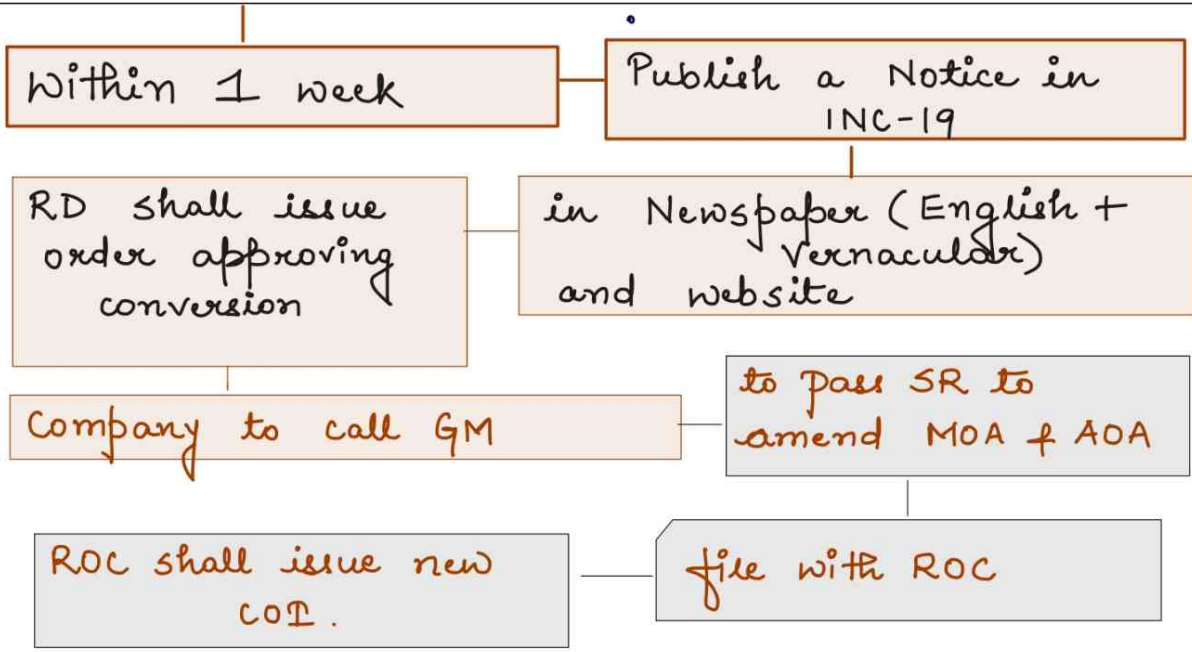
can be formed as Private/Public company



A firm can be a member of Section 8 Co.

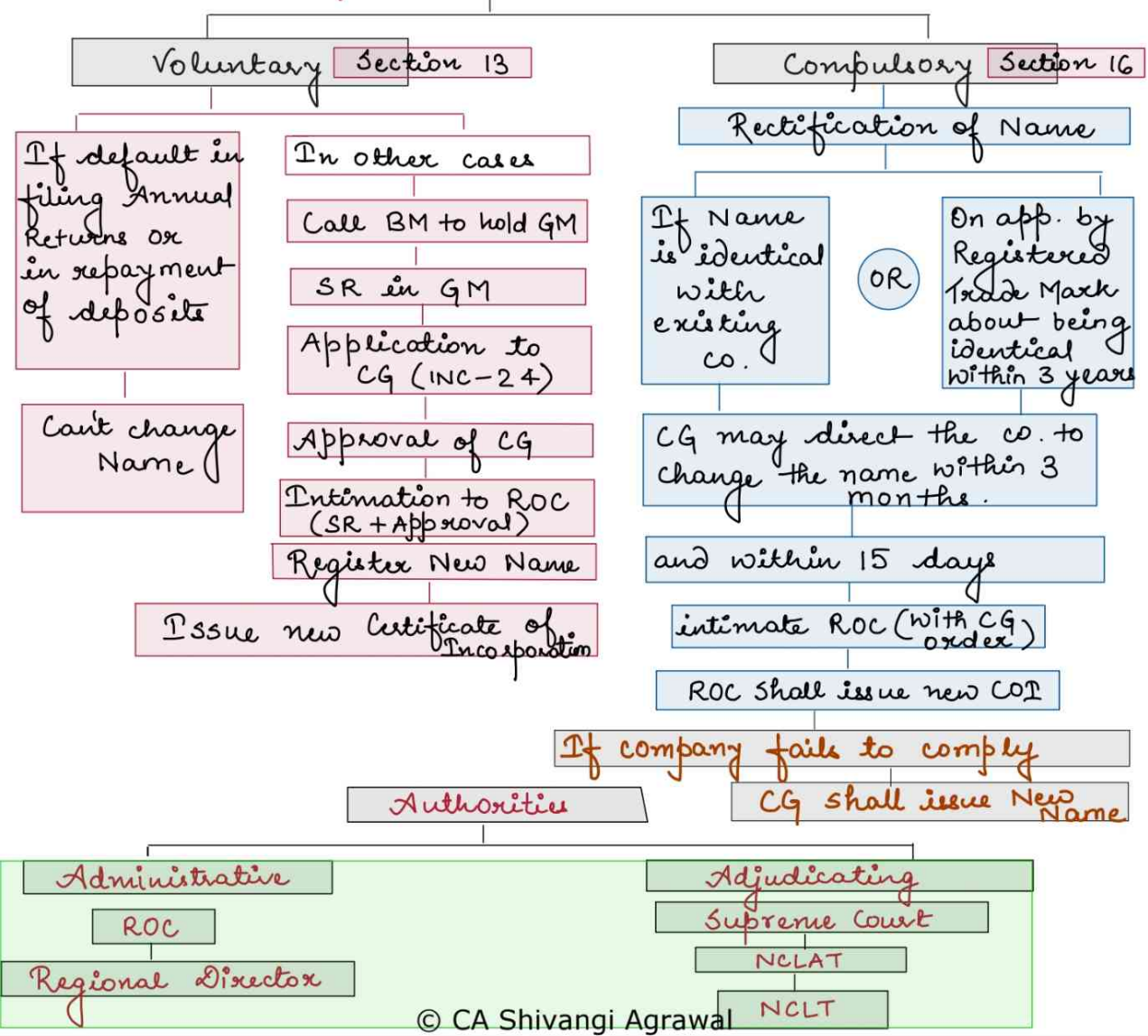
Conversion of Section 8 Company



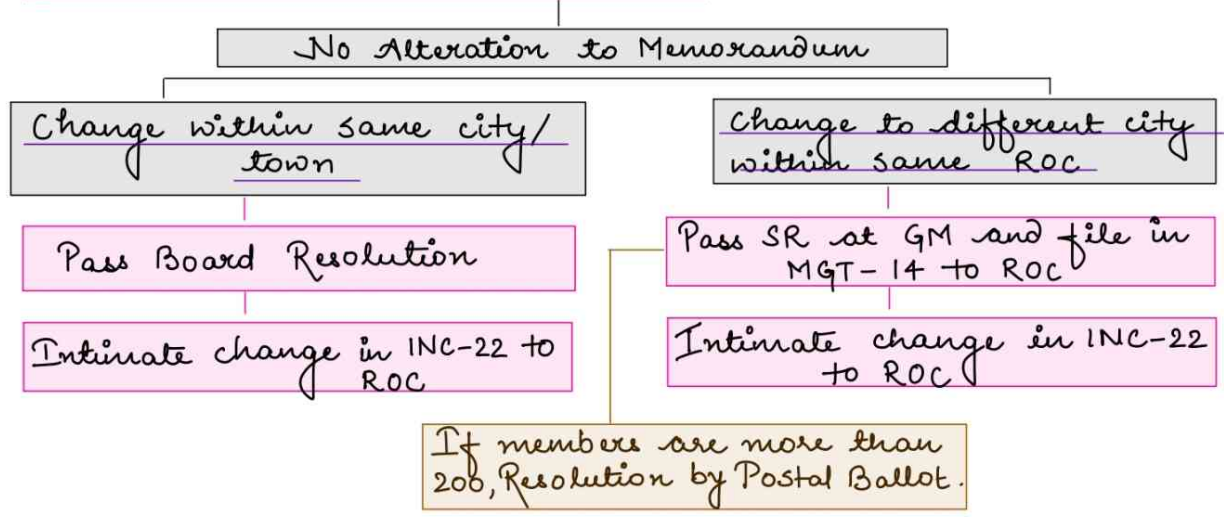


Alteration of Memorandum (Section 13)

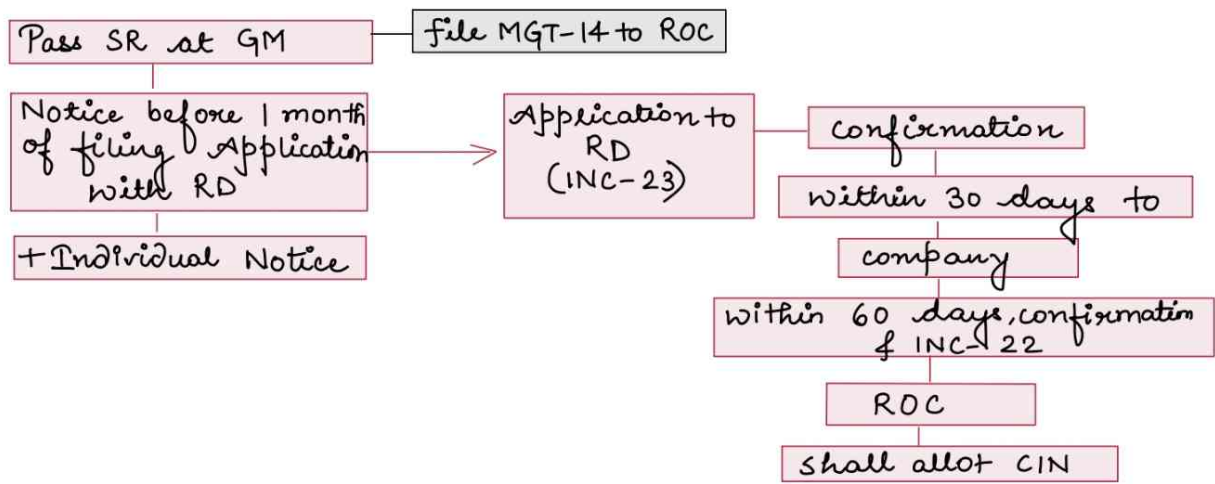
① Alteration of Name Clause :-



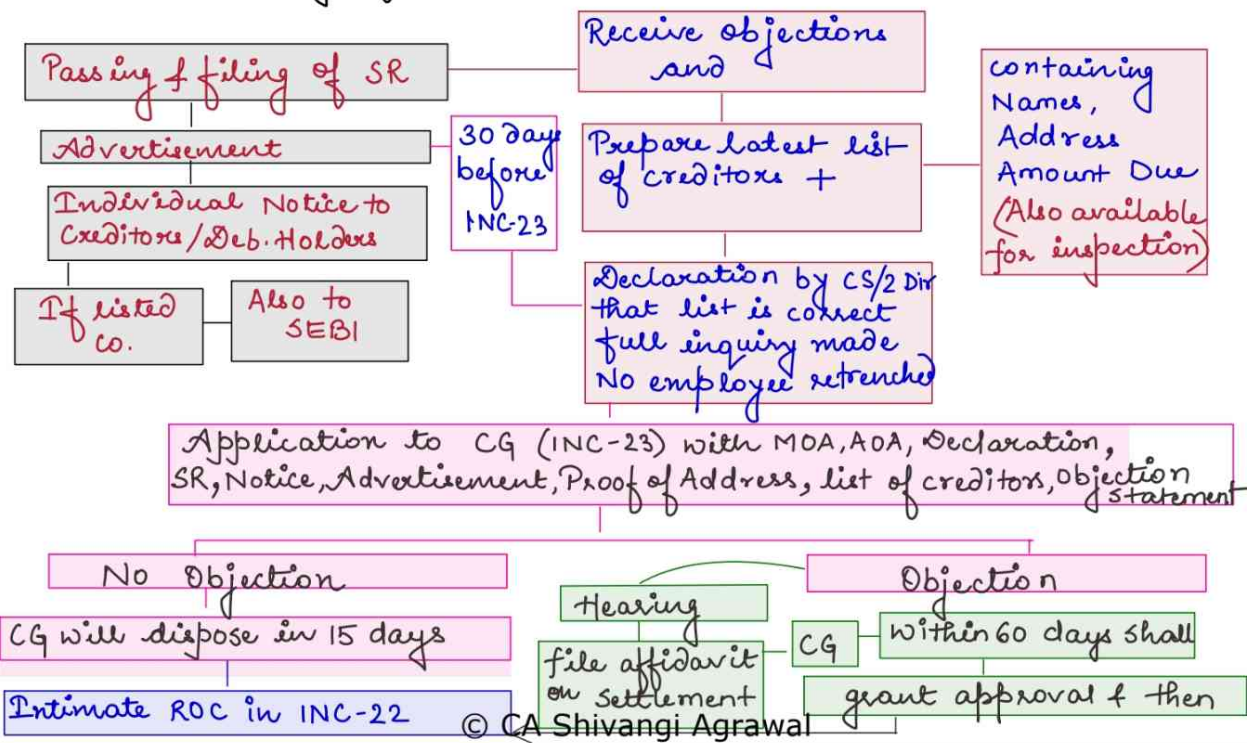
2) Alteration to Situation Clause :-



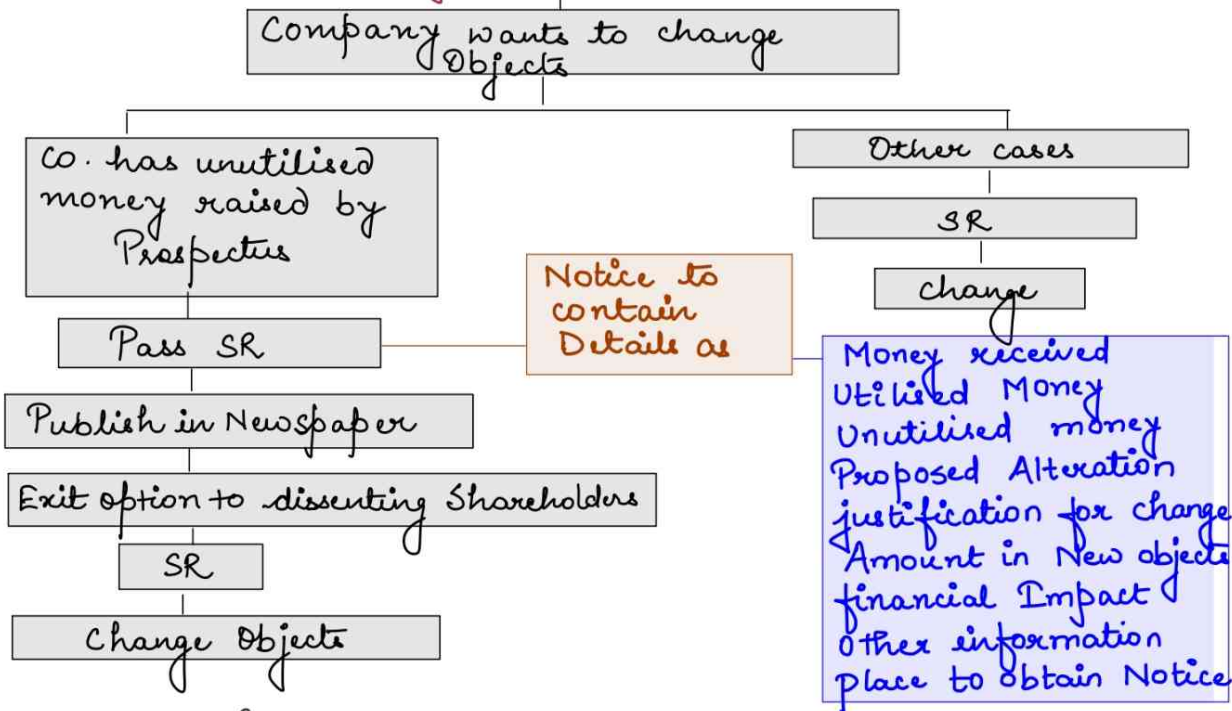
Change from one ROC to another within State



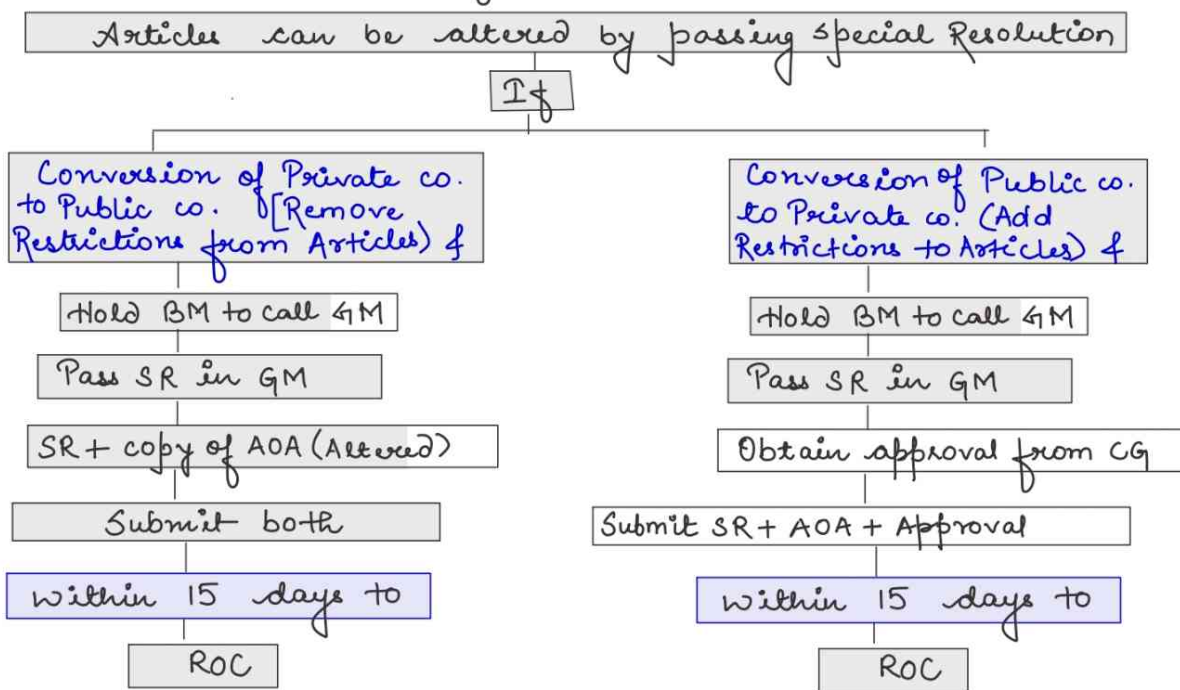
Change from one ROC to another outside State



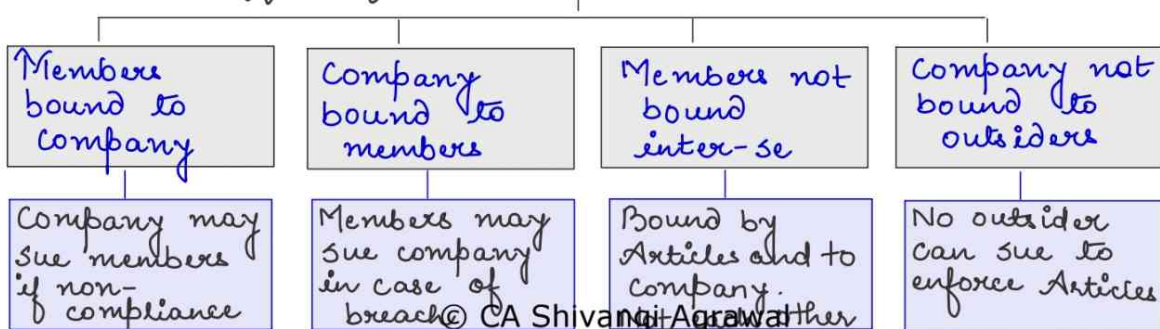
③ Alteration to Object Clause :-



Alteration of Articles



Effect of Memorandum & Articles [Section 10]



Subsidiary not to hold shares in Holding (Sec.19)

No company shall hold shares in its Holding co.

- either by itself or
- through its nominees

No Holding co. shall allot or transfer shares to subsidiary

If done - it shall be void.

Exceptions -

- If subsidiary holds it as legal representative
- If subsidiary holds it as Trustee.
- If subsidiary acquired shares before it became subsidiary

Service of Documents (Sec.20)

To Company / Officer

- Registered Post
- Speed Post
- Courier
- leaving at office
- Electronic / other prescribed Mode

To Registrar / Member

- Post / Registered Post
- Speed Post
- Courier
- leaving at office / residence
- Electronic / other prescribed Mode

Member may request for delivery of document through Particular mode for which fees (As determined in AGM) shall be paid.

Delivery by post deemed to have been effected at expiration of 48 hours of posting.

NIDHIS :- Members holding -

- shares > lower of :- 1000 or 1% PBC
- Individual Notice
- Other cases [ie. upto 1000 F.V.]
- Document served through Advertisement

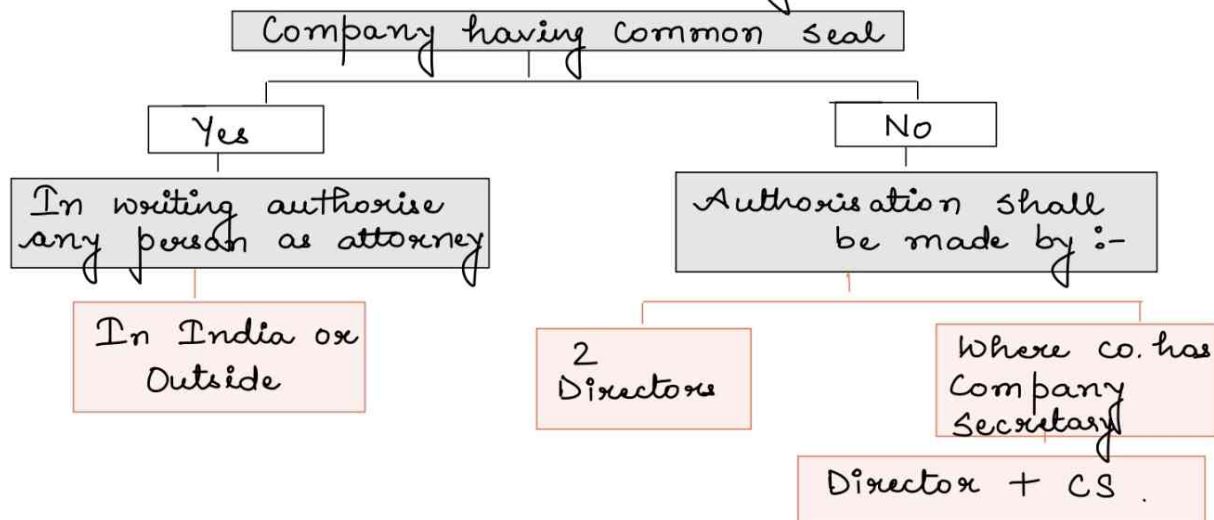
Authentication of Documents (Sec.21)

It may be signed by :-

- KMP OR
- Officer / Employee duly authorised by Board in this behalf.

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Execution of Bills of Exchange (Sec. 22)



Doctrine of Ultra Vires.

Whatever not stated in Object Clause of MOA is ultra Vires.
 Ultra Vires act is void.
 Neither company nor contracting party can sue on it.
 Members can't ratify.

Doctrine of Constructive Notice

Person dealing with co. → Presumed to know MOA +
 AOA of company (being Public Documents)

Doctrine of Indoor Management

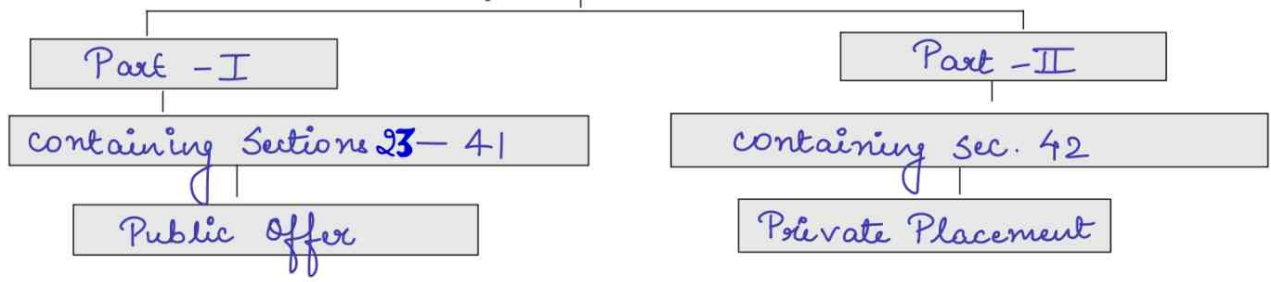
Person dealing with co. → Not presumed to know internal problems of company.

Exceptions :-

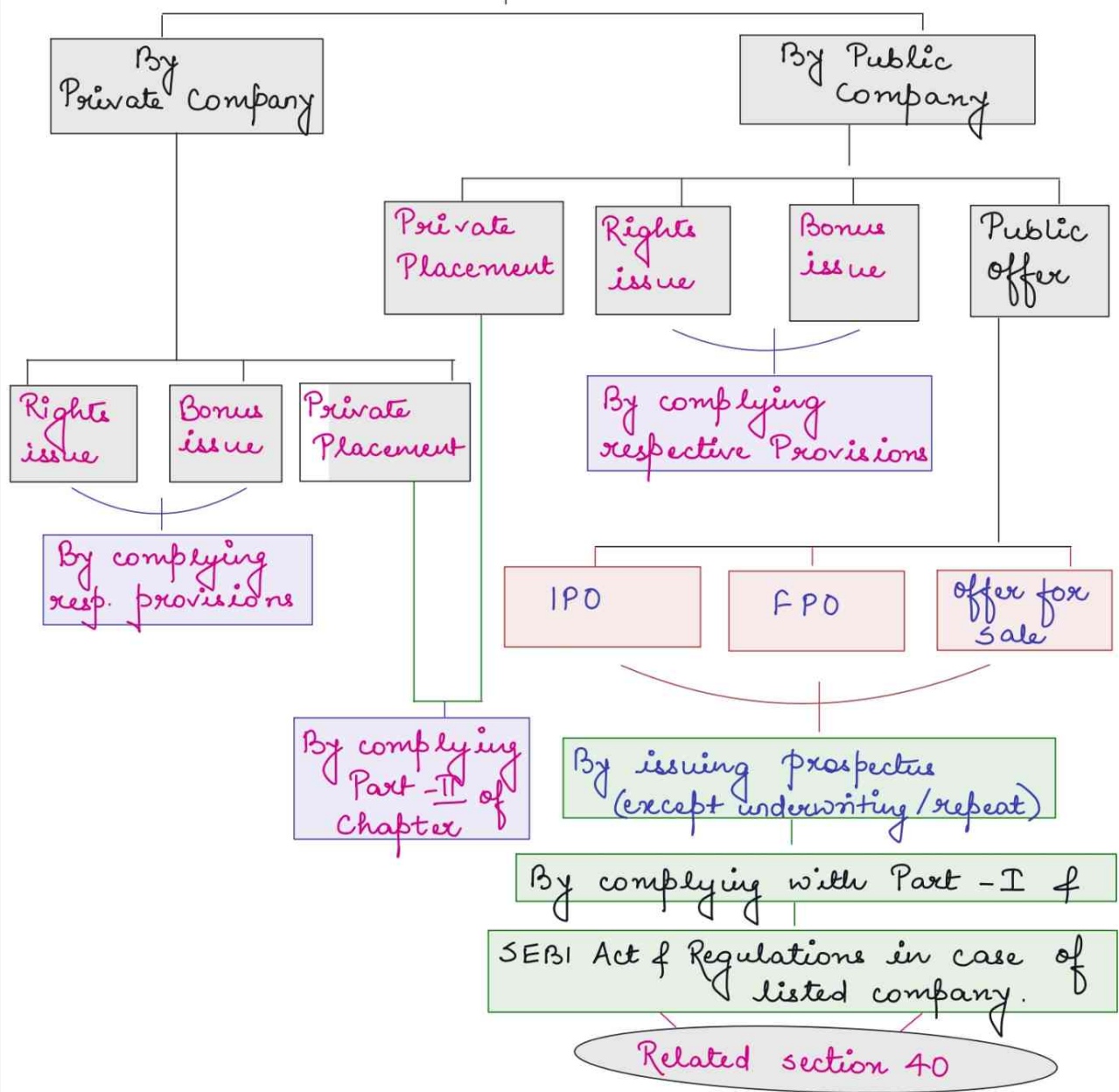
Knowledge of Irregularity
 Negligence
 Forgery

Prospectus & Allotment of Securities

Chapter III of Companies Act, 2013



Issue of Securities (Section 23)



Securities

Sec. 2(81) of Co.'s Act Says -

Not defined under Companies Act, 2013

According to Sec. 2(h) of SCRA, 1956, it includes :-

- Shares, stock, bonds, debentures
- Derivative
- Units by CIS
- Units by Mutual fund
- Instrument by SPV
- Government securities
- Security receipt acc. to SARFAESI
- As declared by CG
- Right/interest in Security

Prospectus

What? [Sec 2(70)]

Any Document so described

- Red Herring
- Shelf
- Notice, circular, Advertisement inviting offer from Public.

Not an offer

but it is a prior stage of Invitation to offer.

Why?

Helps investors make informed decision.

Creates accountability and prevents fraud.

When?

When security is offered to Public

How?

Acc. to Companies Act and related rules.

Procedure of raising funds by issuing Securities

to Public through Prospectus

Known as

PUBLIC OFFER

Governing Laws:-
 SCRA, SEBI Act, Companies Act

Application to one/More Stock Exchange for listing (Sec.40)

Permission Granted by all

No Public Offer.

Not Granted by Anyone/All

Prepare Prospectus

Include Name of Stock Exchange

Send to ROC for filing (26)

Within 90 days

Give offer to Public with Application (33)

Receipt of Application Money

Money collected to be kept in separate A/c

Minimum Subscription Received

Yes

NO

Allotment as per Sec. 39

Other-wise Irregular Allotment

Refund all money

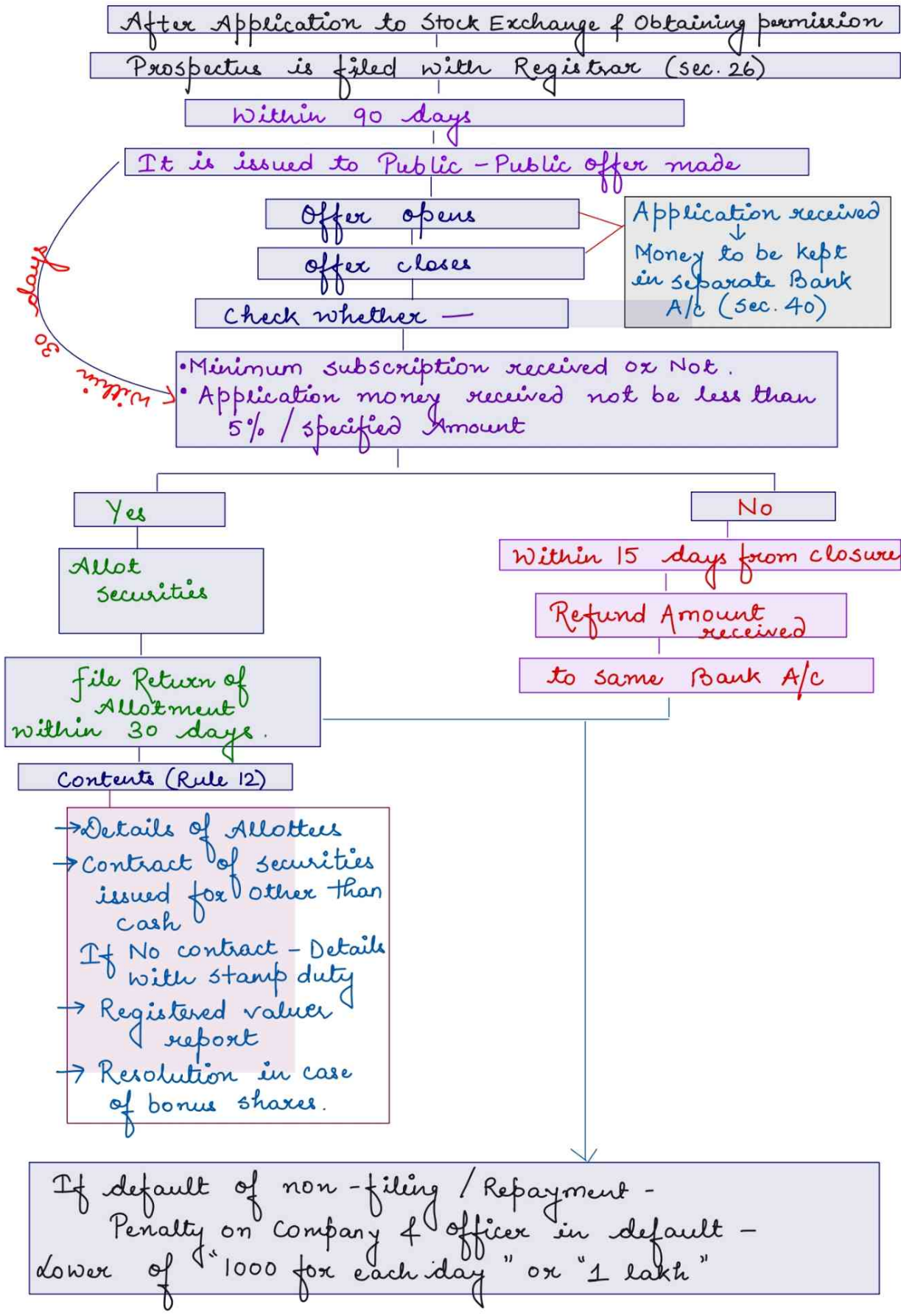
Refund excess money

Now Money can be used

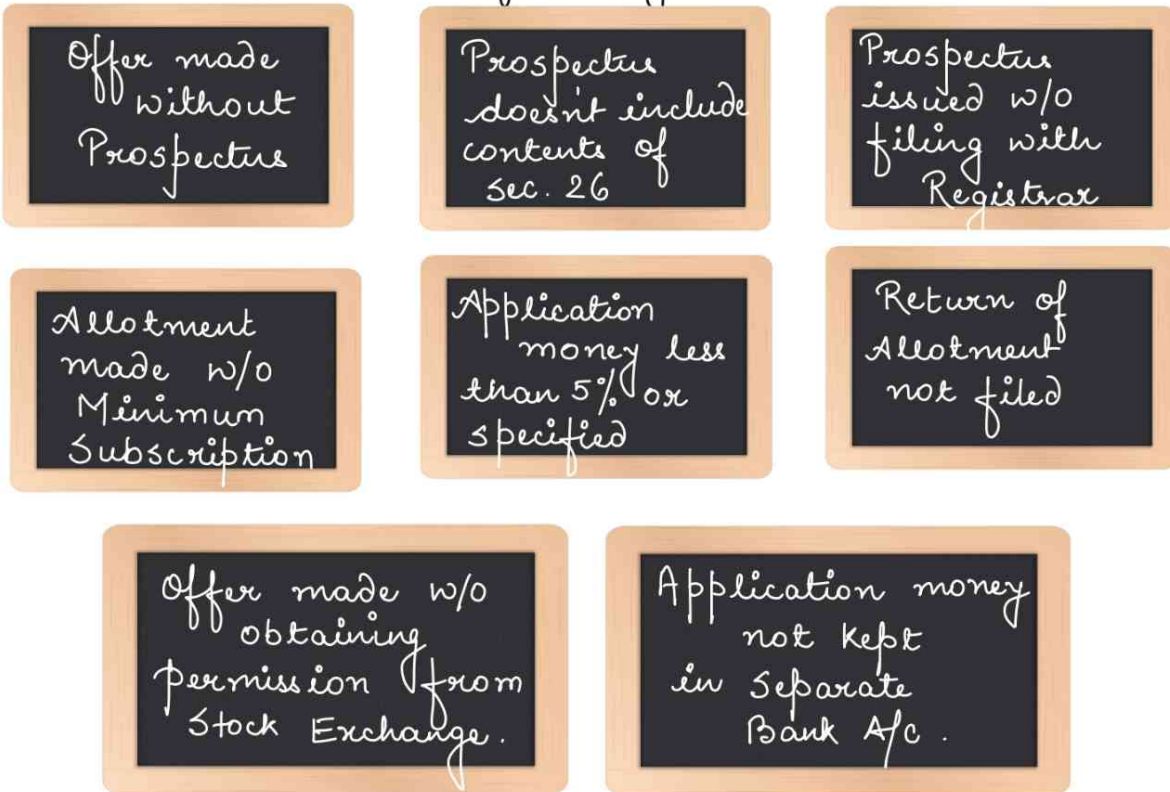
But NO Variation in terms of contract

How to Prepare?
 - Golden Rule
 What to include?
 - Contents (Sec.26)
 If Incorrect.
 - Misstatement
 - Liability
 Meaning, Type, Punishment

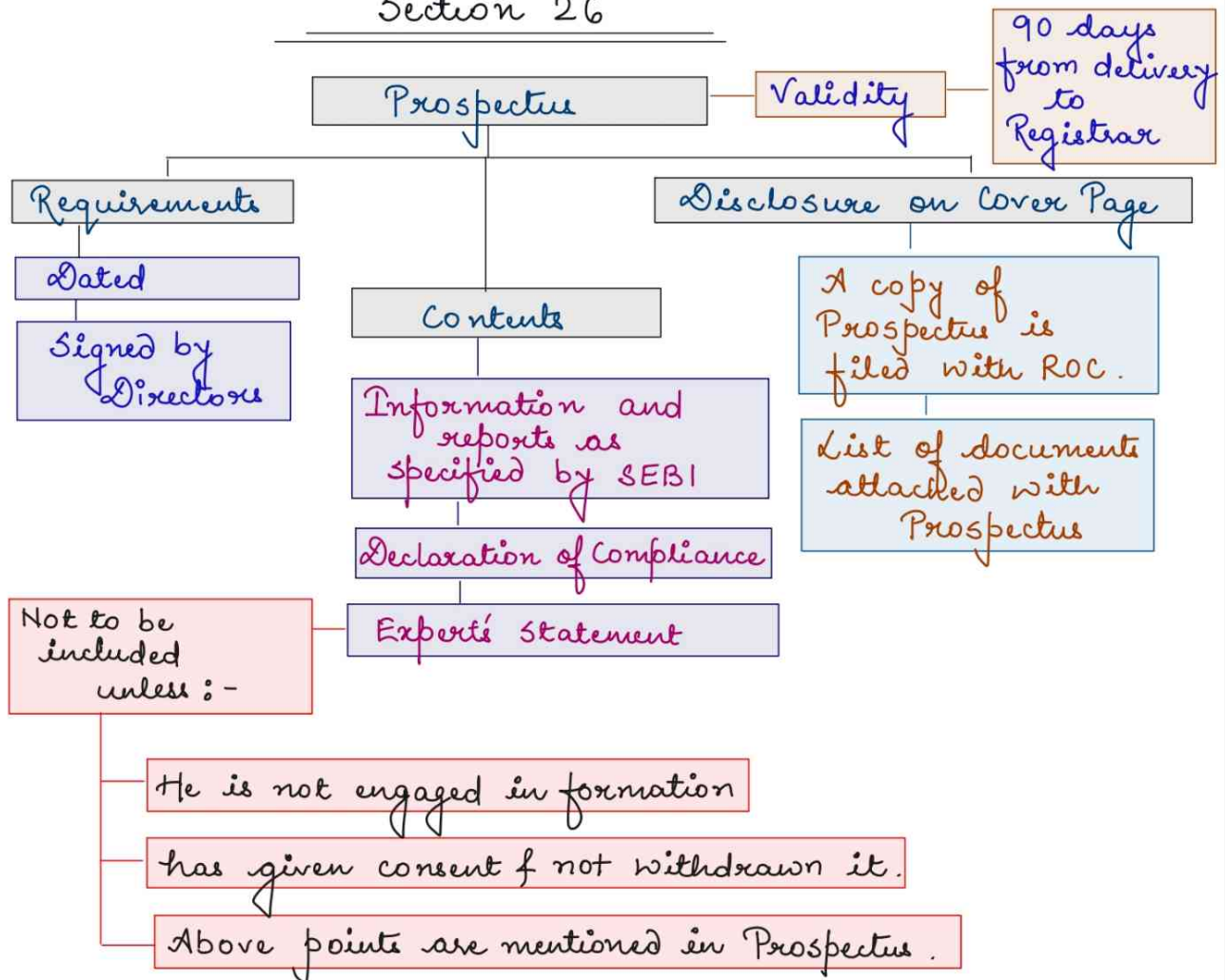
Allotment of Securities [Sec. 39]



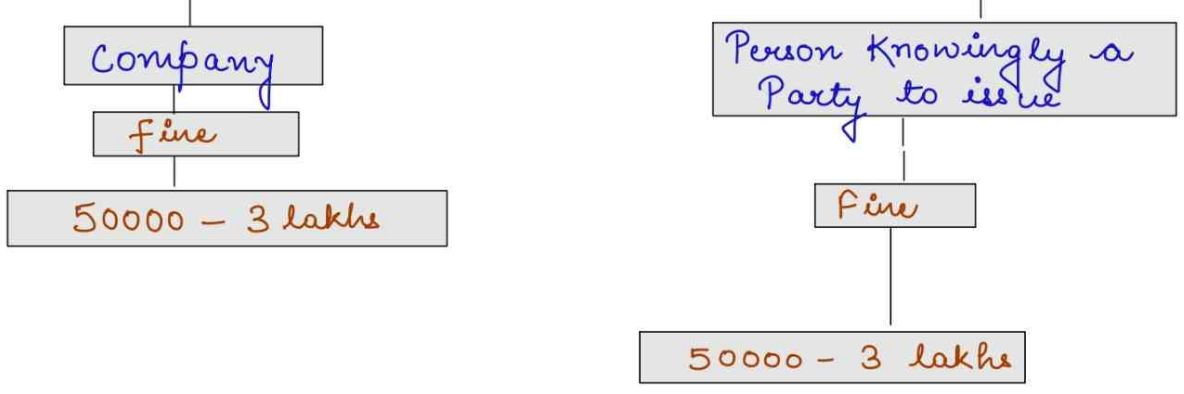
Cases of Irregular Allotment



Section 26



Punishment for Non-compliance of Sec. 26



Golden Rule for framing Prospectus

Prospectus must disclose all material facts which are likely to influence decision of investors

It must be free from **Misstatements**

false / Inaccurate Info

either due to commission

or omission or both

It is a serious offence and attracts **Penalty**

Civil liability u/s 35
 Loss or Damage - Essential
 Code of Civil Procedure
 Offence against Party
 Company, Director, Proposed Director, Promoter, expert, one who authorised is liable to
 Pay compensation to investors

Criminal liability u/s 34
 Mens Rea is essential
 Under Code of Criminal Procedure
 Offence against State
 Person who authorised prospectus
 Punishable u/s 447

Defenses

- Withdrawn consent to be director
- Believed on expert's consent
- Prospectus issued w/o knowledge

Defenses

- Immaterial
- Reasonable ground to believe

Punishment for fraud [Sec. 447]

Section 447 is attracted in case of **FRAUD**

act, omission, concealment, abuse committed with intent to deceive to gain undue advantage or injure interest of Shareholders, creditors etc. whether or not there is —

Punishment for fraud

If it involves Public interest

It does not involve Public interest

Wrongful Gain

OR Wrongful loss

Gain by unlawful means of property to which person is not legally entitled

loss by unlawful means of property to which person is legally entitled.

Fine and Imprisonment

Min - Amount of fraud
Max - 3 times of fraud

Min - 3 years
Max - 10 years

(A) lower of -
1% of turnover
OR
10 lakhs

If Amount of fraud is less than (A)

If Amount of fraud is more than/equal to (A)

Fine
Max = 50 lakhs

And/OR

Imprisonment
Max = 5 years

Fine AND Imprisonment
Min = Amount of fraud
Max = 3 times of fraud

Min = 6 Months
Max = 10 years

Abridged Prospecture

Memorandum containing salient features of Prospecture as specified by SEBI

Form of Application to be accompanied by Abridged Prospecture (Sec. 33)

Shelf Prospecture (Section 31)

Prospecture which does not require to be re-issued for one or more issues over a certain period

For specified class of Company & Security

Validity = 1 yr

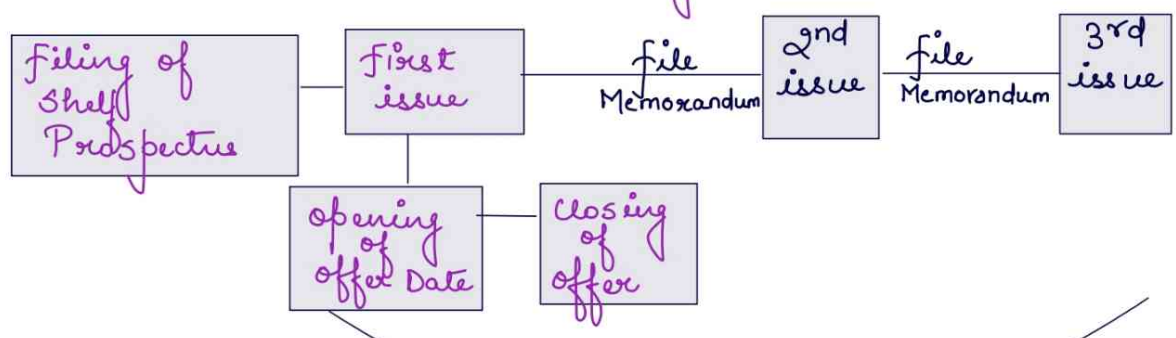
Information Memorandum

PAS-2

1 month prior to issue of subsequent offer

Contents :-
New Charges
Changes in financial position
Other prescribed changes

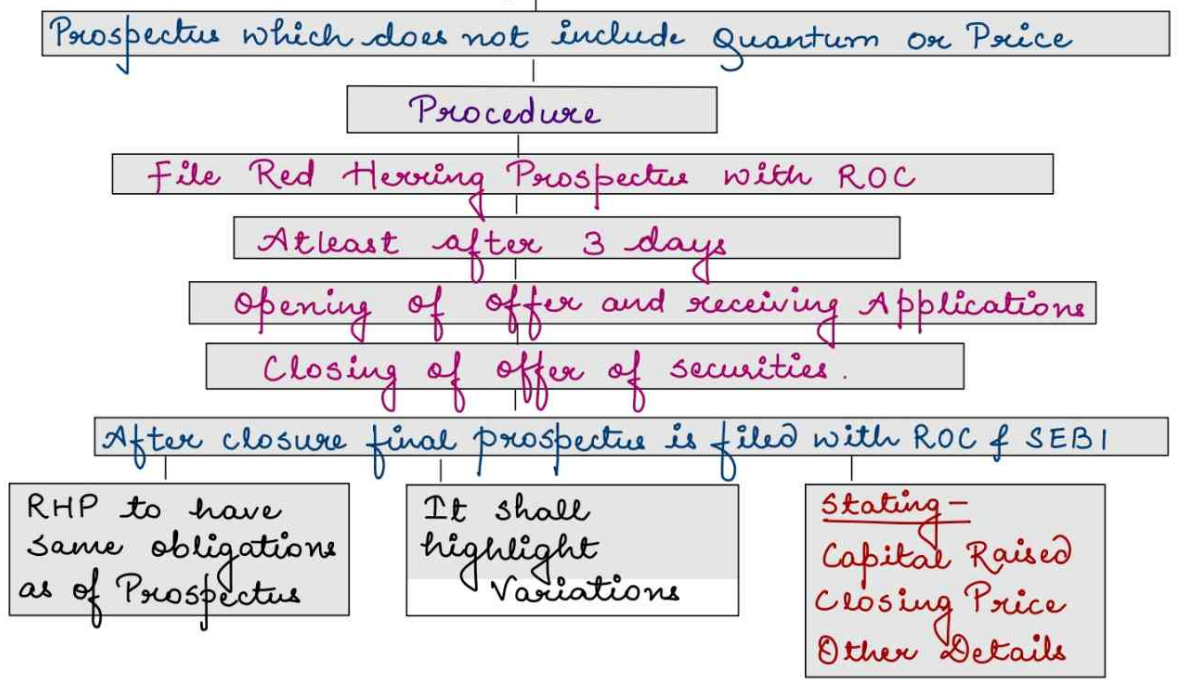
Effect :-
Shelf Prospecture + Information Memorandum = Prospecture



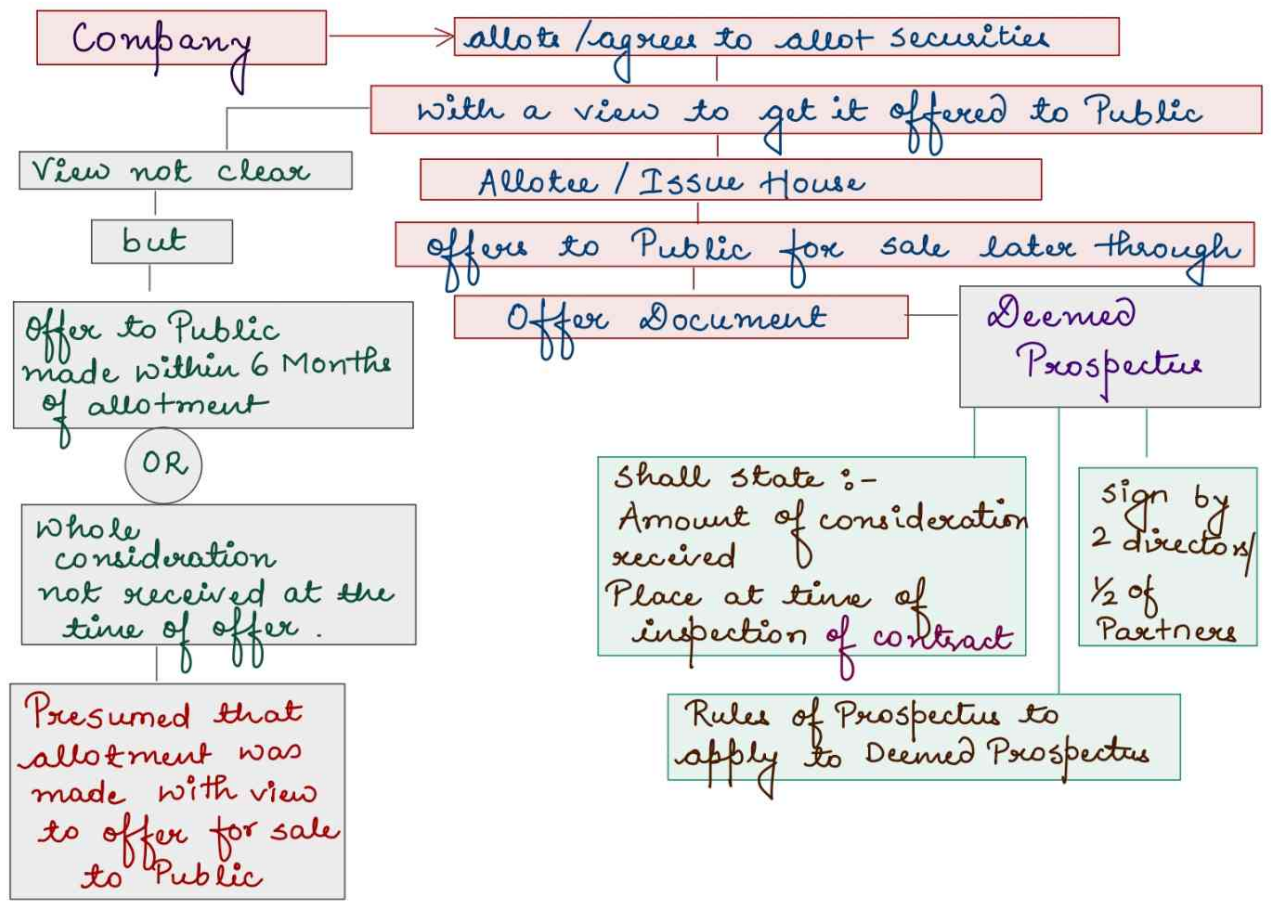
Validity starts of 1 year

If Person makes advance payment → before change Intimate to such person ← Company ← of Memorandum
Agree ✓ Disagree → Refund within 15 days.

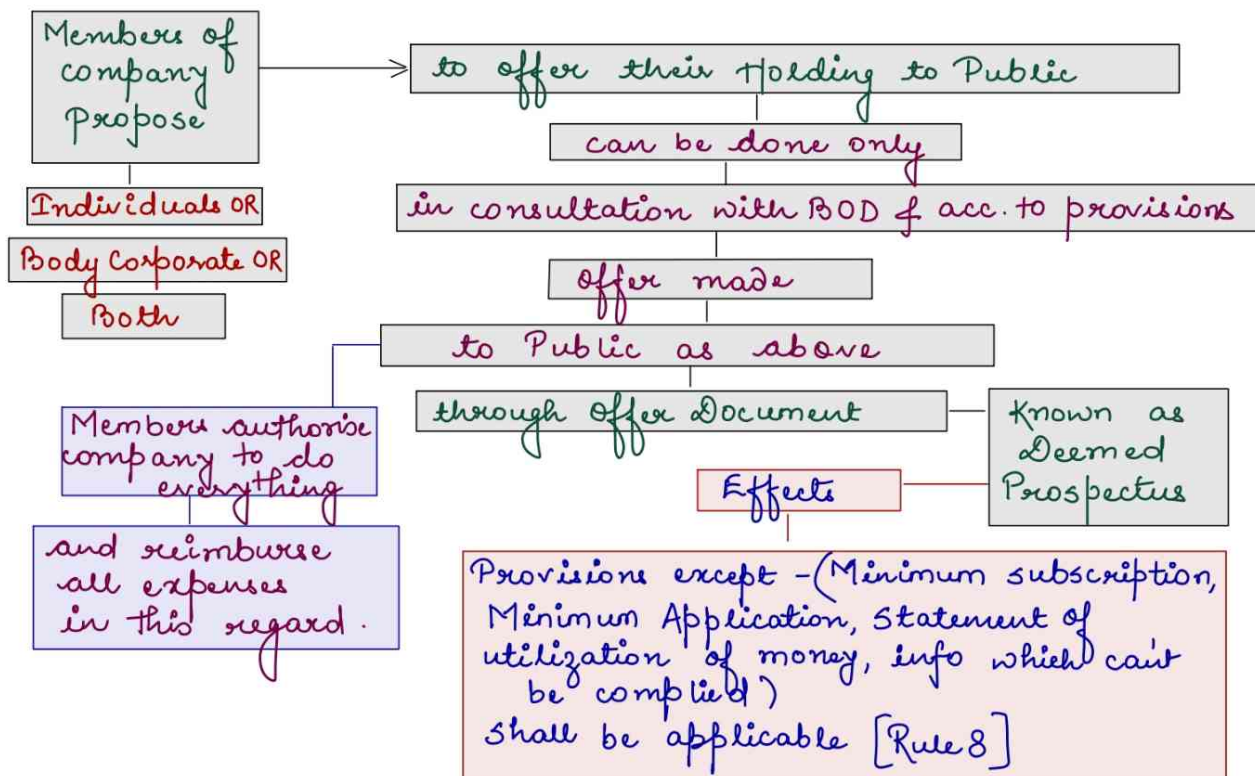
Red Herring Prospectus (Sec. 32)



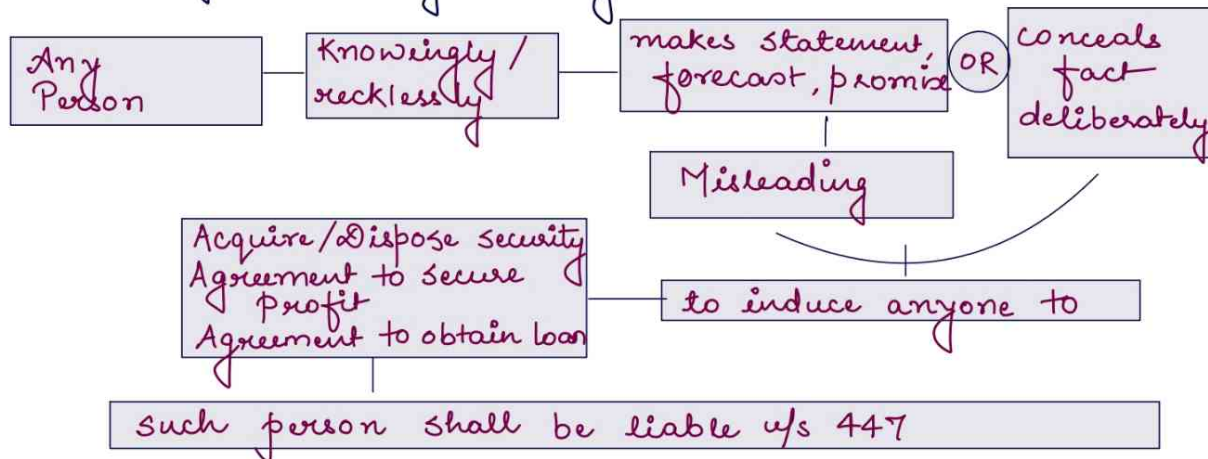
Deemed Prospectus (Section 25)



Deemed Prospectus [Sec. 28]



Fraudulently inducing to invest (Sec. 36)



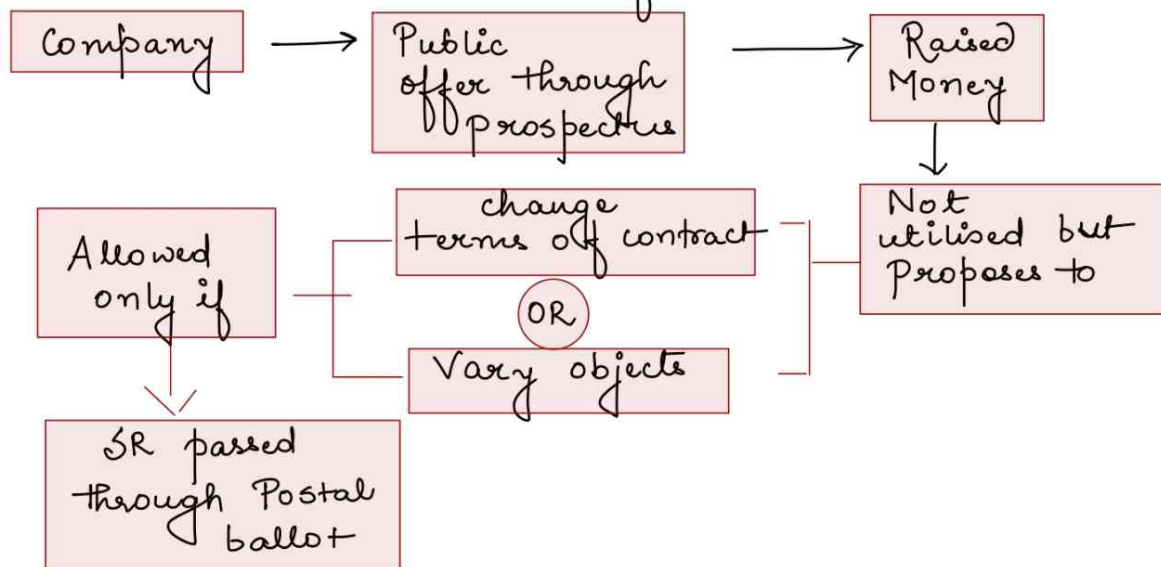
Class Action (sec. 37)

Allowed for action u/s 34, 35, 36. (Group Action by Cost effective for small investors. Investors)

Advertisement (sec. 30)

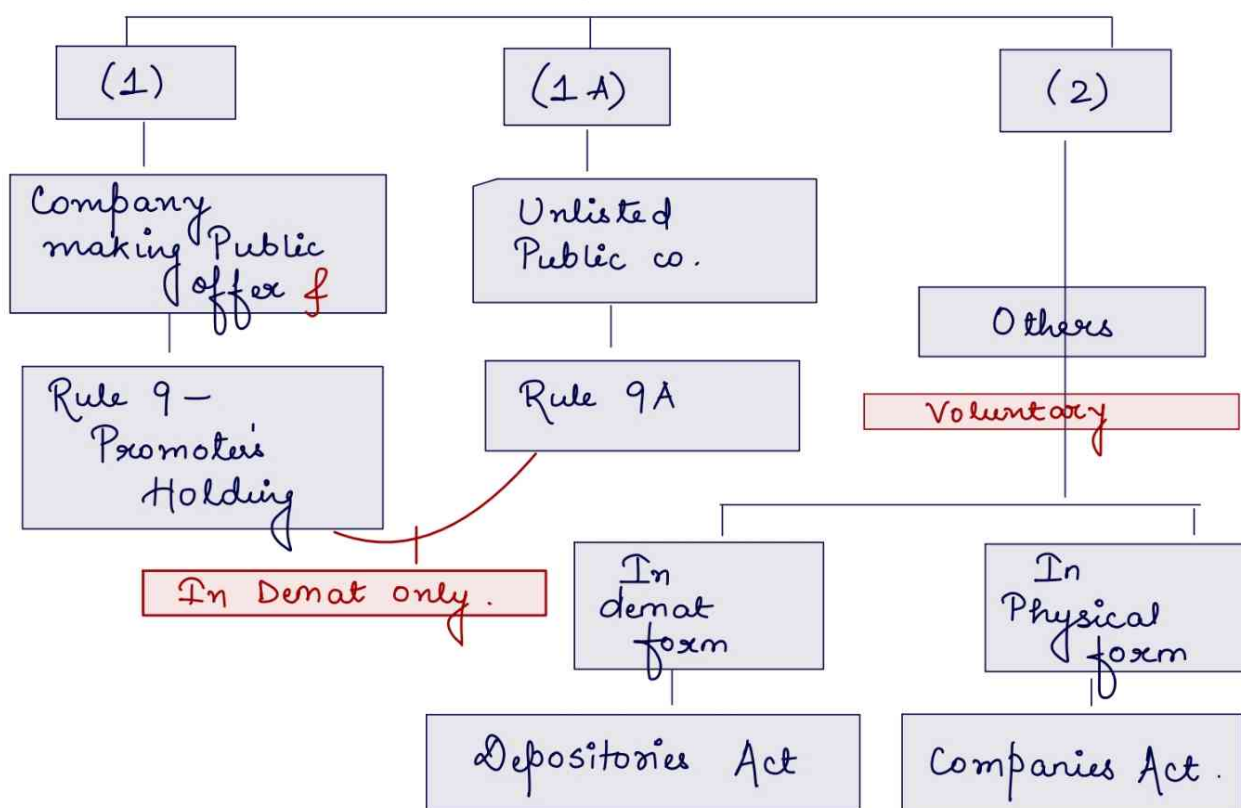
Specify - Objects - Share capital
 - liability - Signatories (Name & shares subscribed)
 - Capital structure.

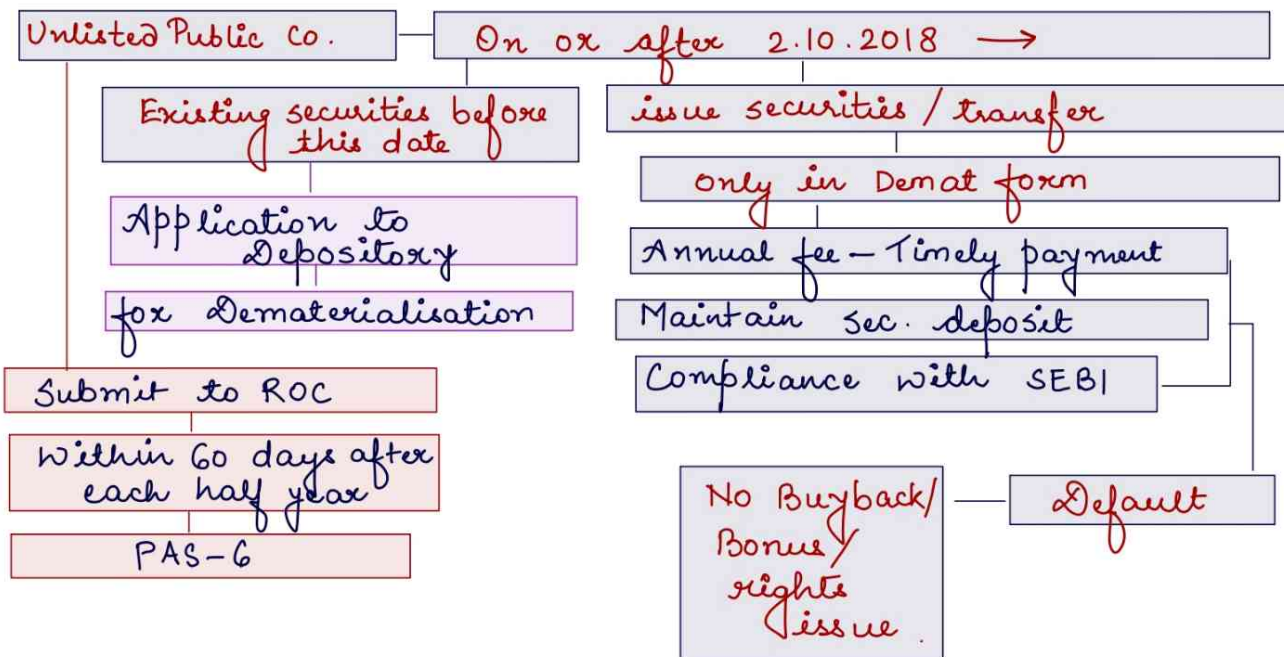
Variation in terms of Contract (Sec.27)



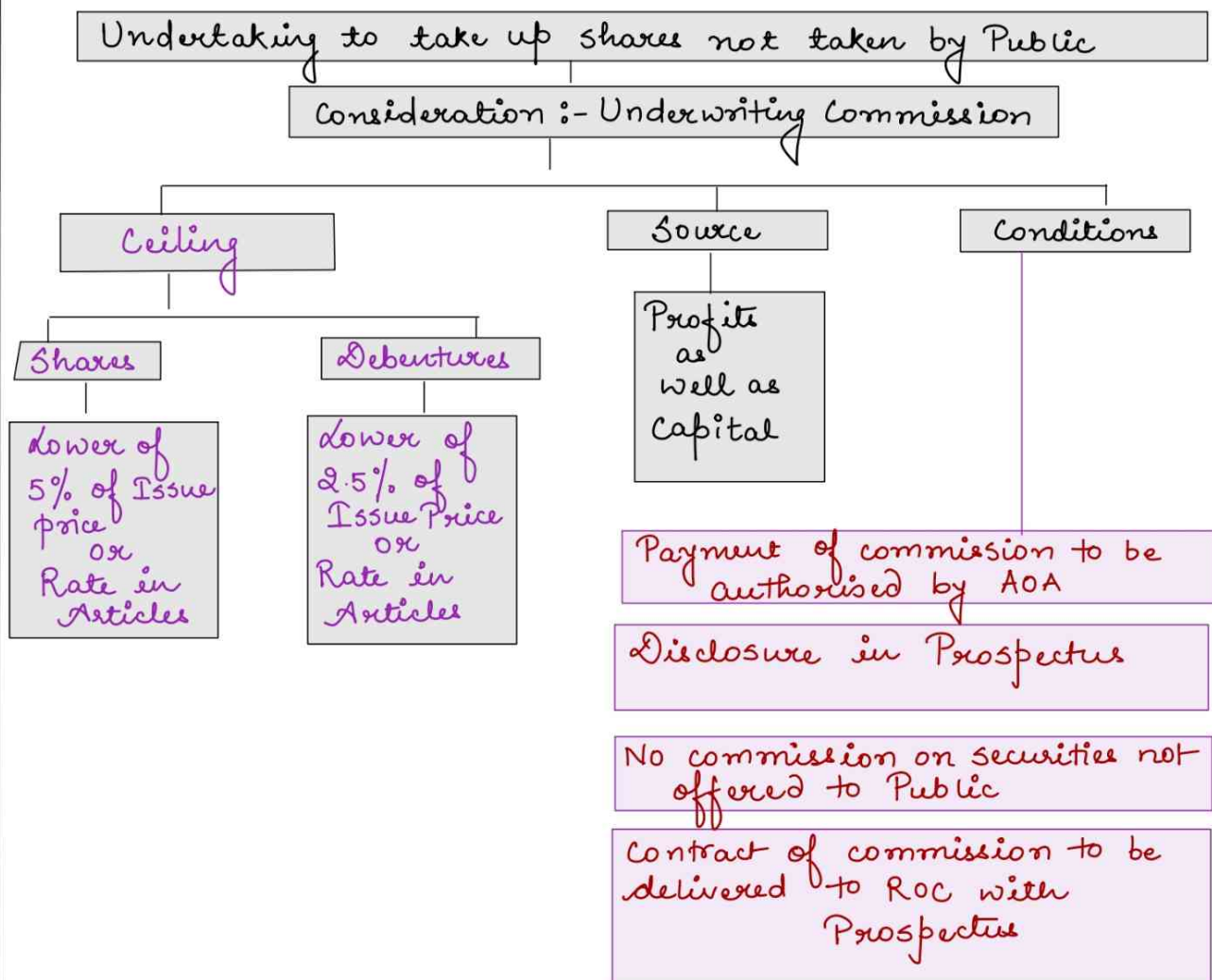
Advertisement of Variation to be published in form PAS-1 in Notice Newspaper company's website

Securities in Demat form (Sec.29)

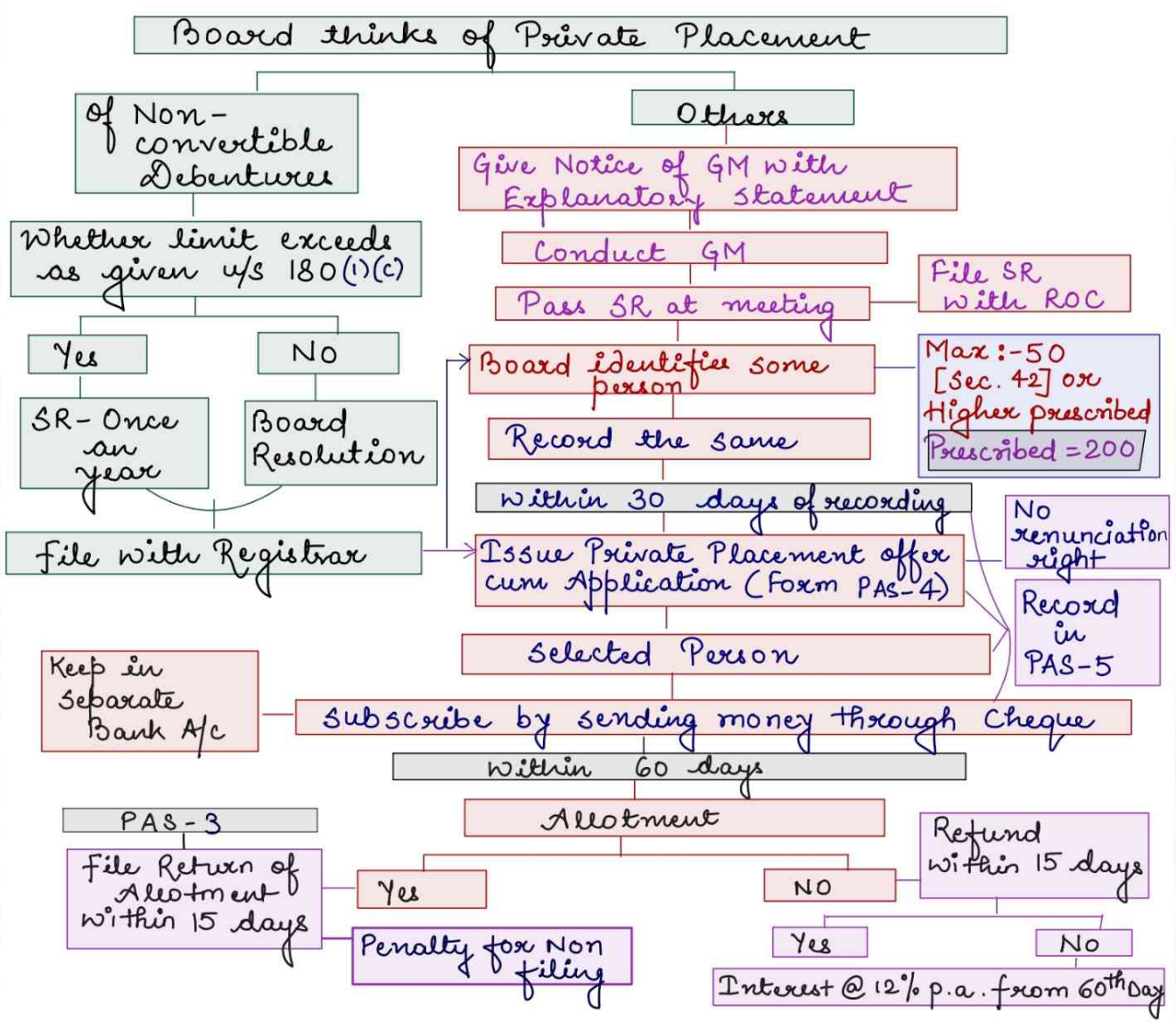




Underwriting Commission (Sec.40)



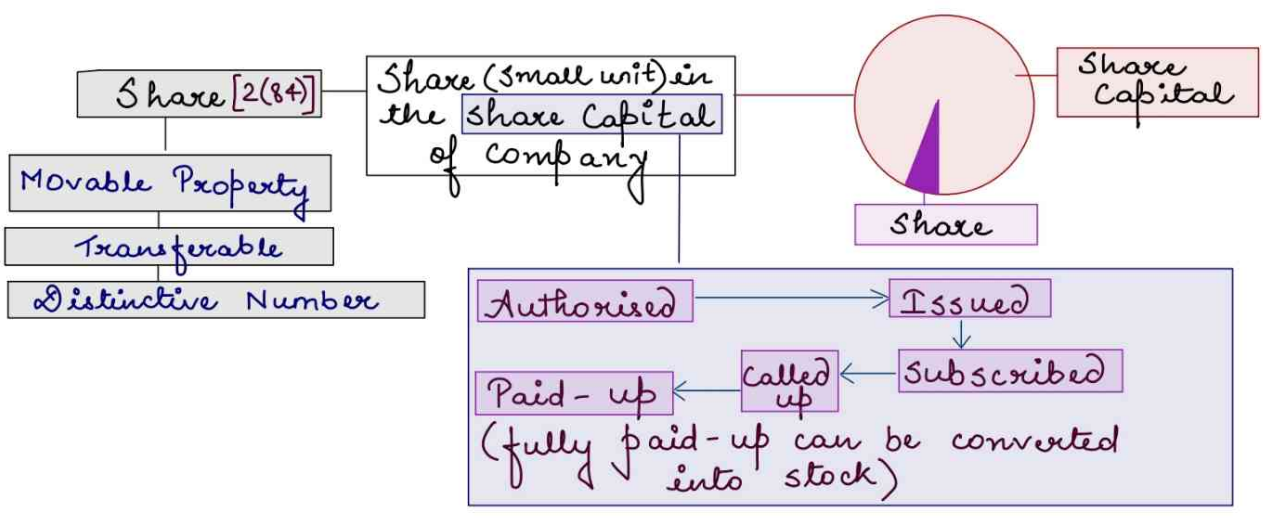
Private Placement (Sec. 42) - Rule 14



Other Points related to Private Placement

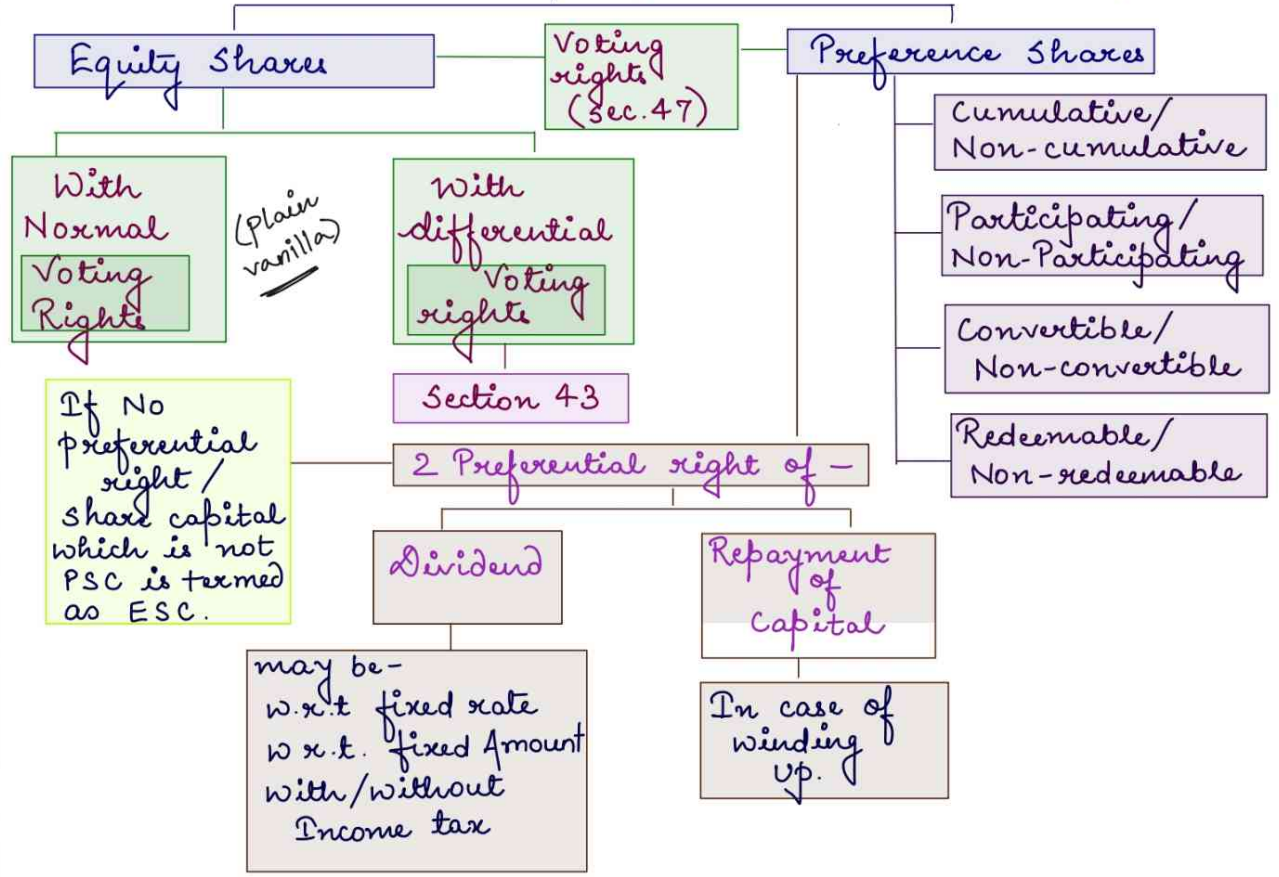
No new offer unless allotment completed/abandoned.
 No Public Advertisement

Share Capital and Debentures

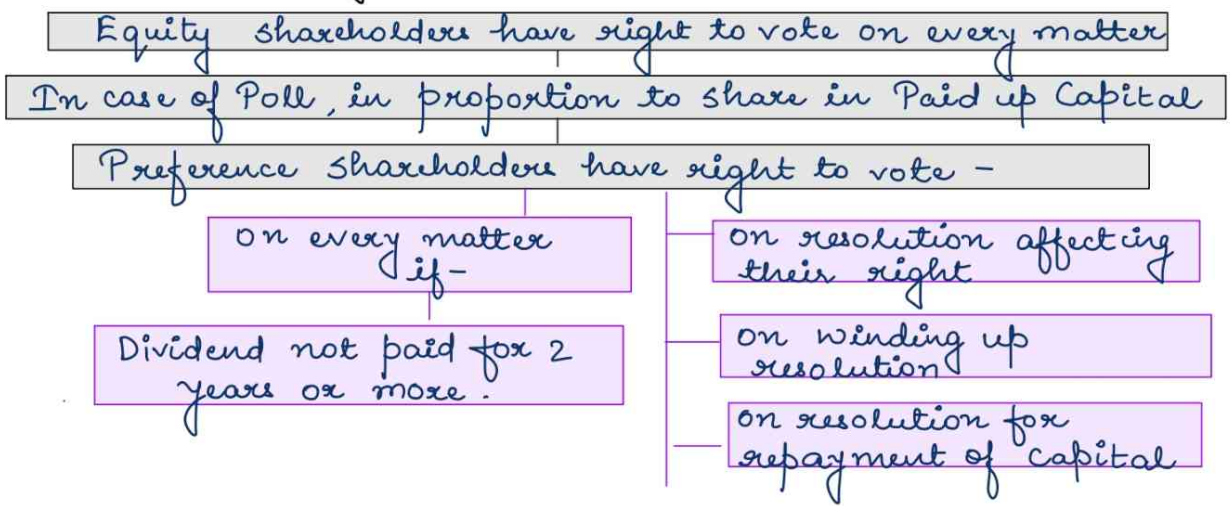


Kind of Shares [Sec. 43]

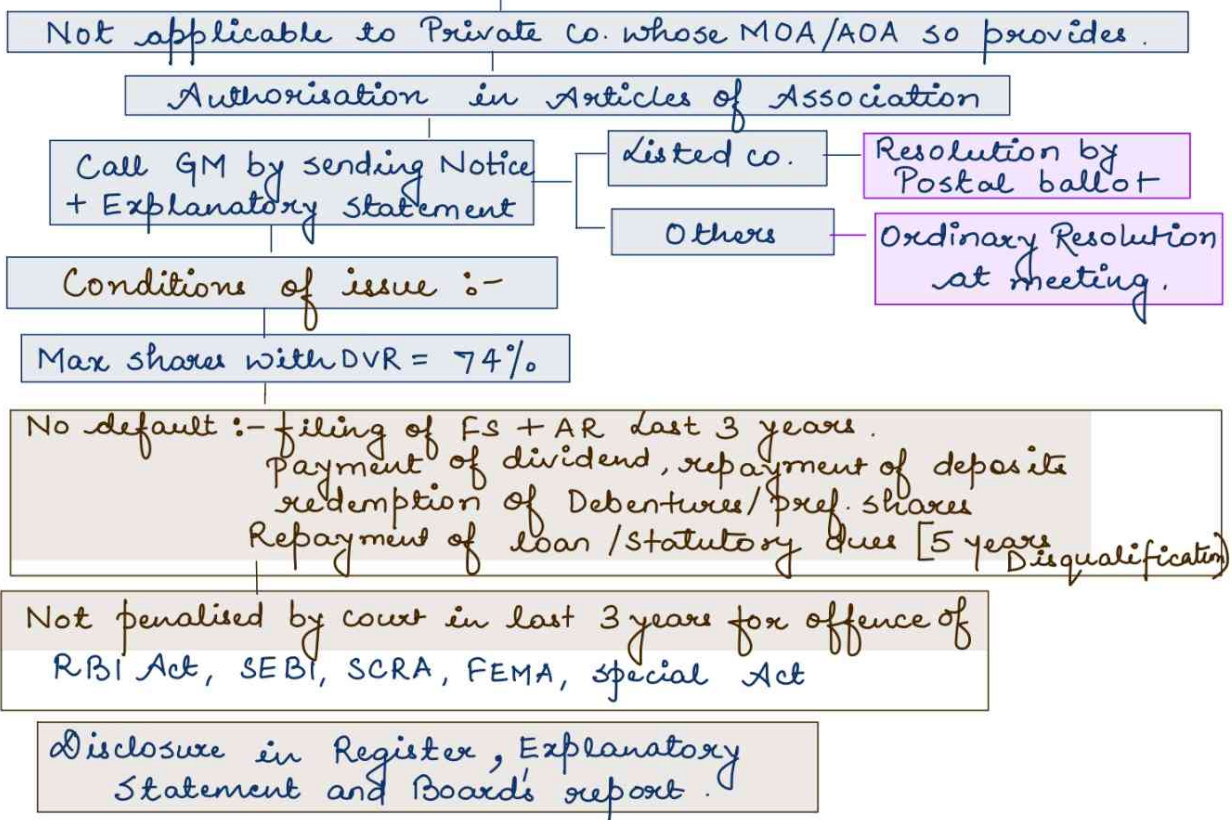
N.A. to Private Company if Memorandum/Articles say so.



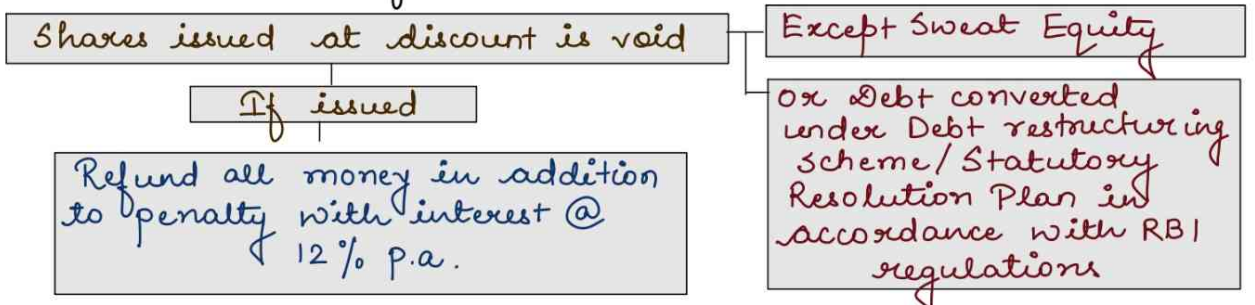
Voting Rights (Sec. 47)



Shares with DVR [Sec. 43] - Read with Rule 4



Issue of Shares at Discount [Sec. 53]



Issue of Sweat Equity Shares [Sec. 54]

issued to Directors/Employees as Reward for Value Addition

Must belong to class of shares already issued.

at a discount

Call GM by sending Notice + ES

for consideration other than cash

Pass SR at meeting specifying

No. of shares
Current Market Price
consideration
Directors/E^e

Allot within 12 months of SR

Conditions listed company Regulations by SEBI
Unlisted company Rule 8 by CG

- Lock in period of 3 years
- Limit :- 15% of ESC in one FY, 25% of ESC at any time.
- Start-up - limit of 50% for 10 years
- Register in form SH-3
- Prescribed details in Explanatory Statement & Board's Report
- Non-cash consideration - treatment according to AS.

Issue of Shares at Premium [Sec. 52]

No condition, No restriction, No limit for such issue

No express Power in Articles

Private Placement

If Public offer

Transfer Premium received to Securities Premium A/c

follow SEBI guidelines also

This A/c is not a free Reserve has Specific Uses only

If used

Not used

✓

Reduction of Capital

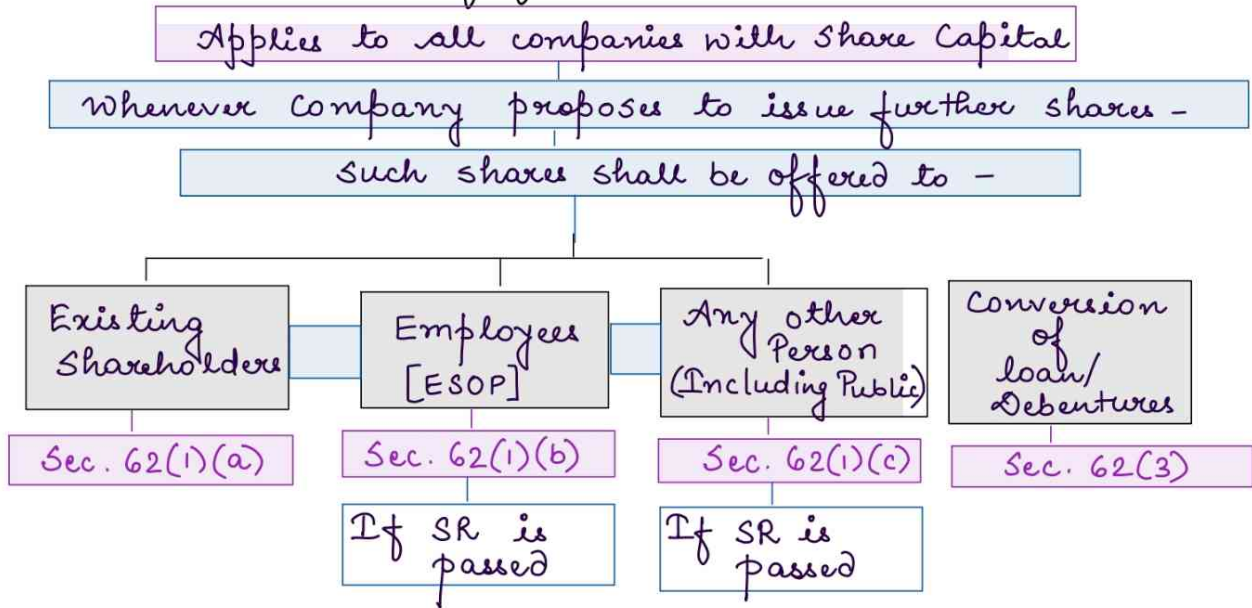
for Prescribed companies

for Others

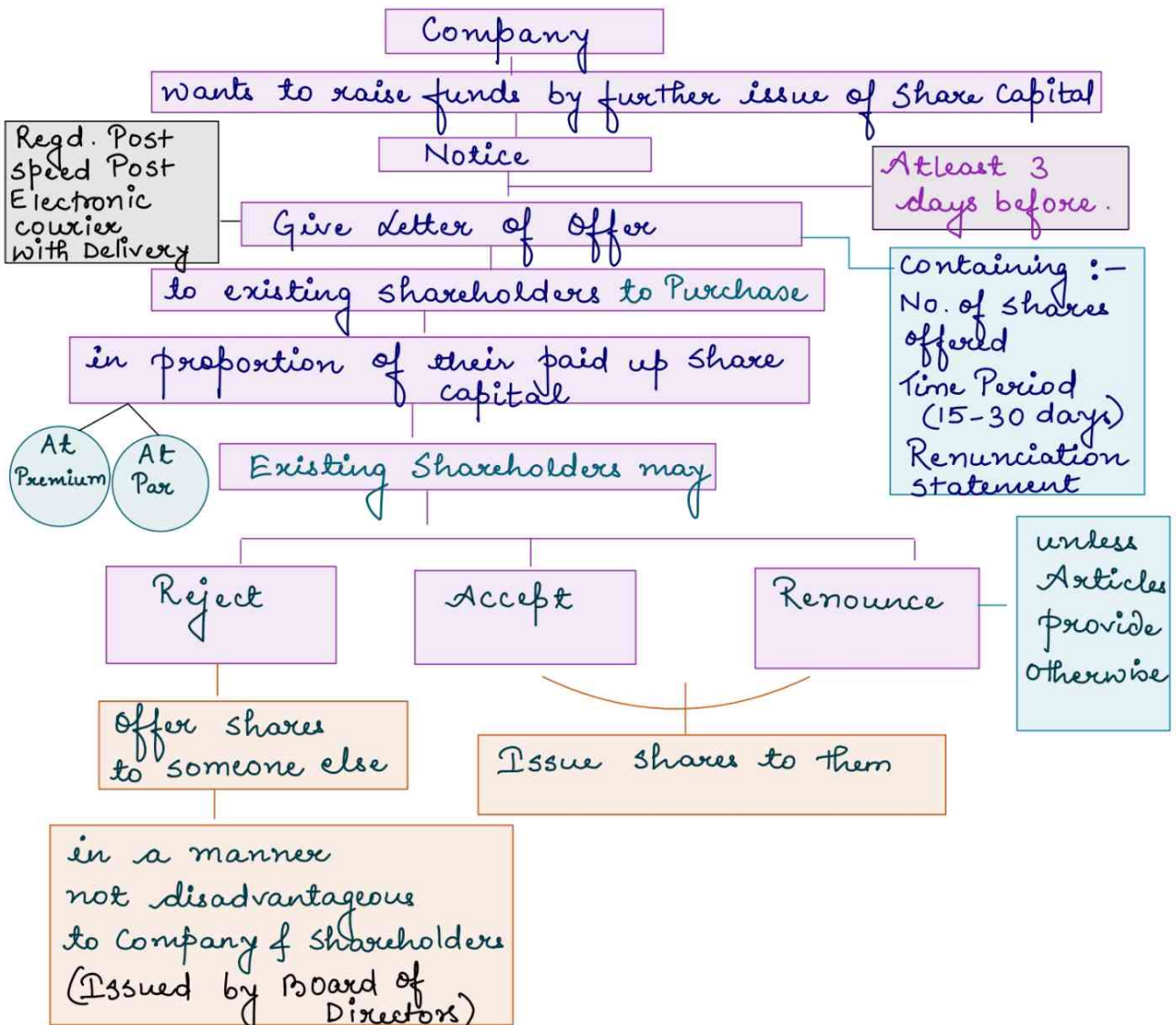
- Bonus Shares
- Expenses/comm/Discout on equity Shares
- Buy back

- Buy back
- Bonus shares
- Expenses/comm/discout on shares or Deb.
- Expenses - Preliminary
- Redemption premium

Issue of further shares [Sec. 62]

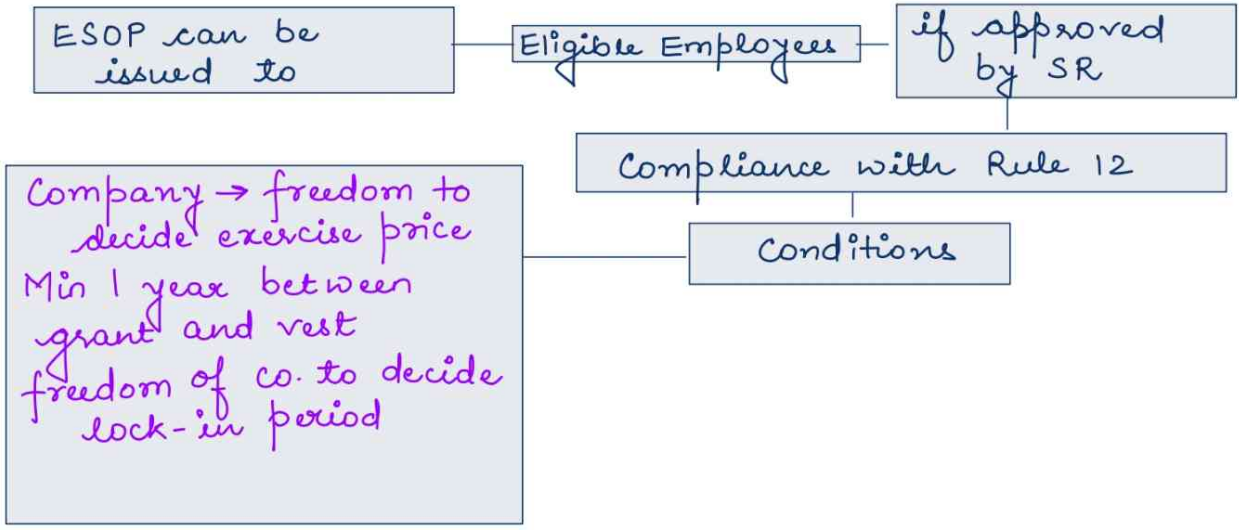


Rights issue [Section 62(1)(a)]

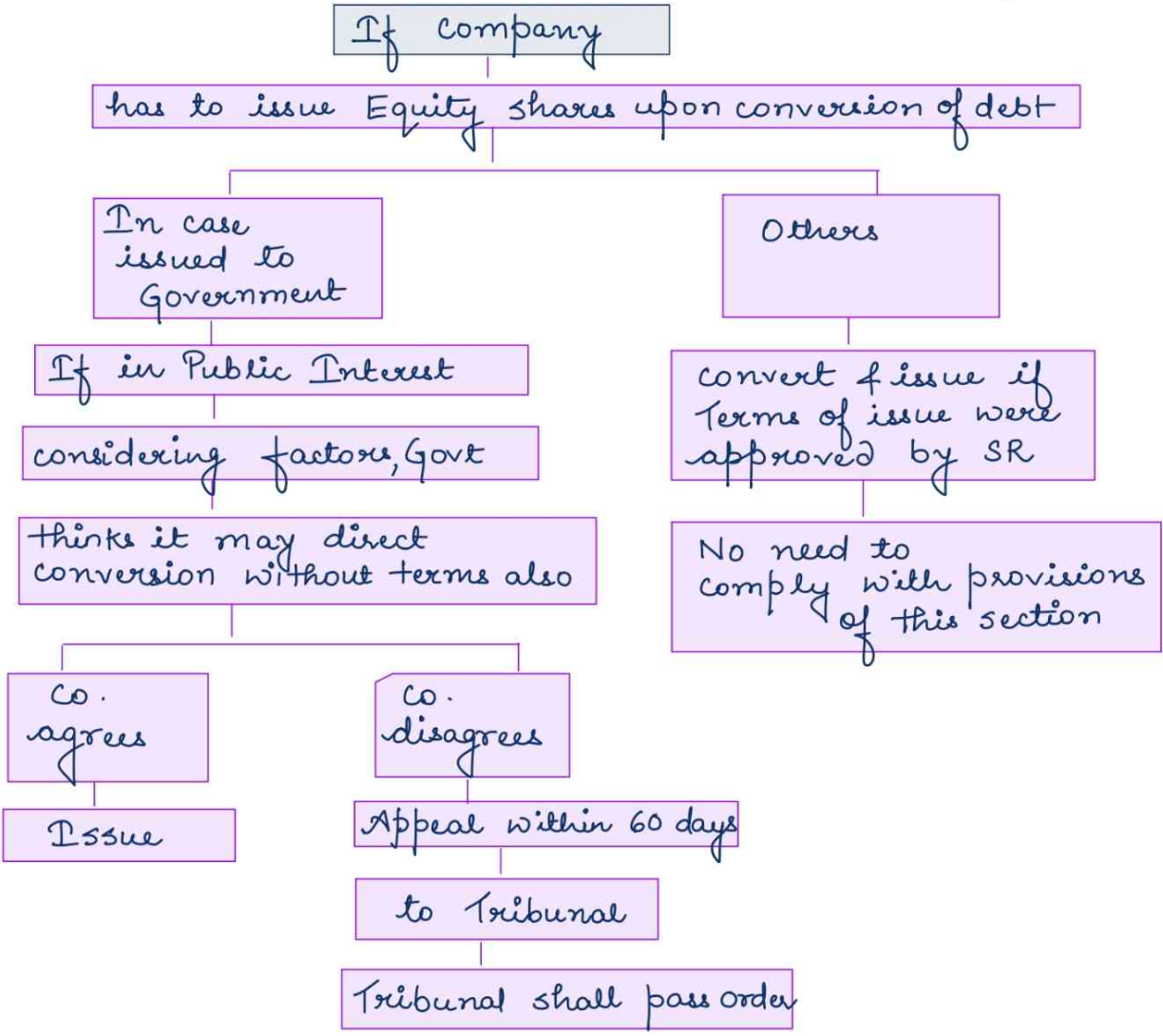


Employee Stock Option Plan (ESOP)-Sec.62(1)(b)

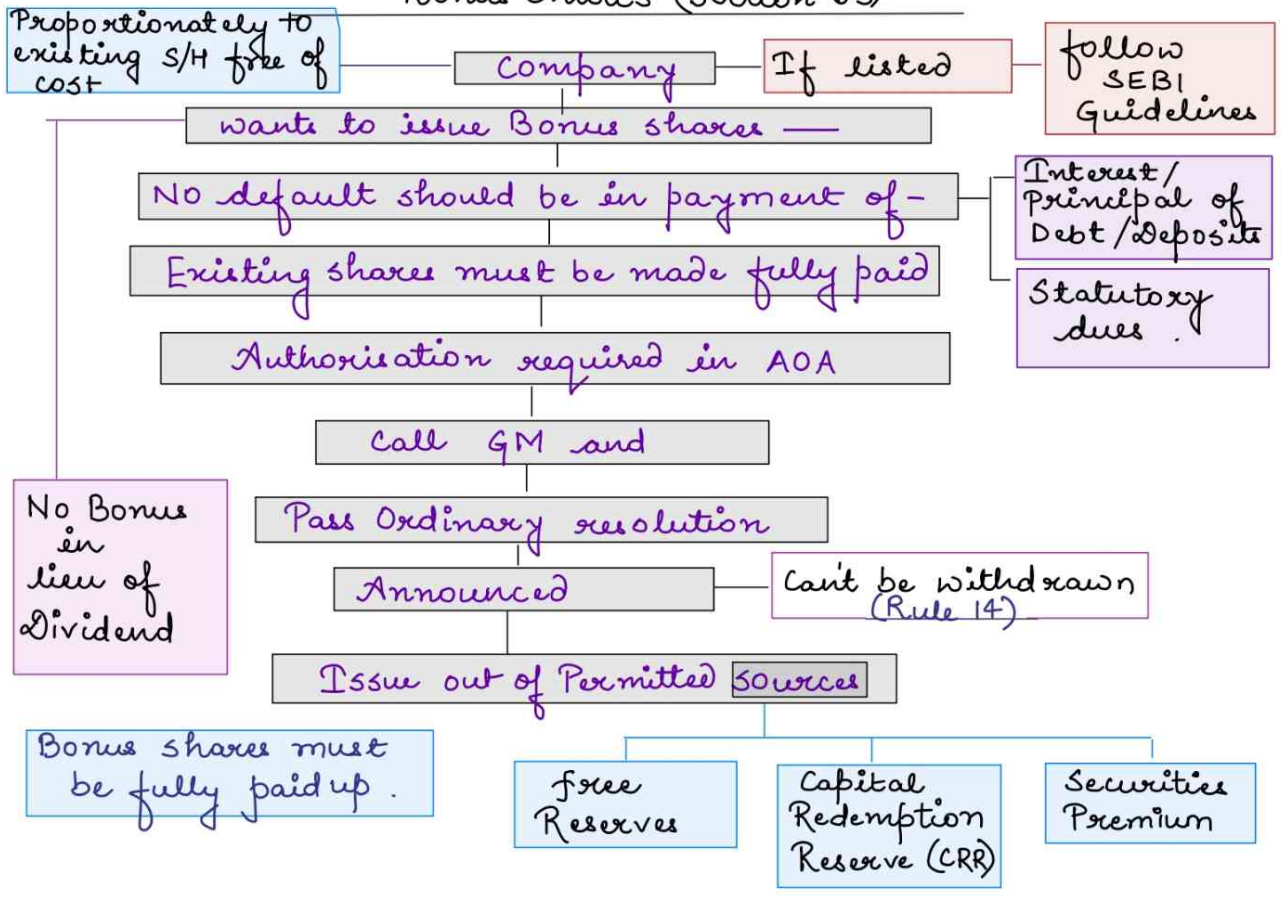
Read with Rule 12



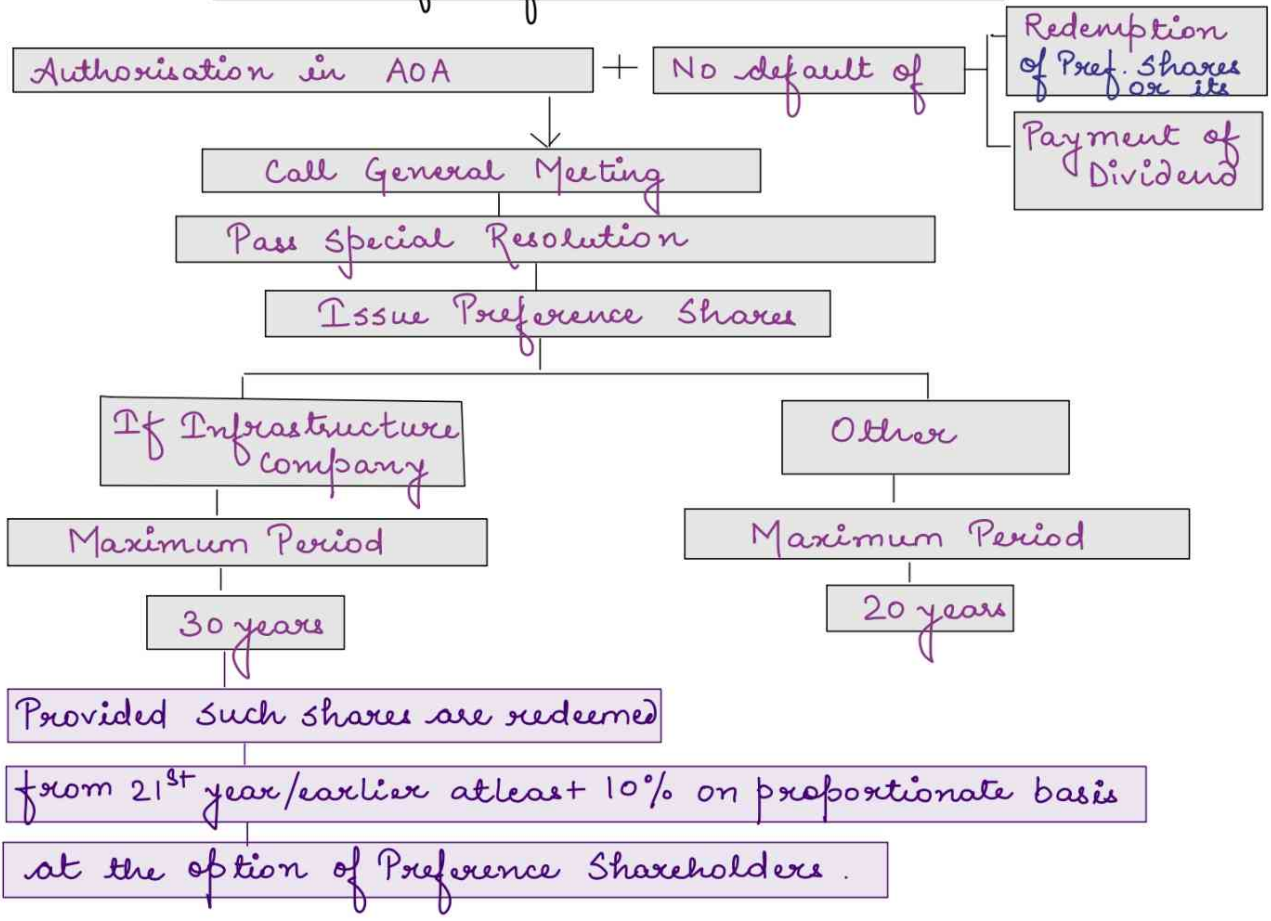
Conversion of loan/Deb into Equity



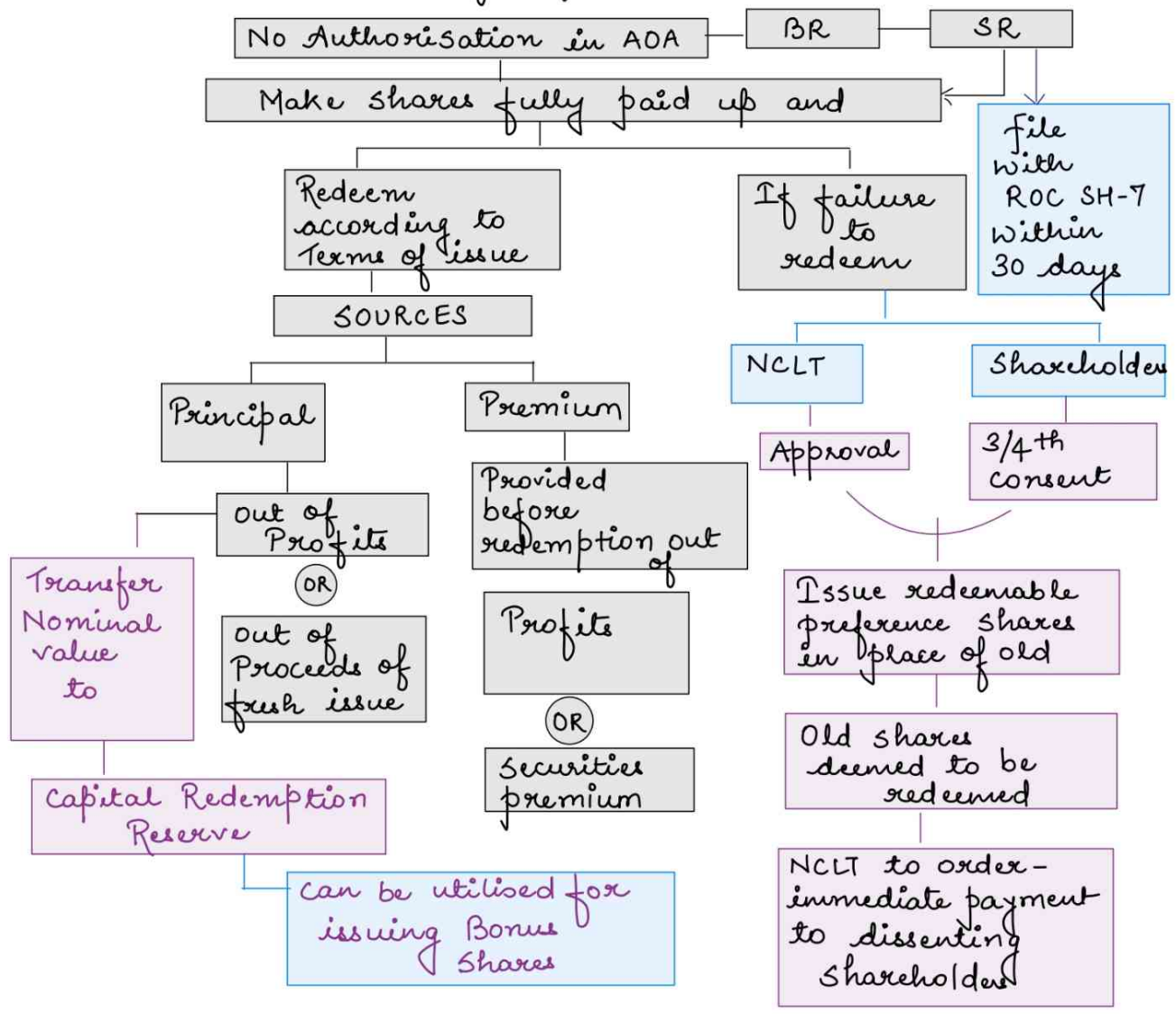
Bonus Shares (Section 63)



Issue of Preference Shares (Sec. 55)

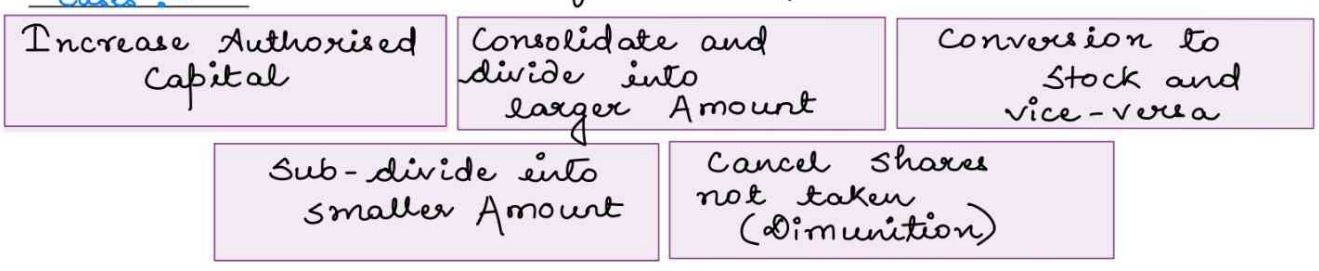


Redemption of Preference Shares

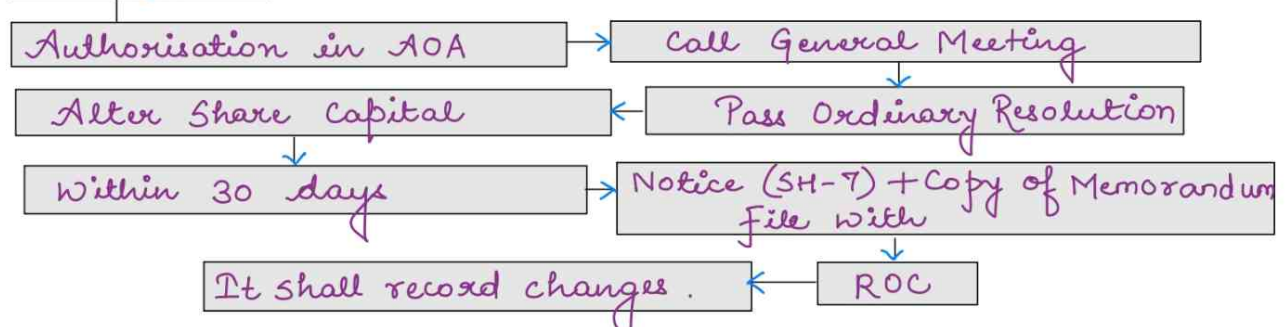


Alteration of Share Capital (Sec. 61)

Cases :-



Procedure :-



Reduction of Share Capital [Sec. 66]

Applies to Co. limited by shares/limited by Guarantee with share Capital

Manner of Reduction

Extinguish/reduce liability for shares not paid up

cancel lost paid up share capital

Pay off excess paid up share capital

with/without extinguishing or reducing liability.

Procedure and Conditions of Reduction

Authorisation in AOA

Call General Meeting & Pass SR

No default in repayment of deposits

With Prescribed Attachments

Application to Tribunal

in form RSC-1

Notice within 15 days

to CG and ROC (RSC-2)

SEBI (In case of listed Co.) [RSC-2]

by company to

Creditors (RSC-3)

Advertisement (RSC-4)

If no objection received within 3 months, presumption of No objection.

All objection must be sent to Tribunal within 3 months with copy to company

can be dispensed with

within 7 days company submits response

After hearing objection, response and looking at interest of shareholders

if Tribunal satisfied of discharge of debt

Pass an order confirming Reduction (RSC-6)

Showing -
Amount of Share Capital
No. of shares
Amount of each share
Amount paid up

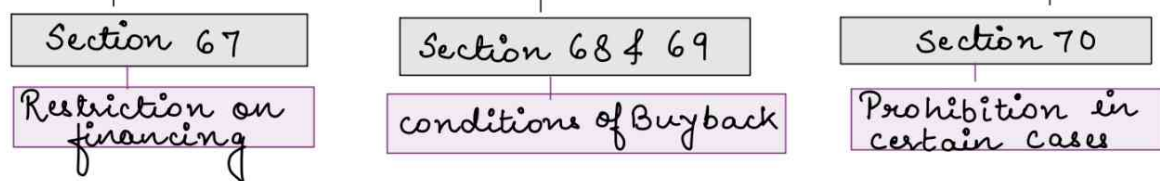
file order with Minutes within 30 days to

ROC

shall register and issue RSC-7

No member shall be liable to contribute more than the difference between Amount paid and amount fixed by order of Reduction

Buy - Back Provisions



Buy back of Securities [Sec.68]

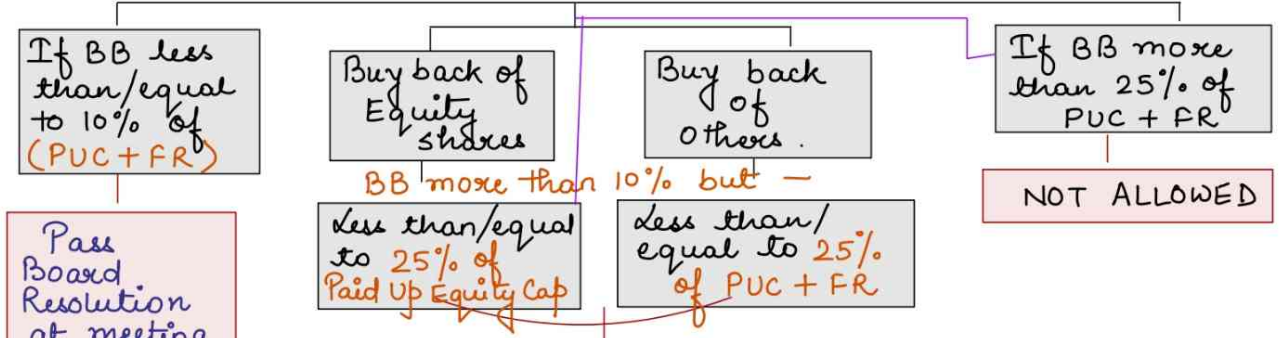
A company may purchase its own shares / **Specified securities**

If Authorisation in AOA out of **SEBI compliance for listed Co.**



Transfer Nominal Value to CRR (Sec.69)

Check the limit of Buy back -



Call GM by sending Notice + Explanatory Statement

Pass Special Resolution

Partly Paid up shares

Not allowed

fully paid up shares



through letter of offer



Destroy Physical Certificate (7 days)

Min Time 15 days
Max Time 30 days

BUY

file Declaration of Solvency with ROC (SH-9)

Maintain Register (SH-10)

file return of BB within 30 days (SH-11)

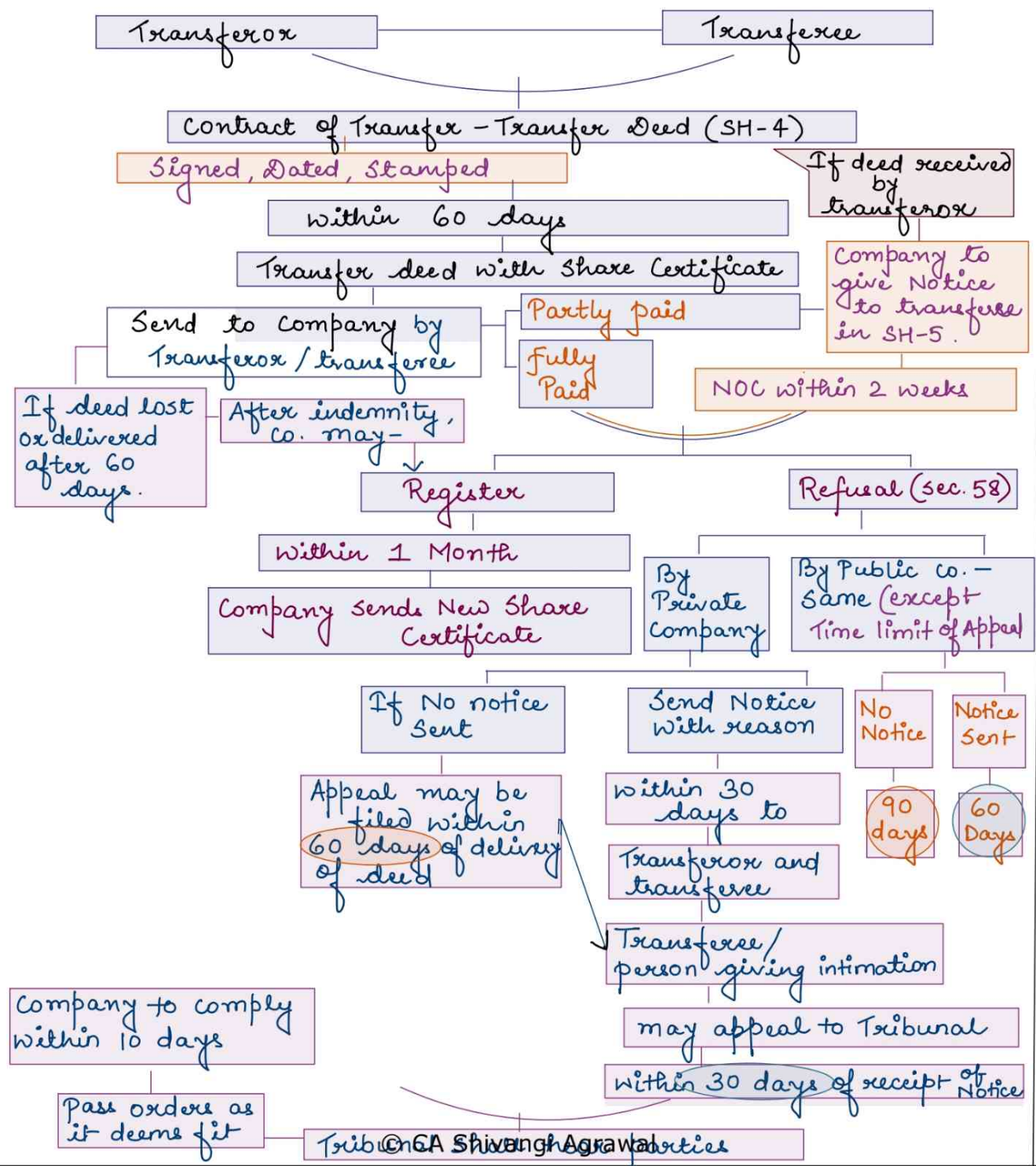
No BB within 1 year

No new issue within 6 Months

Other Points of BB :-

- Buyback shall be completed within 1 year of passing of resolution for buy-back (SR or BR)
- Ratio of debt owed by the company must ^{not} be more than twice the aggregate of Paid-up capital and free reserves after such buy-back. (CG may notify a higher ratio for any class)

Transfer of Securities [Sec. 56 read with Rule 11]



Transmission of Securities.

It is different from Voluntary transfer. In this, A person becomes entitled to shares by operation of law.

No transfer Deed, On receipt of intimation

Company registers the securities in the name of -

legal representative/
official assignee

No voting right until name registered

Forged Transfer

Transfer of shares where Transferor's sign are forged on transfer Deed.

It is void ab initio

Original owner continues to be member

If company registered transferee as member

Original member can compel company to restore name

Company cancel share certificate of transferee

If transferee transferred to innocent Purchaser
New Purchaser not entitled to securities

But right to claim damages from co. and co. → Right to recover damages from depositor of forged deed.

Rectification of Register [Sec. 59]

Person aggrieved / Member / Company

may appeal for rectification

if entry without cause
omission without cause
Default/delay in entering
or removing name
without cause

with Tribunal

Tribunal after hearing parties may dismiss appeal or order rectification damages

Company, Depository, DP, SEBI, Holder

may apply for rectification

if transfer in contravention of Co's Act, SCRA, SEBI, other law

to Tribunal

Tribunal to direct company to rectify.

Debentures [Sec. 71]

No Debenture shall carry any voting right.

May issue convertible (full/Part) Debentures

may issue Secured Debentures

complying with Rule 18 conditions

after passing SR in GM

Tenure of Redemption - Max - 10 years
Infrastructure - Max 30 years

at prescribed percentage

Create DRR out of profits available for Dividend

Secured by charge on Assets - sufficient

Invest prescribed Amount in Specified Assets.

Appoint Debenture Trustee

compulsory if -
• prospectus is issued
• Public offer is made
• offer to members exceeding 500

Before issue of Prospectus / letter of offer

Appoint Debenture trustee if Mandatory

To perform duties and incur liability as prescribed

Company shall pay interest and redeem debentures acc. to terms

If failure to do so -

Debenture Holder OR

Debenture Trustee

may make application to Tribunal

Tribunal after hearing may order forthwith payment

Creation of DRR

DRR not required in case of - listed co. → AIFI Banking financial Inst. Other listed co.

Unlisted co. → NBFC & Housing finance Private Placement

Other Unlisted co. → 10% of Deb.

Creation of DRI

On or before 30th April

Invest 15% of deposits maturing on 31st Mar

in specified securities by

Listed Public issue (Other than AIFI, Banks, PFI)

Unlisted (Other than AIFI, Bank, PFI, NBFC, Housing finance)

Debenture Trustee

Before appointment,

Obtain written consent and such statement to

appear in letter of offer / Prospectus.

Eligibility

Be disqualified if -

- ▷ Beneficially holds shares.
- ▷ is promoter/Director/KMP/officer/e^o of C/H/S/A.
- ▷ entitled to money apart from remuneration.
- ▷ Indebted to C/H/S/A or subsidiary of Holding
- ▷ given guarantee of debt
- ▷ has pecuniary relation [3 yrs] (lower of -
2% of Gross T/o on Total income
50 lakh
Prescribed Higher Amount)
- ▷ is relative of promoter/E^o/Director/KMP

Duties

to protect interest and redress grievances of Deb. Holders.

Convene Meeting on written request by Debentureholders with 1/10th value

OR
On happening of event affecting interest of debentureholders.

can be removed before term if 3/4th value holders give consent.

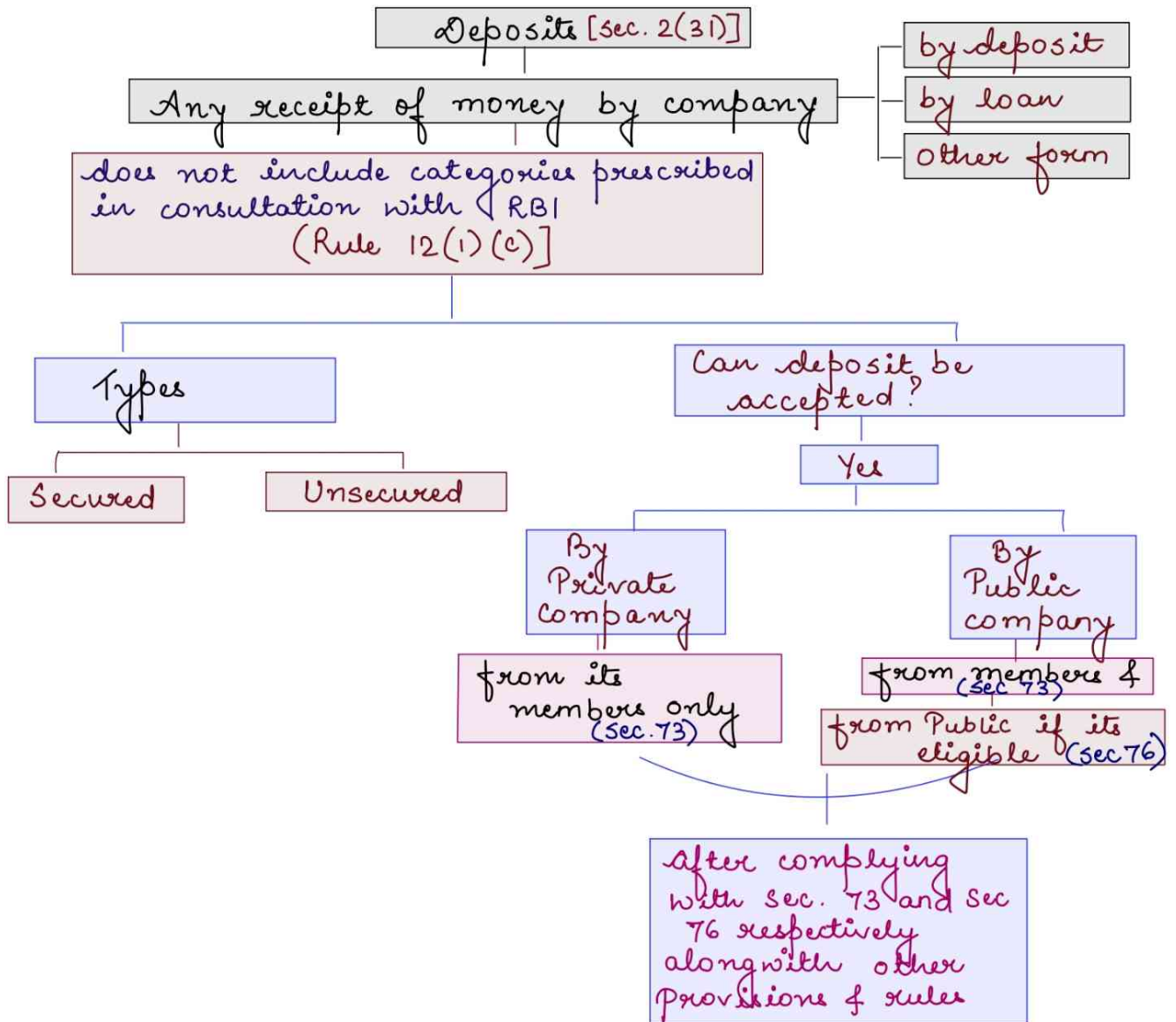
Liability

If Debenture Trustee → Guilty of breach of Trust OR fails to exercise due care

↓
liable for damages.

[can be exempted from some liability if 3/4th value holders give consent]

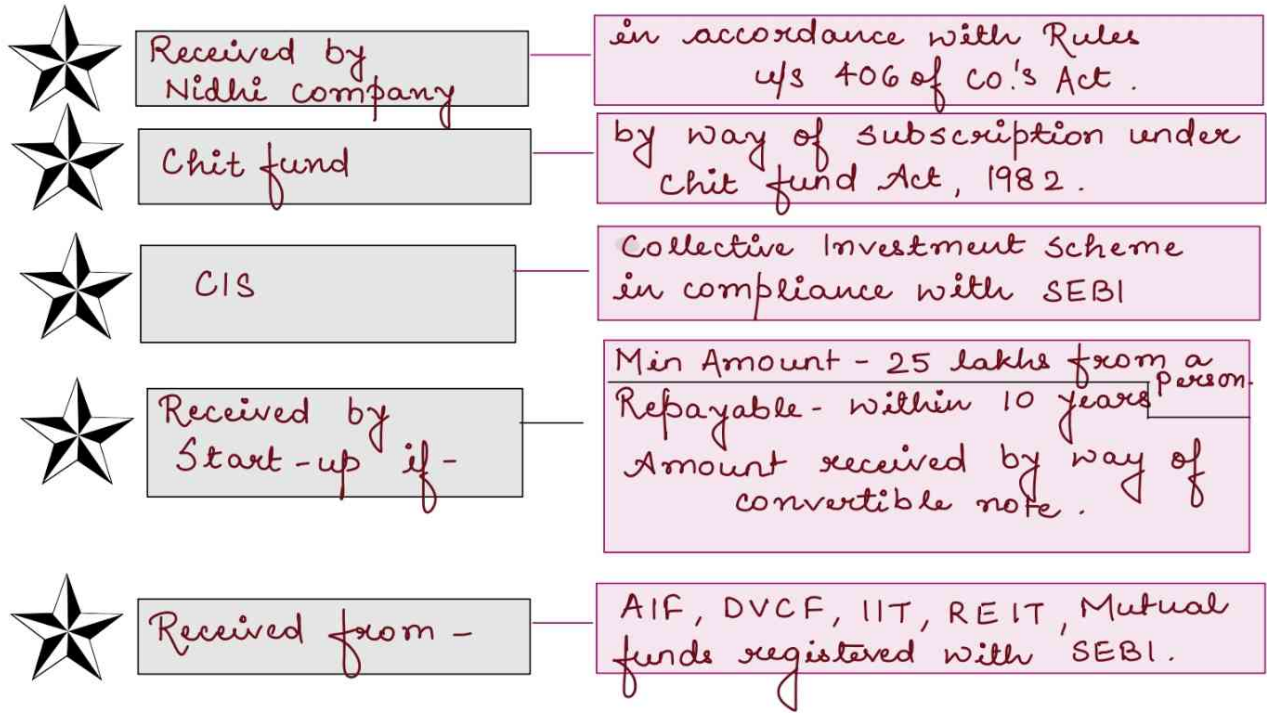
Acceptance of Deposits by Companies



Amounts not considered as Deposits [Rule 2(1)(c)]

★ Received from Government	CG/SG/source guaranteed by them/local Authority/Statutory Authority
★ Received from foreign source	foreign Govt, foreign banks, Multilateral financial Institution foreign citizen etc.
★ loan/facility	from Banking co./SBI/co-operative banks
★ loan	from Public financial Institutions (PFI)

★ Issue of instruments	Commercial Paper/ Other Instrument in accordance with RBI
★ from Company	Amount received from any other company.
★ Amount towards Subscription of Securities (including Application money)	Money Pending Allotment treated as deposit if - Money received → No Allotment till 60 days ↓ Not refunded in next 15 days
★ Received from Director/ relative of Director of Private Company	Such person must provide a declaration in writing that money is not borrowed funds. Co. disclose in Board's report.
★ Issue of secured/ convertible Bonds / Debentures	Security - sufficient, either first charge / Pari Passu with 1st charge. Convertible - within 10 years
★ Listed Debentures	if Non-convertible, non-secured but listed on RSE.
★ Received from Employee	not exceeding Annual salary & no interest (Under Contract)
★ Received in trust	Non-interest bearing.
★ Trade Advances	for Goods/Services - Appropriate within 365 days. for immovable property under agreement & adjusted accordingly. Security deposit for performance of contract. long term projects for supply of capital goods. in the form of warranty for future services under agreement. as allowed by sectoral regulator for subscription towards publication.
★ Received from Promoter	If loan brought because of stipulation by bank. Exemption till repayment of bank loan.



Depositor [Rule 2(1)(d)]

Member of Private / Public company who has deposited money with company

Non-member who has deposited money with eligible Public company.

Following types of companies are exempted from Deposit provisions -

(ie. Such companies can accept any receipt of money from anyone without compliance to this chapter)

Exempted companies - (Sec. 73(1))

- Banking company
- Non-Banking financial company
- Housing finance company
- Other company specified by CG in consultation with RBI.

Acceptance of Deposits from its Members [Section 73]

Company (Public or Private)

may accept deposits from members

by complying with such rules as prescribed by CG

Procedure / Steps as under :-

Call GM and Pass OR

Prepare circular (DPT-1 containing financial position, credit rating, Depositors (Name, Amount), Others)

Prepare Certificate of No default in repayment of Deposit / interest

Sec 73(2)(e)

file circular with ROC 30 days prior to issue

Sec. 73(2)(b)

Execution of Deposit trust deed to appoint Trustee

Issue circular to members inviting deposits from them.

Sec 73(2)(a)

Creation of charge for the security provided.

Accept deposits and issue Depository receipts within 21 days of receipt of money

Transfer to DRR (20% of deposits maturing following year) before 30th April

Sec. 73(2)(c)

File Return of Deposits (DPT-3) before 30th June with ROC

Repay Deposits & interest in time

If failure

Depositor may make Application (NCLT II)

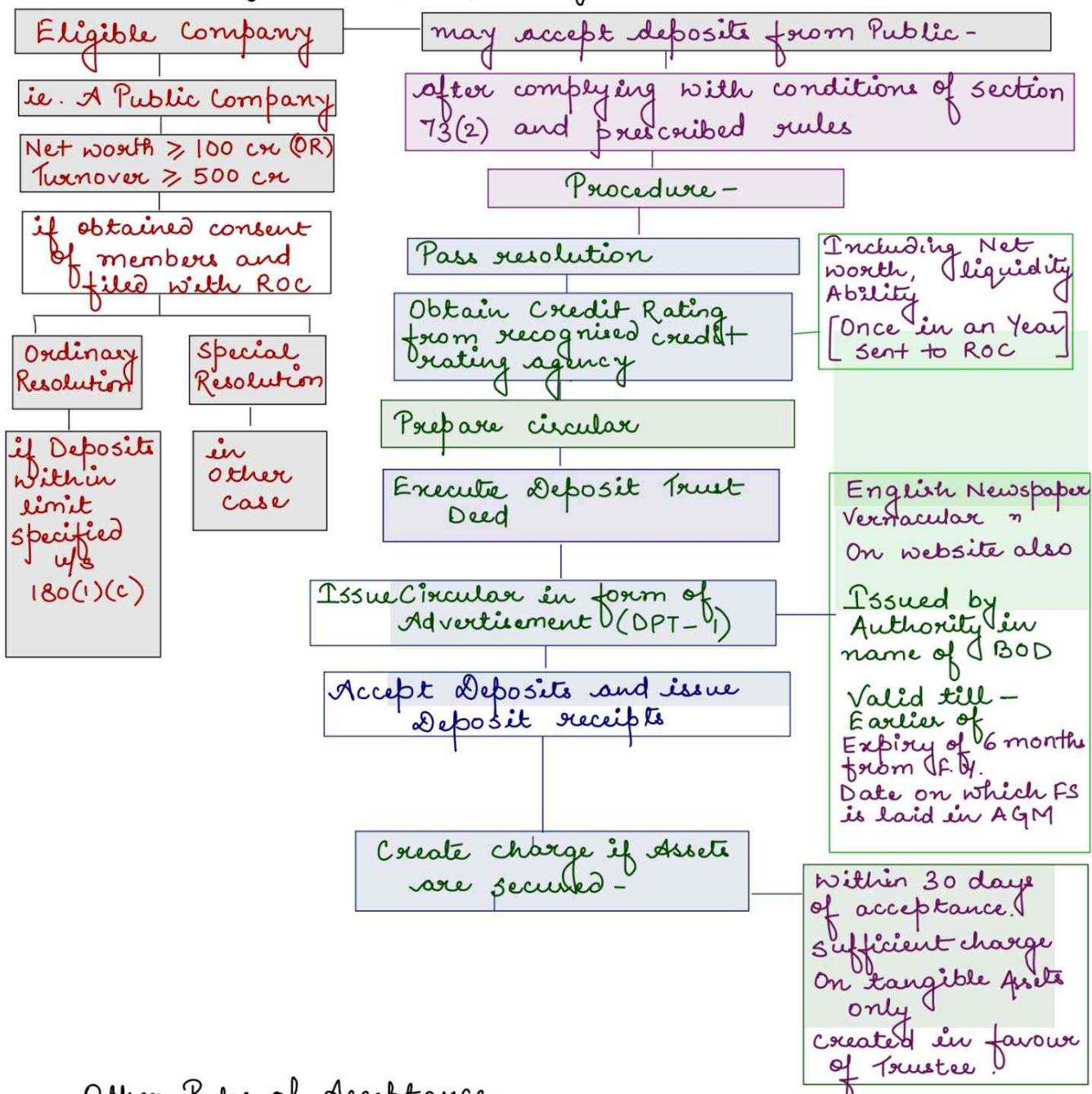
It may order company to pay & pass other orders.

to Tribunal

N.A. to Private company if

- It accepts deposits upto 100% of PUC + FR + premium
- Start-up for 10 years from incorporation
- Pvt co. which is not Associate or subsidiary AND Borrowings less than lower of 2x PUC or 50 crores AND No subsisting default of repayment of Deposits.

Acceptance of Deposits from Public (Section 76)

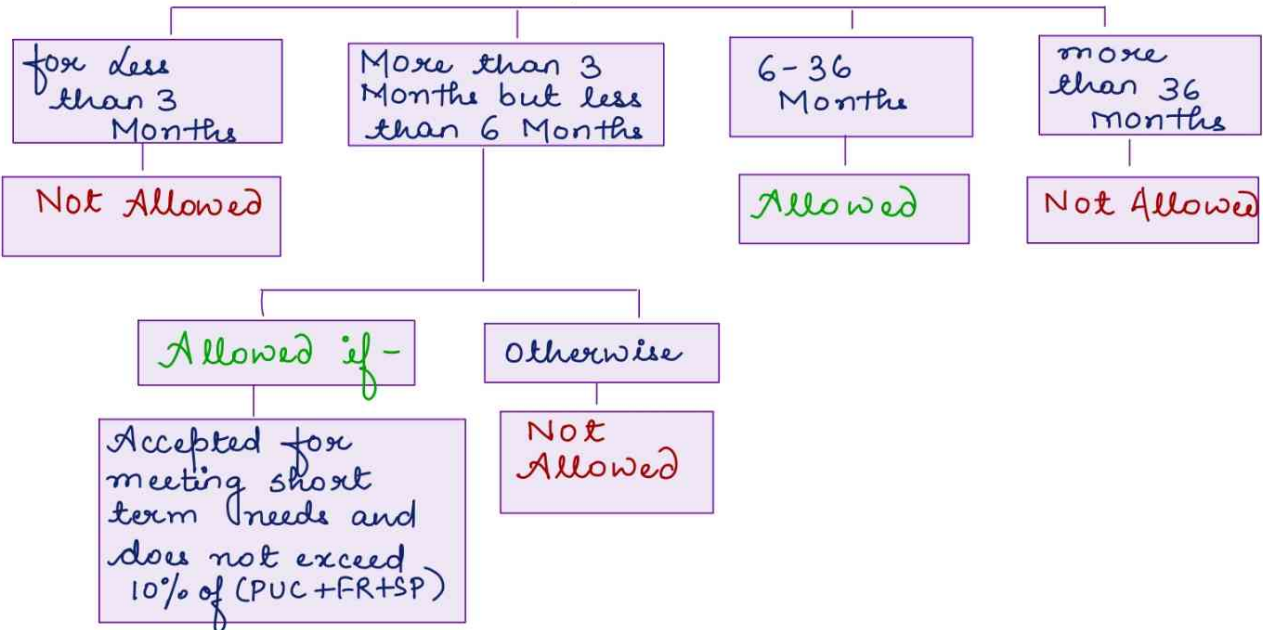


Other Rules of Acceptance

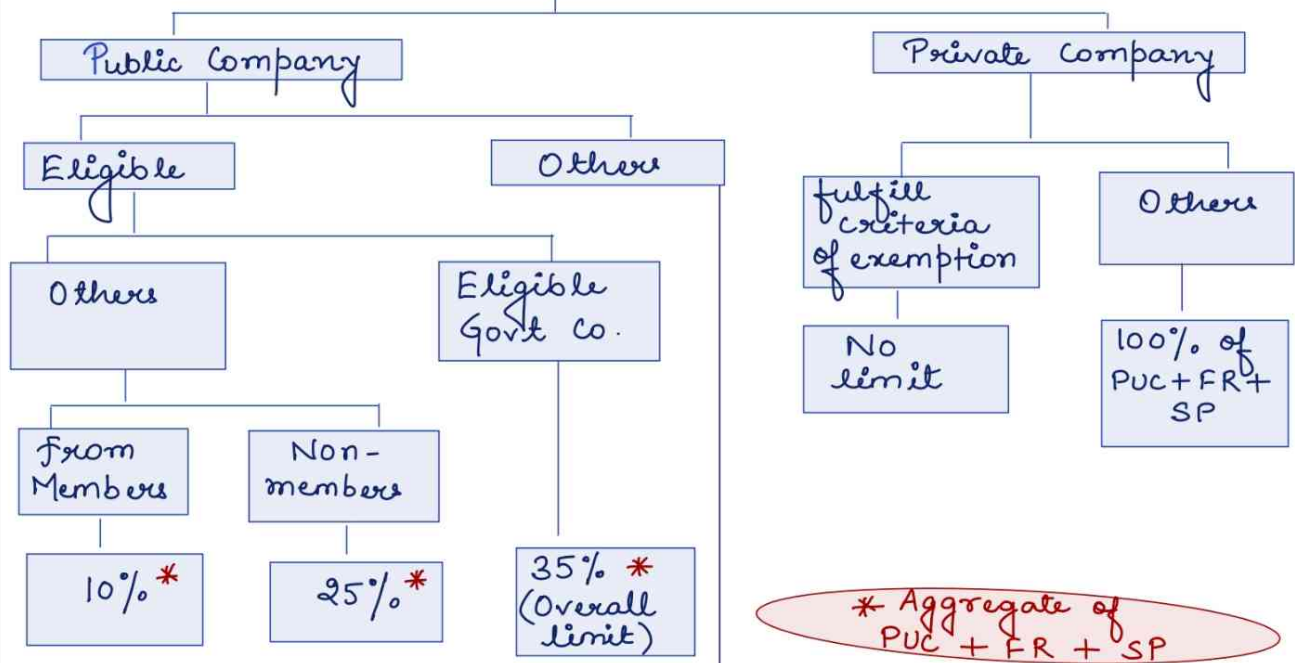
Maintain deposit register containing name, address, PAN of depositor, Date, Amount, interest, duration, charge, Nominee Preserved for 8 years, kept at registered office.

Disclosure in financial Statement :-
 Amount received from Directors by way of notes [Public Company]
 Amount received from Directors & relatives of Directors by way of notes [Private Company]

Tenure of Deposit



Limit on Deposit



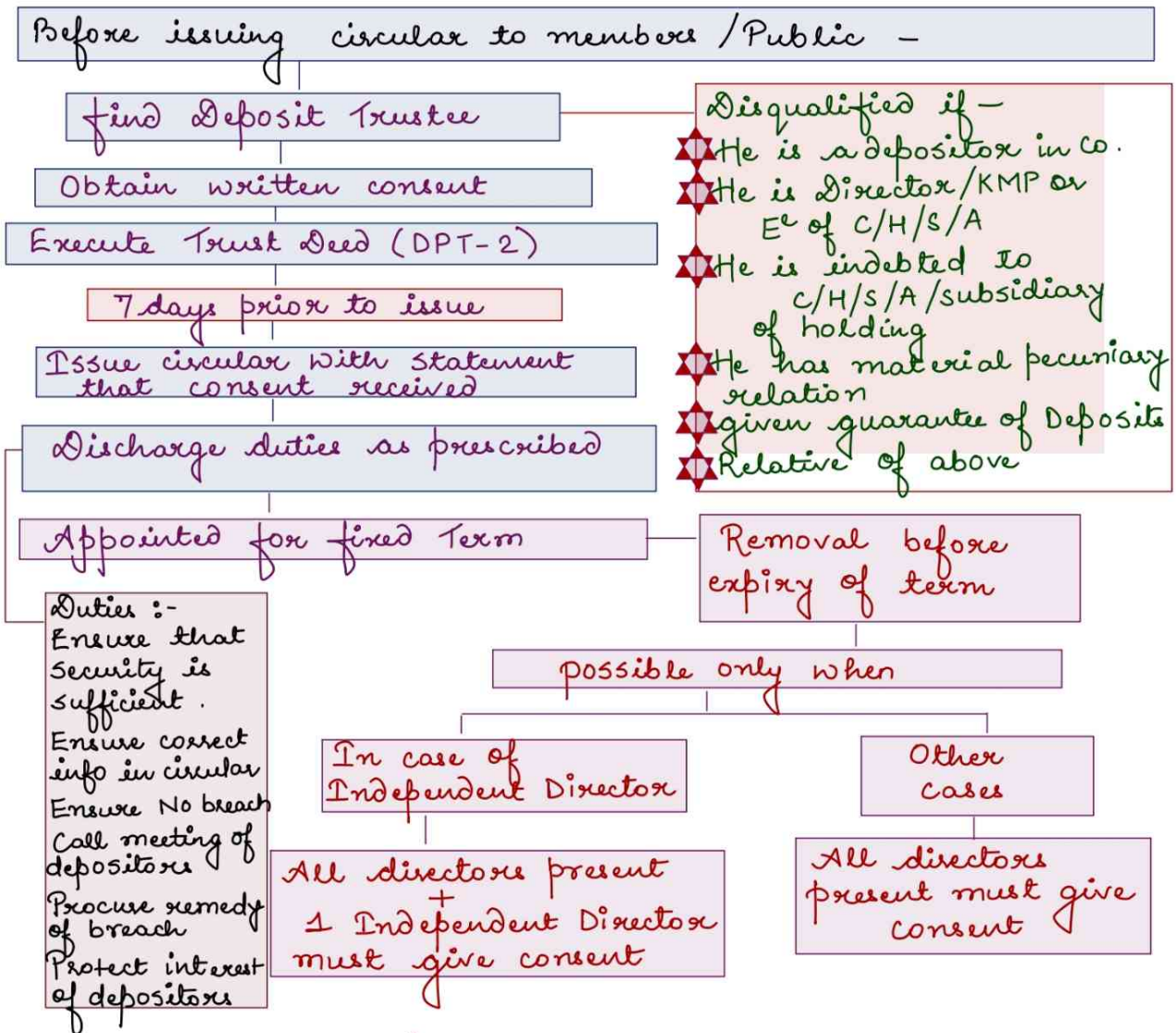
* Aggregate of PUC + FR + SP

All other type of company - 35% (PUC + FR + SP) from members
IFSC public co. - 100% (PUC + FR + SP) from members

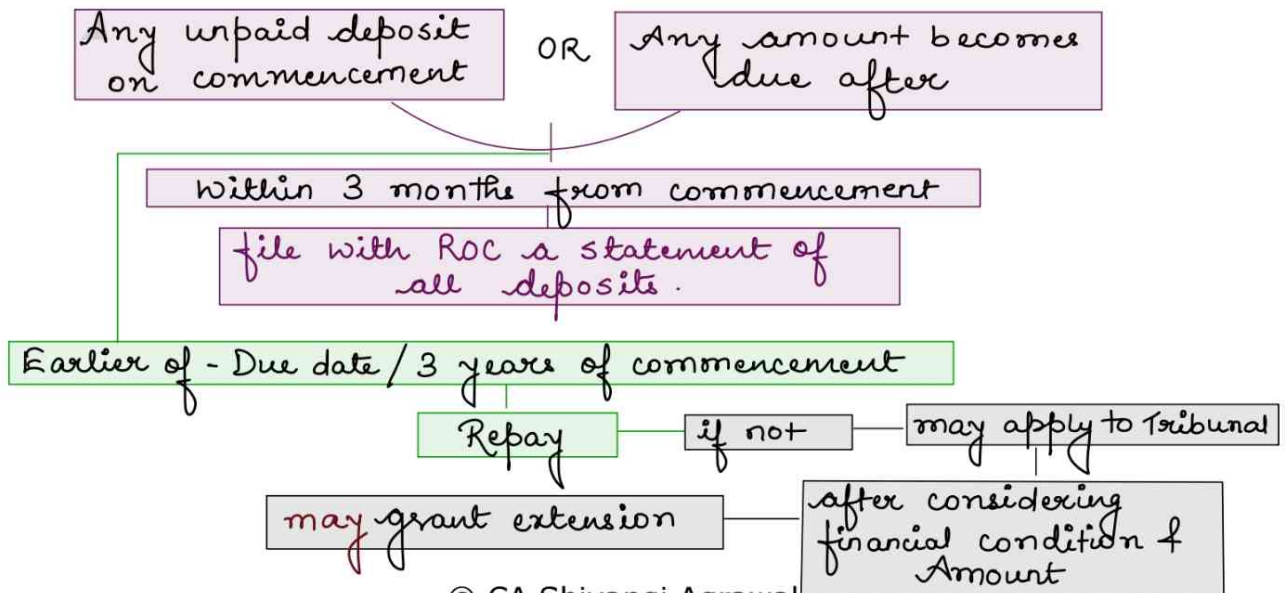
Deposits may be accepted in joint names not exceeding 3.

Rate of interest not more than rate specified by RBI for NBFCs

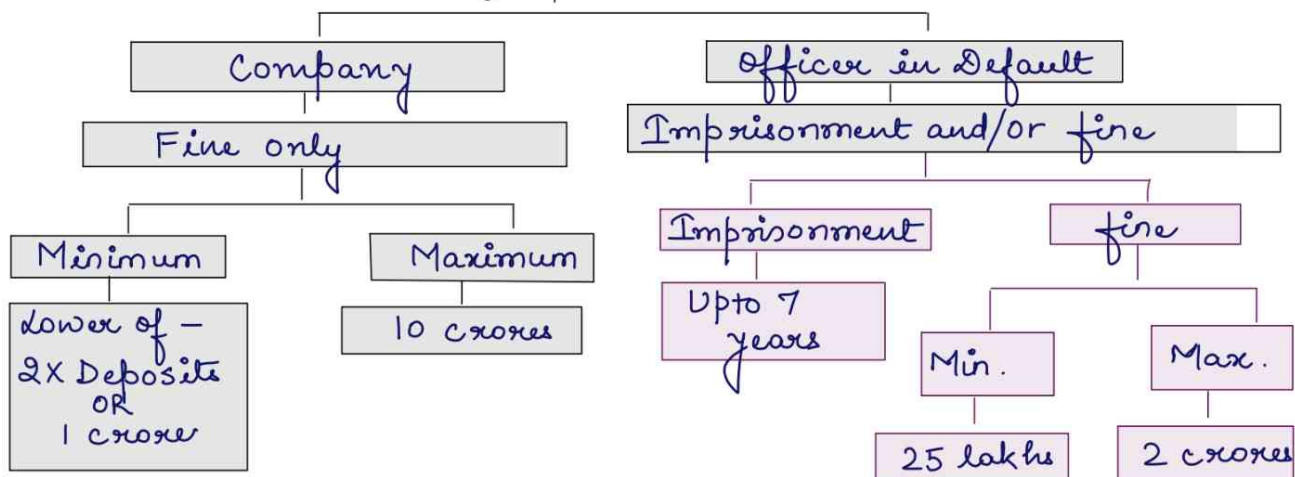
Appointment of Trustee for Depositors



Repayment of Deposits accepted before Commencement of Act [Sec.74]



Contravention of Section 73 or 76 or rules



liable u/s 447 if intention to deceive proved.

Registration of Charges

fixed charge

floating charge

Types

Charge

Meaning [sec 2(16)]

Interest/lien created on Asset/property/undertaking as security

If created by a company

must be registered with ROC

By whom?

When?

How?

Company (Sec. 77)

If Not By chargeholder (Sec. 78)

Within 30 days of Creation

In such form and manner & with such fees as prescribed (Rule 3)

If registered (After effects)

Misstatement can be rectified (Sec. 87)

If Not registered (consequences)

ROC gives certificate

Deemed notice of charge (Sec. 80)

Other compliance like maintenance of register (Sec. 81 & 85)

When satisfied fully

Report satisfaction within time

By Company (Sec. 82)

Suo Motu (Sec. 83)

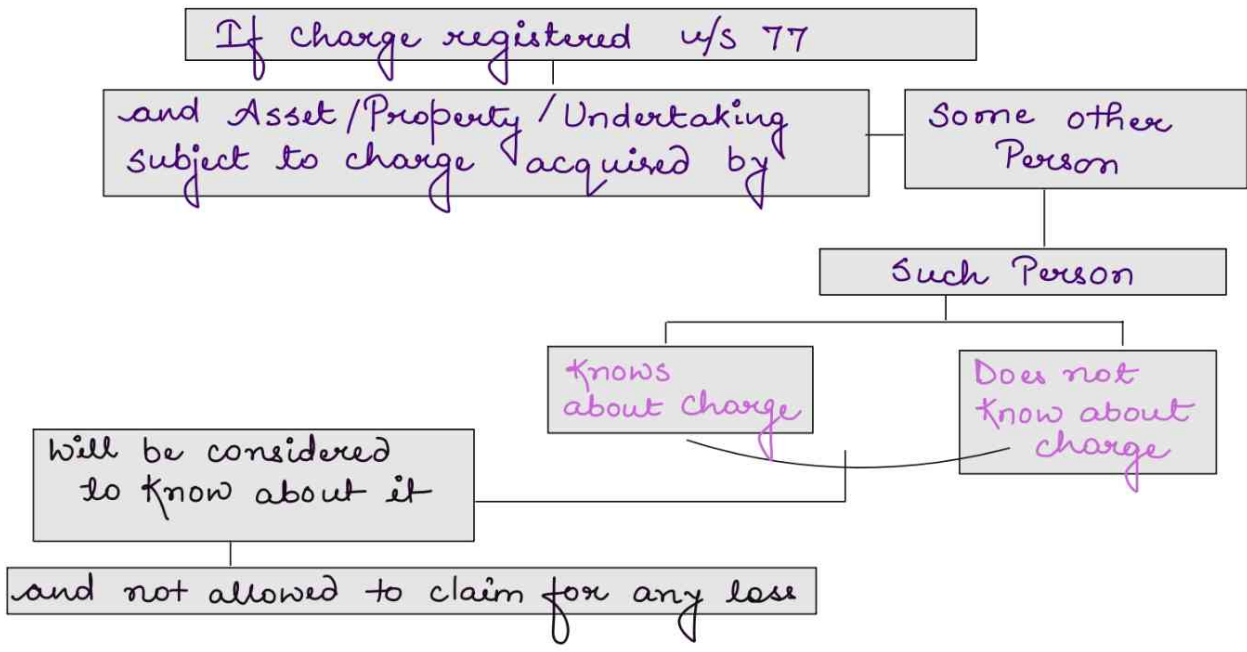
Chargeholder becomes unsecured creditor in case of winding up.

Priority of subsequent registered charge

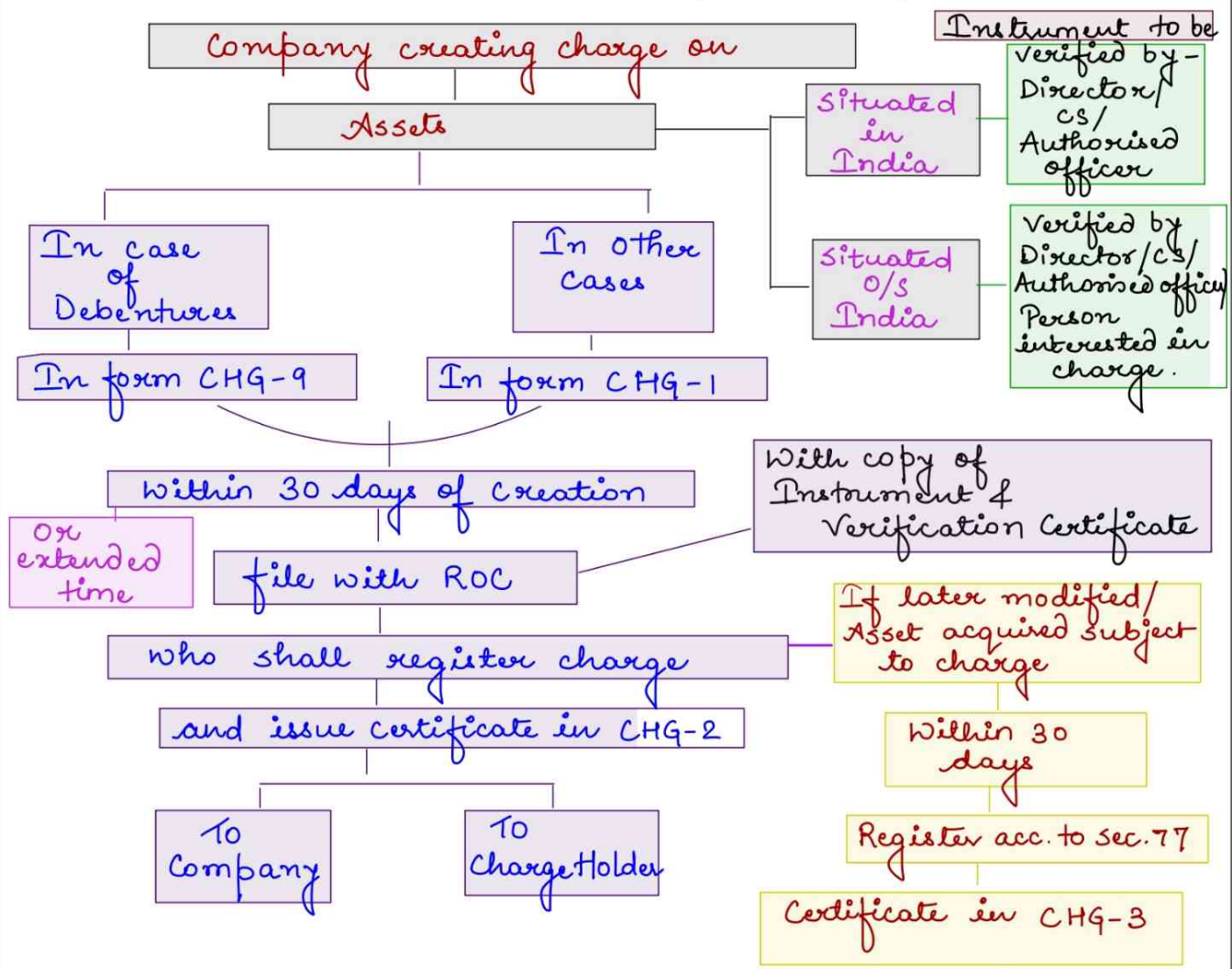
Penalty (Sec. 86)

Registration provisions apply even in case of Modification (Sec. 79)

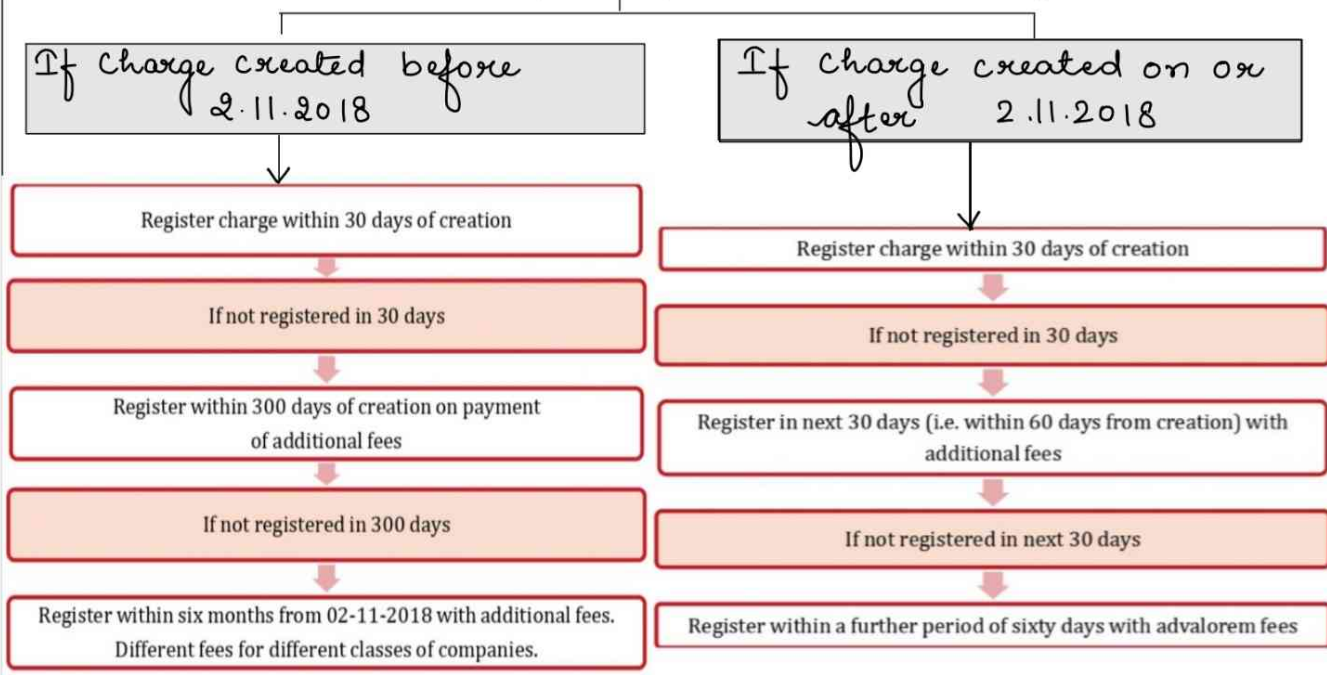
Date of Notice of charge (Sec. 80)



Duty of Company to register charge (Sec. 77)



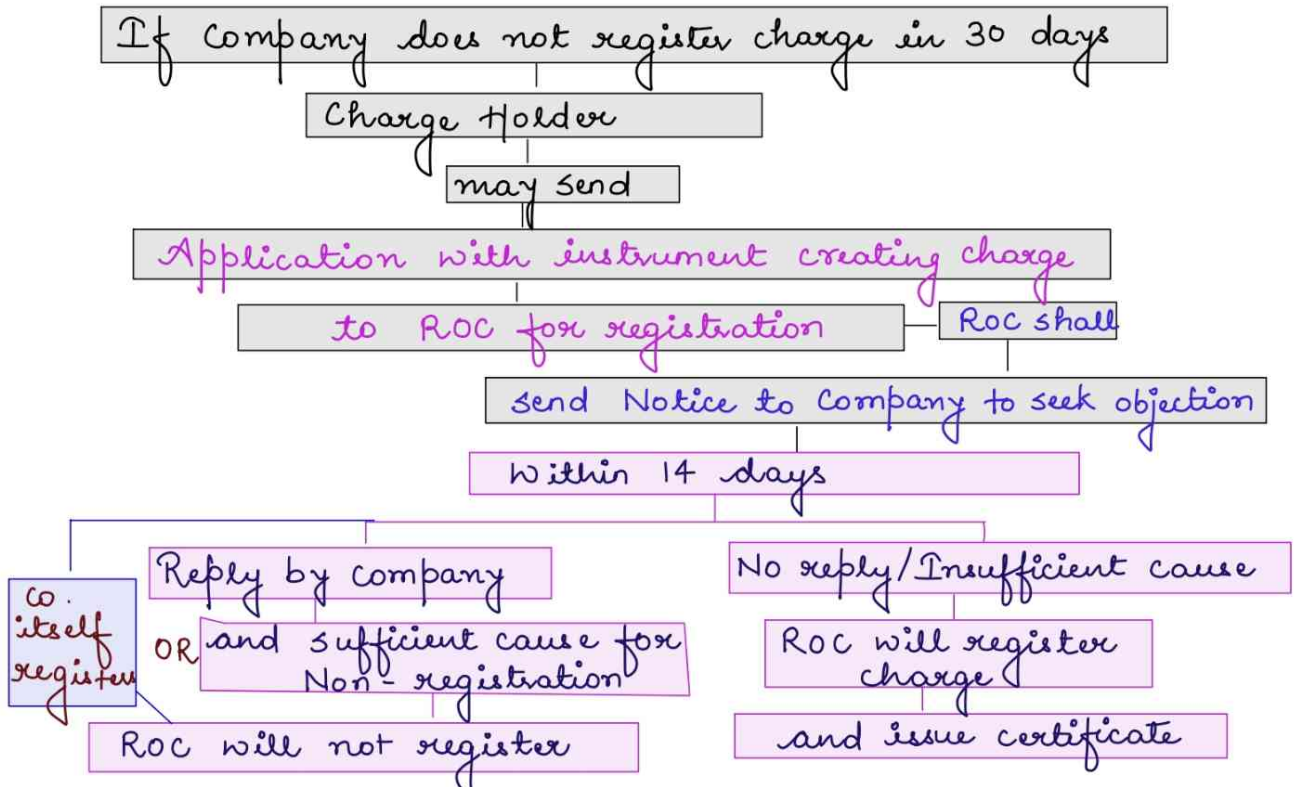
Time limit for Registration of charges



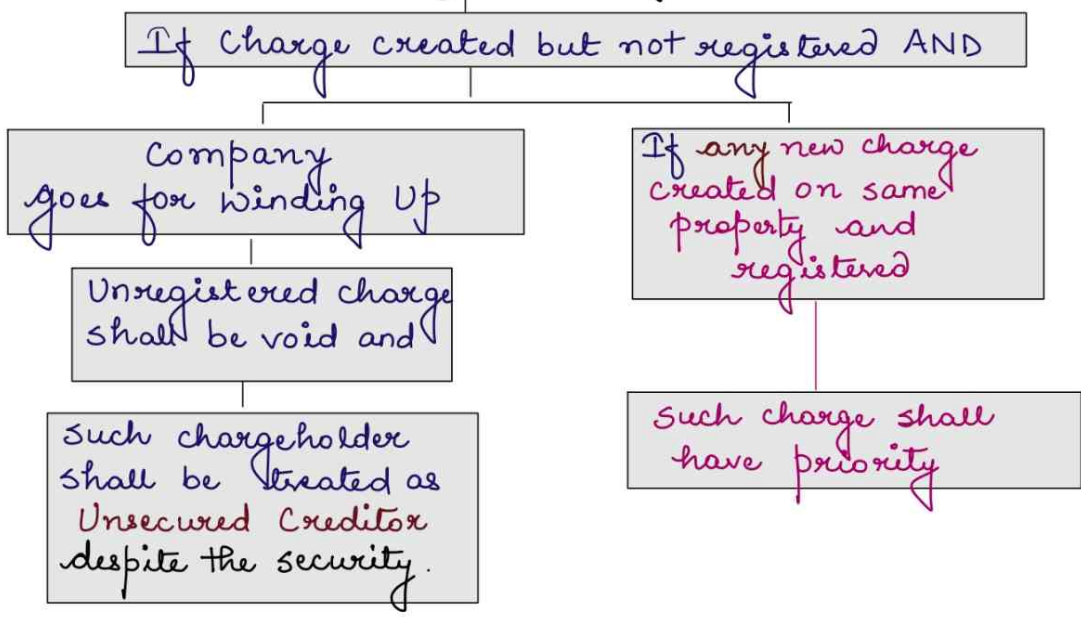
Registration of charge beyond this period is not allowed

No further extension for registration can be granted.

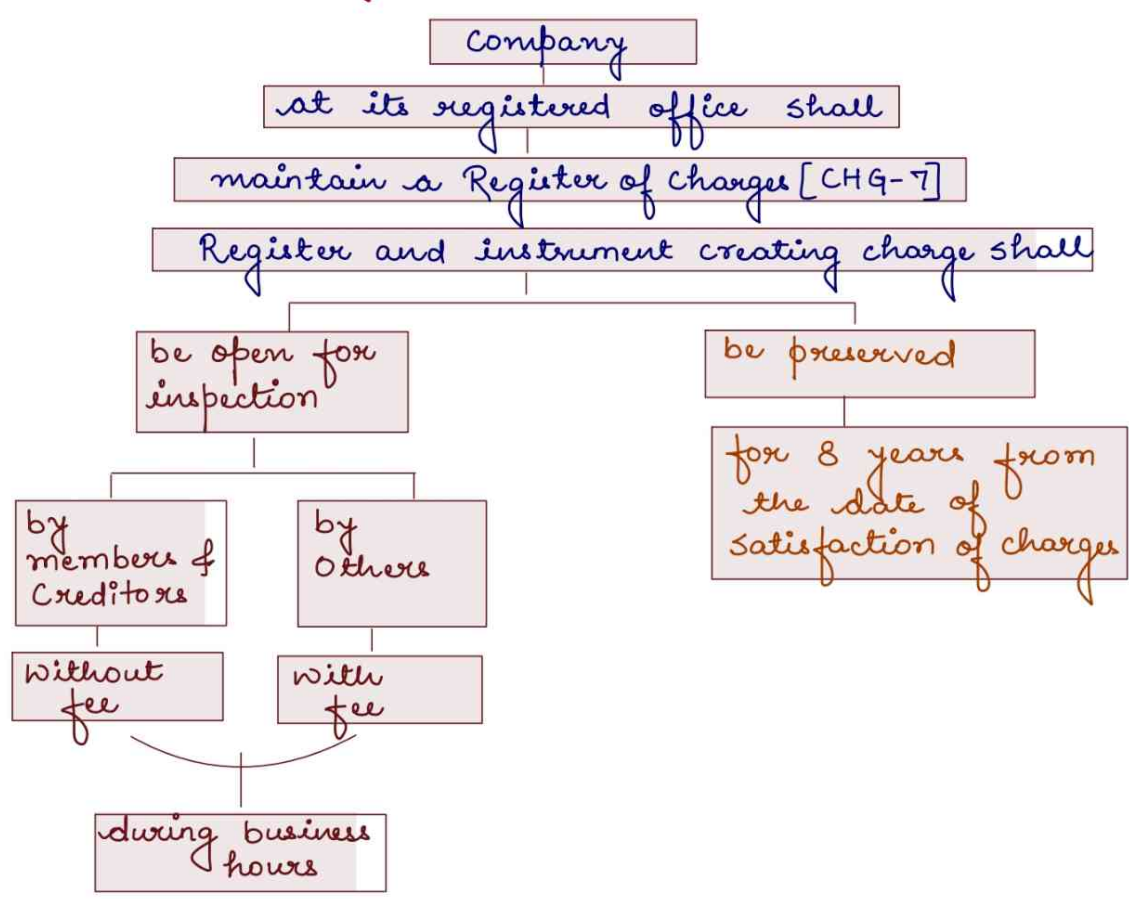
Registration of Charge by Charge Holder (Sec.78)



Consequences of Non-Registration.

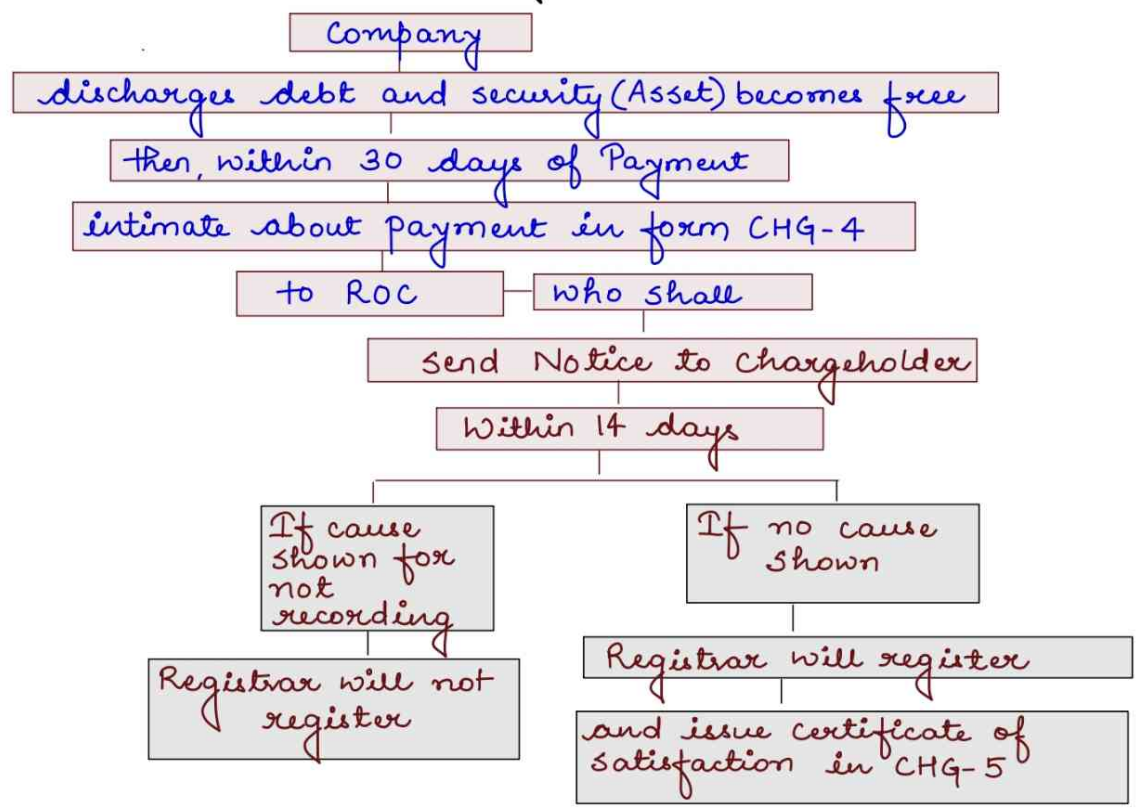


Register of Charges (Sec. 85)

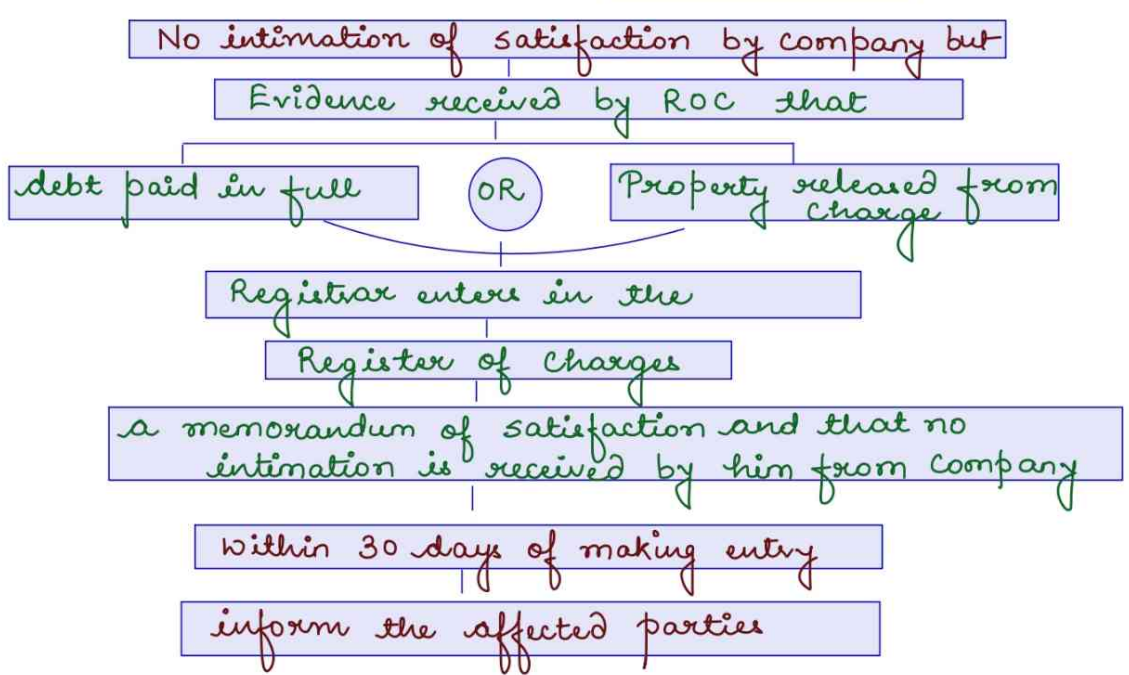


A register shall also be maintained by Registrar and open for inspection.

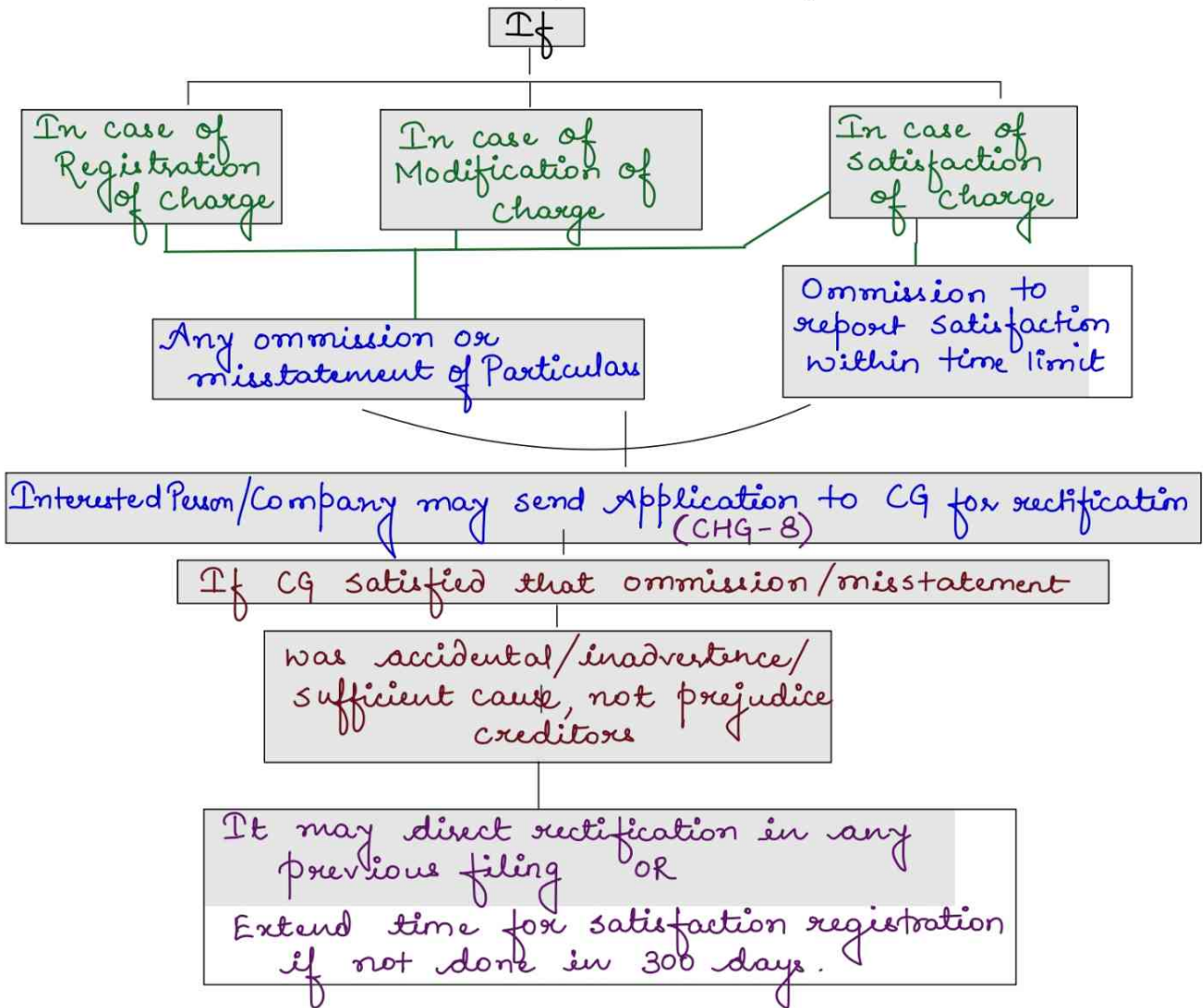
Satisfaction of charge (Sec.82)



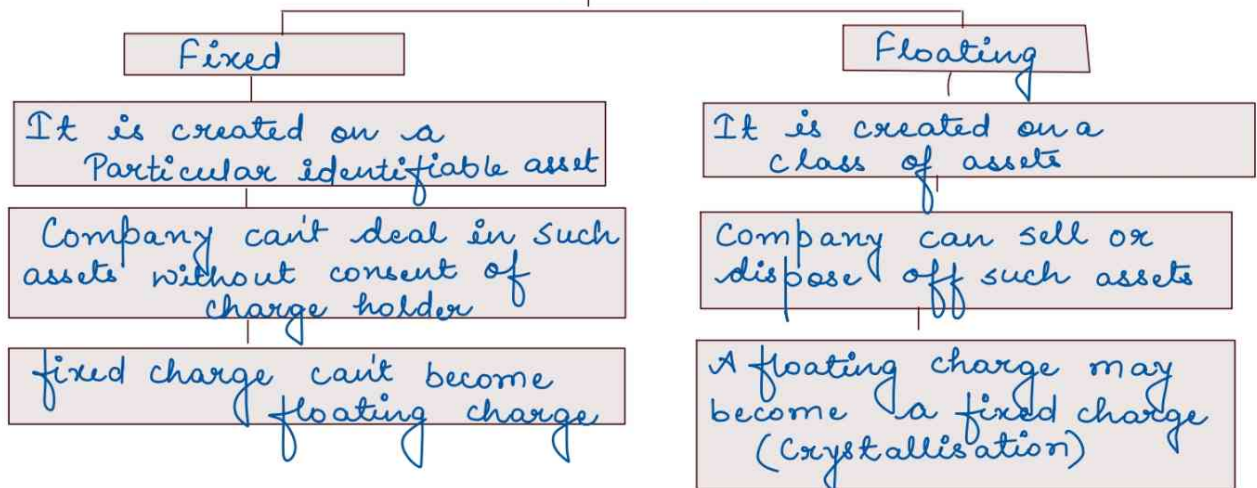
Satisfaction of charge without intimation by Company Section 83



Rectification in Register of Charges (Sec. 87)



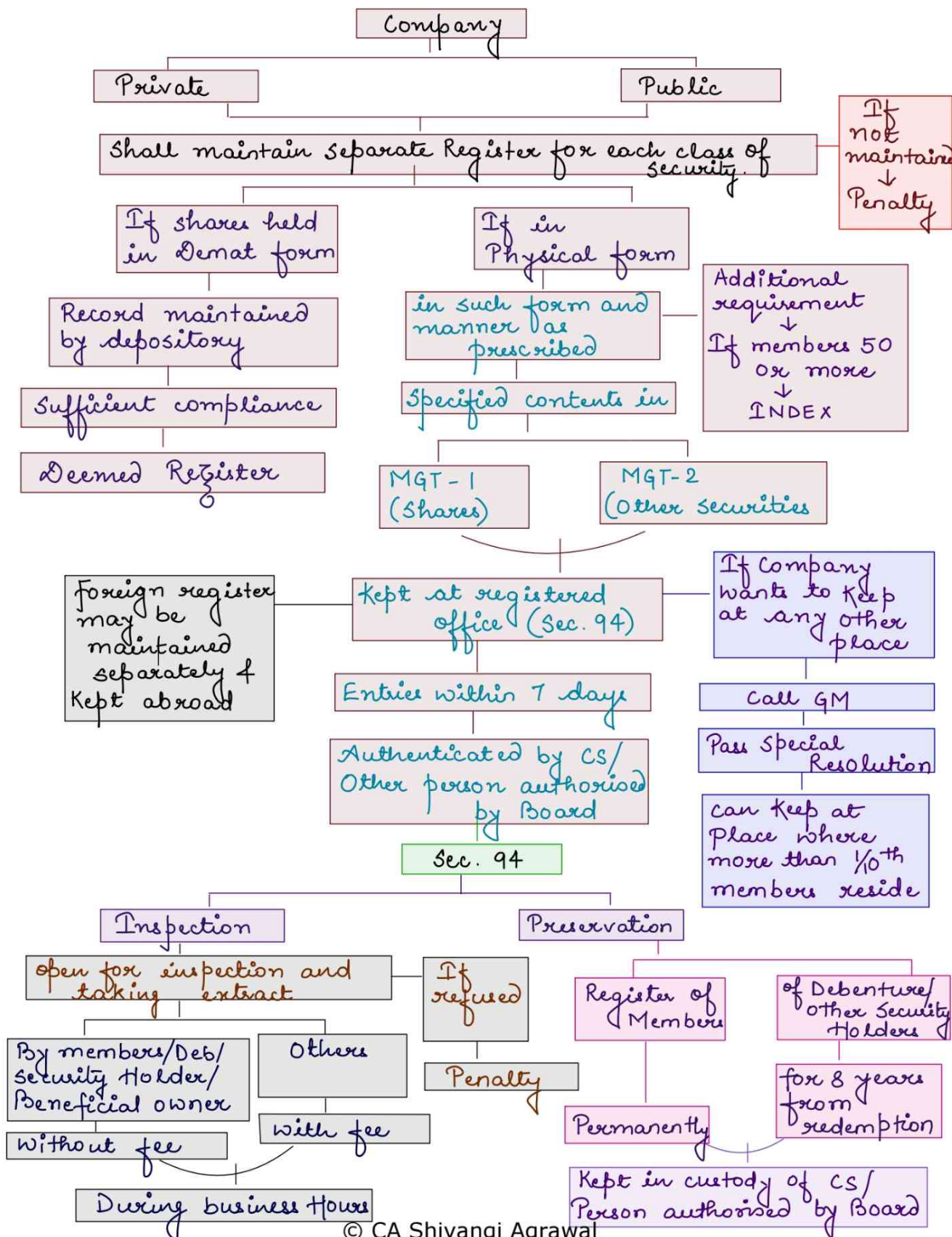
Types of Charges



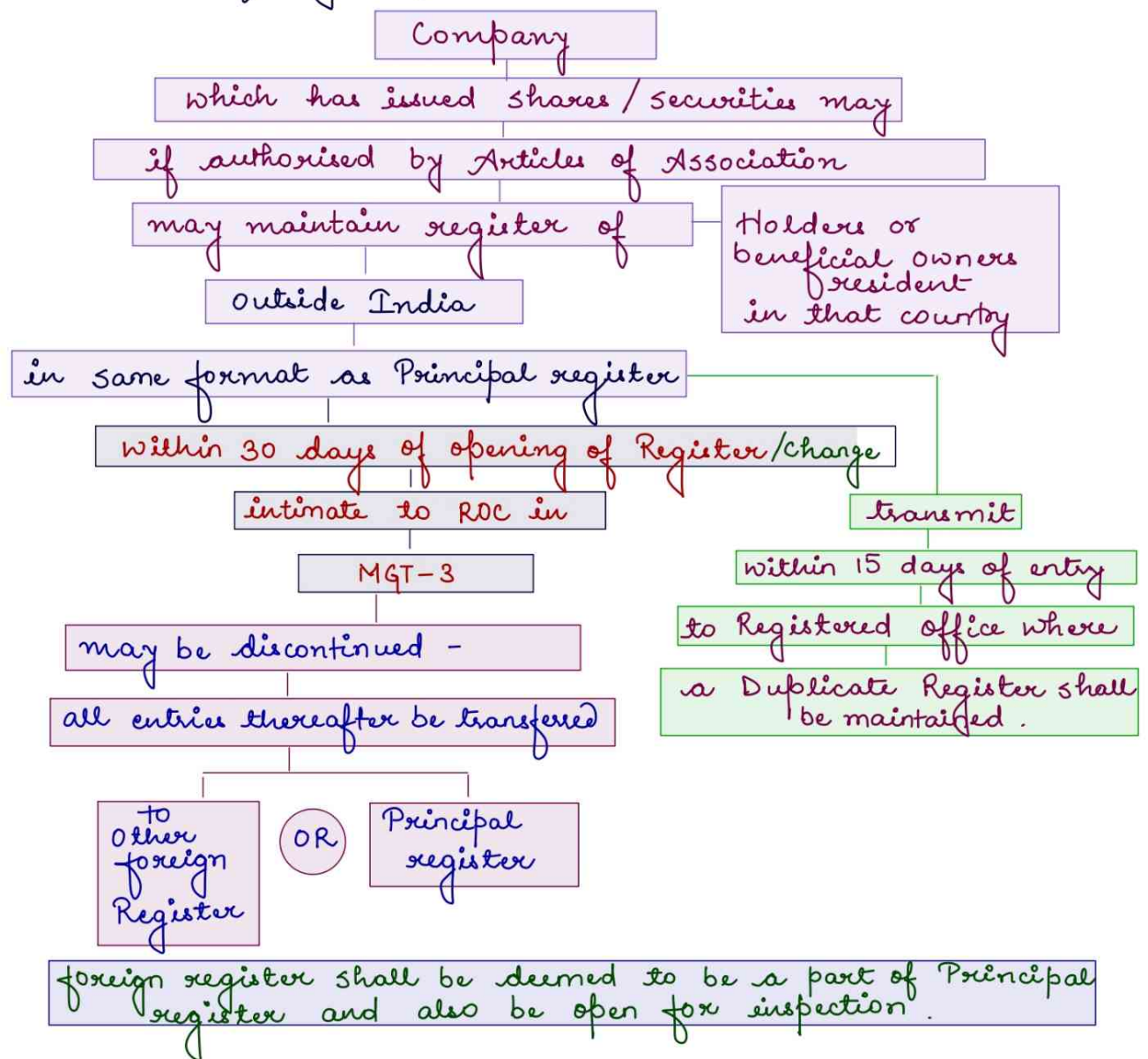
Management & Administration

Chapter VII - containing Section Numbers 88 to 122

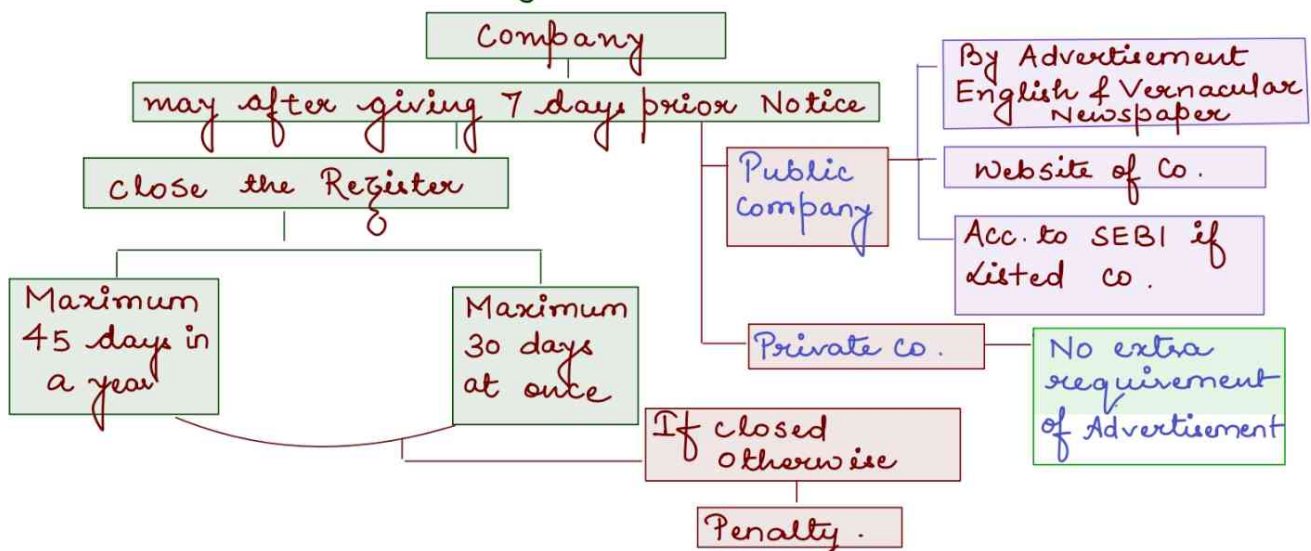
Register of Members [Sec. 88]



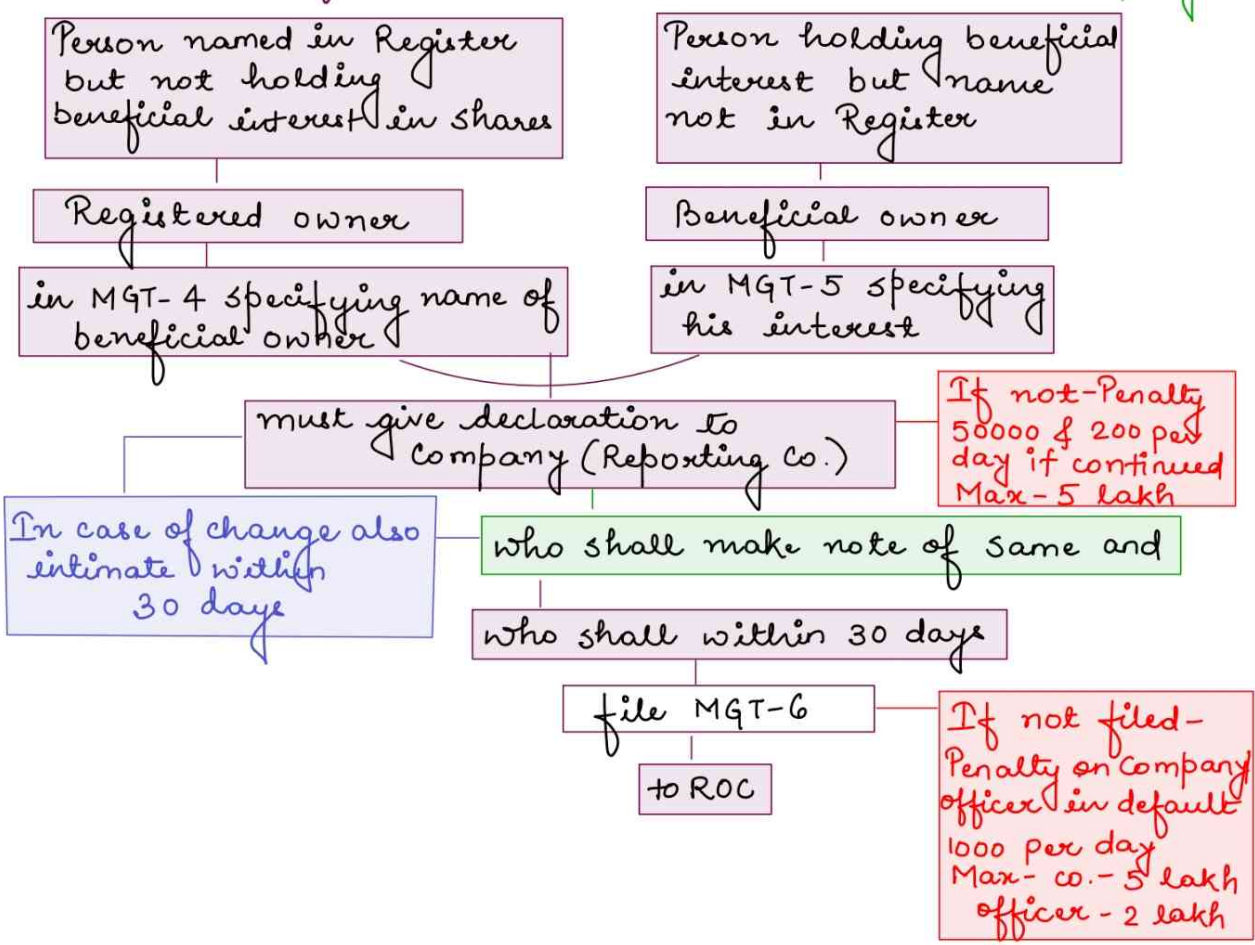
foreign Register [Sec. 88 read with Rule 7]



Power to close Register [Sec. 91 read with Rule 10]



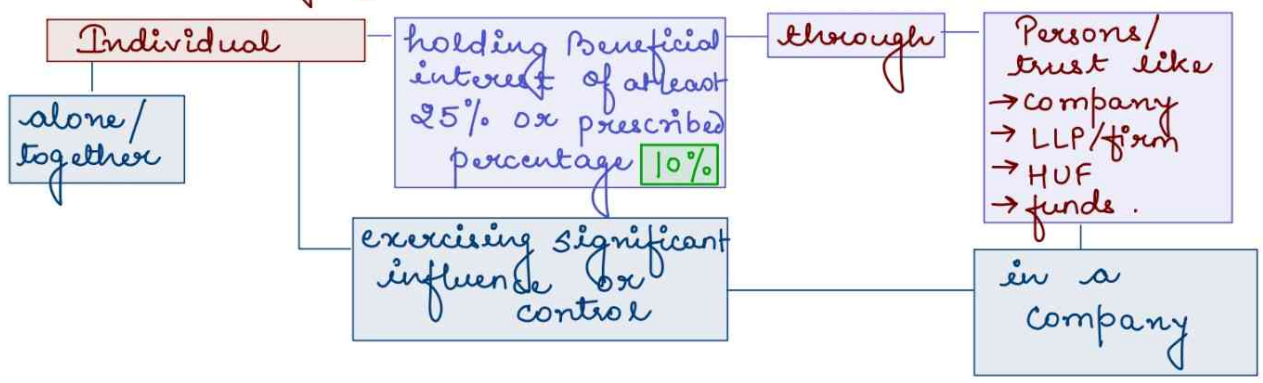
Beneficial Ownership [Sec. 89] → N.A. to Government company.



Company shall continue to pay dividend to its registered owner
 If declaration not filed, no right can be enforced by beneficial owner.

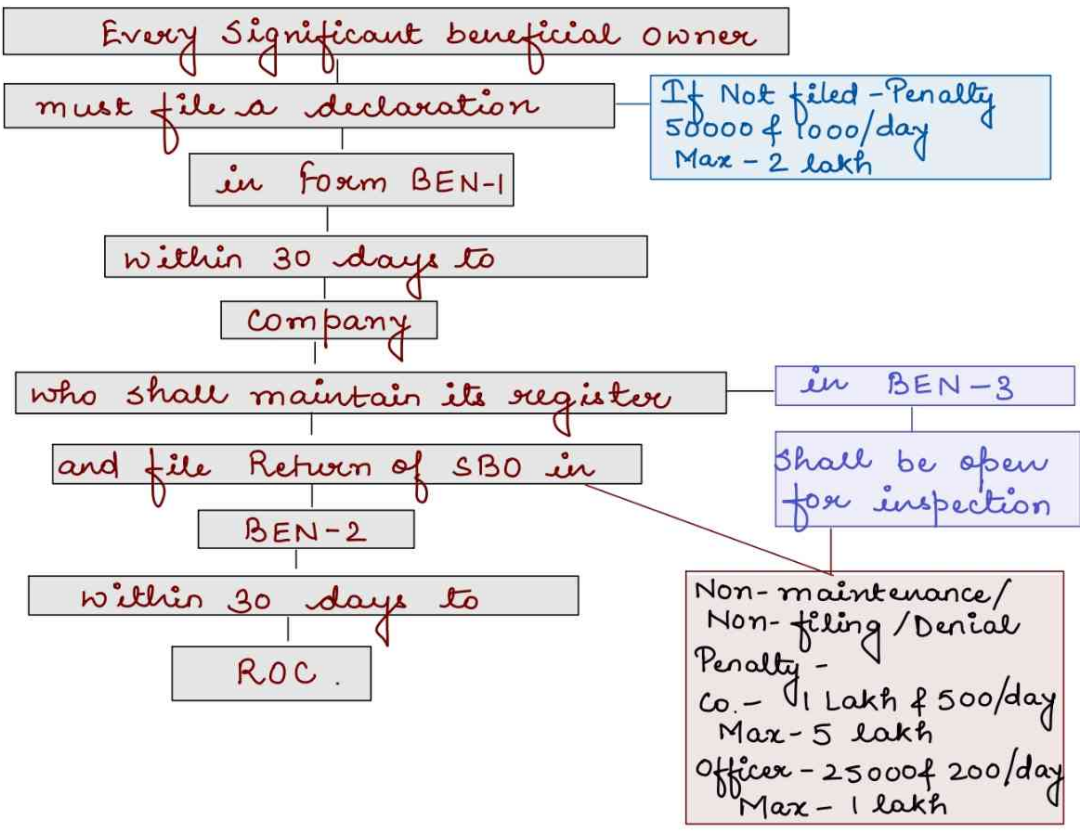
Significant Beneficial Ownership [Sec. 90] → N.A. to Govt co.

Meaning of SBO (Sec. 90 read with Rule 2(1)(h) of Companies (SBO) Rules, 2018)

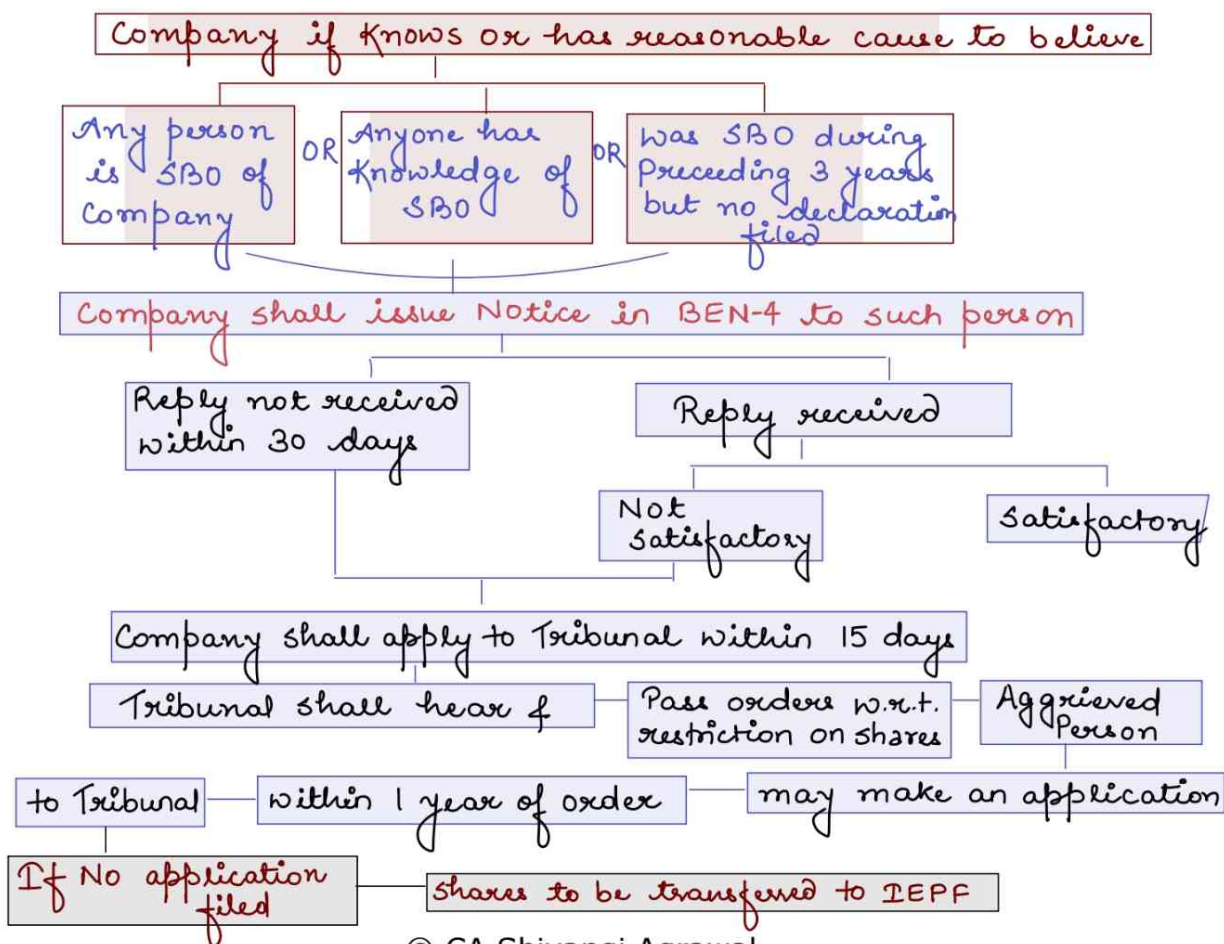


An Individual having direct holding of shares of more than prescribed percentage shall not be Significant Beneficial Owner.

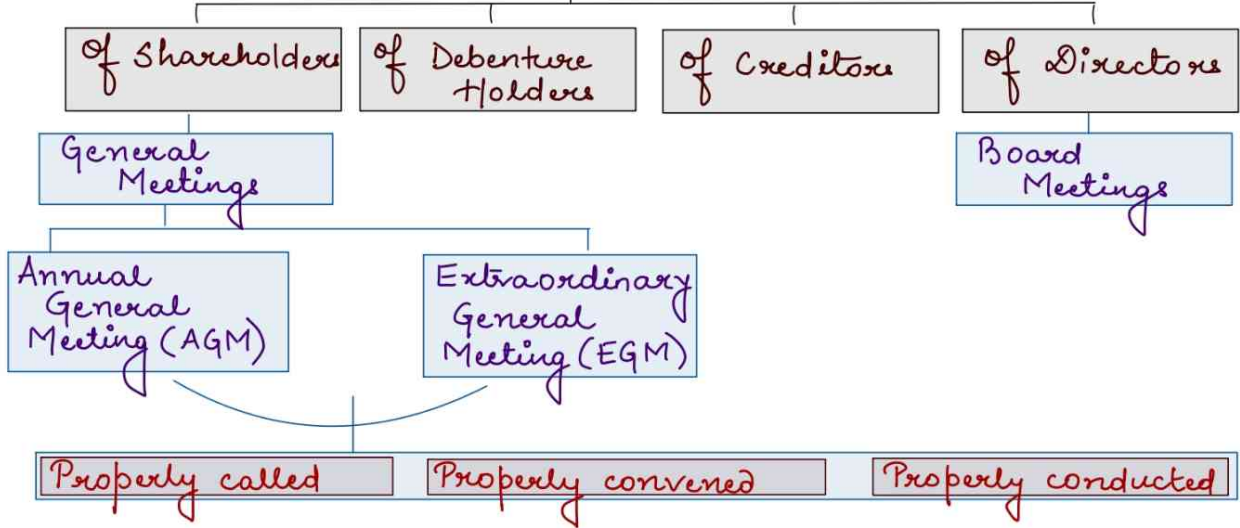
Declaration by SBO [Sec. 90]



Duty of Company in respect of SBO [Sec. 90]

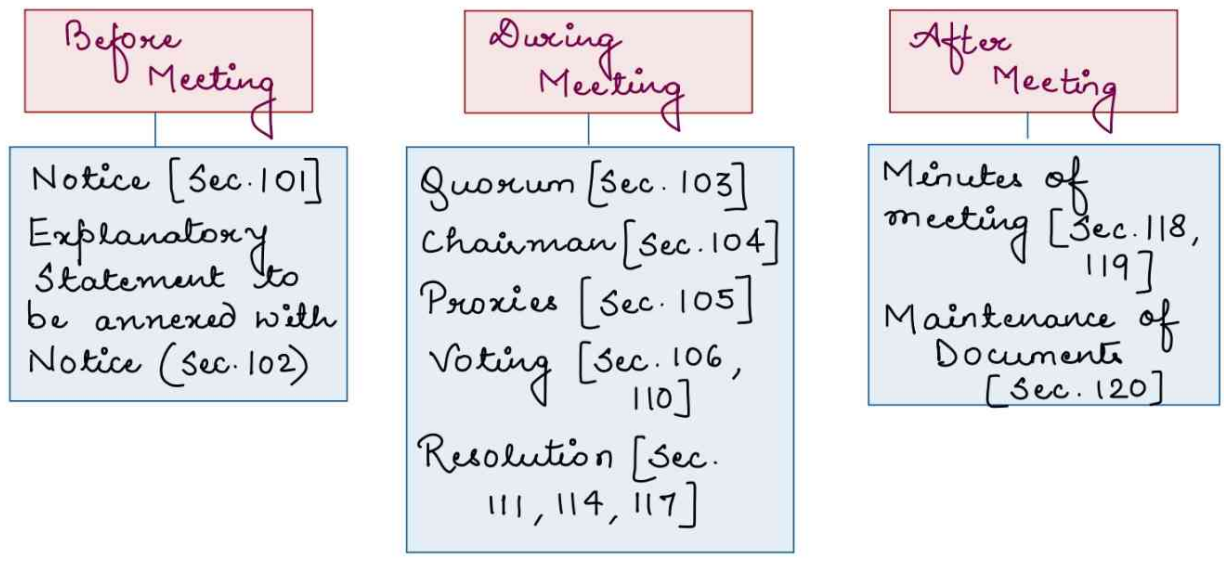


Meetings

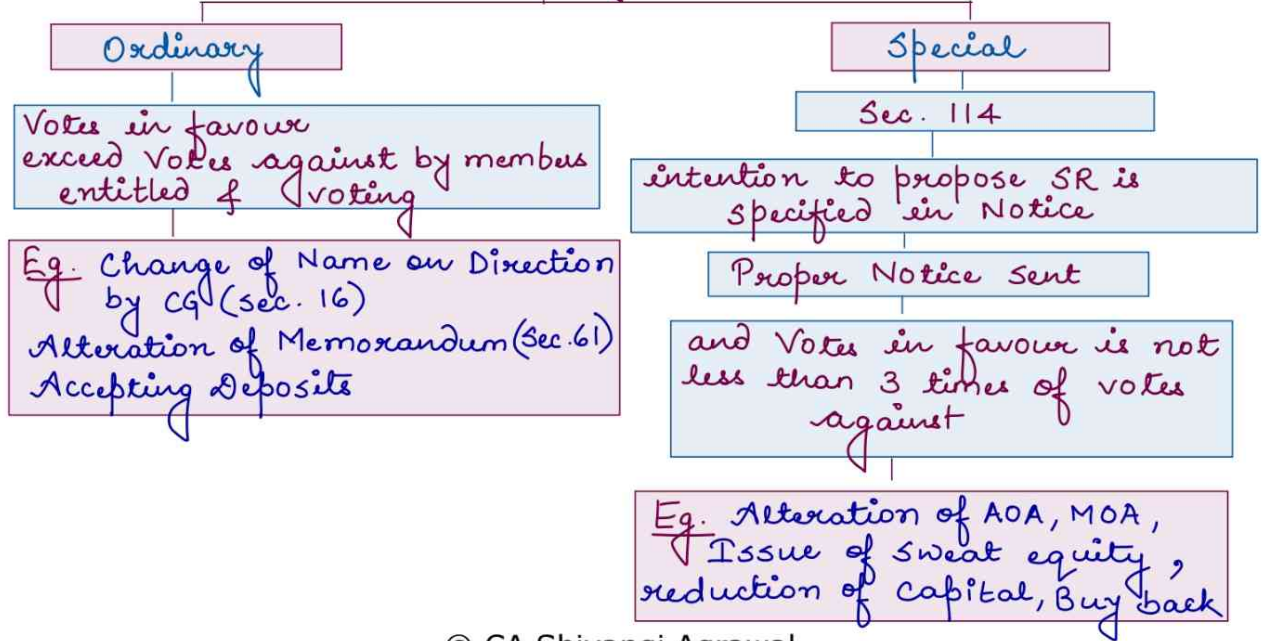


Properly called Properly convened Properly conducted

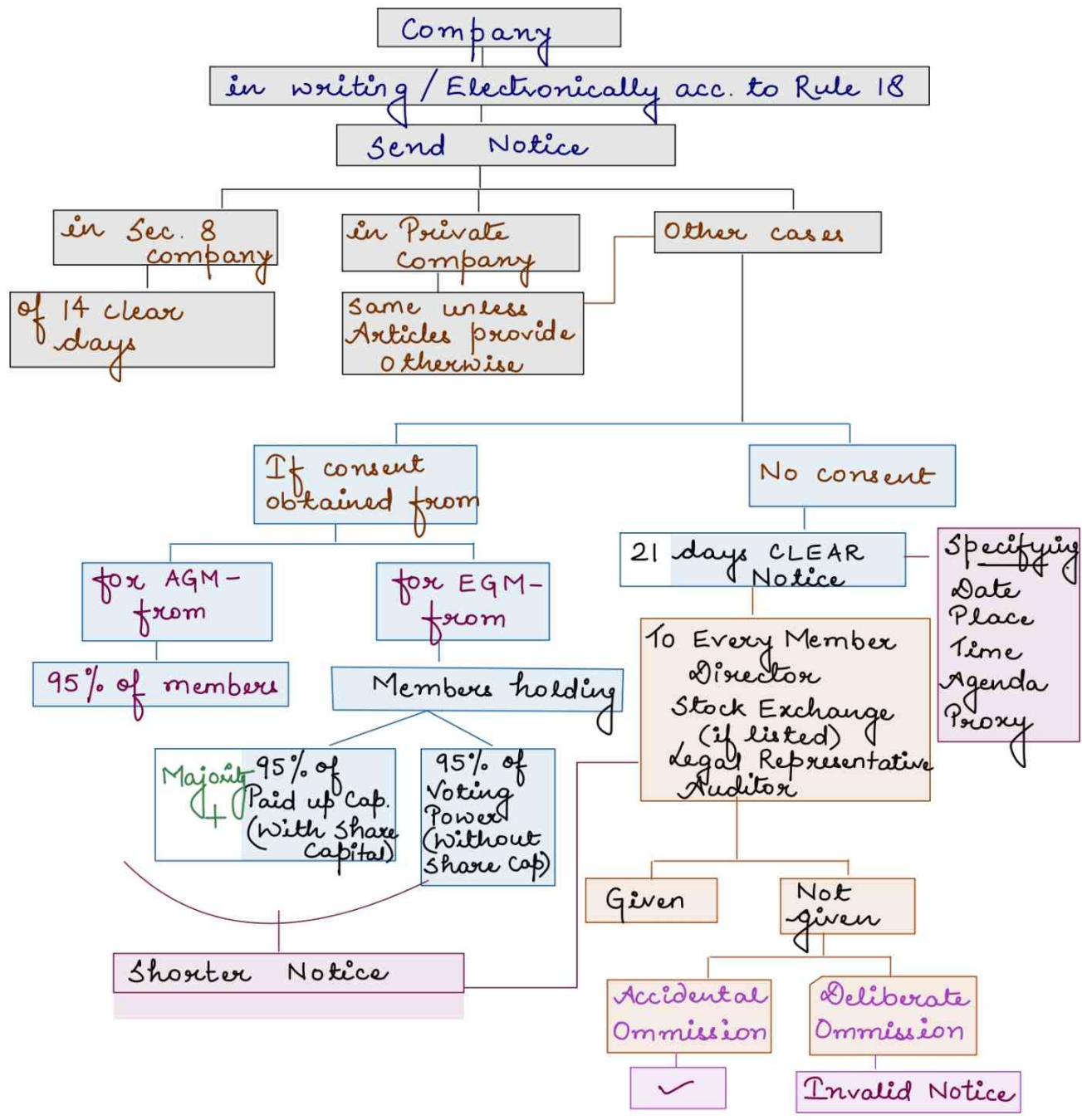
Pre-requisites of Meeting



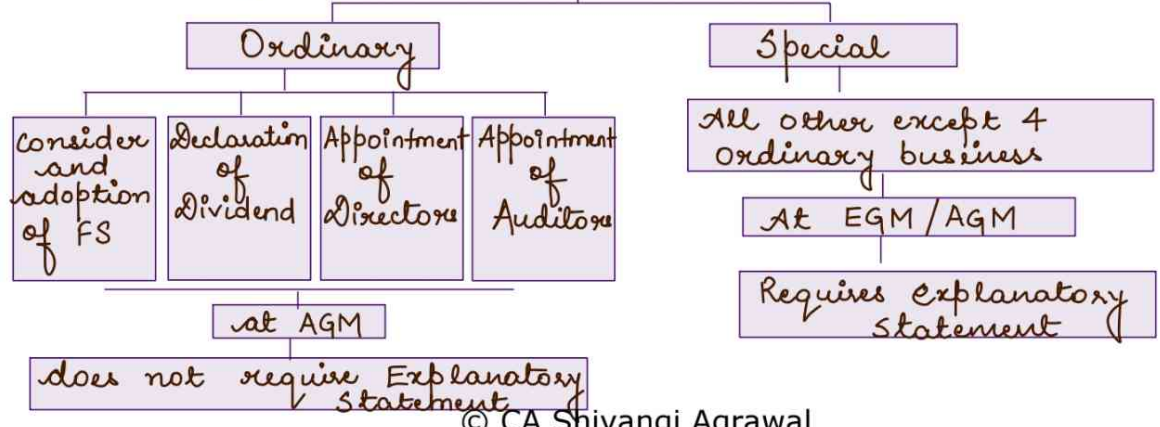
Resolution by Members



Notice of a Meeting [Sec. 101]



Agenda/Business to be transacted [Sec. 102]



Explanatory Statement

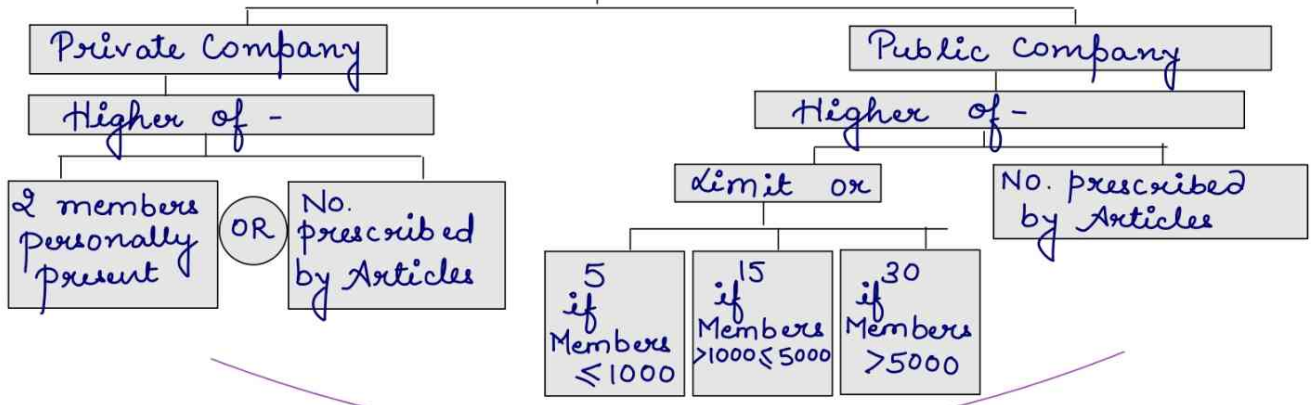
to be annexed with Notice for transacting every special business

Contents

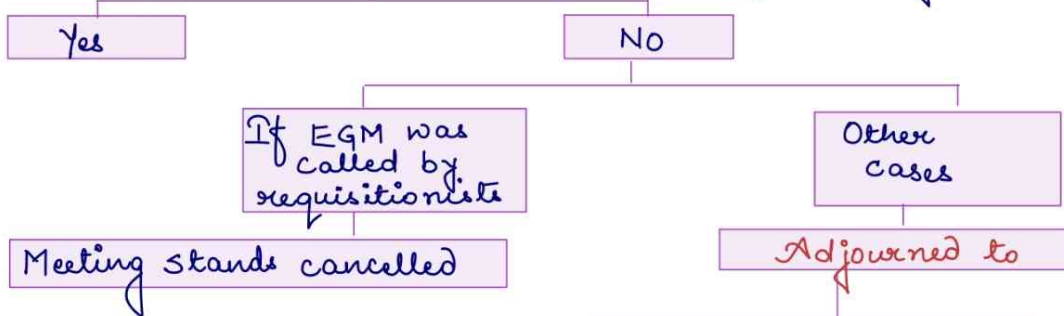
- Material facts
- Disclosure of interest of Director/KMP
- Other relevant information to take decision
- If related to other company, shareholding of 2% or more of Director/KMP/Promoter in that Co.
- If reference to any document, Date, time and place where it can be inspected.

Compensation and Penalty for insufficient or Non-disclosure.

Quorum (Sec. 103)

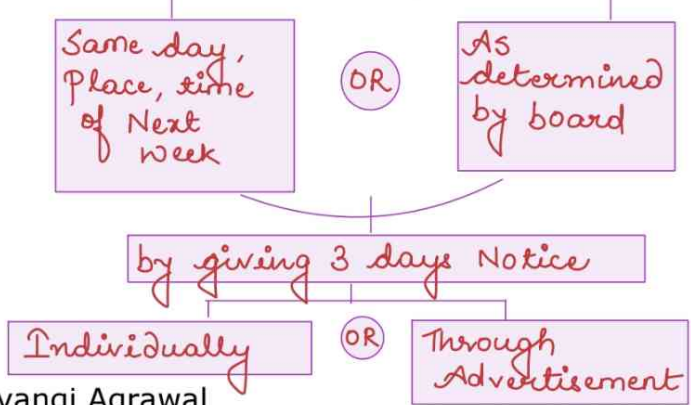


Quorum to be present within 1st half n hour of meeting

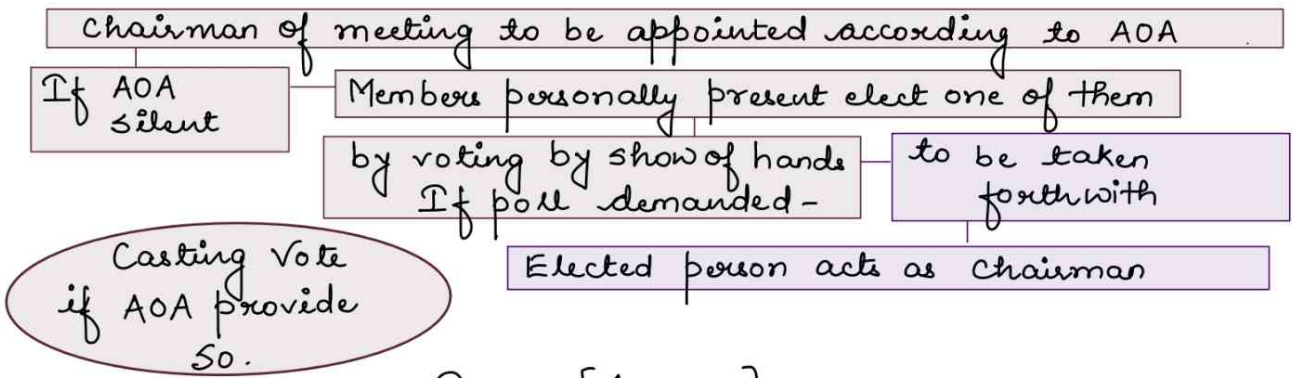


Proxy - Not counted for Quorum

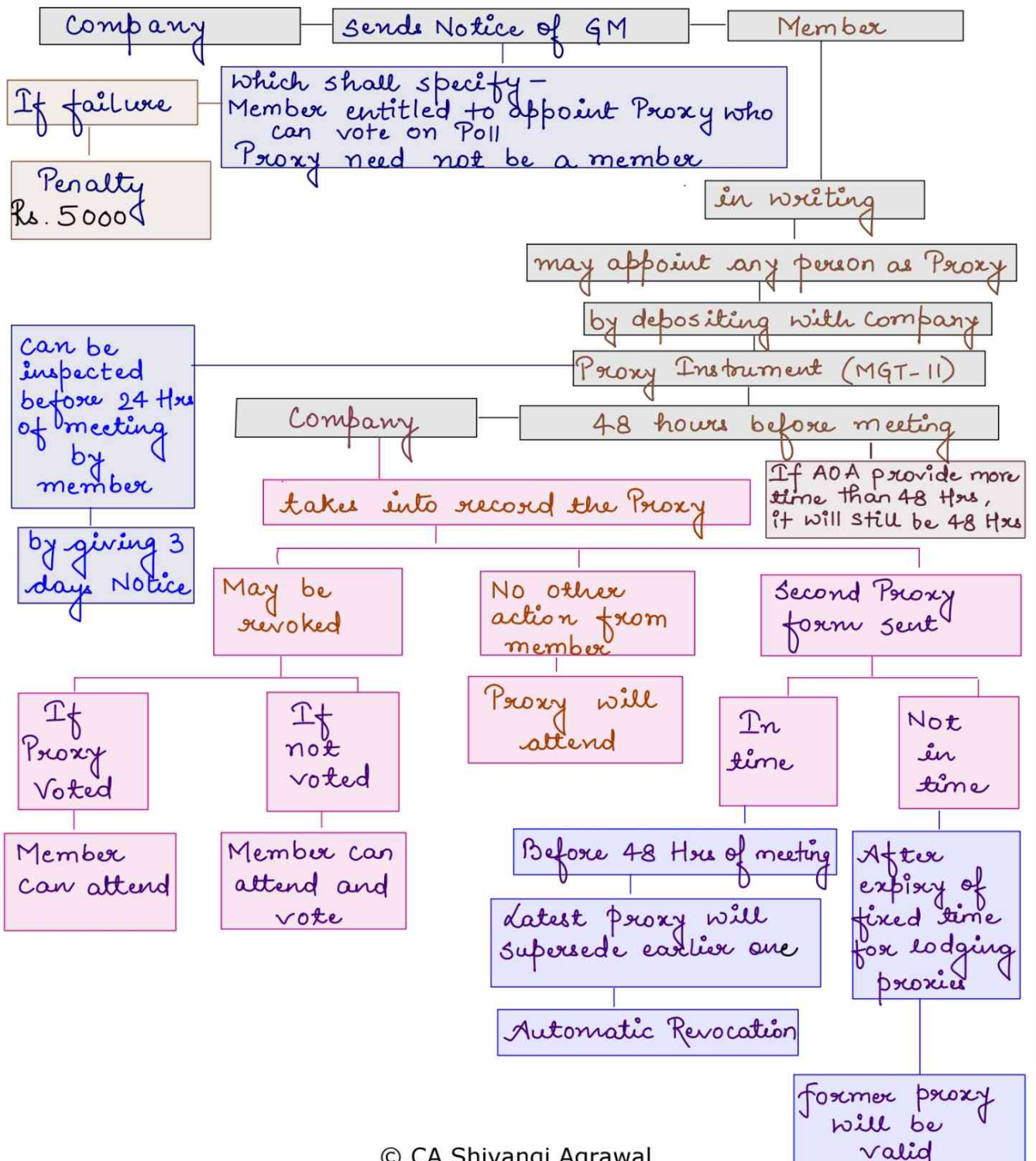
Quorum must be present throughout meeting.



Chairman [Sec. 104]



Proxy [Sec. 105]



Proxy - No right to speak at meeting.
can't vote on show of hands.
Not counted for Quorum.
Right to vote on Poll.

One Person can become a Proxy -
→ of not more than 50 members. and
→ holding not more than 10% of Share capital with voting rights.

Voting

Member/Proxy may use his votes differently on a Poll (Sec. 106)

Voting rights can be restricted if authorised by AOA on the ground of Non-payment of call / sums due.

Manner of Voting

By show of hands

By Poll

By Electronic means

By Postal Ballot

A resolution shall be decided by show of hands - (At GM) unless poll demanded u/s 109 or Voting carried out electronically u/s 108.

Voting by Poll in Meeting [Sec. 109]

Chairman

On his own motion OR

On demand by members present in Person / Proxy

For Company with Share Capital

Holding 10th or more Voting Power OR Paid up cap - 5 Lakh / Prescribed

Without SC

Holding 10th or more Voting Power

Before / after result of Voting by show of hands -

carry out Poll Procedure

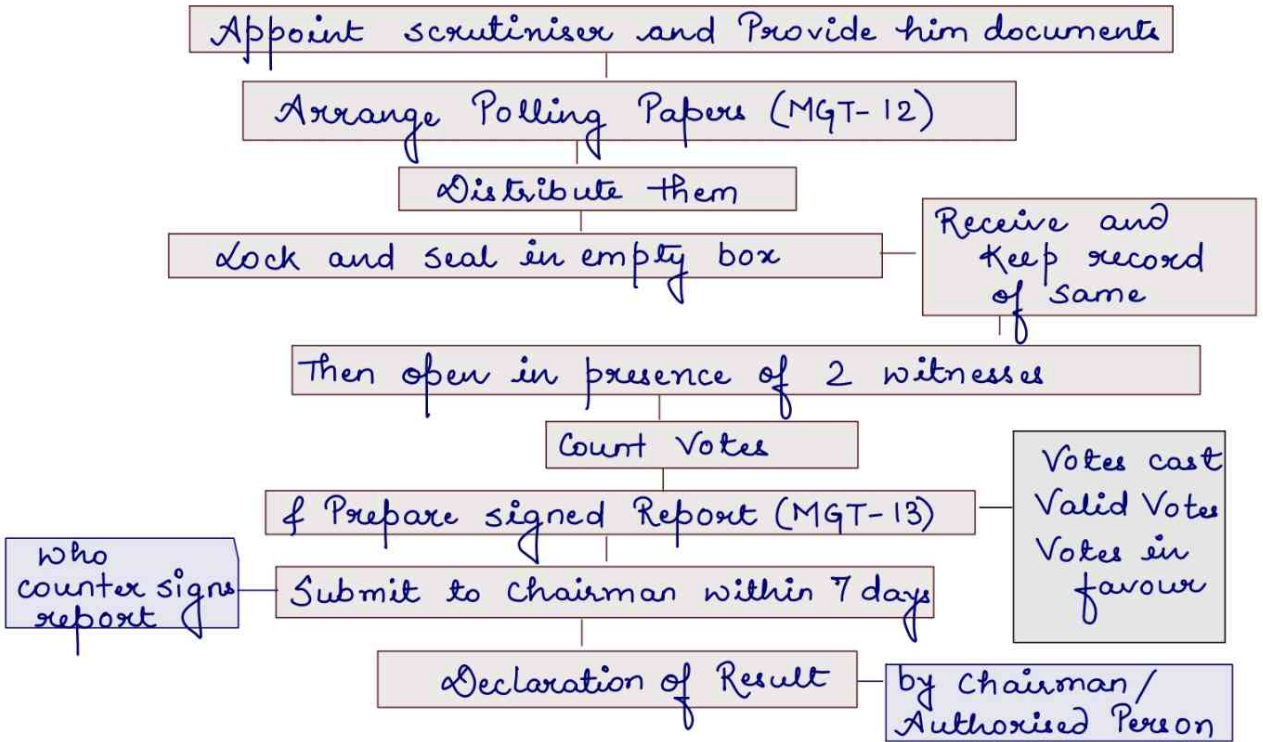
If related to Adjournment / Election of Chairman

Other cases

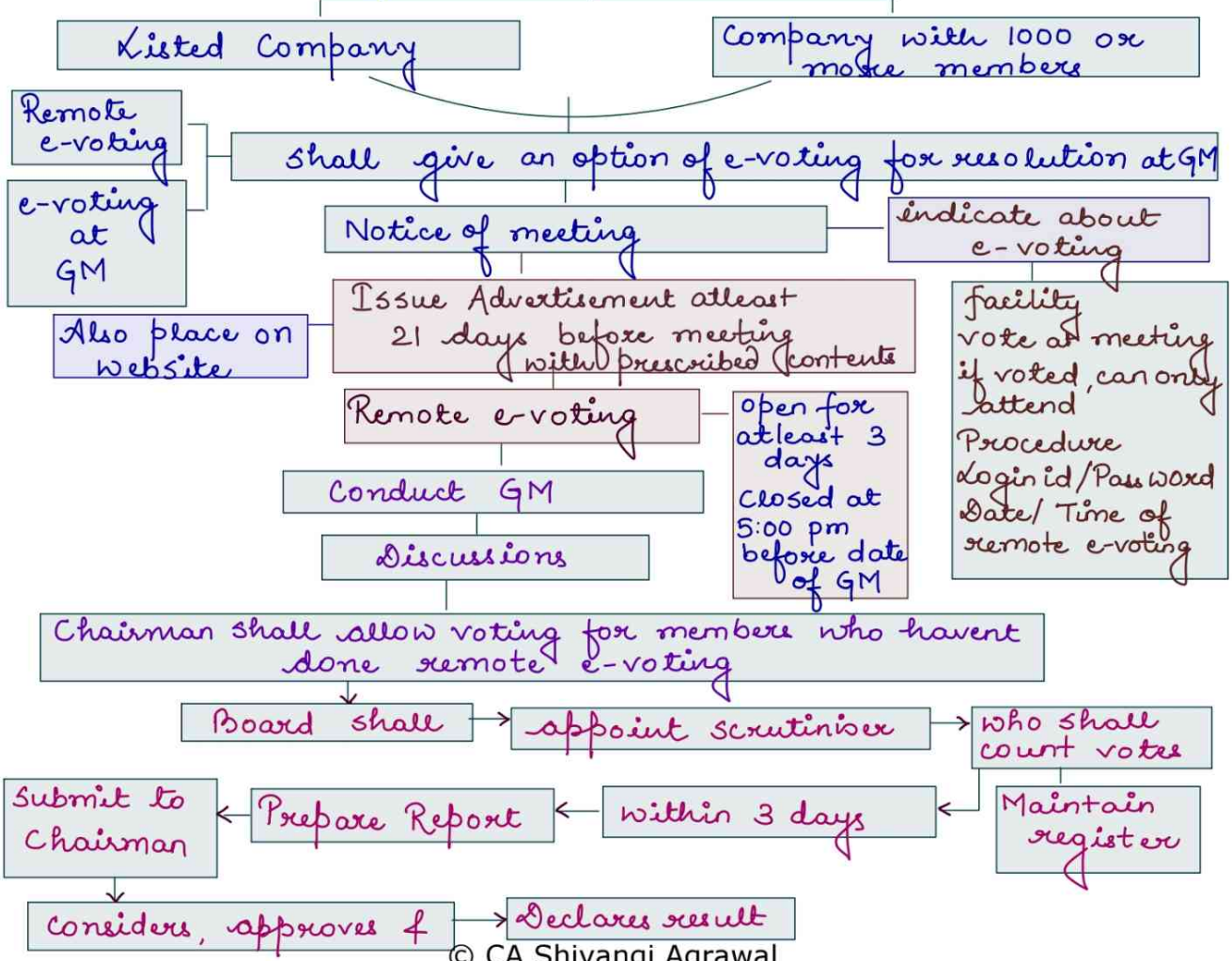
Immediately

within 48 Hours

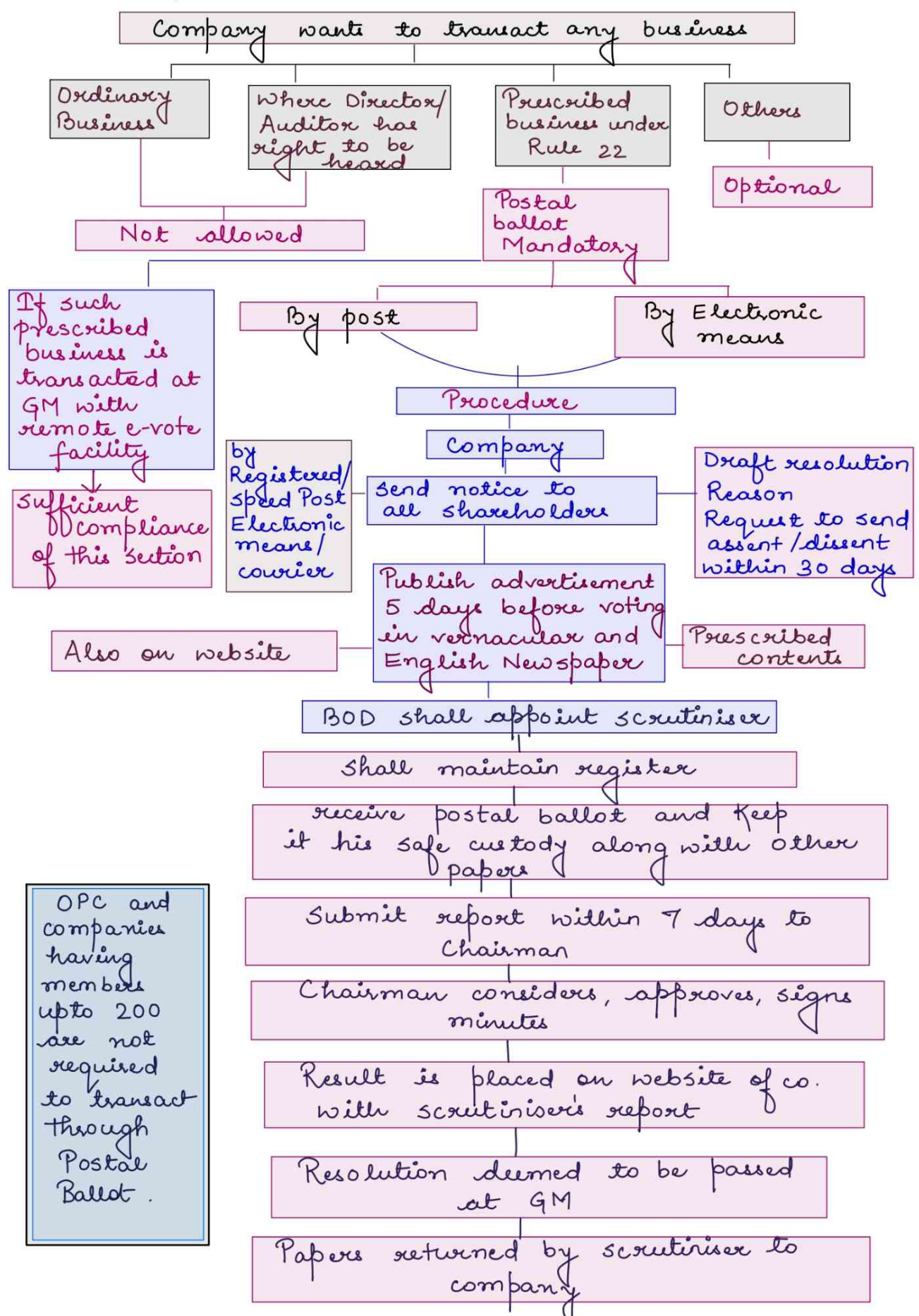
Procedure of Poll



Voting by Electronic means [Sec. 108]



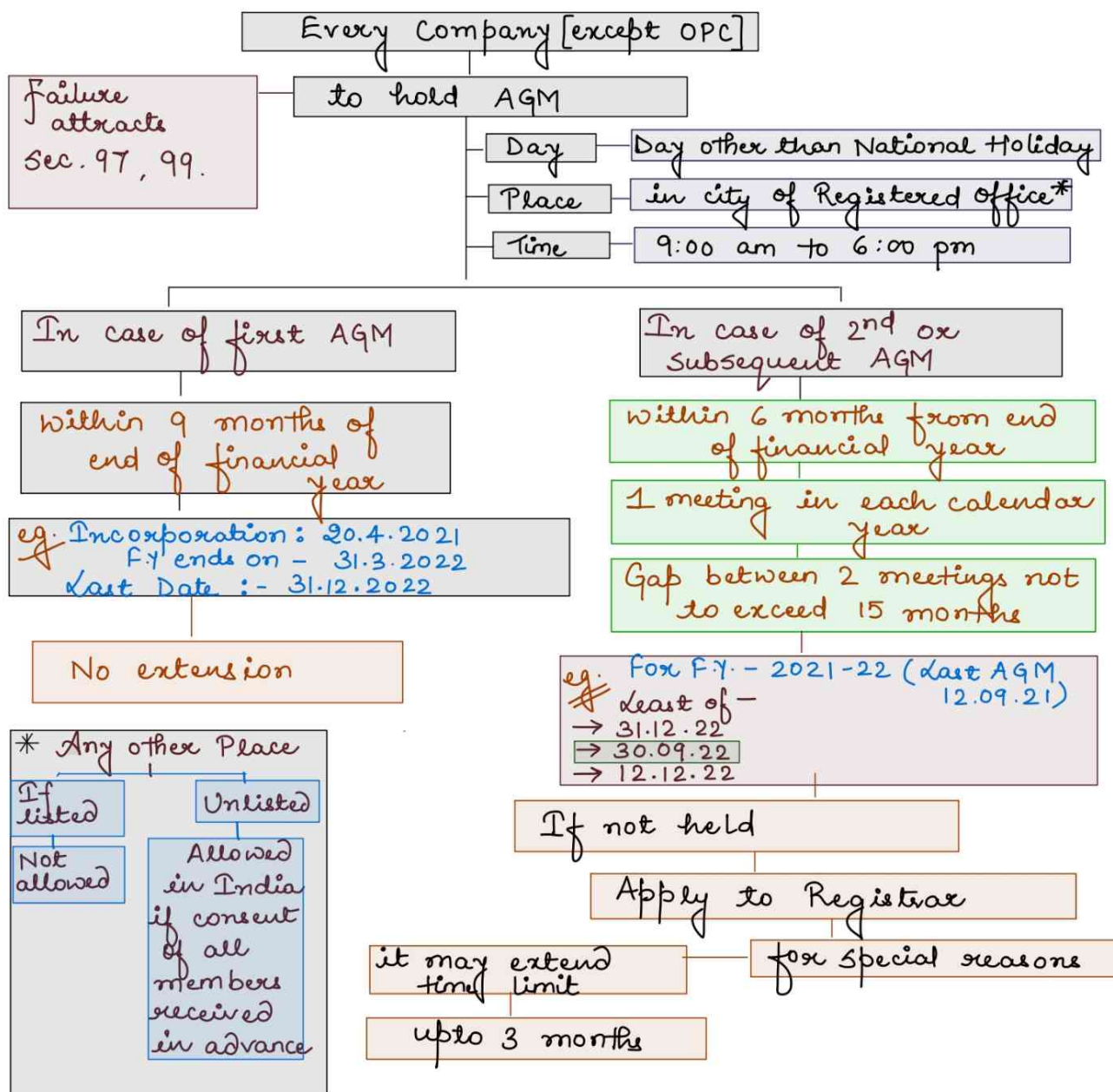
Voting by Postal Ballot (Sec. 110 read with Rule 22)



OPC and companies having members upto 200 are not required to transact through Postal Ballot.

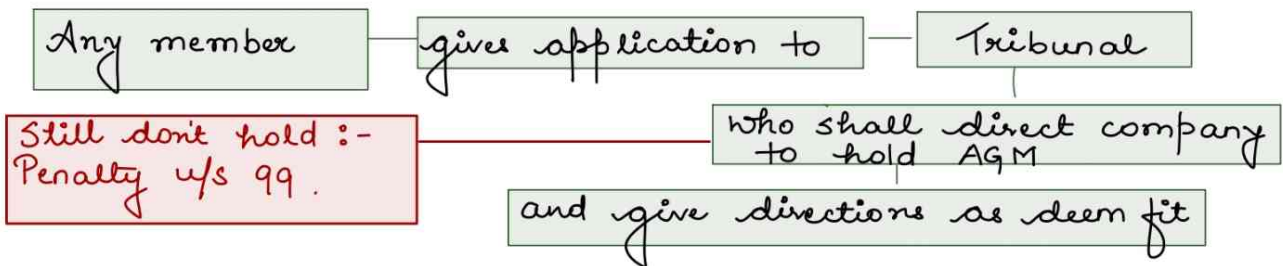
- Mandatory - Postal ballot in following cases :-
- Alteration in Object Clause
 - " in AOA → to make Private Company
 - Shifting of registered office outside city.
 - variation in Objects when money from Prospectus unutilised.
 - Issue of shares with DVR
 - Variation of rights
 - Buyback
 - Election of Director (Sec. 151) [Small Shareholder's Director]
 - Sale of Undertaking (Sec. 181)
 - extending lease (Sec. 186)

Annual General Meeting [Sec. 96]

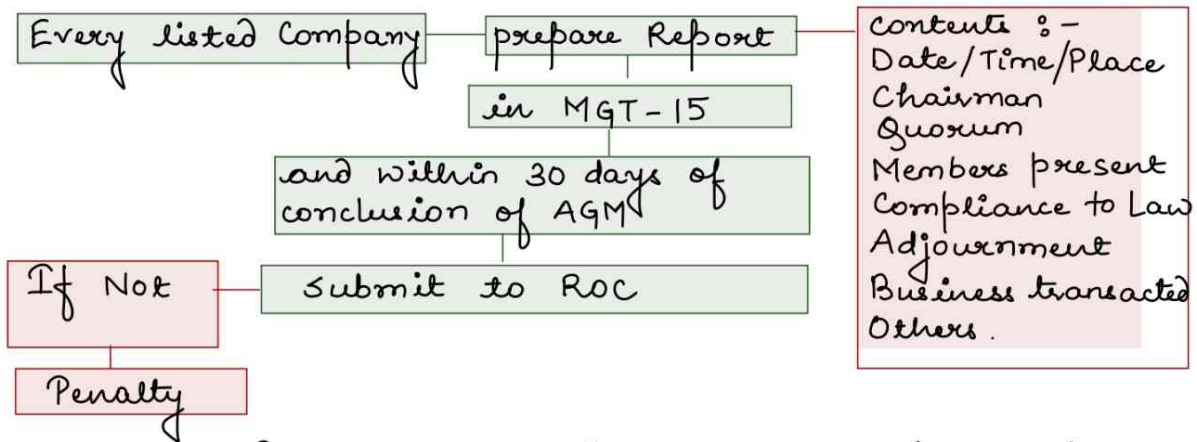


AGM/EGM not required for OPC
Communicate decision to member & prepare minutes

Failure to hold AGM (Sec. 97)

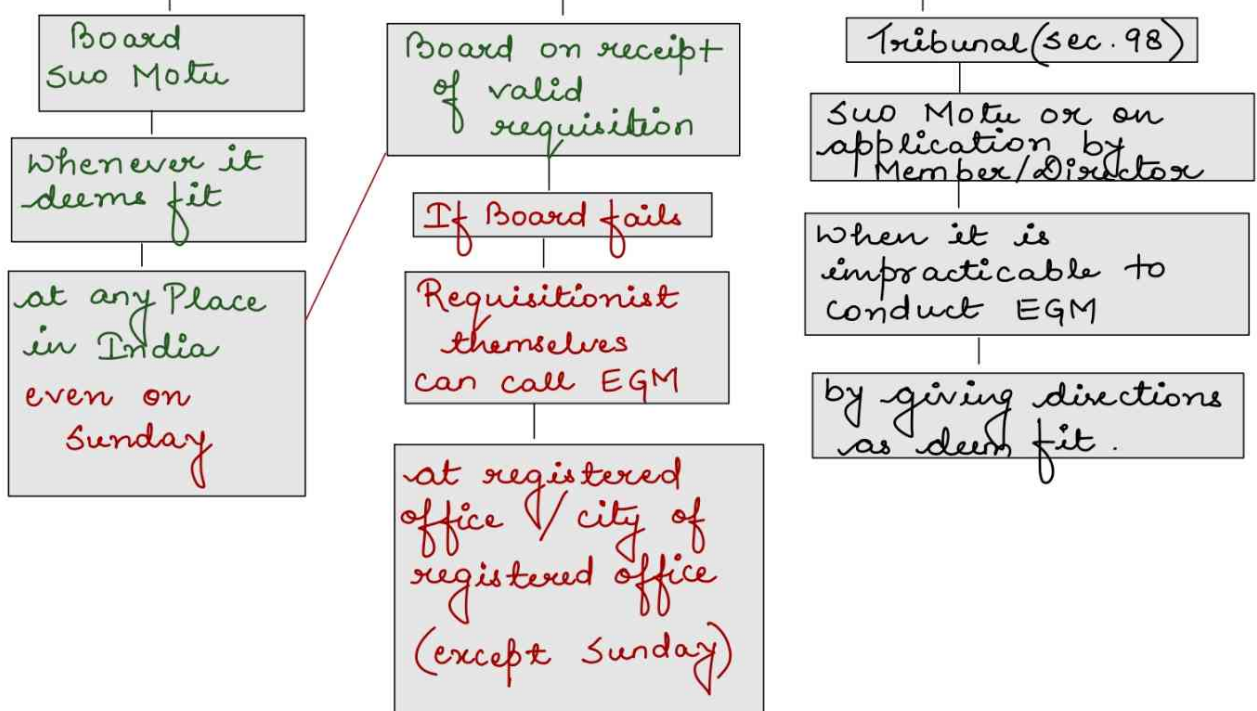


Report on AGM [Sec. 121]

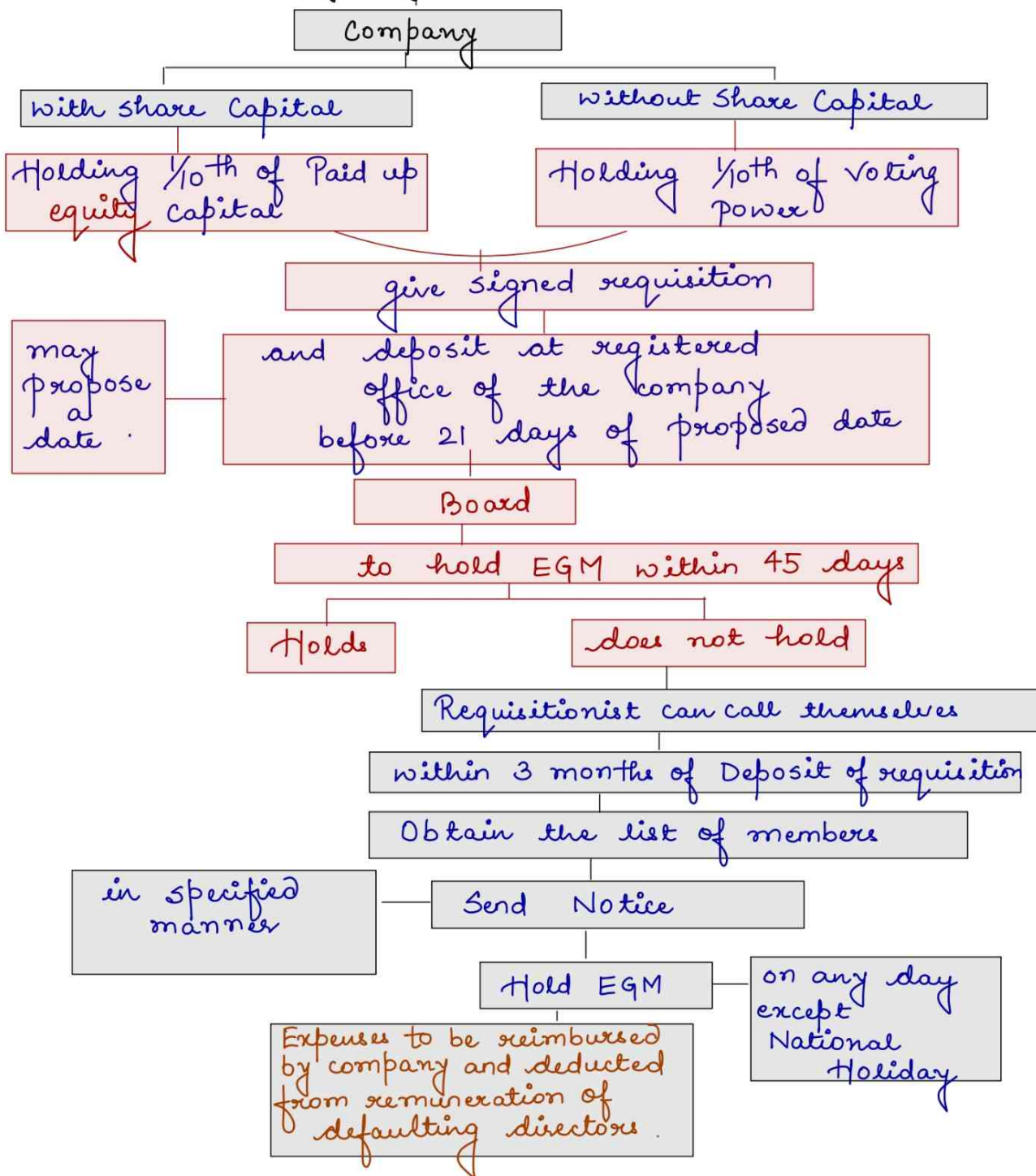


Extra Ordinary General Meeting (Sec. 100)

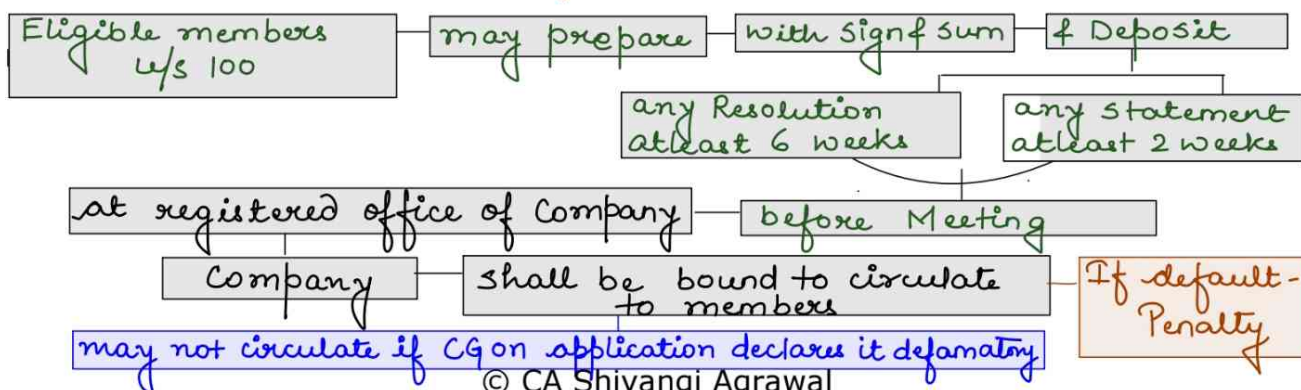
Who can call EGM ?



EGM by eligible members

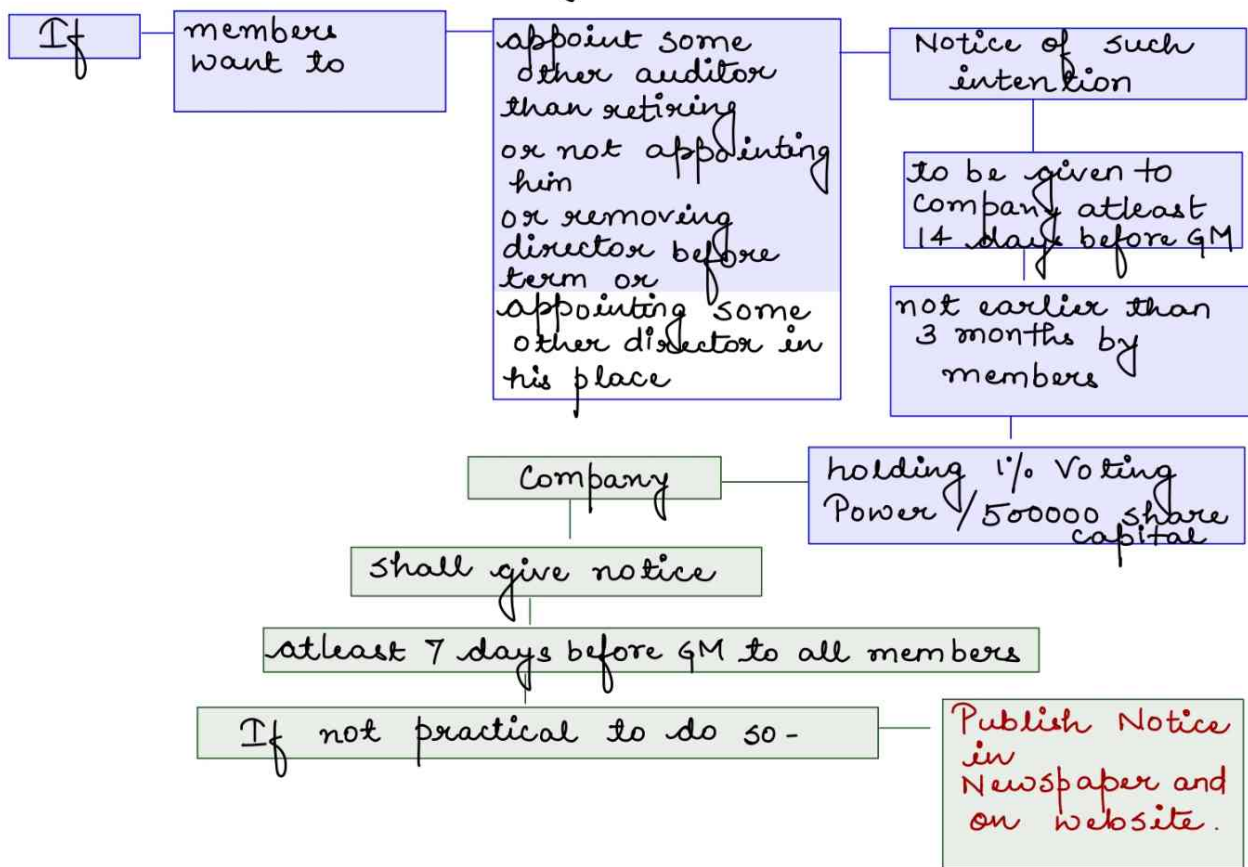


Circulation of Members Resolution (Sec. 111)



All special resolution along with other specified Resolutions must be filed with ROC within 30 days of passing resolution in MGT-14 (Sec. 117)

Resolutions requiring Special Notice (Sec. 115)



Minutes of Meeting [Sec. 118, 119]

Separate Minute book for each type of meeting

signed, dated, consecutively numbered

Preserved Permanently

Signing by chairman

Kept at registered office

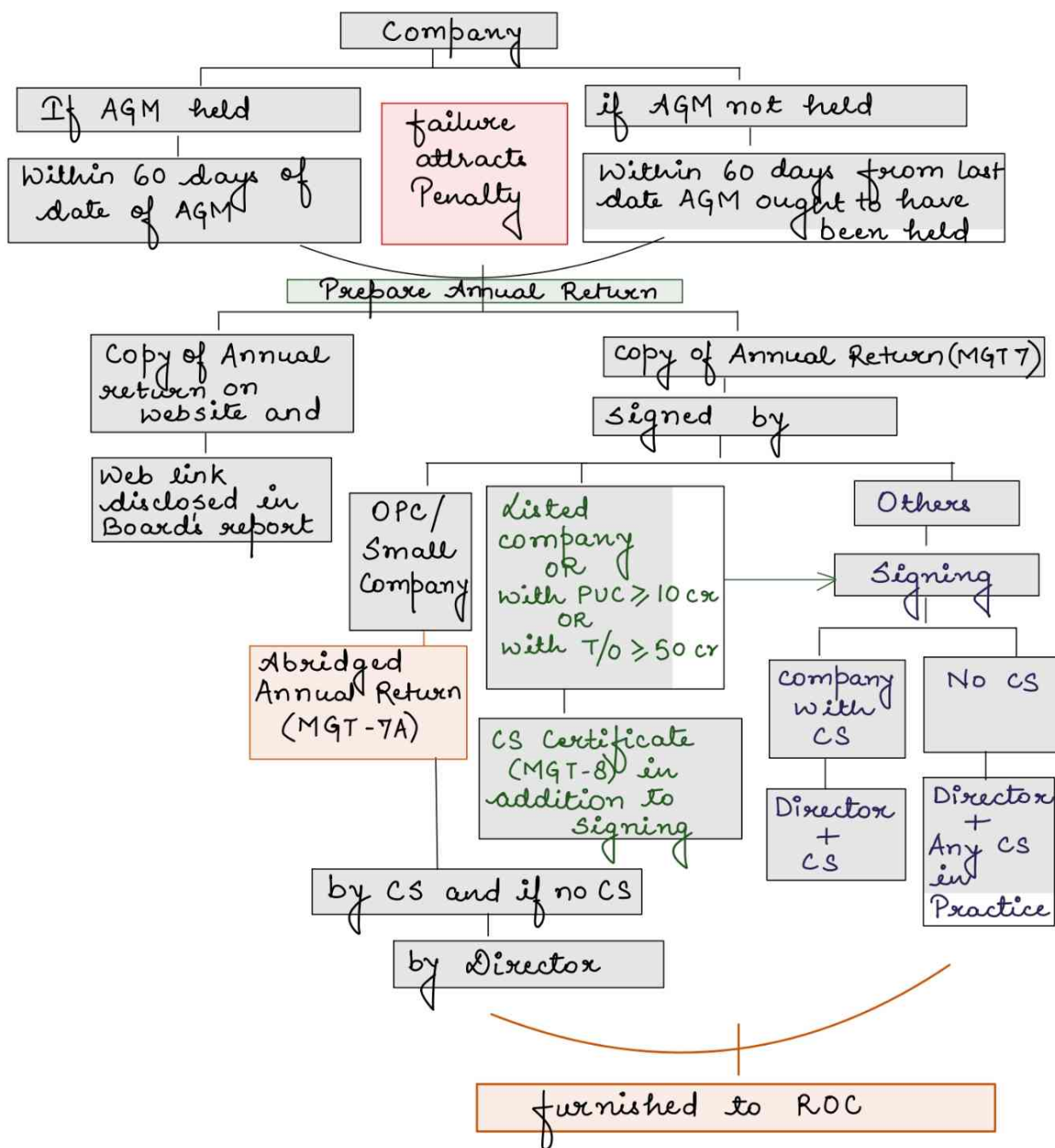
fair & correct summary

Not loose paper

Prepared and signed within 30 days of conclusion of meeting

Open for inspection during business hours by members without charge

Annual Return [Sec. 92]

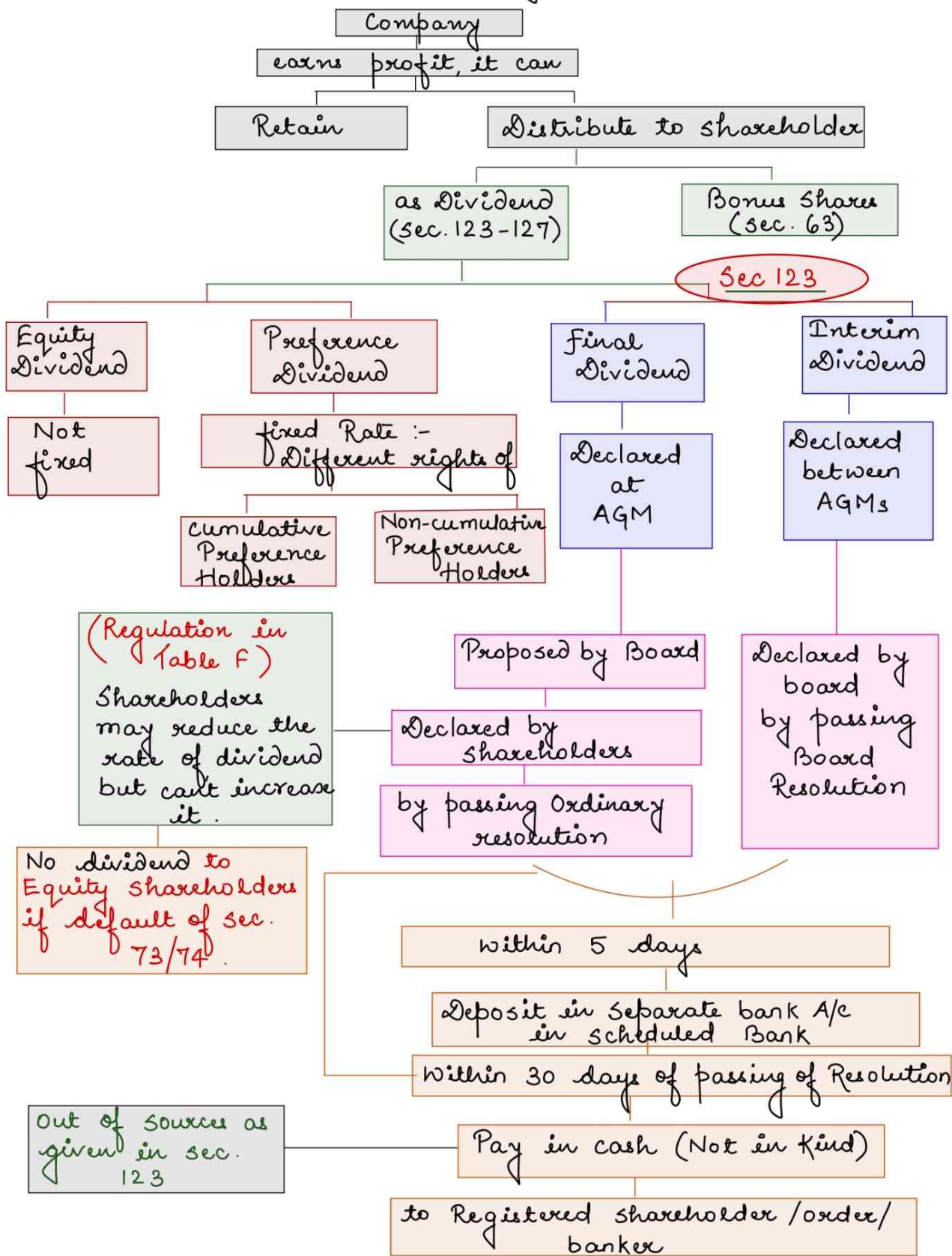


Failure to file Annual Return :-
 Company - 10000 + 100 per day (Max = 2 lakhs)
 officer in default - 10000 + 100 per day (Max = 50000)

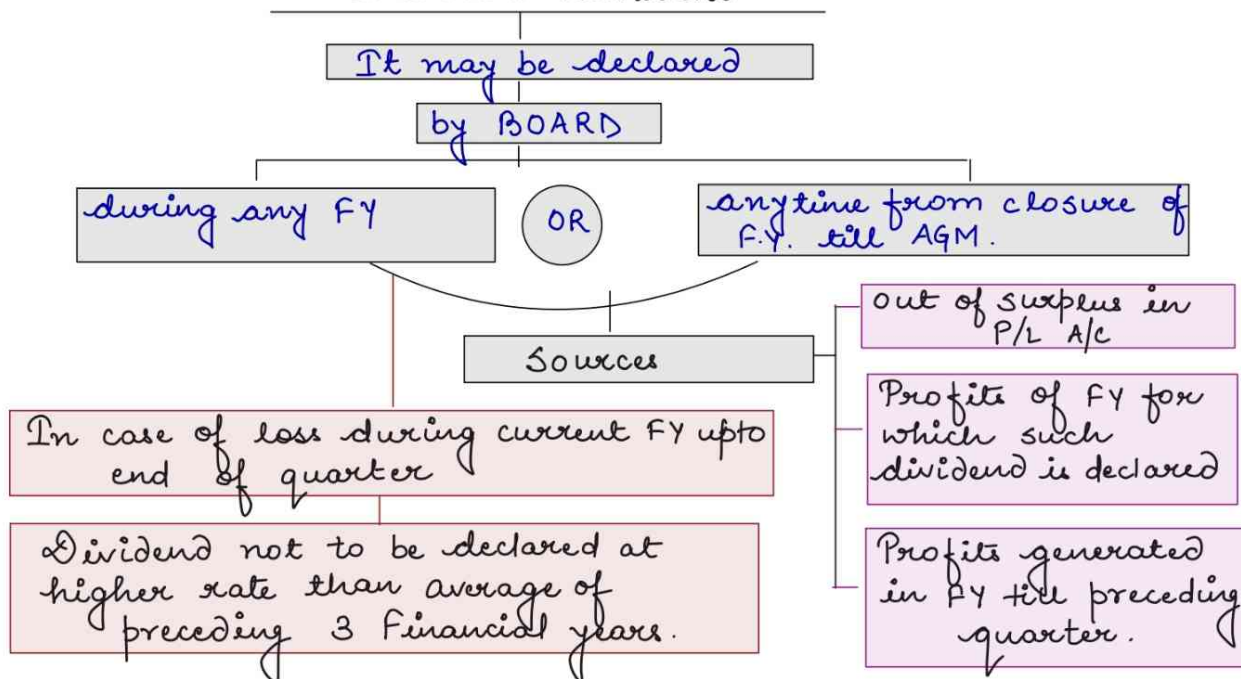
CS certifies not in conformity with law
 Penalty = 2 lakh

Declaration & Payment of Dividend

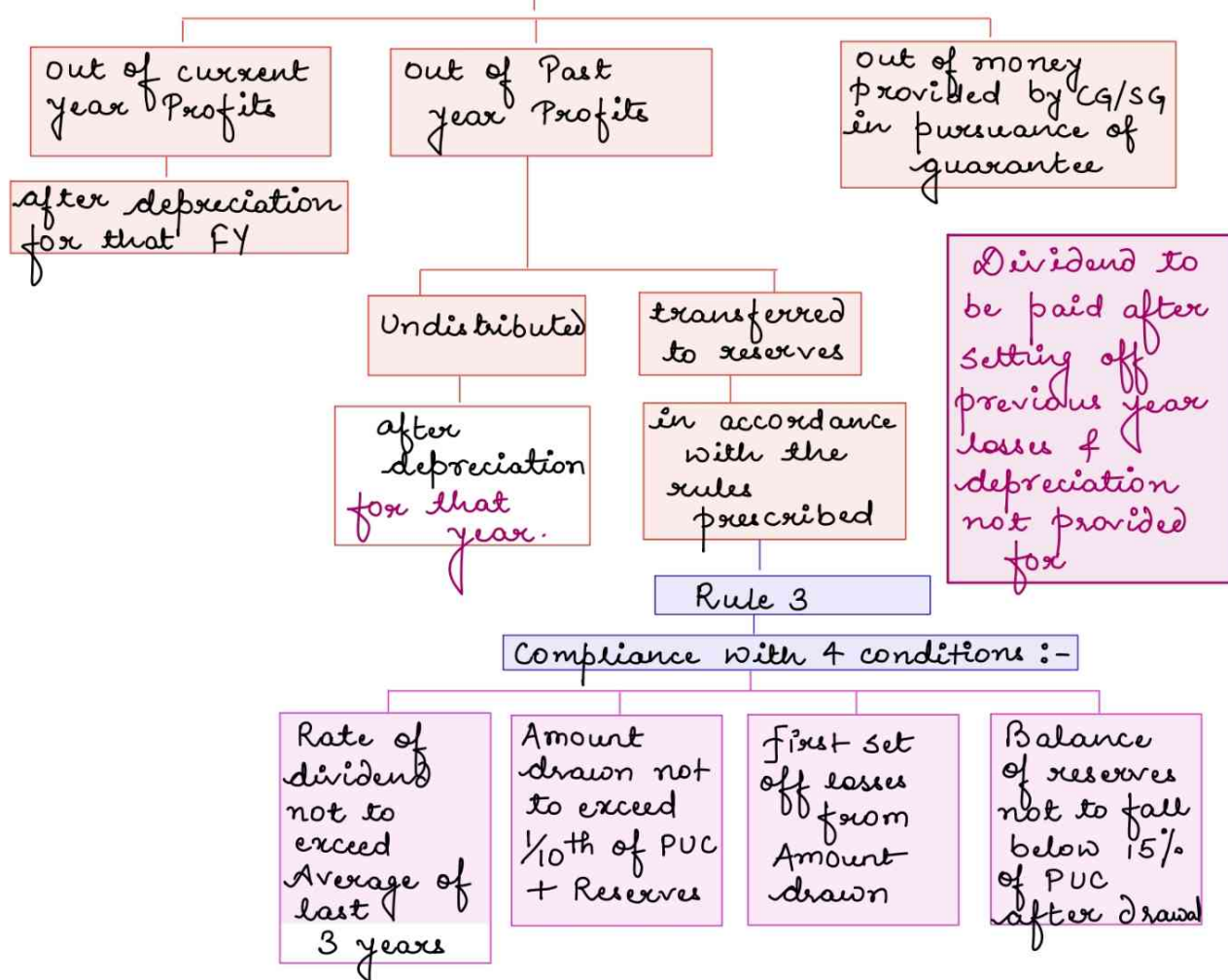
Chapter VIII (containing sections 123-127)



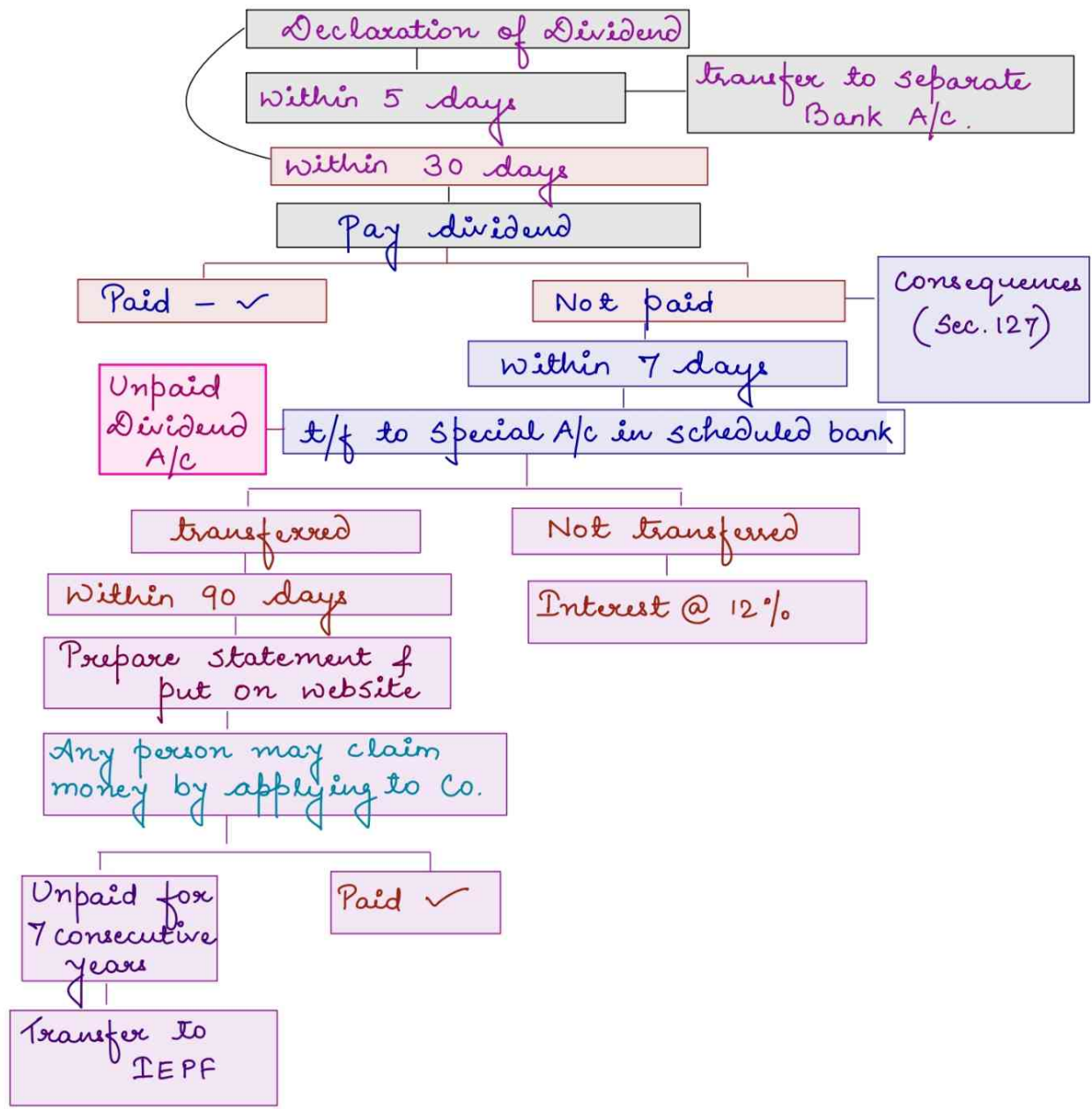
Interim Dividend



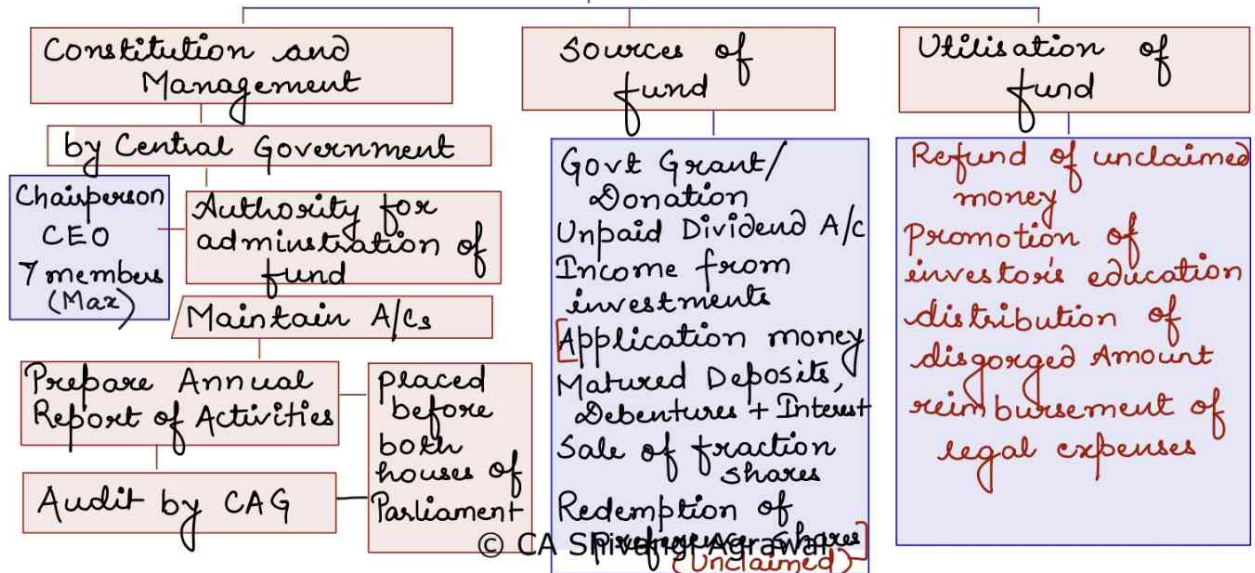
Sources of Dividend



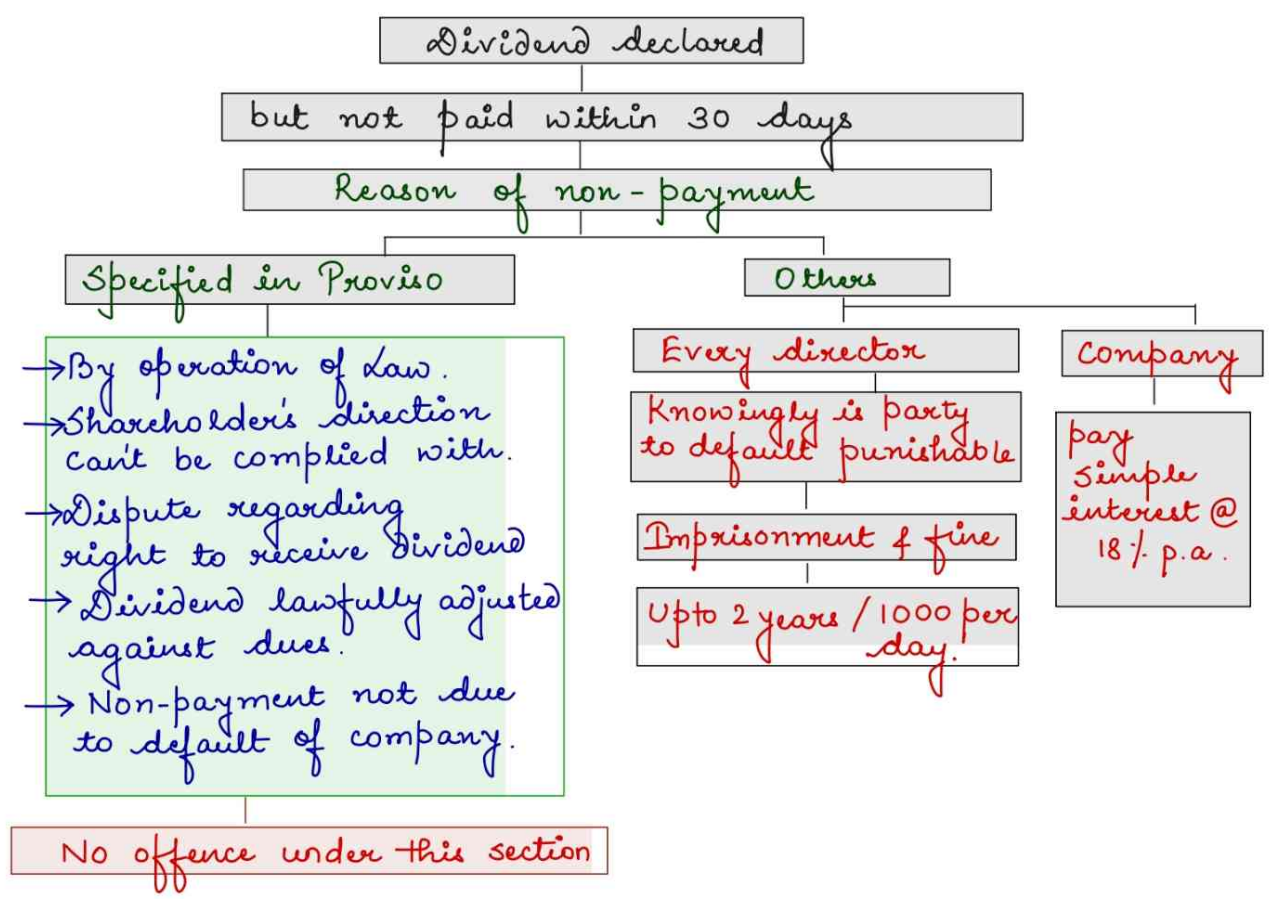
Unpaid Dividend (Sec. 124)



Investor Education & Protection Fund (IEPF) [Sec. 125]



Failure to distribute Dividend [Sec. 127]

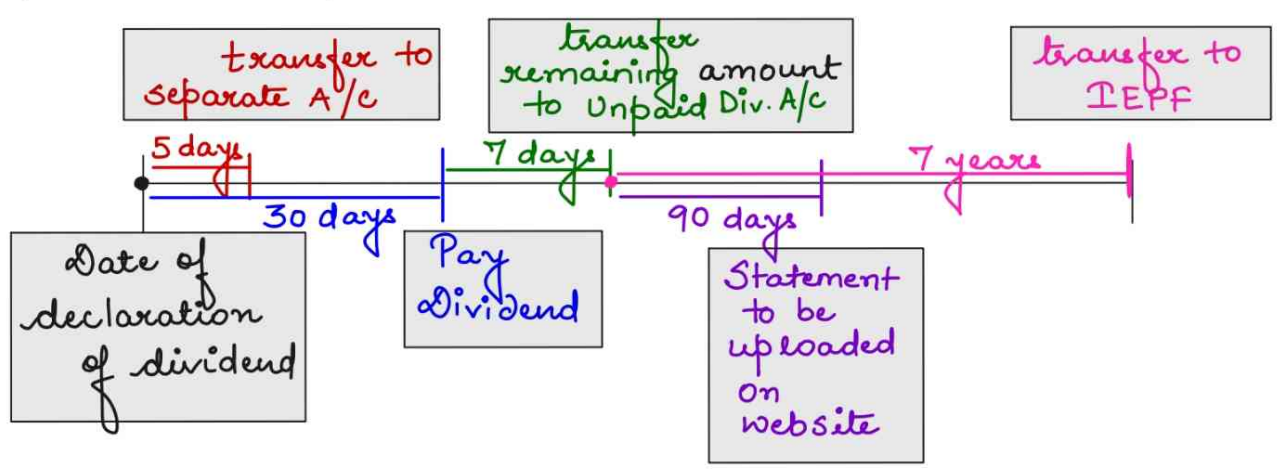


Other Points related to Dividend :-

If transfer not registered, pay to transferee if authorised by registered holder in writing or else transfer to Unpaid dividend A/c [Sec. 126]

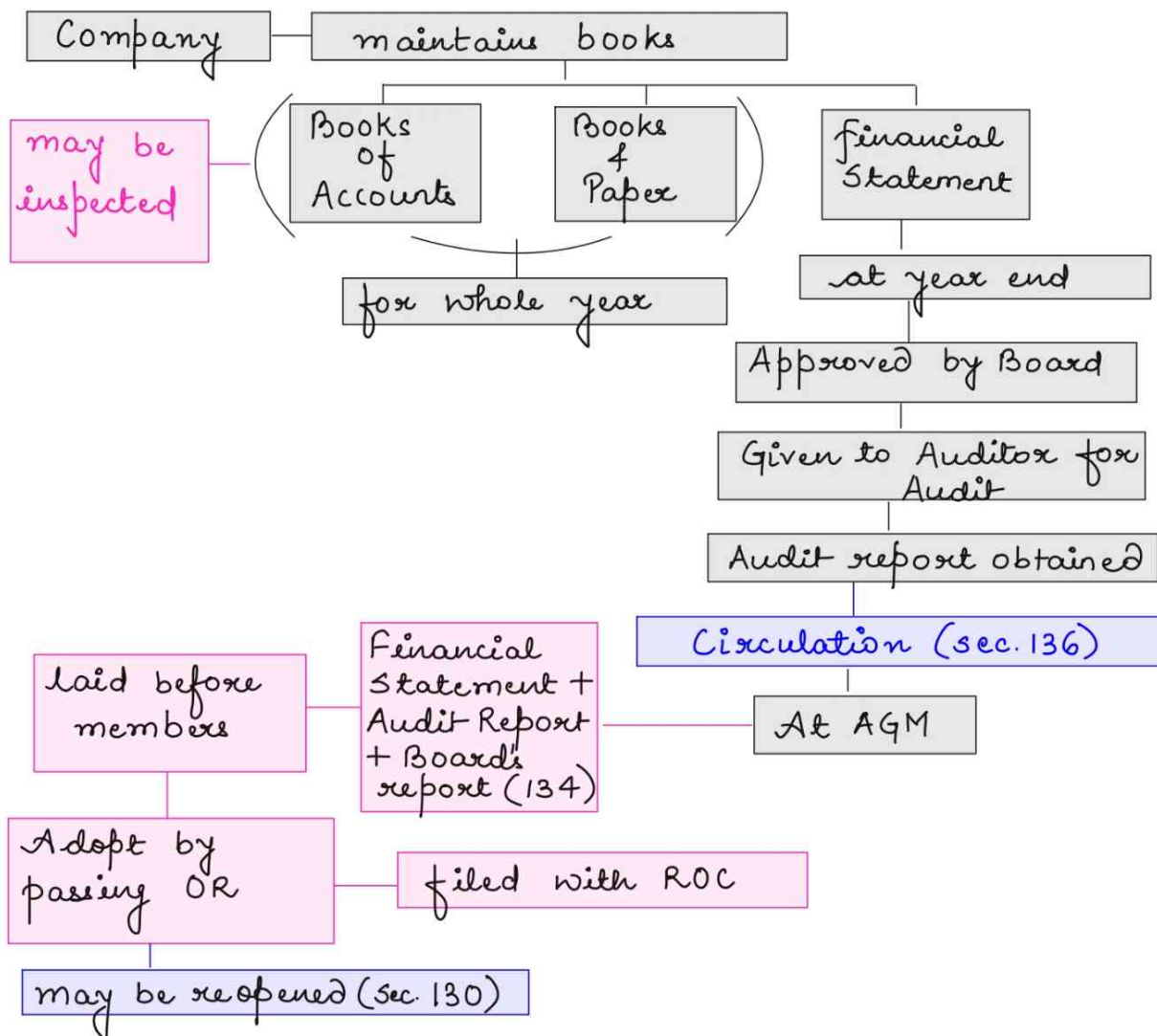
Dividend once declared can't be revoked.

Time limit :-

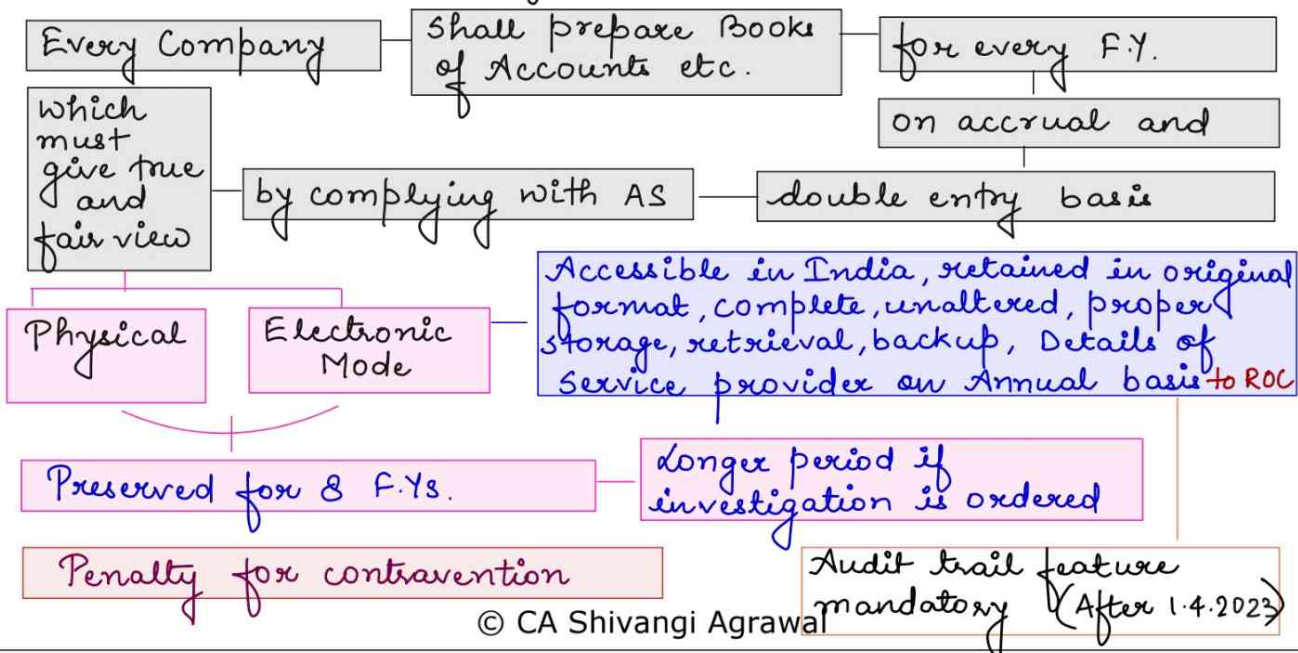


Accounts of Companies

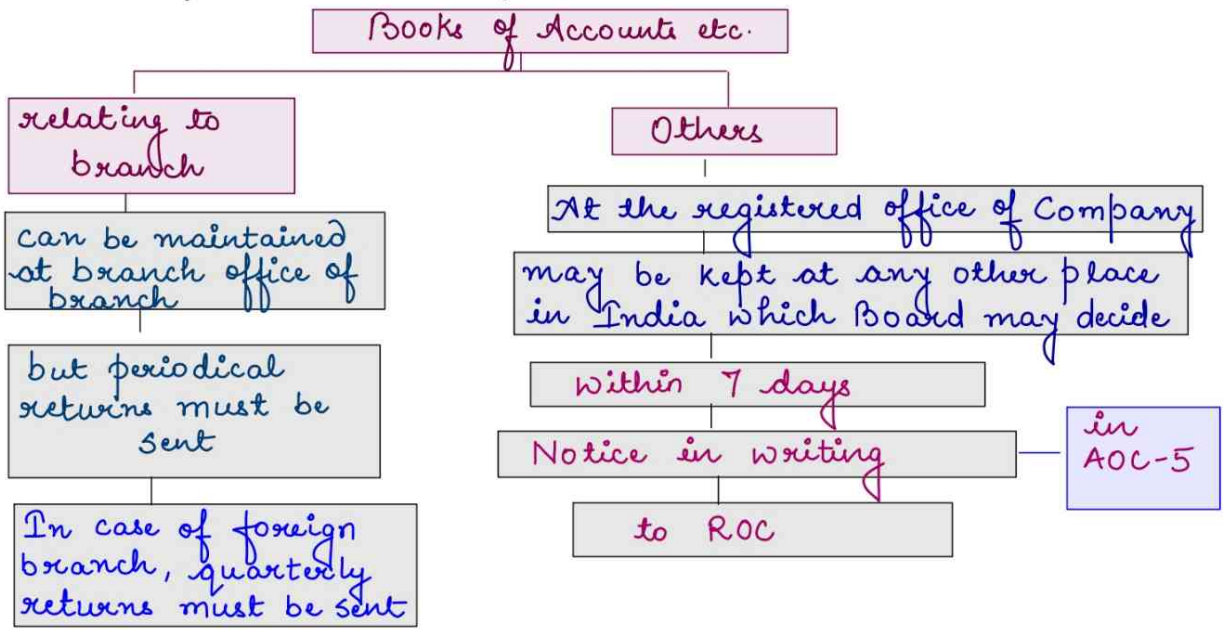
Chapter IX (containing Sec. 128 - 138)



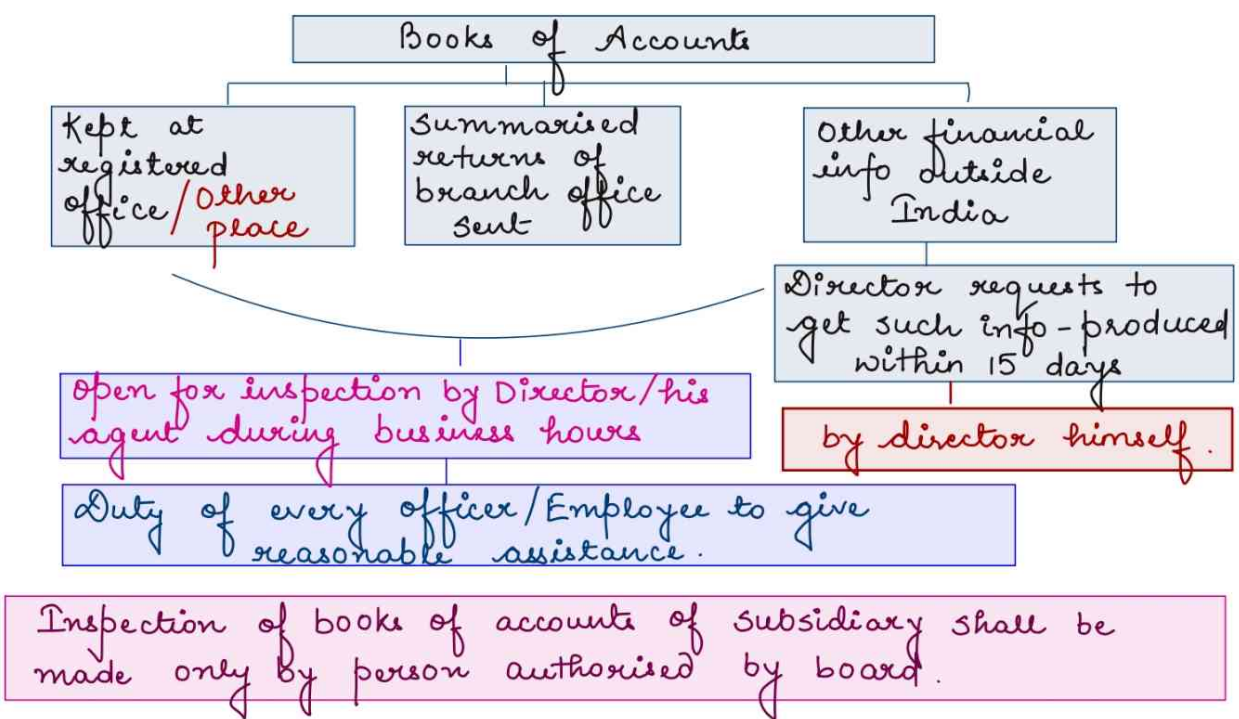
Maintenance of Books of Accounts (Sec. 128)



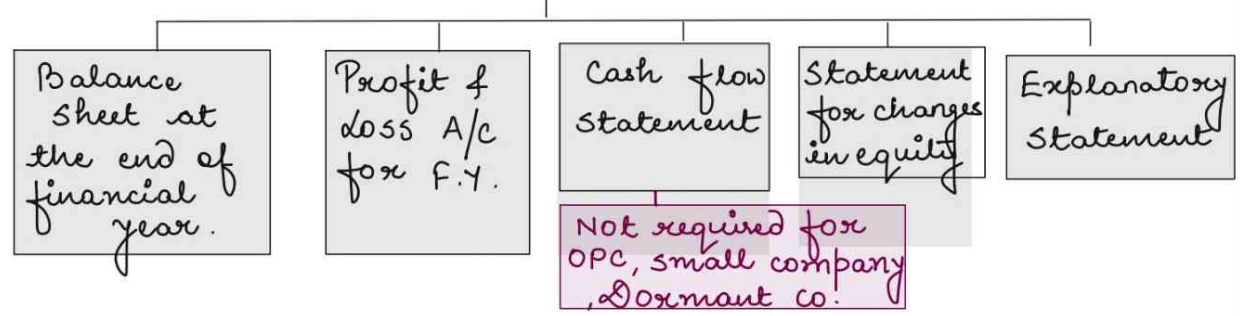
Place of Maintenance of Books of Accounts

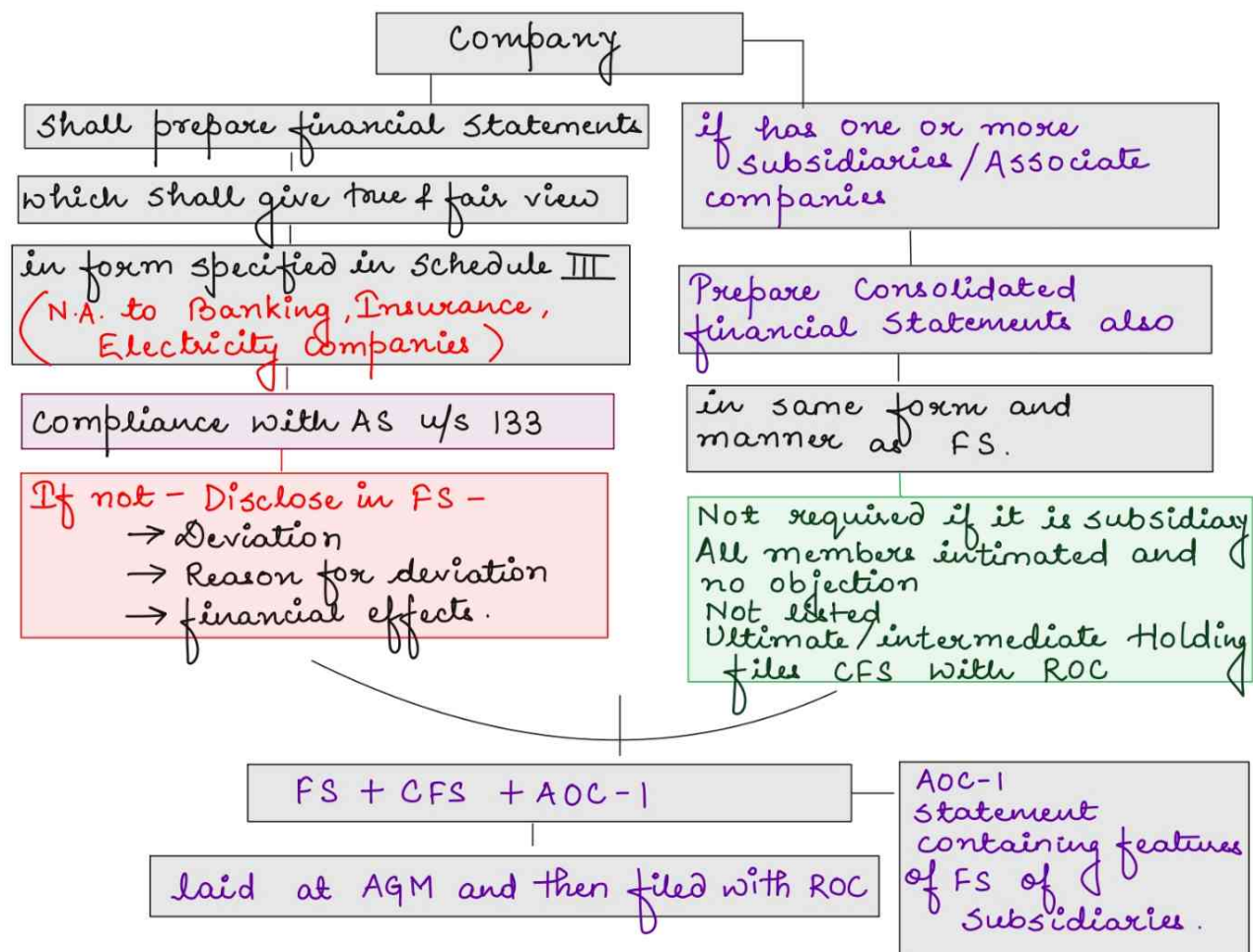


Inspection of Books of Accounts etc.



Financial Statements [Sec. 129]

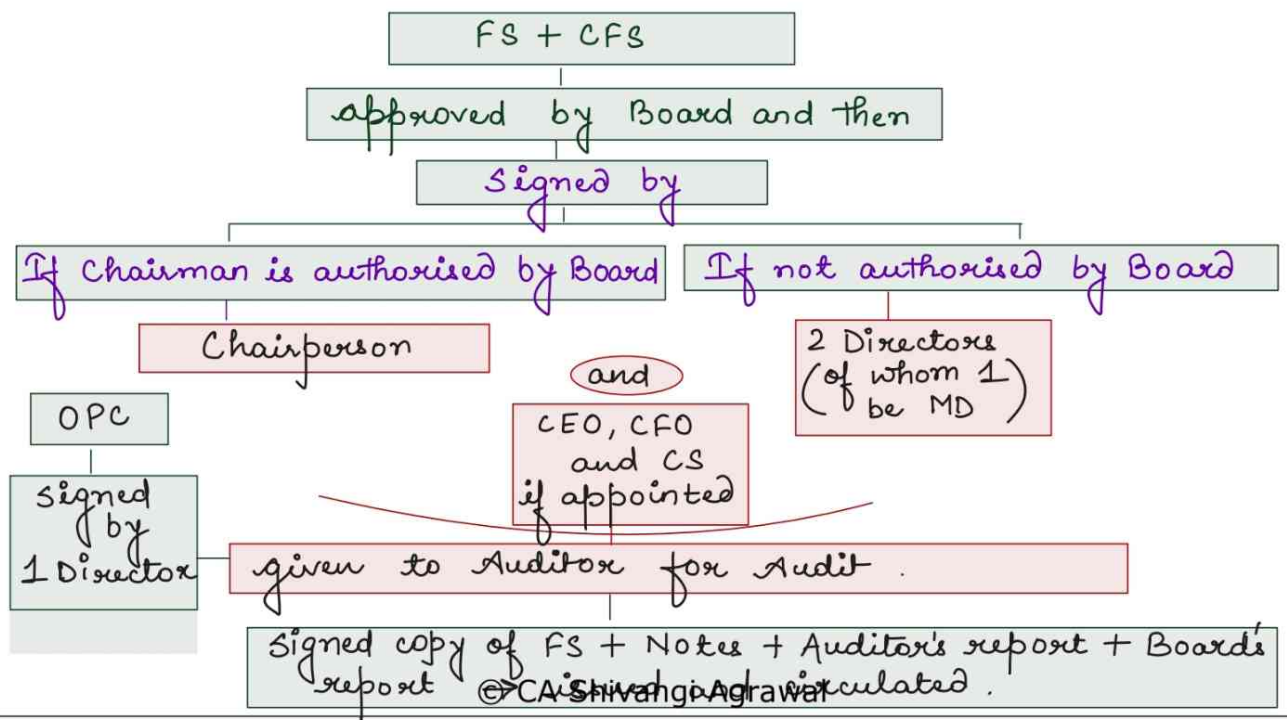




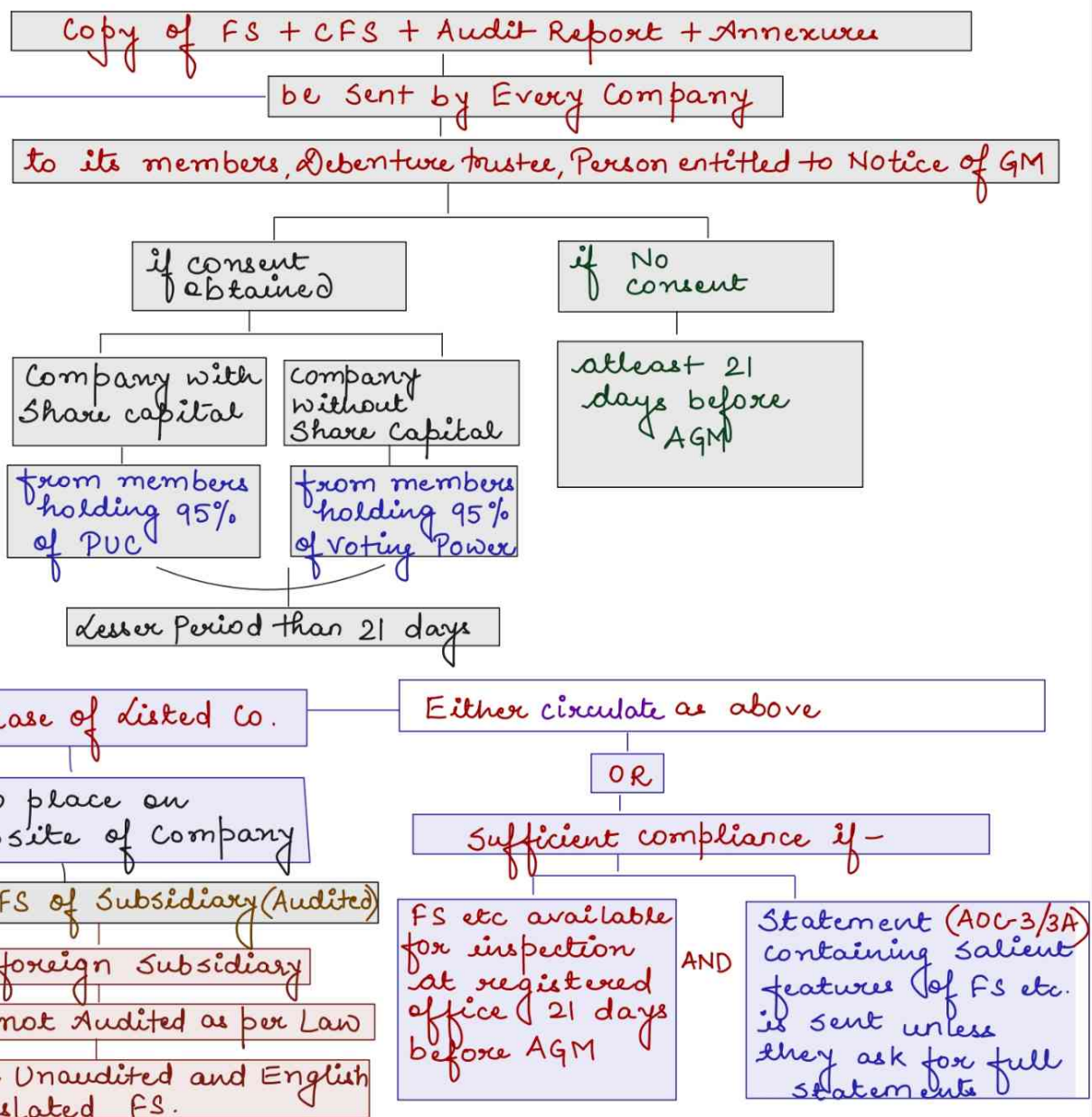
Non-compliance :-

MD/ ^{finance} WTD/CFO/Person charged by Board/ All Directors (if Absence of above)	fine and/or imprisonment Minimum - 50000 Maximum - 5 lakh Imprisonment upto 1 year.
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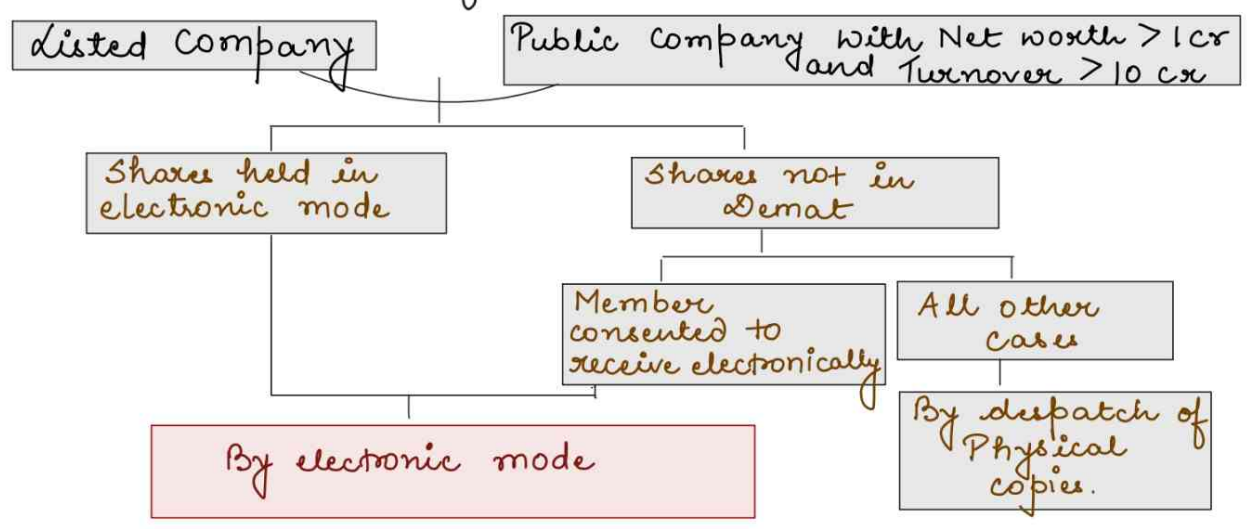
Approval and Signing of financial Statements (Sec. 134)



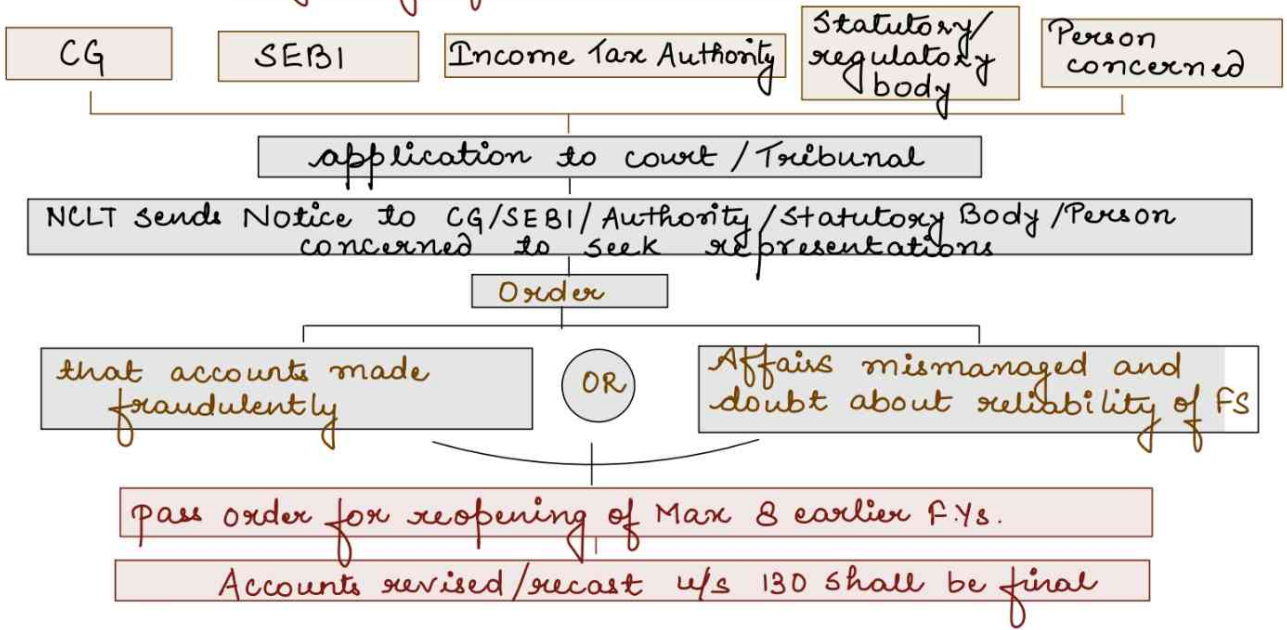
Right to get Audited Financial Statement [Sec. 136]



Manner of Circulation



Re-opening of Accounts [Sec. 130]



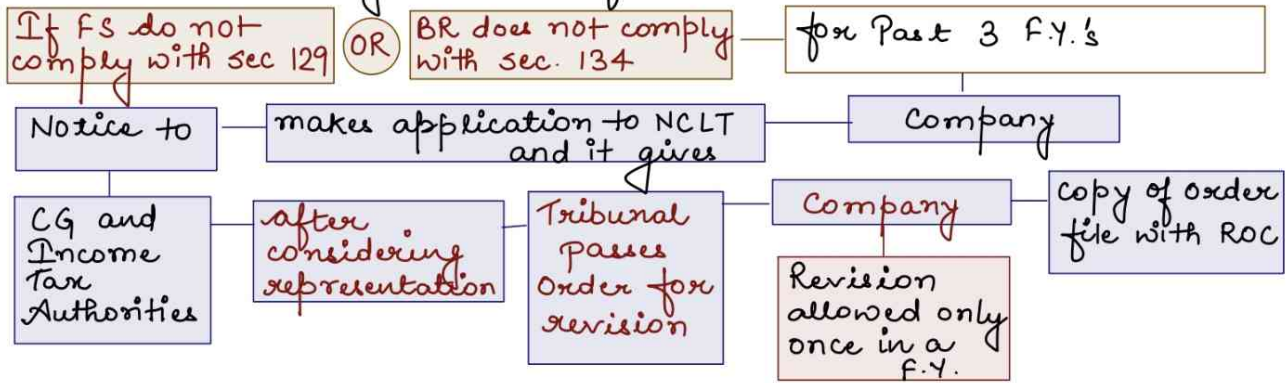
Board's Report [Sec. 134]

Web Address No. of meetings by Board Director's responsibility Statement Details of fraud reported by CA Statement of declaration by Independent Director Nomination and Remuneration Committee Explanation by Board on Adverse comment by Auditor Particulars of loans Particulars of contracts with R.P Amount transferred to Reserves Dividend Proposed State of affairs of co. Application pending IBC Diff. in Valuation Amt	Material changes after end of FY but before Board's report conservation of energy, technology, foreign exchange. Risk Management CSR Board's Performance Prescribed matters - financial summary KMP / Directors Change in nature of business Change in subsidiary/Associate/Joint Venture. Deposits court / Tribunal's order cost records Sexual Harassment Act compliance
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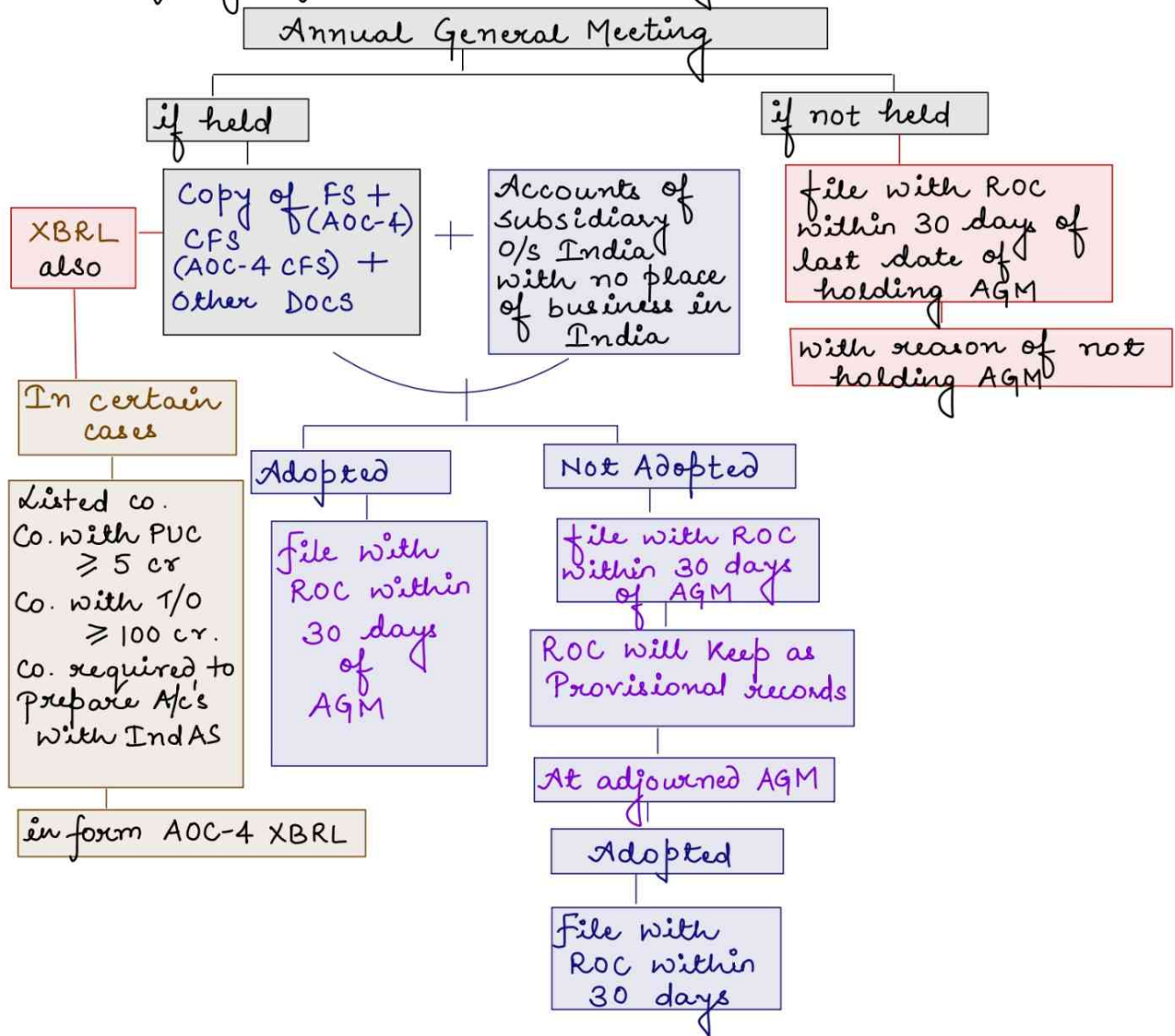
Abridged Report for OPC & Small company

- Web address
- No. of Board meetings
- Director's responsibility Statement
- fraud reported by Auditor & comment on it.
- Company's affair, financial summary
- Directors - Appointed/resigned
- Changes in Nature of business
- Court order
- contract with Related Parties

Voluntary Revision of FS/Board's Report [Sec.131]



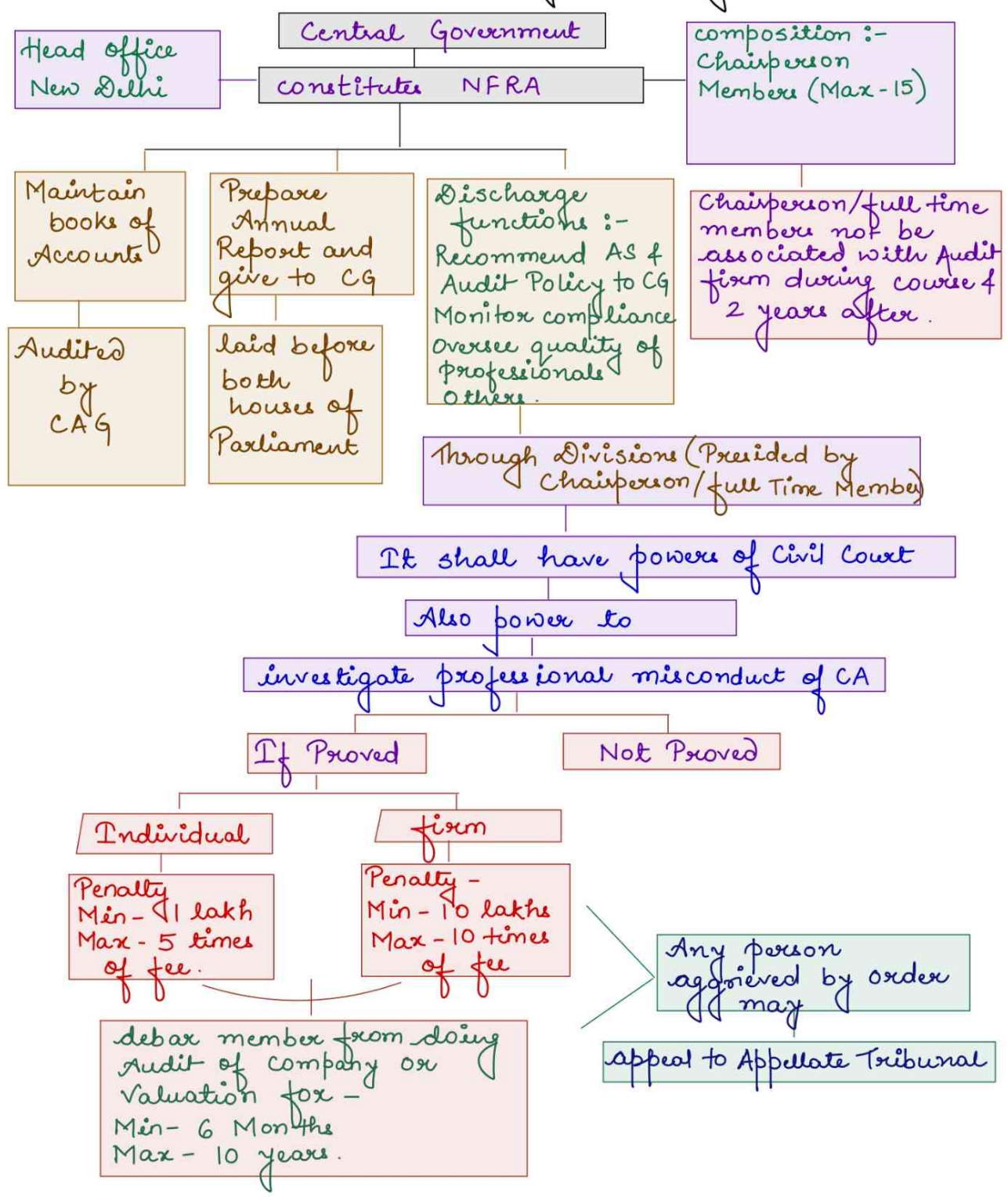
filing of Documents with Registrar [Sec. 137]



OPC shall file FS with other docs within 180 days from closure of F.Y.

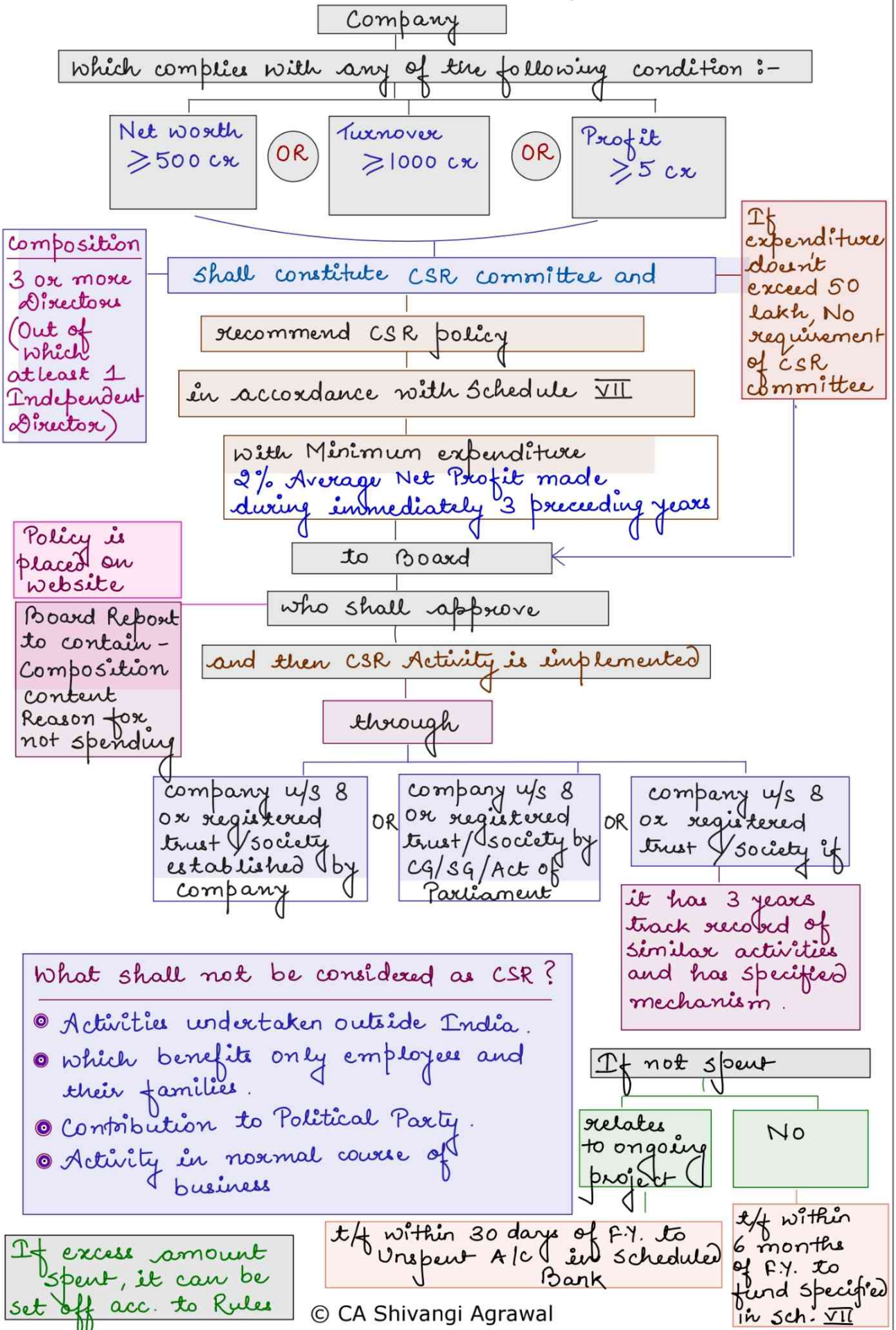
If foreign subsidiary not required to get FS audited according to laws of that country, Holding co. can file unaudited CA statement with such declaration.

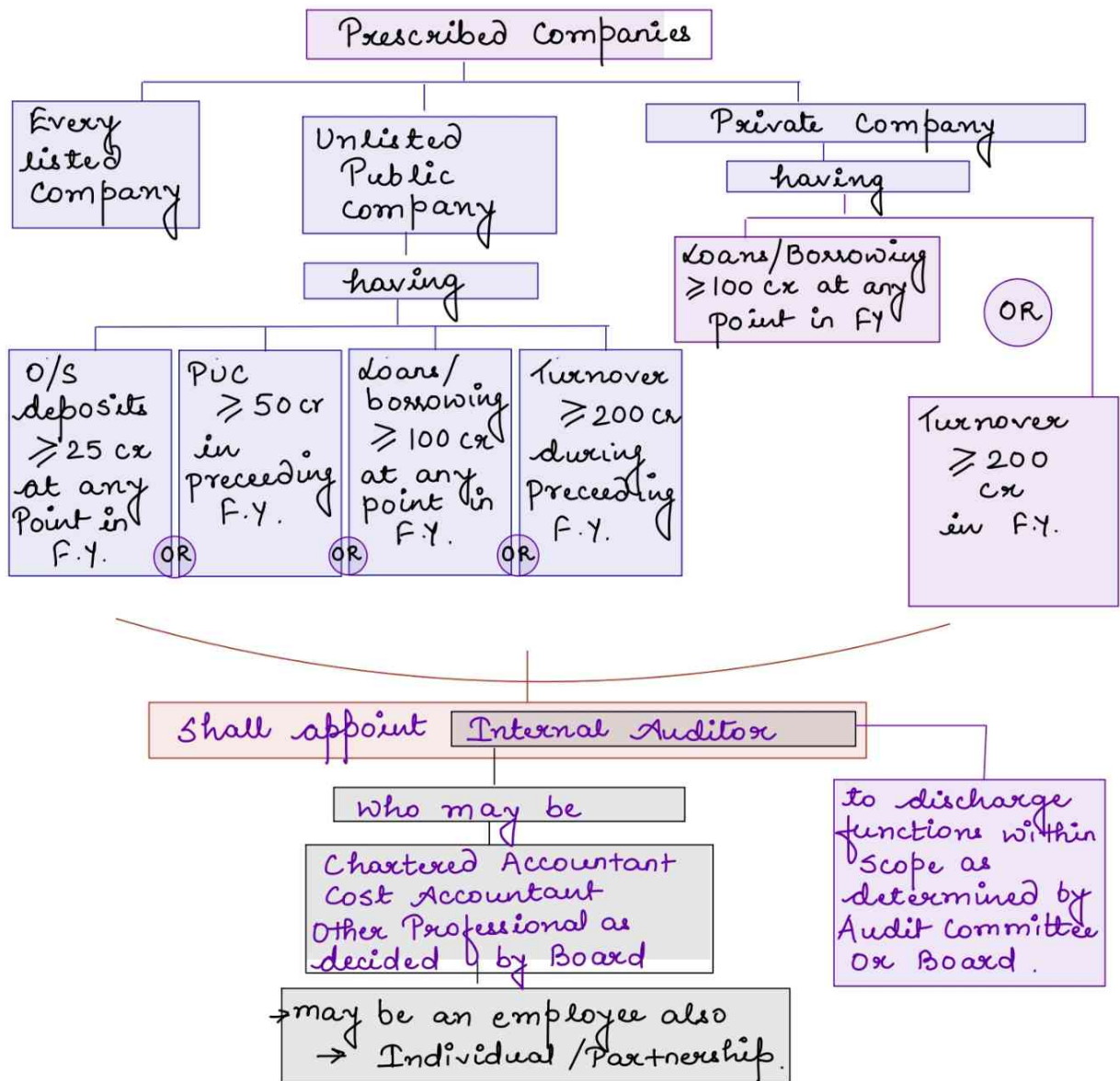
National Financial Reporting Authority [Sec. 132]



There shall be an executive body to discharge functions when NFRA initiates investigation, no body to initiate or continue proceedings
 CG may appoint employees as required.

Corporate Social Responsibility [Sec. 135]





Audit and Auditors

Chapter X (containing Sec. 139 to 148)

Audit is mandatory for every company for each F.Y.

Company incorporated → Appoint Auditors according to Sec. 139

can be Individual only if he is a CA in practice

or Firm/LLP majority of Partners CA - Only CA can sign

Provided they are qualified u/s 141 and not rendering services u/s 144

after obtaining from Auditor

Consent

Certificate

that not disqualified. Appointment as per term. within limit correct list of proceedings satisfaction of criteria u/s 141

Appoint Auditors in prescribed manner

Inform Auditors

file Notice of Appointment

with ROC within 15 days of meeting in which appointed

with NFRA within 15 days of appointment in NFRA-1

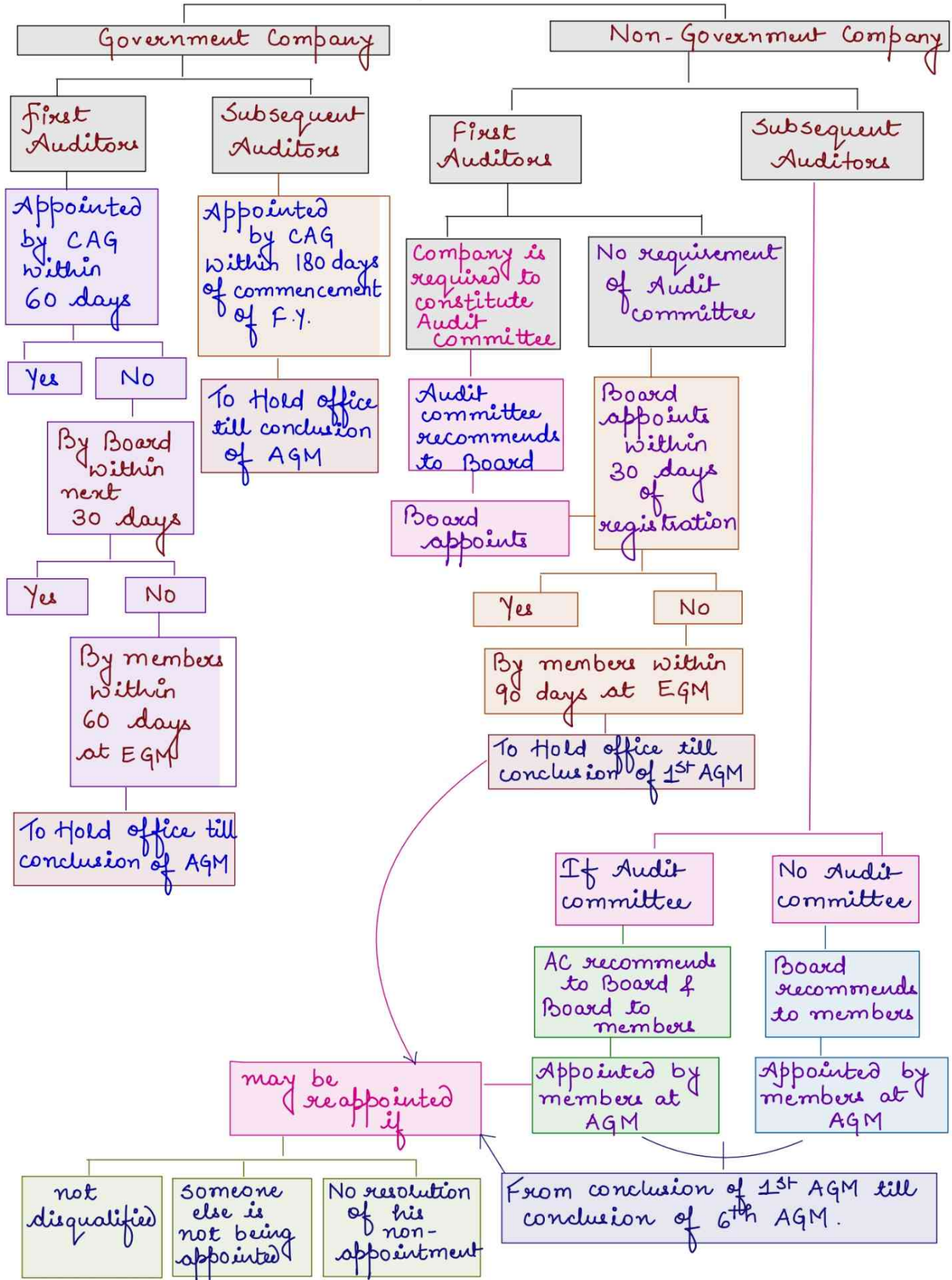
for body corporate which does not file ADT-1

As discussed in Accounts of Companies Chapter

can resign/be removed according to section 140

be conferred with certain rights and duties according to sec. 143

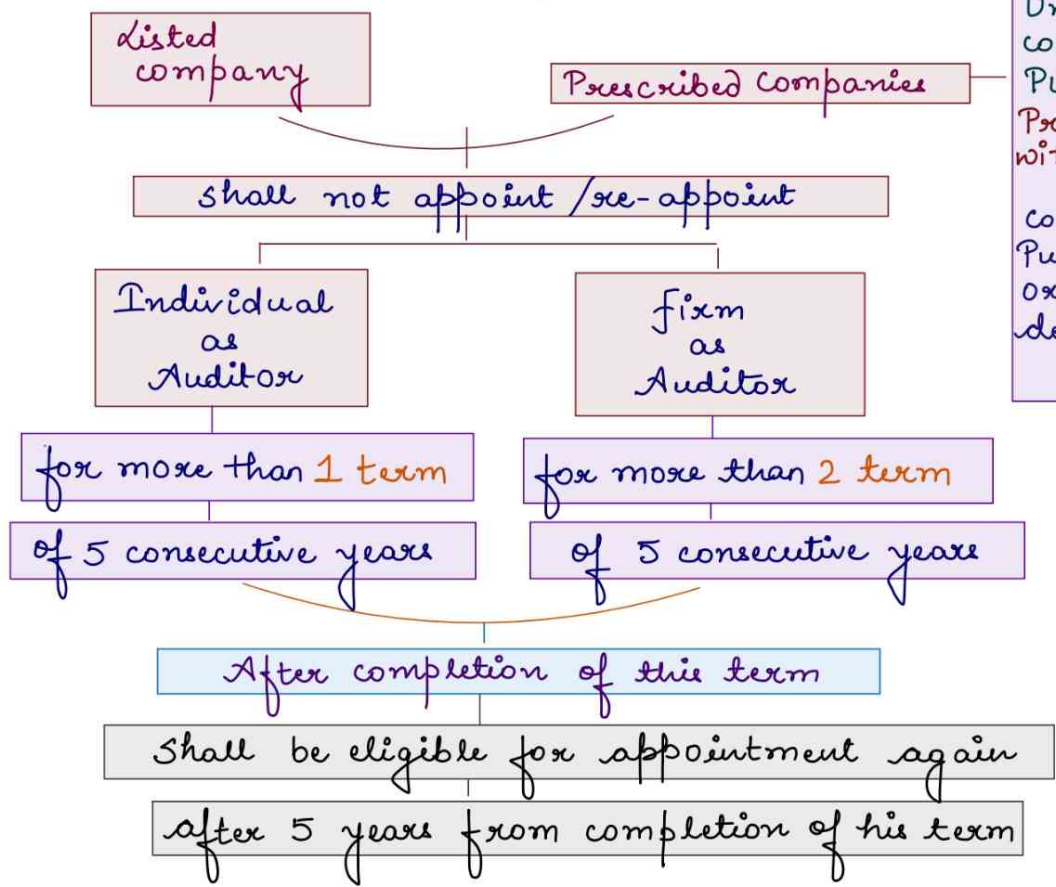
Appointment of Auditors (Sec. 139)



Where at any AGM, No Auditor is appointed/re-appointed existing Auditor shall continue.

Rotation of Auditor (Sec. 139(2))

Rule 5
 Unlisted Public company with PUC ≥ 10 cr.
 Private company with PUC ≥ 50 cr
 OR
 company with Public borrowing or public deposits ≥ 50 cr.



If Audit firm has common Partner whose Term expired, such firm can also not be appointed for 5 years.

Company before commencement - to comply within 1st AGM after 3 years from date of commencement

Members may resolve to provide for rotation of Auditor within Firm.

Auditor can still resign or be removed within this term.

Manner of Rotation

Audit committee wherever appointed

shall recommend name of Auditor to Board of it

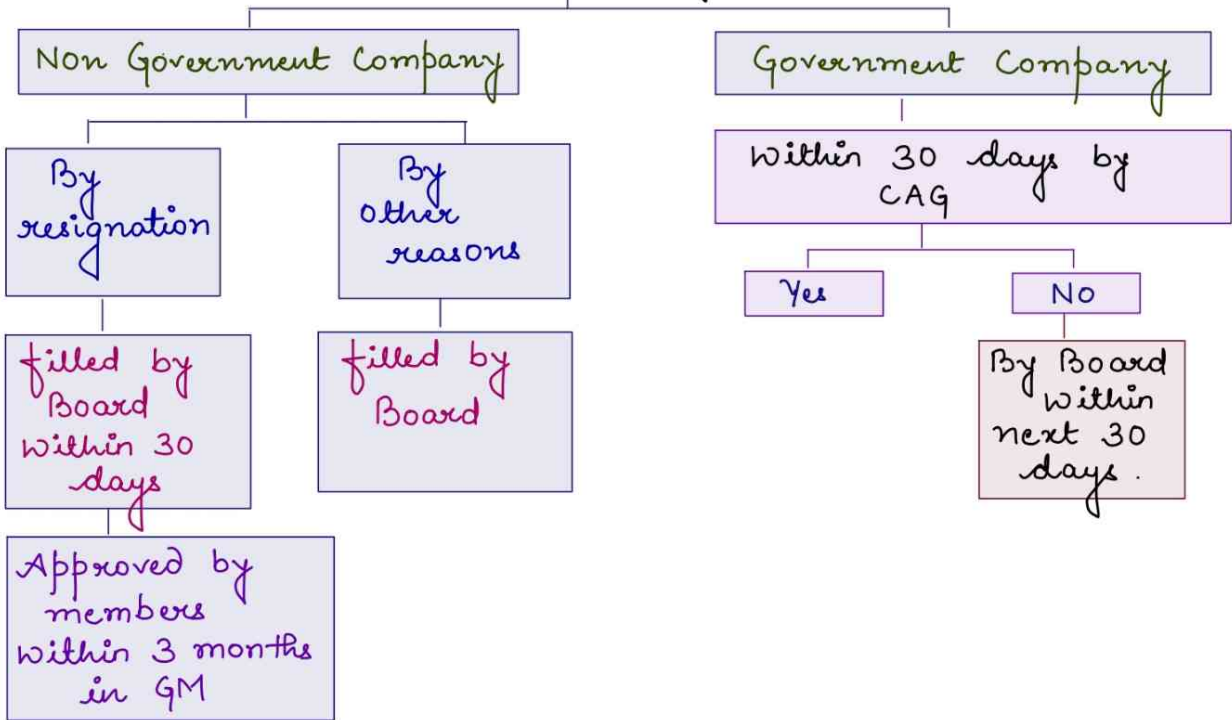
shall propose the same in AGM

Period as Auditor before commencement of Act shall be taken into account when computing 5/10 years

Partner in charge retires and joins another firm, such firm shall also be ineligible.

Consecutive years shall mean all preceding financial years until a break of 5 years or more.

Casual Vacancy



Disqualifications of Auditors [Sec. 141(3)]



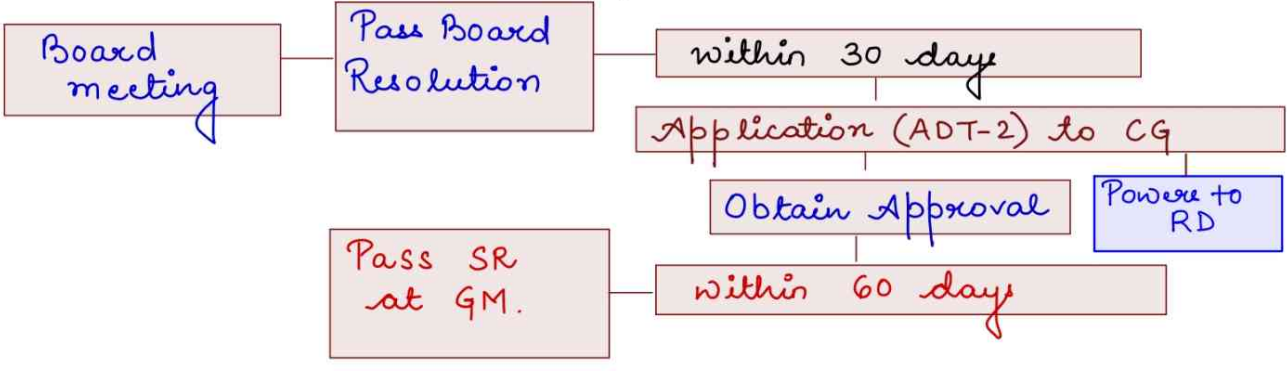
Person (who / his relative / his partner) -



Corrective Action within 60 days

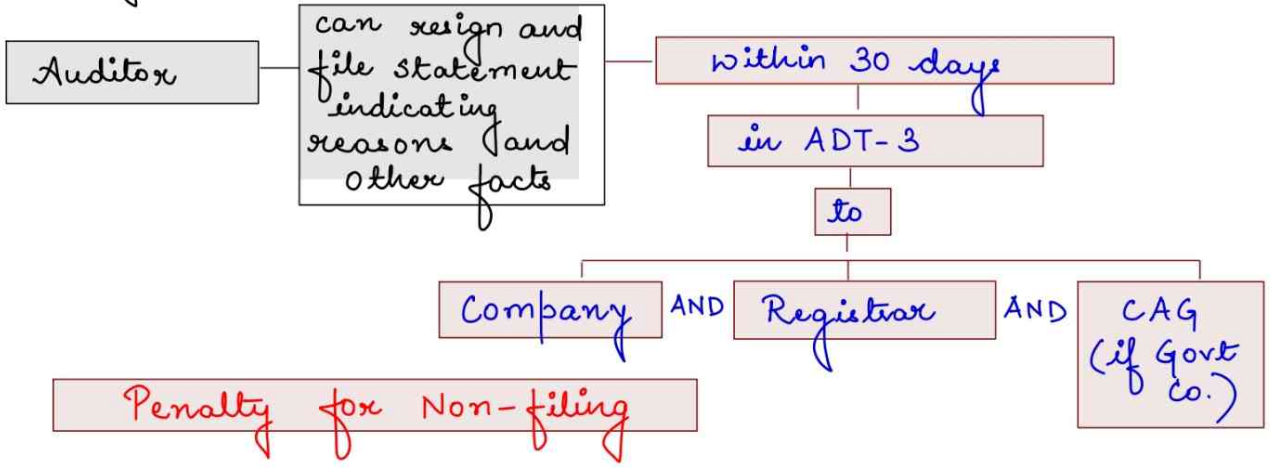
If any disqualification incurs, vacation of office - amounts to Casual Vacancy

Removal of Auditor before Term [Sec. 140]

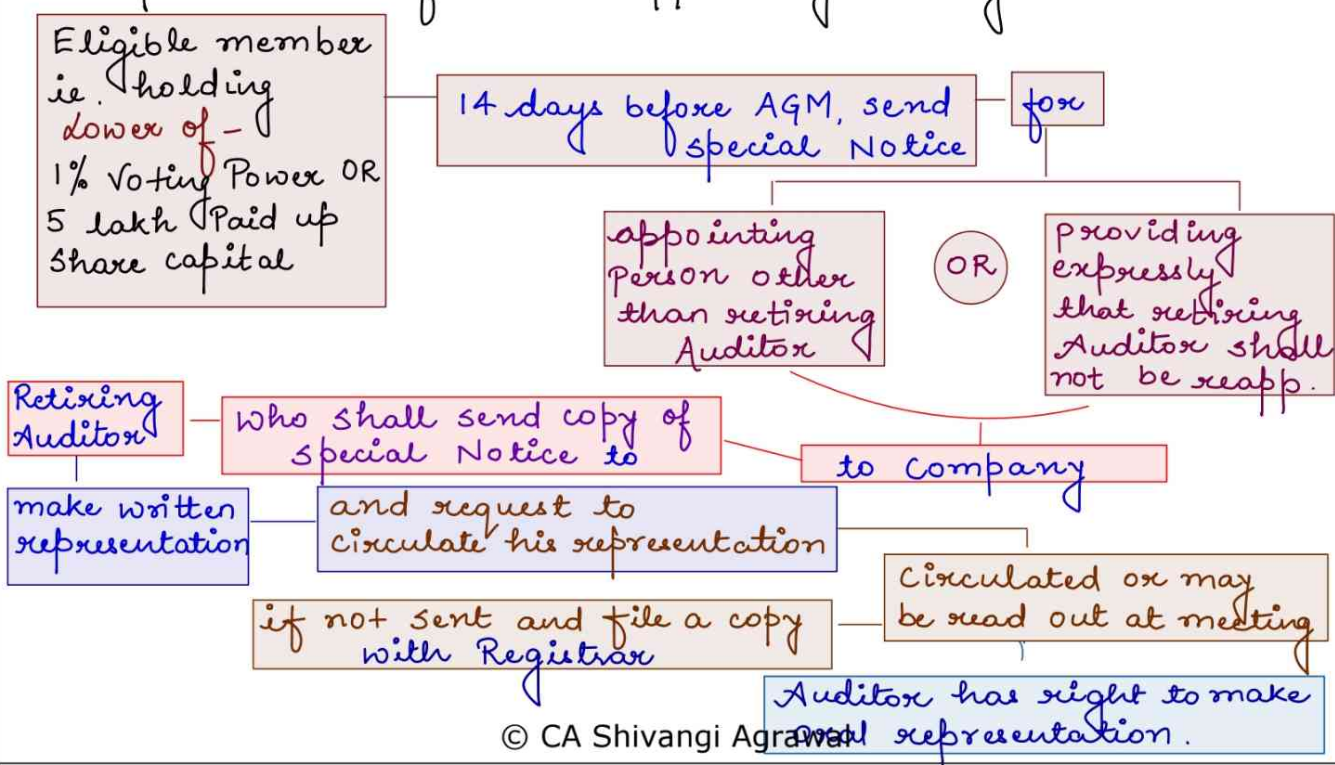


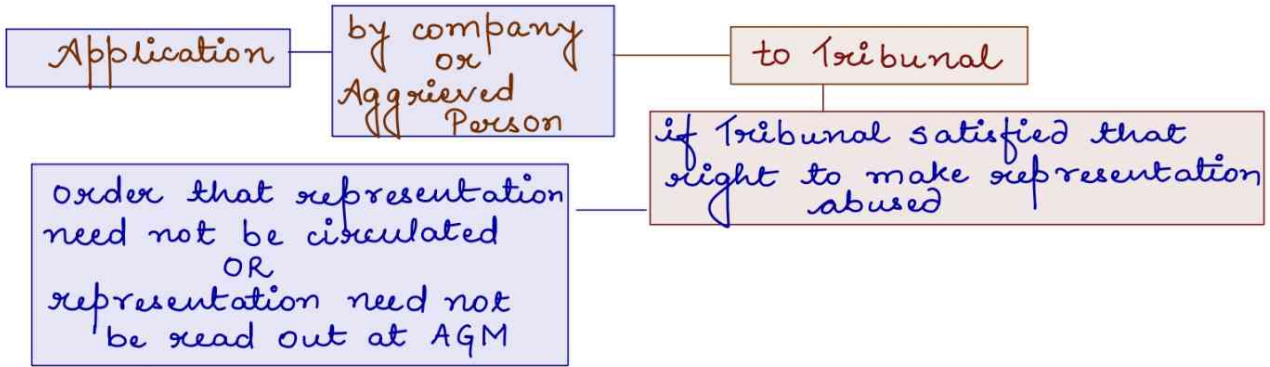
Auditor to be given reasonable opportunity of being heard

Resignation by Auditor

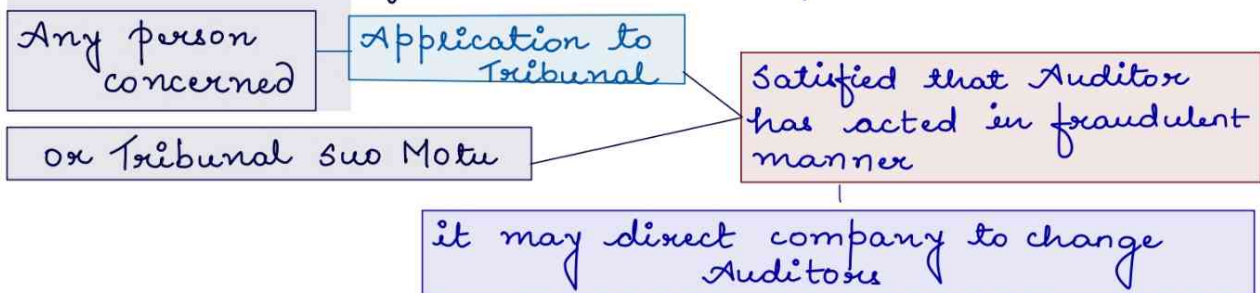


Special Notice for not reappointing retiring Auditor





Power of Tribunal to change Auditor



If Application is made by CG, within 15 days, make order that he shall not function as Auditor & CG may appoint another.

Such Auditor shall not be eligible to be appointed as Auditor for 5 years and also liable for action u/s 447.

Powers and Duties of Auditors [Sec. 143]

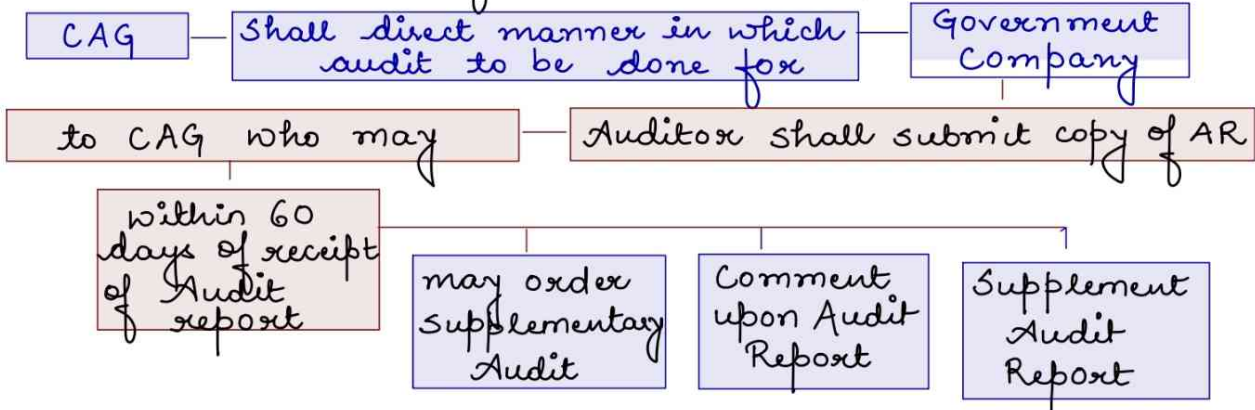
Rights

- to access books of accounts
- to receive Notice
- to make inquiries
- to receive remuneration
- Right of lien.

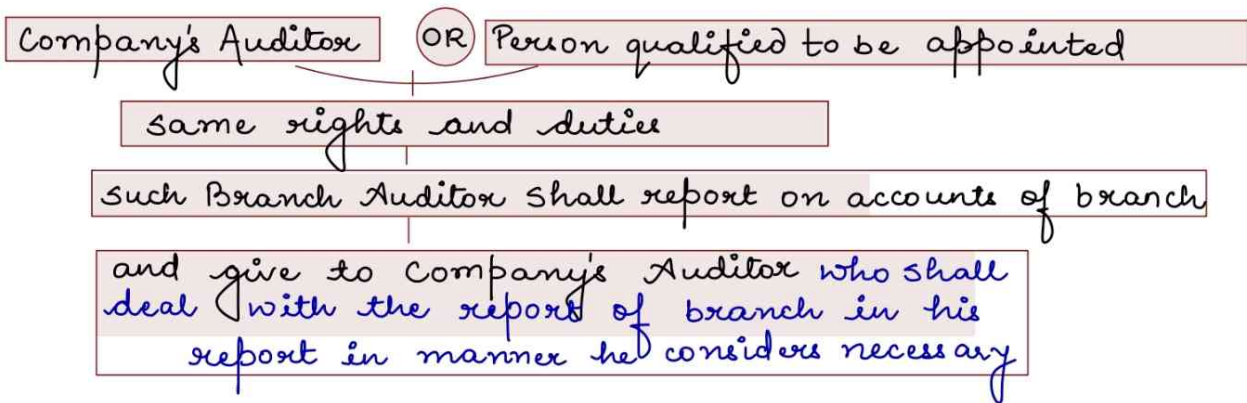
Duties

- Duty to make inquiries
- Duty to make report
- Duty to follow Auditing Standards
- to exercise reasonable skill and care.

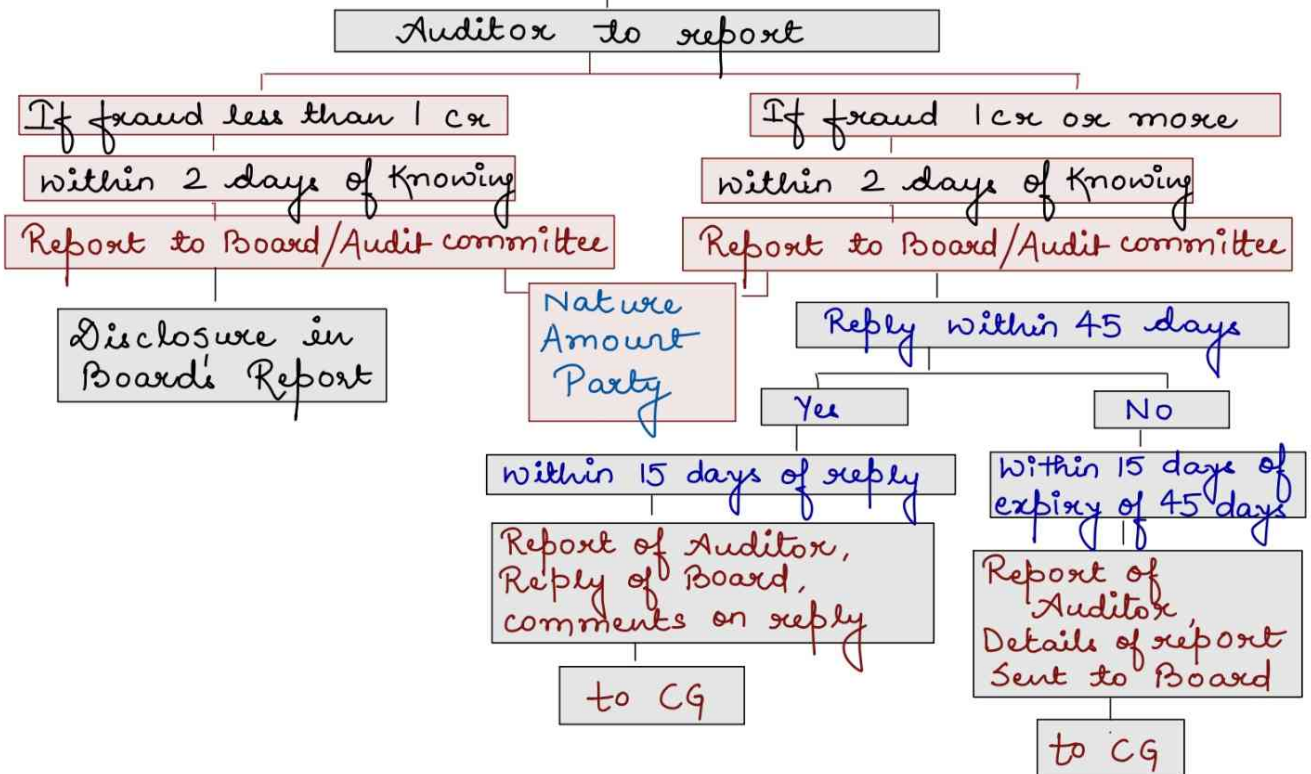
Audit of Government Companies



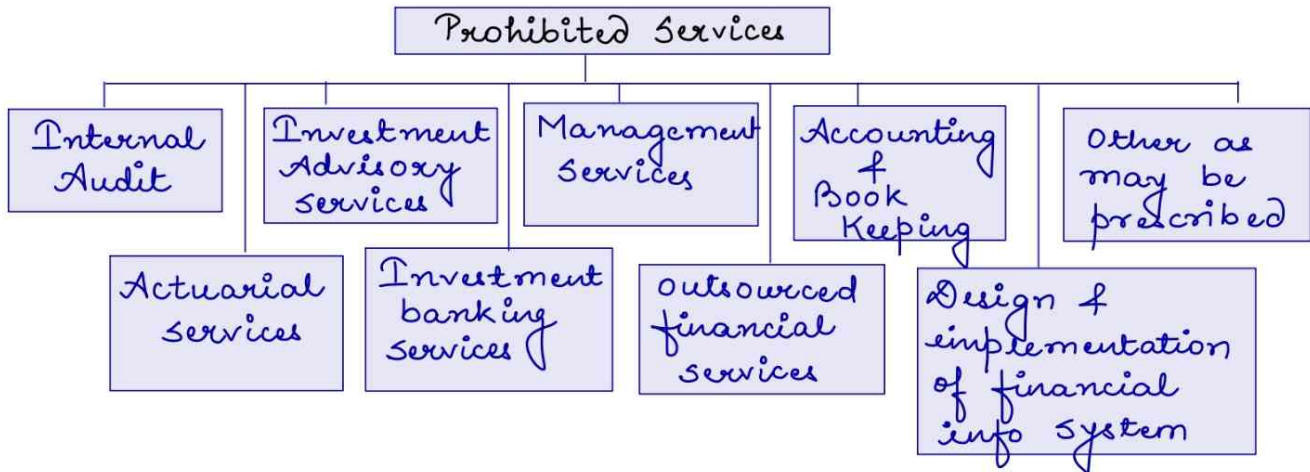
Branch Audit



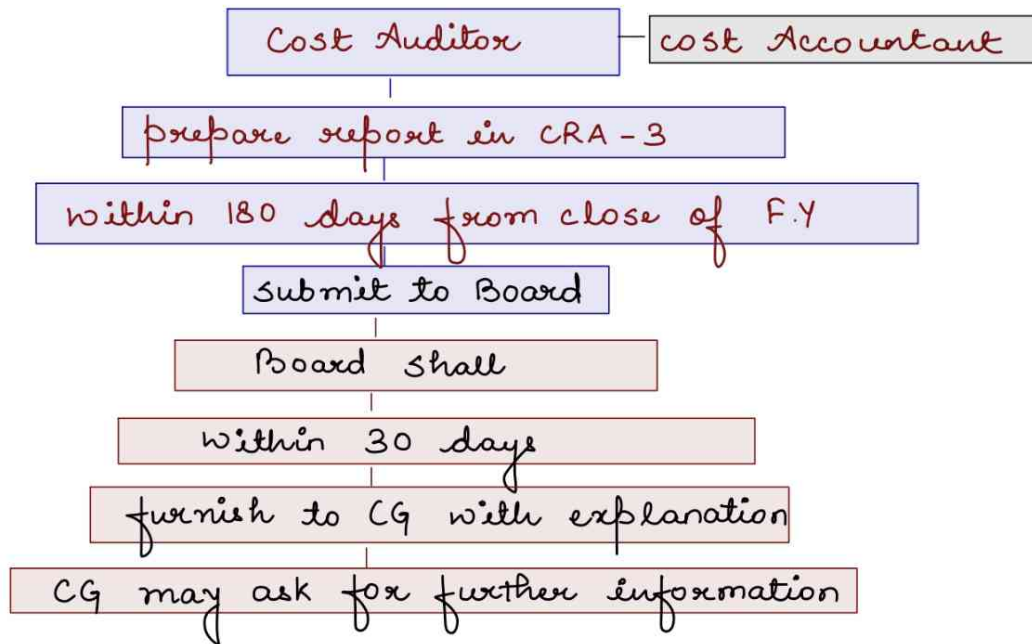
Reporting of fraud by Auditor

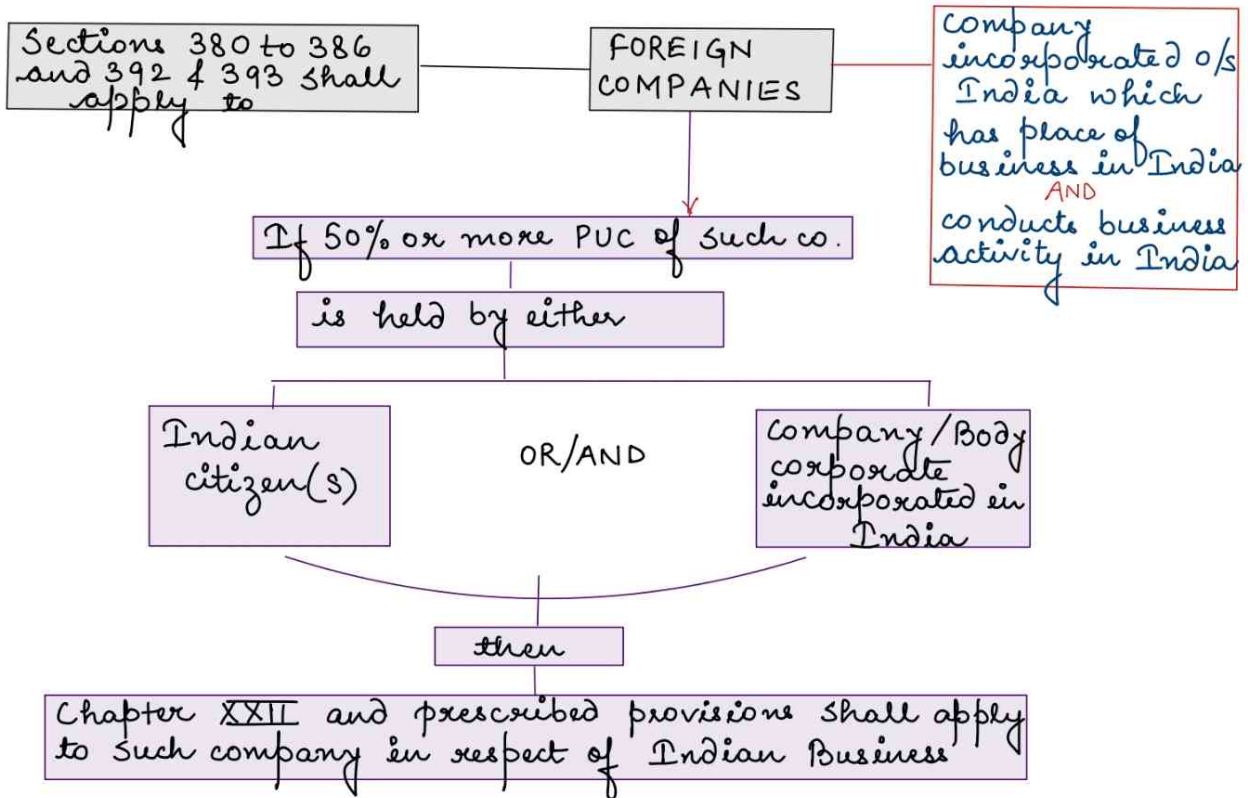


Auditor not to render certain services (Sec. 144)

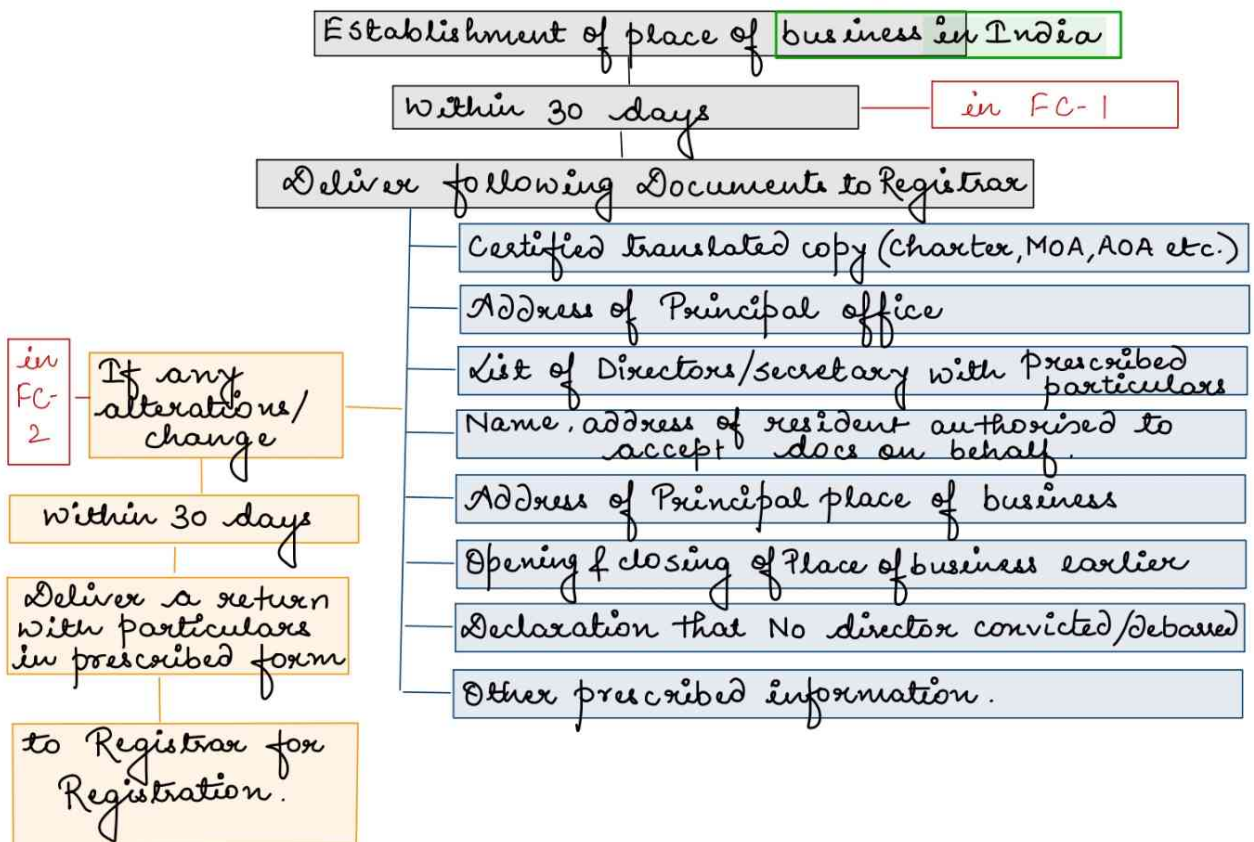


Cost Audit [Sec. 148]

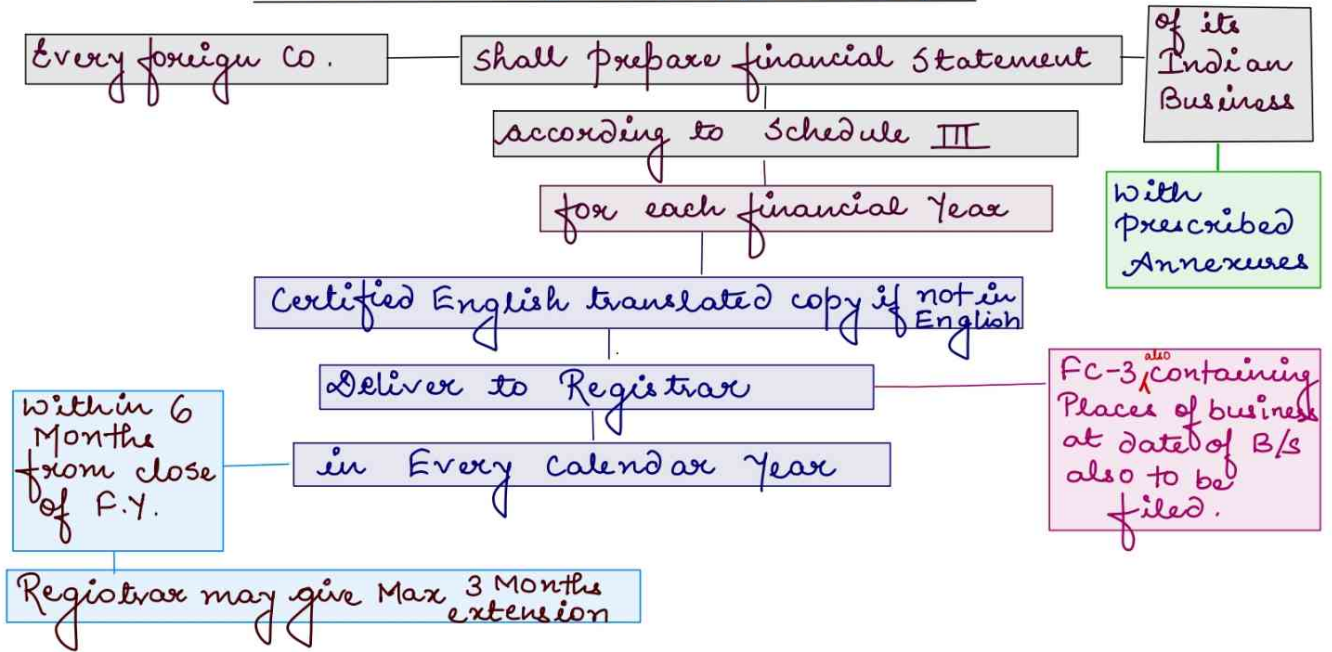




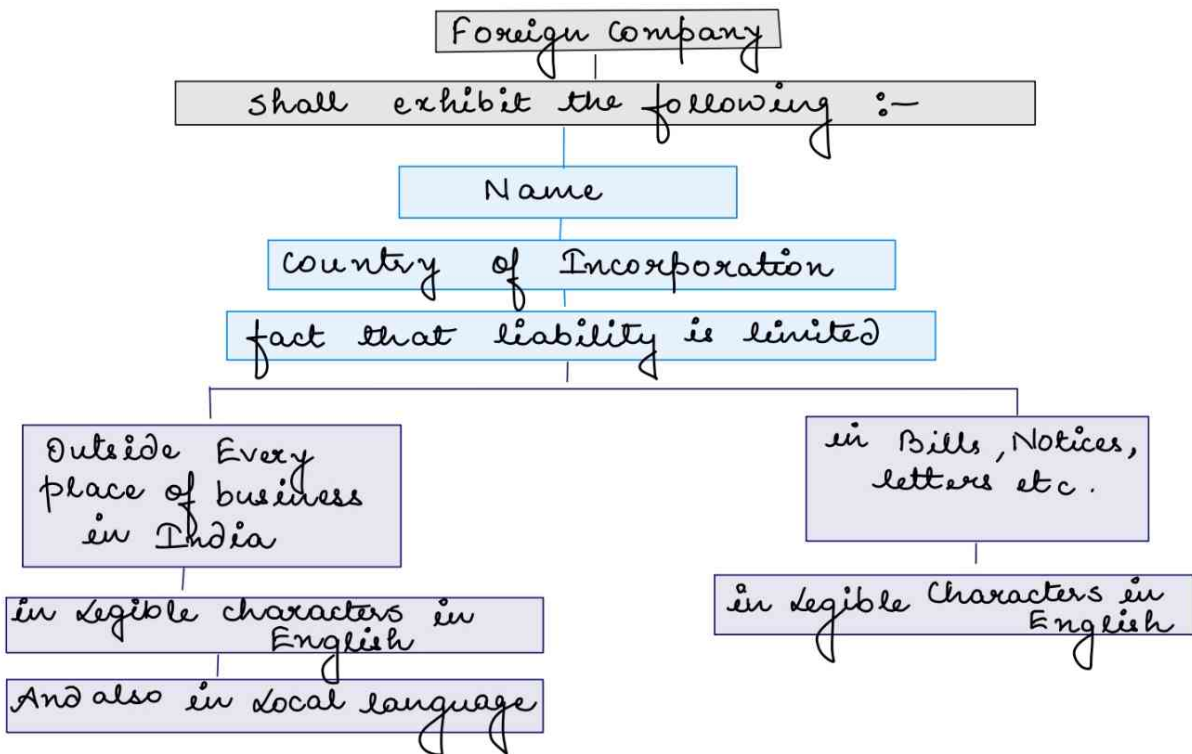
Documents to be delivered by Foreign Companies to ROC [Section 380]



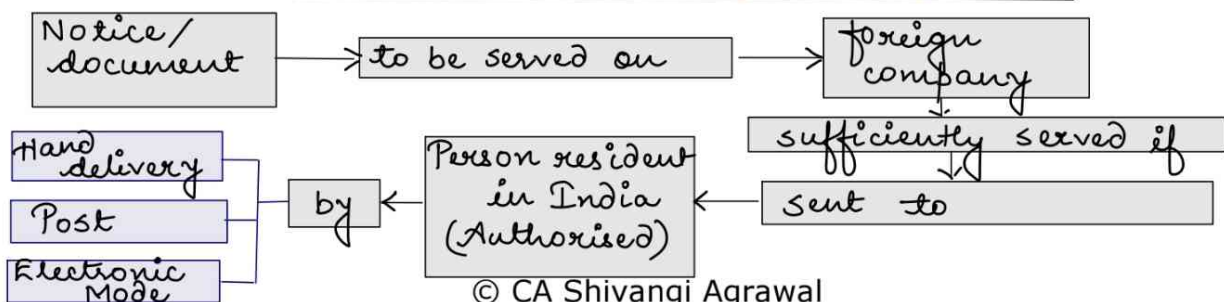
Accounts of Foreign Company [Section 381]



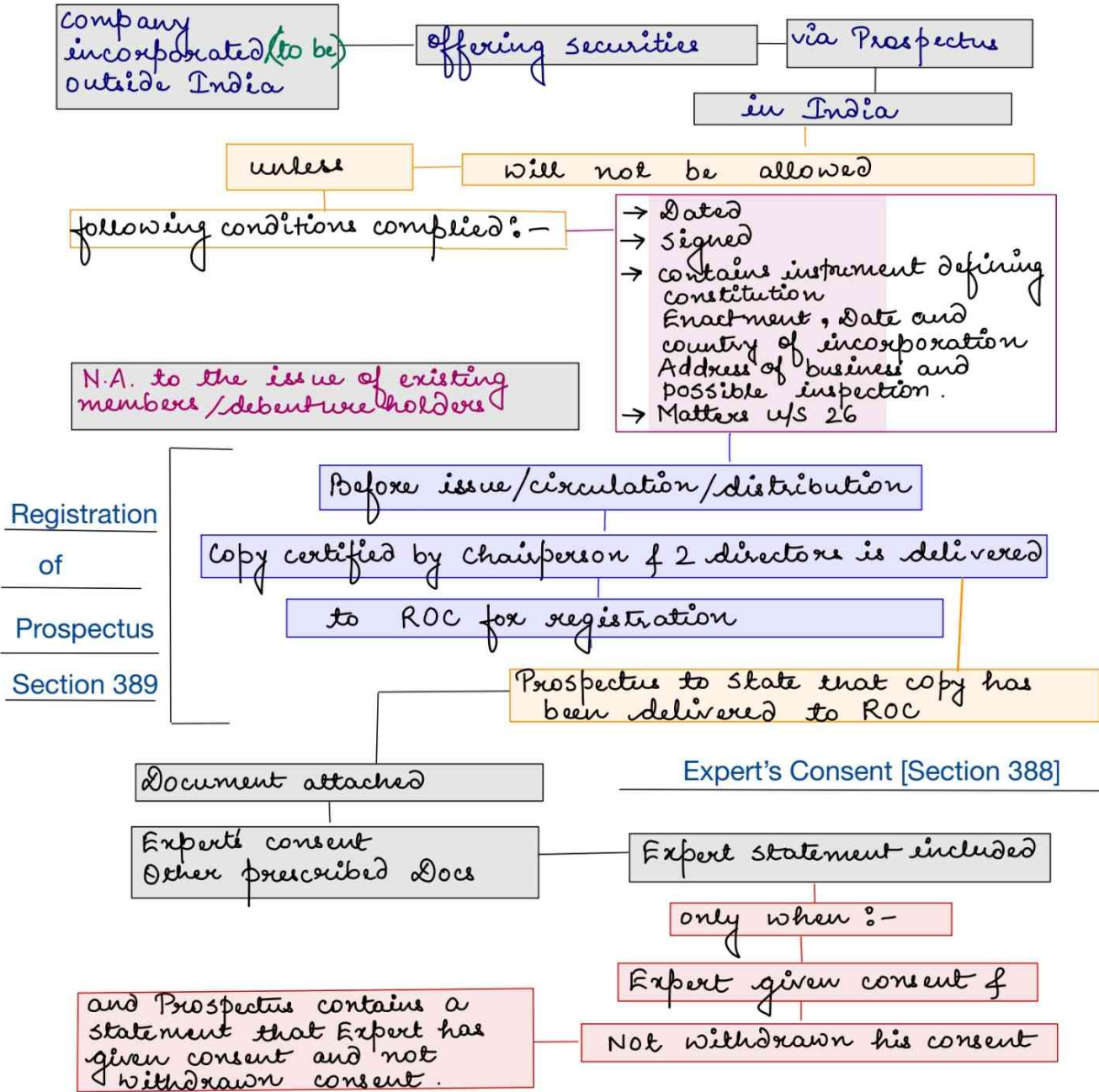
Display of Name of Foreign Company [Section 382]



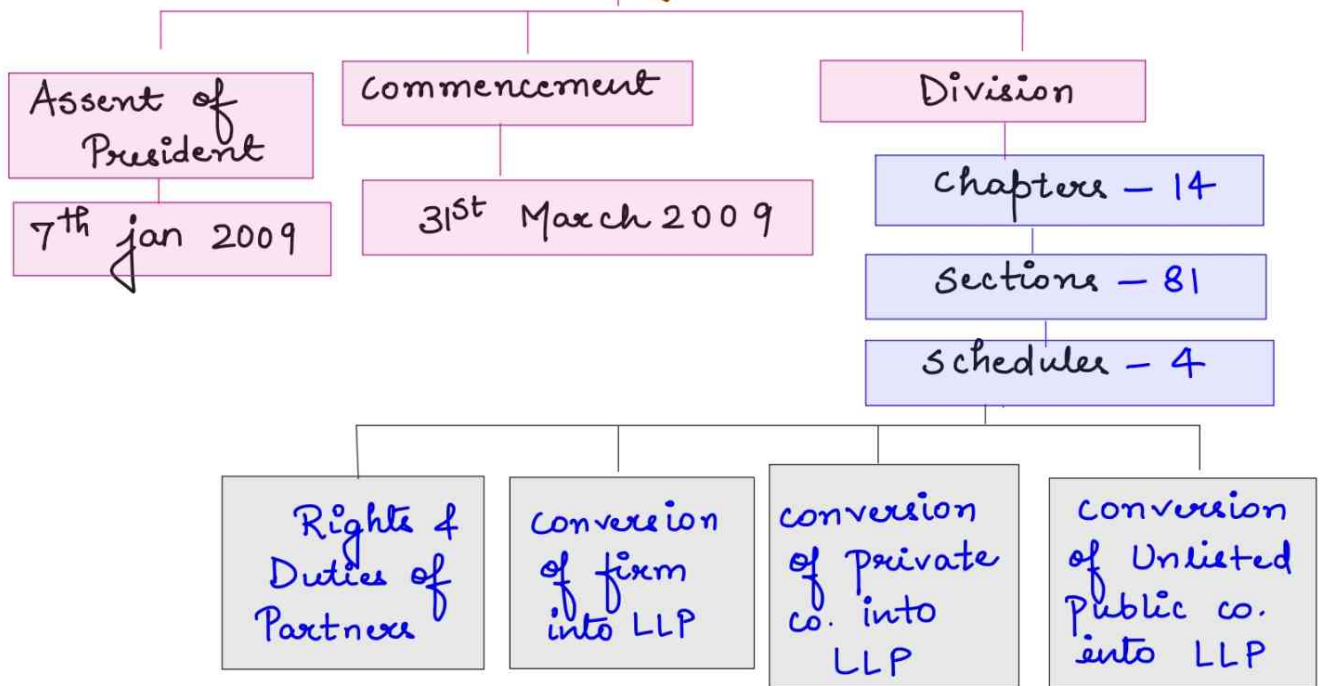
Service of Documents [Section 383]



Dating of Prospectus and Particulars therein [Section 387]



Limited liability Partnership Act



What is LLP

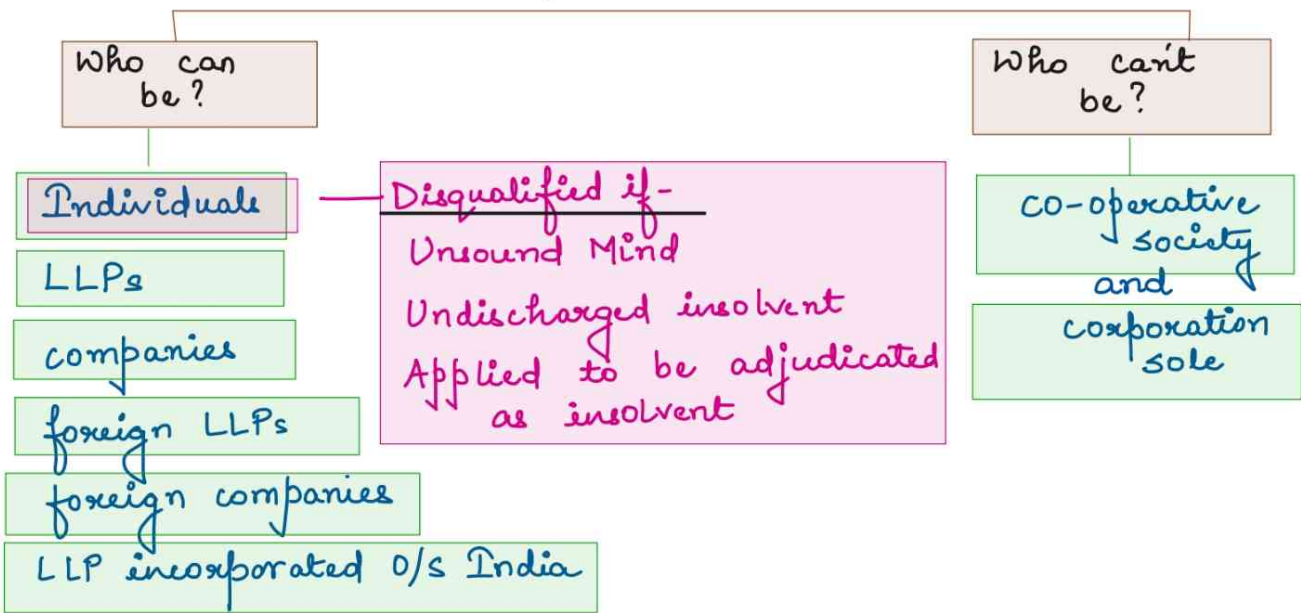
→ Partnership formed and registered under this Act

Features of LLP

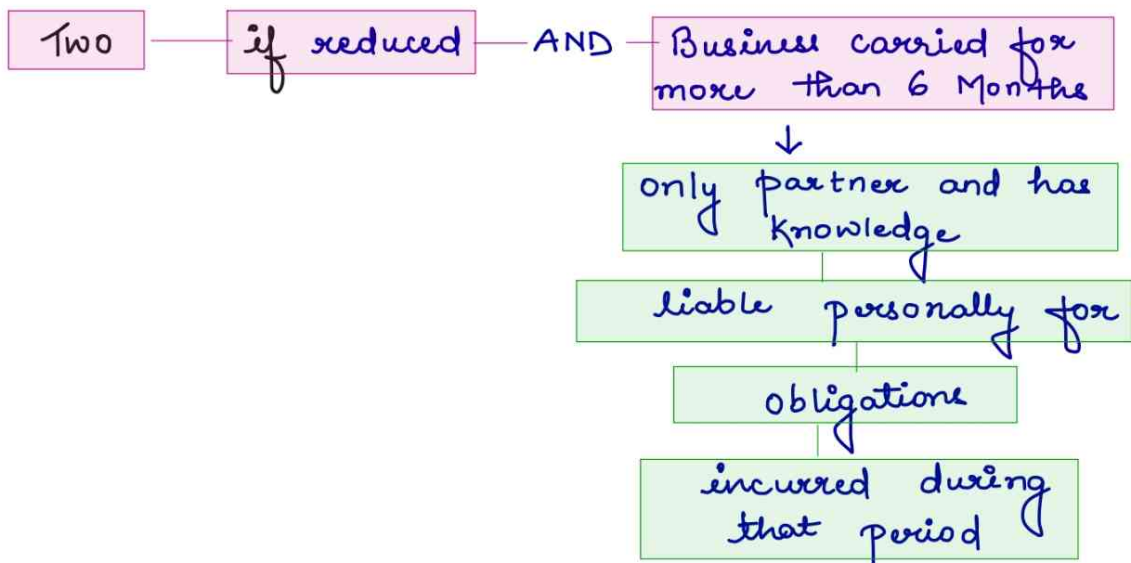
- △ Body corporate
- △ Perpetual succession
- △ Separate legal Entity
- △ Mutual Agency
- △ LLP Agreement
- △ Artificial legal Person
- △ Common seal
- △ Limited liability
- △ Entitlement of Partners to manage business
- △ At least 2 partners. No maximum limit. One shall be resident.
- △ Profit Motive
- △ CG to have investigation powers
- △ Mergers according to LLP Act
- △ Allowed to be converted to company & vice versa
- △ e-filing of Docs
- △ foreign LLP can become partner in Indian LLP

Advantages of LLP
 organised
 operates on agreement
 flexible
 Easy to form
 limited liability
 flexible capital
 Easy Dissolution

Partners (section 5)



Minimum No. of Partners (section 6)



Designated Partner (Section 7)

Contravention attracts penalty u/s 10 108

Minimum No. of Designated Partner

2

at least 1 shall be resident (who has stayed for ≥ 120 days in preceding year)

Who can be Designated partner?

Individual

If all Partners are Body corporate

Nominee of such Body corporate

Who shall be Designated Partner?

Whoever is specified by Incorporation Document OR All partners

After obtaining consent

Must have DPIN

Every LLP shall file with ROC particulars of DP within 30 days of appointment with consent.

Responsible for all acts to be done by LLP for compliance and subject to Penalties (Section 8)

Changes in Designated Partner (Sec. 9)

Contravention attracts penalty u/s 10

Vacancy

within 30 days

Appointment by LLP

file consent

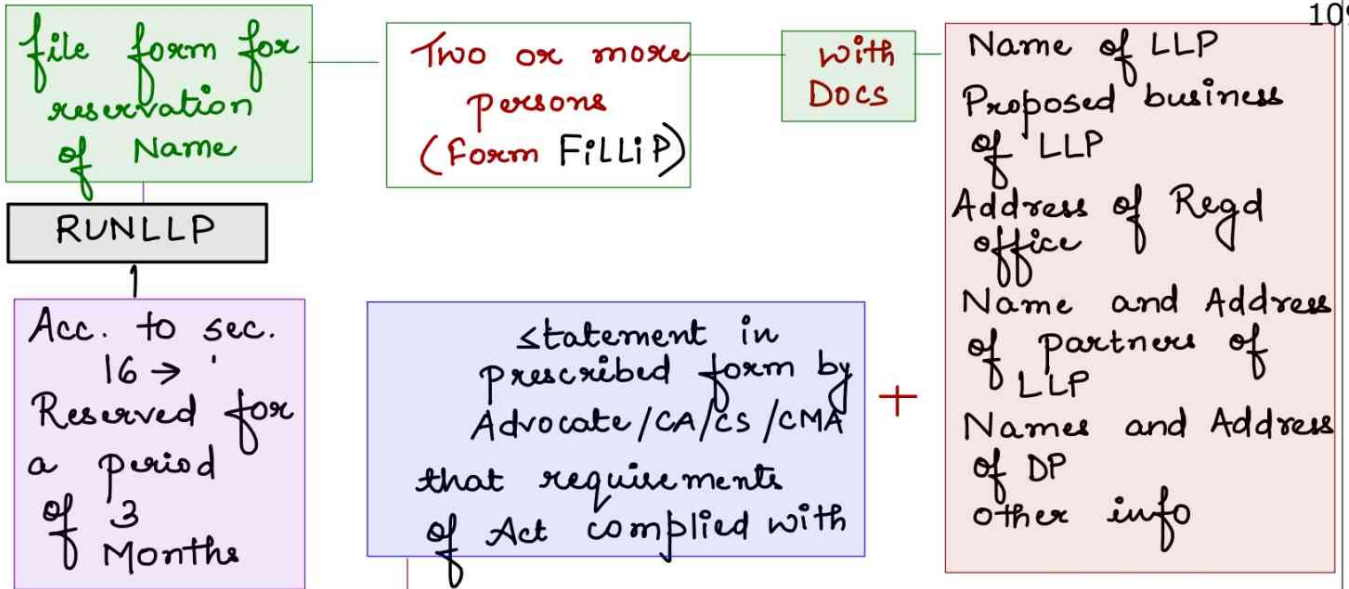
follow prescribed conditions

No DP appointed

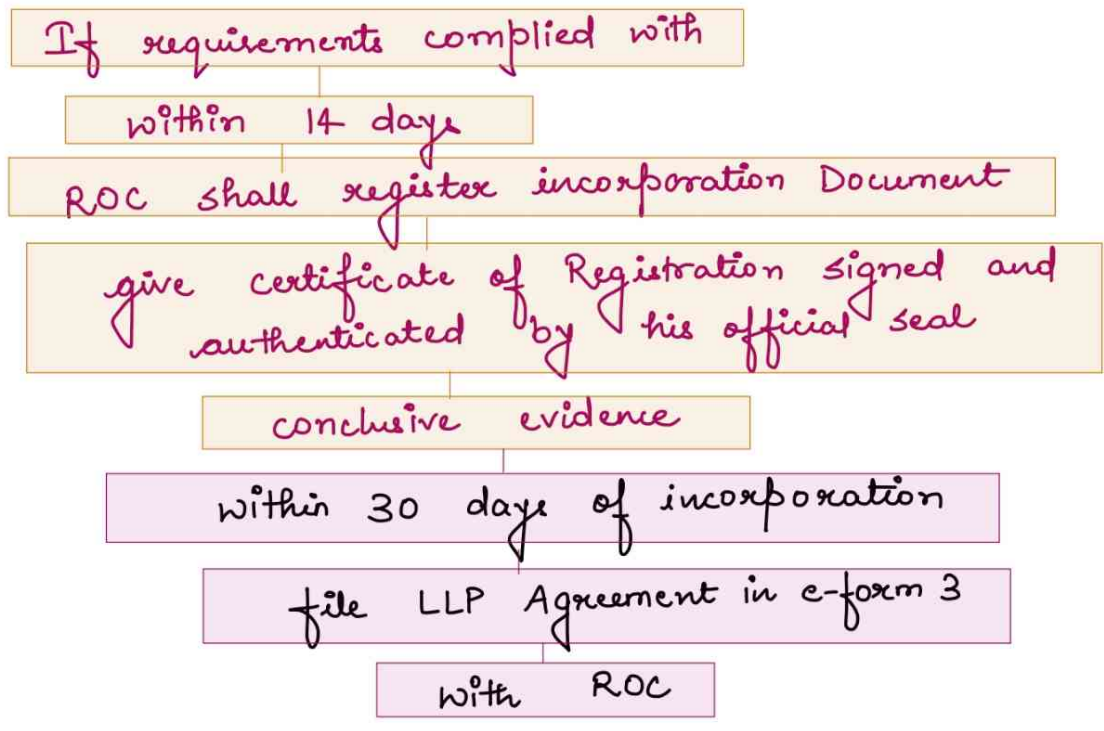
each partner deemed to be DP

Incorporation of LLP

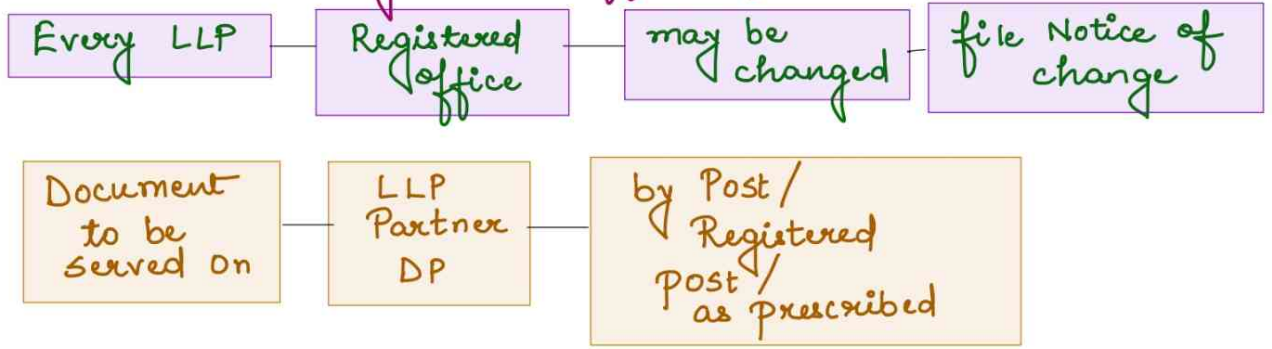
Reservation of Name
Submission of Incorporation Document
Registration of LLP



Registration (sec. 12)



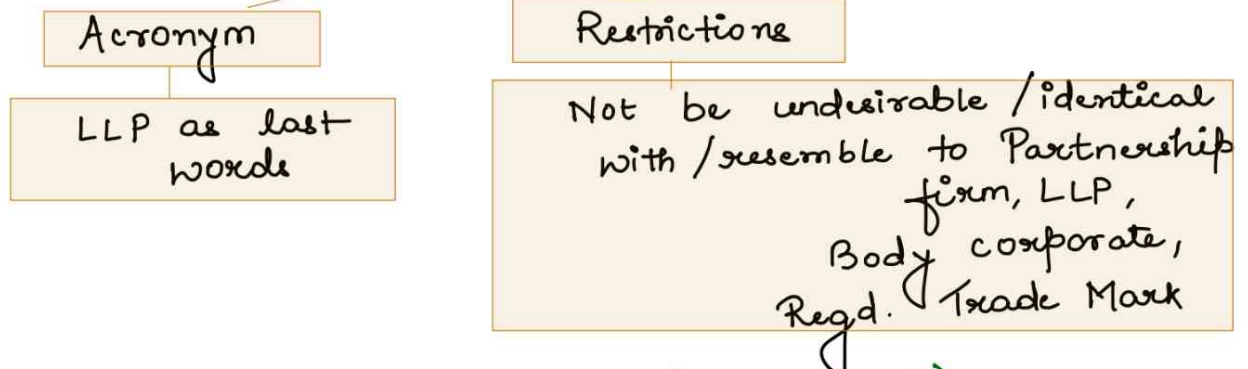
Registered office of LLP (section 13)



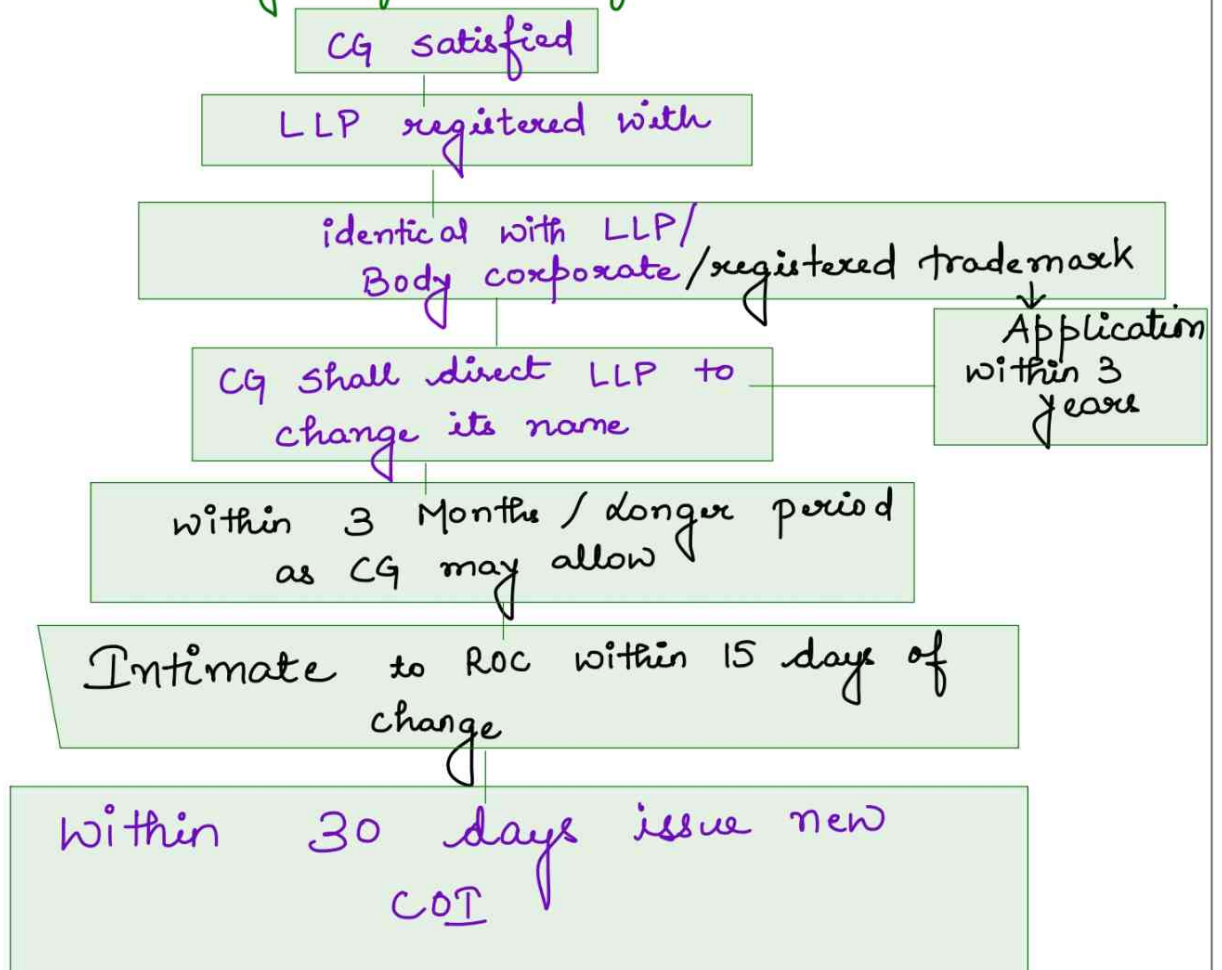
Effect of Registration (sec. 14)

capacity to sue & be sued
common seal
acquire, own, hold property etc.

Name (sec 15)



Change of Name of LLP (sec 17)



Relationship of Partner (Sec 23)

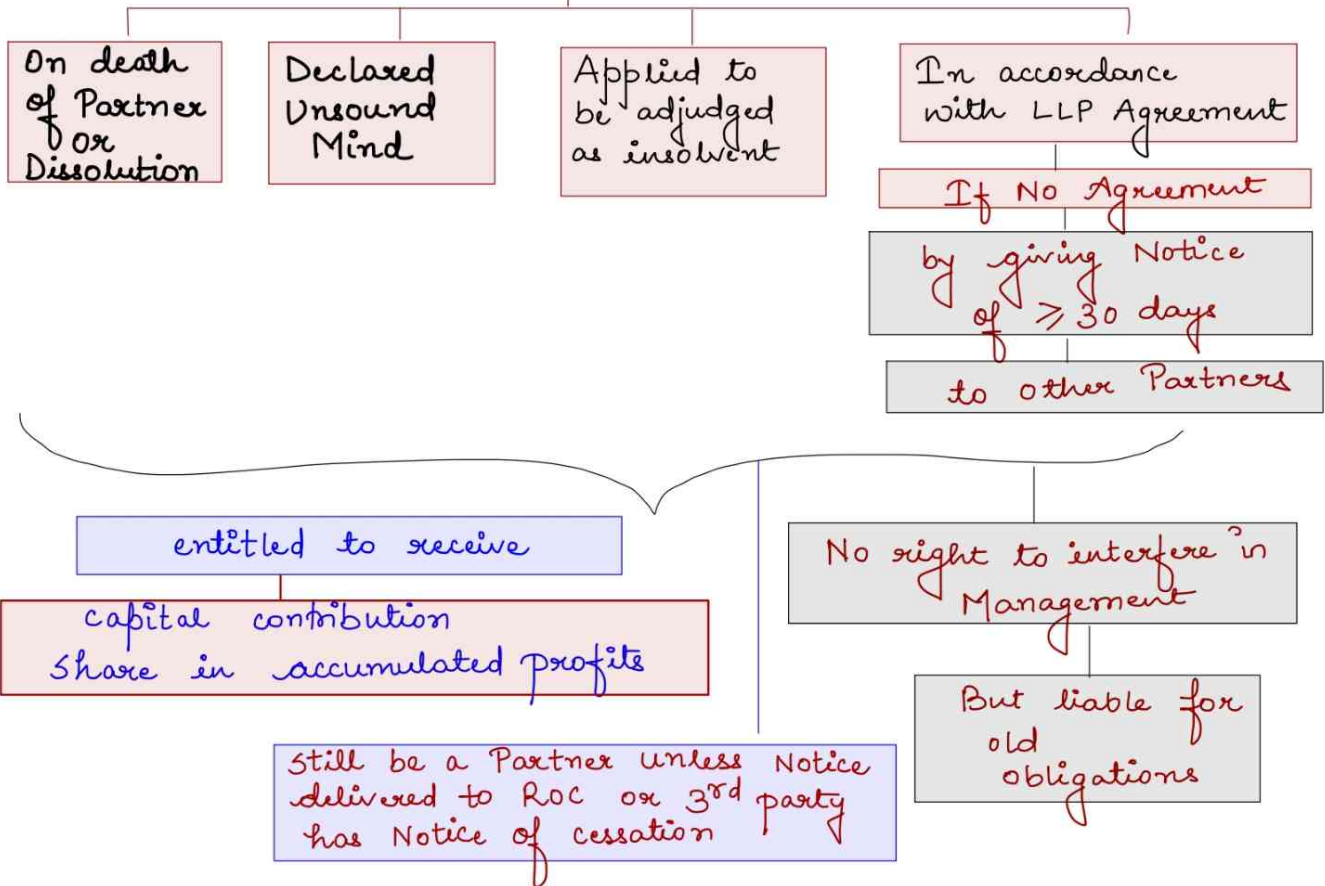
Rights and Duties governed by LLP agreement

In absence of Agreement

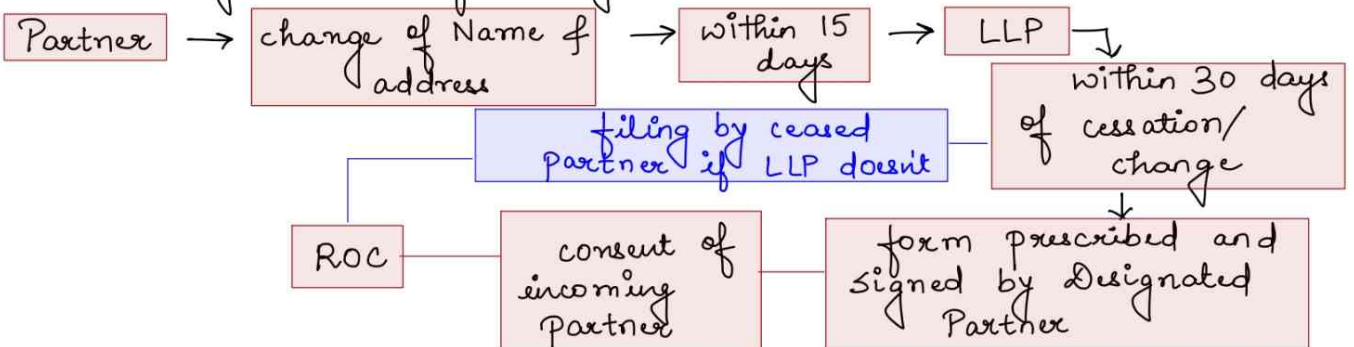
Determined by provisions set out in first schedule

Pre-incorporation agreements may impose obligations if ratified by all Partners

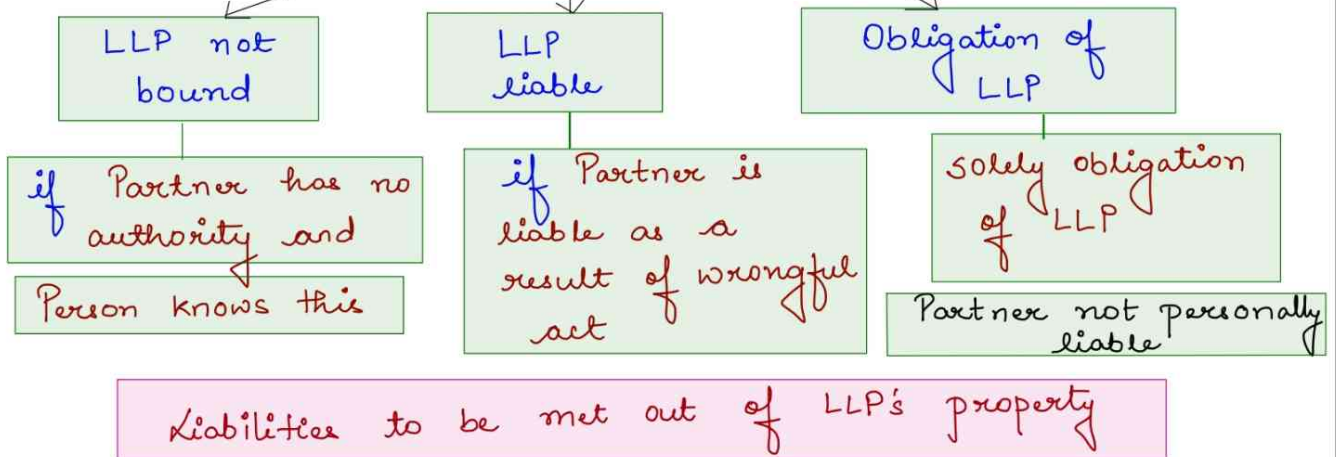
Cessation of Partnership Interest (Sec 24)



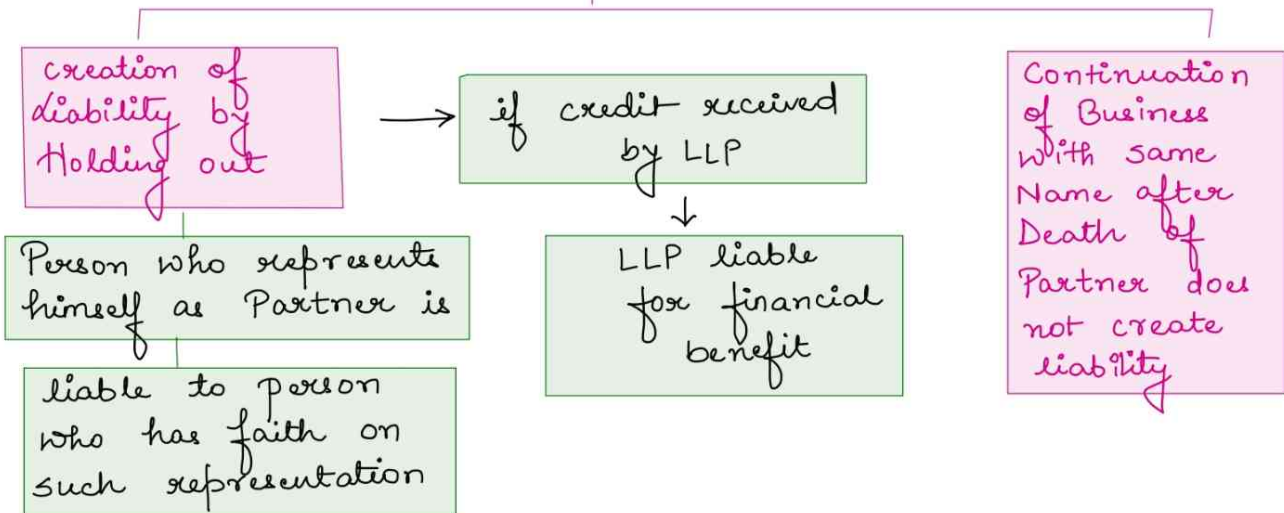
Registration of changes in Partner (Sec 25)



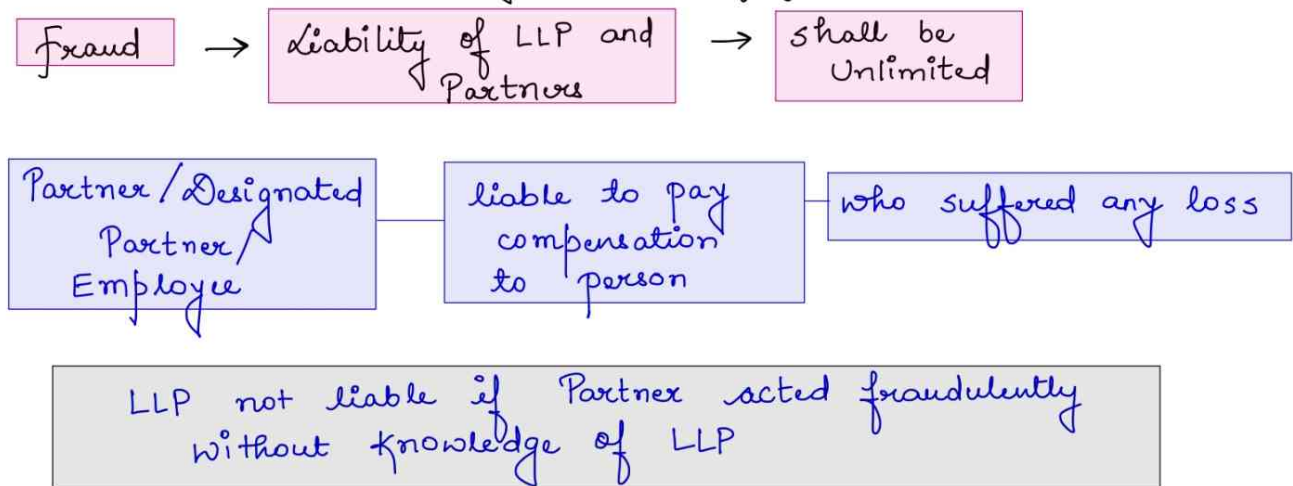
Extent of liability of LLP (sec 27)



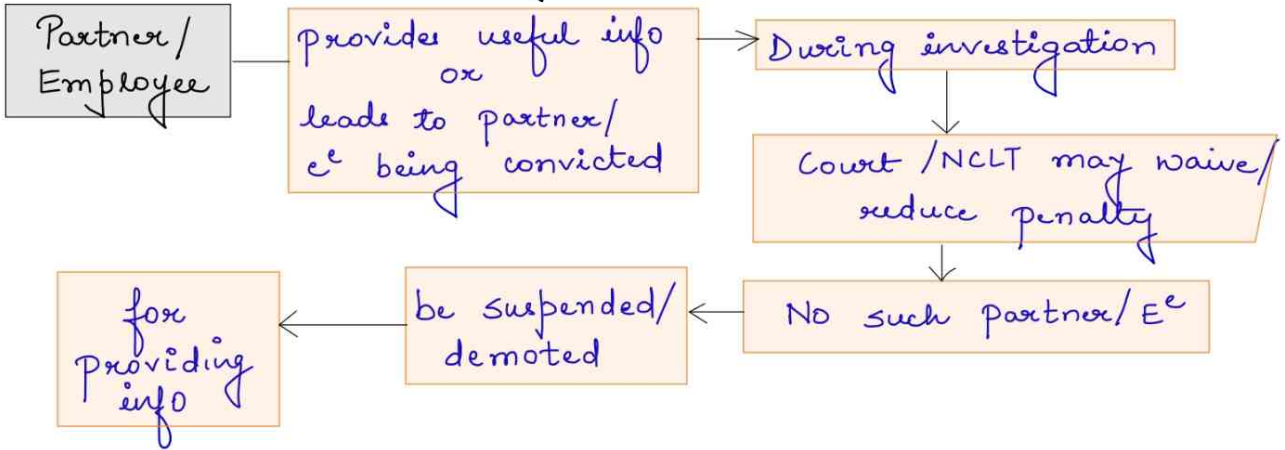
Holding Out (sec 29)



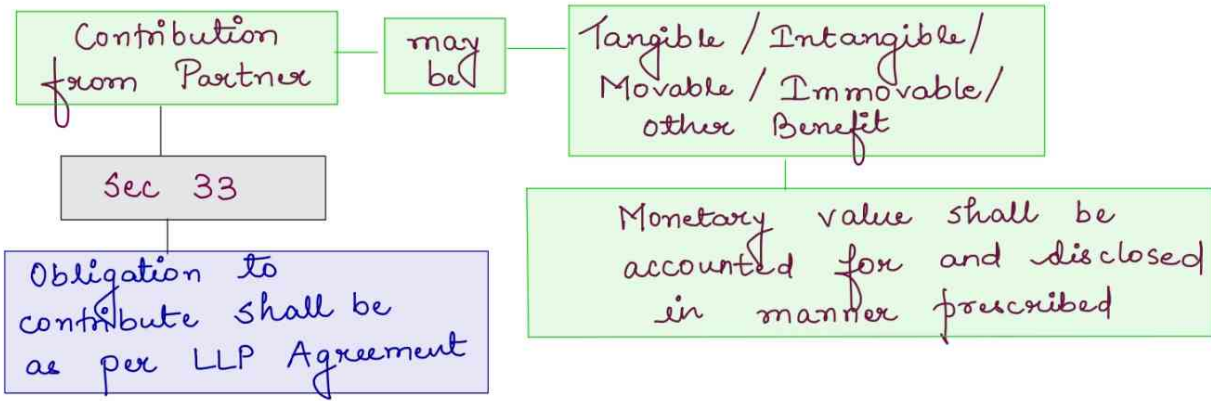
Unlimited liability in case of fraud [sec 30]



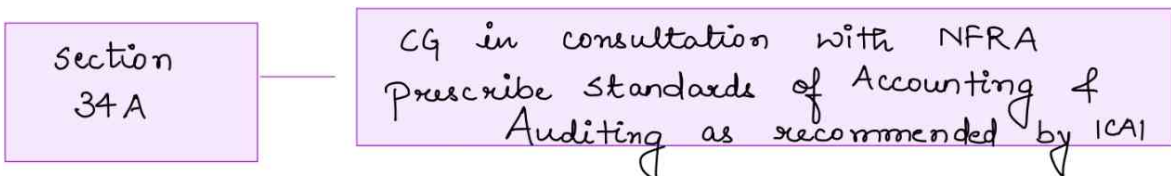
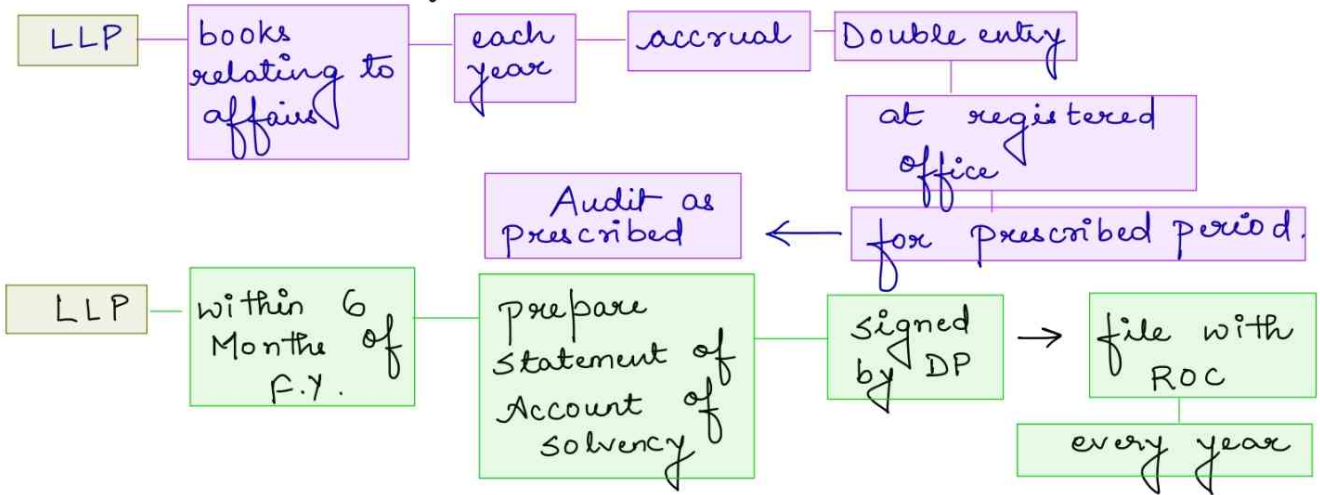
Whistle Blowing [section 31]



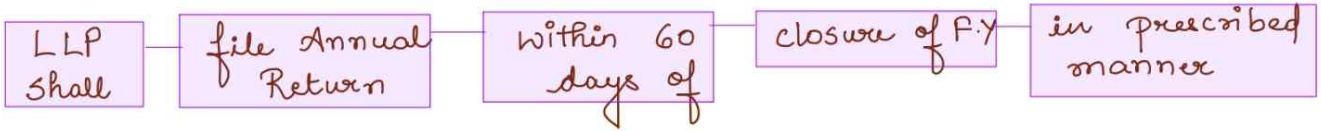
Contribution [sec 32]



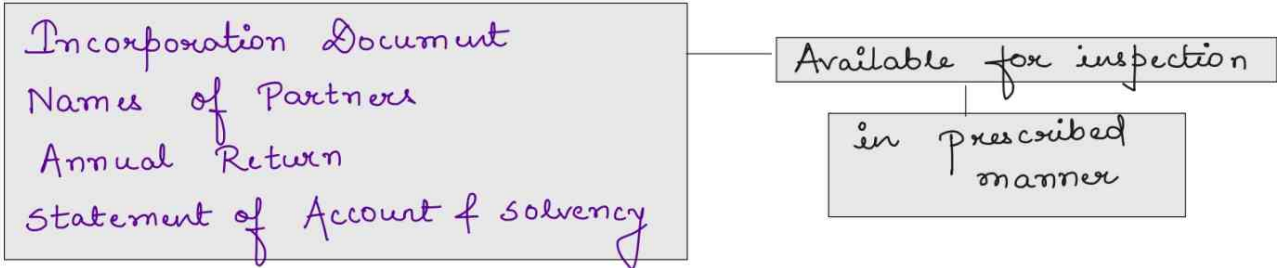
Maintenance of Books etc. [section 34]



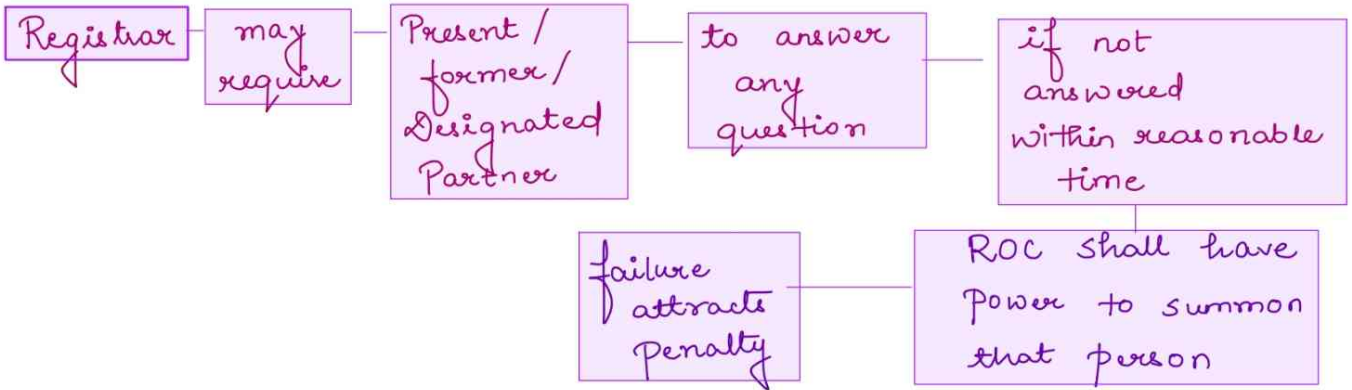
Annual Return [sec 35]



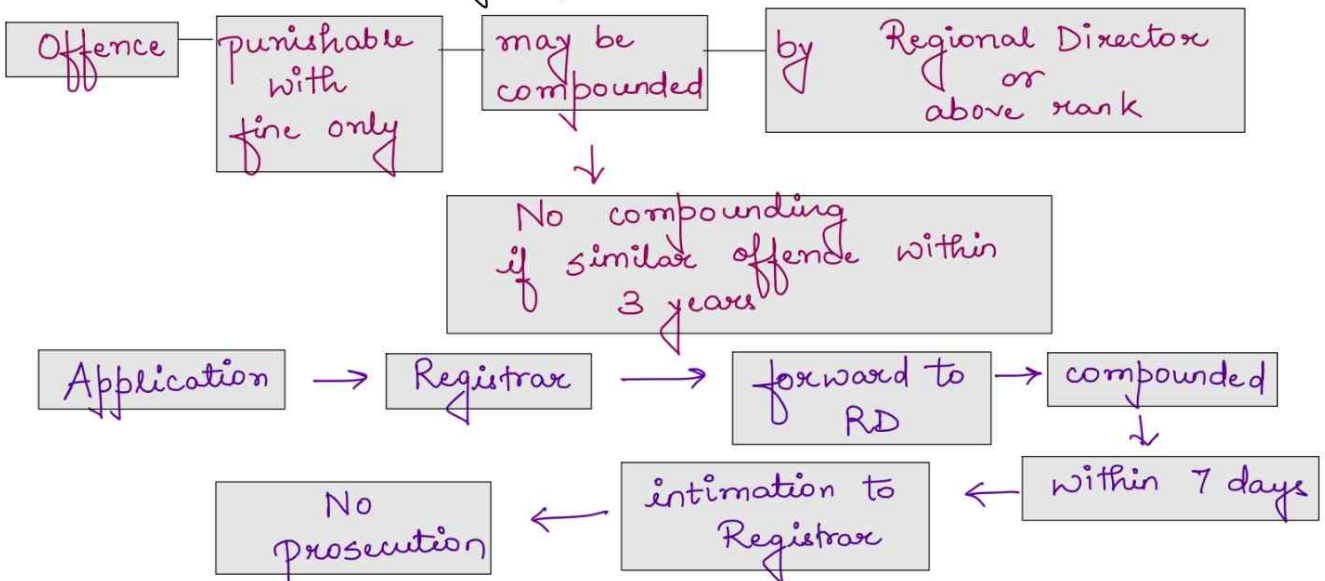
Inspection of Documents (sec 36)



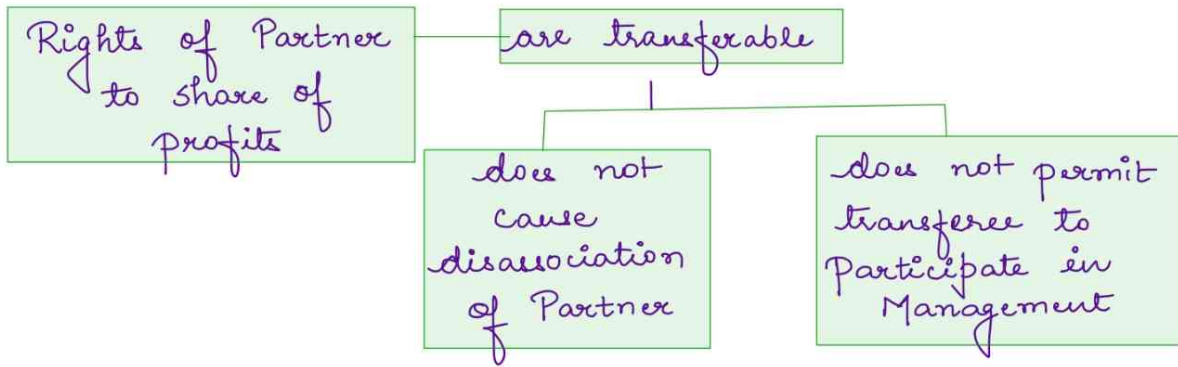
Power of Registrar to Obtain info [sec 38]



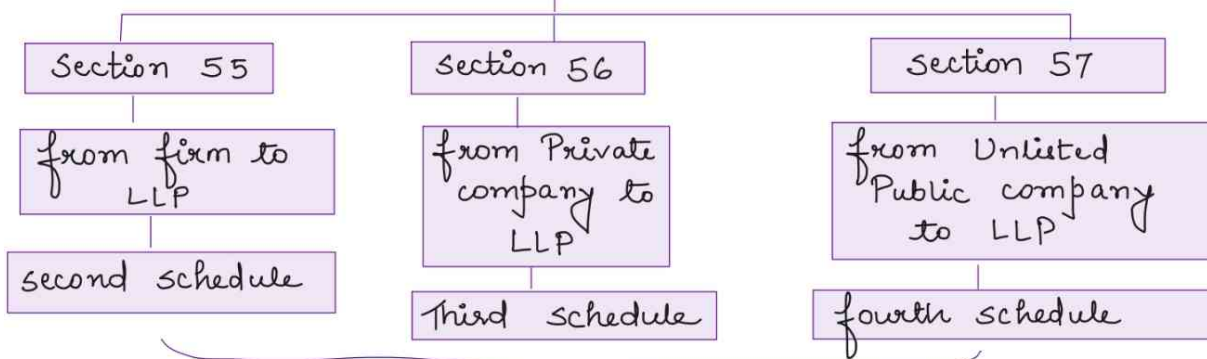
Compounding of offences [sec 39]



Partner's Transferable Interest [sec 42]

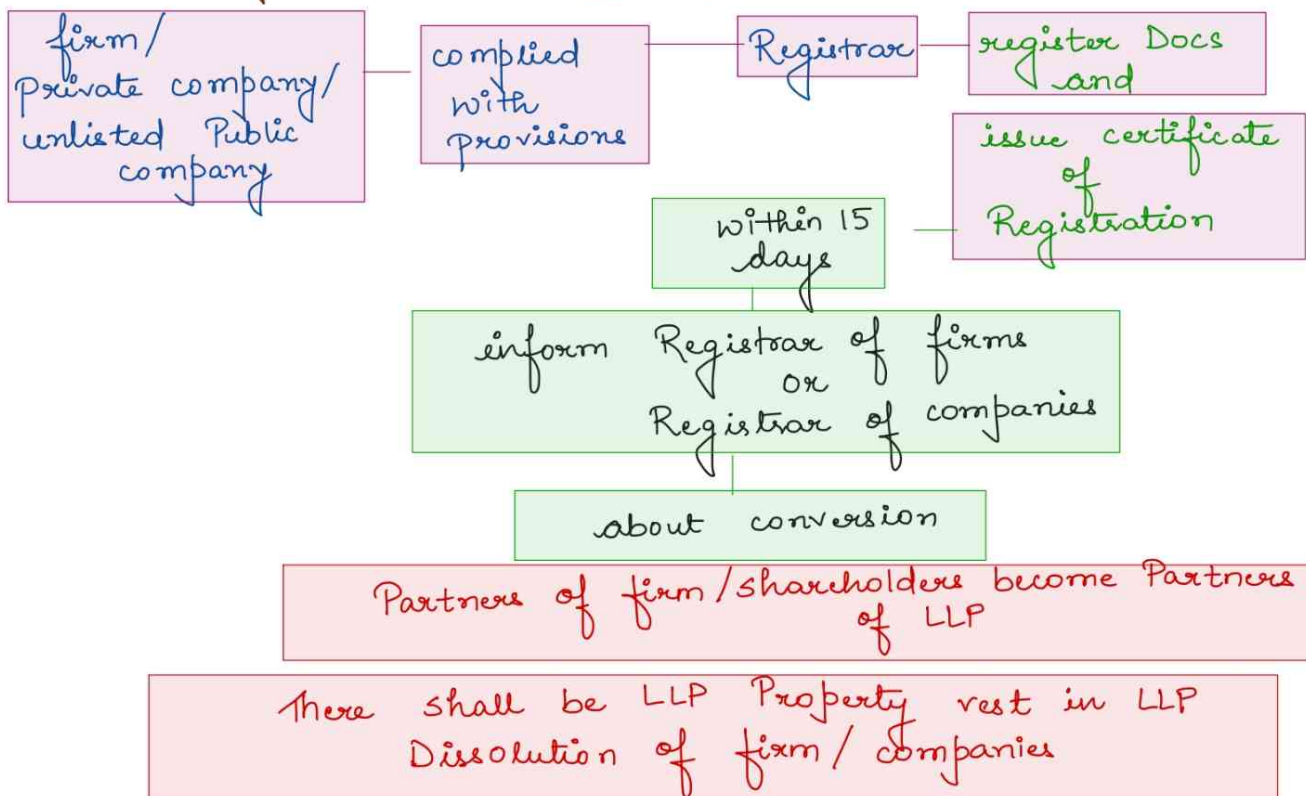


Conversion

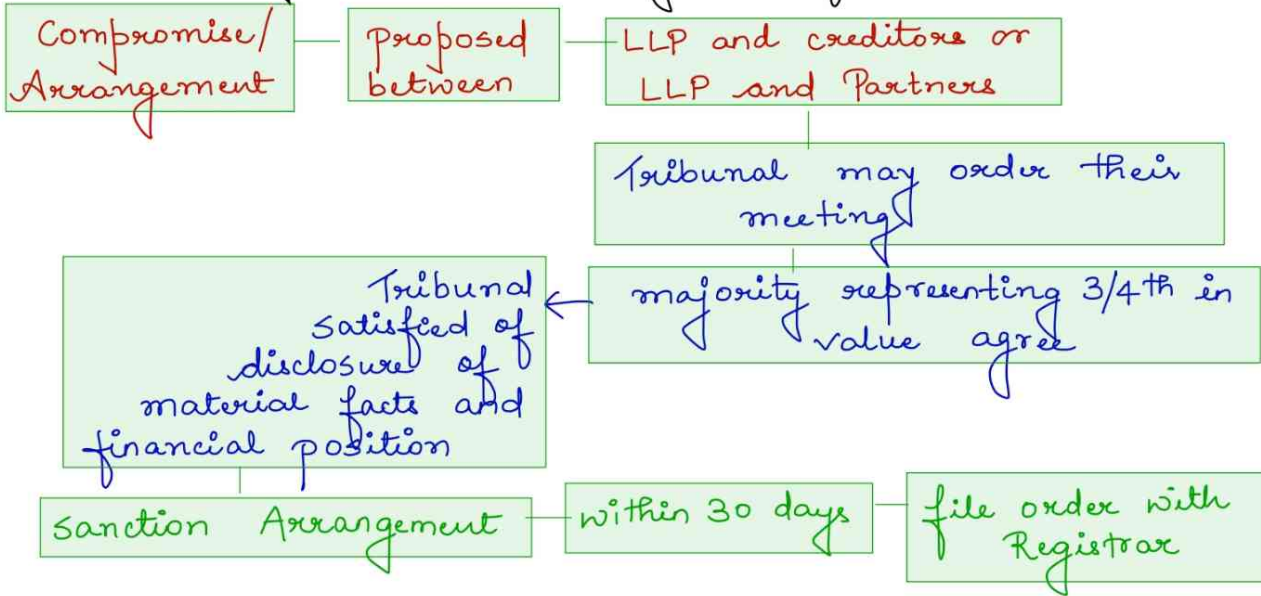


and according to Provisions of this Chapter

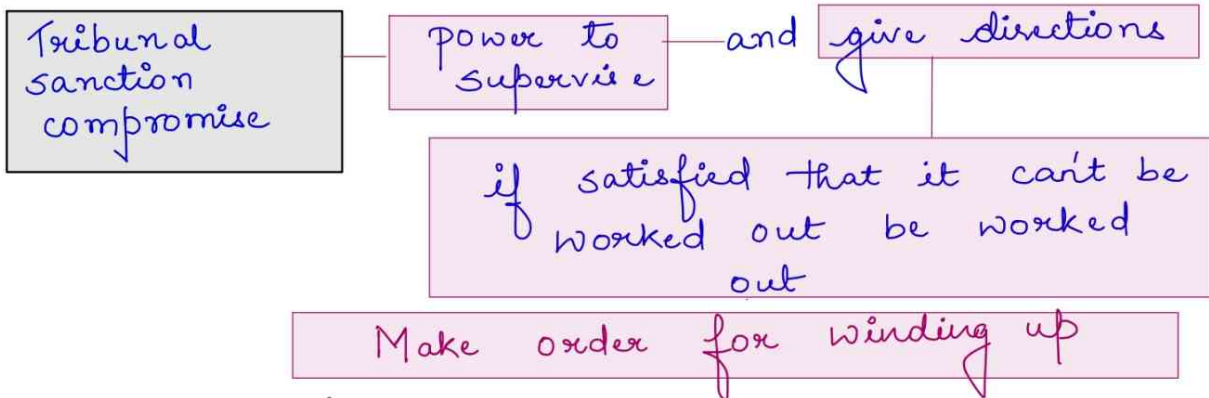
Registration and Effect of conversion (Sec 58)



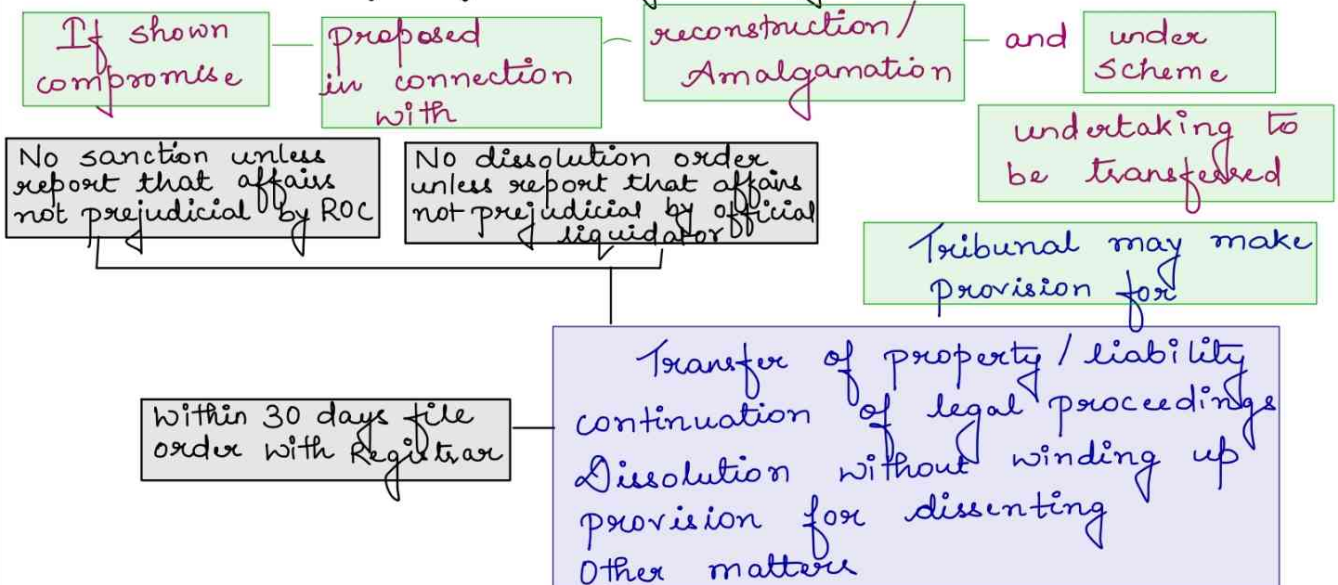
Compromise or Arrangement of LLP (sec 60)



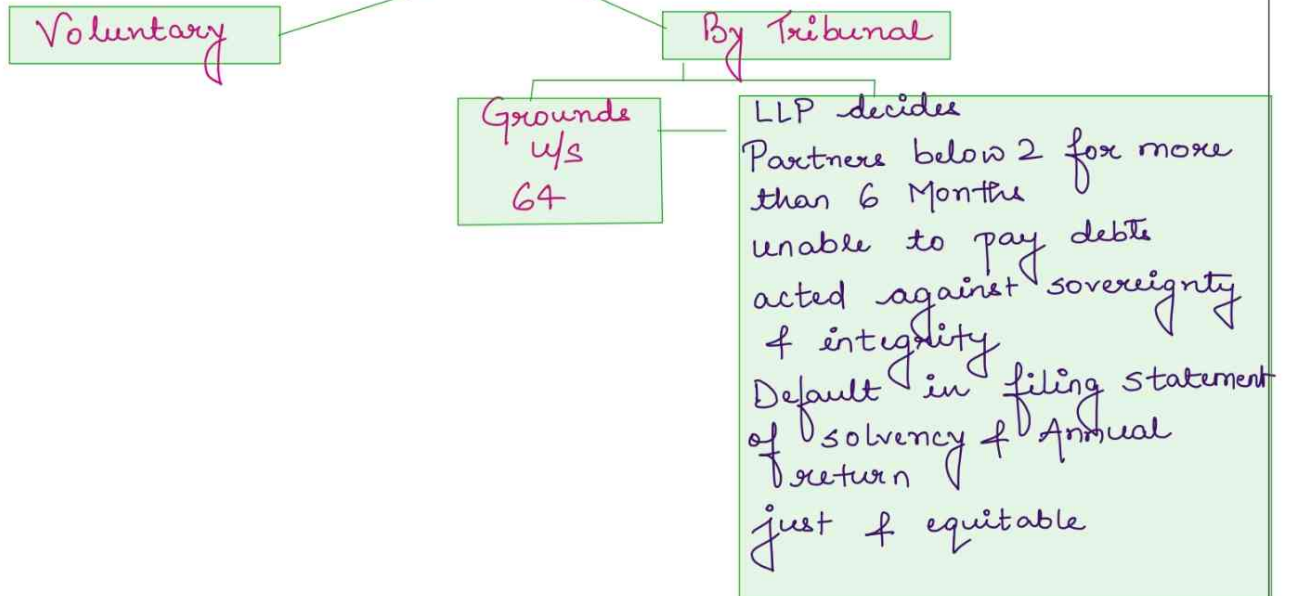
Power of Tribunal to enforce compromise (sec 61)



Provisions for facilitating Amalgamation etc. (sec 62)



Winding Up - Cg may make rules



sec 68

Doc to be filed in prescribed manner.
Electronic Doc to be true copy admissible evidence

sec 69

Doc required to be filed not filed may be filed upto 300 days on payment of additional fee. Also after 300 days with additional fee

sec 70

Twice the amount of fine in case of 2nd or subsequent offence.

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