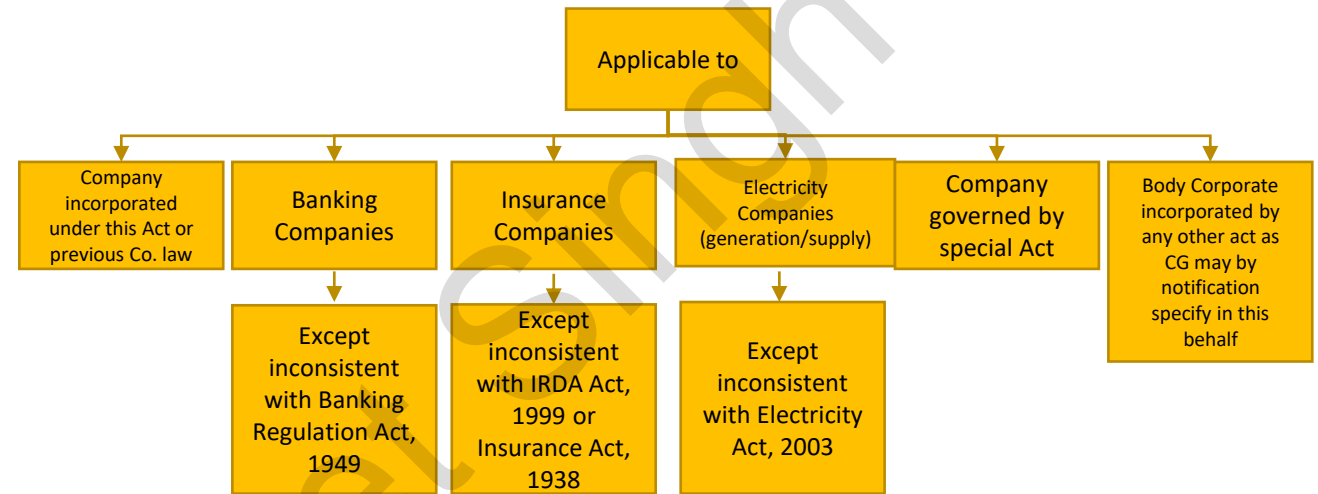
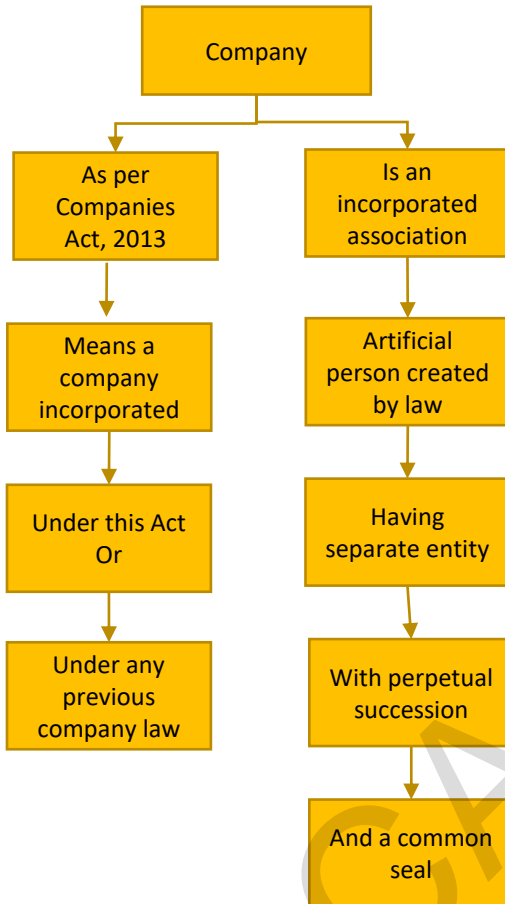
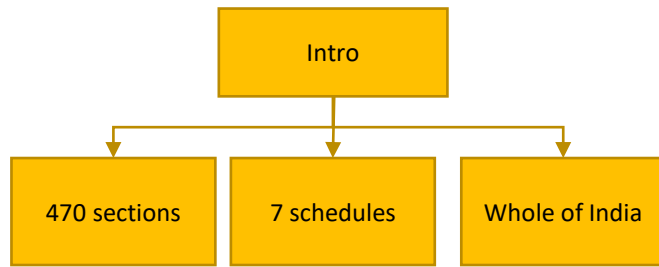
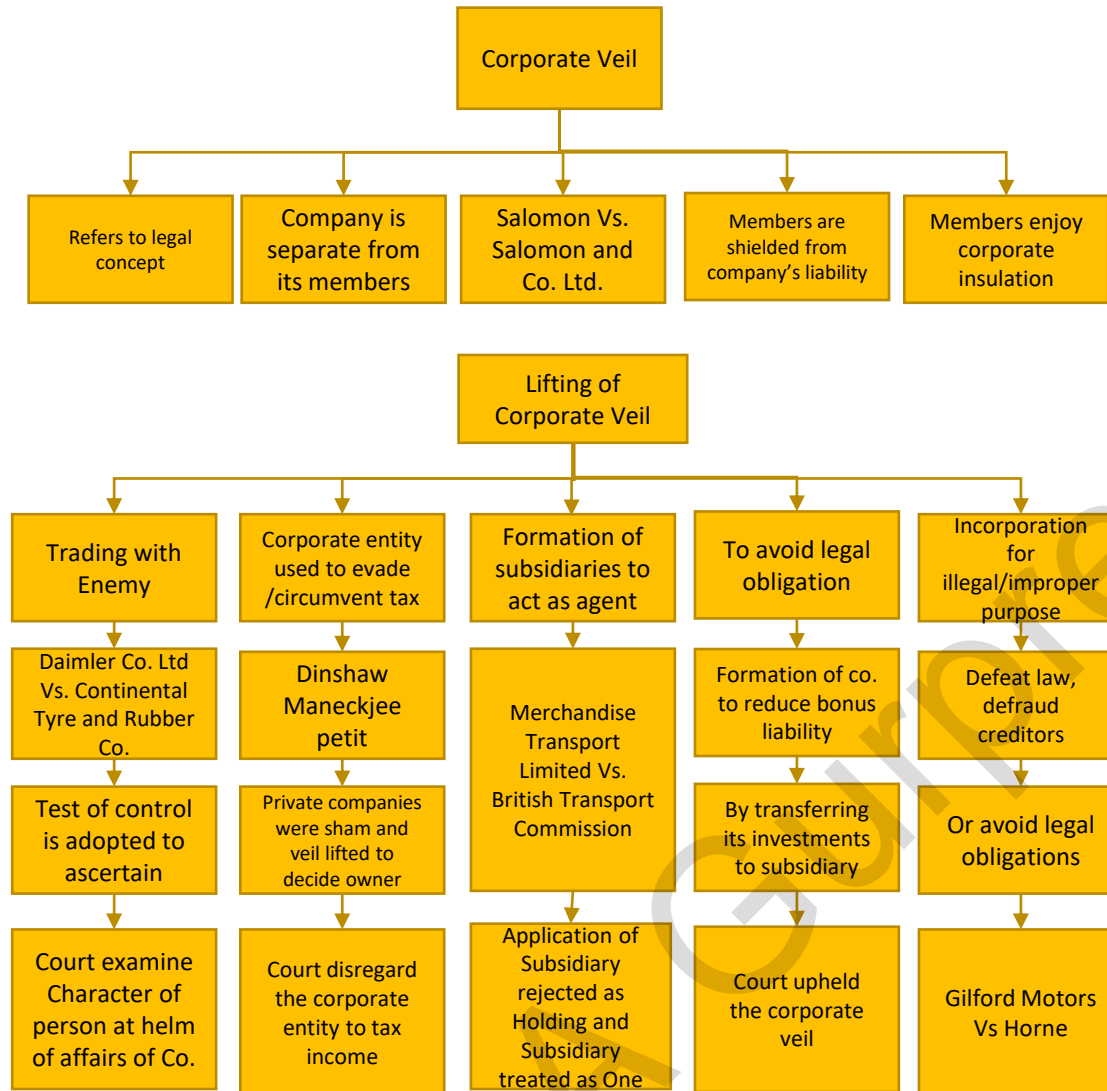


THE COMPANIES ACT, 2013

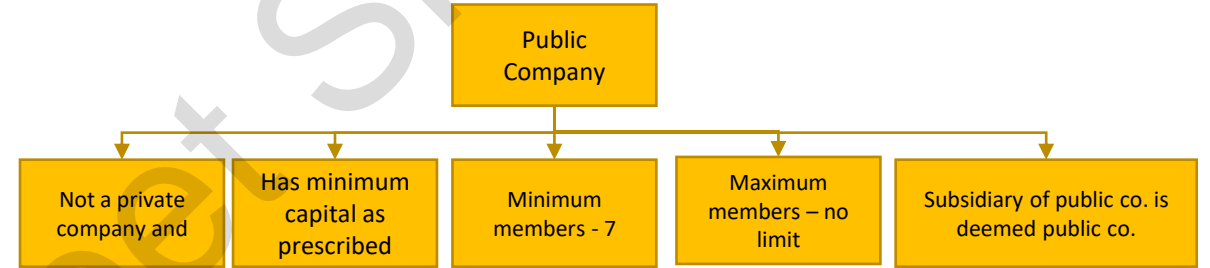
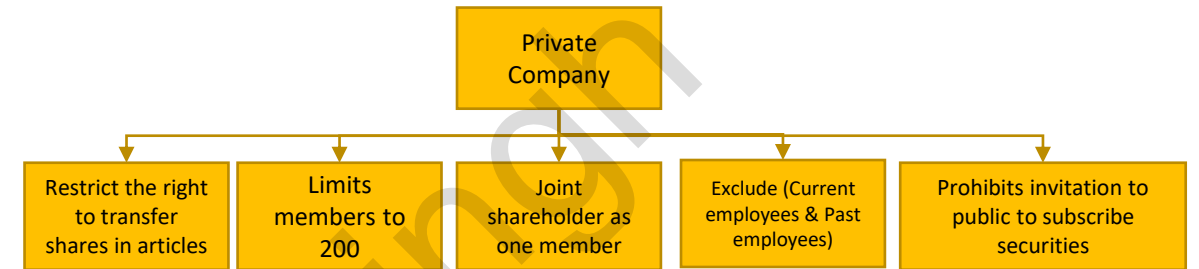
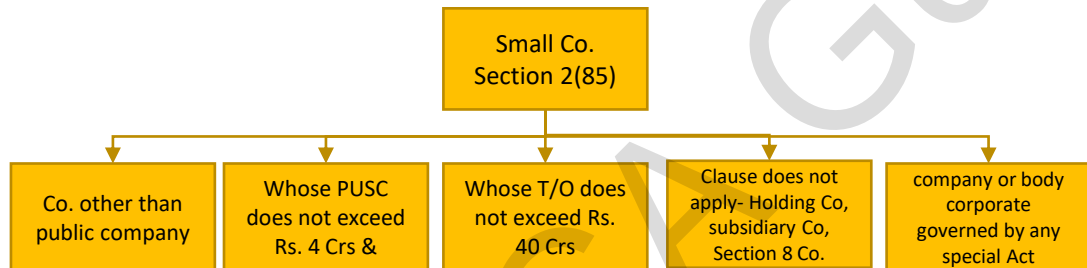
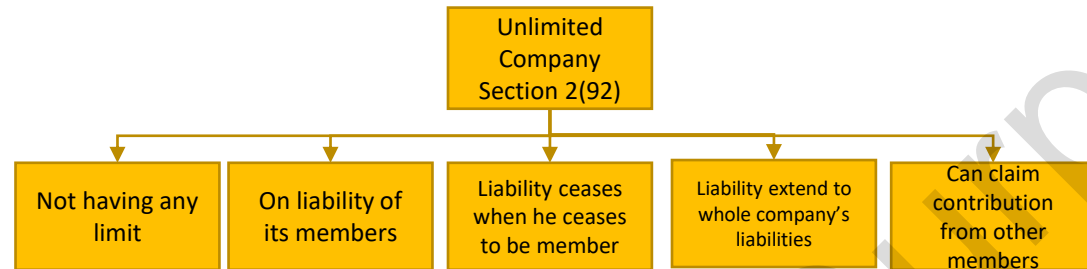
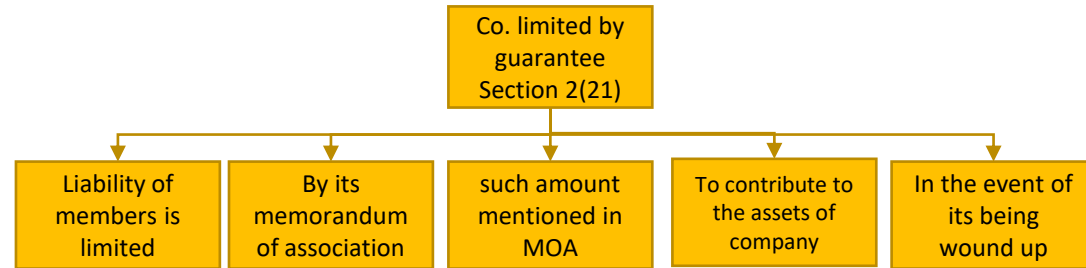
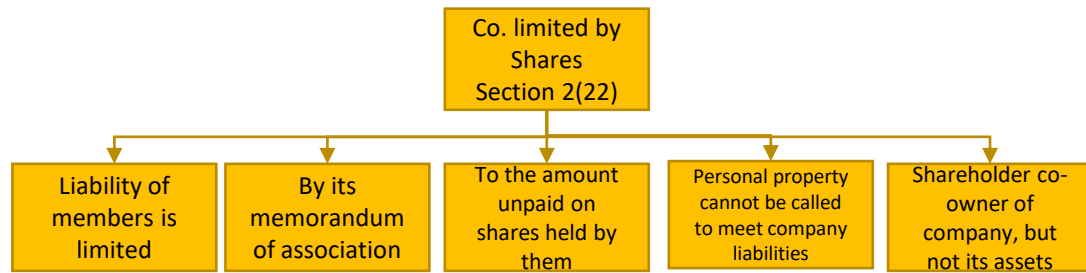




In **Salomon vs. Salomon & Co. Ltd.** the House of Lords laid down that a company is a person distinct and separate from its members. In this case one Salomon incorporated a company named "Salomon & Co. Ltd.", with seven subscribers consisting of himself, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for £ 38,782 and in turn, Salomon took 20,000 shares of £ 1 each, debentures worth £ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one £ 1 share each. Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of £ 7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debentures held by him, as he was the managing director of one-man company, which was not different from Salomon and the cloak of the company was a mere sham and fraud.

It was held by Lord Mac Naughten:

"The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act."

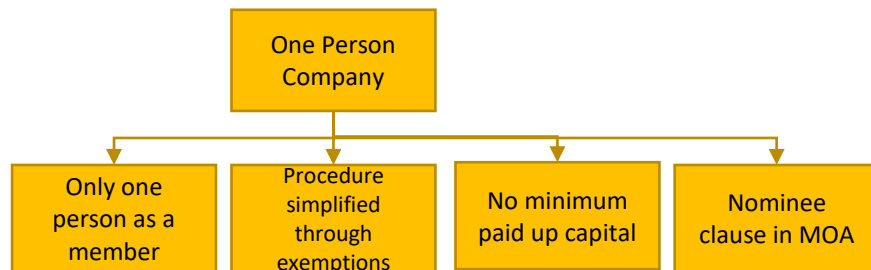


Private company - significant points

- ◆ No minimum paid-up capital requirement.
- ◆ Minimum number of members – 2
- ◆ 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.

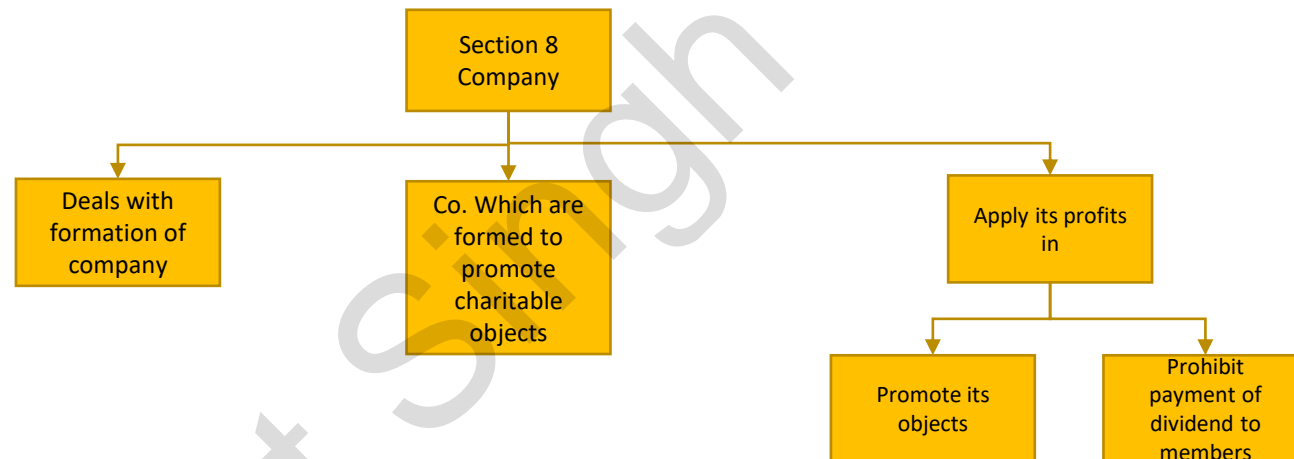
Public company - significant points

- ◆ 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.



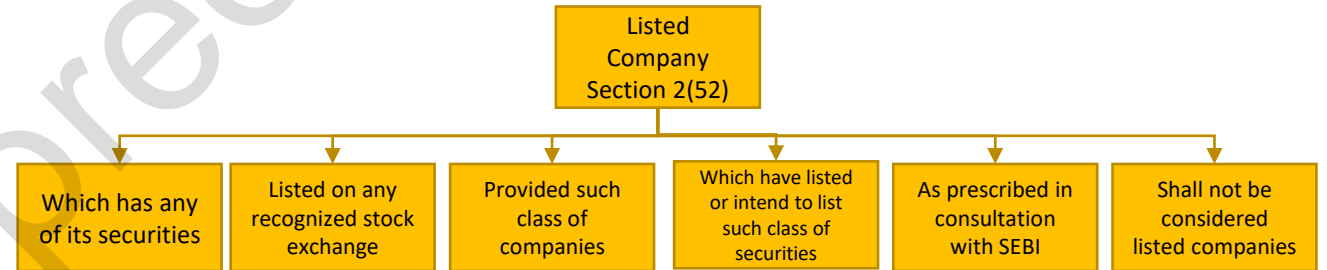
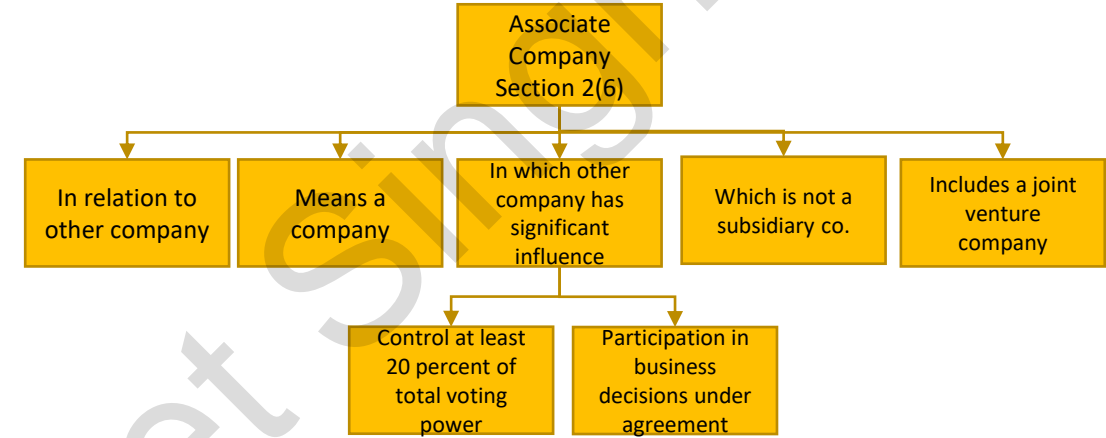
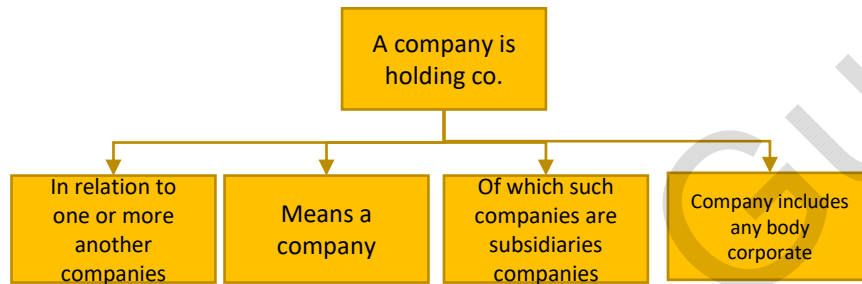
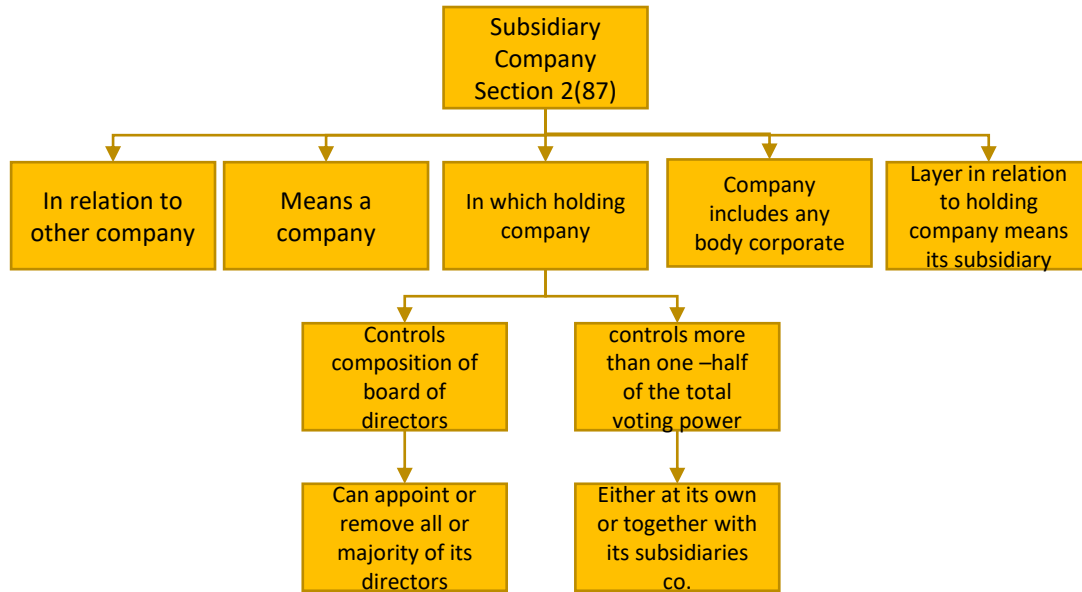
Significant points of OPC:-

- ◆ Only one person as member.
- ◆ Minimum paid up capital – no limit prescribed.
- ◆ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ◆ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e-articles.
- ◆ Such other person may be given the right to withdraw his consent.
- ◆ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ◆ Only a natural person who is an Indian citizen whether resident in India or otherwise
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- ◆ No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ◆ 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 Non-Banking Financial Investment activities including investment in securities of any body corporate.
- ◆ Here the member can be the sole member and director.

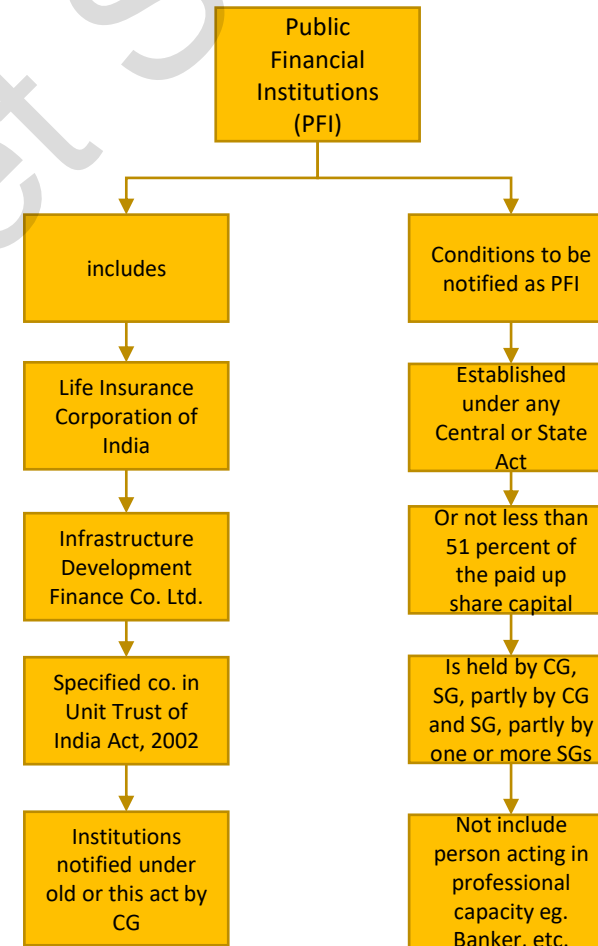
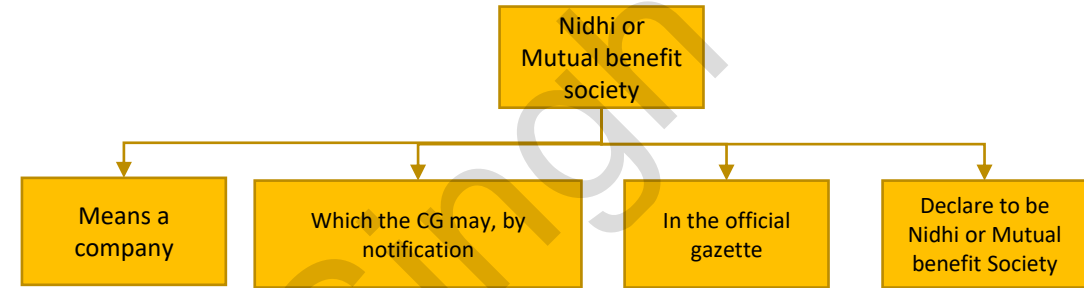
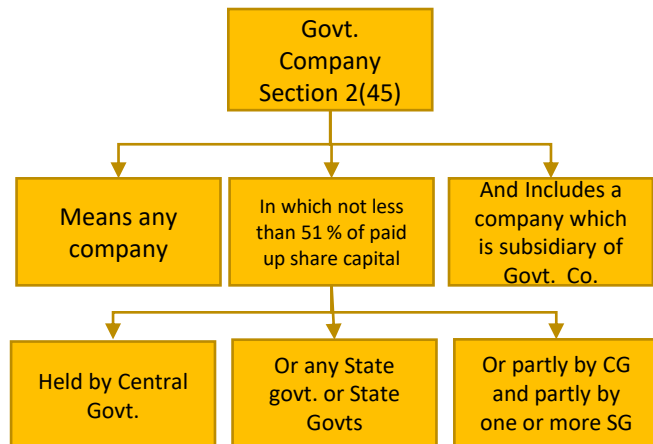
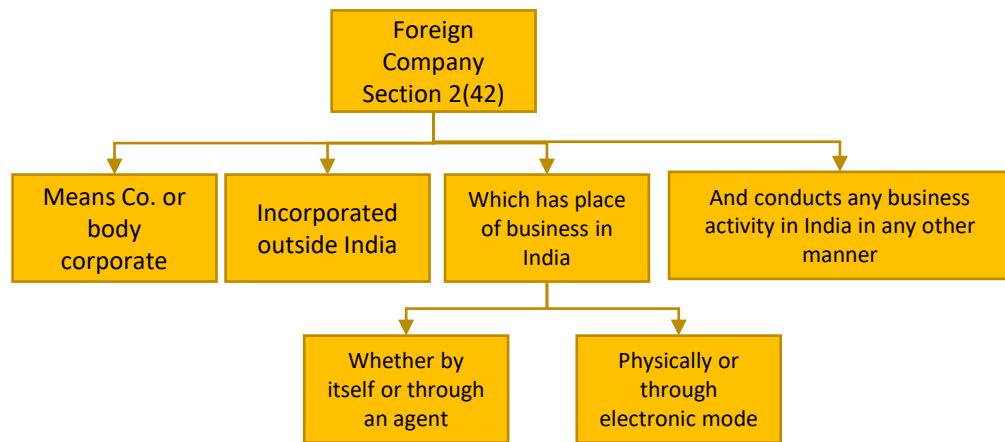


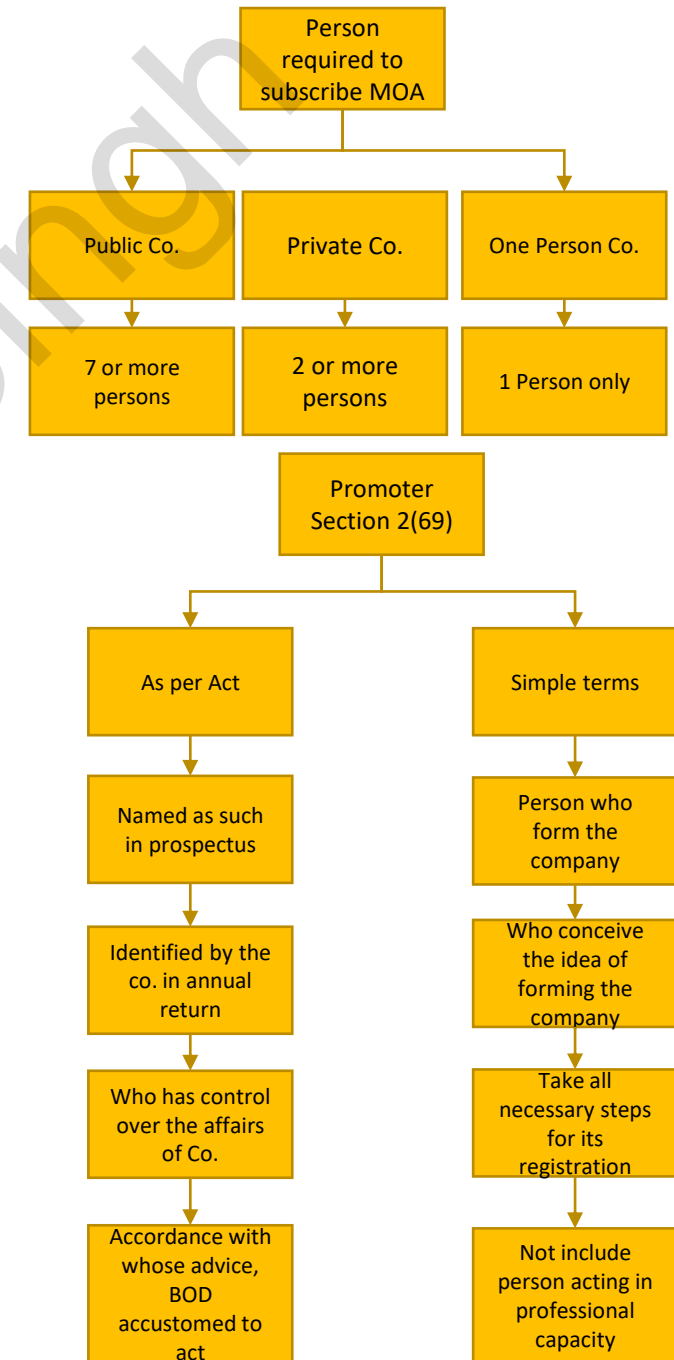
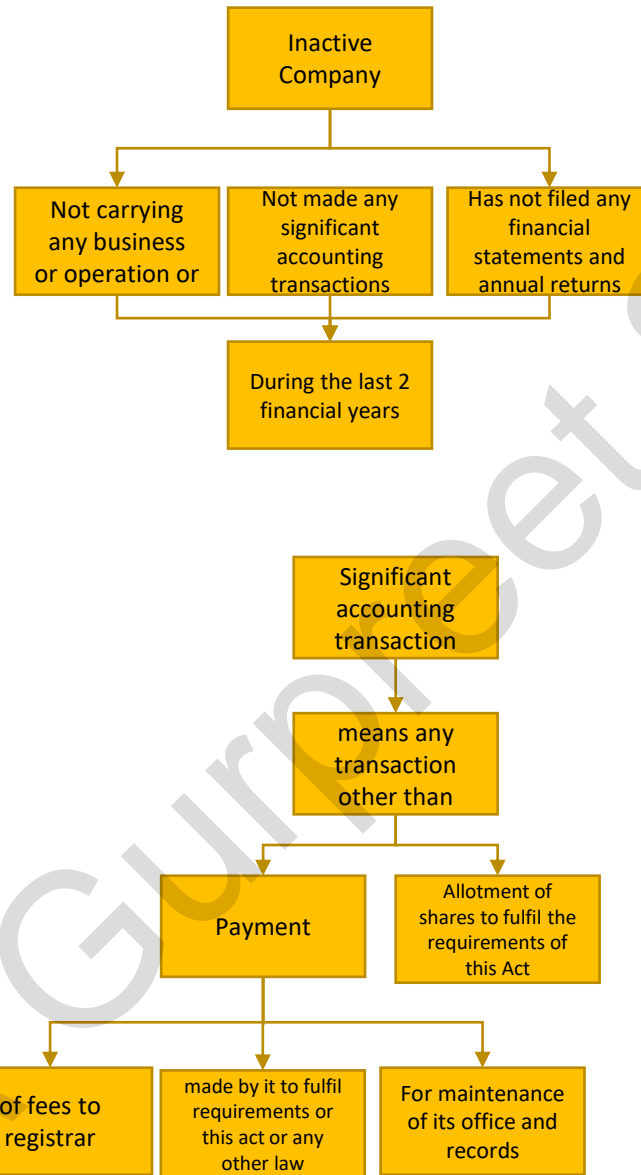
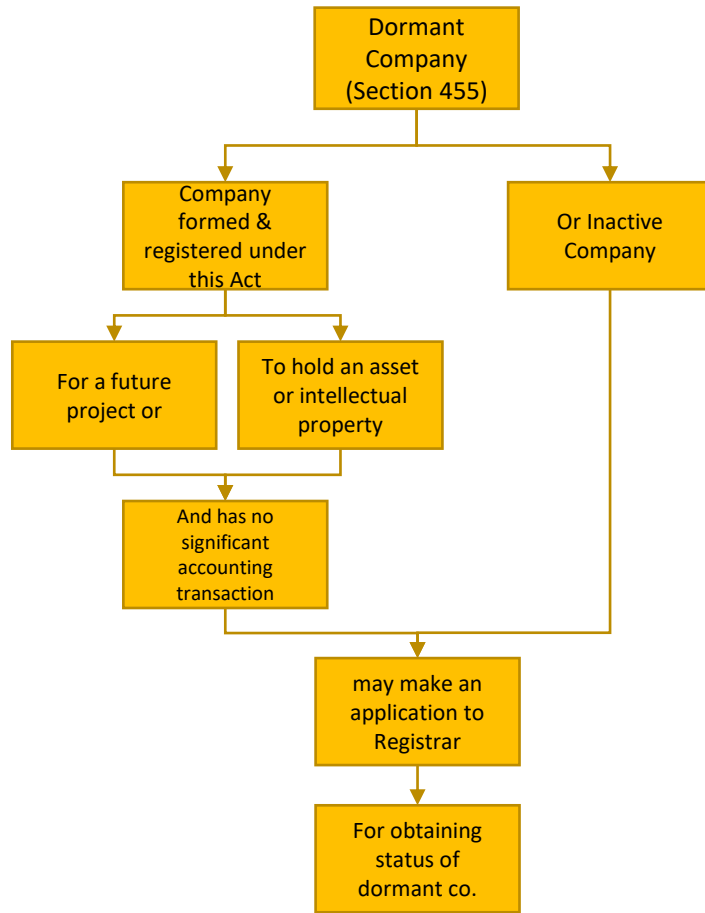
Significant Points of Section 8 Company

- ◆ Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- ◆ Requirement of minimum share capital does not apply.
- ◆ Uses its profits for the promotion of the objective for which it is 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.
- ◆ Licence revoked if conditions contravened.
- ◆ On revocation, Central Government may direct it to
 - Converts its status and change its name
 - Wind – up
 - Amalgamate with another company having similar object.
- ◆ 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.
- ◆ Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee
- ◆ A partnership firm can be a member of Section 8 company.



Unlisted Company means a company other than listed company





Section 7 – INCORPORATION OF COMPANY



SPICE+ = Simplified Proforma for Incorporating a Company Electronically Plus



Promoter

**Files SPICE+
form
with info
and
documents
and
declaration**



ROC

CIN

CORPORATE IDENTIFICATION NUMBER

APPROVED



**RoC issues Certificate of
Incorporation**

Information	Documents	Declaration
Address for Correspondence till its registered office is established	Memorandum and Articles Duly signed by all the subscribers	Declaration by person engaged in the formation of Co.
Particulars of Subscribers to MOA and First Directors	Proof of Identity of Subscribers to MOA and First Directors	(Advocate/CA/CMA/CS in practice) and by person named in articles as (director manager or secretary)
Particulars of interest of the person named as First Directors in Other Firm or Body Corporate	Written consent to Acts as director of The Company	- All the requirements of this Act and rules thereunder have been complied with
		Declaration from each Subscribers to MOA and First Directors <ul style="list-style-type: none"> - Not convicted of Offence involving promotion/formation/management of the Company - Not found guilty of fraud, misfeasance, breach of duty under this Act during last 5 years - All documents filed with RoC contain correct, complete and true info

1)

Pre - Incorporation :-

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

2)

Post - Incorporation :-

Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants

- 1) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- 2) direct that liability of the members shall be unlimited
- 3) Declaration that not convict/ not filed guilty for fraud
- 4) direct removal of the name of the company from the register of companies;
- 5) pass an order for the winding up of the company
- 6) pass such other orders as Tribunal may deem fit:

Before passing order, Tribunal

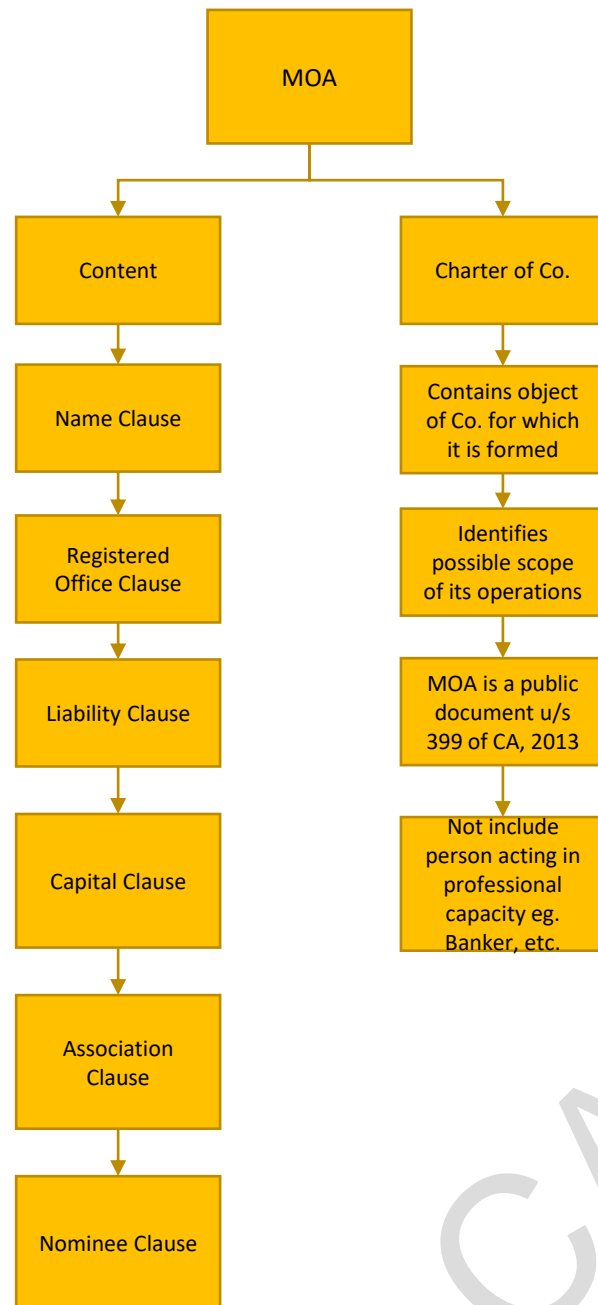
- 1) Give the company shall be given a reasonable opportunity of being heard in the matter &
- 2) shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Section 9 - EFFECT OF REGISTRATION

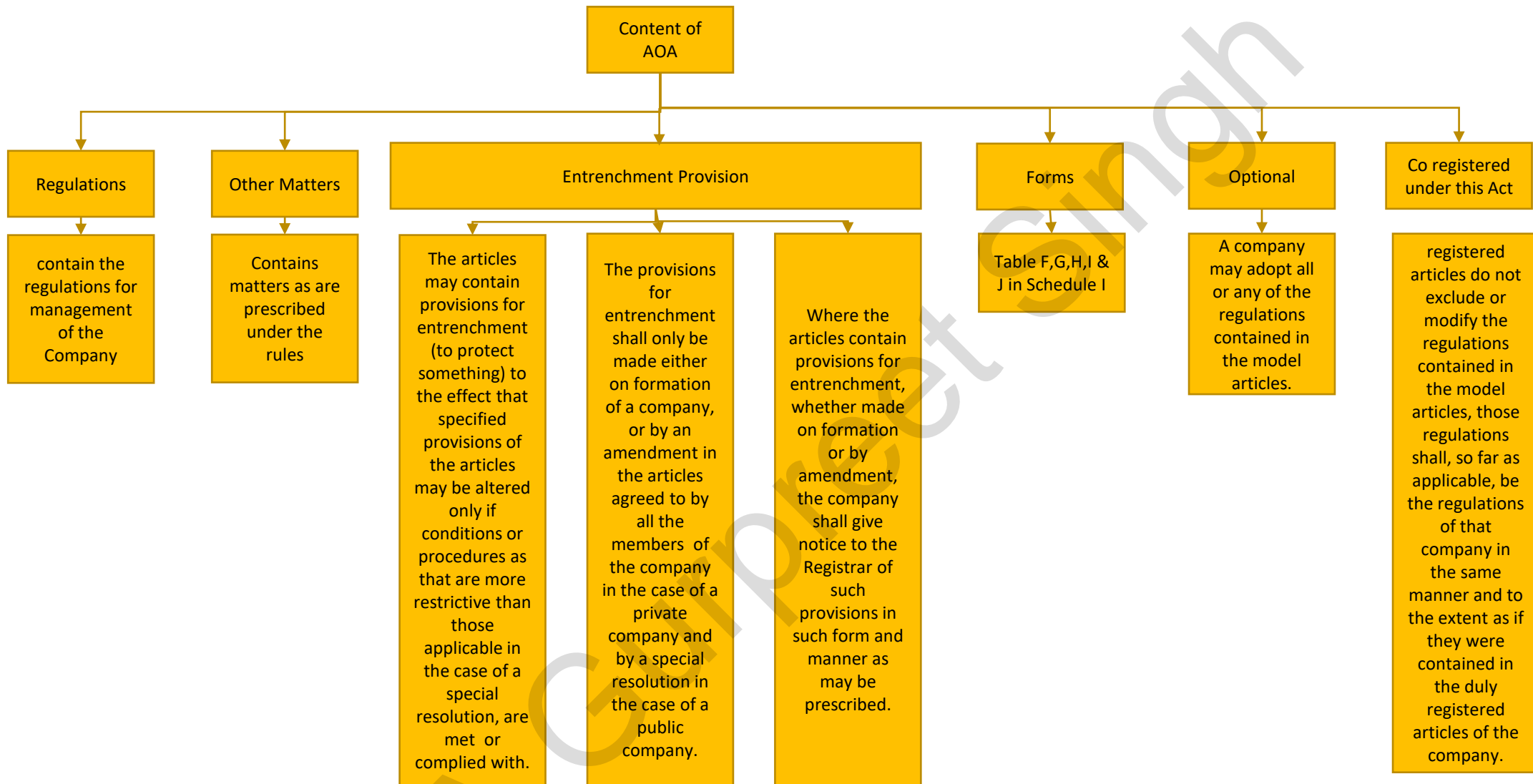
- 1) From date of incorporation, Company is separate from Subscriber to MoA (Separate legal entity)
- 2) A company purchase 100 percent shares of other company but still they are different
- 3) Central Govt owns 100 percent shares of all the company but still it is not an agent of Govt
- 4) Any money payable by members to company will be considered as debt due to company

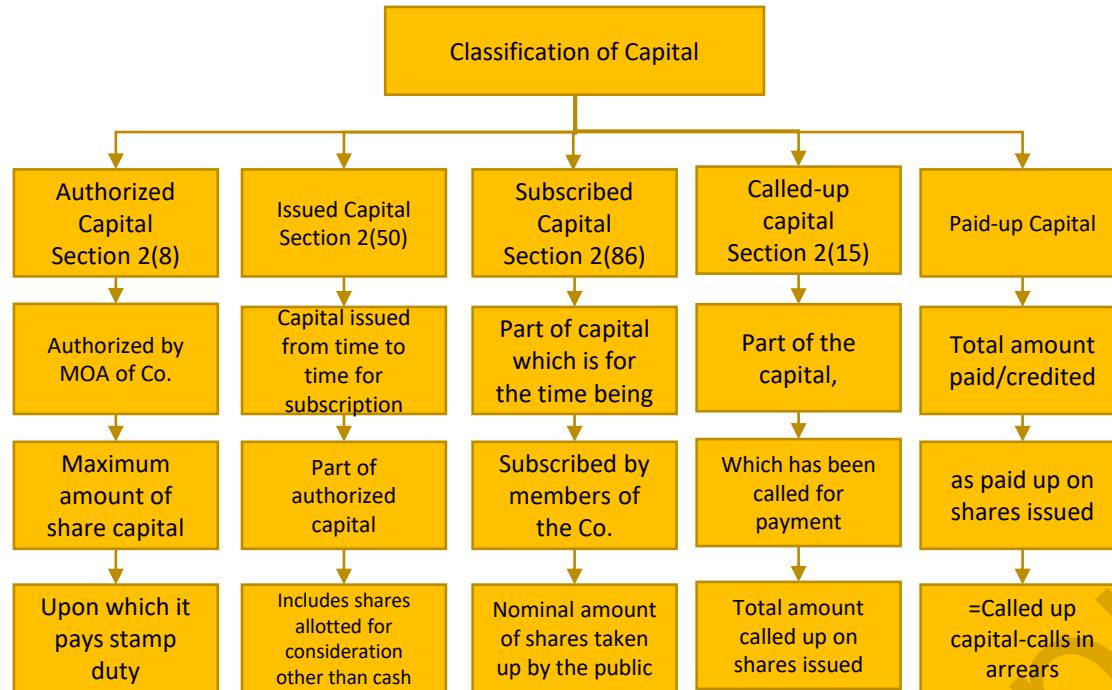
Section 10 - EFFECT OF MOA AND AOA

- 1) where the MOA and AOA when registered, shall bind the company and the members
- 2) All monies payable by any member to the company under the MOA or AOA shall be a debt due from him to the company.

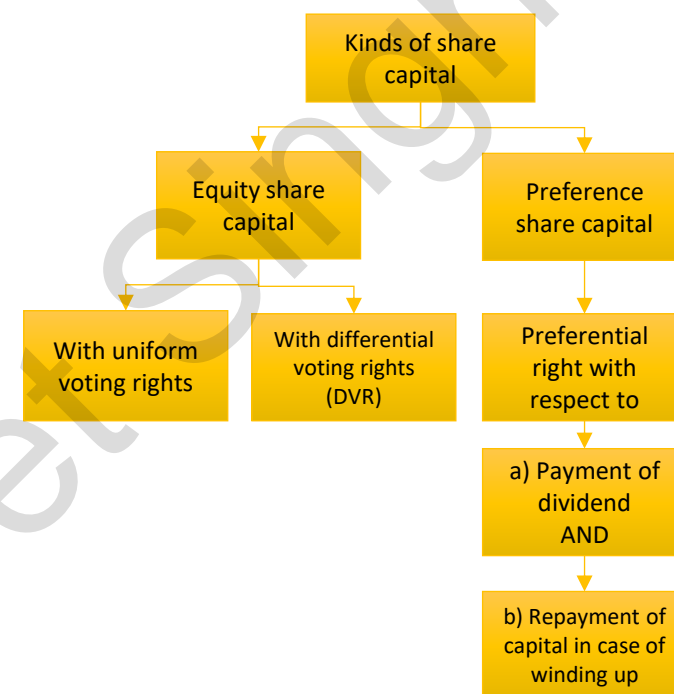


Type of Company	MOA	AOA
Limited by shares	Table A	Table F
Limited by guarantee and not having share capital	Table B	Table H
Limited by guarantee and having a share capital	Table C	Table G
Unlimited Company not having share capital	Table D	Table J
Unlimited Company having share capital	Table E	Table I

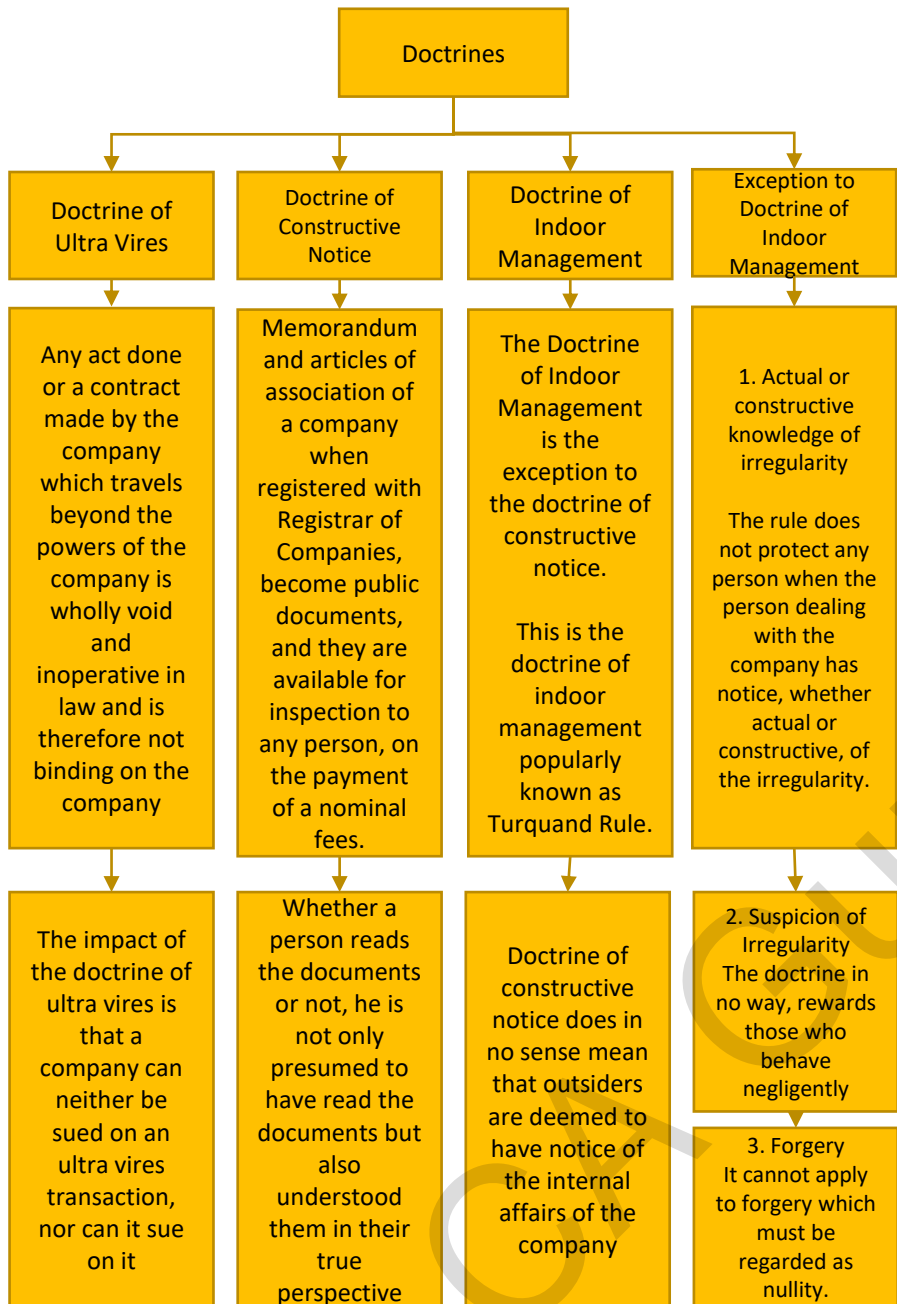




Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters. A default in this regard will make the company and every officer who is in default liable to pay penalty extending Rs. 10,000 and Rs. 5,000 respectively.



The term 'share' which means a share in the share capital of a company and includes stock. Shares are a movable property. Every share shall be numbered.



Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).

The facts of the case are:

The main objects of a company were:

- To carry on the business of mechanical engineers and general contractors.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors by passing a special resolution. The company however, repudiated the contract as being ultra- vires. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover, it had been ratified by a majority of shareholders.

Held :- However, it was held by the Court that the contract was null and void. It said that the terms general contractors was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If, the term general contractor's was not so interpreted, it would authorize the making of contracts of any kind and every description, for example, marine and fire insurance.

FACTS of the Royal British Bank vs. Turquand

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.