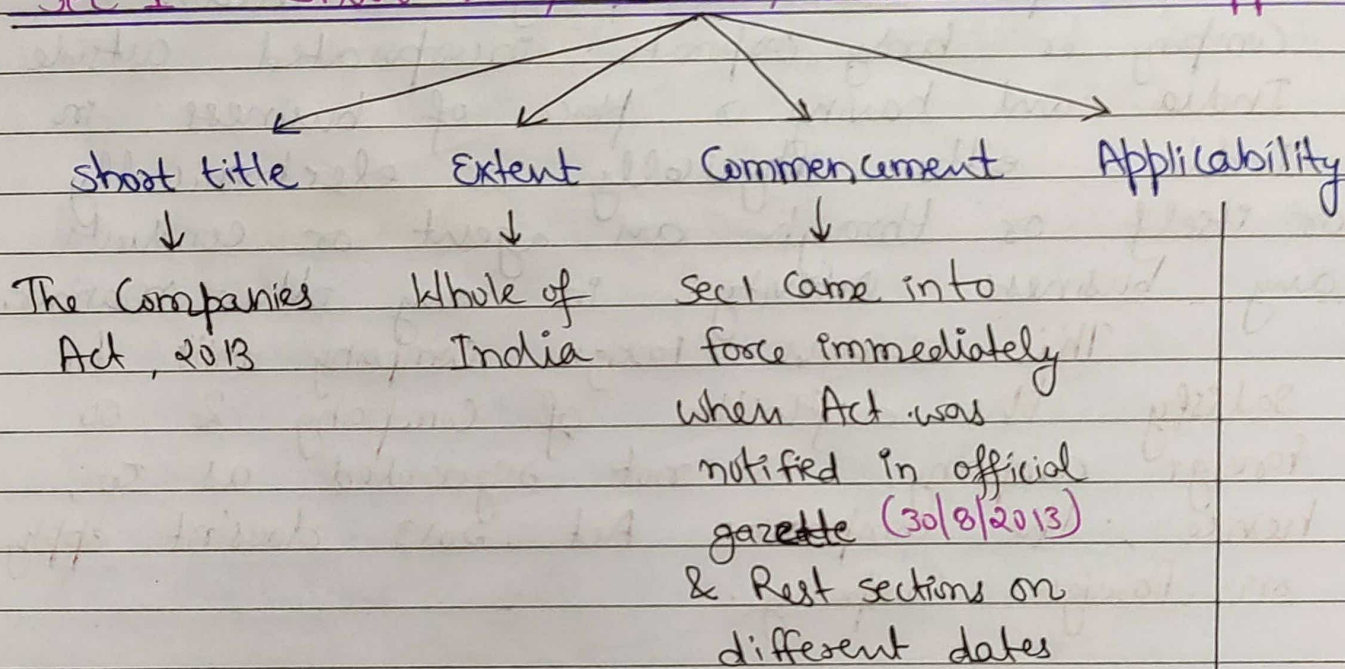


CHAPTER - 1PRELIMINARYSec 1 → Short title, Extent, Commencement, Applicability

- Every company
- Banking Co only to the extent its not inconsistent with its own specific Act i.e. Banking Reg. Act 1949
- Insurance Co. only to the extent its not inconsistent with its own specific Act i.e. Insurance Act 1938 & Insurance Regulatory Development Authority Act 1999
- Electricity Co. only to the extent its not inconsistent with its own specific Act i.e. Electricity Companies Act, 2003
- Company formed under special statute or Act of Parliament
- Body corporate notified by Cg eg FCI, NHAI

Q1) Is the Companies Act 2013 also applicable fully on foreign company?

Ans1) As per **sec 2(20)** of the Companies Act 2013, Co. means a Co. incorporated under this Act or under any Previous Company law.

As per **sec 2(42)** foreign Co. means a Company or body corporate incorporated outside India and having a place of business in India either physically or electronically or itself or through an agent or conducts any business activity in any other manner.

This means foreign company fails to satisfy the definition of company & so foreign company is not regarded as Co., hence, the Companies Act 2013 doesn't apply on foreign company.

Q2) Can the Companies Act 2013 be made applicable to non company also?

Ans2) Yes if both conditions satisfied

Body Corporate & Notified by
of FCI, NHAI CG

Q3) What is a body corporate?

Ans3) Any entity which has perpetual succession, separate entity, right to use common seal, Powers to acquire, hold, dispose Property both movable & immovable, tangible & intangible, right to sue or be sued is a body corporate.

Body Corporate is a broader term

All Co. are body corporate but all body corporate are not Company.

eg FCI, NHAI, SEBI, CCI are body corporate but not Company.

However the Companies Act 2013 is applicable only on those BC which are notified by CG
eg FCI, NHAI and not CCI, SEBI

As per **sec 2(11)** Body corporate includes a Co. incorporated outside India but does not include

- a) a ~~company~~ co-operative society registered under ~~any~~ any law or
- b) such entities notified by CG.

All definitions will start with

Means

Includes

↓
Exhaustive &
Restrictive

↓
Inclusive &
Extensible

Particulars	Co.	Foreign Co.	BC	Is the Com. Act 2013 Applicable
-------------	-----	-------------	----	---------------------------------

1) RIL	✓	X	✓	✓
2) MEPL	✓	X	✓	✓
3) Unilever Ltd	X	✓	✓	X
4) Co. inc. in London	X	X	✓	X
5) Co. inc. in USA & having sh. Hf. office in Mumbai	X	✓	✓	X

Can Pvt Co. Issue share to outsider → Yes → Pvt Placement 42

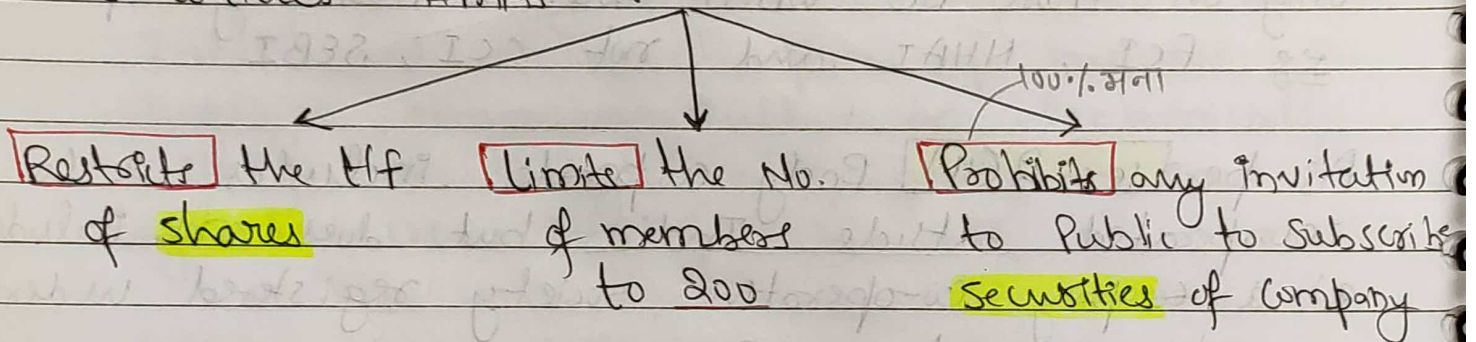
Can Pvt Co list its debenture → Yes

Date.....

6) FCI	X	X	✓	✓
7) SEBI	X	X	✓	X

Private Company → Sec 2(68)

means a Company having such amount of PUSC as may be prescribed and which by its articles ~~limit~~.



Ques

Ans

1) Can a Pvt. Co. issue shares or debenture to outsiders?

1) Yes by making specific offer i.e. Pvt Placement & Not a general offer to public

2) Can Pvt. Co. come out with IPO of shares/debt?

2) No, because its prohibited to invite public to subscribe any securities of company

3) Can Pvt. Co's share be listed?

3) No, because shares of Pvt Company are not freely transferrable

4) Can Pvt Co's debenture be listed?

4) Yes, as debenture of Pvt Co. are freely transferrable
eg Lotus Green Constructions Pvt. Ltd.

5) Is employee counted in limit of 200?

5) No

6) Is ee cum shareholder counted in limit of 200?

6) No

7) What if ee cum SH retires but continues to hold shares?

7) No

8) Joint shareholders.

8) Counted as 1

Public Company → Sec 2(71)

means a Company which is ^{not} a Private Company & having such PUSC as may be Prescribed.

Provided that a Private Company which is a subsidiary of a Public Company shall be deemed to be a Public Company.

eg X Ltd. → Sub → Y Pvt Ltd. Y Ltd. is a deemed

Note 6 → Minimum No. of ~~members~~ PUSC of both company (Pvt / Public) is Nil.

One Person Company → Sec 2(63)

means a Company having only one Person as a member.

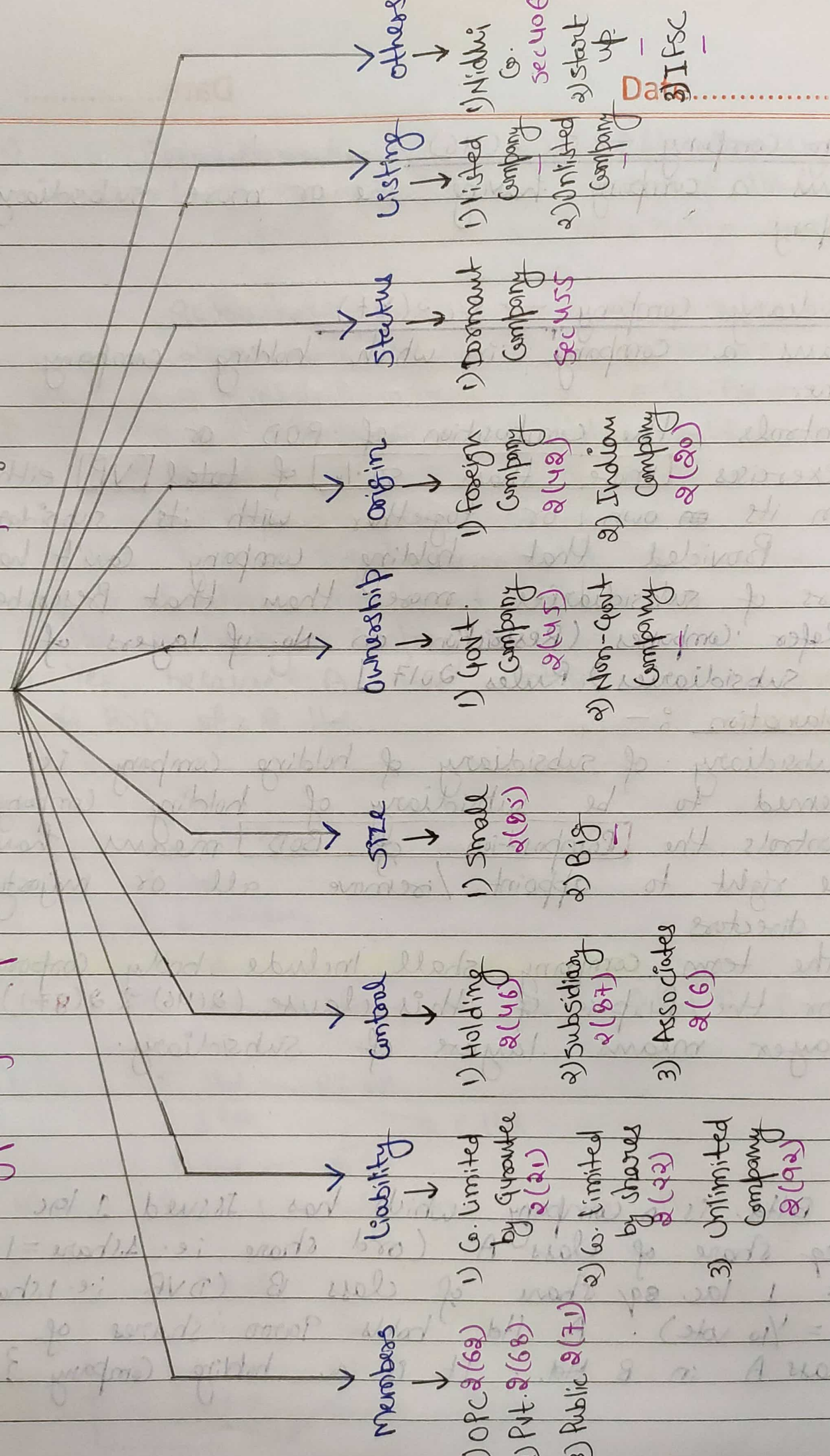
on the basis of liability :-

Date.....

Company limited by Guarantee s(21)	Company Ltd by Shares s(22)	Unlimited Company s(92)
1) means a company in which members' liab is <u>limited upto the amount that they have guaranteed</u> in <u>MOA</u> .	1) means a company in which members' liab is limited upto <u>the amount which is unpaid on FV of share</u> held by them.	1) means a company in which members' liab is <u>unlimited</u> .
2) Amt. can be called <u>only at the time of winding up</u> .	2) Amt. can be called <u>anytime</u>	2) Amt. can be called <u>only at the time of winding up</u> .
3) <u>eg.</u> Bharat egg Producers Association	3) <u>eg.</u> RIL, M&PL	<u>eg.</u> Amway India Enterprises Pvt Ltd.

Note : Liability for all the three company is unlimited. Its just that their members' liability is limited in first 2 types of companies

Types of companies on the basis of :-



1) OPC & (68)
2) Pvt. & (68)
3) Public & (71)

1) Co. limited by Guarantee & (21)
2) Co. limited by shares & (23)
3) Unlimited Company & (92)

1) Holding & (46)
2) Subsidiary & (87)
3) Associates & (6)

1) Small & (85)
2) Big -

1) Govt. Company & (45)
2) Non-Govt. Company -

1) Foreign Company & (48)
2) Indian Company & (20)

1) Dormant Company & (455)

1) Listed Company -
2) Unlisted Company -

1) Nidhi Co. & (406)
2) start up -
3) IFSC -

Holding Company → Sec 2(46)

means a company having one or more subsidiary Company

Subsidiary Company → Sec 2(87)

means a company in which holding company either

- i) controls the composition of BOD or
- ii) exercises more than 50% of total VP either on its own or together with its subsidiaries.

Provided that holding company can't have layers of subsidiaries more than that described.

[Refer Companies (Restriction on No. of layers of Subsidiaries) Rules 2017]

Explanation :-

- a) subsidiary of subsidiary of holding company is deemed to be subsidiary of holding company.
- b) Controls the Composition of BOD means having the right to appoint / remove all or majority of directors
- *** c) the term company shall include body corporate
- ⊖ for the purpose of this clause (2(46) & 2(87))
- d) layer means layers of subsidiary.

Q1) B Ltd. is a company which has issued 1 lac eq share of class A (ord share i.e. 1 share = 1 vote) & 1 lac eq share of class B (DVR i.e. 1 share = 1/10 vote). A Ltd. holds 90000 shares of class A in B Ltd. It is a holding company?

Ans 1)

Before Amendment
 > 50% of Total share Capital

After Amendment
 > 50% of Total Voting Power

$$\frac{90000 \text{ share} \times 100}{200000 \text{ share}} = 45\%$$

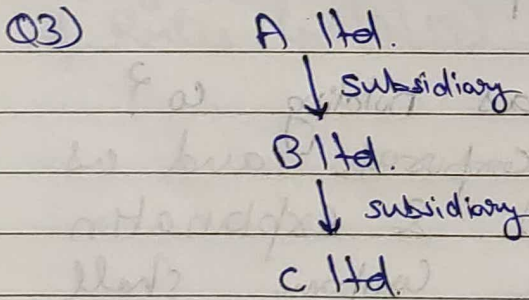
$$\frac{90000 \text{ votes} \times 100}{110000 \text{ votes}} = 81.82\%$$

A Ltd. was not holding Co. of B Ltd.

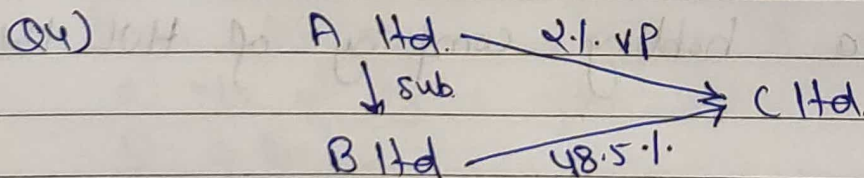
A Ltd. is holding company of B Ltd.

Q2) A Ltd. has a right to appoint 3 directors out of 5 directors on board of B Ltd. Is A Ltd. a holding company?

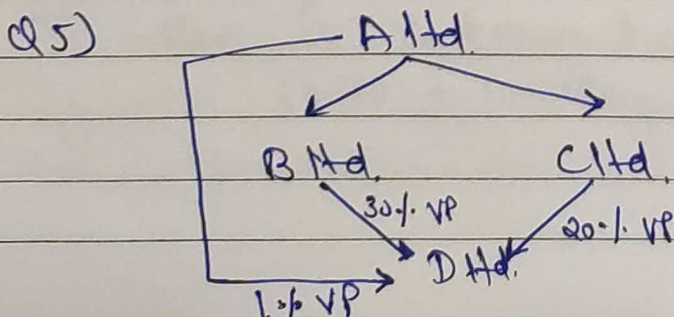
Ans 2) Yes, because A Ltd. controls the composition of BOD of B Ltd.



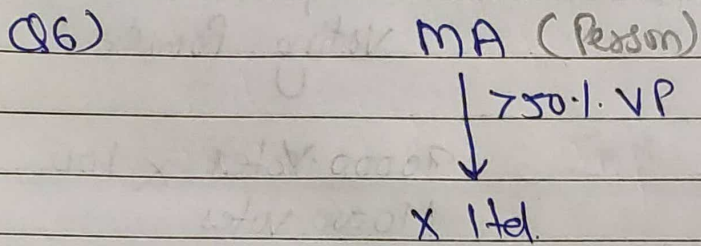
Ans 3) C Ltd. is subsidiary of Both A Ltd & B Ltd.



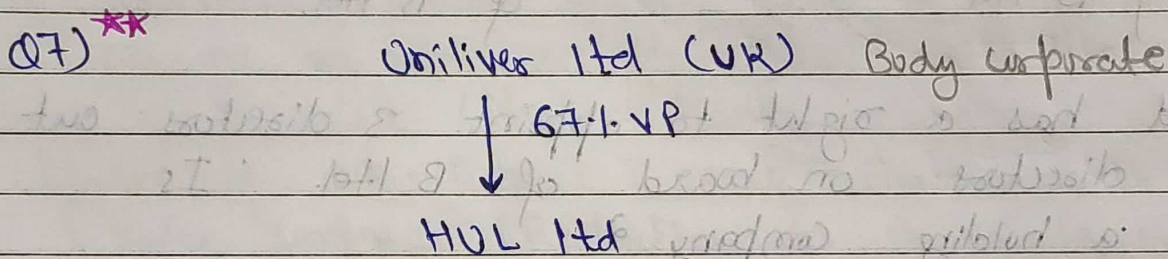
Ans 4) C Ltd is a subsidiary of A Ltd. only



Ans 5) D Ltd. is a subsidiary of A Ltd. only



Ans 6) MA is a Person Not a Company = hence MA is not a holding of X Ltd.

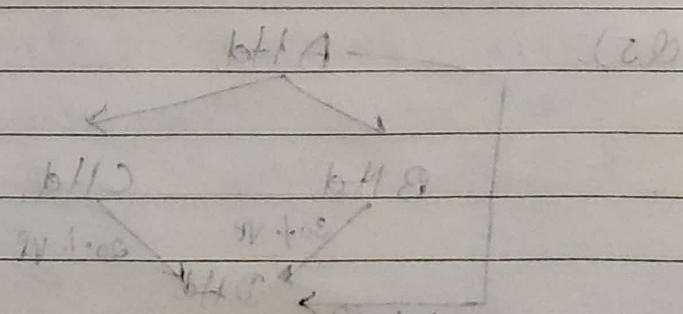


i) Is Uniliver Ltd a company?

Ans 7) i) No because it does not satisfy the definition of company as per sec 2(20)

ii) Then how is it regarded as holding co?

ii) Uniliver Ltd is a body corporate and as per explanation to sec 2(46) & explanation (c) to sec 2(87) the term company shall include body corporate for the purpose of these clauses. Since it holds > 50% VP in HUL Ltd. so its a holding company of HUL Ltd.



Companies (Restriction on No. of layers) Rules 2017

wef 20/9/2017

- 1) No company shall have more than 2 layers of subsidiaries.
- 2) Nothing in this Rule shall prevent a ~~firm~~ Co. from acquiring co. incorporated outside India, which has more than 2 layers of subsidiaries as per foreign law.
- 3) If a layer contains wholly owned subsidiaries then that layer shall not be counted.
- 4) Existing companies having more than 2 layers of subsidiaries as on 20/9/2017

Shall submit form CRL 1 within 150 days of commencement of Rules (20/9/17)

cannot increase its layers

If reduces voluntarily then Max. layers it can have is :-

- a) No. of layers after reduction
- b) 2 layers.

eg suppose co. had 10 layers as on 20/9/17. later on voluntary it reduces it to 9 layers. then Maximum layers it can have is whichever is higher

- a) No of layers after reduction (9)
- b) 2 layers

whichever is higher = 9 layers.

- 5) fine for contravention :- 10000 + 100/day till default continues

6) Non applicability of these Rules :-

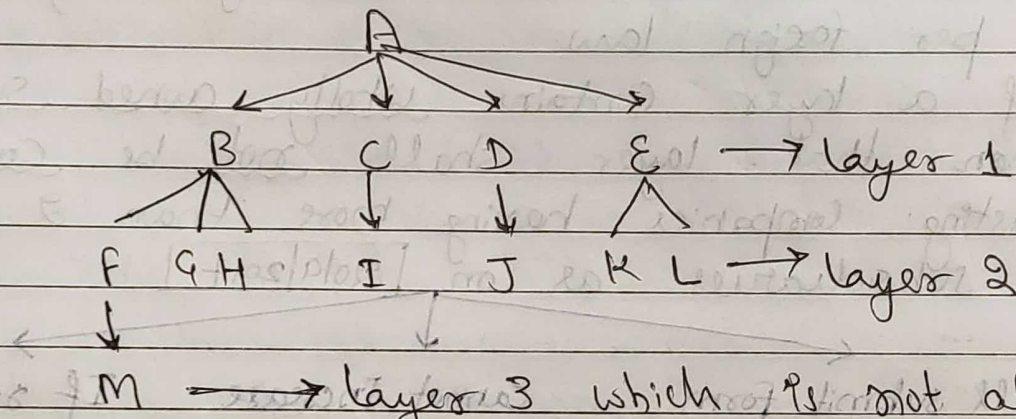
Banking Company

Insurance Company

Govt. Company

Systematically Imp NBFC (Asset size as per latest audited B/s Min. 500 Cr.)

7) eg



However, suppose B, C, D, E are wholly owned subsidiary then they won't be counted as a layer which means F, G, H, J, K, L will be layer 1 & M will be layer 2 & allowed.

Sec 2(6) → Associate Company

means a company in which the other company (Investing Co.) has a significant influence & includes joint venture

Significant Influence means holding 20% or more voting power but upto 50%.

Joint venture means joint arrangement whereby the parties have joint control over such arrangement & have a right to net assets of such arrangement.

Small Company → Sec 2(85)

means a company other than Public Company whose

PVSC does not exceeds 50 lacs or such higher limit as may be described but not exceeding 10 cr. (currently it has been described 2 cr.)

T/O as per P/L of immediately Preceding FY does not exceed 2 cr. or such higher limit as may be described but not exceeding 100 cr. (currently it has been described 20 cr.)

In other words, small company means a Pvt Co. whose PVSC does not exceed 2 cr. AND T/O as per P/L of immediately Preceding FY does not exceed 20 cr.

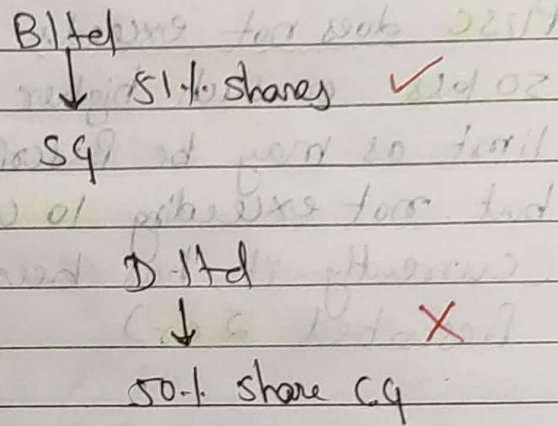
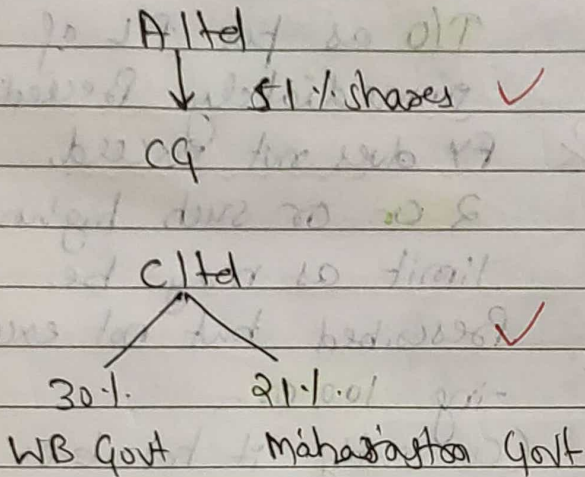
3 types of companies are not regarded as small company :-

- Holding, subsidiary
- Sec 8 i.e. Charitable Co.
- Co. governed by special statute.

Govt. Company → Sec 2(45)

means a company whose at least 50% of PVSC is held by Cg or one or more SG or partly by Cg or partly by one or more SG provided that any subsidiary of Govt. Co. is deemed to be Govt. Company

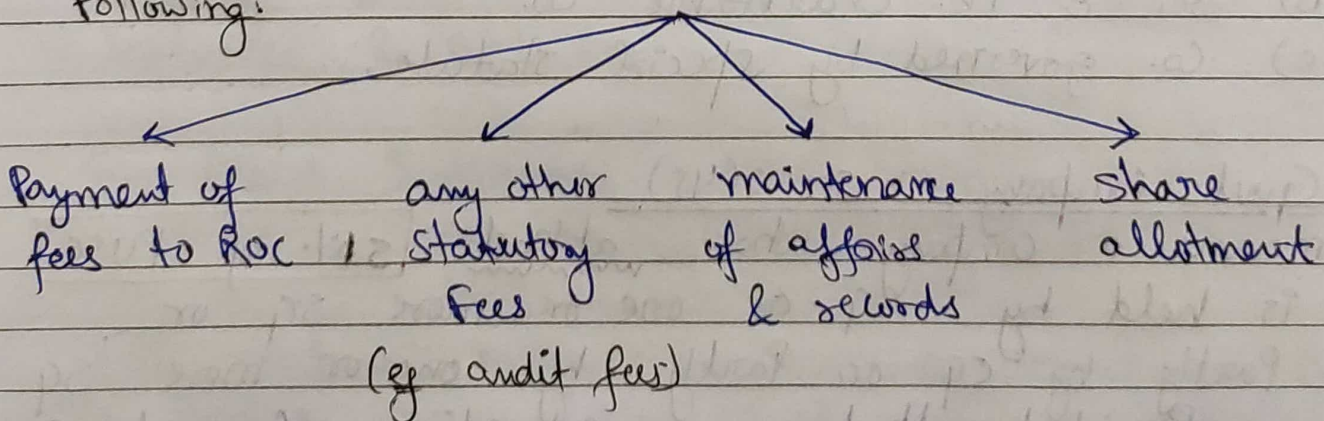
Explanation → If Company has issued DVR shares then instead of Rusc, voting Power will be considered.



Dormant Company → see 455

means a Company incorporated for a future Project or for holding any asset or intellectual property and has no significant accounting transaction, such a company or inactive Company is called dormant company.

All the transactions are regarded significant Along Accounting transactions except the following:



Inactive Company means which has not filed financial statement & Annual return for last 2 financial years continuously.

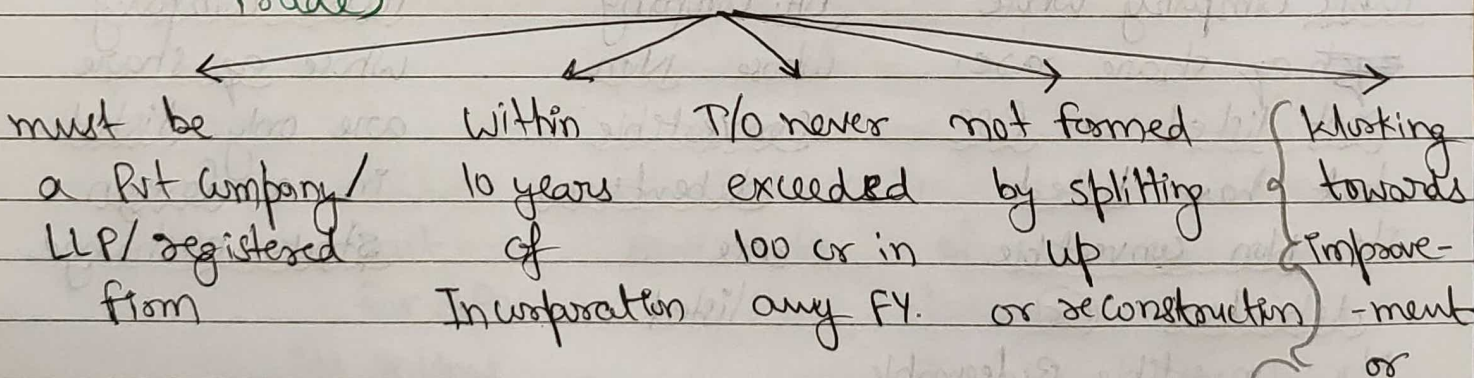
For obtaining status of Dormant Company, submit MSC 1 to ROC & ROC shall issue Certificate of Dormant Co. in form MSC 2

Nidhi Company → Sec 406

means a company formed with the object of cost cutting & savings amongst the members, receiving deposits from & lending to members only for their mutual benefit

Start up company (defined by DPIIT)

(Department for Promotion of Industry & Internal Trade)



kicking towards Improvement or development of a new Product / Process / service &

having a scalable business model having potential of wealth generation & employment creation.

Listed Company → Sec 2(52)

means a company whose any of the securities are listed on a Recognised Stock Exchange. The Companies (Amendment) Act 2020 has added a proviso in above definition :-

Provided that such classes of companies which have issued such classes of securities as may be prescribed shall be excluded from the definition of listed company.

As per the Companies (Specification of Definition Details) Second Amendment Rules 2021 wef 1/4/21 :-

Following companies are excluded from definition of listed company.

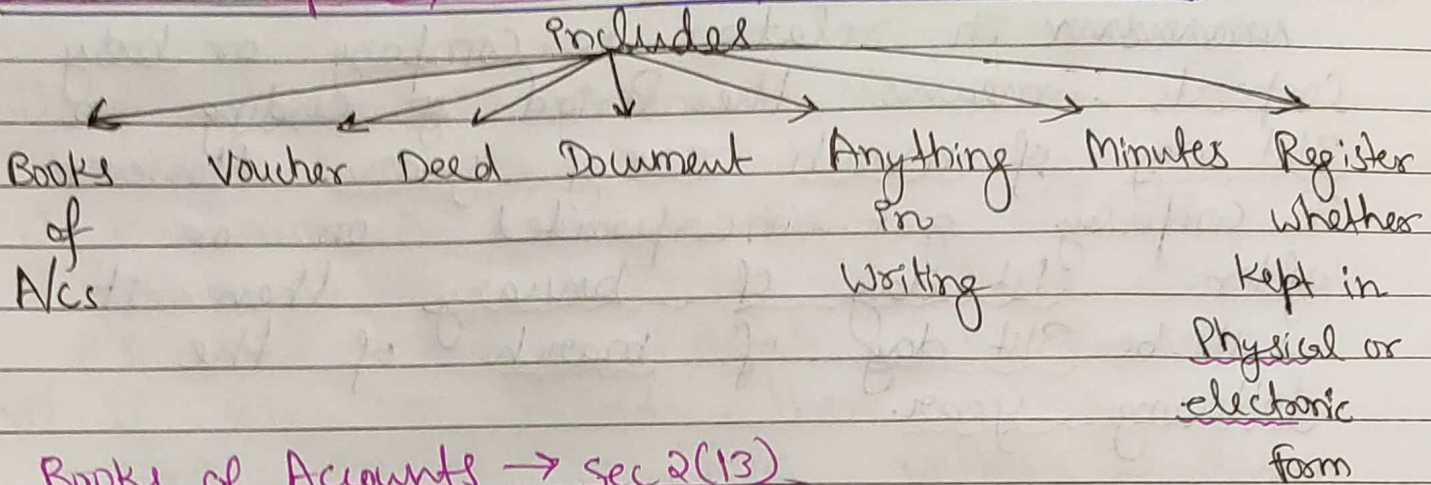
Public Company whose ~~eq~~ eq share are not listed on RSE but have listed its Non Convertible debenture (or)

Non Convertible Redeemable Preference share or both.

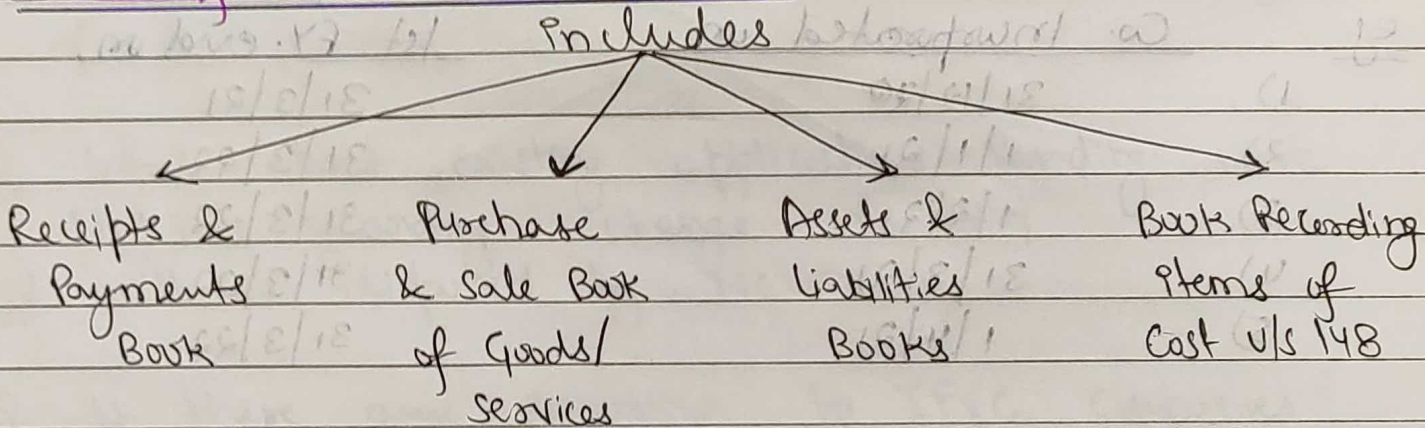
Pub. Company whose Non Convertible debentures are listed

Public Company whose eq share are only listed in a foreign stock exchange.

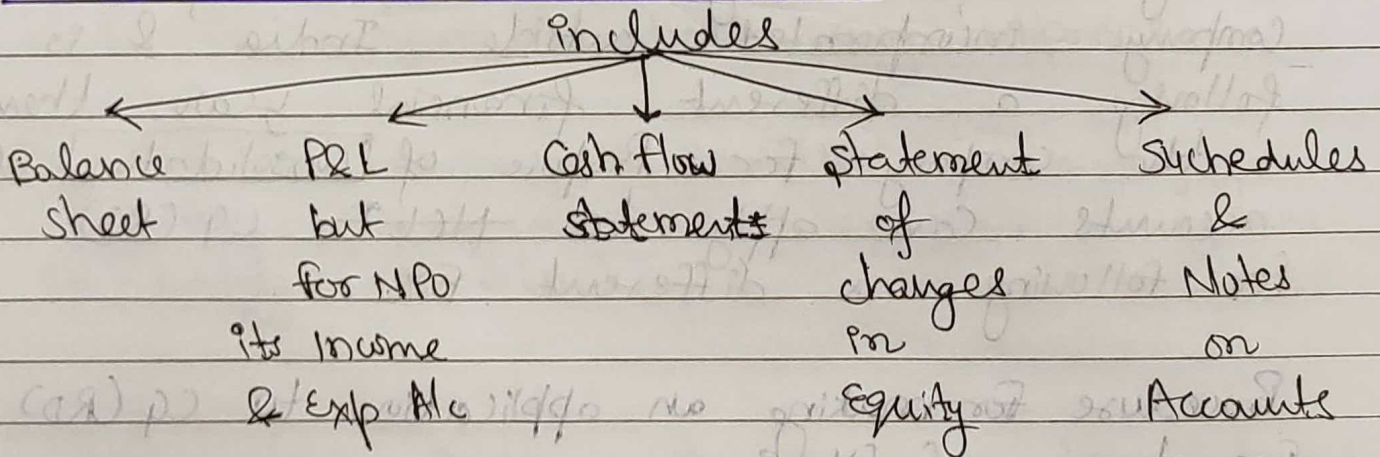
Books & Papers, Books or Paper → Sec 2(12)



Books of Accounts → Sec 2(13)



Financial statements → Sec 2(40)



Provided that financial statements of OPC, small co, diurnal co & startup company may not include cash flow statement.

Financial Year → Sec 2(41)

~~Announcement~~ in relation to company or body corporate, means the period ~~of~~ ending on 31st day of march every year. However if company got incorporated on or after 1st day of January then it will be 31st day of march of the following year.

<u>eg</u>	<u>Co. Incorporated on</u>	<u>1st FY. end on</u>
1)	31/12/20	31/3/21
2)	1/1/21	31/3/22
3)	1/2/21	31/3/22
4)	31/3/21	31/3/22
5)	1/4/21	31/3/22

Provided that a company which is either holding or subsidiary or associate of a company incorporated outside India & is following a different financial year then the company for purpose of consolidation of accounts can apply to NCLT (Cg (RD)) for following a different FY.

Procedure for making an application to Cg (RD) for change of FY :-

- i) submit form RD 1 to Cg (RD) (Power of attorney)
- ii) Attach 4 documents with RD 1

Minutes of BM in which it was decided to change FY. Reason for change of FY. Memorandum of appearance of POA to appear in front of RD details of any application that were made

in last 5 FYs for
change of FY.

- iii) If an defect in documents, RD may allow 15 days to rectify & resubmit.
- iv) Maximum 2 such resubmission allowed
- v) Within 30 days of Receipt of Proper documents, RD shall either or Reject such Request.
- vi) If RD has allowed, then Company shall submit INC28 to ROC within 30 days of RD's order.

Q What about Existing applications pending with NCLT regarding change of FY?

Ans Will be disposed by NCLT.

Q Is there any exemption to IFSC Companies?

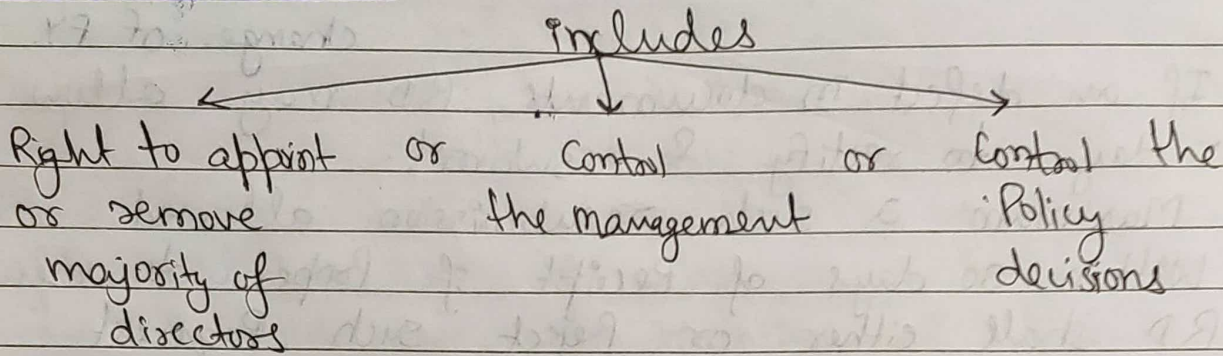
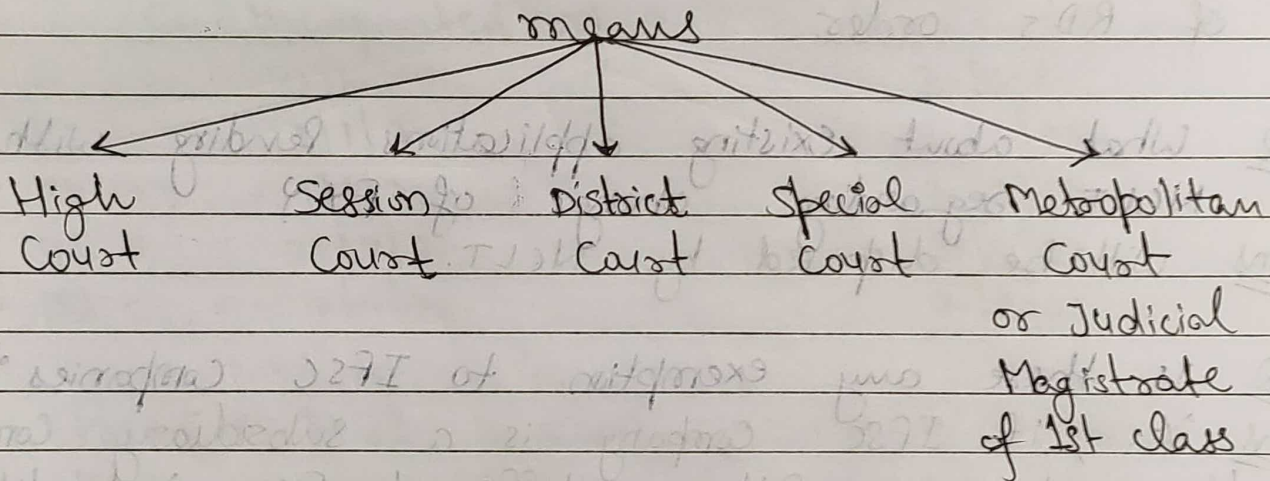
Ans Yes, if IFSC Company is a Subsidiary Company then it may follow different FY. Just like that for Company without any Approval.

Transitional Provision of sec 2(41)

Existing companies were given 2 years to comply sec 2(41)

Contributory → sec 2(26)

means any person who is liable to contribute to assets of Company at the time of Winding up.

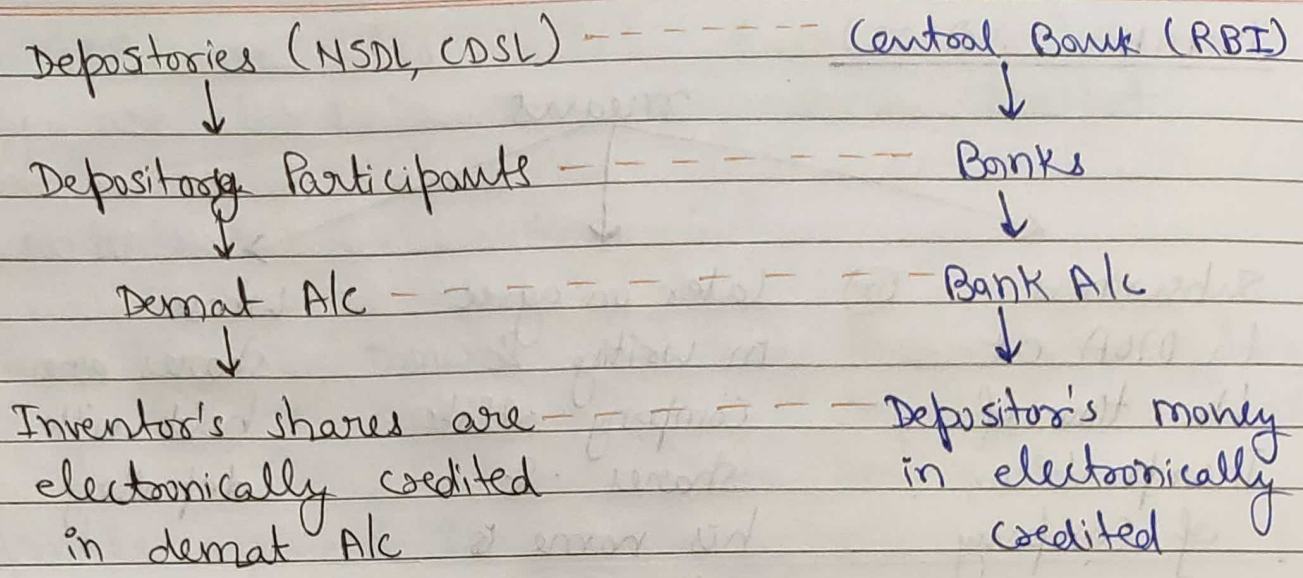
Control → Sec 2(27)Court → sec 2(29)Depository → Sec 2(32)

means a depository as defined u/s 2(1)(e) of the depositories Act 1996.

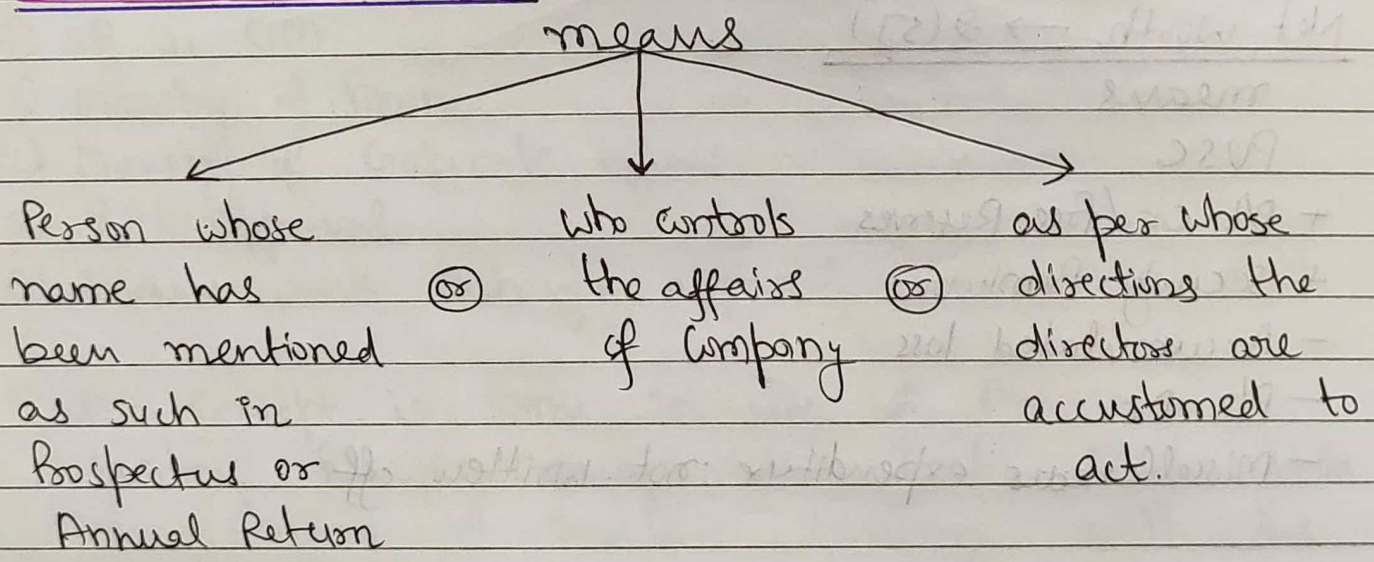
These are two depositories in India :-

NSDL → National Securities Depositories Ltd.

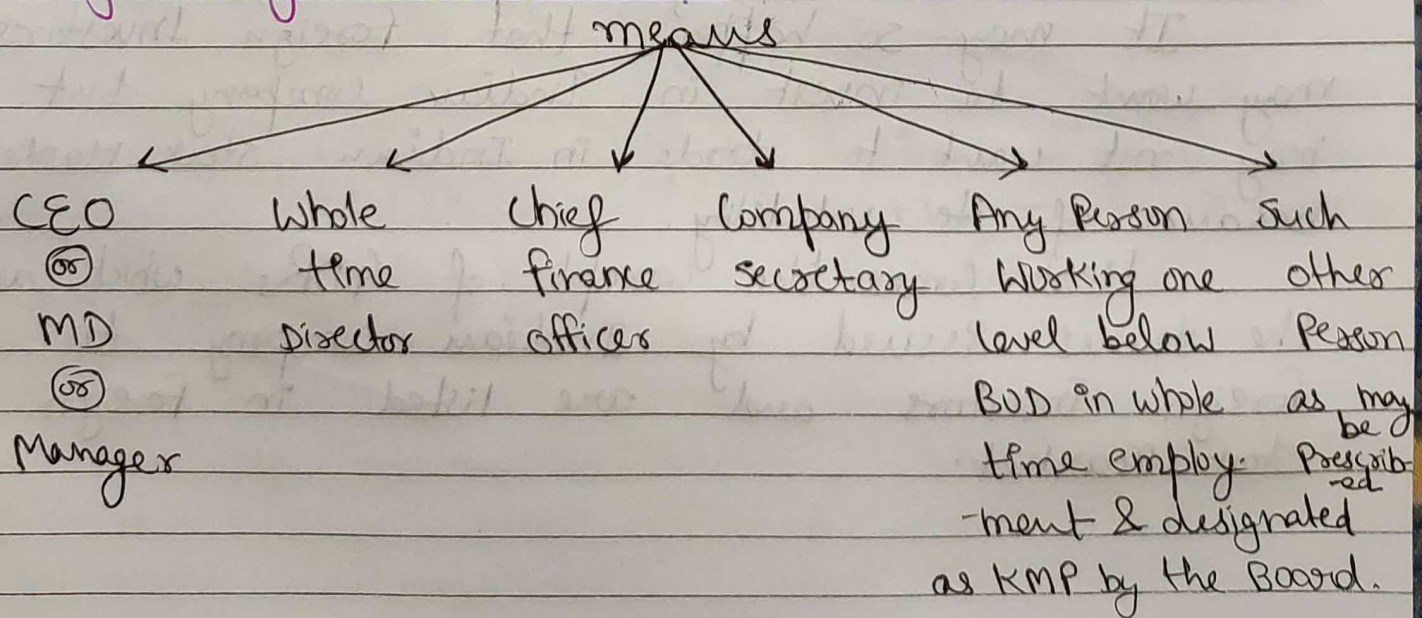
CDSL → Central Depositories Services Ltd.

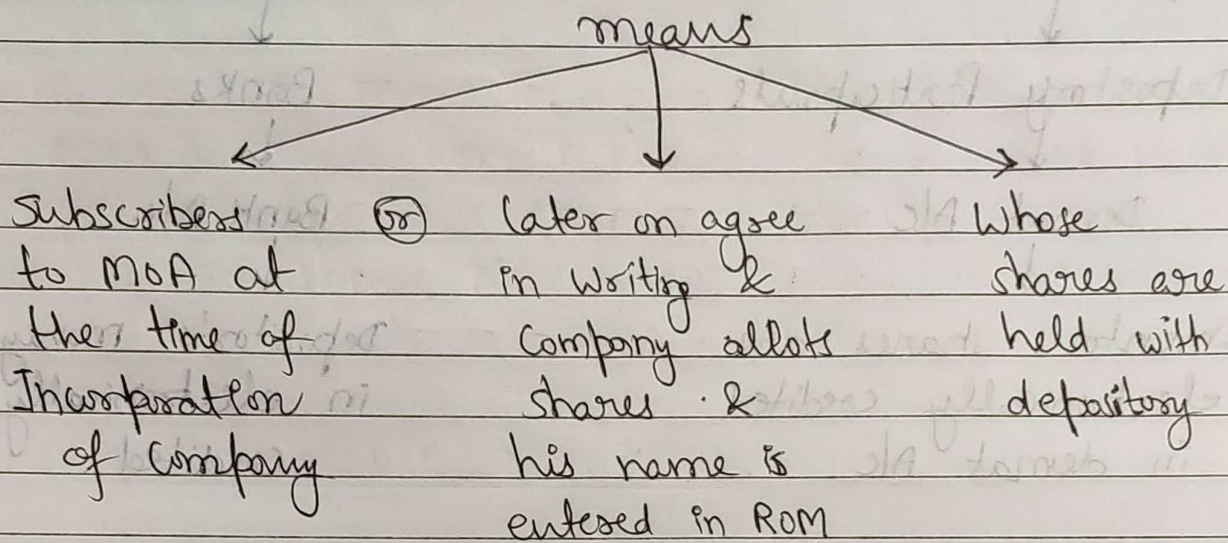


Promoter → sec 2 (69)



Key Managerial Personnel → 2(51)



Member → 2(55)Net worth → 2(57)

means

PVSC

- + P/L Cr./free Reserves
- + Security Premium
- Accumulated loss
- P/L Dr.
- Miscellaneous expenditure not written off

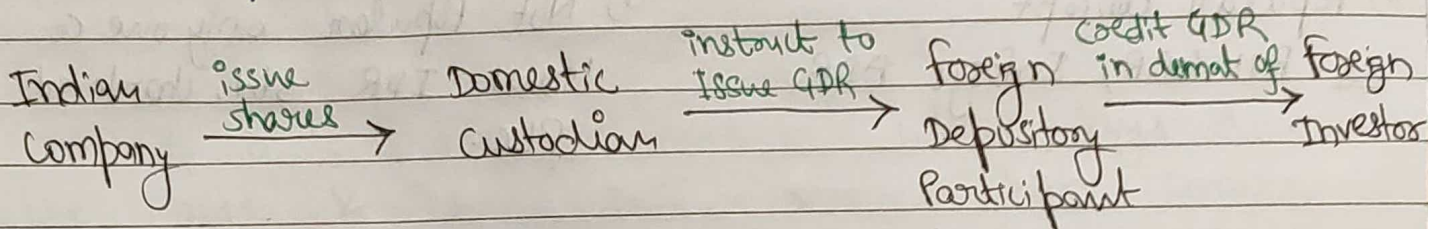
Global Depository Receipts → sec 2(44)read with sec 41 of Companies Act 2013

It may so happen that foreign Investors may want to invest in Indian Company but may not want to trade in Indian stock Market because of its volatility.

Here comes the concept of GDRs which are the shares issued by Indian Company to foreign Investors and are listed in foreign stock Market.

GDRs are also called Euro issue because they are listed in European stock market

4 participants are involved :-

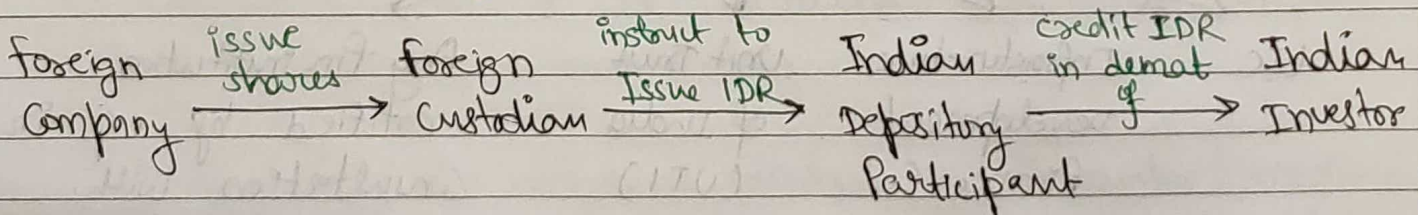


Approvals required :-

- 1) BR at BM
- 2) SR in GM
- 3) Ministry of finance
- 4) Ministry of Corporate affairs
- 5) RBI approval
- 6) Indian stock exchange approval where co. is listed.

Entire concept is same in case of American Depository Receipts except the fact that this time shares of Indian Company will be listed on American stock market.

Indian Depository Receipts → Sec 2(48)



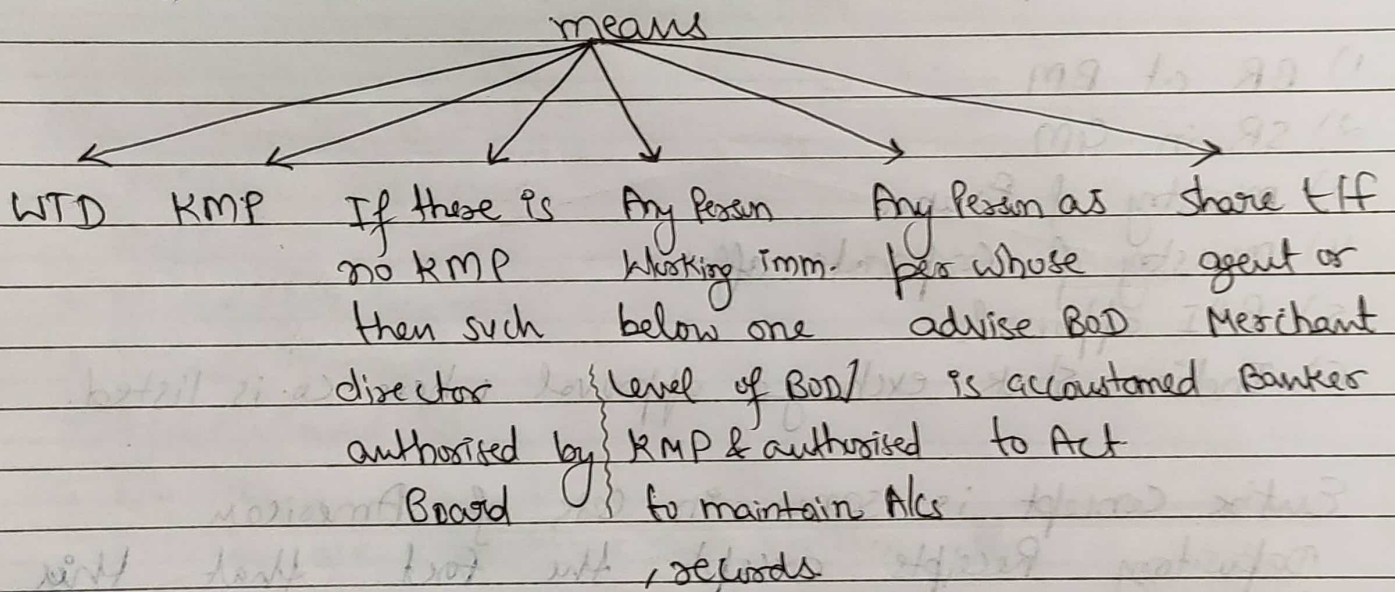
GDR/ADR

IDR

- 1) Issued by Indian Company
 - 2) Purchased by foreign Investor
 - 3) Traded in foreign stock Market
 - 4) Popular concept
- eg RIL GDR, Infosys ADR

- 1) Issued by foreign Company
- 2) Purchased by Indian Investor
- 3) Traded in Indian/stock Market
- 4) Not Popular. only one Co. Issued IDR std. chartered PLC.

Officers in Default → sec 2(60)



Public financial Institution → sec 2(72)

