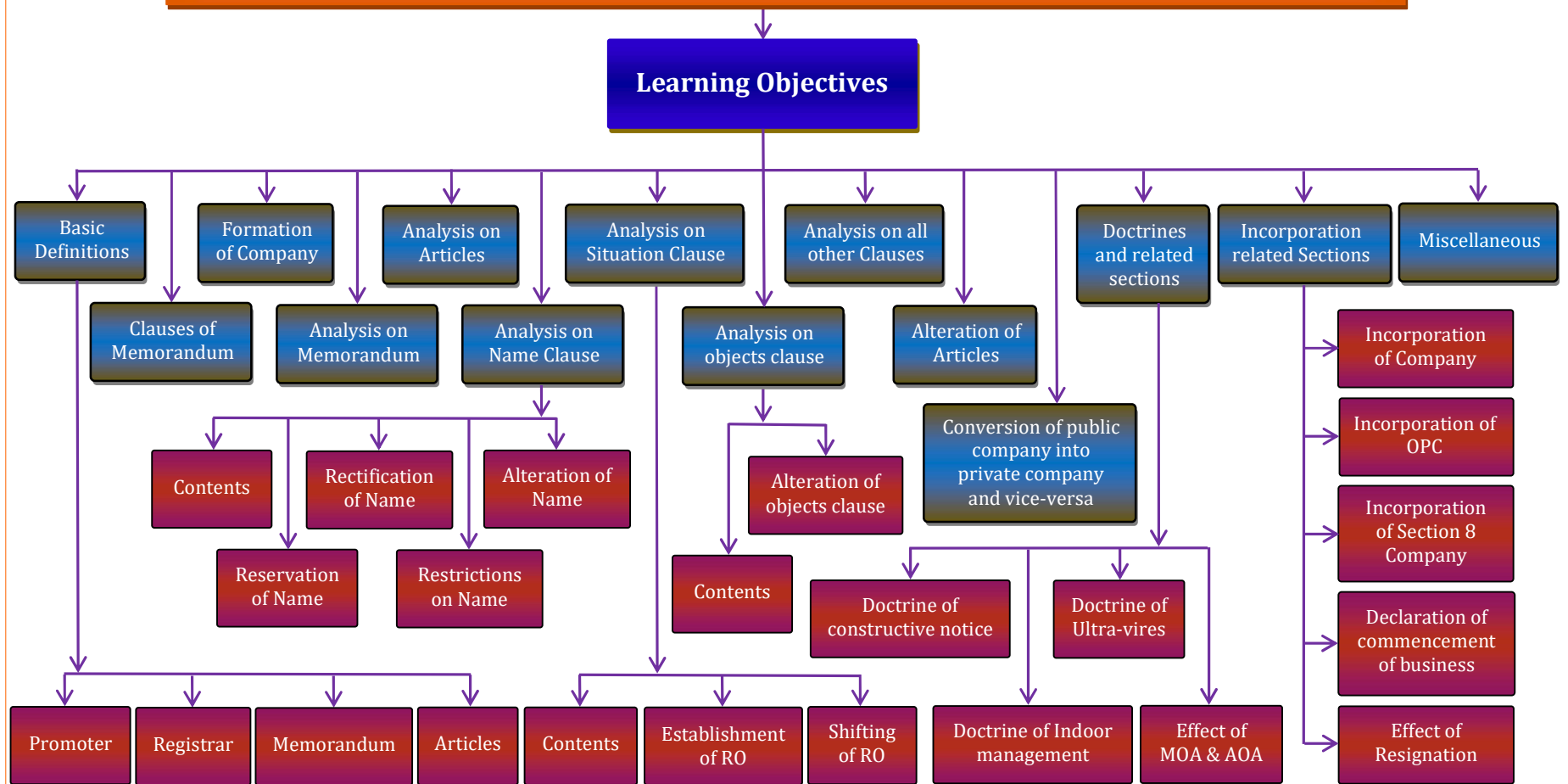


CHAPTER 2

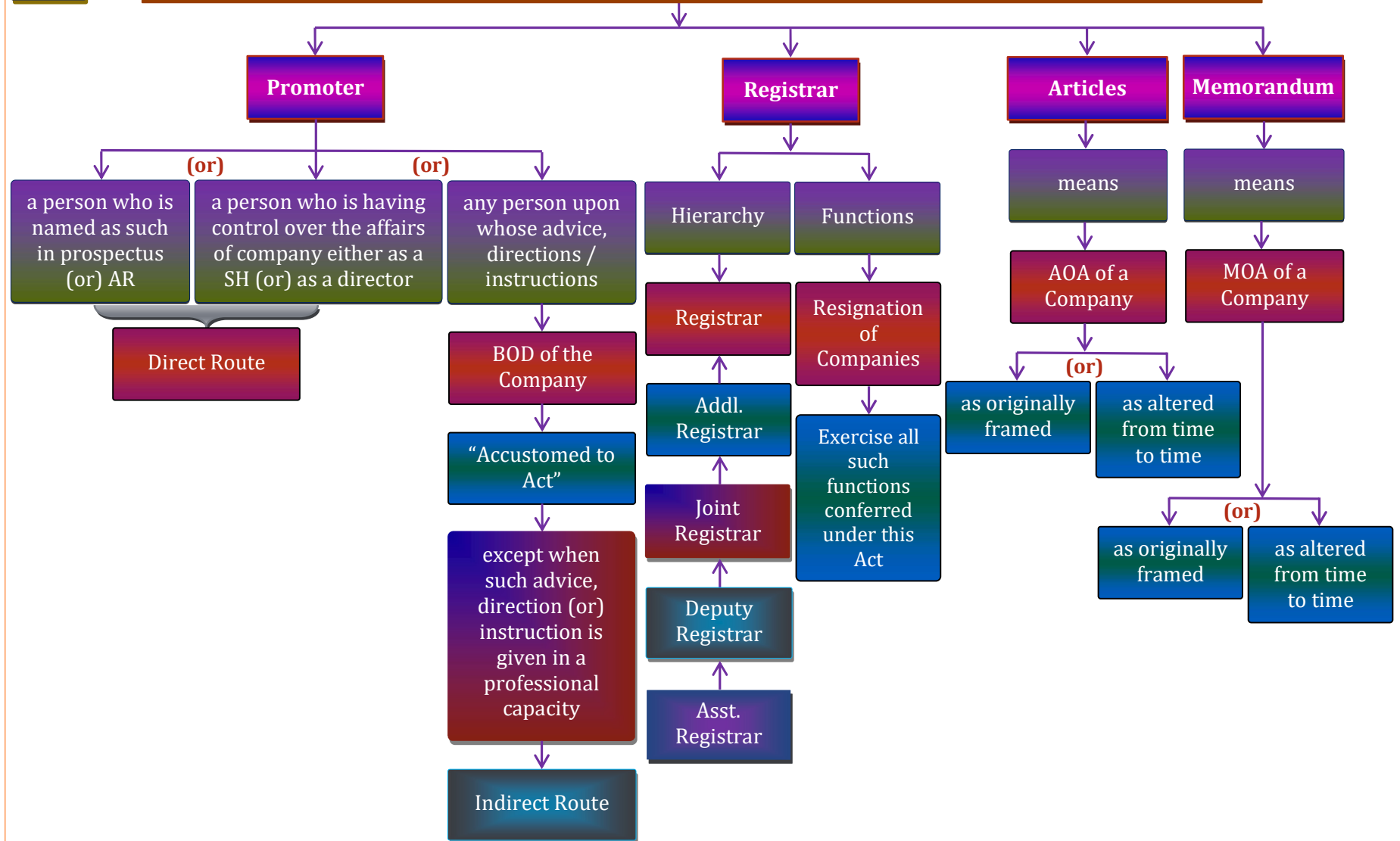
THE COMPANIES ACT, 2013

INCORPORATION & INCIDENTAL MATTERS



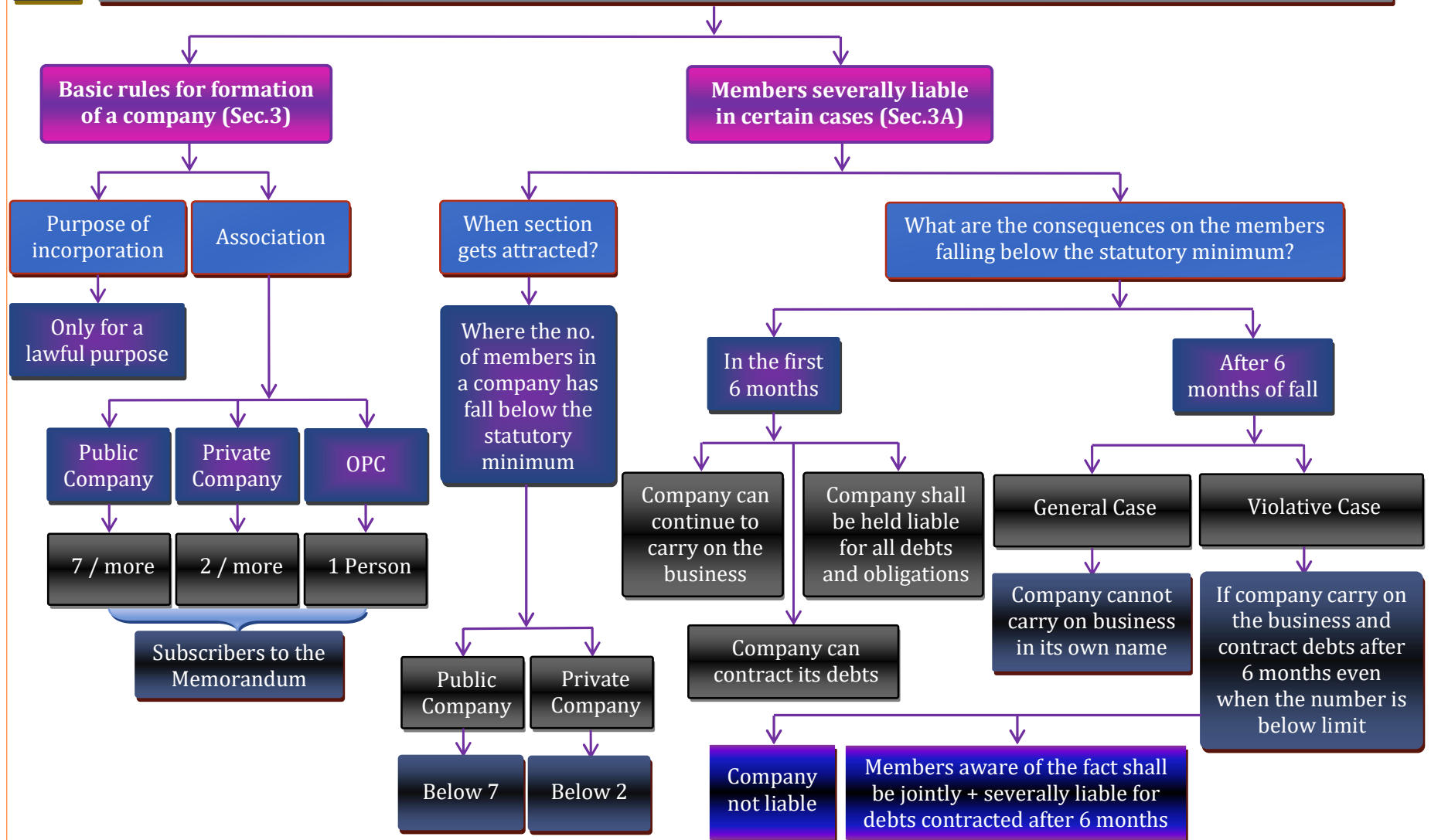
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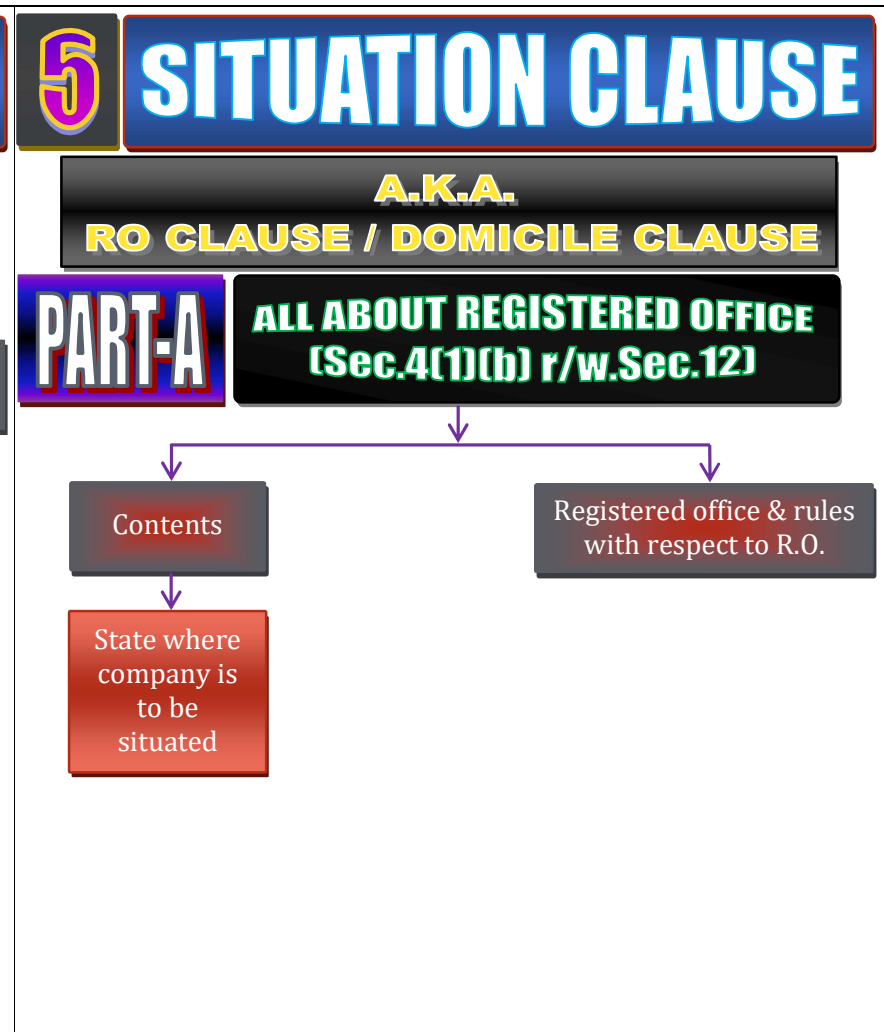
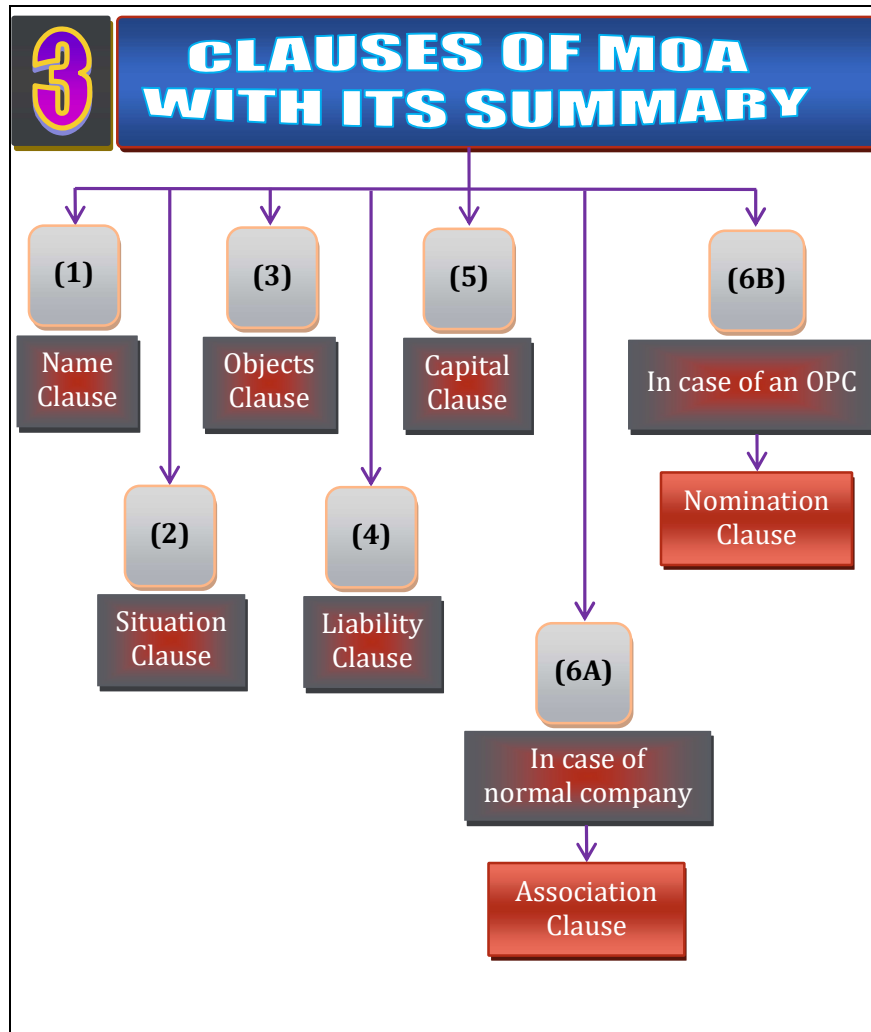
BASIC DEFINITIONS



2

FORMATION (+) RELATED CONCEPT

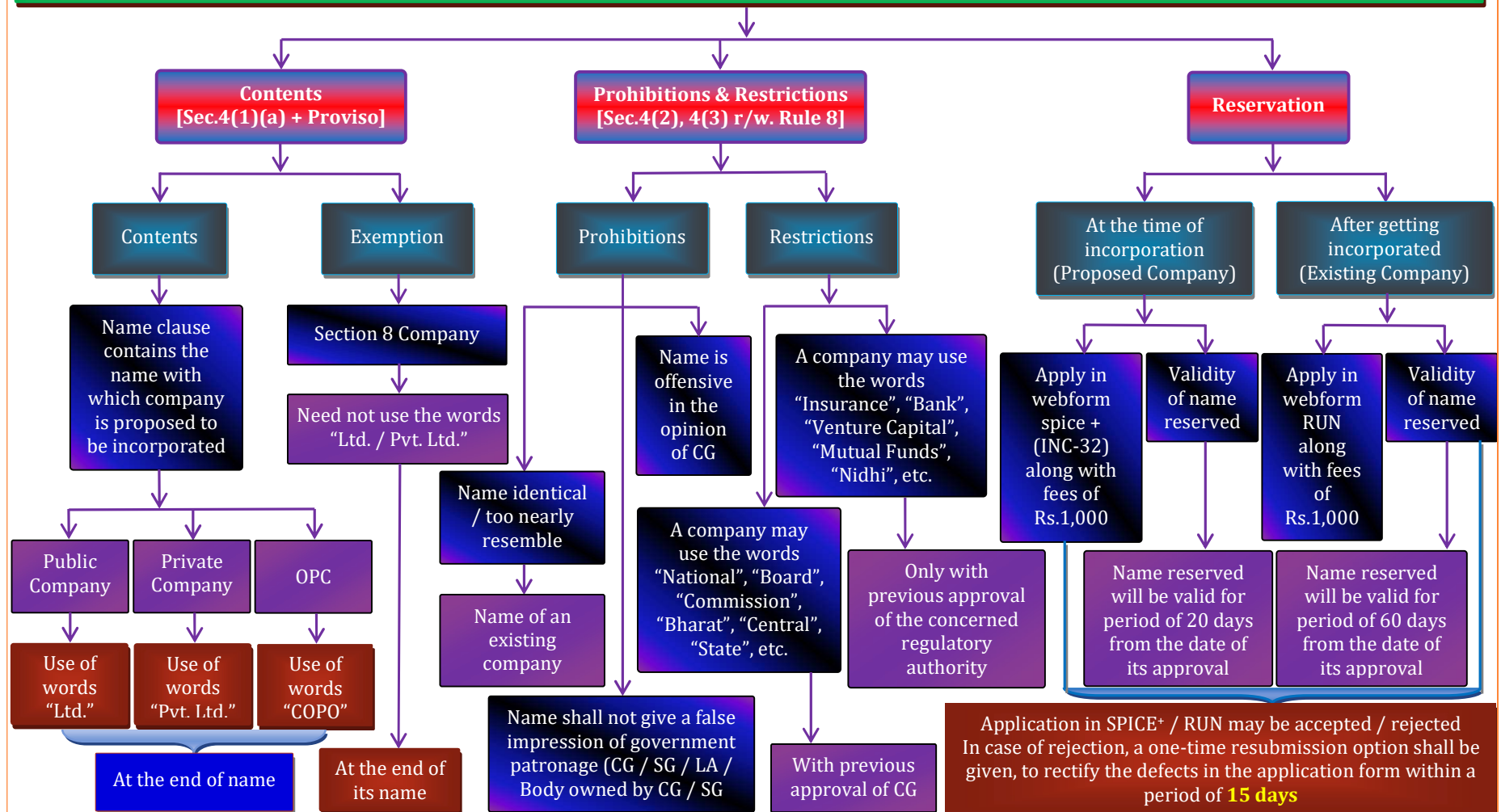




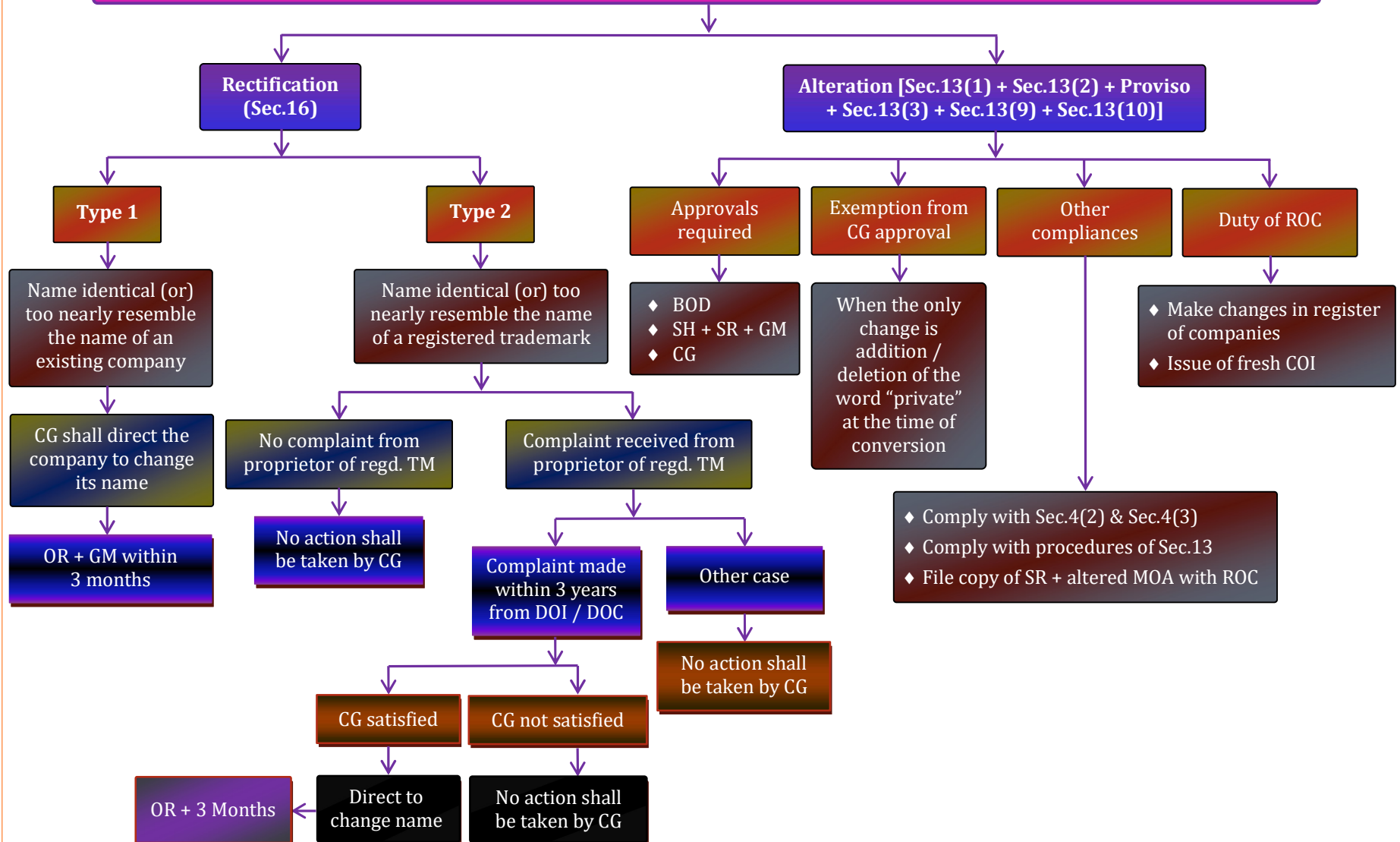
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NAME CLAUSE - General

[Sec.4(1)(a) proviso to Sec.4(1)(a), Sec.4(2), (3), (4) & (5)]



NAME CLAUSE - RECTIFICATION & ALTERATION



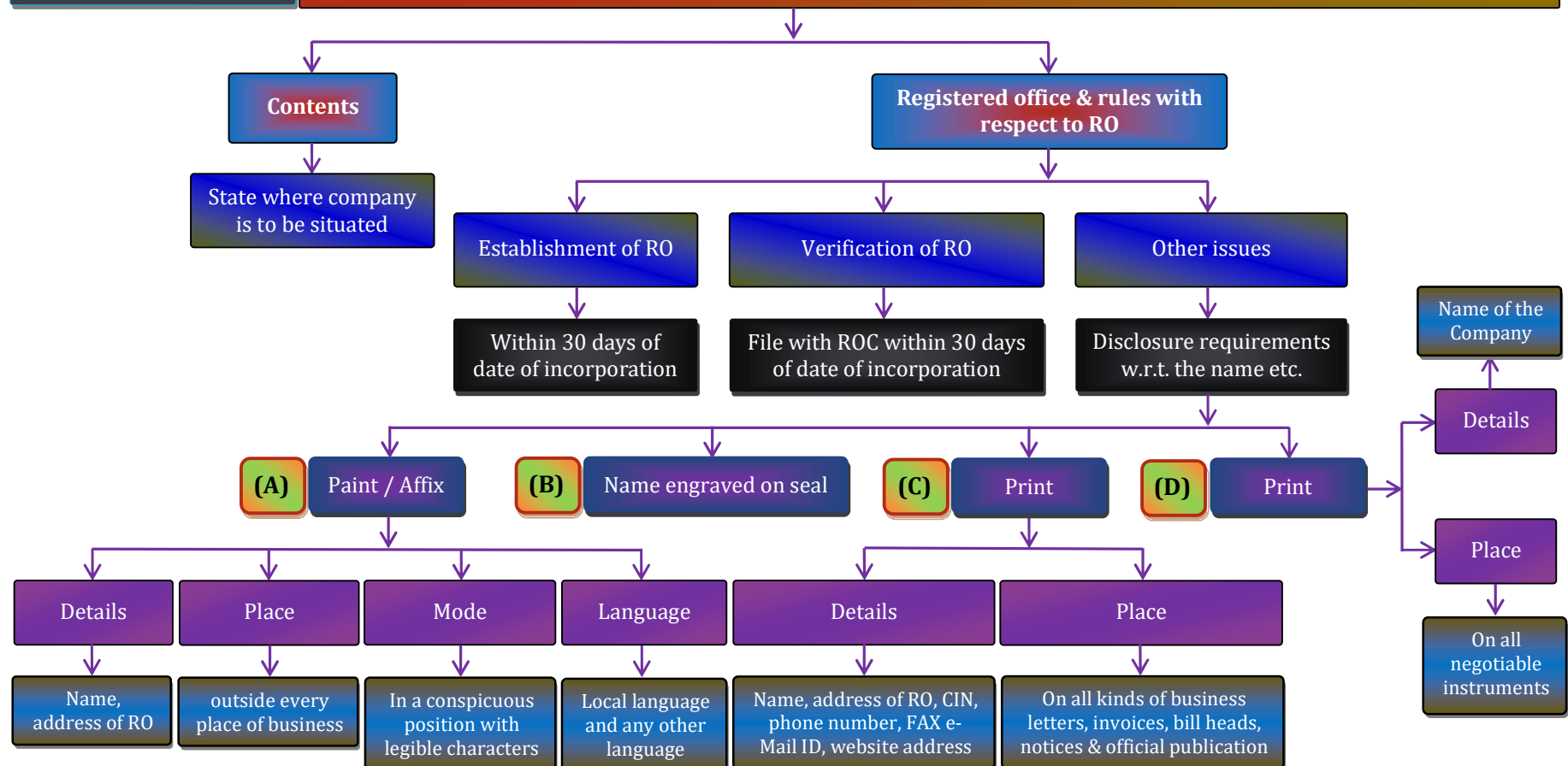
5

SITUATION CLAUSE

(a.k.a. RO Clause | Domicile Clause)

PART - A

All about registered office [Sec.4(1)(b) r/w.Sec.12]



PART - B

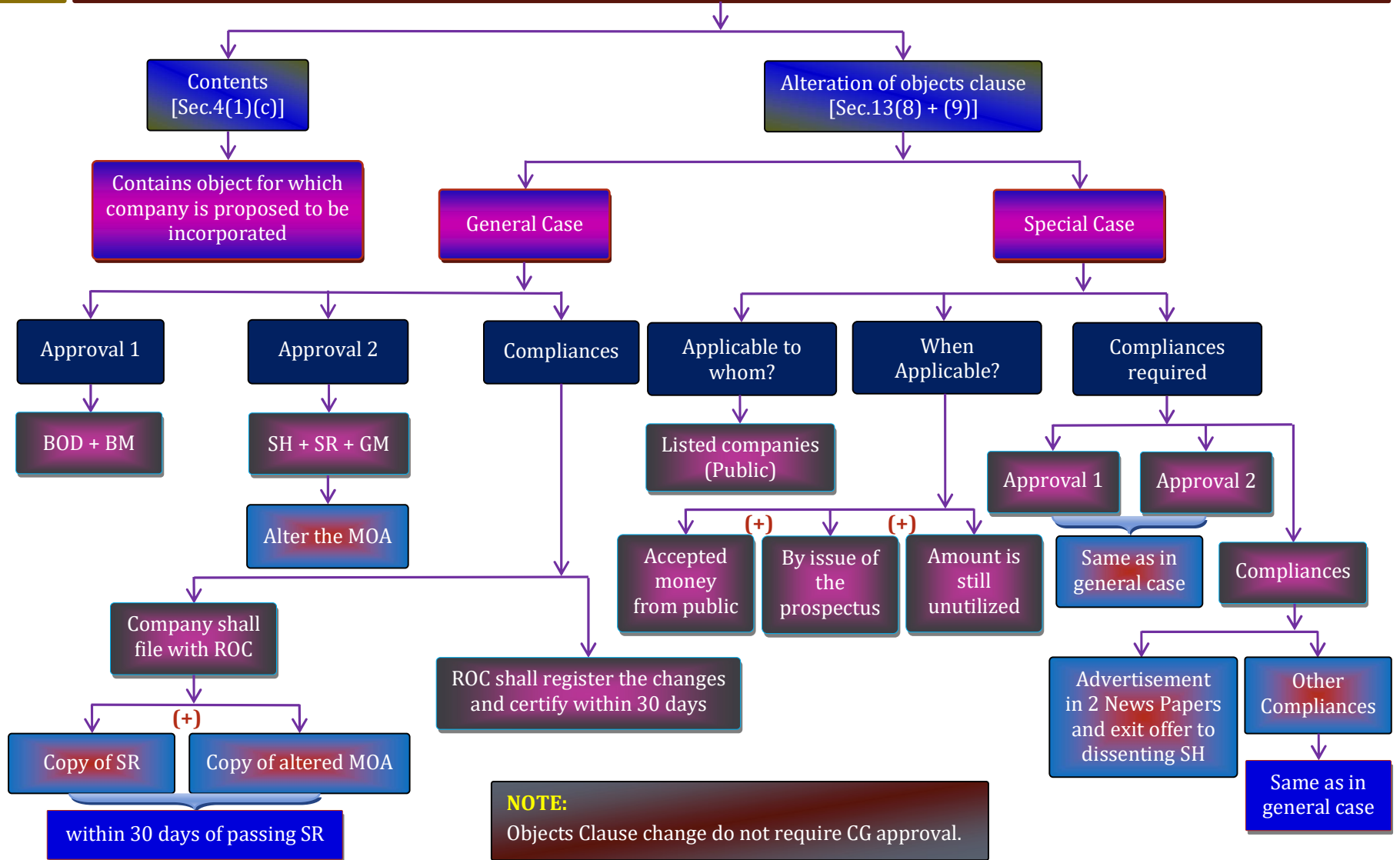
Shifting of registered office

Particulars	Types of Shifting			
	Place to Place within City	City to City within State	ROC to ROC within State	State to State
1. Section governing	S.179 + S.12(4)	S.179 + S.12(4) + S.12(5)	S.179 + S.12(4) + S.12(5) + Proviso + S.12(6)	S.179 + S.13(4) + S.13(5) + S.13(7)
2. Approval-1	BOD + BM	BOD + BM	BOD + BM	BOD + BM
3. Approval-2	-	SH + SR + GM	SH + SR + GM	SH + SR + GM
4. Alteration of MOA	No	No	No	Yes
5. Special Confirmations	Not required	Not required	Confirmation of Regional Director S1: Co. $\xrightarrow[\text{Confirmation}]{\text{For}}$ RD S2: RD $\xrightarrow[30 \text{ days}]{\text{Issue conf.}}$ Co. S3: Co. $\xrightarrow[60 \text{ days}]{\text{File conf.}}$ ROC S4: ROC $\xrightarrow[30 \text{ days}]{\text{Register}}$ Co.	Not required

Particulars	Types of Shifting			
	Place to Place within City	City to City within State	ROC to ROC within State	State to State
6. CG approved	Not required	Not required	Not required	Required
S1: Co. $\xrightarrow{\hspace{1cm}}$ CG S2 CG $\xrightarrow[\text{within 60 days}]{\text{Issue approval}}$ Co. Condition 1 Consent of creditors, debenture holders (or) person concerned Condition 2 Sufficient provision is made to discharge debts Condition 3 Adequate security is provided to discharge the debts S3: Co. $\xrightarrow[\text{Confirmation}]{\text{CG}}$ ROC of both states				
7. Duty of ROC	Shall register the change	Shall register the change	Shall register the change	ROC of the state to which RO is shifted shall register change and issue fresh COI

6

OBJECTS CLAUSE

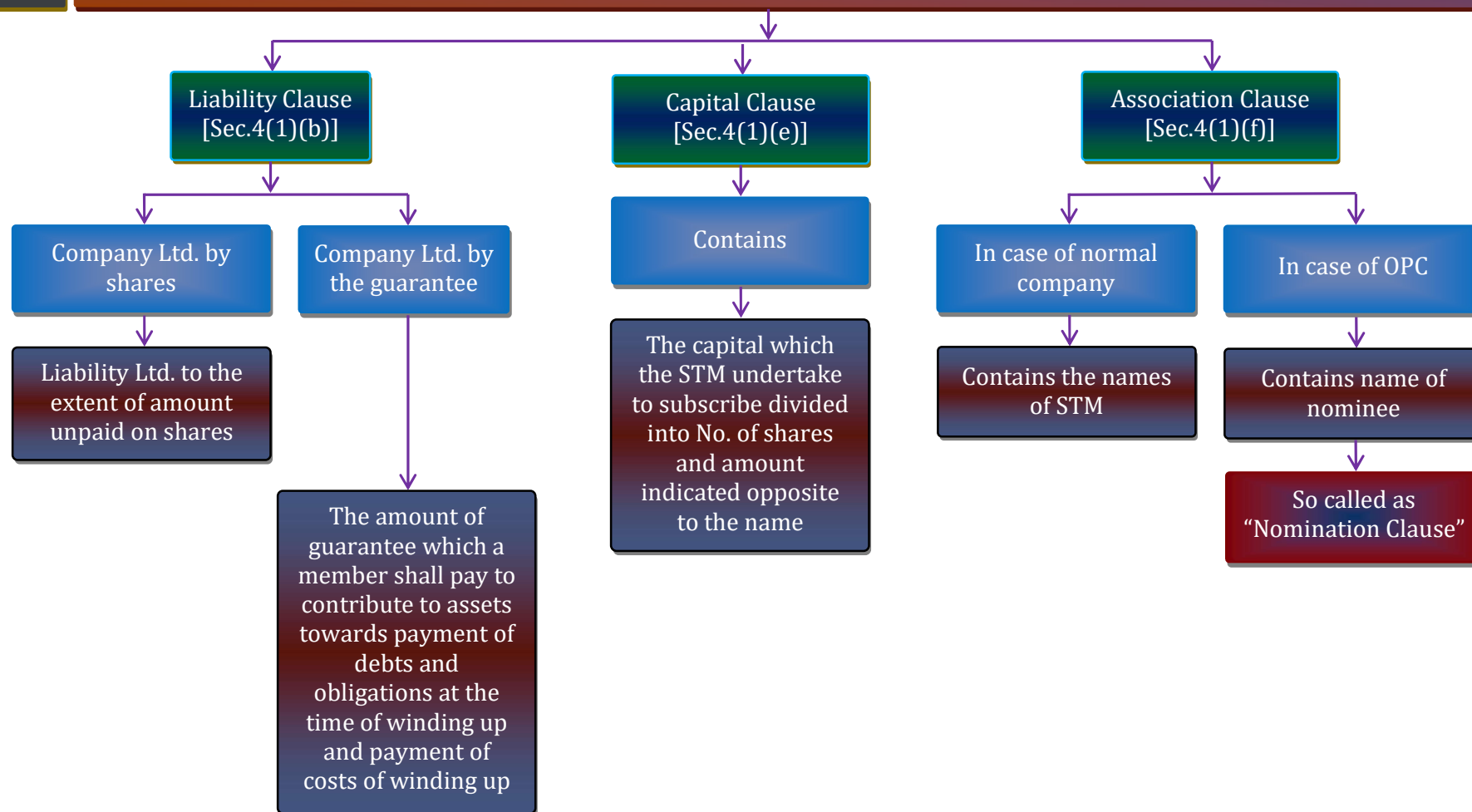


NOTE:

Objects Clause change do not require CG approval.

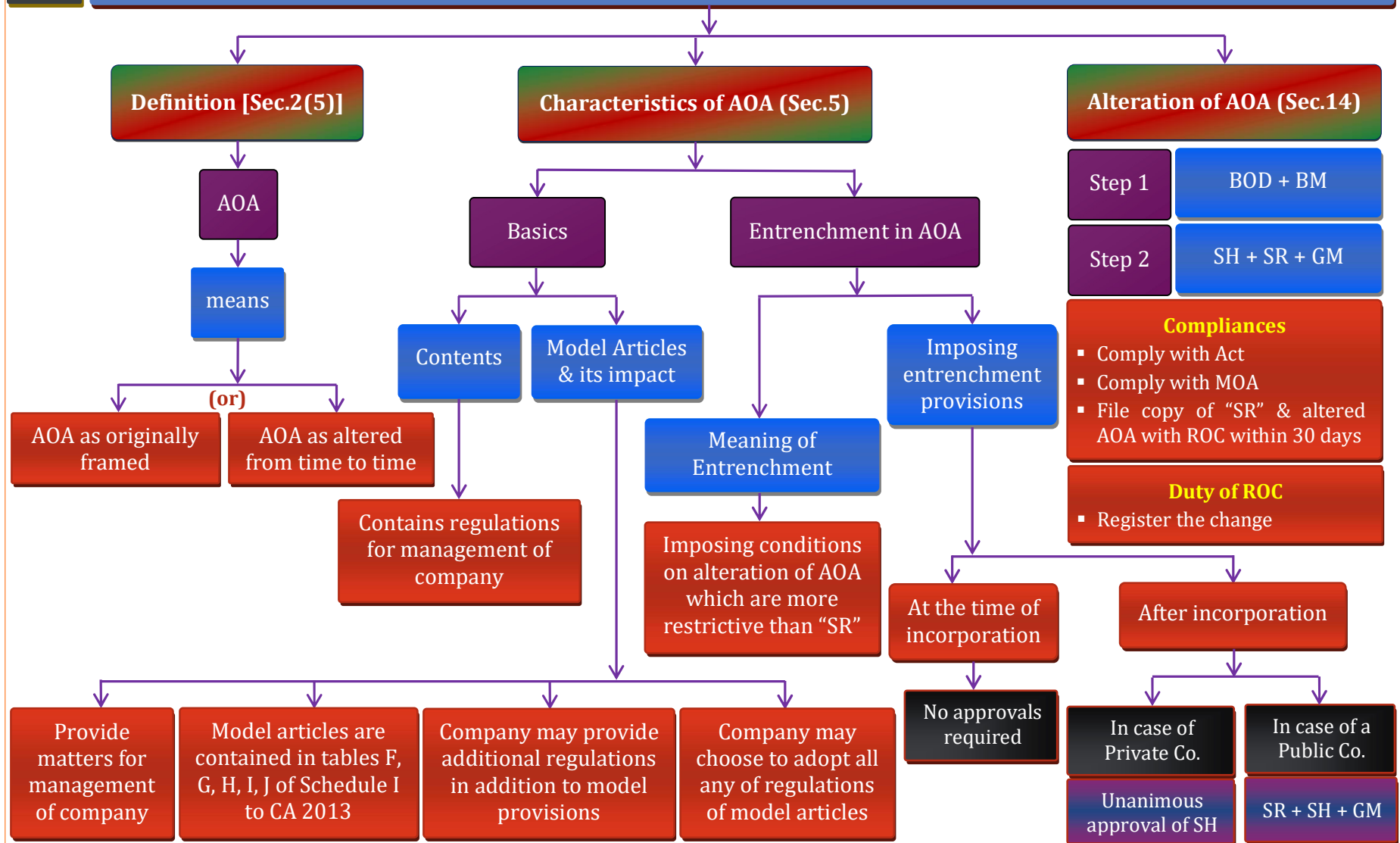
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OTHER CLAUSES OF MOA



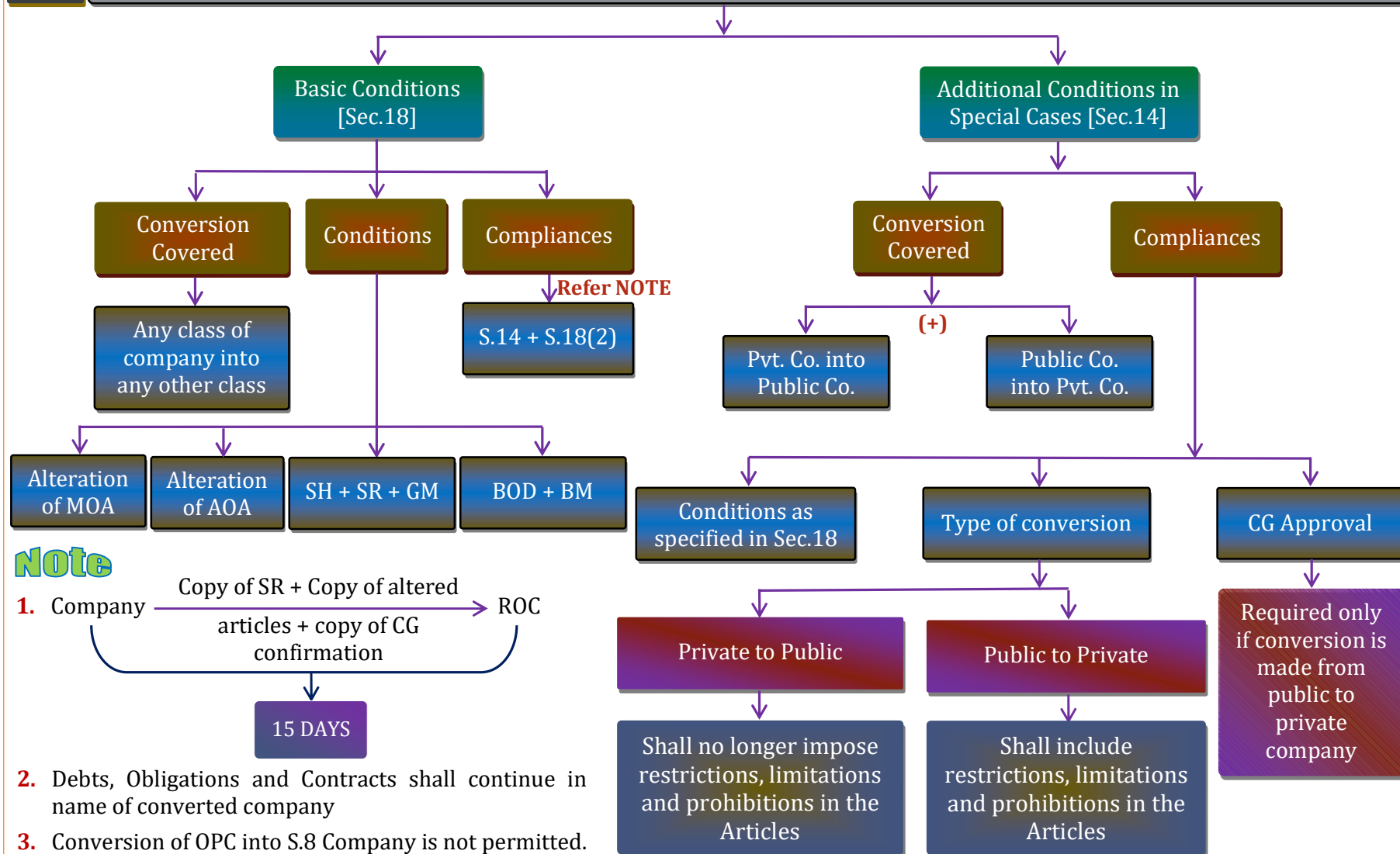
8

ARTICLES OF ASSOCIATION



9

CONVERSION CASES [SEC.14 r/w.SEC.18]



10

DOCTRINES UNDER THE COMPANIES ACT

10-A

Doctrine of constructive notice

Doctrine of Indoor Management

Once MOA & AOA are registered with ROC

They get the status of "public documents"

Therefore, every person dealing with the company shall have the knowledge of contents of MOA & AOA and understand the contents in a right sense

So, company presumes that the outsider have knowledge of MOA & AOA and understood in right sense

An outsider who has not read the contents in MOA & AOA with consensus cannot bring any suit against the company

This doctrine protects the company against the outsider

Hence, this is a doctrine that operates in favour of company and against PDWC

Once an outsider read the contents of MOA & AOA and understand its contents in a right sense, he will be stand protected by doctrine of indoor management

An outsider can presume that as far as internal regulations / resolutions are concerned, company has complied them strictly. That means, he need not inquire into internal management

This is a doctrine that operates in favour of outsider and against to company

Thus, the doctrine protects innocent outsiders against the wrongs done by the company

11

EXCEPTIONS TO "IM" AND DOCTRINE OF ULTRA VIRES

10-B

Exceptions to DIM

Knowledge of irregularity

If the outsider is having the actual knowledge of irregularity, the doctrine will not protect him since the doctrine protects innocent outsiders

Forgery

Refer Share Capital chapter "Forged Transfer"

Negligence / suspicion

If the transaction leaves an amount of suspicion, the outsider has to inquire and clear the suspicion involved, or else, he will not be protected by DIM on the ground of negligence

11

Doctrine of Ultra-Vires

Meaning

The term "ultra" means "beyond" and the term "vires" means "powers"

Types of UV Transactions

UV the Act

Acts done are not permitted by the Companies Act, 2013

Null & void

UV the MOA

Acts done are outside the objects of MOA

UV the AOA

Acts done are not in conformity with AOA

UV the Board powers

Acts done are not within the authority of BOD

Type 1 & 2
(1) Illegal, (2) Void-ab-initio, (3) Company not liable
(4) Not ratifiable, (5) Directors are personally liable

Impact of UV Transactions

Type 3 & 4

- Irregular
- Voidable
- Company liable if ratified
- Directors liable if not ratified

- Irregular & voidable
- These are intra-vires the Act & MOA

12

ADDITIONAL CONCEPTS ON ULTRA VIRES

General

- UV Acts do not bind the company
- UV Acts makes the BOD, being the agents to the company personally liable
- 3rd Party cannot sue the company
- Objects of company shall be expressly said in MOA or else Acts become UV

Ashbury Railway Carriage & Iron Co. Ltd. V/s. Richie

FACTS OF THE CASE

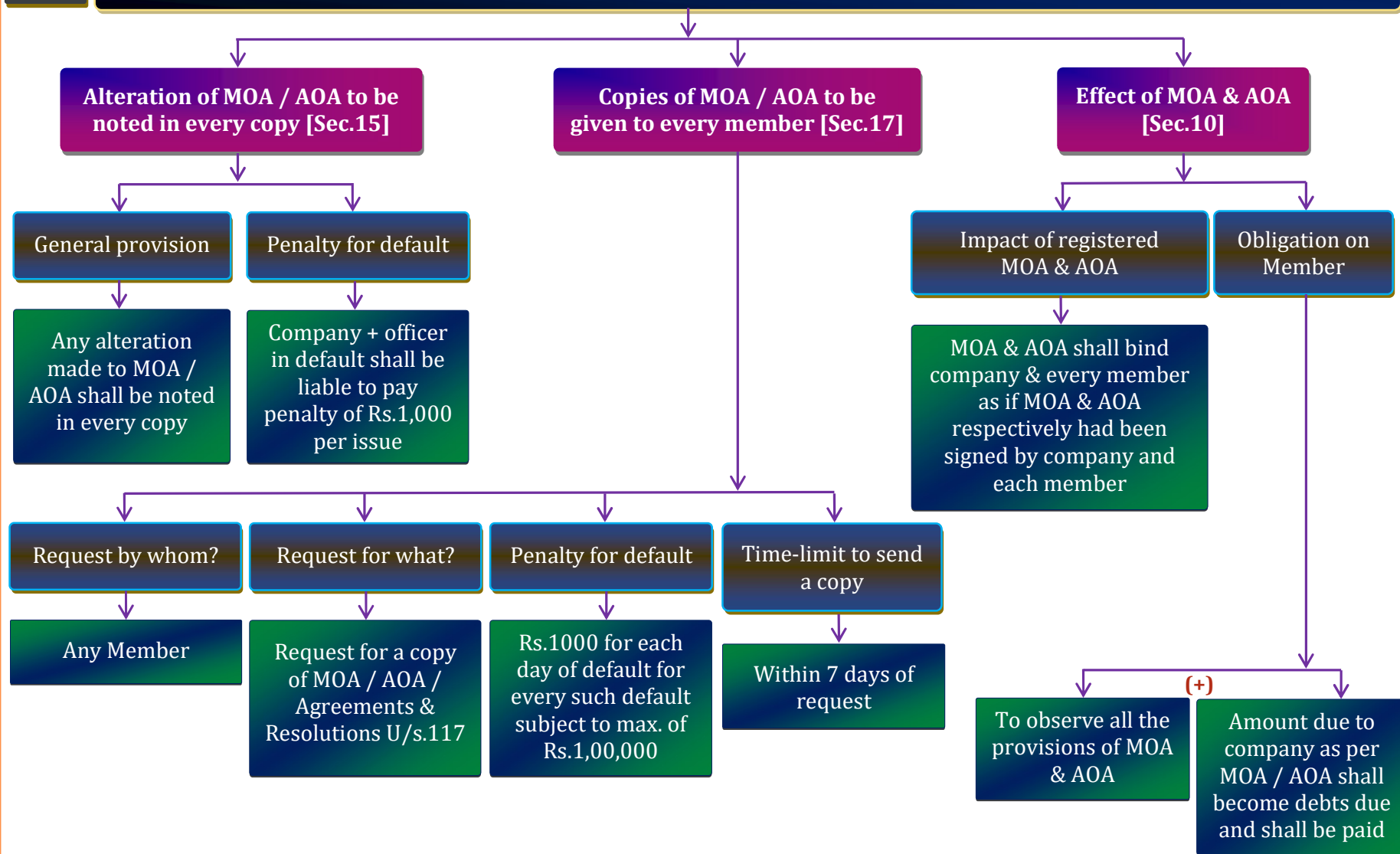
- Ashbury is a company incorporated with an object to sell, lease, hire the railway carriages and wagons
- The company is approached by Belgium Railway Company which requested Ashbury company to finance its railway line in Belgium
- Ashbury company has initially accepted but later on decided to withdraw to finance the railway line in Belgium because financing other companies is outside the purview of its objects.
- The director of Belgium Company, Mr. Richie, decided to sue the Ashbury company for breach of contract since financing is within the objects showing other objects of Ashbury company which says "to carry on the business of mechanical engineers and general contractors".

VERDICT OF THE COURT

The Court held that, the term "GENERAL" used in the objects clause covers only such contracts which are related to mechanical engineering and since financing is not covered, the contract is ultra-vires and no party can sue another.

13

MISCELLANEOUS CONCEPT ON MOA



14

OTHER ISSUES ON BINDING EFFECTS

By the contents covered by MOA & AOA

There is a binding effect between company and members

Company bound to member

There is a binding effect between the members and company

Member bound to company

There is no binding effect between member with another member

There is no binding effect between company with an outsider

CASE LAW

Major General Shanta Shamsher Jung Bahaddar Rana

Vs.

Kamani Bros. (P) Lvt.

FACTS

The company in its AOA has expressly said that MD of the company cannot be removed unless there is a proven mis-conduct

Major Rana has been appointed as MD of the company. Major Rana is also a member of the company

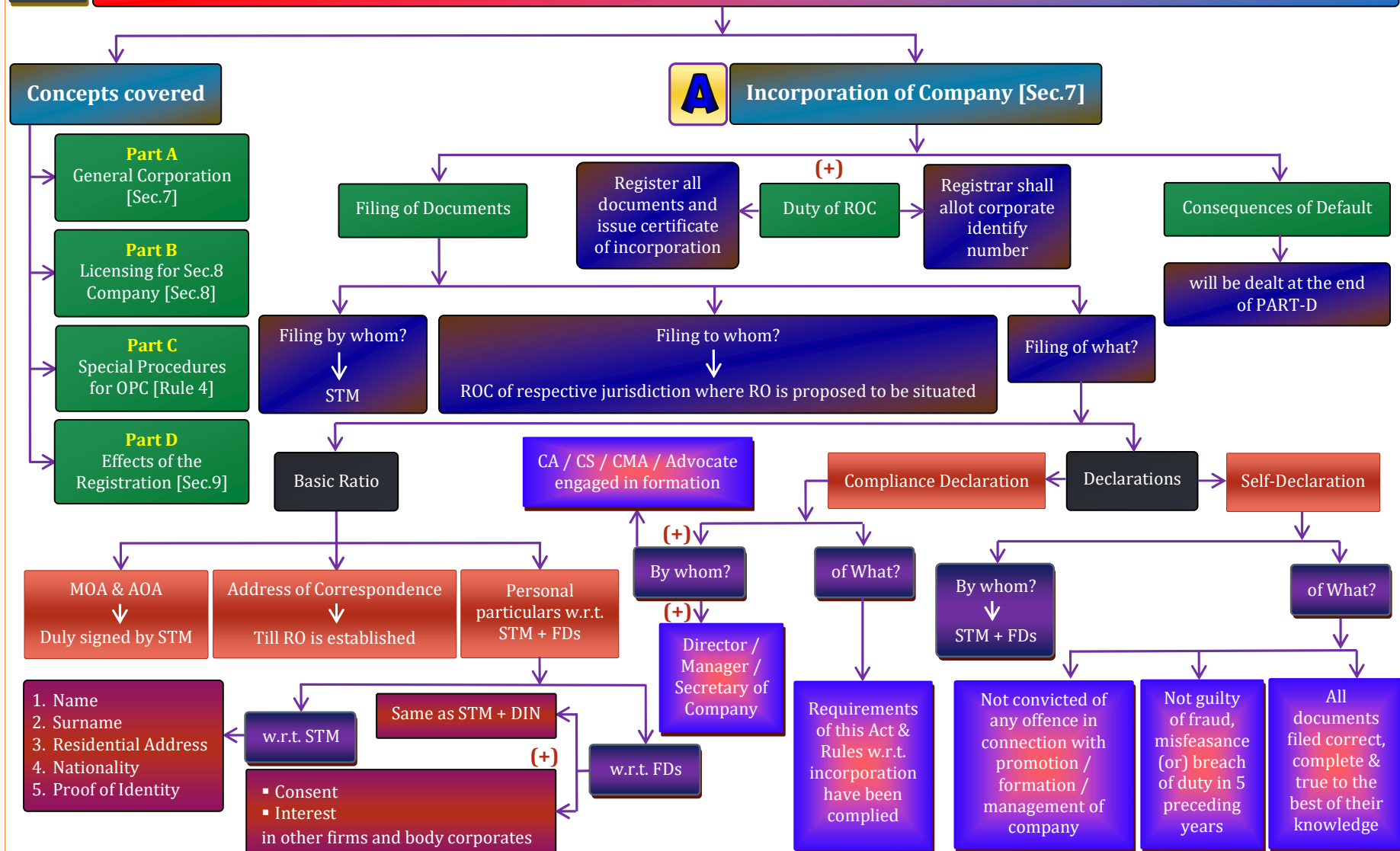
Major Rana has been removed by the company as MD even though there is no proven mis-conduct and filed a suit in the court against unjustified removal

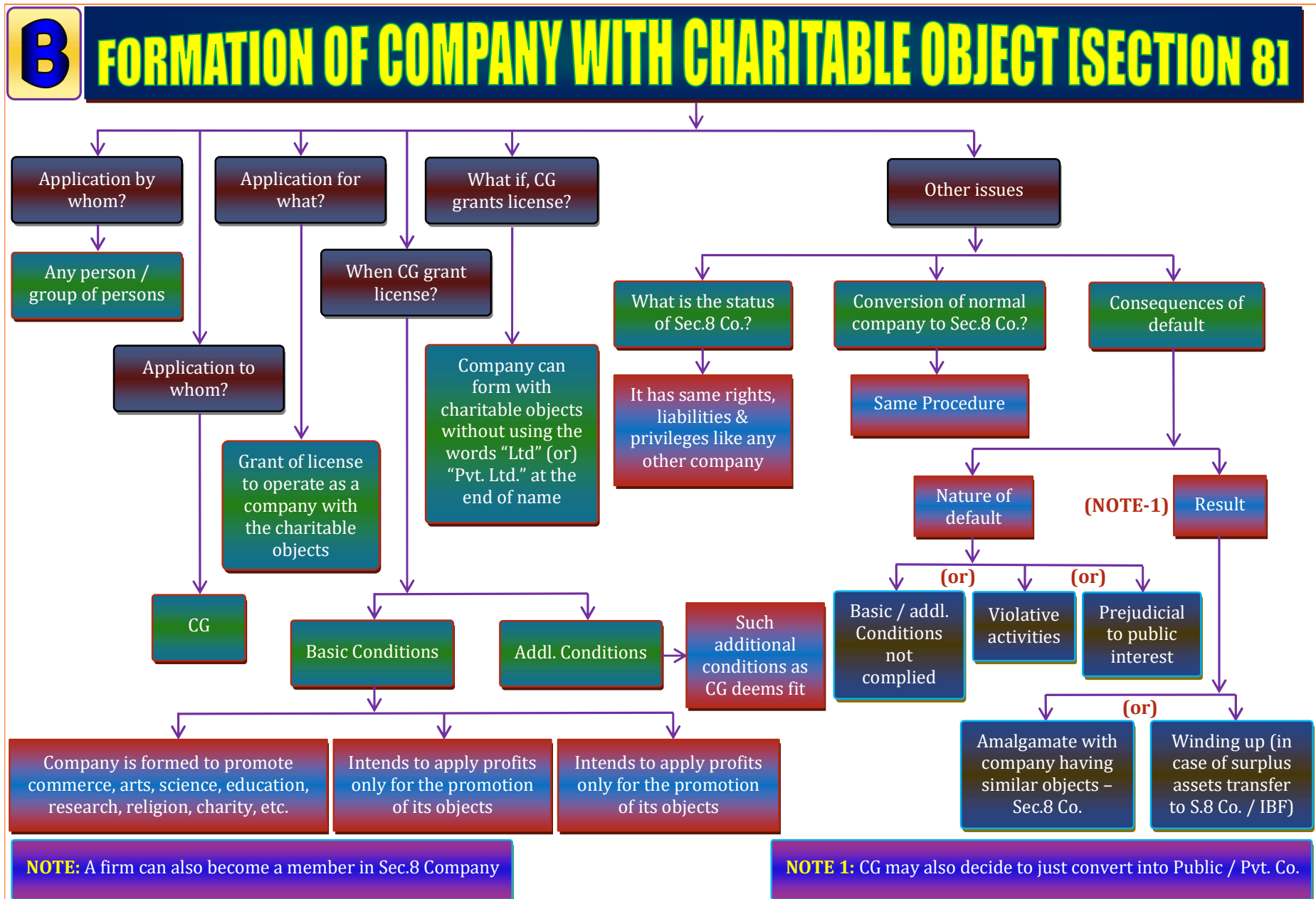
Court in the given case held that, removal of MD claiming it to be unjustified is not valid since MOA & AOA do not create any binding effect with the outsiders

Verdict of the Court

15

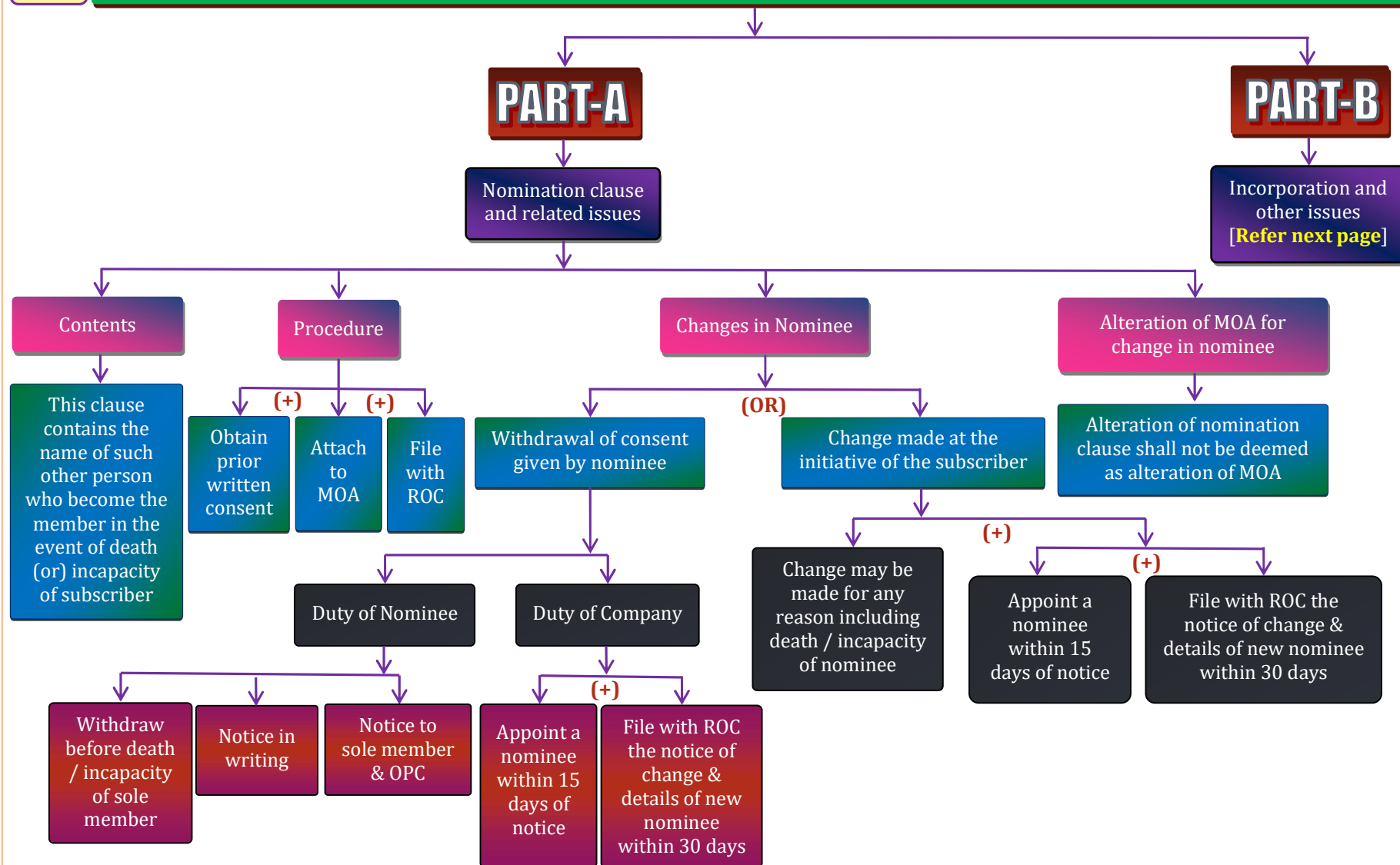
INCORPORATION CONCEPTS [SECTION 7, 8, 9 AND RULE 4]





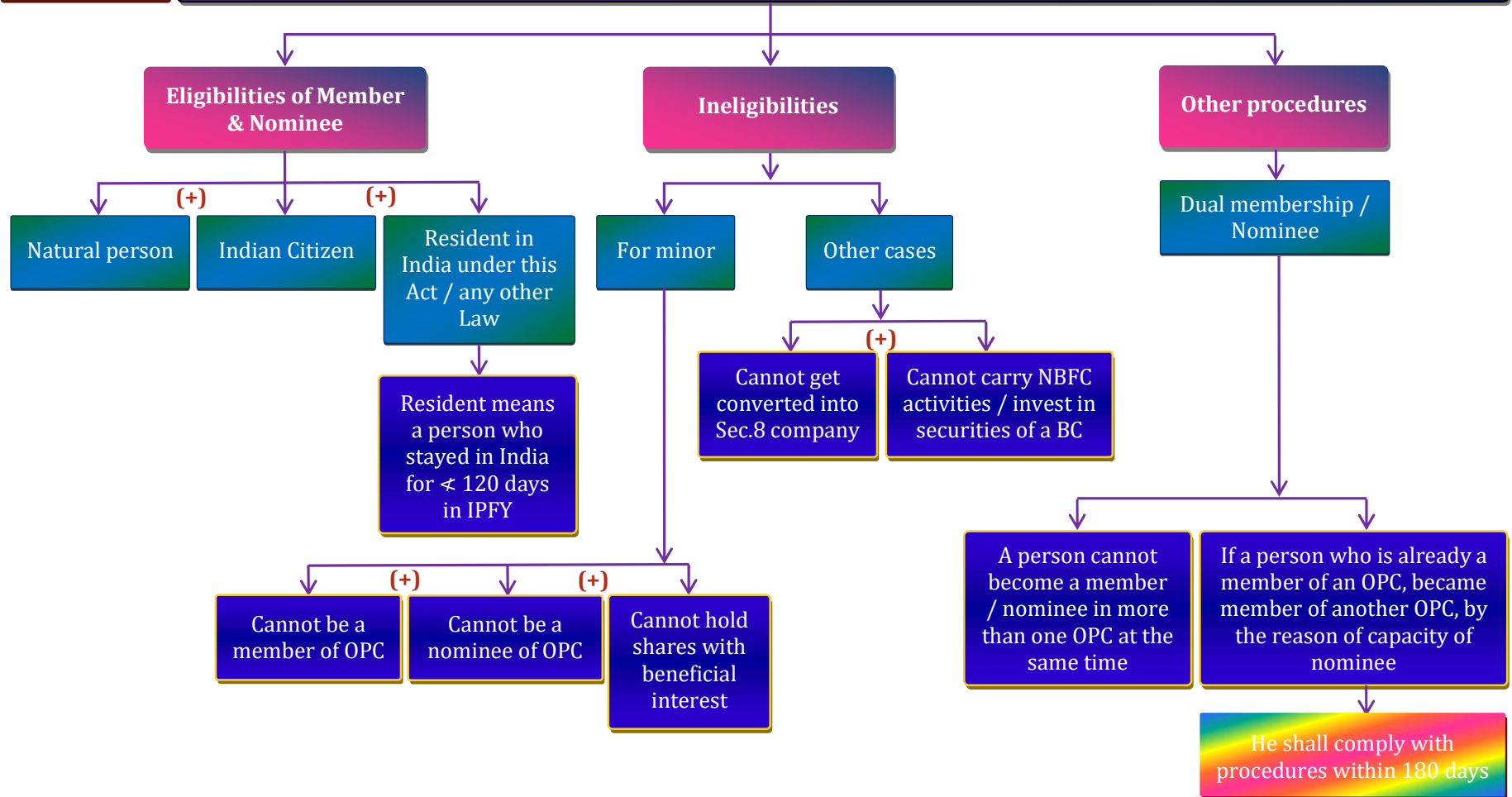


SPECIAL PROVISIONS APPLICABLE FOR ONE PERSON COMPANY 1st, 2nd, 3rd, 4th & 5th Provisos to Sec.3(1) & Rule 41

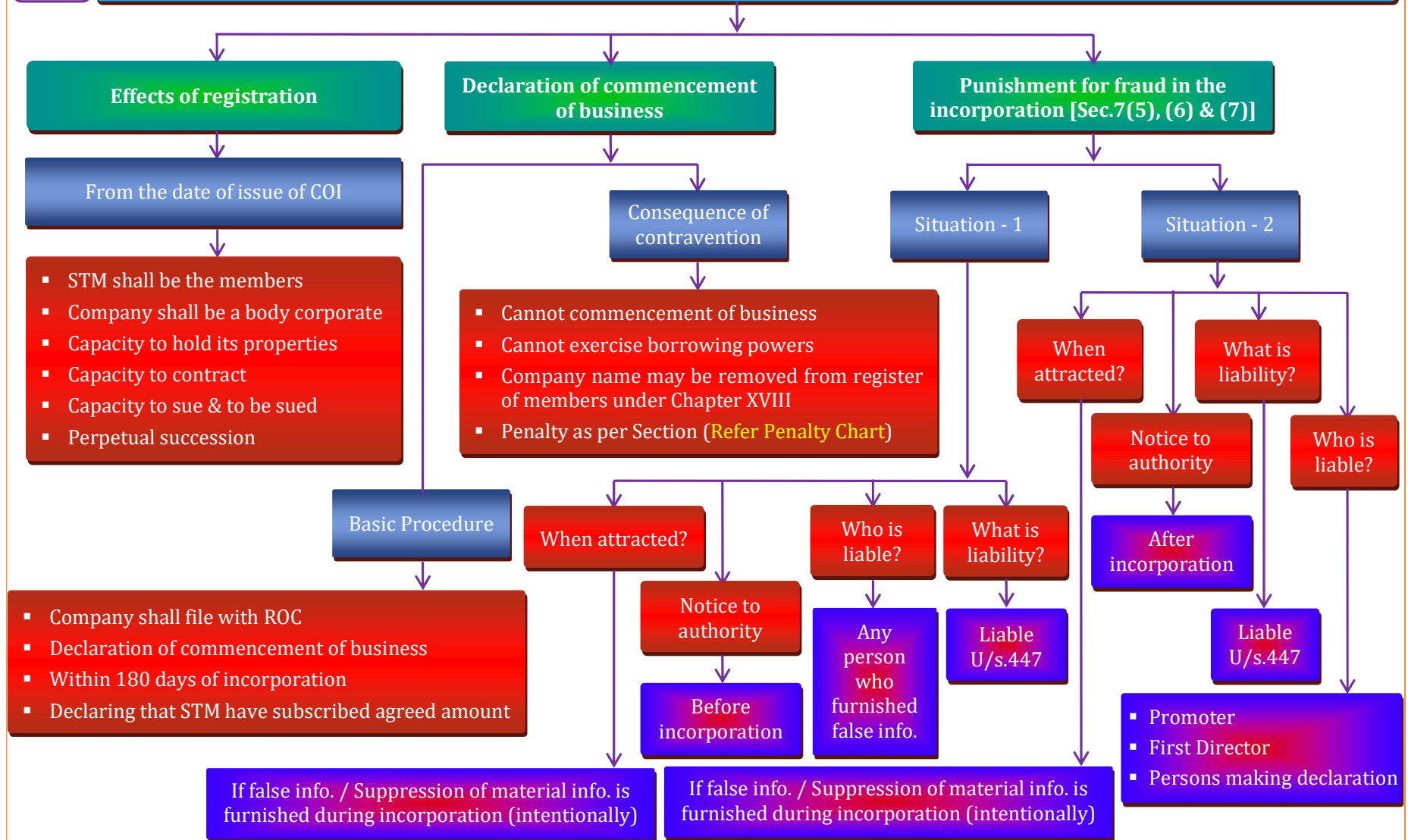


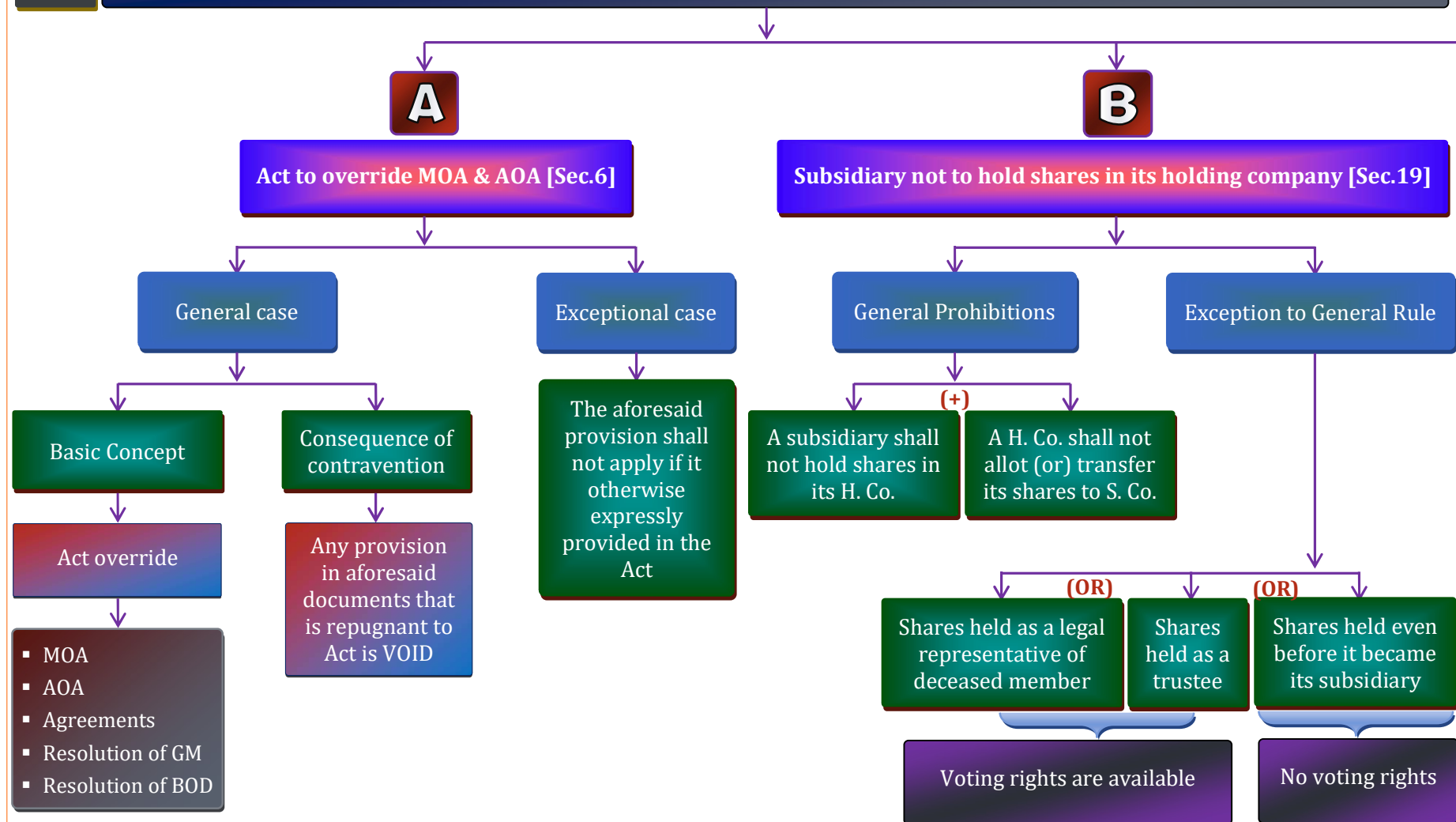
PART-B

INCORPORATION AND OTHERS ISSUES



D OTHER ISSUES IN INCORPORATION





(Contd..)

