Legal Aspects of Business

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Recapitulate

The companies Act, 2013

Managerial Personnel

- Director
  - Position of directors
  - Qualification of directors
  - Disqualification of directors
  - Appointment of directors
  - Vacation of directors
  - Duties and liabilities
- Managing Director
- Managerial Remuneration

The Companies Act, 2013

Winding Up

Winding up of a company is a process of putting to an end to the life of a company. It is a proceeding by means of which a company is dissolved and in the course of such dissolution its assets are collected, its members, if necessary pay off its debts out of assets of the company or from contribution.

The Companies Act, 2013

Modes of Winding up

Modes of winding up

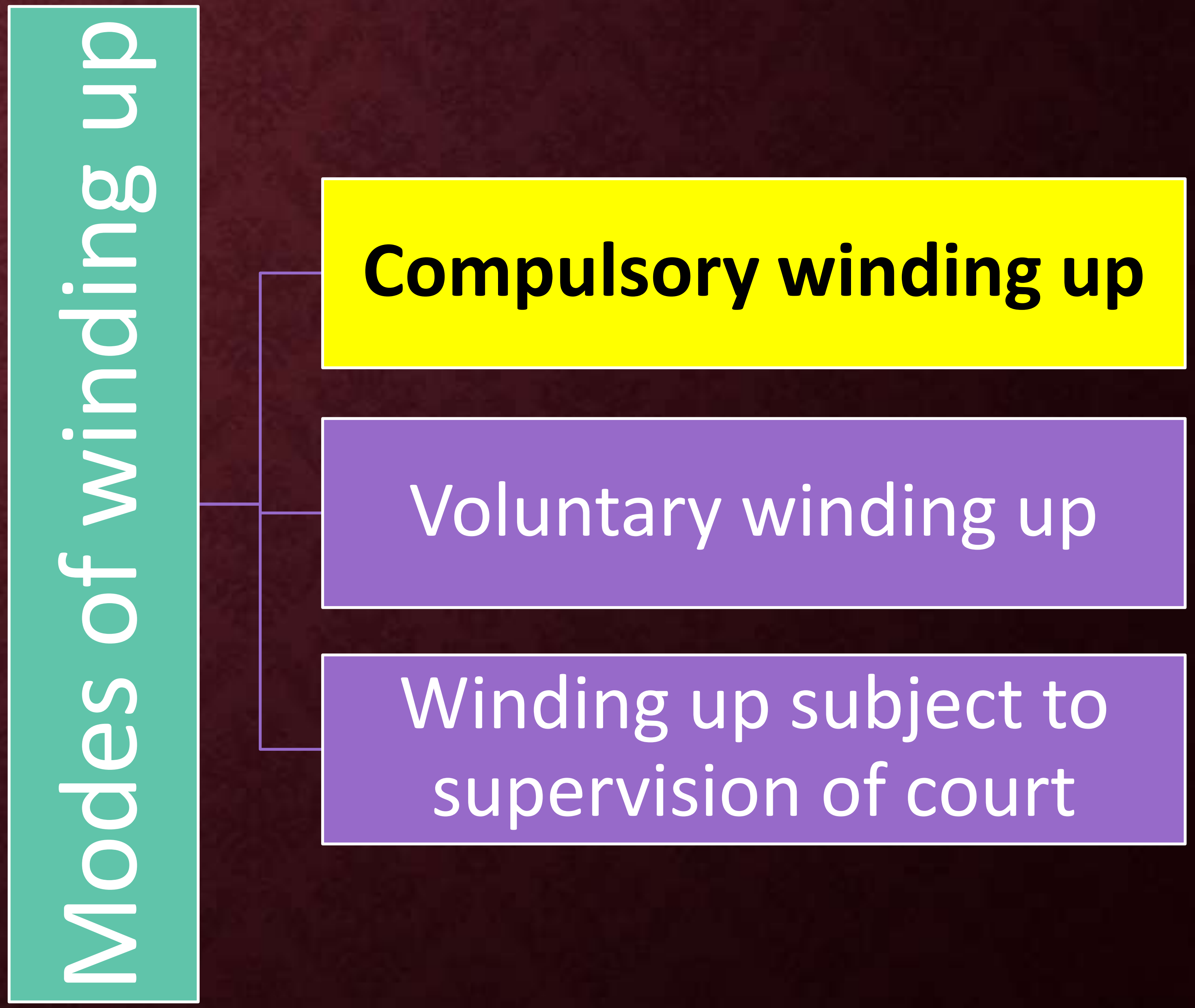
- Compulsory winding up
- Voluntary winding up
- Winding up subject to supervision of court

The Companies Act, 2013

Modes of Winding up

I. Compulsory winding up by the court

1. By a special resolution
2. Default in delivering the statutory report to the registrar or in holding the statutory meeting
3. Company does not commence its business within a year
4. Number of members is reduced below 7 in the case of a public company and below 2 in case of a private company
5. Unable to pay its debts
6. Question of just and equitable if its proved



The Companies Act, 2013

Modes of Winding up

Petition for winding up

1. The company
2. Any creditors or creditor
3. Any contributory or contributories
4. All or any of the aforesaid parties, together or separately
5. The Registrar
6. Any person authorized by the Central Government under section 243

The Companies Act, 2013

Modes of Winding up

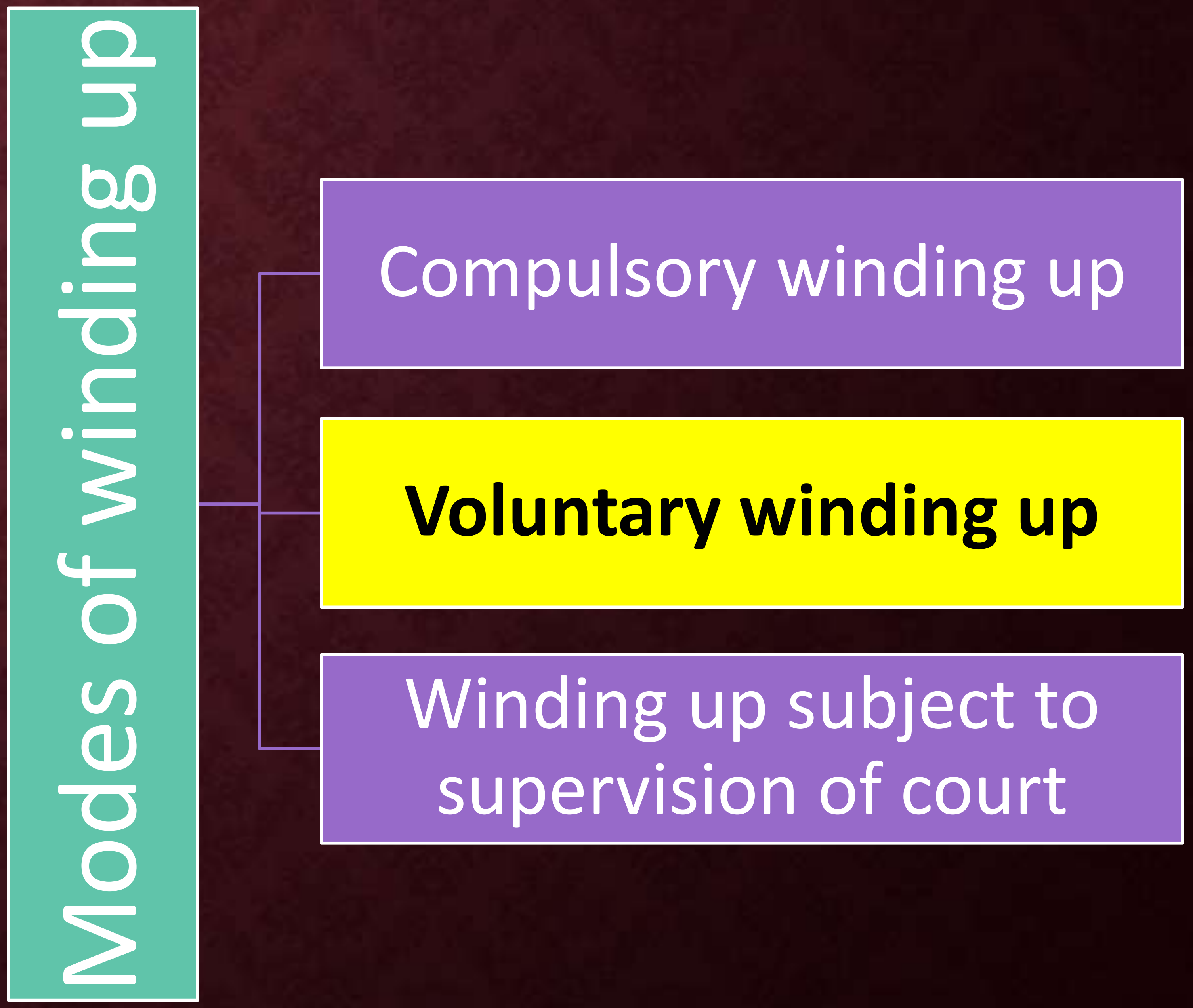
Voluntary Winding up

This form of winding up is by far the most common and the most popular form.

Types of voluntary winding up

i. Members voluntary winding up

If it is proposed to wind up a company voluntarily, the directors or a majority of them, may, at a meeting of the Board, make a declaration verified by an affidavit that the company has no debts or that it will be able to pay its debts in full **within a period not exceeding 3 years** from the commencement of winding up as may be specified in the declaration.



The Companies Act, 2013

Modes of Winding up

Voluntary Winding up

This form of winding up is by far the most common and the most popular form.

Types of voluntary winding up

ii. Creditors Voluntary winding up

Where the **declaration of solvency is not made** the winding up is referred to as creditors' voluntary winding up. Similar to those applicable to the members' voluntary winding up except that in the former, it is the creditors who appoint the liquidator, fix the remuneration and generally conduct the winding up.

- Modes of winding up
  - Compulsory winding up
  - **Voluntary winding up**
  - Winding up subject to supervision of court

The Companies Act, 2013

Difference between Member's and Creditors Voluntary Winding up

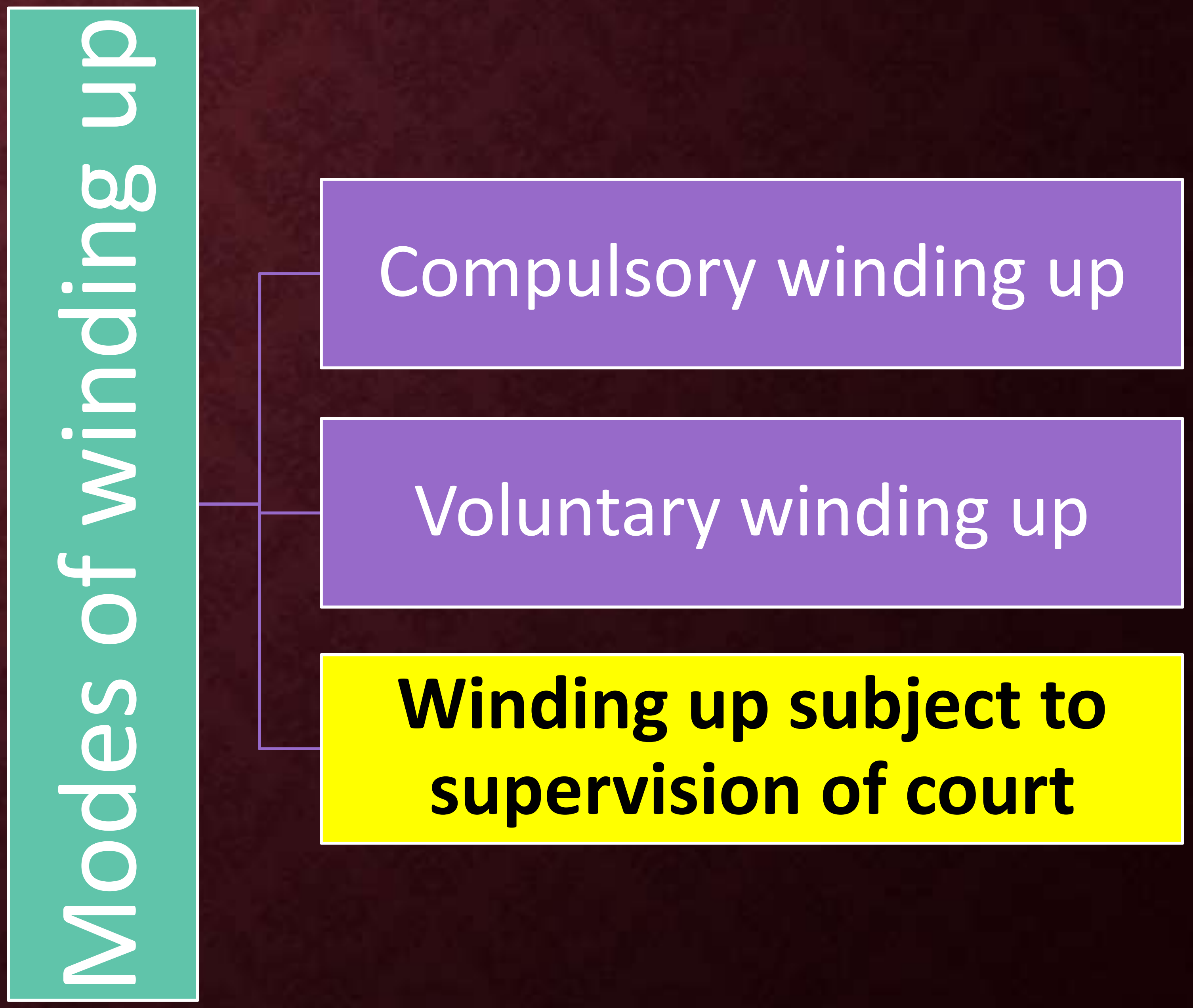
S. No.	Member's Voluntary winding up	Creditors Voluntary winding up
1	Only meeting of members is called	Meeting of the members and creditors is called
2	No committee of inspection is appointed	Committee of inspection is appointed
3	Declaration of solvency is made by the directors	No such declaration is made
4	The liquidator is appointed and remuneration is fixed by the company itself	The liquidator is appointed by the creditors and remuneration is fixed by the committees of inspection
5	Such winding up takes place only when the company is in a position to pay its debts	Such winding up takes place only when the company is not in a position to pay its debts

The Companies Act, 2013

Modes of Winding up

Winding up subject to Supervision of Court

At any time after a company has passed a resolution for voluntary winding up the court may make an order that the voluntary winding up will continue, but subject to the supervision of the court and with such liberty for creditors, contributories and others to apply to the court on such terms and conditions as the court thinks fit.



Review Questions

1. Declaration of solvency should be made in case of creditors voluntary winding up. **True or False**

2. In case of members voluntary winding up the company should clear or pay all its debts within how many years

   a. Two years
   b. Five Years
   c. One Year
   d. Three Years

3. Who can file petition for the winding up of a company?

   a. Contributors
   b. Creditors
   c. The company
   d. All of the above

Answer

1. Declaration of solvency should be made in case of creditors voluntary winding up.

Answer: **False**

2. In case of members voluntary winding up the company should clear or pay all its debts within how many years

Answer: d. Three years

3. Who can file petition for the winding up of a company?

Answer: **d.** All of the above

Thank You