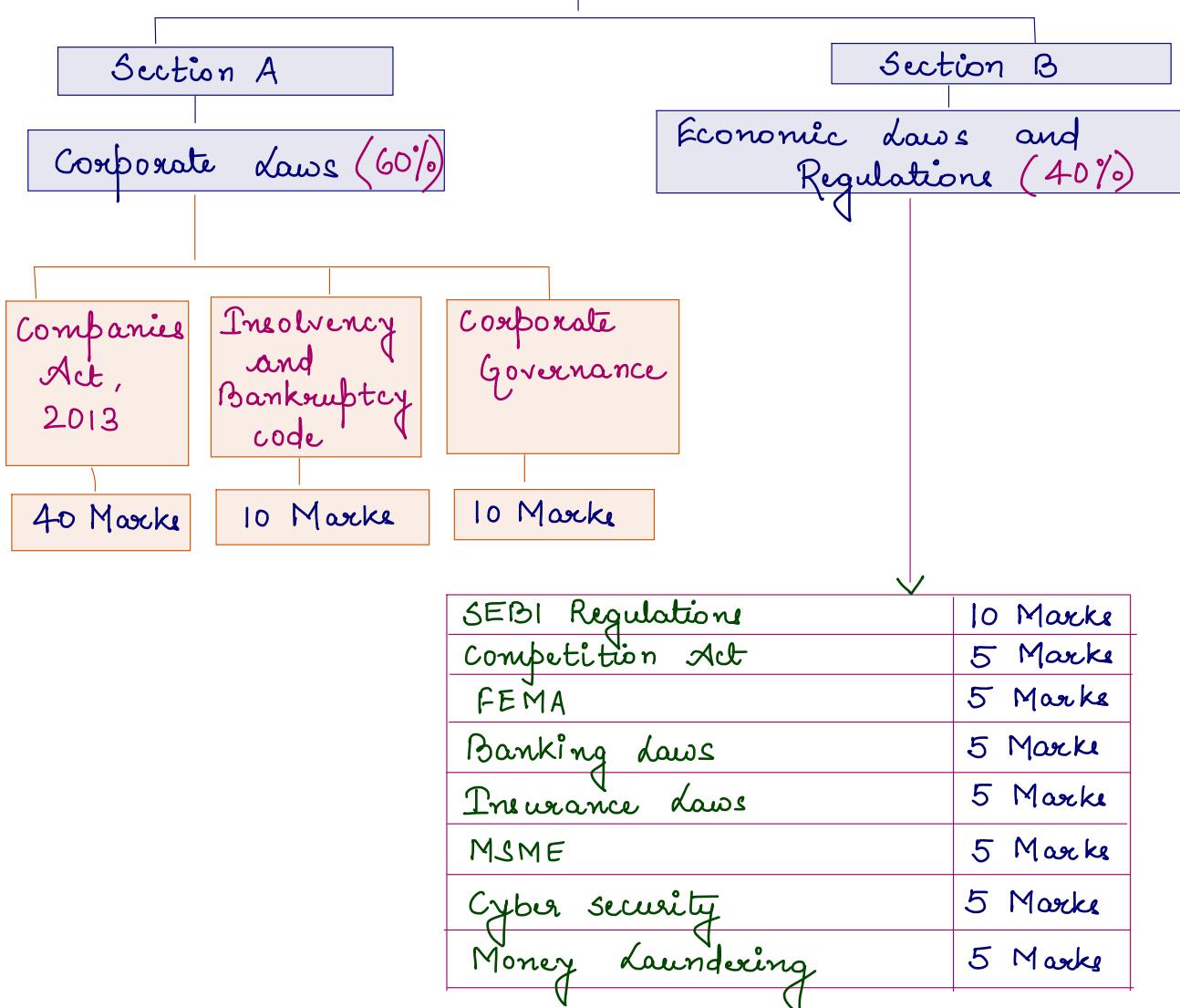
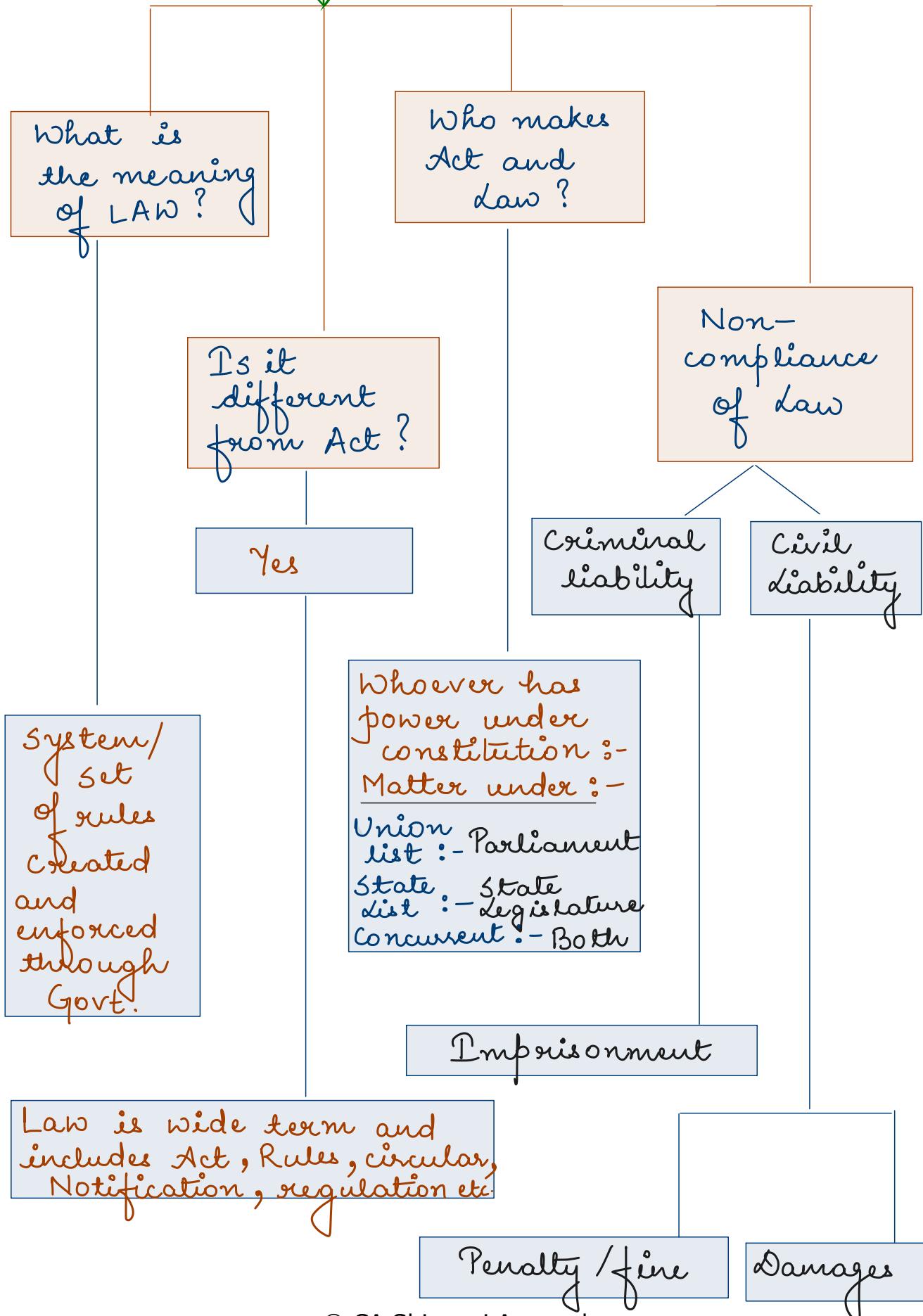


CMA Final Law

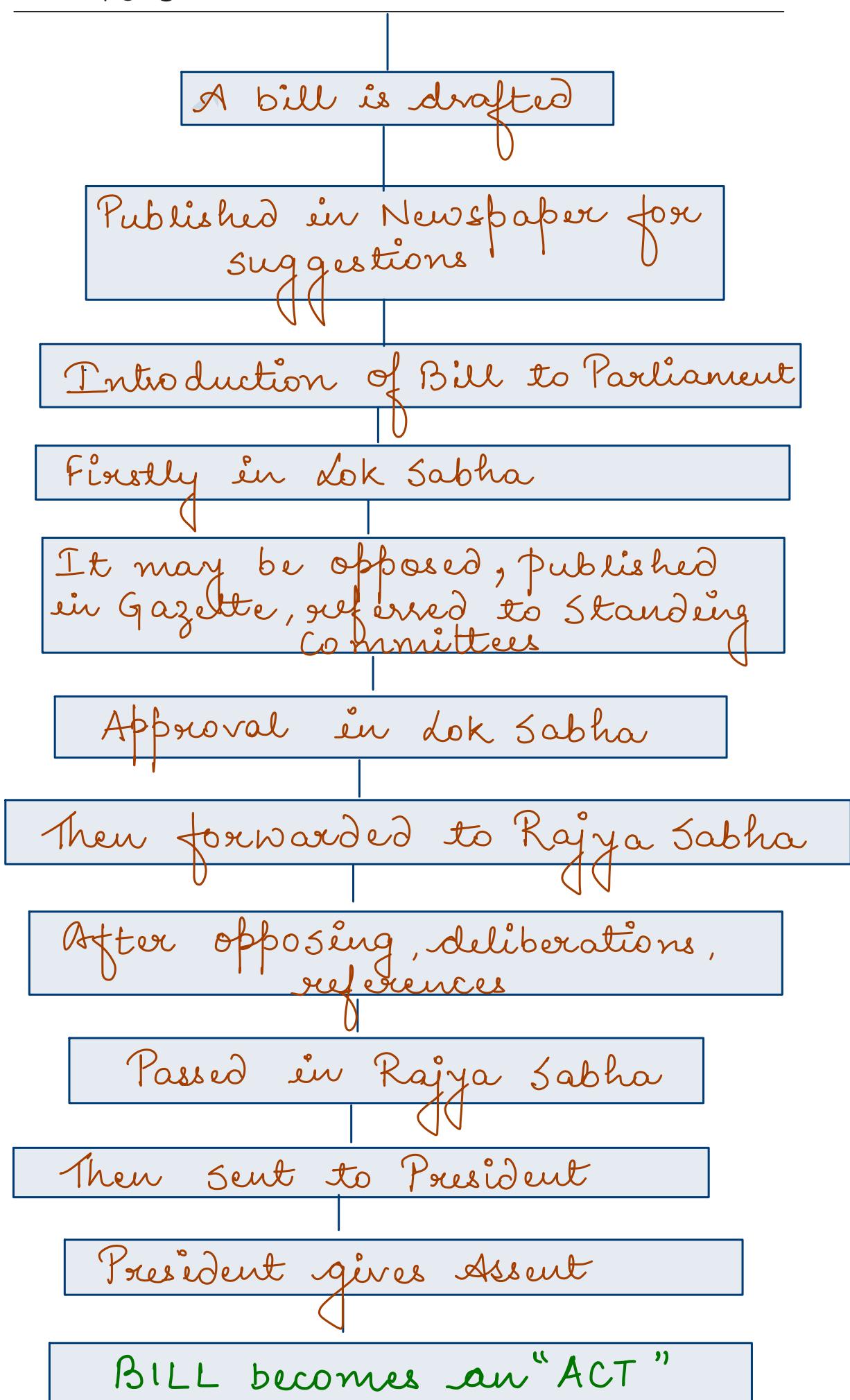
Paper 13- Corporate and Economic Laws – 2022



Corporate and Economic laws



How an Act is Passed ?



Corporate law

Companies Act, 2013

By power under Entry 97 of Union list, Parliament got Power

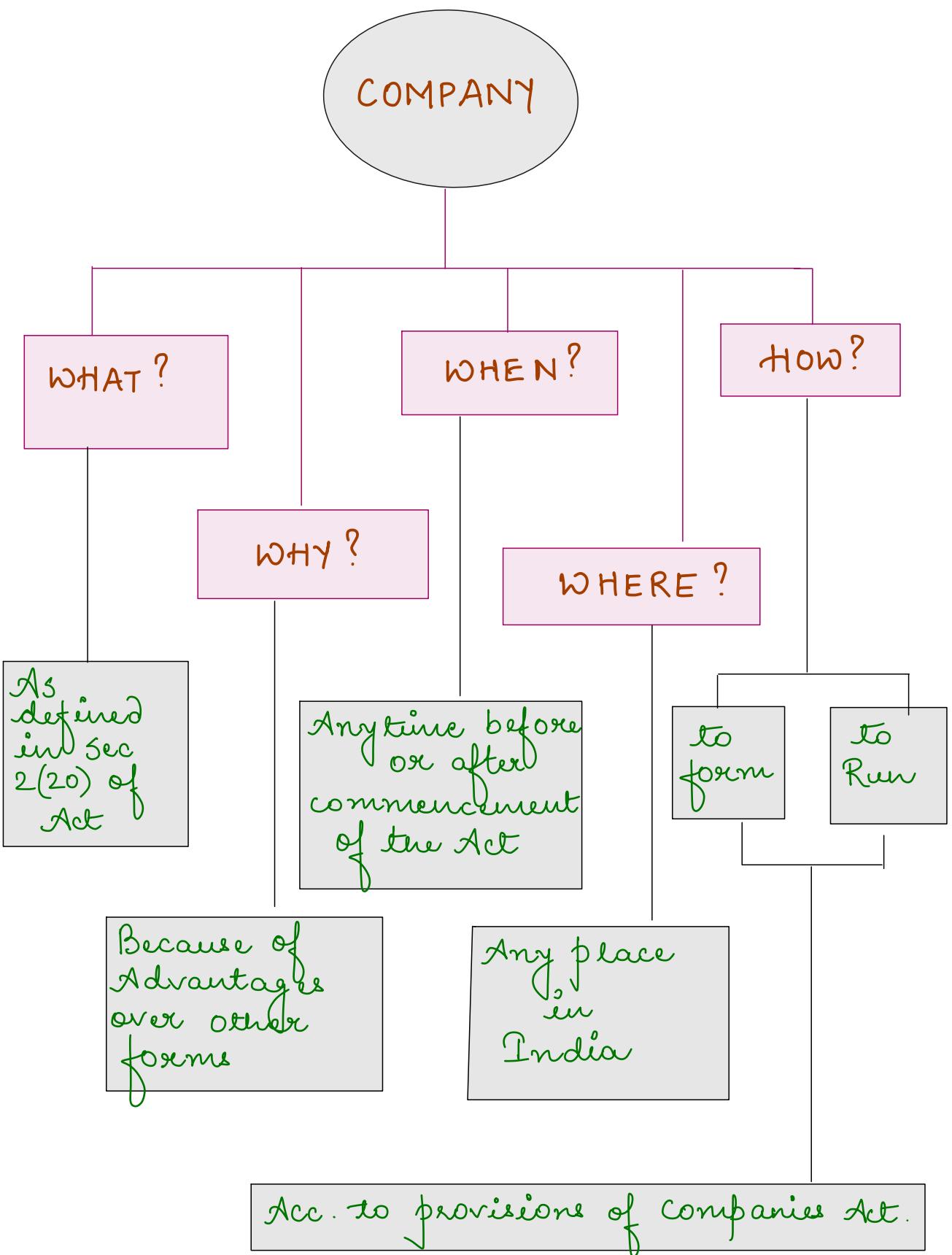
Introduced in 2008 but after rejections of referals, got approved in

Dec. 2012 → by Lok Sabha
Aug 2013 → " Rajya Sabha
29 Aug 2013 → By President

Bill became Companies Act, 2013 to regulate

this form of Business Organisation

COMPANY



Companies Act, 2013

Chapters

Schedules

XXIX

VII

containing 470 sections

read with a lot of rules

In CMA final law Syllabus -

Only Selected Portion of companies Act is covered - Eg-

Preliminary, Incorporation, Deposits, Dividends, Accounts, Audit, Directors, Board Meetings, Inspection, Compromises, Oppression

Act was notified in Parts :-

Section 1 notified on 30th Aug 2013

98 sections n n 12th Sep. 2013

183 n n 1st April 2014 and so on..

Companies Act, 1956 has been completely repealed and New Act has been now implemented completely.

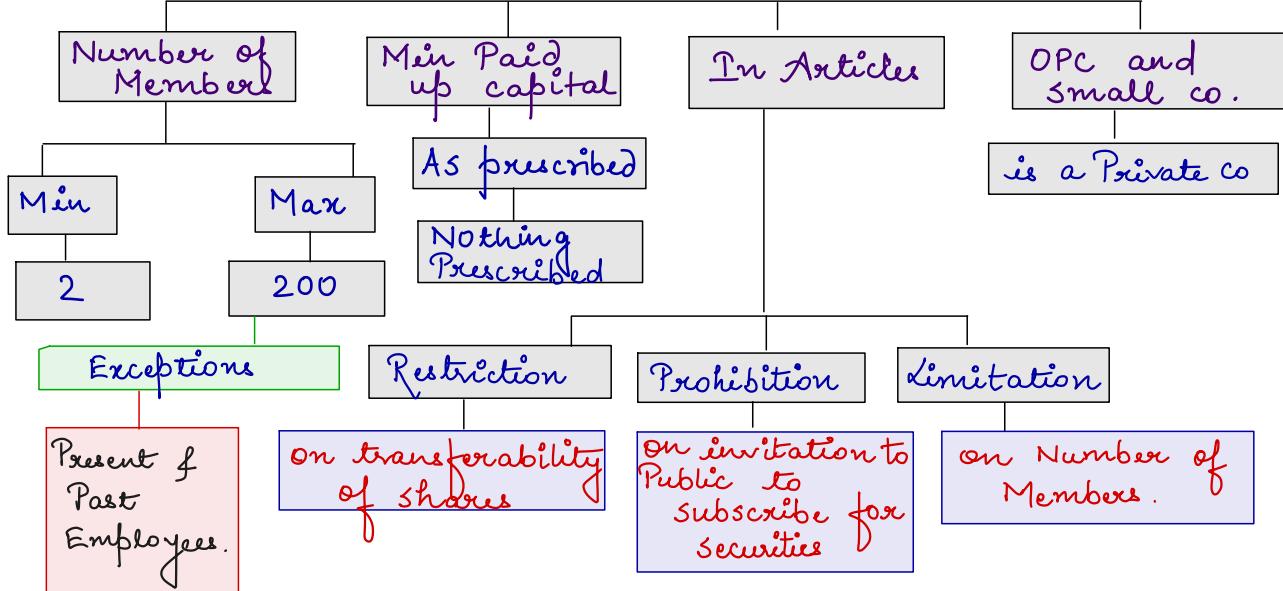
Extends to whole of India. Applicable also to Banking, Insurance, Electricity co's so far provisions are consistent with respective Laws

Chapter I~ Preliminary [Section 1 & 2]

Section 2 :- Definitions

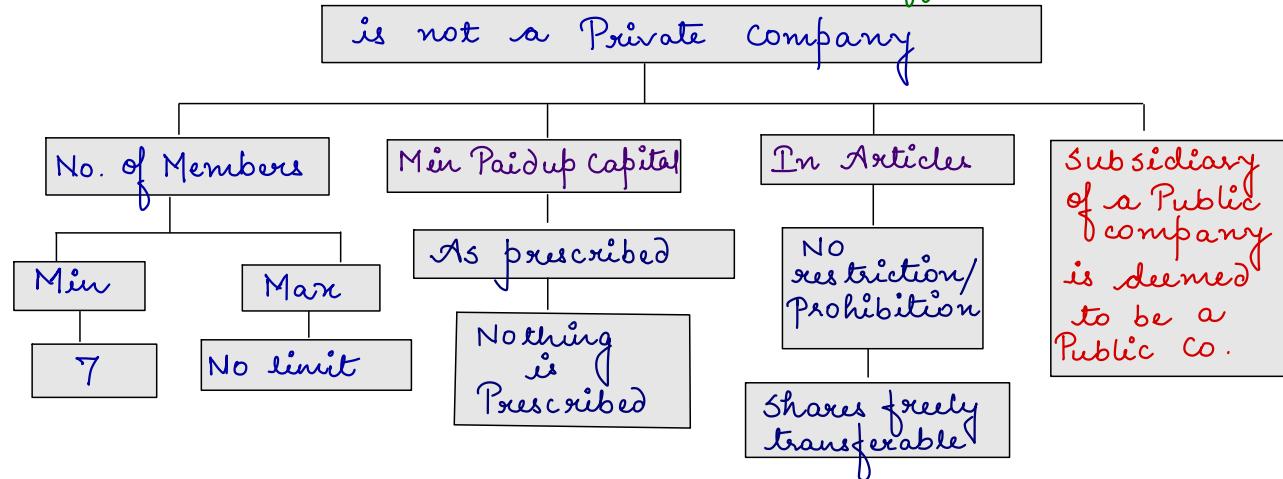
Private company [Section 2(68)]

suffix - "Private Ltd"



Public Company [Section 2(71)]

suffix " Ltd "



One Person Company [Section 2(62)]

One Person

is member and can be sole director

Natural Person + Indian Citizen (whether Resident / Not)

can't incorporate more than one OPC

MOA of OPC shall indicate name of Nonresident which can be changed

Not allowed to be Sec. 8 company.

Holding Company [Section 2(46)]

In relation to other company

is a company of which such companies

are subsidiary companies

Subsidiary Company [Section 2(87)]

Company

in which Holding company

either

control composition
of BOD

OR

control more than half
of Voting Power at own
or with Subsidiaries.

No company shall have more than 2 layers of subsidiaries.

Associate Company [Section 2(6)]

In relation to another company

in which other co. [which is not subsidiary]

BUT

has significant influence

is joint
venture
or

significant influence $\geq 20\%$
of Voting Power
or control

Voting
Power =
Total votes
at Poll

Small Company [Section 2(85)]

A Private Company

Not being :-
Section 8 Company
Holding " "
Subsidiary " "
Co. by special Act

PUC \leq 50 lakhs / sum Prescribed

AND

Max 10 crores can be Prescribed

Turnover \leq 2 crores / sum Prescribed

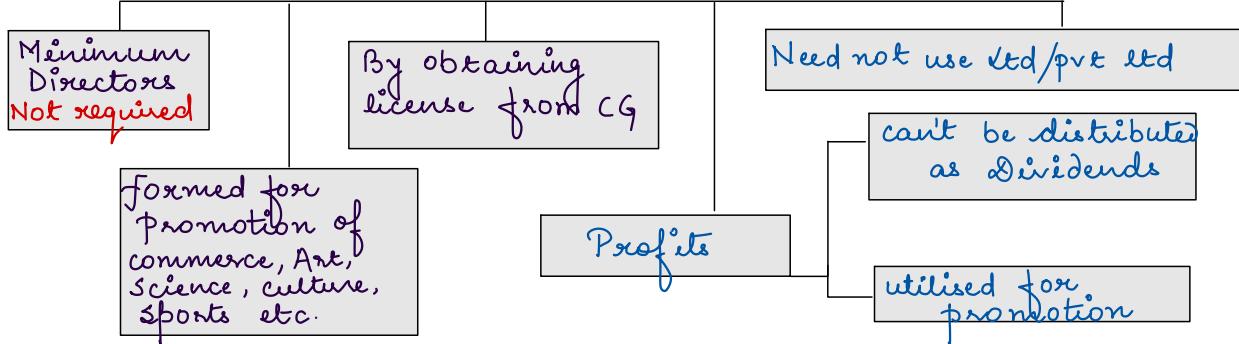
Amount Prescribed :- 4 crore

Max 100 crores can be Prescribed

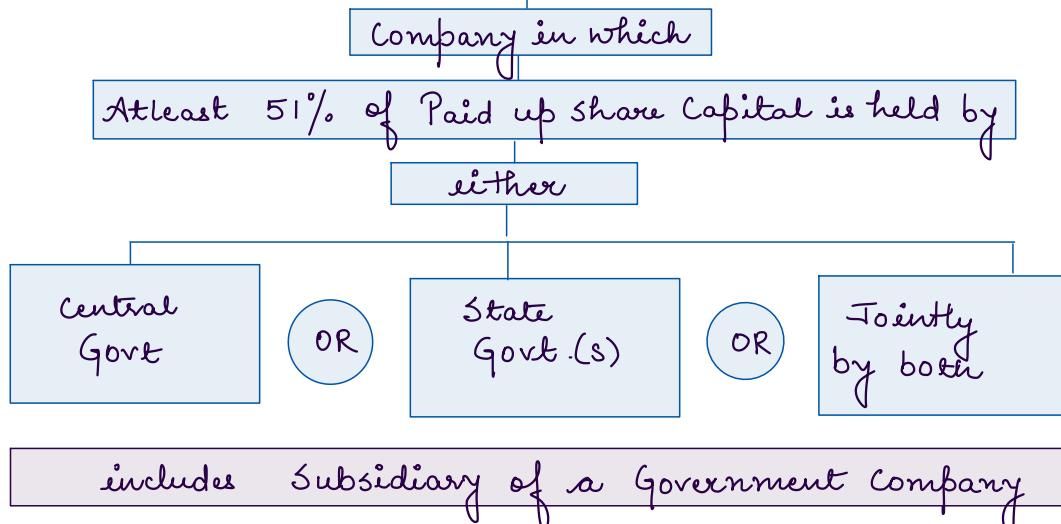
© CA Shivangi Agrawal

Amount Prescribed :- 40 crore

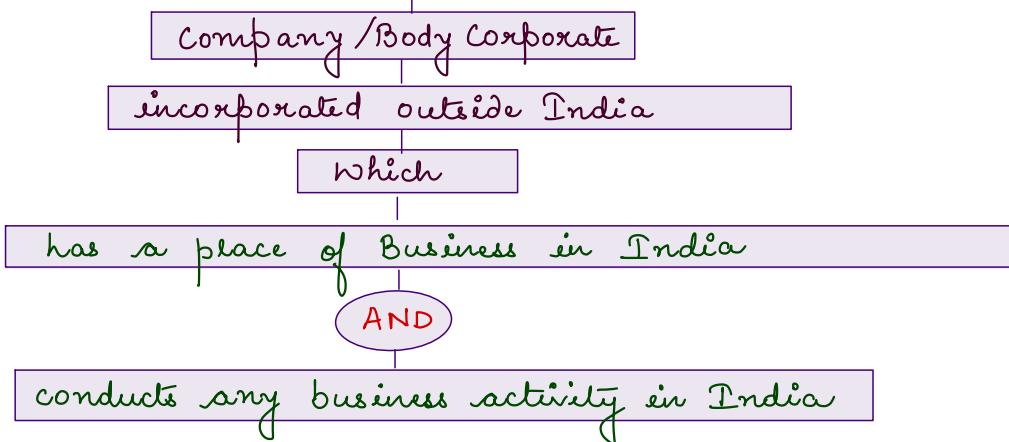
Section 8 Company



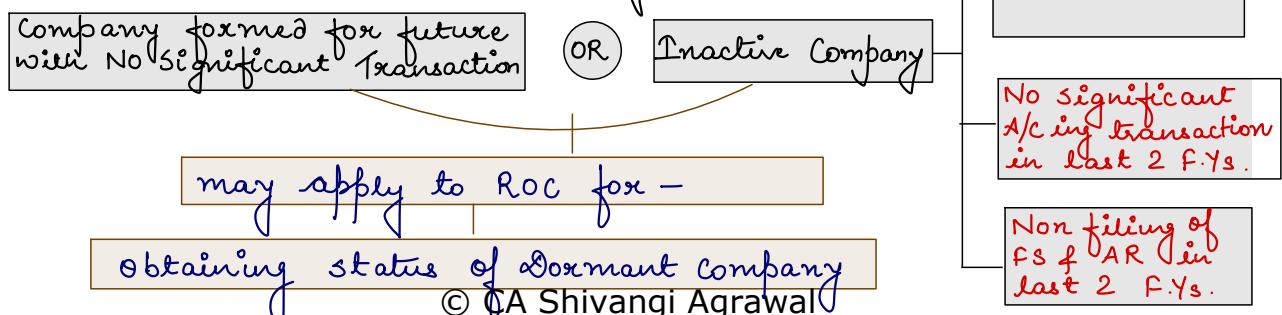
Government Company [Section 2(45)]



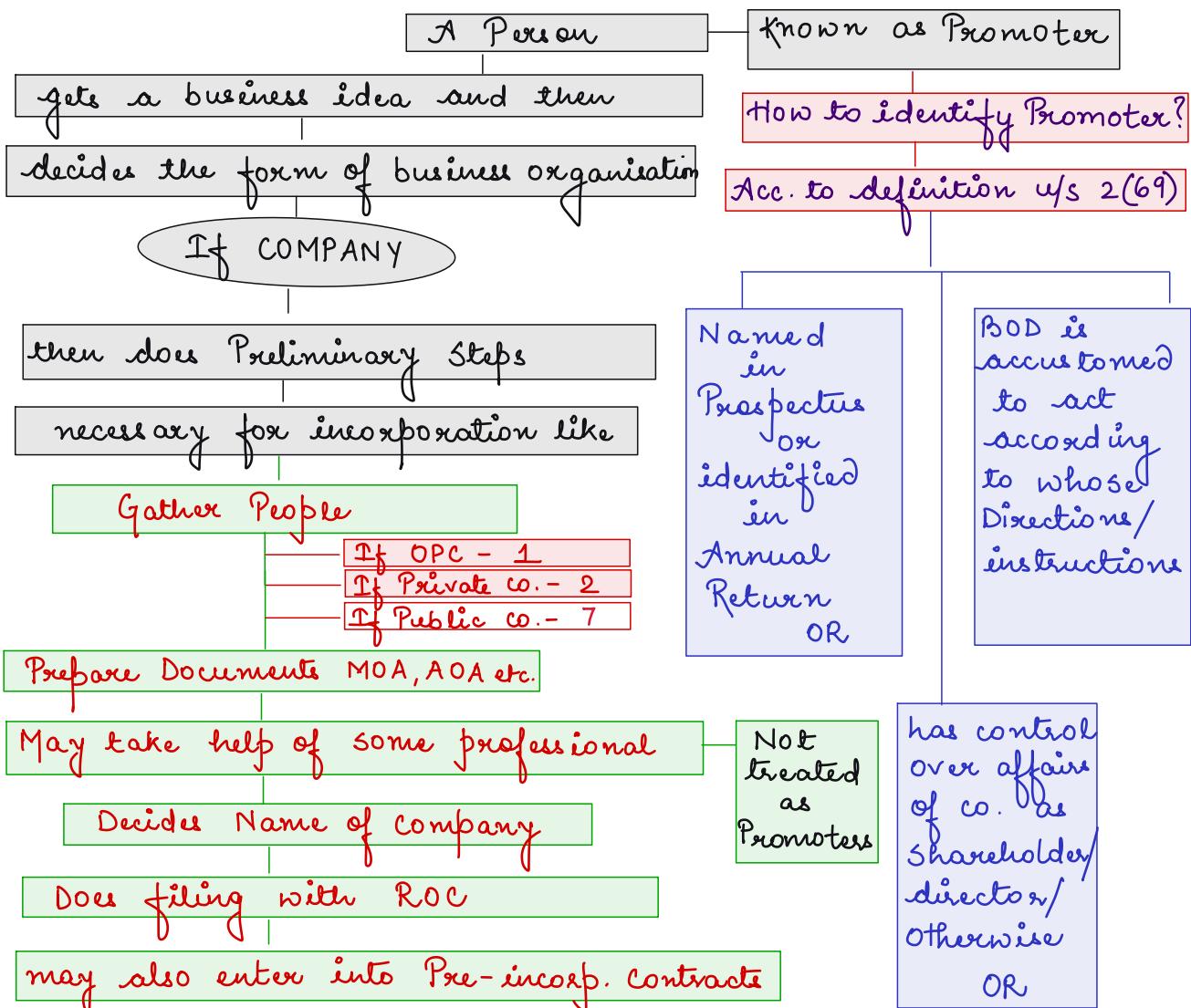
Foreign Company [Section 2(42)]



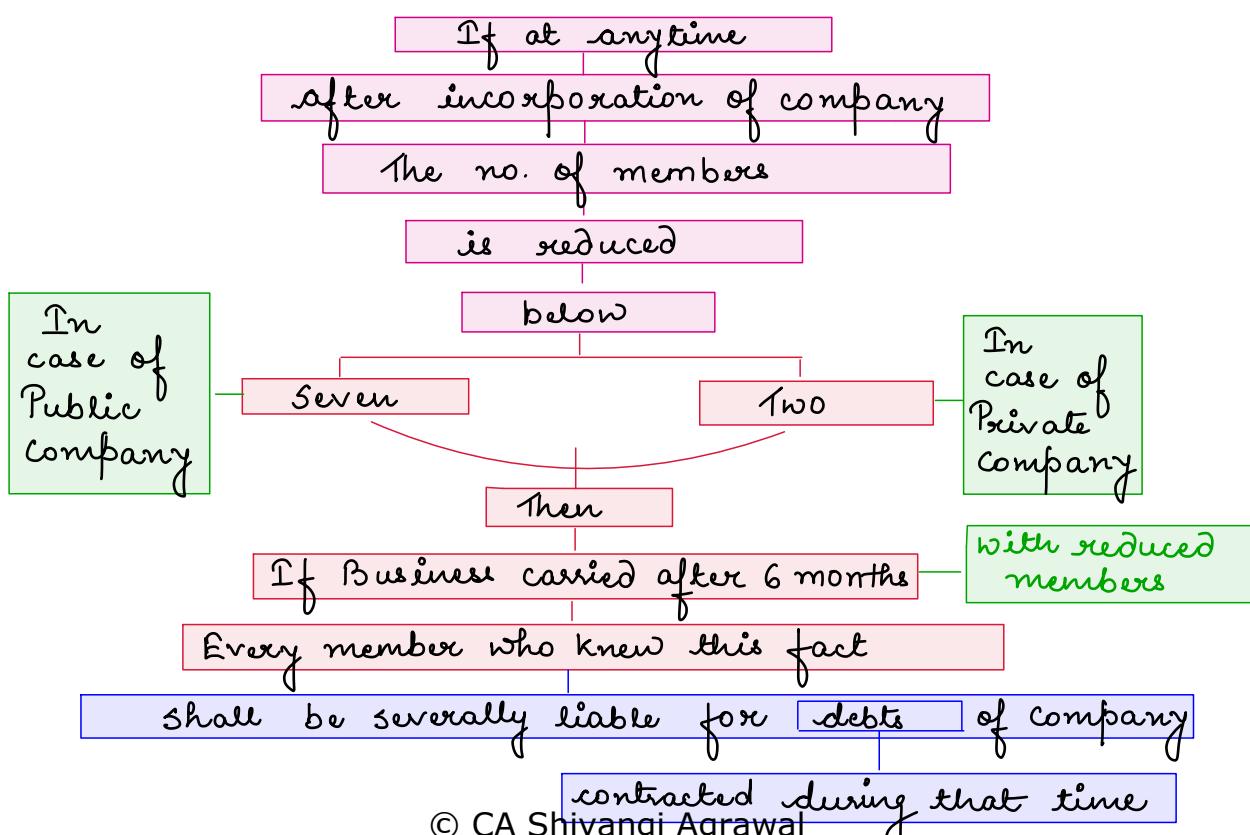
Dormant Company [Sec. 455]



Incorporation of Company and Matters Incidental thereto



Members liable in Certain Cases [Section 3A]



Memorandum Of Association

[Section 4]

Memorandum

As defined
u/s 2(56)

It is a document containing fundamental Prov. of constitution

Name Clause	Situation Clause	Object Clause	Liability Clause	Capital Clause	Succession Clause
Name of Company with ltd/pvt ltd	State in which registered (No full address)	Purpose for which co. is incorporated	Liability/Amt. on shares or Amount undertaken to contribute	Registered Share capital with division	In case of OPC Name of Nominee

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]

Articles

As defined
u/s 2(5)

The internal regulations of company for own Governance

A company may adopt all or any of Provision

given in respective Tables of Schedule I

Printed, signed, divided into Paragraphs, numbered, witnessed

Must be prepared by every company

required at the time of registration

be altered later according to sec. 14

can be made more strict by adding

Entrenchment Provision

at the time of formation of co.

OR Later on by Amendment

File INC 32

In Private Company

In Public Company

SPICE+

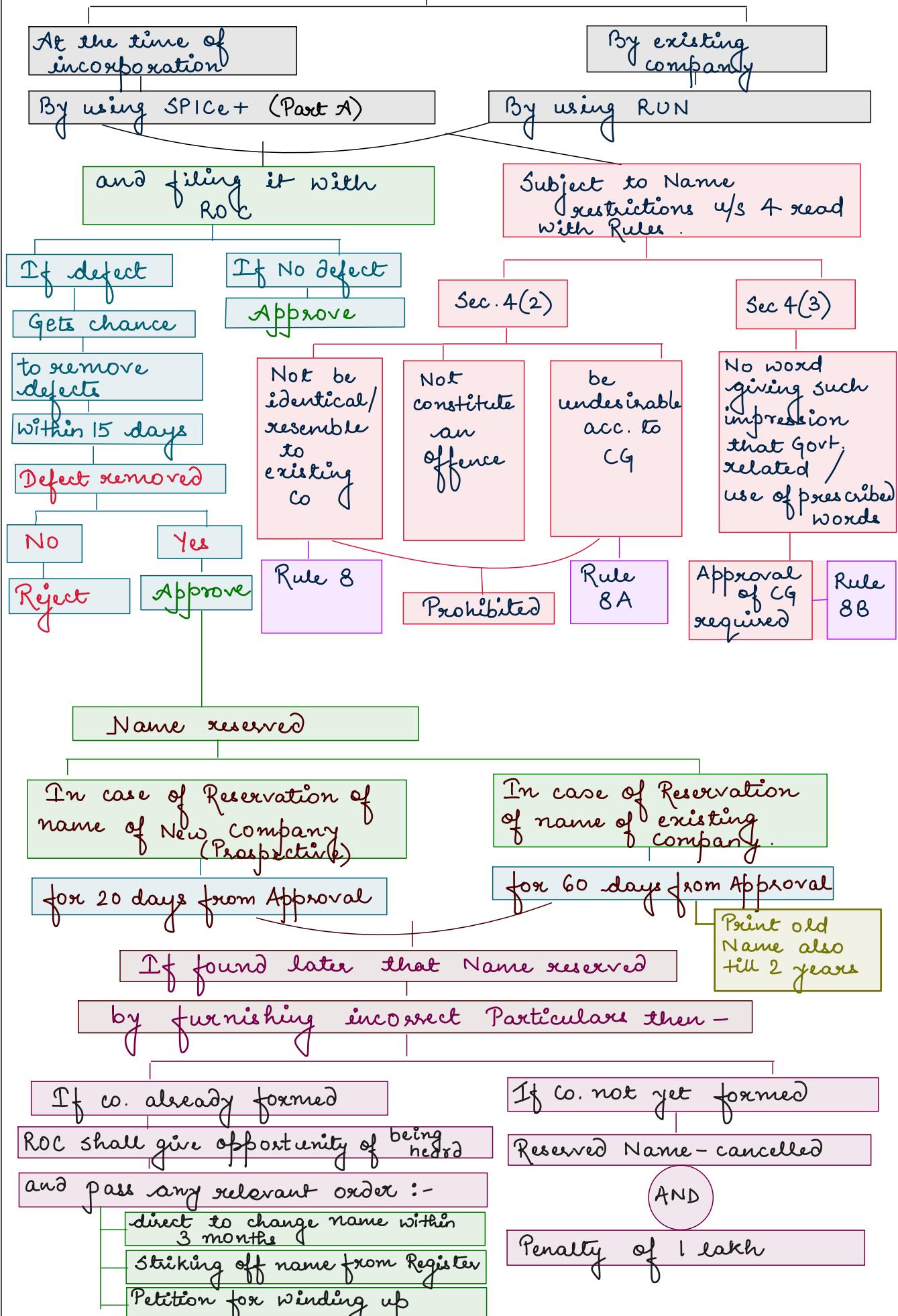
If agreed by all members

If SR passed

© CA Shrawan Agrawal

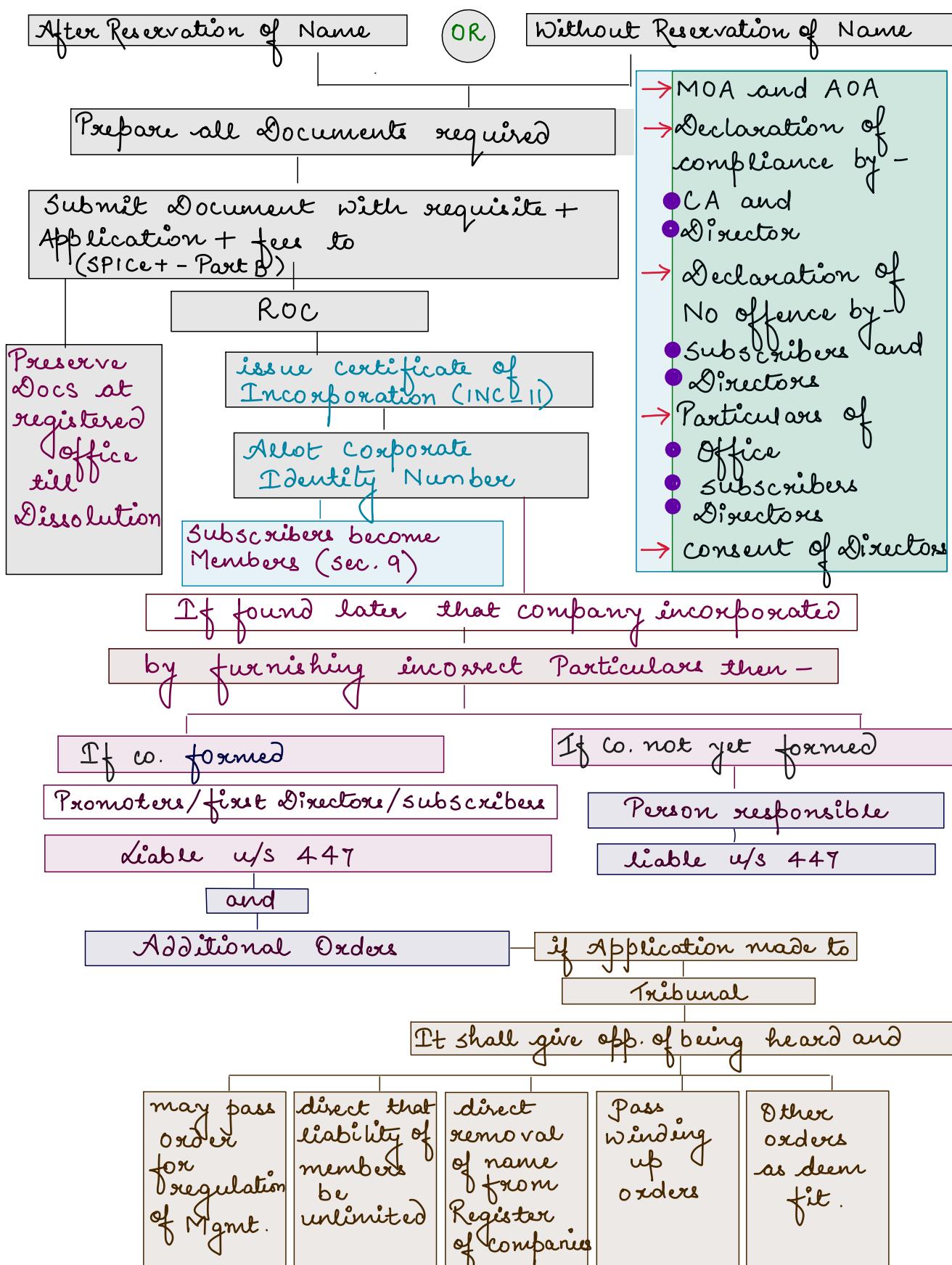
Process of Incorporation

Step 1:- Name Reservation

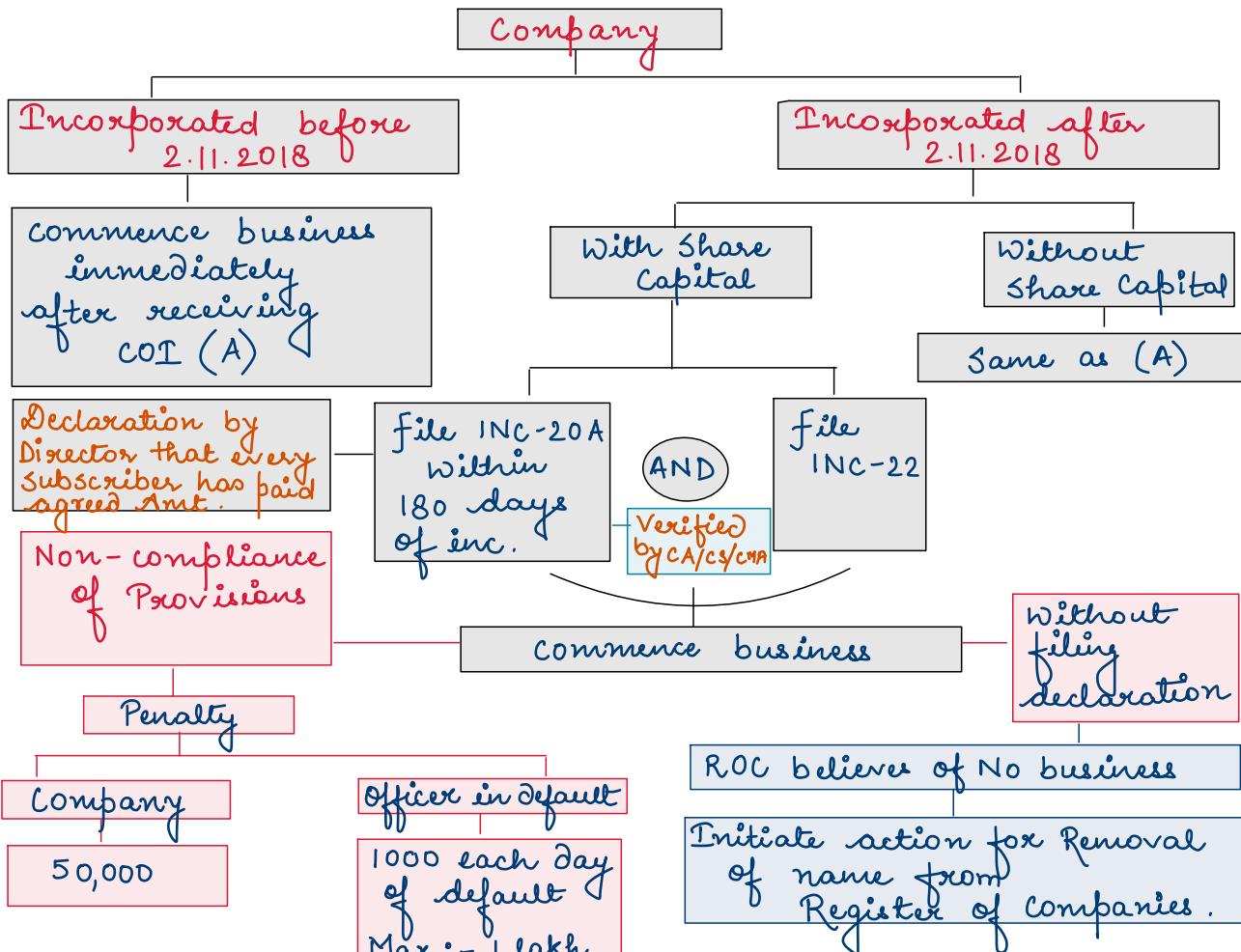


Process Of Incorporation

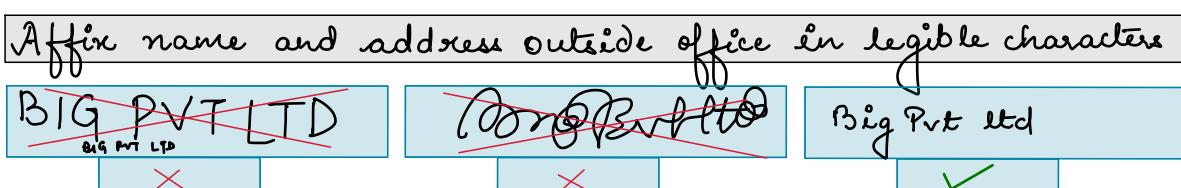
Other steps



Commencement of Business [Section 10A]



Publication of Name & Registered office [Section 12]



If Registrar has reasonable cause to believe

that company is not doing business

Registrar will do Physical Verification

Upon Verification

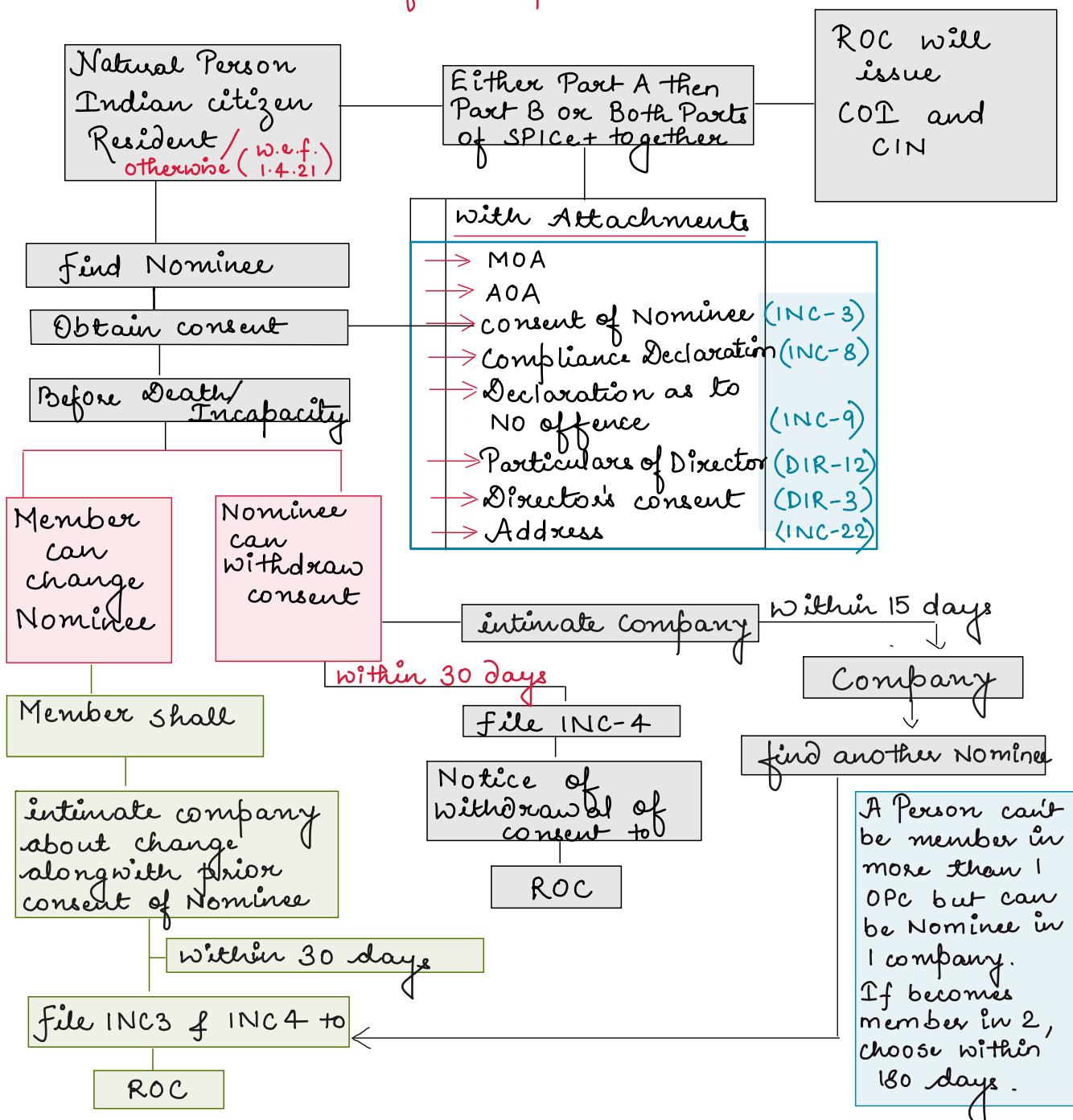
Default found

No default

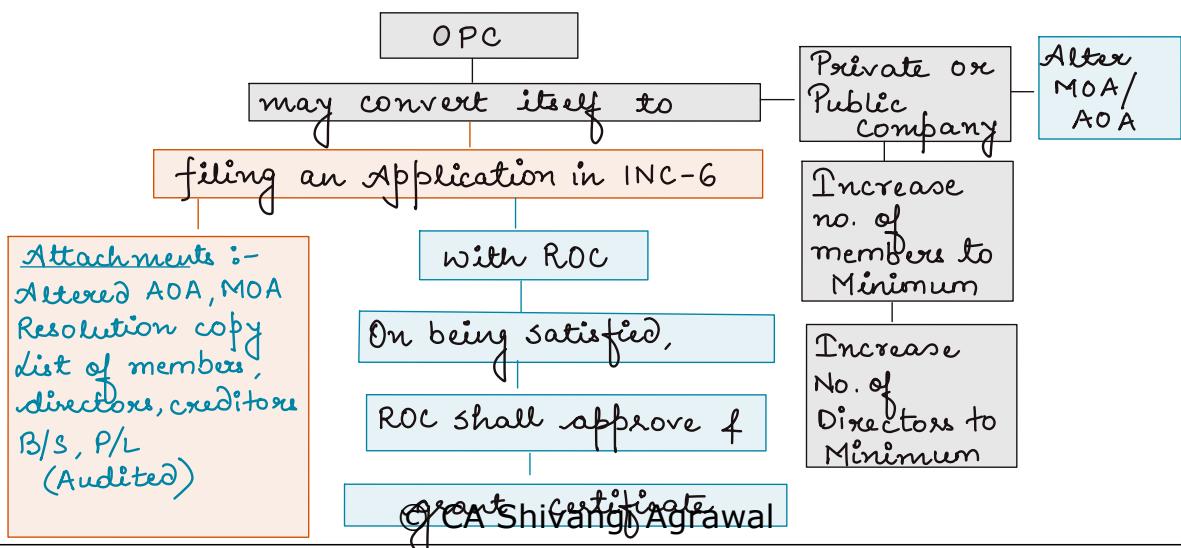
Registrar to remove name of Company from Register

One Person Company

Procedure of Incorporation

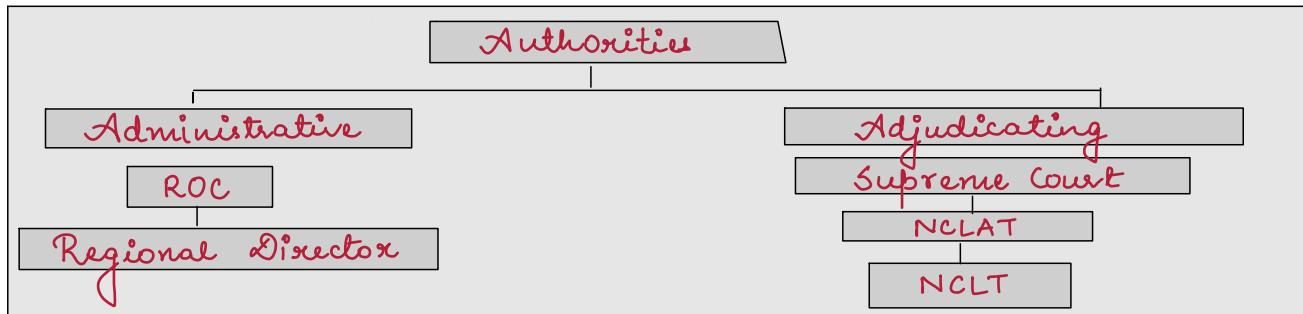
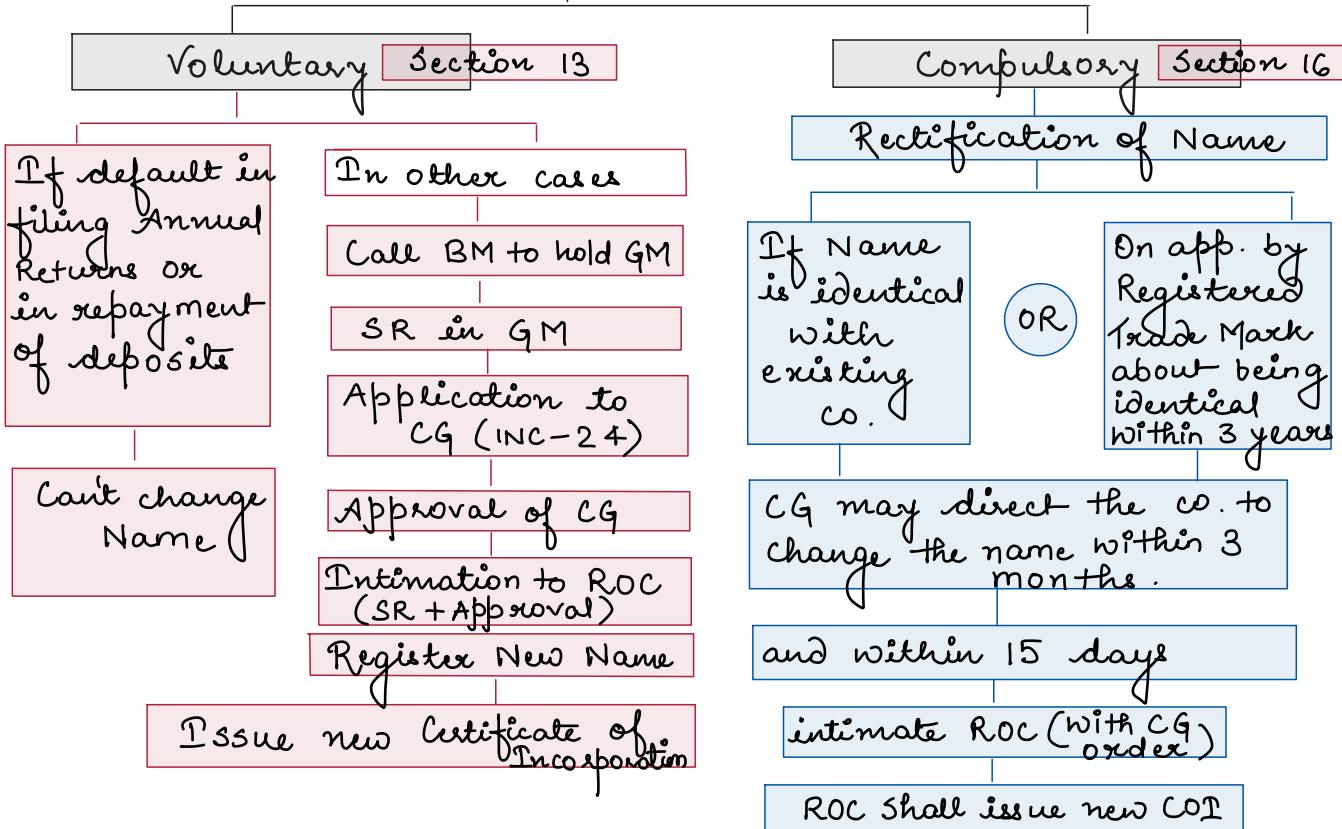


Conversion of OPC [Rule 6] w.e.f. 1st April 2021

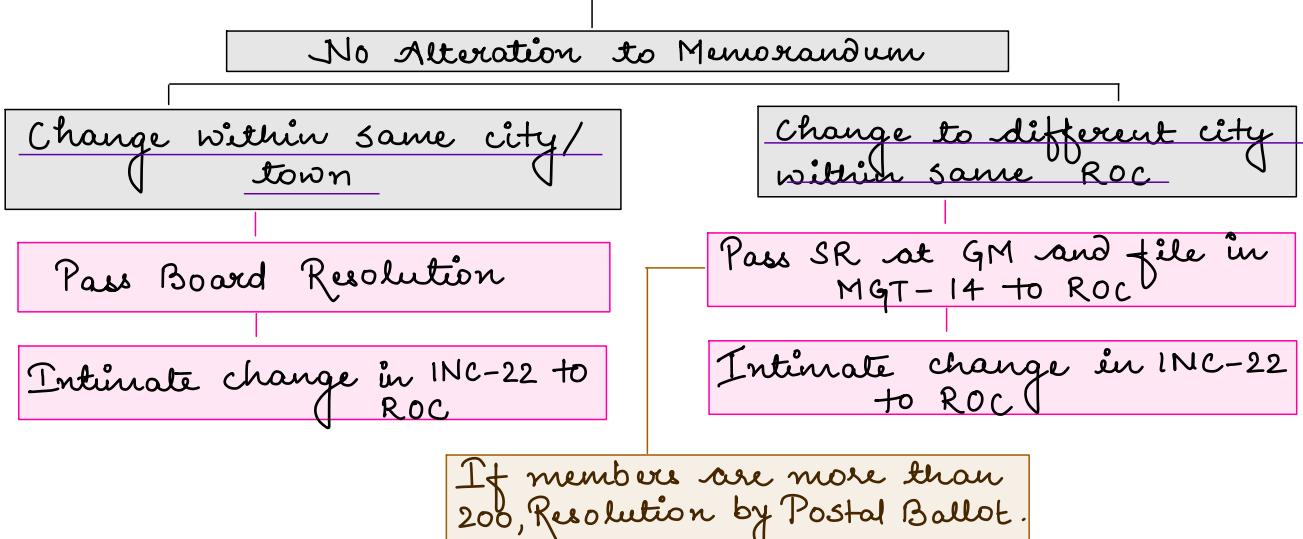


Alteration of Memorandum (Section 13)

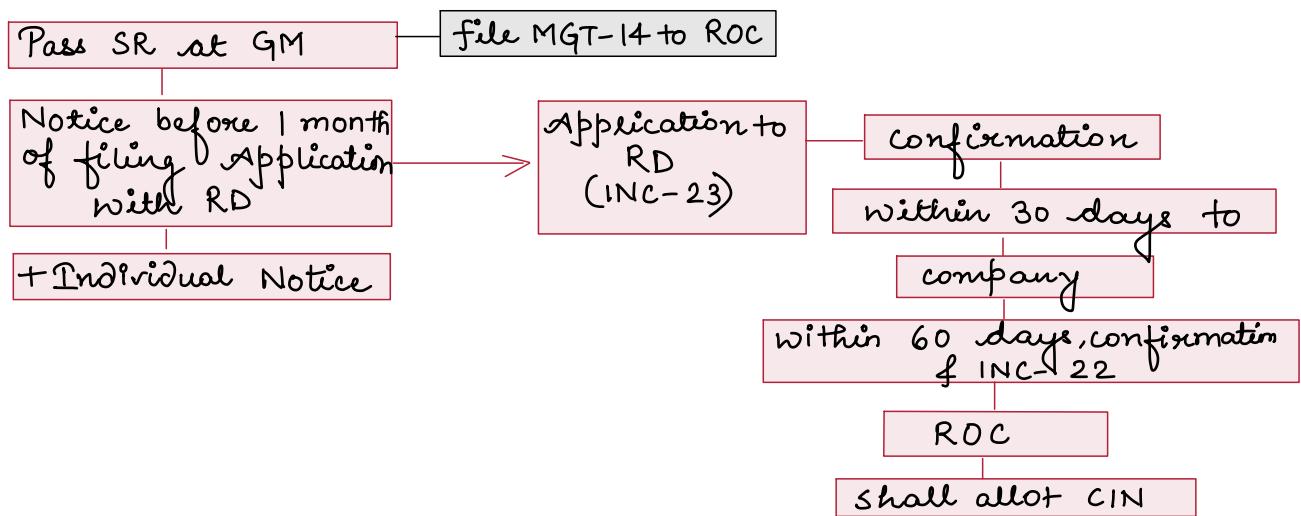
① Alteration of Name Clause :-



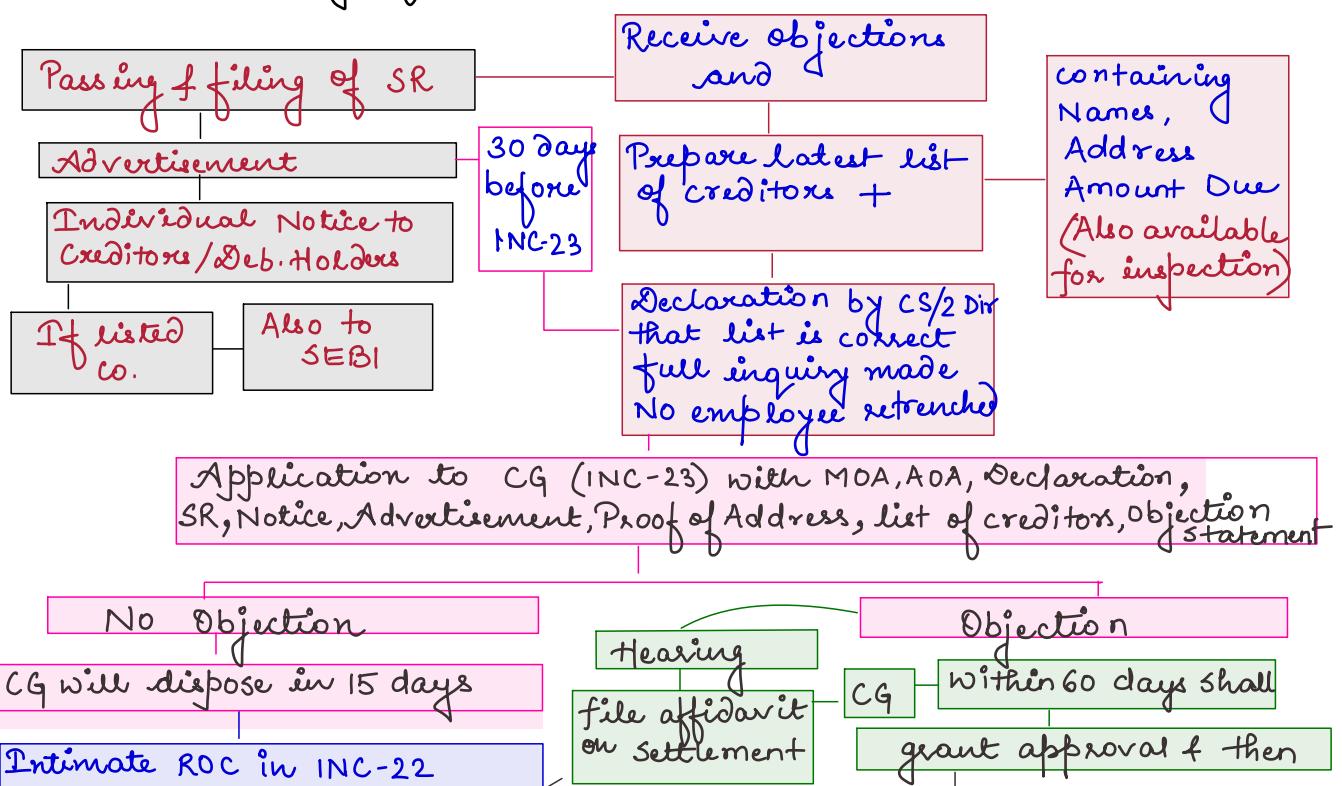
② Alteration to Situation Clause :-



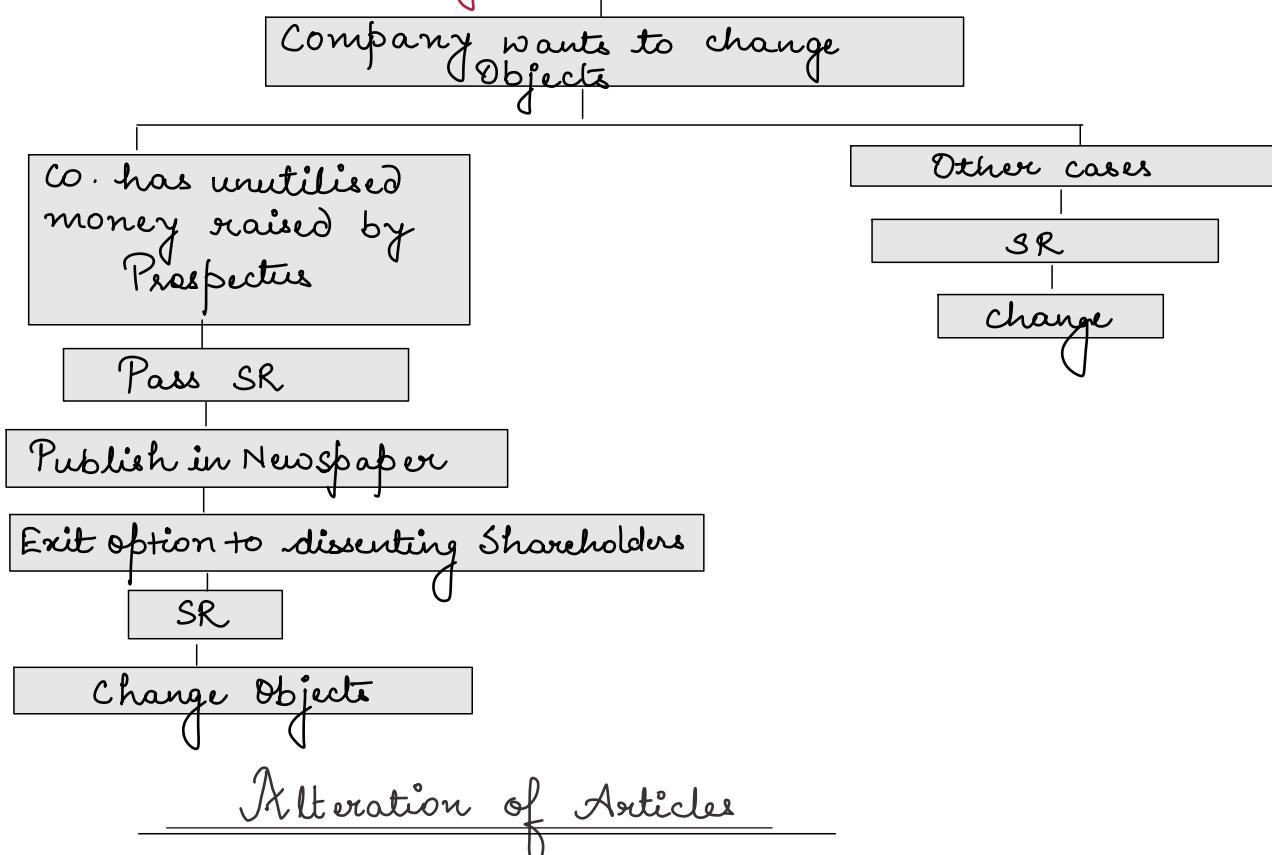
Change from one ROC to another within State



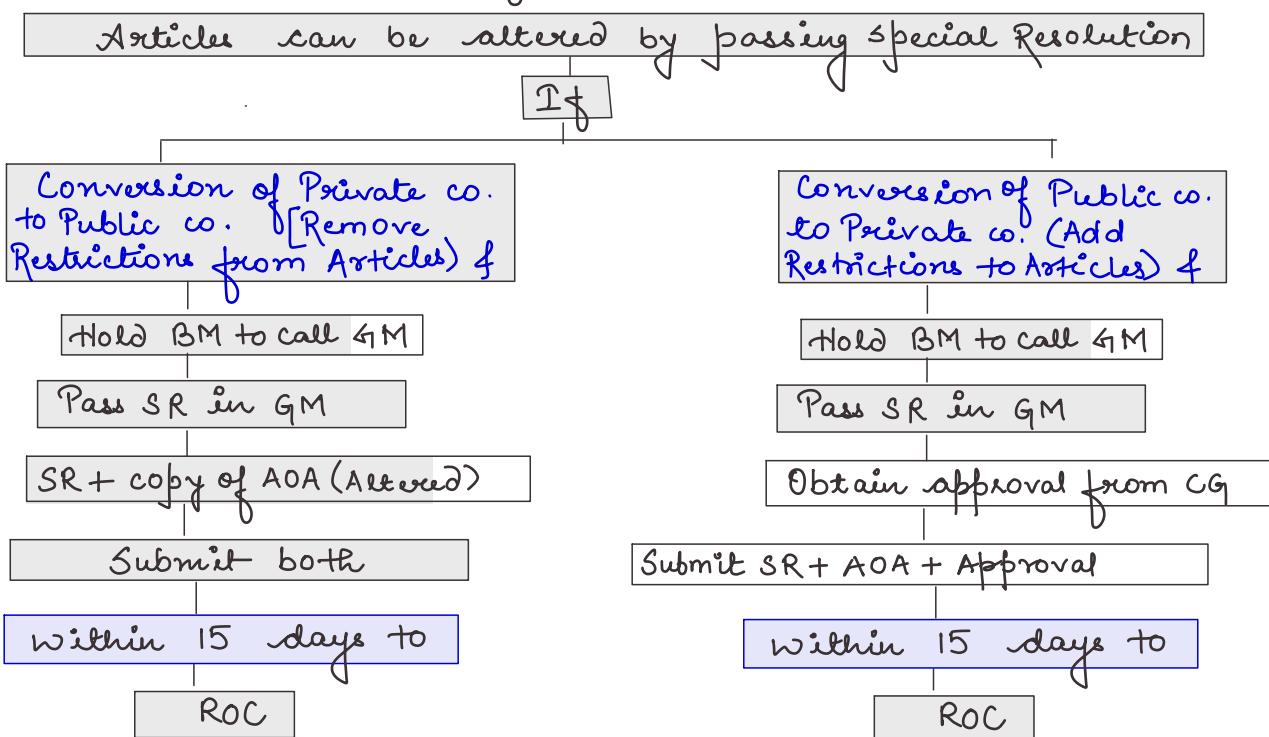
Change from one ROC to another outside State



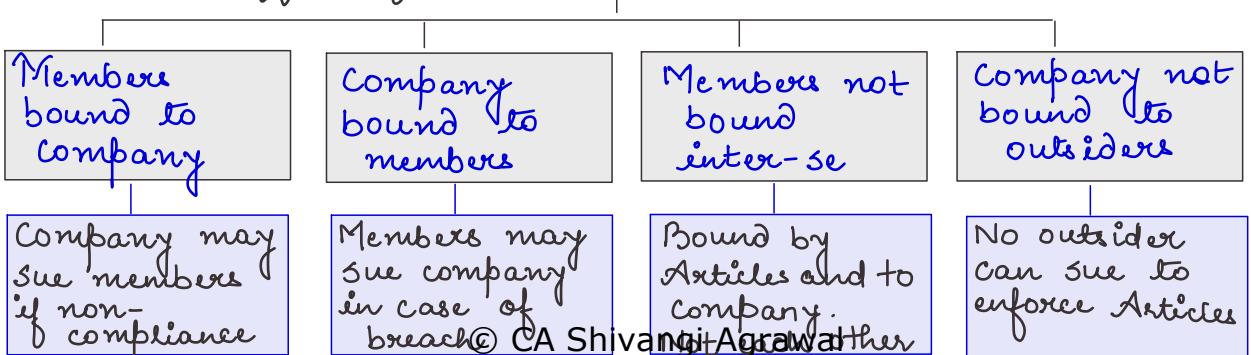
③ Alteration to Object Clause :-



Alteration of Articles



Effect of Memorandum of Articles [Section 10]



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 internal problems of company.

Doctrine of Indoor Management

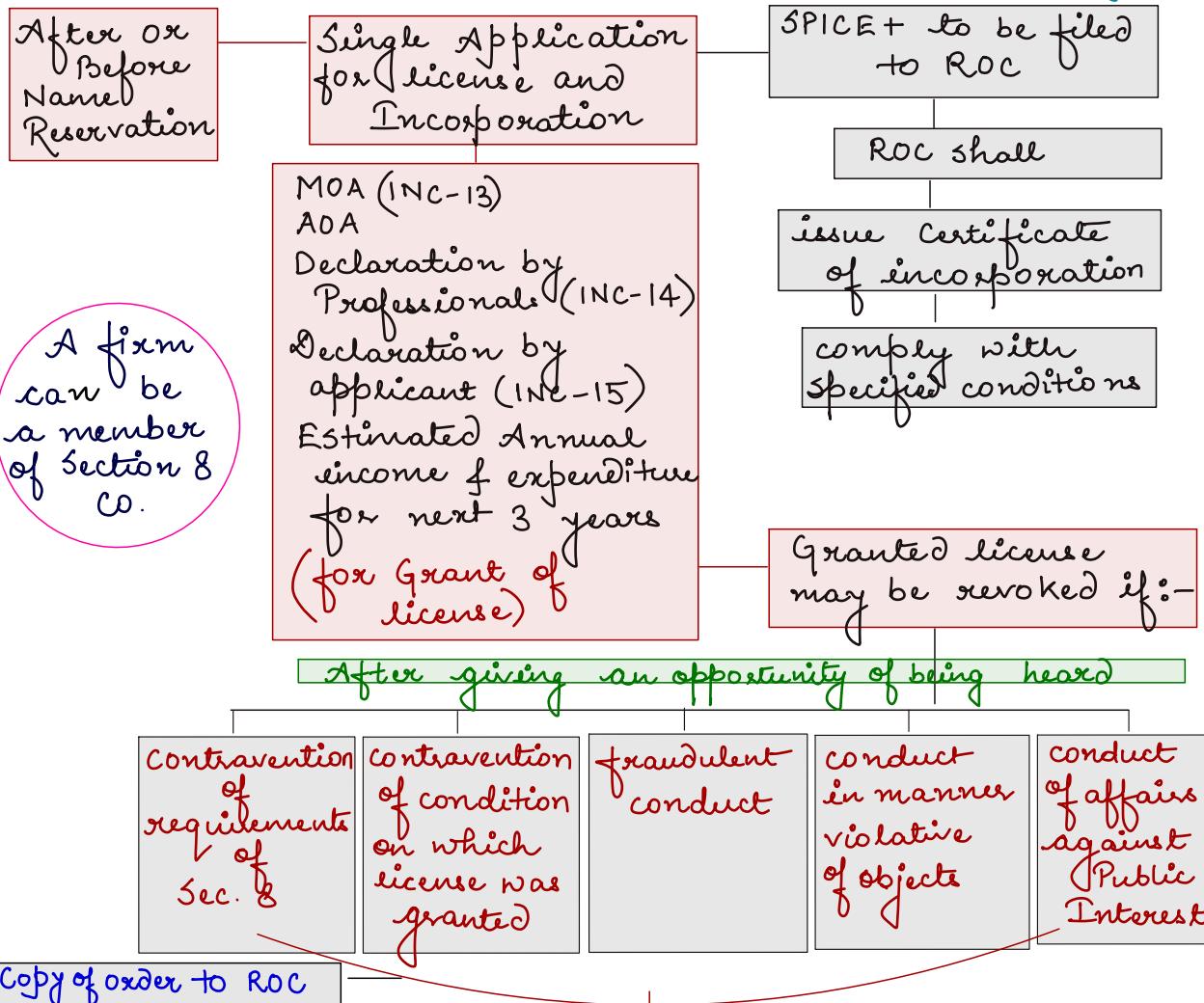
Person dealing with Co. → Not presumed to know internal problems of company.

Exceptions :-

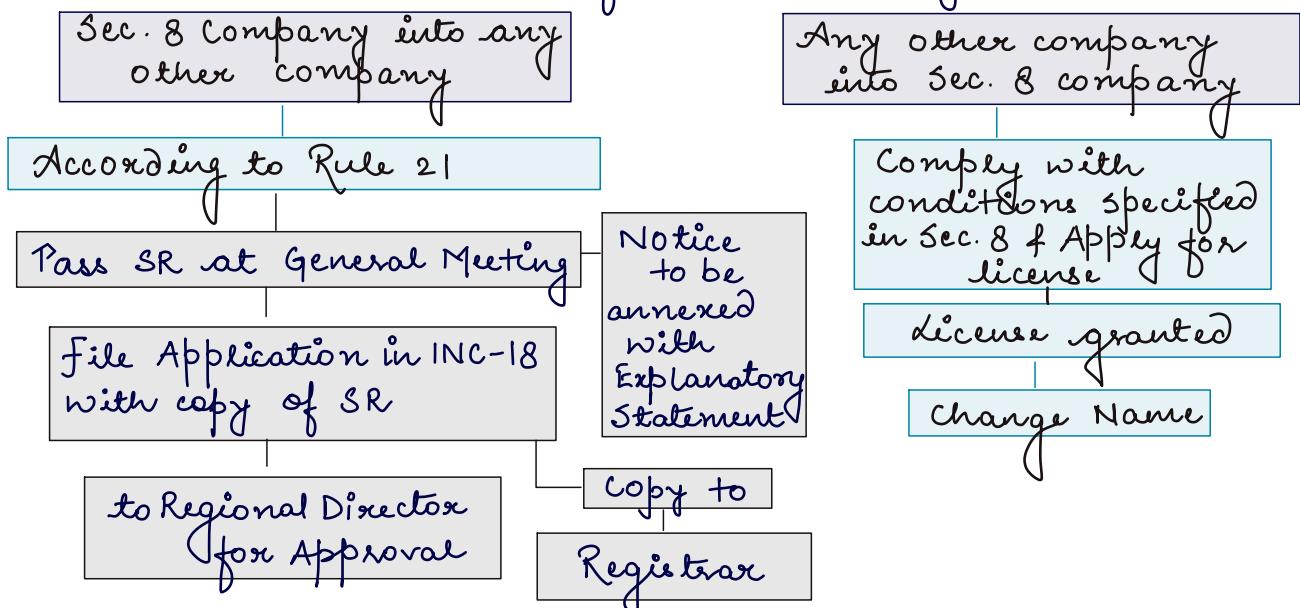
Knowledge of Irregularity
Negligence
Forgery

Section 8 Company Procedure of Incorporation

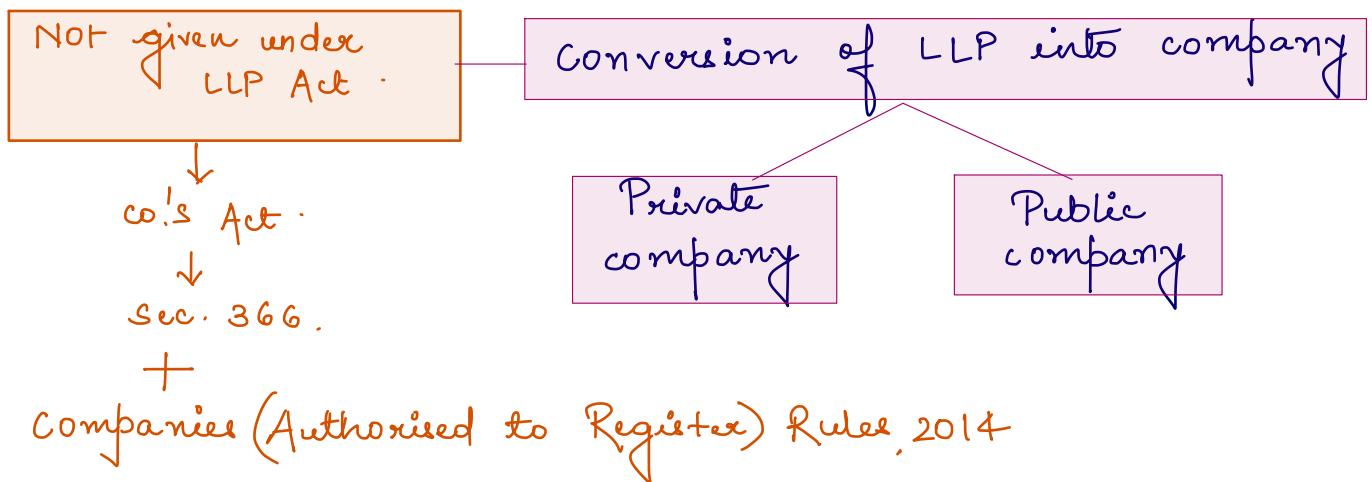
can be formed
as Private/Public
company



Conversion of Section 8 Company



Conversion of LLP and Vice versa



Conversion of LLP into company

- Approval from all Partners.
- Advertisement in Newspaper seeking objection
- NOC from ROC where LLP is registered.
- file form for Name Approval and it is reserved for 60 days.
- file form URC - I with following attachments
 - Member details
 - first Director details
 - LLP agreement & certificate of Regn.
 - Written consent of all partners of LLP
 - NOC from creditors
 - n n ROC .
 - copy of Newspaper Advertisement .

Conversion of co. into LLP

- Board meeting and passing of Board resolution
- Take written consent of shareholders.
- file form for Name availability.
- file necessary Docs for incorporation of LLP.

E-form 18 with following attachments -

- Statement of shareholders - consent
- Statement of Assets and liabilities verified by Auditor
- list of creditors with their consent
- Directors Details.

Laws and Regulations relating to Cyber security & Data Privacy

Information Technology Act, 2000

Business Intelligence (BI)

Cyber Crimes

Information Technology Act, 2000

- It is an Act of Parliament
- Notified on 17th October, 2000
- Applicable to whole of India.

Objects of the Act.

Legal recognition
to

facilitate
E-filing of
Doc

Amend
other
Acts

Licensing,
Monitoring
certifying
Authority

Electronic
transactions
&
Digital
signatures

Cyber Crimes

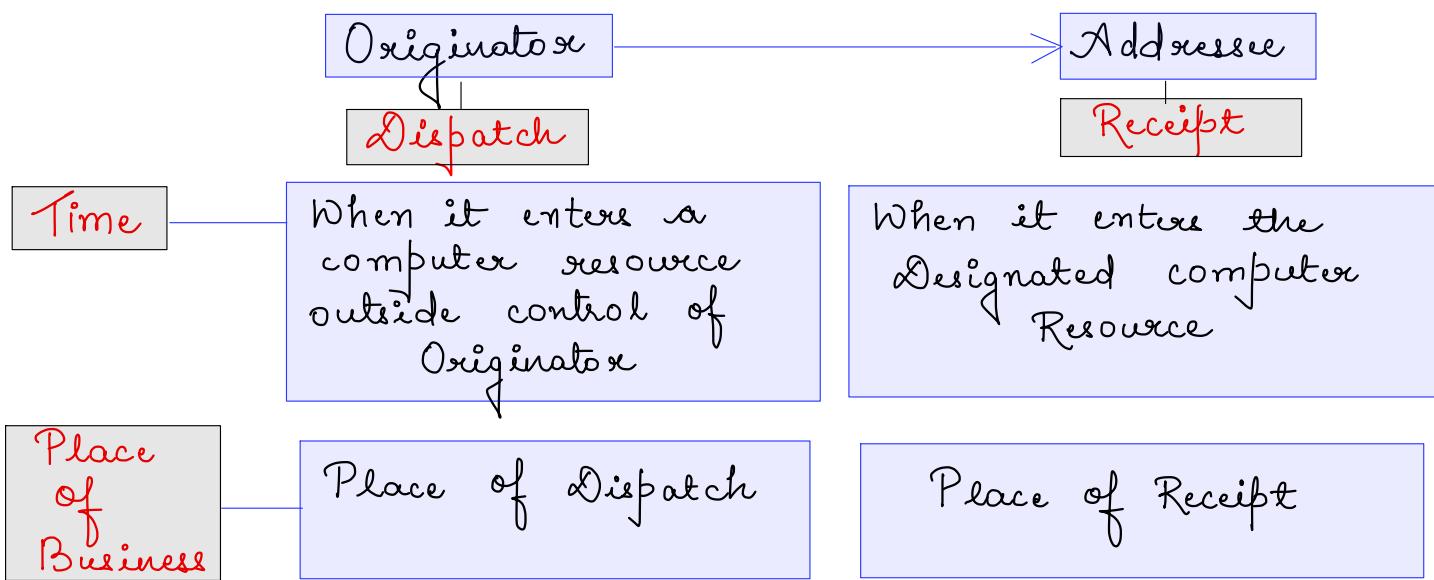
Under IT Act

Tampering - sec 65
Hacking - sec 66
Obscenity - sec 67
Unauthorised access - sec 70
Breach of confidentiality - sec 72
False DSC - sec 73

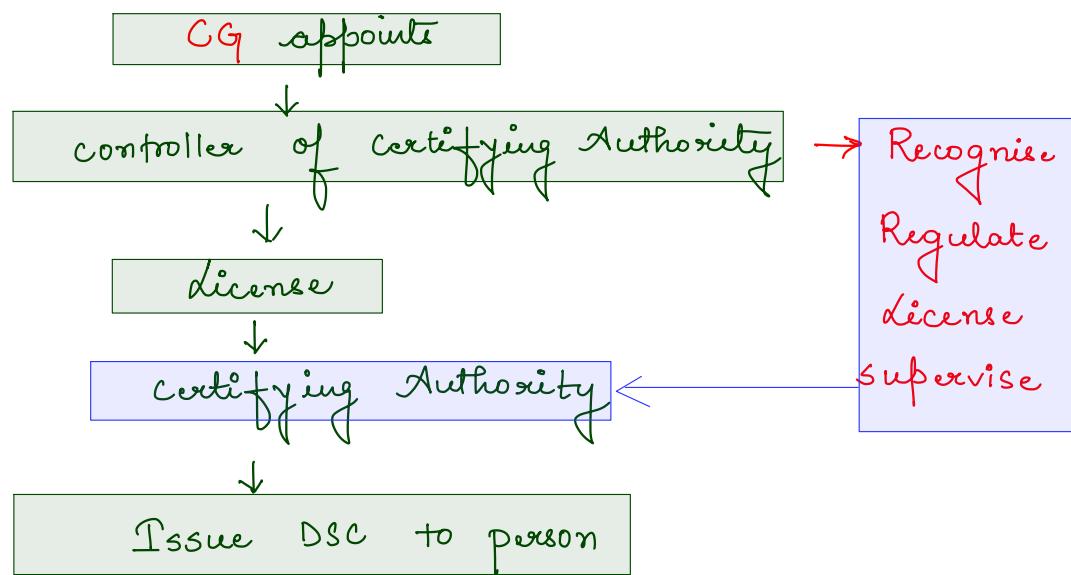
Under IPC

Threatening message by mail - 503
Defamatory message by mail - sec 499
forgery - 463
Bogus website, fraud - 420
Email spoofing - 463
Web-jacking - 383
e-mail abuse - 500

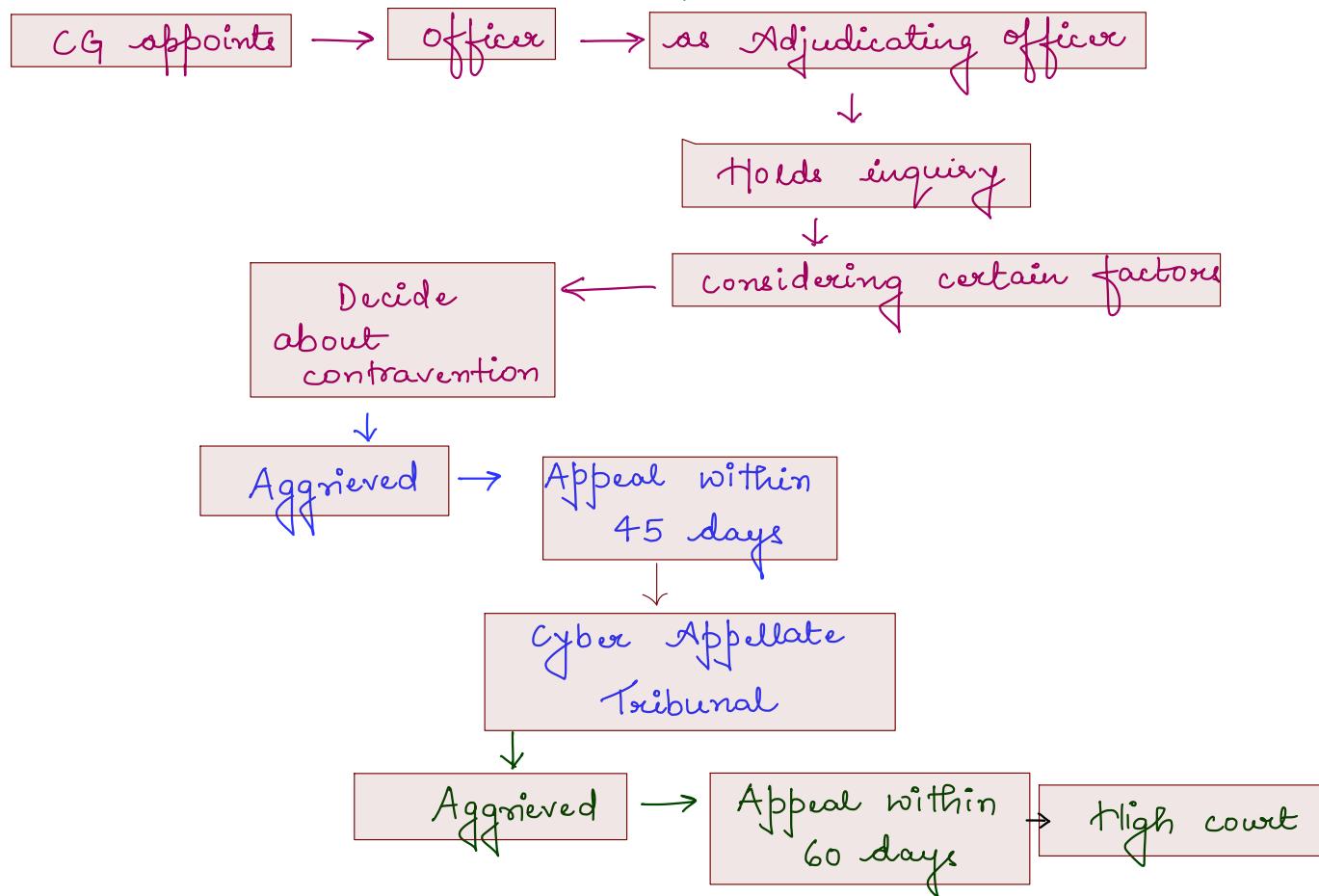
Electronic Records



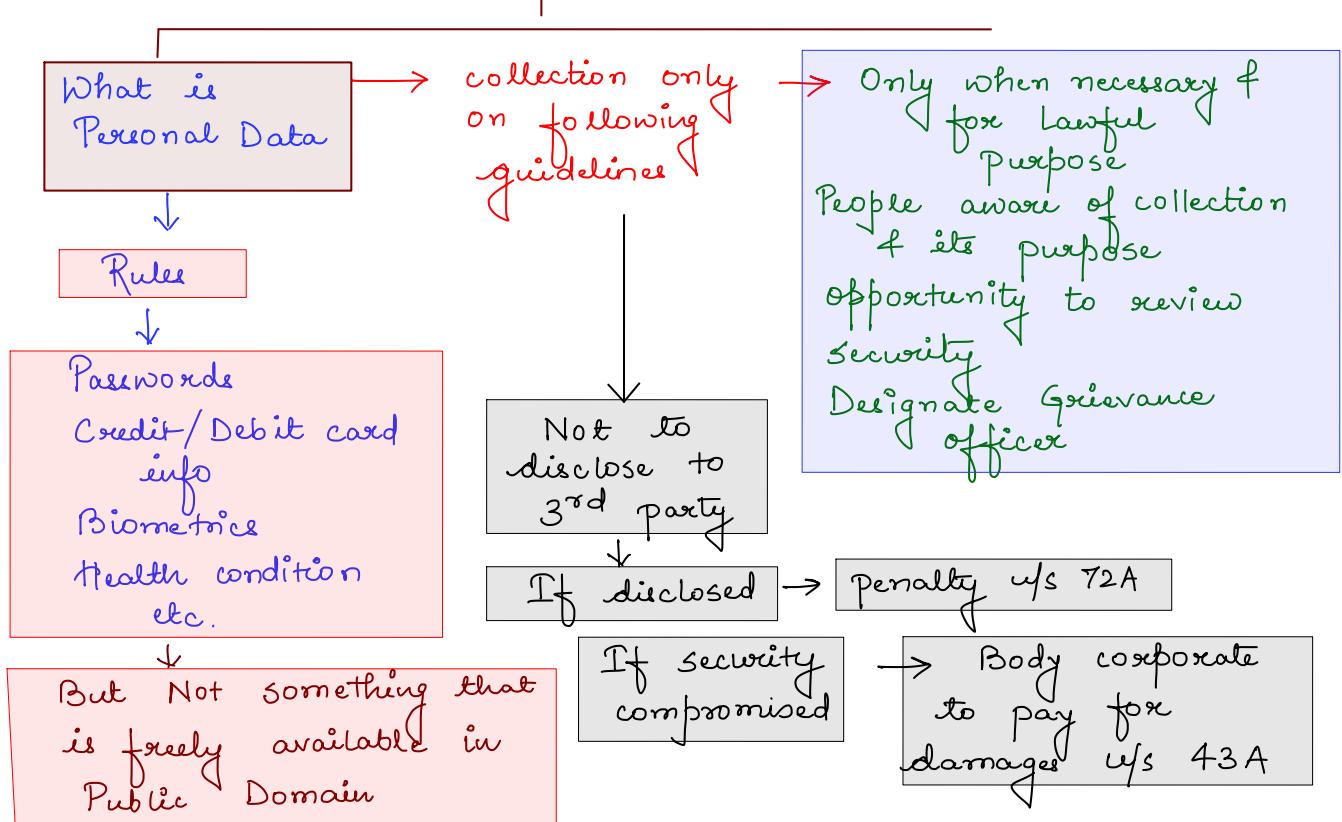
CERTIFYING AUTHORITIES



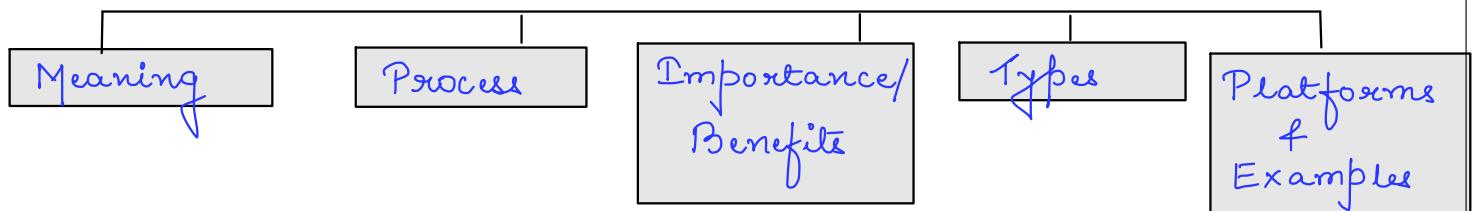
Adjudication :- who imposes Penalty?



DATA PROTECTION



Business Intelligence

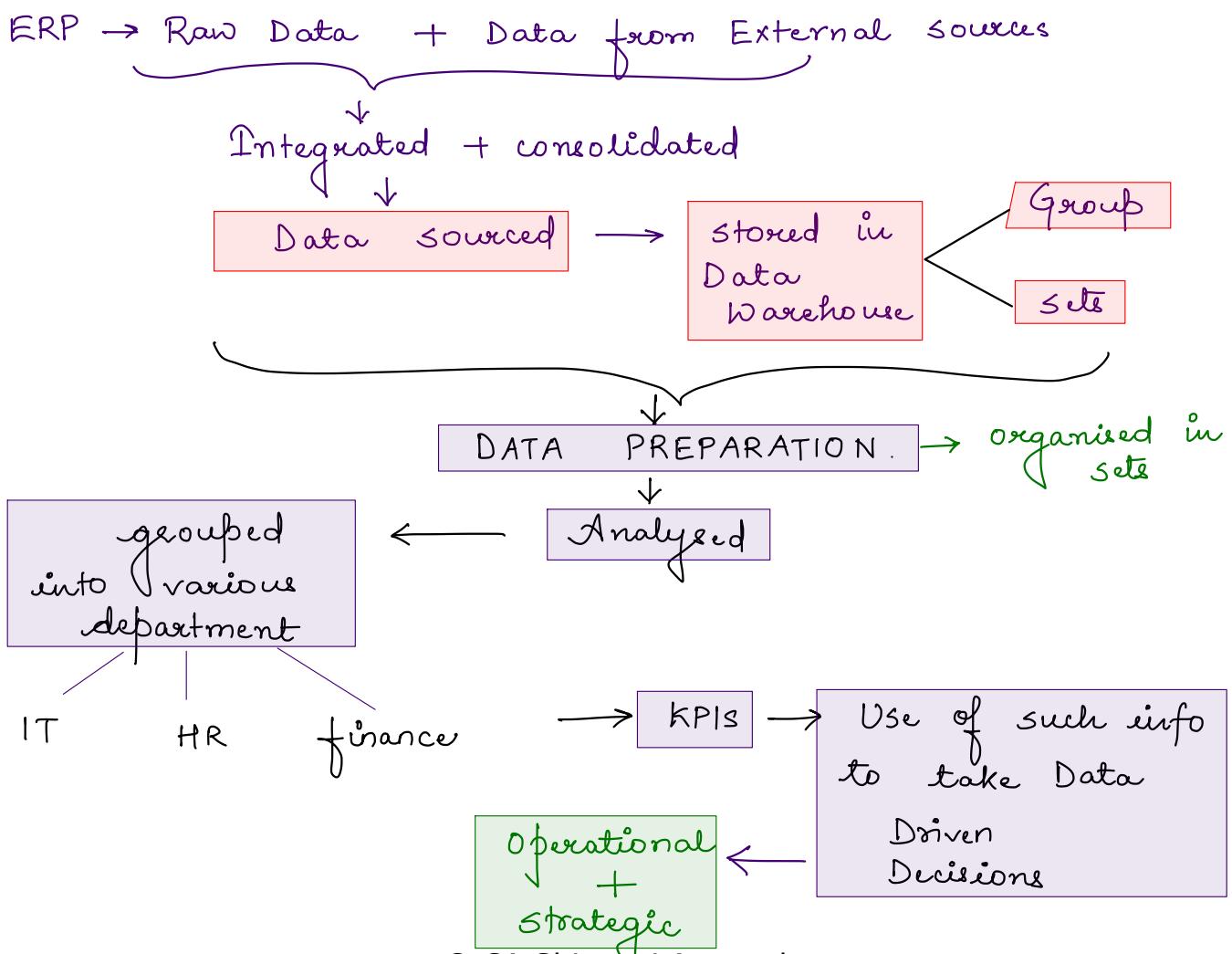


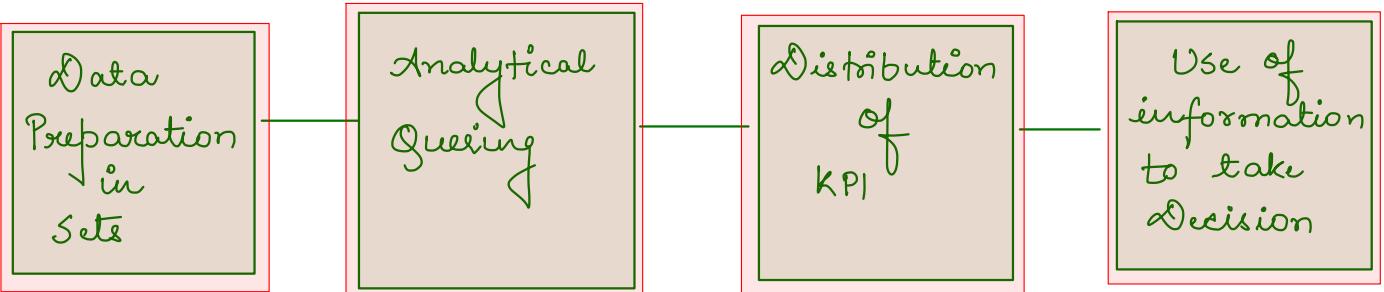
Business Intelligence (BI) is technology driven process for analysing data and delivering actionable info which helps Managers to take informed decision

AND

Improve Efficiency
Increase in Revenue
Gain competitive advantage over Rivals

Process :- How BI works?



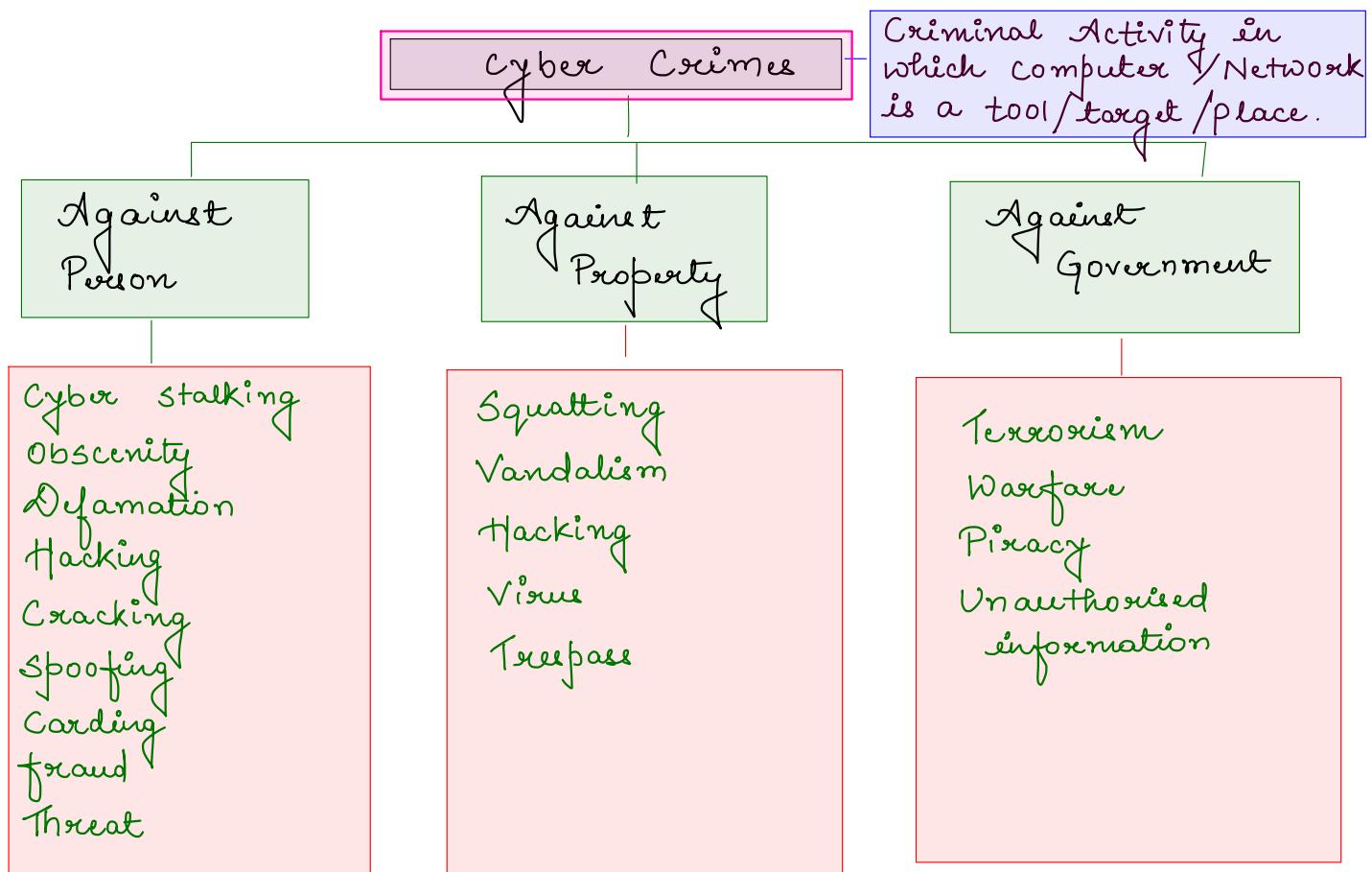


Modern BI platforms

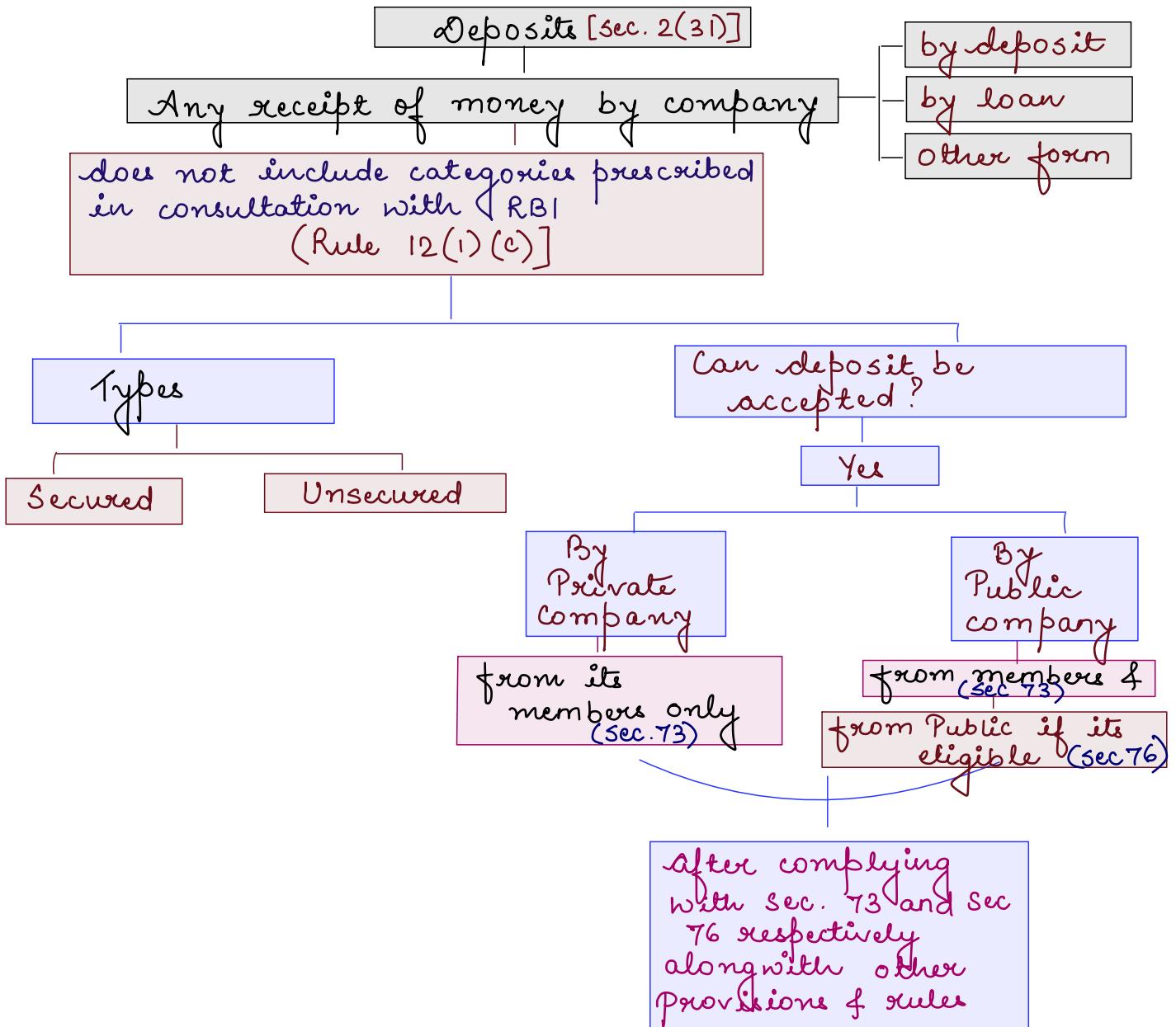
- o Data visualisation software
- o Tools for building Dashboards, reports
- o Data storytelling features
- Usage Monitoring, security others

BI team → Architect + Developer + Analyst + Specialist

Shift from Waterfall to Agile BI



Acceptance of Deposits by Companies

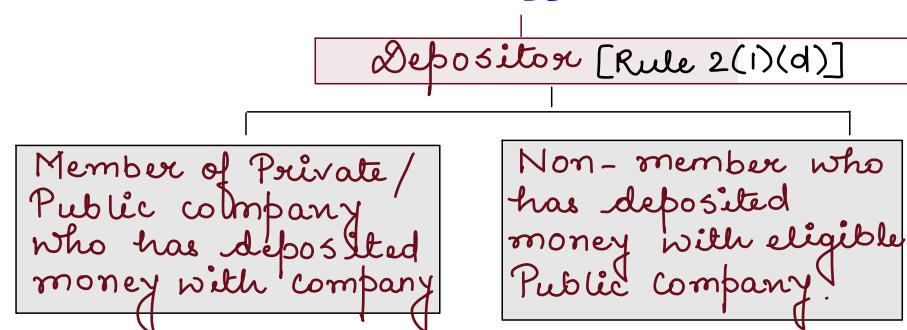


Amounts not considered as Deposits [Rule 2(1)(c)]

★	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 from Company	Commercial Paper/ Other Instrument in accordance with RBI
		Amount received from any other company.
	Amount towards Subscription of Securities (including Application money)	Money Pending Allotment treated as deposit if - Money → No Allotment received 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 / Par 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.

	Received by Nidhi company	in accordance with Rules u/s 406 of co.'s Act.
	Chit fund	by way of subscription under chit fund Act, 1982.
	CIS	Collective Investment Scheme in compliance with SEBI
	Received by Start-up if -	Min Amount - 25 lakhs from a person. Repayable - within 10 years Amount received by way of convertible note.
	Received from -	AIF, DVCF, IIT, REIT, Mutual funds registered with SEBI.



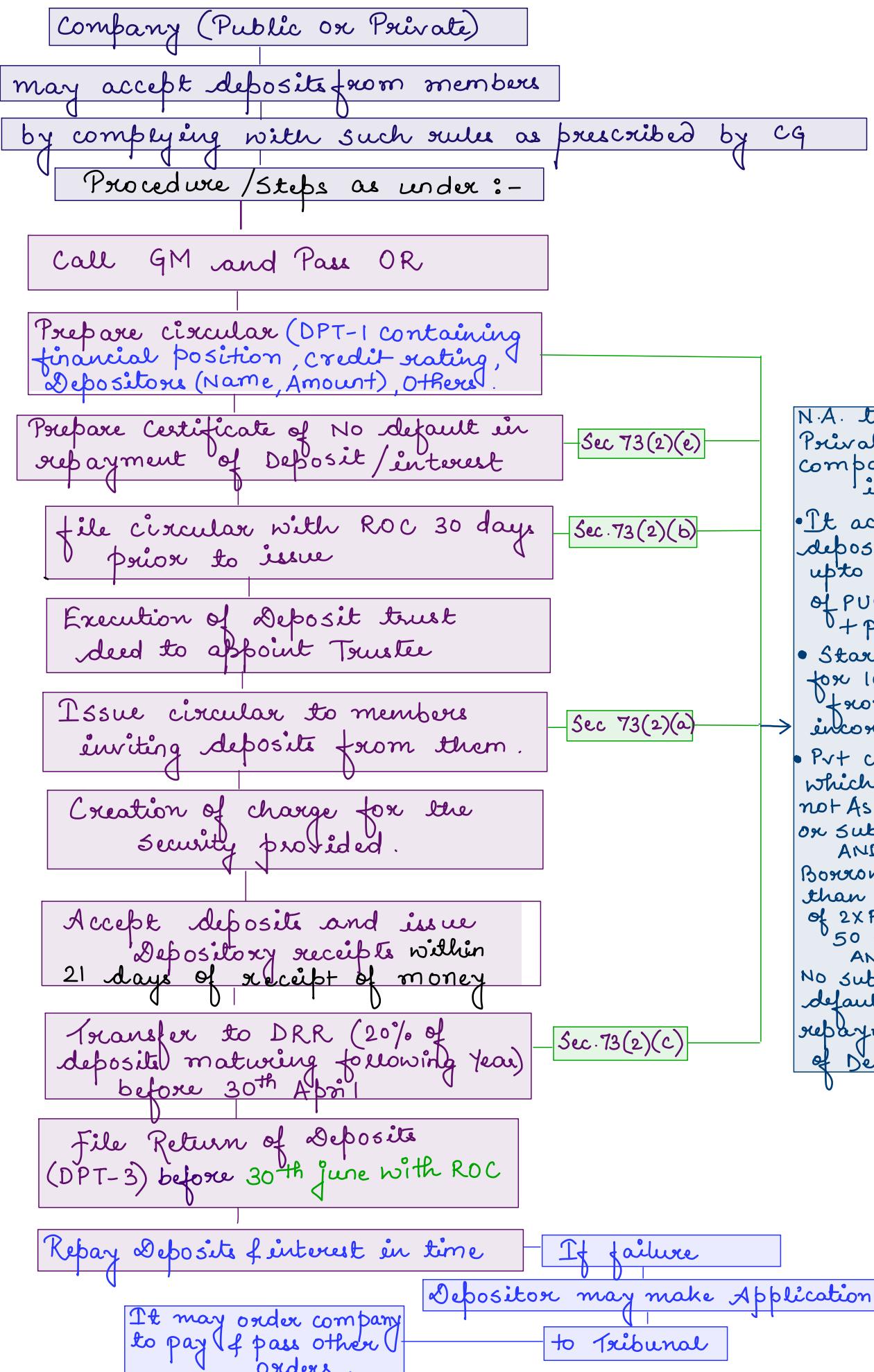
Following types of companies are exempted from Deposit provisions -

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

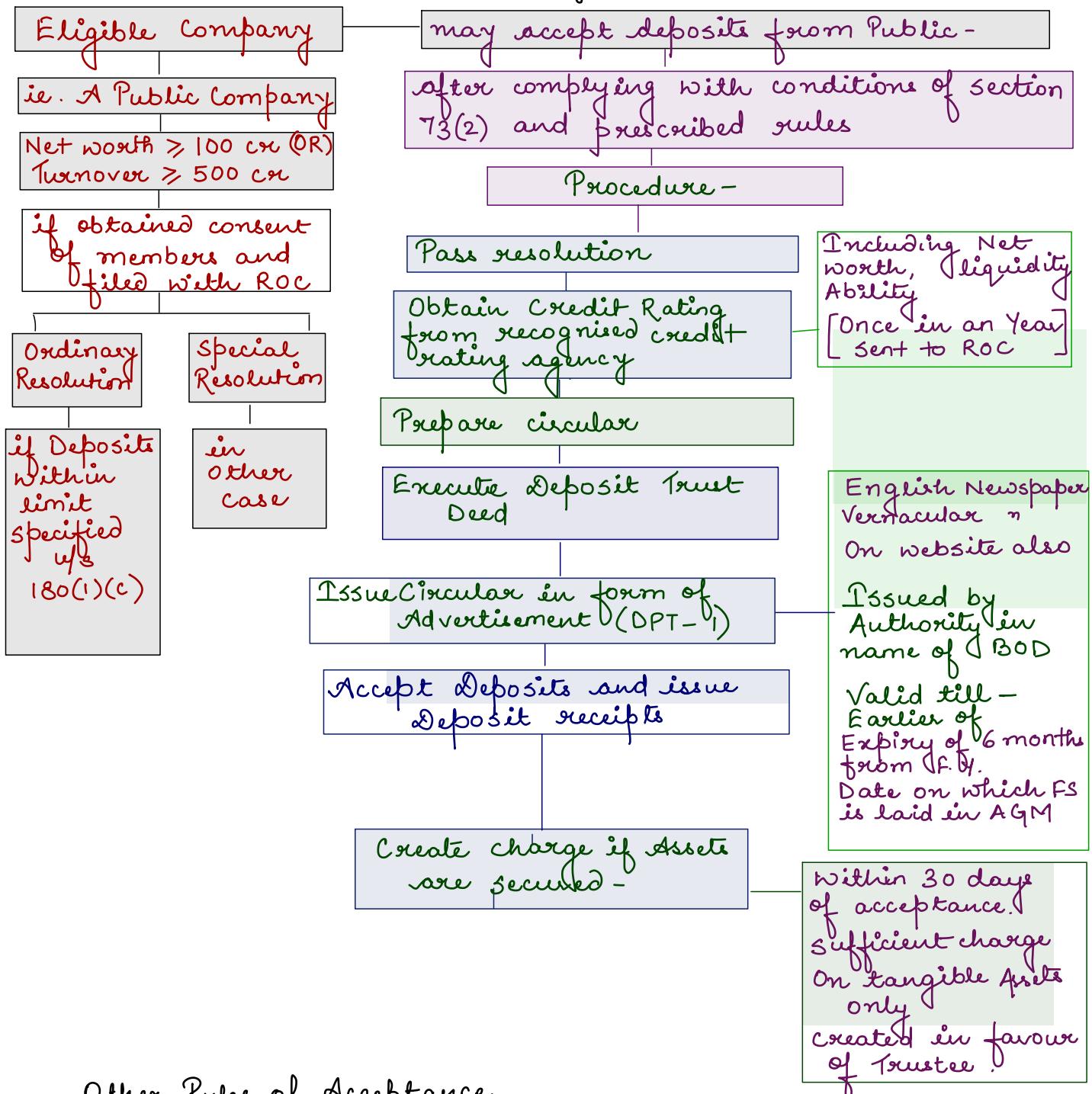
Exempted Companies - (Sec. 73(1))

- 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]



Acceptance of Deposits from Public (Section 76)



Other Rules of Acceptance

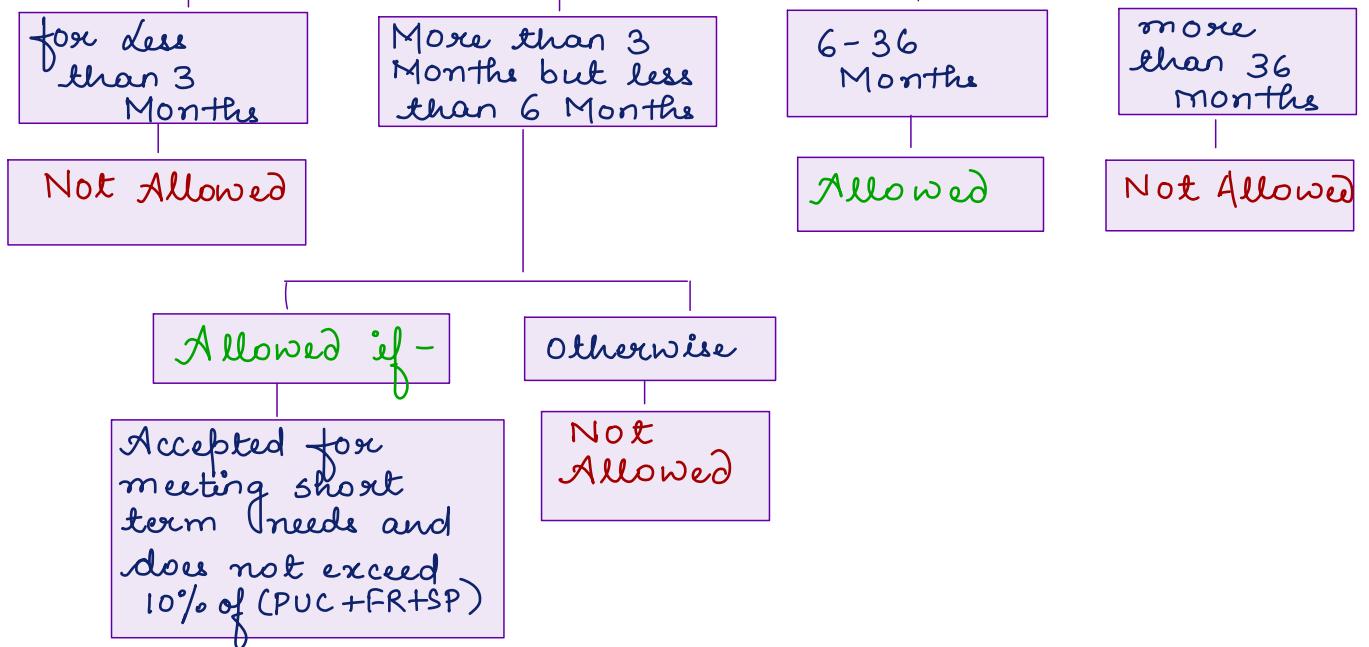
Maintain deposit register containing name, address, PAN of depositor, Date, Amount, interest, duration, charge, Nominee
Preserved for 8 years, kept at registered office.

Disclosure in financial Statement :-

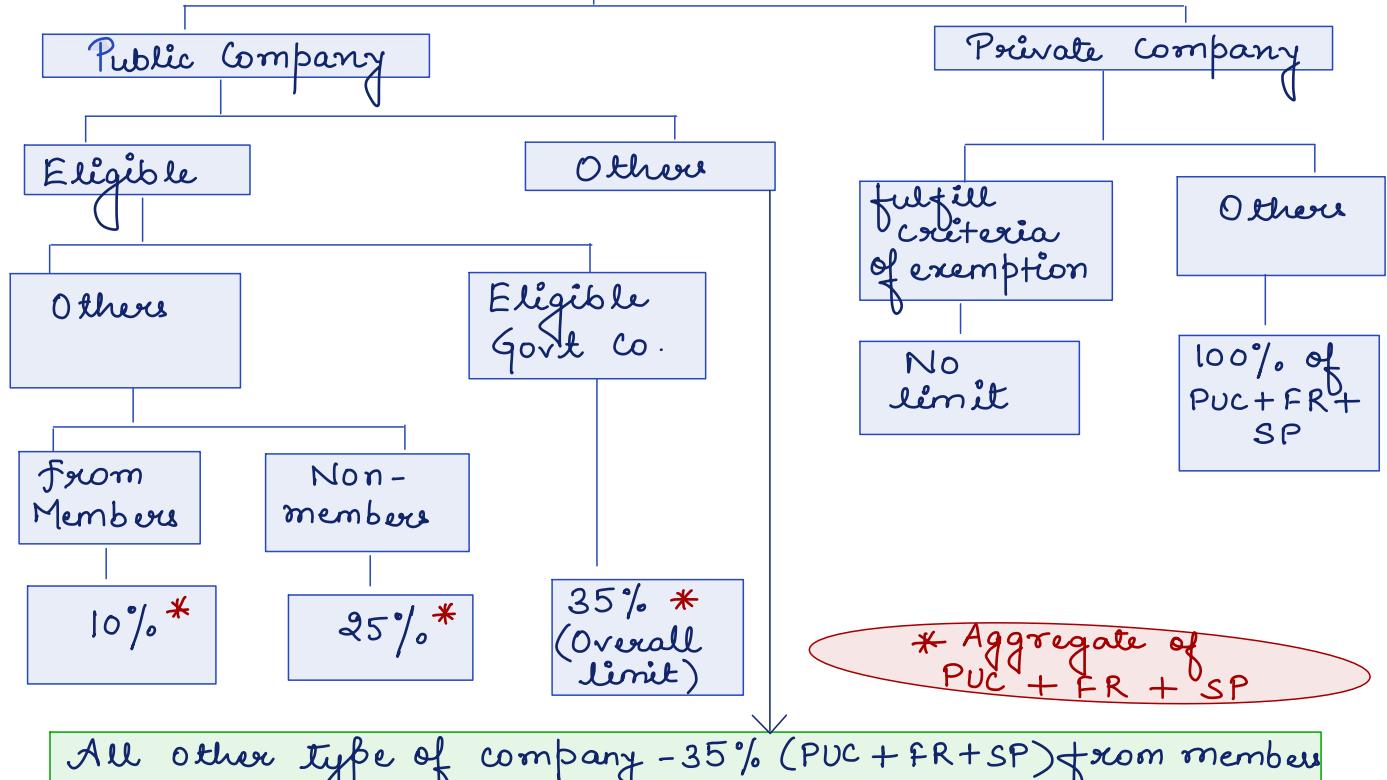
Amount received from Directors by way of notes [Public Company]

Amount received from Directors & relatives of Directors by way of notes [Private Company]

Tenure of Deposite



Limit on Deposite



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

Before issuing circular to members / Public -

Find Deposit Trustee

Obtain written consent

Execute Trust Deed (DPT-2)

7 days prior to issue

Issue circular with statement that consent received

Discharge duties as prescribed

Disqualified if -

He is a depositor in co.

He is Director / KMP or

Ec of C/H/S/A

He is indebted to C/H/S/A / subsidiary of holding

He has material pecuniary relation

given guarantee of Depositor

Relative of above

Appointed for fixed Term

Removal before expiry of term

Duties :-

Ensure that security is sufficient.

Ensure correct info in circular

Ensure No breach call meeting of depositors

Procure remedy of breach

Protect interest of depositors

In case of Independent Director

Other cases

All directors present +
1 Independent Director must give consent

All directors present must give consent

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

Any unpaid deposit on commencement

OR

Any amount becomes due after

Within 3 months from commencement

file with ROC a statement of all deposits.

Earlier of - Due date / 3 years of commencement

Repay

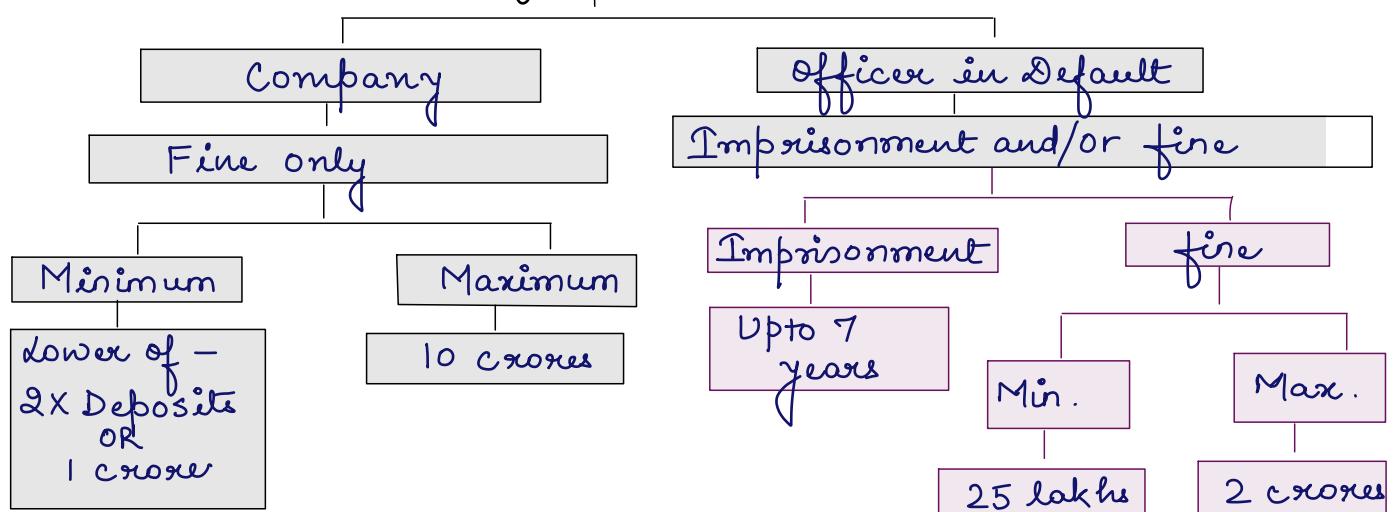
if not

may apply to Tribunal

may grant extension

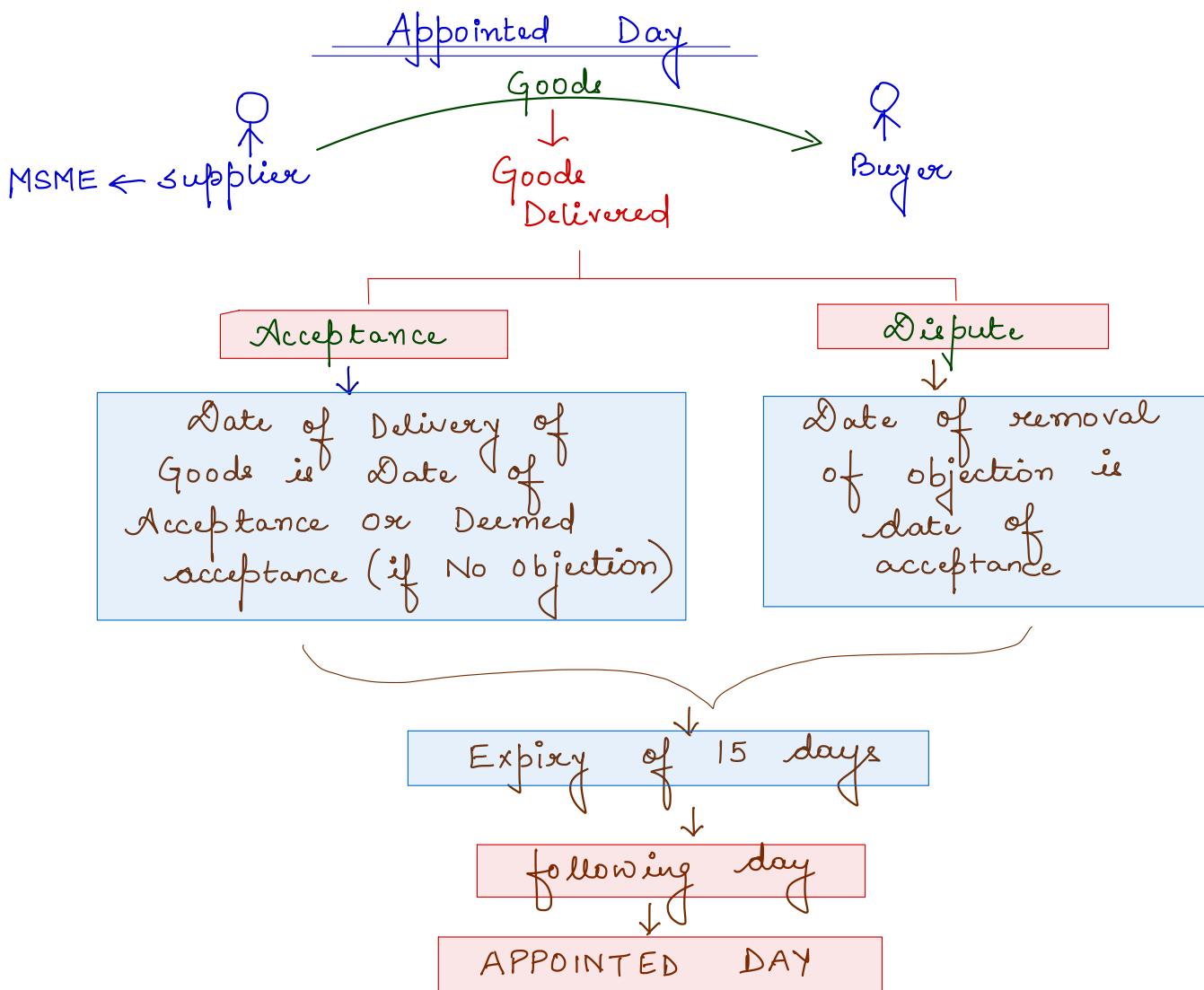
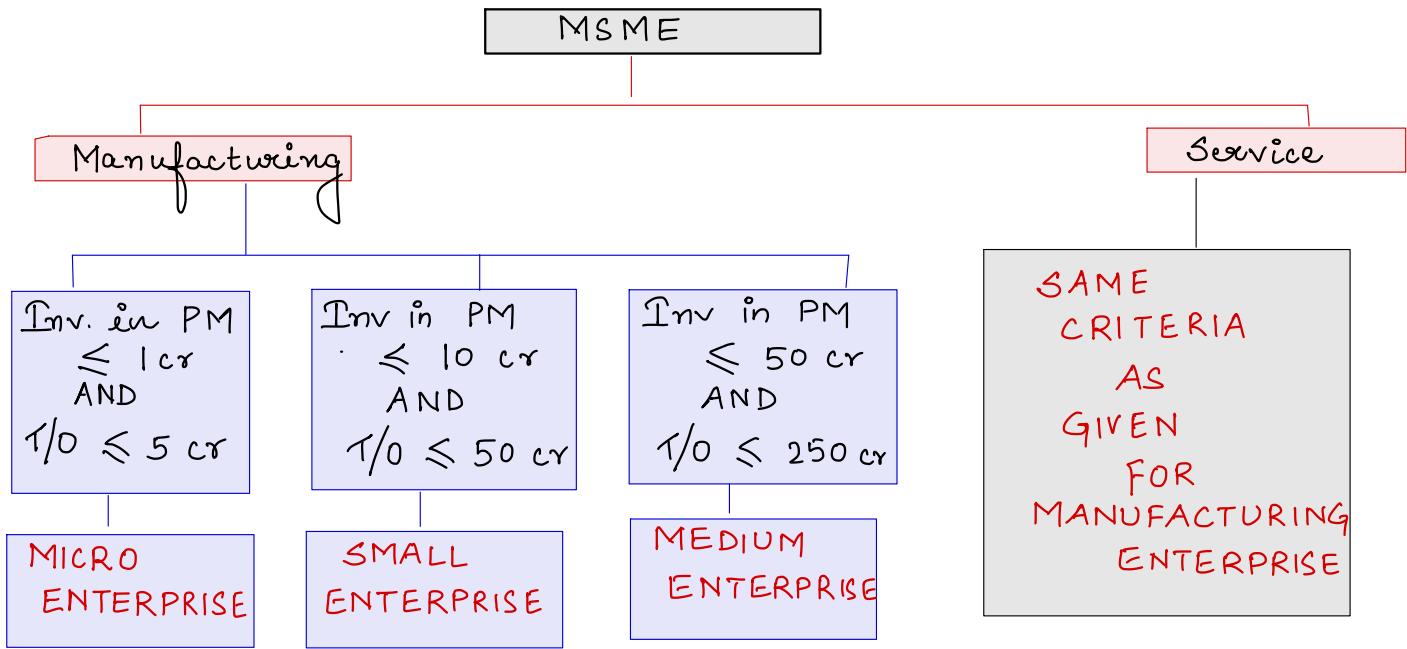
after considering financial condition & Amount

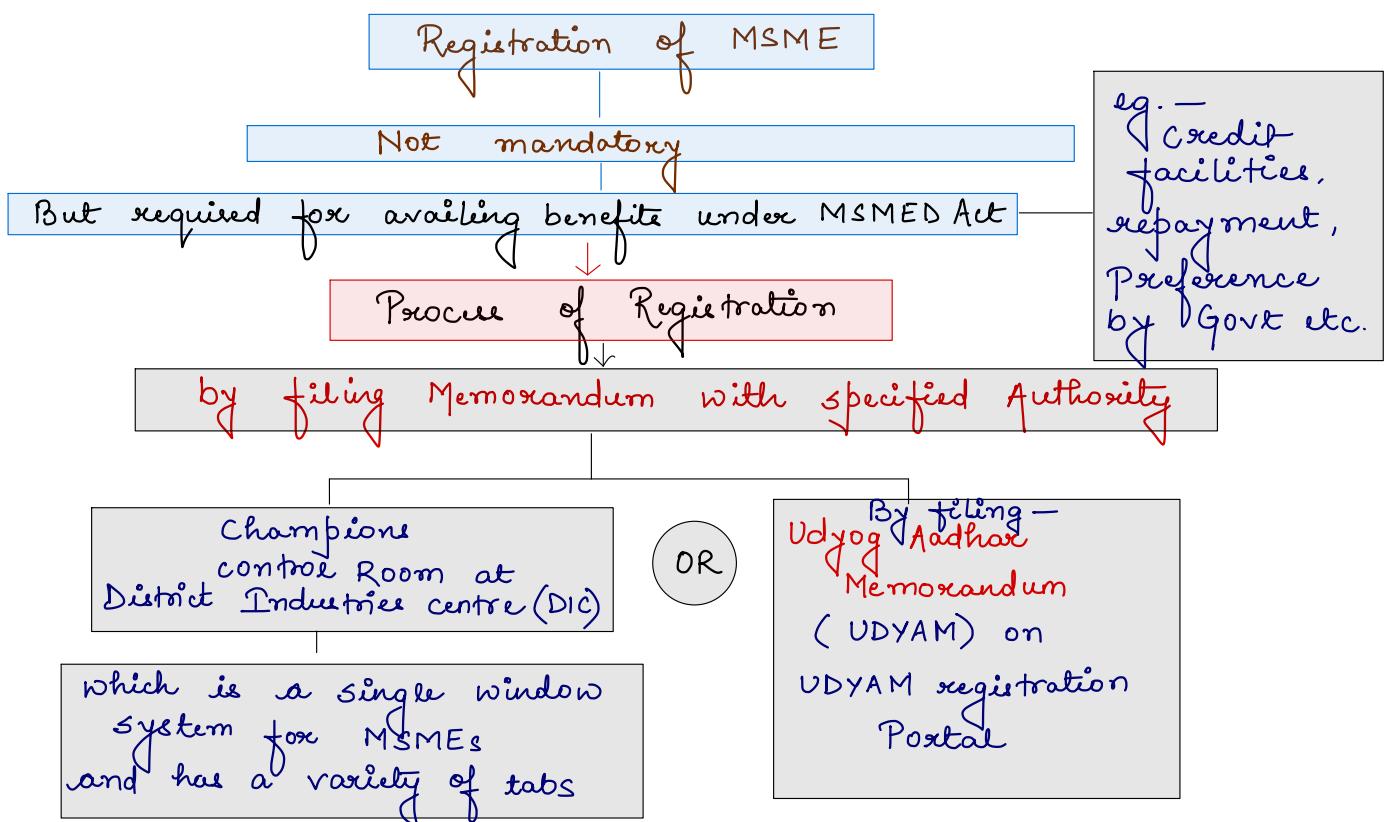
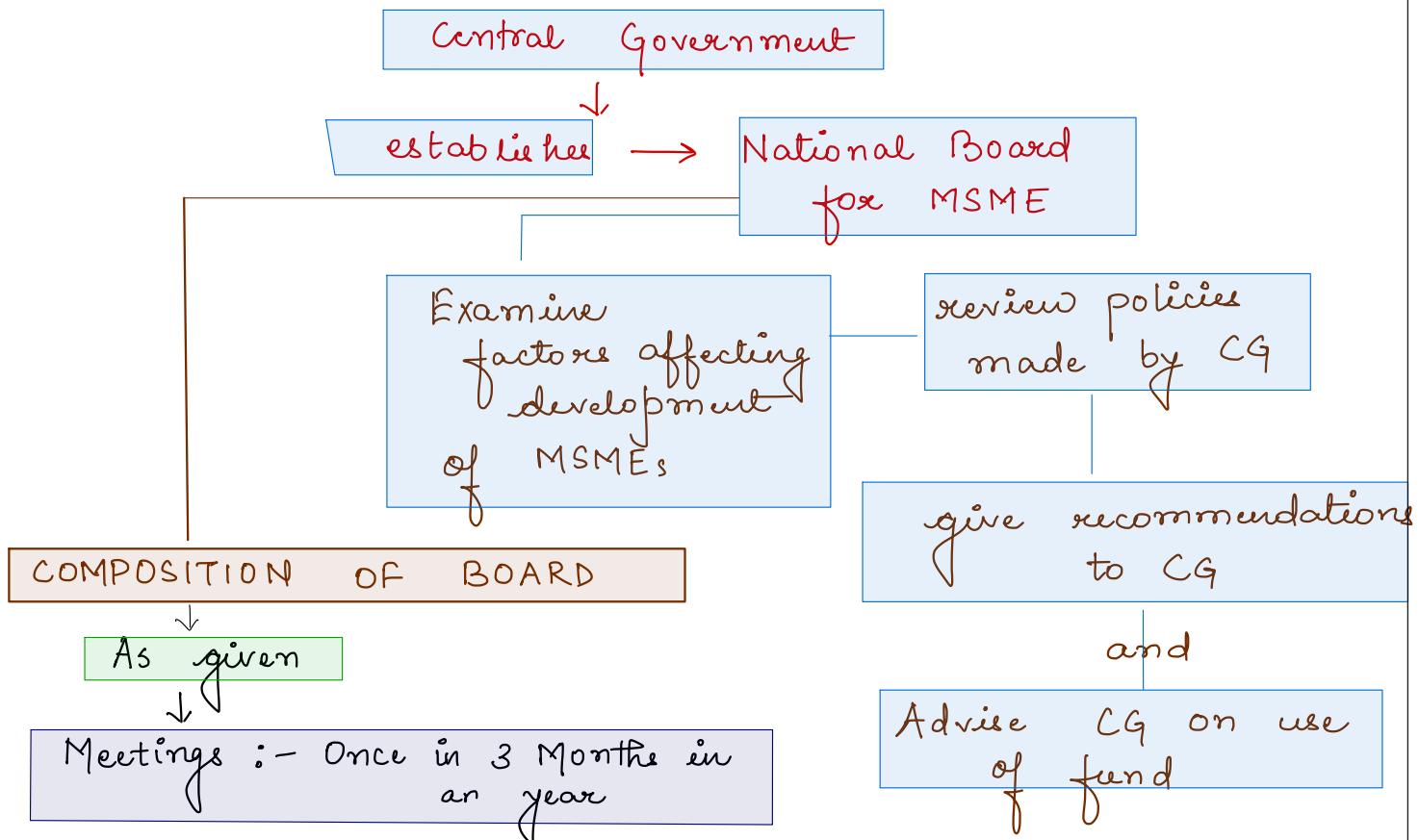
Contravention of Section 73 or 76 or rules

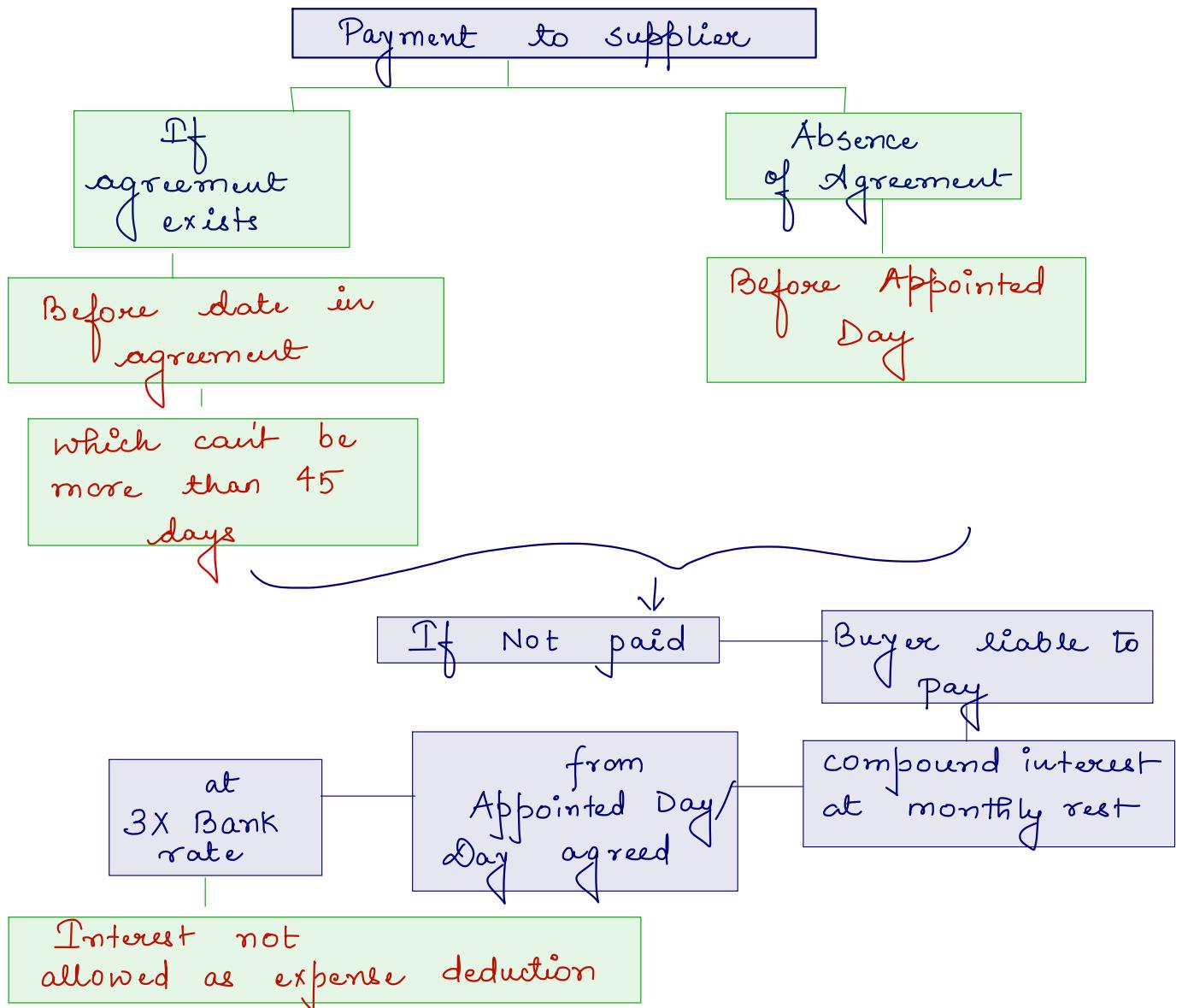


Liable u/s 447 if intention to deceive proved.

Legal Provisions related to MSME sector







Other Points -

Advisory committee NSIC Establishment of funds Section 9	}	to be read from main book
---	---	---------------------------------

Micro and small Enterprises Facilitation Council (MSEFC)

Established by
State
Government

Min - 3 Members
Max - 5 Members

from

Director of
Industries
Representative
of
- Association of
MSE
- Banks
Person with
Special Knowledge

to deal with disputes relating
to delayed payments &
int'l.

Any Party

refer to council
through

On such receipt

conciliation

If not successful

council to act as
Arbitrator and
decide accordingly

Reference to be decided within 90 days.

Jurisdiction :- supplier in the area and buyer anywhere in India

Various Schemes / Benefits

Revival and Rehabilitation

Procurement Preference Policy

Digital MSME

ECLGS - 4 years / ROI - 9.25% for Banks / 14% for NBFCs
100% Guarantee coverage.

SBL - 10 crores - 10 years

PMEGP

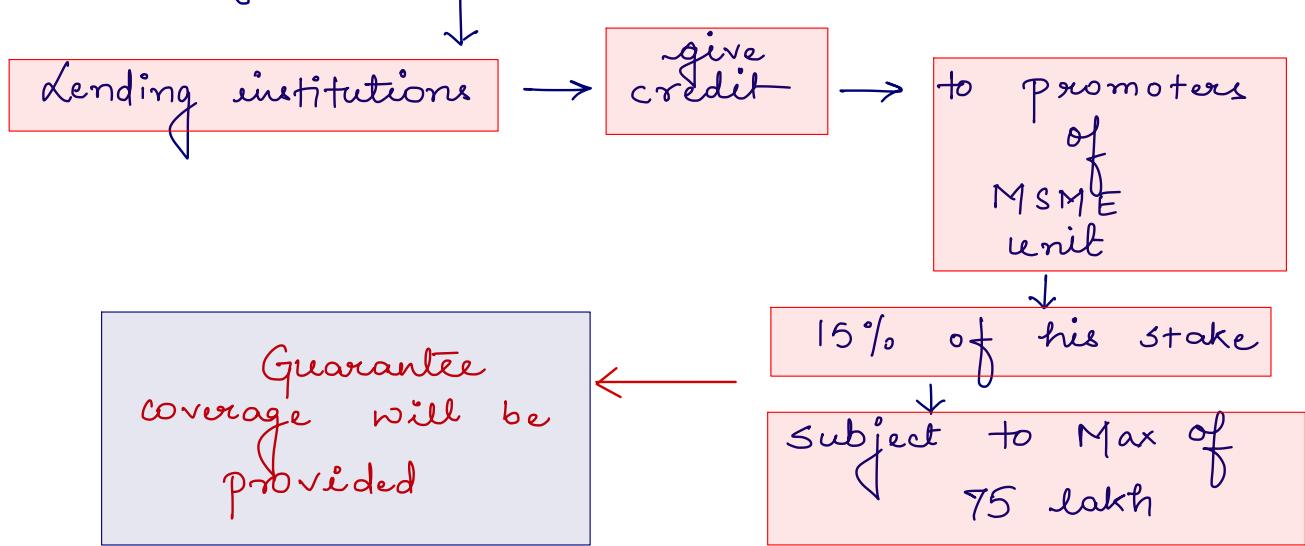
Reservation Policies

Special consideration

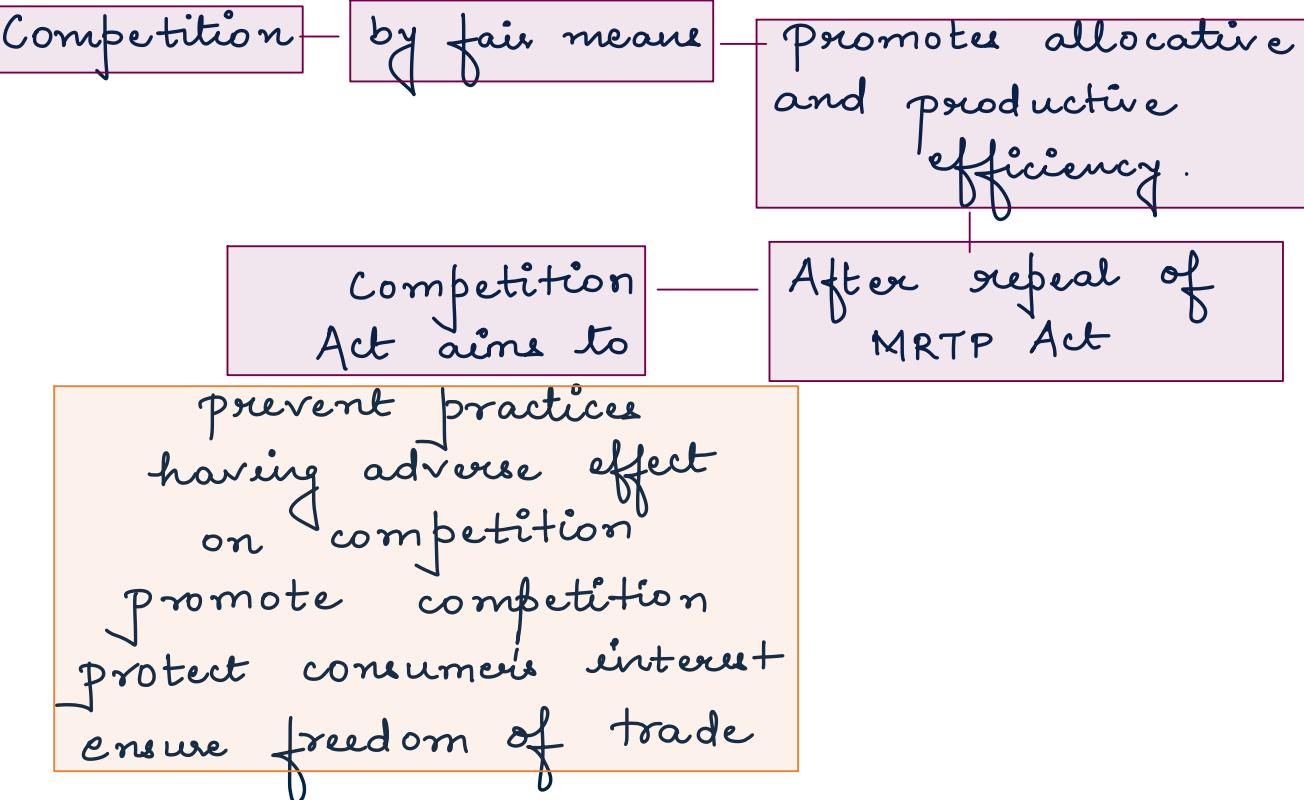
Training

Recent Announcement

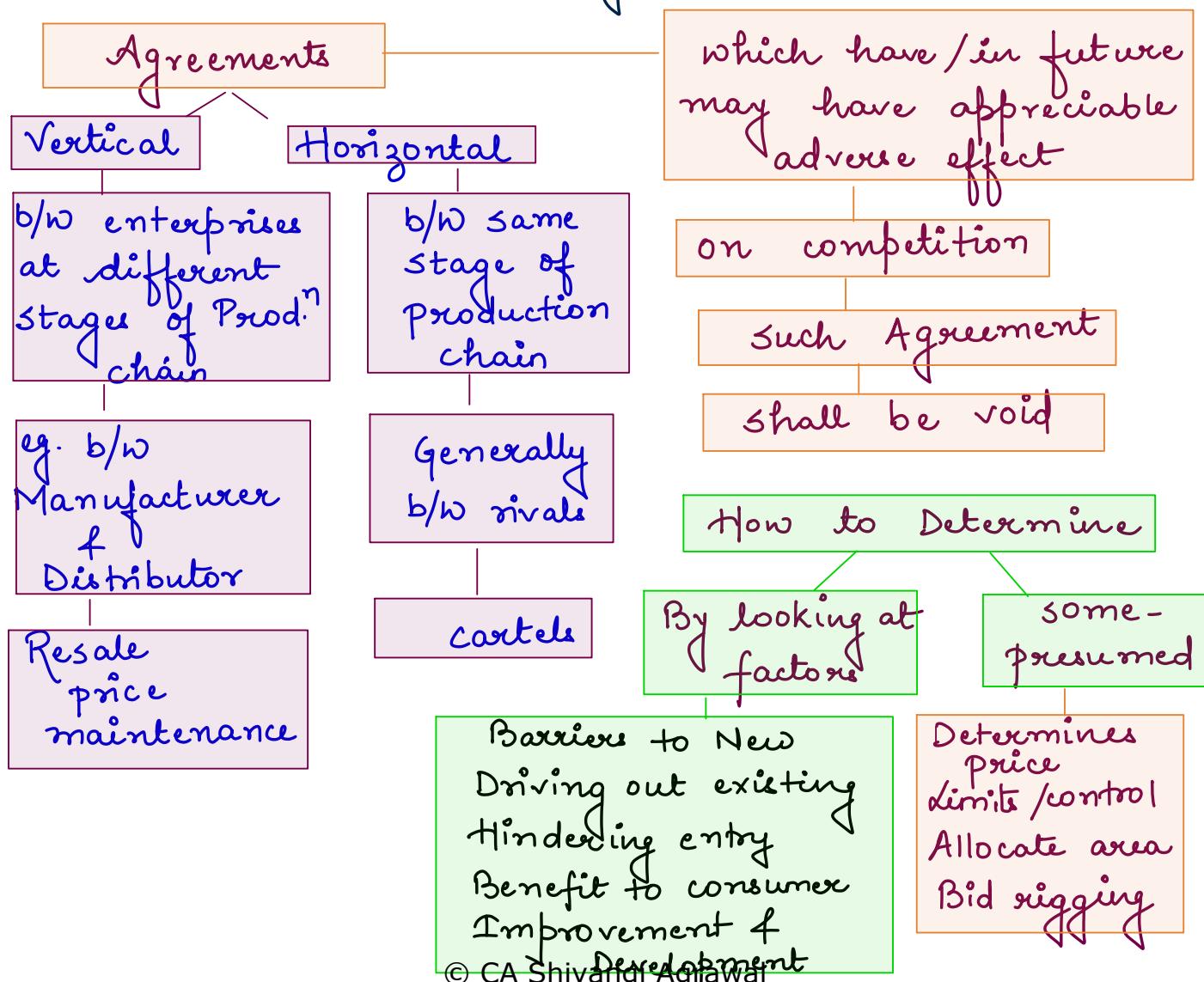
Credit Guarantee Scheme for Subordinate Debt
for stressed / NPA - MSMEs



Competition Act, 2002



Anti-competitive Agreements



Prohibition on Abuse of Dominant Position

Dominance is position of strength to operate independently.

Abuse includes

Unfair pricing
Predatory "
Limiting Prod."
Barrier to Entry
Using position
to gain advantages

How to identify Abuse

Determining Relevant Market

Determining Dominance

Establishing Abuse

Inquiry by CCI

Orders by CCI

On the basis of factors like-
Market share
Size of enterprise
size of competitor
Dependence of consumers
Market structure

Combination

Acquisition

Sharee

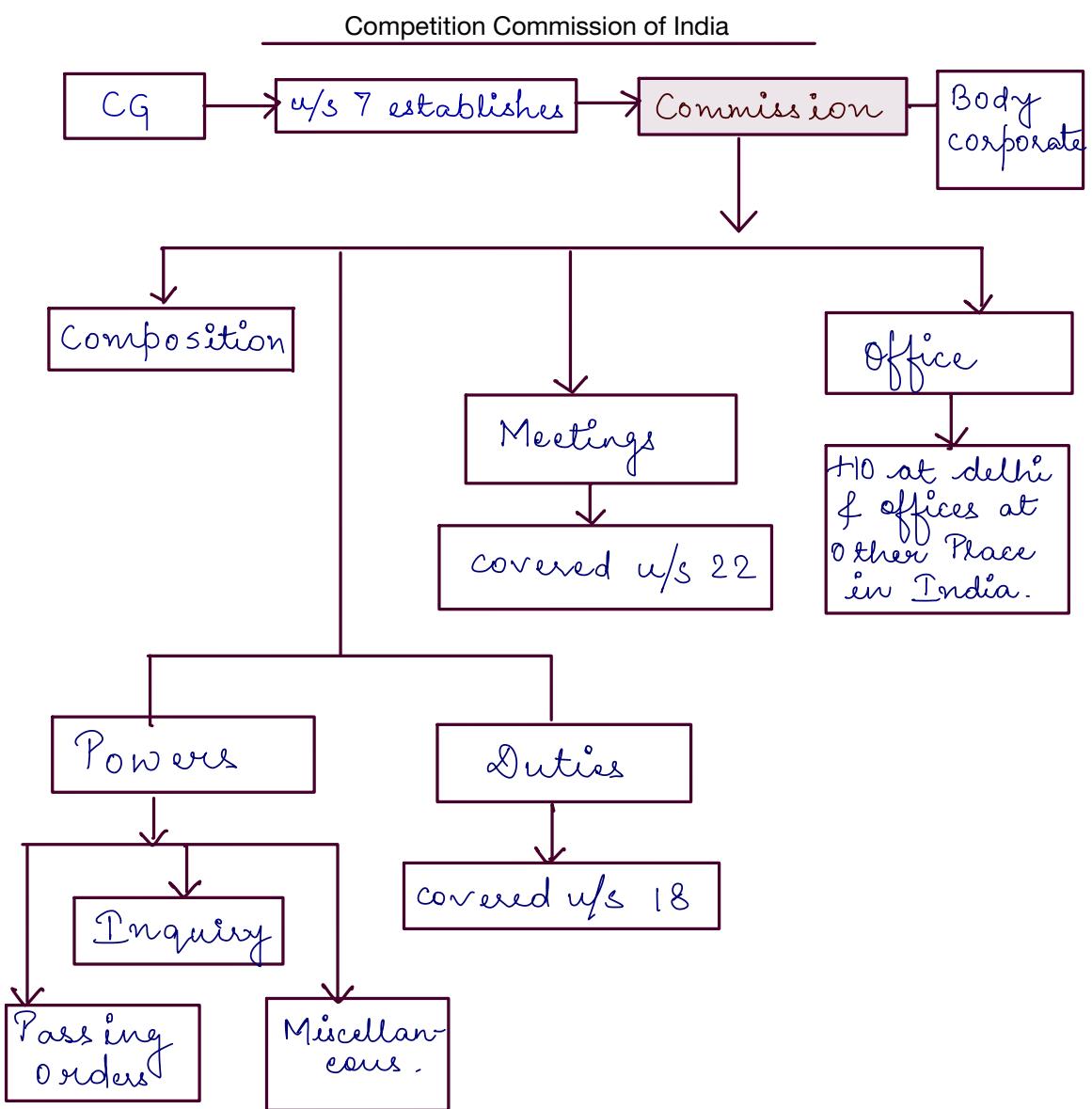
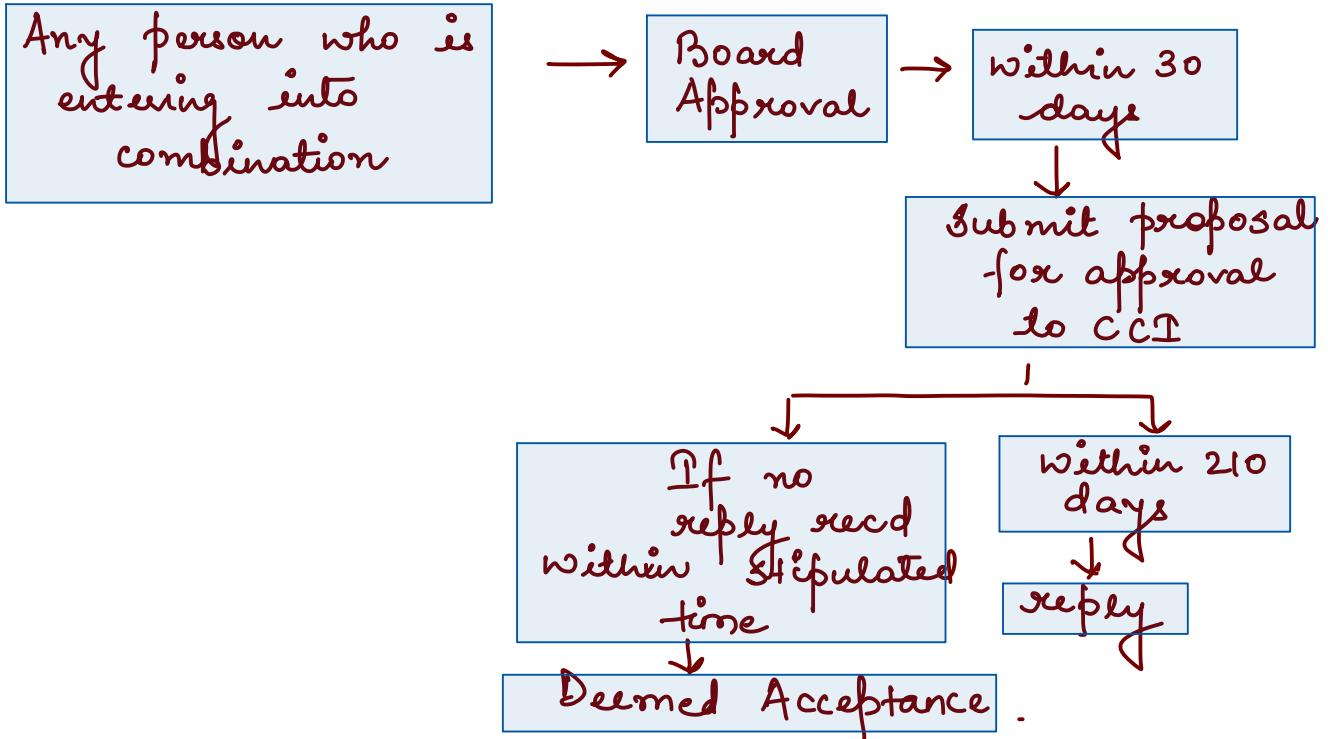
Assets

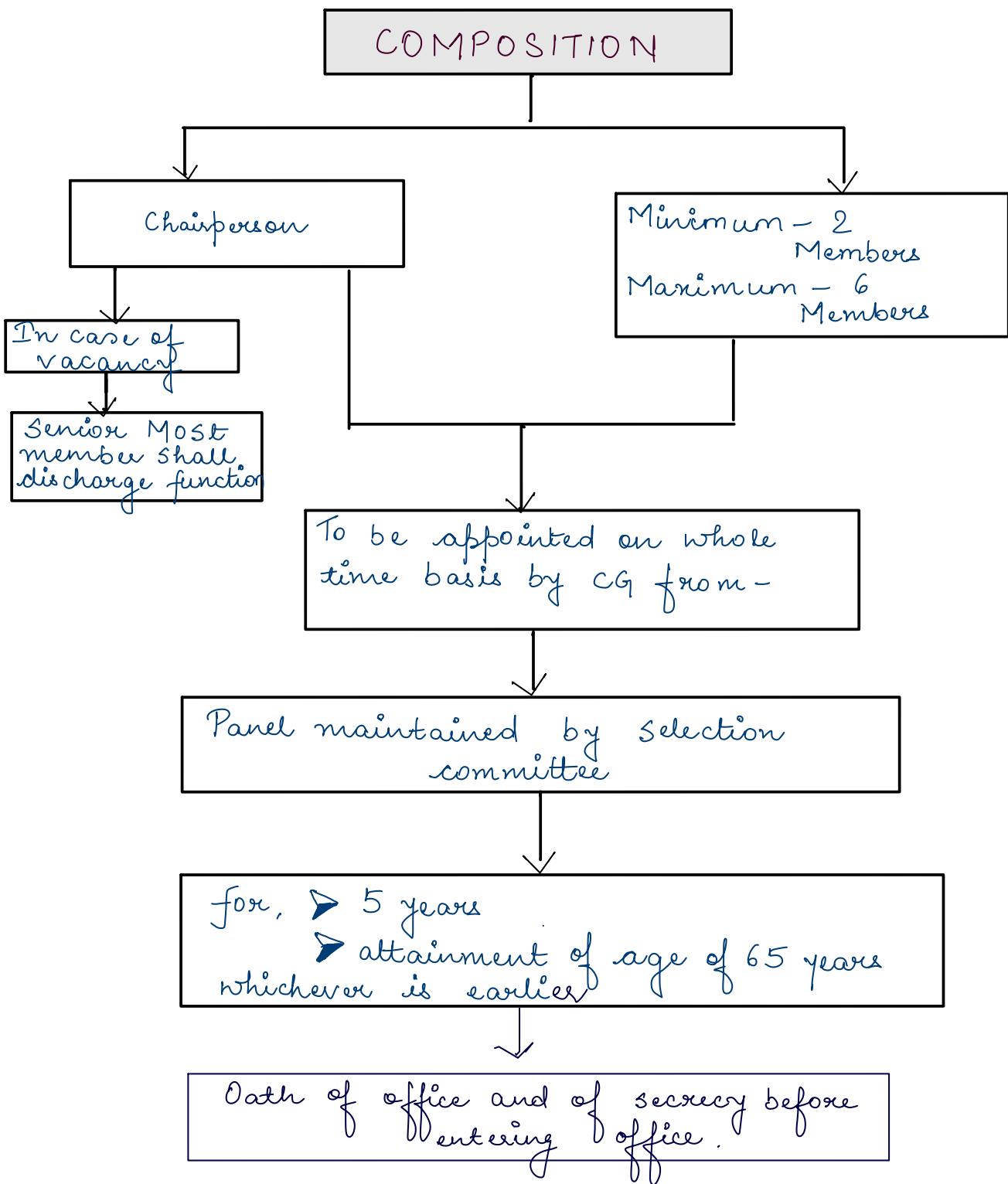
Control over Management/
Assets

of any enterprise

exceeds threshold → combination

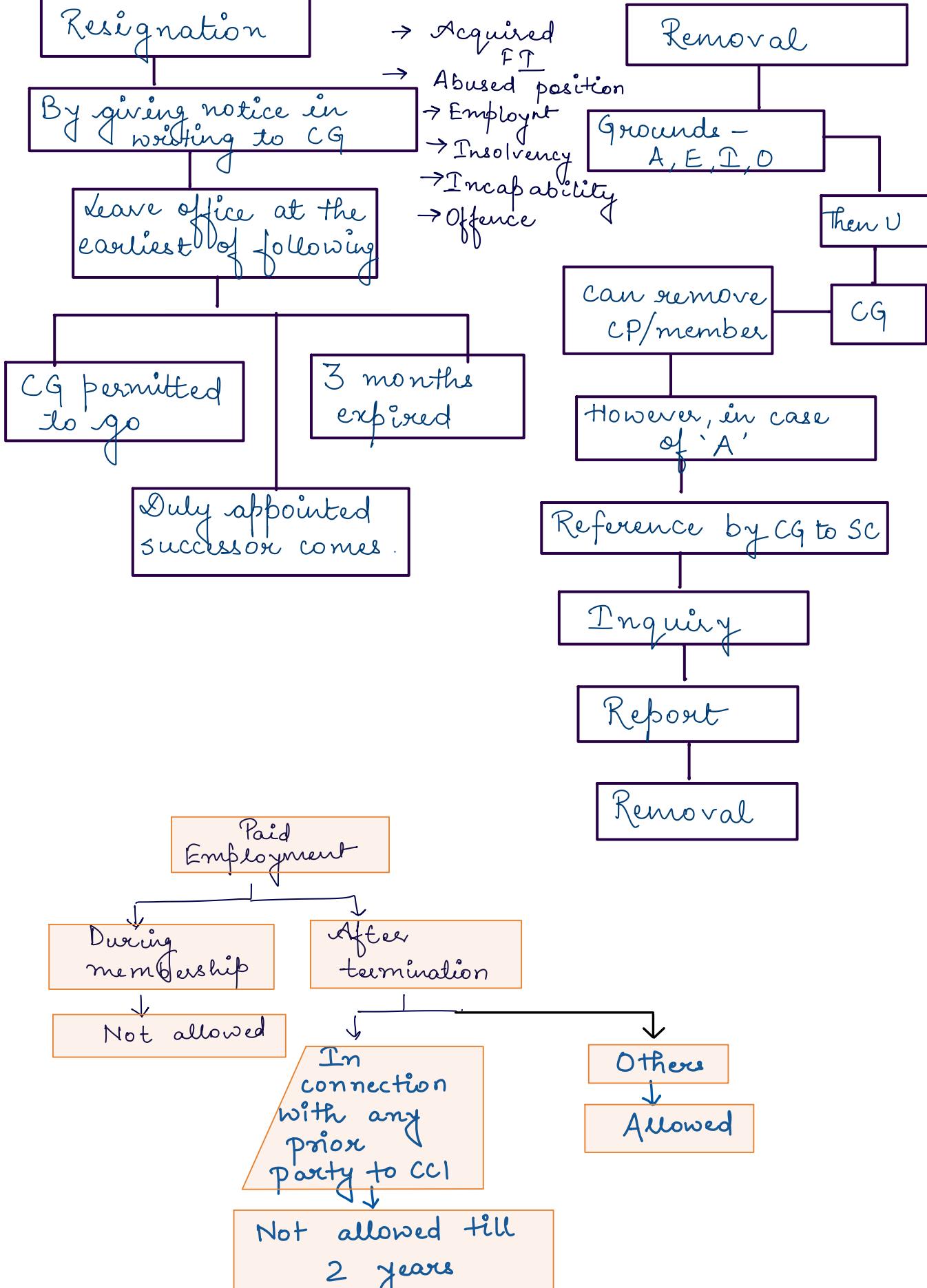
Seeks approval of
CCI in
Prescribed
manner



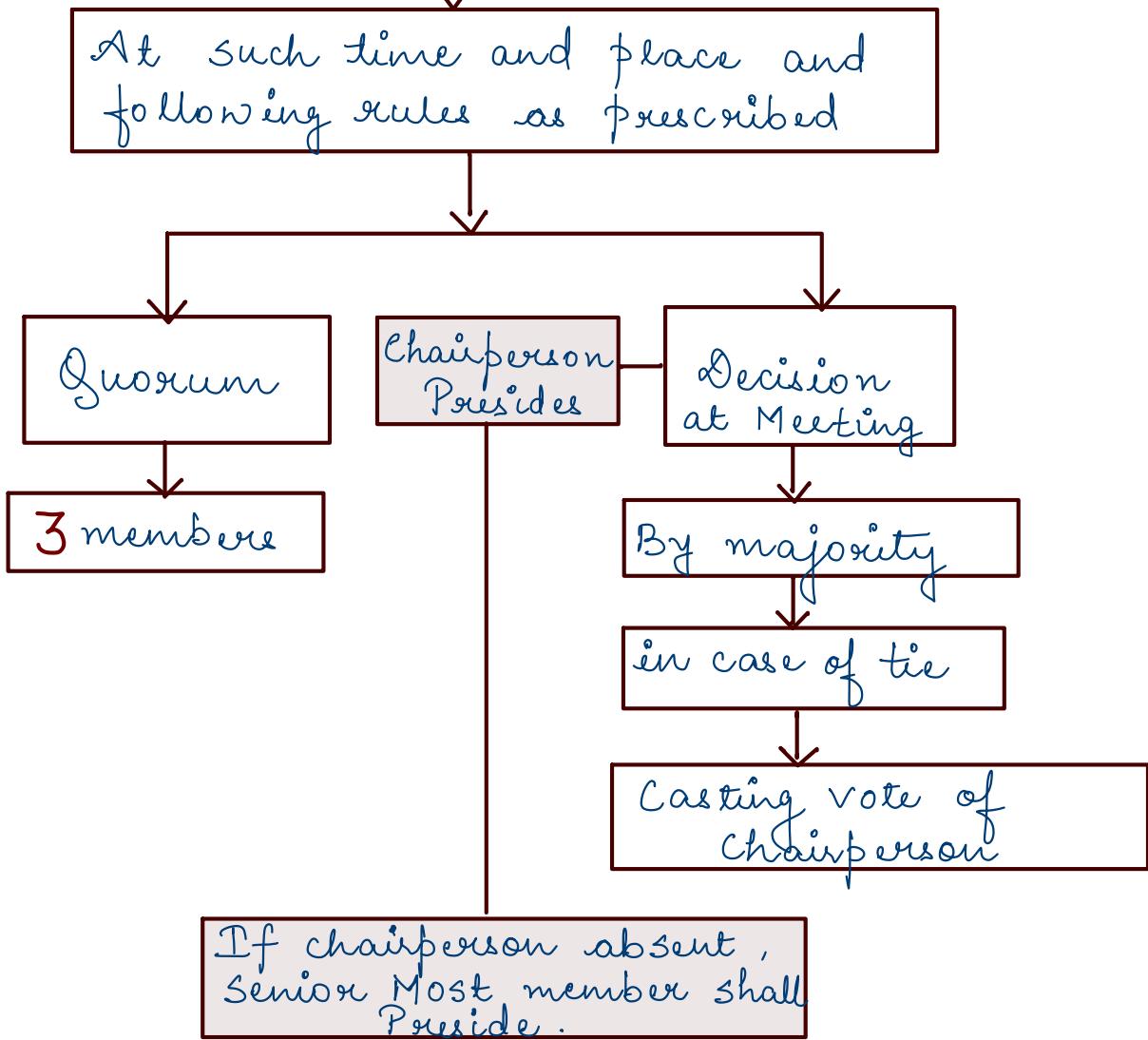


Termination of office of CP & Members

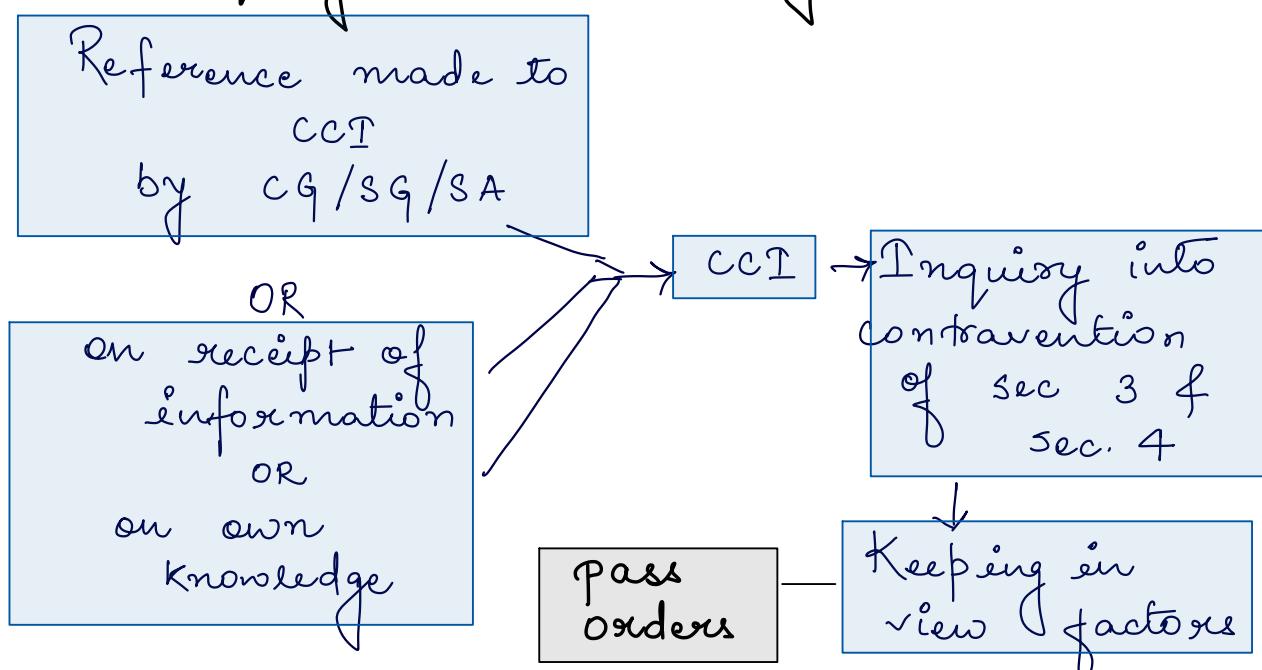
Section 11



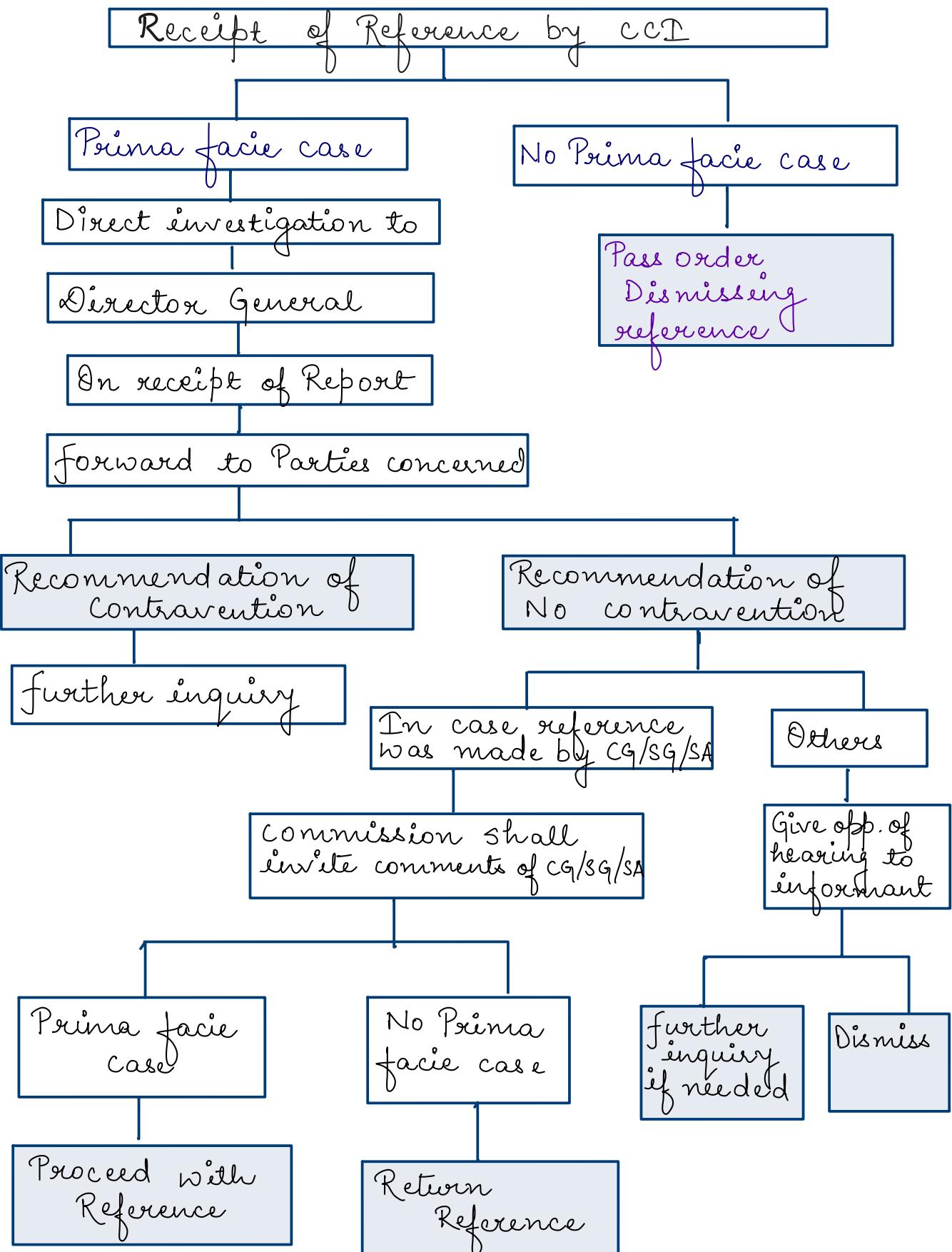
Meetings u/s 22



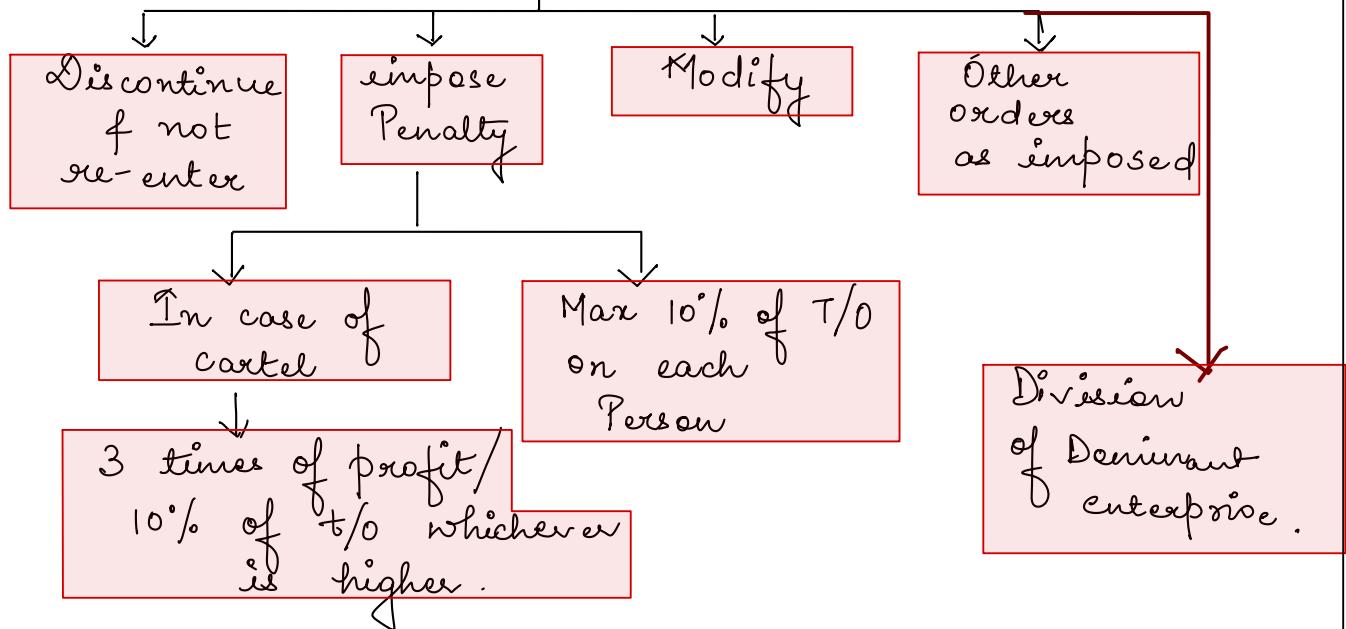
Inquiry into certain Agreements



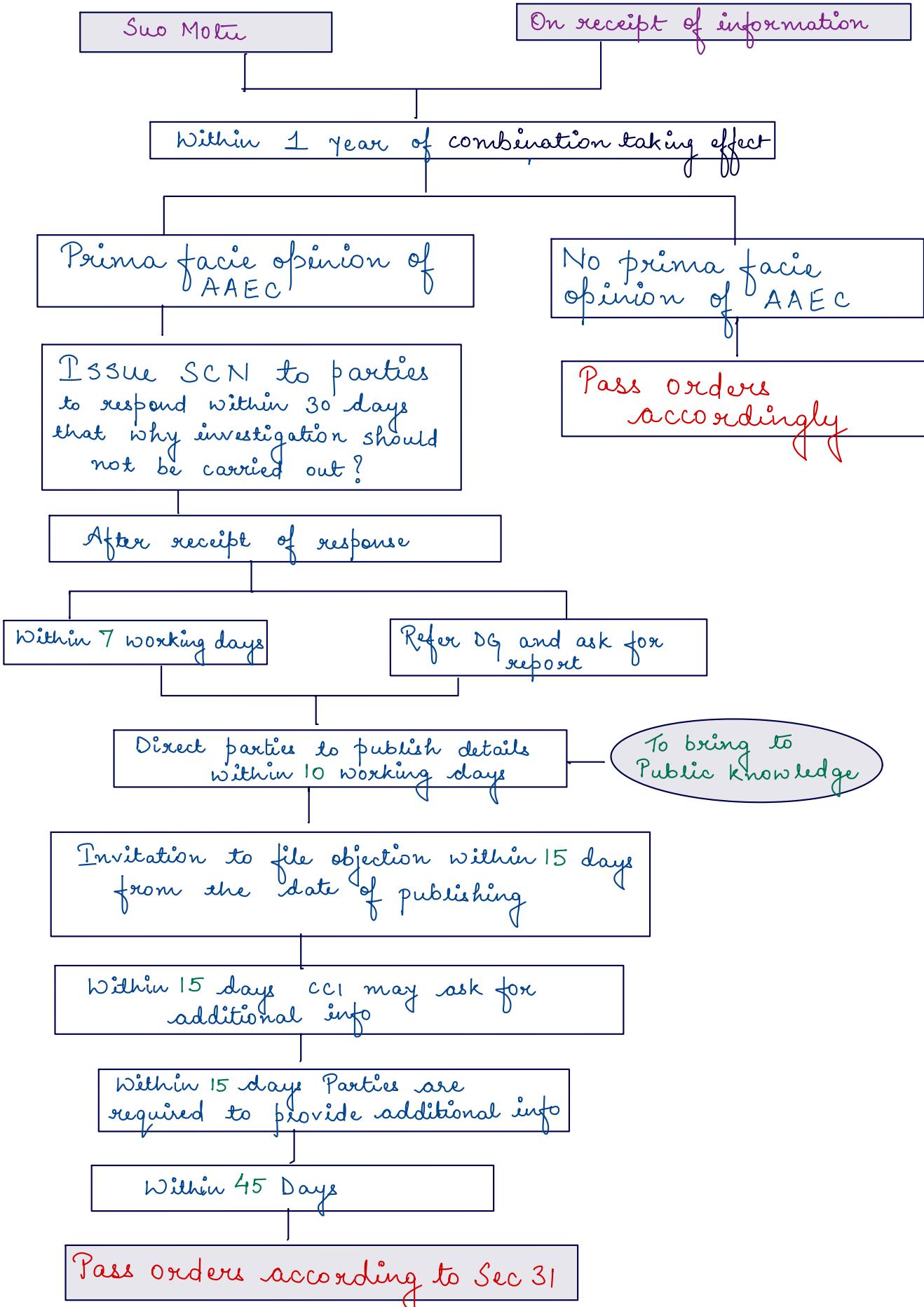
PROCEDURE OF INQUIRY

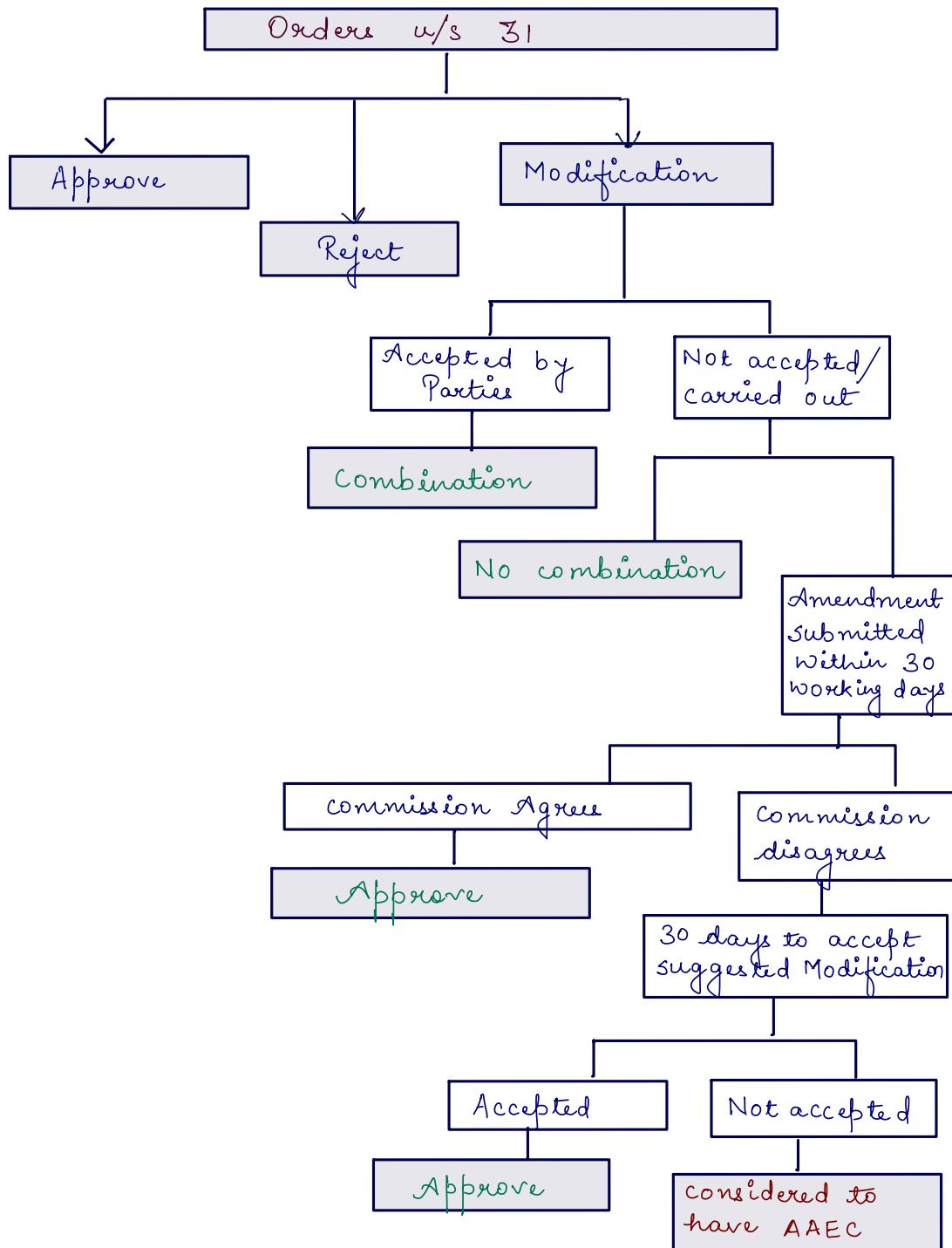


Orders by commission → after inquiry
(Sec. 27) w/s 19 & 26

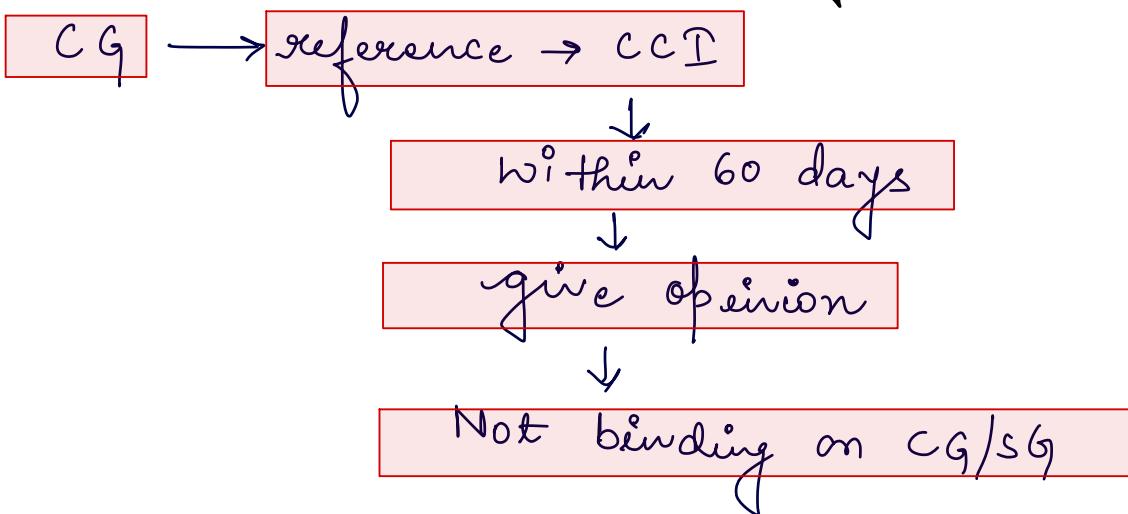


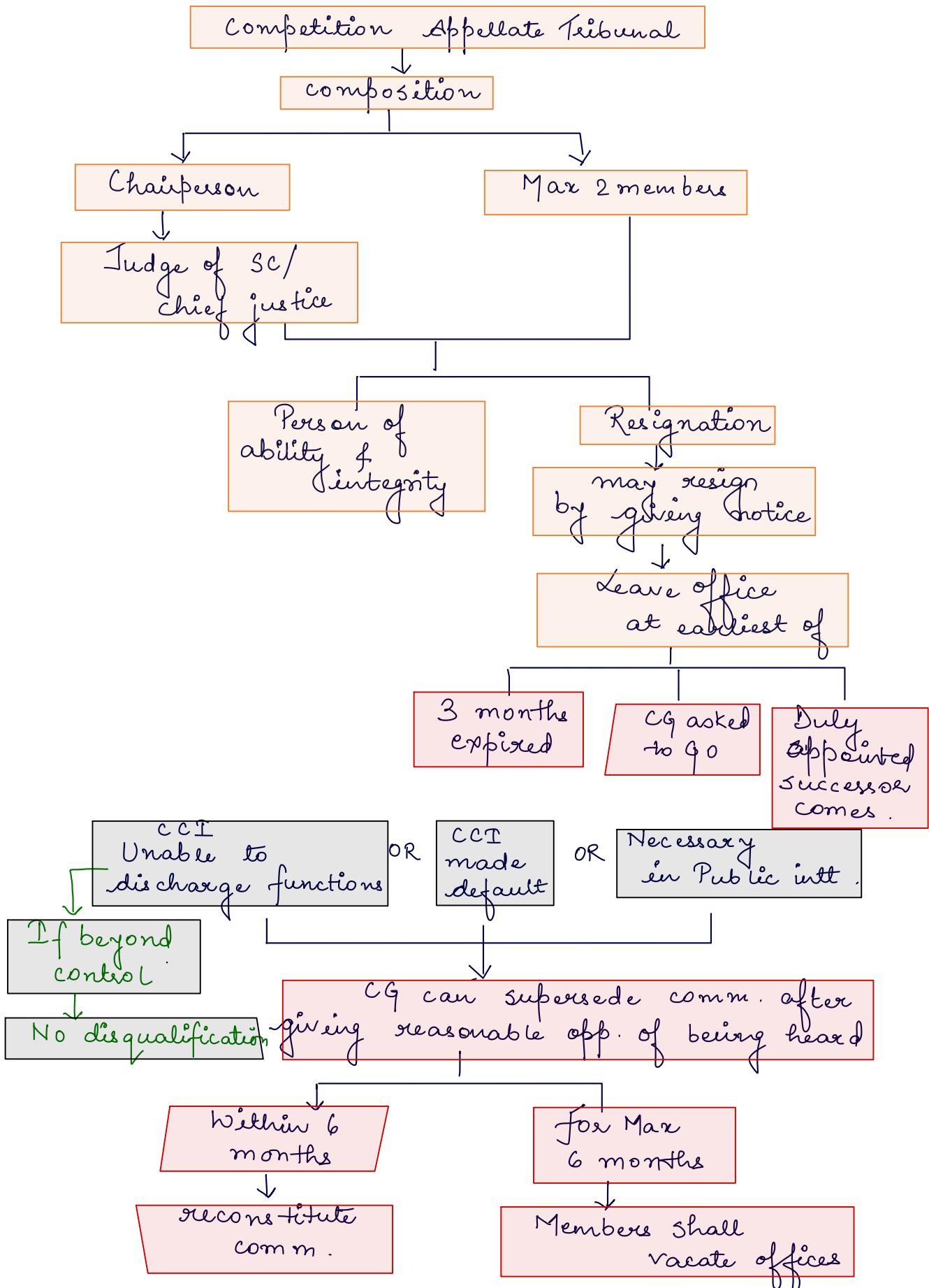
PROCEDURE FOR INQUIRY INTO COMBINATIONS





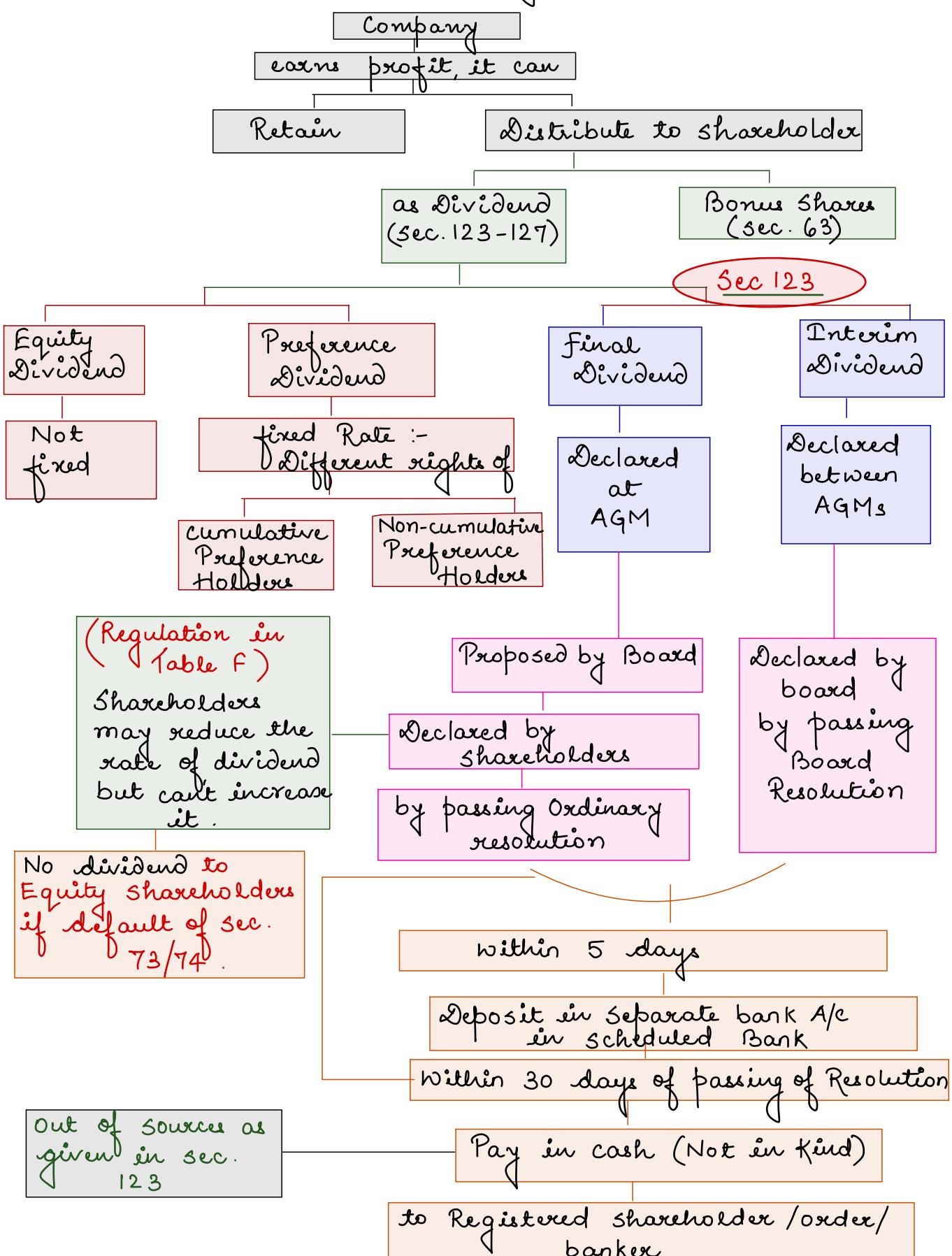
Competition Advocacy



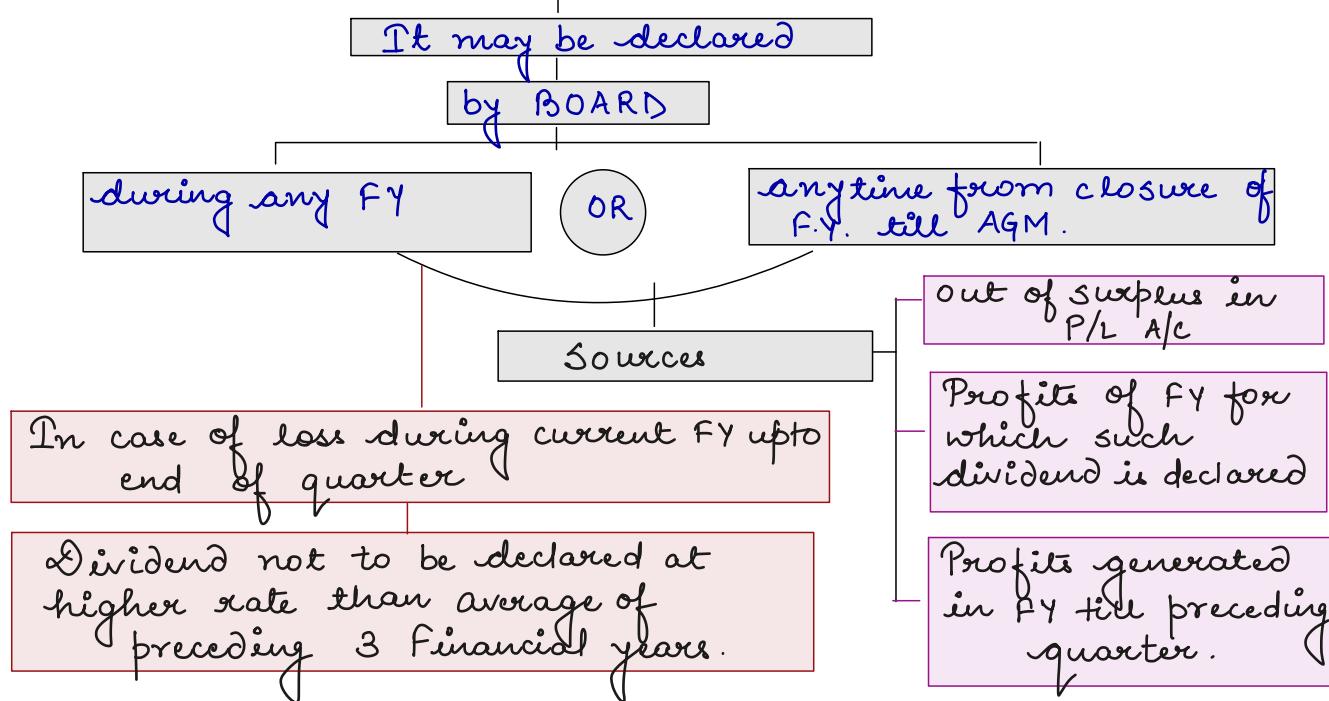


Declaration & Payment of Dividend

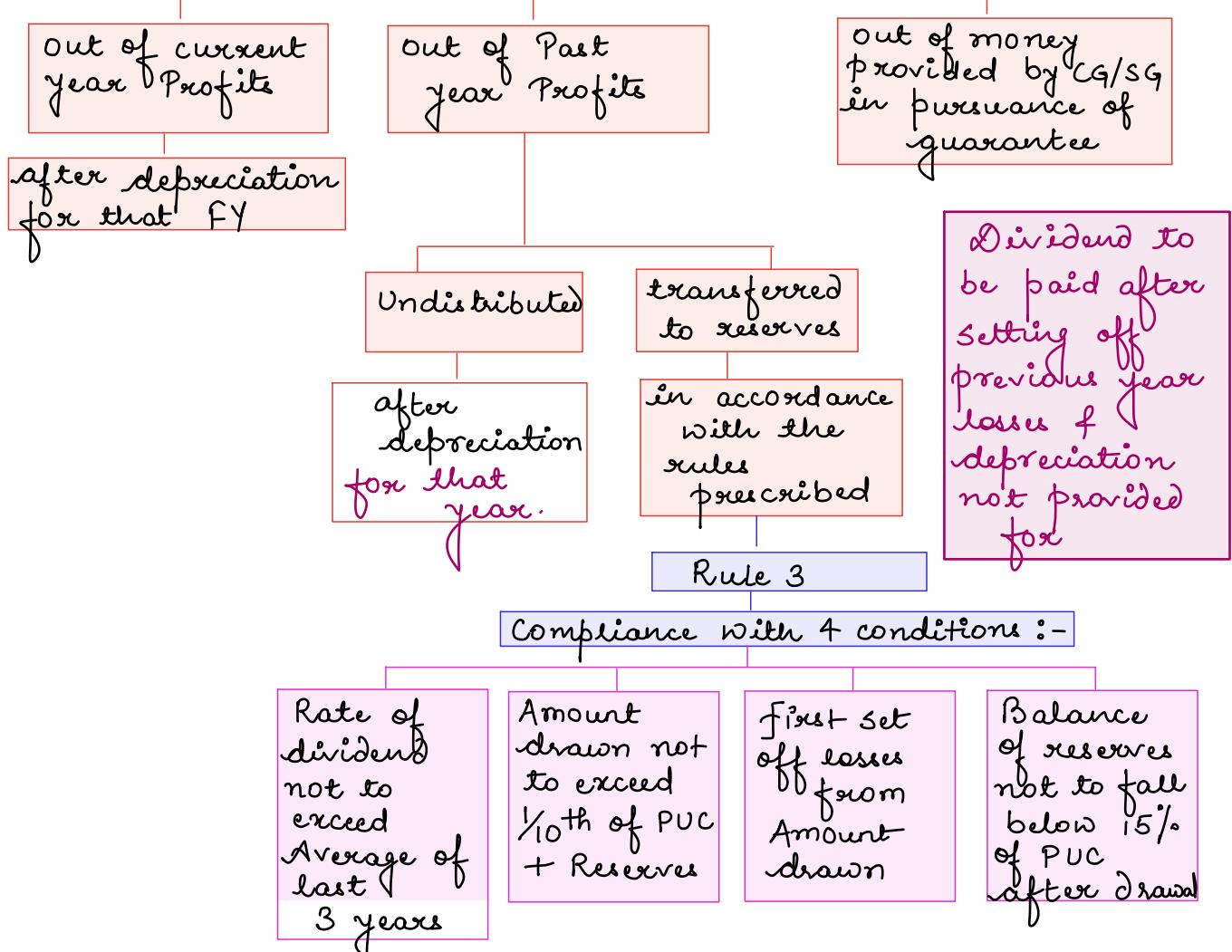
Chapter VIII (containing sections 123-127)



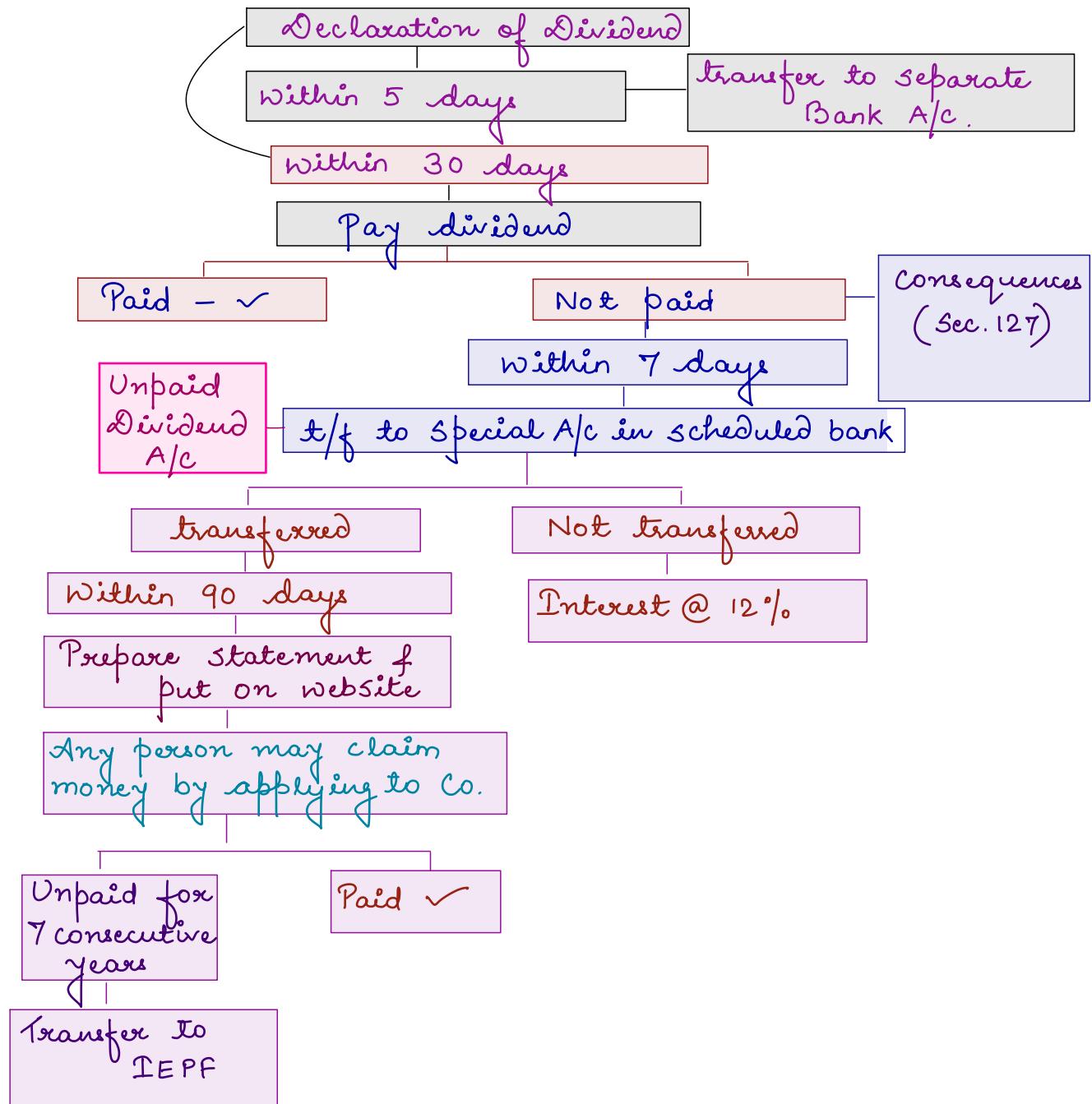
Interim Dividend



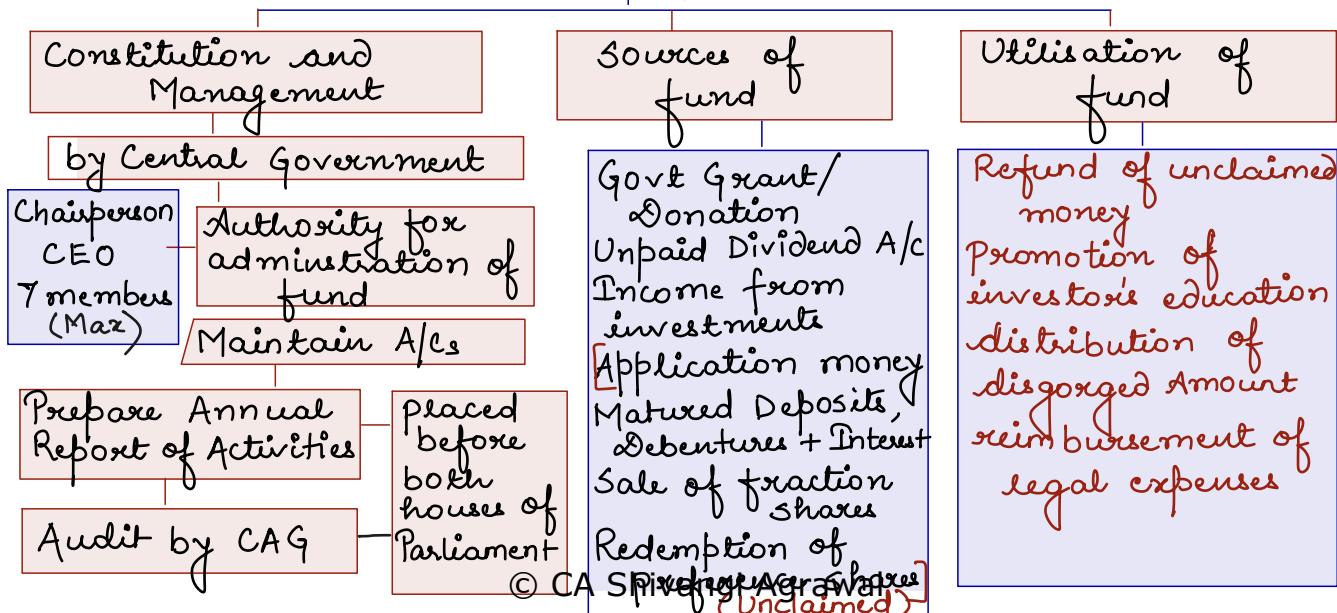
Sources of Dividend



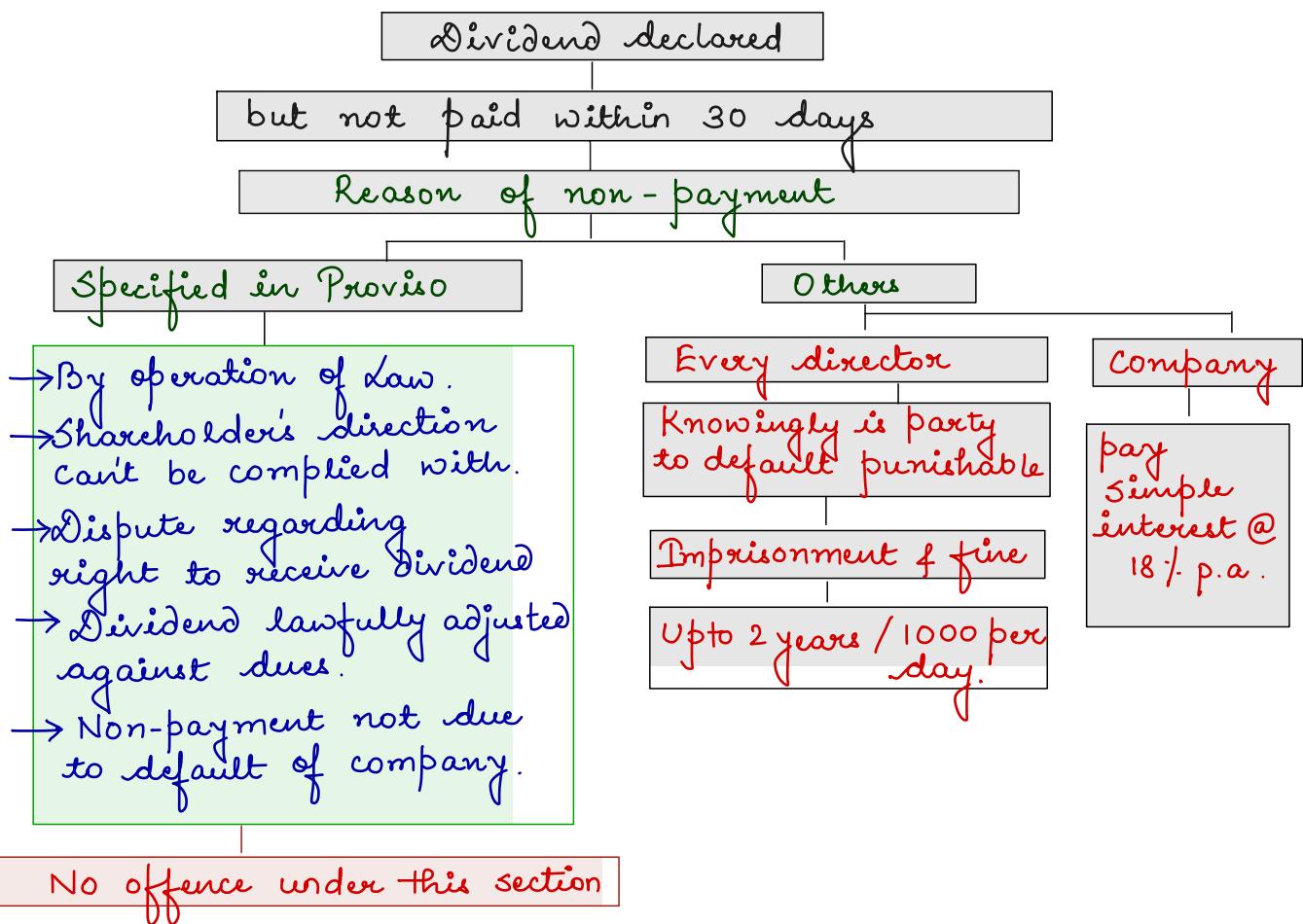
Unpaid Dividend (Sec. 124)



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



Failure to distribute Dividend [Sec. 127]

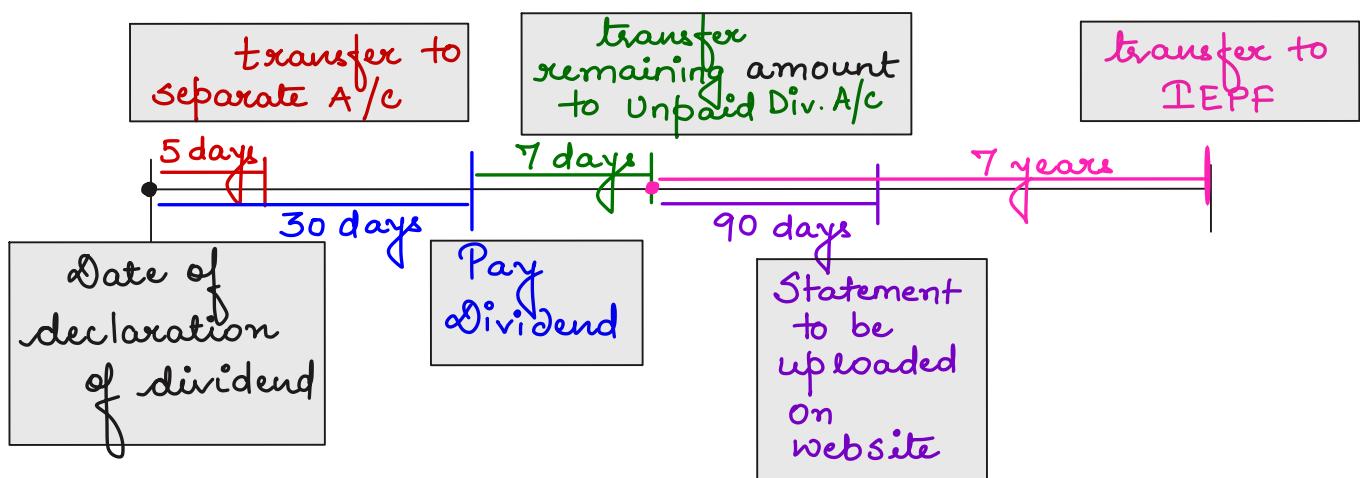


Other Points related to Dividend :-

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

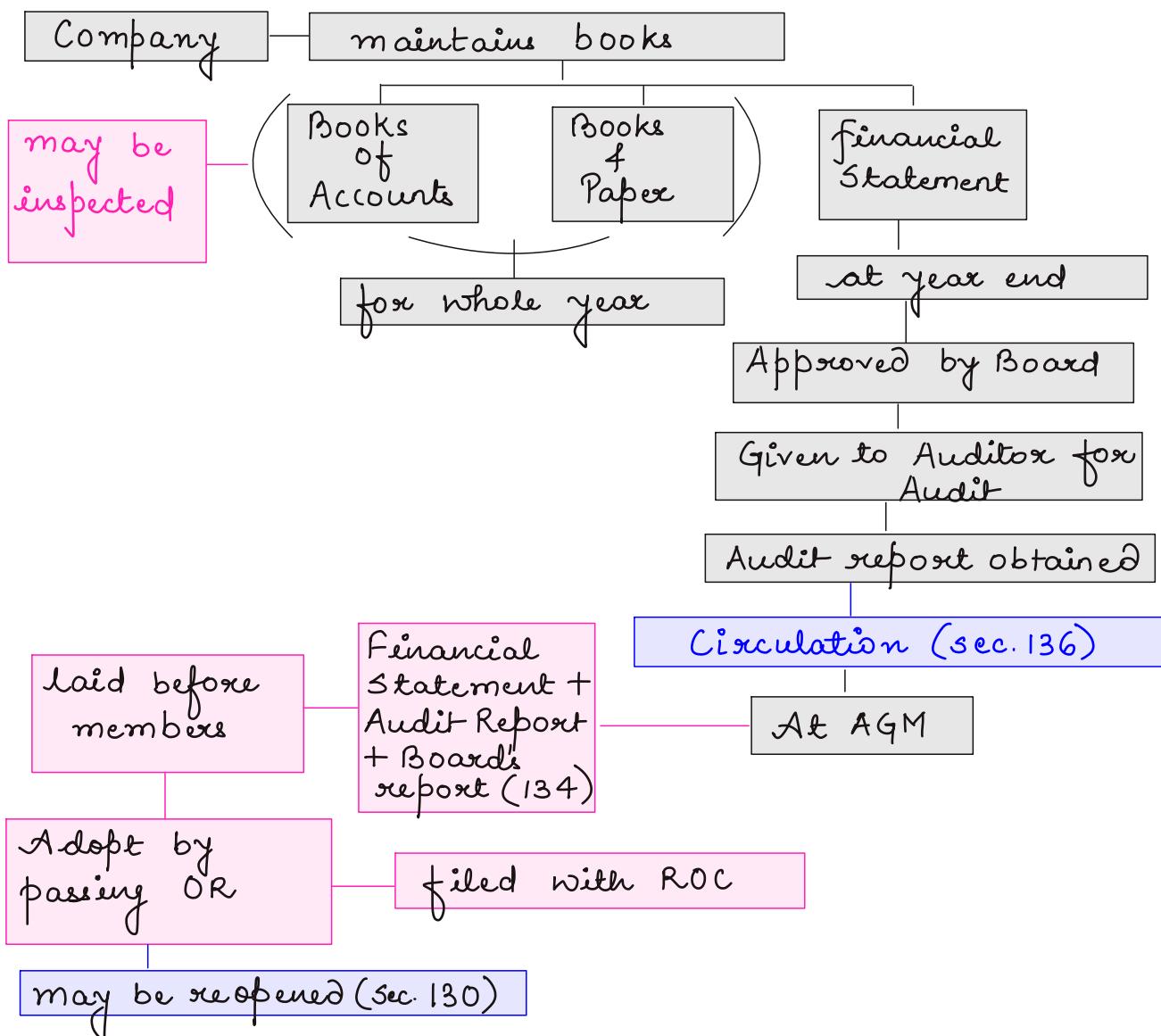
Dividend once declared can't be revoked.

Time limit :-

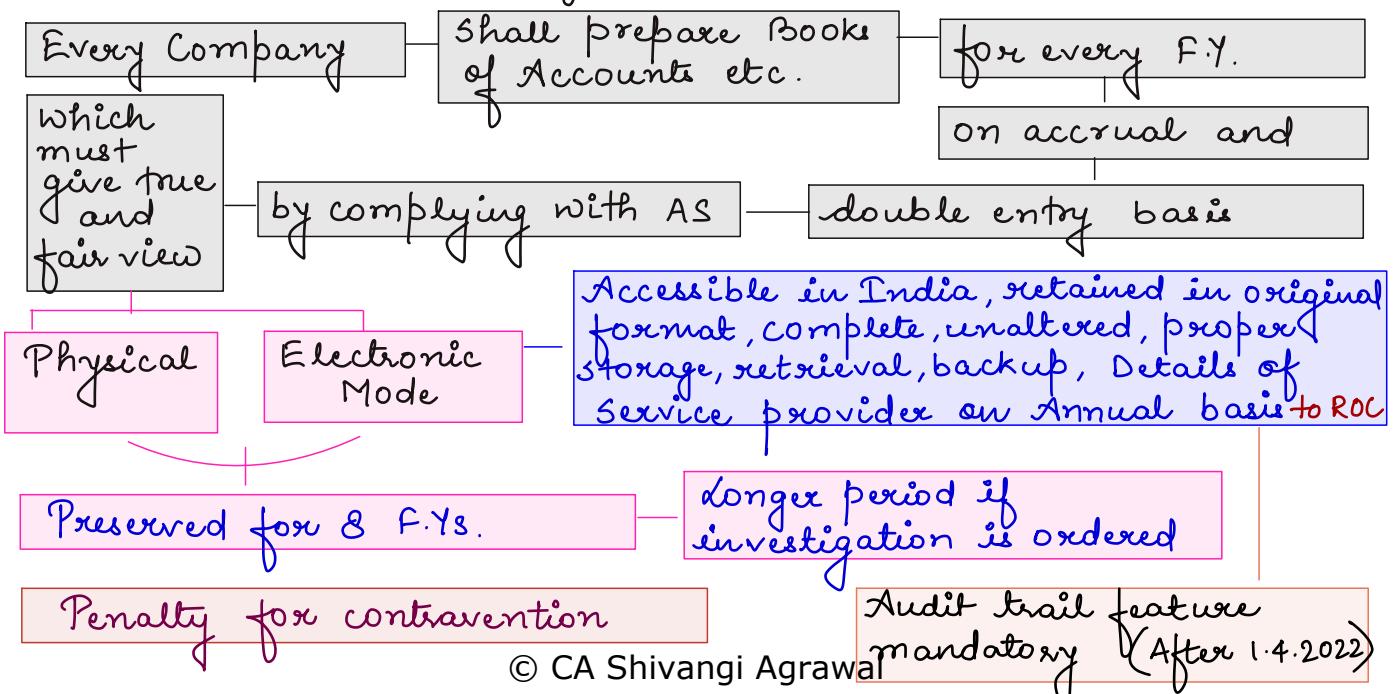


Accounts of Companies

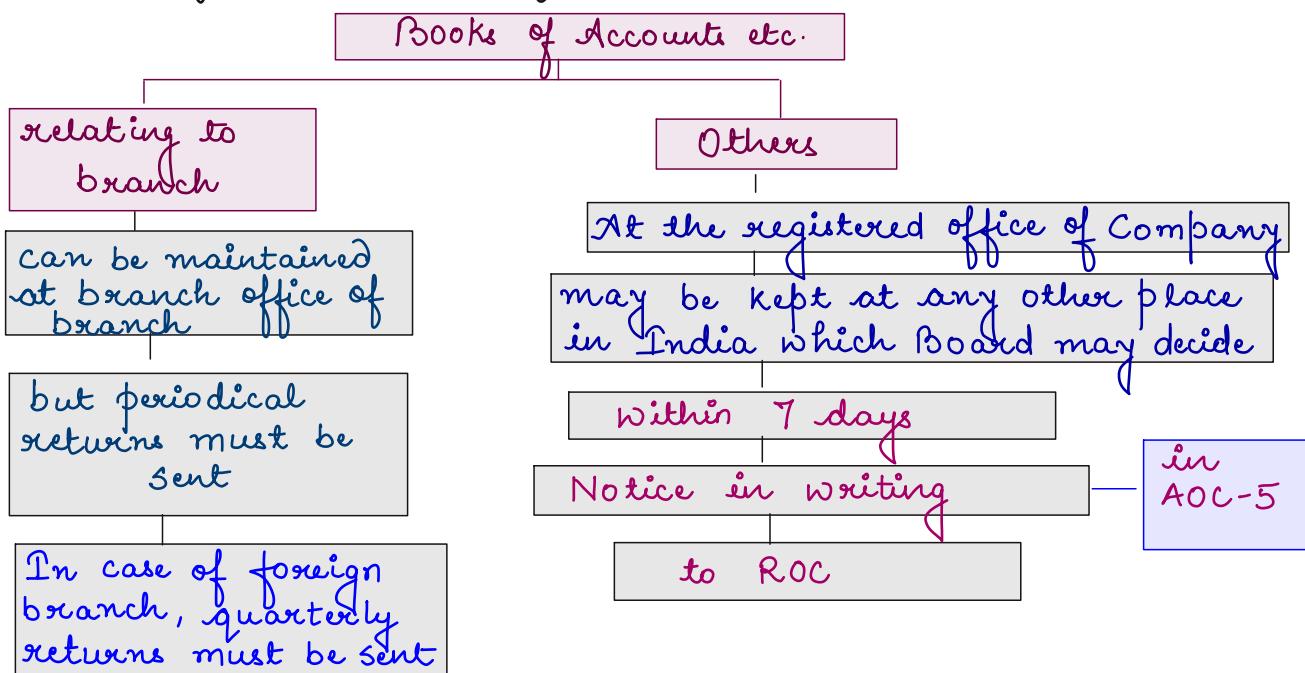
Chapter IX (containing Sec. 128 - 138)



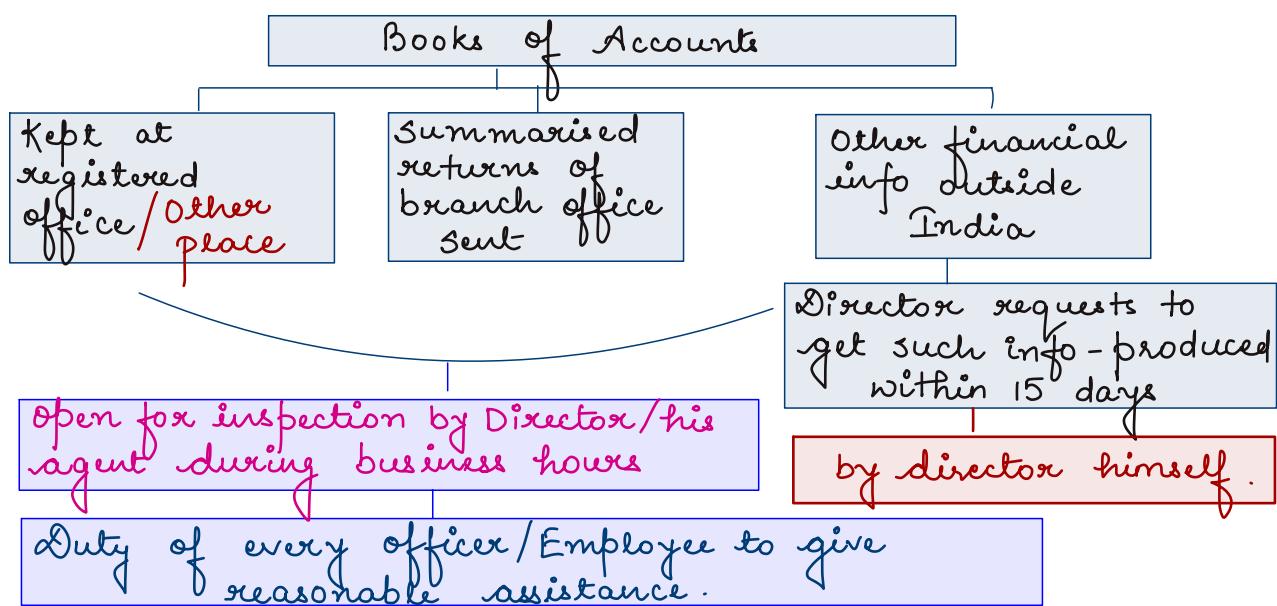
Maintenance of Books of Accounts (sec. 128)



Place of Maintenance of Books of Accounts

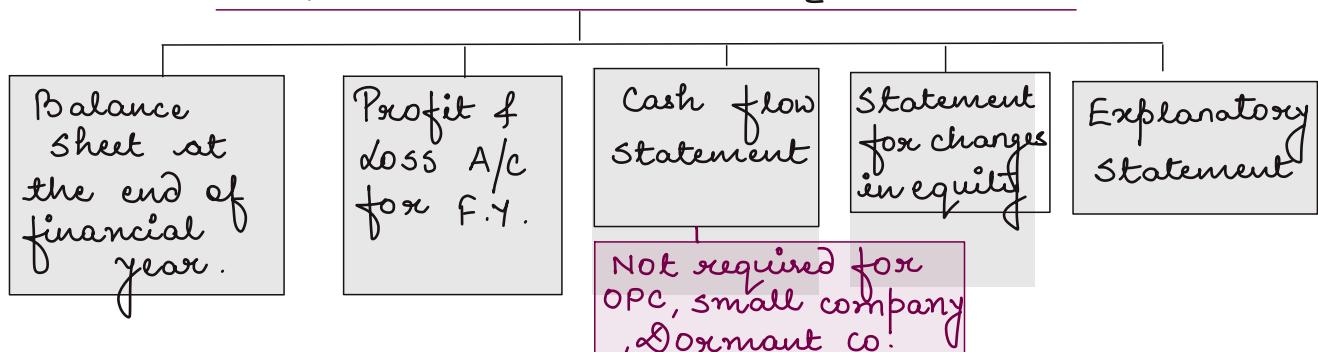


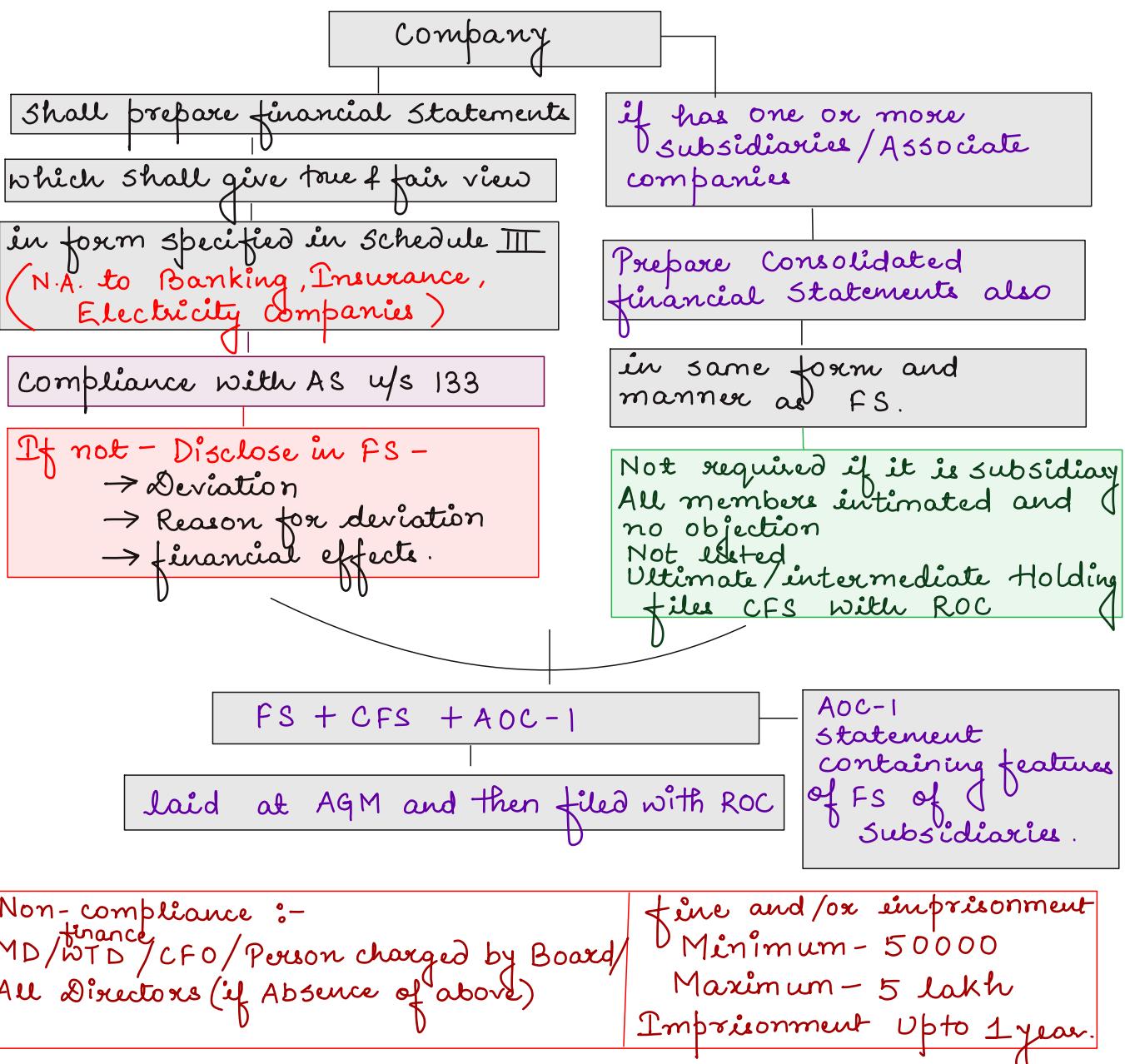
Inspection of Books of Accounts etc.



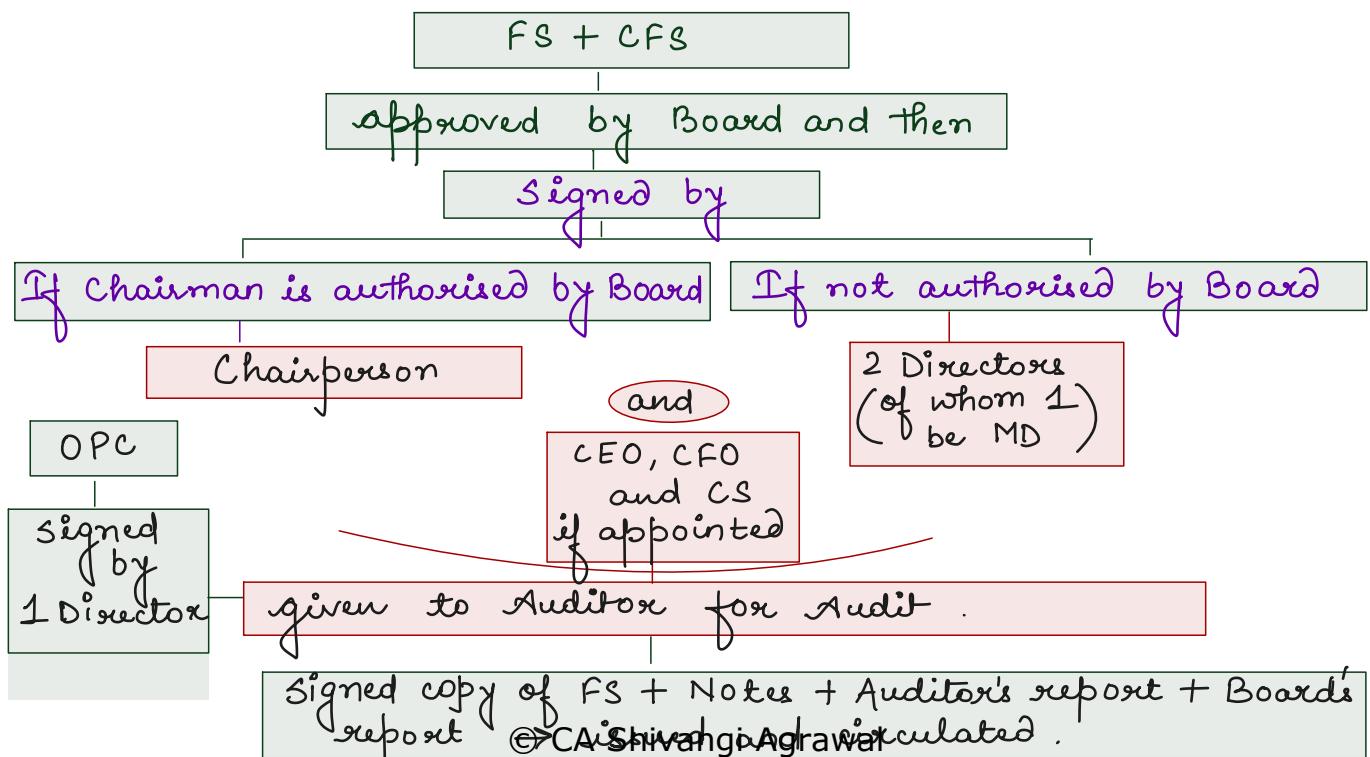
Inspection of books of accounts of subsidiary shall be made only by person authorised by board.

Financial Statements [Sec. 129]





Approval and Signing of financial Statements (Sec. 134)



Right to get Audited Financial Statement [Sec. 136]

Copy of FS + CFS + Audit Report + Annexures

be sent by Every Company

to its members, Debenture trustee, Person entitled to Notice of GM

if consent obtained

if No consent

Company with Share Capital

Company without Share Capital

from members holding 95% of PUC

from members holding 95% of voting Power

at least 21 days before AGM

shorter Period than 21 days

In case of listed Co.

Either circulate as above

OR

Sufficient compliance if -

Also FS of Subsidiary (Audited)

FS etc available for inspection at registered office 21 days before AGM

AND

Statement (AOC-3/3A) containing salient features of FS etc. is sent unless they ask for full statement

If foreign Subsidiary

A/c's not Audited as per Law

such Unaudited and English translated FS.

Manner of Circulation

Listed Company

Public company with Net worth > 1 cr and Turnover > 10 cr

Shares held in electronic mode

Shares not in Demat

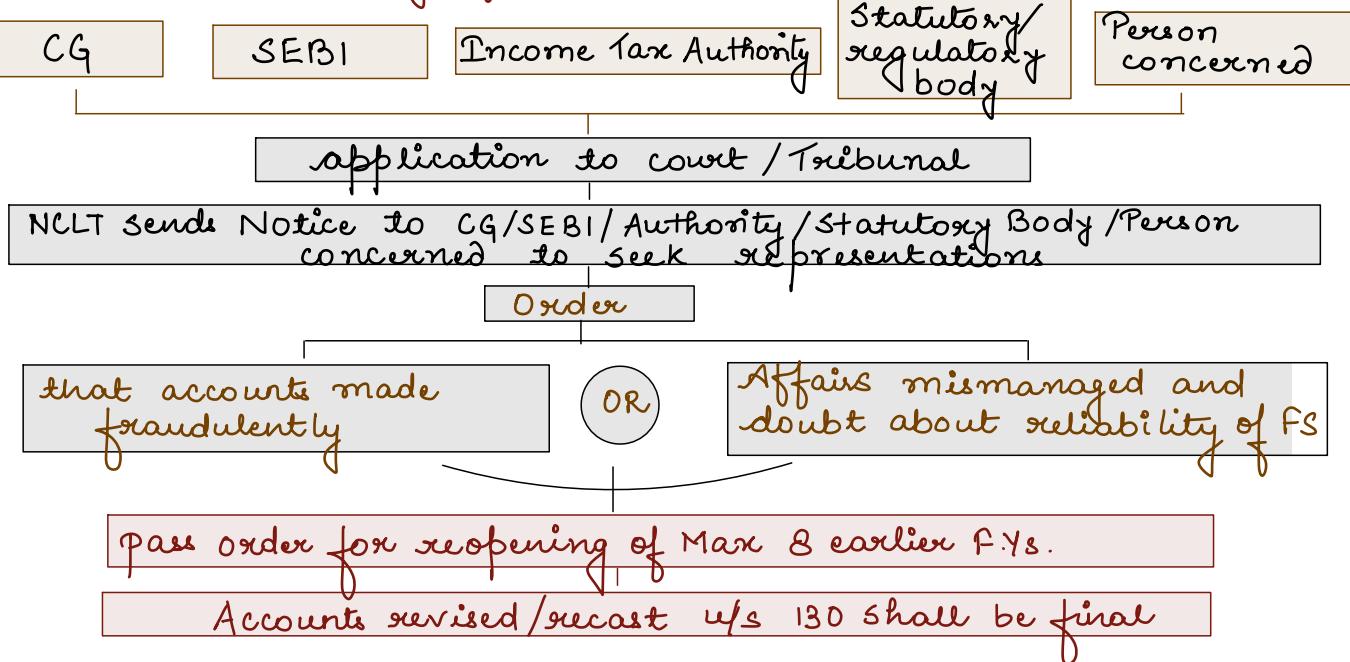
Member consented to receive electronically

All other cases

By electronic mode

By despatch of Physical copies.

Re-opening of Accounts [Sec. 130]



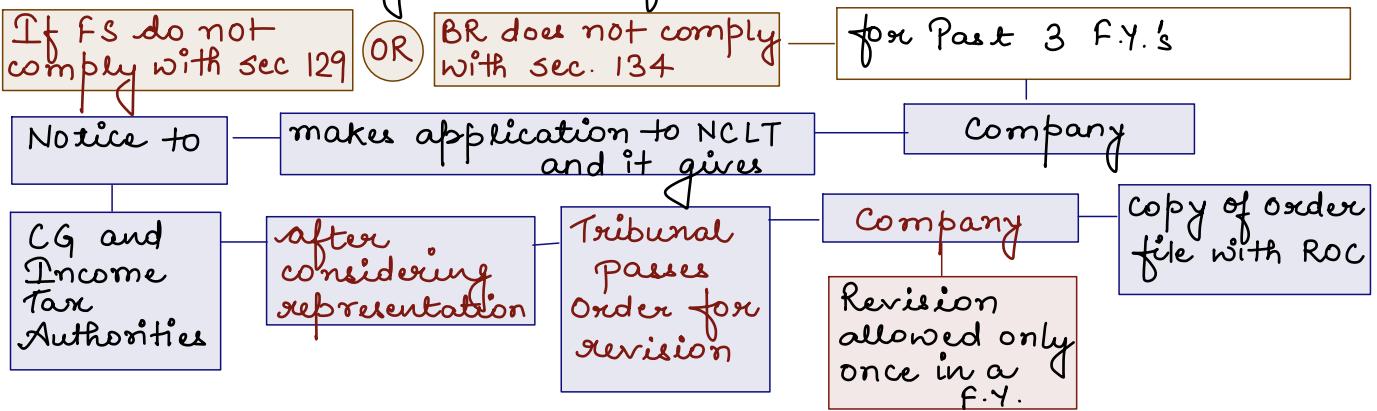
Board's Report [Sec. 134]

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

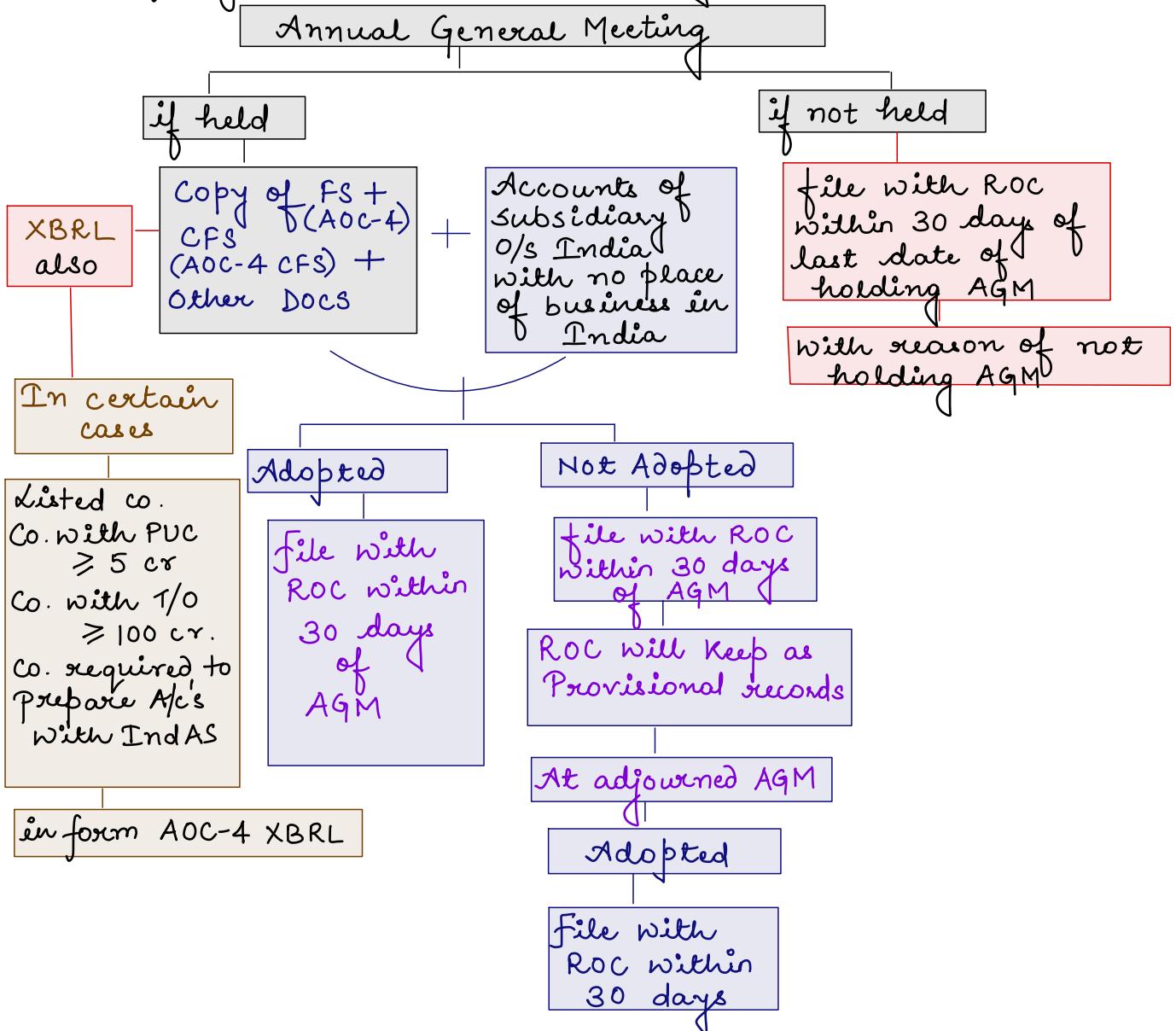
Abridged Report for OPC & Small company

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

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.

Corporate Social Responsibility [Sec. 135]

Company

which complies with any of the following condition :-

Net worth
≥ 500 cr

OR

Turnover
≥ 1000 cr

OR

Profit
≥ 5 cr

Composition

3 or more Directors
(Out of which at least 1 Independent Director)

Shall constitute CSR committee and

recommend CSR policy

in accordance with Schedule VII

If expenditure doesn't exceed 50 lakh, No requirement of CSR committee

with Minimum expenditure
2% Average Net Profit made during immediately 3 preceding years

to Board

who shall approve

and then CSR Activity is implemented

through

company u/s 8
or registered
trust/society
established by
company

OR
company u/s 8
or registered
trust/society by
CG/SG/Act of
Parliament

OR
company u/s 8
or registered
trust/society if

it has 3 years track record of similar activities and has specified mechanism.

What shall not be considered as CSR?

- ◎ Activities undertaken outside India.
- ◎ which benefits only employee and their families.
- ◎ Contribution to Political Party.
- ◎ Activity in normal course of business

If not spent

relates to ongoing project

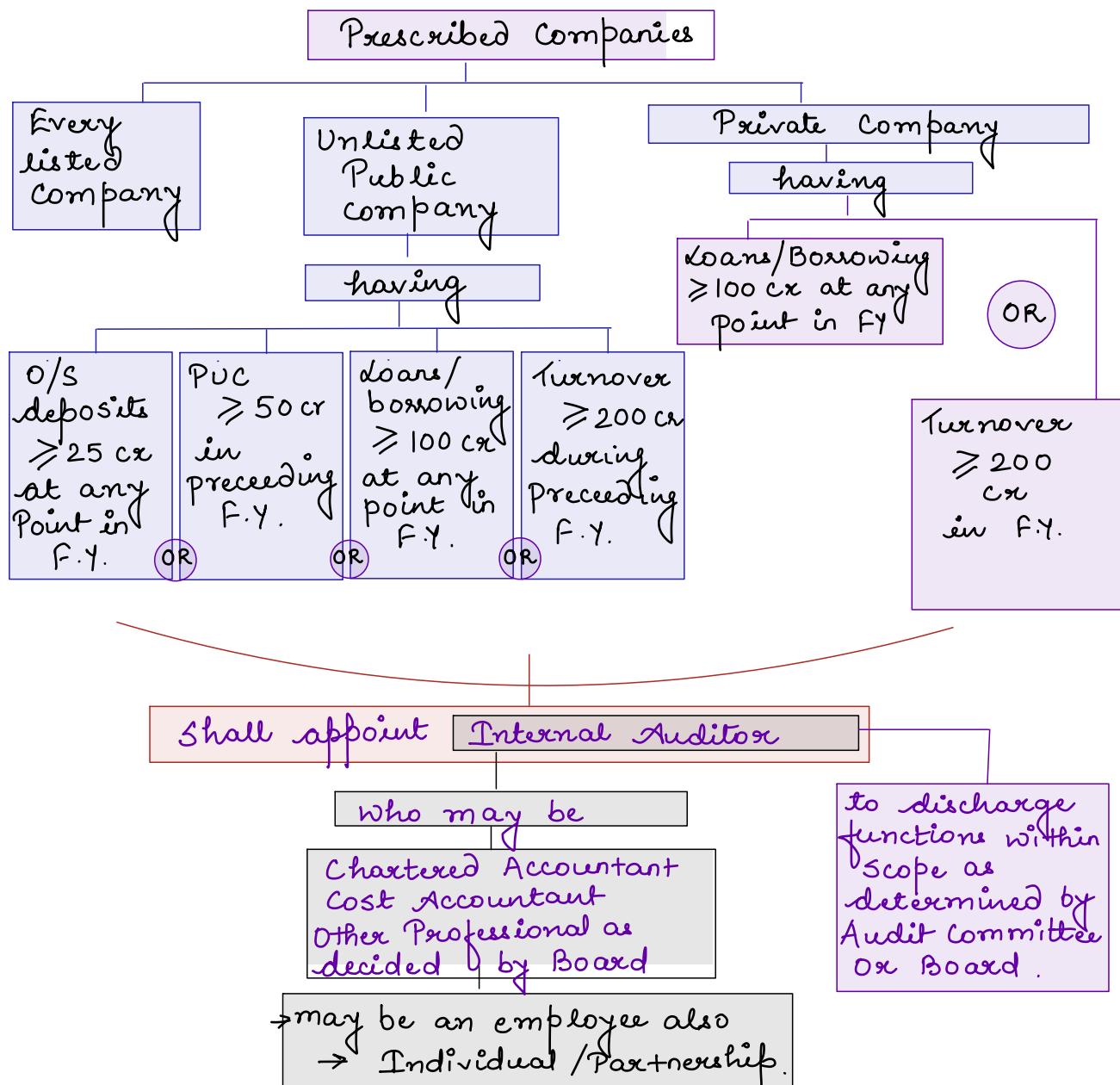
No

If excess amount spent, it can be set off acc. to Rules

t/f within 30 days of F.Y. to Unspent A/c in Scheduled Bank

t/f within 6 months of F.Y. to fund specified in Sch. VII

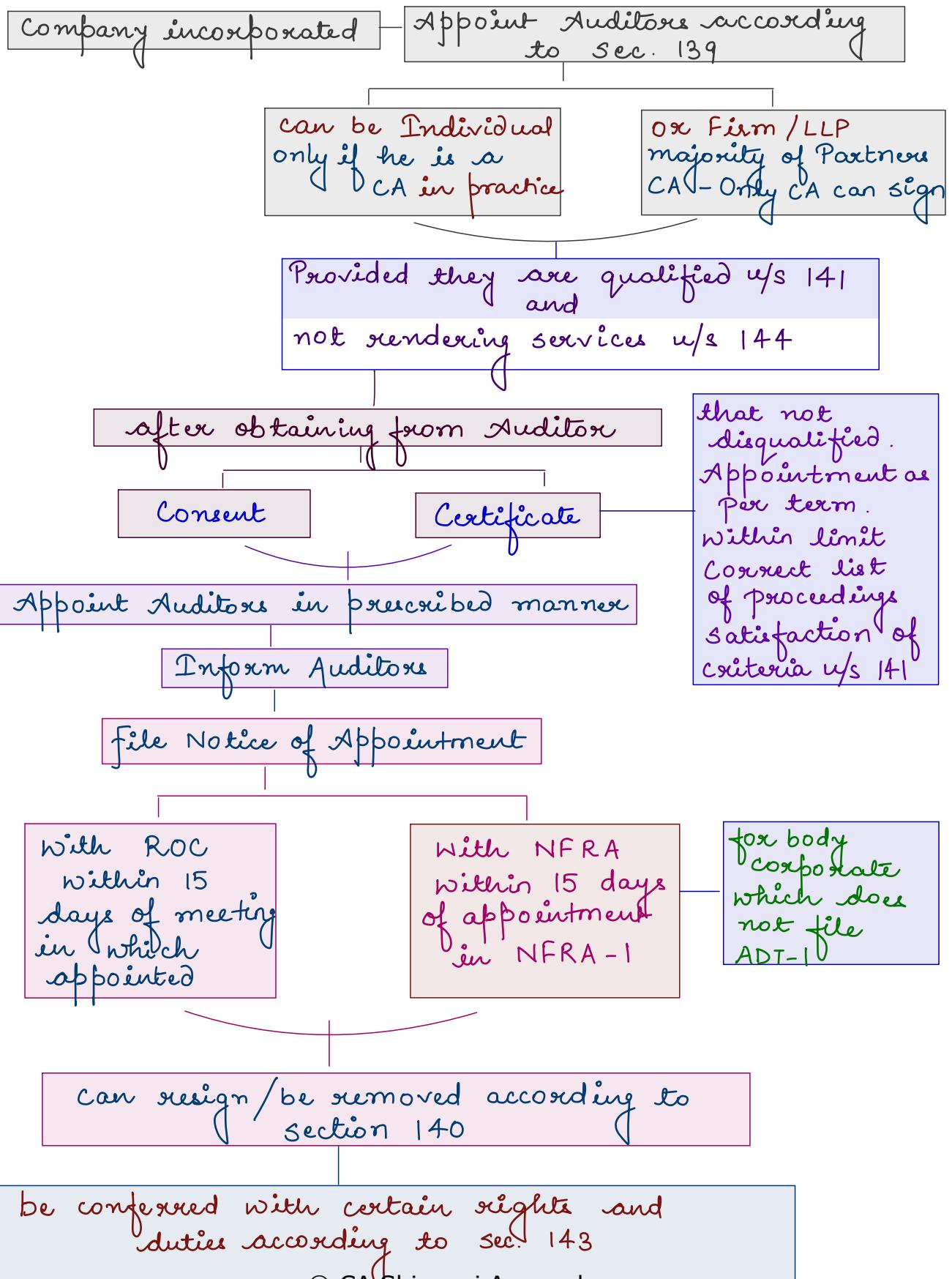
Internal Audit [sec. 138] read with Rule 13



Audit and Auditors

Chapter X (containing Sec. 139 to 148)

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

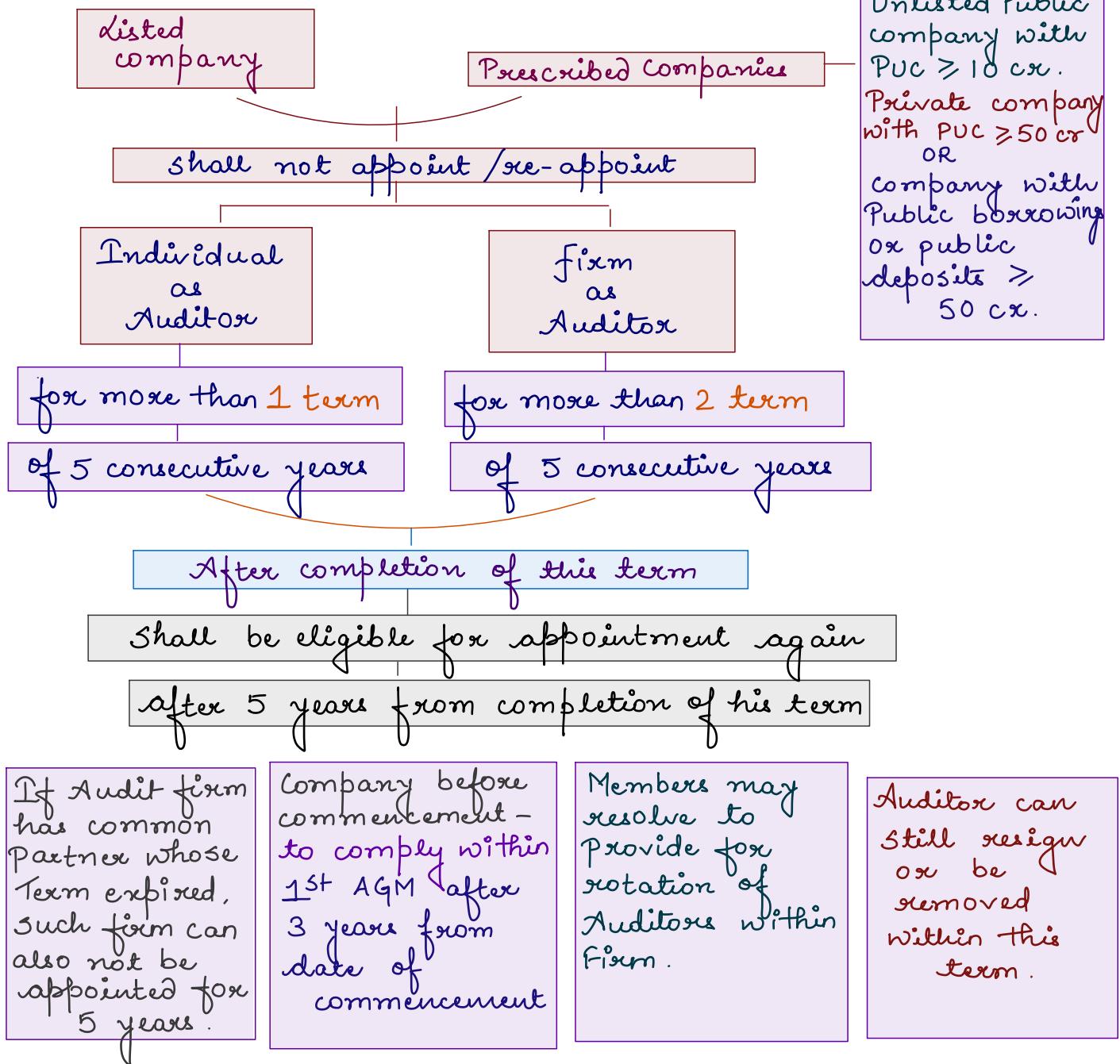


Appointment of Auditore (Sec. 139)

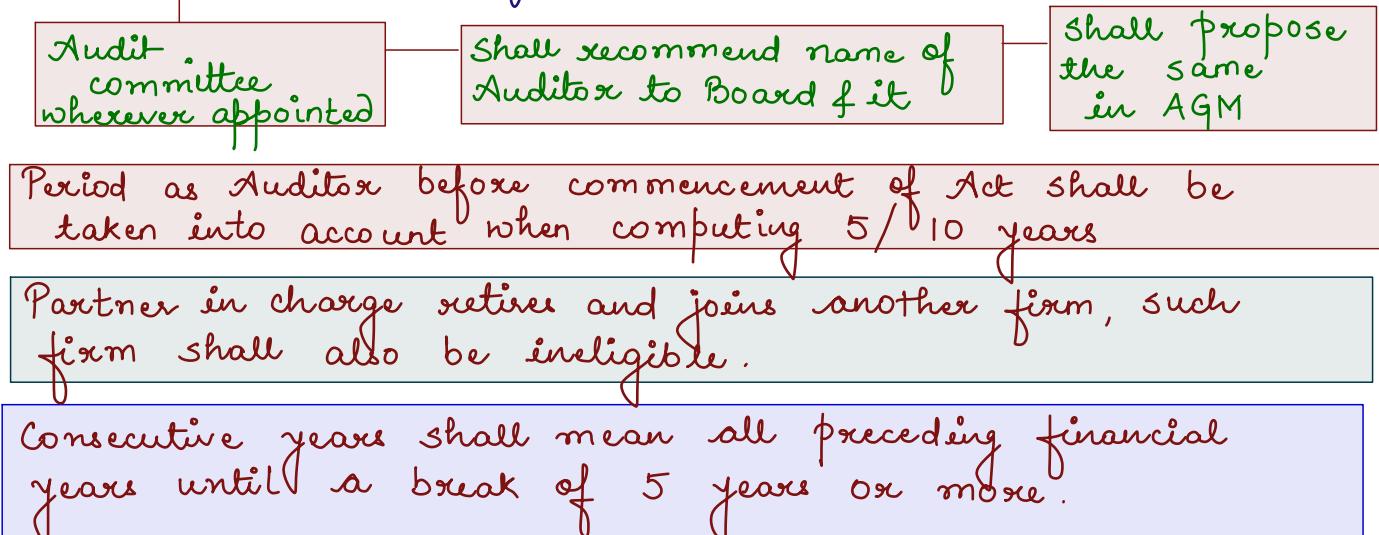


Where at any AGM, No Auditor is appointed/re-appointed existing Auditor shall continue

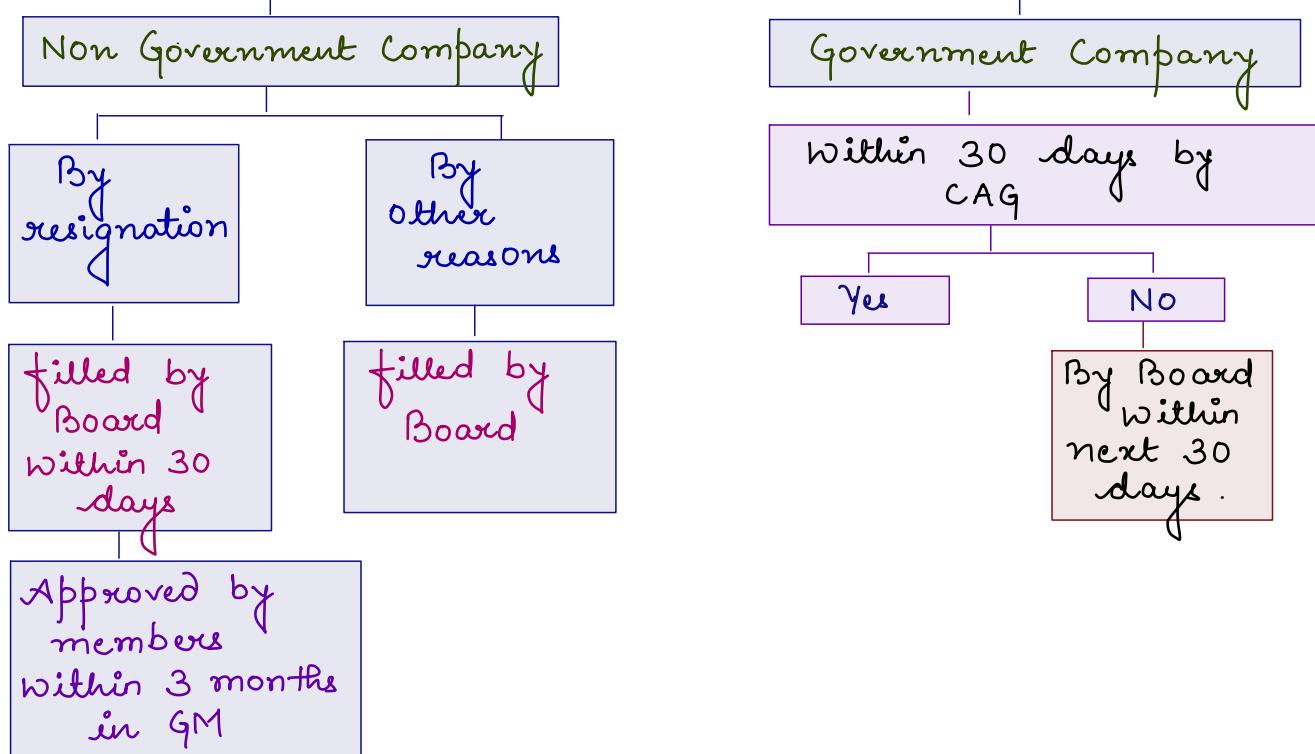
Rotation of Auditors (Sec. 139(2)]



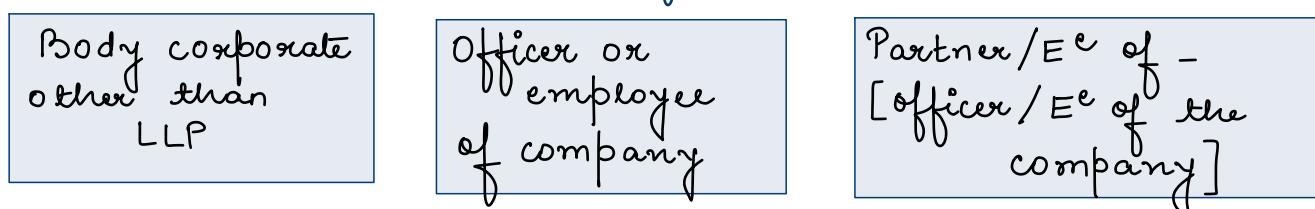
Manner of Rotation



Casual Vacancy



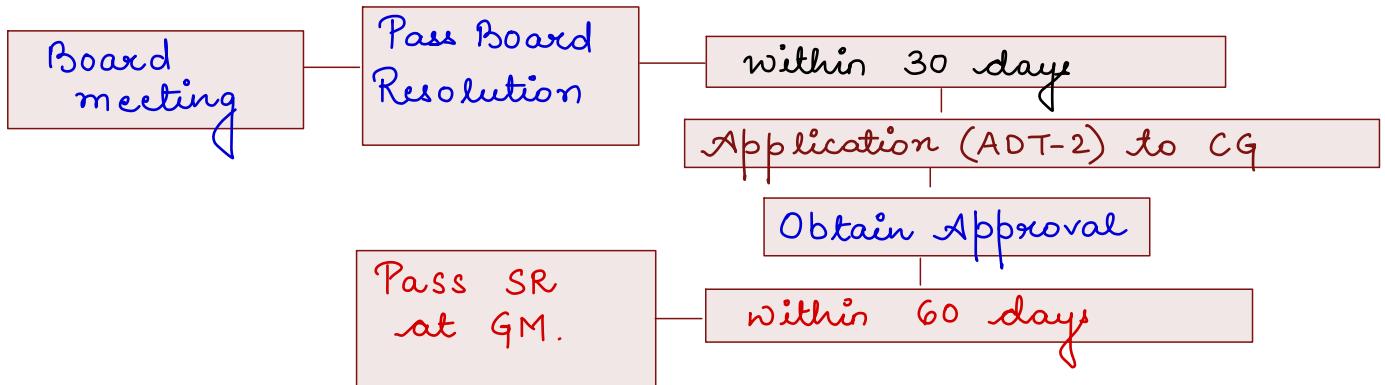
Disqualifications of Auditor [Sec. 141(3)]



Person (who / his relative / his partner) –

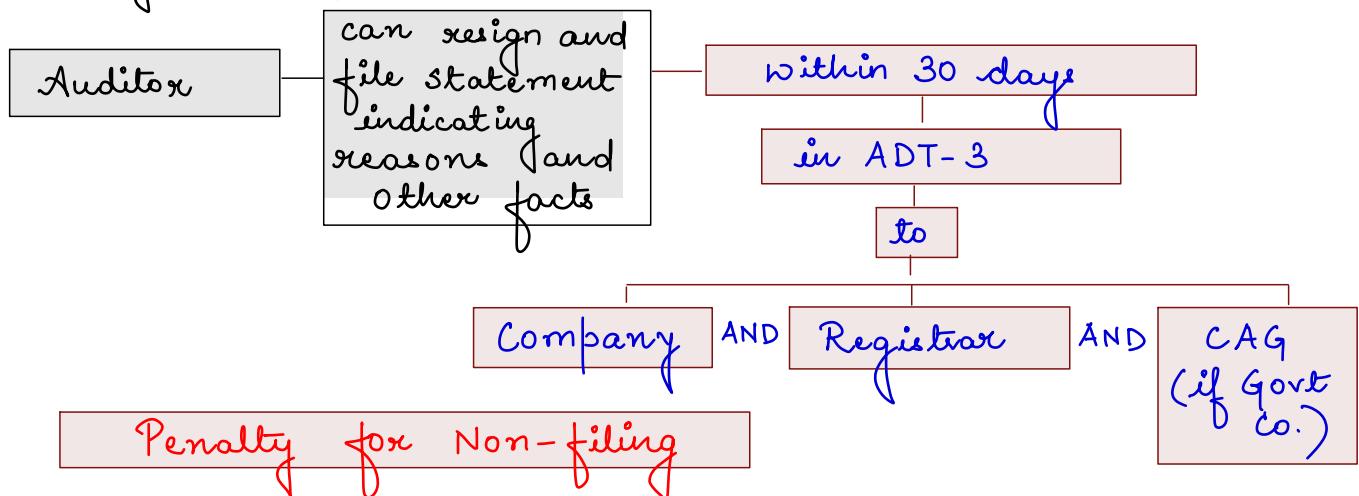


Removal of Auditor before Term [Sec. 140]

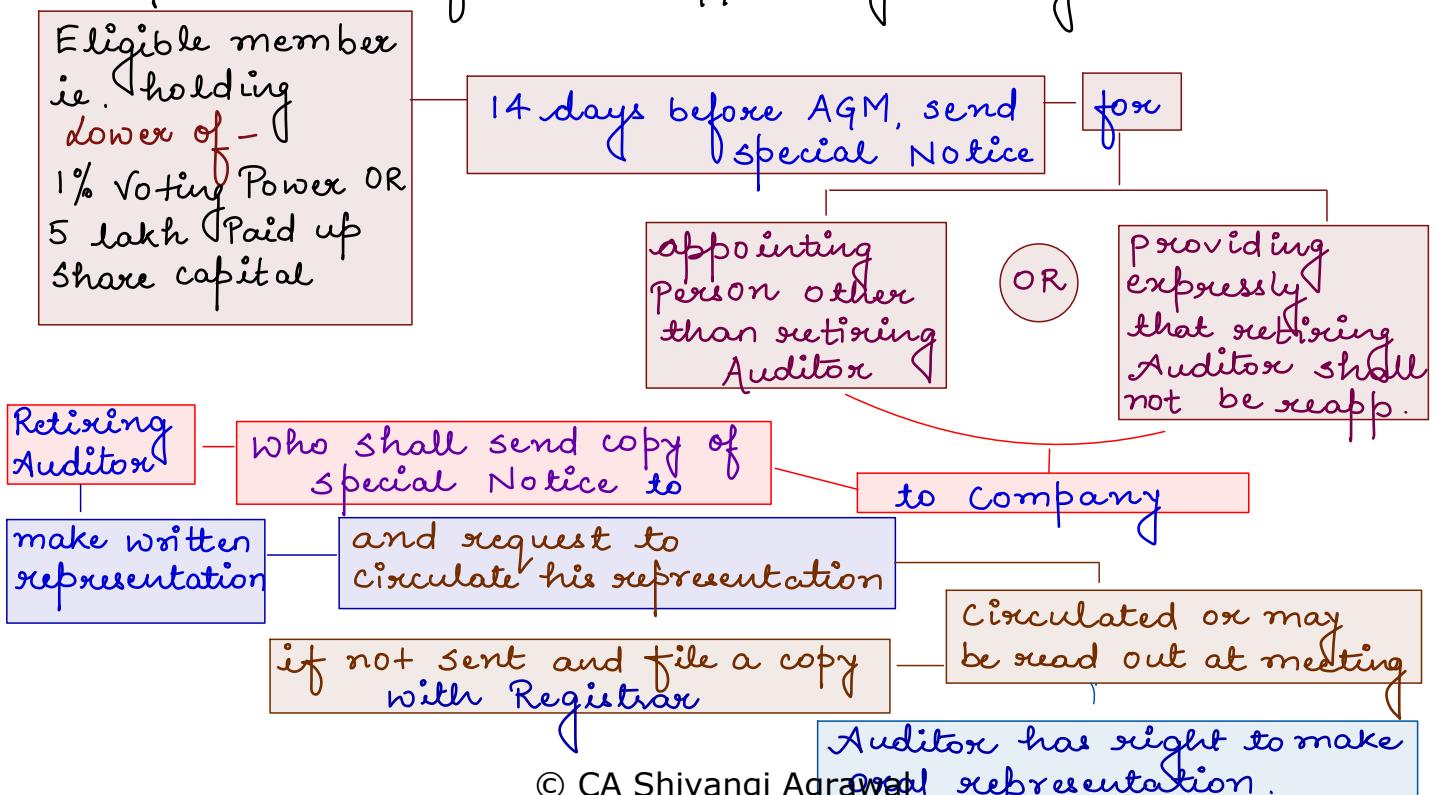


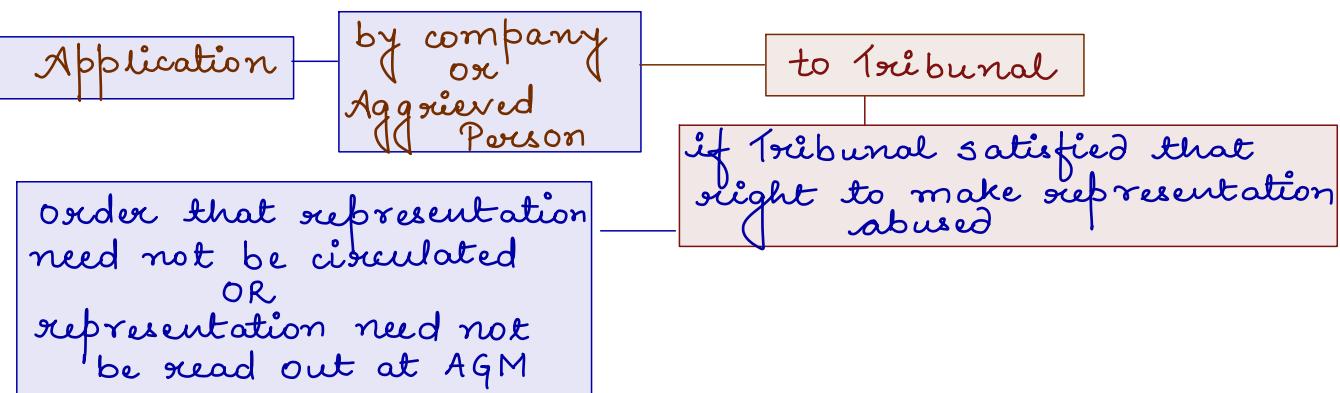
Auditor to be given reasonable opportunity of being heard

Resignation by Auditor

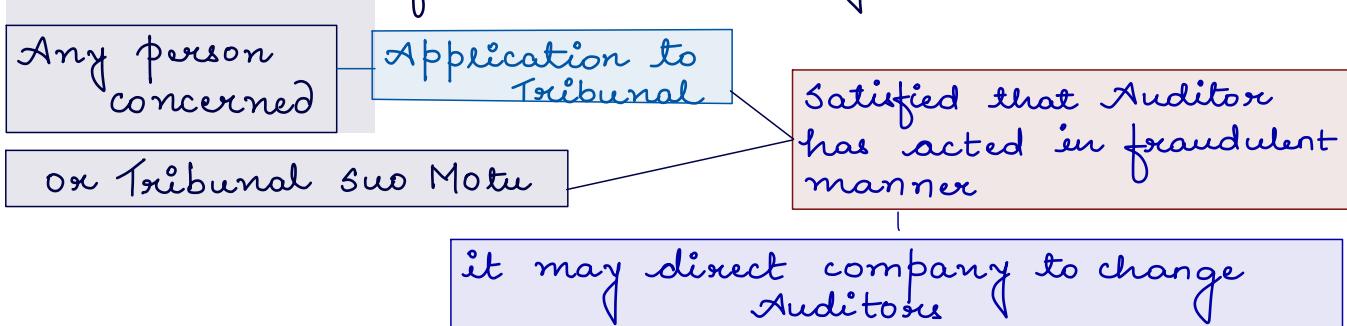


Special Notice for not reappointing retiring Auditor





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 Auditor [Sec. 143]

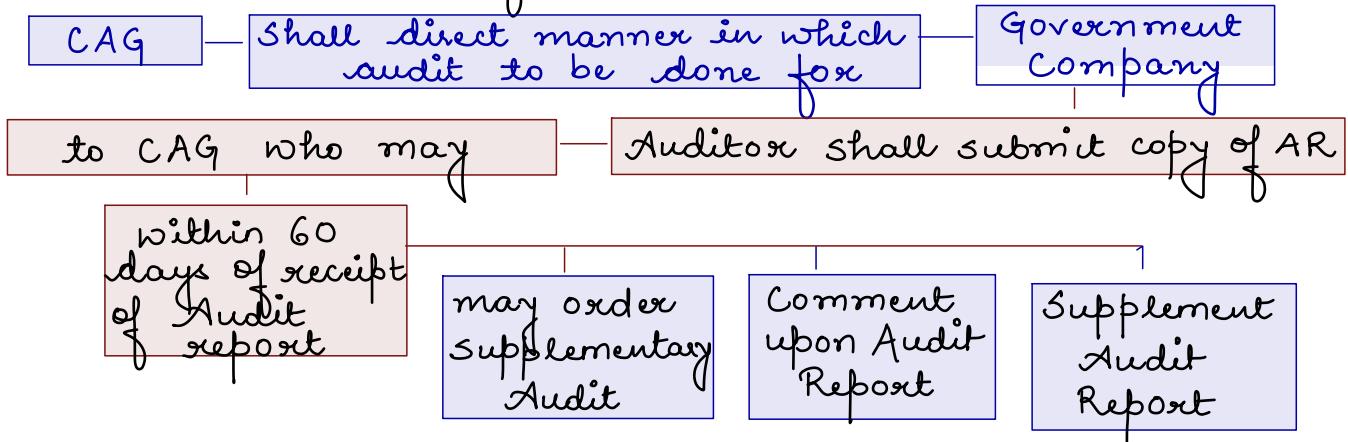
Rights

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

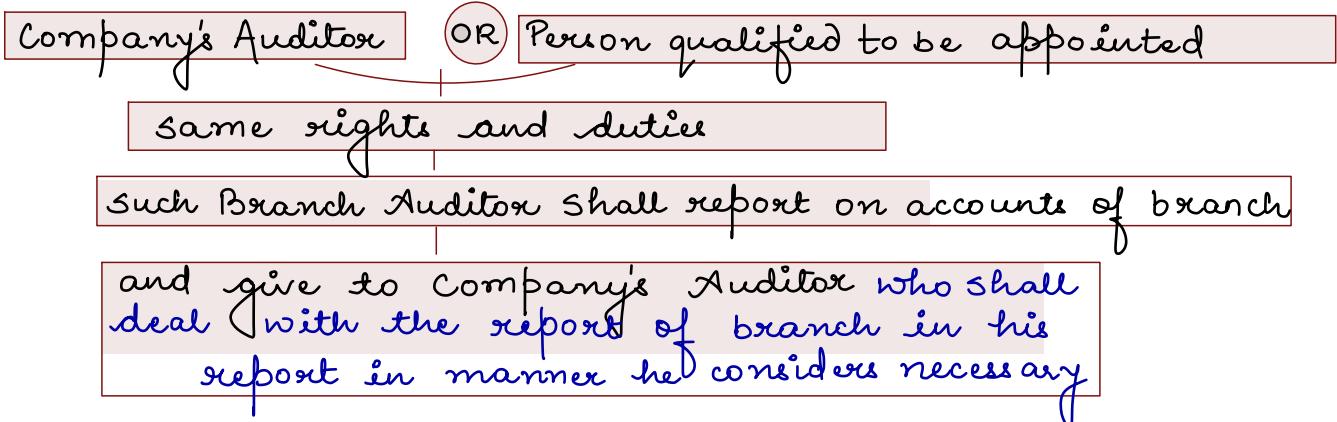
Duties

- 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 to report

If fraud less than 1 cr

within 2 days of knowing

Report to Board/Audit committee

Disclosure in Board's Report

If fraud 1 cr or more

within 2 days of knowing

Report to Board/Audit committee

Nature
Amount
Party

Reply within 45 days

Yes

No

within 15 days of reply

Report of Auditor,
Reply of Board,
Comments on reply

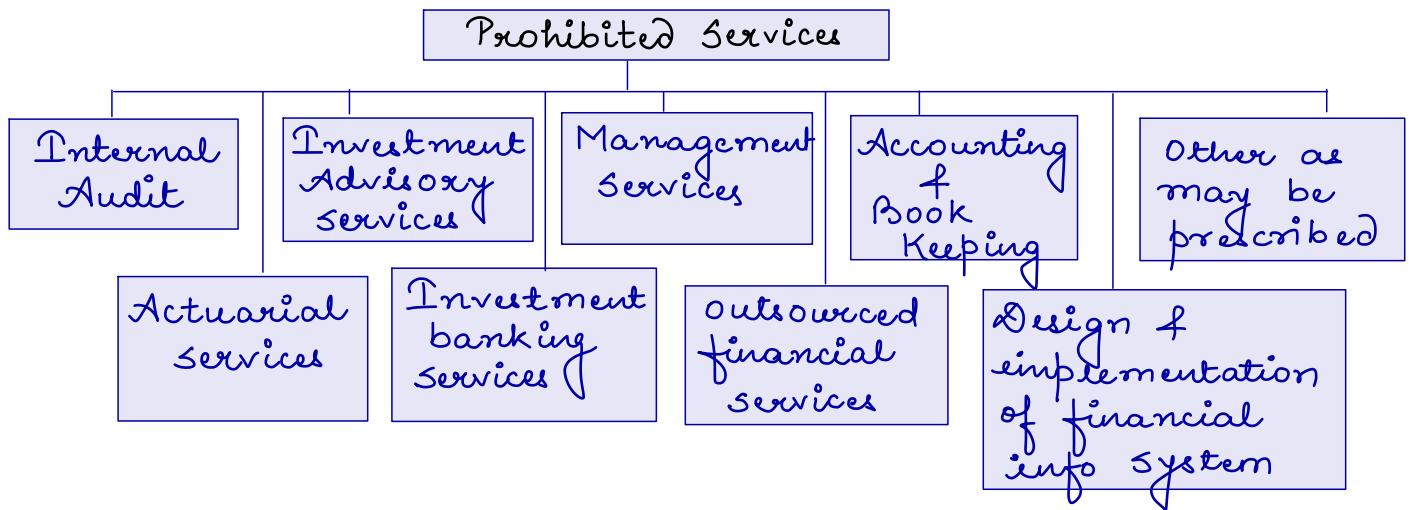
to CG

within 15 days of expiry of 45 days

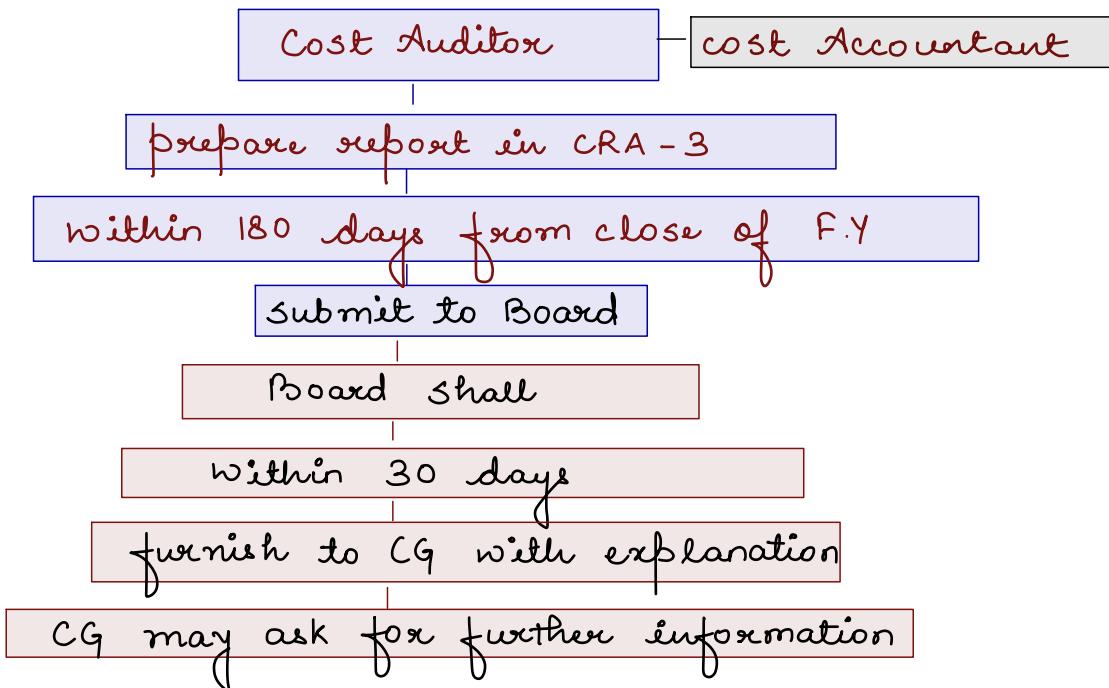
Report of Auditor,
Details of report
Sent to Board

to CG

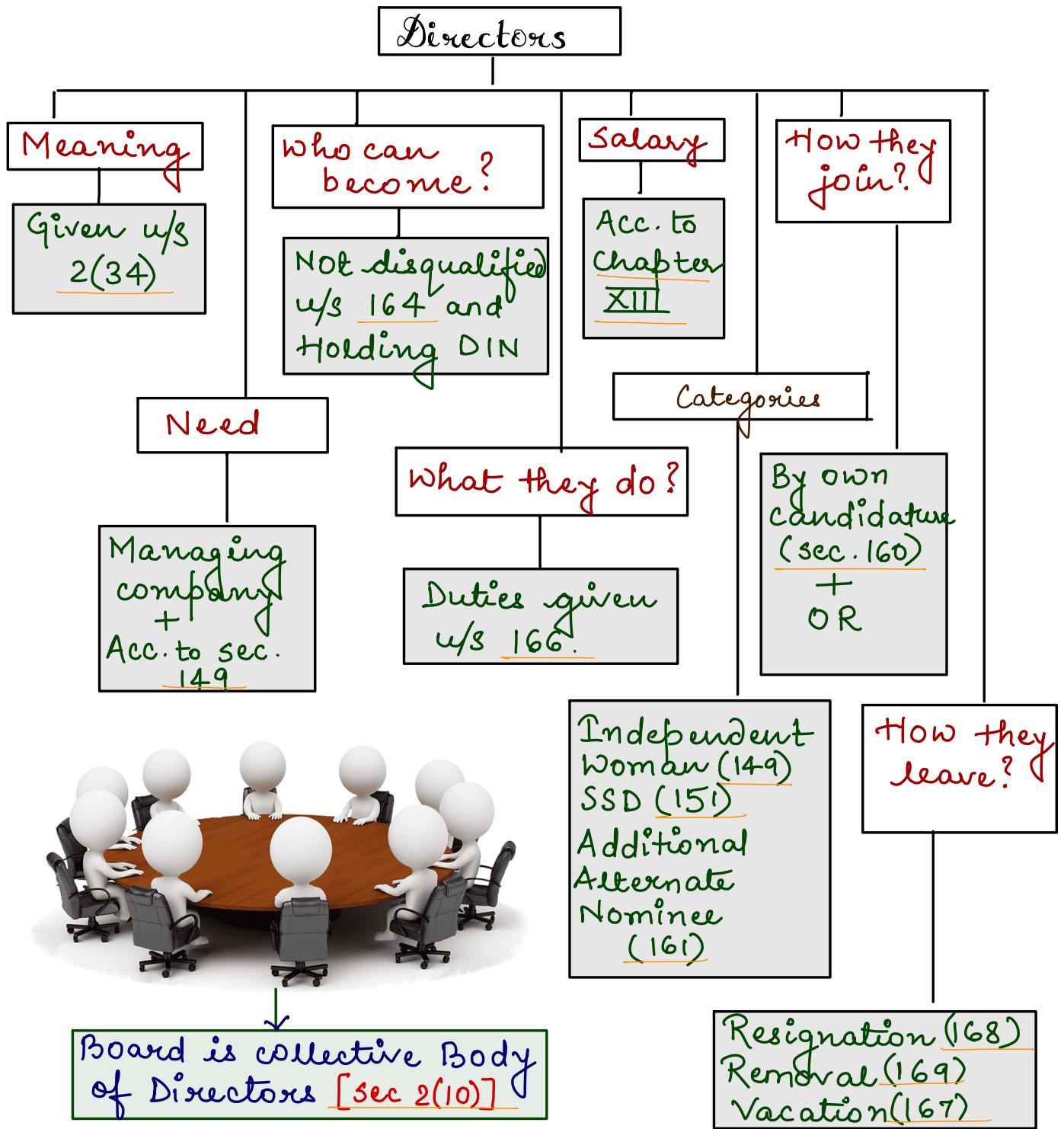
Auditor not to render certain services (Sec. 144)



Cost Audit [Sec. 148]

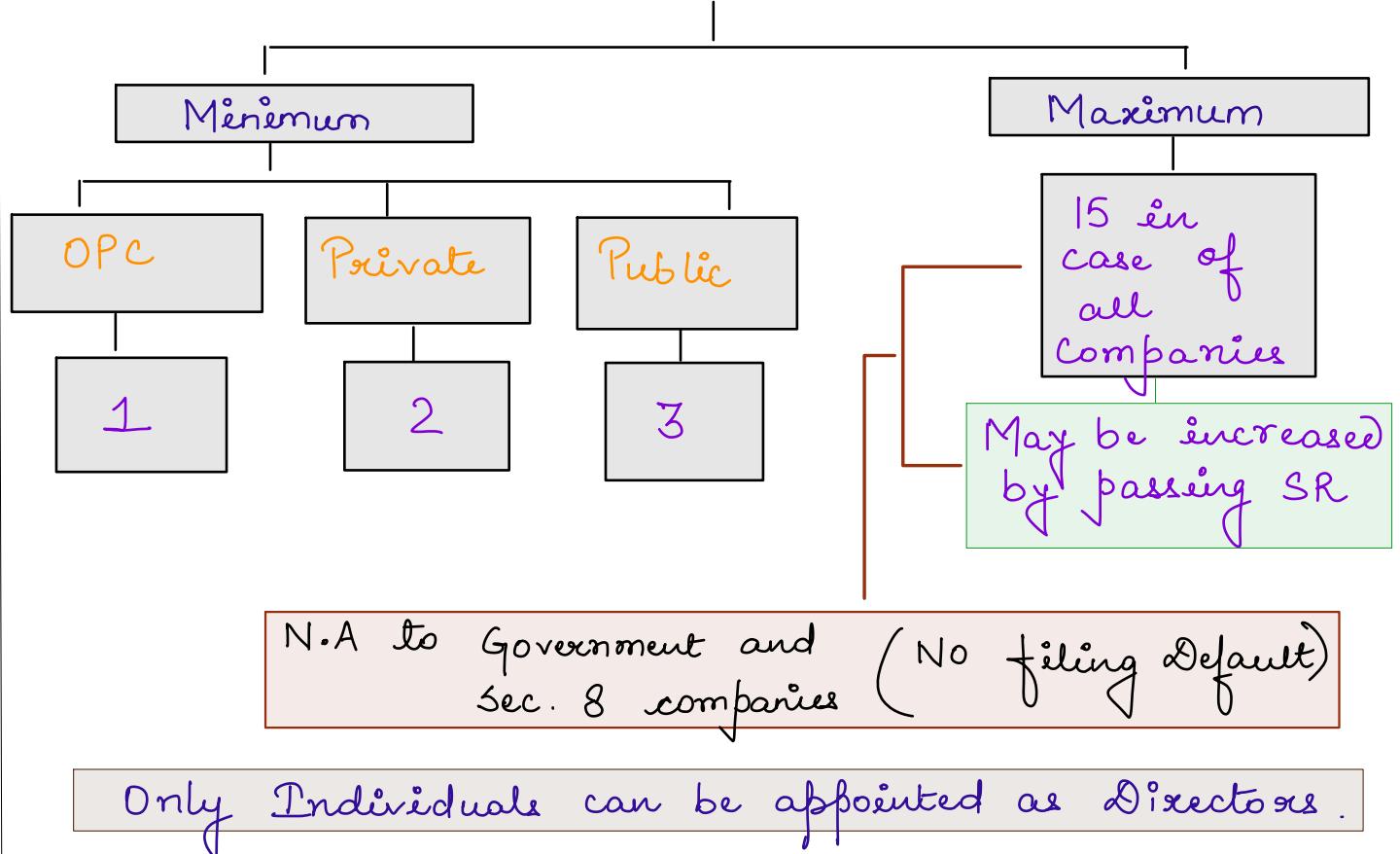


Appointment and Qualifications of Directors

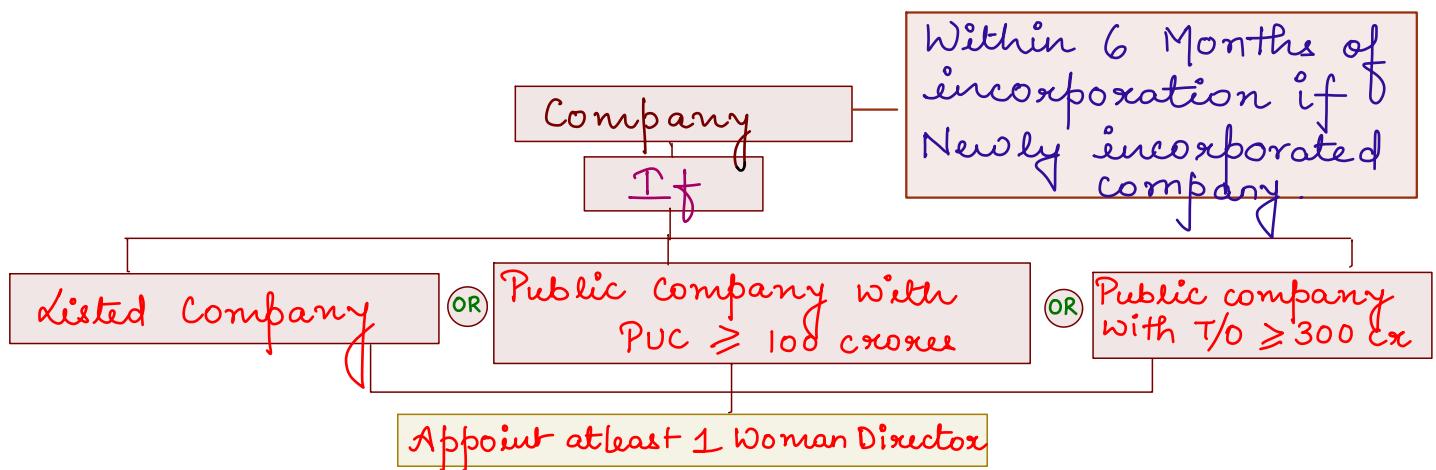


Chapter XI :- Appointment and Qualification of Directors
consists of Sections 149-172 and is read with The Companies (App. & Qual. of Directors) Rules, 2014.

Company to have Board of Directors [Section 149]

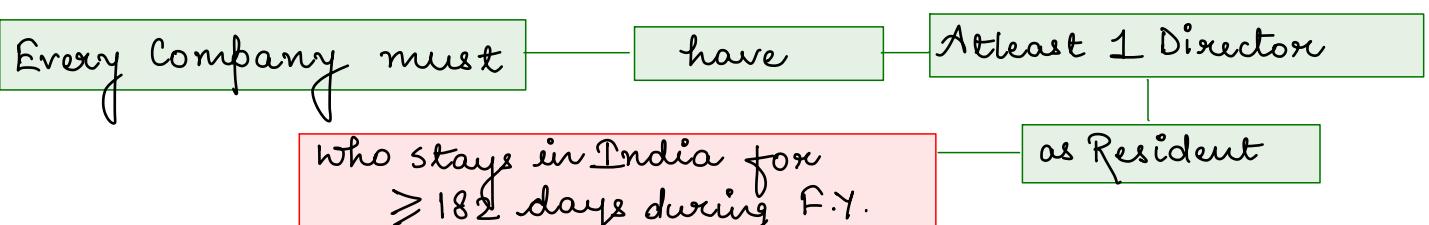


Woman Director (2nd Proviso to Section 149(1))

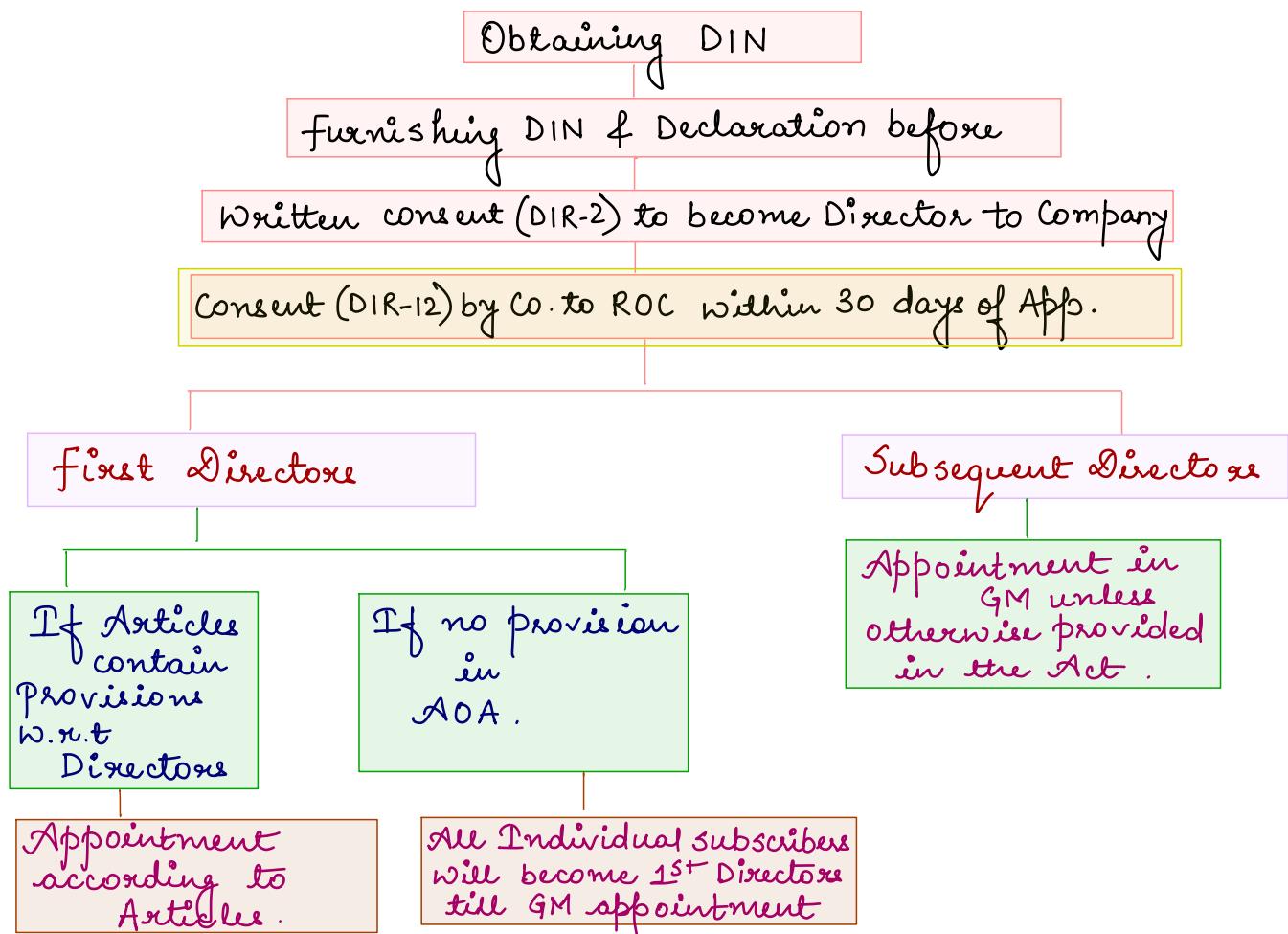


Intermittent Vacancy to be filled by Board in later of next BM/3 Months.

Resident Director [Section 149(3)]



Appointment of Directors [Section 152]



Study Tip :-

First Directors hold office till ensuing General meeting only.

At GM, they may be re-appointed if they want to.

for which they must file candidature u/s 160.

If they don't want to be re-appointed,
New Eligible persons are appointed according to Sec. 160.

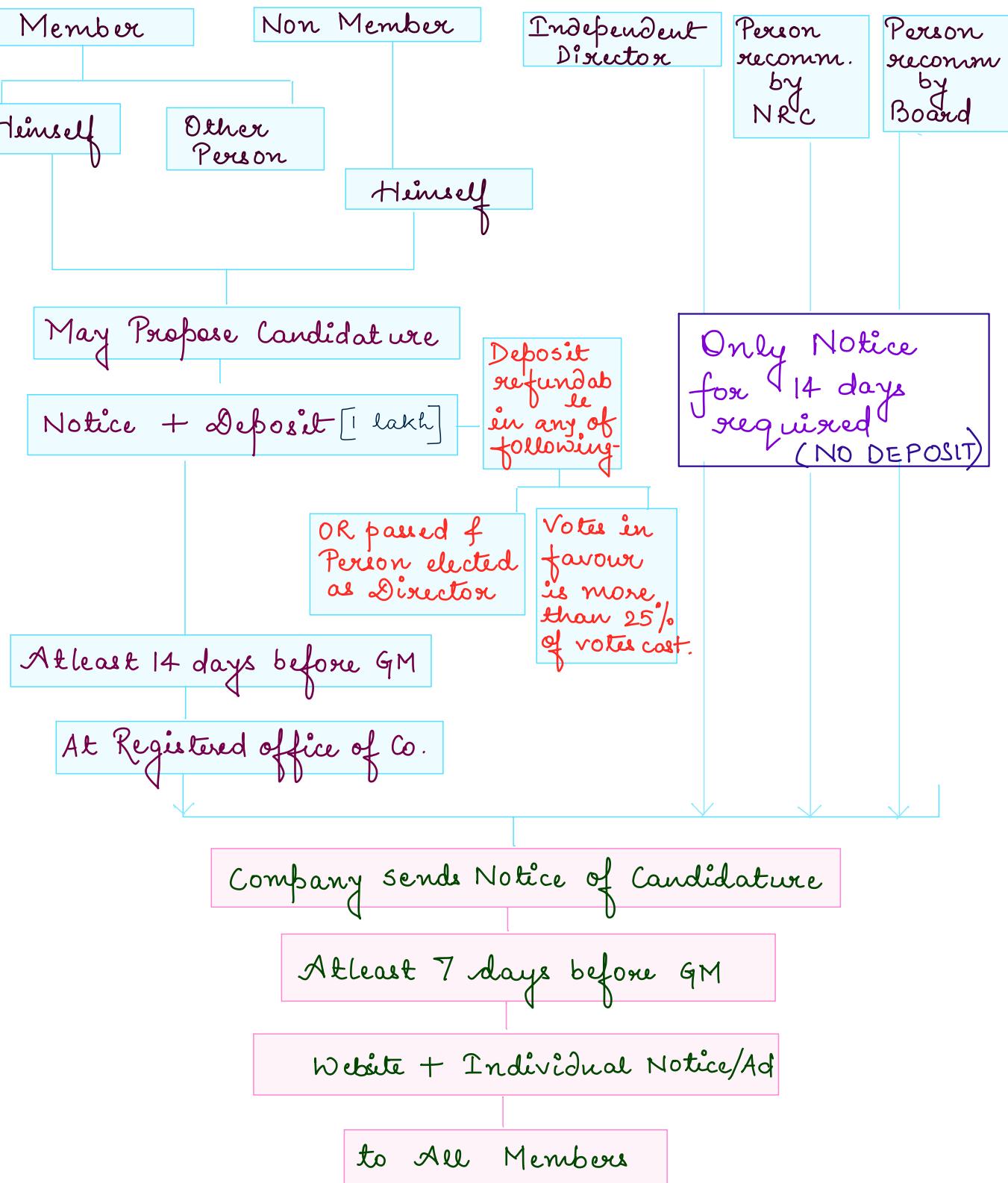
They may be rotational / Non-rotational
(in case of Public company)

Private Companies may have Permanent Directors as Rotation doesn't apply to them.

Rotational and Non Rotational Directors [Section 152(6) & 152(7)]



Right of Persons other than Retiring Directors to stand for Directorship [Section 160]

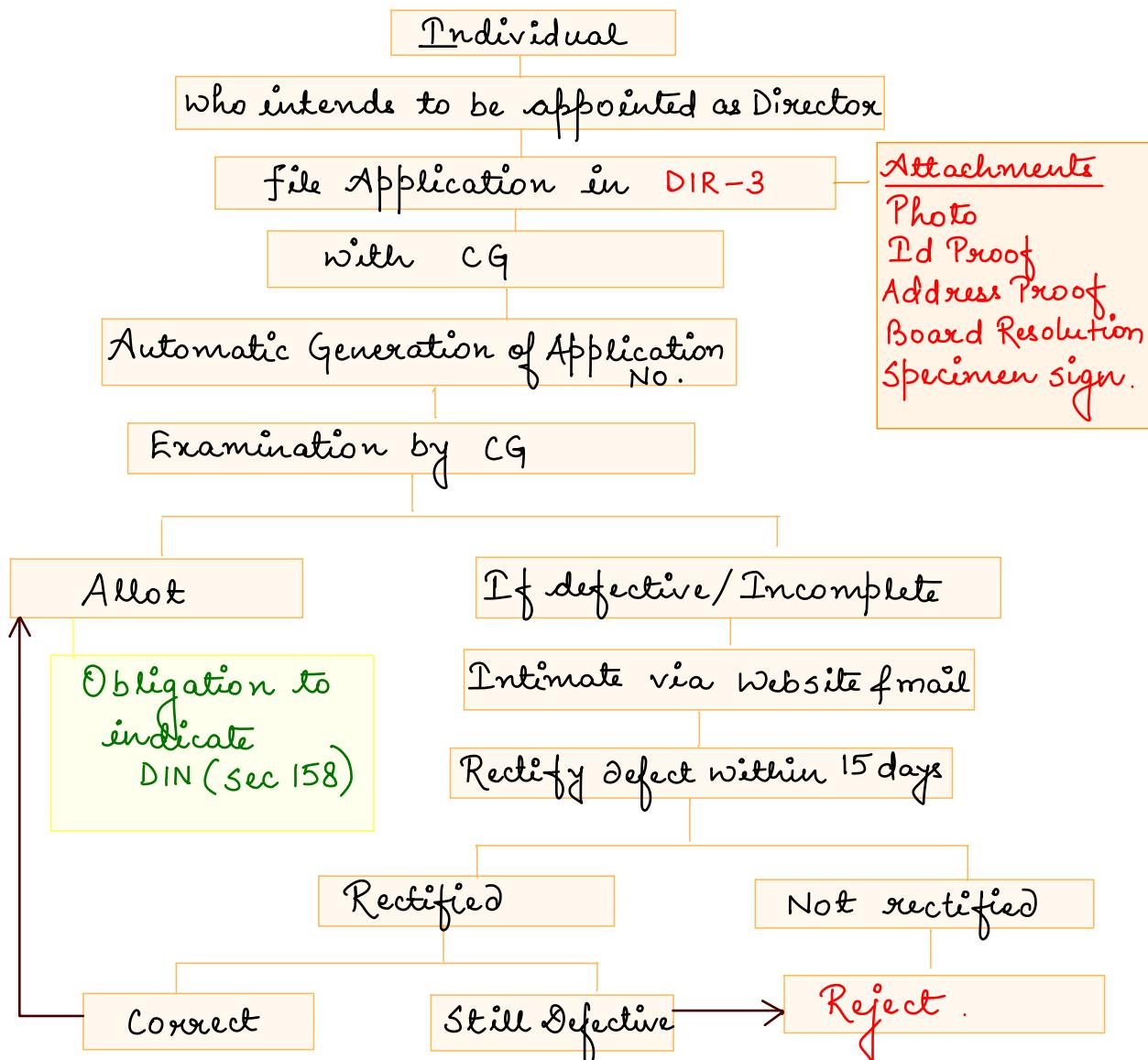


Non-Applicability :-

- Private Company.
- Govt. co. - PUC held by CG/SG/jointly [100%]
- WOS of such Govt Co.
- Sec 8 co. whose Articles provide for election by ballot.

Only when there is no default of Sec. 137/92.

Director Identification Number (DIN)



DIN valid for life time
Only 1 DIN per individual (sec. 155)
Existing Director to intimate DIN to company (sec. 156)
and Company to ROC (sec. 157)
Changes to be intimated by Individual (Rule 12)
Director to do KYC annually (Rule 12A)

Cases of DIN cancellation

- Duplicate DIN
- DIN obtained in wrongful /fraudulent manner .
- Death
- Unsound Mind
- Inept

After obtaining DIN in case of change

Download & fill DIR-6

Verify the form DIR-6 [within 30 days]

Attach scanned copy of Proof of change

Attach DSC by CA/CS/CMA

Submit form for verification by CG

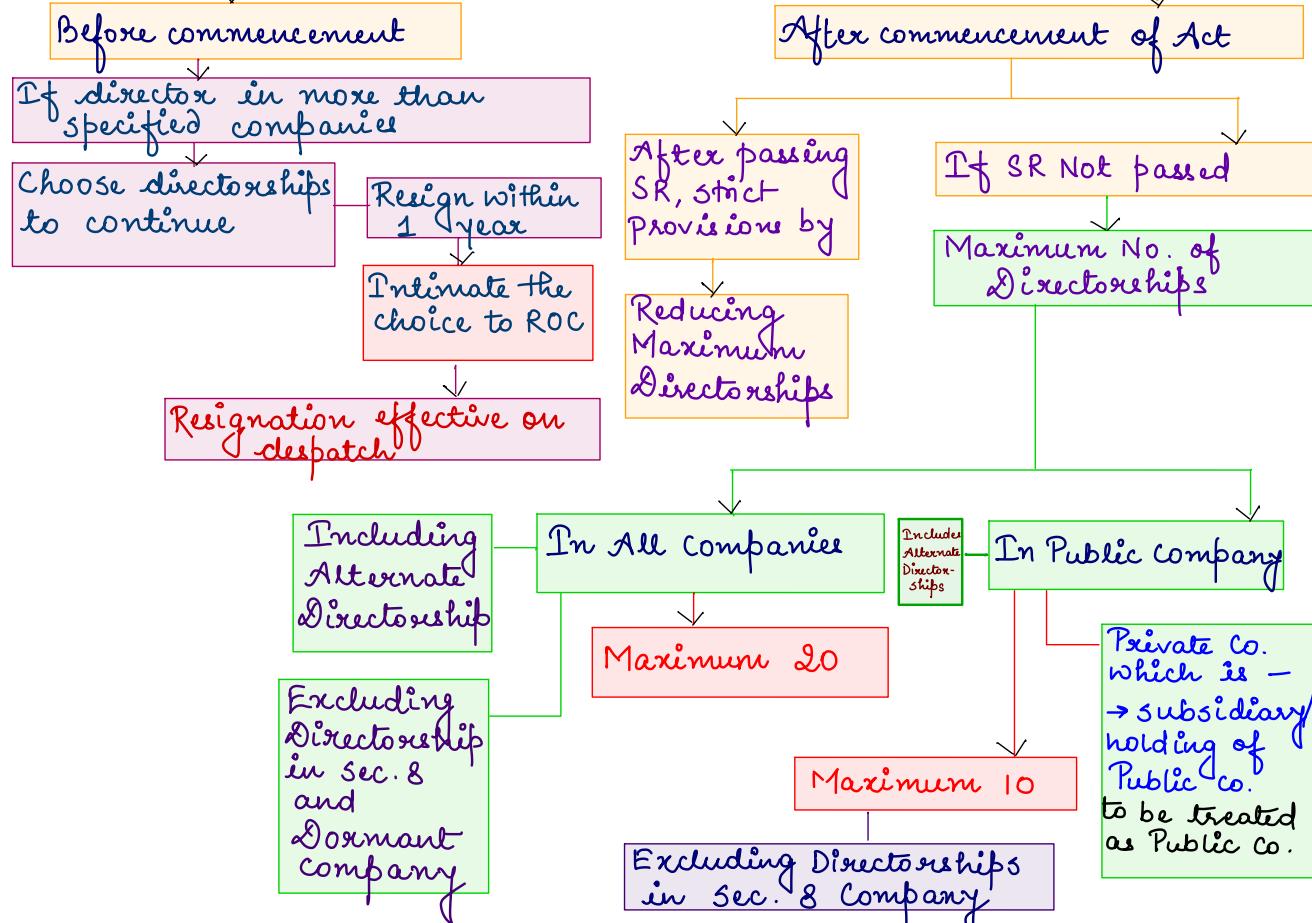
CG incorporates all changes

and inform the applicant

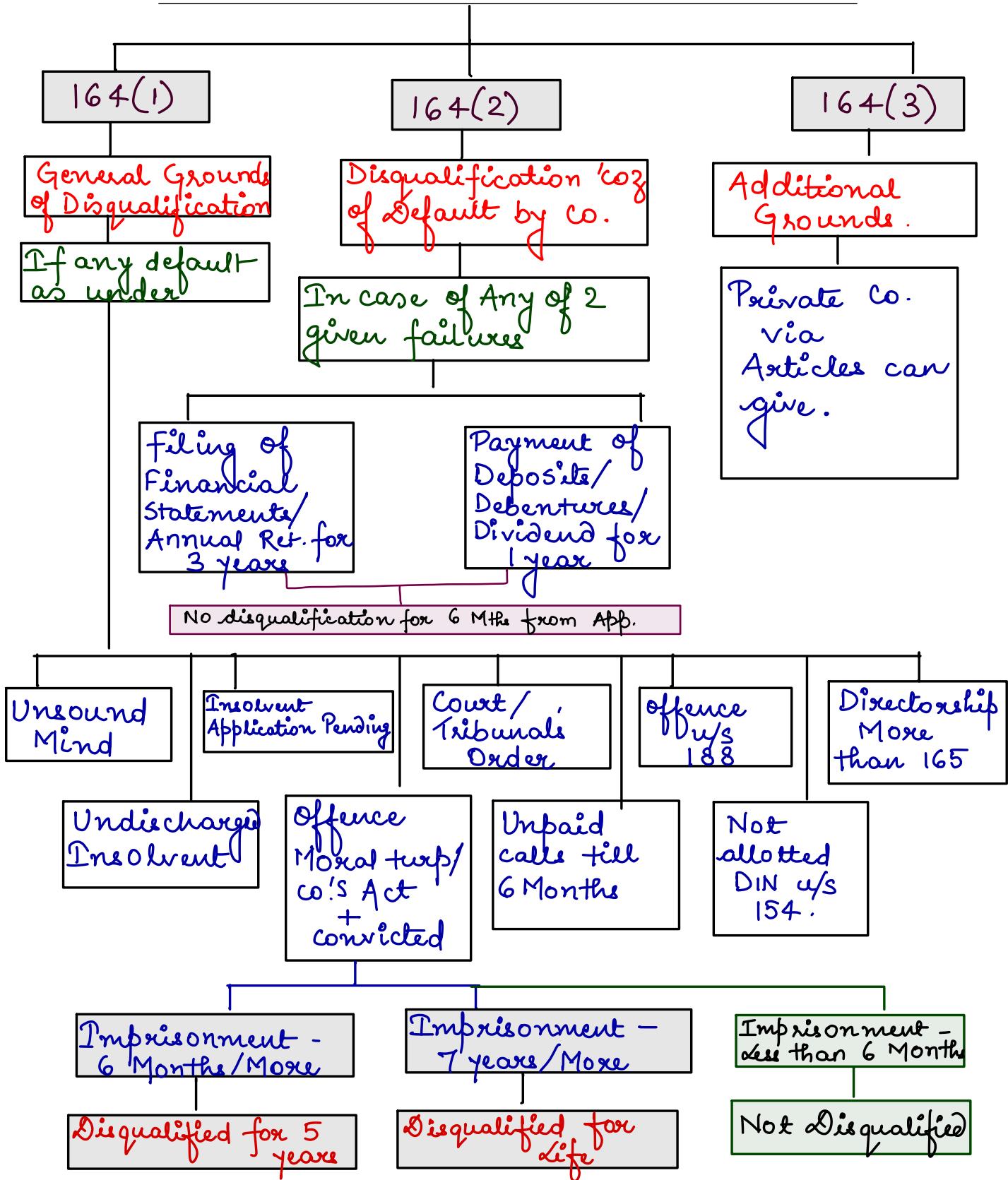
DIN cell of MCA intimates changes to Registrar(s).

Number of Directorships [Section 165]

Directorships in a Company



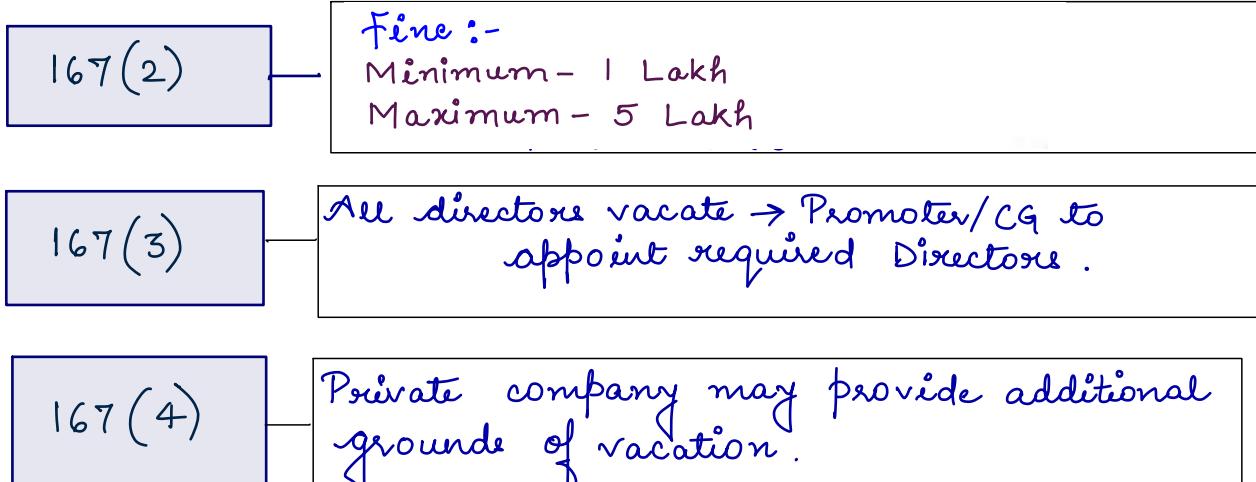
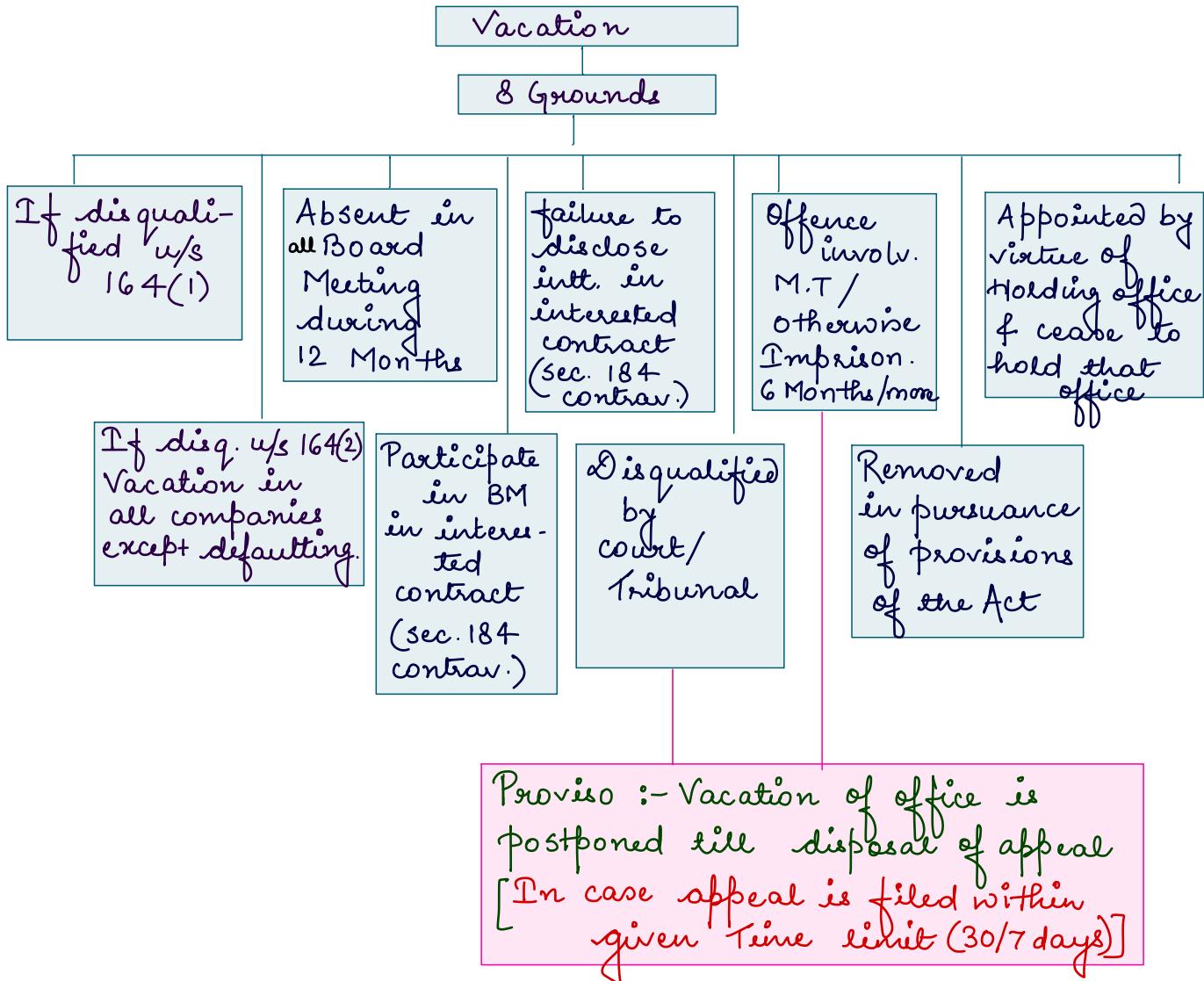
Disqualifications for Appointment of Directors (Section 164)



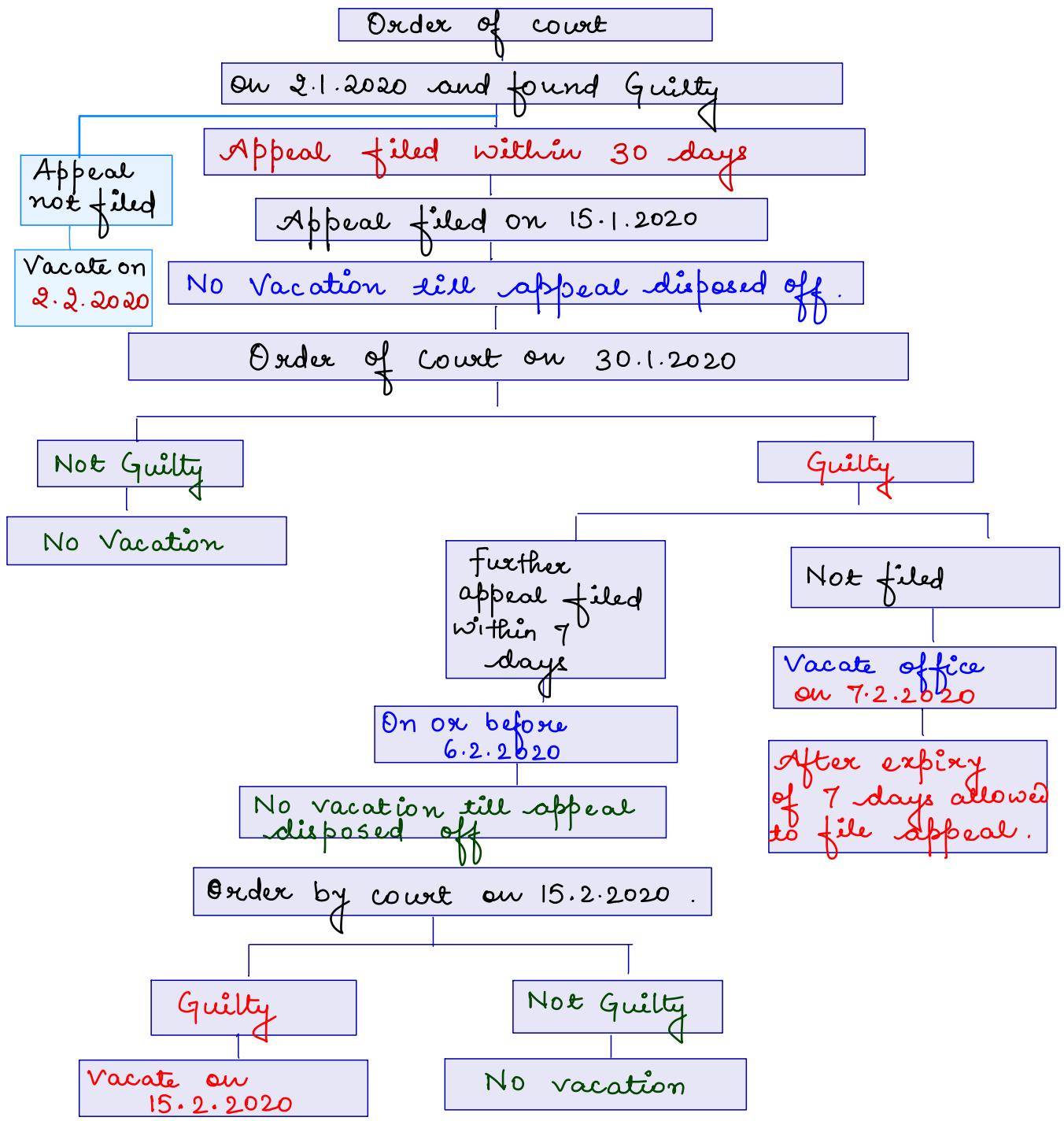
Disqualification is checked at the time of appointment of Directors.

Sec. 164(2) does not apply to a Govt. Co.

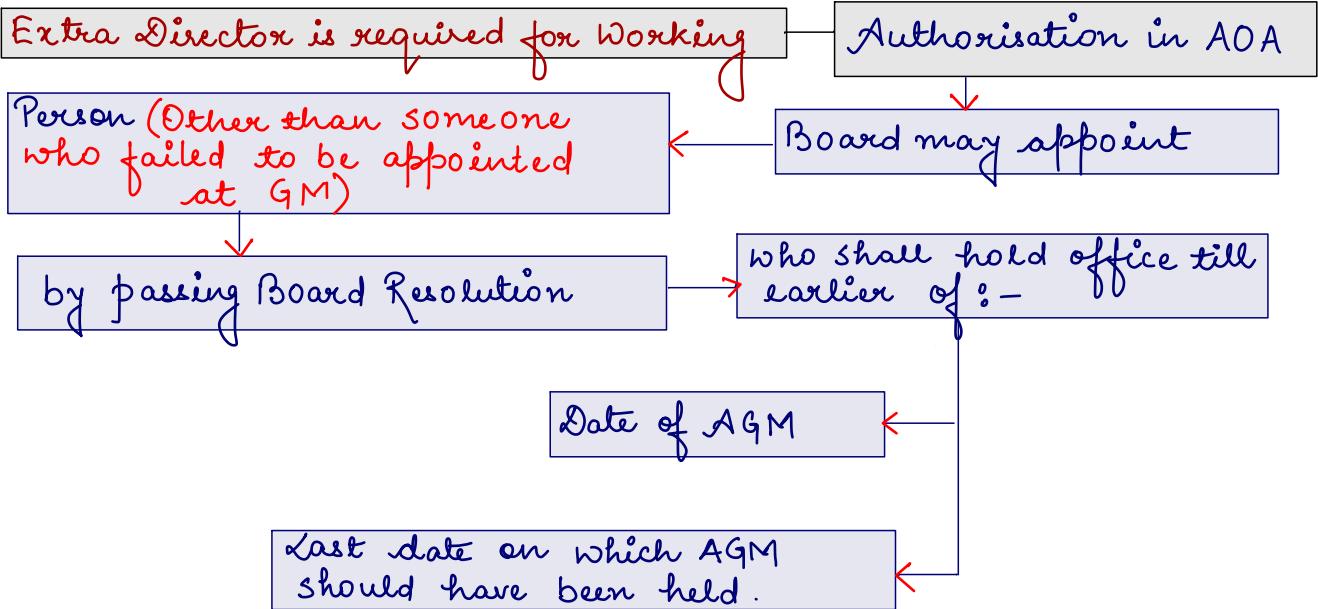
Vacation of Office of Directors [Section 167]



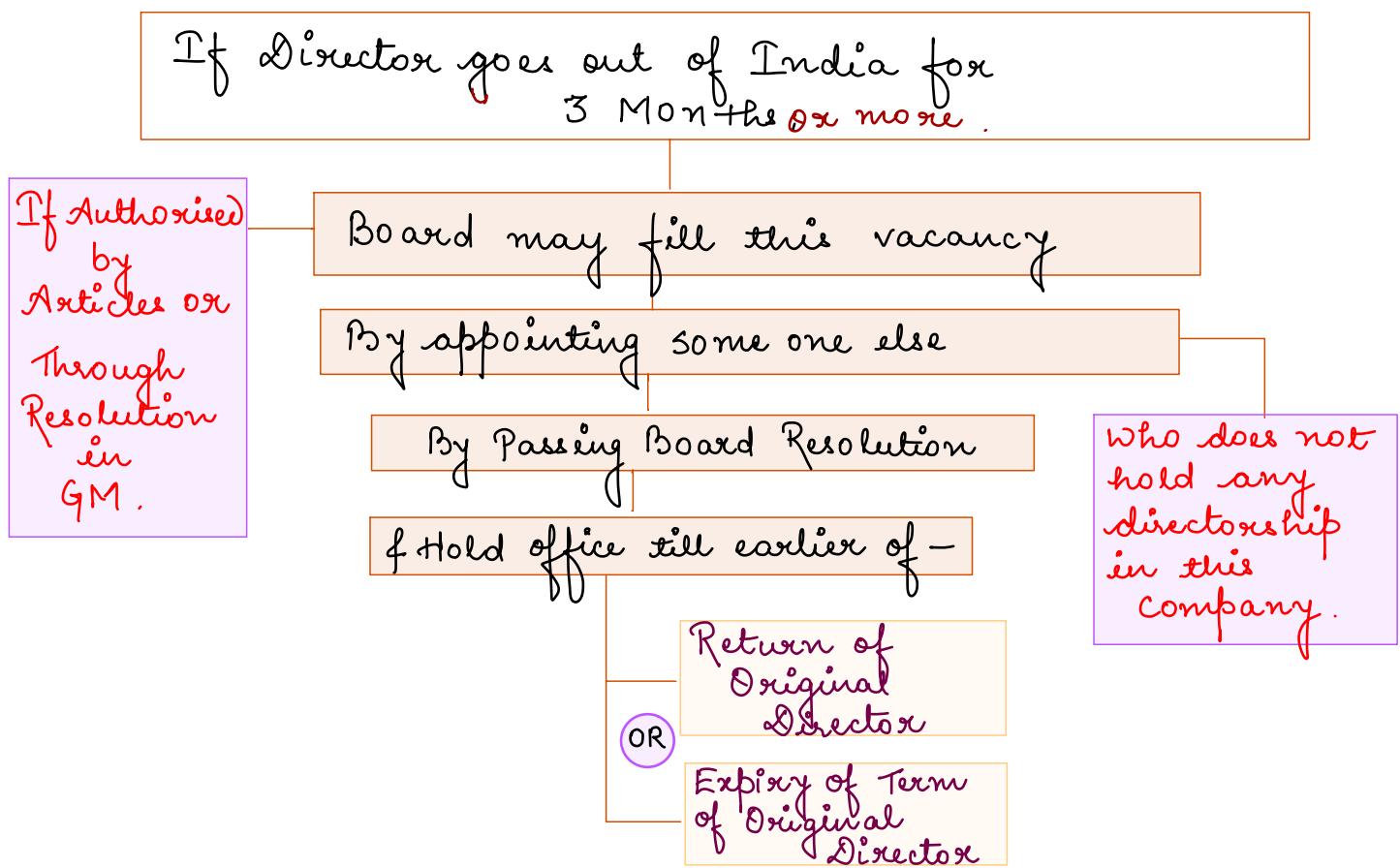
Proviso to Section 167(1)(f) and 167(1)(e)



Additional Directors [Section 161(1)]

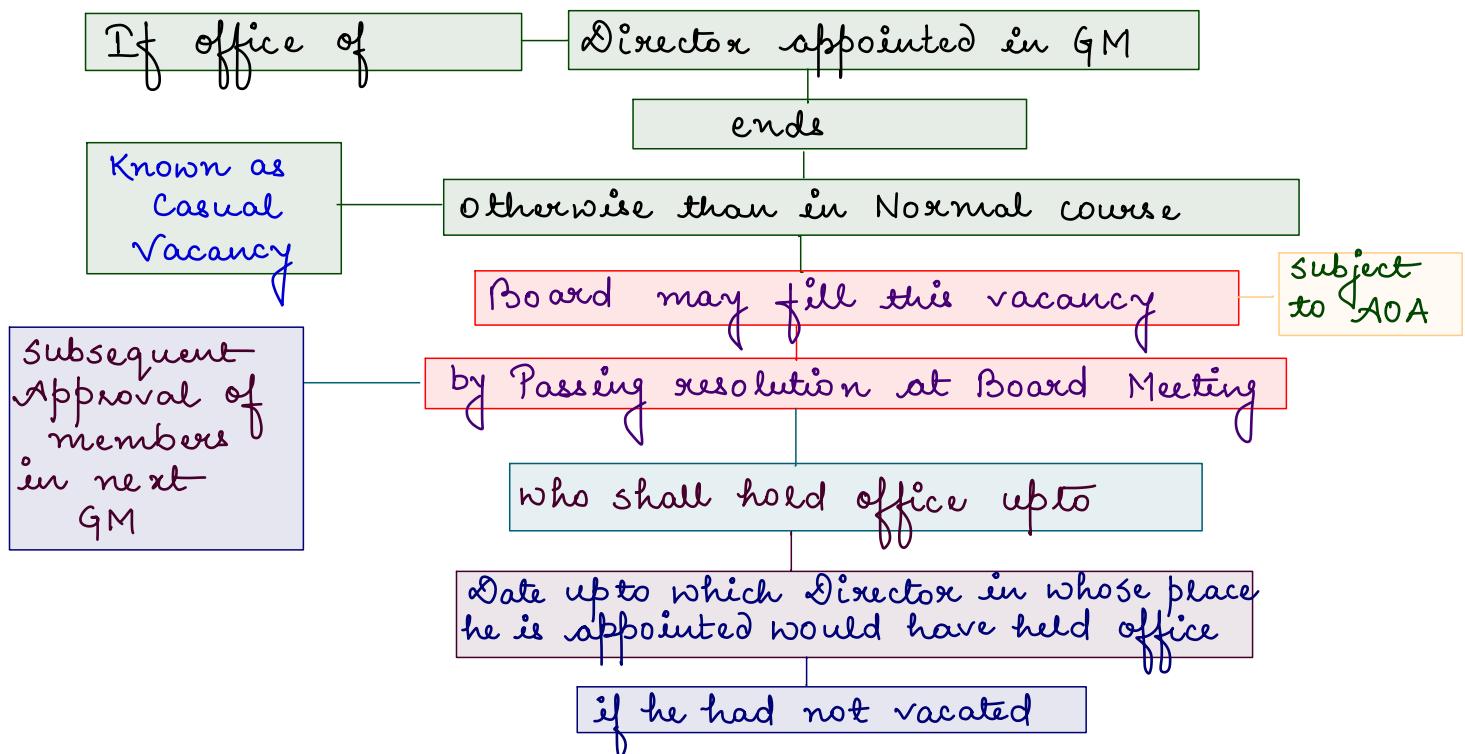


Alternate Director [Section 161(2)]

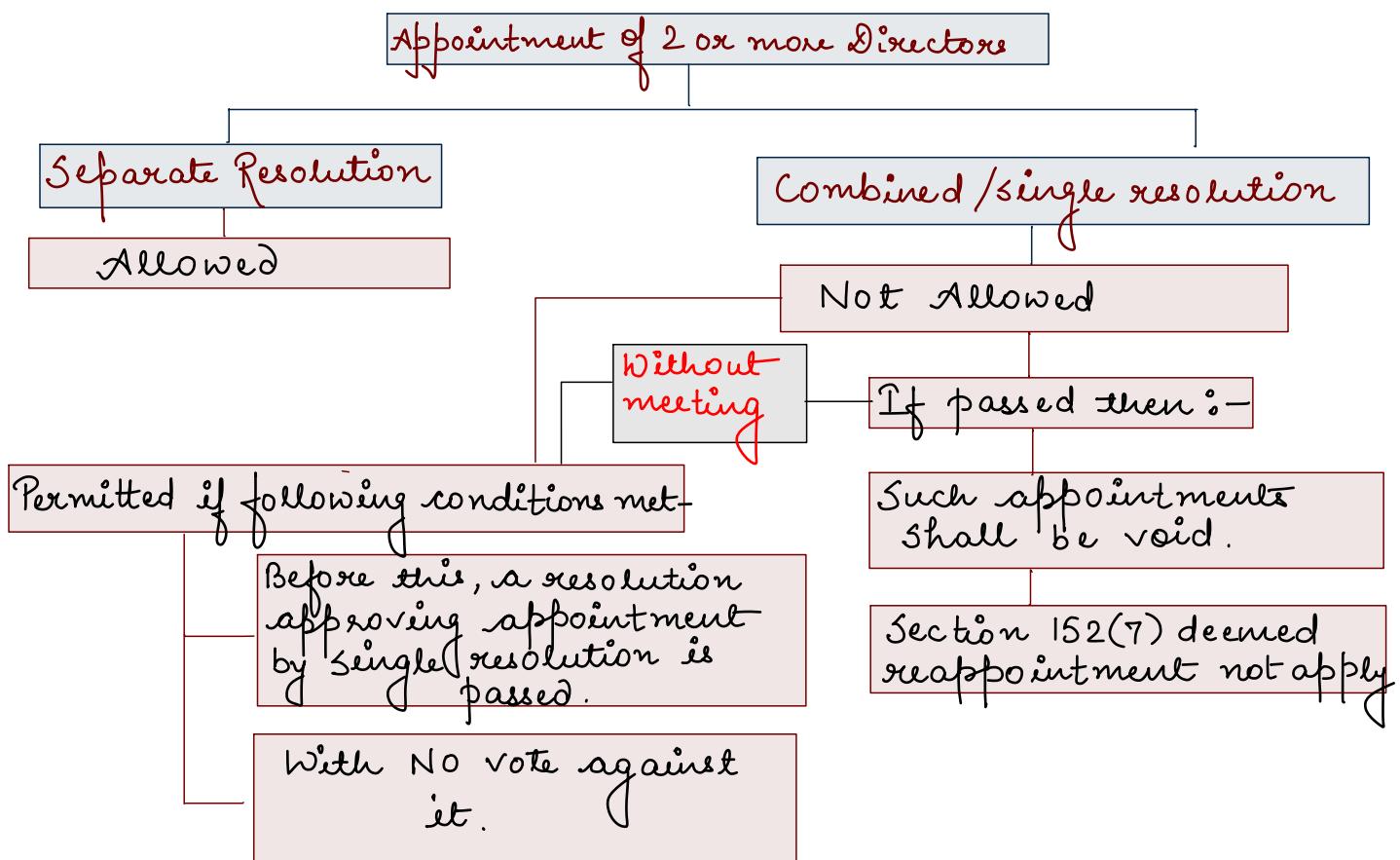


Alternate Director is not an agent of Original Director and has its own duties & liabilities.

Filling of Casual Vacancy [Section 161(4)]



Appointment of Directors to be voted Individually [Section 162]



Non-Applicability :- In case of No default u/s 137 or 92 in

- Private Company
- Government company in which entire capital is held by CG/SG/jointly.
- WOS of such Govt Co.

Appointment by Proportional Representation [Section 163]

If Articles provide for

Company may appoint Directors by Proportional Rep.

of Atleast 2/3rd of Directors

Once in every three years

Single Transferable
vote

OR

Cumulative
voting

OR

Otherwise

This section has an over riding effect.

N.A. to Govt Co. / WOS of it with no default of 137/92.
Such directors can't be removed u/s 169.

Resignation by Directors [Section 168]

Director may resign by giving Notice in writing

may also within
30 days

in Form DIR-11

file a copy of
Resignation

to ROC

to Company

Board takes note

Resignation to be
effective later of -
Date of receipt
of notice or
Date specified in
Notice.

RULE 15

Within 30 days

Co. intimates Resignation

Display on company's
website

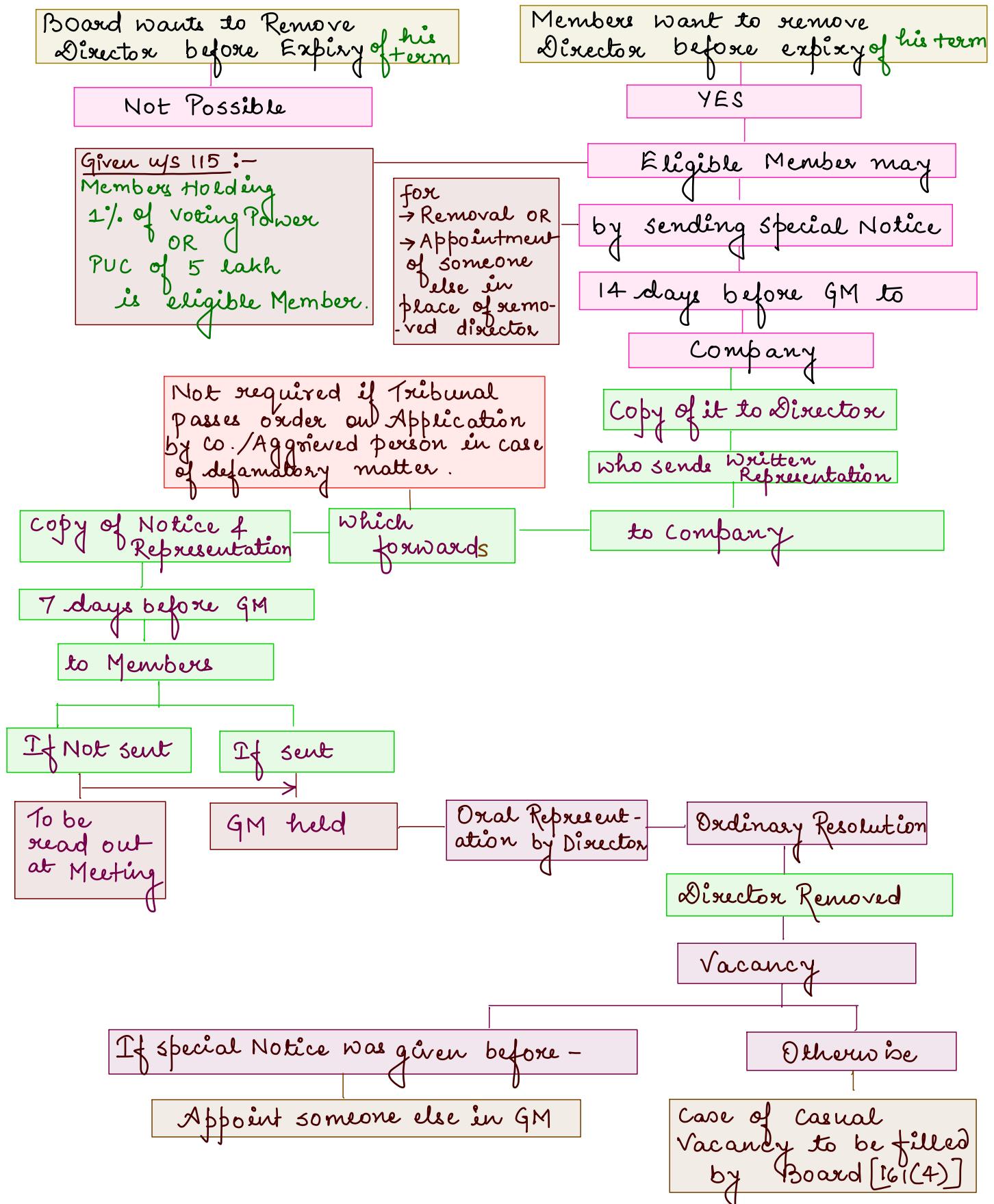
within 30 days

Promoter / CG to fill vacancy
in case all Directors
resign.

in form DIR-12

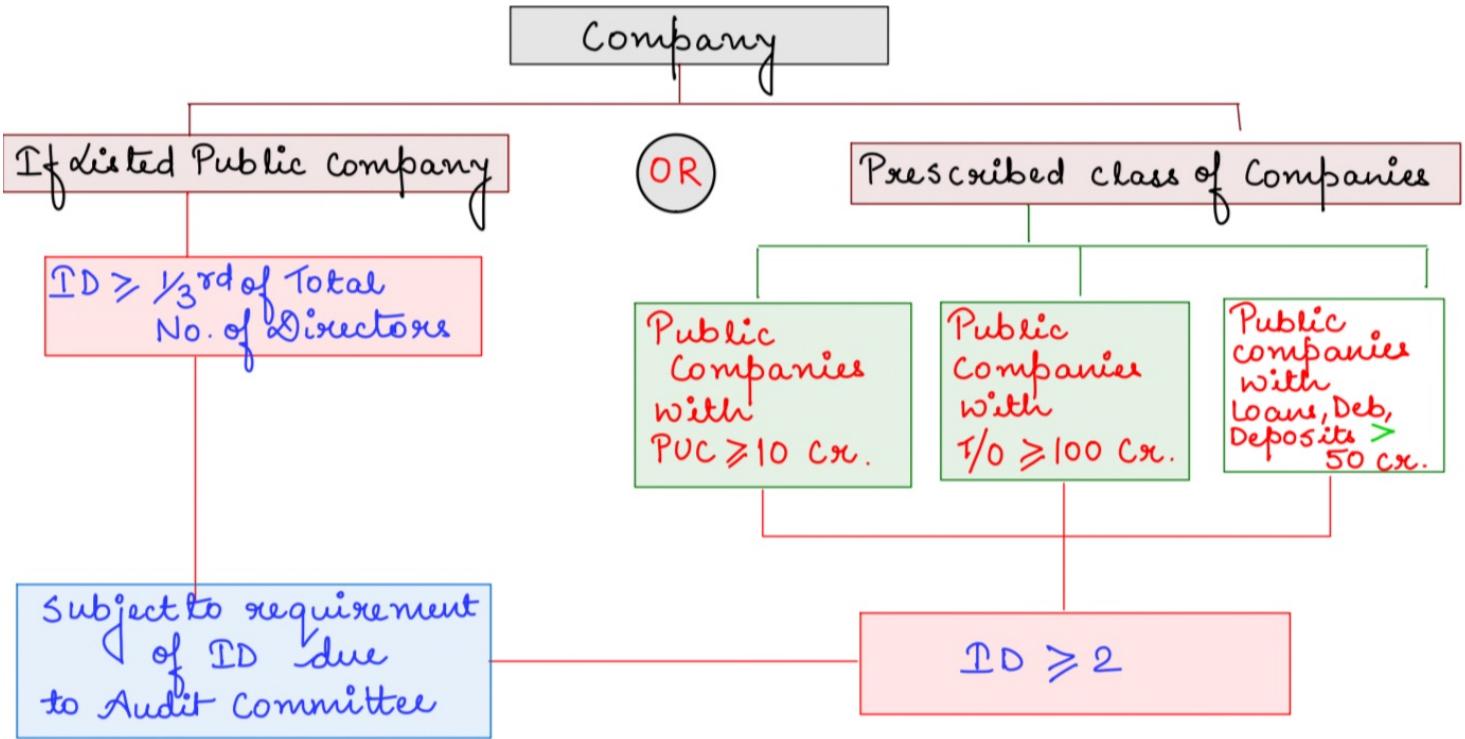
to ROC

Removal of Director [Section 169]



Director appointed by Tribunal
Nominee Director under any special Act of Parliament can't be removed u/s 169.
Independent director in 2nd term - Removal requires SR.

Independent Director [Section 149(4) and Rule 4]



No requirement to appoint ID if company ceases to fulfil criteria for 3 consecutive F.Y.s.
Vacancy to be filled up later of Next BM / 3 Months.

Criteria of Independence u/s 149(6)]

Not MD/WTD/Nominee Director

AND

Satisfying all conditions below

a)

Person of Integrity, Expertise & Experience (In opinion of Board)

b)

i) Not a promoter of C-H-S-A

ii) Not related to Promoter/ Director of C-H-S-A

c)

who has/had no pecuniary relationship [excluding remuneration or transaction not exceeding 10% of his Total Income]

With

OR

C-H-S-A

Promoter/
director of
C-H-S-A

anytime in Current F.Y.

OR

immediately preceding 2 F.Y.s

d)

NONE OF WHOSE RELATIVES :-

i) is holding any security/interest

in

C-H-S-A

During current F.Y./ 2 prec. F.Y.s

Relative may hold security upto FV not exceeding 50 lakh/ 2% of PUC of C-H-S-A.

ii) is indebted

to

C-H-S-A

Current F.Y./
2 prec.
F.Y.s

in excess of prescribed amount of 50 lakhs.

Promoter/
Director of
C-H-S-A

iii) has given guarantee/security with indebtedness of third person

to

C-H-S-A

Current F.Y. or
Prec. 2 F.Y.s

for an Amount of 50 lakhs

Promoter of
C-H-S-A
Director of H

iv) H has pecuniary relationship

with

C-H-S-A

2% or more of Turnover/ Total Income

WHO NEITHER HIMSELF NOR HIS RELATIVE :-

i) holds/held position of KMP or

Employee of

C-H-S-A

in

In case of relative Employee, 3 year condition doesn't apply

Preceding 3 F.Y.s.

ii) Is/has been Employee/Proprietor/Partner

in Prec. 3 F.Y.s of

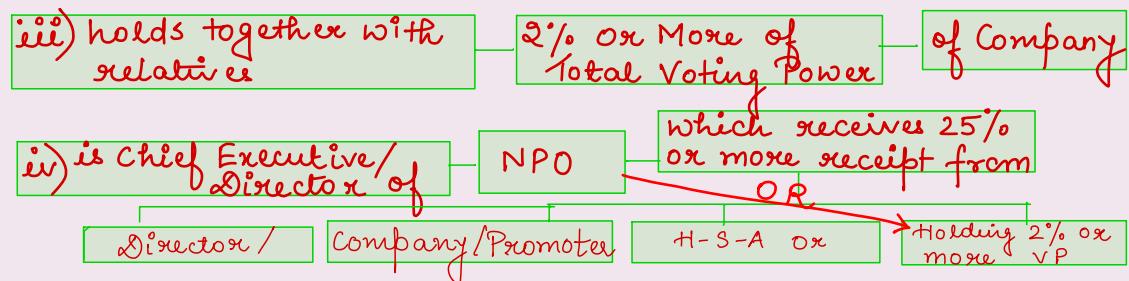
firm of Auditors/
CS/Cost Auditors

in C-H-S-A

OR

Legal firm that had transaction

with C-H-S-A
of
10% or more of T/O



f)

who possesses other qualification as prescribed

Skills in field of finance, Law, Mgmt, sales, Marketing, Adm¹, Research

Other Points related to Independent Directors

149(7)

Declaration of independence to be given by ID
 at First BM at First BM in case of change
 he attends of every F.Y. of circumstances

149(8)

It is the duty of ID to follow Schedule IV:-
 "Code for Independent Directors"

149(9)

Not entitled to Stock option
 May receive remuneration/reimbursement of exp./
 profit related commission.

149(10)

Maximum Term of 5 consecutive years.
 SR and Disclosure in Board's report required
 for re-appointment.

149(11)

Not to hold office for more than 2 consecutive term
 3 years cooling period in which no appointment/
 association allowed.

149(12)

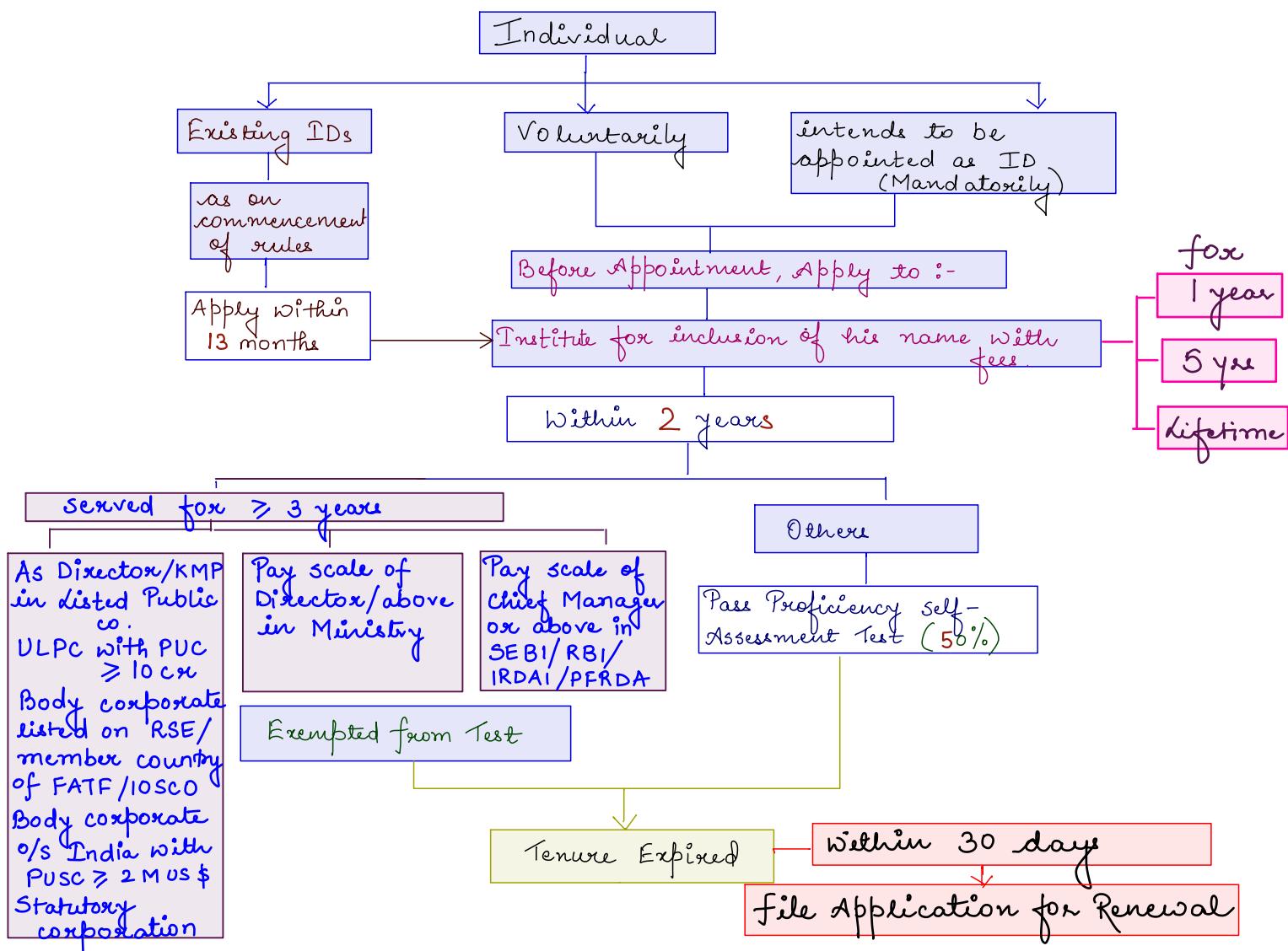
Independent Director/ Non-Executive Director to be
 liable only for acts occurred with their knowledge &
 consent or where they did not act diligently.

149(13)

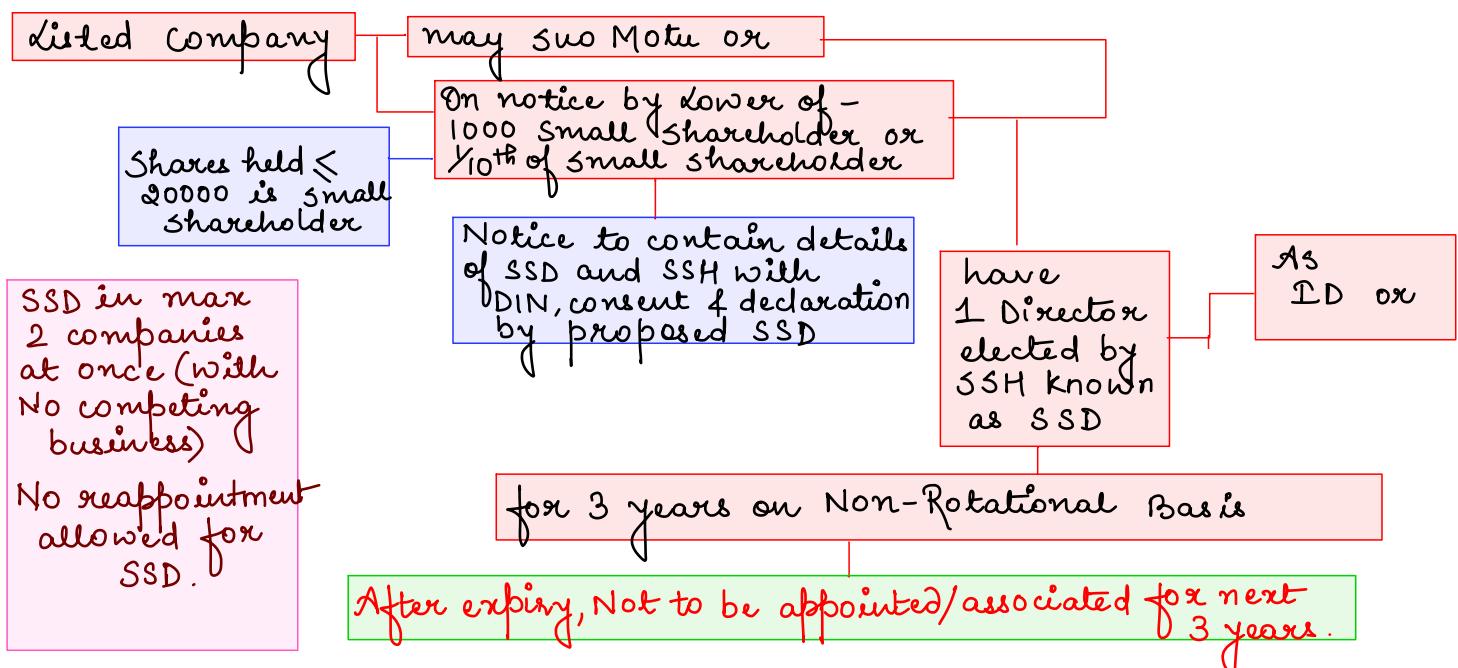
Not to retire by Rotation.

Maintenance of Data Bank for Independent Directors

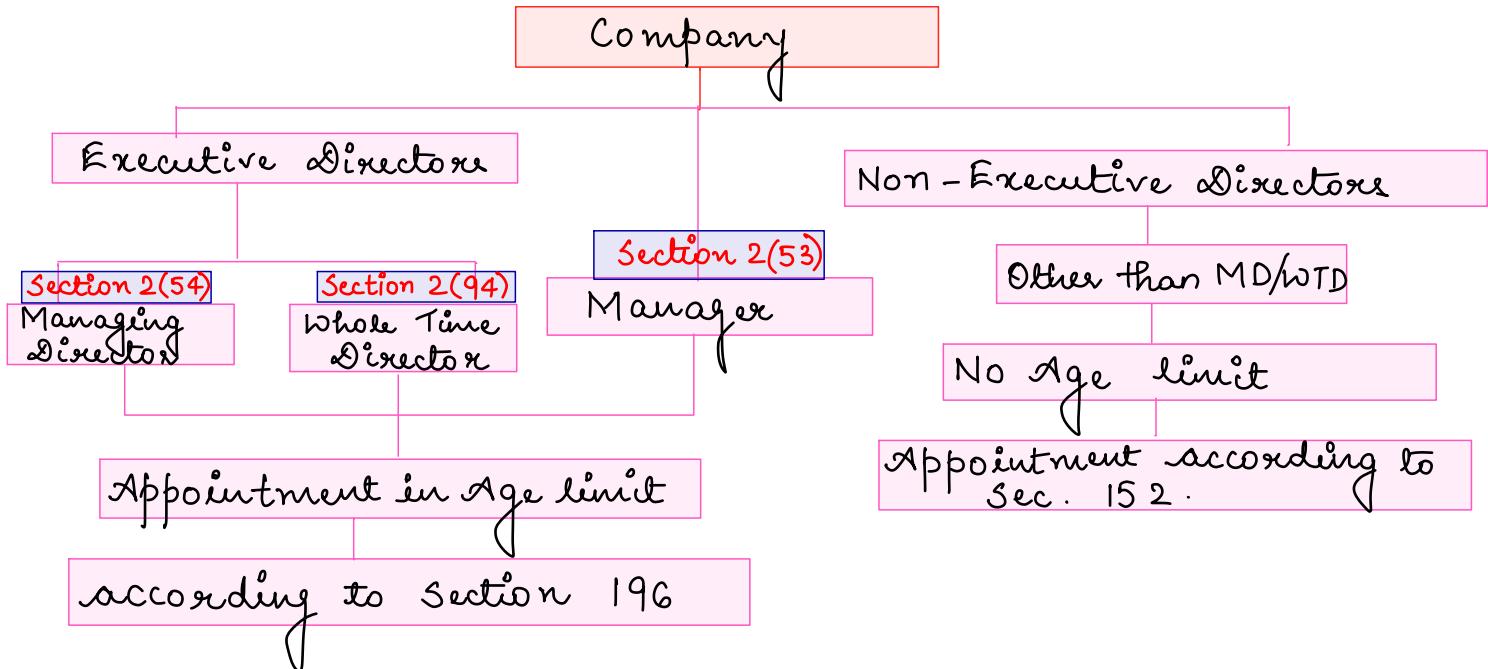
Rule 6



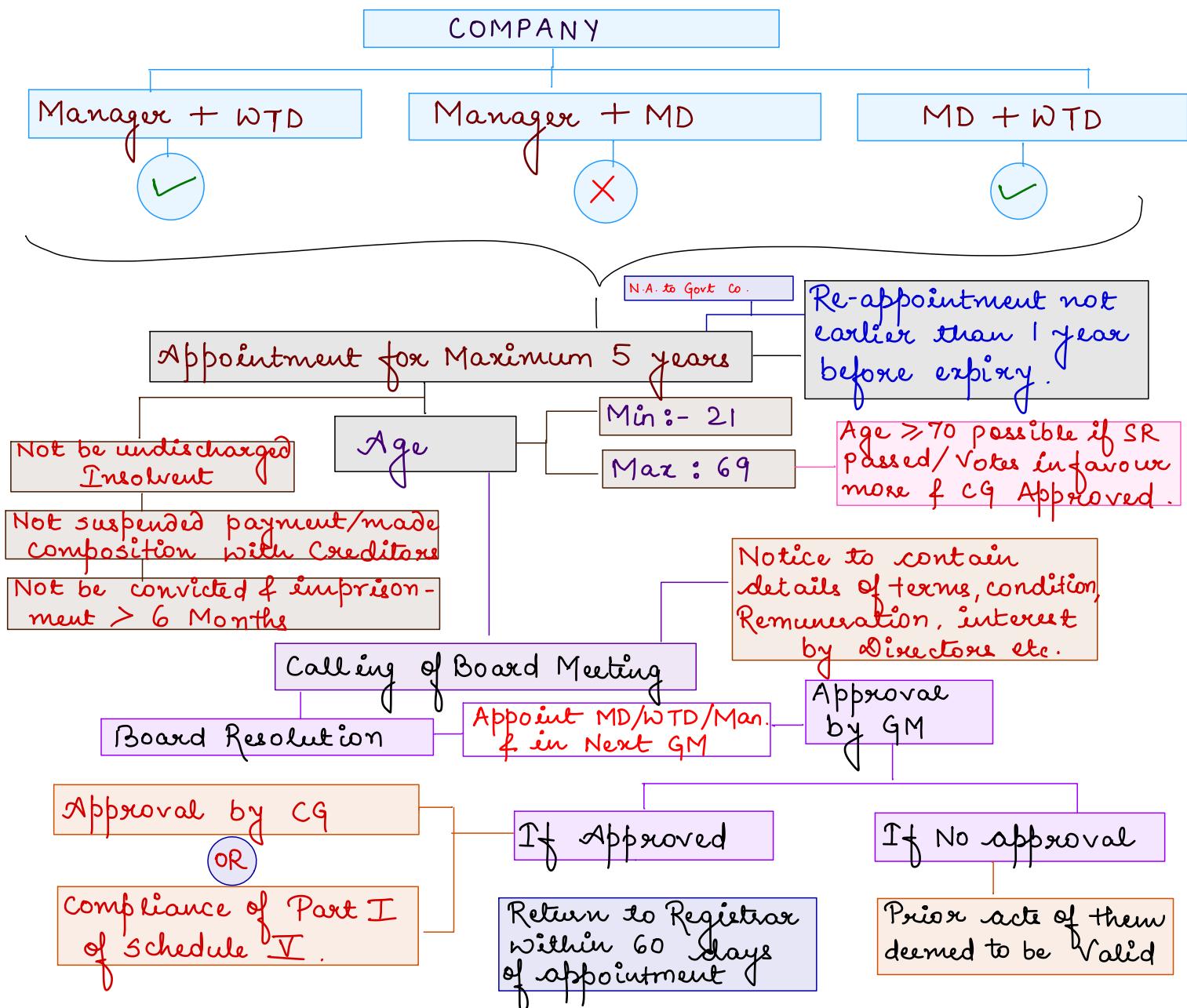
Small Shareholders Directors [Section 151]



Appointment and Remuneration of Managerial Personnel



Appointment of MD/WTD/ Manager [Section 196 read with Part I of Schedule V]



Conditions of Appointment in Part I of Schedule V

Not been imprisoned or fined exceeding Rs. 1000 for -

Offence under :- Central Excise Act, customs Act, GST Act, Wealth Tax Act, Income Tax Act, FEMA, PMLA, SCRA, SEBI, Companies Act, Competition Act, IBC, Stamp Act, SICA, Food Adulteration, Essential Commodities Act, fugitive Economic offenders Act, Foreign Trade Act, Industries (Development and Regulation) Act.

If convicted person is appointed as MP with approval of CG. No Approval required for any subsequent Appointment

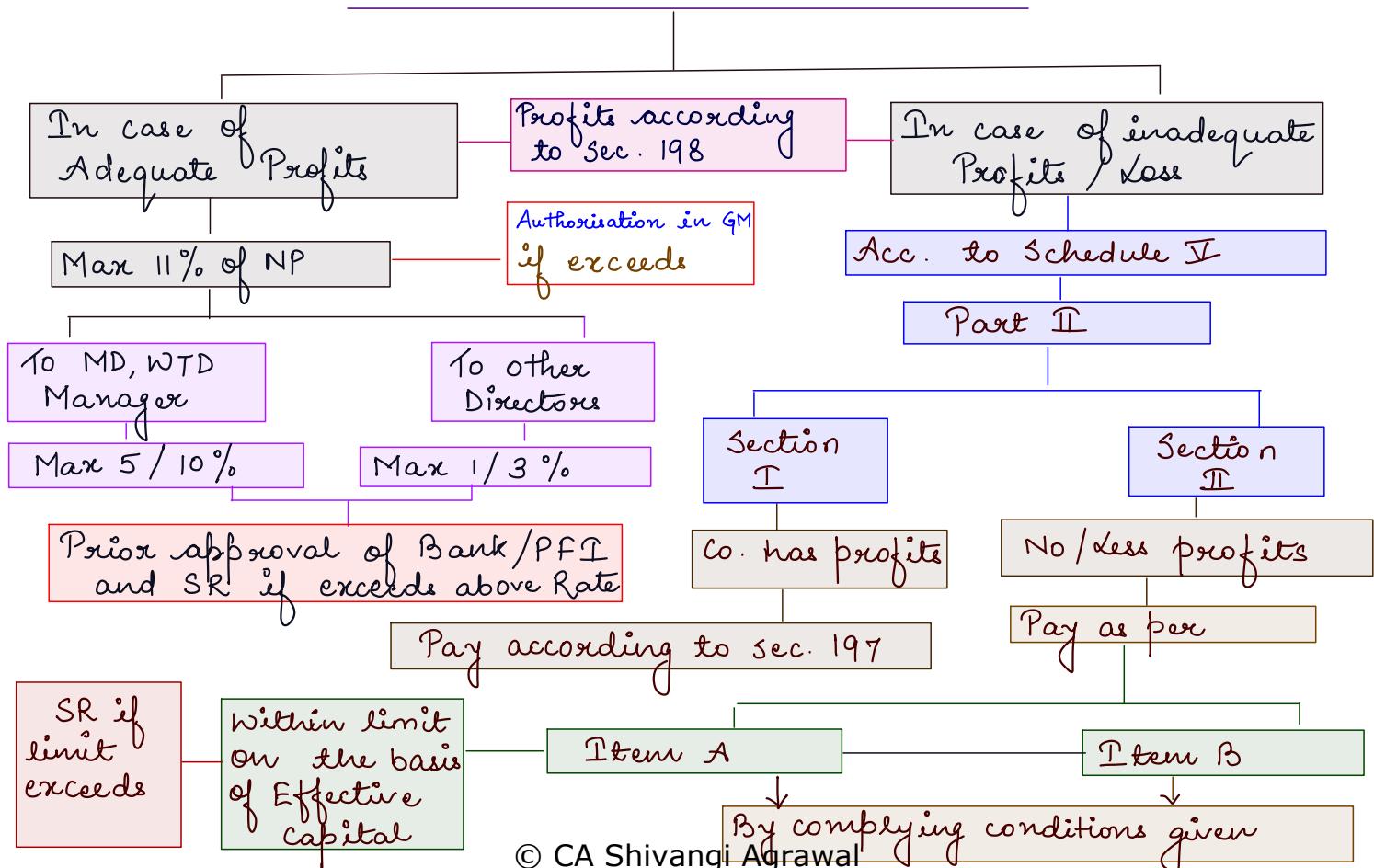
Not detained for any period under Conservation of foreign Exchange & Prevention of Smuggling Activities Act, 1974.

If detained person is appointed as MP with approval of CG. No Approval required for any subsequent Appointment.

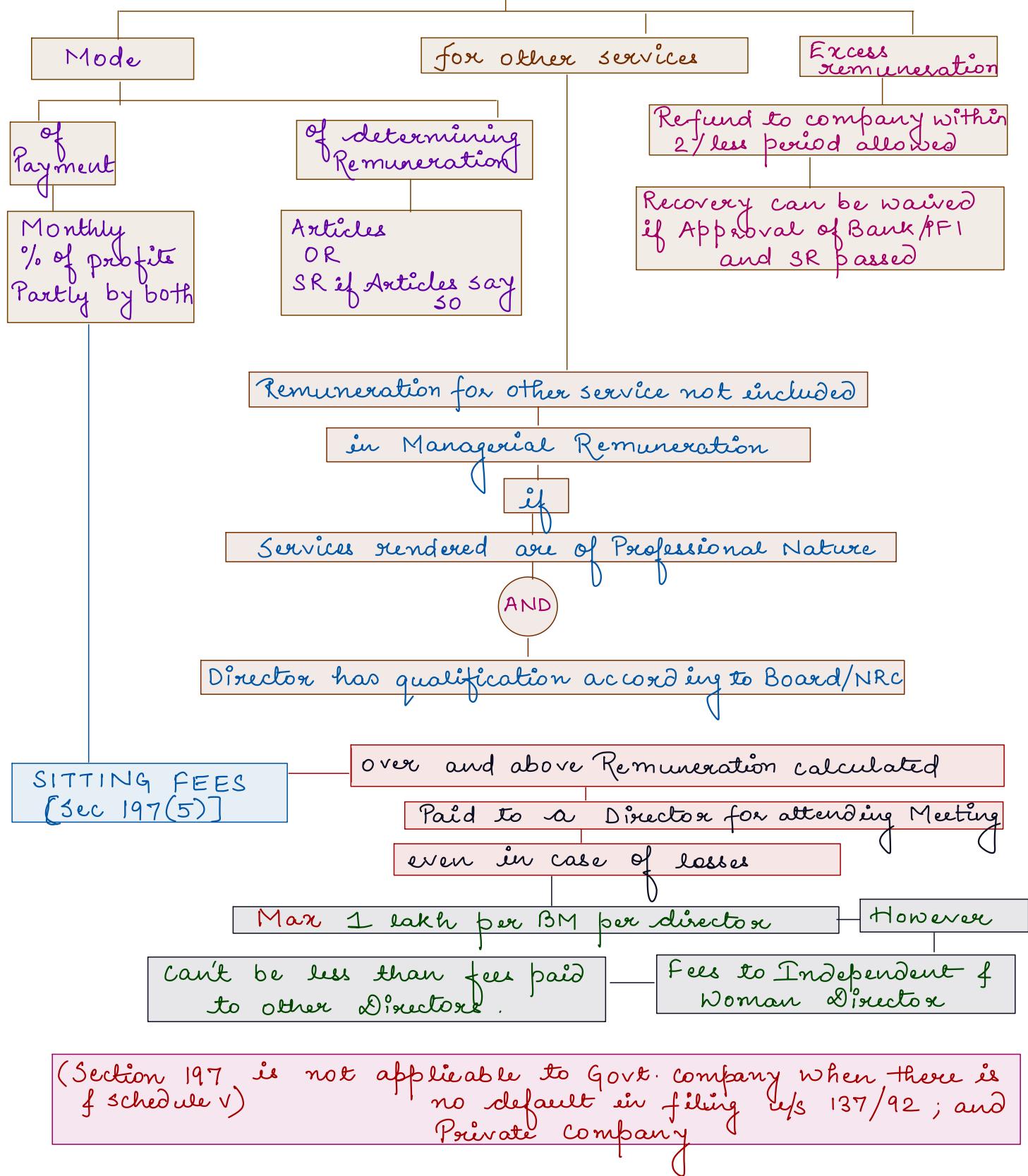
Has completed the age of 21 years and not attained the age of 70 years.

Must be resident in India.

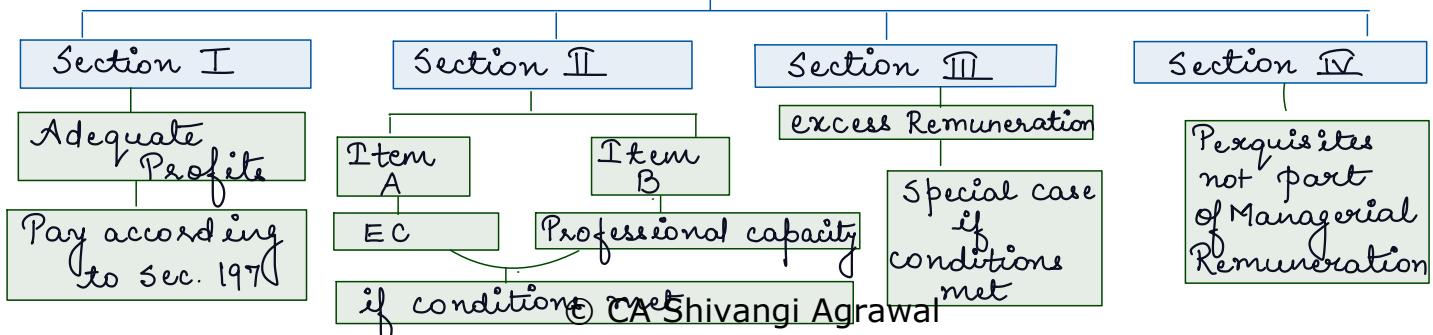
Managerial Remuneration by Public Company



Other Relevant Points of Remuneration



Schedule V- Part II- Summary



Recovery of Remuneration [Section 199]

If because of Fraud / Non-compliance of Act

Company required to restate FS

Company can recover Remuneration

of excess Amount i.e.

Amount - Amount that should have been Paid paid (Acc. to Restated FS)

from

MD/WTD/CEO/
Manager

Whether Past
or Present

who received
such Amount

Company to fix limit of Remuneration [Section 200]

Company by passing OR can

fix Remuneration

at any Amount / Percentage

while granting

considering factors like Qualification, Experience, financial position, already drawn etc.

Approval w.r.t Appointment / Remuneration

of

MD

WTD

Manager

Compensation for loss of office [Section 202]

If MD/WTD/Manager has loss of office then company may

pay compensation to them :-

Not allowed in
following cases :-

Maximum

Lower of :-
Unexpired Tenure or
3 years

Director resigns on amalgamation &
joins new company.

Director resigns voluntarily
vacation of office u/s 167.

Company wound up due to Director's
negligence

Director guilty of fraud, breach

Director responsible for Termination

Remuneration actually earned

during preceding 3 years
or shorter period of office.

Within 12 months, co. winds up
and assets insufficient to repay
capital - NO COMPENSATION

Appointment of Key Managerial Personnel [Section 203]

In case of

Listed Company

Public company with PUC ≥ 10 crores

It is mandatory to appoint

MD or
WTD or
Manager or
CEO

and

CFO

and

CS

Rule 8A

Every Private
Company with
PUC ≥ 10 crores
has to appoint
CS.

by passing a resolution at BM

In case of Vacancy in office of KMP

It has to be filled within 6 Months at BM only

An Individual may be Chairperson and MD/CEO if :-

→ Articles so provide OR

→ company does not carry multiple businesses . OR

→ Public Company with PUC ≥ 100 crores and T/O > 1000 crores
doing Multiple business but appointed CEO for each
business .

KMP

A person can be KMP in
only 1 company OR
in Subsidiary also OR
A director in other with Boards' permission

Managing Director

Max MD in 2 companies that too if :-
Specific Notice sent and
Unanimous Resolution passed at BM in
company proposed to be appointed .

Secretarial Audit [Section 204]

Every

Listed Company

Public Company with
PUC ≥ 50 crores

Public Company with
Turnover ≥ 250 crores

Company
with Loans
 ≥ 100 cr.

shall get Secretarial Audit done

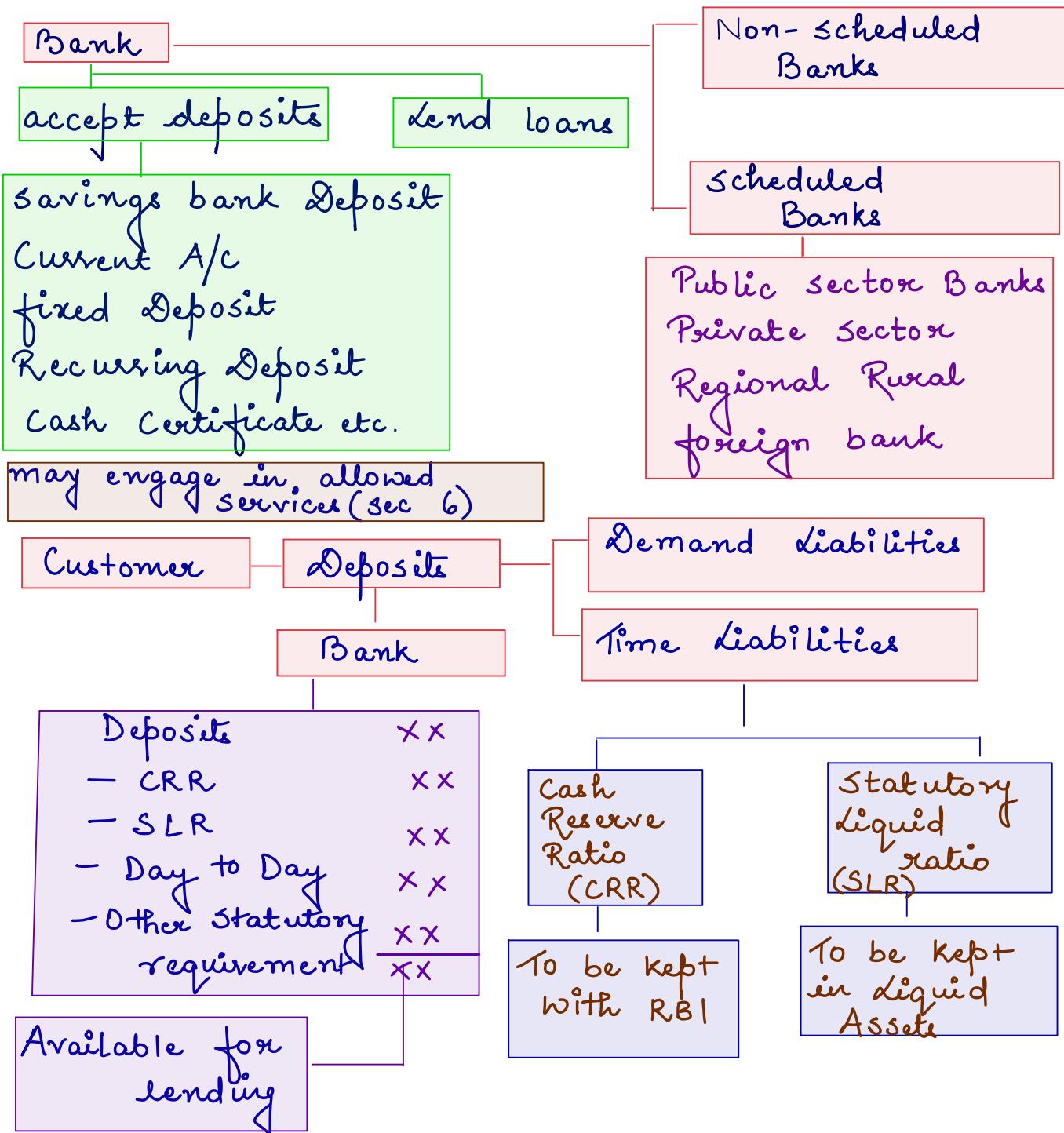
by CS in
practice

if report in MR-3 which shall be

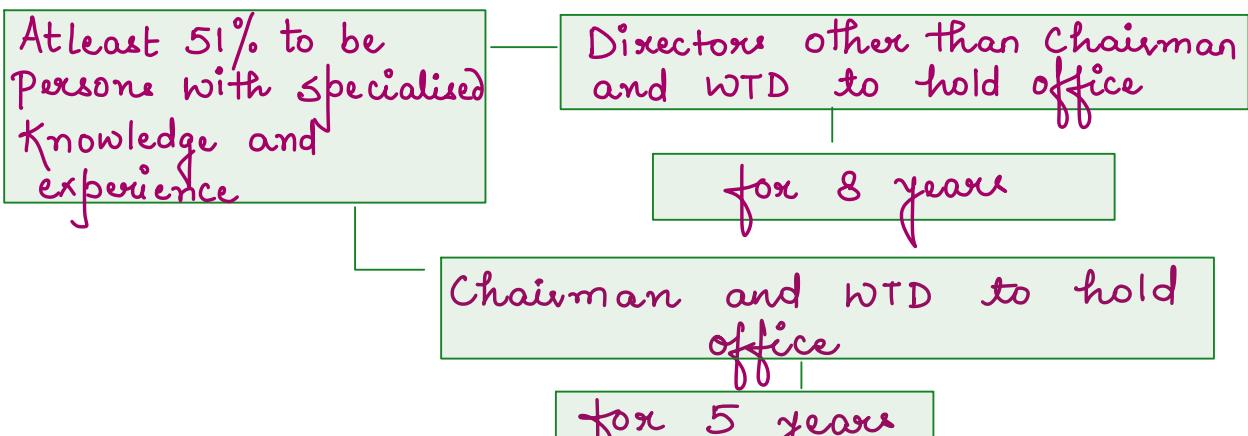
annexed with Board's Report and

it shall be duty of
Board to give
explanation on Remarks

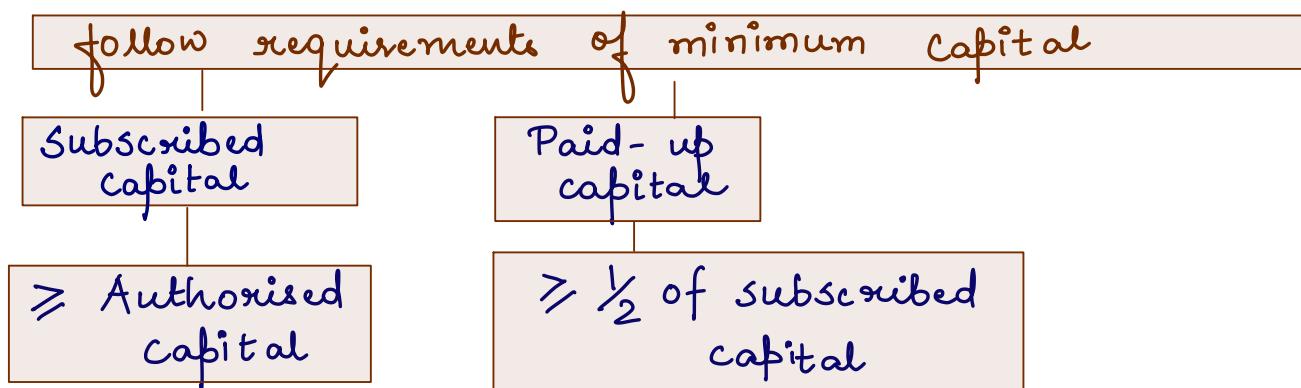
Banking Regulation Act



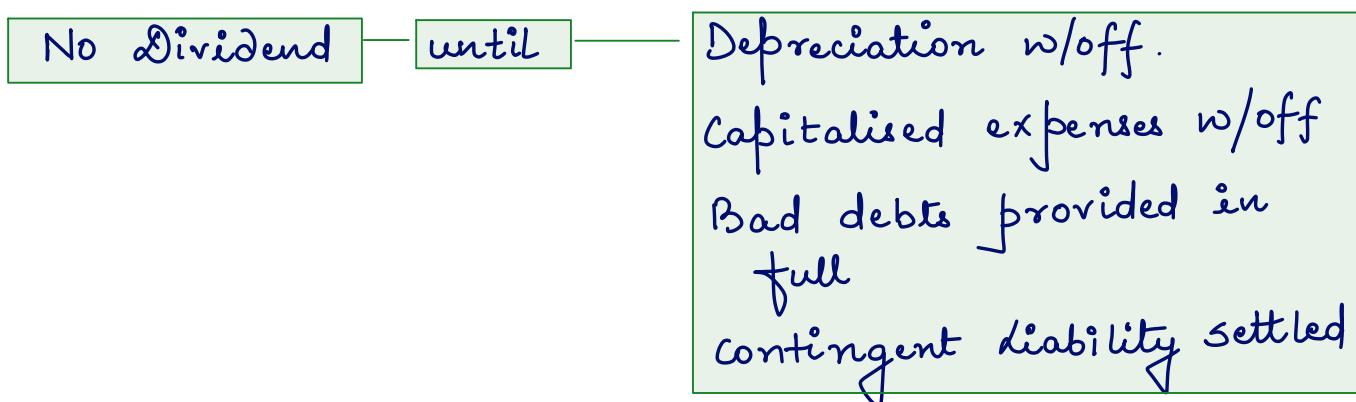
Board of Directors



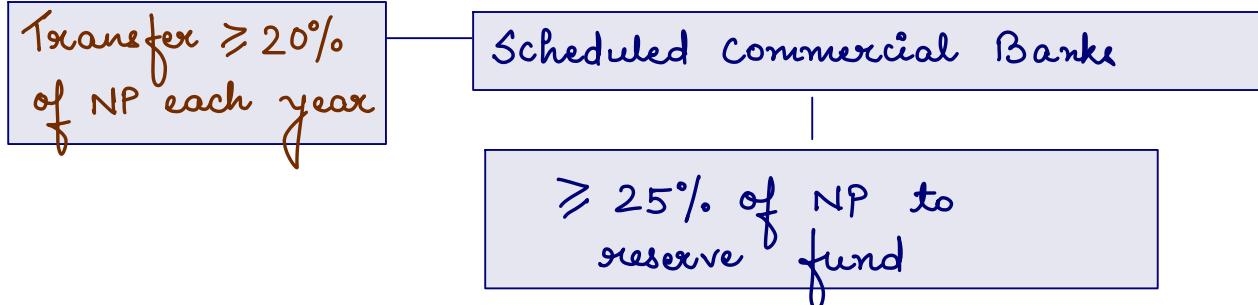
Capital



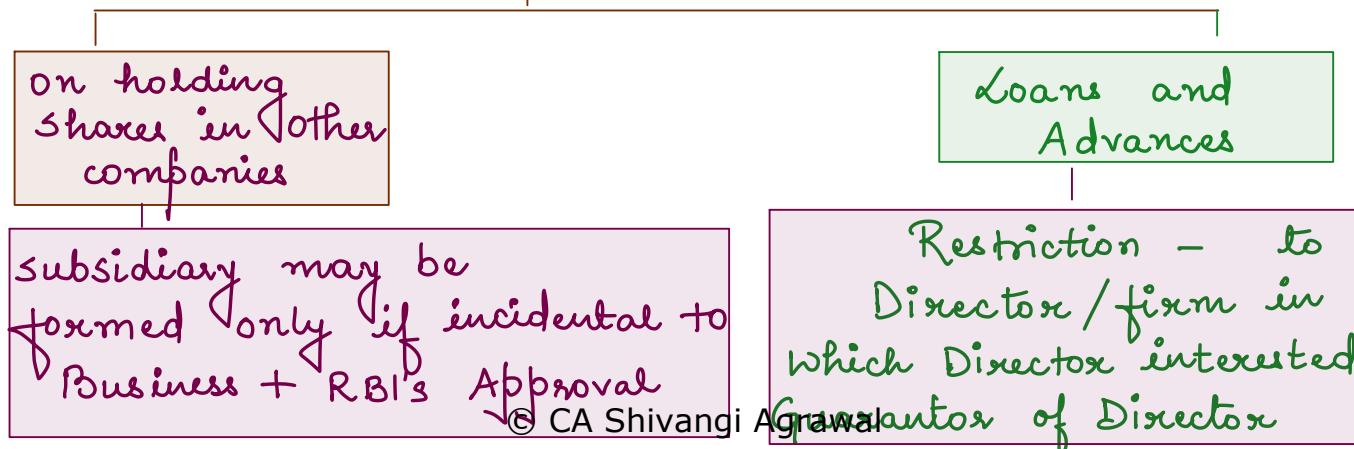
Payment of Dividend



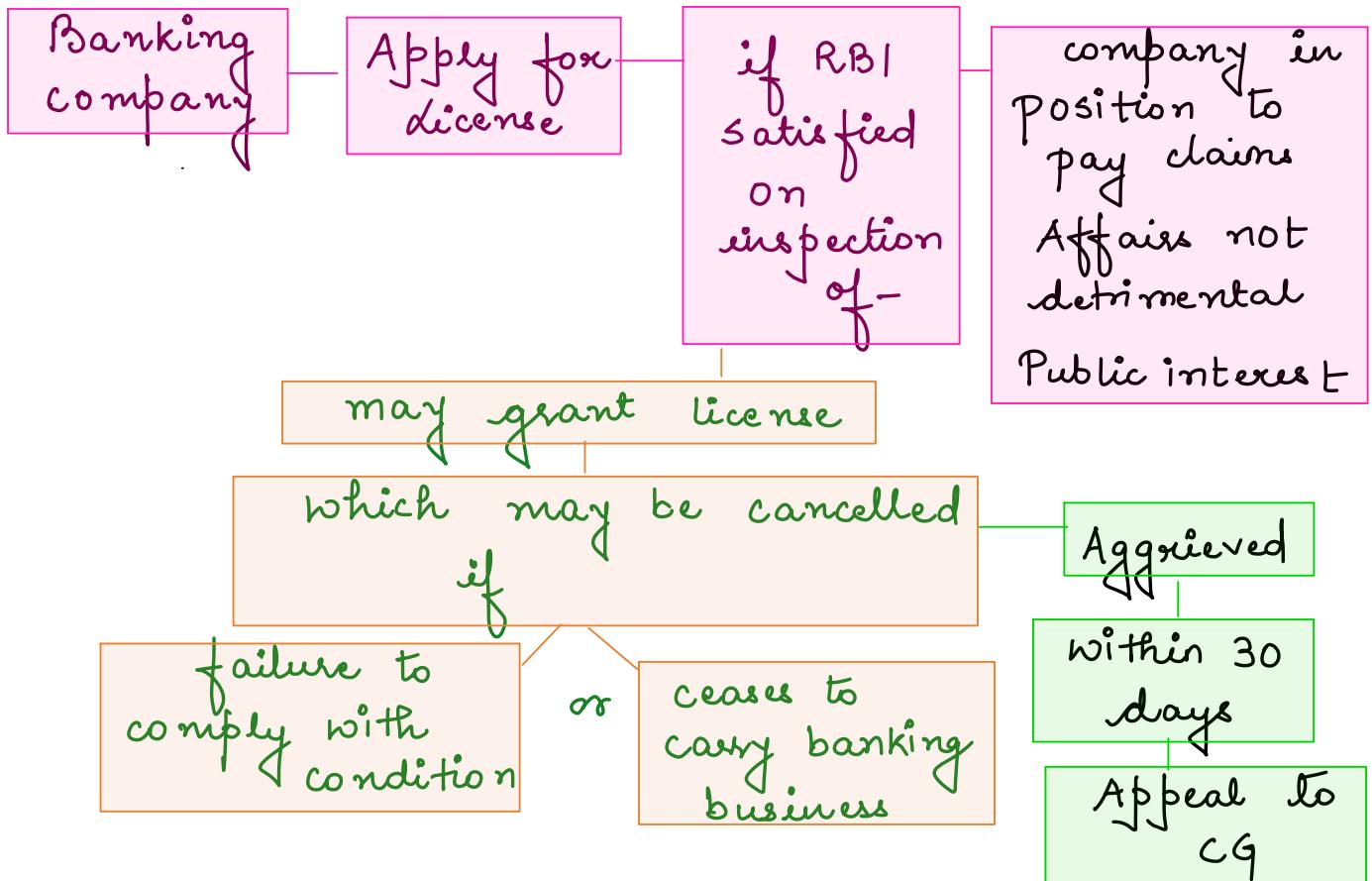
Transfer to Reserve fund



Restrictions

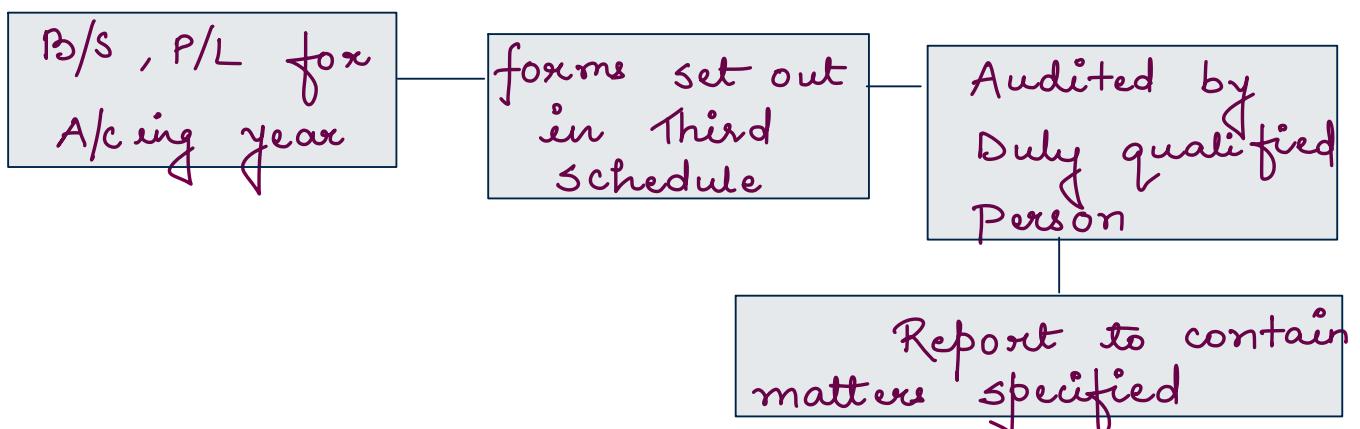


Licensing of Banking Companies

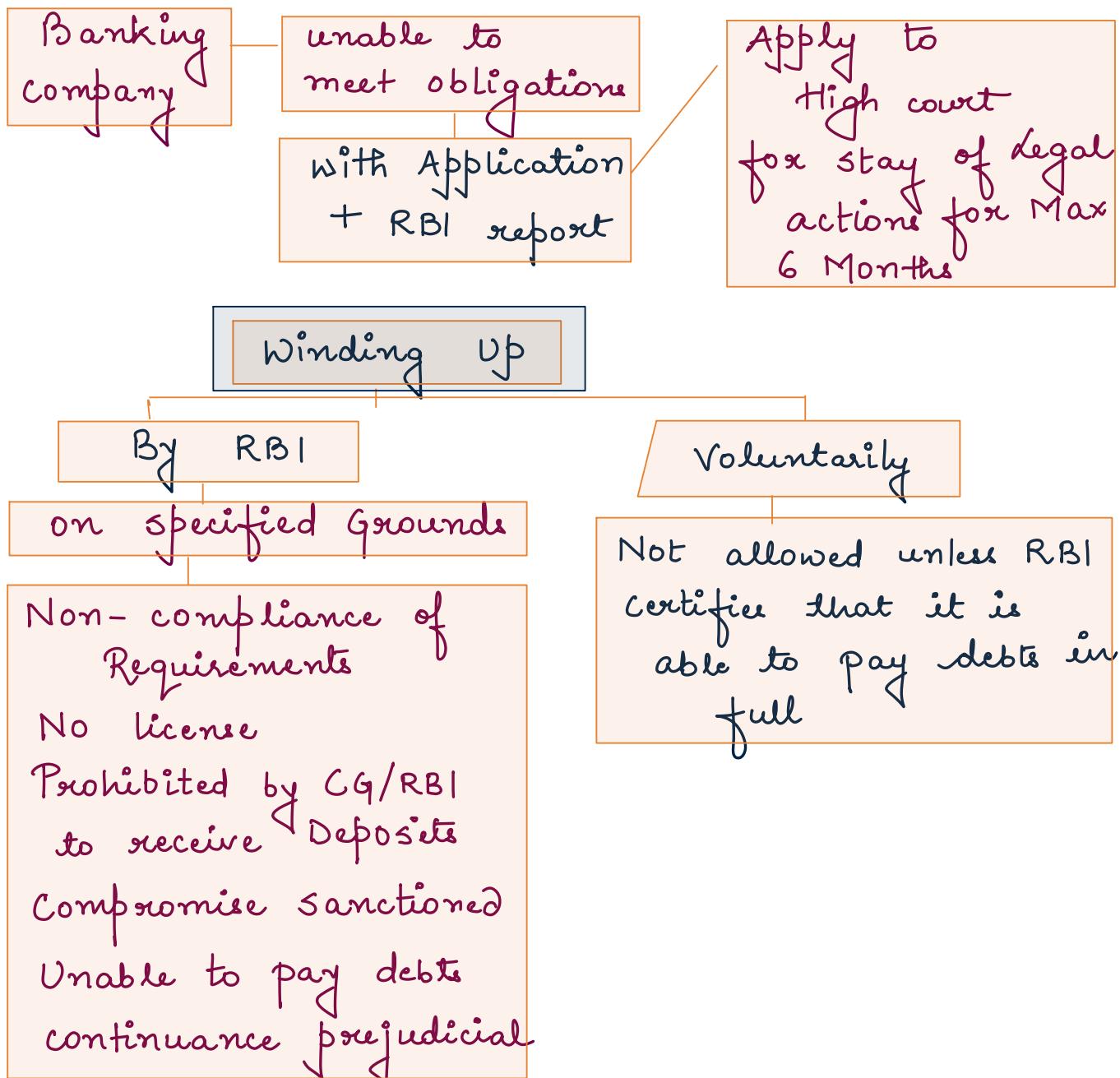


RBI has power to publish info, give directions, inspection, Remove managerial person, appoint additional Directors, suspend Board etc.

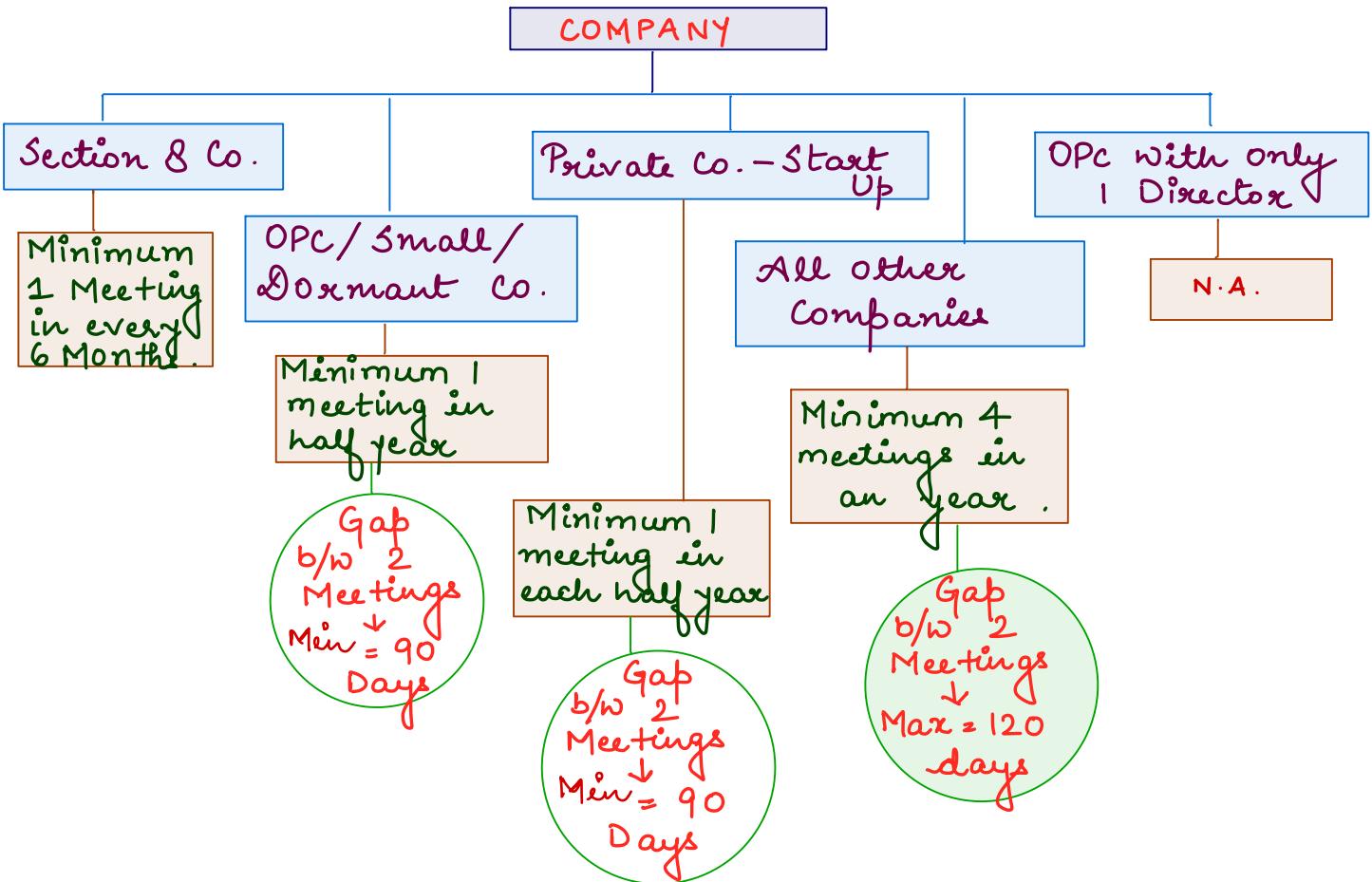
Accounts, B/S and Returns



Suspension of Business

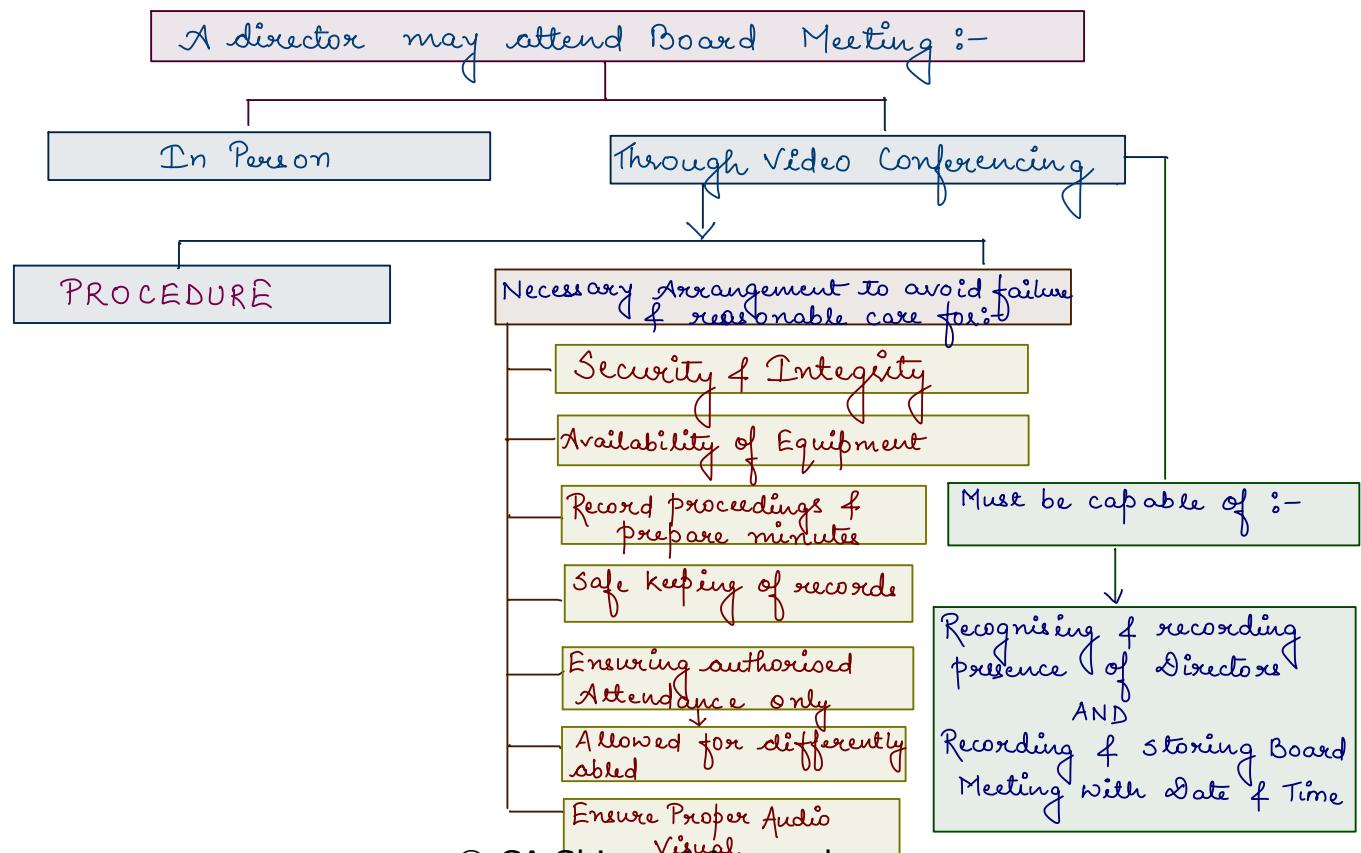


Number of Board Meetings [Section 173(1)]

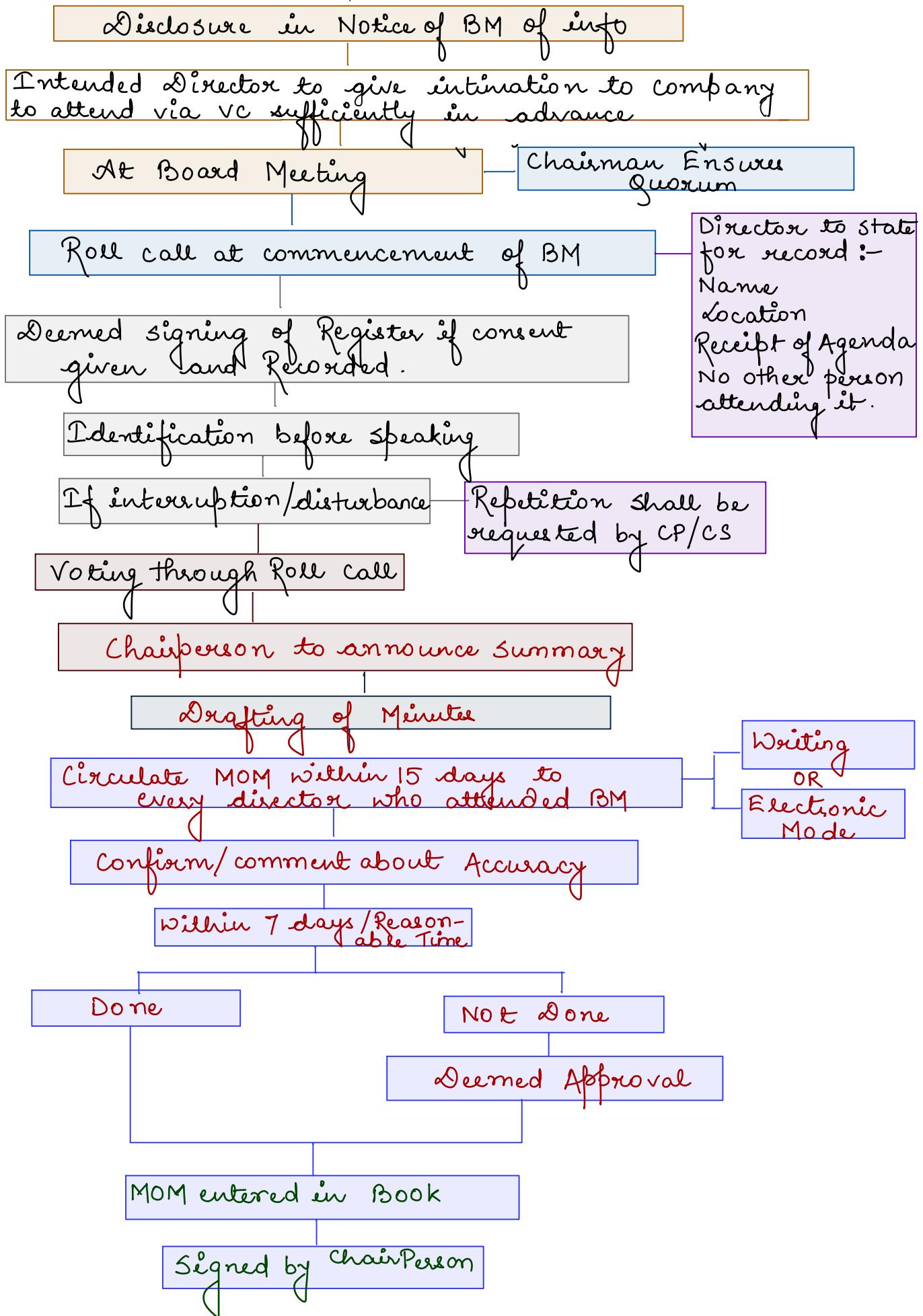


1st Board Meeting to be held within 30 days of Incorporation

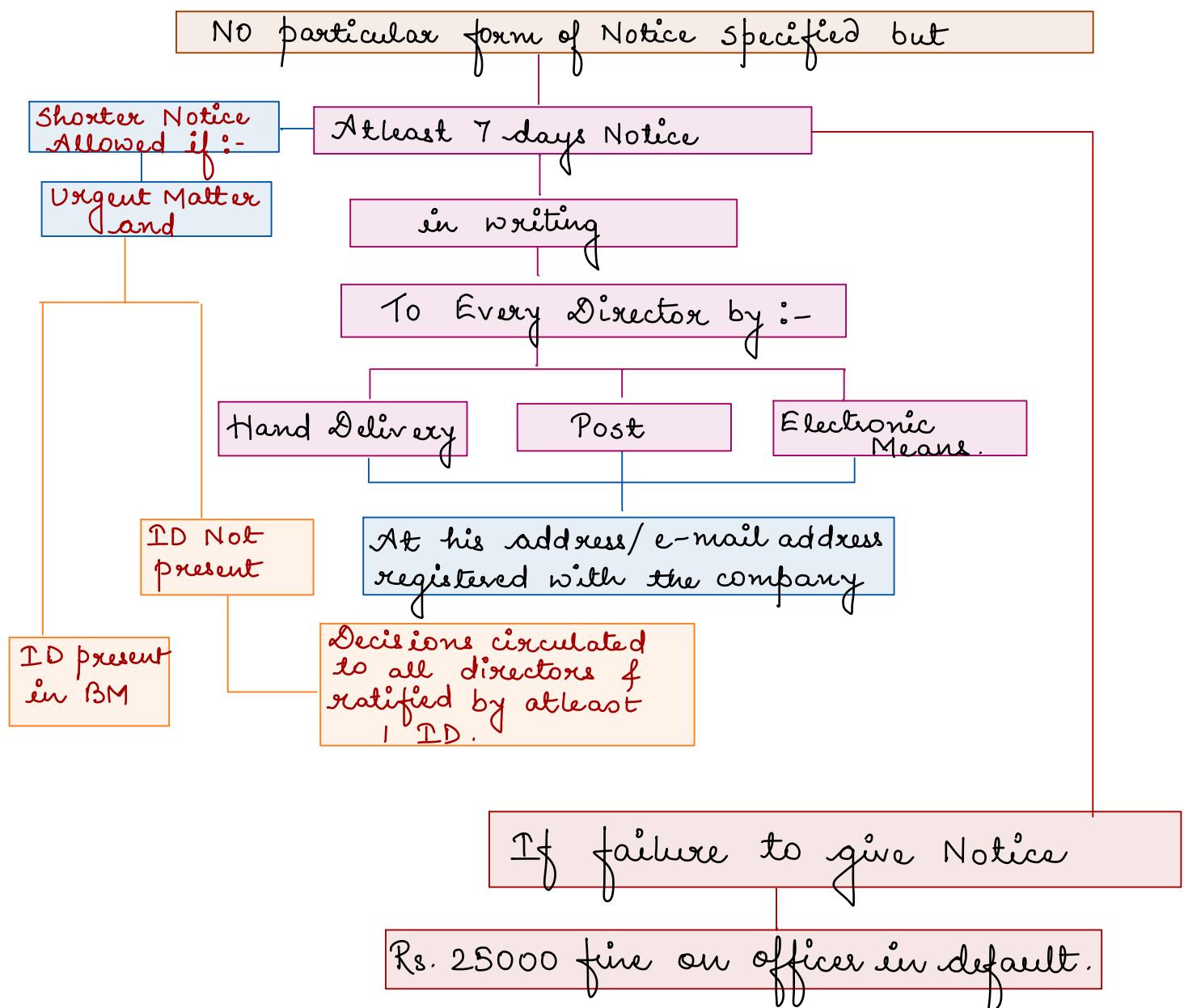
Board Meeting through Electronic Mode [Section 173(2) read with Rule 3 & 4]



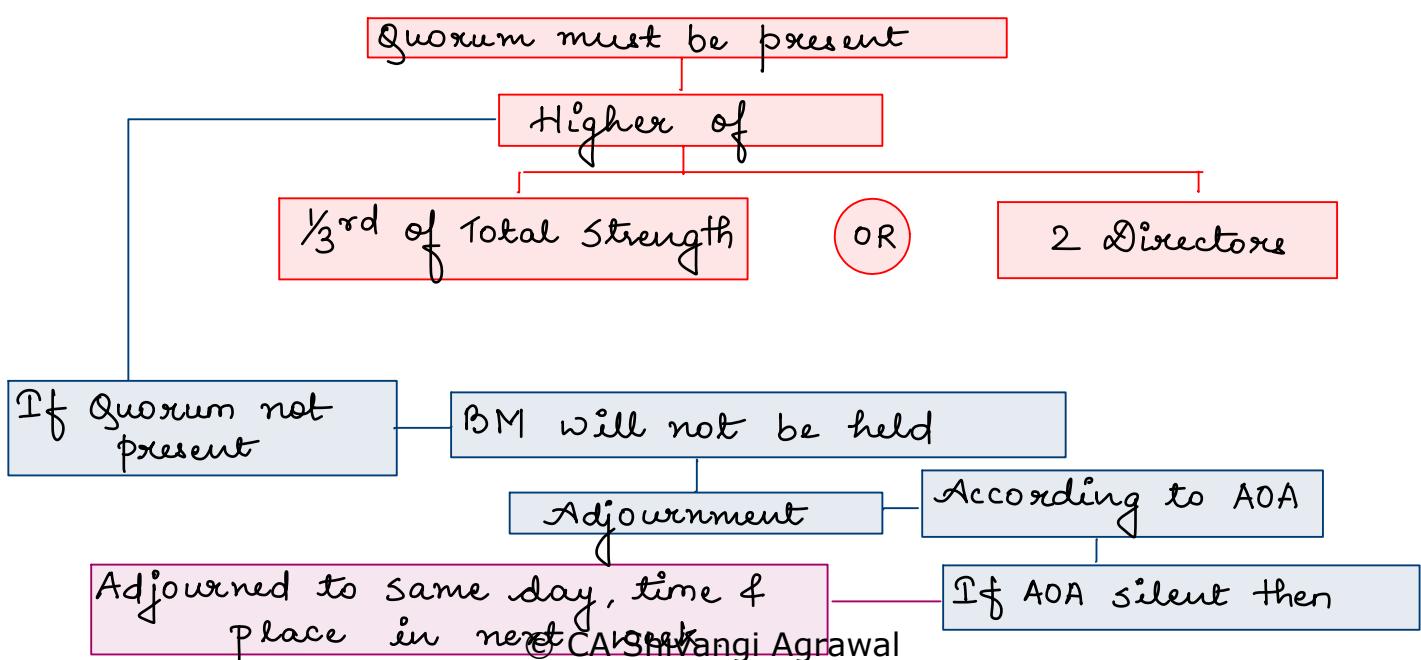
Procedure



Notice of a Board Meeting [Section 173(3)]



Quorum for a Board Meeting [Section 174]



In case Co. has interested Directors (174(3))

N.A. to
Private
Companies

Quorum

If interested directors at any time $\geq \frac{2}{3}$ rd of Total Strength

Higher of

Number of disinterested Directors

OR

2 directors.

In case of Section 8 company , Quorum is lesser of 25% of total strength or 8 directors but shall not be less than 2 directors.

If directors reduced below Quorum, continuing directors may act only for increasing directors & calling GM.

Passing of Resolution by Circulation [Section 175]

Allowed for matters other than those specifically required to be exercised at Board Meeting only.

Draft Resolution

Alongwith Necessary Papers

Send to all Directors

Such resolution not to be passed if - $\frac{1}{3}$ rd of Directors require Resolution at BM only.

by

Hand Delivery

Post/courier

Email/fax

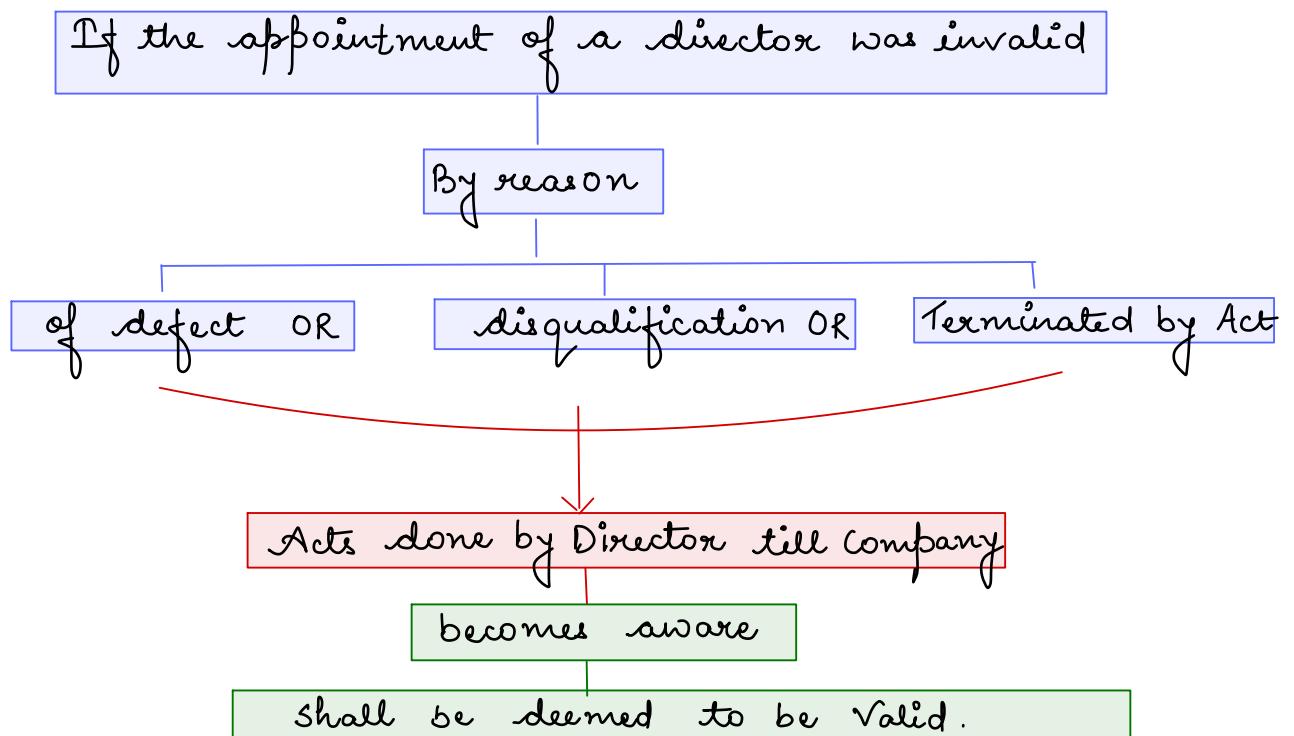
at address registered with company

Approval by Majority

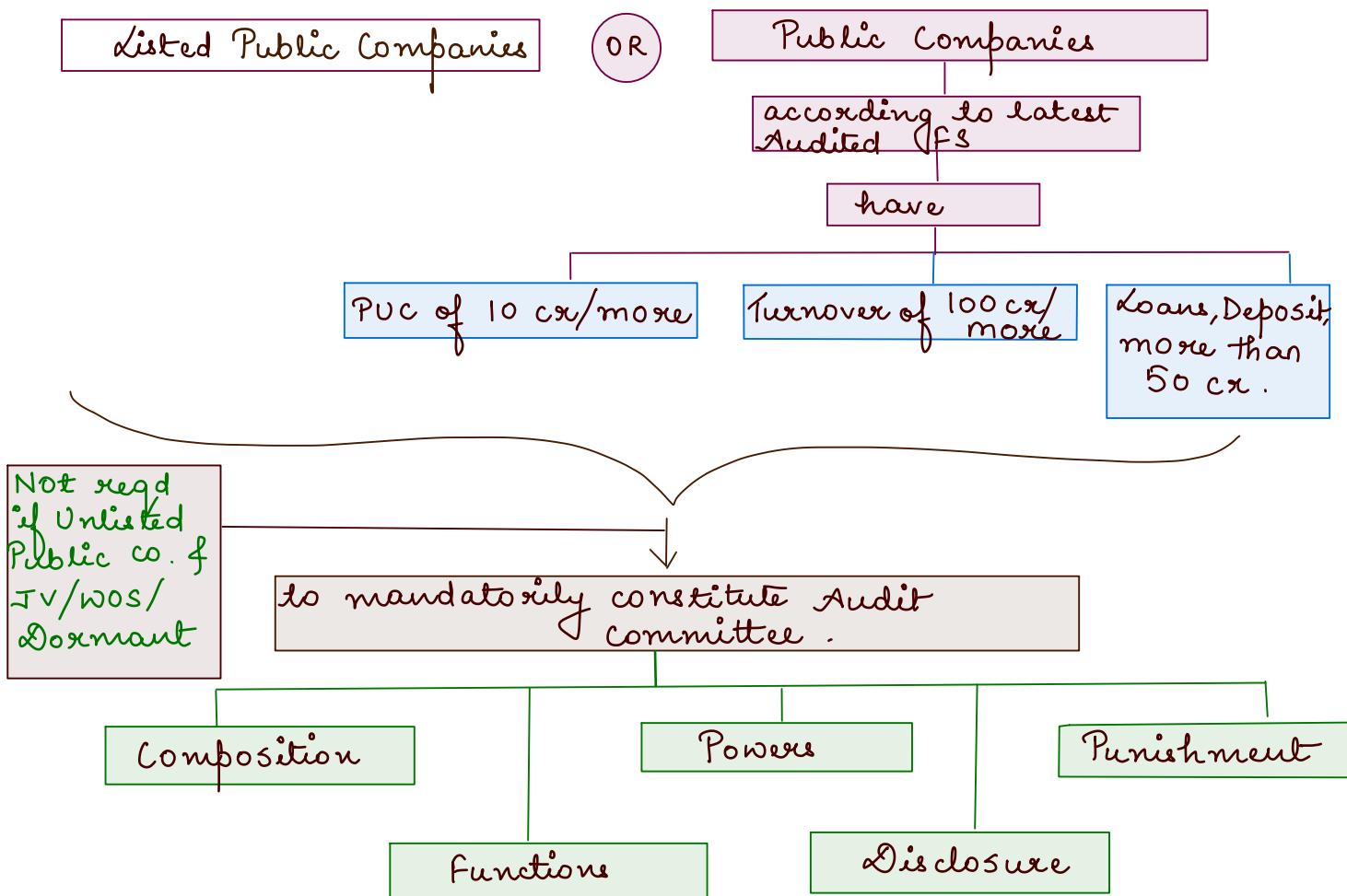
Noted & included in Minutes

In subsequent BM

Validity of Acts of Directors [Section 176]



Audit Committee [Section 177]



Composition

Minimum Number of Directors = 3
 in which Majority shall be
 Independent Dir
 Ability to read & understand financial statement.

Powers

- Call for the comments of Auditor about Internal control, observation
- Review financial statement
- Discuss issues of FS with Auditor
- Investigate
 - ↓ with power to access information
- Oversee Vigil Mechanism

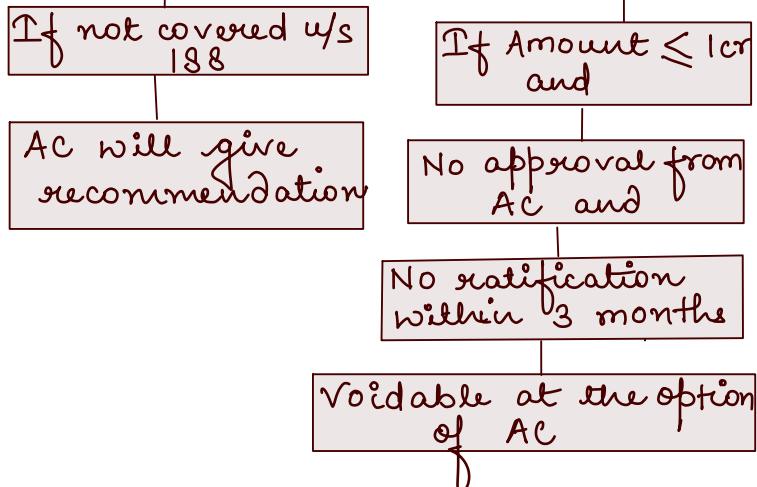
Disclosure

Board's report to disclose :-
 → Composition of Audit committee
 → Non-acceptance of recommendation of Audit committee with reasons.

Functions

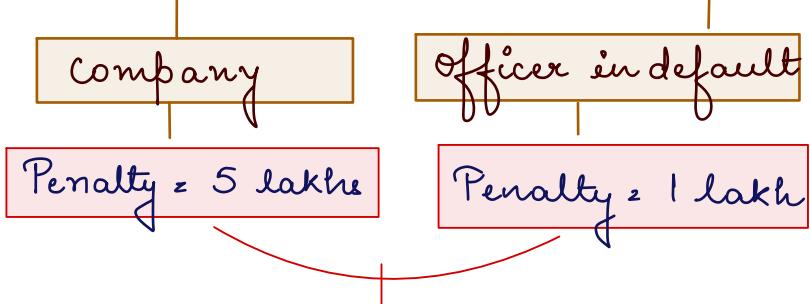
- Recommendation for Appointment & remuner. of Auditor
- Review of Auditor's Performance
- Examination of FS & Auditor's report
- Scrutiny of loans
- Valuation of Assets
- Evaluation of Internal control
- Monitor use of Public funds AND

Approval of Related Party Transactions



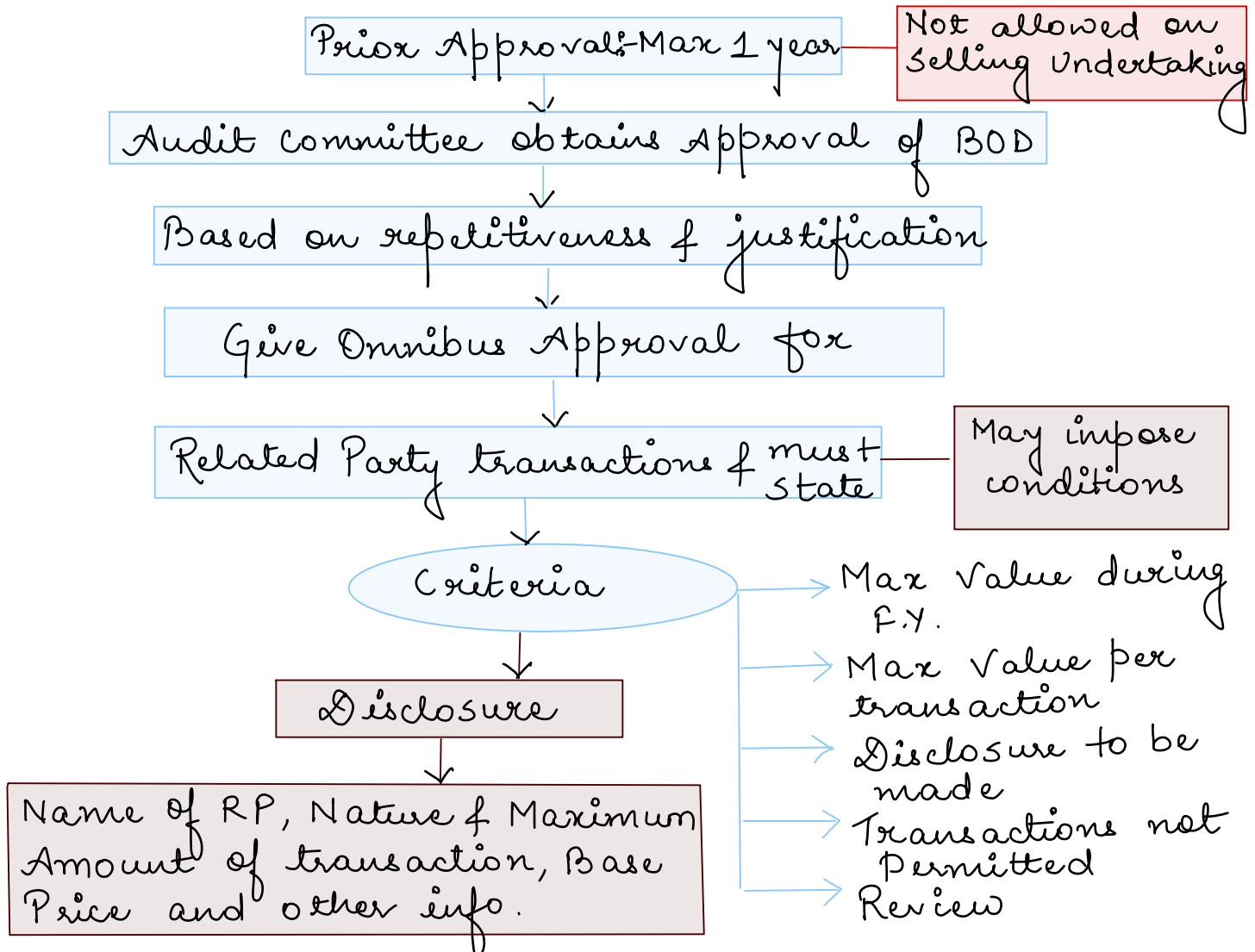
Contravention

Contravention of Section 177

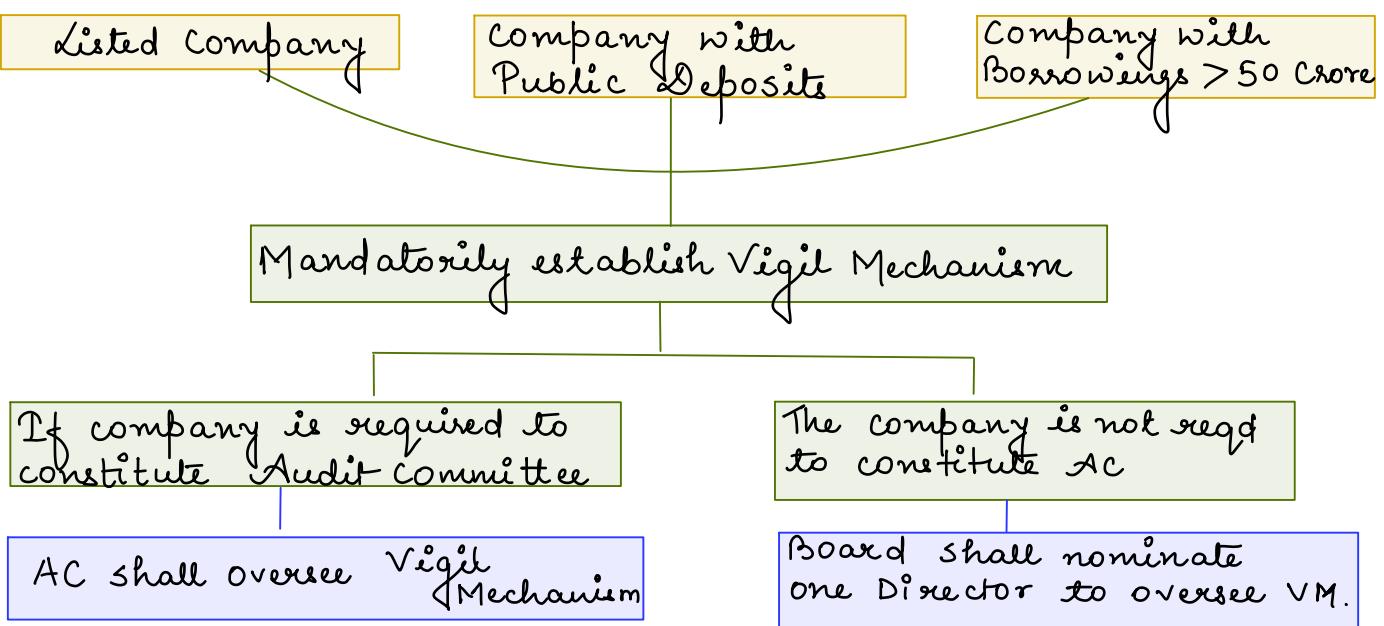


This is for contravening sec. 177 and 178 and penalty is given u/s 178 only.

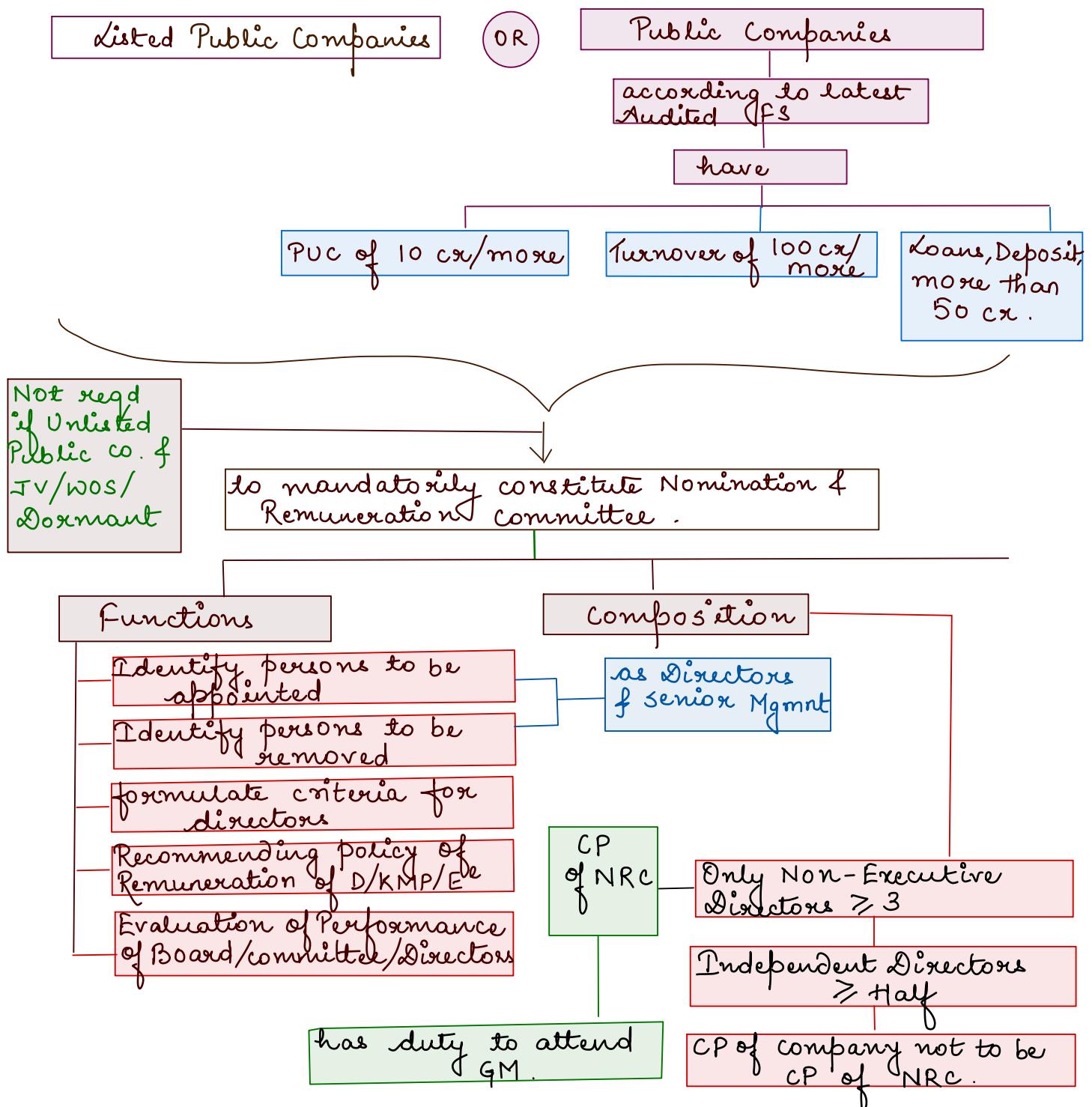
Omnibus Approval for Related Party Transaction [Rule 6A]



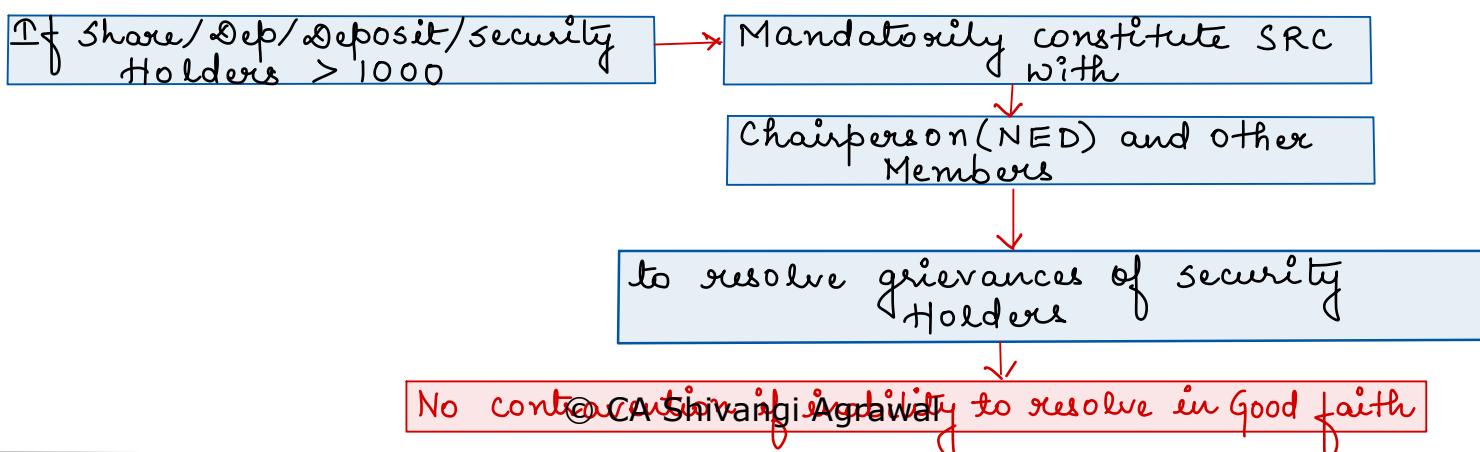
Vigil Mechanism [Section 177]

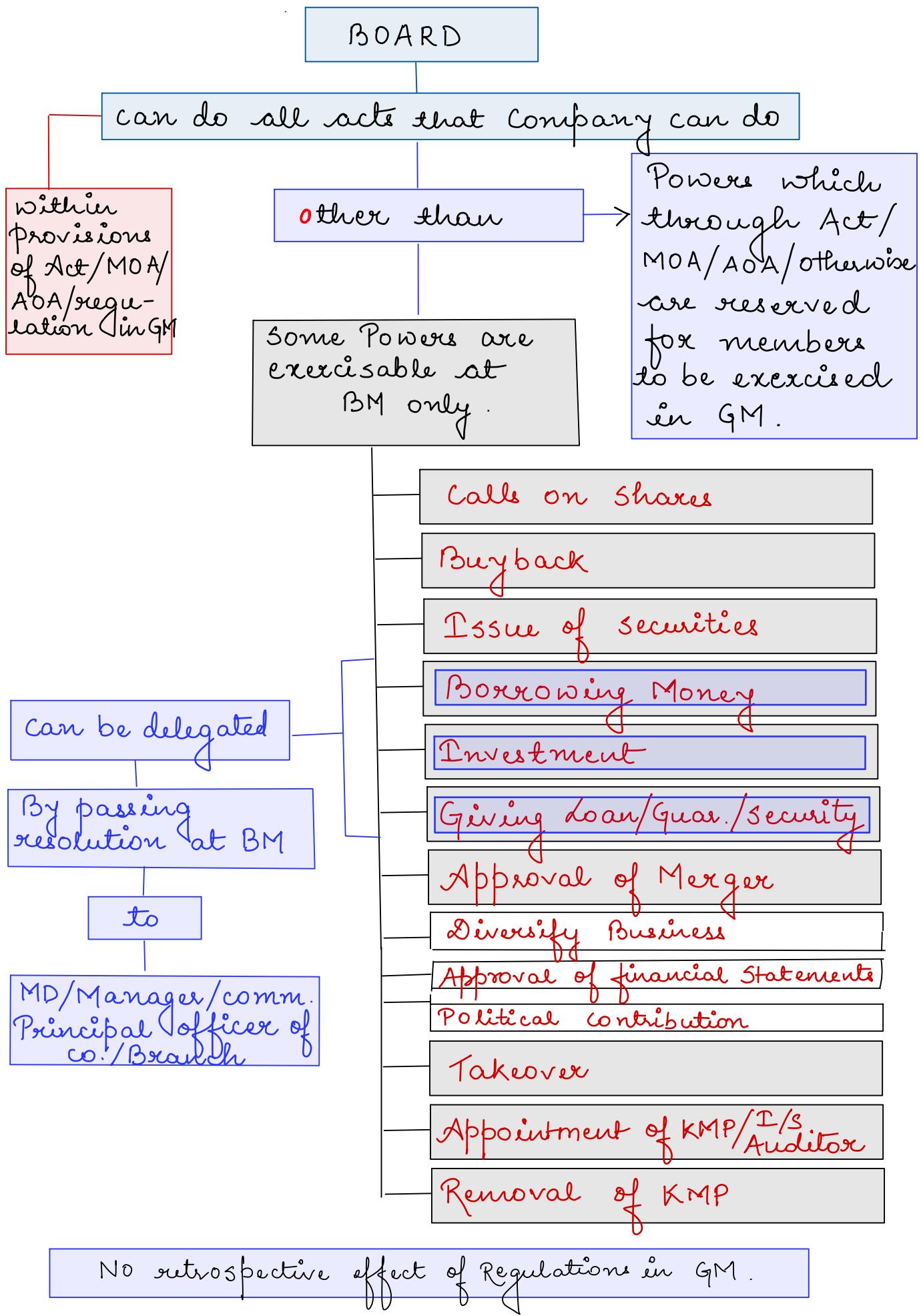


Nomination and Remuneration Committee [Section 178]

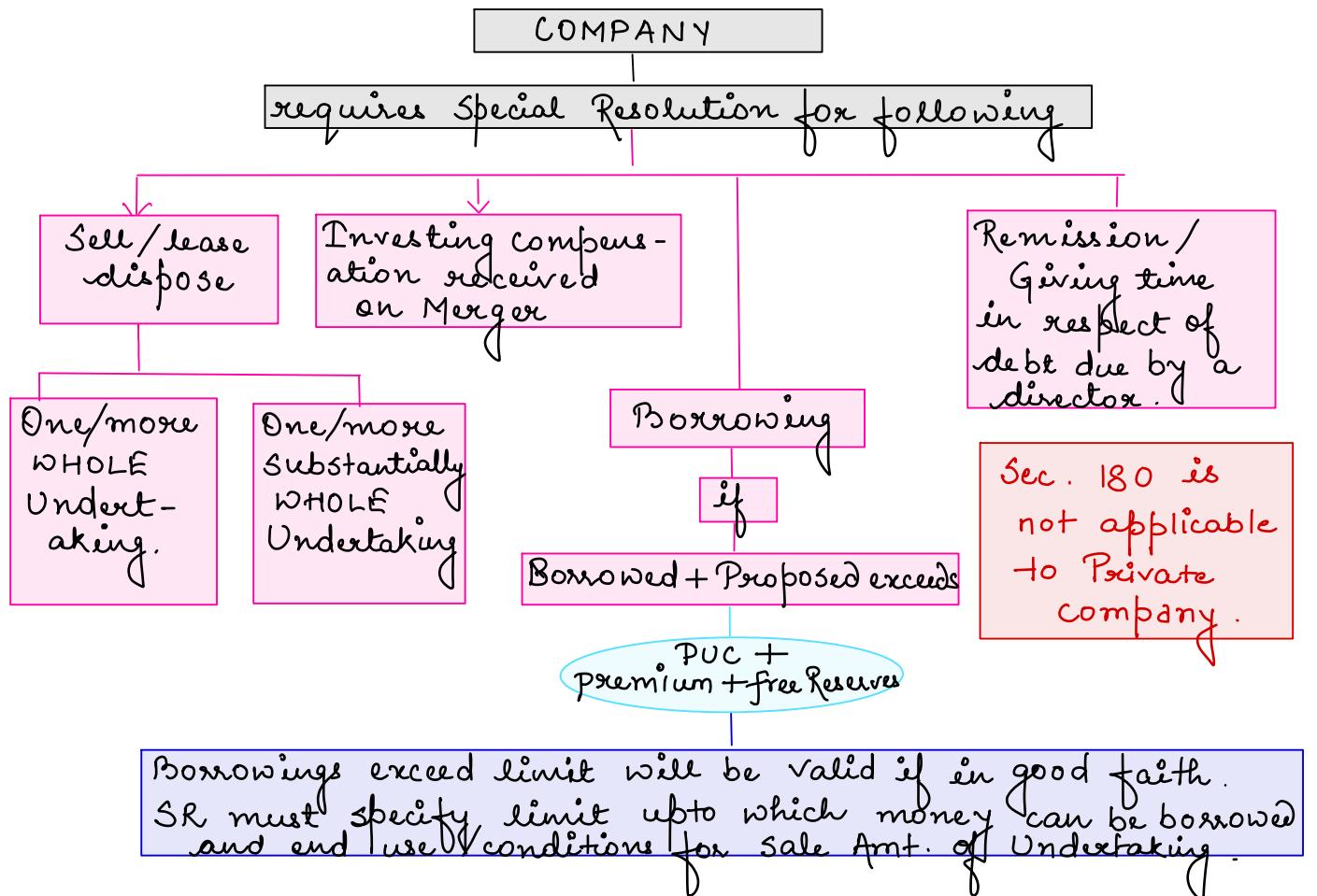


Stakeholders Relationship Committee [Section 178]

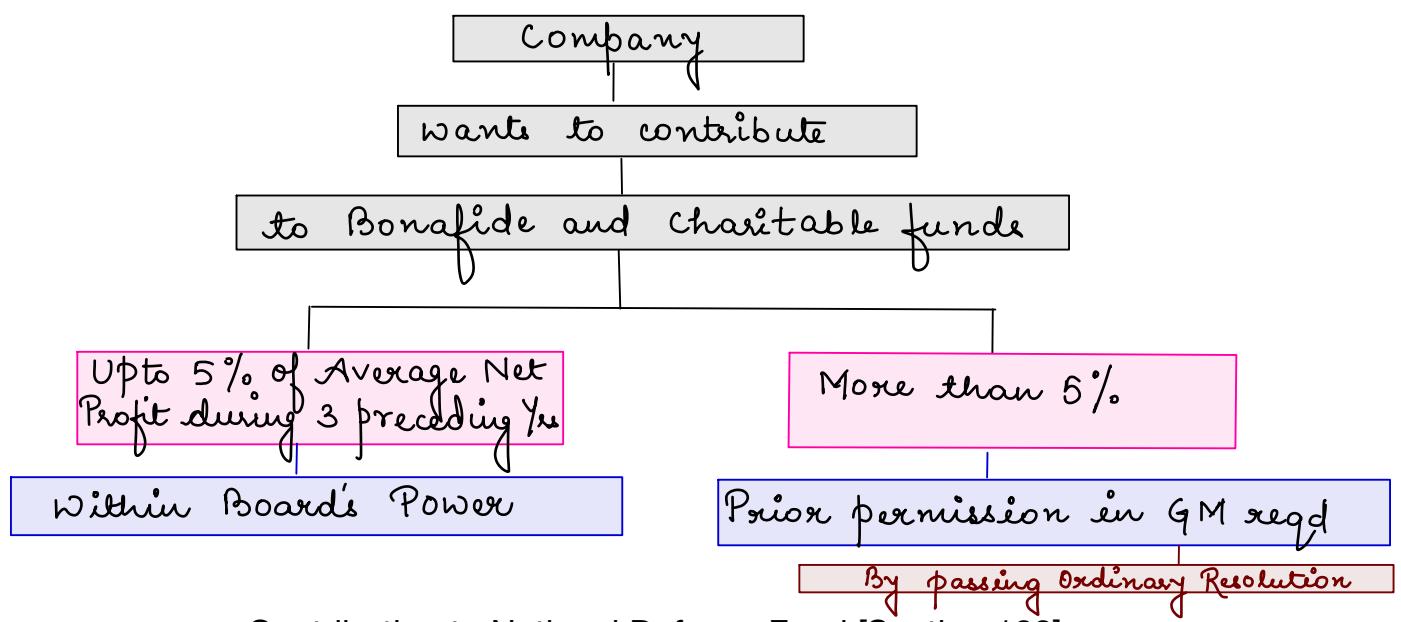




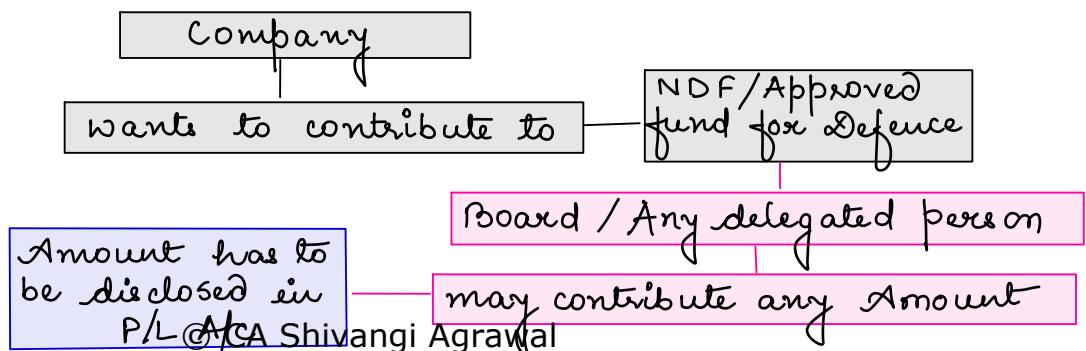
Restrictions on Powers of Board [Section 180]



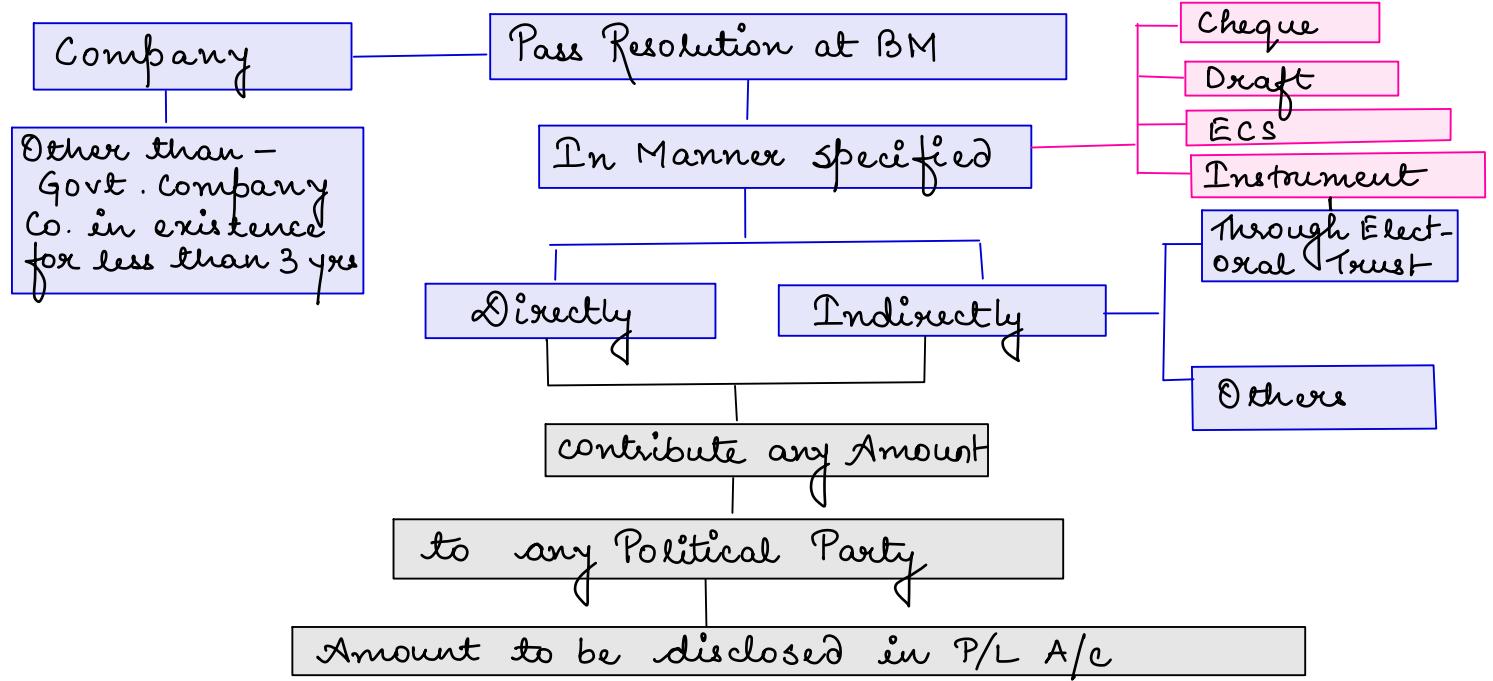
Company to contribute to Bonafide and Charitable Funds [Section 181]



Contribution to National Defence Fund [Section 183]

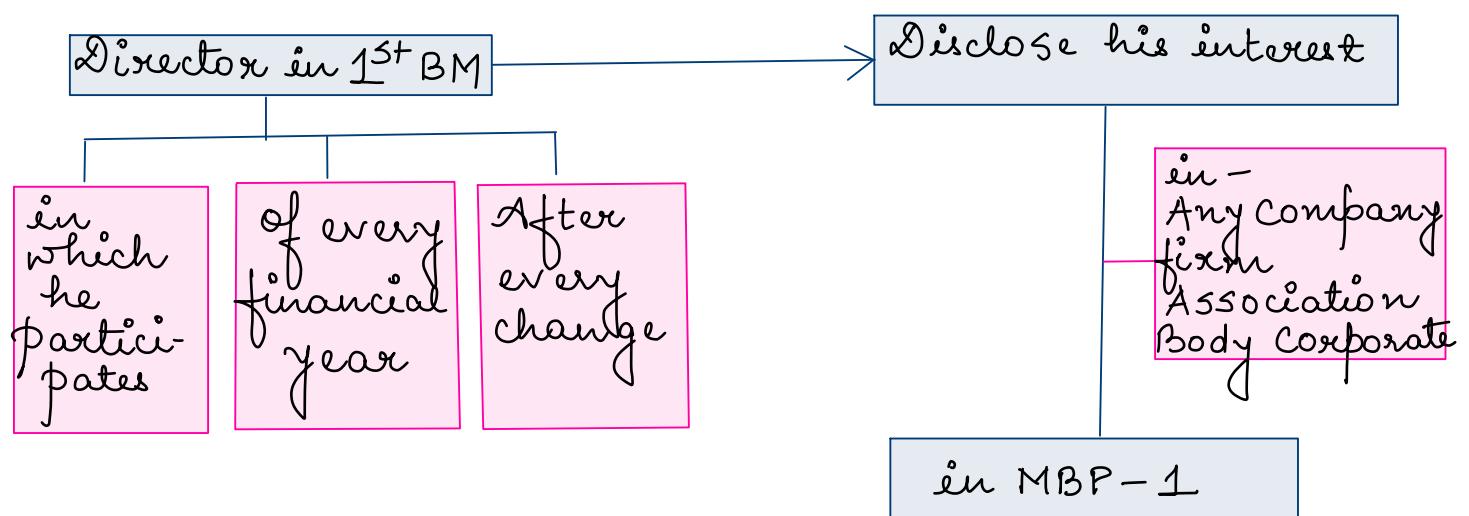


Prohibition & Restriction regarding Political Contribution [Section 182]

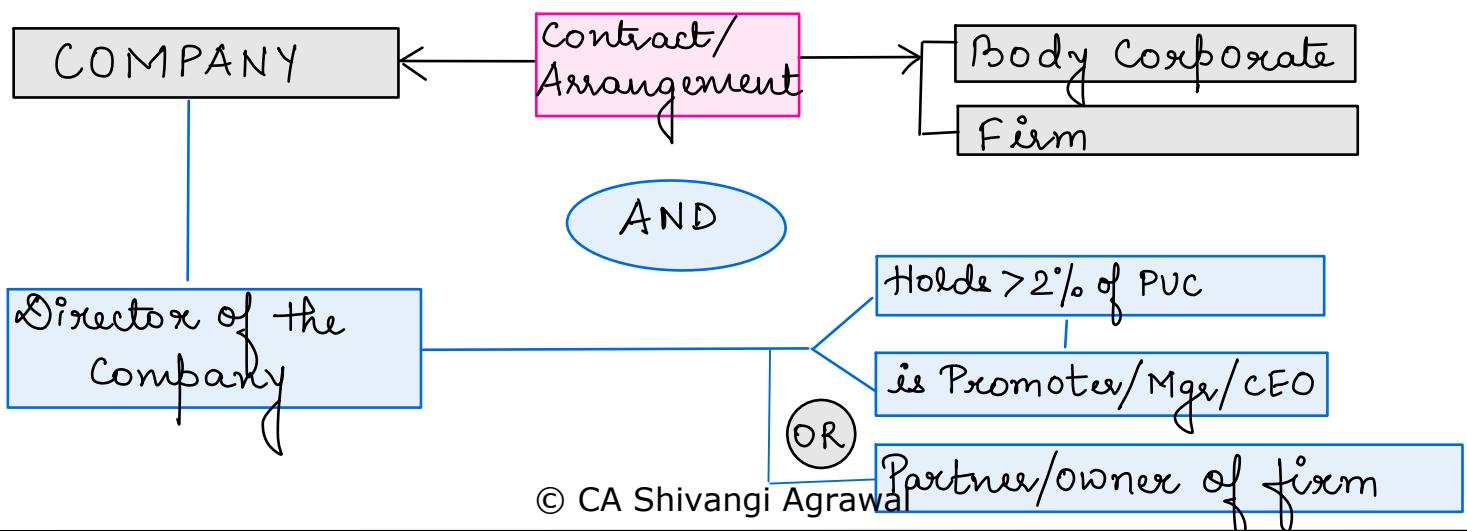


If contravention :- Company :- fine upto 5 times of contribution.
 officer in default :- Imprisonment - upto 6 months
 fine upto 5 times of contribution.

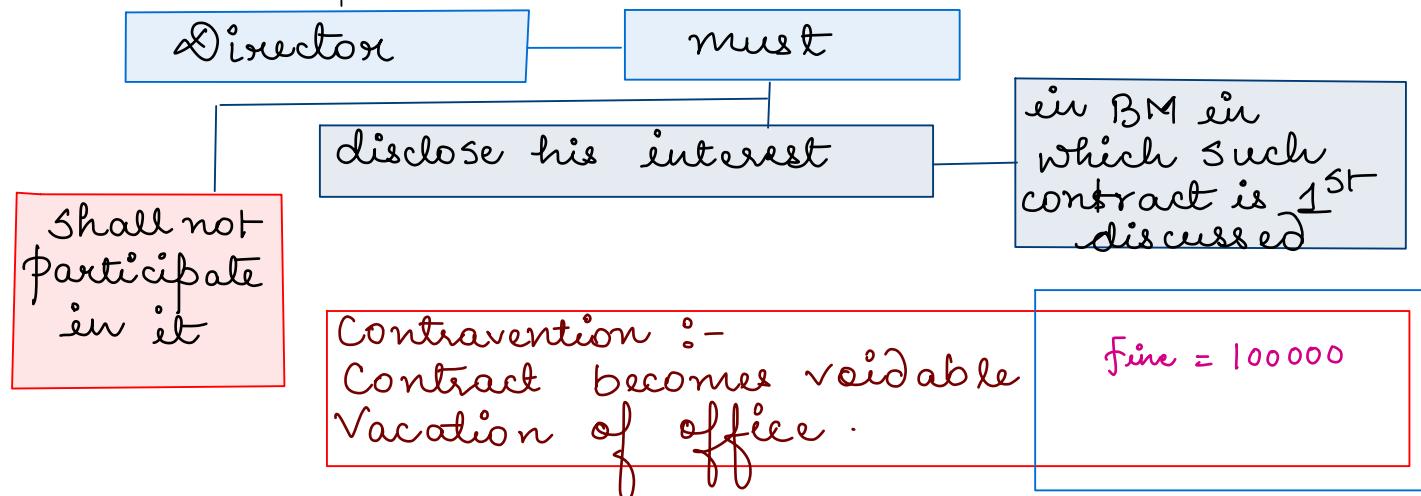
Disclosure of Interest by Director [Section 184]



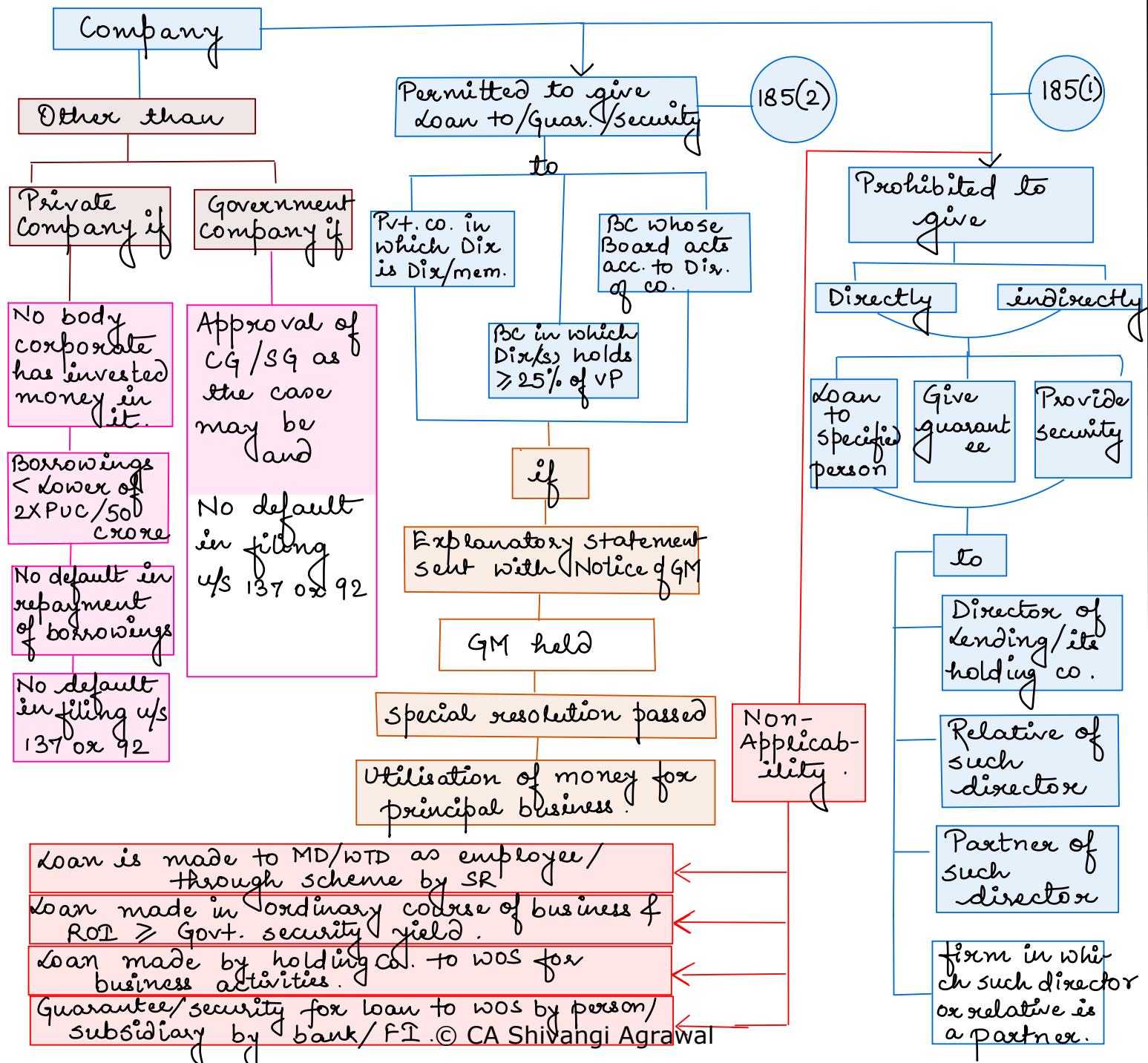
Specific Disclosure u/s 184(2)



In case above situation arises,

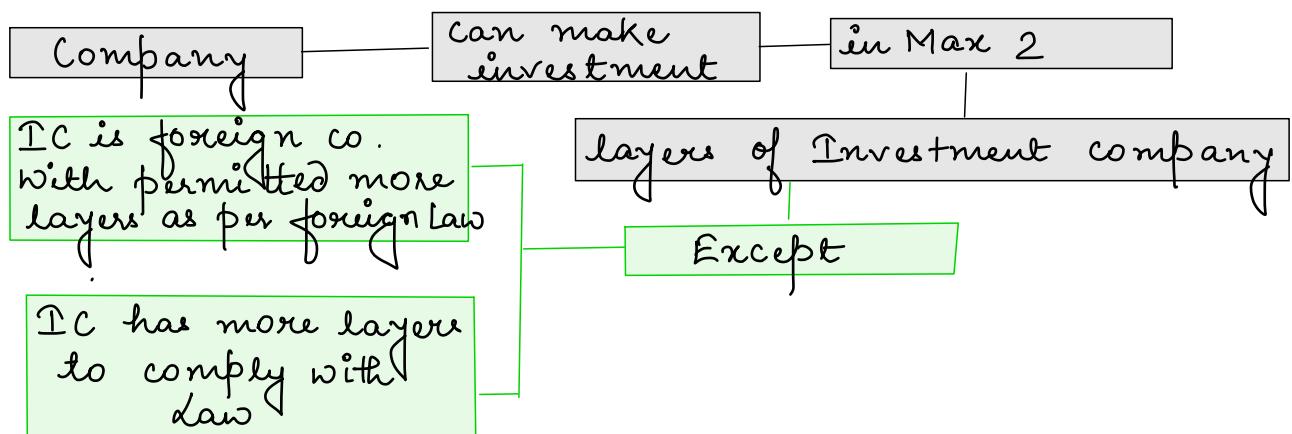


Loan to Directors etc [Section 185]

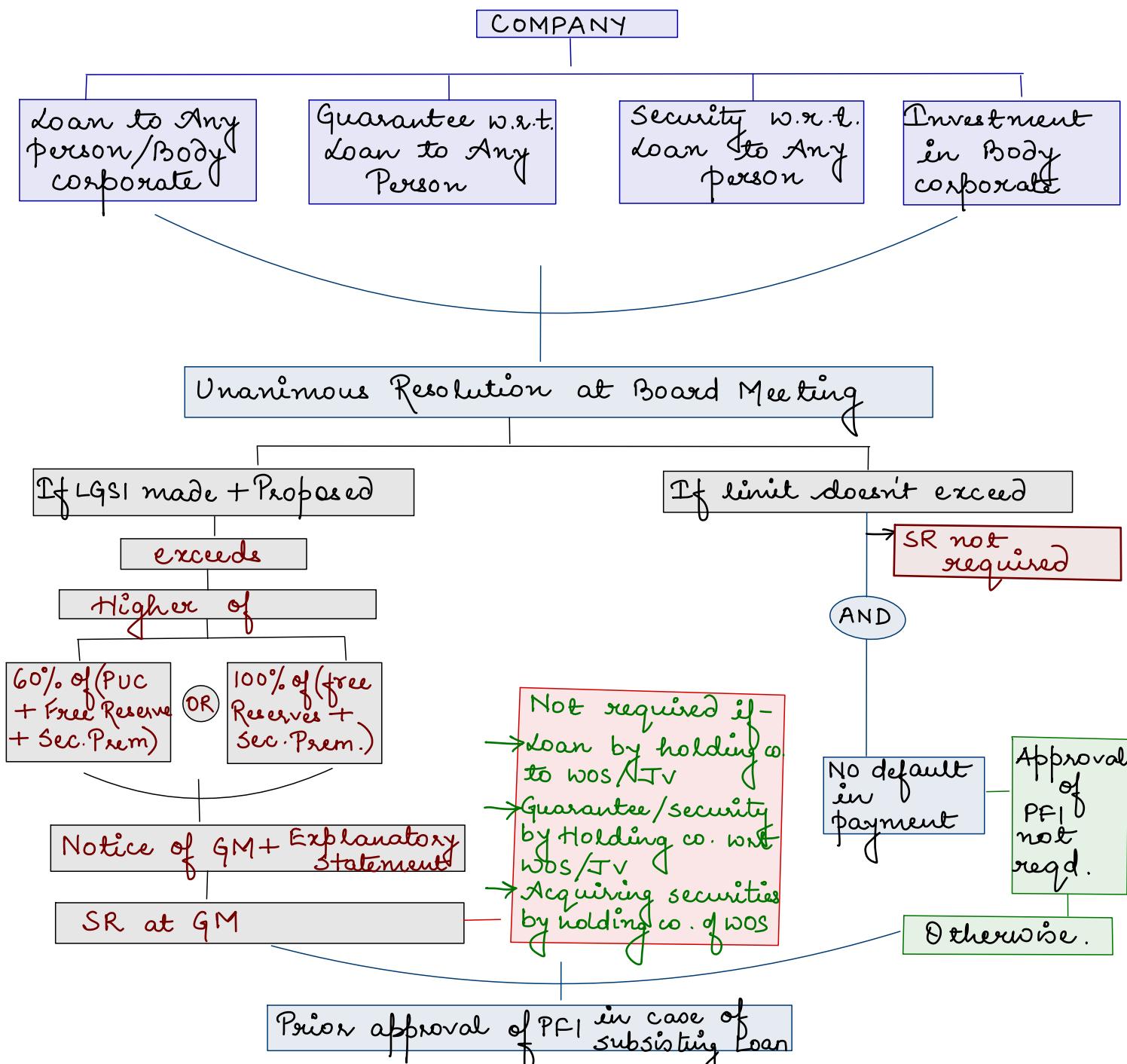


Loans, Investments etc by a Company [Section 186]

Restriction on layers of Investment Companies [Section 186(1)]



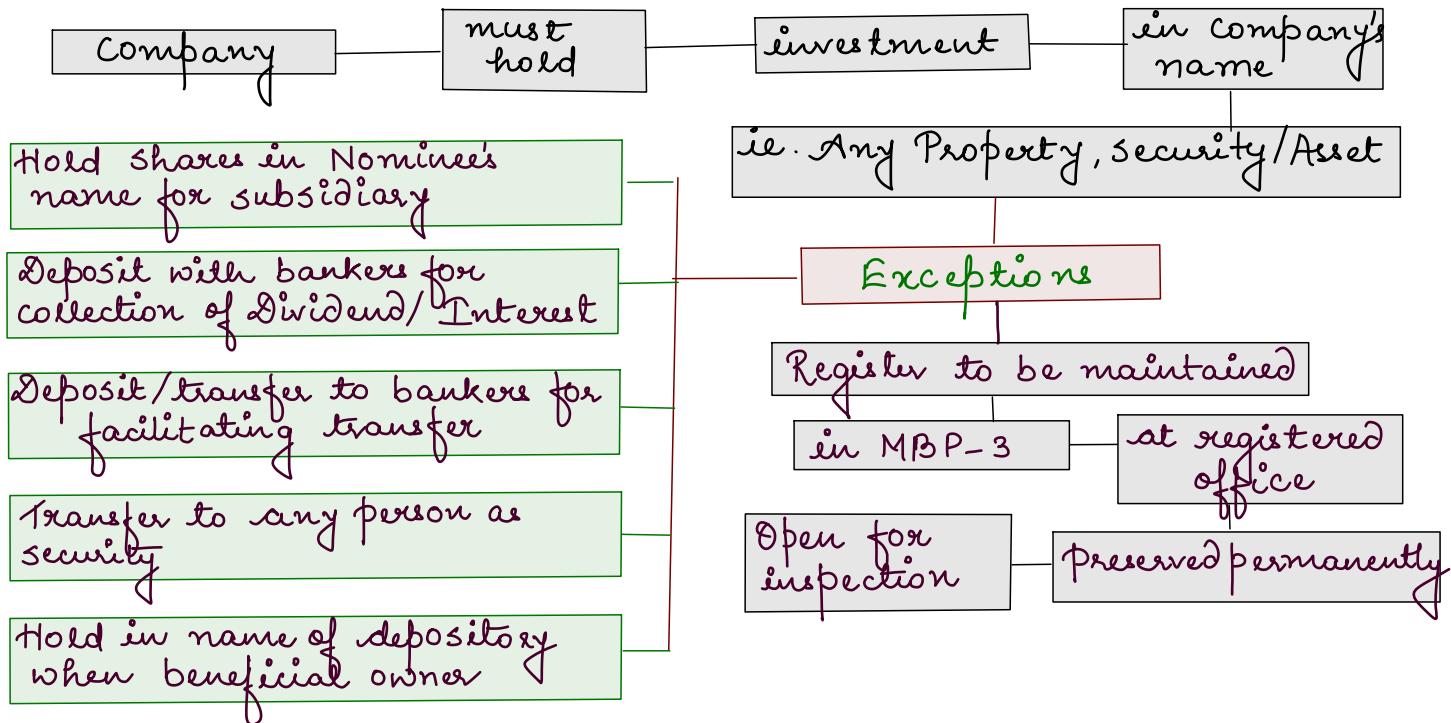
Other Provisions of Section 186



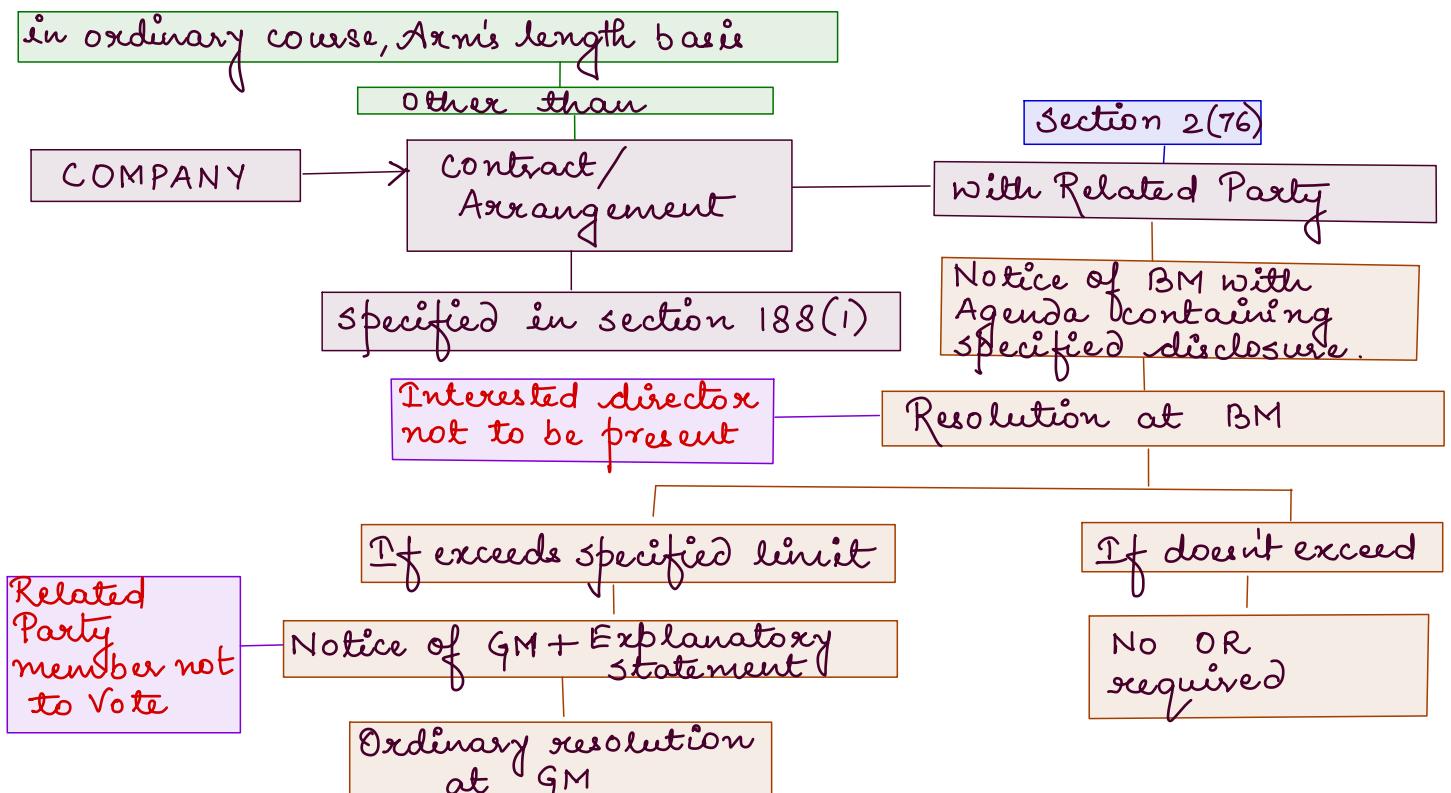
Other Requirements :-

- ⇒ Rate of interest on loan ≥ Yield of Govt. security
- ⇒ No subsisting default w.r.t. deposits
- ⇒ Disclosure of full particulars in financial statement.

Investment of Companies to be held in its own name [Section 187]



Related Party Transactions [Section 188]



Specified Contracts u/s 188(1) to which section 188 applies

Sale/purchase/
supply of goods/
materials
(with/w/o Agent)

Buying/selling/
disposing
Property
(with/w/o Agent)

Leasing of
any
Property

Availing/
rendering of
Services

Appointment
at OPP in
company/Associate/
subsidiary

Underwriting
of
securities.

Limit of above Specified Contracts

Prior Approval by OR in the following cases :-

Sale/purchase
of goods/
material

Buying/selling
disposing
property

Leasing of
any property

↓
 \geq lower of
10% of T/O or
100 crore

↓
 \geq lower of
10% of Net worth or
100 crore

↓
 \geq lower of -
10% of T/O or
10% of NW or
100 crore.

Availing/
rendering of
Services

Appointment
of
OPP

Underwriting
of
securities

↓
 \geq lower of
10% of T/O or
50 crore

↓
exceeds 2.5 lakhs
per month

↓
exceeds 1% of
Net worth

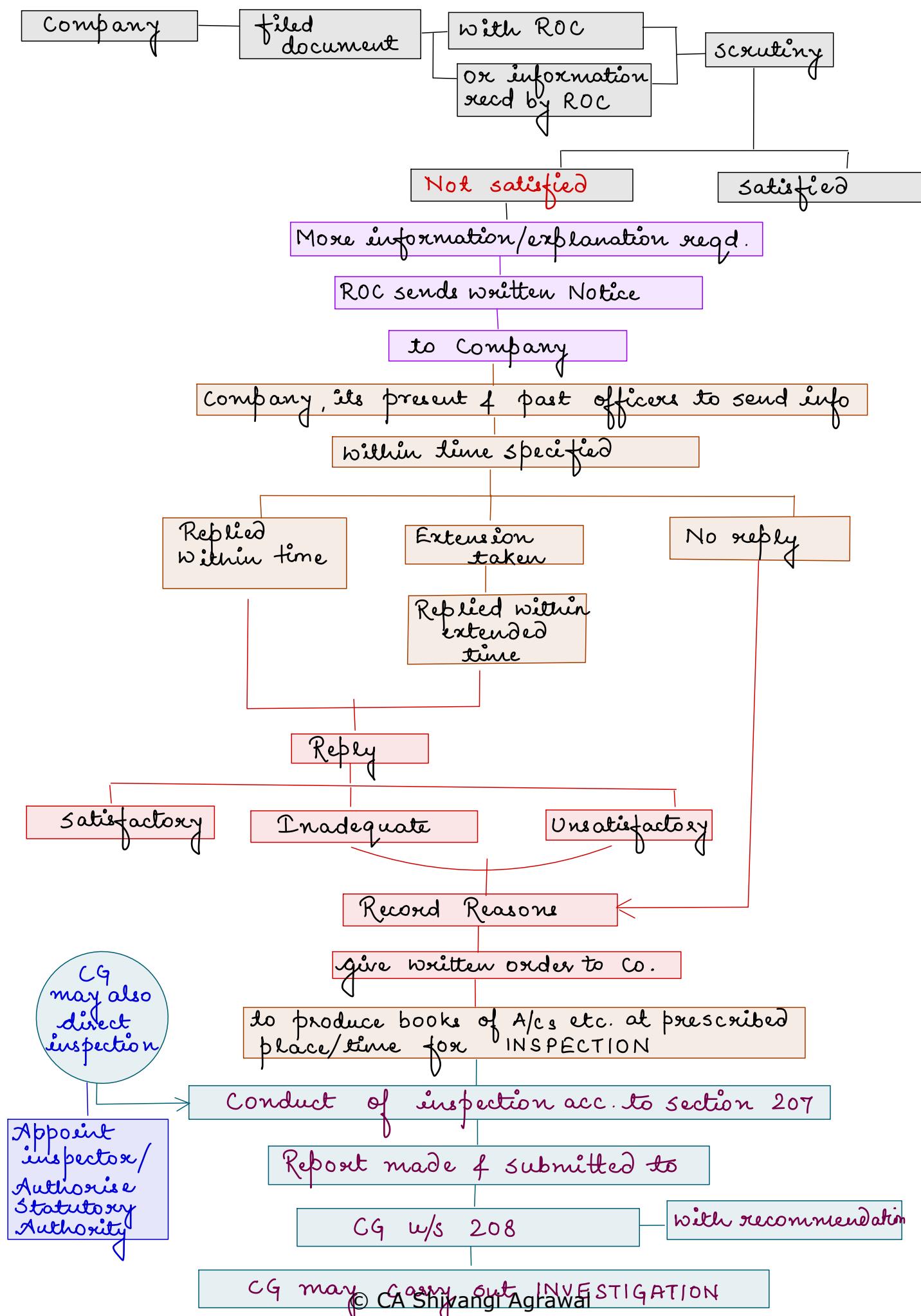
If contract entered without Board and/or Member's Approval,
it may be ratified within 3 months by them.

If not ratified -

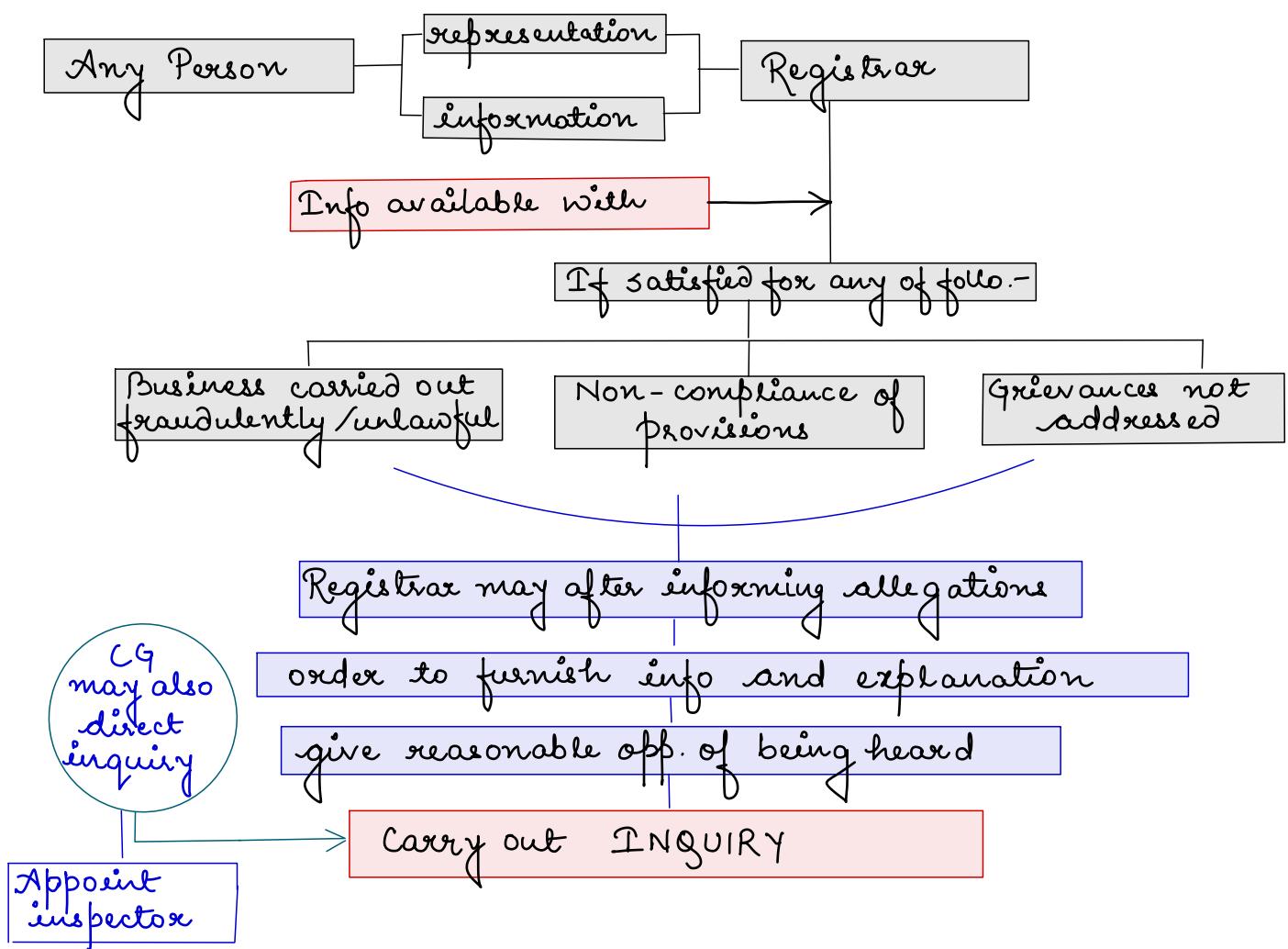
Voidable at the option of Board/members as the case may be
AND

Directors concerned shall indemnify company against loss.

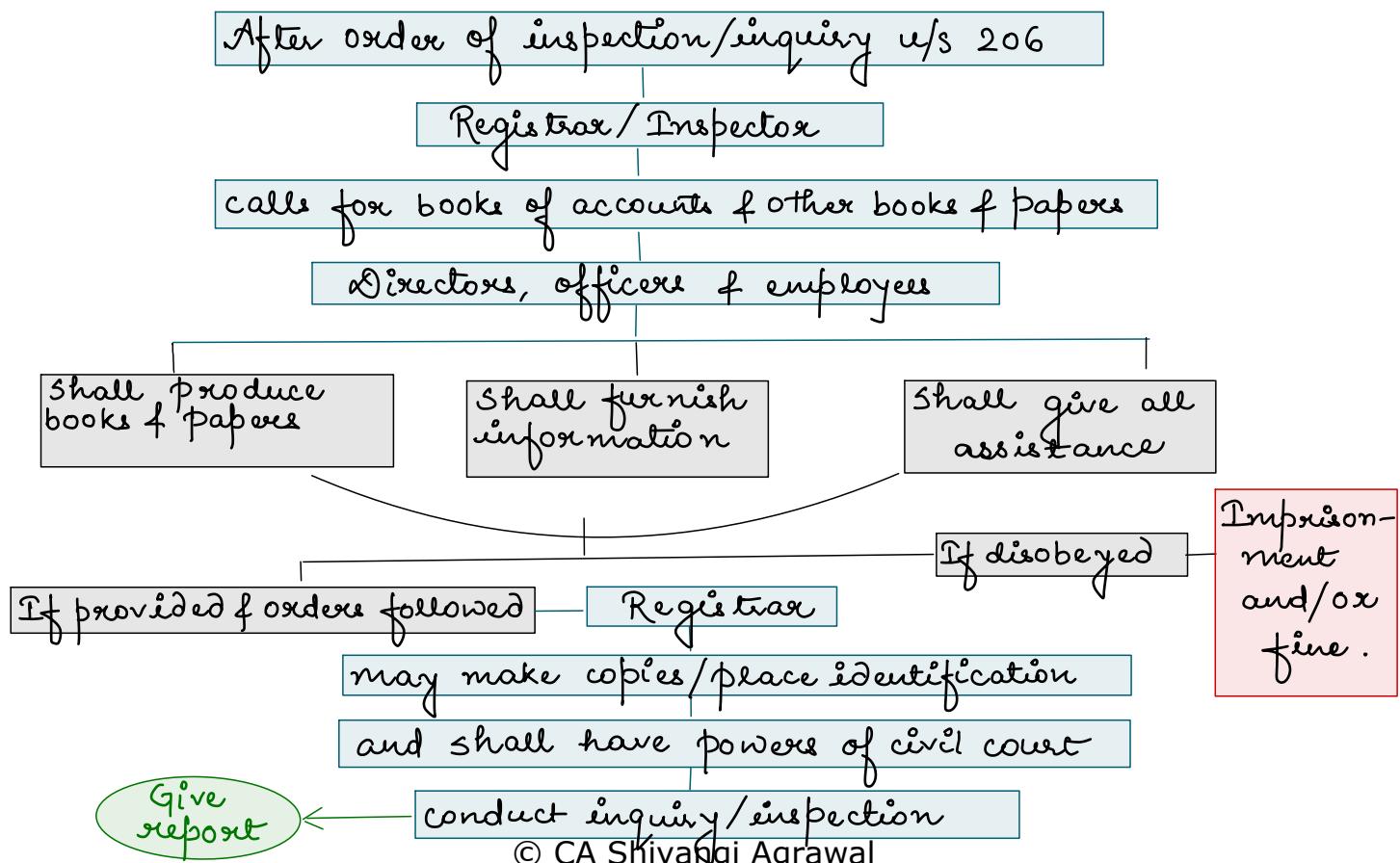
Power of ROC to call for Info, Inspect Books [Section 206]



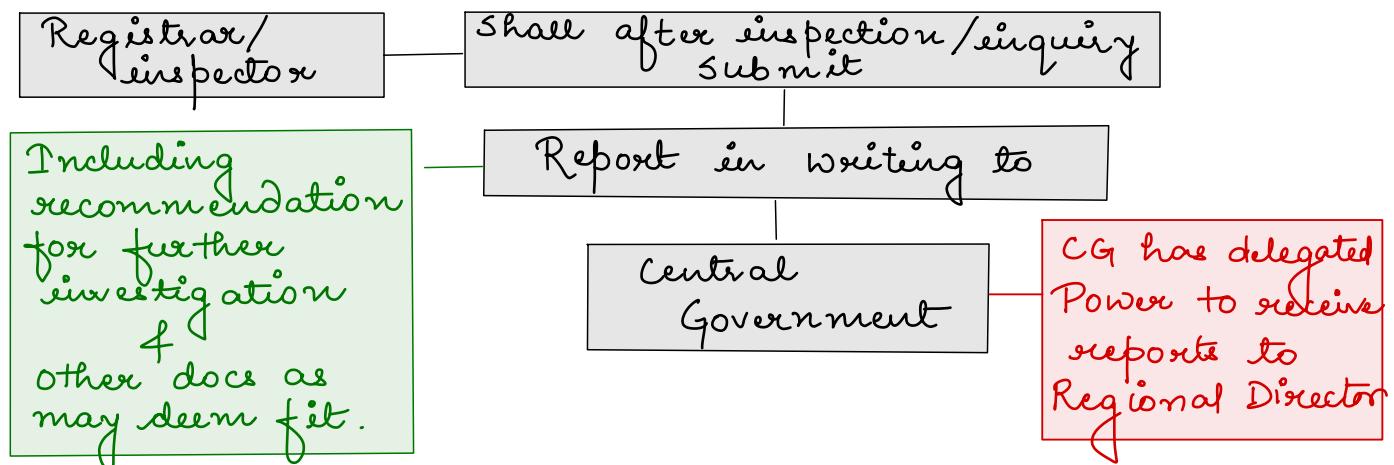
Power of ROC to call for Info, Conduct Inquiries [Section 206(4)].



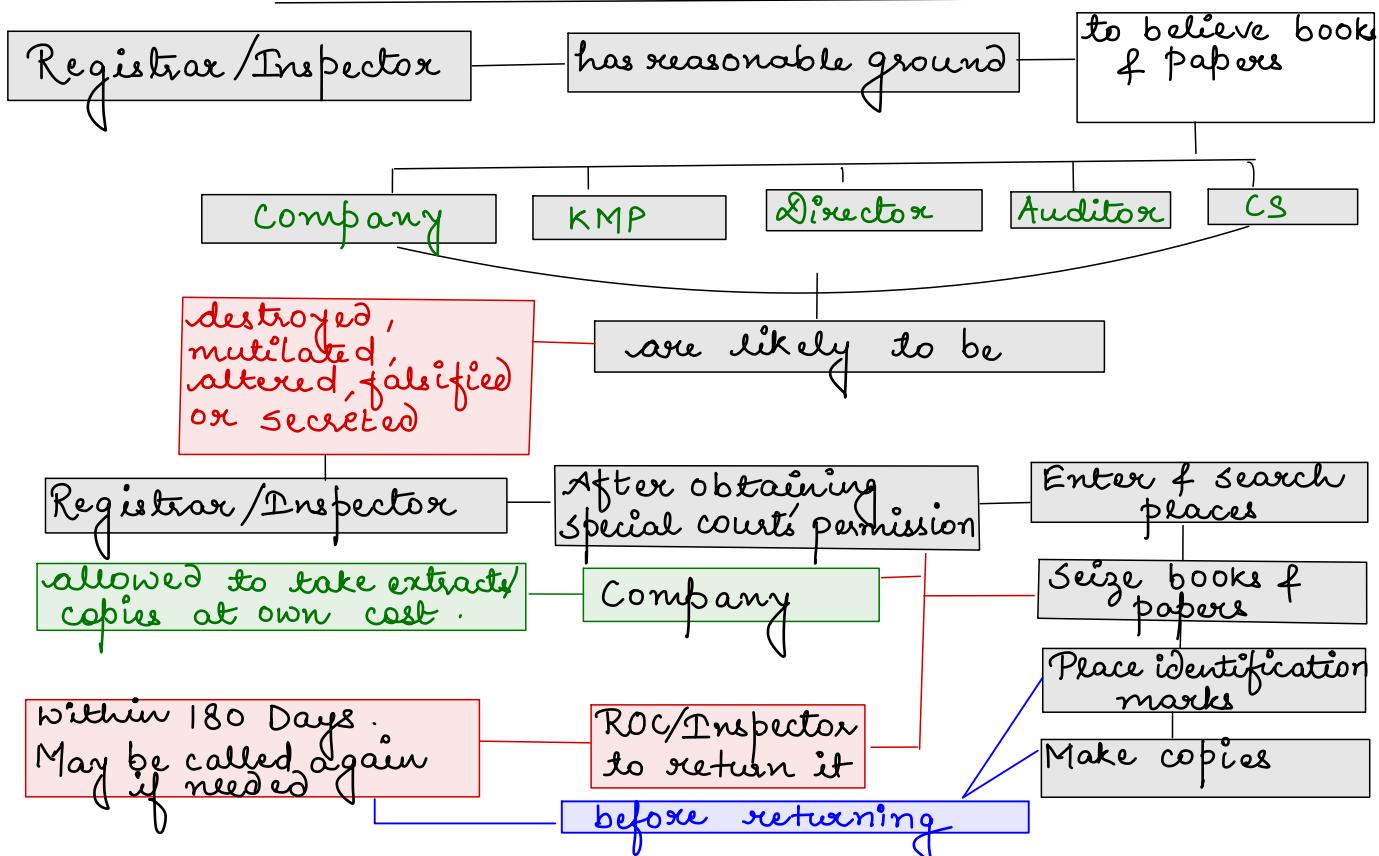
Conduct of Inspection and Inquiry [Section 207]



Report after Inquiry/ Inspection [Section 208]

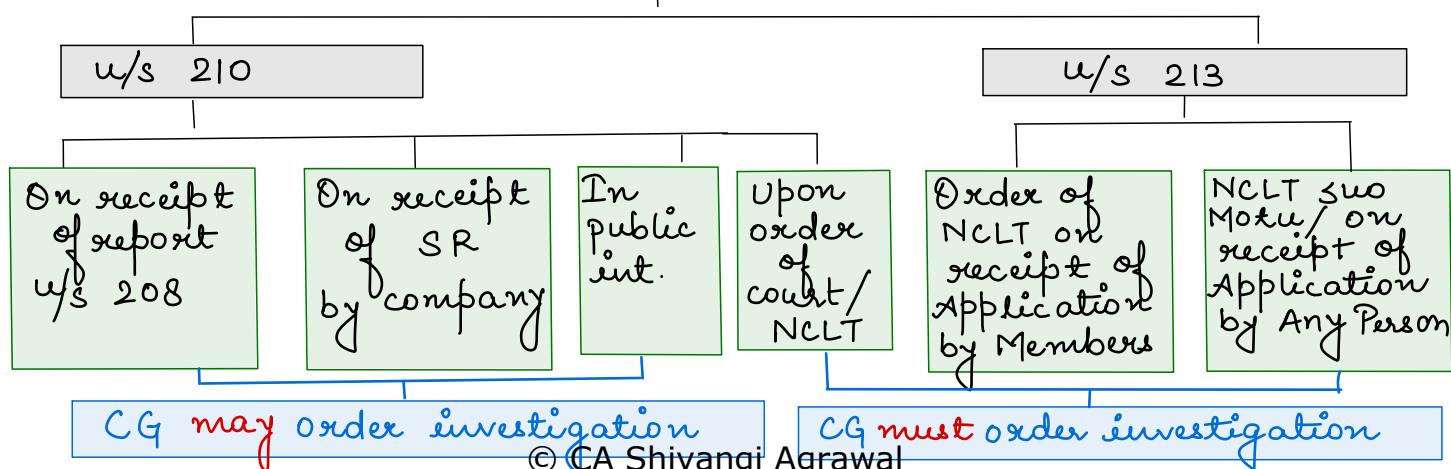


Search and Seizure [Section 209]

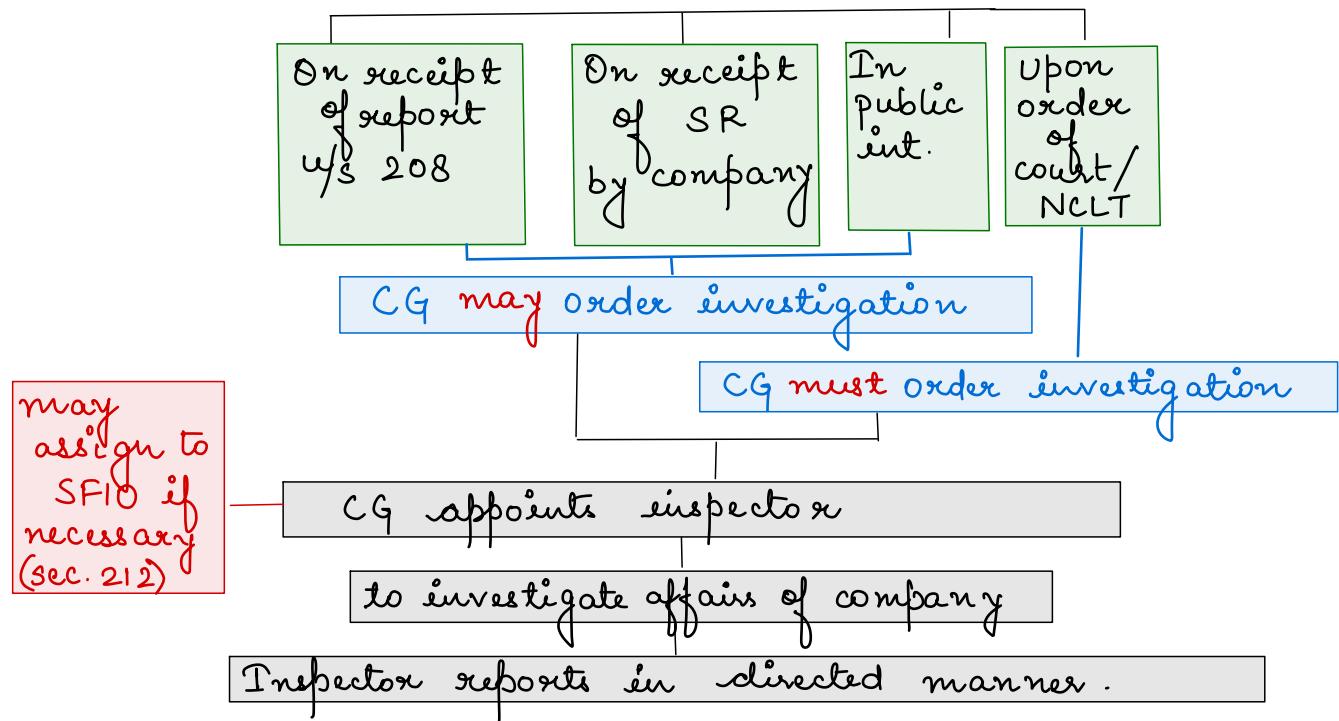


Investigation into affairs of the Company

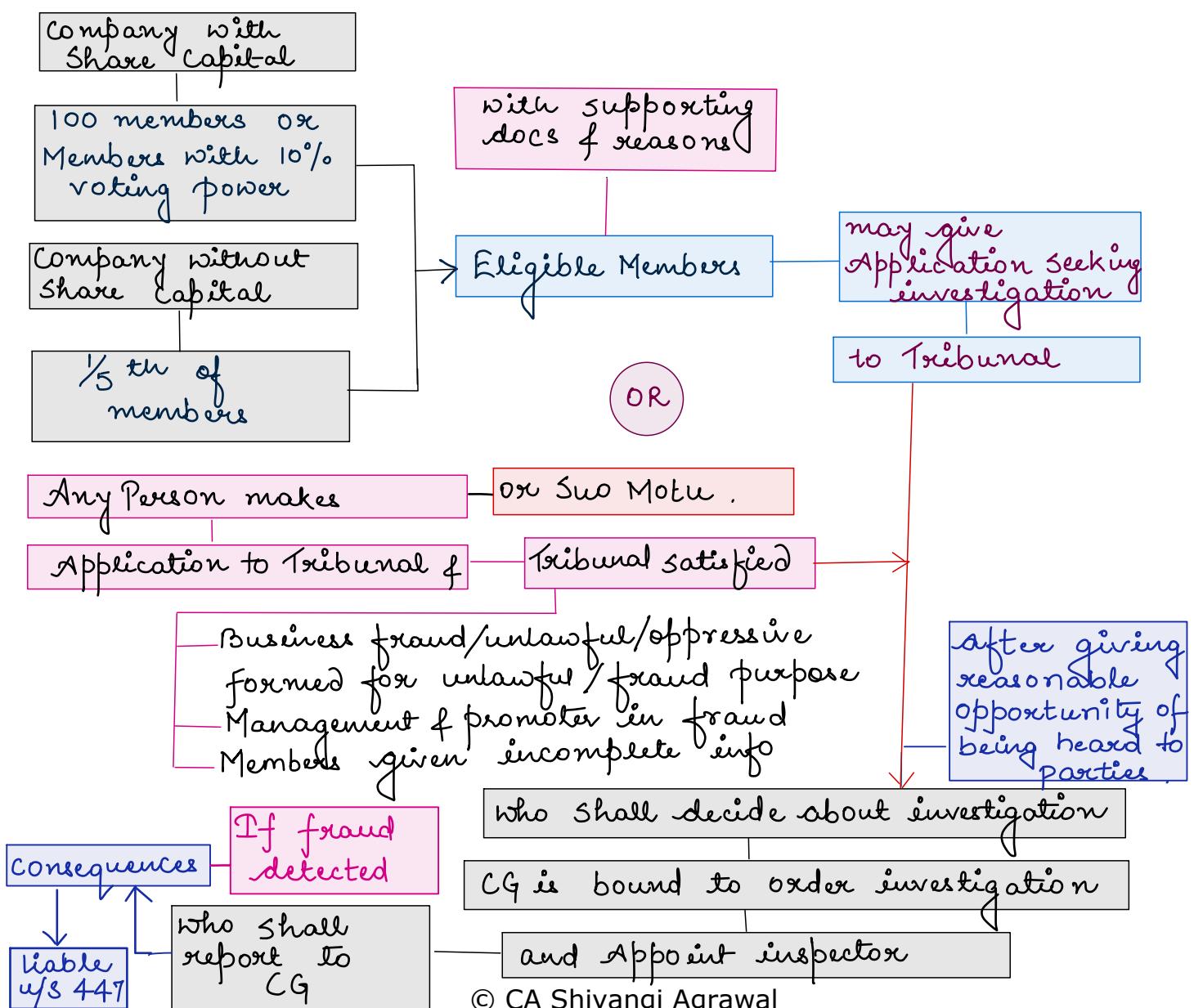
Grounds of Investigation



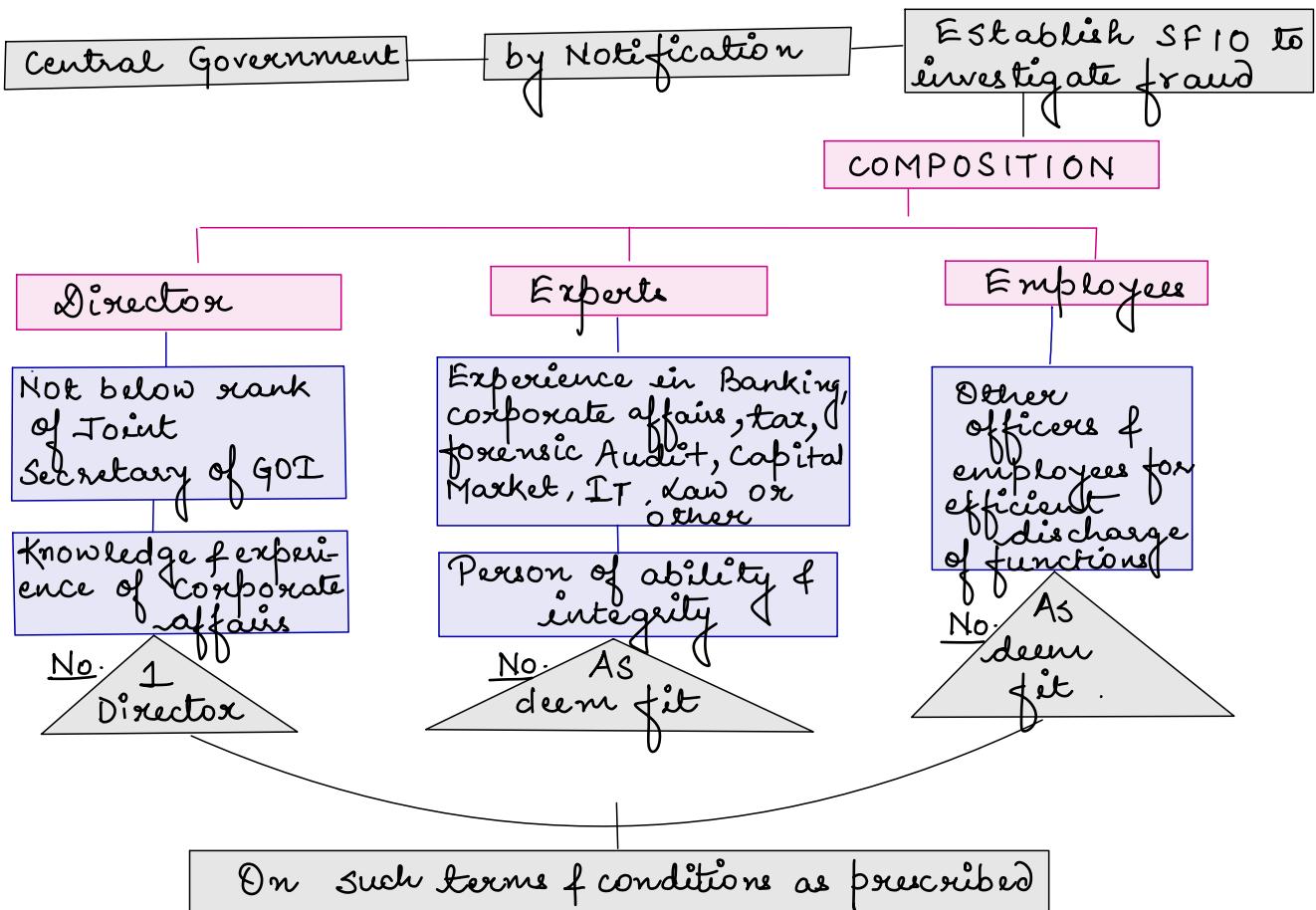
Investigation into affairs of Company [Section 210]



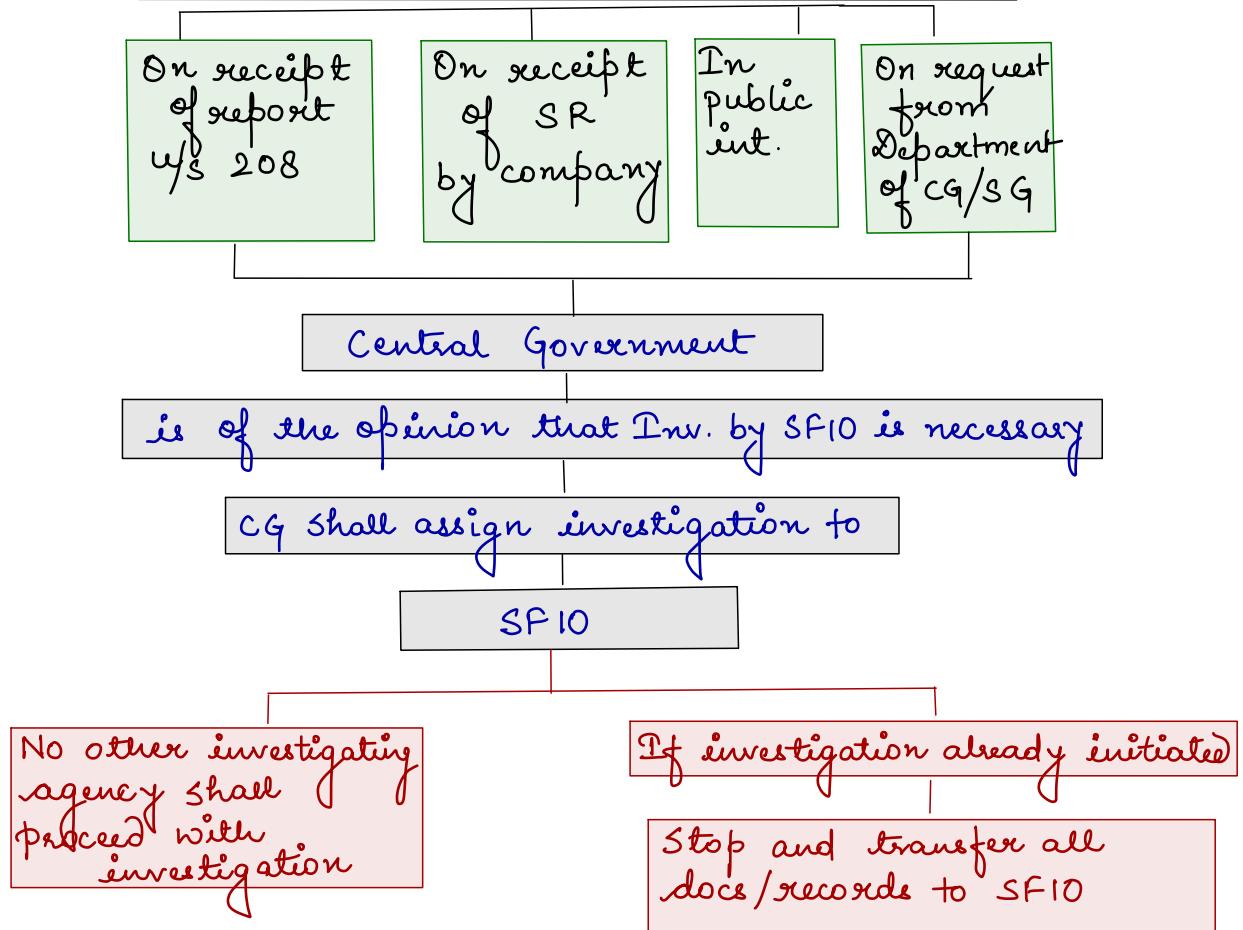
Investigation into affairs of Company on order of Tribunal [Section 213]



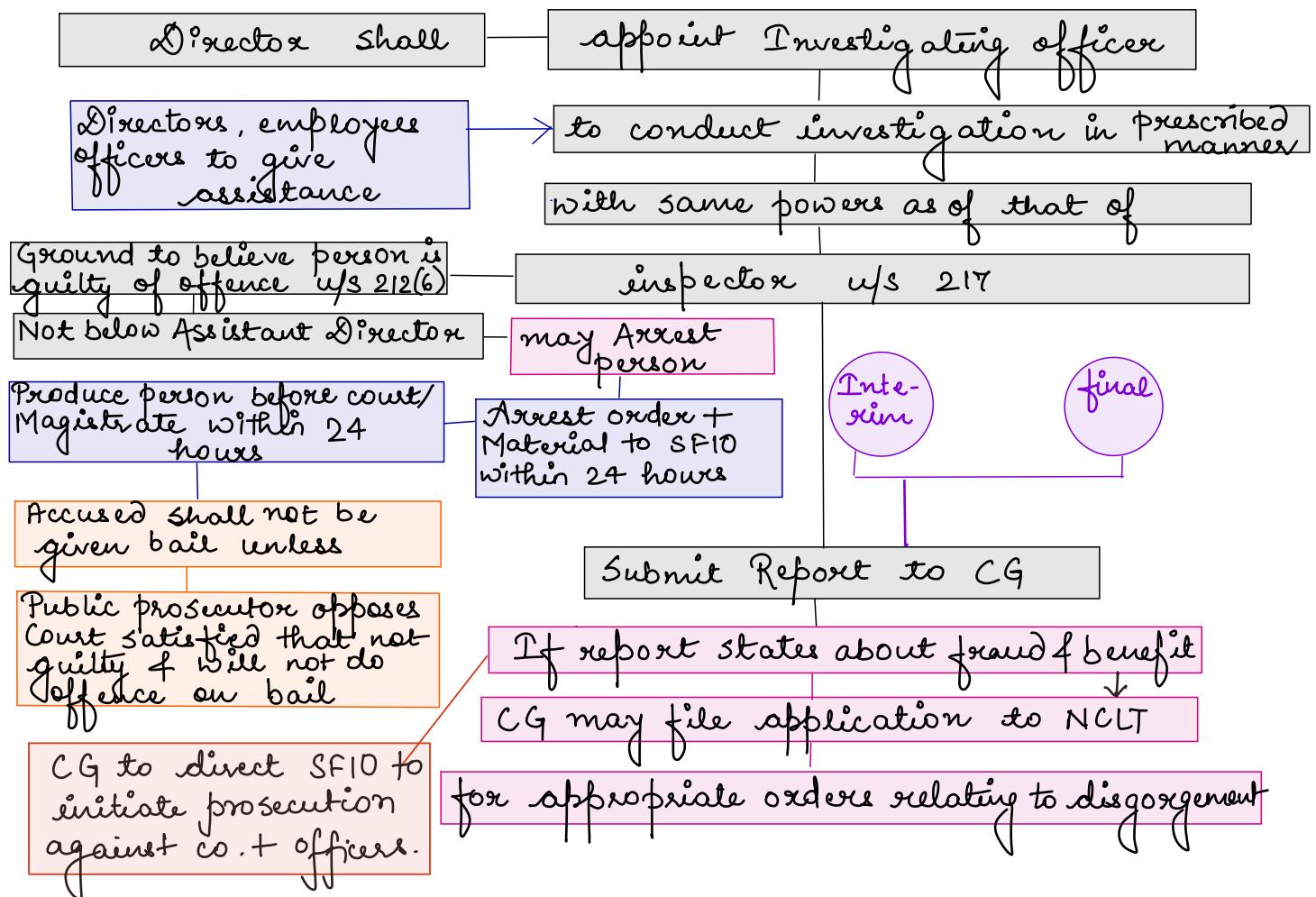
Establishment of SFIO [Section 211]



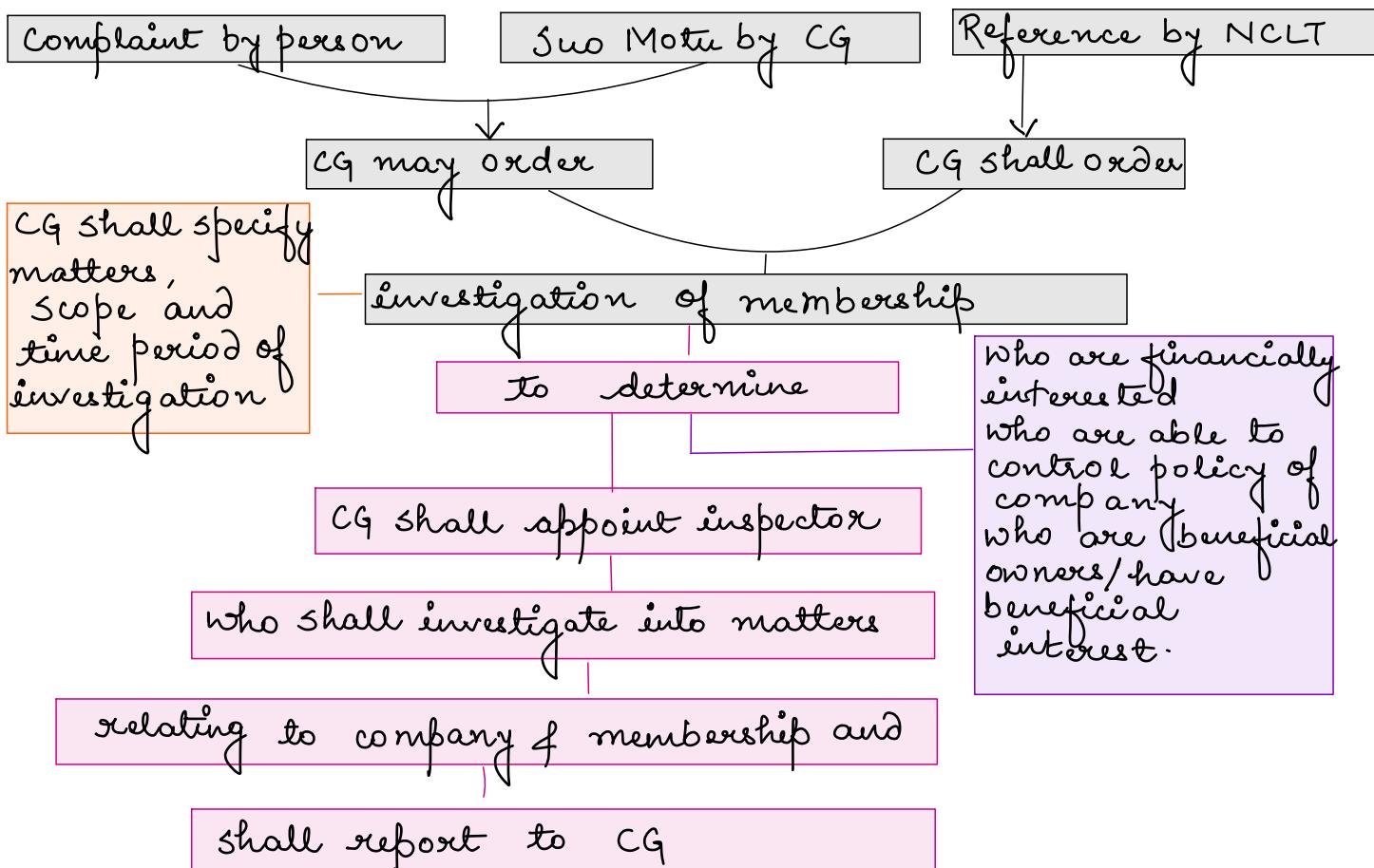
Investigation into affairs by SFIO [Section 212]



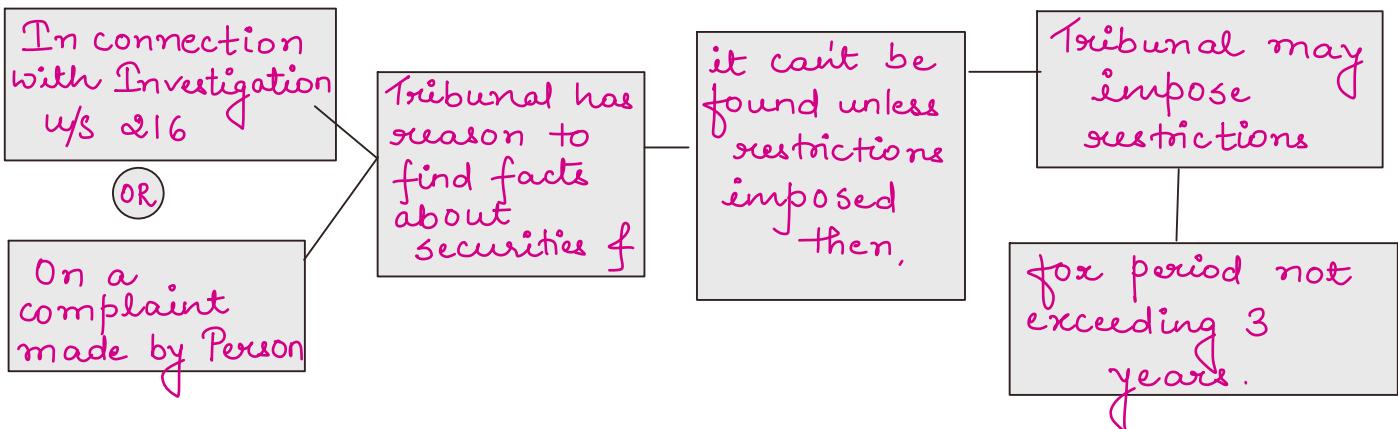
Procedure to be followed by SFIO



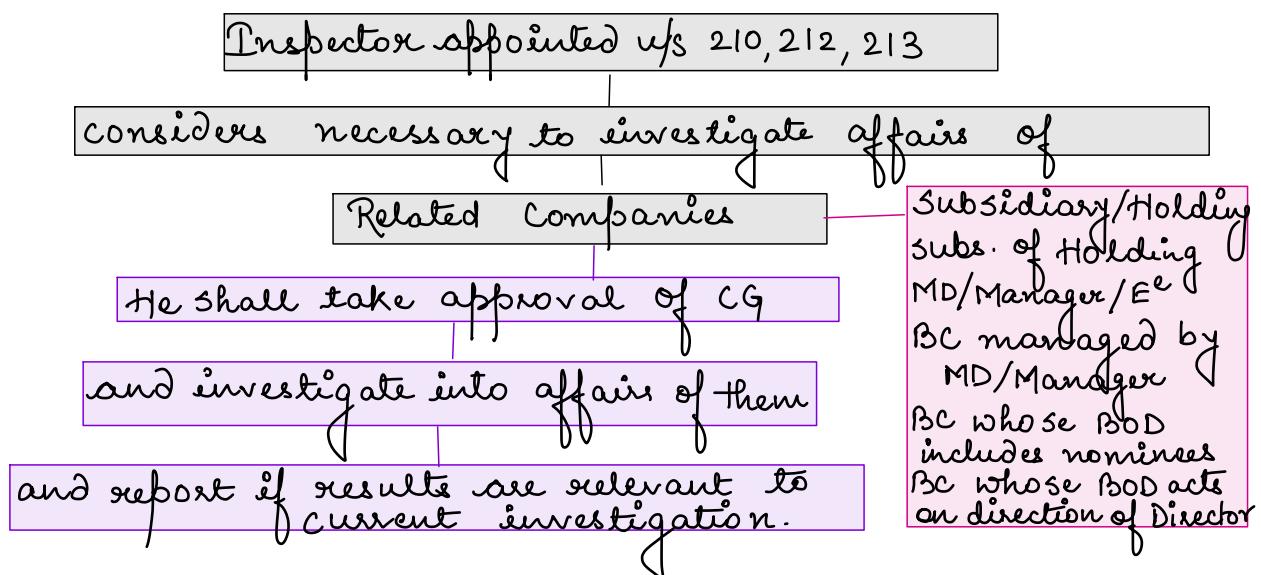
Investigation of Membership of a Company [Section 216]



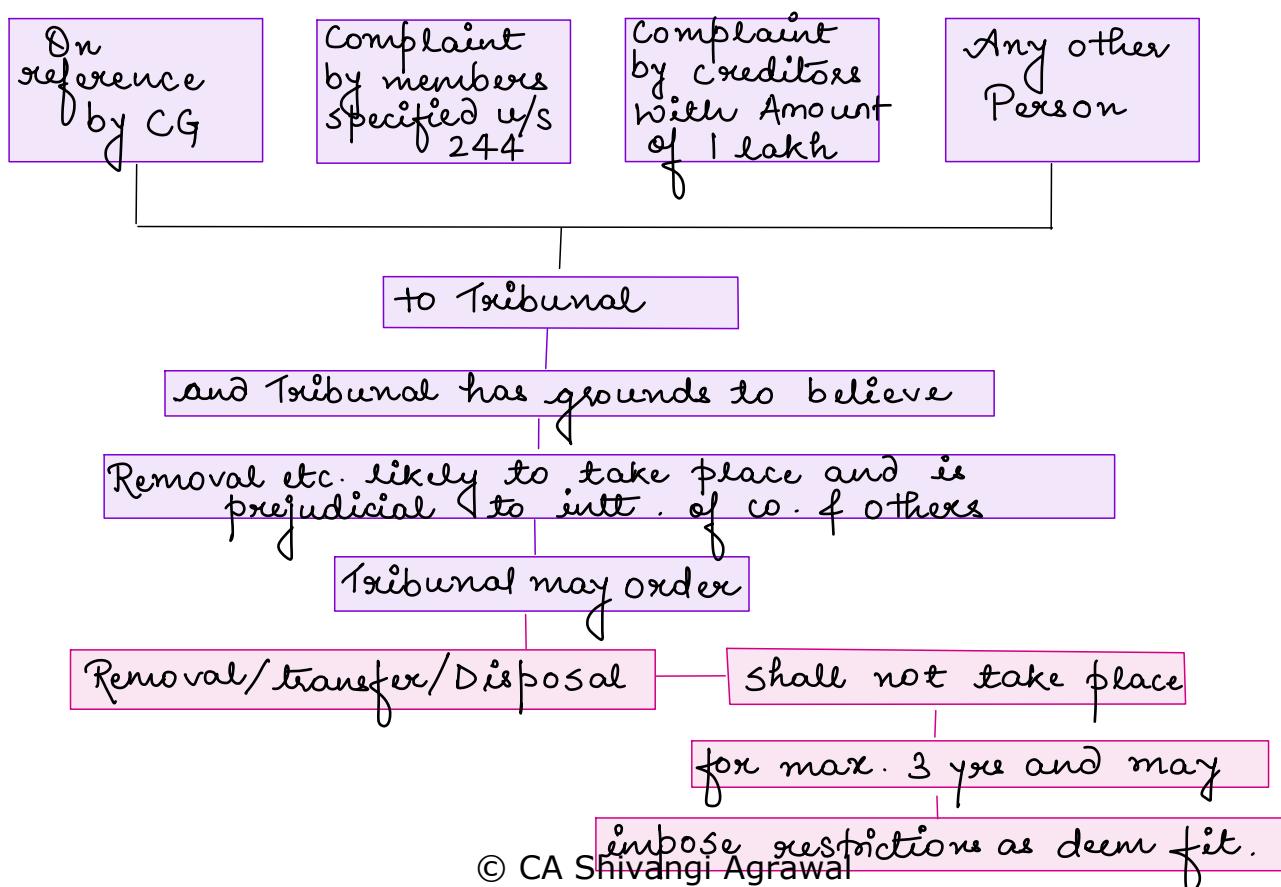
Imposition of Restrictions upon Securities (Section 222)



Powers of Inspector to investigate affairs of Related Companies [Section 219]



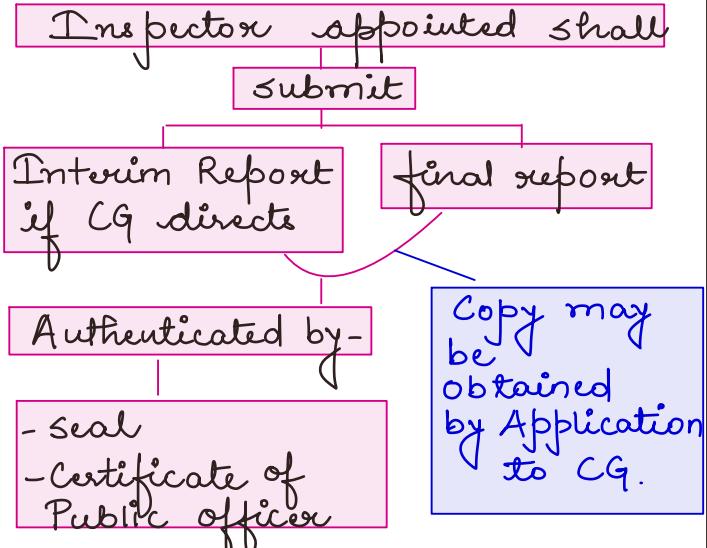
Freezing of Assets of a Company [Section 221]



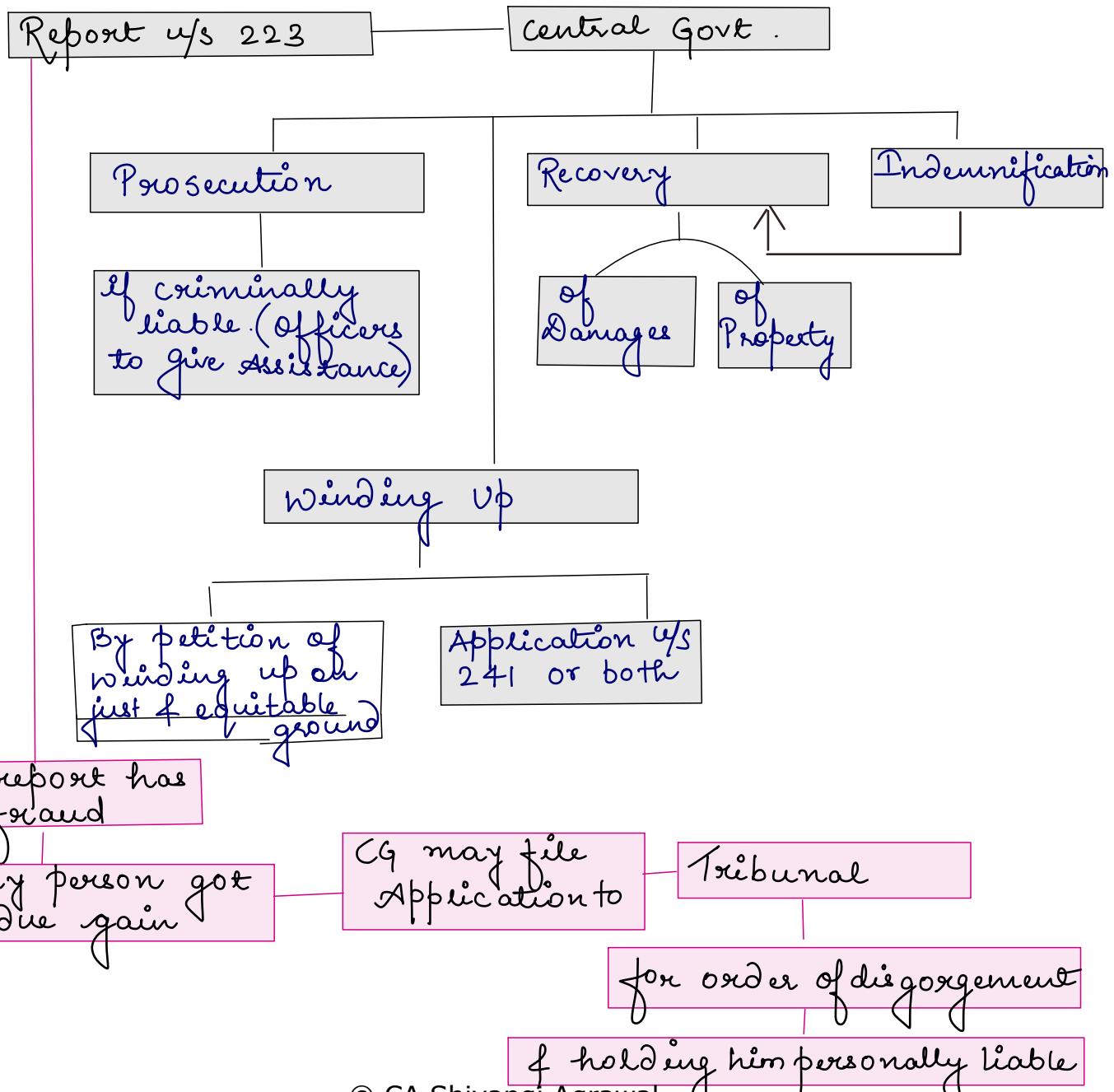
Seizure of Documents [Sec. 220]



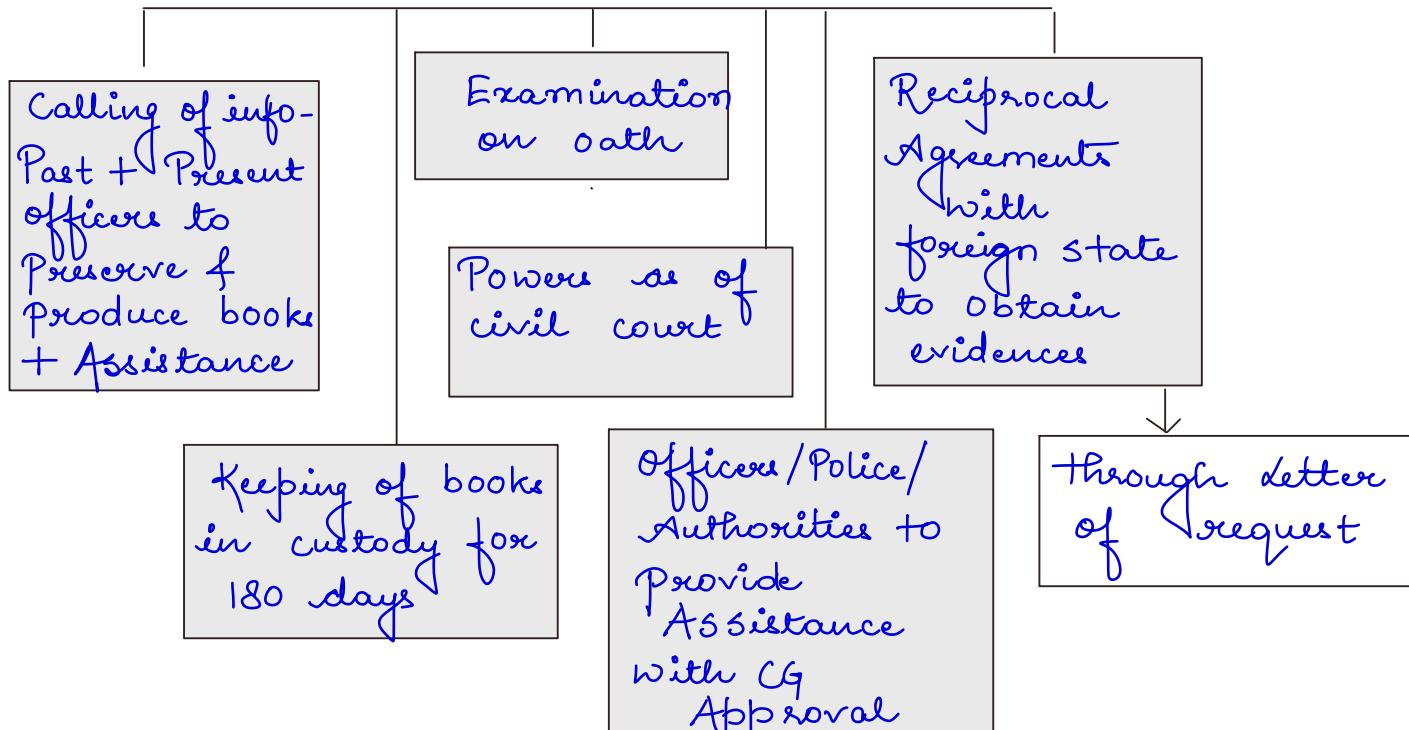
Inspector's Report [Sec. 223]



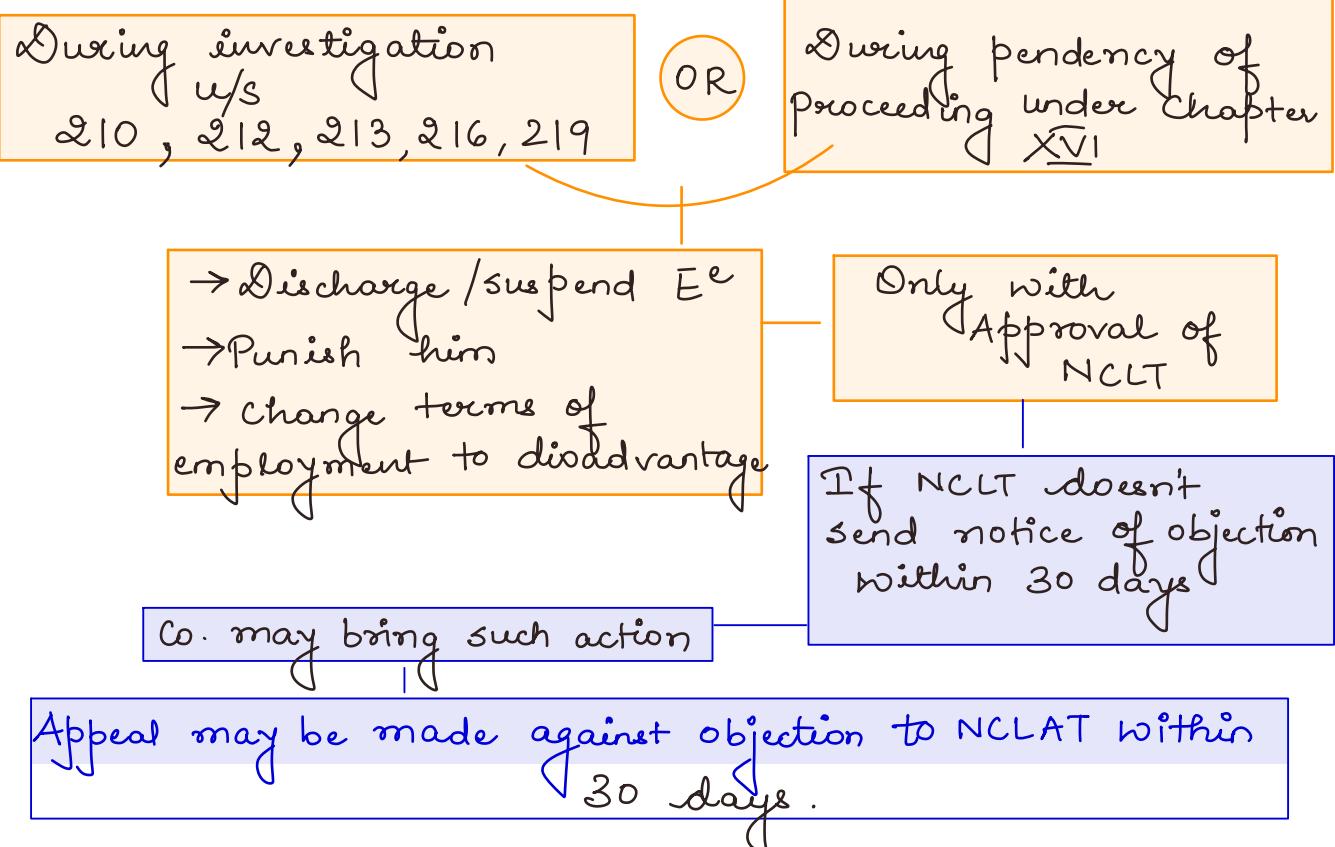
Actions in pursuance of Inspector's Report [Section 224]



Procedure, Powers of Inspector [Sec. 217]



Protection of Employee [Sec. 218]



SEBI Regulations

CONDITIONS FOR IPO

Eligibility of Issuer :- Not allowed if -

- △ Promoter / Group debarred from accessing Capital market by SEBI
- △ Application not made to stock Exchange for in-principle approval.
- △ Agreement with Depository not made
- △ Partly paid shares
- △ Arrangements of finance towards 75% not made
- △ Promoter's holding not dematerialised
- △ Amount for General corporate purpose $> 25\%$ of Amount raised
- △ Promoter - wilful defaulter
- △ Issue open for less than 3 days or more than 10 days
- △ Non-compliance of Minimum Subscription

Conditions :-

Appoint

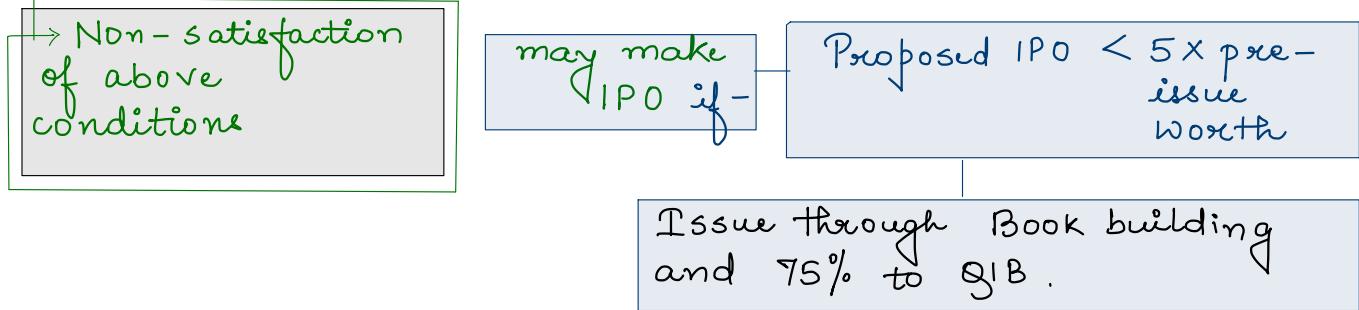
Merchant Banker
Registrar to issue
compliance officer

IPO allowed only if -

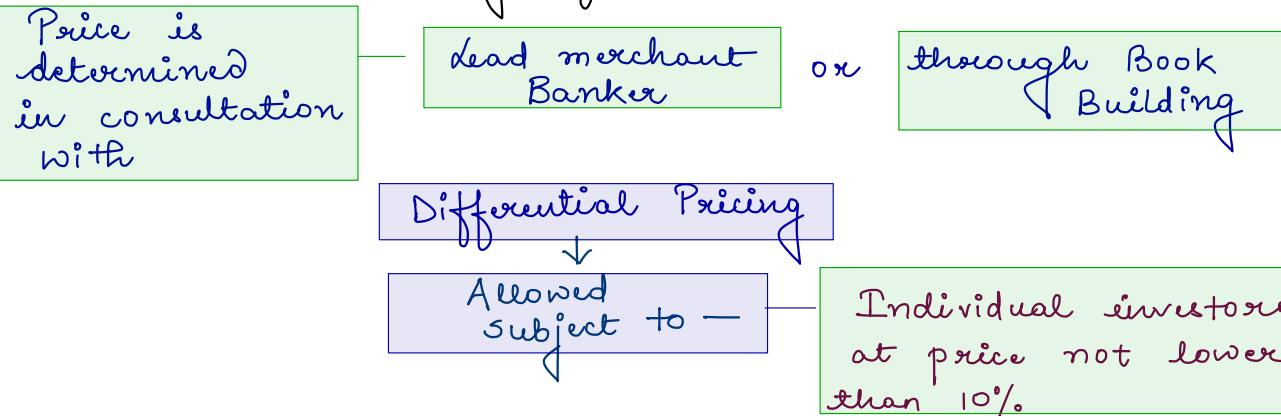
Tangible Assets ≥ 3 crore [$\leq 50\%$
in Monetary Assets]

Minimum = 15 crores [3 out of 5 years]
Average pre-tax profit

Net worth ≥ 1 crore [each preceding 3 years]



Pricing of Shares



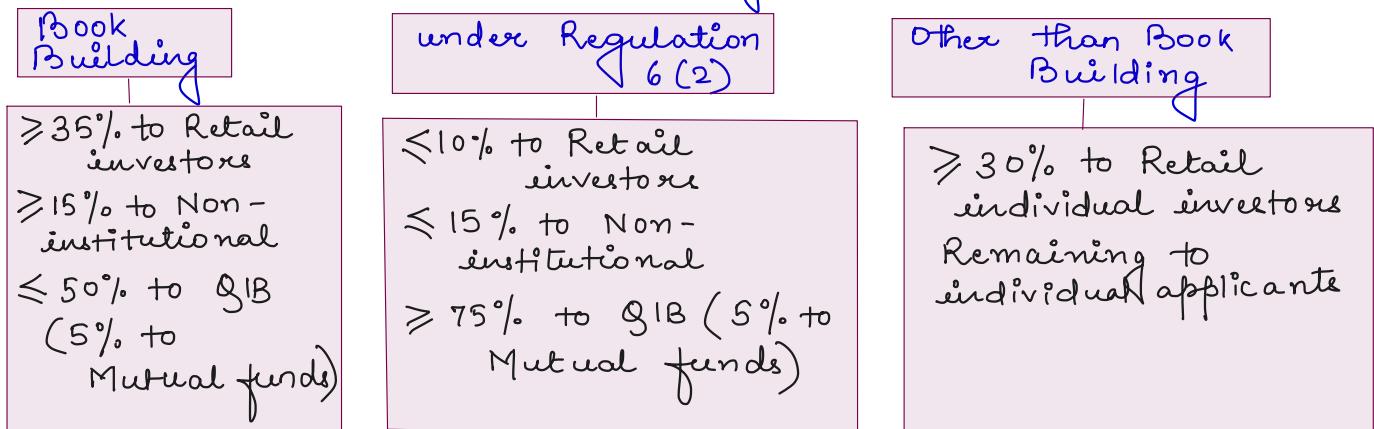
Book built - securities to Anchor investor not lower than price to others

Alternate method - shares to Ee - lower than floor price but difference not more than 10%.

Issue price \geq 500 - face value - Not less than $\frac{1}{10}$
 $< 500 - \text{face value} - 10$

Promoter's Contribution - In case of - $\geq 20\%$ of post IPO Issue capital

Book Building - Allocation

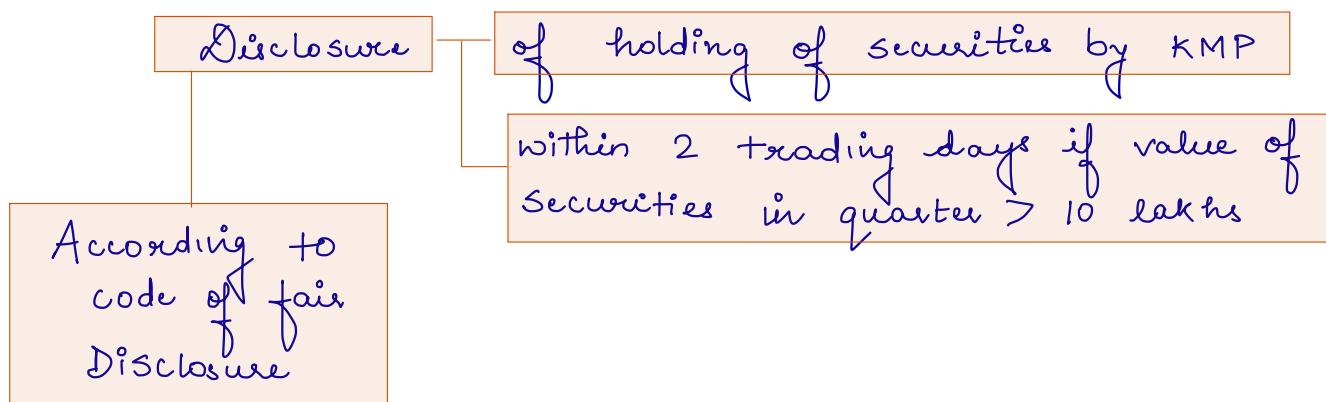


Insider Trading

Trading of securities in breach of trust on the basis
of Non-public information

Restrictions on communication and Trading by insiders

- No insider to communicate — unpublished Price sensitive Information
- Due Notice shall be given to insiders to maintain confidentiality.
- Organisation to ensure structured digital database containing such info and preserved for ≥ 8 years
- Insider not to trade
- One to prove that not in possession of such info on connected person



Takeover Code

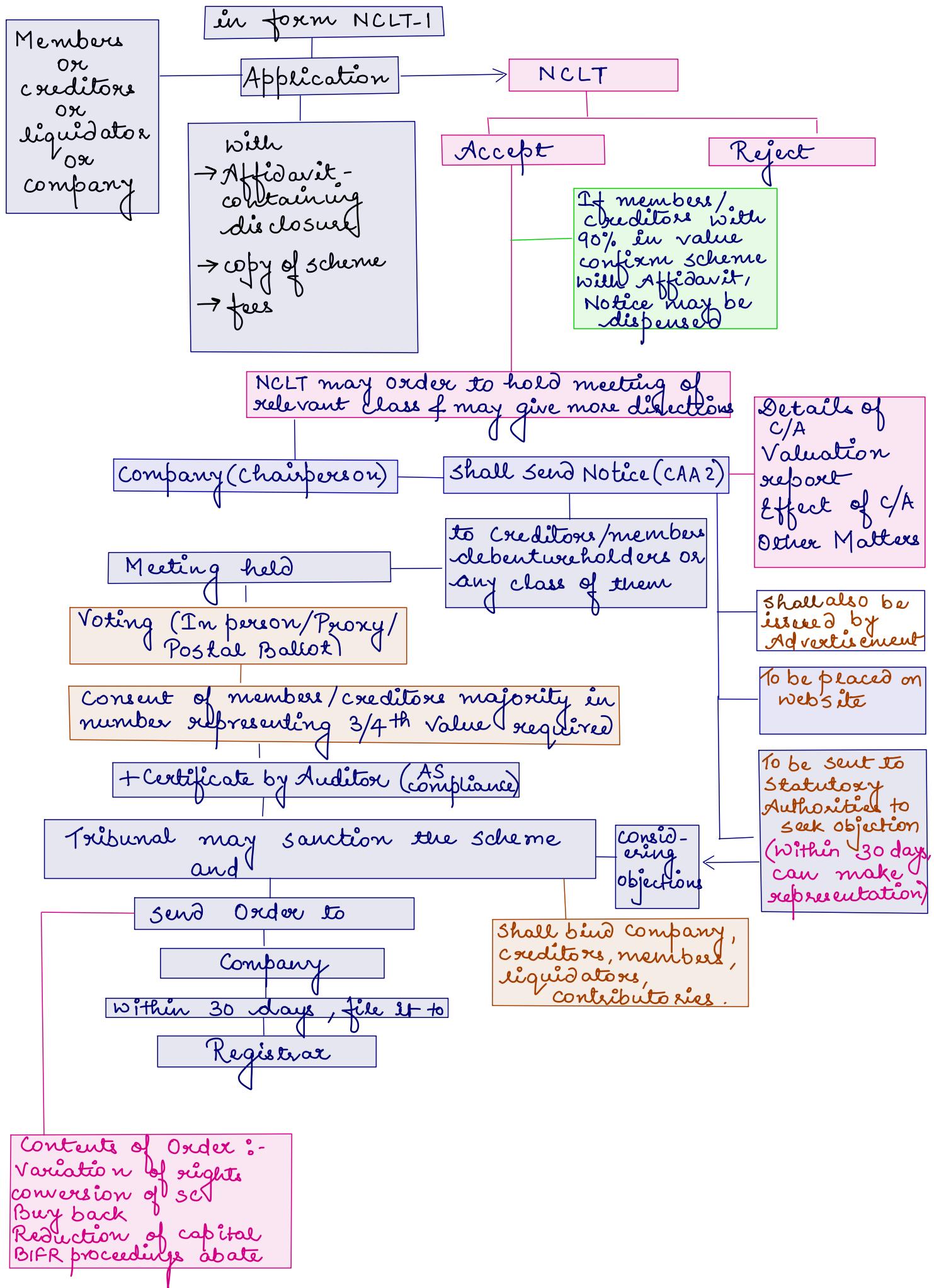
Acquirer → take control of Target company

↓
TAKEOVER → Types

Disclosure,
obligations, offer,
withdrawal,
Mode of Payment
governed by
Regulations

friendly Takeover
Hostile Takeover
Horizontal Takeover
Vertical Takeover
Conglomerate Takeover

Power to make compromises or arrangements with creditors & members [Section 230]



Power of Tribunal to enforce Compromise/Arrangement [Section 231]

Scheme Sanctioned (230)

Tribunal shall have following powers

Supervise implementation of C/A

Give Directions

Make modifications

Order winding up.

Merger and Amalgamation of Companies [Section 232]

Applicant

Application u/s 230

Tribunal

Provisions of sec. 230 to apply

relating to M/A/R

Sending of Notice to eligible person
Advertisement website
Objection allowed
Notice to Authorities
Approval by members / creditors

may order meeting of creditors/members/ Any class

Also may give directions for meeting

Circulate Additional Documents

If all conditions complied with and

Certificate by Auditor recd (As compliance)

Draft Scheme f its confirmation, valuation report, financial statement, Report of Directors

Tribunal may sanction scheme

Transfer of undertaking
Allotment of shares
continuation of legal proceedings
Dissolution
Provision for dissenting shares to Non-resident
eff of employees listed co.
Set off of fees other matters.

Send Order to

Company

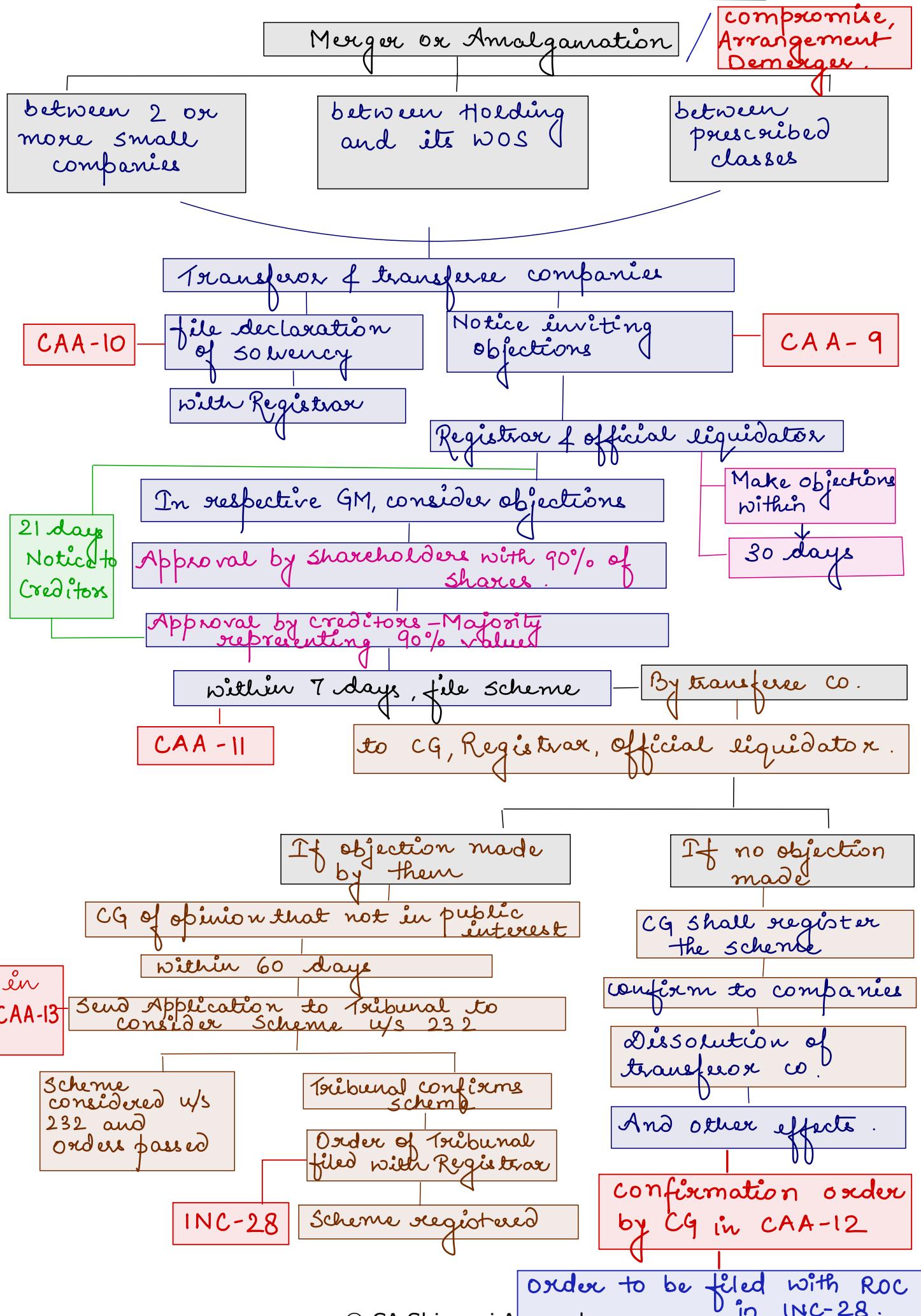
within 30 days, file it to

Registrar

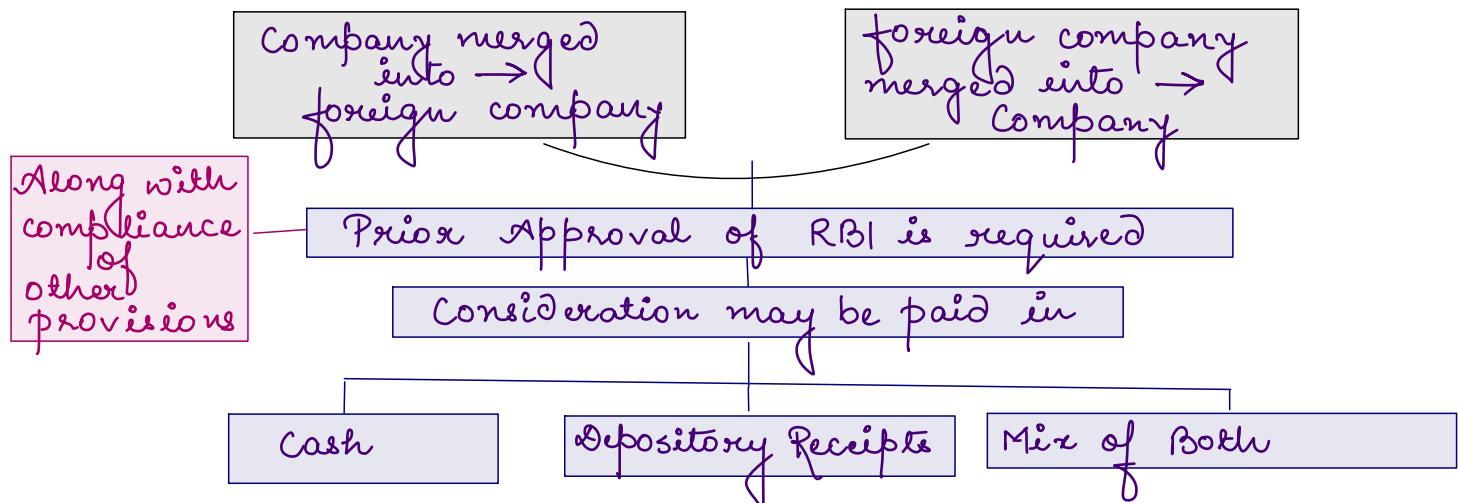
Shall file certified Statement of compliance

every year

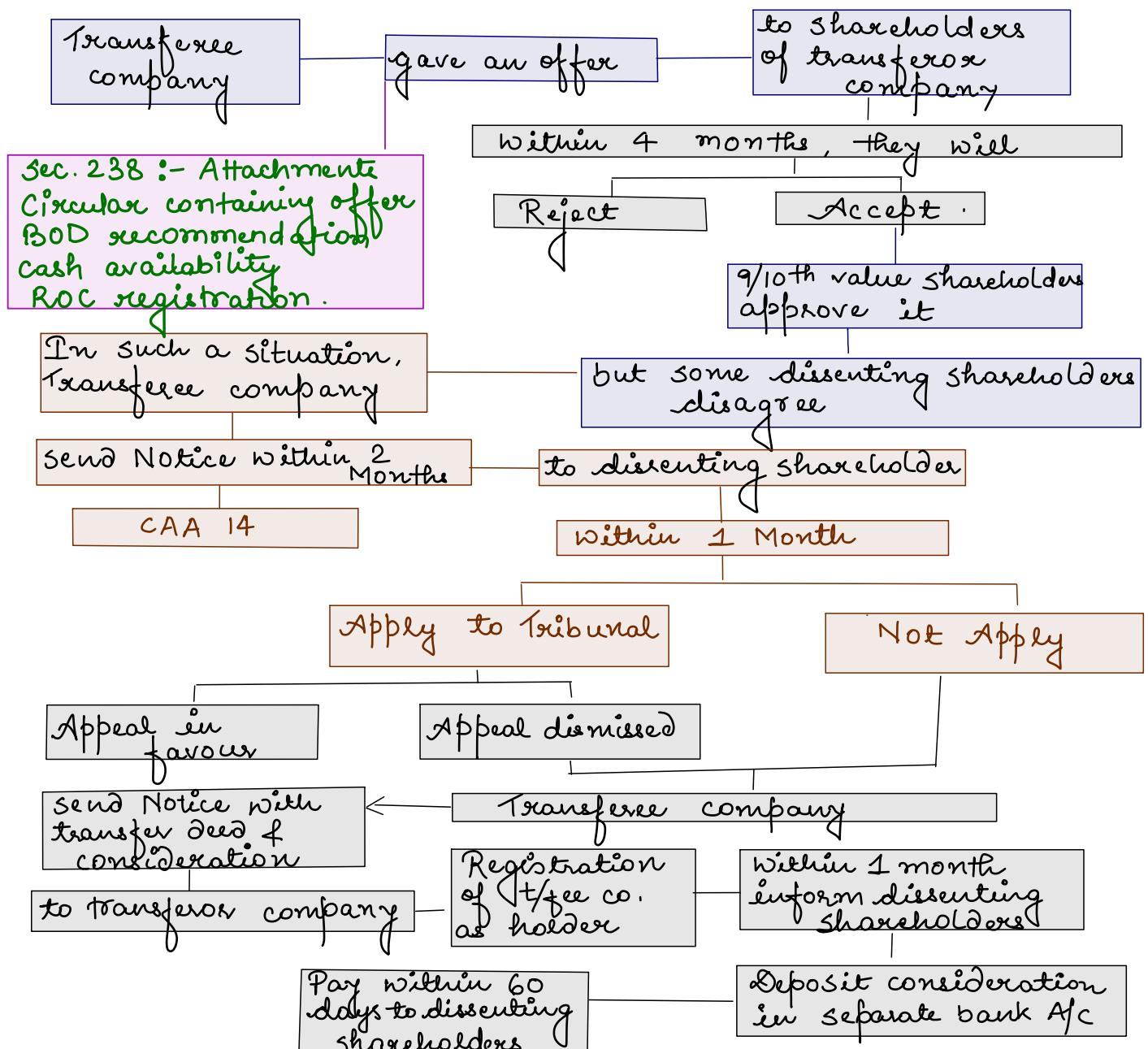
Merger and Amalgamation of certain companies [Section 233]



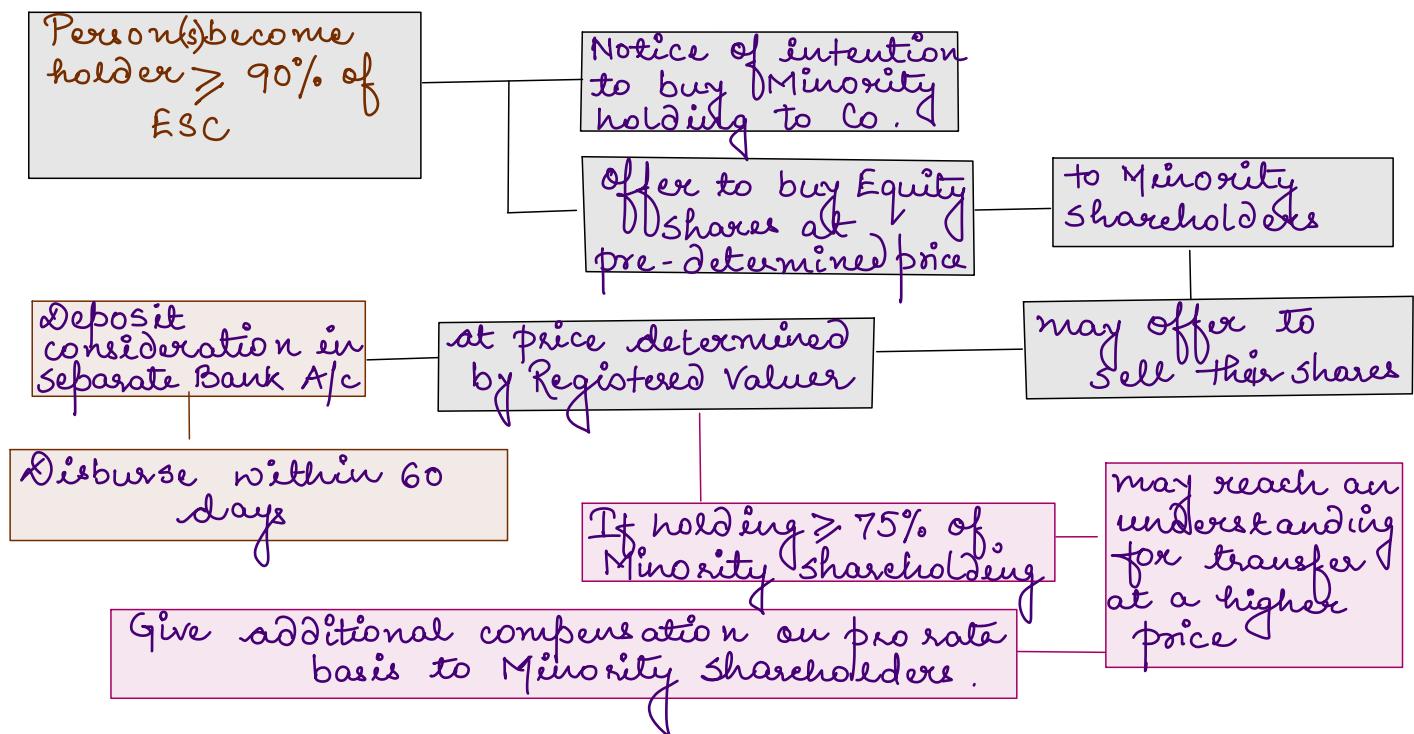
Merger & Amalgamation with Foreign Company [Section 234]



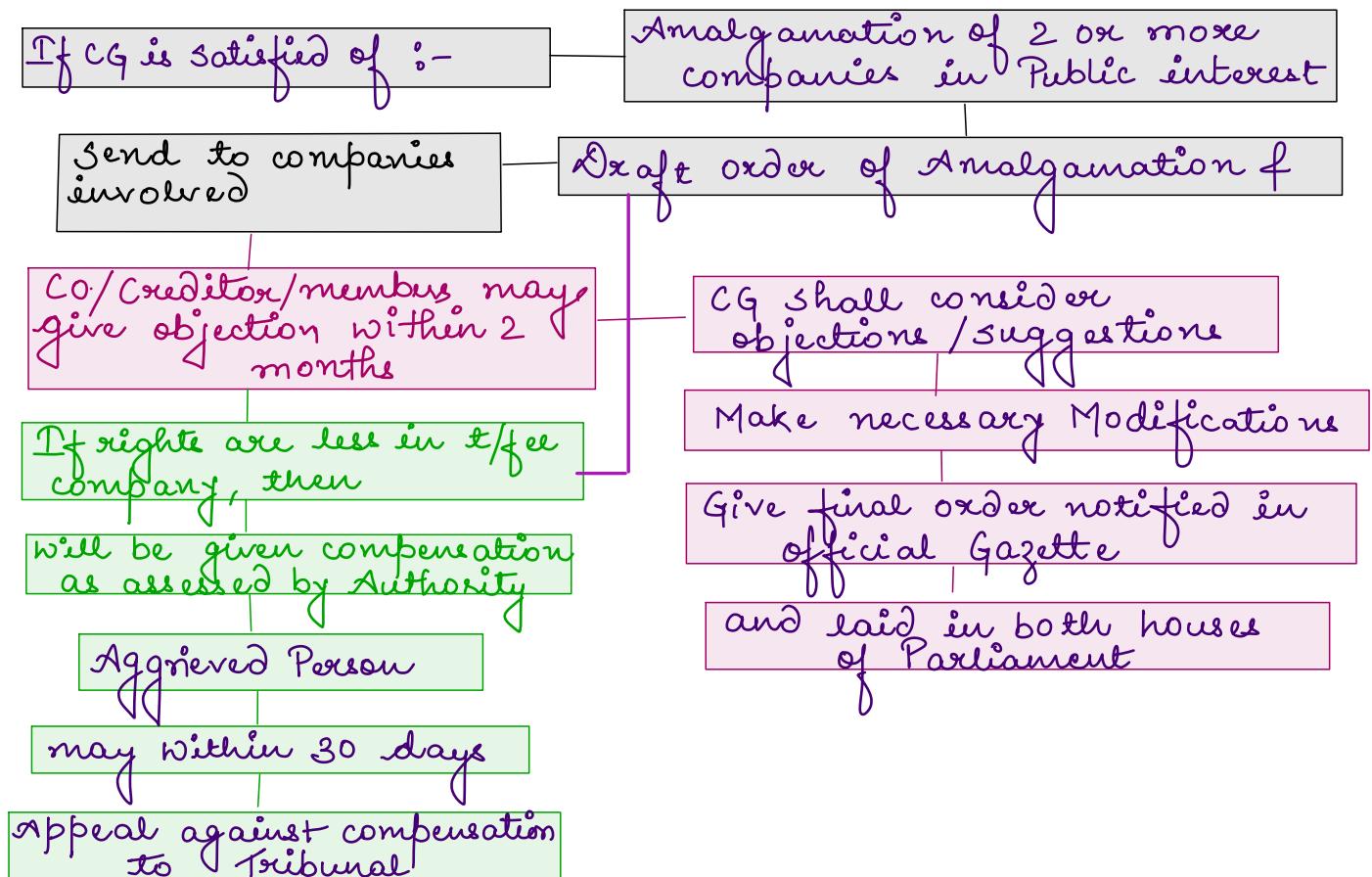
Power to acquire shares of dissenting shareholders [Section 235]



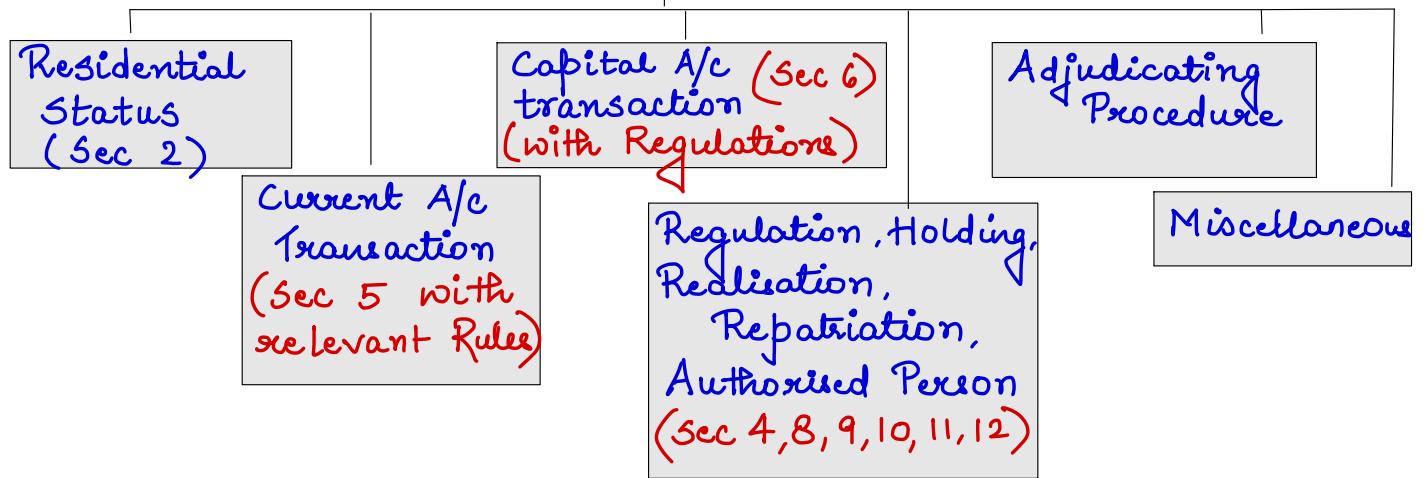
Purchase of Minority Shareholding [Section 236]



Power of CG to provide for amalgamation in public interest [Section 237]



Foreign Exchange Management Act, 1996



RESIDENTIAL STATUS

Person Resident in India (PRI)

Person resident O/s India (PROI)

Individual

If reside in India > 182 days in P.Y.

Yes

Gone out of India

No

Came to India for

Other than Individual

Branch, office, Agency

Others

located in India

PRI

located outside India

Where incorporated

In India

Outside India

for specified purpose
Employment
Business
Vocation
Uncertain period

for Other Purpose

PRI

Other than specified purpose

PROI

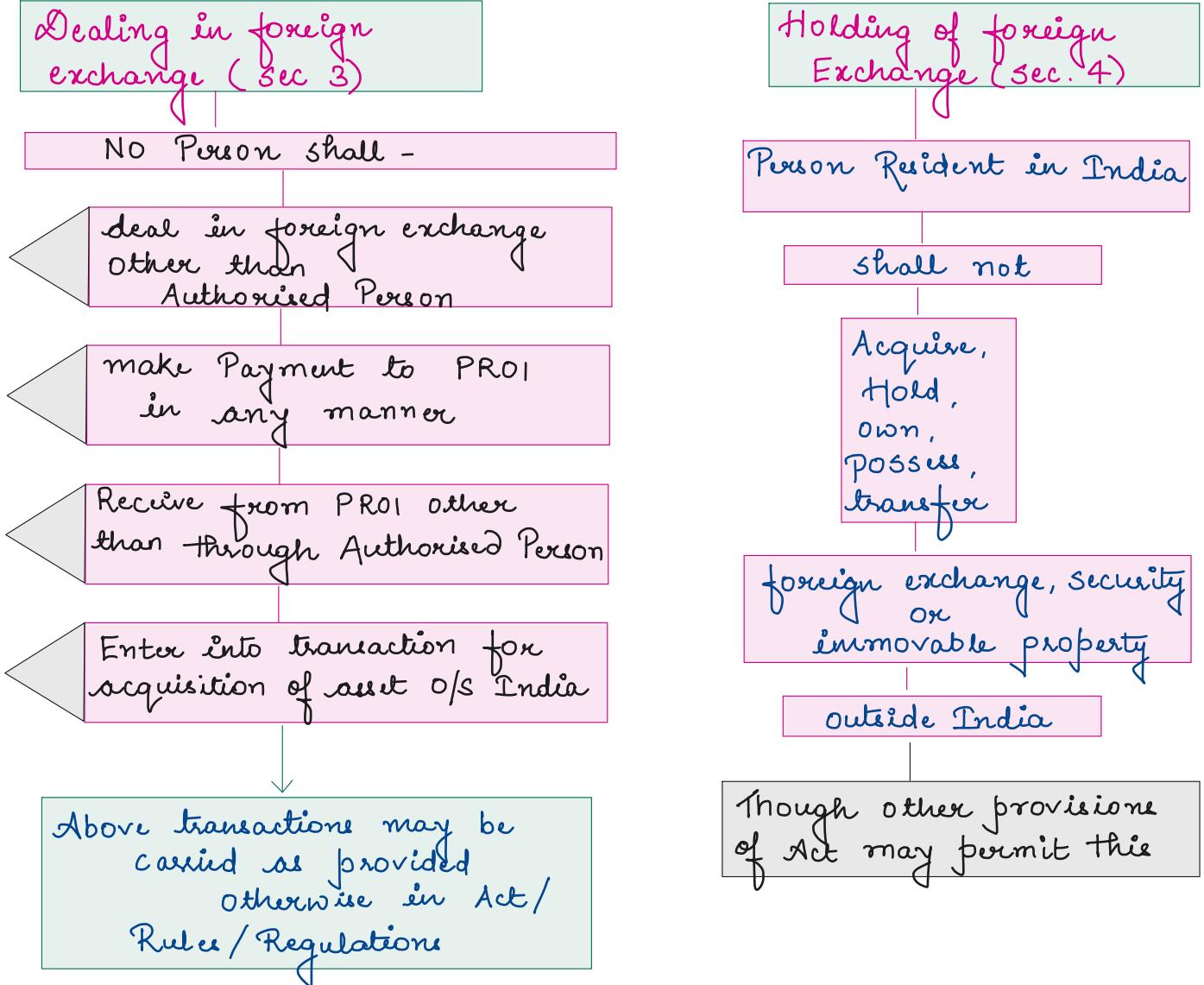
owned / controlled by PRI

PRI

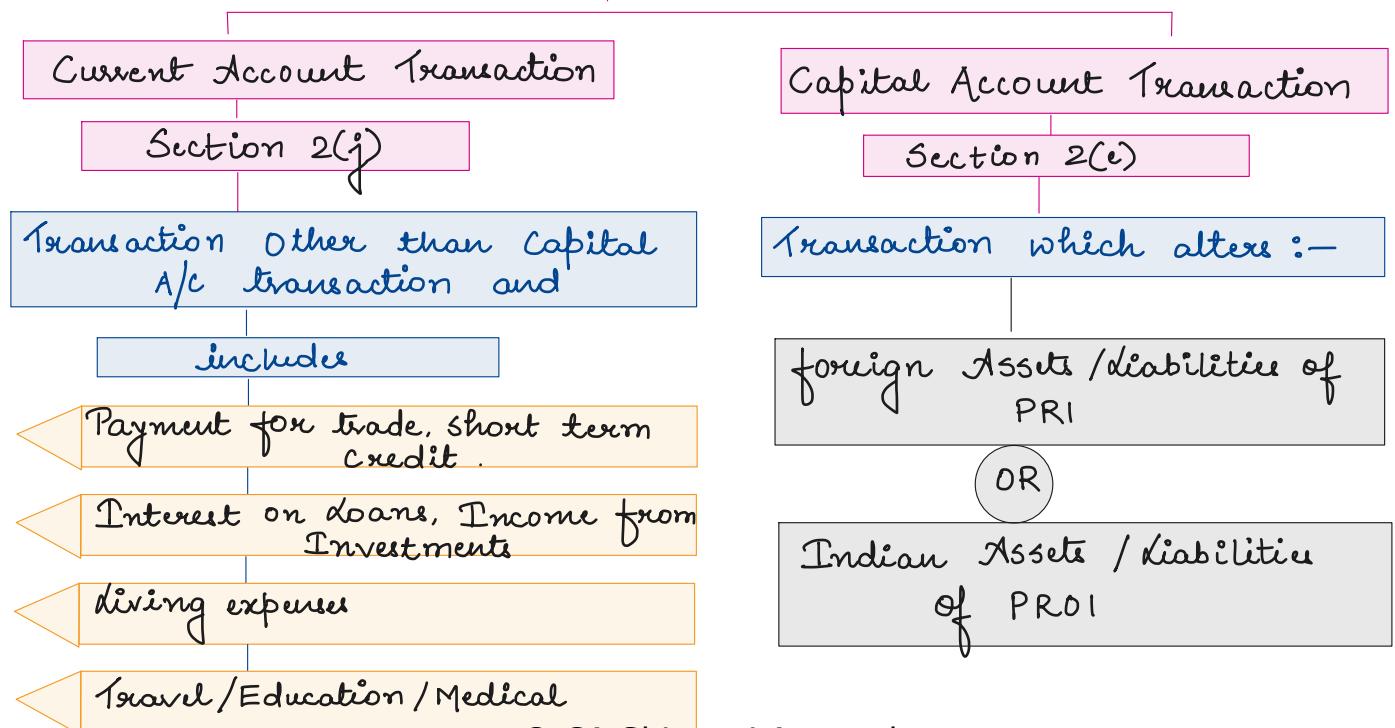
owned and controlled by PROI

PROI

Restrictions on Foreign Exchange



Types of Transactions



Current Account Transactions

Section 5 read with FEM (Current A/c transactions) Rules, 2000

are freely Permissible

unless

They fall in the list of Rule 3 - Schedule I

Prohibited Transactions

Drawal of foreign exchange is not allowed.

Not allowed for

Nepal and Bhutan and -

- Remitting lottery winning, Racing, riding etc.
- for purchase of lottery ticket, banned Magazine
- commission on exports to JV/WOS
- commission on exports under Rupee State credit route
- Dividend Balancing case
- Call Back services
- Interest of NRSR A/c

They fall in the list of Rule 4 - (Schedule II)

Requires CG Approval

Drawal allowed if approval obtained

Cultural Tour (Ministry of HRD)

Advertisement in Print media > USD 10000 except Tourism, bidding, investments

freight of vessel by PSU

Import on CIF basis by Govt Dept/PSU

Multi Modal Transport Operators

Hiring charges of transponders

Container detention charge > Rate prescribed

Prize Money > 1 Lakh USD by person other than sports Body

Membership of P&I club.

They fall in the list of Rule 5 (Schedule III)

within prescribed limit

Drawal without RBI's approval

exceede limit prescribed

Permissible facilities for Individuals (limit :- 250000 USD)

Private Visit
Gift / Donation
Employment
Emigration*
Maintenance
Business travel
Medical treatment*
Studies*
Others

* limit - Actual expenditure

Permissible facilities for Other than Individuals

Donation - chair creation/ contribution to Institute lower of 1% of Exchange earning of 3 yrs or 50 Lakh USD

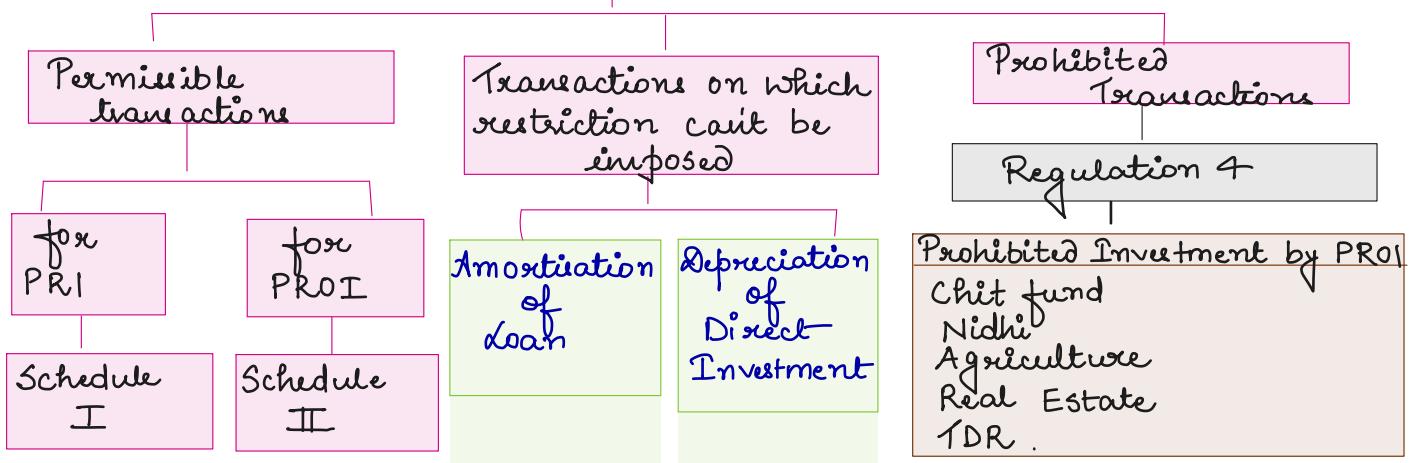
Commission for sale of flats/ plots. Higher of 25000 USD or 5% of inward remittance

USD 1 cr for infrastructure consultancy
USD 10 Lakh for others

Pre-incorporation expenses higher of 5% of Investment or USD 1 Lakh.

Capital Account Transactions

Section 6 read with FEM (Capital A/c transaction) Regulations, 2000



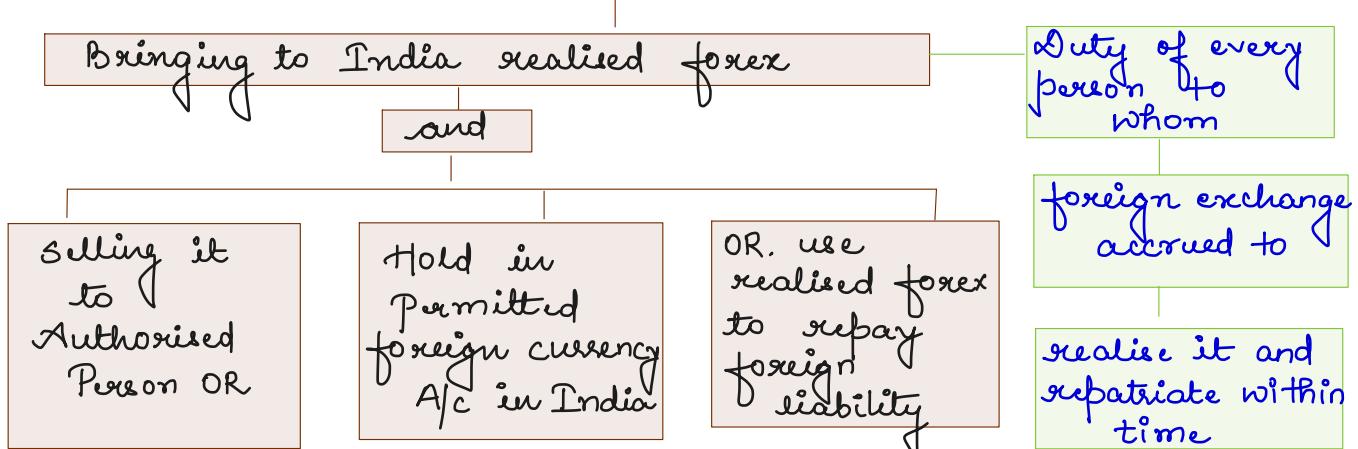
Permissible Transactions for PRI - Schedule I

Investment in foreign securities	foreign currency loans (ECB)	T/t of Immovable Property o/s India
Guarantee in favour of PROI	Export / Import of currency	Loans in INR by PROI.
Maintenance of foreign currency A/c	Insurance Policy from o/s India	Loans to PROI
Remittance of capital Assets	Derivative contracts	

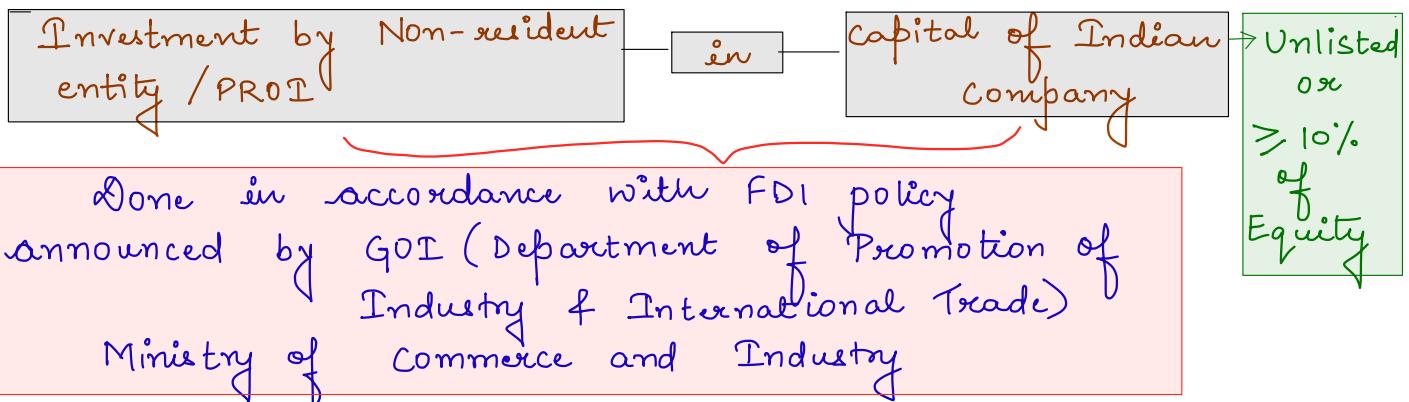
Permissible Transactions for PROI - Schedule II

Securities in India	Investment to capital of firm etc.	Acquisition / transfer of Immovable Property
Guarantee in favour of PRI	Export - Import of currency	Deposits
foreign currency A/c in India	Remittance of Capital Assets	Derivatives

Repatriate to India (section 8)



Foreign Direct Investment (FDI)



Prohibition of FDI

- △ Lottery Business
- △ Gambling
- △ Chit funds
- △ Nidhi company
- △ TDR
- △ Real Estate Business
- △ Manufacturing of cigarette, tobacco.
- △ Sector not open to Private eg. Atomic, Railway
- △ Investment by Bangladesh / Pakistan

Procedure for receiving FDI

Automatic Route

Without approval of
Govt./RBI
in sectors specified
in FDI policy.

Government Route

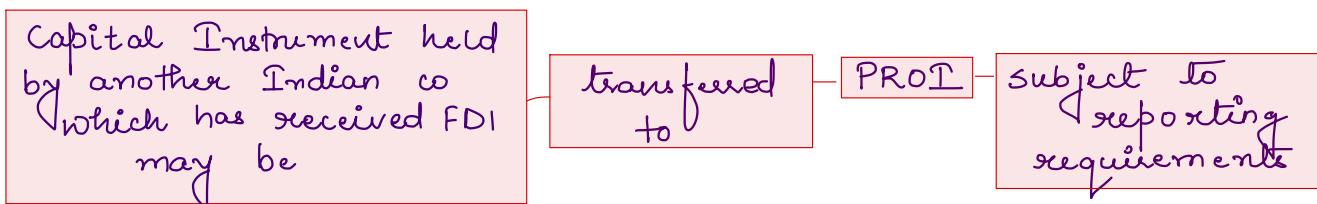
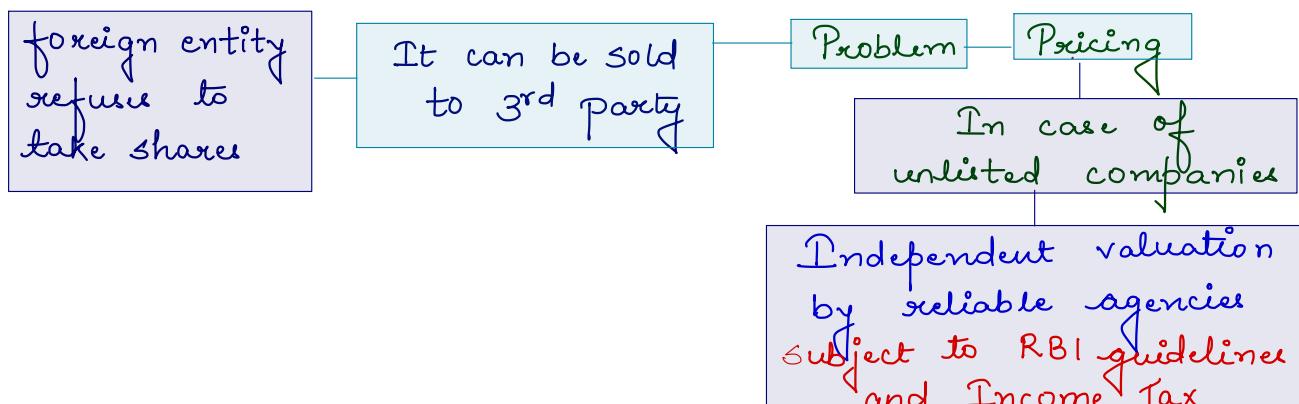
FDI in activities not
covered under Automatic
Route requires
approval of Government

25% of consideration to be paid upfront
Balance towards fully paid Equity within 12 months

Permitted Investments by PROI :- (Acc. to Annexures)

- subscribe capital instruments of Indian company
- Purchase of instrument of listed Indian co. on RSE
- Purchase by NRI/OCI on repatriation basis.
- Purchase by NRI/OCI or contribution to capital of LLP/firm/proprietorship on Non-repatriation
- Purchase/sale of securities other than capital Instruments
- Investment in LLP
- Investment by FVCI.
- Investment in Investment Vehicle.
- Issue/transfer to depository
- IDRs

Conditions for Exit



External Commercial Borrowings

ECBs are commercial loans raised by eligible entities from recognised Non-resident entities.

ECB should conform to parameters such as -

Minimum Maturity

Permitted and Non-permitted uses

Minimum All-in cost ceiling

Types of ECB

FCY denominated ECB

INR denominated ECB

Eligible Borrowers

Entities eligible to receive FDI

same as FCy + Micro finance, NPO

Lender

Resident of FATF or
IOSCO compliant country.

MAMP

5 years

End uses (Negative list)

Real estate
Capital Market Inv.
Equity Investment
Working capital/
General corporate/
Repayment of Rupee Loan
except ECB permitted

Parking of ECB

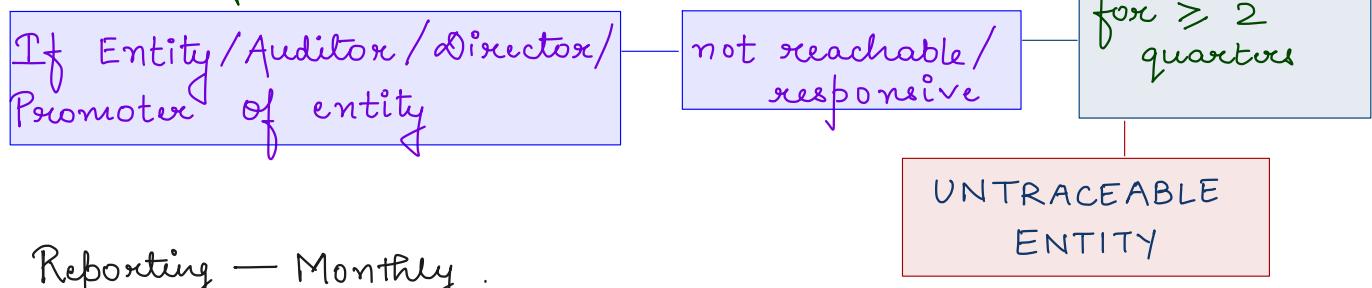
Abroad

meant for FC expenditure
can be parked abroad
pending utilisation

Domestically

meant for F expenditure
should be repatriated
immediately to Rupee
Accounts

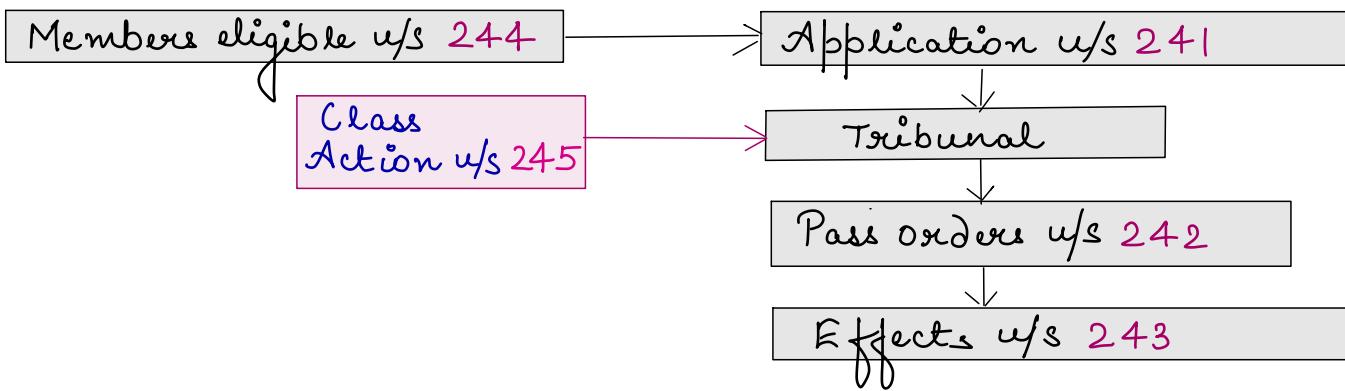
Reporting Requirements :-



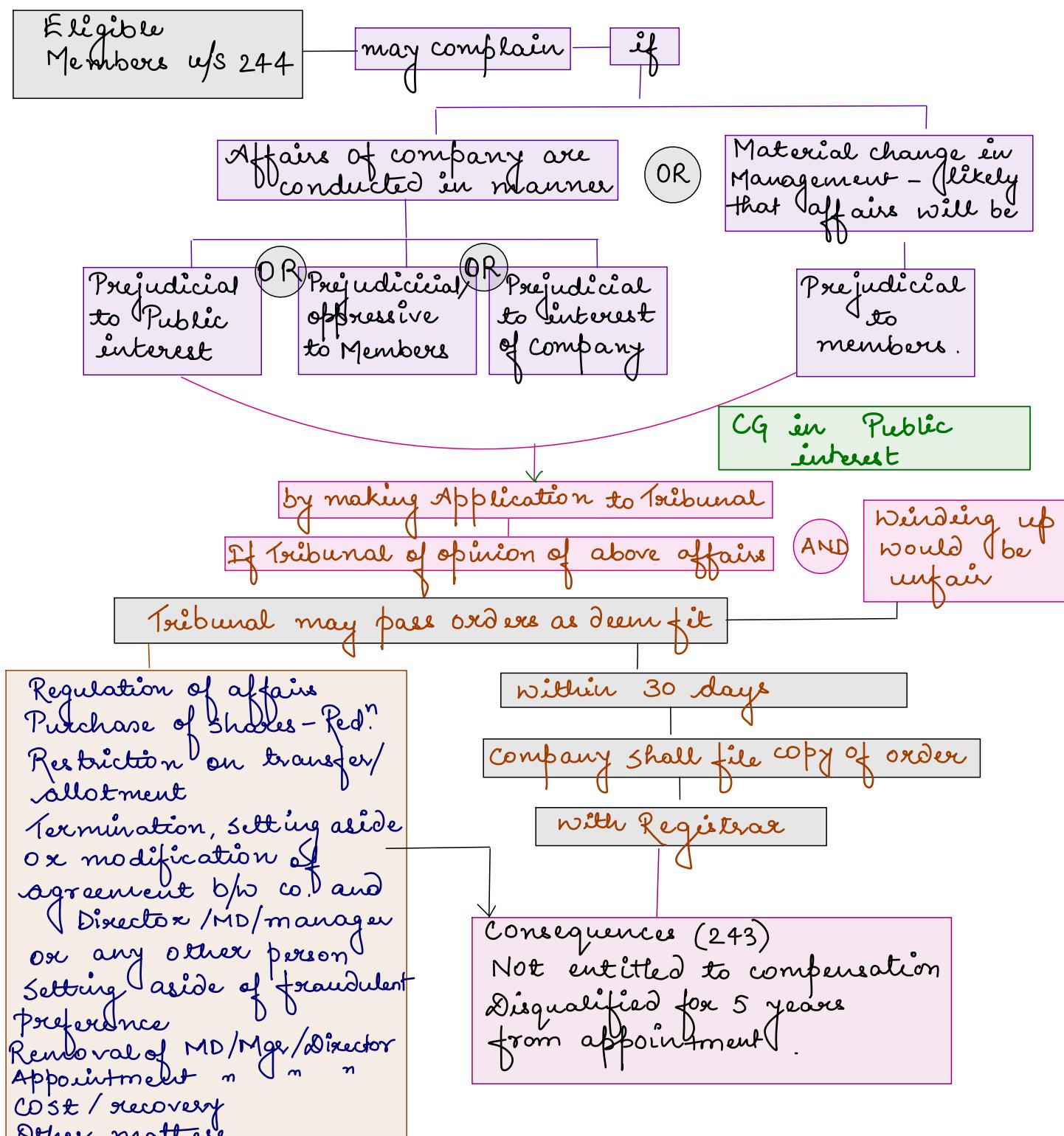
- Entity not operative on visit
- Entity not submitted Auditor's certificate for 2 years or more.
- Revised ECB with UNTRACEABLE ENTITY on top.
- No fresh application by entity to be processed
- ED to be informed when entity is designated as such
- No remittance under Automatic Route.

Trade credits to be revised from Main Book

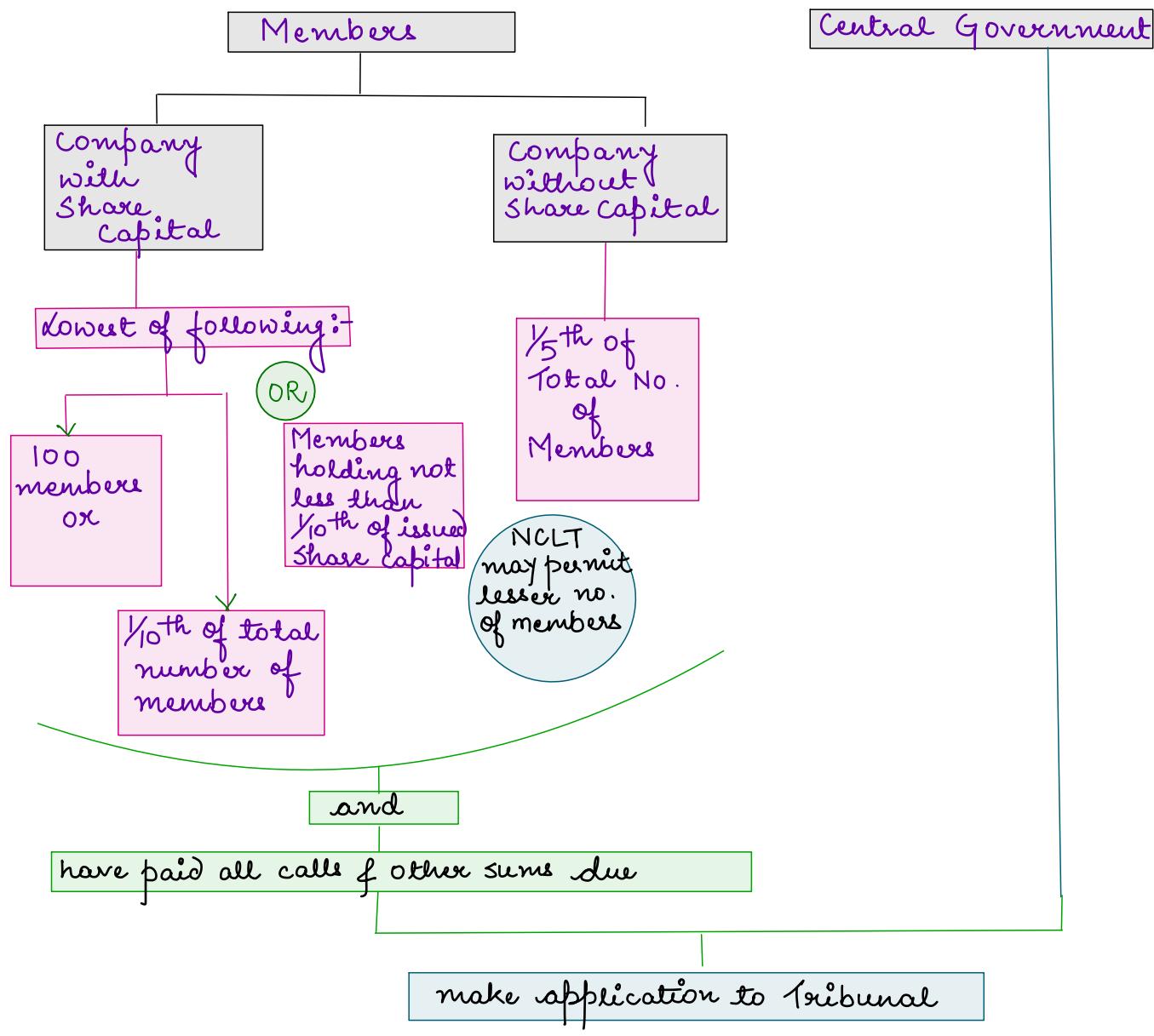
Chapter Overview



Application to Tribunal for relief in case of oppression etc. [Section 241] and Powers of Tribunal [Section 242]

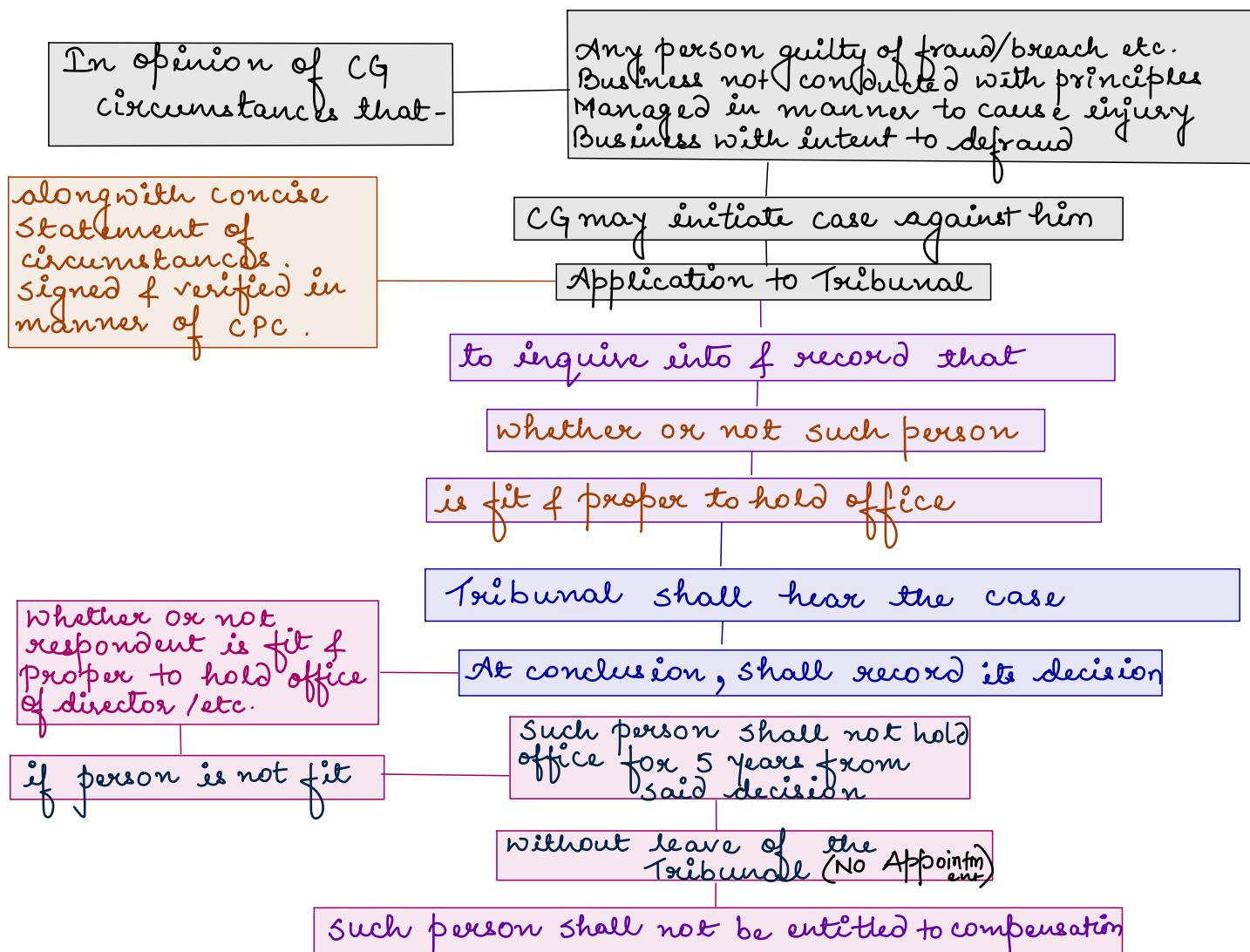


Right to apply u/s 241 [Section 244]

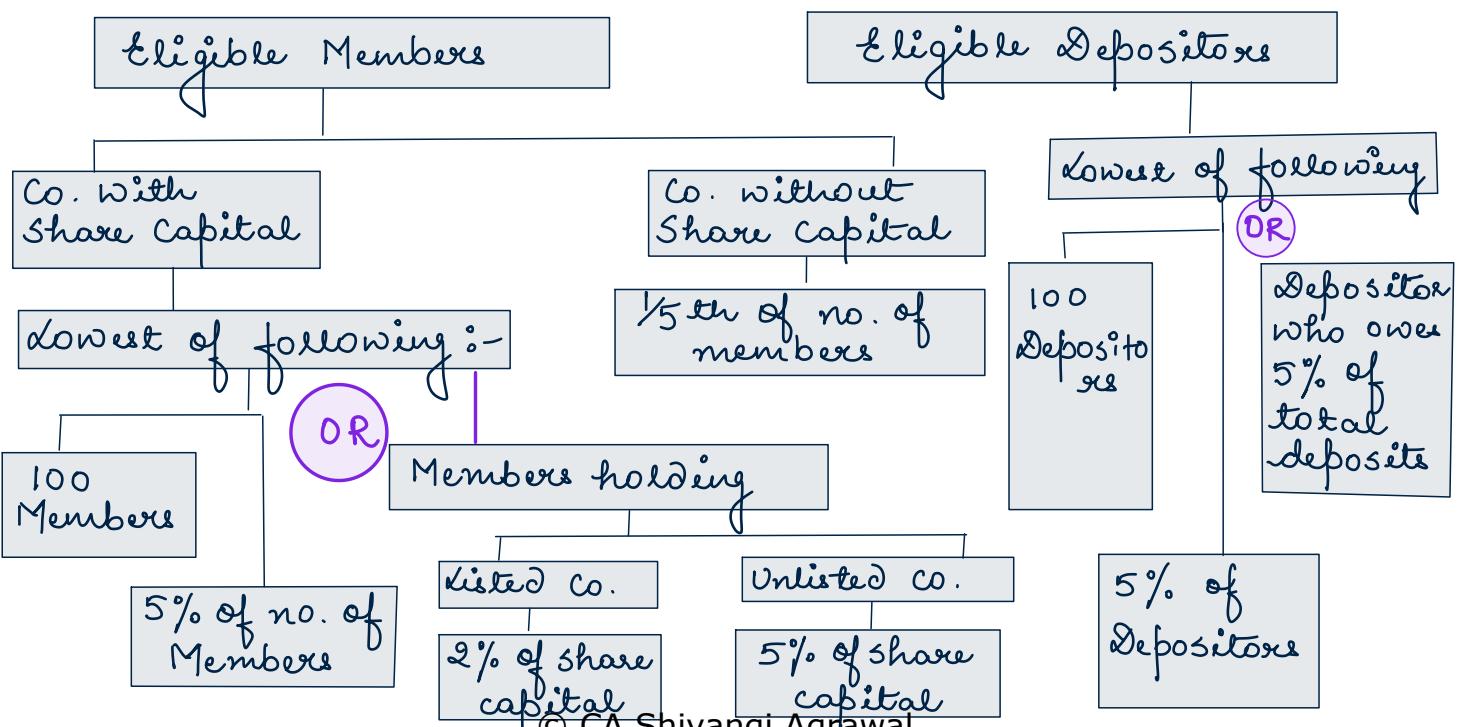


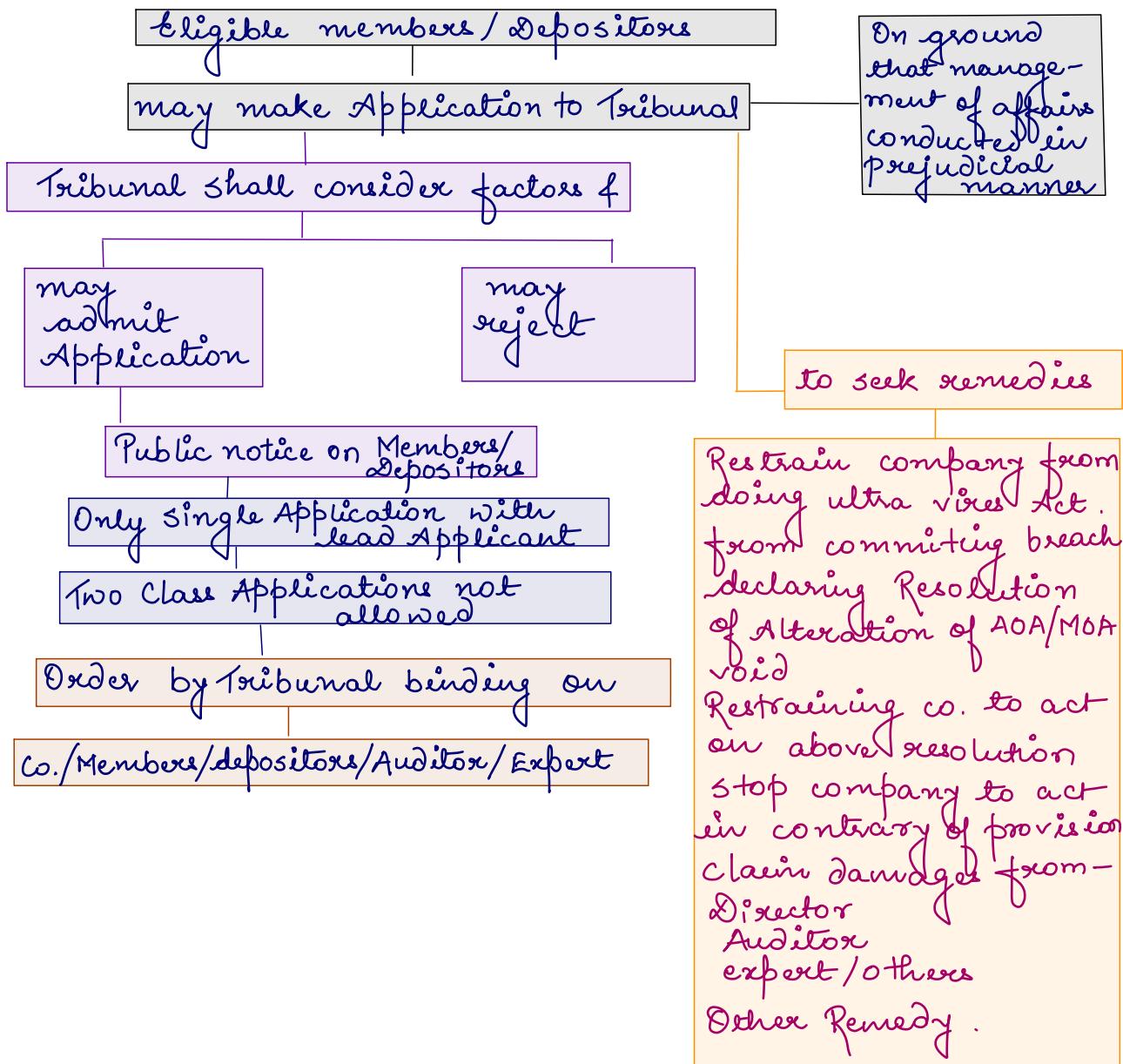
Applicants to hold requisite no. of shares at the time of filing application. One/more members may make application on behalf of all consenting members. Consent has to be checked at the time of making application to Tribunal.

Application to Tribunal for relief in case of oppression etc. [Section 241]
and Powers of Tribunal [Section 242] and Section 243



Class Action [Section 245]





Whether a Person is fit and Proper or not?
to hold managerial Position in
a company.

Central Government

Sec. 241

along with concise statement

if circumstances suggest
fraud/Negligence/Default
Not sound business Principles
serious injury to Trade/Industry
Intent to defraud

Make Application to NCLT to inquire whether such person is fit and proper or not

No further action needed

If fit

After hearing NCLT shall pass order whether he is fit and proper or Not?

Sec. 242(4A)

Such person shall be removed

If not fit

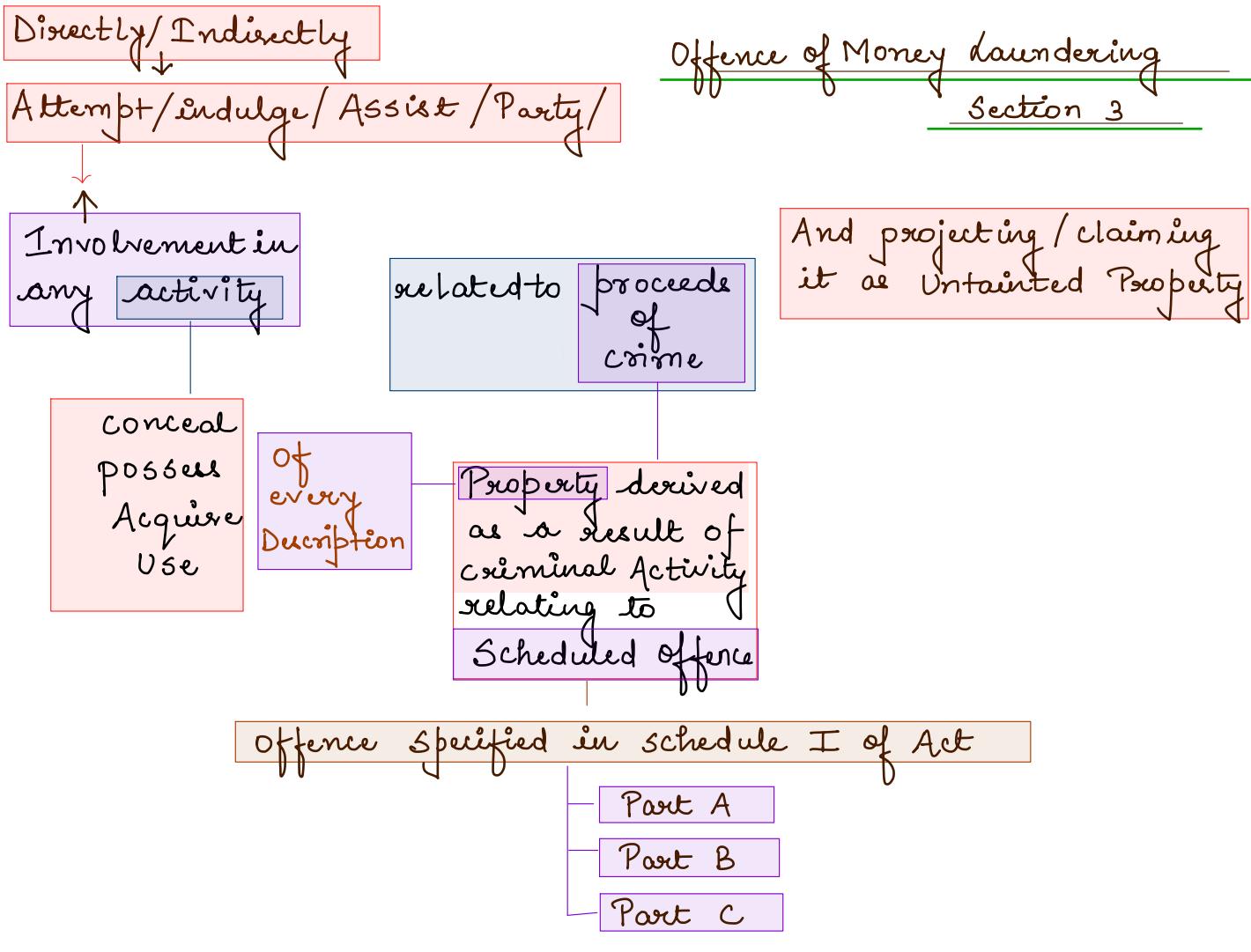
AND
disqualified for 5 years to hold office in ANY co.

AND

also not entitled for compensation for loss

Sec. 243(1A) and
sec. 243(1B)

Prevention of Money Laundering Act, 2002



Punishment for Money Laundering [Sec 4]

If Proceeds of crime involved in Money laundering relates to any offence specified under Para 2 of Part A [Offences under Narcotic Drugs and Psychotropic Substances Act, 1985]

YES

Rigorous Imprisonment and Fine

Minimum -
3 years

Maximum -
10 years

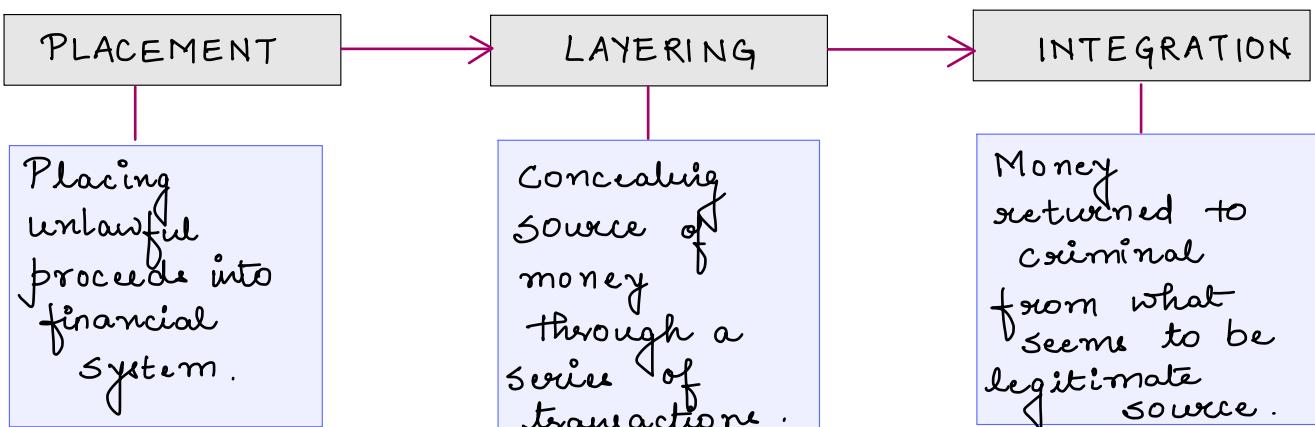
NO

Rigorous Imprisonment and Fine

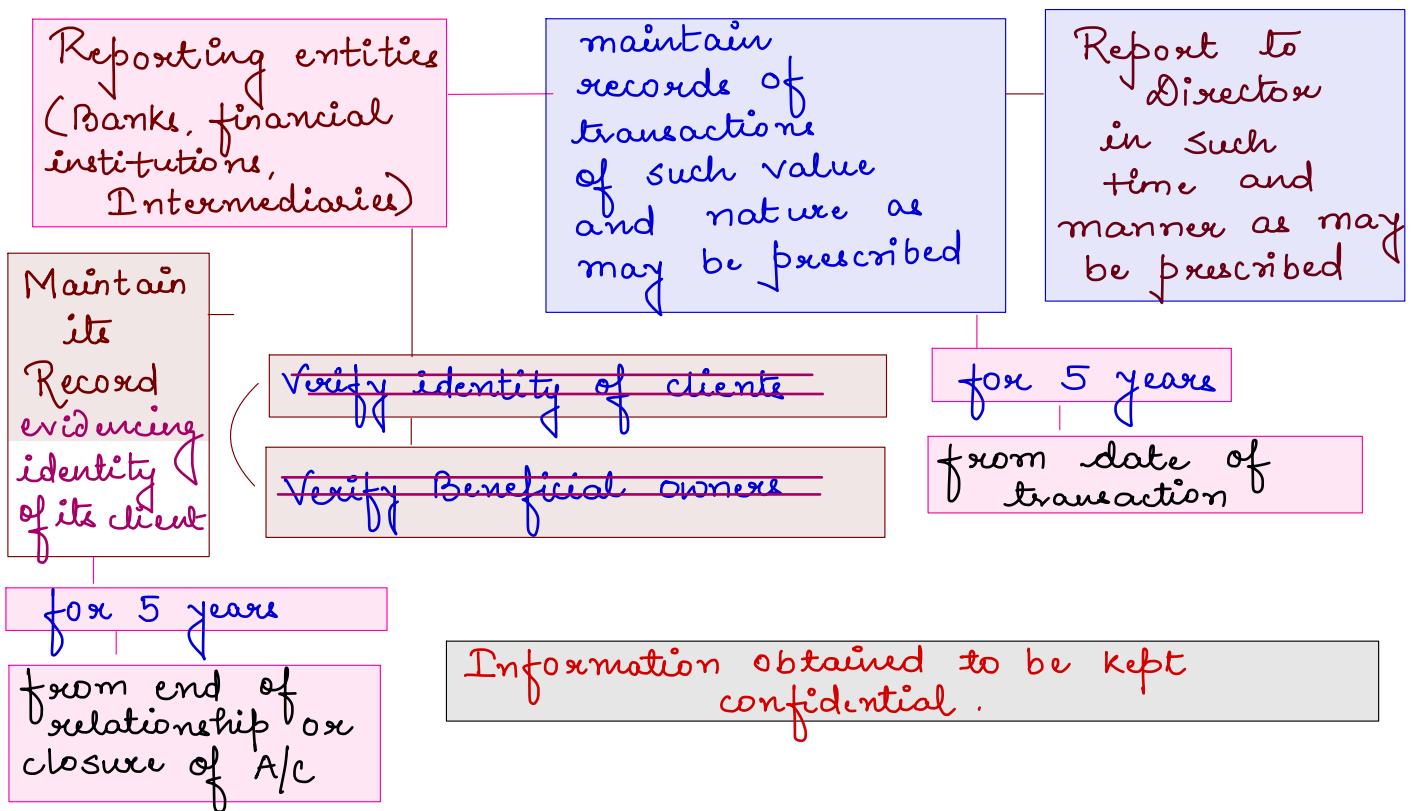
Minimum -
3 years

Maximum -
7 years

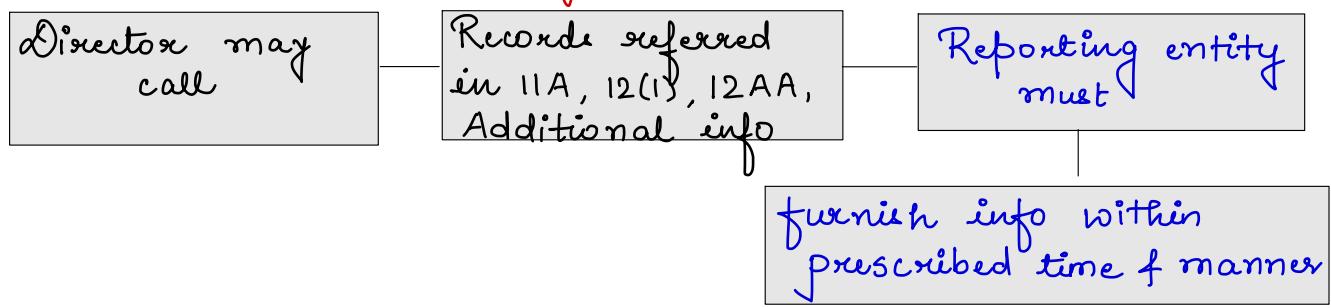
Stages of Money Laundering



Obligation of Reporting Entities [Sec 12]

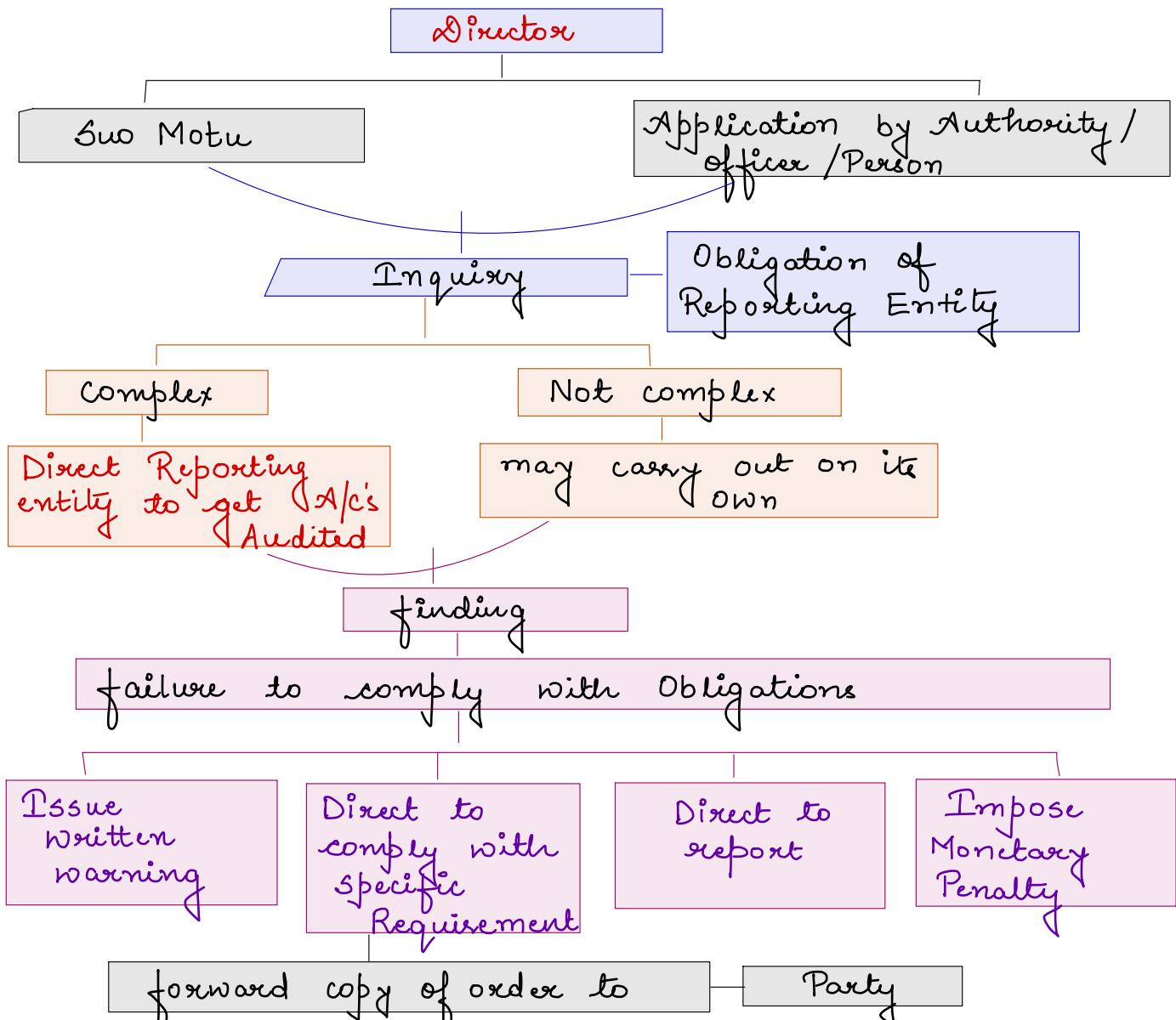


Access to Information [Sec 12A]

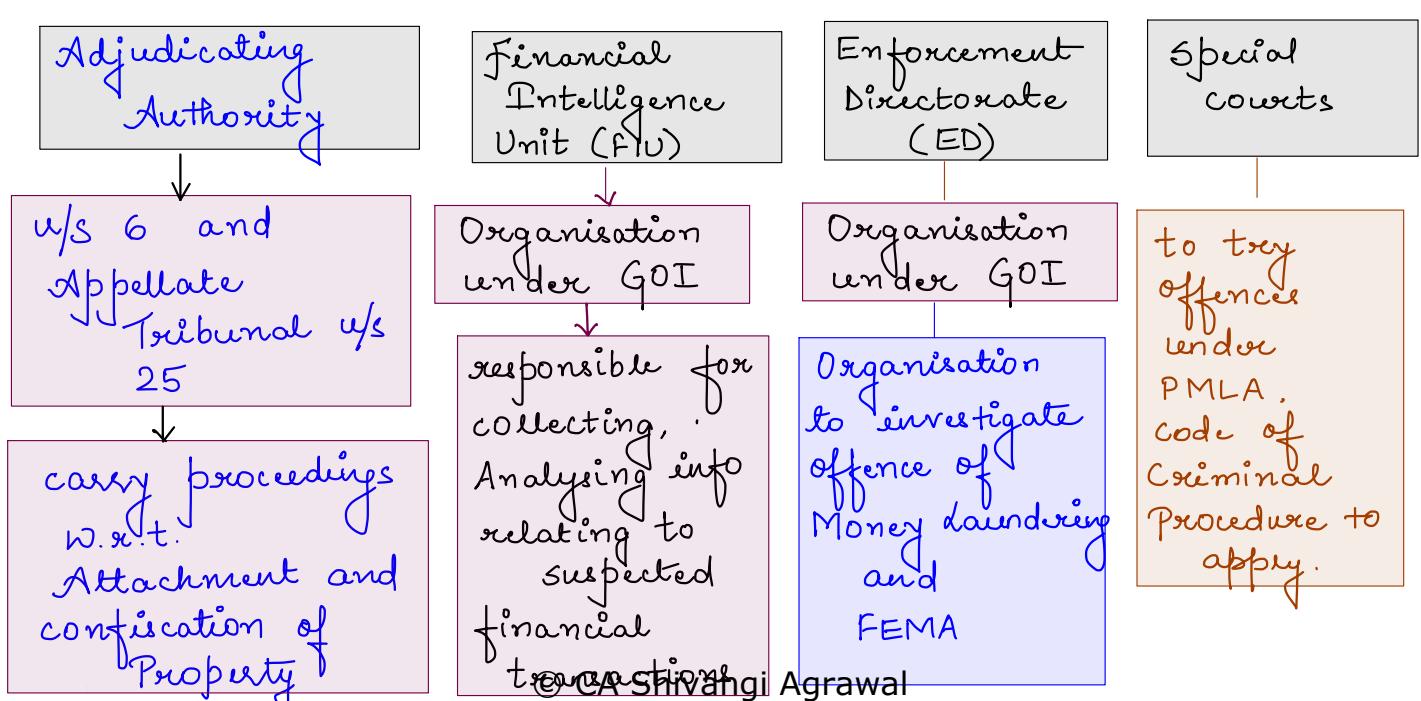


Information obtained to be kept confidential.

Power of Director to impose fine (sec. 13)



Authorities under the Act



Procedure of Investigation

Adjudicating Authority believe of Offence u/s 3 or in possession of Proceede of Crime

after receiving complaint / Attachment / Seizure etc.

Adjudicating Authority to consider reply, hear parties, take into A/c relevant Material

Record finding

Confirm Attachment, Seizure, freeze

Attachment etc. to continue till final order.

Trial By Special Court

Release of Property

Confiscation of Property

Appeal to Appellate Tribunal (sec. 26)

Director / Any person aggrieved by order of AA

OR

Reporting entity aggrieved by order of Director

Within 45 days

may appeal to Appellate Tribunal

Shall have same powers as are vested in a civil court while trying a suit

who shall after giving opportunity of being heard

Modify

Confirm

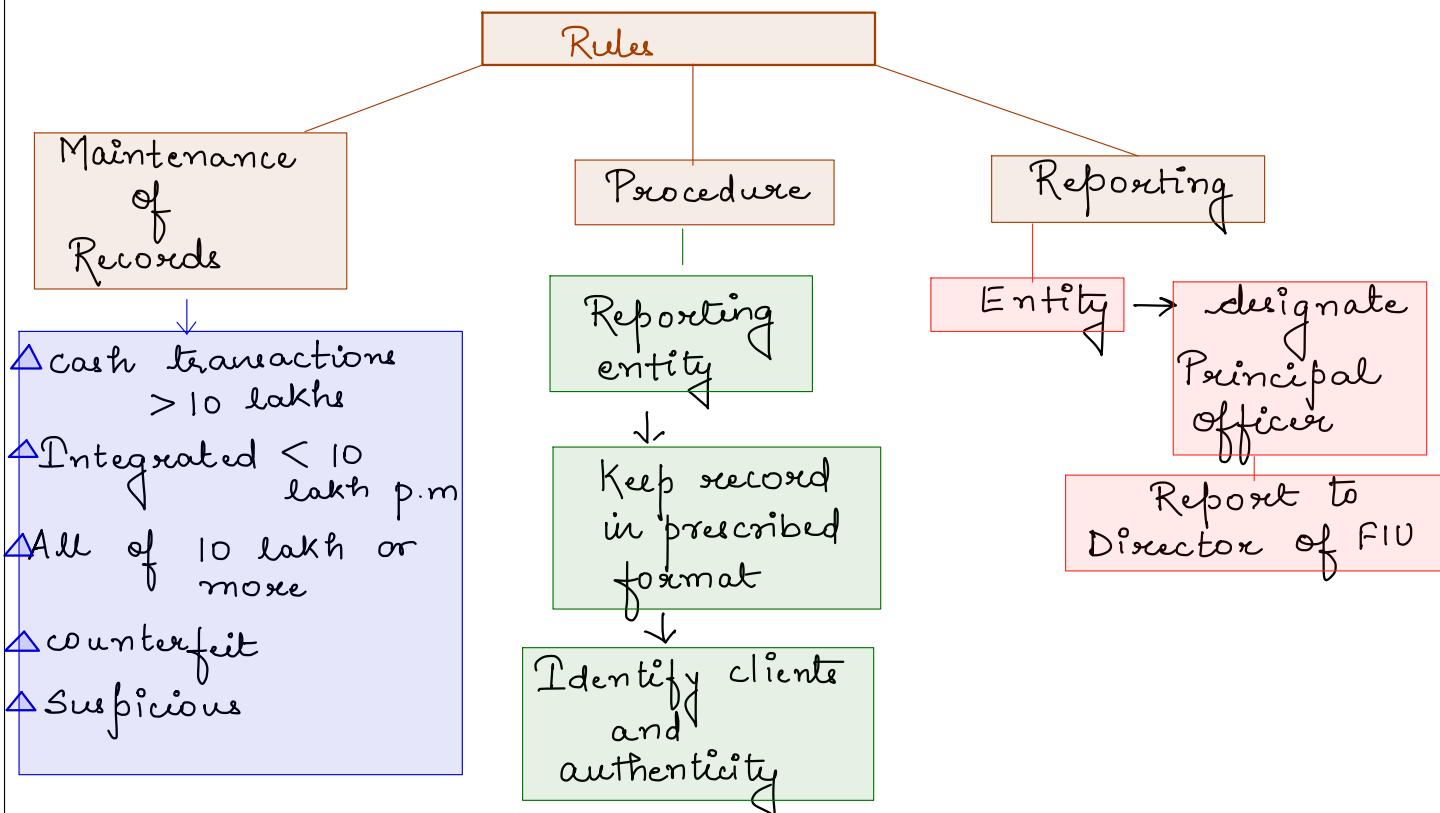
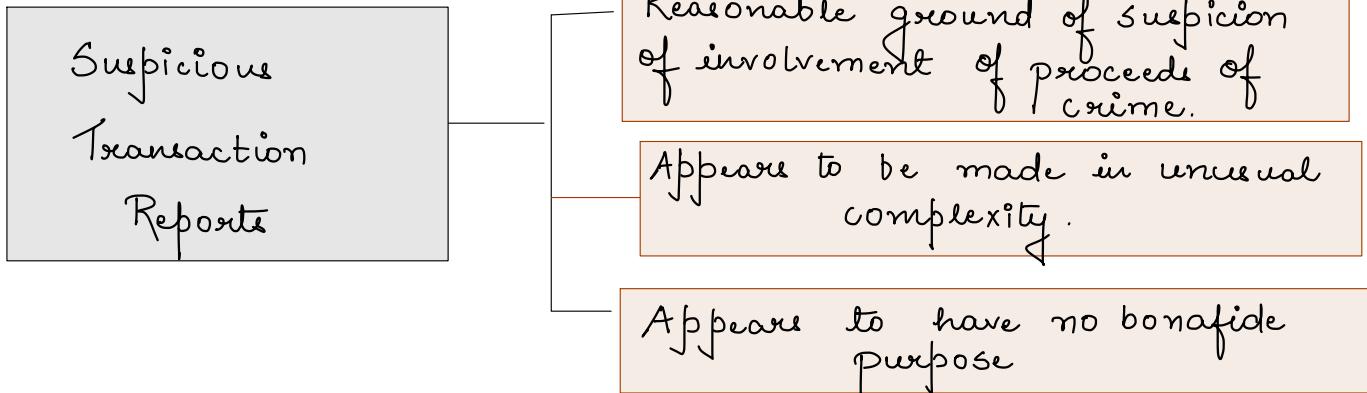
Set aside order

Decision by Majority

Aggrieved

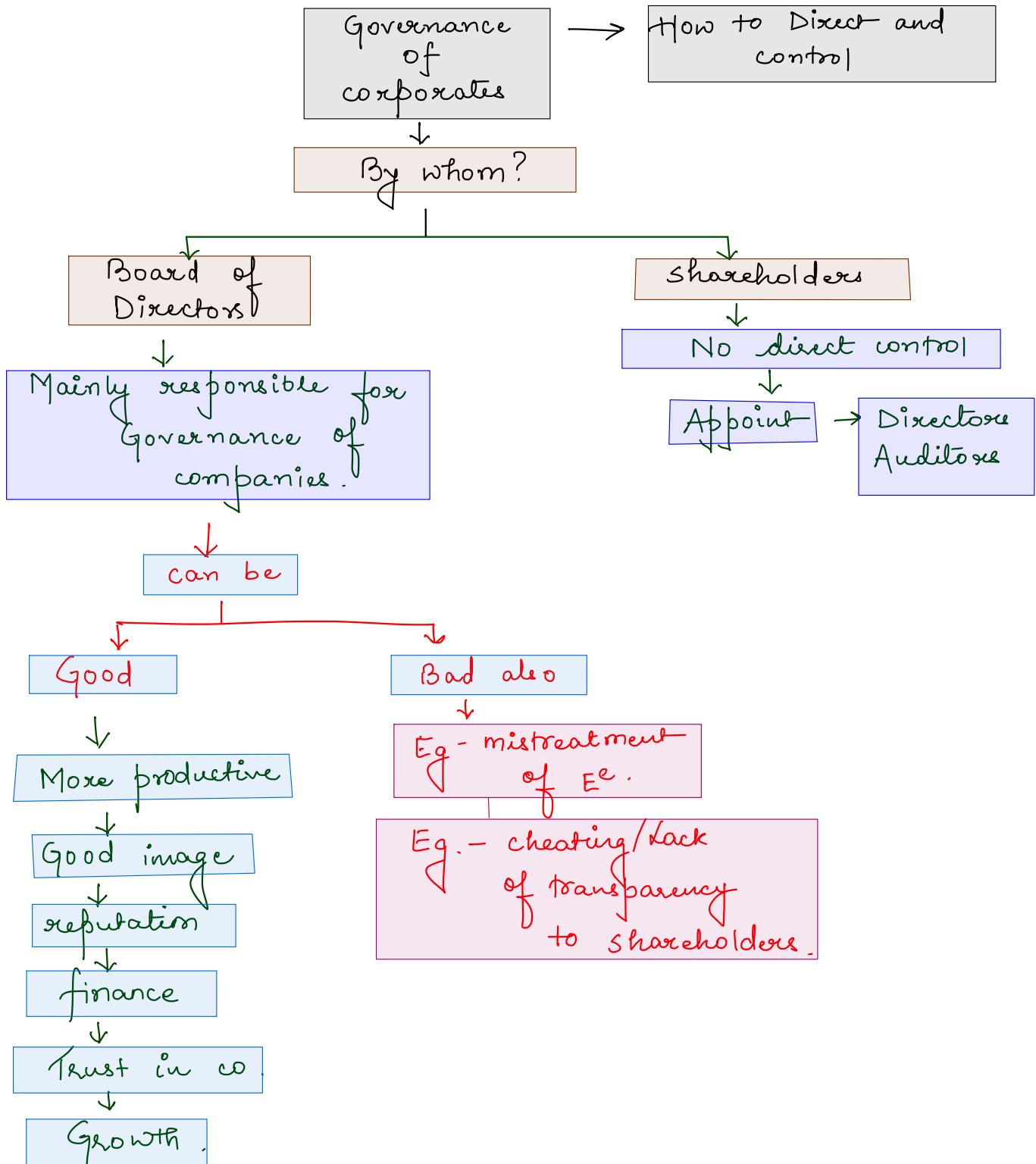
within (60 + 60) days may file an appeal

to High Court © CA Shivangi Agrawal



KYC Registry → to keep data which include Analysis and transforming of data

Corporate Governance



Corporate Governance

- It normally applies at top level
- CG is not about achieving any result but it's a fair method of managing a corporate.
- Corporate Governance is different from Ethics and also different from day to day operational management.
- CG is more a way of business life than a mere legal compulsion but since companies do not follow good governance practices unless mandatory, CG has to be imbibed through Regulations.

Features of CG

- Transparency
- Prudent Management
- Enhancing value of Enterprise
- Accountability
- Innovation
- Professionalism
- Stakeholder Recognition

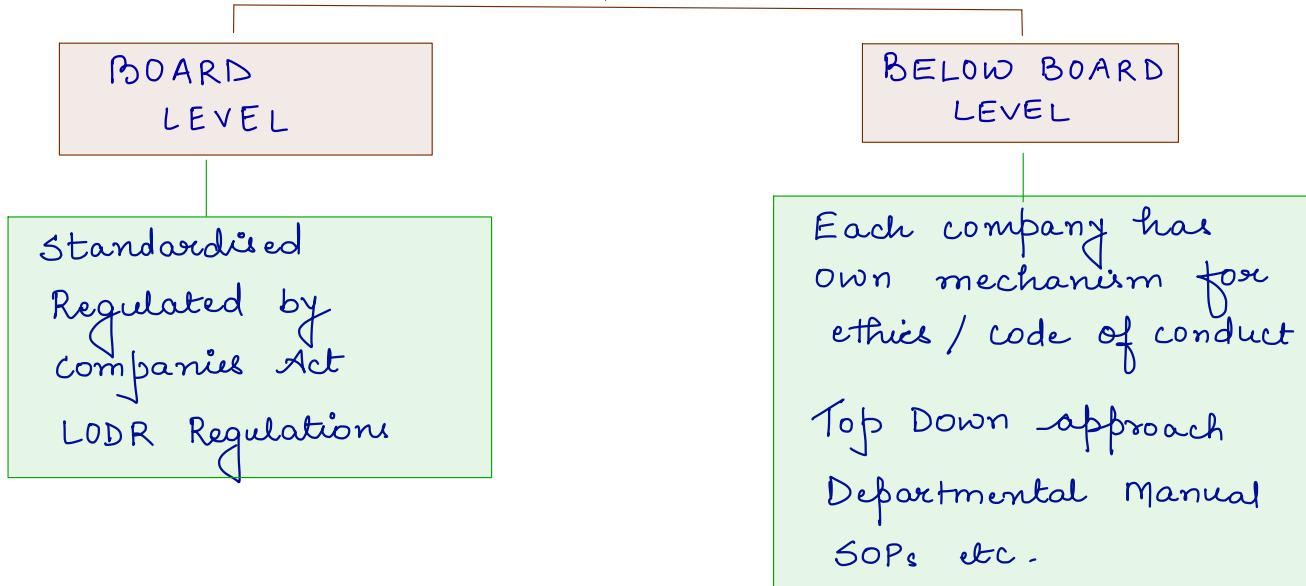
Theories of CG through Board Management

- Stewardship — Directors decide and drive
- Agency — Directors act as agents
- Stakeholder — wide inclusion of all stakeholders.
- Trusteeship — Directors are given authority.
Trust very important.

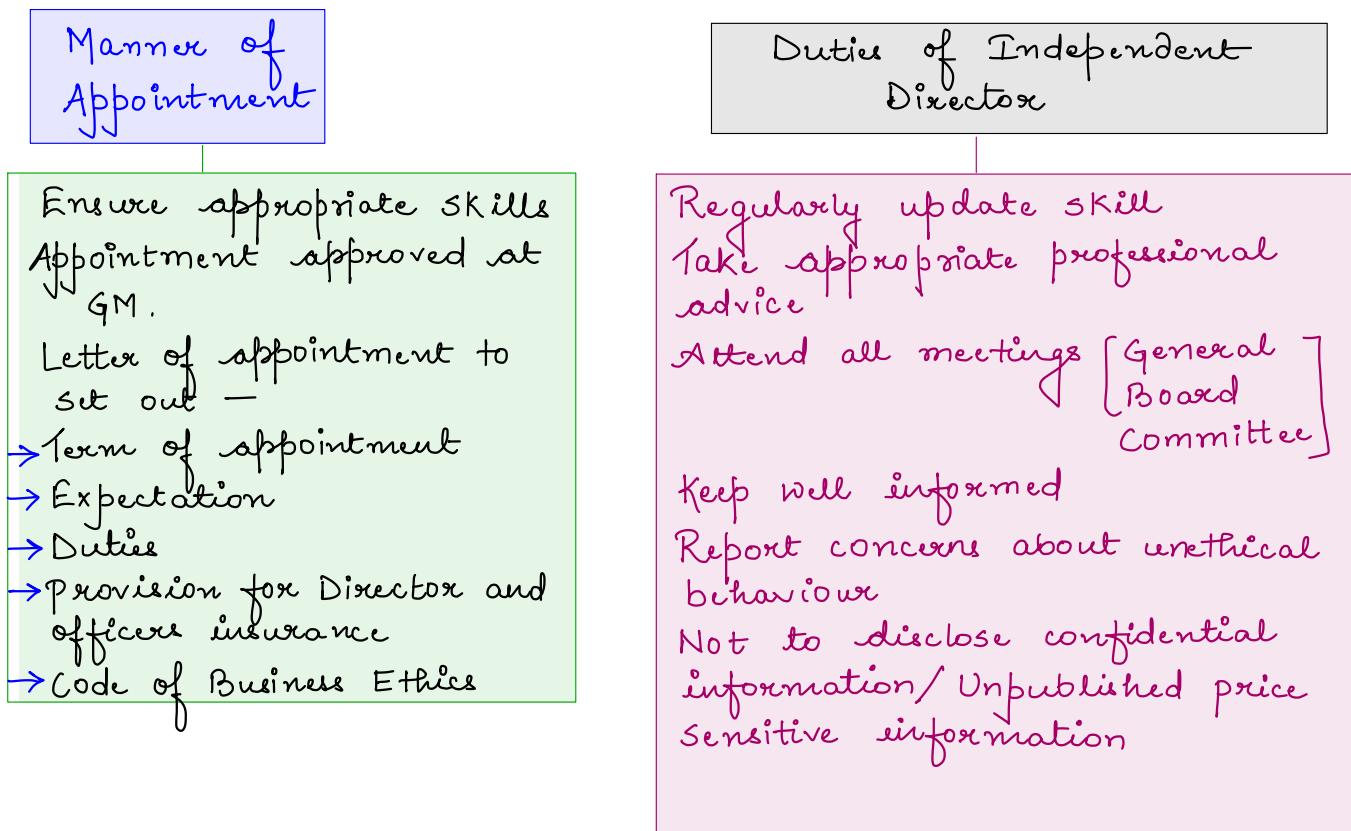
Corporate Governance Practices in India



Principles of Good Governance

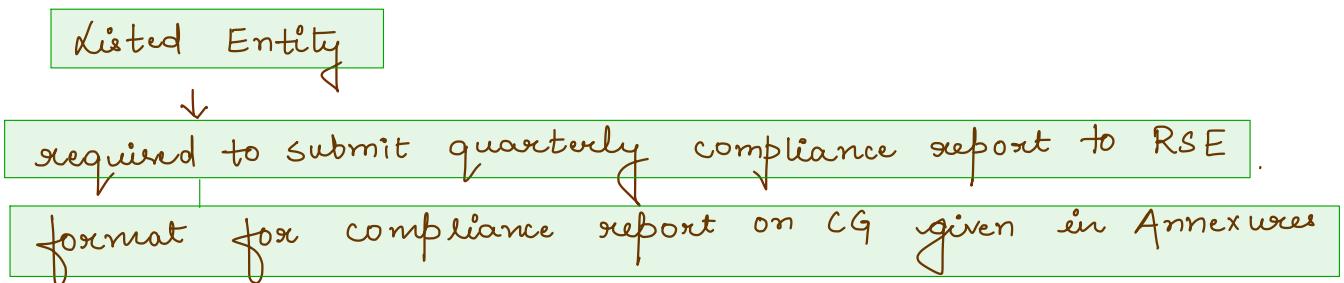
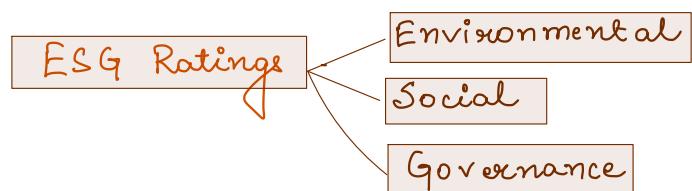


Independent Director — Schedule IV under co.'s Act



Corporate Governance Ratings

It determines relative standing of an entity vis-a-vis other entities in respect of best practices followed on CG principles



Corporate Governance in Family Business

Where the voting majority is in the hands of the controlling family.

Features :-

- Directors / Senior Management from family.
- formation of coterie
- Attachment of Emotions
- Dilution of shareholding over generations
- conflict of interest
- Non-family Directors defunct in decision making.
- Hard core professionals avoid working
- Death / disability of senior member results to leadership management crisis.

Emerging Issues

- Separation of ownership and Management
- family members acquiring professional courses from reputed institutes
- Promoters are encouraging professionals
- Role decided at Board level
- Owners accepting opinion of managers
family issues satisfied by forming trust

National Guidelines on Responsible Business Conduct

1. Businesses should conduct and govern themselves with integrity and in manner that is ethical, transparent and accountable.
2. Businesses should provide goods and services in a manner that is sustainable and safe.
3. Businesses should respect and promote well-being of all employees including those in their value chains.
4. Businesses should respect interest of and be responsive to all of its stakeholders.
5. Businesses should respect and promote human rights.
6. Businesses should respect and make efforts to protect and restore environment.
7. Businesses when engaging in influencing public and regulatory policy should do so in a manner that is responsible and transparent.
8. Businesses should promote inclusive growth and equitable development.
9. Businesses should engage with and provide value to their consumers in a responsible manner.

Corporate Social Responsibility [Sec. 135]

Company

which complies with any of the following condition :-

Net worth
 $\geq 500 \text{ cr}$

OR

Turnover
 $\geq 1000 \text{ cr}$

OR

Profit
 $\geq 5 \text{ cr}$

composition

3 or more
Directors
(Out of
which
at least 1
Independent
Director)

Shall constitute CSR committee and

recommend CSR policy

in accordance with Schedule VII

If expenditure
doesn't exceed 50
lakh, No requirement
of CSR committee

with Minimum expenditure
2% Average Net Profit made
during immediately 3 preceding years

to Board

who shall approve

and then CSR Activity is implemented

through

company u/s 8
or registered
trust/society
established by
company

OR
company u/s 8
or registered
trust/society by
CG/SG/Act of
Parliament

OR
company u/s 8
or registered
trust/society if

it has 3 years
track record of
similar activities
and has specified
mechanism.

What shall not be considered as CSR ?

- ◎ Activities undertaken outside India.
- ◎ which benefits only employee and their families.
- ◎ Contribution to Political Party.
- ◎ Activity in normal course of business

If not spent

relates
to ongoing
project

No

If excess amount
spent, it can be
set off acc. to Rules

t/f within 30 days of F.Y. to
Unspent A/c in Scheduled
Bank

t/f within
6 months
of F.Y. to
fund specified
sch VII

Steps in CSR Implementation

- 1) Determining Thrust Area
- 2) Identification of Project
- 3) Evaluation of CSR project :-

Before making Expenditure :- Due diligence :- Nature, cost, linking, beneficiary, feasibility, Time, monitoring, Impact measurable.

After making Expenditure.

How → with Team of 2/3 officers who inspect Document and make report

↓
Evaluated by company's evaluation team if done by independent Professionals

↓
Placed before CSR committee

↓
Recommended to Board for approval

↓
Approved → Agreement made between company & Implementing Agency for execution

↓
Completed → Agency informs with completion certificate

↓
Company

↓
Inspects → final completion

4) Implementation of CSR Projects :-

Direct Implementation

Third party Implementation

Direct Implementation

Advantages

flexible
Better supervision
Quick decision
less coordination
less cost

Disadvantages

Manpower
lack of knowledge
No B.O.G
Biased
Corrective action not defined
Lack of Monitoring.

Third Party Implementation

Organisation also needs to be evaluated

Advantages

Expertise
Better supervision
Unbiased
Single point coordination

Disadvantages

More supervision
lack of domain knowledge
Biased
No proper accounting
-ve points undocumented
lack of adequate monitoring by company

Implementing Agencies :-

Elected local bodies like Panchayats
Voluntary agencies, Trusts, missions (NGOs)
Institutes
Self-help groups
Govt organisations
Mahila Mandals etc.

Problems in Implementation

Internal

Deciding Preferences
financial mismatch
lack of seriousness
Right people to work
Internal references
Difference in opinion

External

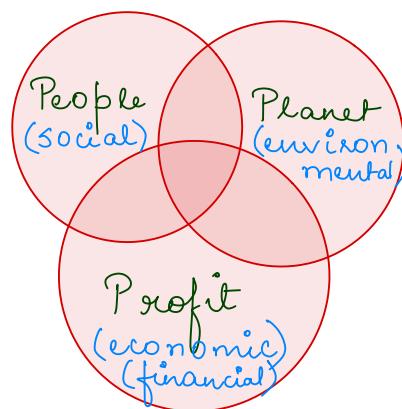
Political pressure
Social pressure
Inefficient implementing agency
Diverting siphoning money
fraud

5) Monitoring :- To be done periodically.
Assess → corrective action → final.

6) Impact Assessment → It helps in future plan.
↓
Impact Analysis → comparison → Achieved results
Study with
Desired results.

SUSTAINABILITY MANAGEMENT

Triple Bottom Line



△ People - fair wages, workplace

SOCIAL APPROACH

△ Planet - reduce ecological footprint i.e. waste etc.

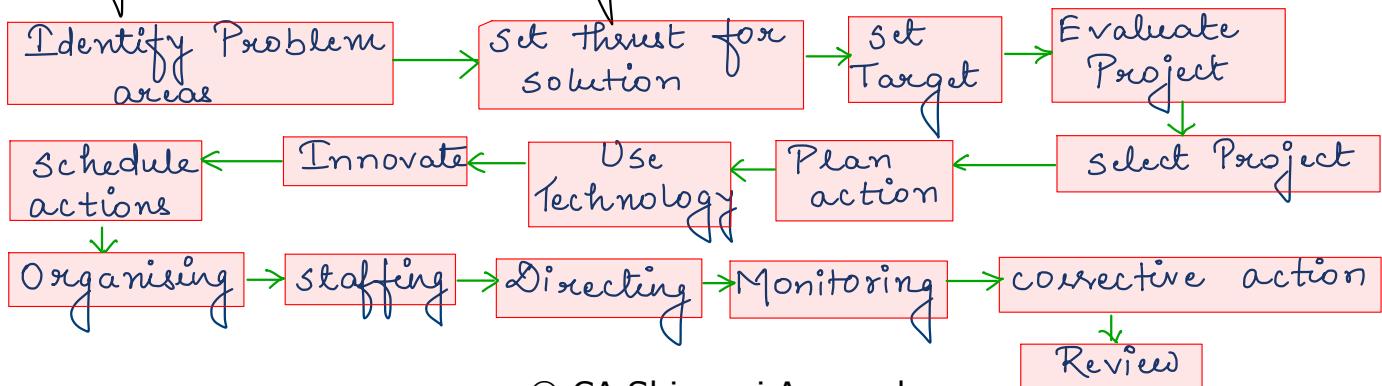
ENVIRONMENT APPROACH

△ Profit - Maximise

ECONOMIC APPROACH

Sustainable Management

Steps involved in Management



Benefits of Sustainable Management -

- Maintains economic viability
- Limits resource depletion
- Maintains quality of life on Planet
- Company can generate more savings
- Better performance

Insolvency and Bankruptcy Code, 2016.

Insolvency

State where the Liabilities > Assets

If treated

If Untreated

It may lead to

Liquidation

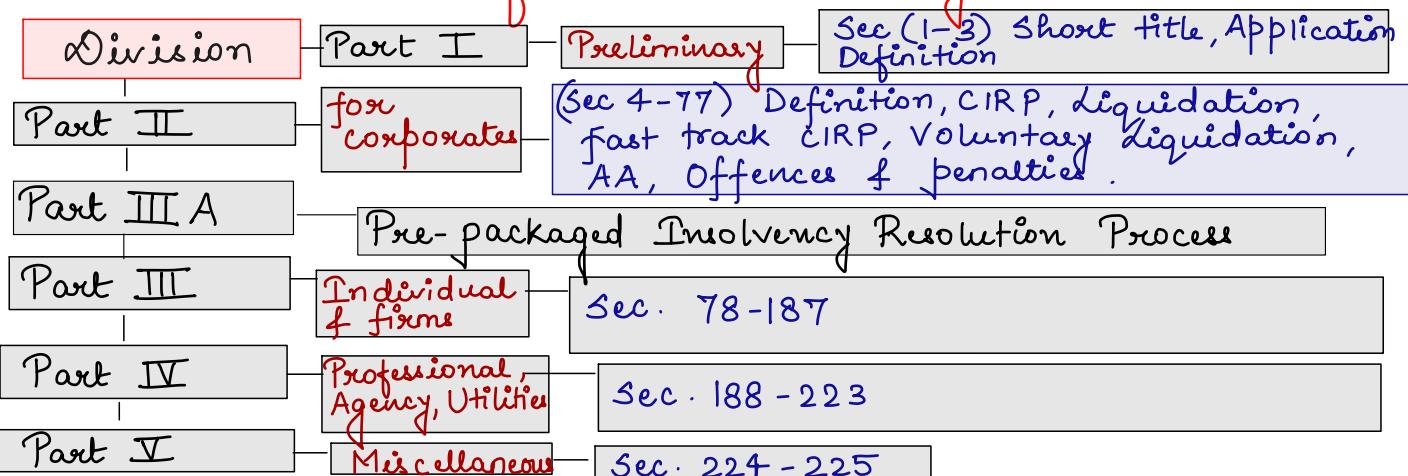
for corporates

Bankruptcy

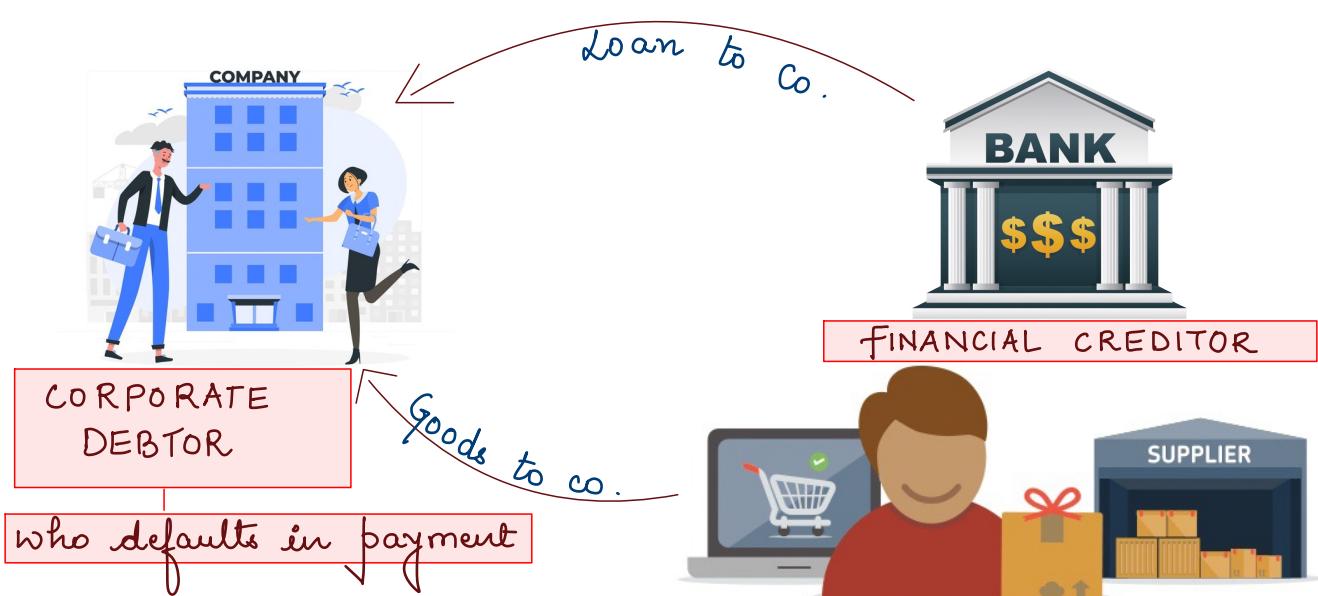
for Non-Corporates

Code which repealed and amended many laws.

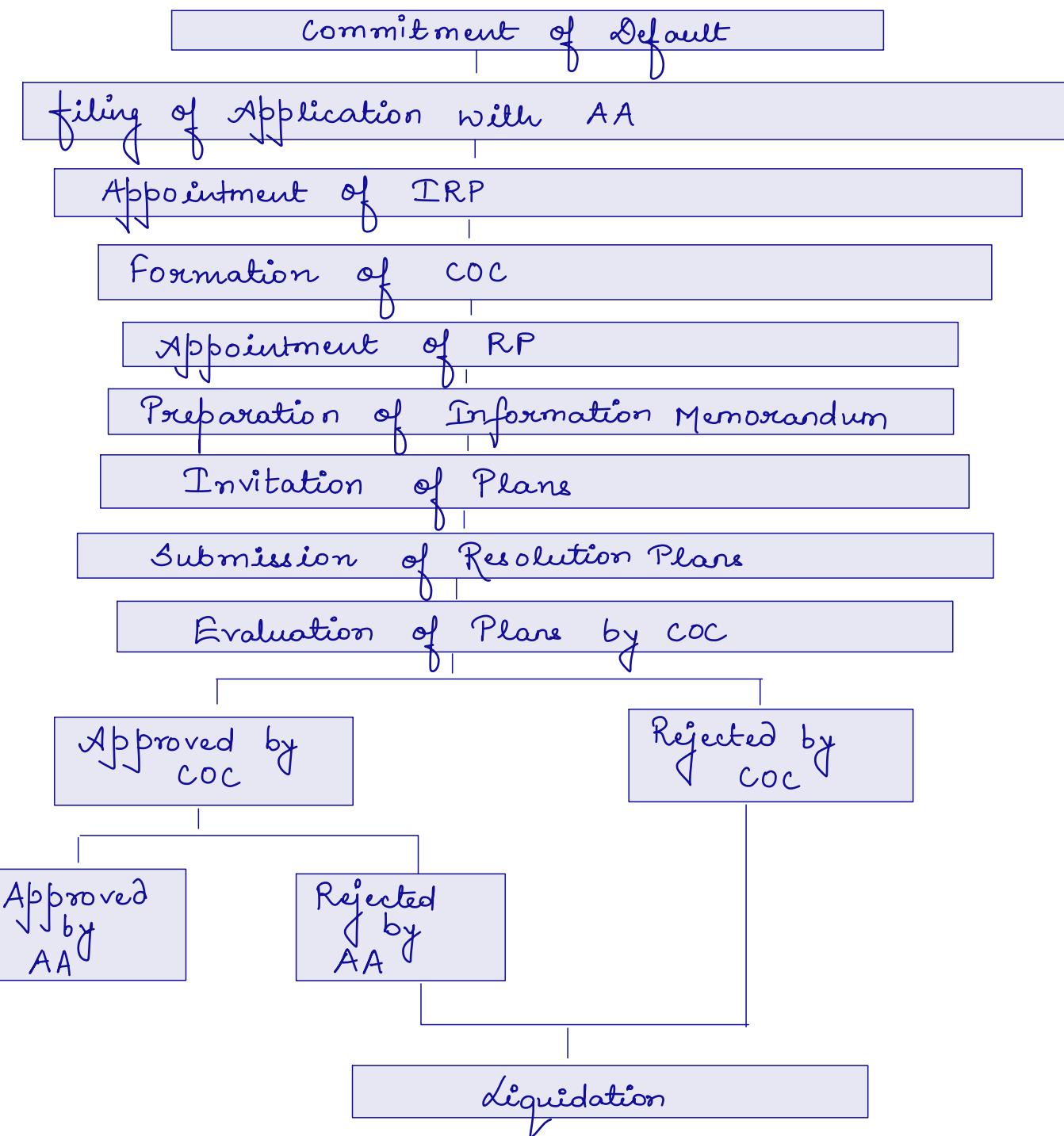
Came into force on 28th May 2016



Parties under IBC

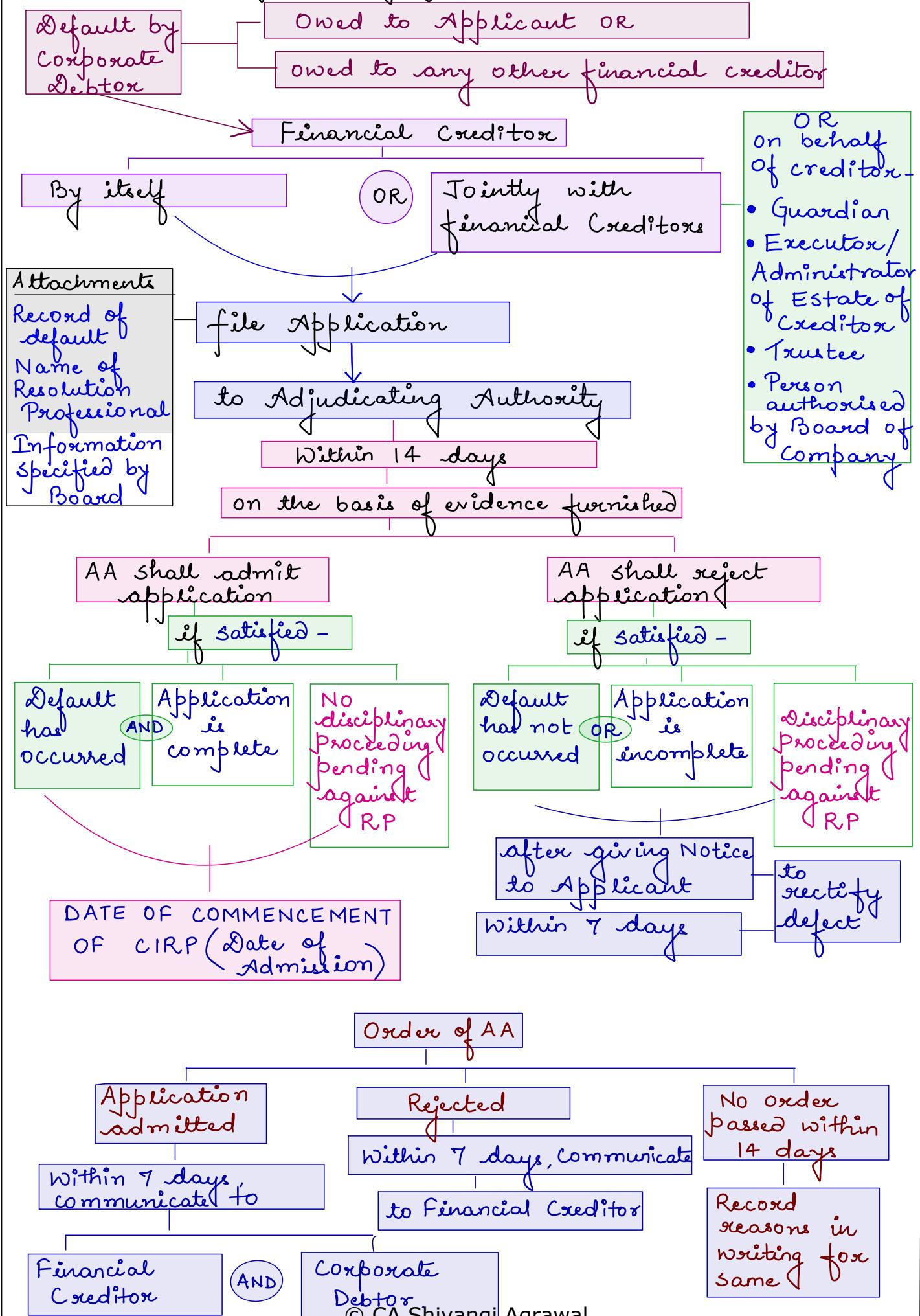


CIRP Overview

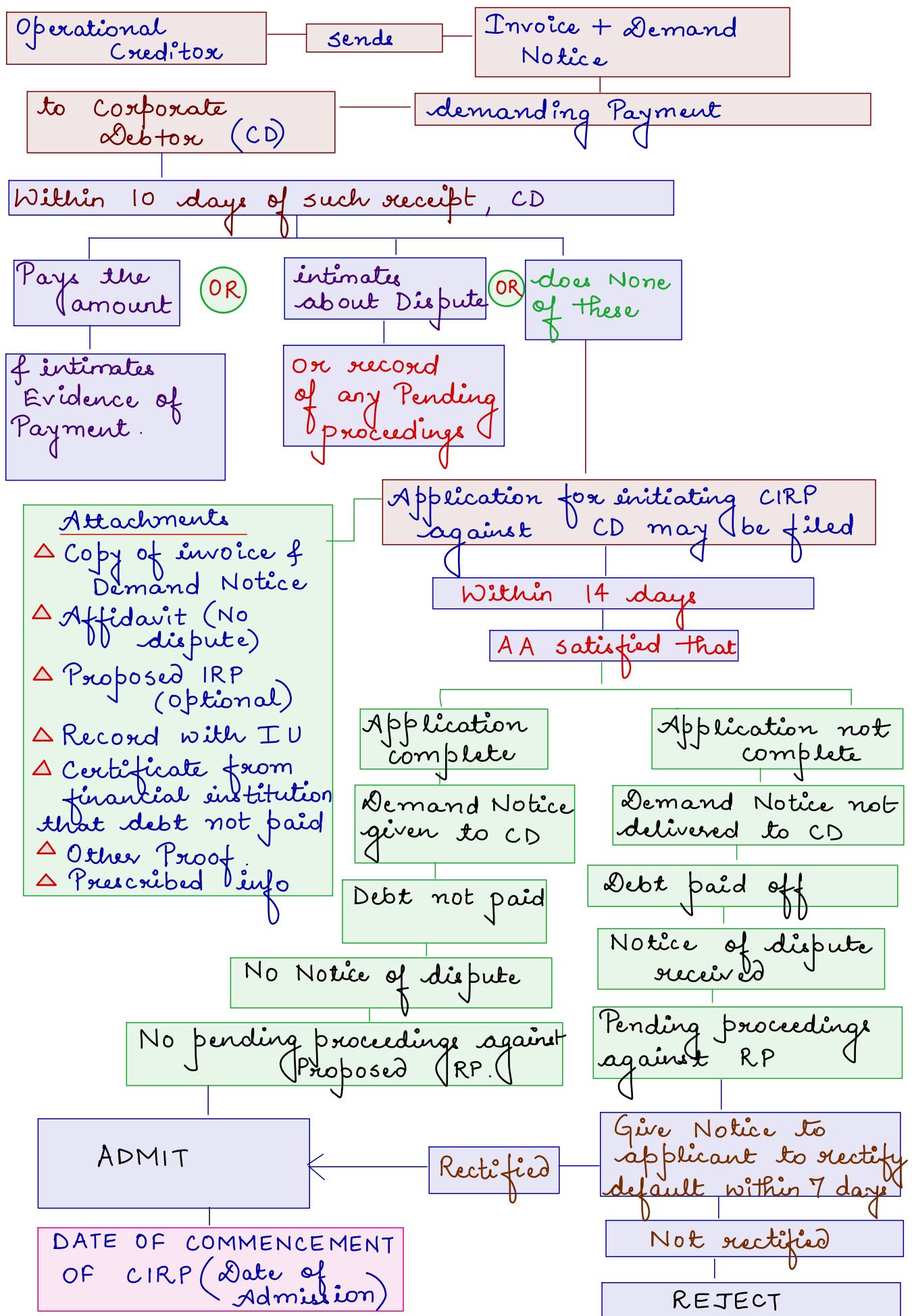


CIRP	Corporate Insolvency Resolution Process
IP	Insolvency Professional
IRP	Interim Resolution Professional
RP	Resolution Professional
COC	Committee of Creditors
CD	Corporate Debtor
AA	Adjudicating Authority - NCLT
Board	TBBI
RP	can mean Resolution Plan also

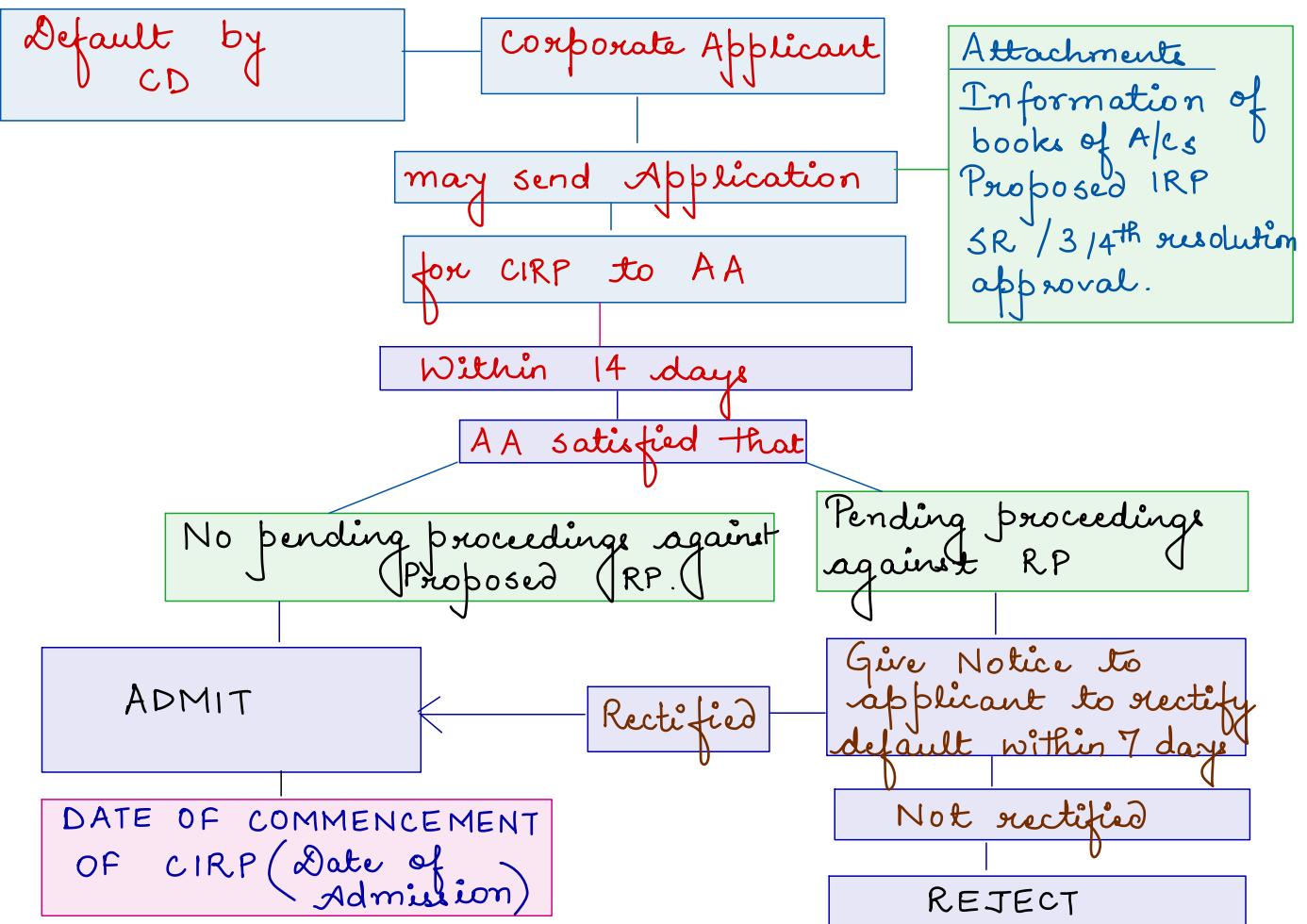
Initiation of CIRP by financial Creditor (Sec. 7)



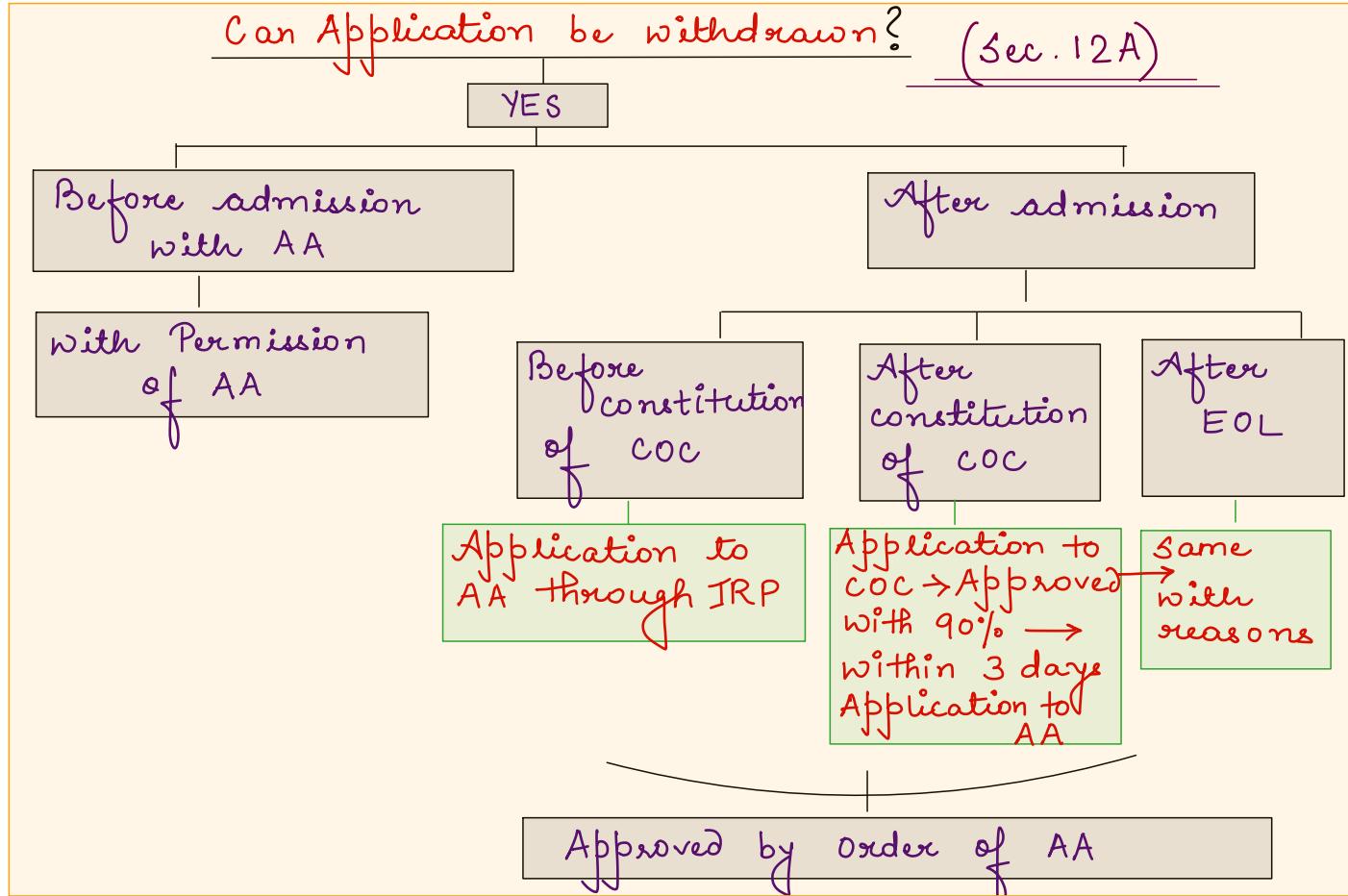
Initiation of CIRP by Operational Creditor (sec. 8 + sec. 9)



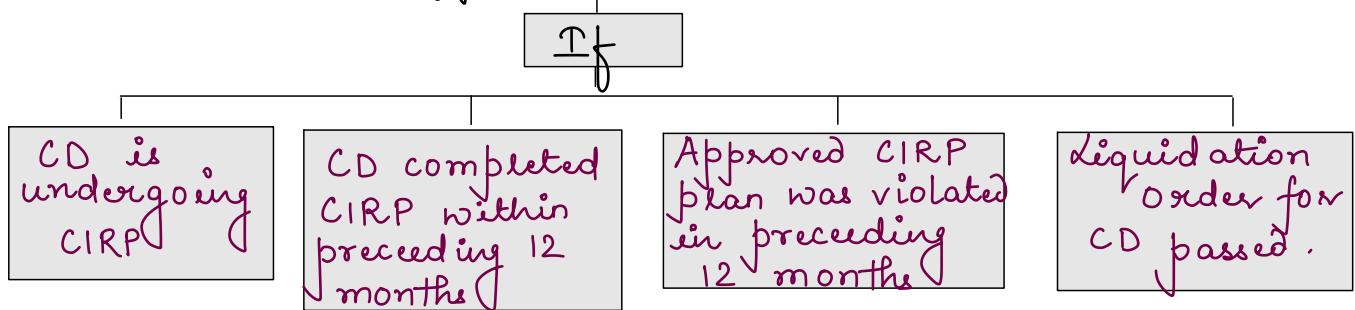
Initiation of CIRP by Corporate Applicant (Sec. 10)



Can Application be withdrawn? (Sec. 12A)



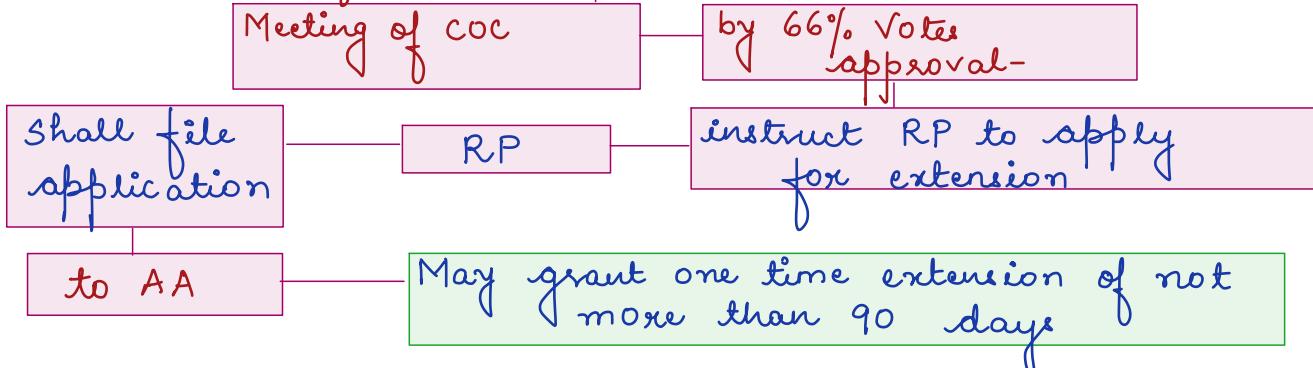
When Application can't be made? (Sec. 11)



Time limit for completion of CIRP (Sec. 12)

CIRP to be completed within 180 days from commencement

if not possible then -



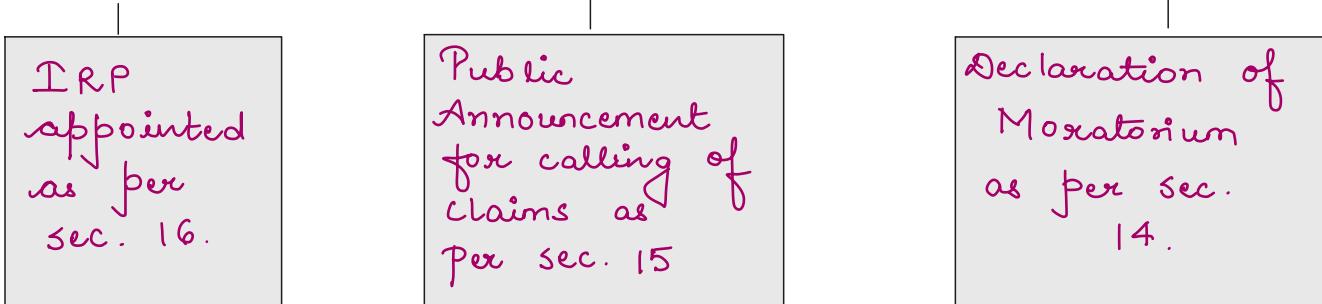
CIRP to be completed within 330 days (including extension and time in legal proceedings)

If Not -

Within 90 days from 16.08.2019 (Amendment Act 2019)

After admission of Application

AA passes 3 Orders



Moratorium (Sec. 14)

Delay or suspension of an activity.

On Insolvency commencement date, AA

shall prohibit -

Institution of suits/
continuation of Pending
suits against CD

Transferring /
encumbering /
disposing of Assets / legal
right of CD

Recovery of any property by owner in possession of CD.

Execution of any Order of court/
Authority

Action to foreclose/recover/enforce security interest

Supply of essential goods / services not to be Terminated & licensed by Regulator also suspended or interrupted.

N.A

→ Transaction notified by CG
→ Surety who has given guarantee for CD.

Tenure of Moratorium

Otherwise

If Resolution Plan approved

If liquidation order passed

Till date of such approval

Till date of such order

Till end of CIRP.

Public Announcement (Sec. 15)

Immediately (within 3 days) of appointment of IRP

IRP to make Public Announcement

Contents

Name & Address of CD

Authority under which registered

Details of IRP

Last date for submission of claims

Penalty for false claims

CIRP end date.

Appointment of IRP (sec. 16)

CIRP application is made by -

Financial Creditor (sec. 7)

Corporate Debtor (sec. 10)

Operational Creditor (sec. 9)

If no disciplinary proceeding pending against Proposed RP

He shall be appointed as IRP

If no disciplinary proceeding pending against Proposed RP

He shall be appointed as IRP

Whether IRP is proposed in Application or not?

Yes

No

AA refers the matter to IBBI

within 10 days

IBBI recommends name.

Person so appointed shall continue till appointment of RP u/s 22.

Powers of IRP :-

Management of affairs (of CD) by IRP

Board Powers suspended and to be exercised by IRP.

Officers to report to IRP and provide all docs.

Execute Deeds / Documents

Take actions specified by Board

Access electronic records from IU

Access books of A/c's, record with Authorities

Compliance with law

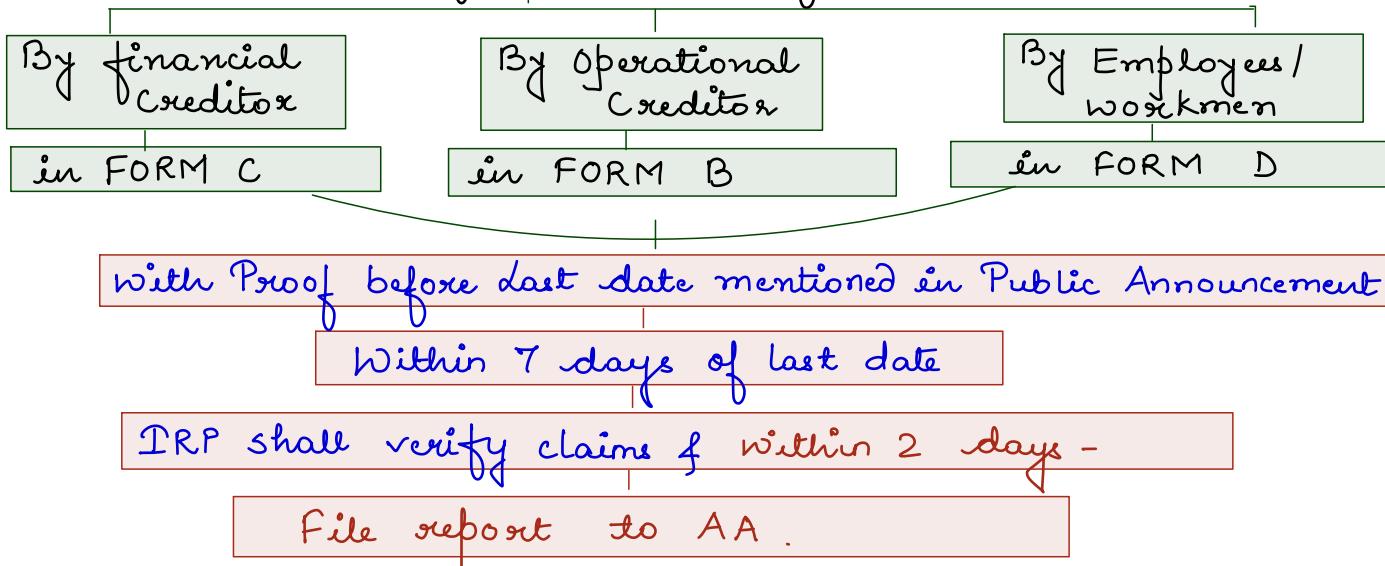
Financial Institutions to act on instructions of IRP and furnish information to IRP.

IRP shall endeavor to protect and preserve property of CD and manage operations as a going concern.

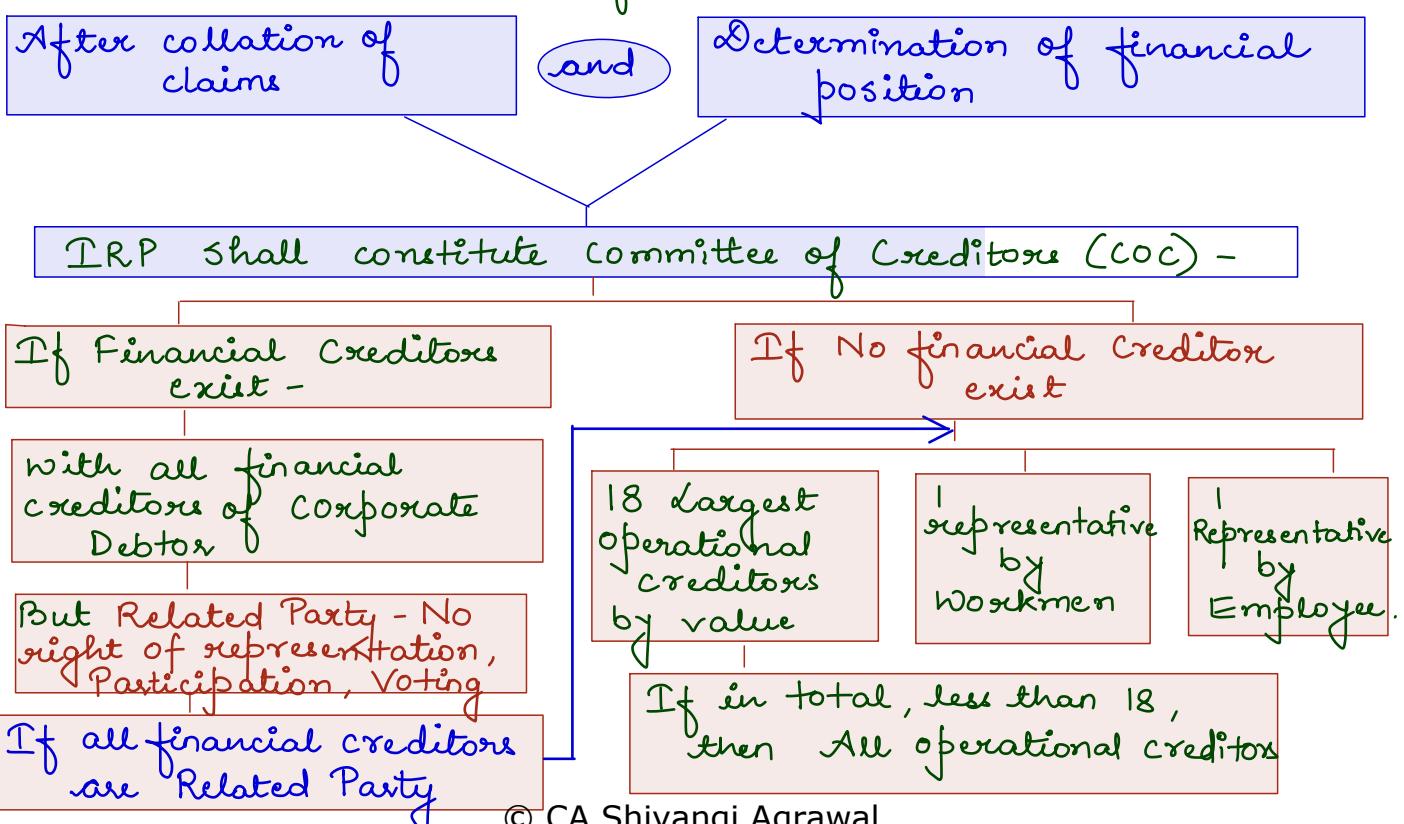
Key Duties of IRP

- Collect info about assets, finances etc.
- Collate claims
- Constitute COC
- Monitor assets
- file info with IU
- Take control and custody of assets
- Perform duties specified

Manner of submission of Claims



Committee of Creditors (Sec. 21)



Special Cases :

2 or more financial Creditors as a part of consortium

Person is financial as well as Operational Creditor

Operational creditor assigns his debt to financial Creditor

Each financial creditor shall be a part of COC

Voting Share to be proportionate to financial debt owed to him by CD

Assignee considered as Operational Creditor to the extent of operational debt owed

Voting right be in proportion of financial debts owed.

Meeting of Creditors

Constitution of Committee

within 7 days

5 days Notice to Every Participant .
May be reduced by COC to not less than 24 / 48 hrs.

Conduct 1st meeting of COC .

Notice

Representing 33% of Voting rights in person or by AV

Quorum

Voting

If not

Actions requiring approval shall be approved by vote of 66% / 51%.

Meeting adjourned to same time Place next day .

COC may demand any info relating to CD from RP and RP to furnish it within 7 days

Appointment of RP (Sec. 22)

In the 1st meeting of COC, By 66% voter - Appoint

IRP as RP

Replace IRP

If written consent obtained

COC sends

Application (Proposed IRP + his consent) AA

COC communicates decision to -
IRP
Corporate Debtor
Adjudicating Authority

within 10 days

to Board

forward it

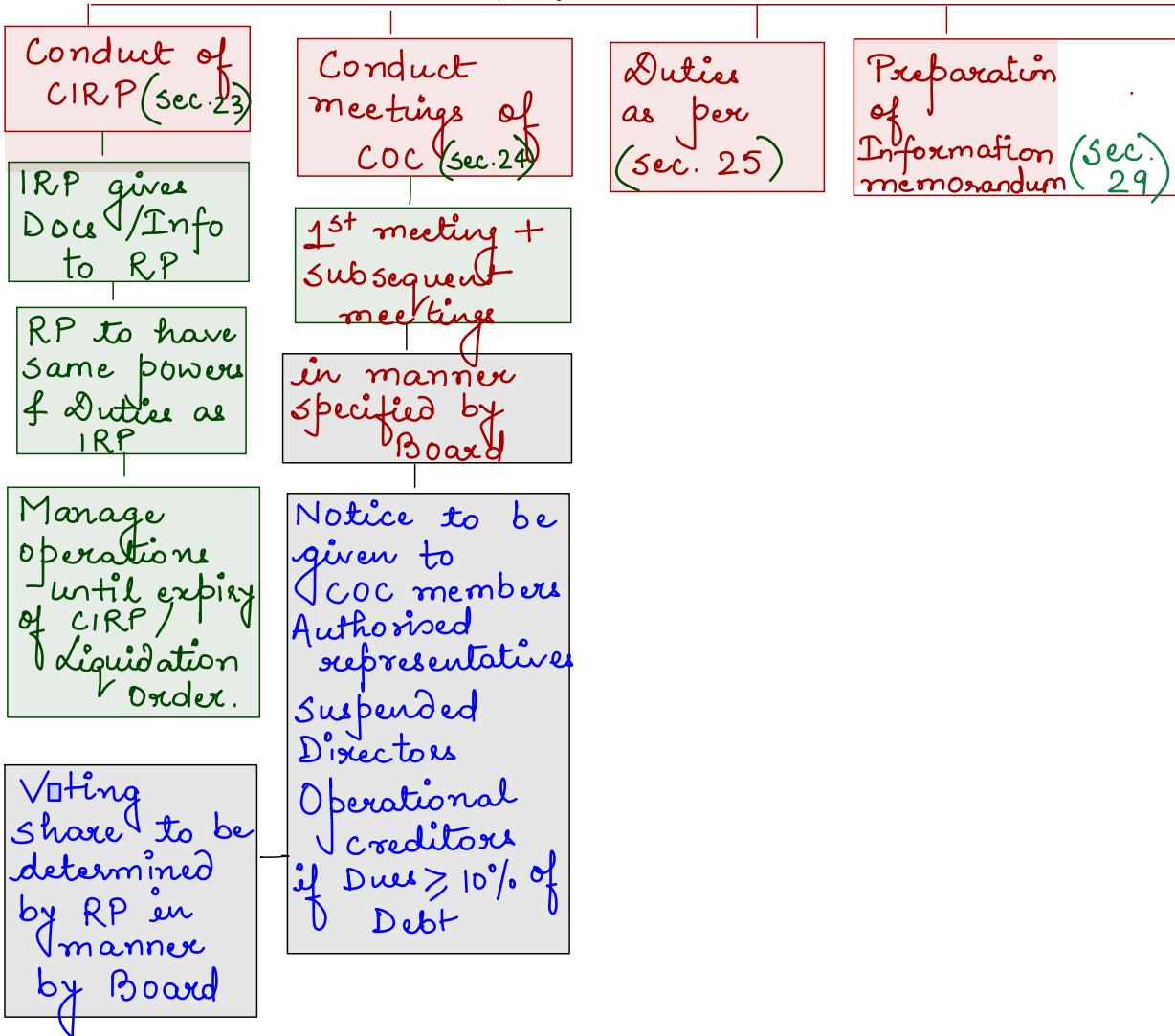
Confirms

Proposed RP appointed

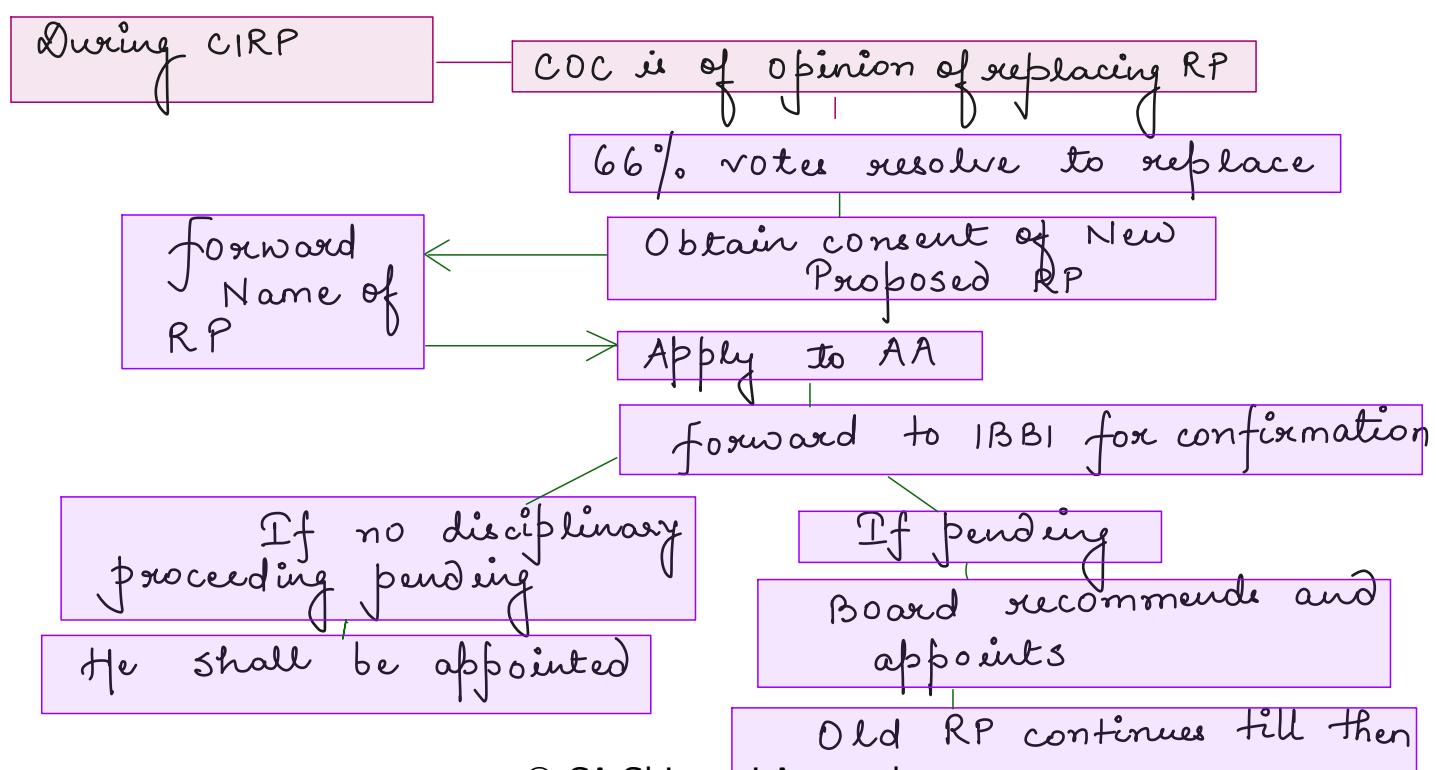
Board doesn't confirm

IRP continue as RP, until Board confirms other

Duties of RP



Replacement of Resolution Professional (sec. 27)



Duties/Actions (Sec. 25) — Subject to Approval (Sec. 28)

Preserve, protect assets of CD and continue its business.	Take custody and control of assets
Exercise rights for CD's benefit in proceedings	filing of application for avoidance of transactions (chapter II)
Maintain updated list of claims.	Appoint required accountants, professionals etc.
Represent CD while 3rd party dealings	Other actions as specified by Board.

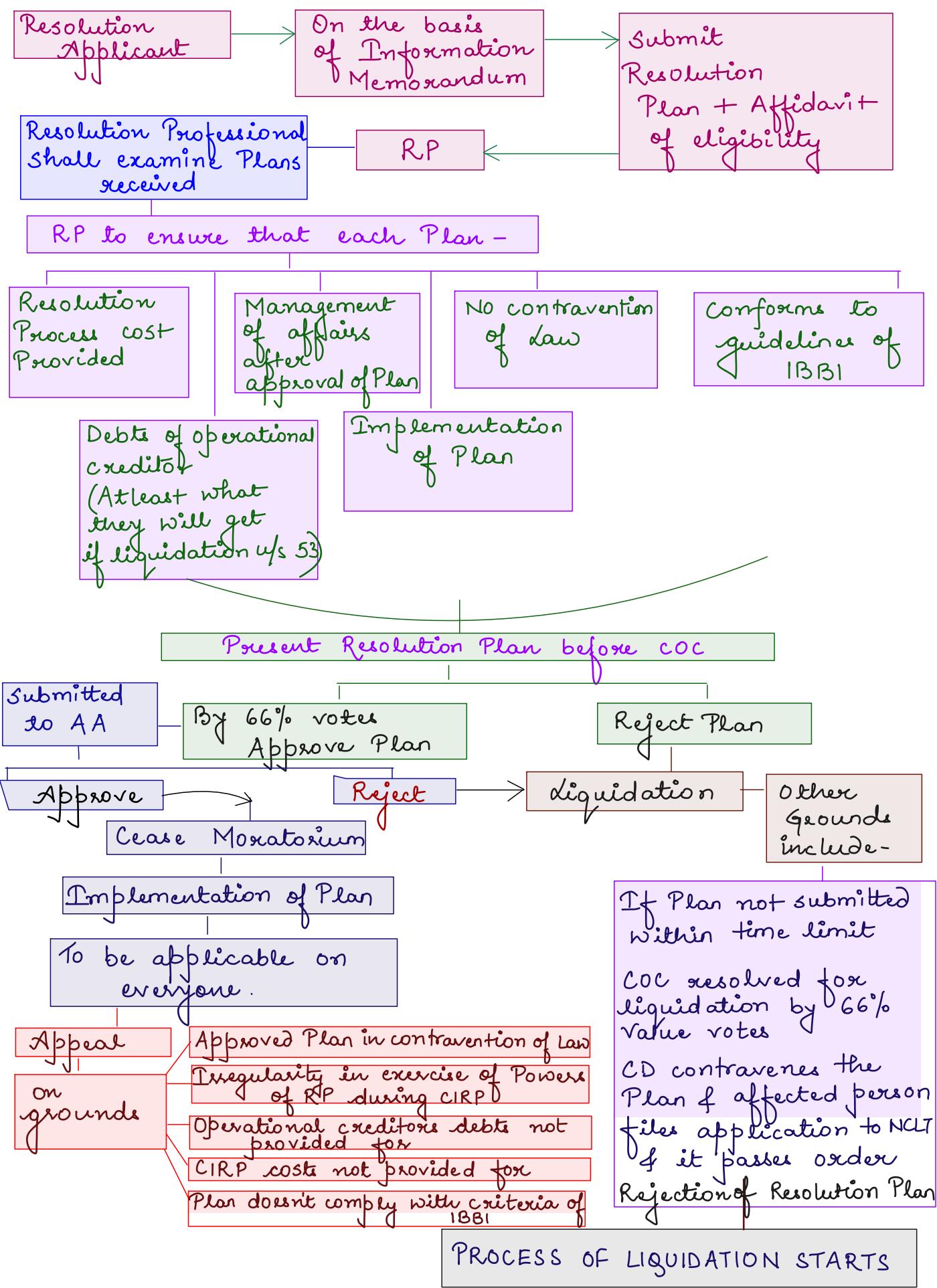
Invite Prospective resolution applicants to submit resolution plan from eligible **resolution Applicants**

Section 29A

Person not eligible

Undischarged insolvent	Wilful defaulter according to RBI
Disqualified as a director under companies Act.	Prohibited by SEBI for trading
Has an account classified as NPA and 1 year or more elapsed from such date.	convicted for offence - imprisonment - 2 years/more (Twelfth schedule)
Promoter/in mgmt of corporate Debtor in which Preferential/Under valued / fraudulent transaction convicted for offence - imprisonment - 7 years/more (under any other law)	Executed Guarantee in favour of Creditor in respect of CD against which application for resolving insolvency admitted and such guarantee invoked by creditor and remains unpaid
Disability as above under foreign law	Connected Person not eligible

Submission of Resolution Plan (Sec. 30)



Order of liquidation may be passed on above grounds

Deemed to be notice of discharge to Employee etc.

Appointment of liquidator

except where business is continued

Resolution Professional to act as liquidator subject to his written consent

Shall have all powers of BOD, KMP

and personnel to extend all assistance to liquidator

If

Plan was rejected on failure to meet requirements

OR

Board recommends replacement of RP for reasons in writing

OR

RP doesn't give written consent

AA directs Board to propose a name

within 10 days

Name is proposed with written consent

Such IP is appointed as liquidator

Powers and Duties of Liquidator (sec. 35)

Verify claims, Invite and settle claims

Take into custody all assets etc.

Evaluate Assets & Property & prepare report

Protect assets / properties carry business

Sell property by auction / transfer / in specified manner

Draw, accept, make, endorse Negotiable Instrument

Take out in official name letter of administration to deceased contributory

Obtain professional assistance

Institute suit

Investigate affairs - Undervalued / Preferential transactions

To take all actions to sign / execute / verify deed, document bond etc.

Apply to AA for necessary orders, Other specified functions

Liquidator also has power to access info. Creditor may require liquidator to provide any financial info to them -
AND Liquidator → within 7 days → Provide info / reasons for not doing so.

Liquidation Estate

Inclusions	Exclusions
Assets over which CD has ownership rights	Owned by 3rd party in CD's possession
Encumbered Assets	Collateral held by financial service providers
Tangible / Intangible Assets	Personal assets of shareholder / Partner
Ownership of Assets determined by court	Assets of Indian / foreign subsidiary
Assets recovered through proceedings	Other assets specified by Board
Assets issued as collateral over which creditors have relinquished right	
Proceeds of liquidation	
Property at Insolvency commencement	

Consolidation of Claims (Sec. 38)

Commencement of Liquidation Proceedings

Within 30 days

Liquidator to collect claims of Creditors with record with Information Utility / supporting doc

Verify claims within 30 days from last date of receipt of claims

May withdraw or vary within 14 days of submission

May require other document and then, it may -

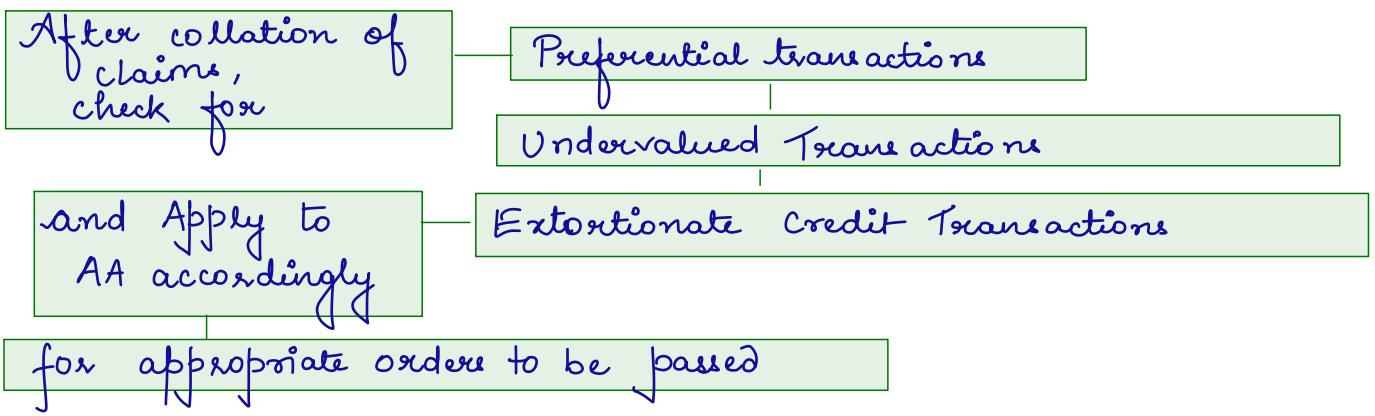
Admit

Reject

Record reasons

Appeal within 14 days of receipt of such Decision to AA

Liquidator shall determine value of claims in manner



Distribution of Assets (Sec. 53)

- 1 I.R.P and liquidation costs in full
- 2 Workmen's Dues for 24 months preceding liquidation commencement date
AND
Debt of secured creditor
- 3 Wages and Unpaid dues to employee other than workmen for preceding 12 months
- 4 Financial Debt to unsecured creditor
- 5 Amt due to CG/SG
AND
Debt of Secured creditor unpaid following enforcement of security Interest
- 6 Remaining Debts and Dues
- 7 Preference shareholders
- 8 Equity shareholders / Partner

Any contractual arrangement with equal ranking if disrupting order of priority shall be disregarded

Liquidator shall distribute proceeds within 90 days from receipt of Amount to stakeholders

When assets completely liquidated

Liquidator shall make application to AA for dissolution

Insolvency & Bankruptcy Code (Amendment) Ordinance 2021

4th April 2021

introduces Alternate insolvency resolution process

for MSME

called as Pre-packaged Insolvency Resolution

PIRP

Chapter IIIA containing sections 54A to 54P (Newly inserted)

What is MSME ?

As classified according to MSME Development Act, 2006

Conditions	Micro	Small	Medium
Investment in Plant & Machinery	Not more than 1 crore AND	Not more than 10 crores AND	Not more than 50 crores AND
Annual Turnover	Not more than 5 crores	Not more than 50 crores	Not more than 250 crores

Meaning of Pre-pack (Because plan is already packed)

Informal arrangement

between

Promoters
and
Creditors

Alternative to CIRP - available only for MSMEs

Difference between PPIRP and CIRP

Particulars	CIRP	PPIRP
Applicability	for all corporations	Only for MSMEs
Application by whom?	Corporate Applicant / Creditors	Only Corporate Applicant
Time limit	270 / 330 days	120 days
Default Amount	1 crore	10 lakhs
Management	is taken over.	Stays with Promoters & management
Arrangement	Only formal	Informal + formal

Process

Default by MSME of atleast 1 lakh (CG may increase
(Notified = 10 Lakhs) limit up to 1 crore)

Only Debtor is allowed to initiate PPIRP

in event of default

if

No PIRP
during 3 years
preceding
initiation date

AND

Not
undergoing
CIRP

AND

No order of
liquidation
u/s 33

AND

Declaration by
Directors -
PIRP within 90
days
No intention to
defraud
Proposal and
approval of IP

AND

Financial
creditors (Not
related parties)
have proposed
IP and 66%
have approved
proposal

AND

eligible to
submit
resolution
plan u/s 29A

AND

SR by members / 3/4th by partners as
the case may be have approved
filing of Application

PPIRP Period :- from commencement date till -

Approval of
Resolution Plan [54L]

OR

Termination of
PPIRP [54N]

OR

Initiation of
CIRP [54O]

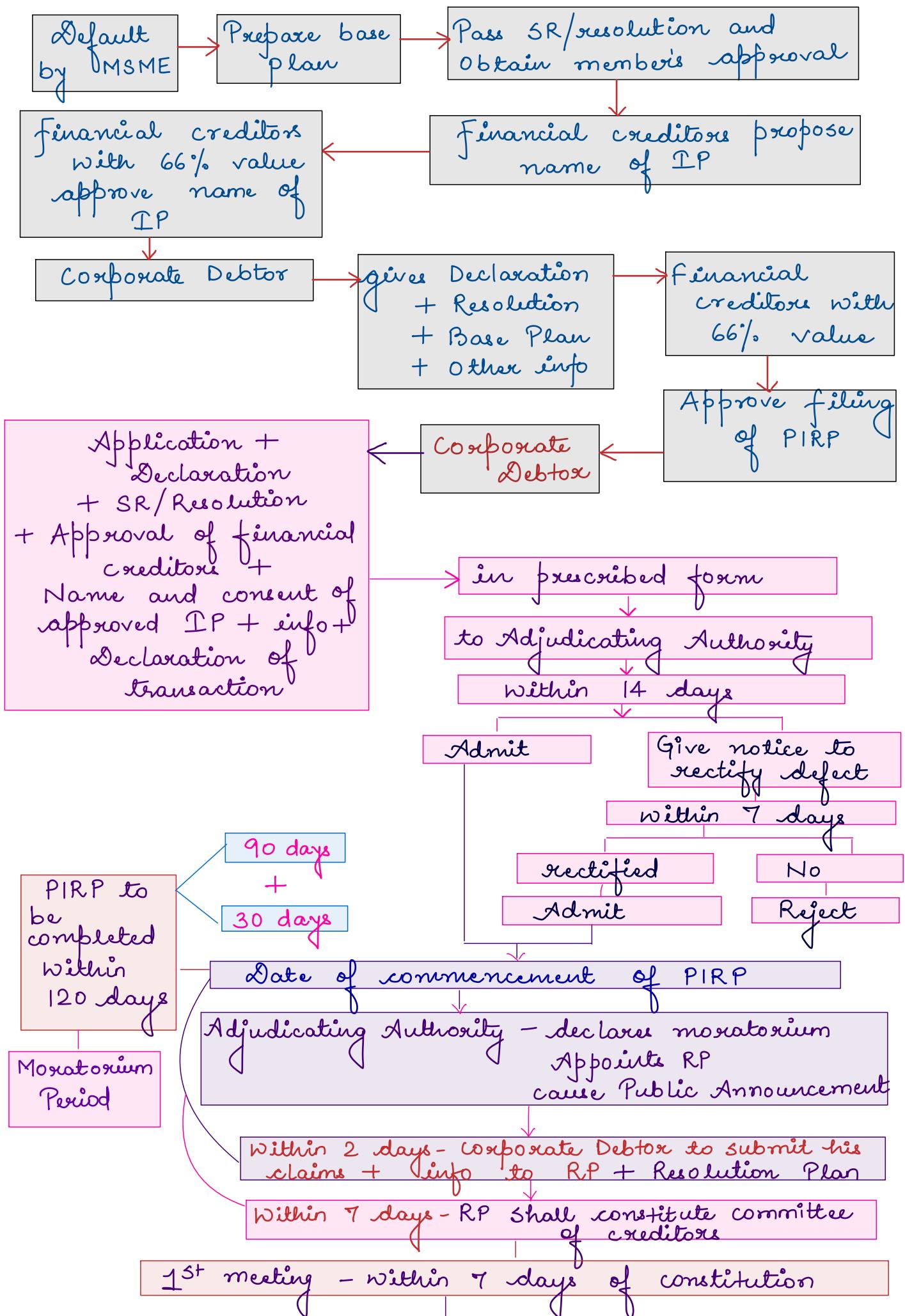
Duties of Resolution Professional

Before initiation (54B)

After initiation (54F)

Prepare report on compliance
with conditions of 54A
and
on Base resolution Plan
filing of report with IBSI
Other Specified Duties

Confirm, update claims
Monitor management
constitute COC, convene meetings
inform COC about breach
Prepare information memorandum
file for avoidance of transactions
Other specified Duties



RP to present BRP to COC within 14 days of commencement

COC shall approve/reject BRP by 66% Voting

Approve

Reject

RP shall invite Plans under swiss challenge

COC shall complete process of improvement

and select one Resolution Plan which is significantly better

Within 90 days, COC shall -

Approve BRP/
Other
Plan

No Plan Approved
then,

RP shall file Application for Termination

RP to file Approved
Plan to Adjudicating
Authority

According to
Sec. 54N

within 30 days

AA approves
the Plan

PPIRP is completed

AA rejects then
termination

Acc. to
Sec.
54N

If order u/s 54J and
termination of PPIRP -
AA to pass
order of
liquidation

Cost of
PPIRP to be
borne by
corporate
Debtors

COC by 66% voting may resolve to terminate PPIRP between commencement date and approval of Plan and AA passes relevant order upon intimation.

COC by 66% vote may resolve to initiate CIRP between commencement date and approval of plan if eligible. AA on intimation terminates PPIRP and appoints Resolution Professional [Sec. 540]

Relevant forms and procedure (As prescribed is given in
which is not included in syllabus and hence not
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