

LAW CHARTS – DIRECTORS

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DIRECTORS CHARTS

APPLICABLE FOR NOVEMBER 2019 CA FINAL EXAMS ONWARDS



CA KUSHIK MUKHESH ACA, CMA, B.COM

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वंदे गुरु परम्पराम्

PRANAAMS TO PARENTS AND TEACHERS

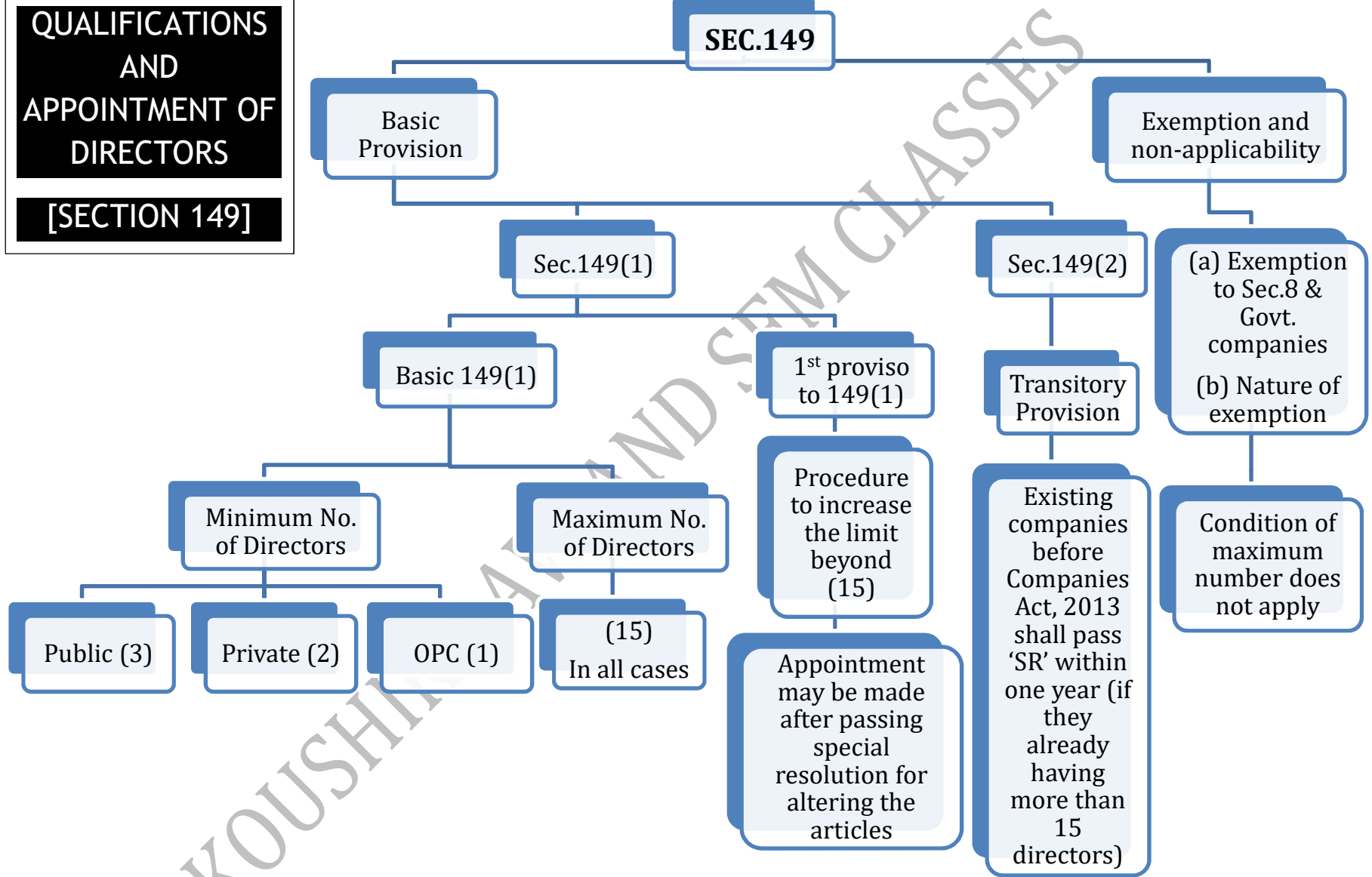
Pranaams to Pujya Sree R. Sowmya Narayanan

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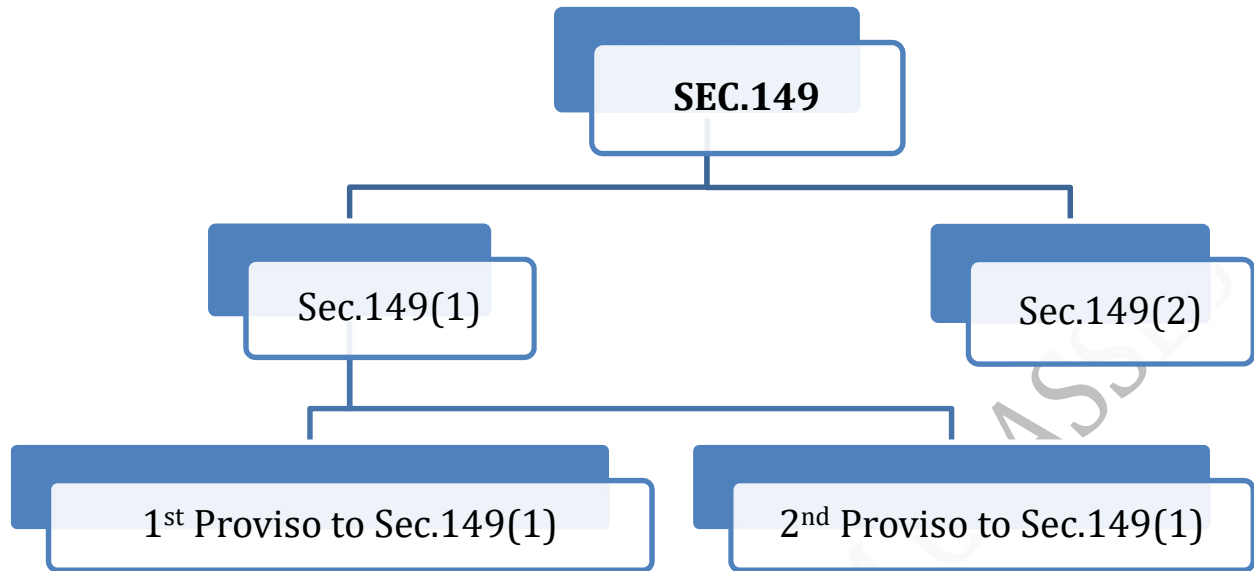
**QUALIFICATIONS
AND
APPOINTMENT OF
DIRECTORS**

[SECTION 149]



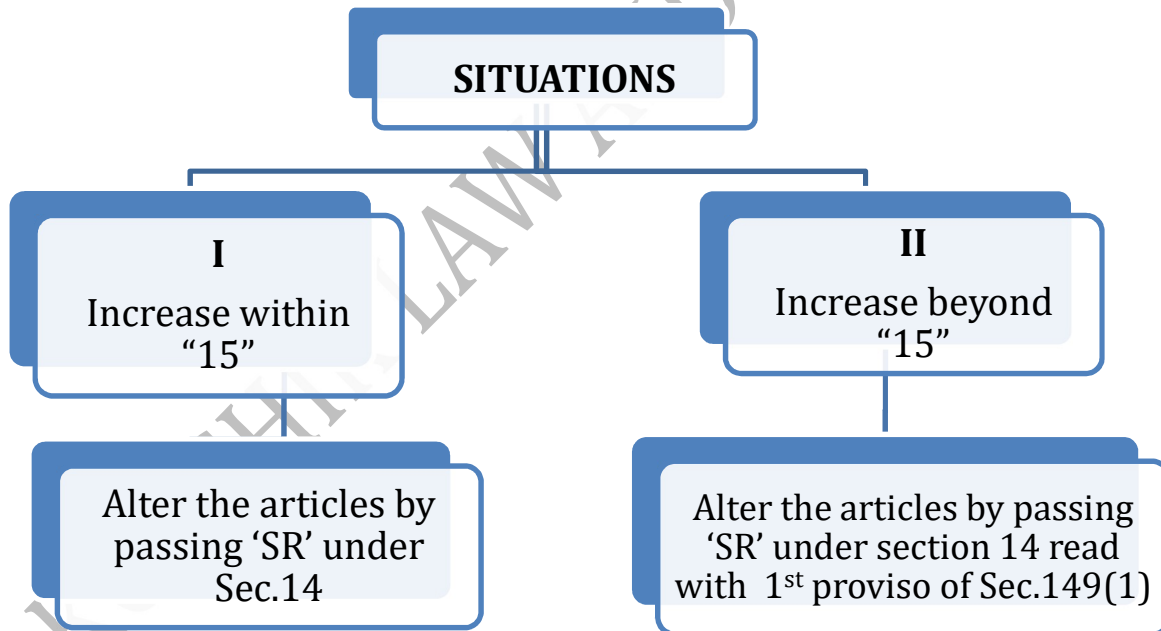
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Note: Proviso is an exception (or) clarification (or) condition.

Procedure to increase:



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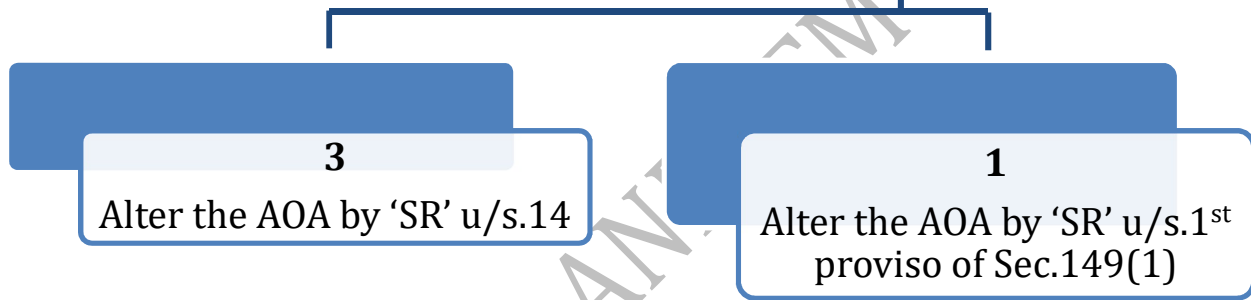
Example 1:	C₁
Maximum as per Articles	10
Proposed Increase	2

Procedure: Alter AOA by passing 'SR' U/s.14

[Note: Sec.149 (1) doesn't apply, because, it does not cross 15]

Example 2:	C₂
Maximum as per AOA	12
Proposed Increase	4

16



Example 3:

AOA	= 15	
Add	= 2	Alter the articles by SR u/s.1st proviso Sec.149 (1)
	= 17	
	= 17	

Sec.149 (2)

Transitory Provision:

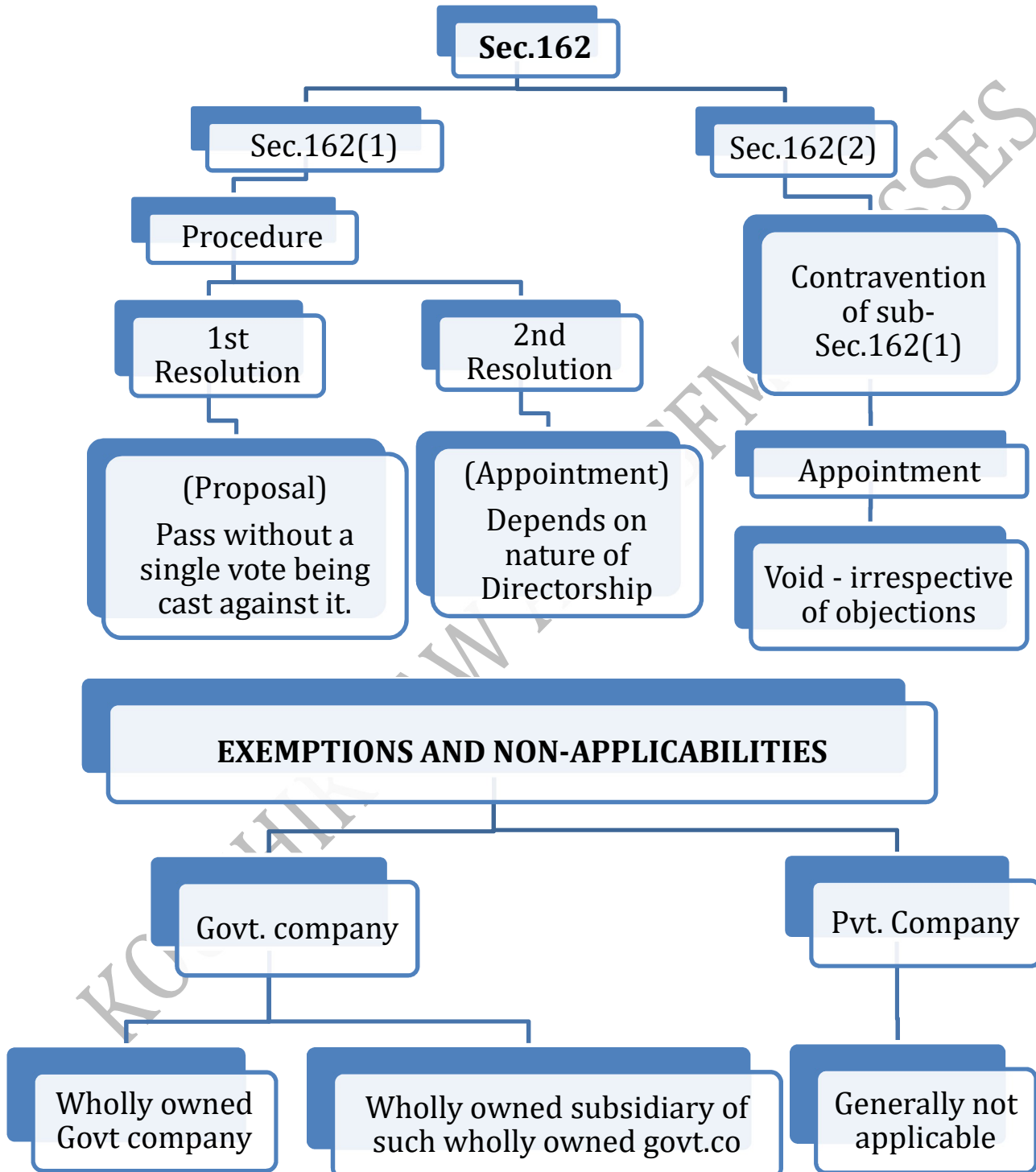
Companies in existing before Companies Act 2013 and having more than 15 directors shall pass special resolution within 1 year i.e. on (or) before 31.03.2015.

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APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY

[SECTION 162]

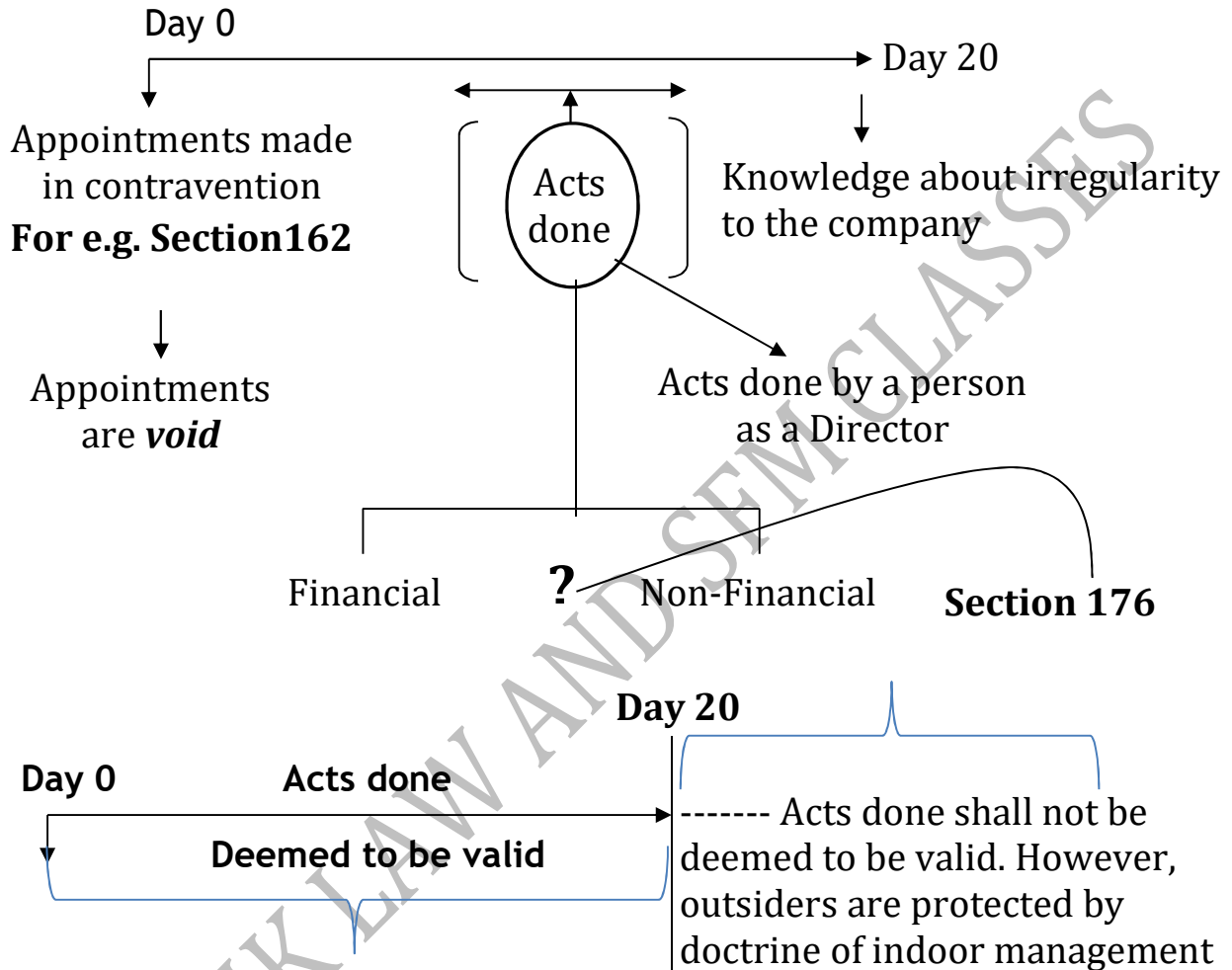


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SECTION 176: VALIDITY OF ACTS OF DIRECTORS

Need for the Section:



Final Provision:

- No act done by a person as a director shall be deemed to be invalid notwithstanding that it was subsequently noticed that the appointment is invalid by the reason of defect, disqualification and vacation etc.
- Acts shall not be deemed to be valid subsequent to the notice of defect.
- Section applicable only if there is irregular (or) defective appointment. No immunity shall be granted, if there is no appointment at all.

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CONSENT OF A DIRECTOR [SECTION 152(5)]

Sec.152(5) Consent of the Director

Consent by the Director

Before getting effectively appointed

Consent to Company

Form - DIR 2

Filing by the Company

After getting appointed

Filing with ROC

Within 30 days of appointment

Form DIR 12

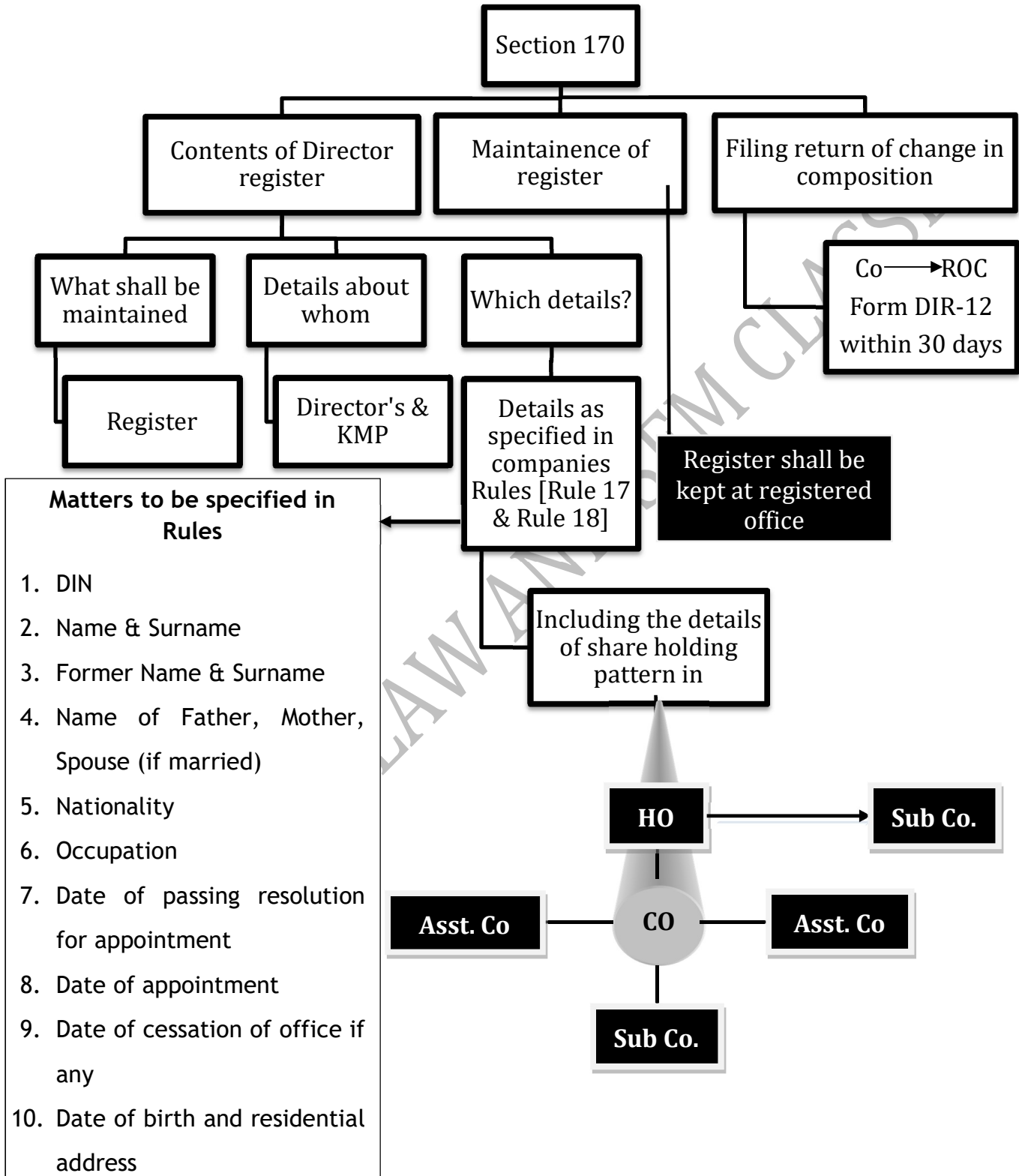
Sec.152 (5): Consent of Director - Exemption / Non-applicability

- Exemption to government company
- Consent need not to be given if appointment is made by S.G. (or) C.G.

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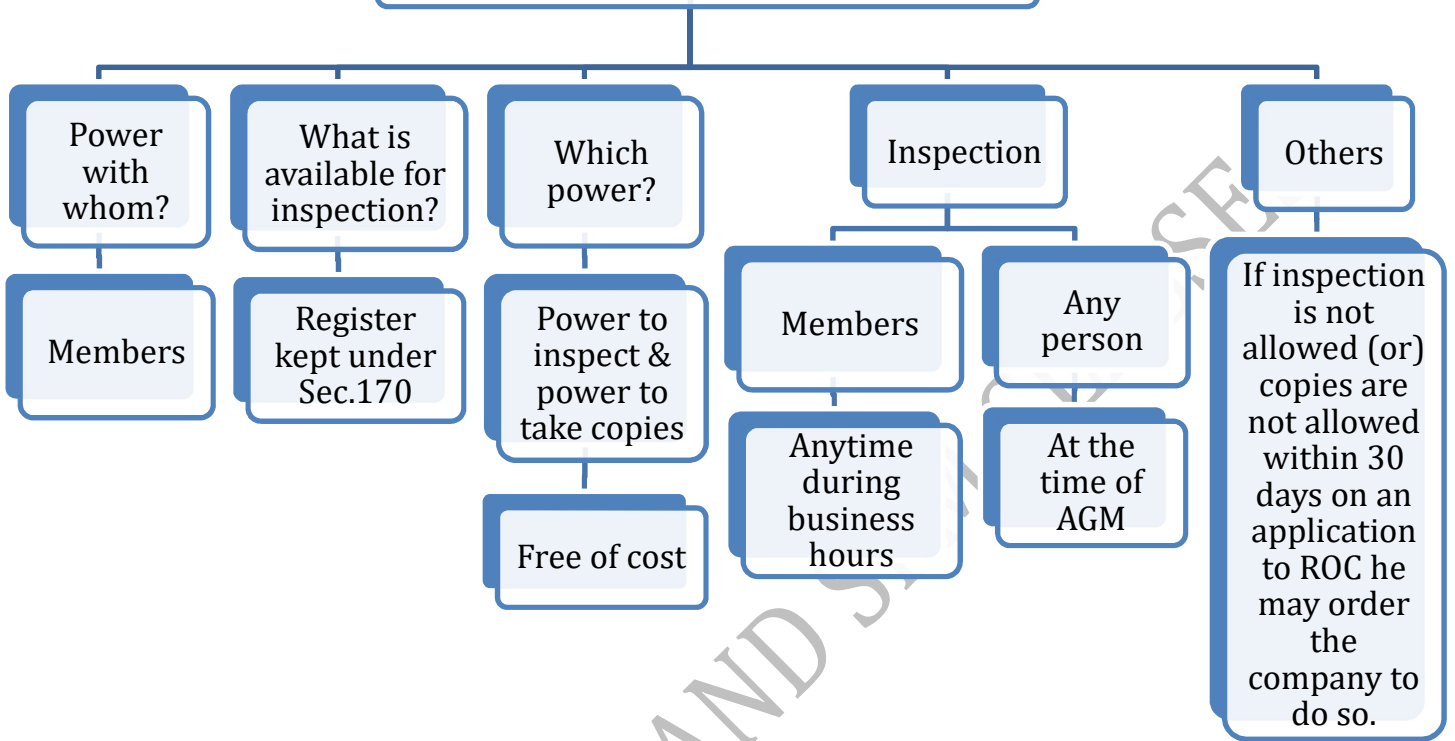
REGISTER OF DIRECTORS (SECTION 170 AND SECTION 171)



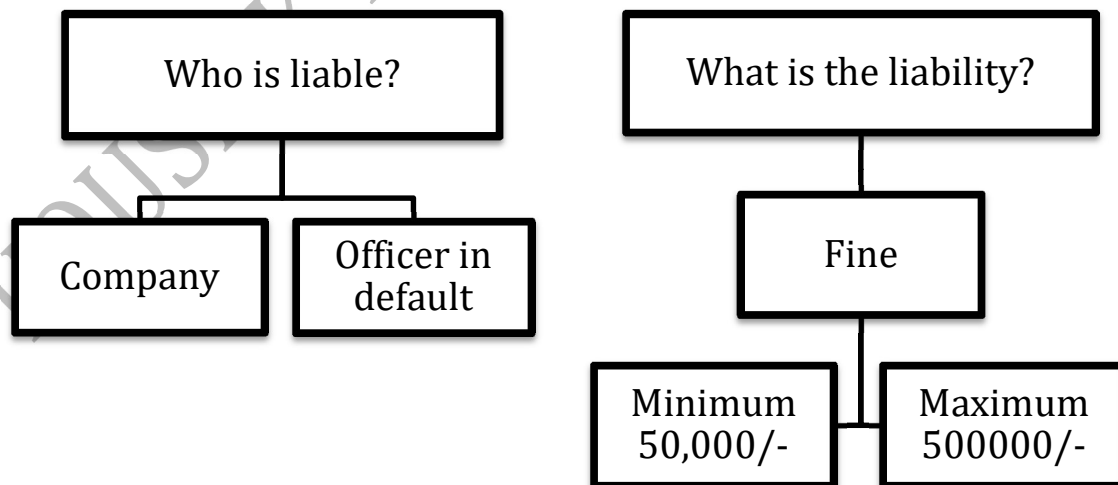
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SEC.171: INSPECTION OF REGISTER KEPT UNDER SEC.170



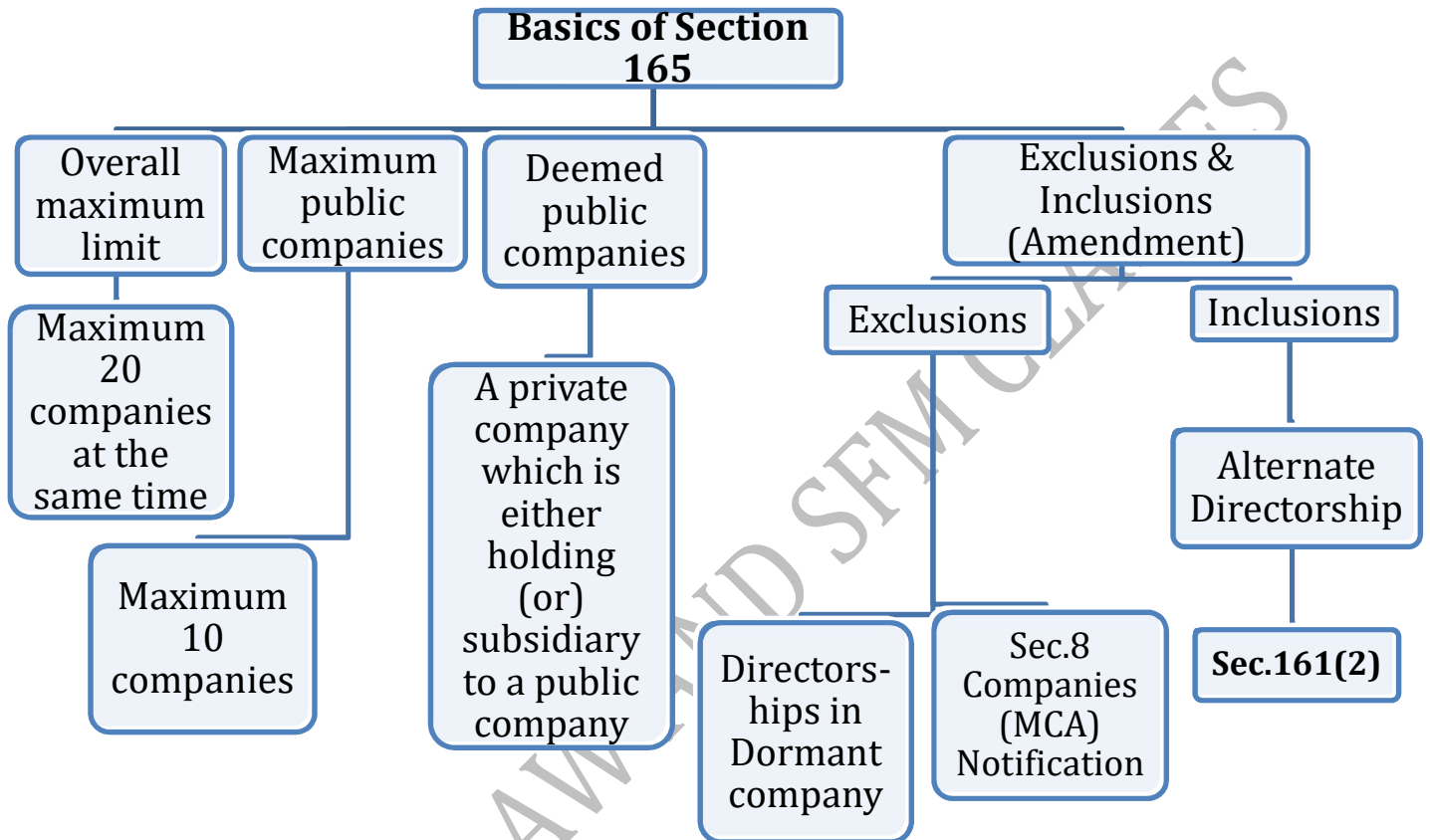
PENALTIES FOR THE CHAPTER COVERING FROM SECTION 149 TO SECTION 171 [SECTION 172]



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SECTION 165: NUMBER OF DIRECTORSHIPS (AMENDED BY COMPANIES AMENDMENT ACT, 2017)

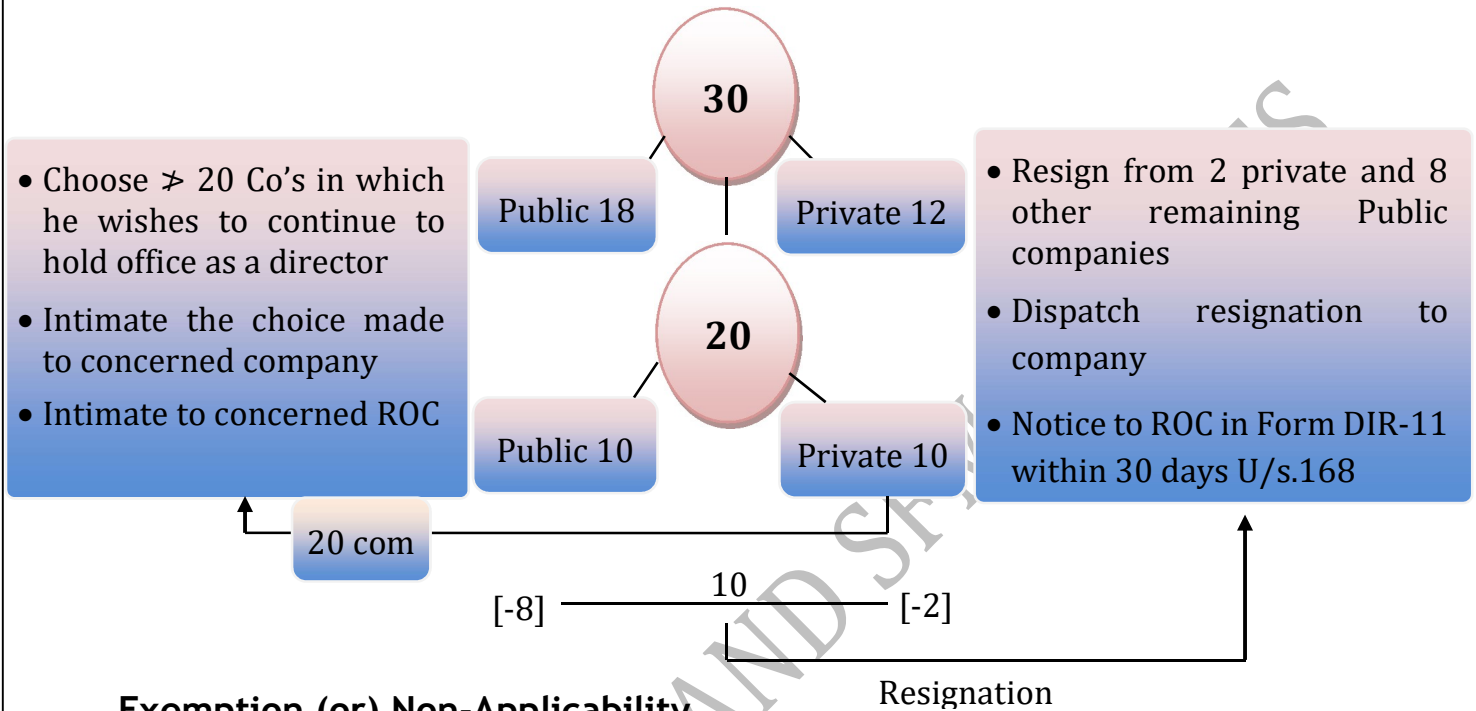


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PROCEDURE:

Compliance of Sec.165 (Transitory Provision)



Exemption (or) Non-Applicability

Limit of 20 for a director shall not apply in case of Sec.8 companies.

That means, a person can accept more than 20 Sec.8 Directorships.

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VARIOUS KINDS OF DIRECTORS AND THEIR APPOINTMENT

FIRST DIRECTOR
[Section 152(1)]

MODE OF APPOINTMENT

If AOA provide for appointment of first director

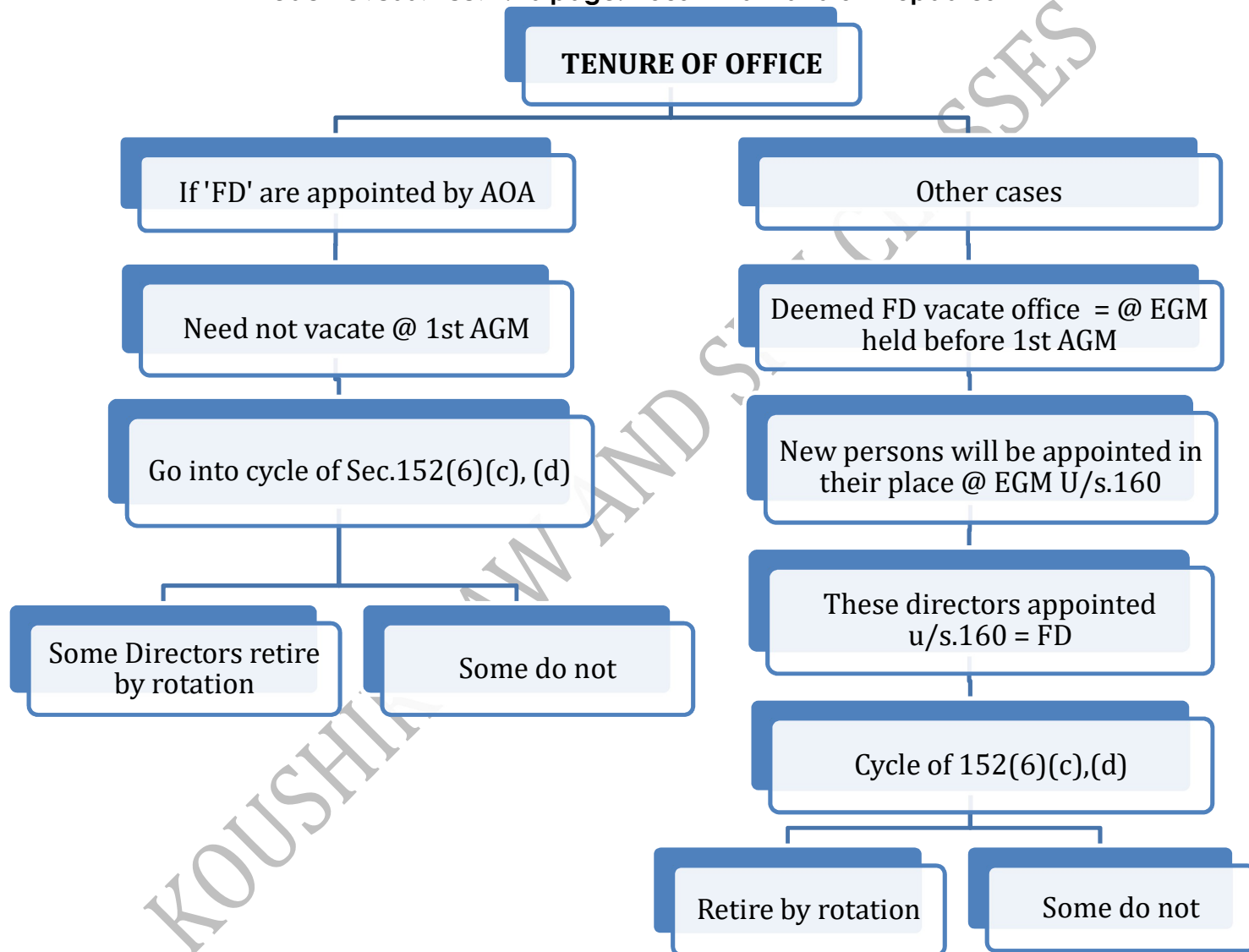
First director = Those specified in AOA
(Follow AOA)

Other cases [Sec.152(1)]

STM + Ind = DFD
Subscribers to memorandum who are individuals shall be deemed to be first directors

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RIGHT OF A PERSON OTHER THAN RETIRING DIRECTOR TO STAND FOR DIRECTORSHIP

BASICS

- Section is applicable for person
- Section 160 is a method of entry
- Section 160 does not apply to retiring director u/s.152.
- Be eligible for appointment

PROCEDURE

- A member himself (or) a non-member himself (or) a member can propose others candidature
- Send a notice in writing
- Send to registered office
- Not less than 14 days before the meeting
- Along with the deposit of Rs.1 lakh
- Circumstances of refund

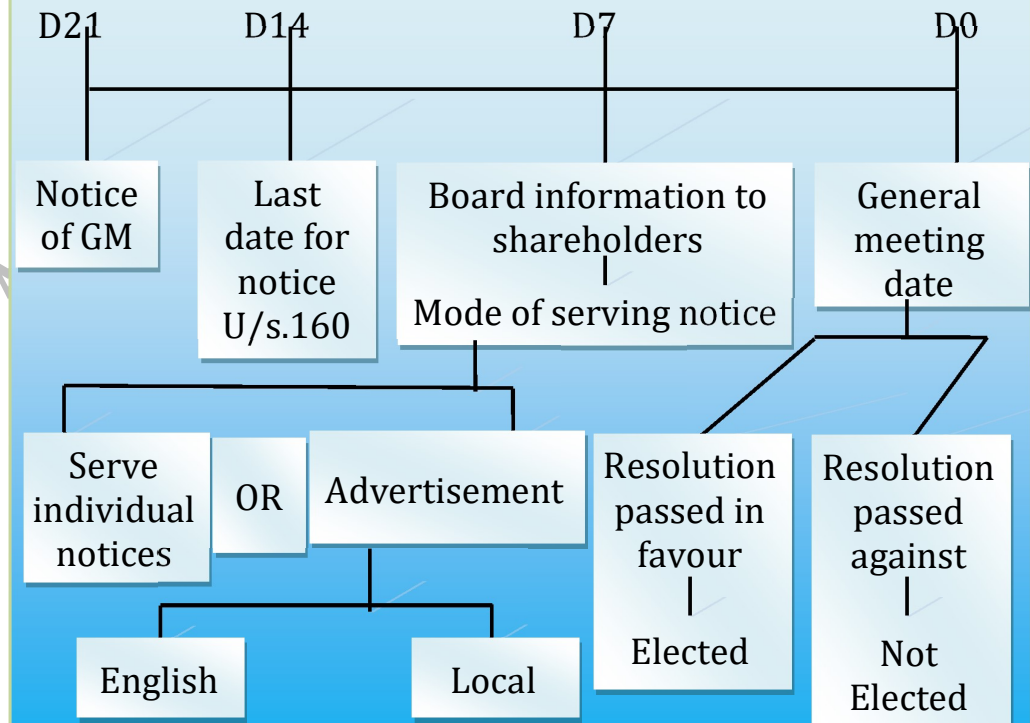
If he gets elected

(OR)

Gets more than 25% of valid votes cast.

- Votes can be casted only on showoff hands or poll and not by electronic mode

MISCELLANEOUS

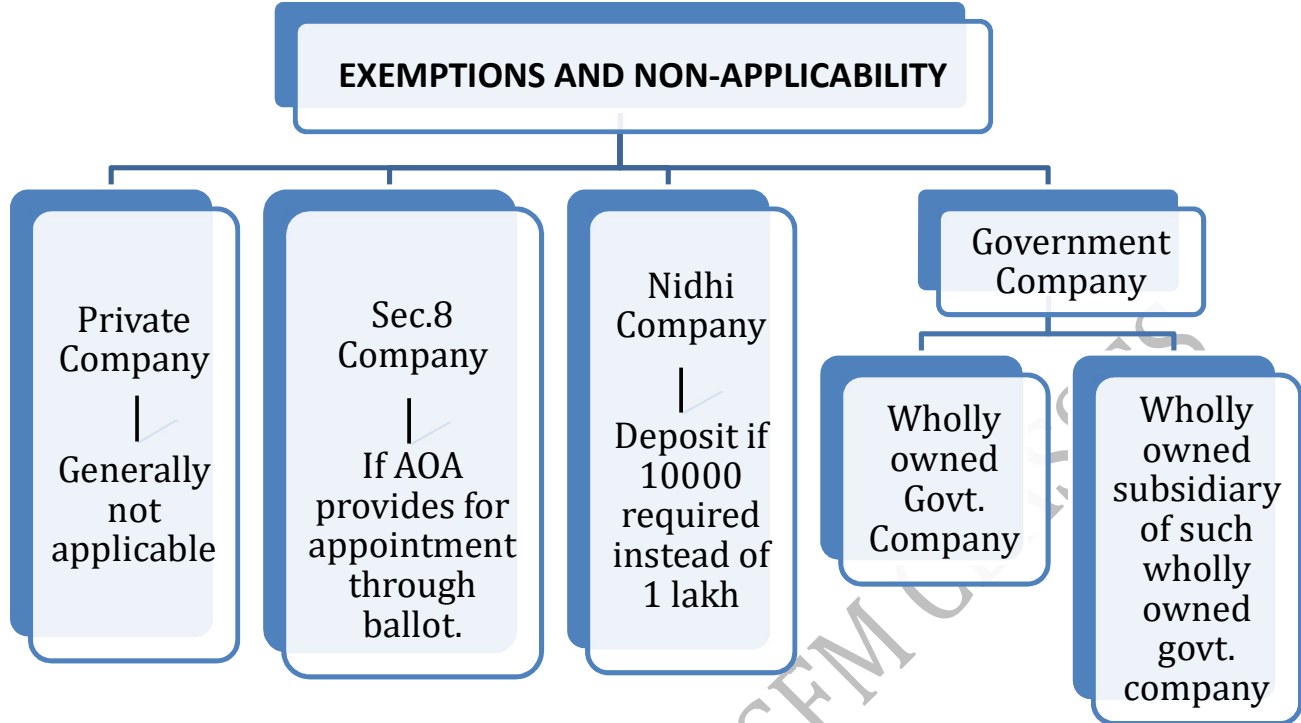


Tenure: in Resolution

Note: Sec.160 is silent about tenure of office. In case of directors appointed U/s.160, tenure shall be fixed by the resolution appointing them.

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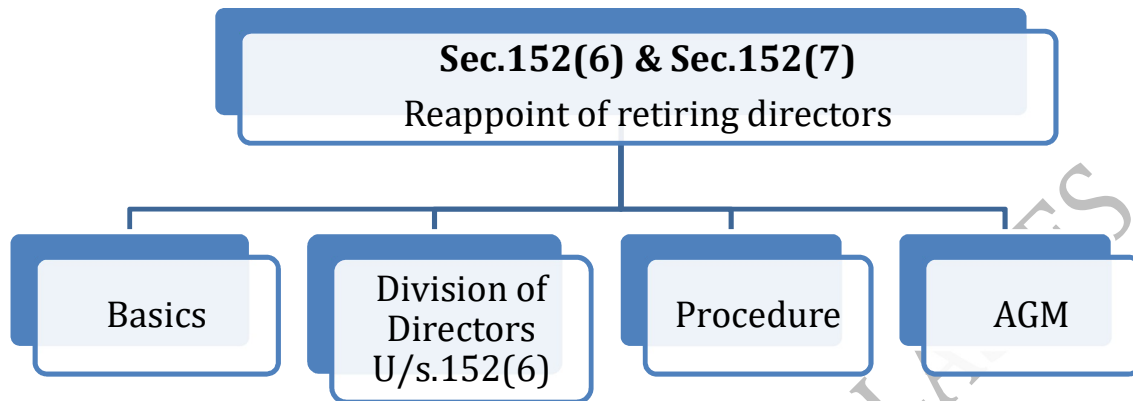
Penalty: Any procedural non-compliance U/s.160 attracts Sec.172

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RE - APPOINTMENT OF RETIRING DIRECTORS

[SECTION 152(6) AND (7)]



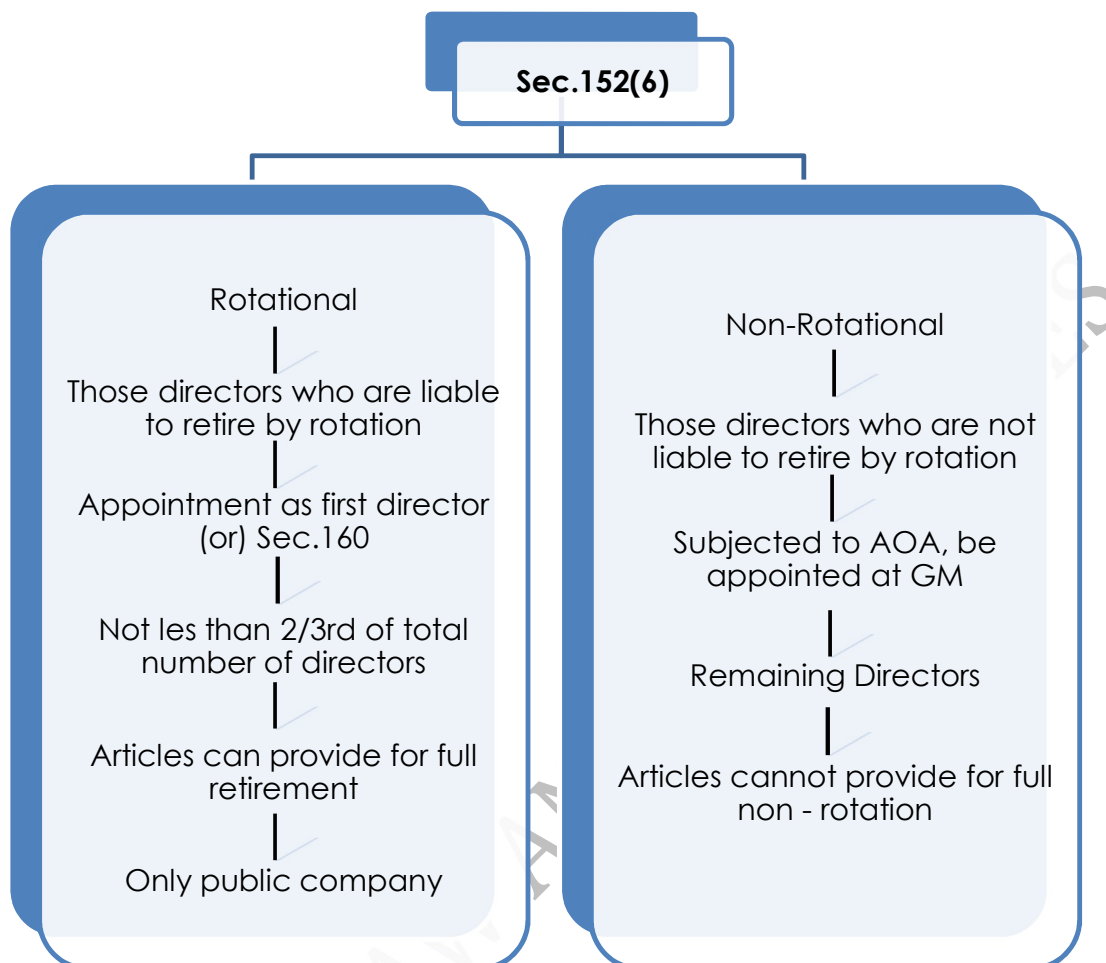
(1) Basics

- Section applicable only for public companies
- Section takes effect at only AGM
- Section 152(6) is not a method of entry
- Section applicable for Director
- Section talks of re-appointment and not about appointment

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(2) Division of Directors U/s.152(6):



(3) Procedure U/s.152(6):

Beginning from the first AGM, at every AGM those directors who are liable to retire, 1/3rd of those liable directors shall actually retire.

→ **Who shall retire first?**

Those who has been holding longest in the office since their last appointment, shall retire first.

→ **What if multiple appointments are made on the same day?**

Those who have to retire shall be determined by an agreement and in its absence, determined by draw of lots.

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ILLUSTRATION 1

No. of Directors	Rotation	Non-Rotational	Actually retire
	$\leq 2/3$	$\geq 2/3$	1/3 rd of RO
15	10	5	$3.33 \approx 3$
12	8	4	$2.67 \approx 3$
9	6	3	2
8	$5.33 \approx 6$	2	2
6	4	2	$1.33 \approx 1$
4	$2.66 \approx 3$	1	1
3	2	1	$0.67 \approx 1$

ILLUSTRATION 2

	Directors	Date of Appointment
<div style="background-color: black; color: white; padding: 5px; display: inline-block;">Rotational Directors</div>	A	01.01.2018
	B	02.01.2018
	C	03.01.2018
	D	04.01.2018
	E	05.01.2018
	F	06.01.2018
	G, H, I	07.01.2018
	↓	
	Non-Rotational Directors	

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Case ₁	Case ₂	Case ₃
30.09.2018	30.09.2019	30.09.2020
A + B	C + D	E + F

ILLUSTRATION 3



ILLUSTRATION 4



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(4) The AGM:

At the AGM, any of the 3 things should take effect.

- Reappointment of retiring director.
- Appoint of some other person in his place.
- Meeting must resolved not to fill up the vacancy.
- If none of the three things take affect at the AGM, the meeting shall stand adjourned to the same day, same place, same time, next week.
- **If at the adjourned meeting**
- Retiring director not reappointed (or) resolution not expressly pass not to fill up the vacancy.
- The retiring directors shall be deemed to be reappointed at the adjourned meeting.

When deemed reappointment shall not presumed:

- Is disqualified (or) not qualified.
- Shown his unwillingness for getting his re-appointment.
- Resolution put to the meeting and lost
- Where ordinary resolution (or) special resolution required.
- Sec.162 shall applicable to the case.

Exemptions and Non-applicability:

- Un listed government companies and its subsidiary.

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CASE LAWS

AGM not held - consequences?	AGM not held & all directors are retiring directors - consequences?	AGM adjourned due to disturbances - consequences?
Retiring directors shall be deemed to be vacate their offices on the last day on which AGM should have been held	If circumstances justified, the retiring directors can continue without vacation but only the time limit permitted by the Court.	Since AGM held deemed vacation shall not be attracted

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ADDITIONAL, ALTERNATE, NOMINEE AND CASUAL VACANCY DIRECTORS [SECTION 161(1),(2),(3),(4)]

Particulars	Additional Director	Alternate Director	Nominee Director	Director - casual vacancy
Section covered	Sec.161(1)	Sec.161(2)	Sec.161(3)	Sec.161(4)
Applicability	Public & Private	Public & Private	Public & Private	Public & Private
Power to appoint	Board of Directors	Board of Directors	Board of Directors	AOA / Board
Nature of power	Derive from AOA	Derive from AOA (or) Resolution in GM	Subjected to AOA	Subjected to AOA
Nature of appointment	Board Meeting/ resolution by circulation	Board Meeting/ resolution by circulation	Board Meeting/ resolution by circulation	AOA / BM
Tenure of office	Upto next AGM (or) last date of AGM whichever is earlier	(a) Upto the time permissible to original director (or) (b) Shall vacate office upon his return	(a) Date of expiry of his tenure (b) Revocation of nomination (c) Satisfaction of financial assistance {W.I.E}	(a) Upto the time upto which the director in whose place he has been appointed would have held office if it had not been vacated.

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Status for purpose of Section 152(6)	Excluded	Excluded	Excluded	Non-Rotational
Event of appointment	At any time (nonevent based)	Absence of O.D from India for not less than 3 months	Disbursement of financial assistance & nomination by institution	Occurrence of casual vacancy
Additional conditions	Person who fails to get appointment in G.M. cannot be appointed as additional director	Alternate director for independent director should qualify independence	-	Casual vacancy in the office of director appointed by company in a GM expires in normal course
Removal	Yes	Yes	No	Yes
Appointment for fixed tenure nature	No Since tenure is already specified in the act	No Since tenure is already specified in the act	No Since tenure is already specified in the act	No Since tenure is already specified in the act

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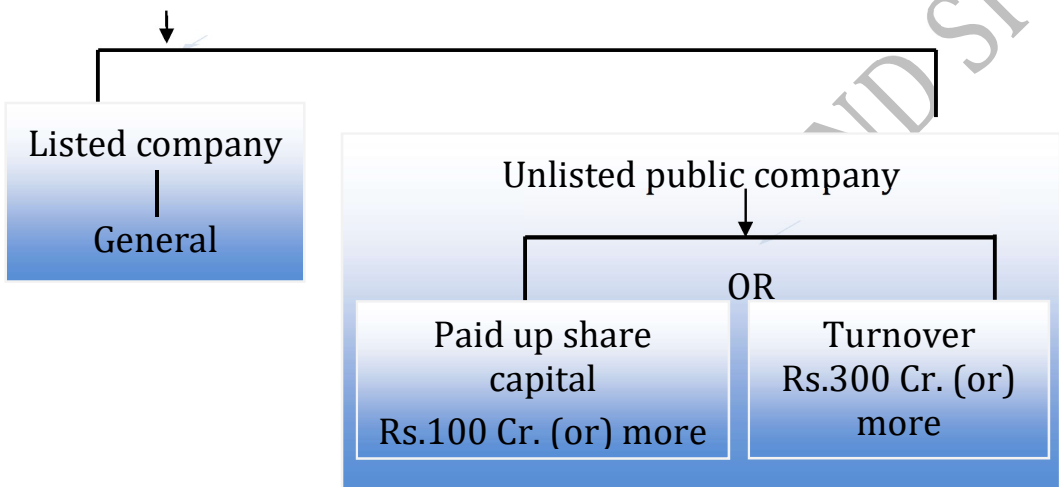
Reacts to Section 149(1) and 149(3) of the Companies Act, 2013

SPECIAL APPOINTMENTS

• Woman Director

2nd proviso to 149(1)

• Applicability



• No. of Woman directors

Atleast one woman director

• Filing of vacancies: Not later than later of the following -

- Immediate next board meeting
- Three months from the date of vacancy

Indian Resident Director

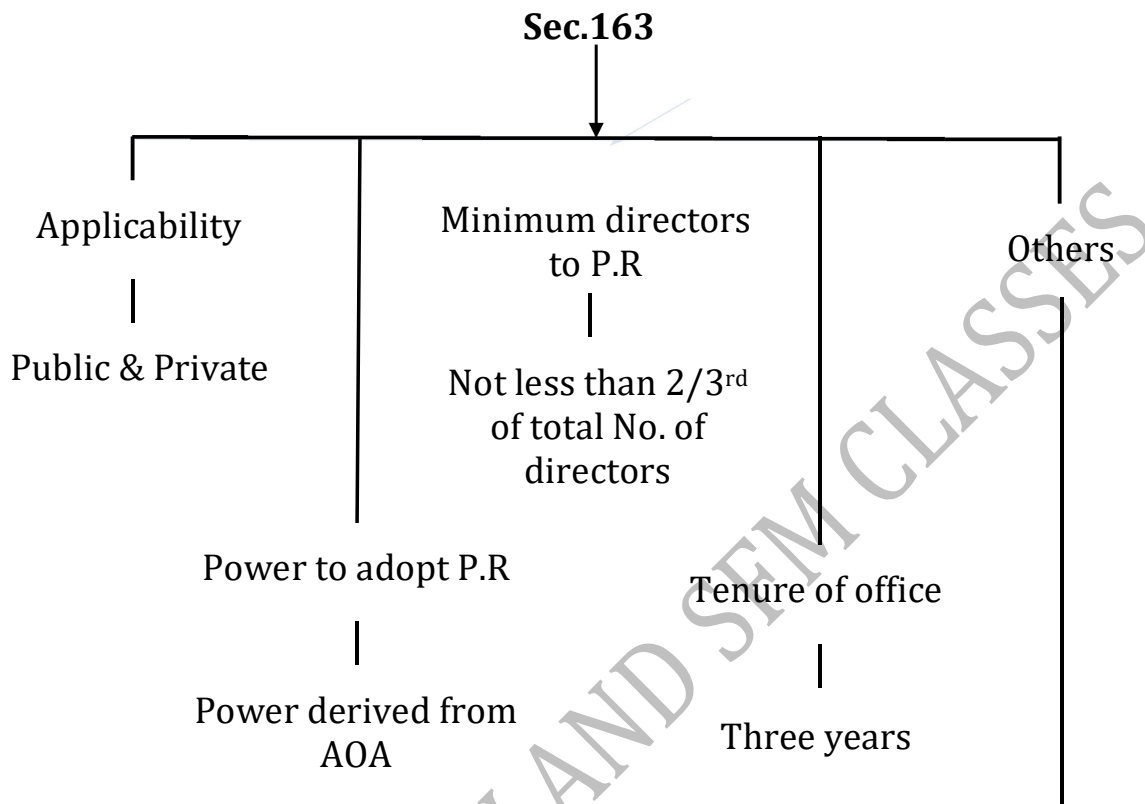
• Sec.149(3)

Every company shall have one director who has resided in India for not less than 182 days in current financial Year.

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APPOINTMENT OF DIRECTORS BY PROPORTIONAL REPRESENTATION [SECTION 163]



- Sec.163 applies notwithstanding anything contained in inconsistent provisions.
- Casual vacancy shall be filled in accordance with 161(4)
- Directors under P.R cannot be removed under Sec.169.
- **Mode of appointment**
 - Single transferable vote or Cumulative voting system.

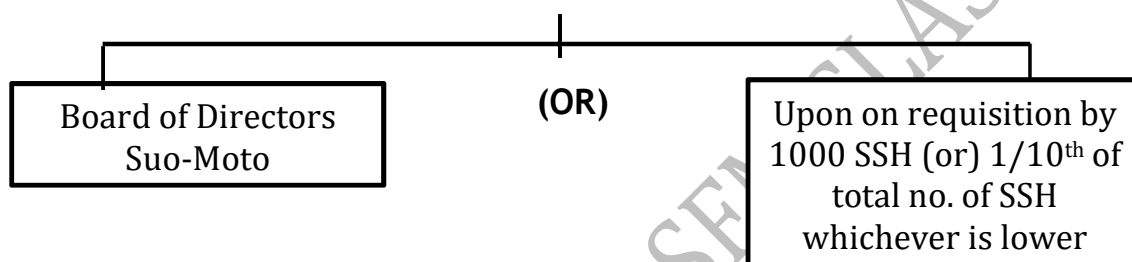
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APPOINTMENT OF DIRECTORS ELECTED BY SMALL SHAREHOLDERS [SECTION 151]

- Applicable only to listed public companies
- Only one SSD at a time
- Election and appointment
- Shareholder holding shares of nominal value not more than 20000 shall be small shareholder.

Mode of appointment



- **Tenure of office**
 - Cannot exceed '3' years
 - Non-rotational directors
 - Not eligible for re-appointment as SSD for lifelong.
 - Can be appointed (or) associated with the company in any other capacity after expiry of three years.
- **Procedure:**
 - Requisite SSH shall send requisition to the Board.
 - **Contents of that notice**
 - ✓ Name
 - ✓ Address
 - ✓ Shares held
 - ✓ Folio numbers
 - With respect to proposed SSD & proposing SSH
 - Notice shall also be accompanied by following details of SSD

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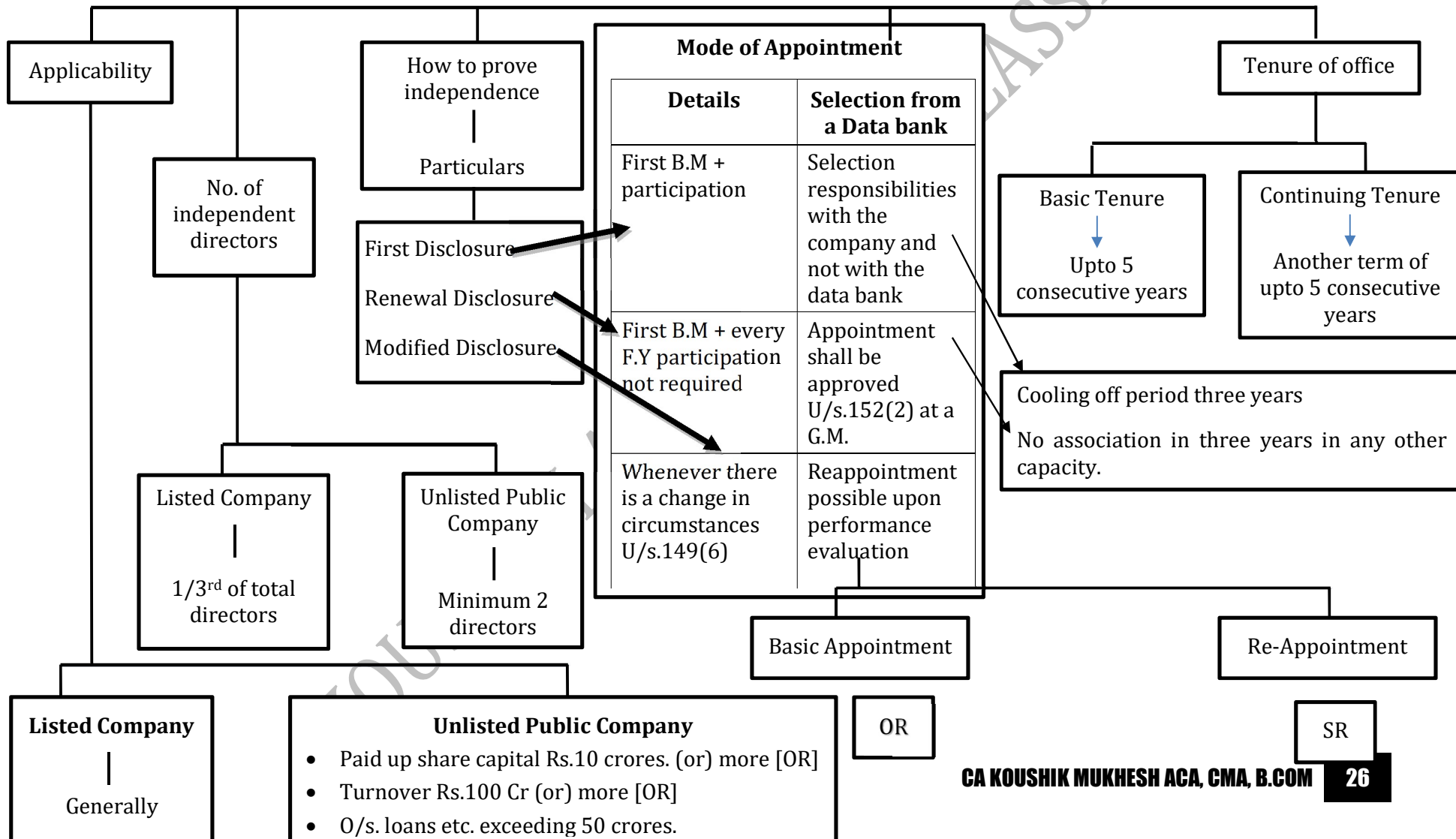
- ✓ DIN
- ✓ Declaration that he is not disqualified
- ✓ Consent to act as Director
- **No. of SS Directorships**
 - Maximum one at a time
 - Exception: Another one company, provided it is not in a competing (or) conflicting business.

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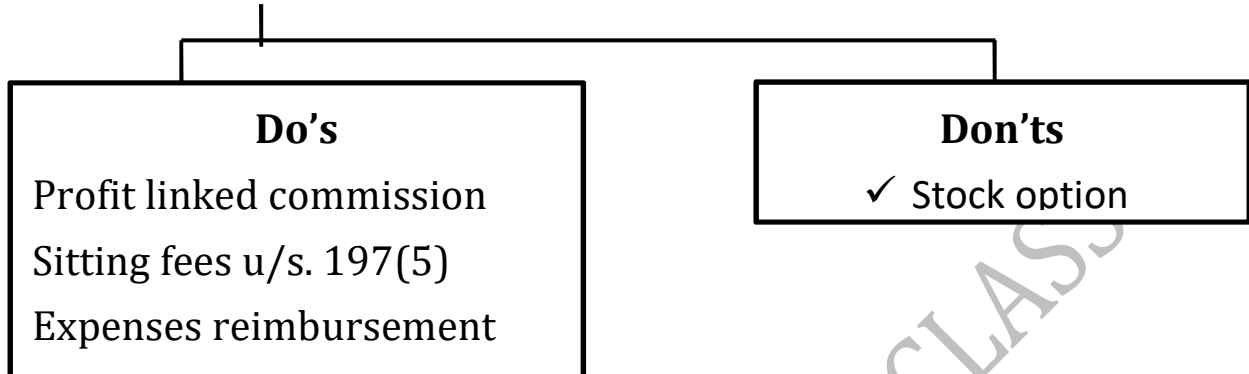
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INDEPENDENT DIRECTORS SECTION 149(4) TO SECTION 149(13)



Miscellaneous

- Section not applicable to a private company
- Remuneration



- Independent Director's V/s. Audit Committee
Audit Committee shall prevail.
- A Managing director or Whole time director or Nominee director cannot be appointed as Independent director.
- If Independent director is appointed under section 160, deposit of ₹ 100000 is not applicable.

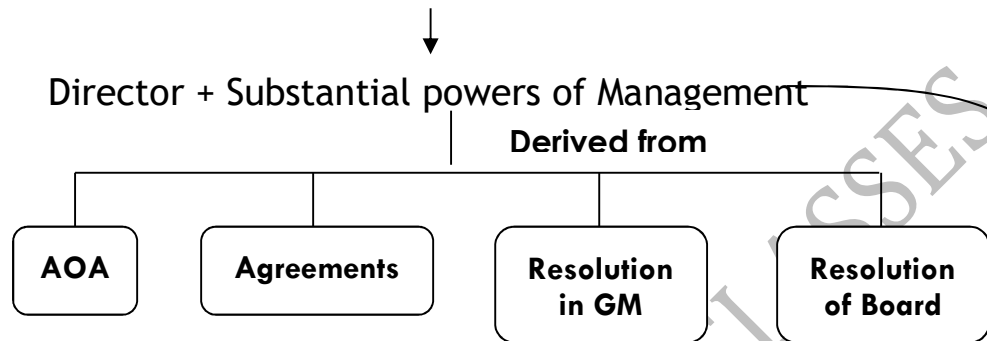
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MANAGERIAL PERSONNEL AND REMUNERATION

MANAGING DIRECTOR u/s 2(54)



(+)

Includes

↓

Director

↓

Occupy position of MD

↓

By whatever name called

Powers to do administrative acts of routine nature when so authorised by the Board shall not be deemed to be included with in the term substantial powers of management such as

- Power to affix common seal
- Draw and endorse any cheque.
- Draw and endorse any negotiable instrument.
- Sign on share certificate.
- Registration of transfer of shares.

LAW CHARTS – DIRECTORS (PART – I)

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MANAGER u/s 2(53)

- ◆ Director + Derived SPM = Managing Director
- ◆ Director + Derived SPM + President = Managing Director
- ◆ Individual + Derived SPM = Not M.D. = But Manager
- ◆ Director + SPM = Not M.D = But Manager
- ◆ Individual + SPM = Not M.D = But Manager

MANAGER



Means an individual



Who subject to superintendence and control of the board of directors is having whole/ substantially the whole of affairs of the company.



Includes a director or person occupying the position of a manager by whatever name called

LAW CHARTS – DIRECTORS (PART – I)

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WHOLE TIME DIRECTOR

- ◆ Whole-Time Director includes a director in the whole-time employment of the company.

WHOLETIME DIRECTOR



Includes a director



In the whole time employment of the company

In the whole time employment of the company

KOUSHIK LAW AND SFM UPDATES

LAW CHARTS – DIRECTORS (PART – I)

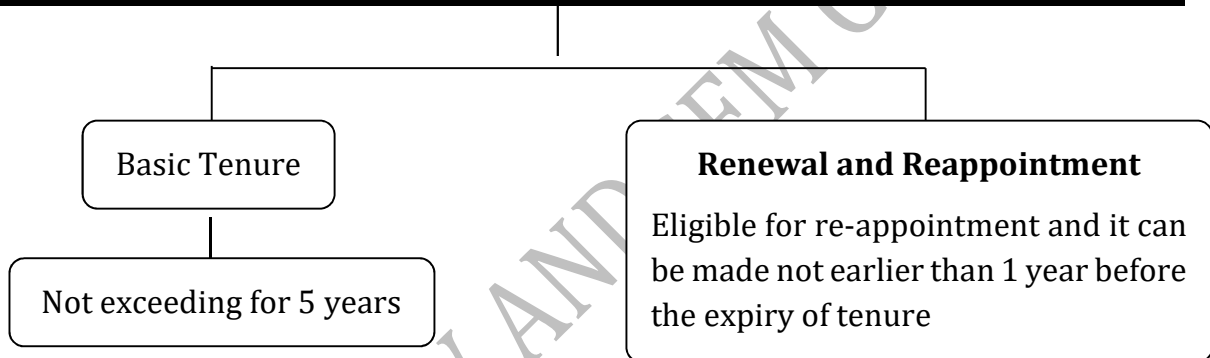
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SECTION 196 - APPOINTMENT OF MD, WTD, MGR

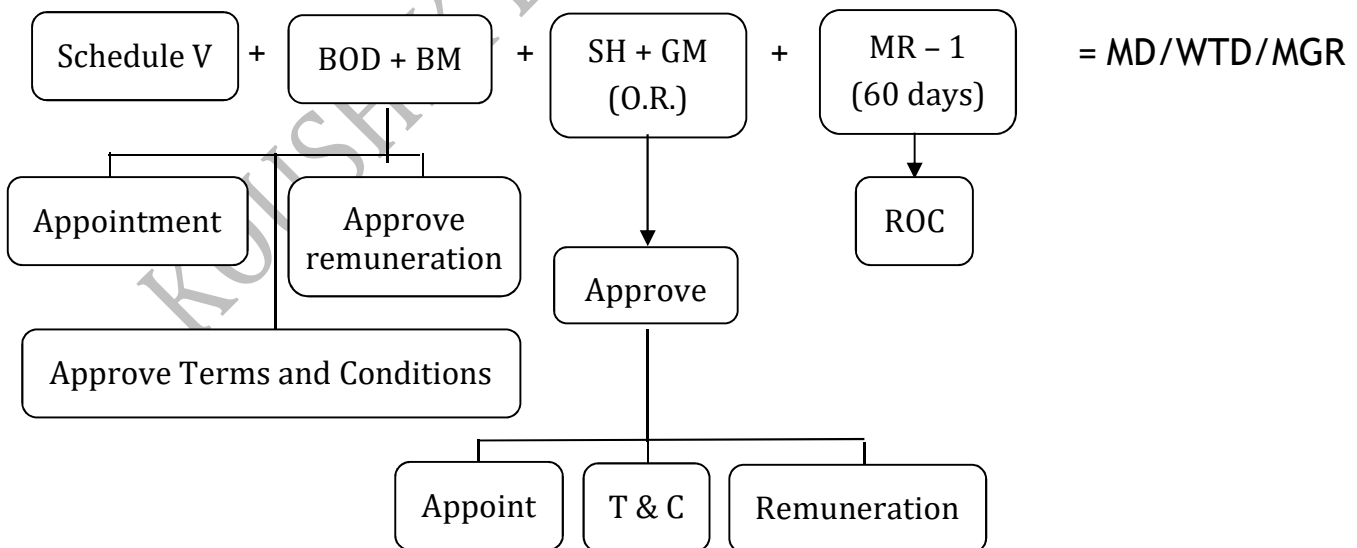
1. APPOINTMENT OF M.D, WTD AND MANAGER - POSSIBLE COMBINATIONS

M.D. + M.D.	= Possible
Manager + Manager	= Possible
M.D. + WTD	= Possible
Manager + WTD	= Possible
WTD + WTD	= Possible
MD + Manager	= Impossible

2. TENURE OF OFFICE



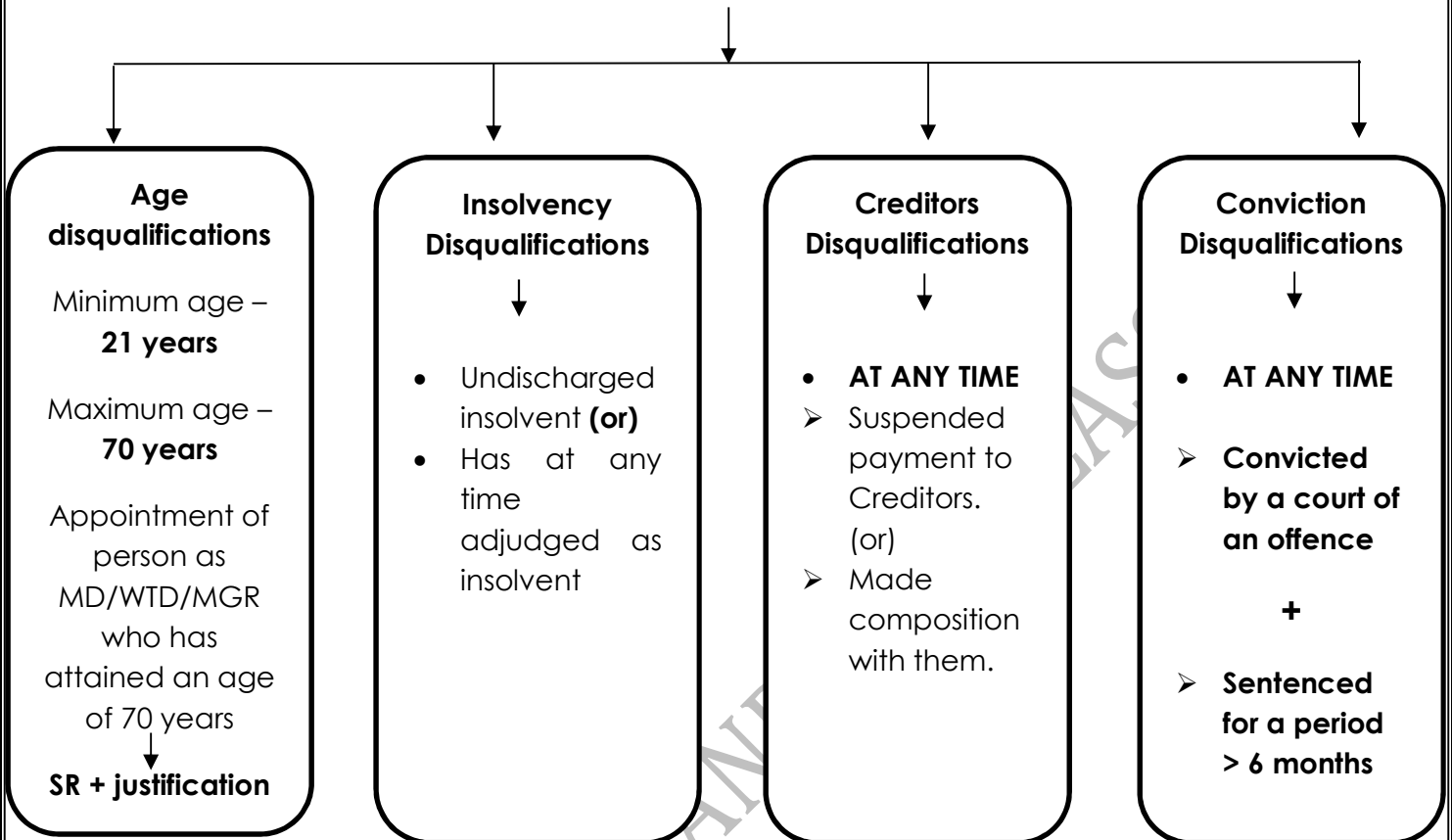
3. PROCEDURE OF APPOINTMENT



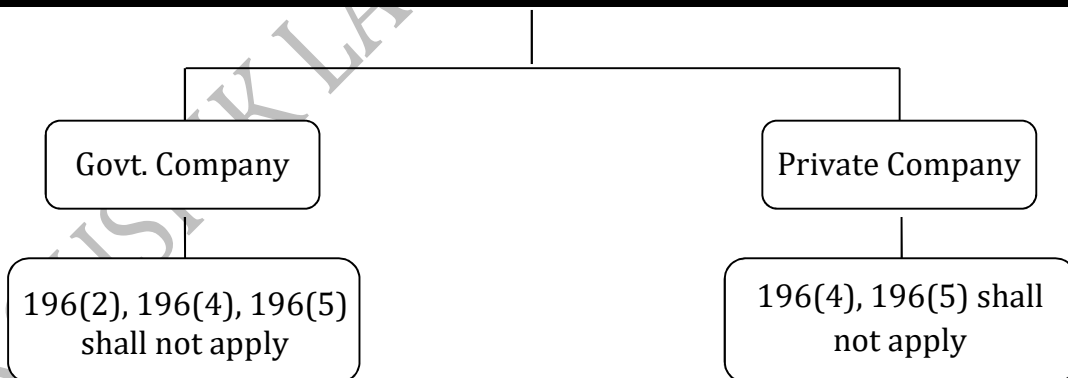
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DISQUALIFICATIONS FOR THE APPOINTMENT OF MD/ WTD/ MANAGER



4. EXEMPTIONS AND NON-APPLICABILITY



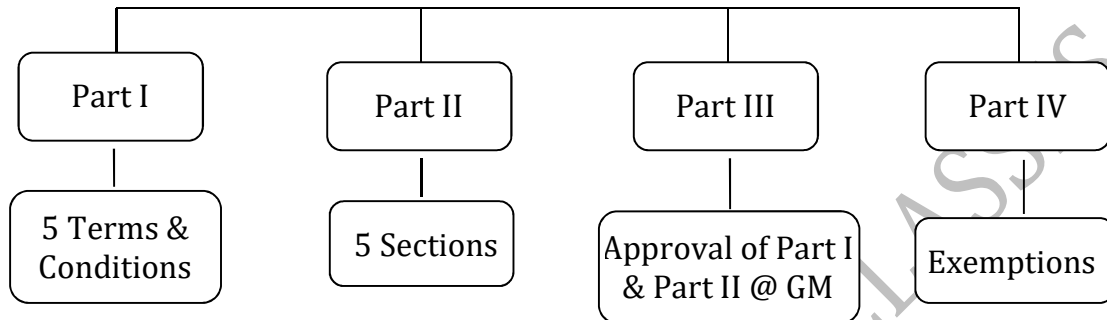
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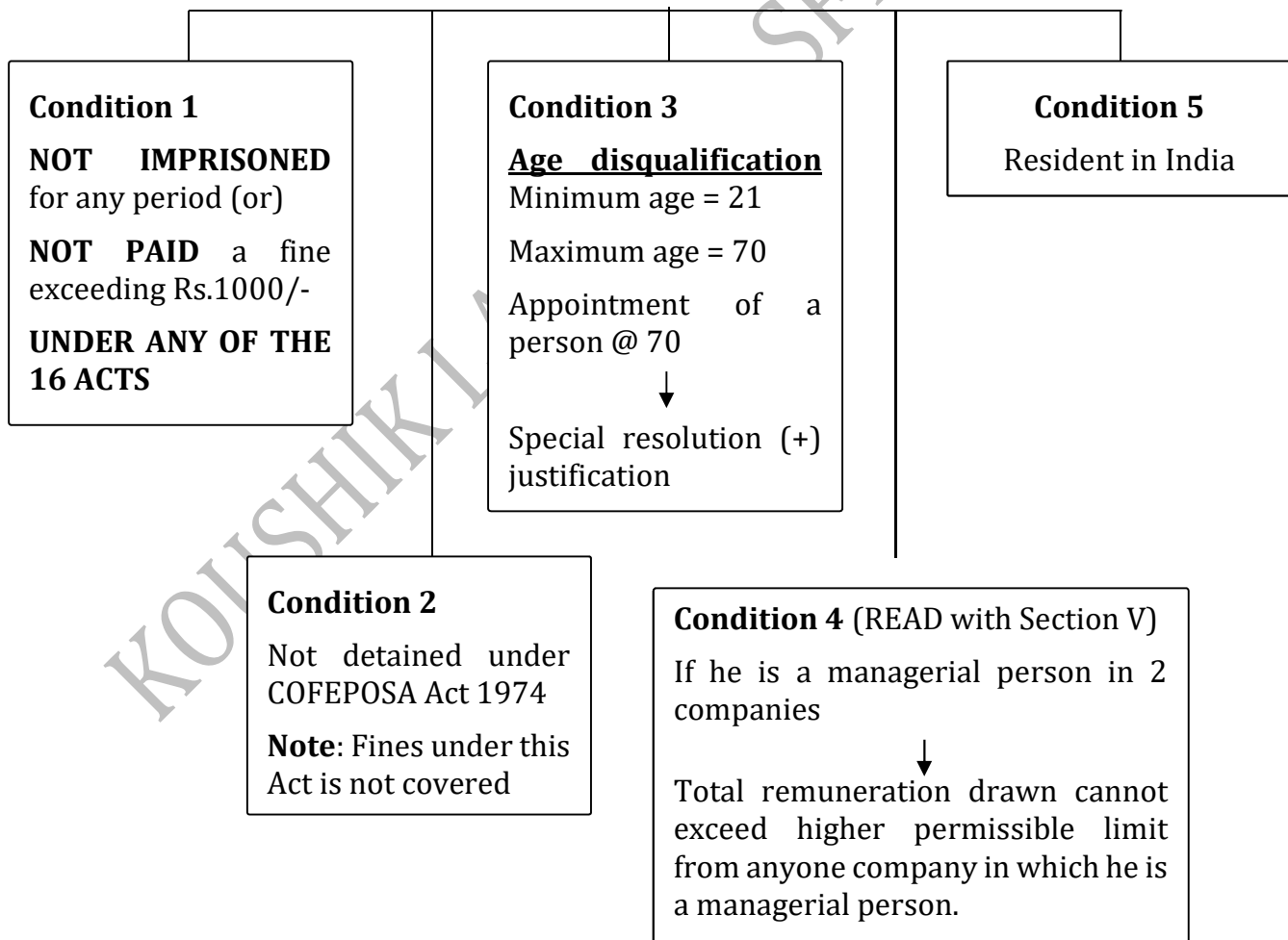
SCHEDULE V - READ WITH SECTION 197

SCHEDULE - V

(Shall be checked at the time of APPOINTMENT and REAPPOINTMENT but not in tenure)



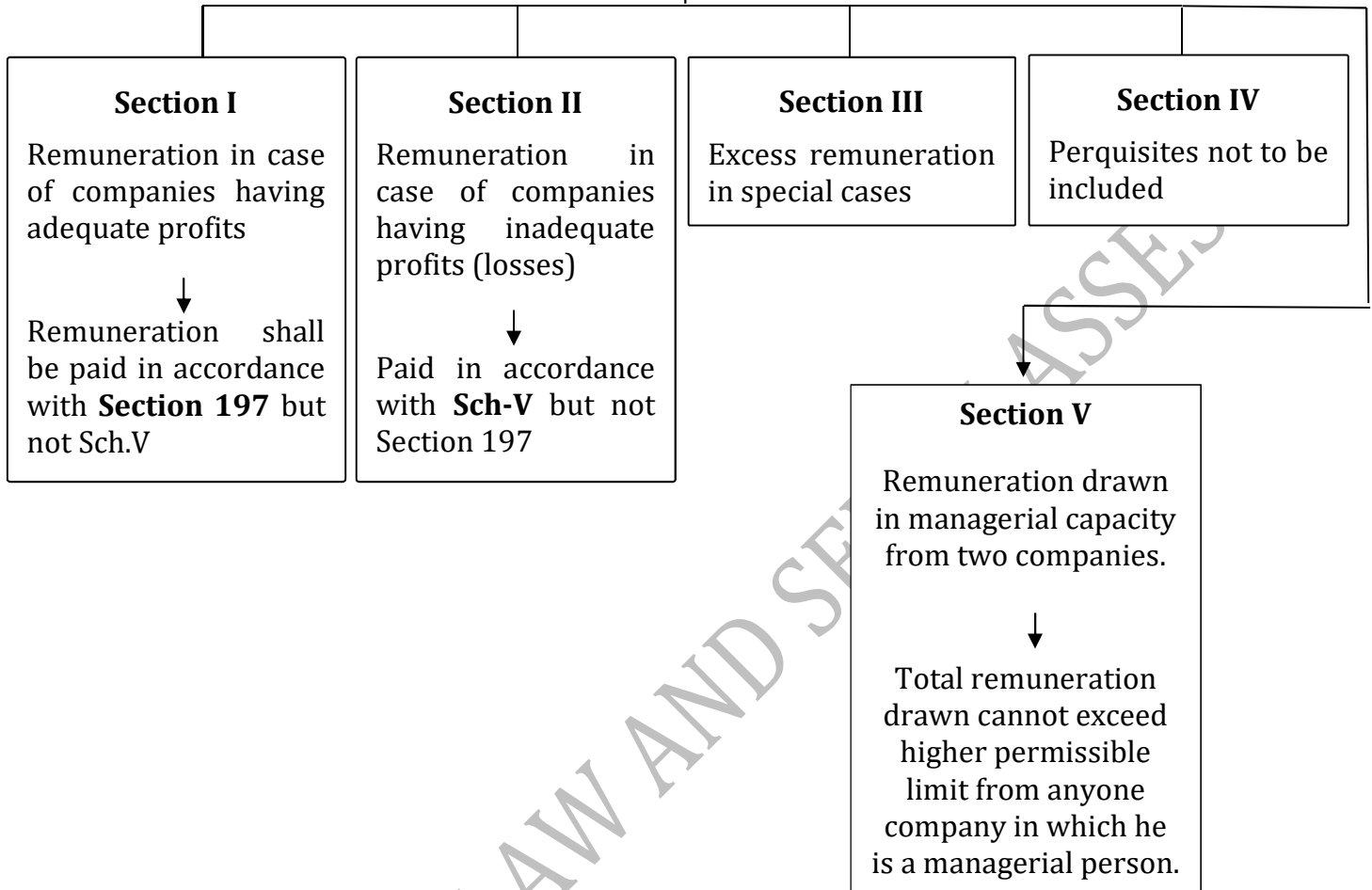
PART I OF SCHEDULE V



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PART II OF SCHEDULE V

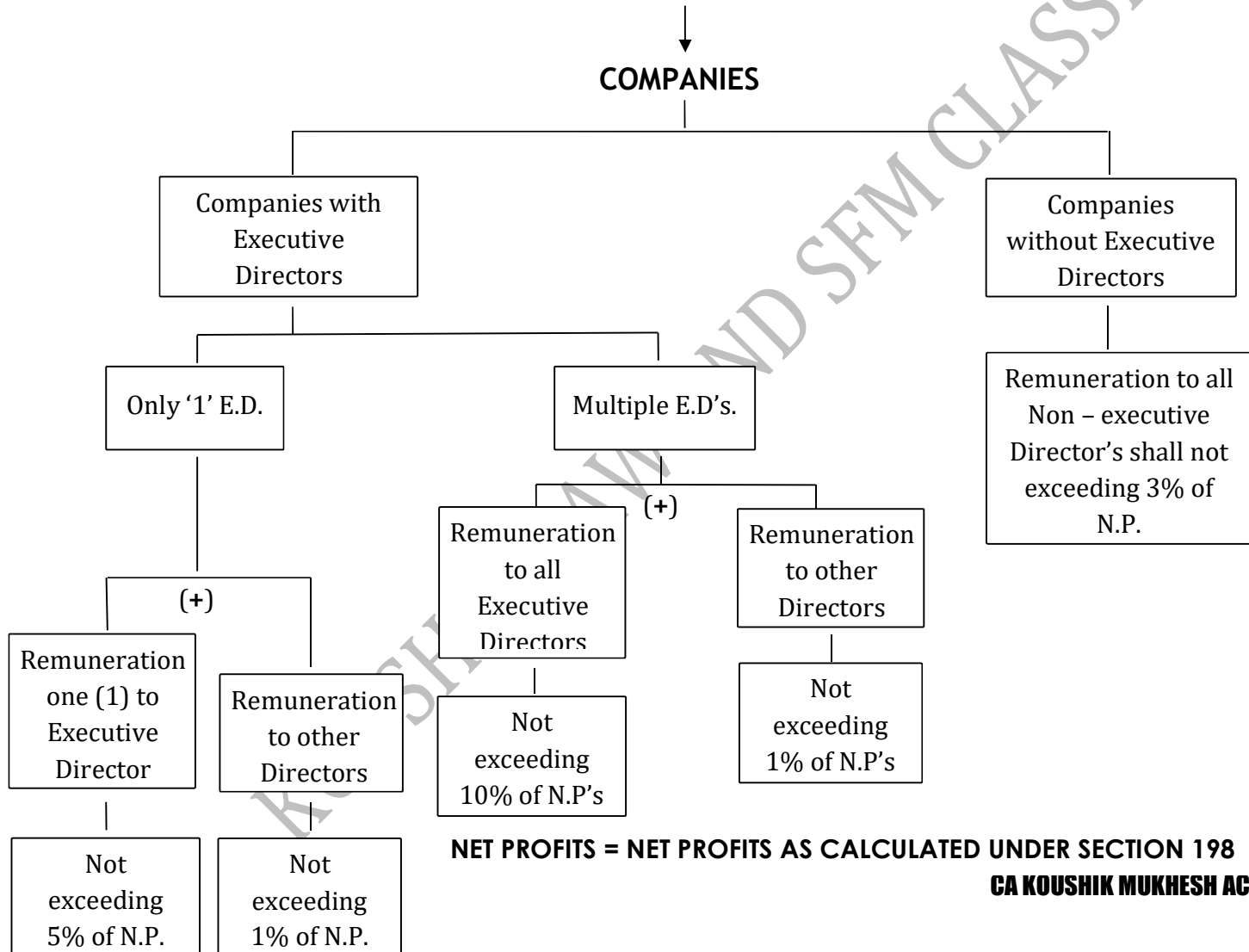


LAW CHARTS – DIRECTORS (PART – I)

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SECTION 197 : REMUNERATION TO MD/ WTD/ MANAGER

1. REMUNERATION CRITERIA



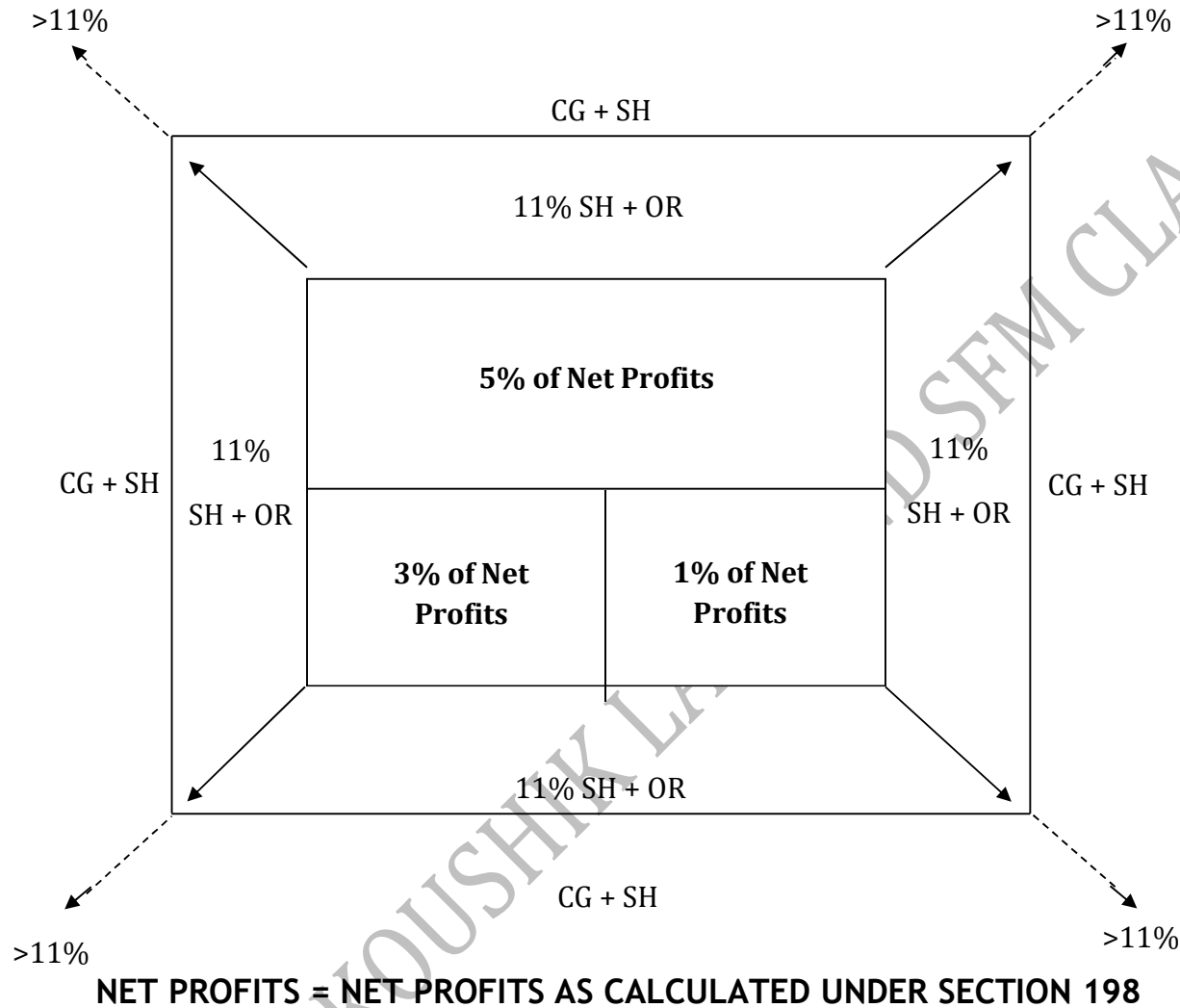
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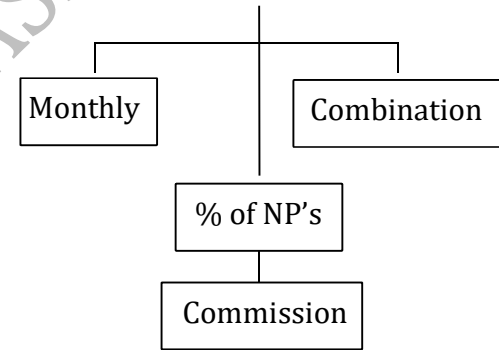
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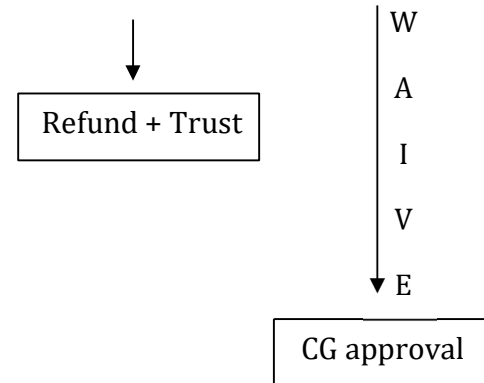
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Remuneration



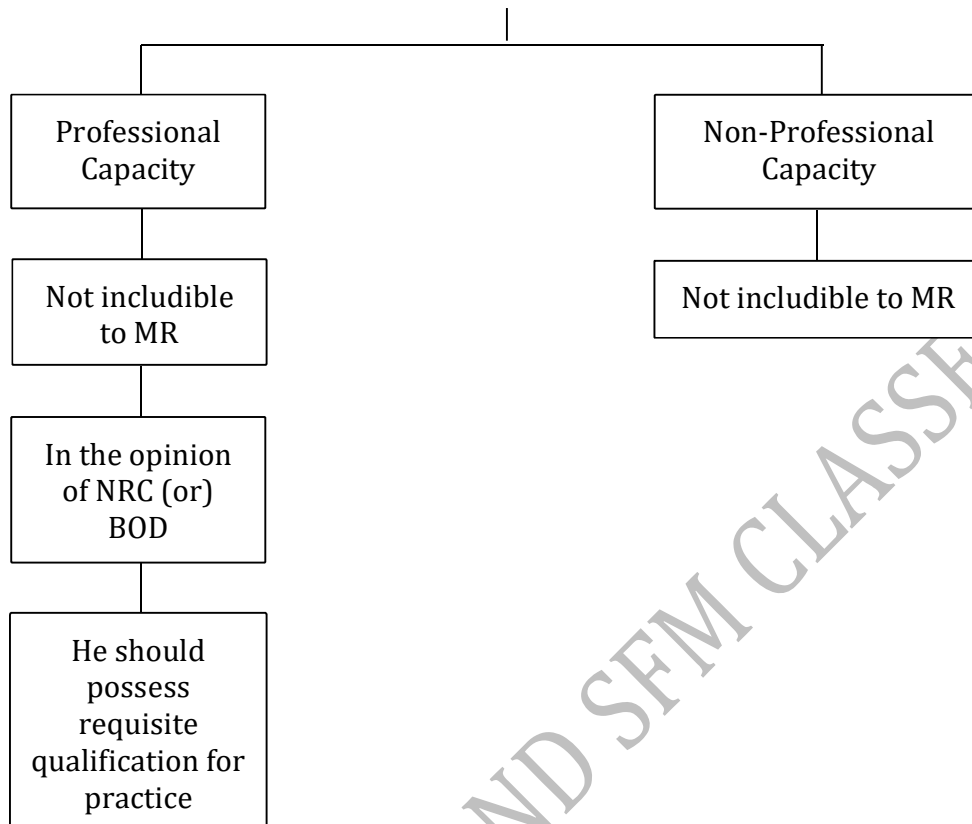
Excess remuneration drawn



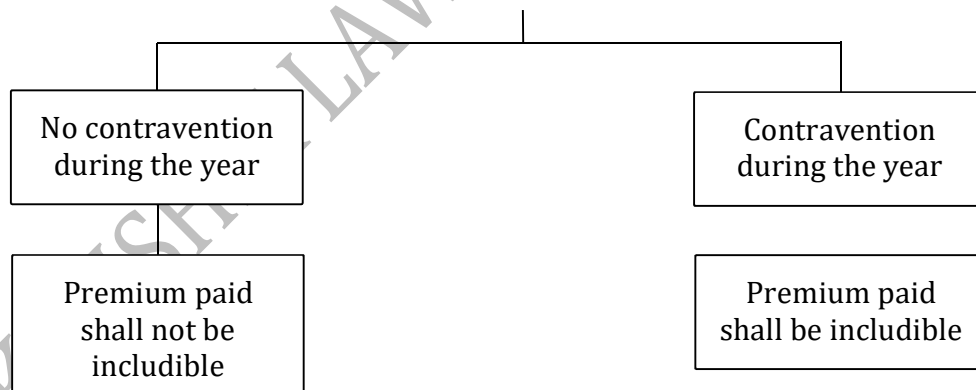
LAW CHARTS – DIRECTORS (PART – I)

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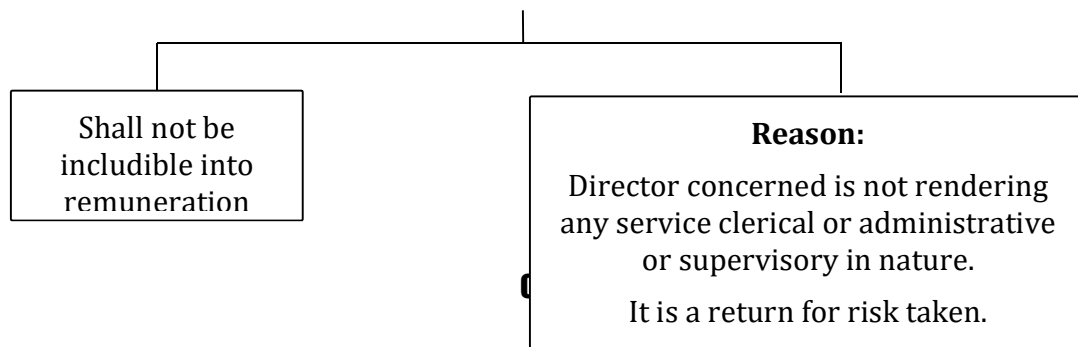
2. SERVICES RENDERED IN OTHER CAPACITIES



3. D & O INSURANCE



4. GUARANTEE COMMISSION



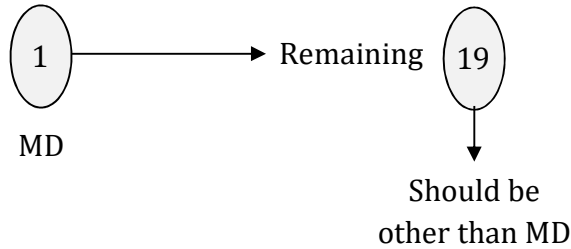
LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

5. REMUNERATION FROM GROUP COMPANIES

Allow if necessary disclosure (is req.) made in Board Report.

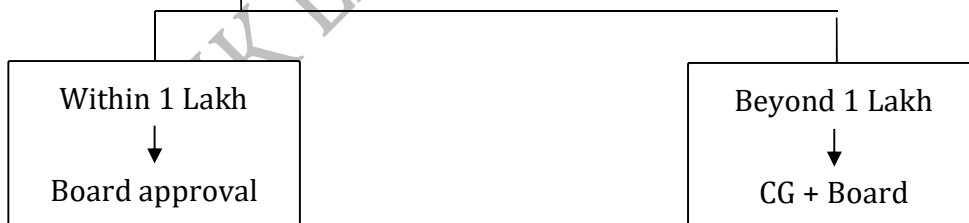
Total '20' Directorships



19 Directorships may be in group companies also, but make a necessary disclosure in Board report.

6. SITTING FEES

- ◆ Sitting fees is for attending Board Meetings
- ◆ Sitting fees is addition to remuneration under Section 197.
- ◆ Sitting fees is decided by Board of Directors.
- ◆ Sitting fees shall be for per Board Meeting per Director.
- ◆ Sitting fees cannot exceed Rs.1 Lakh per Director per meeting
- ◆ Sitting fees shall not be paid for original and adjourned meeting both.
- ◆ Increase in sitting fees



- ◆ Sitting fees is paid to independent director and woman director may be more than sitting fees paid to other directors but it should not be lower.

LAW CHARTS – DIRECTORS (PART – I)

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SECTION II OF PART II OF SCHEDULE V

COMPANIES HAVING INADEQUATE PROFITS (OR) LOSSES

Section II

- Remuneration shall be paid on the basis of effective capital

Effective Capital	Remuneration per Managerial person per annum
Negative (-) to 5 Crores	60 Lakhs per annum
5 Cr and above less than 100 Cr.	84 Lakhs per annum
100 Cr. and above less than 250 Cr.	120 Lakhs per annum
250 Cr. and above	120 Lakhs (+) 0.01% of the effective capital in excess of 250 Crores.

Note: With special resolution (approval of shareholders) limits may be doubled.

- **Effective Capital:**

P.S.C + Reserves & Surplus + Securities Premium + Long term loans & Deposits - Investments - Accumulated losses - Preliminary expenses not written off

- **Date of reckoning Effective Capital**

New commencement Date of appointment

Existing Date of last audited F.S.

- **Additional Information**

- Remuneration has been approved by Board and Nomination Remuneration Committee (NRC), if and

- Company has not committed any default in respect of any Debt (or) interest payable for a continuous period of 30 days in the preceding F.Y.

- **Other disclosures required:**

- General information
- Information about the appointee
- Other information

LAW CHARTS – DIRECTORS (PART – I)

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SEC - III OF PART II OF SCHEDULE - V

Circumstances under which remuneration can be drawn in excess of limits without C/G.

Permission in case of company having no profit (or) inadequate profits.

Particulars	Details	Period
Newly incorporated company	-	7 years
Sick company	As ordered by BIFR	5 years
Company under resolution plan of IBC	With the approval of NCLT	5 years
NCLT/ BIFR Suo moto	Extend the period as decided	

Conditions to be satisfied

- Managerial person is not receiving remuneration from any other company.
- No Objection Certificate obtained from Secured Creditors and lenders. ↓

Certified by CA's and CS

- In case of a company in SEZ (SEZ)
 - Which has not raised money through public issue.
 - Which has been not default in repayment of Debt (or) interest payable for a continuance period of 30 days.
 - May pay remuneration upto 2.40 Crs. per annum.

LAW CHARTS – DIRECTORS (PART – I)

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SECTION IV OF PART II OF SCH-V

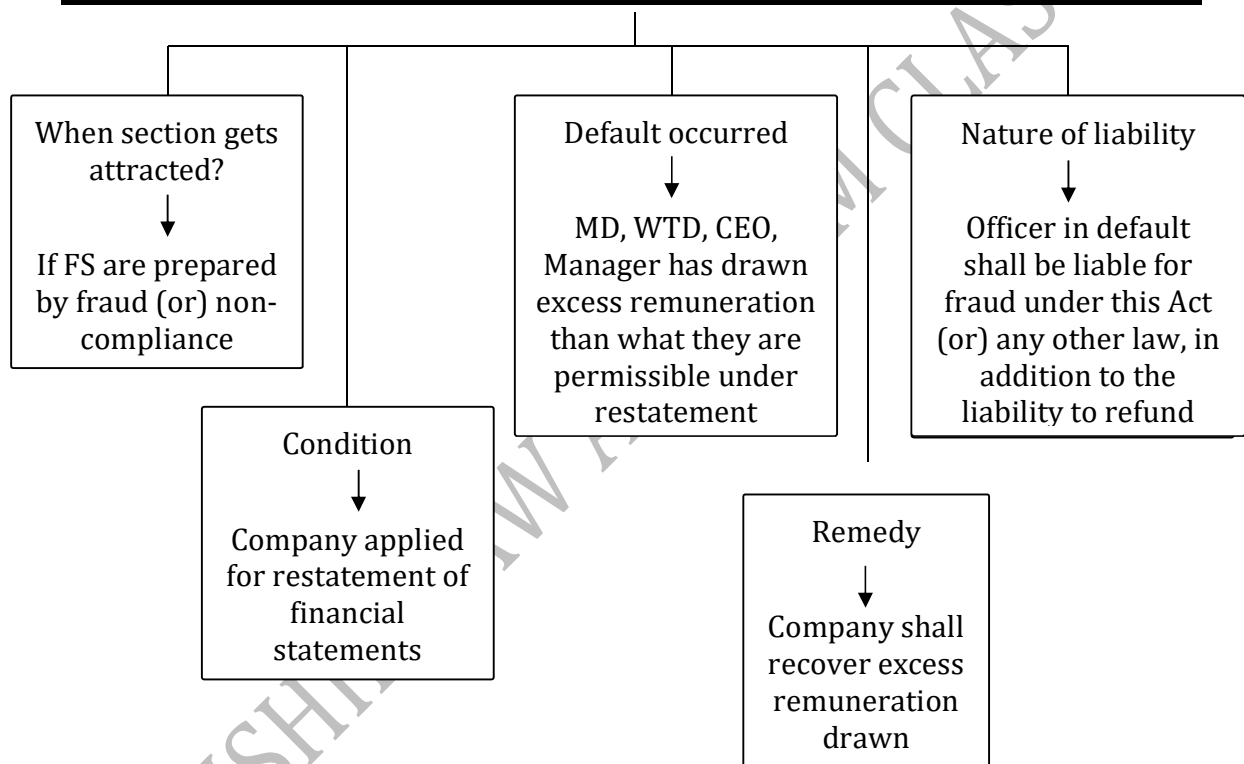
Perquisites not included in remuneration:

The following perquisites shall not be included in managerial remuneration

- (a) Contribution to PF, SAF, AF (within taxable limit)
- (b) Gratuity - Half month salary for every completed year of service.
- (c) Leave Encashment

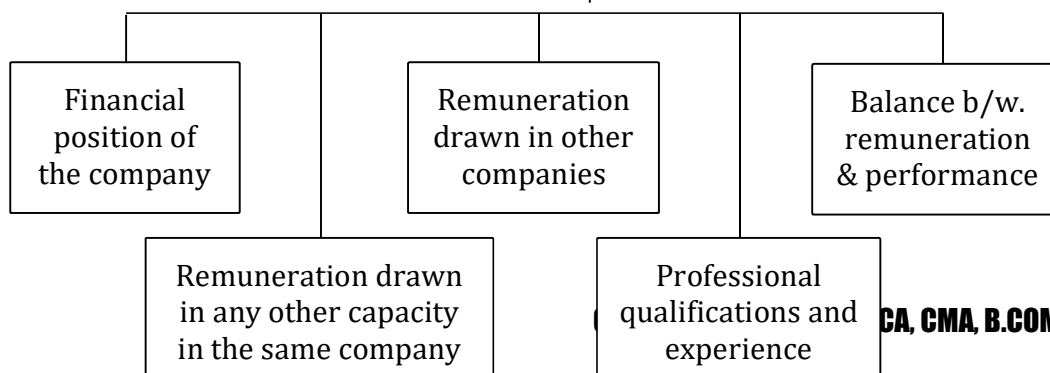
SECTION 199

RECOVERY OF REMUNERATION IN CERTAIN CASES



SECTION 200 - CG (OR) COMPANY TO FIX LIMIT WITH RESPECT TO REMUNERATION

Factors to be considered



LAW CHARTS – DIRECTORS (PART – I)

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SECTION 201 - FORMS OF AND PROCEDURE RELATED TO CERTAIN APPLICATIONS

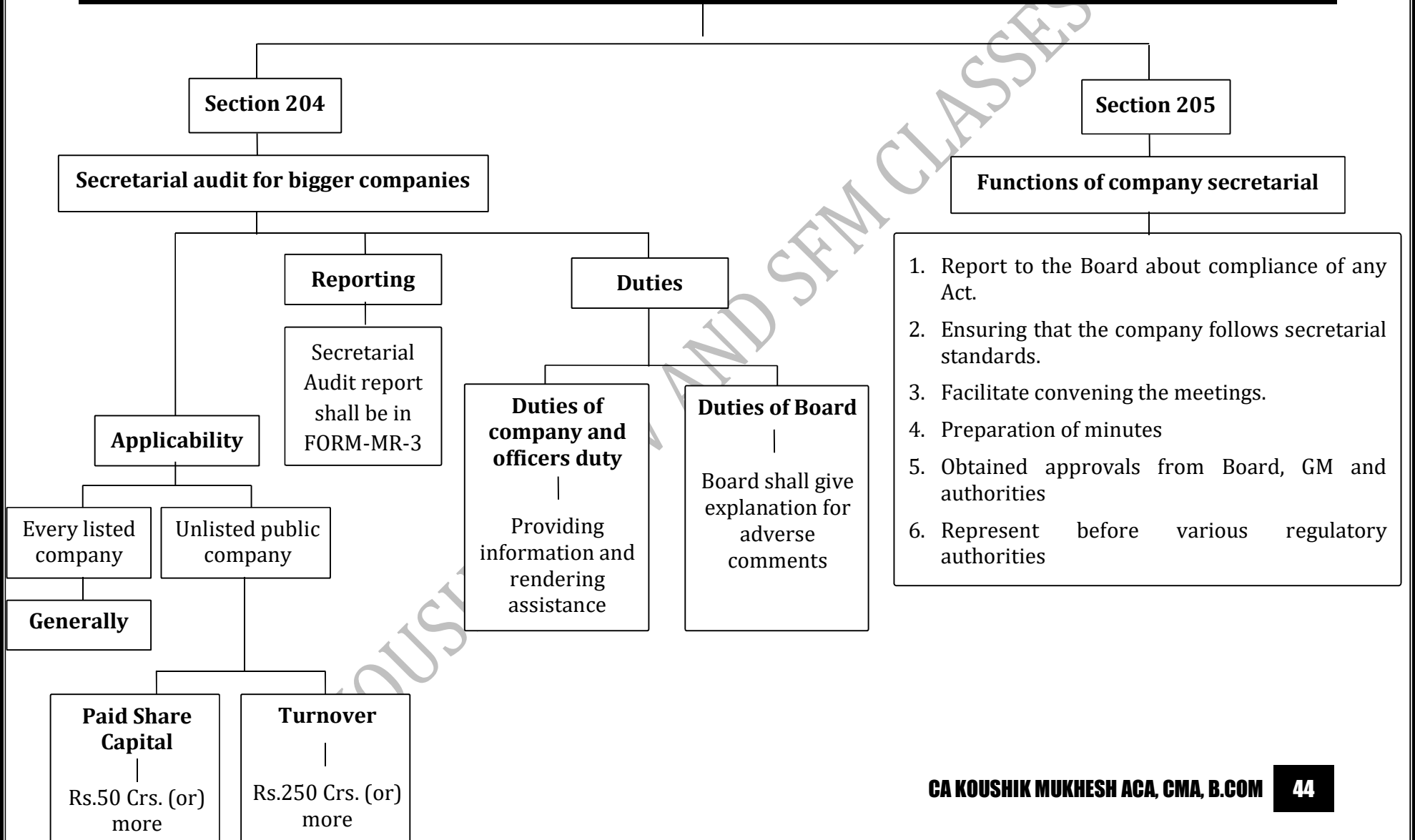
- Application shall be in FORM-MR-2.
- Application shall be made within 90 days.
- Before making application a general notice issued to shareholders by publishing into newspapers one in English another in local vernacular language.

KOUSHIK LAW AND SFM CLASSES

LAW CHARTS – DIRECTORS (PART – I)

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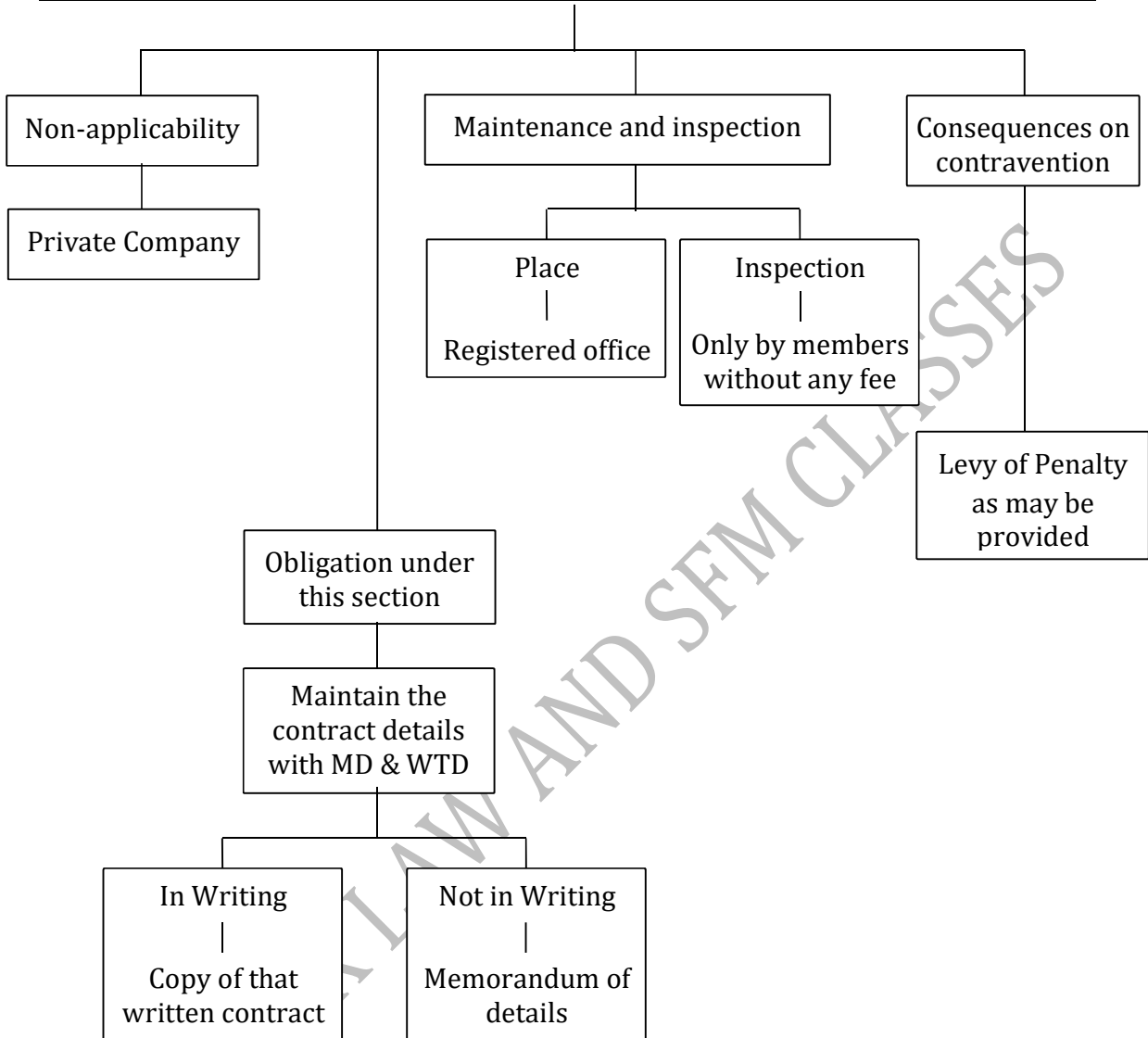
SECTIONS ON COMPANY SECRETARY



LAW CHARTS – DIRECTORS (PART – I)

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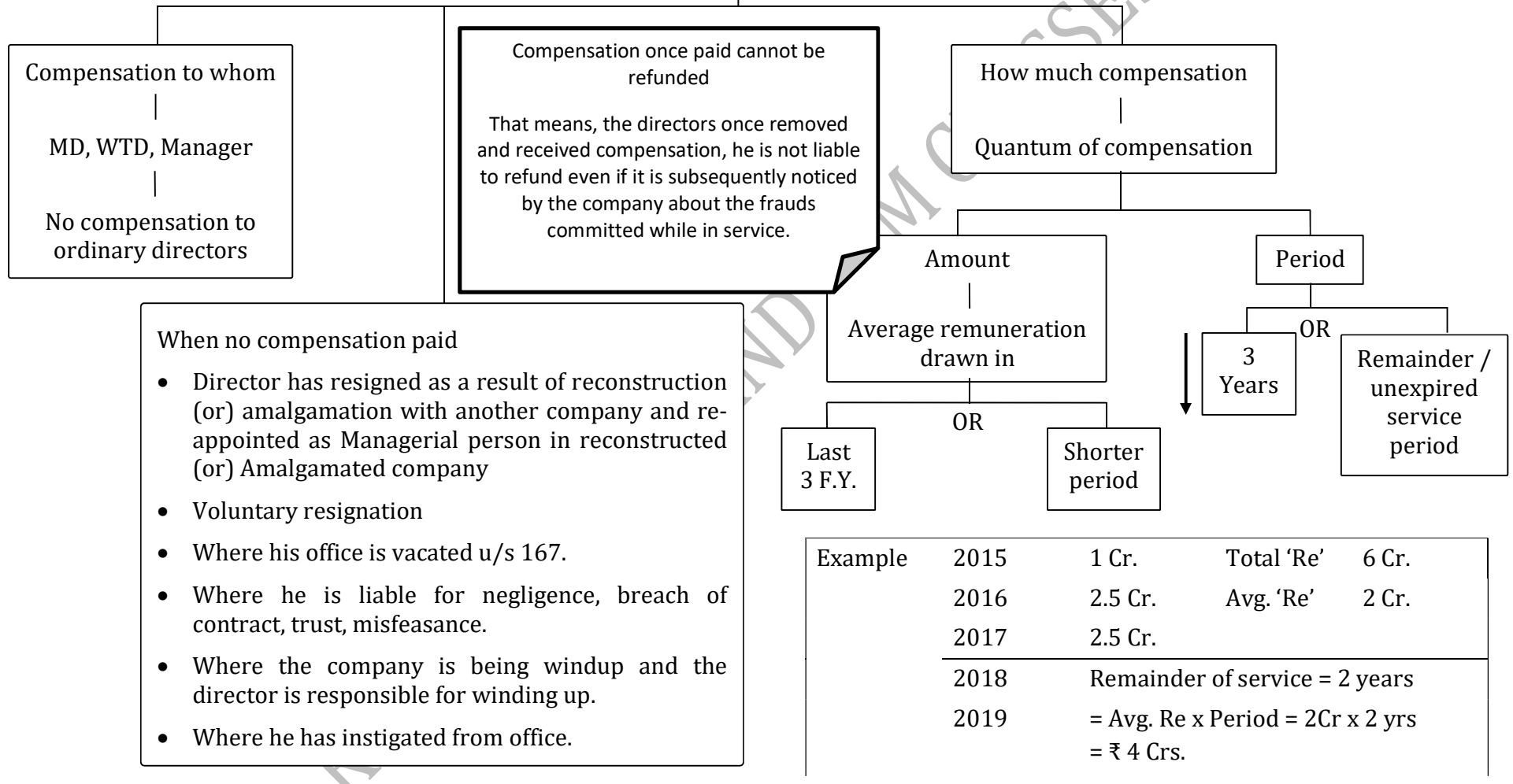
SECTION 190 - CONTRACT OF EMPLOYMENT WITH MANAGER (OR) MD (OR) WTD



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

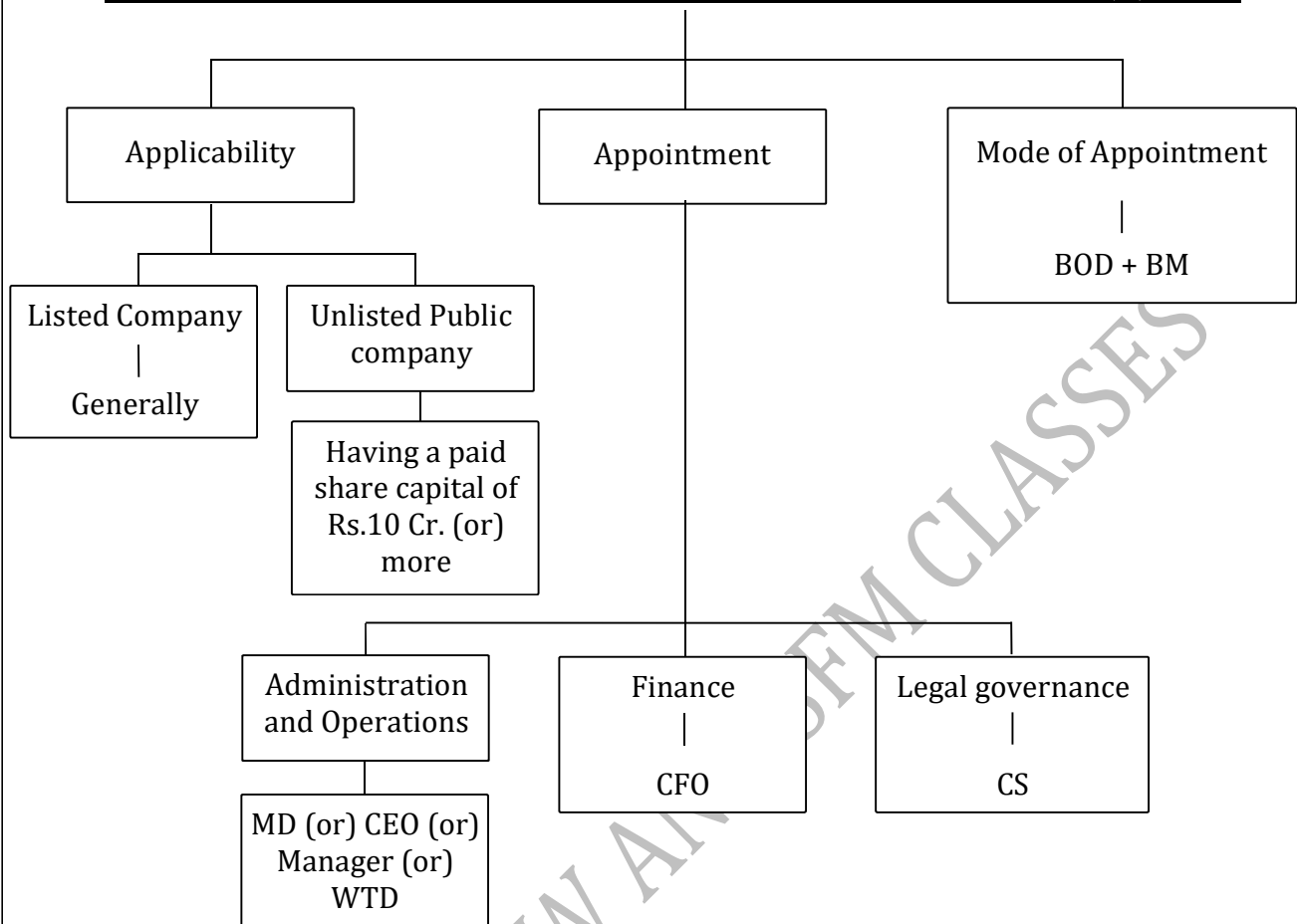
COMPENSATION FOR LOSS OF OFFICE (OR) COMPENSATION IS GIVEN FOR NOT REAPPOINTED [SECTION 202]



LAW CHARTS – DIRECTORS (PART – I)

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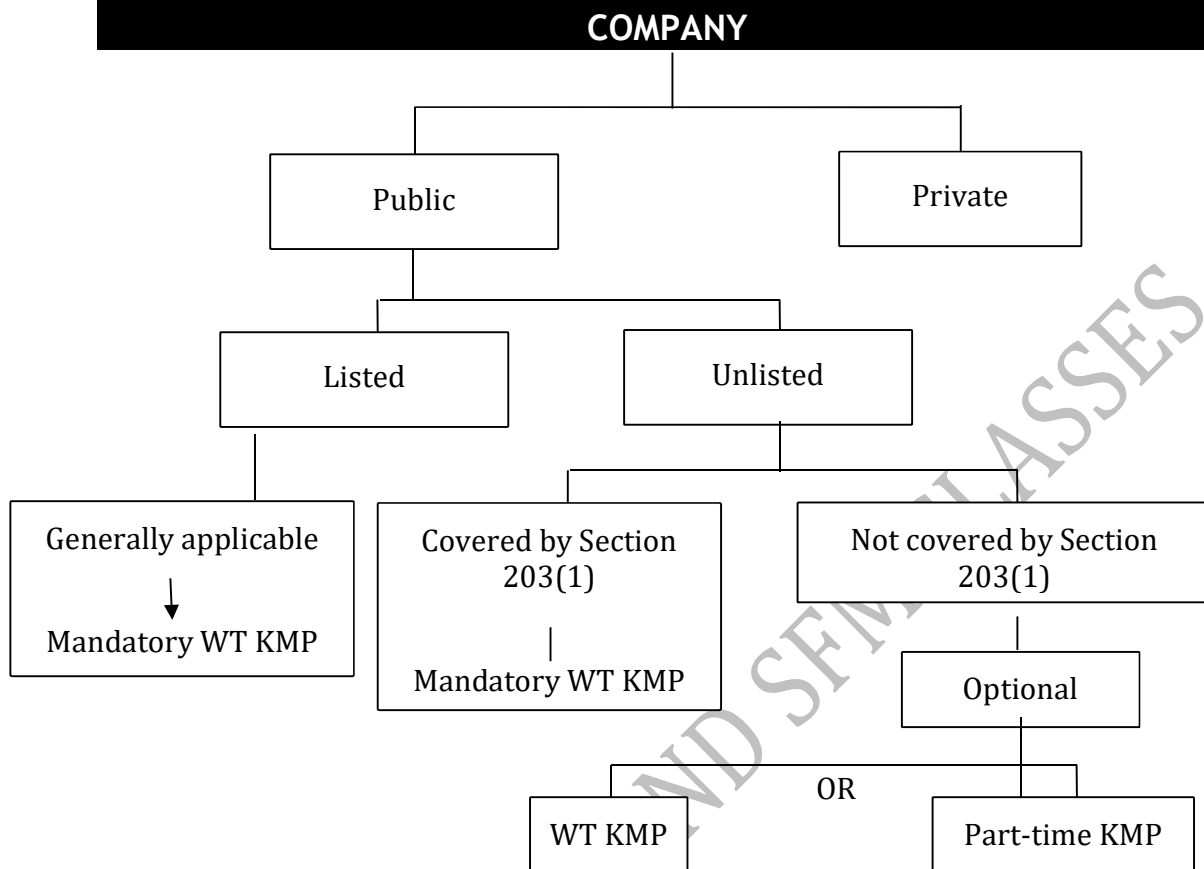
APPOINTMENT OF KMP - WHOLE TIME KMP SECTION 203(1)



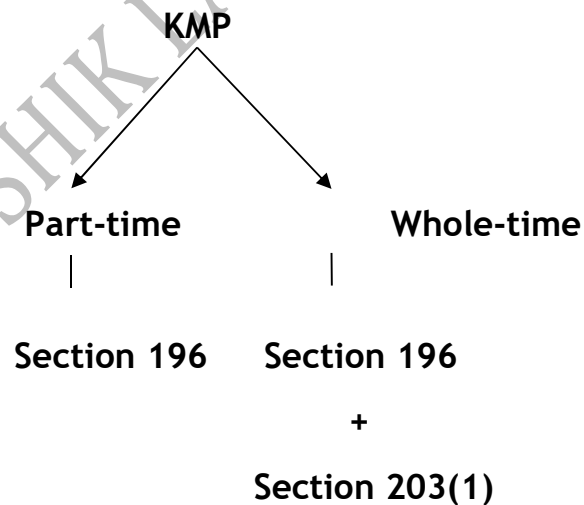
LAW CHARTS – DIRECTORS (PART – I)

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ANALYSIS OF 203(1)



Section 196 + Section 197 (MD / WTD / Manager)

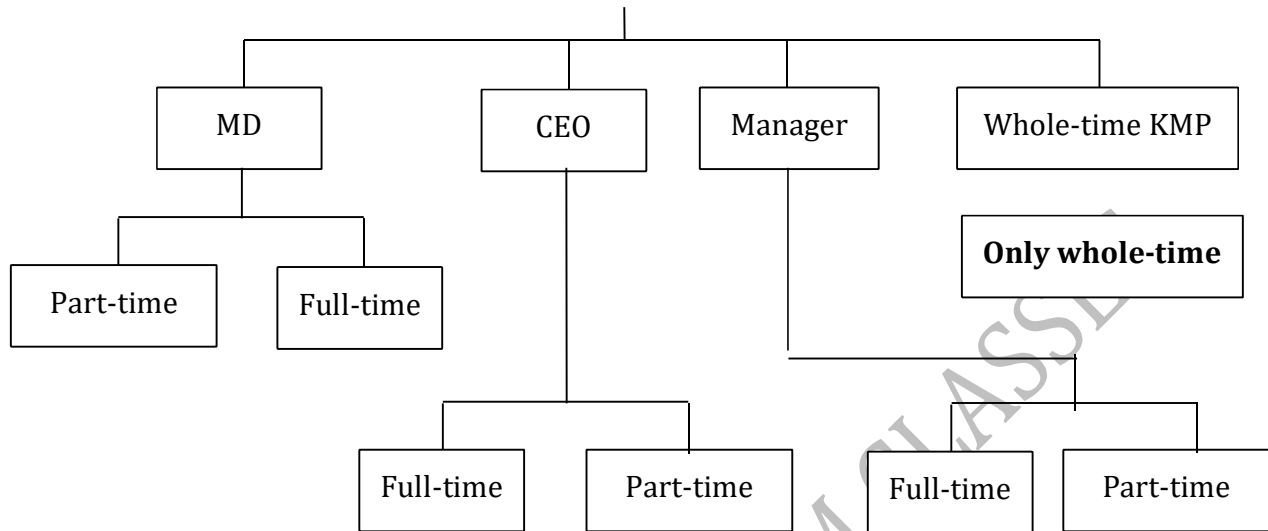


LAW CHARTS – DIRECTORS (PART – I)

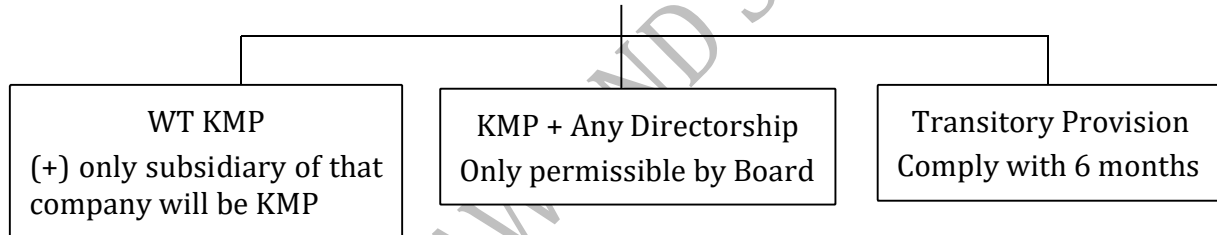
Reach @ 9866728874: Fb page: Koushik law and SFM updates

KMP

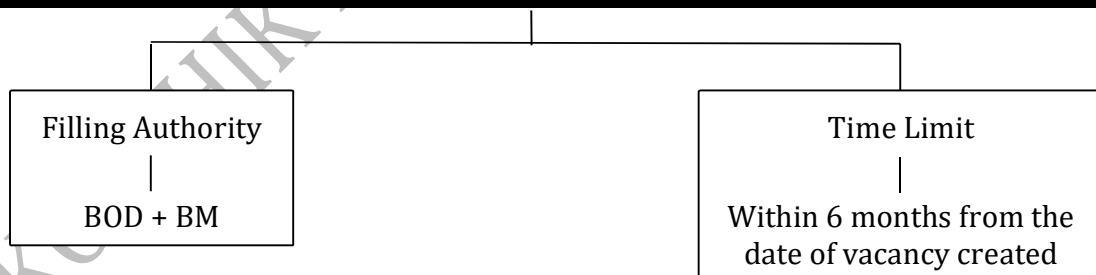
ADMINISTRATIVE + OPERATIONAL



MULTIPLE KMP POSITIONS



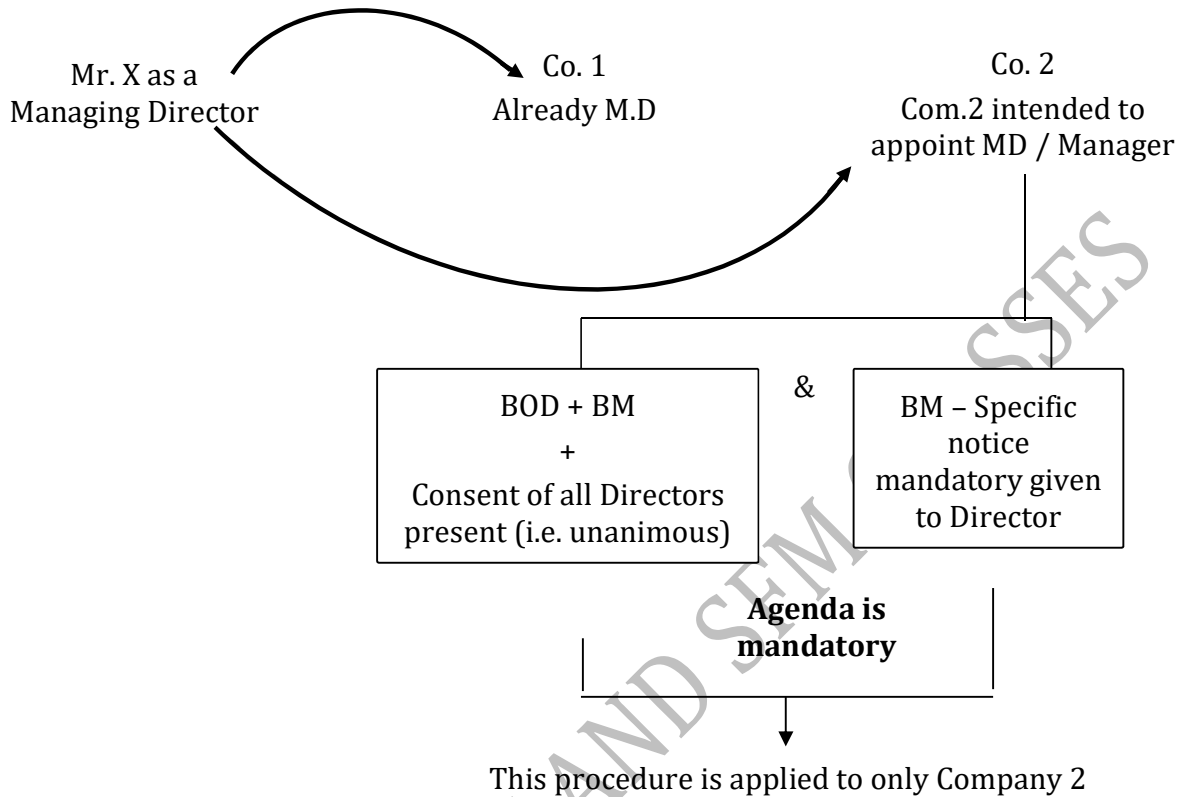
FILLING OF VACANCIES



LAW CHARTS – DIRECTORS (PART – I)

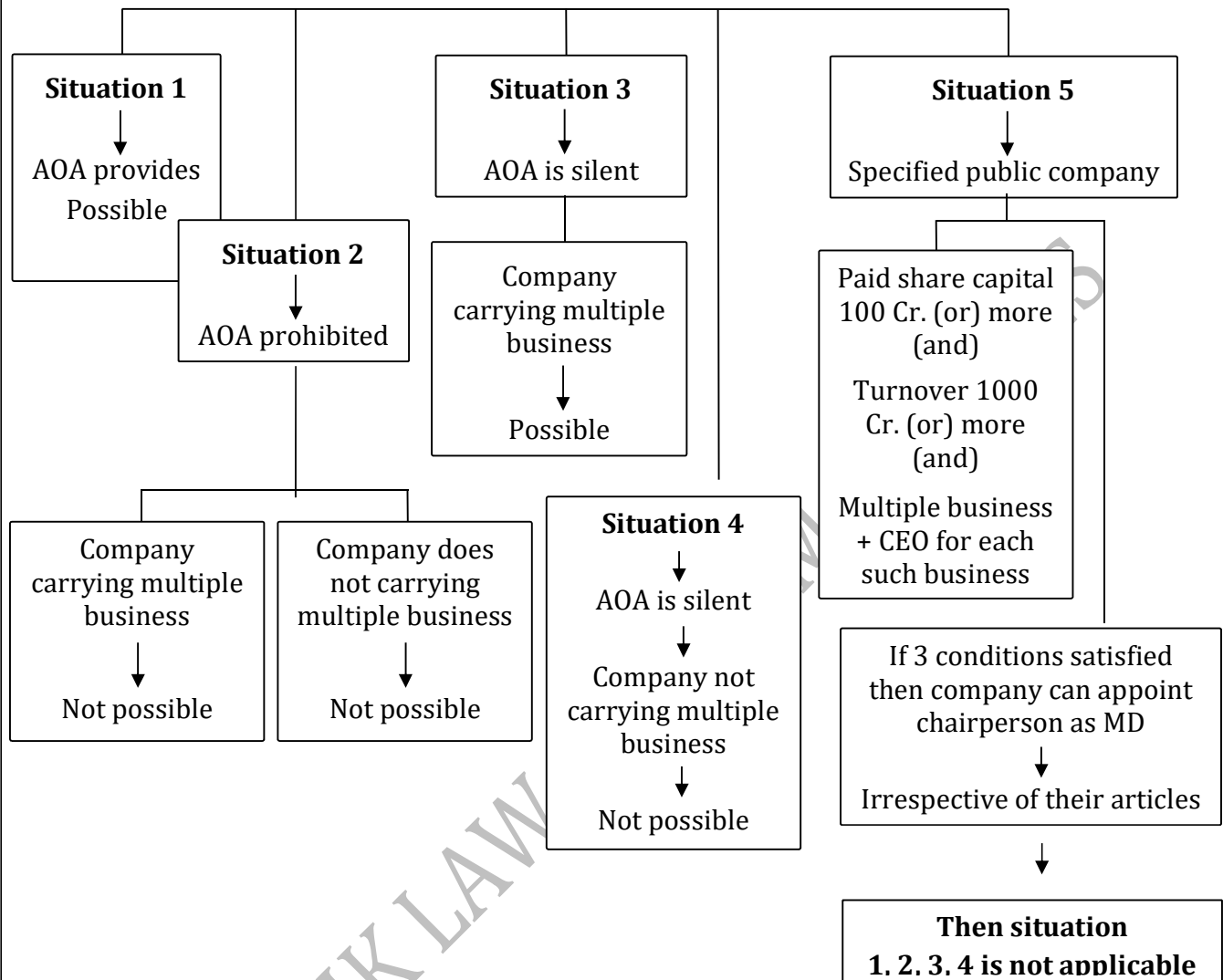
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APPOINTMENT OF MD IN SECOND COMPANY - PROCEDURE



LAW CHARTS – DIRECTORS (PART – I)

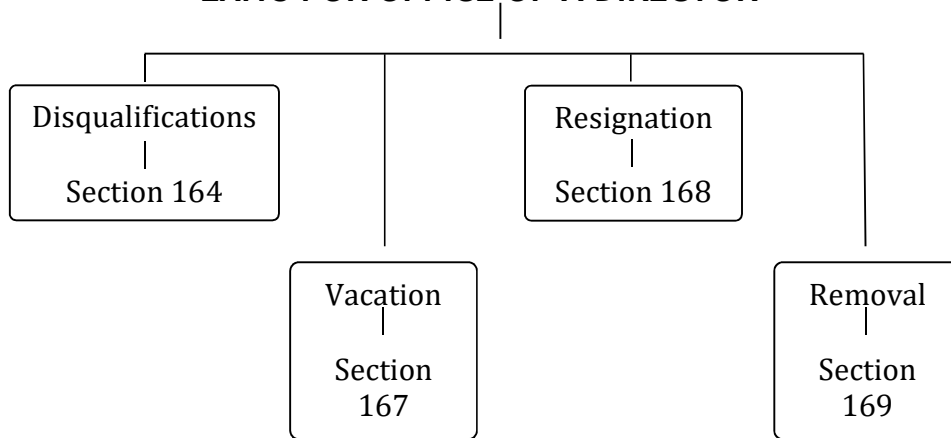
Reach @ 9866728874: Fb page: Koushik law and SFM updates
CHAIRPERSON AS M.D & CEO



LAW CHARTS – DIRECTORS (PART – I)

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EXITS FOR OFFICE OF A DIRECTOR



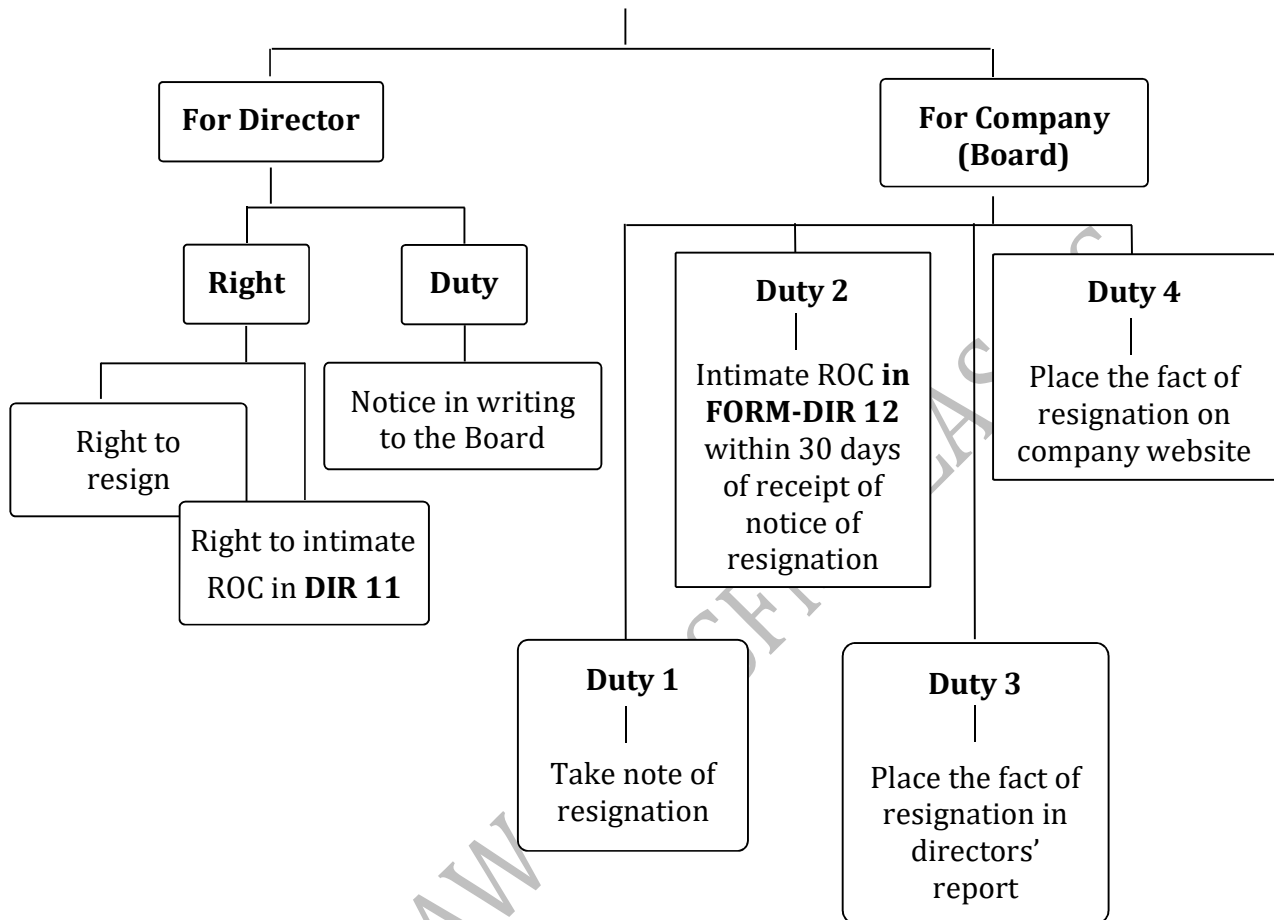
KOUSHIK LAW AND SFM CLASSES

LAW CHARTS – DIRECTORS (PART – I)

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EXIT - 1: RESIGNATION OF A DIRECTOR [SECTION 168]

(a) Rights and duties with respect to resignation



(b) Date of resignation taking effect

- Date of receipt of notice of resignation by the board [OR]
- Any other date specified in the notice

Whichever is later.

Note:

- Acceptance of resignation not required (Refer Point 'B')
- M.D. (or) Board cannot reject the resignation and force the director to continue.
- Non filing either by the company (or) director in no-way effect the resignation.
- Resignation of M.D., WTD

LAW CHARTS – DIRECTORS (PART – I)

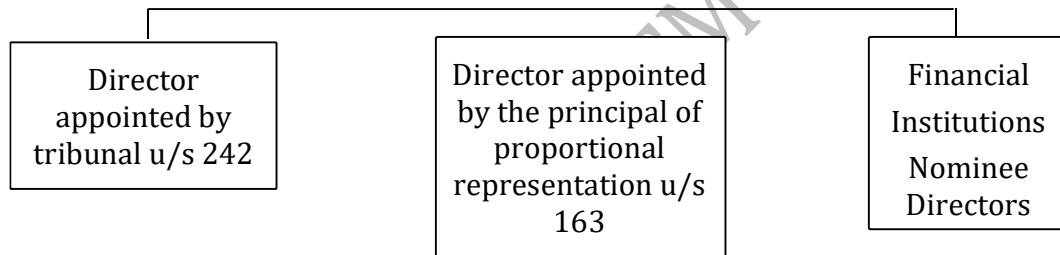
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- Resignation from M.D. capacity (or) WTD capacity (not as a director) shall not attract this section
- An M.D. (or) WTD shall first discharge their duties and then tender resignation.

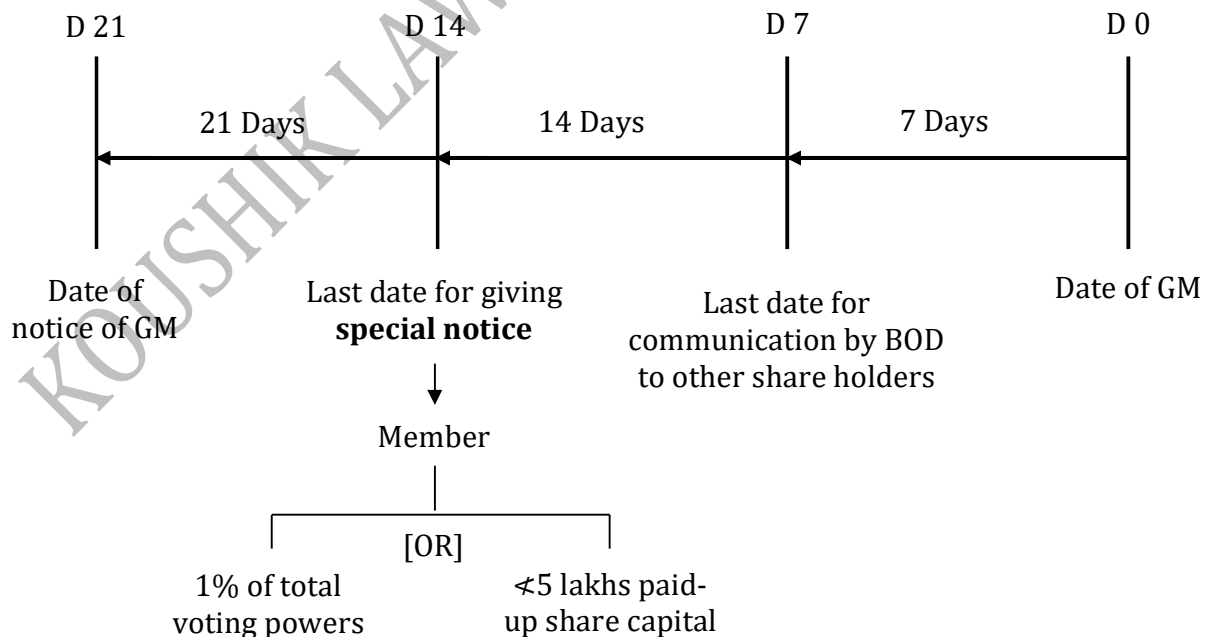
EXIT 2: REMOVAL OF A DIRECTOR [SECTION 169]

A. Basics of Removal

- Removal is optional
- Removal requires OR
- Articles cannot provide for SR
- Articles cannot provide for non-applicability of Section 169.
- Following directors cannot be removed U/s. 169 but other sections can remove
 - Director appointed by tribunal u/s 242
 - Director appointed by the principal of proportional representation u/s 163
 - Financial Institutions Nominee Directors



B. Special notice and its concepts



C. Principles of natural justice and opportunity of being heard

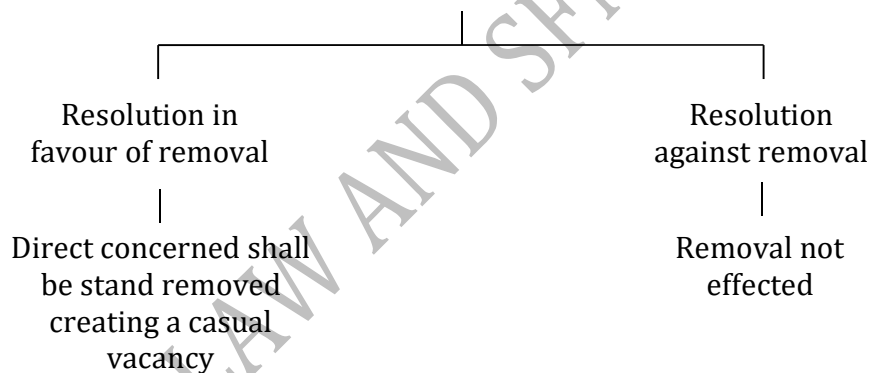
LAW CHARTS – DIRECTORS (PART – I)

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- (a) Up on the receipt of a special notice, the company shall forthwith shall forward a copy to Director consent.
- (b) Director consent shall be entitled be heard at the meeting.
- (c) Company shall circulate the representation being made to the shareholders along with special notice.
- (d) If representation could not be sent, since it is receive late by the company (or) due to company's default, then the director will get a right of speaking.
- (e) If the director abuses the chance of representation by seeking needless publicity for deformatary matters, the chance of representation need not be given and the cost of application shall be received from the director.

D. Removal at a G.M.

Resolution for Removal



E. Filling up of casual vacancy

- A special notice shall be required to appoint a director in place of director removed. Such appointment shall be made at same general meeting.
- Director (remove) (reappointed) removed may be appointed either at a GM / BM
- The vacancy not filled under this section, it shall be filled U/s.161(4).
- The director so appointed at the G.M. shall hold office till the date upto which his predecessor would have held office, if he had not been removed.

F. Claiming compensation

LAW CHARTS – DIRECTORS (PART – I)

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The directors SD removed shall be entitled to claim compensation for removal subjected to the provisions of Section 202.

G. Miscellaneous

- Can Board appoint a director removed U/s.169?

No, refer proviso Section 169(7)

- Can Civil Courts remove a director?

Civil Courts doesn't have a power to remove a director

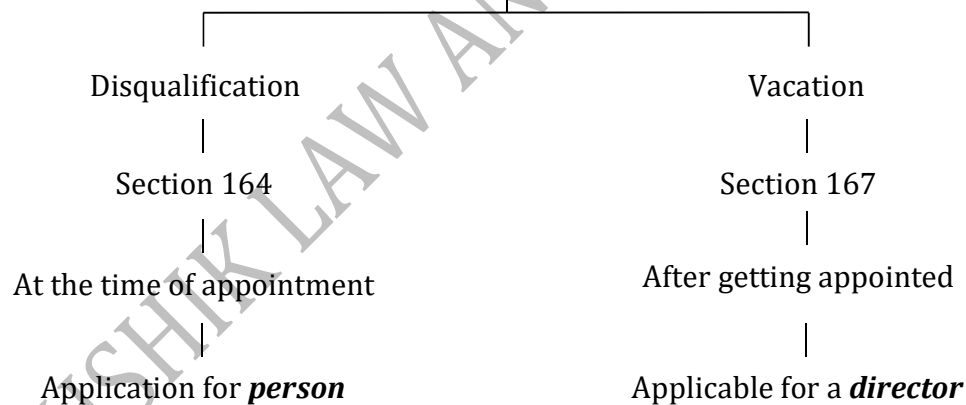
- Can articles provide for exit of a director?

Articles cannot be taken as a mechanism to bring an exit, of an office of a director since various exits are specified in the single act.

EXIT 3 & 4: DISQUALIFICATIONS TO BE READ WITH VACATION [SECTION 164 READ WITH SECTION 167]

Part 1: Basics of disqualification & Vacation

A. Period of effective section applicability



B. Overview of Section 164



LAW CHARTS – DIRECTORS (PART – I)

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PART 2: GENERAL GROUNDS OF DISQUALIFICATION AND VACATION THERE OF

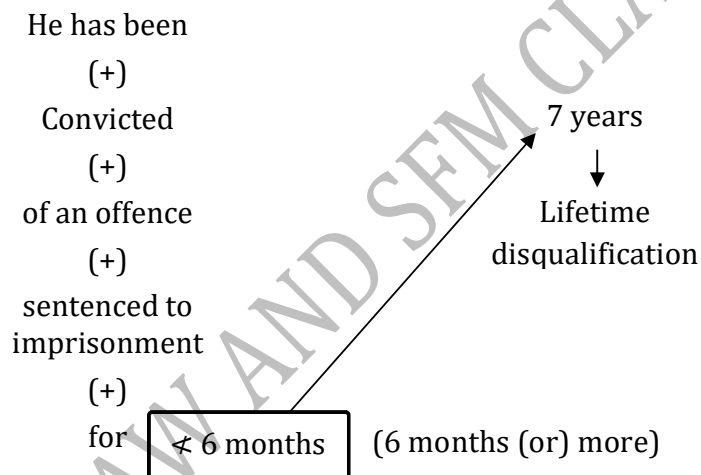
Section 164(1) r/w. Section 167(1)(a)

Ground - 1: He is of unsound mind and stands so declared by a competent court.

Ground - 2: He is an undischarged insolvent.

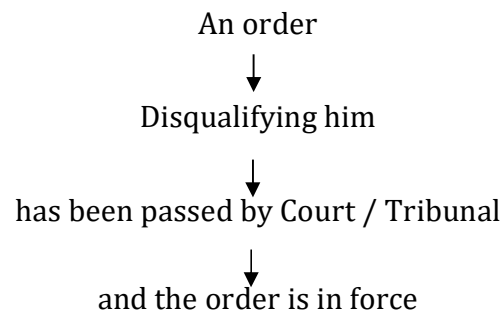
Ground - 3: He has applied to be adjudicated as an insolvent and his application is pending.

Ground - 4 Section 164(1) (d)



Period of 5 years has not elapsed from last date of expiry of sentence.

Ground - 5 Section 164(1)(e)



LAW CHARTS – DIRECTORS (PART – I)

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Ground - 6

Section 164(1)(f)

Has not paid any calls
↓
in respect of any share
↓
whether held single (or) jointly held with
others
+
six months has been elapsed since the last
date of fixed for the payment of call.

Ground - 7

Section 164(1)(g)

He has been convicted for offence
↓
Dealing with related party transactions
↓
In preceding 5 years (once vacate then upto 5 years be
cannot become a director in any other company)

Ground - 8

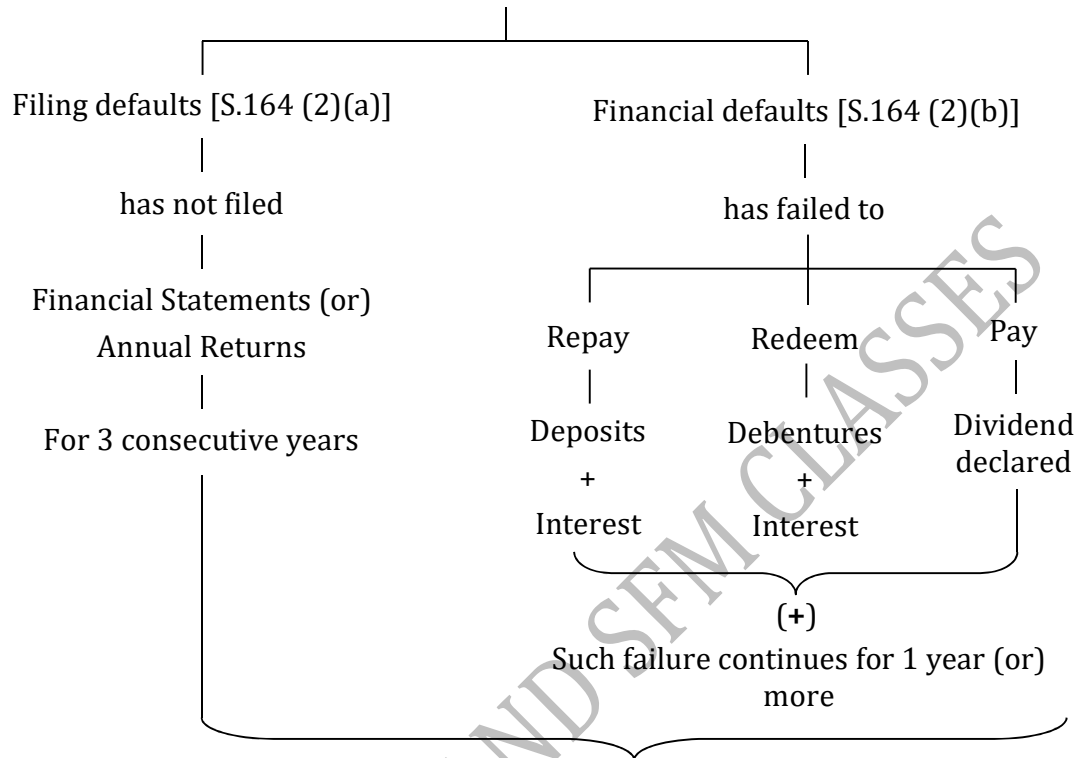
Section 164(1)(h)

He has not complied with DIN provisions

LAW CHARTS – DIRECTORS (PART – I)

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SPECIFIC GROUNDS

SECTION 164(2)



A person who is / has been director of a company which is attracted by above default shall not be eligible to be appointed / re-appointed of any company for a period of 5 years from the date on which company fails to do so.

LAW CHARTS – DIRECTORS (PART – I)

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Illustration 1

Year	F.S.	Annual Return (A.R.)
2015	X	✓
2016	X	X
2017	✓	X

⇒ Disqualification ?

Illustration 2

Year	F.S.	Annual Return (A.R.)
2016	X	✓
2017	X	X
2018	X	X

Last date for filing: 30.09.2018 (assume) ⇒ Disqualification ?



If yes, who is disqualified?

Illustration 3

Details:

A: Appointed on 01.01.2017 and continued →

B: Appointed on 01.01.2014 and continued →

C: Appointed on 01.01.2017 and continued →

D: Resigned on 01.10.2018 →

E: Appointed on 01.10.2018 →

Illustration 4

Date of acceptance of deposits → 01.01.2015

Last date for payment → 31.03.2018 → 1 year time given default

Effective date for repay → 31.03.2019

Appointment actual date of payment → 10.05.2019

LAW CHARTS – DIRECTORS (PART – I)

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Director	Details	Status
A	Appoint on 01.01.2015	
B	Appoint on 30.03.2018	
C	Appointed on 01.04.2018	
D	Appointed on 01.01.2017 and resigned on 10.04.2018	
E	Appointed on 10.04.2018 and resigned on 30.03.2019	
F	Appointed on 09.05.2019	
G	Appointed on 10.04.2017 and resigned on 01.04.2019	
H	Appointed on 01.01.2017 resigned on 30.09.2018 and reappointed on 01.01.2019	

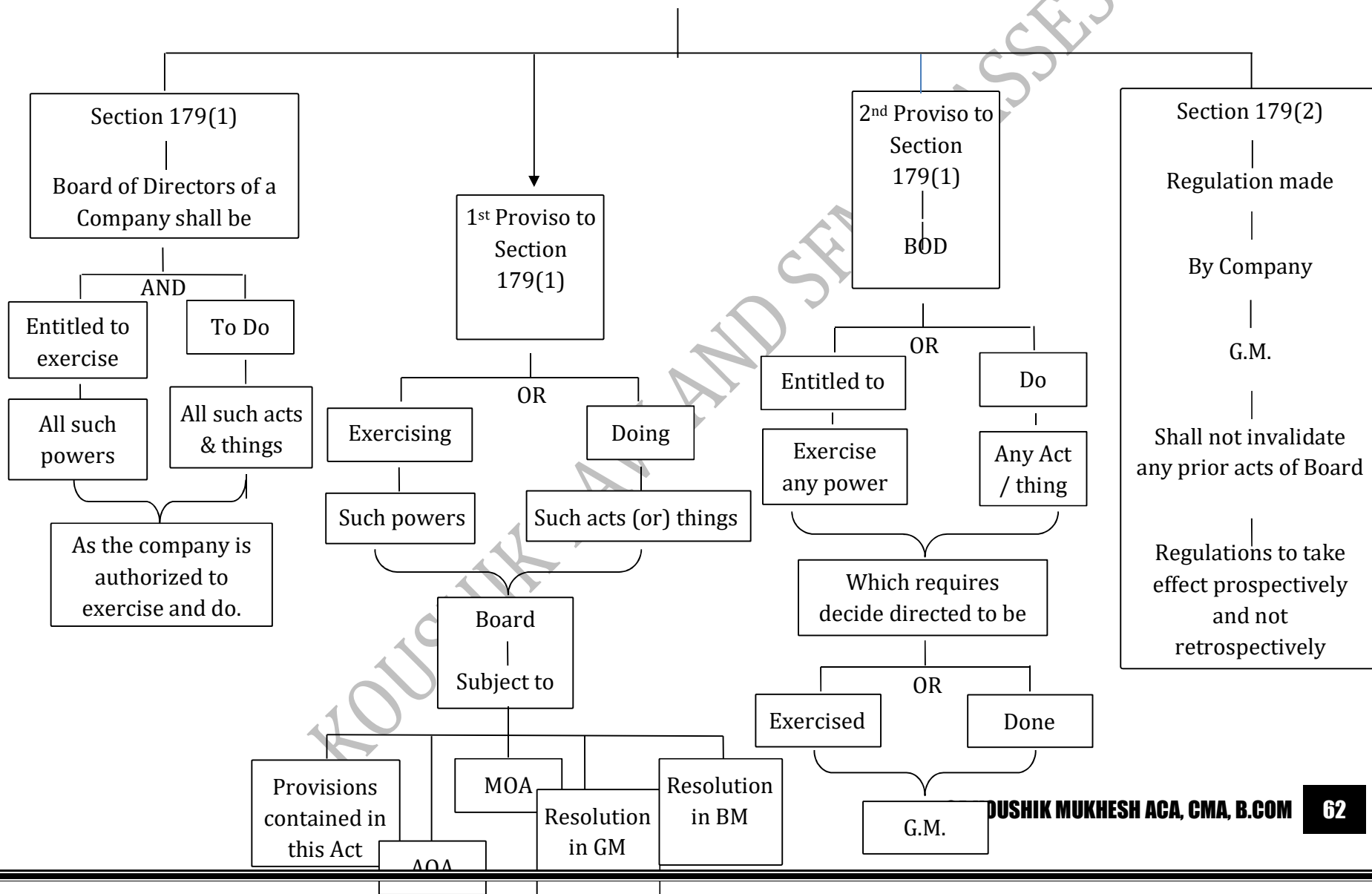
Note:

1. Disqualification attracts only to those directors who are directors on the date of default and continue till the effective date of default.
2. Any break in service would provide immunity from default.

LAW CHARTS – DIRECTORS (PART – I)

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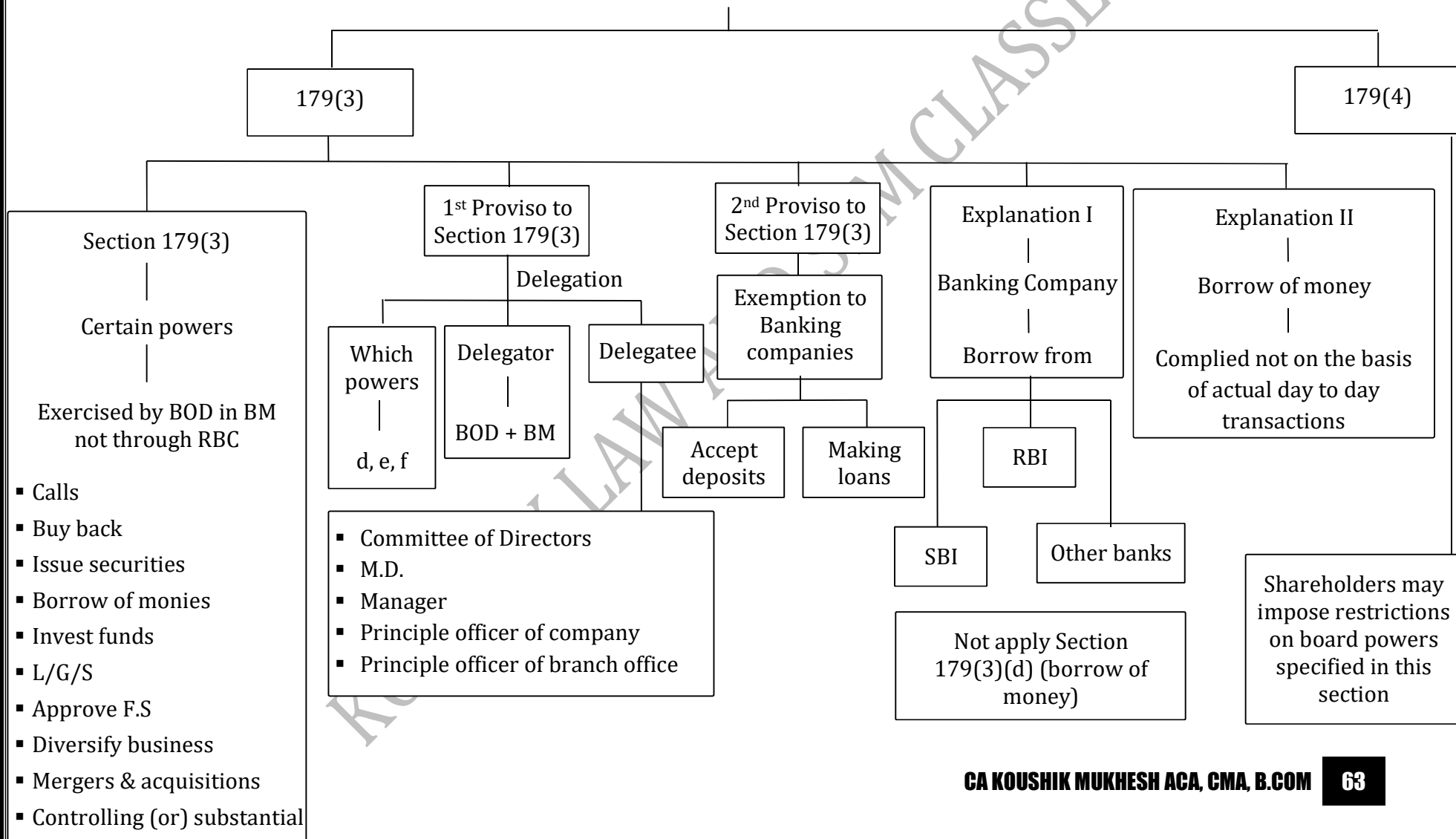
SECTION 179 - GENERAL POWERS OF THE BOARD



LAW CHARTS – DIRECTORS (PART – I)

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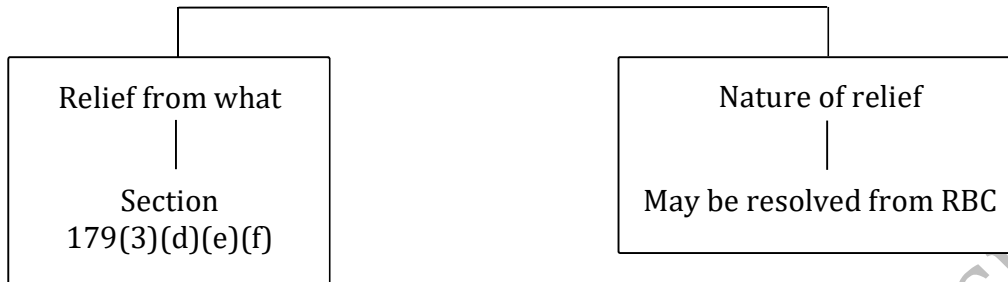
POWERS OF THE BOARD TO BE EXERCISED ONLY AT THE BOARD MEETING



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates
EXEMPTION AND NON-APPLICABILITY

Relief to Section 8 companies

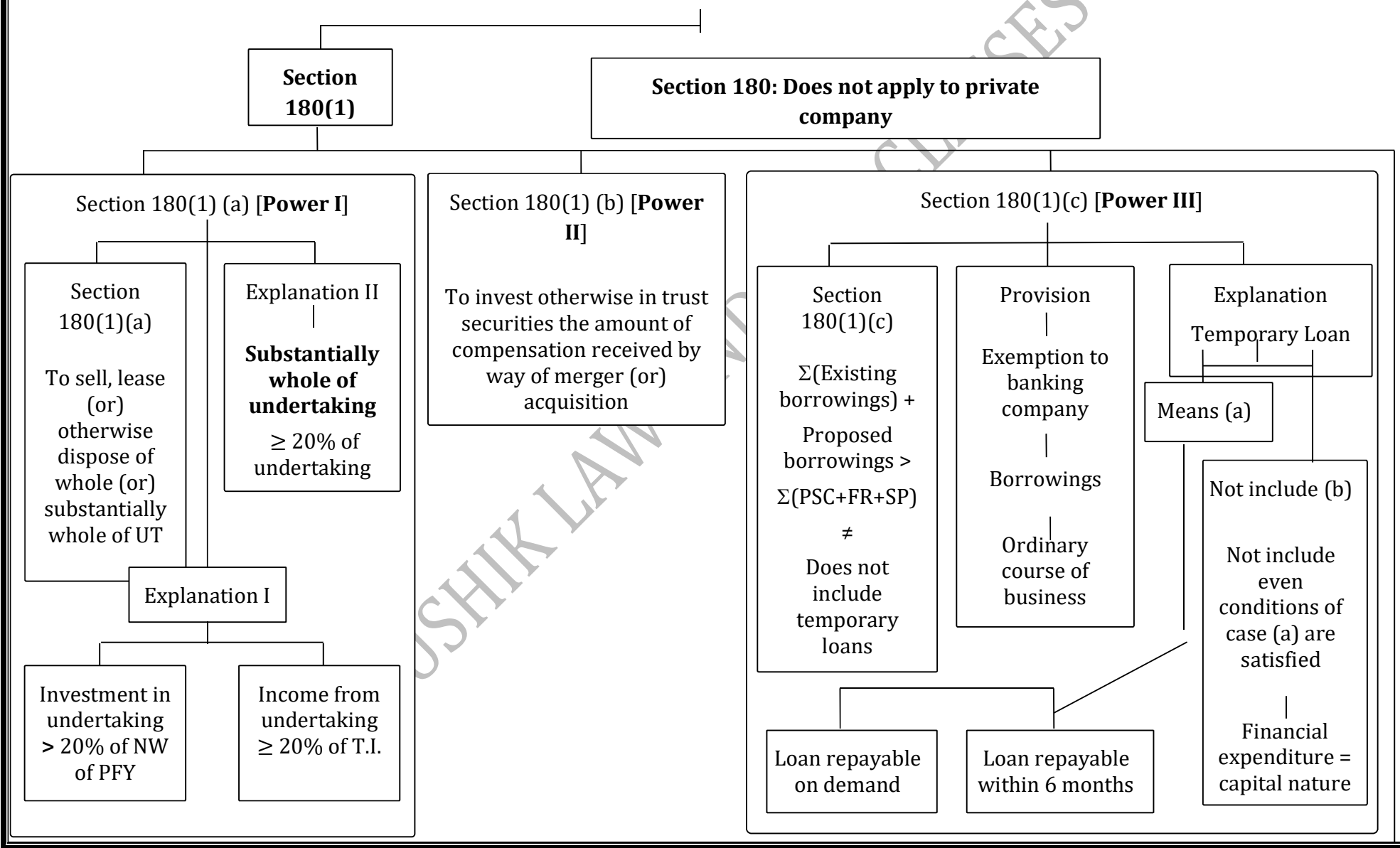


KOUSHIK LAW AND SFM CLASSES

LAW CHARTS – DIRECTORS (PART – I)

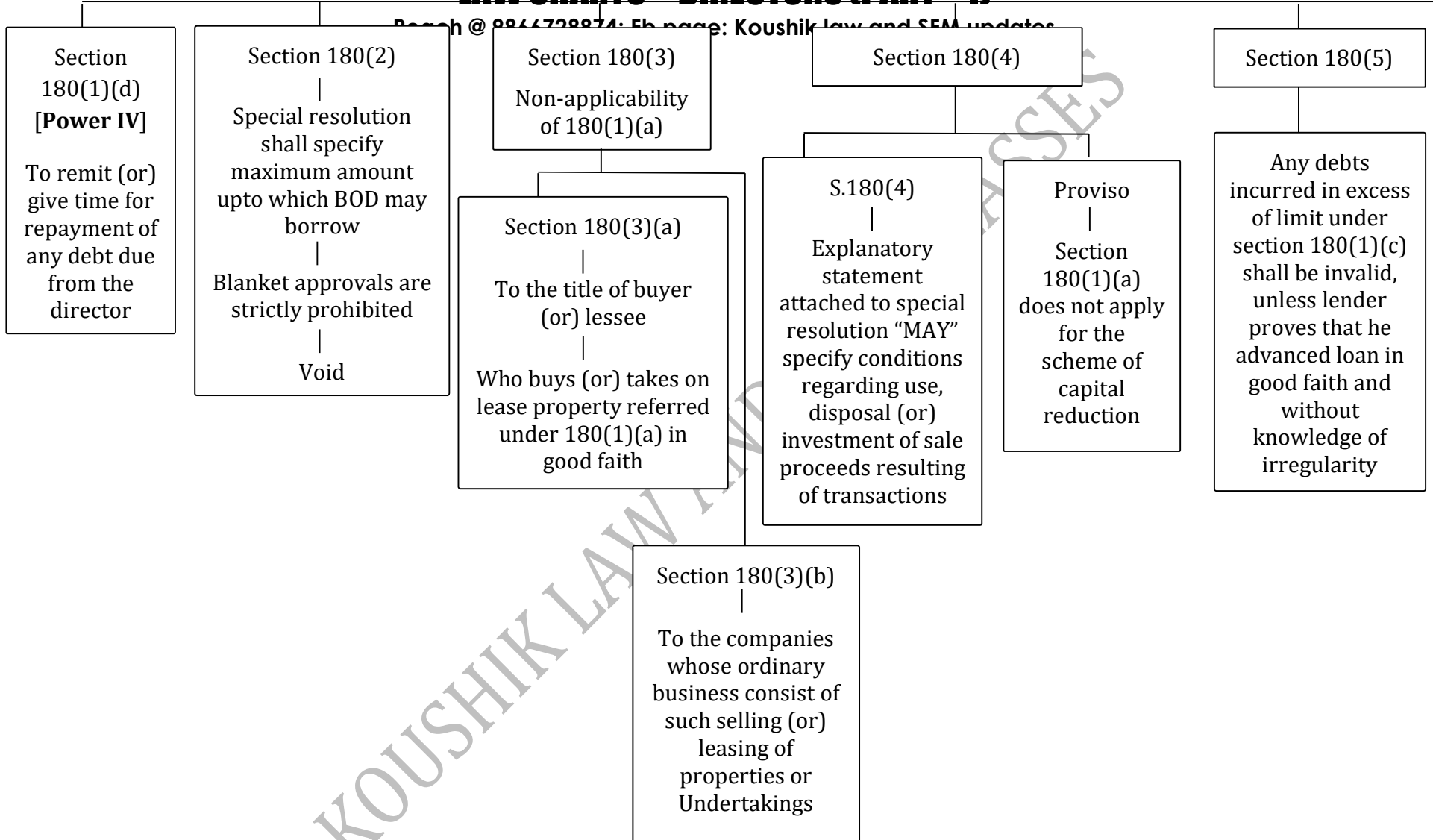
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Section 180 - RESTRICTIONS ON POWERS OF THE BOARD [BOD + SH + SR + GM]



LAW CHARTS – DIRECTORS (PART – I)

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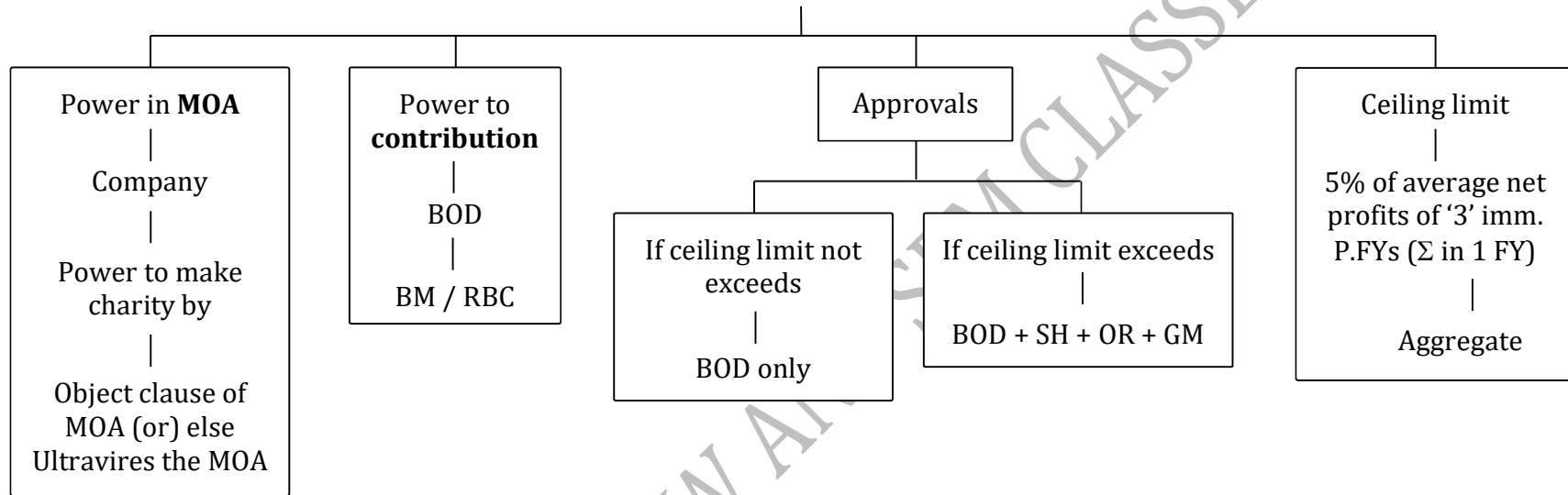


LAW CHARTS – DIRECTORS (PART – I)

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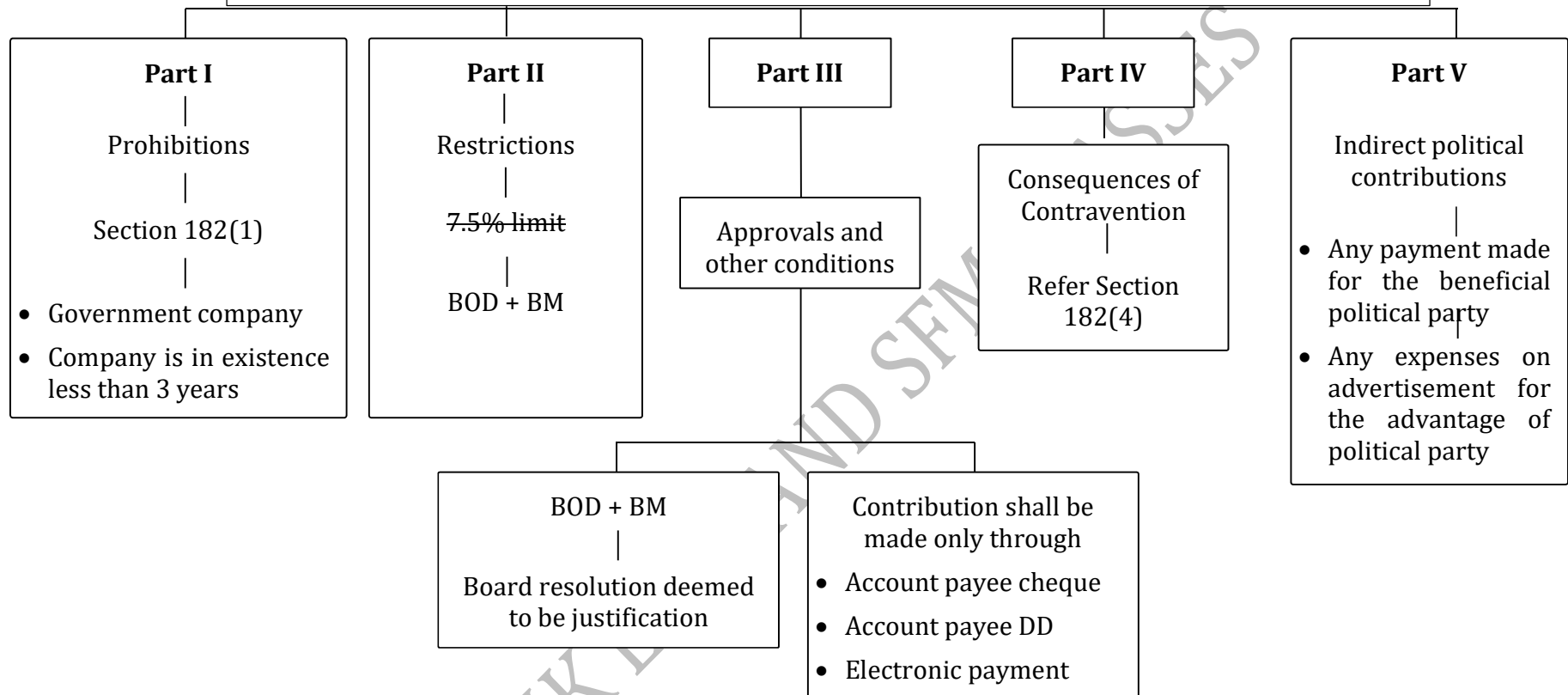
COMPANY TO CONTRIBUTE TO BONAFIDE AND CHARITABLE FUNDS

SECTION 181



LAW CHARTS – DIRECTORS (PART – I)

SECTION 182: PROHIBITIONS AND RESTRICTIONS ON POLITICAL CONTRIBUTIONS

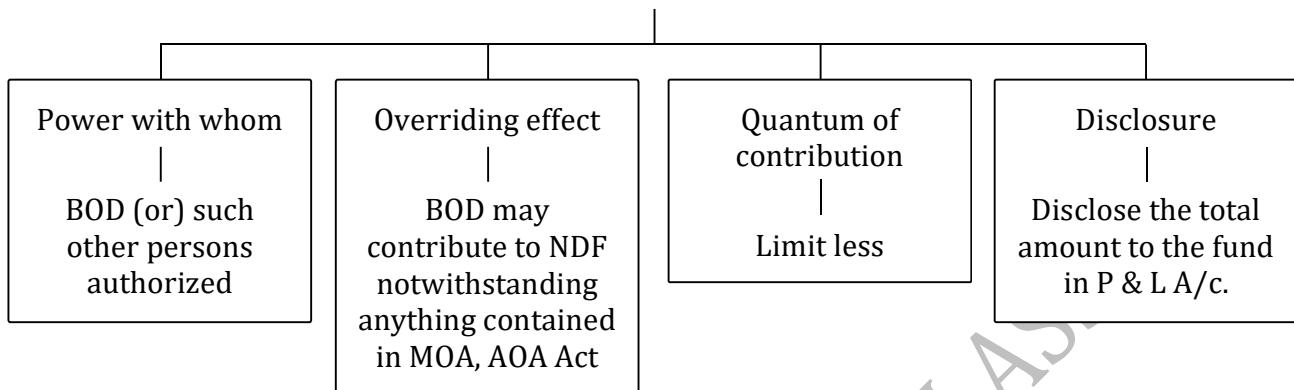


LAW CHARTS – DIRECTORS (PART – I)

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POWER TO BOARD AND OTHER PERSONS TO MAKE CONTRIBUTIONS TO NATIONAL DEFENCE FUND

SECTION 183



Liabilities on Director

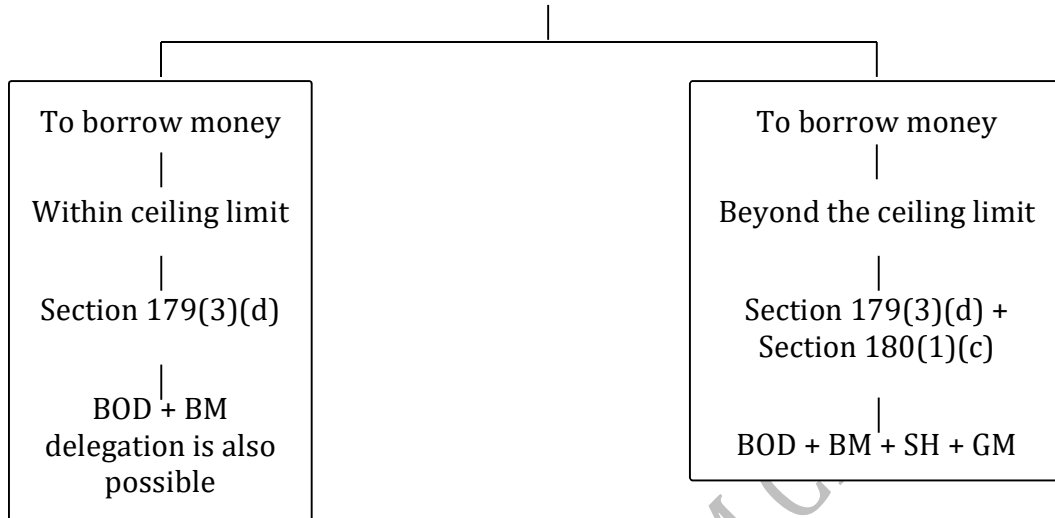
- Company can sue from the breach of trust (or) ostensible authority.
- Company liable to pay to the lender.

LAW CHARTS – DIRECTORS (PART – I)

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ADDITIONAL CONCEPTS RELATING TO BOARD POWERS

1. Harmonious construction between 180(1)(c) & 179(3)(d)



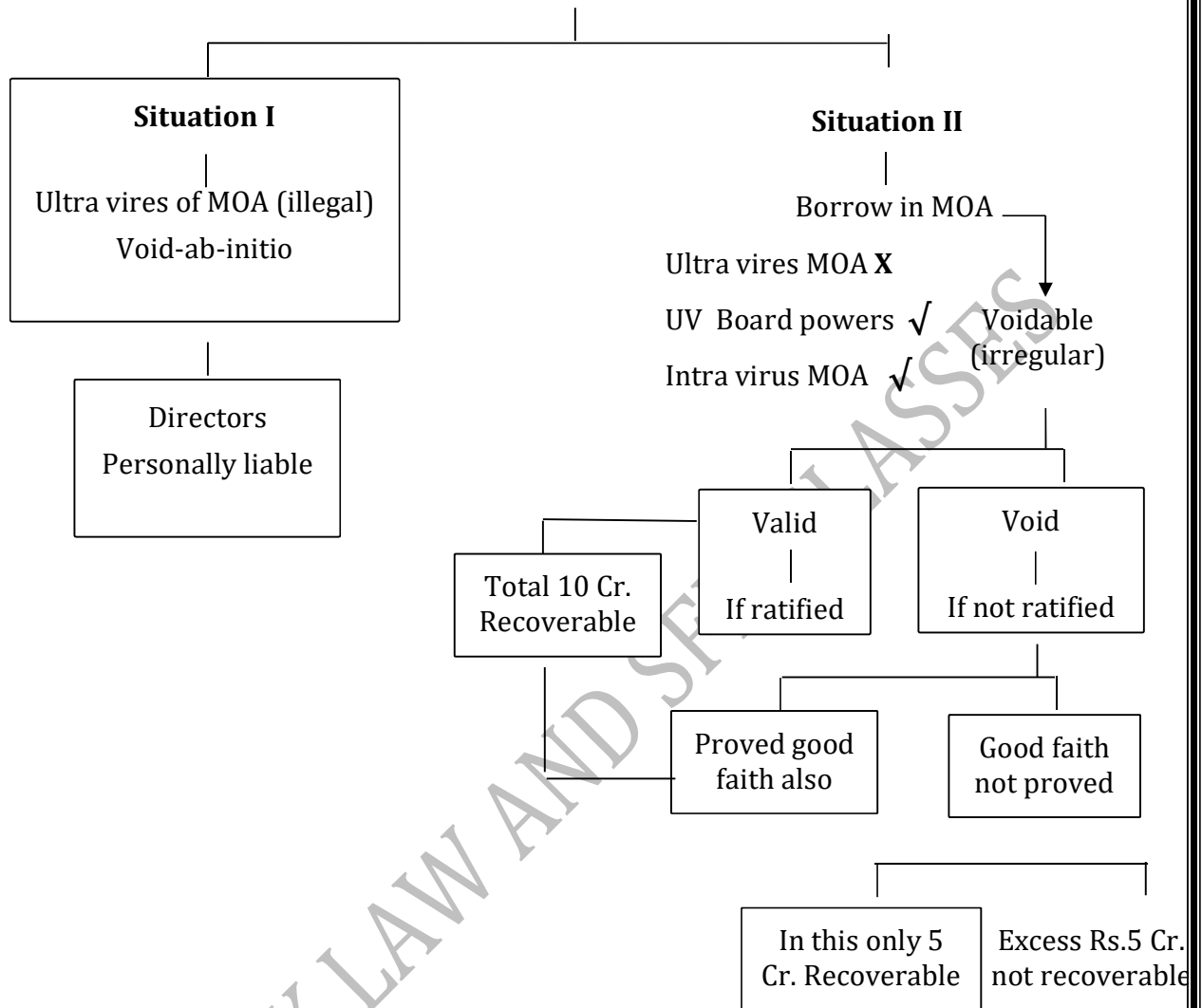
2. Situation of borrowings made by the board of directors themselves in excess of ceiling limits

PSC	10 Cr		
FR	5 Cr	Existing Borrowings	: 15 Cr
SP	5 Cr	Proposed Borrowings	: 10 Cr
Limit	Cr		: 25 Cr

LAW CHARTS – DIRECTORS (PART – I)

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LENDER



LAW CHARTS – DIRECTORS (PART – I)

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3. Can the shareholders dictate the terms to the directors w.r.t. to Section 180?

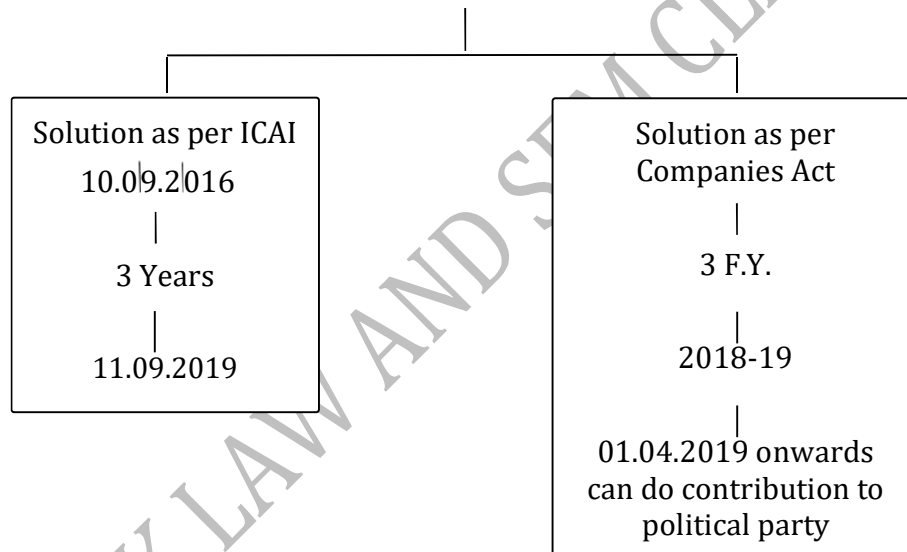
Shareholders cannot dictate the terms to the (BOD) and ask them to follow. Since the BOD is a agent to the company not to an individual shareholders.

Reference Sections:

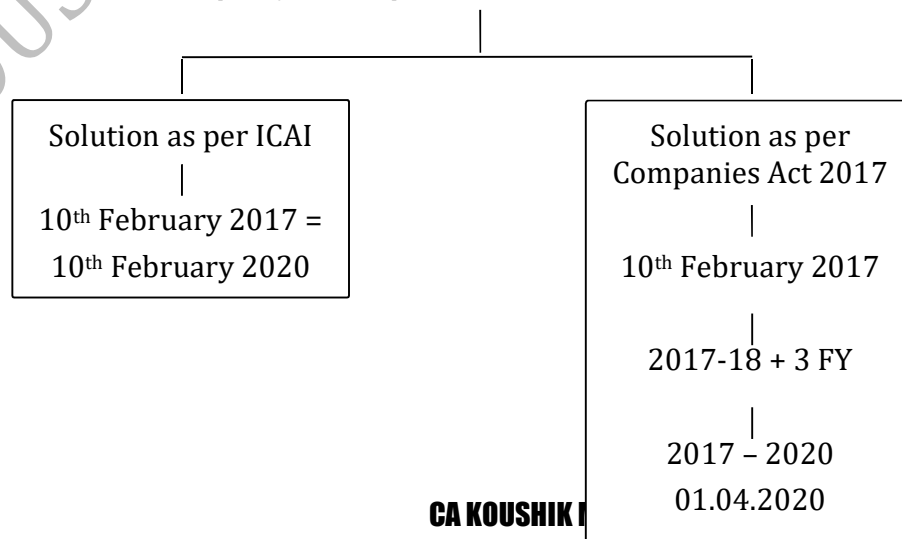
Section 179(1) + 2nd proviso of 179(1) + Section 180(1) + Section 180(1)(a)

4. Interpretation of the term “F.Y” for the purposes of Section 182

Company incorporated on 10.09.2016



Company incorporated on 10.02.2017



LAW CHARTS – DIRECTORS (PART – I)

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BOARD MEETING

Read with secretarial standard I

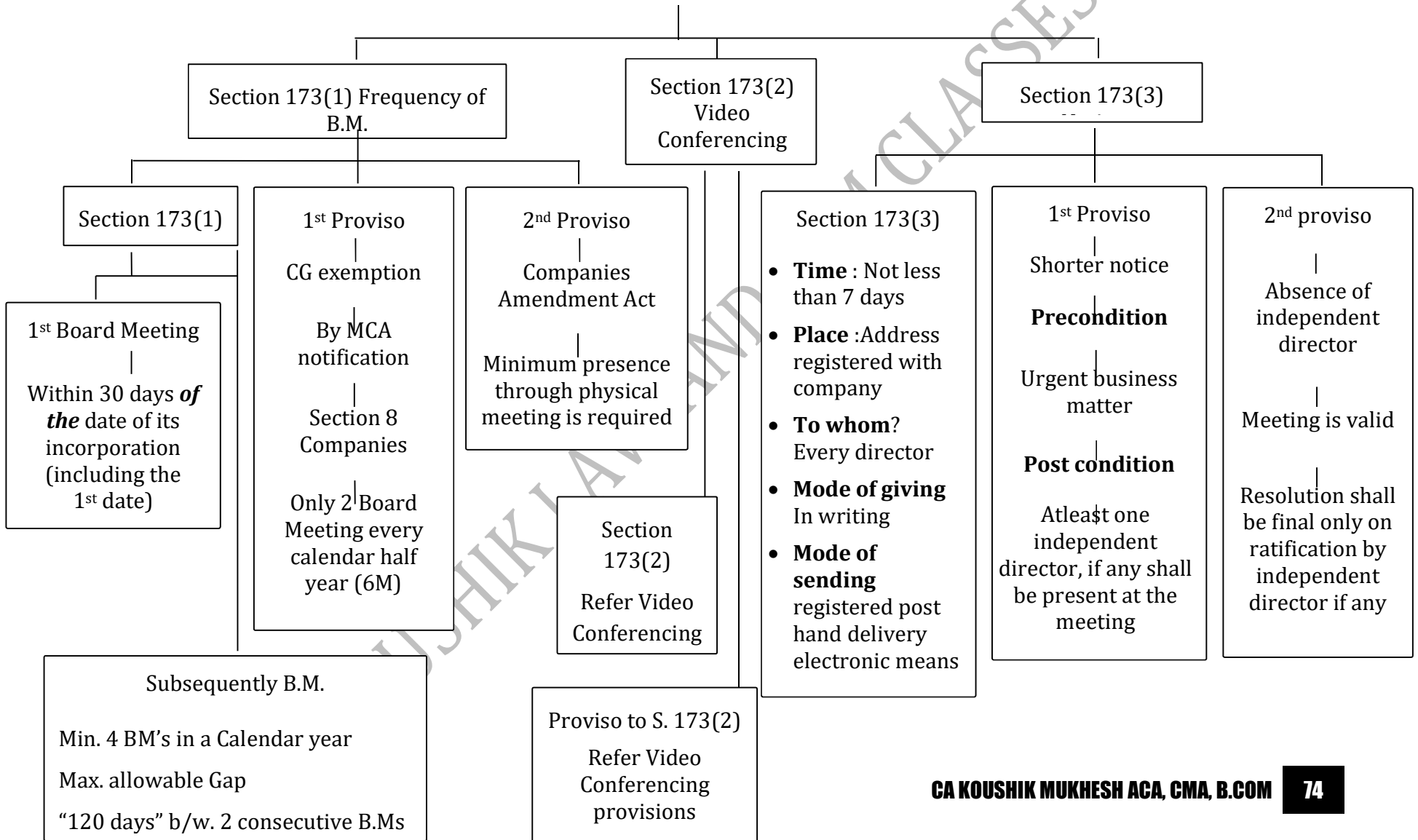
Learning Objectives:

1. Frequency of Board Meetings
2. Video conferencing
3. Notice of a Board Meeting
4. Exemptions from frequency
5. Contravention of Section 173
6. Quorum
7. Discounted Quorum
8. Consequences of no quorum
9. Resolution by circulation
10. Shifting the business from RBC to BM
11. Various committees under Companies Act
12. Related issues, clarifications, case laws on

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

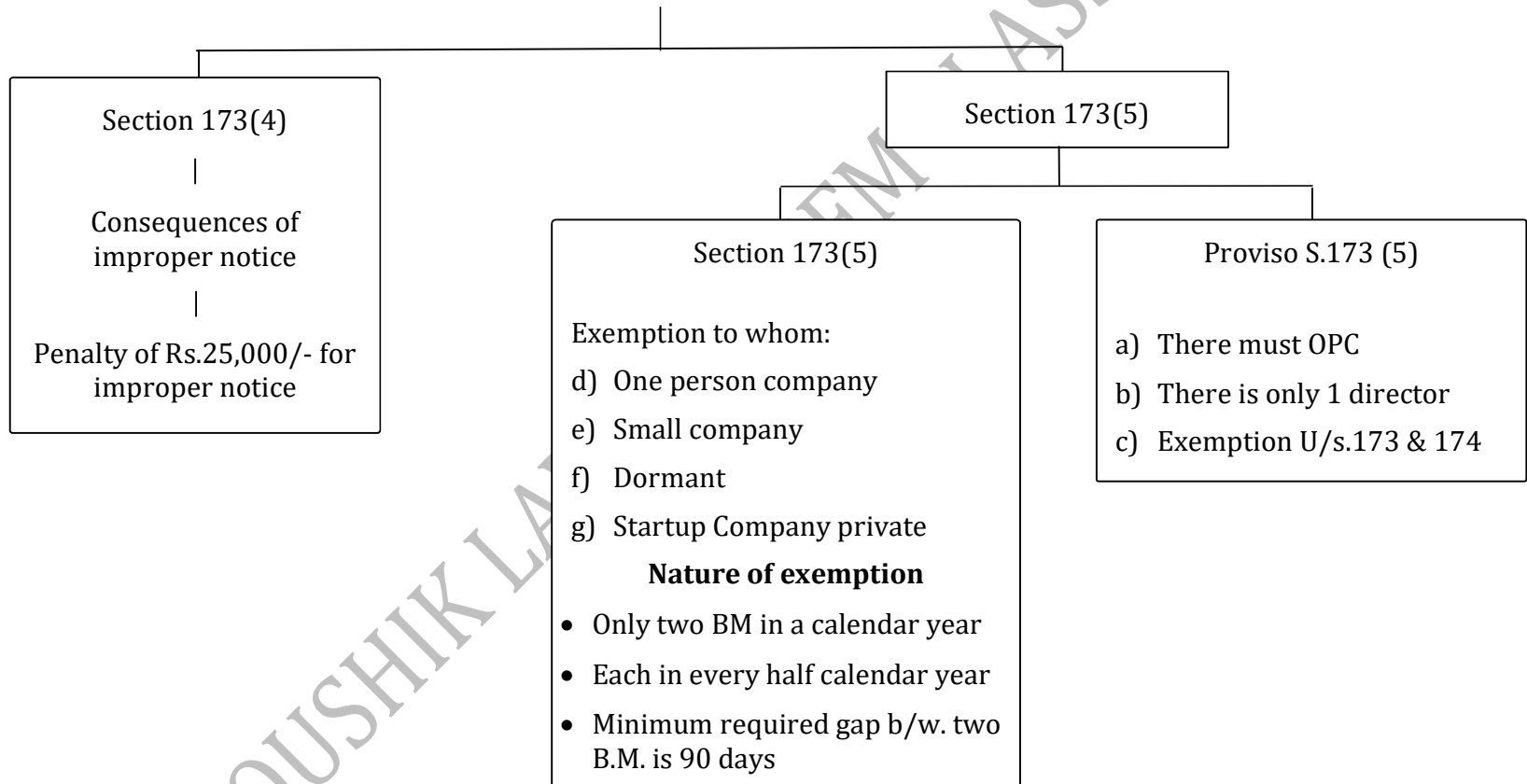
SECTION 173 (MEETINGS OF THE BOARD)



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

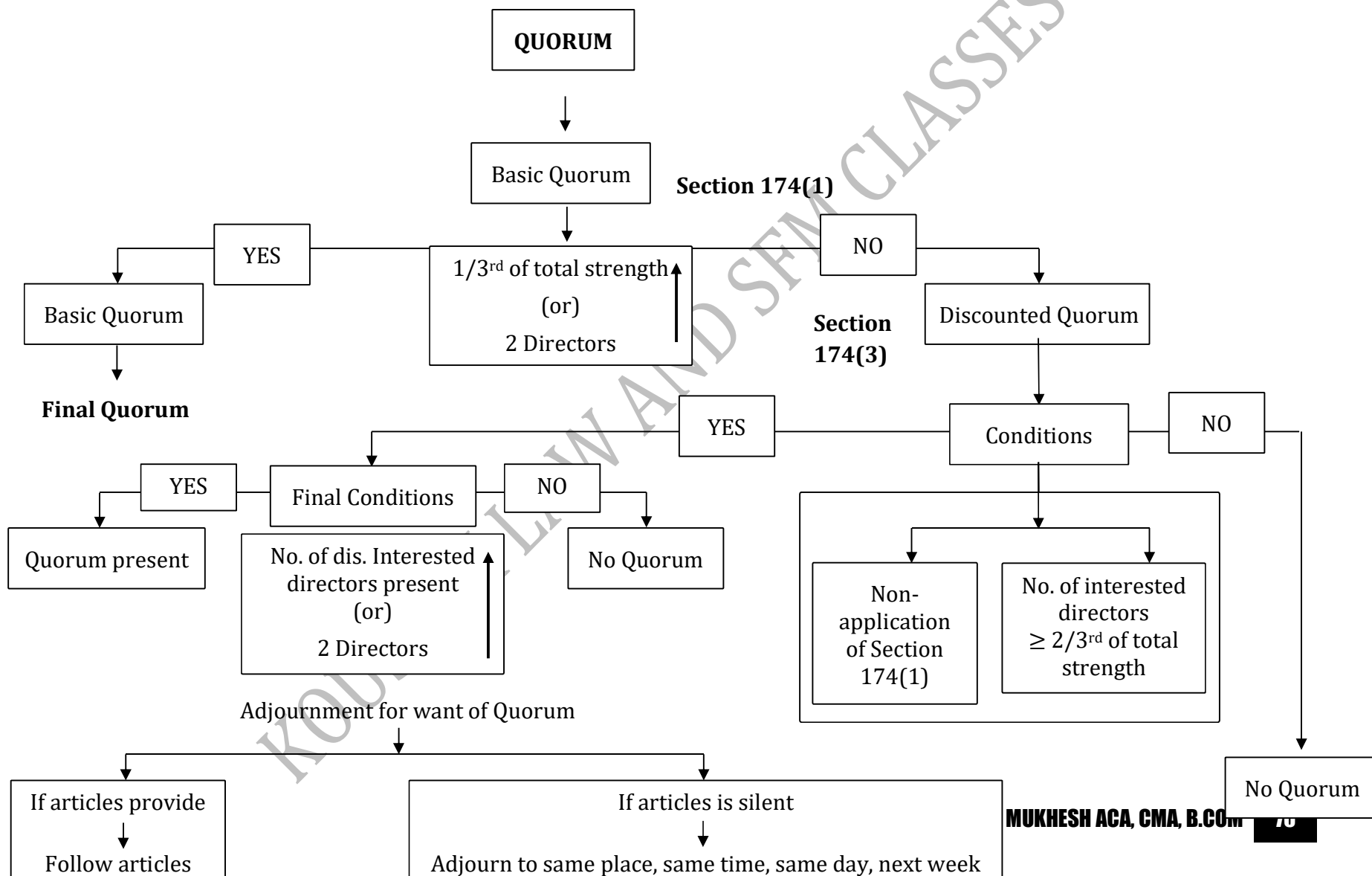
SECTION 173 (Meetings of the Board) Contd....



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

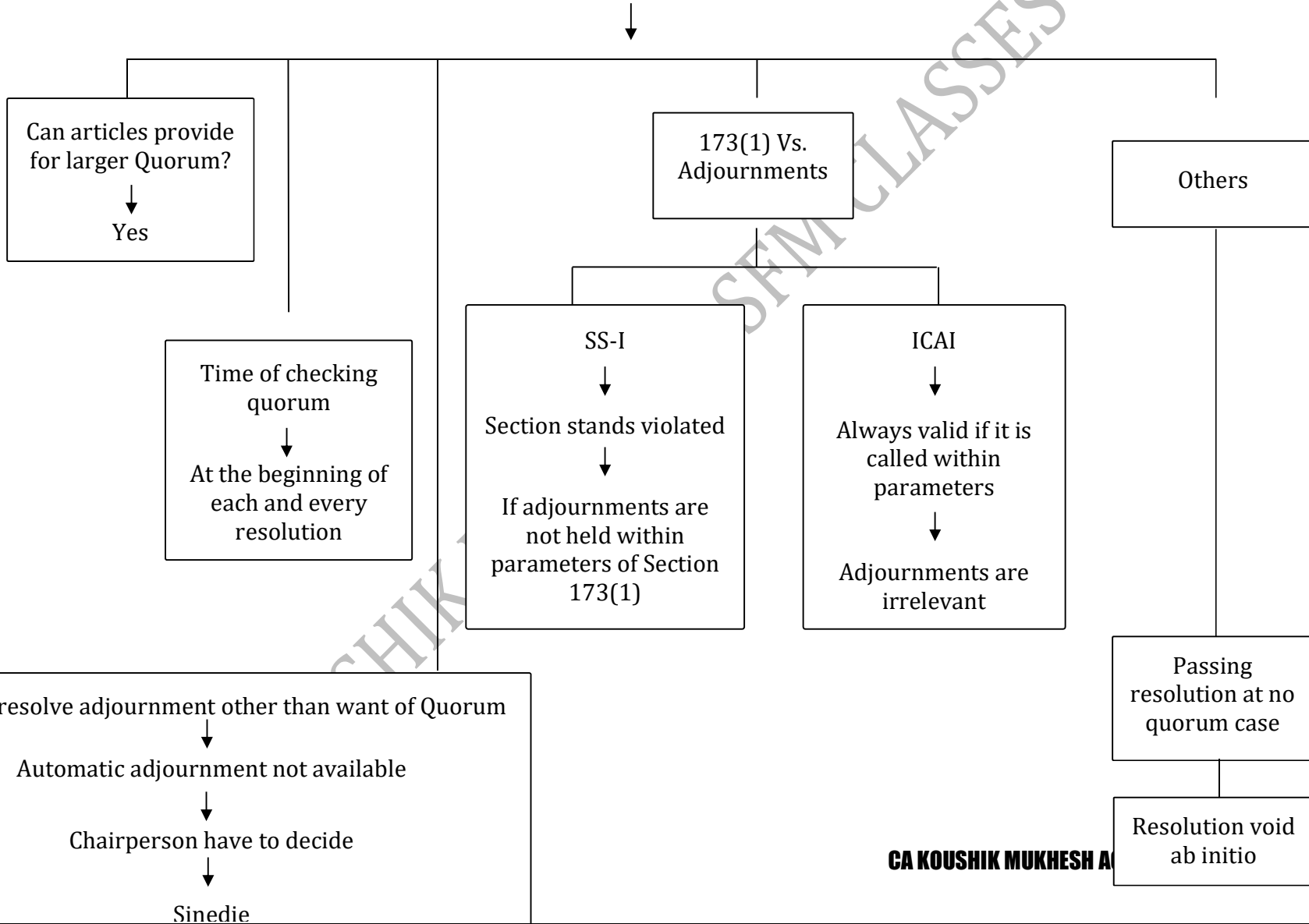
SECTION 174: QUORUM FOR B.M. (BOARD MEETINGS)



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

RELATED ISSUES ON QUORUM

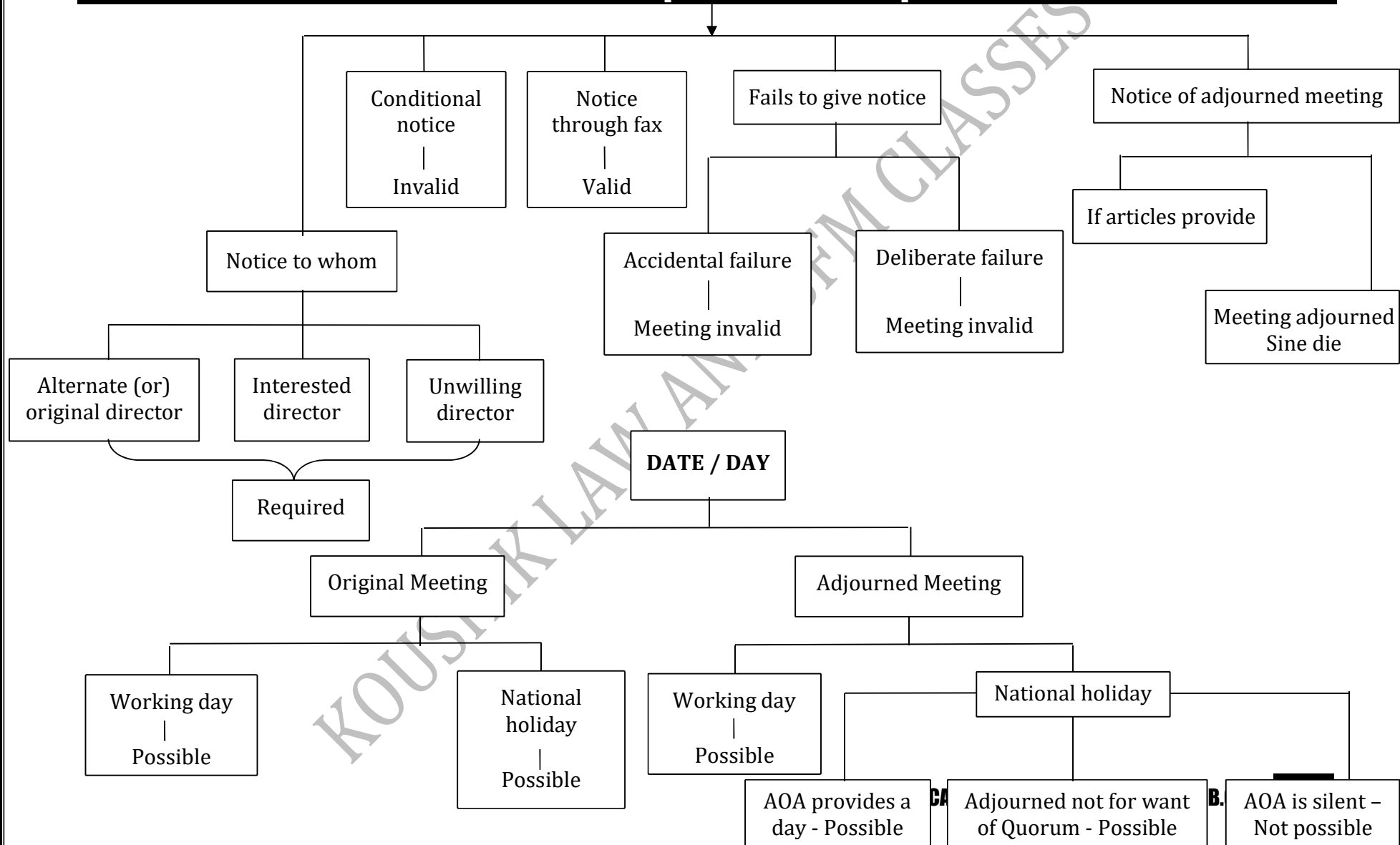


CA Koushik Mukhesh A

LAW CHARTS – DIRECTORS (PART – I)

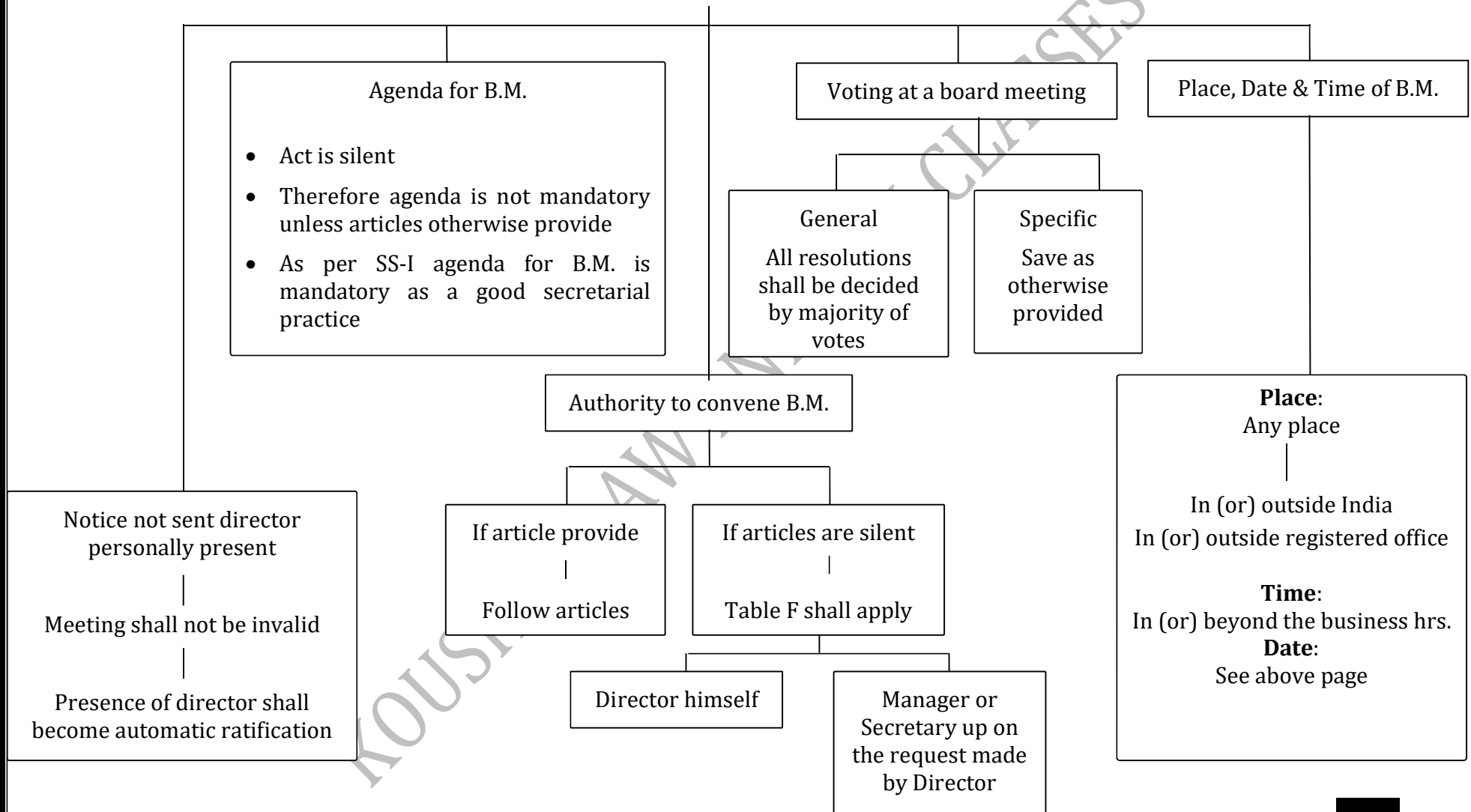
Reach @ 9866728874: Fb page: Koushik law and SFM updates

SECTION 173 [ADDITIONAL ISSUES]



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates
SECTION 173 [ADDITIONAL ISSUES]



LAW CHARTS – DIRECTORS (PART – I)

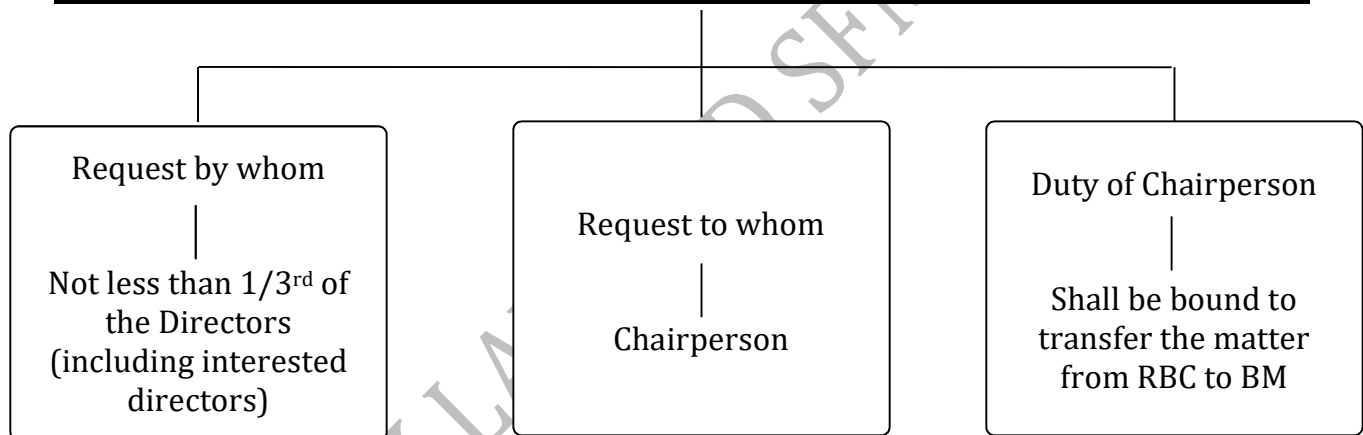
Reach @ 9866728874: Fb page: Koushik law and SFM updates

RESOLUTION BY CIRCULATION [SECTION 175]

ESSENTIALS OF VALID RBC

- Resolution shall be circulated in Draft
- Together with necessary papers, if any
- To all directors
- At their addresses registered with company in India
- By hand delivery, post, courier, electronic means.
- Approved by majority of directors, who are entitled to vote on such resolution. (i.e. disinterested directors)

SHIFT OF MATTER FROM RBC TO BM



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

SEC.173(2)

VIDEO CONFERENCING - (substitute for B.M.)

Duties of chairperson & CS with respect to video conferencing

- To ensure integrity at the meeting
- Ensure sufficient security confidentiality
- Ensure the availability of VC equipment
- Record the proceedings & prepare minutes
- Safe keeping and labeling the recordings
- Ensure that no other person is participating other than directors
- Ensure that every participant can see and hear other participant

Roll call

Elements of Roll call

- Name of participant
- Location from where he is participating
- Ensure that he is received notice and agenda
- Ensure that no other person is participating

No Video Conferencing cases

- Approval of annual financial statements
- Approval of Board reports
- Approval of prospectus
- Approval of F.S. by Audit Committee
- Approval of merger (or) amalgamation and takeover.

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

DUTIES OF DIRECTORS [SECTION 166]

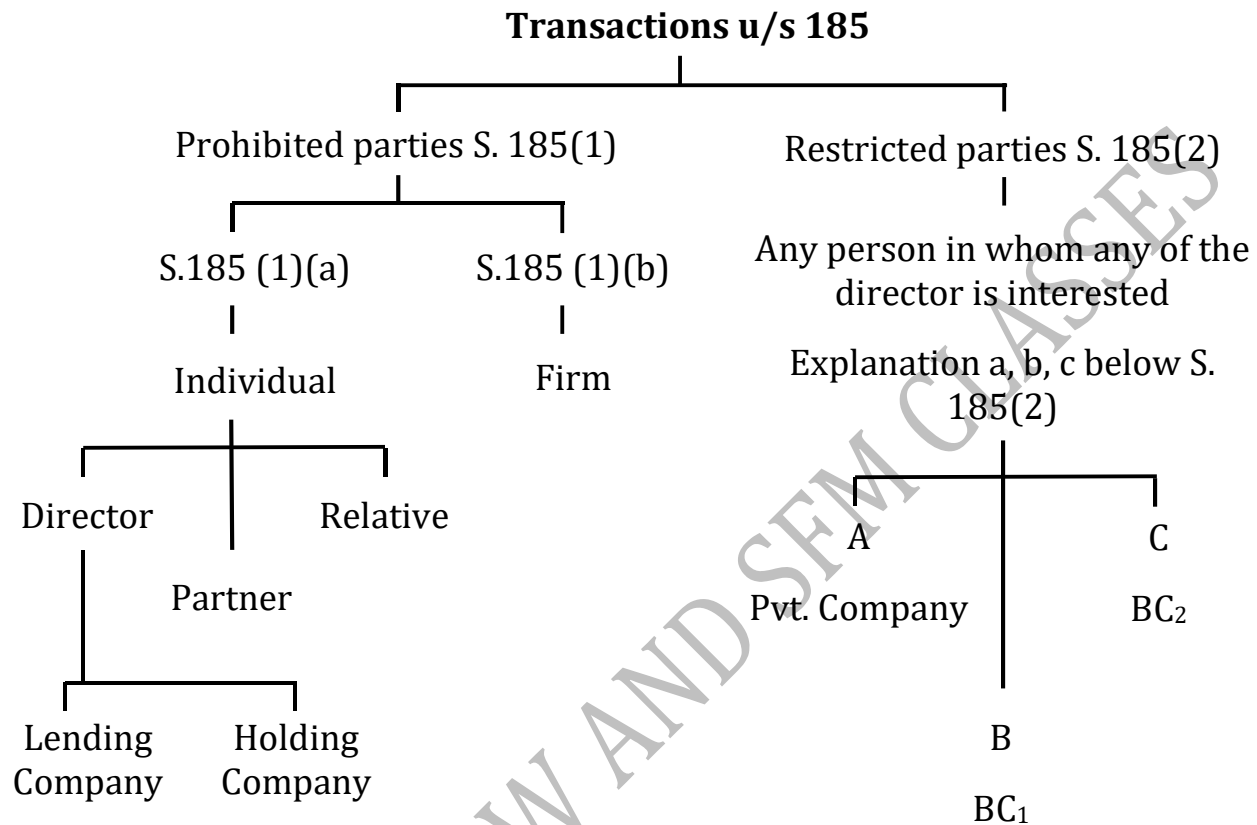
Duty 1	Duty 2	Duty 3	Duty 4	Duty 5	Duty 6
A director of a company shall act in accordance with the articles of the company	<ul style="list-style-type: none">A director of a company shall act in good faith.Promote the objects of the company	exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.	No conflict of interests.	Shall not achieve any undue gain or advantage either by himself or his relatives, business partners etc.	A director of a company shall not assign his office and any assignment so made shall be void

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

LOANS TO DIRECTORS ETC. [SECTION 185]

Part 1 – Transactions with whom?



Prohibited parties:

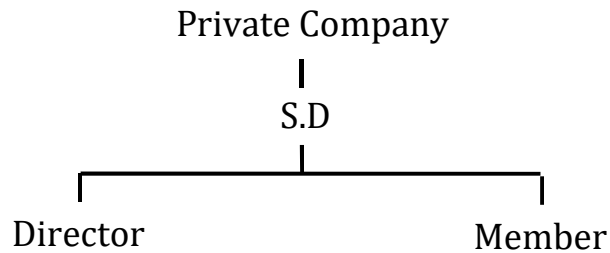
1. Director of lending company
2. Director of lending company's holding company
3. Partner of director of lending company
4. Partner of director of lending company's holding company
5. Relative of director of lending company
6. Relative of director of lending company's holding company
7. A firm in which director of lending company is a partner.
8. A firm in which director of lending company's holding company is a partner
9. A firm in which relative of director at lending company is a partner
10. A firm in which relative of director of lending company's holding company is a partner.

LAW CHARTS – DIRECTORS (PART – I)

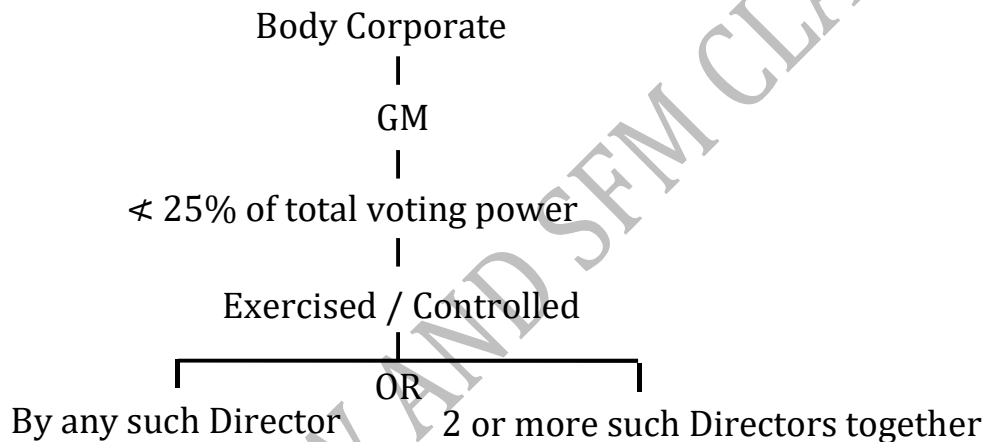
Reach @ 9866728874: Fb page: Koushik law and SFM updates

Restricted parties:

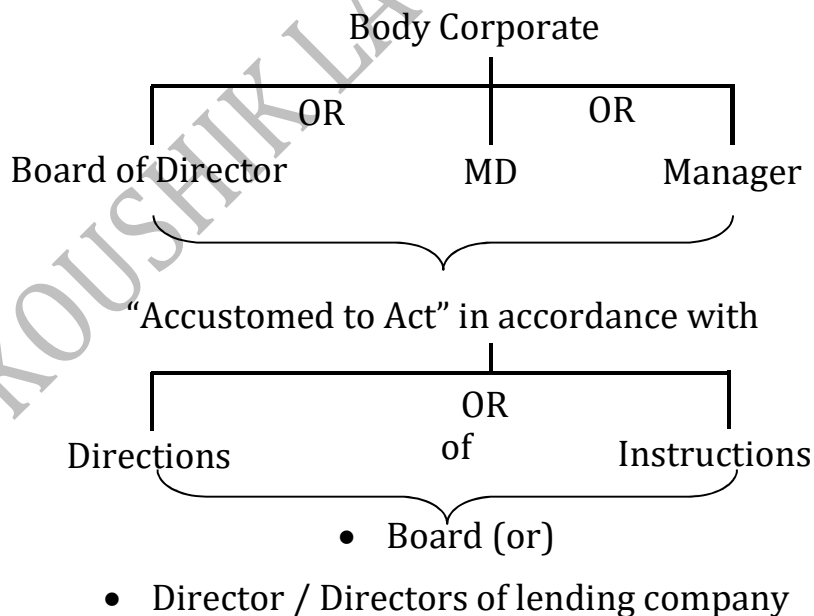
(a) Pvt. Company coverage



(b) Body Corporate



(c) Body Corporate₂



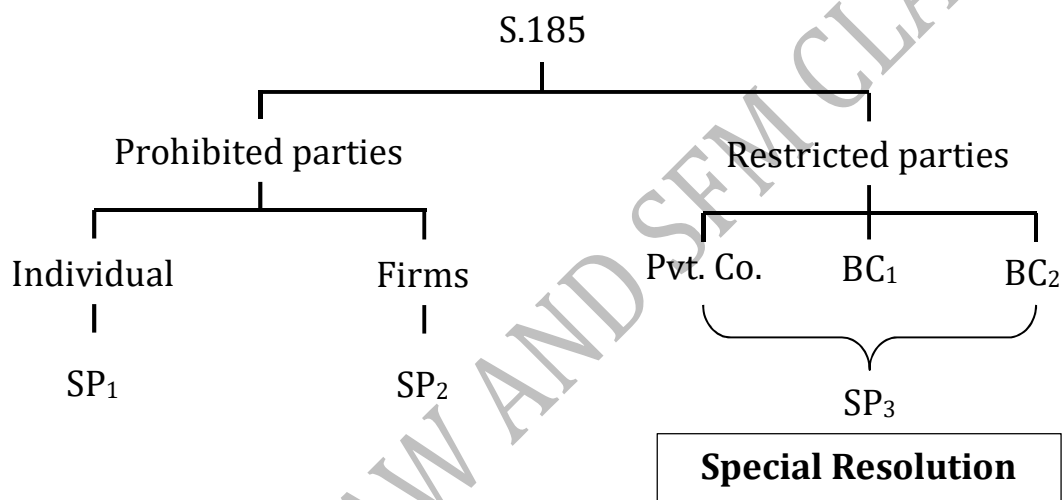
LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

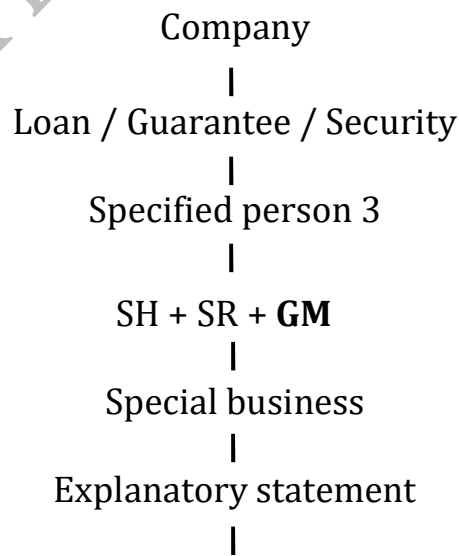
Part 2 – Which transactions are covered?

Transaction	Details
Advance any Loan	Including any loan repaid by represented by book debt.
In Give any guarantee performance provide any security guarantee is not covered connection with any loan	In connection with any loan

Part 3 – Various approvals required



Part 4 – Disclosures required to be made



Full particulars of L/G/S made + purpose for which the recipient is utilizing it.

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Only for principal business activities

Part 5 – Consequences of contravention

Refer Sec.185(4) in material

Part 6 – Filing requirements

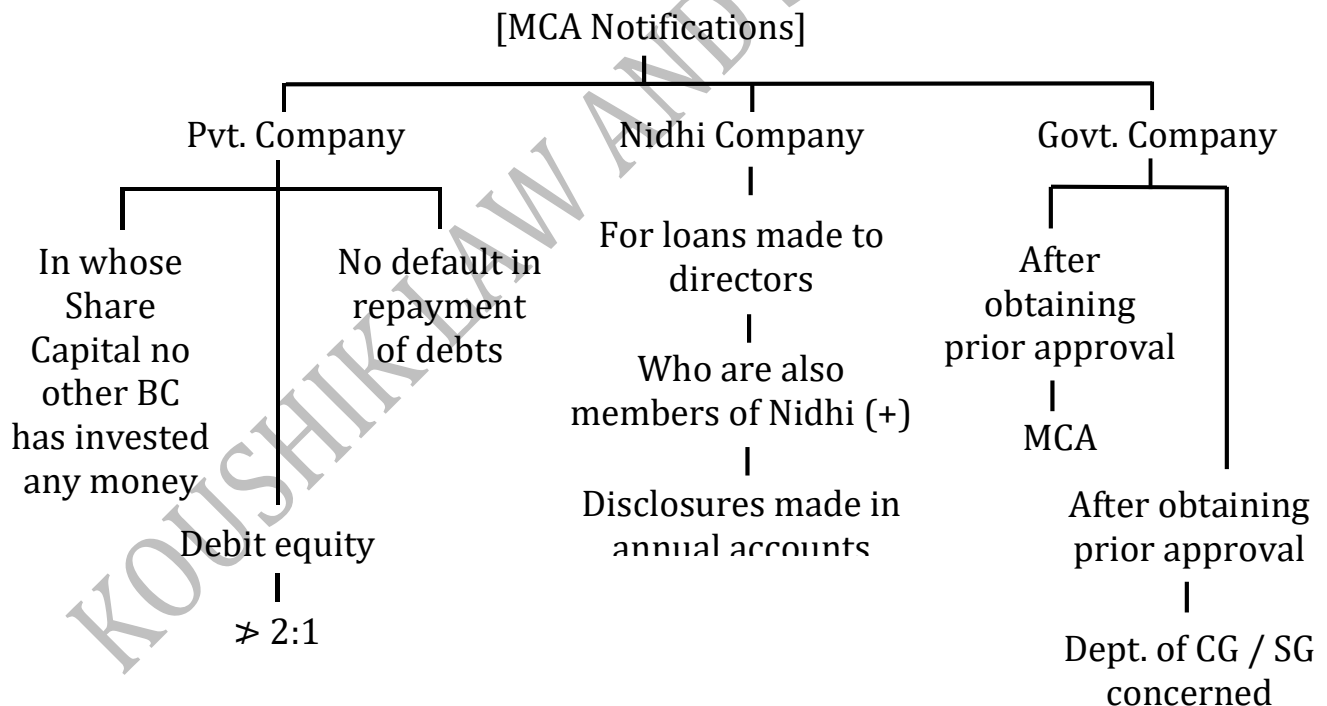
Co. → L/G/S → SP₃ → “SR”

File Form MGT-14

With ROC within 30 days

Part 7 – Exemptions and non-applicability

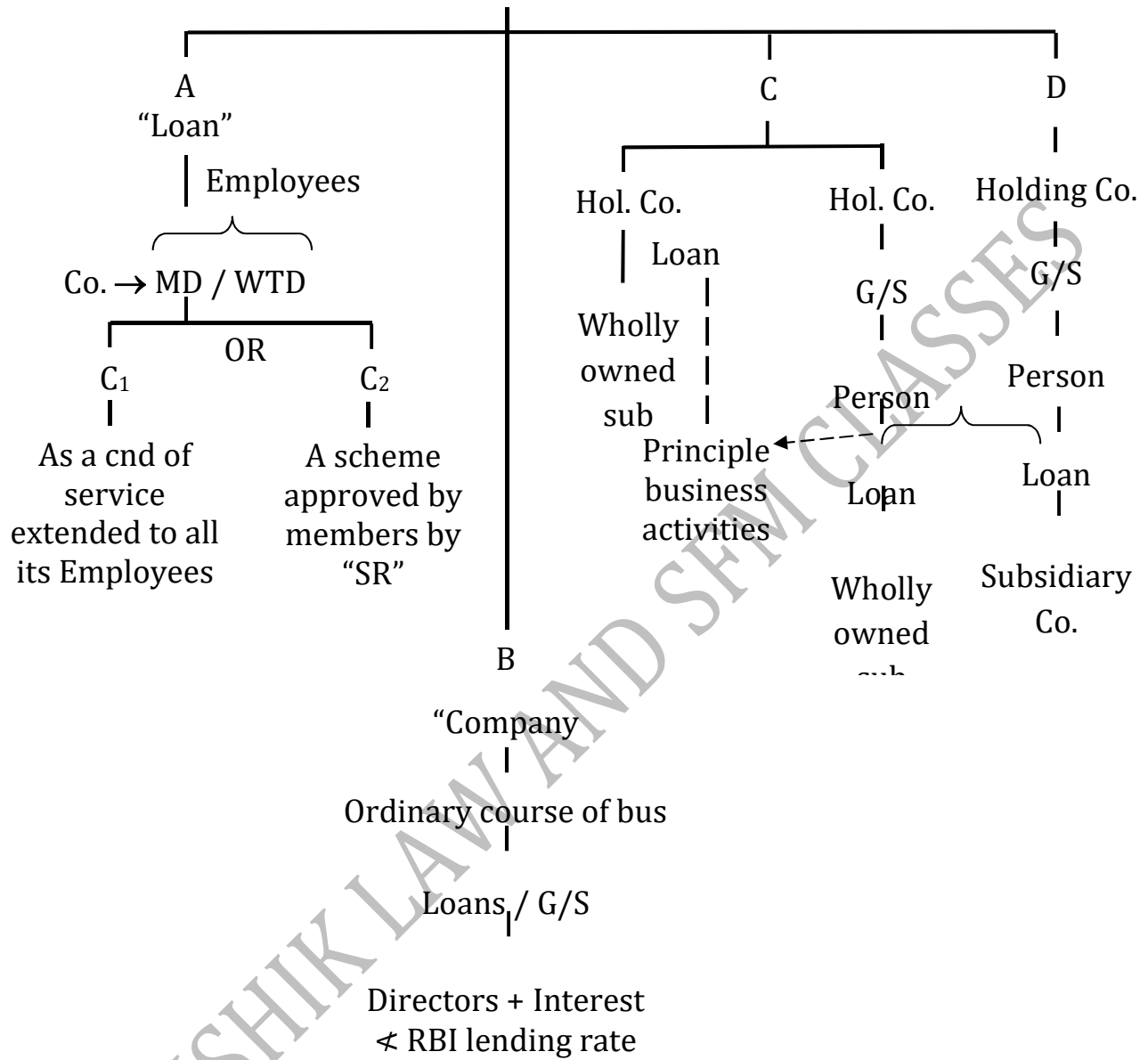
Part 7A: Non applicability



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Part 7B – Exemptions [S. 185(3)]

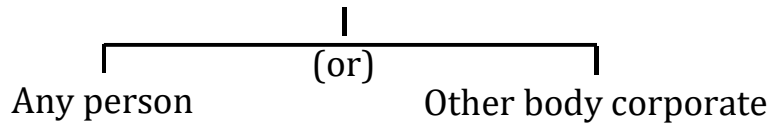


LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

LOAN AND INVESTMENT BY A COMPANY [SECTION 186]

Part 1 – Transactions with whom?

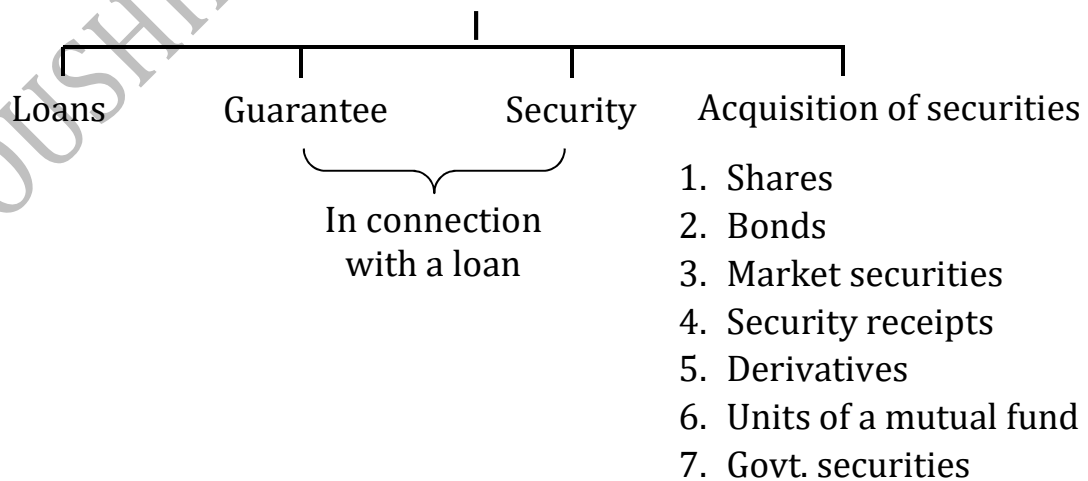


- Any Person
- (-) Body corporate
- (-) Employee
- (=) **Person u/s.186**

Person
|
Includes
Industries, Firm, Companies, HUF.....

Transaction	Details	Interpretation
1	Loan	Co. → Loan → any person
2	Guarantee	Co. → Guarantee → any person
3	Security	Co. → Security → any person
4	Investment	Co. → Investment → Securities of a Body corporate

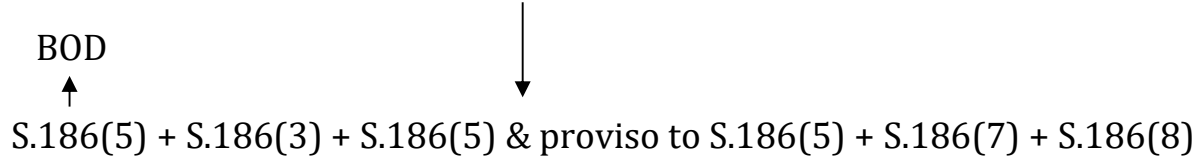
Part 2 – Which transactions are covered?



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

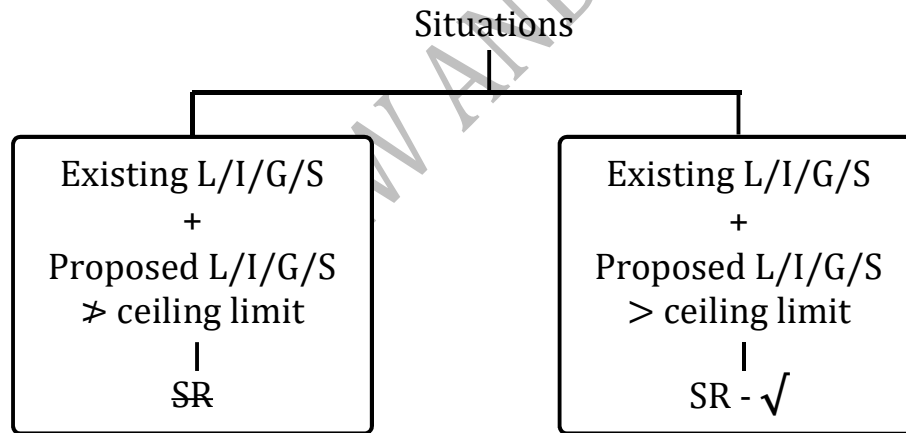
Part 3 – Various approvals required



Approval – 1 Board of Directors approval [Sec. 186(5)]

1. BOD approval is required, irrespective of amount involved.
2. Prior approval
3. Board meeting level
4. No resolution by circulation
5. Unanimous approval of all the directors present

Approval – 2 SH approval [Sec. 186(3) r/w Sec.186(2)]



Sec. 186(2) – Meaning of term “ceiling limit”

$$60\% \text{ of } \Sigma (\text{PSC} + \text{FR} + \text{SP})$$

(or)

$$100\% \text{ of } \Sigma (\text{FR} + \text{SP})$$

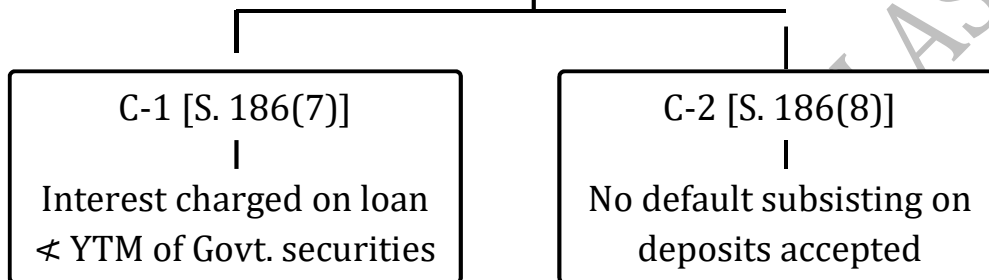
Approval 3 – PFI approval Sec. 186(5) + proviso to 186(5) irrespective of amount involved, PFI approval is required.

LAW CHARTS – DIRECTORS (PART – I)

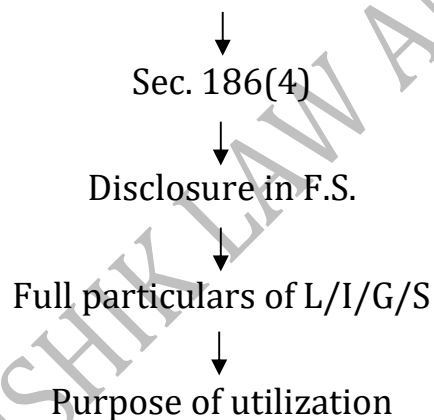
Reach @ 9866728874: Fb page: Koushik law and SFM updates
Exception

Case	Ceiling it exceed	Default	PFI approval
1	X	X	X
2	X	√	√
3	√	X	√
4	√	√	√

Compliances required



Part 4 – Disclosures required to be made



Part 5 – Consequences of contravention

Refer Sec. 186 (13) page No.76

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Part 6 – Filing requirements



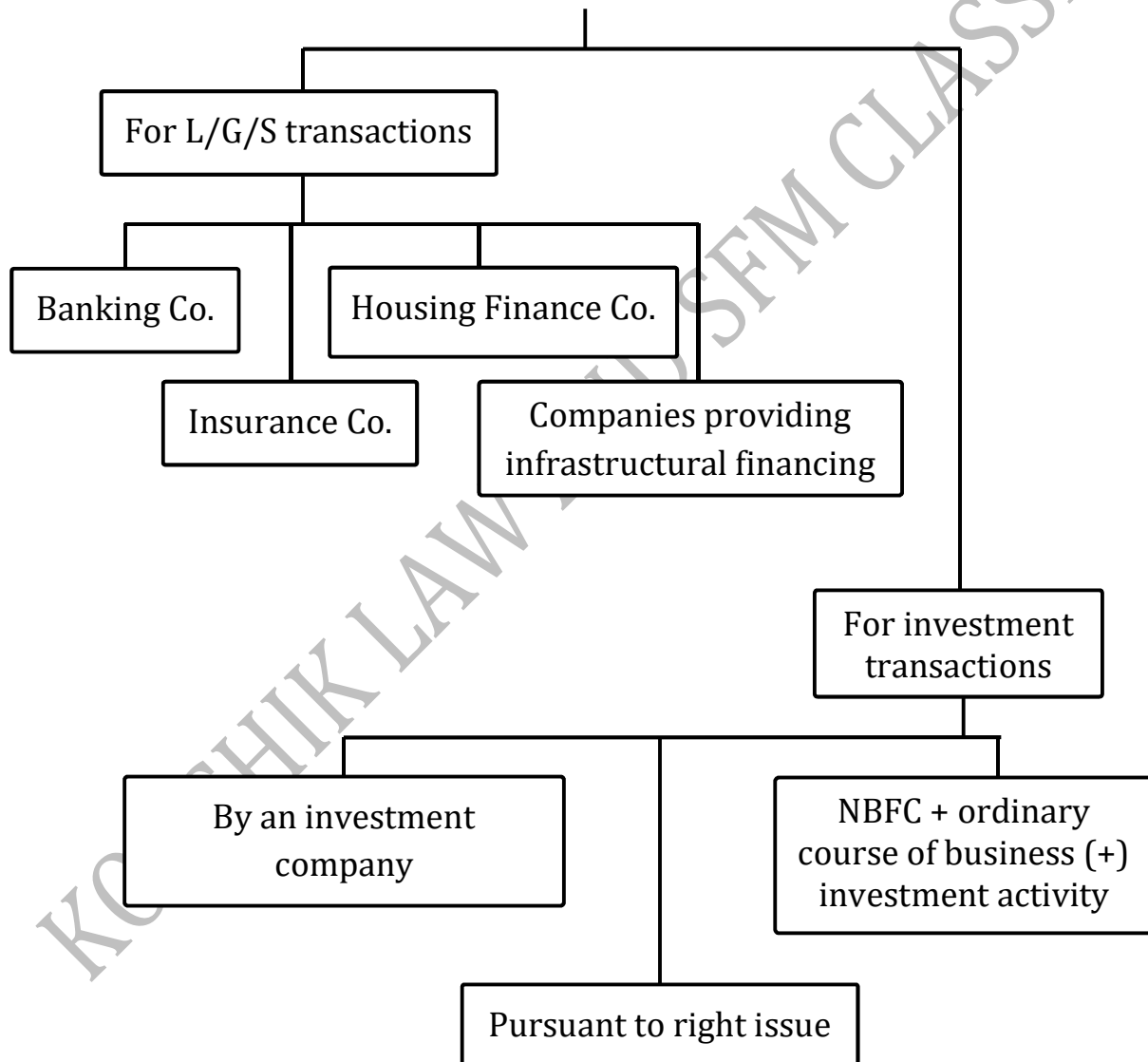
If special resolution is passed



File FORM MGT-14 within 30 days

Part 7 – Exemptions and Non-applicability

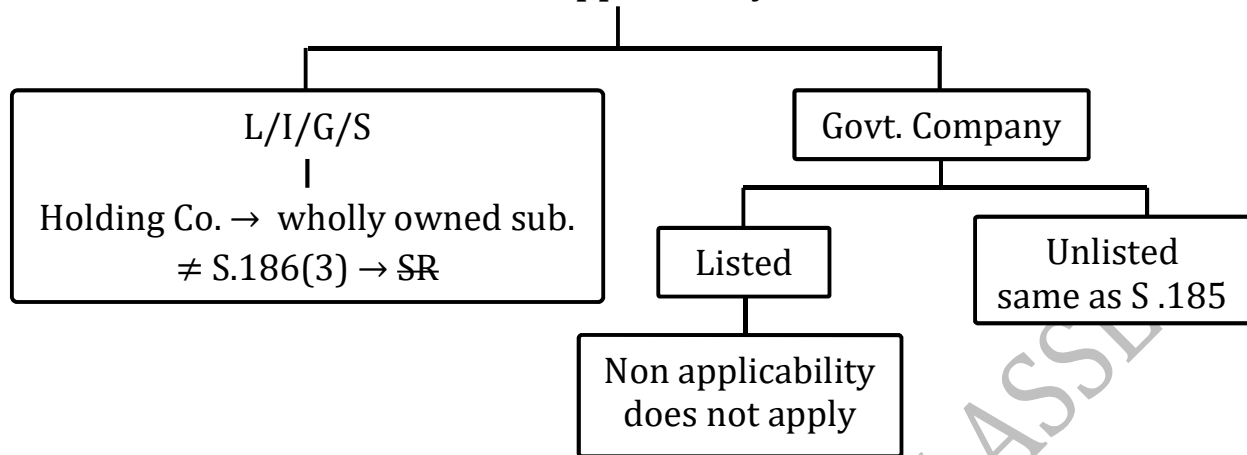
Exemptions



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Non applicability



KOUSHIK LAW AND SFM CLASSIC

LAW CHARTS – DIRECTORS (PART – I)

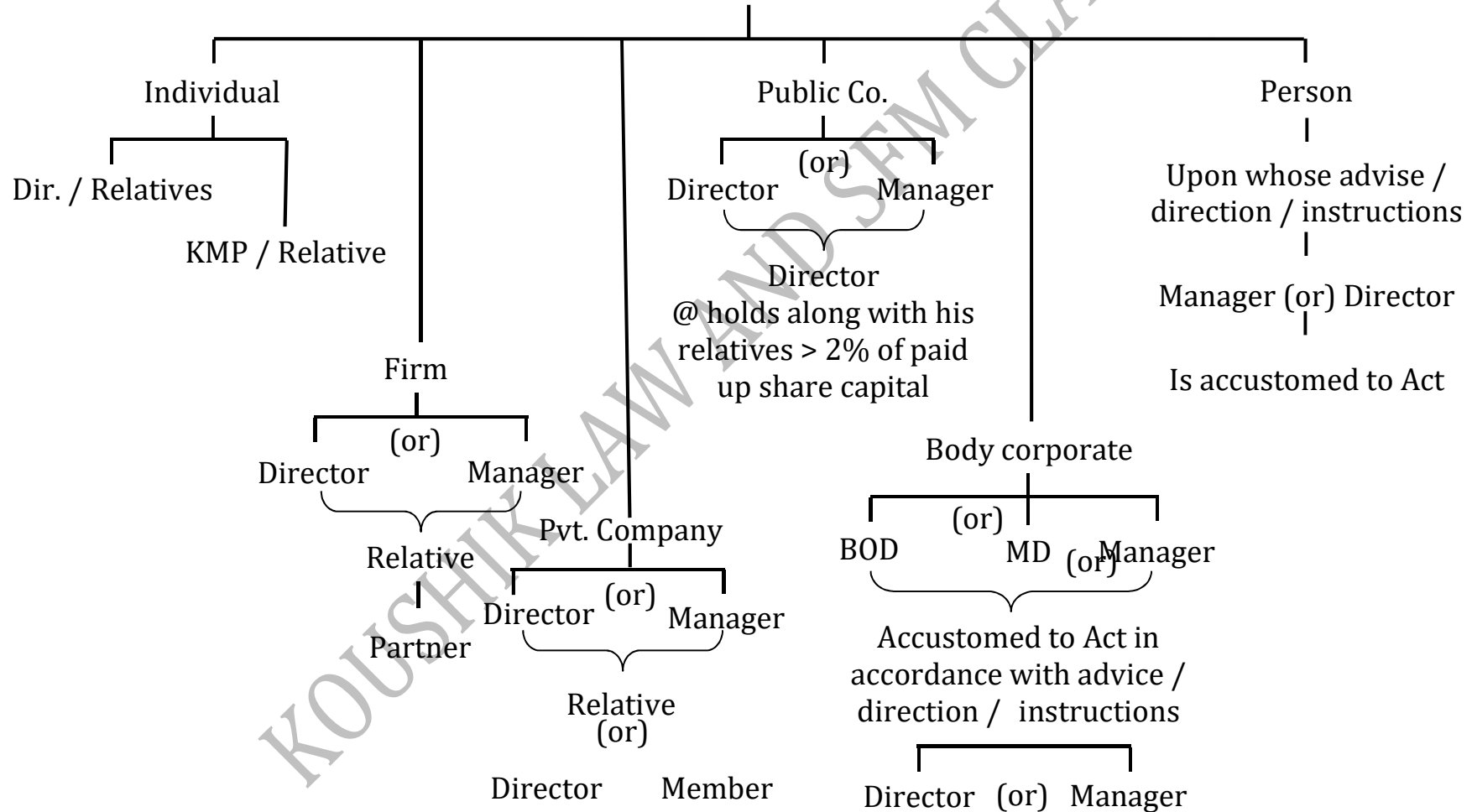
Reach @ 9866728874: Fb page: Koushik law and SFM updates

RELATED PARTY TRANSACTIONS [SECTION 188]

Part 1 – Transactions with whom?

Transactions must be with a related party as defined in section 2(76)

S. 2(76) – RELATED PARTY



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Part 2 – Which transactions are covered?

Transaction 1

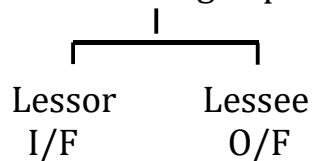
Sale, purchase (or) supply of any goods / materials

Transaction 2

Selling (or) otherwise disposing of buying property of any kind

Transaction 3

Leasing of property of any kind



Transaction 4

Availing or rendering of any services

Transaction 5

Appointment of an agent for sale / purchase (or) supply of goods, materials, services, property (lease transactions not covered) – Transaction 3

Transaction 6

Such related party's appointment to any "office or place of profit" in the company, subsidiary company (or) associate company

Transaction 7

Underwriting the subscription of any securities / derivatives thereof.

Part 3 – Approvals required

Approval 1 – Board Approval [S. 188(1)]

Prior approval

+

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates
Board meeting level

+

No RBC

Approval 2 – SH’s approval

Transaction 1 10% of T.O. of PFY (or) Rs.100 Crs. together with agents ↓	Transaction 2 10% of N.W. of PFY (or) Rs.100 Crs. together with agents ↓
Transaction 3 10% of T.O. of PFY (or) 10% of N.W. of PFY (or) Rs.100 Crs. ↓	Transaction 4 10% of T.O. of PFY (or) Rs. 50 Crs. ↓ together with agents
Transaction 6 Monthly remuneration > ₹ 250000	Transaction 7 Underwriting commission > 1% of NW of PFY

Approval 3 – Audit Committee approval

1. All related party transactions require audit commission approval.
2. Audit commission may make **Omni Bus** approval



1 time approval

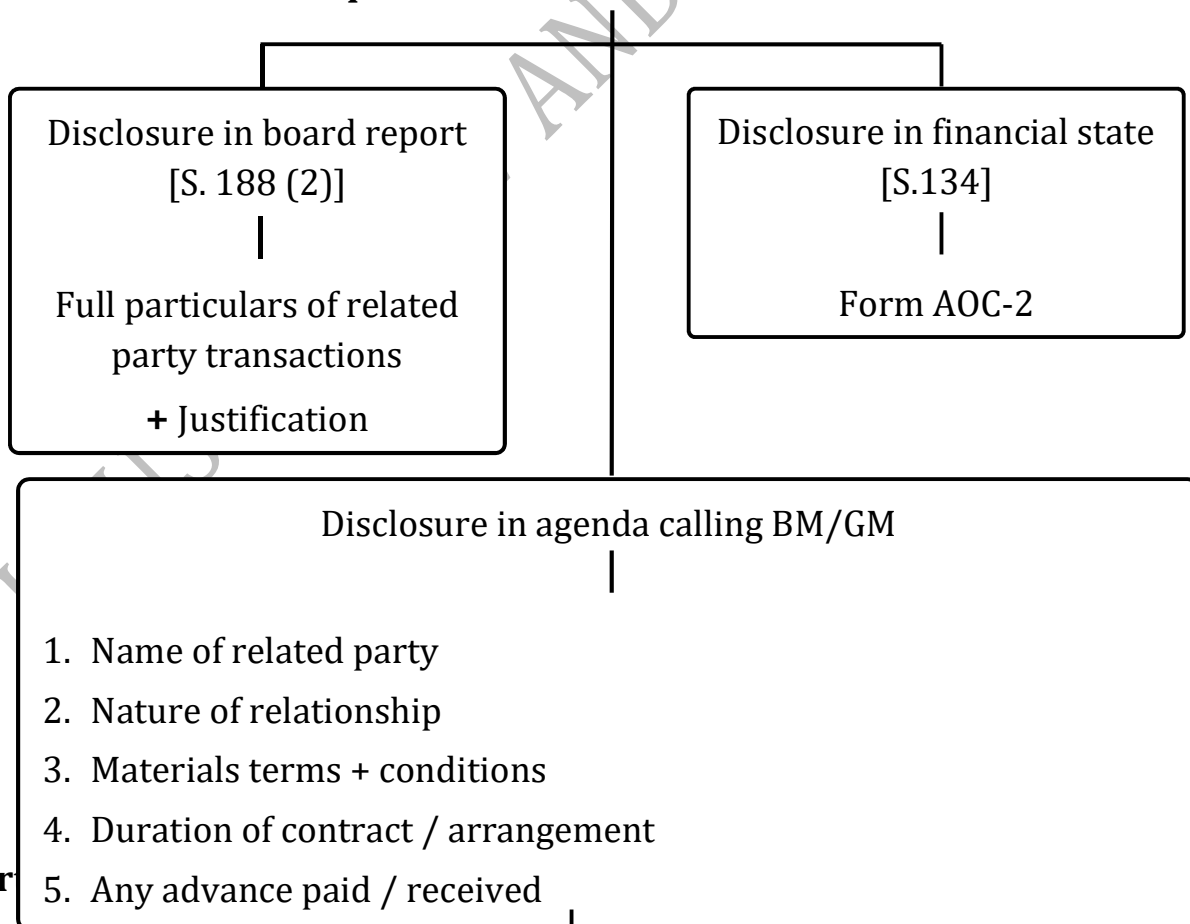
LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

CONTENTS OF OMNIBUS APPROVAL

- Max. value of transactions in aggregate
- Max. value per transaction
- Review at regular intervals the related party transactions entered through Omni Bus route.
- Factors to be considered before making Omni bus approval
 - Repetitiveness of transaction
 - Justification
- Transactions that cannot be subjected to Omni bus approval
 - Transactions w.r.t. selling or dispoing of properties buying may be subjected to Omni bus route
- Validity of Omni bus approval
One Financial Year

Part 4 - Disclosures required to be made



Part

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

S.188(3)

Effect on the transactions

1. Prior BOD approval
2. Prior SH approval (or)
3. Both and contracts / arrangements is not ratified within 3 months.

C/A shall be “voidable” at the option of BOD / SH as the case may be.

S.164(1)(g)

Disqualification of Director

Disqualified for a period of 5 years

S.188(4)

Civil liability of Director / Employee

Company has power to recover the loss /damage caused and director has a liability to indemnify the loss so caused.

S.188(5)

Criminal liability of director / Employee

Fine /Imprisonment (or) both – (Refer book)

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Part 6 – Filing requirements

Related party requires → No filing

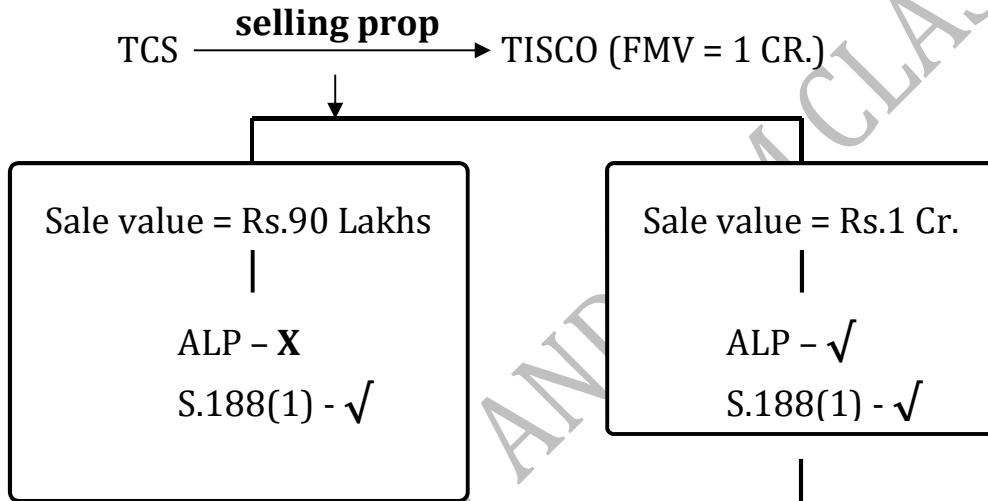
Part 7 – Exemptions and Non-applicability

Exemption:

Exemption from approval in a RPT = C/A + OCB + ALP ≠ S.188(1)



Arms length basis



It is not an ordinary course of business

2nd proviso to Sec. 188(1)

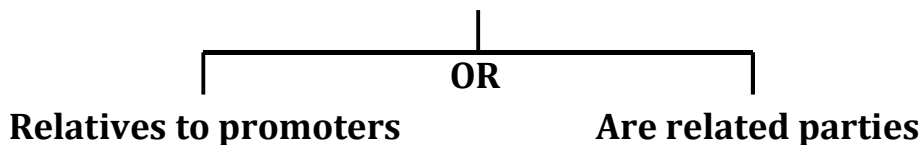
No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

3rd proviso to Sec. 188(1)

Non applicability of 2nd prov.



If 90% (or) more of number of members are



LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

5th proviso to Sec.188(1)

Non applicability of 1st prov.



Non applicability of SH's approval



Related party trans. → Holding company:

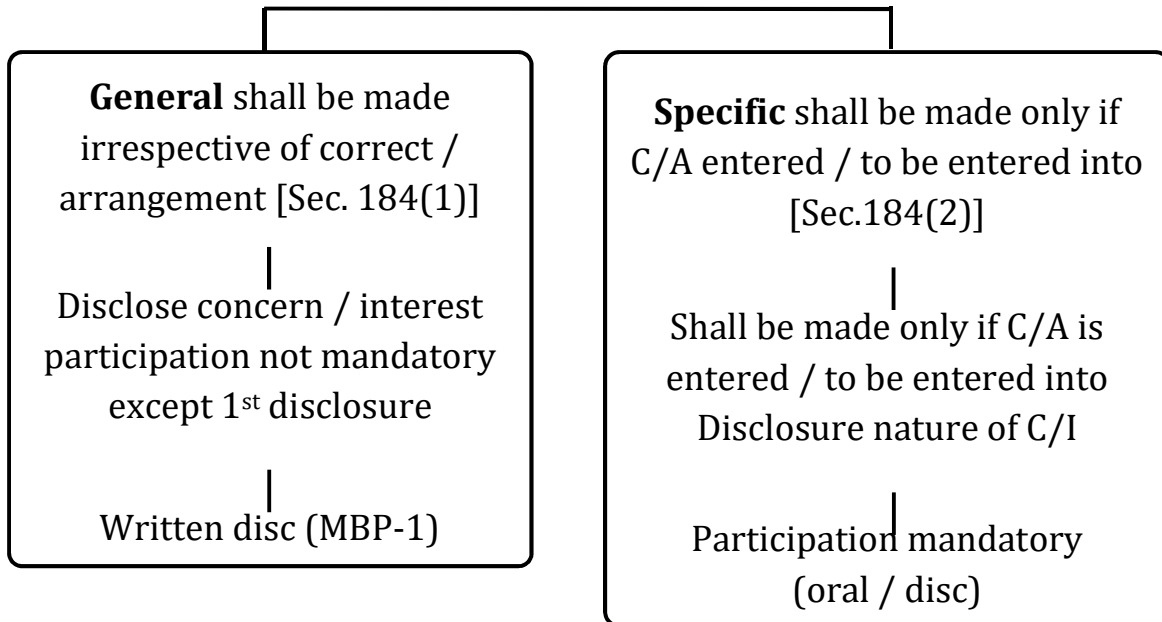
Wholly owned subsidiary (consolidated)

KOUSHIK LAW AND SFM CLASSES

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

DISCLOSURE OF INTEREST [SECTION 184]

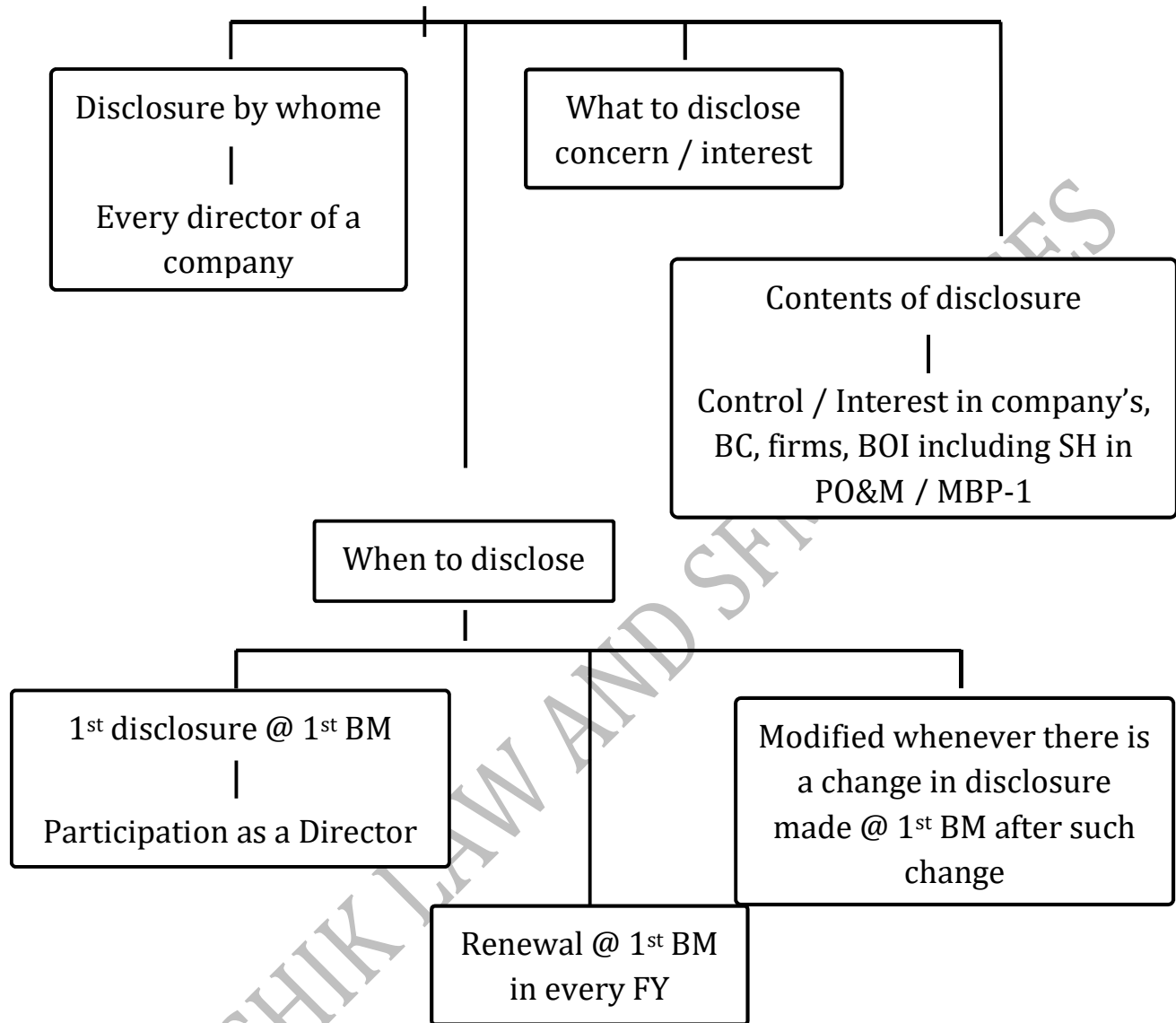


KOUSHIK LAW AND

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

Section 184(1) – General Disclosure



Sec.184 (2) – Specific Disclosure:

Every director of a company



Who is in any way



Whether directly / indirectly



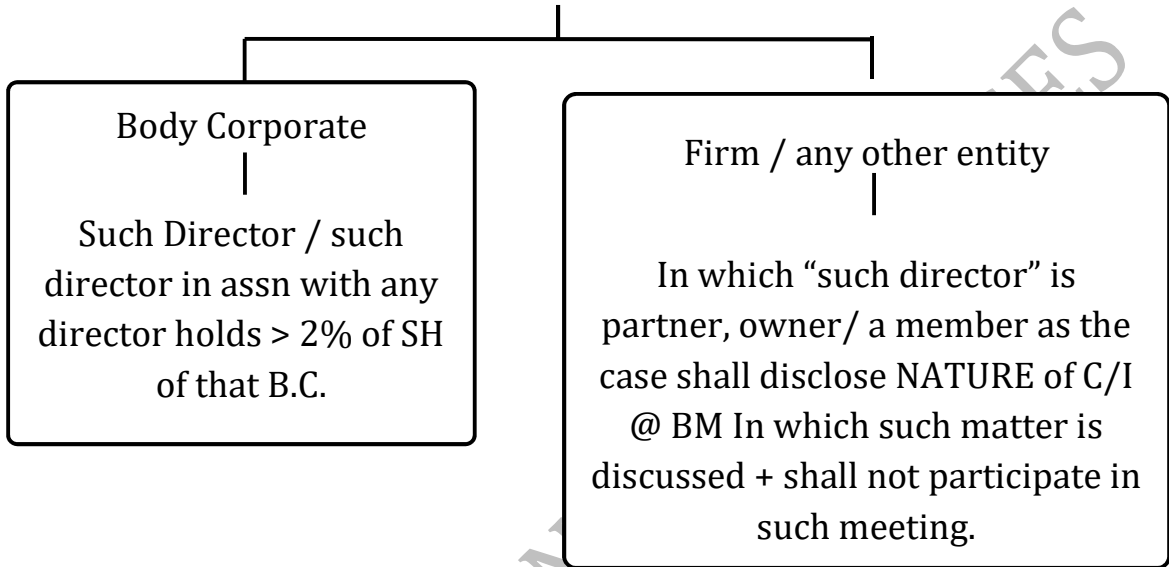
LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates
C/I in contract / arrangement



Proposed contract / arrangement entered into / to be entered into

with

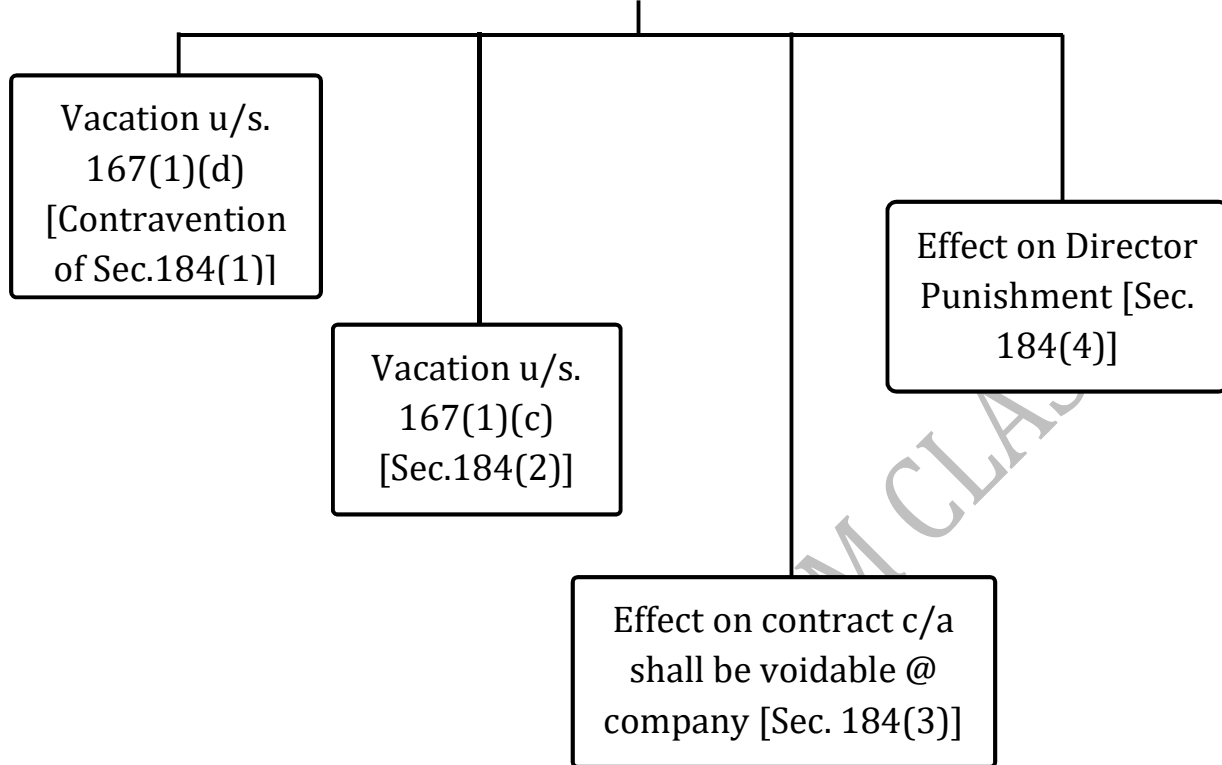


KOUSHIK LAW AND ACCOUNTS

LAW CHARTS – DIRECTORS (PART – I)

Reach @ 9866728874: Fb page: Koushik law and SFM updates

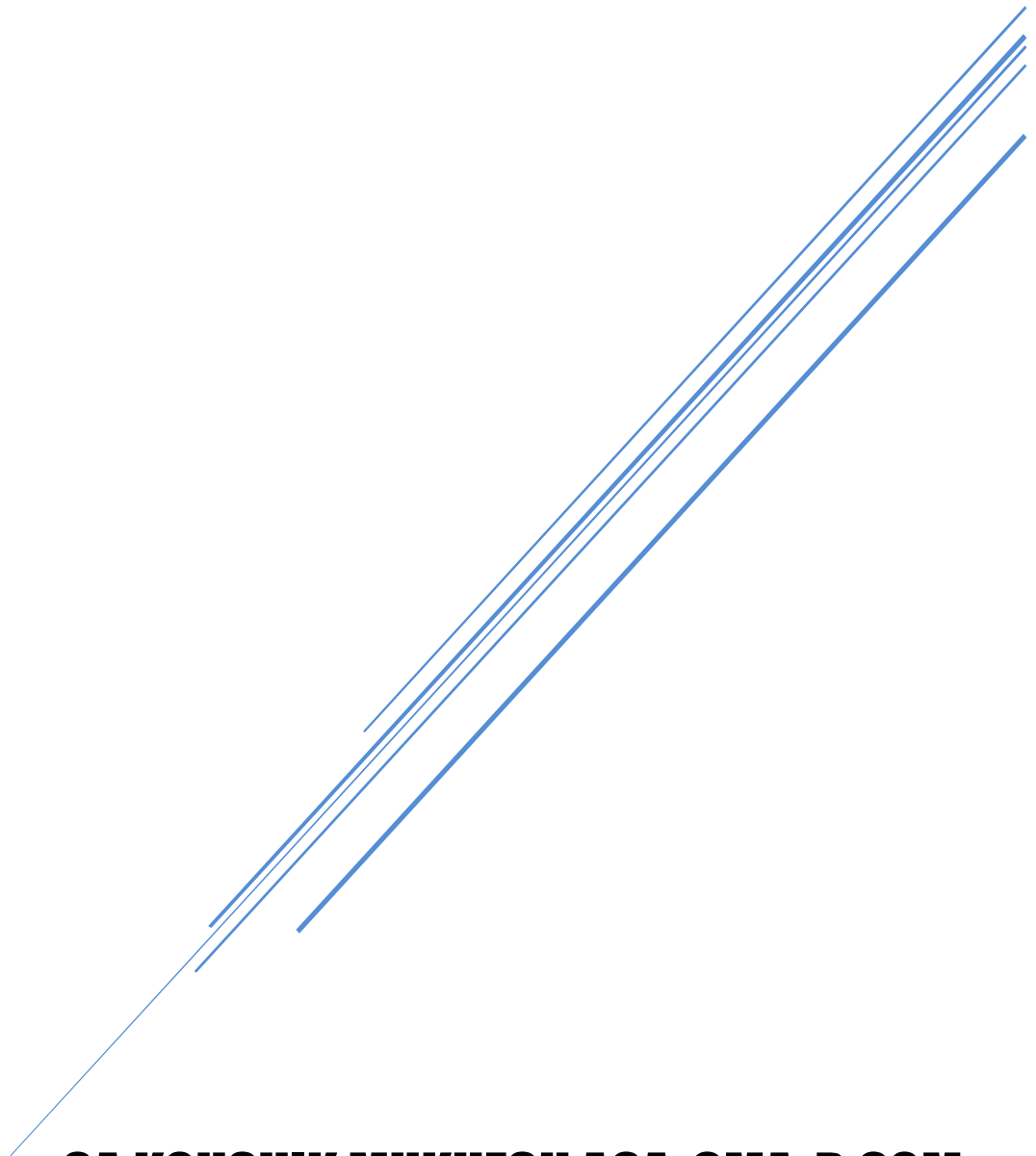
CONSEQUENCES OF CONTRAVENTION



KOUSHIK LAW AND ACCOUNTS

DIRECTORS CHARTS

APPLICABLE FOR NOVEMBER 2019 CA FINAL EXAMS
ONWARDS



CA KUSHIK MUKHESH ACA, CMA, B.COM

GOVERNMENT COMPANY

GOVERNMENT COMPANY

[SECTION 2(45)]



Government Company means a
Company



In which not less than 51% of
the Paid up share capital



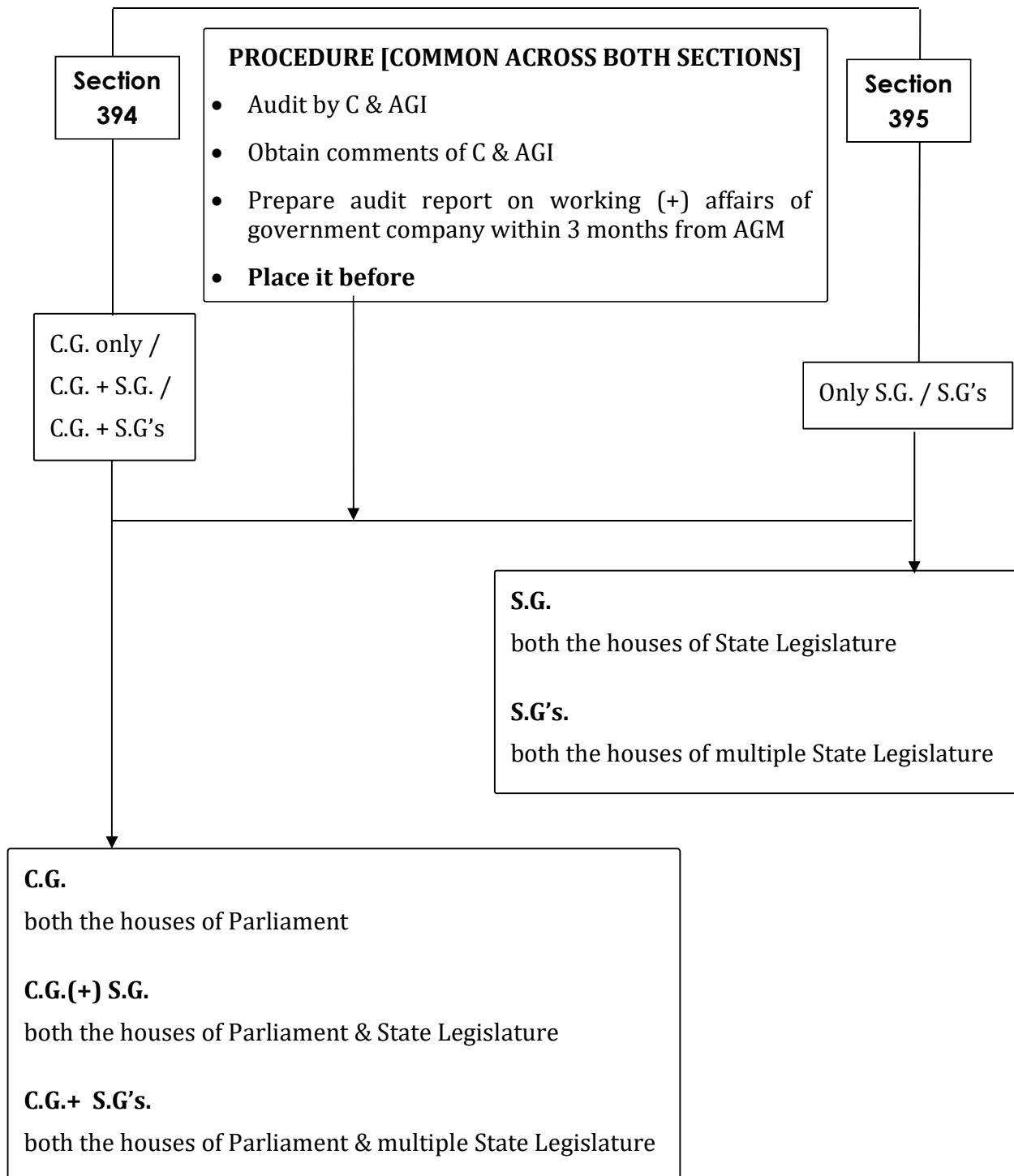
Is held by CG/ SG/SG's/ CG+SG's

+

Includes a subsidiary of such a
government Company.

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

ANNUAL REPORT



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.455 READ WITH RULES

DORMANT COMPANY

WHO CAN APPLY FOR DORMANT STATUS

Newly incorporated Companies

Existing Companies

(or)

Any company which is

Inactive company

Incorporated under Companies Act for
future project / to hold

Hold assets or intellectual properties

(+)

Has **NO** (S.A.T.)

Significant
Accounting
Transactions

Not defined but
**non S.A.T. is
defined**

Insignificant
accounting
transactions

Payment of
fees to ROC

Payments made
in pursuance of
this Act (or) any
other Law
Ex: GST,
Municipal taxes

Allotment
of shares

Payments
made for
maintenance
of office
records

means

A Company

Which

Has **NO**
business
operations

(or)

Has **NO**
significant
accounting
transactions in
two preceding
financial years

(or)

Has **NOT FILED**
financial
statements (+)
annual returns
for two
preceding
financial years

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

PROCEDURE FOR APPLICATION AND RETENTION OF DORMANT STATUS AND APPLYING FOR ACTIVE STATUS

PROCEDURE - APPLYING FOR DORMANT STATUS

- Company → SR + GM
- Company → ROC

FORM MSC-1

- ROC $\xrightarrow[\text{Issue certificate of dormant status in FORM MSC-2}]{\text{If satisfied}}$ Company

PROCEDURE FOR APPLYING FOR RETENTION OF DORMANT STATUS

- Company $\xrightarrow{\text{file}}$ ROC
- Annually
- **Form MSC-3**
- Known as return of dormant company
- Duly certified by CA in practice
- Within 30 days from the closure of F.Y.

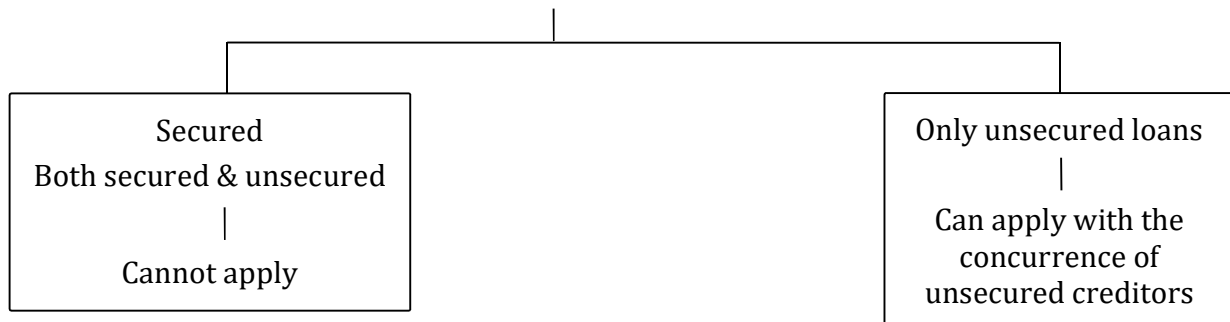
PROCEDURE FOR APPLYING FOR ACTIVE STATUS

- Company $\xrightarrow[\text{Form MSC-4}]{} \text{ROC}$
- ROC $\xrightarrow[\text{Issue certificate of active status in Form MSC-5}]{\text{If satisfied}}$ Company

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

WHO CANNOT APPLY FOR DORMANT STATUS?

1. A company on whom inspection, inquiry, investigation is pending
2. A company on whom prosecution has been launched.
3. Companies which are having dispute regarding ownership and management
4. Companies which are having statutory dues
5. Companies which are having outstanding workmen dues
6. Companies having **outstanding debts**

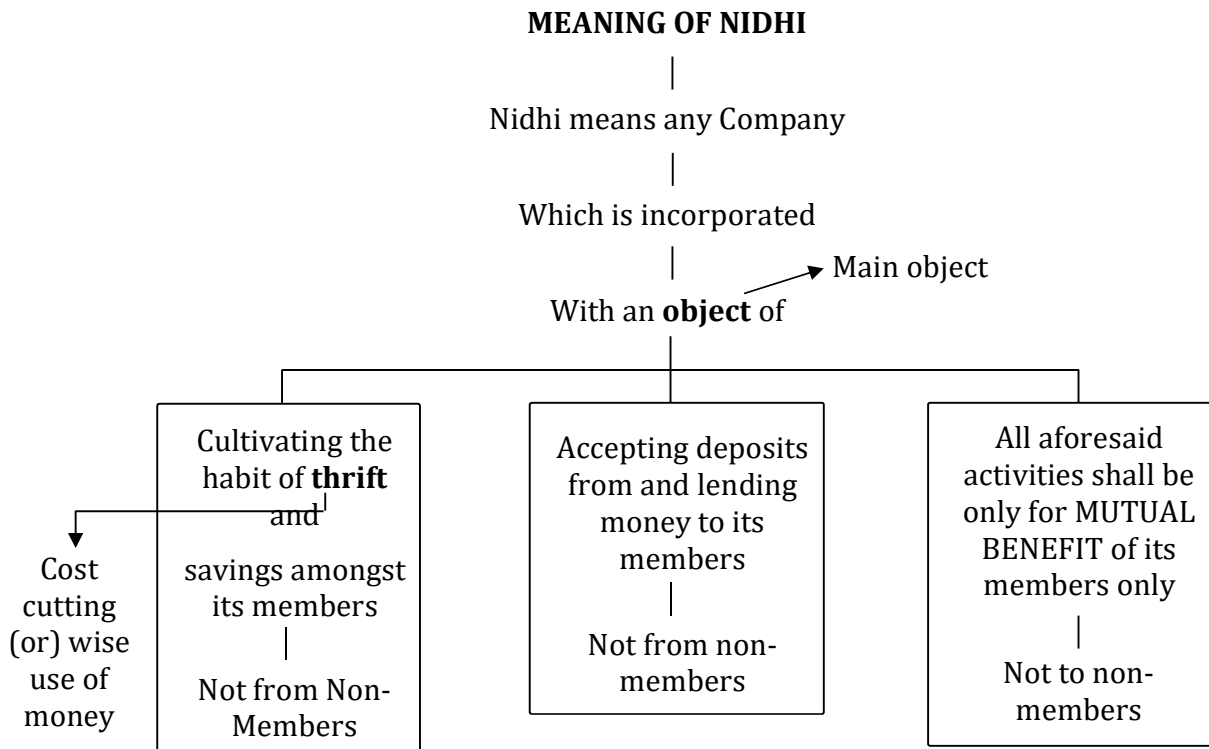


7. A company whose shares are listed on recognized stock exchange.

NIDHI COMPANY [SECTION 406]

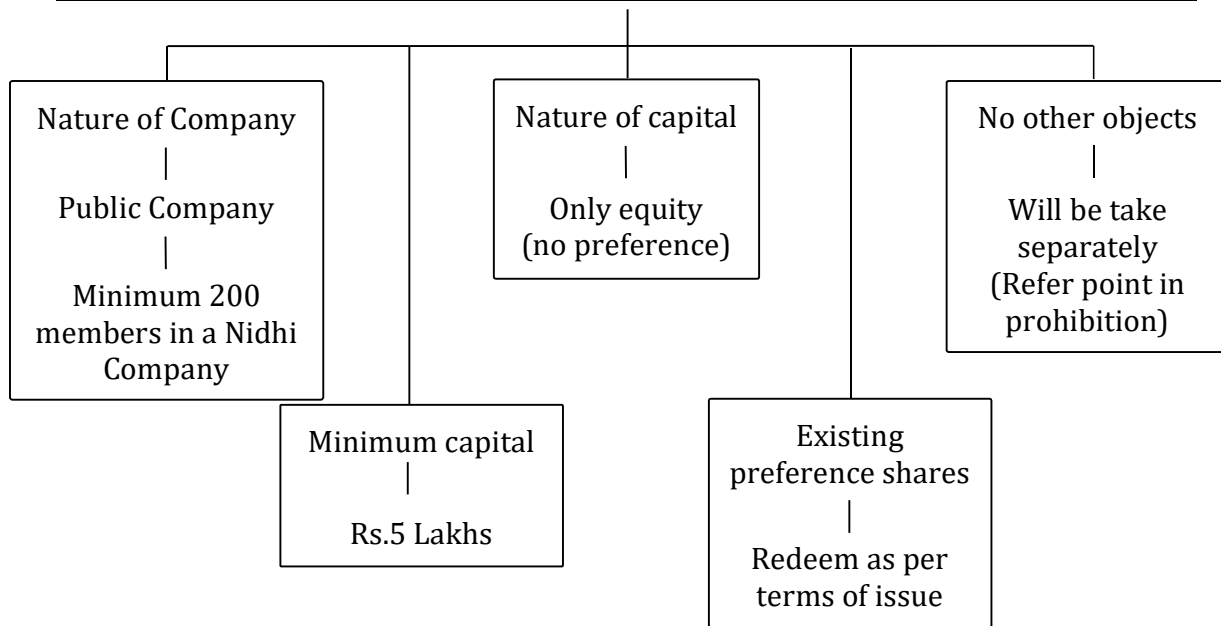
Learning Objectives:

- Meaning of Nidhi
- Incorporation & Incidental matters
- Directorship in a Nidhi
- Membership in a Nidhi
- Auditors in a Nidhi
- Dividends in a Nidhi
- Who cannot apply for Nidhi incorporation

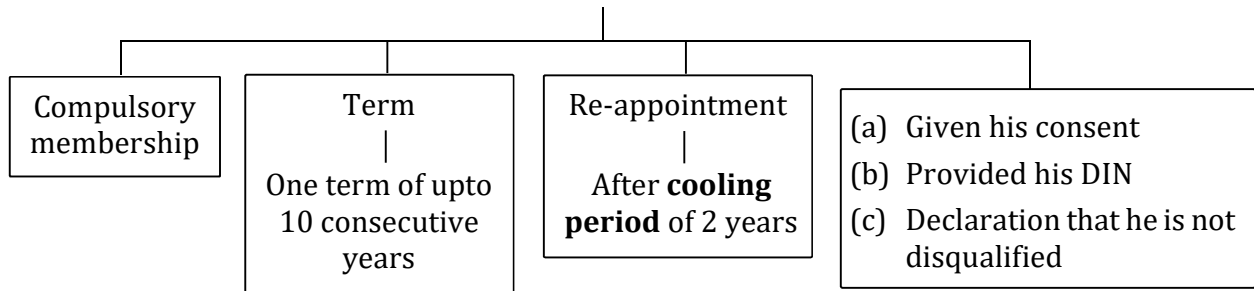


COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

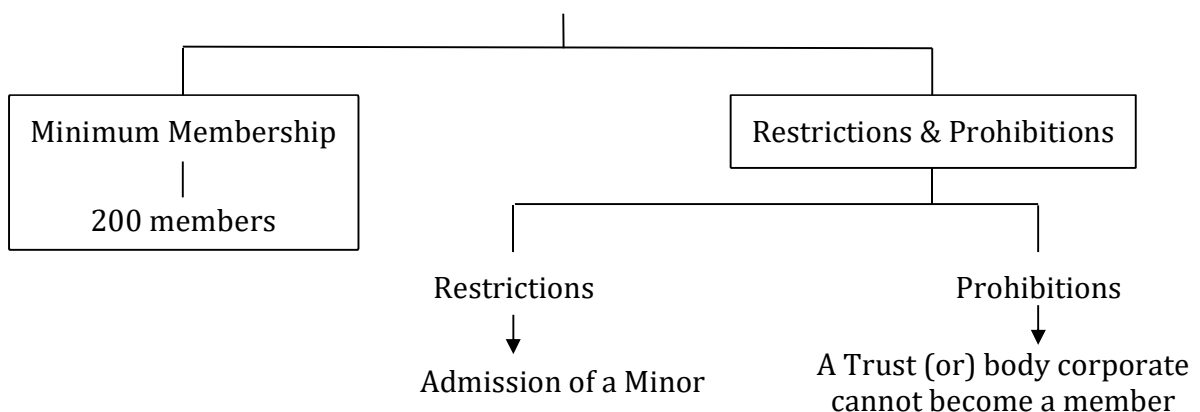
INCORPORATION & INCIDENTAL MATTERS



DIRECTORSHIP IN A NIDHI COMPANY



MEMBERSHIP IN A NIDHI COMPANY

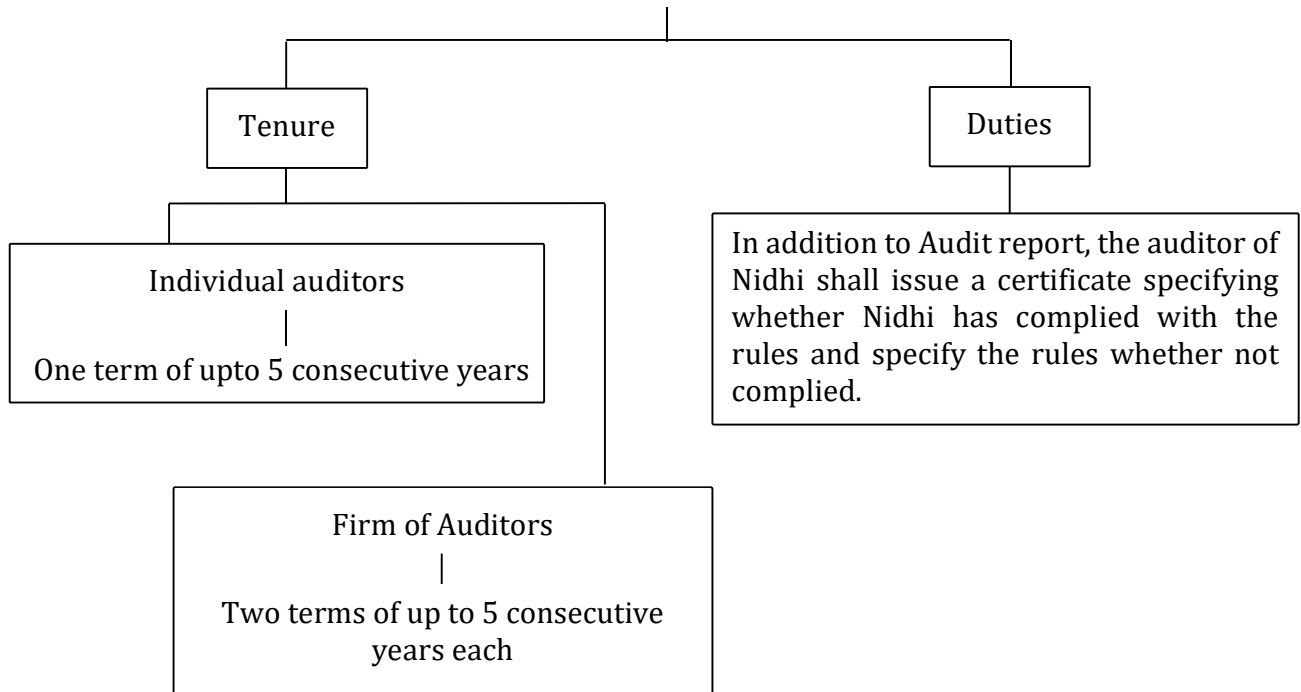


Exception:

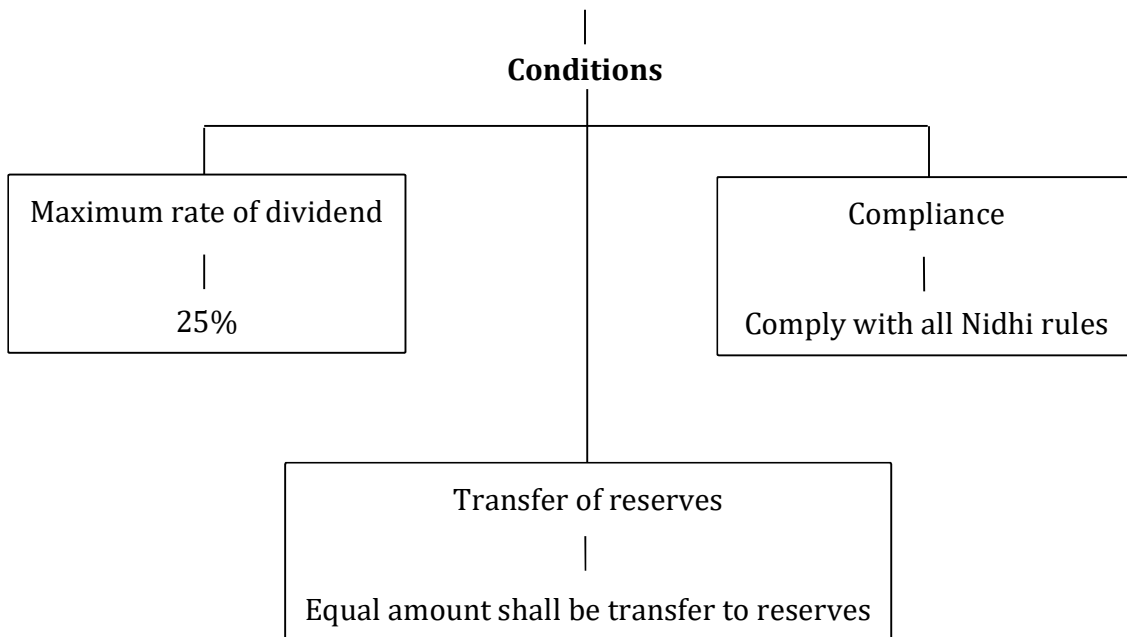
A Nidhi can accept deposits in the name of a minor \Rightarrow Provided that deposit is made by natural (or) legal guardian who is a member of Nidhi

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

AUDITORS IN A NIDHI COMPANY



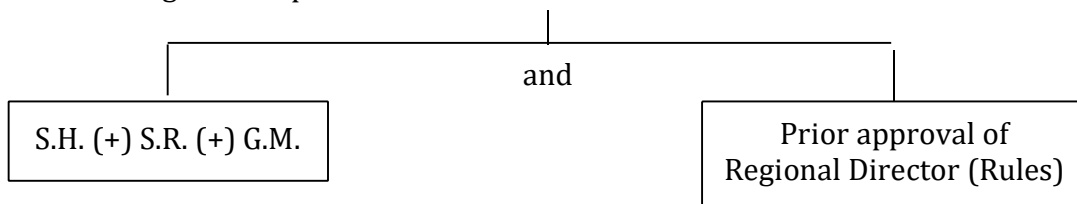
DIVIDENDS IN A NIDHI COMPANY



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

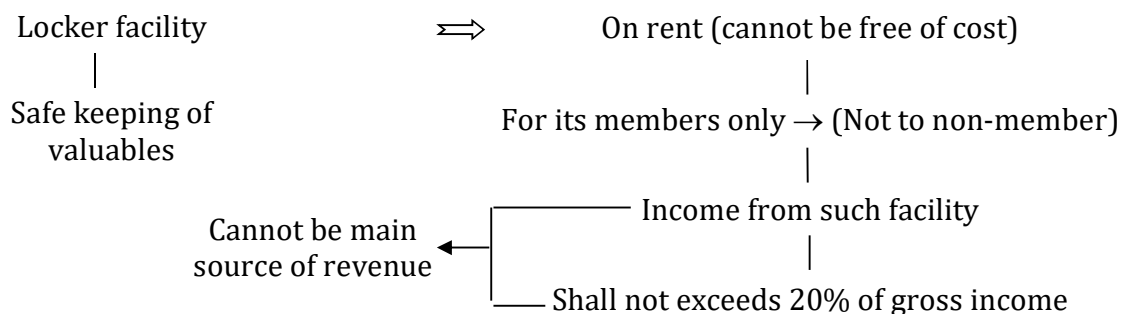
PROHIBITIONS TO INCORPORATE A NIDHI

- a) A Nidhi company cannot carry on business of
- Chit fund, hire purchase finance
 - Lease finance business
 - Insurance business
- b) A Nidhi cannot issue preference shares (or) any kind of Debt Instruments
- c) A Nidhi cannot current account with members.
- d) A Nidhi cannot acquire another company by acquiring its shares (or) by controlling the composition of BOD unless



- e) A Nidhi cannot accept any deposits from non-members.
- f) A Nidhi cannot lend money to any person other than its members.
- g) A Nidhi cannot issue public advertisement for soliciting deposits. However a Nidhi can issue private advertisement for its members, but such advertisement should carry the words **'FOR PRIVATE CIRCULATION OF ITS MEMBERS'**
- h) **No other objective:** A Nidhi cannot carry on any other object other than
- Cultivating the habit of thrift and saving among its members.
 - Accepting deposits from and lending money to its members.
 - All aforesaid activities shall be only for mutual benefits.

Exception:



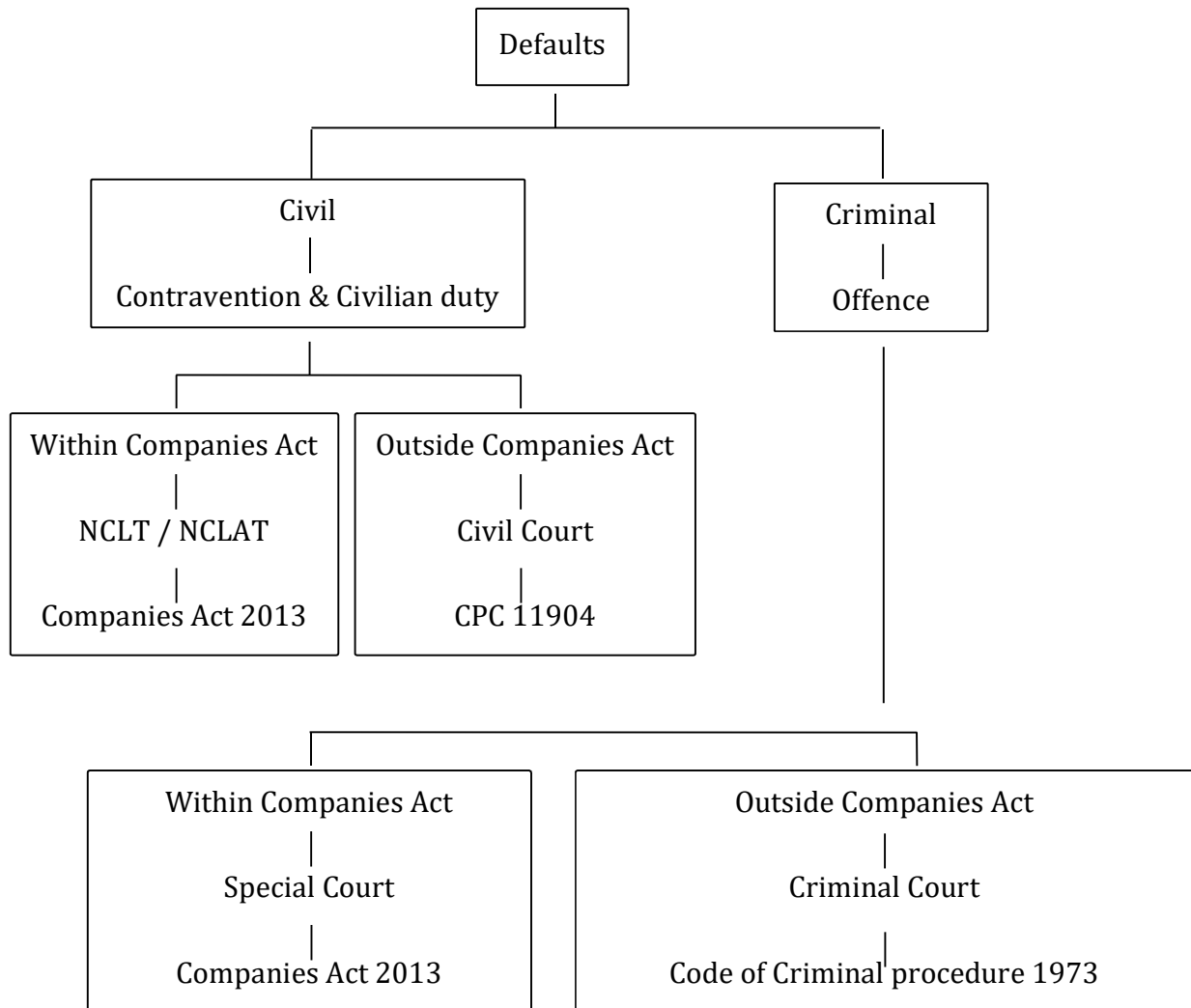
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

OFFENCES, PROSECUTIONS, PENALTIES & SPECIAL COURTS

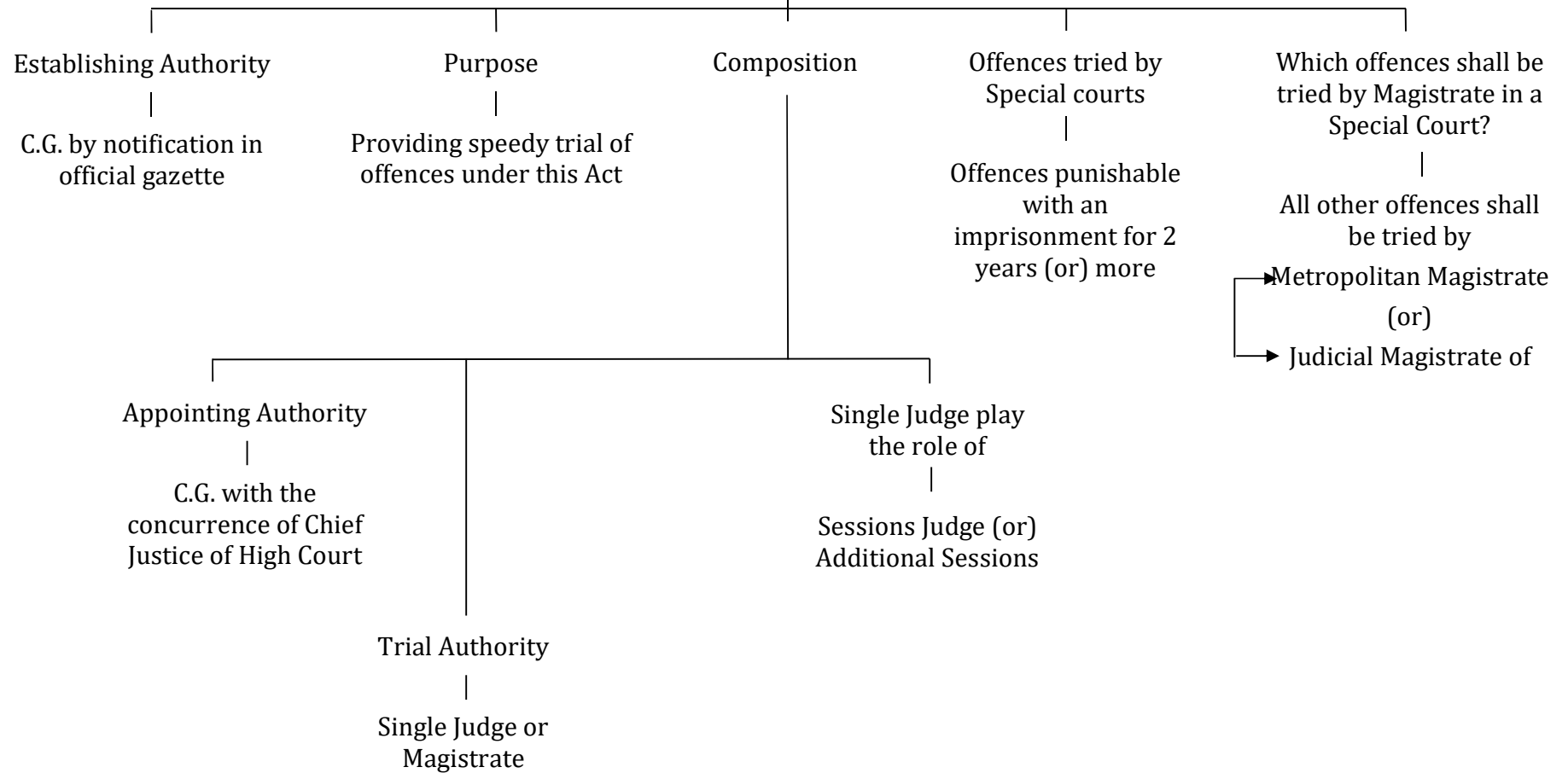
Sec. 435 to Sec. 446B

Need for NCLT & Special Court



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

ESTABLISHMENT OF SPECIAL COURT – SEC 435

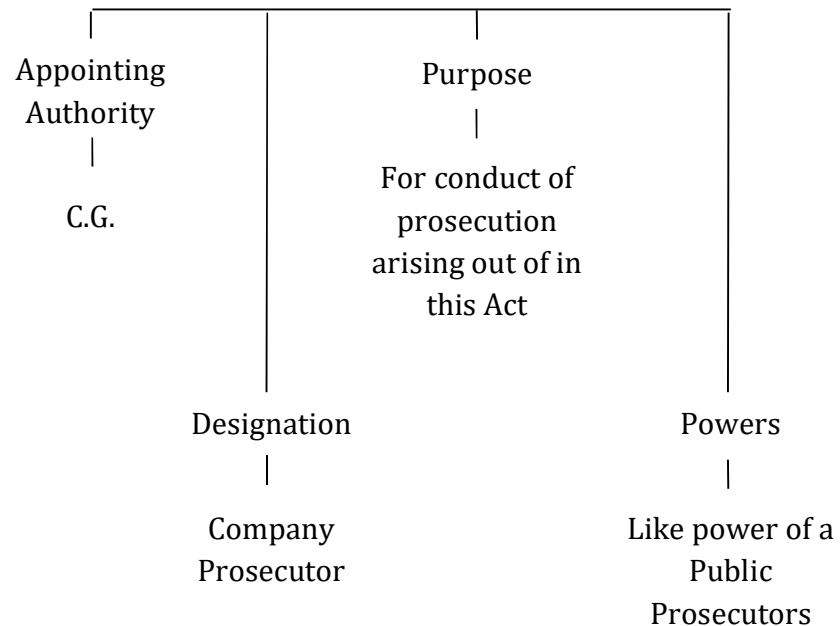


COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SPECIAL POWERS OF C.G.

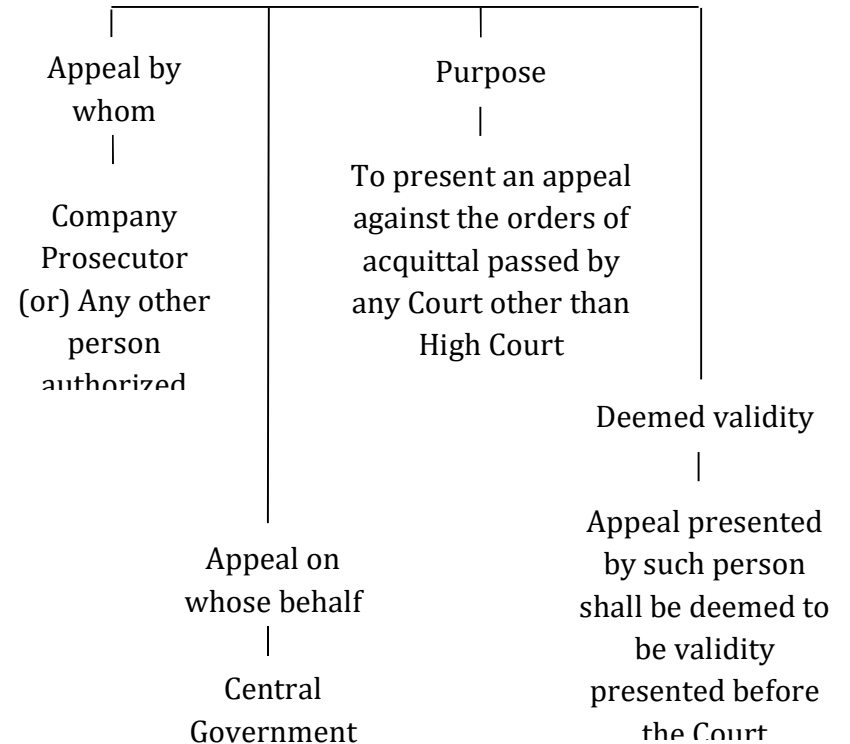
SEC.443

POWER OF C.G. TO APPOINT COMPANY PROSECUTOR



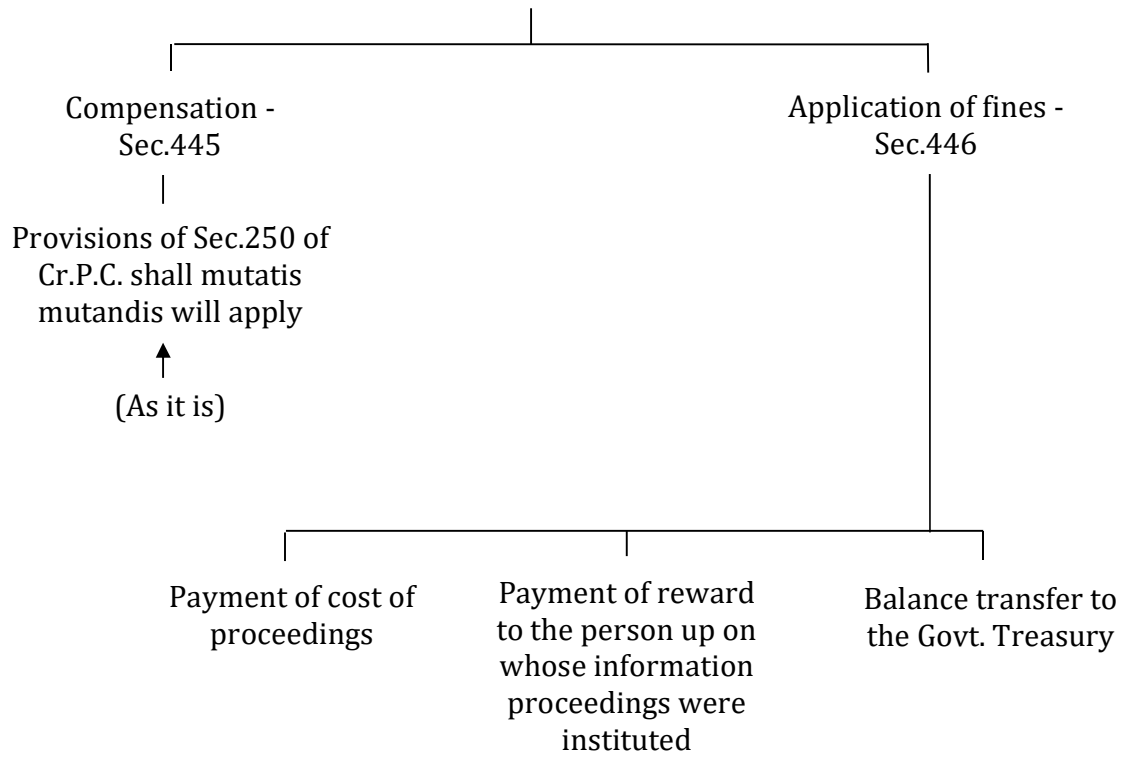
SEC.444

APPEAL AGAINST ACQUITTAL



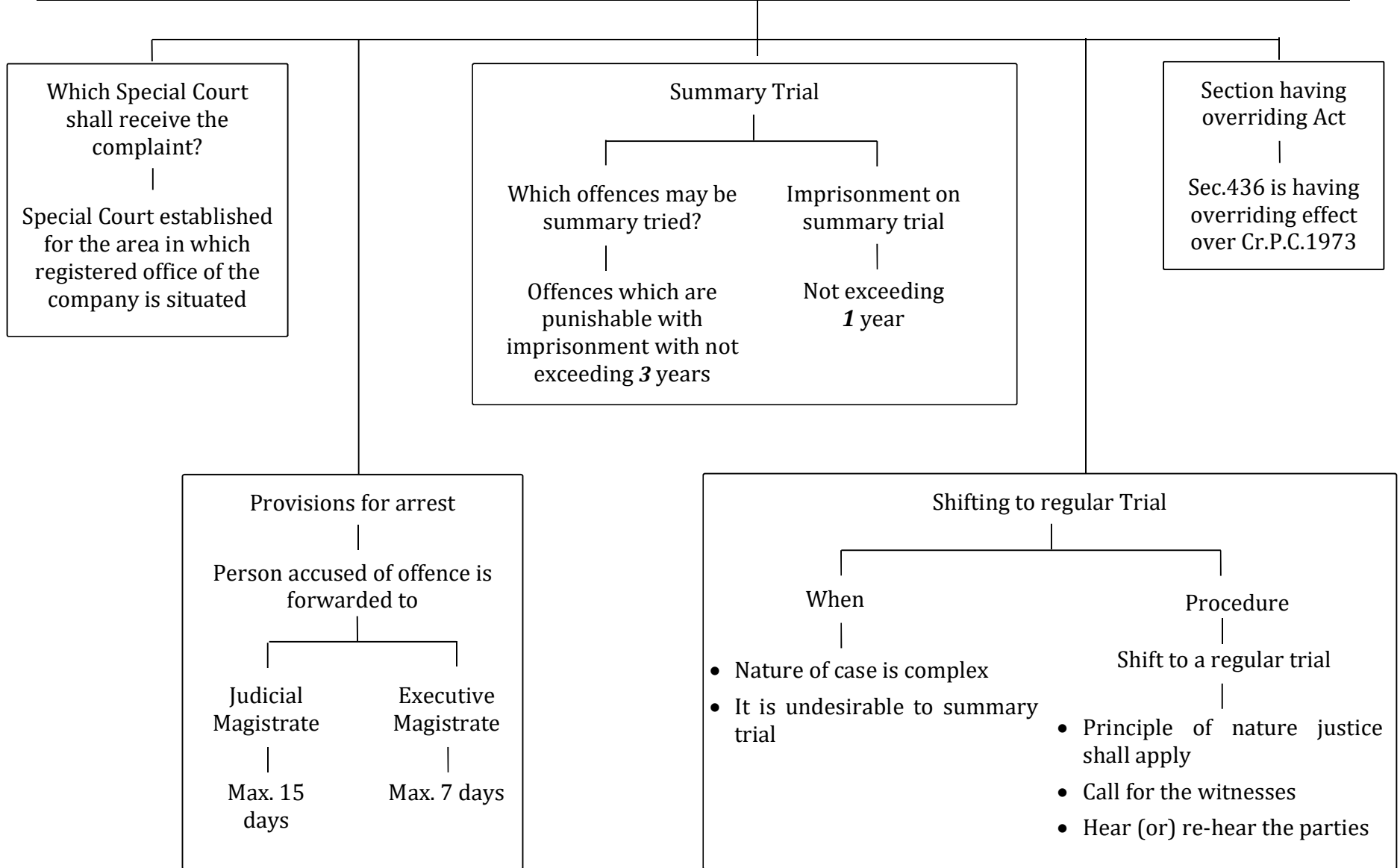
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

MISCELLANEOUS



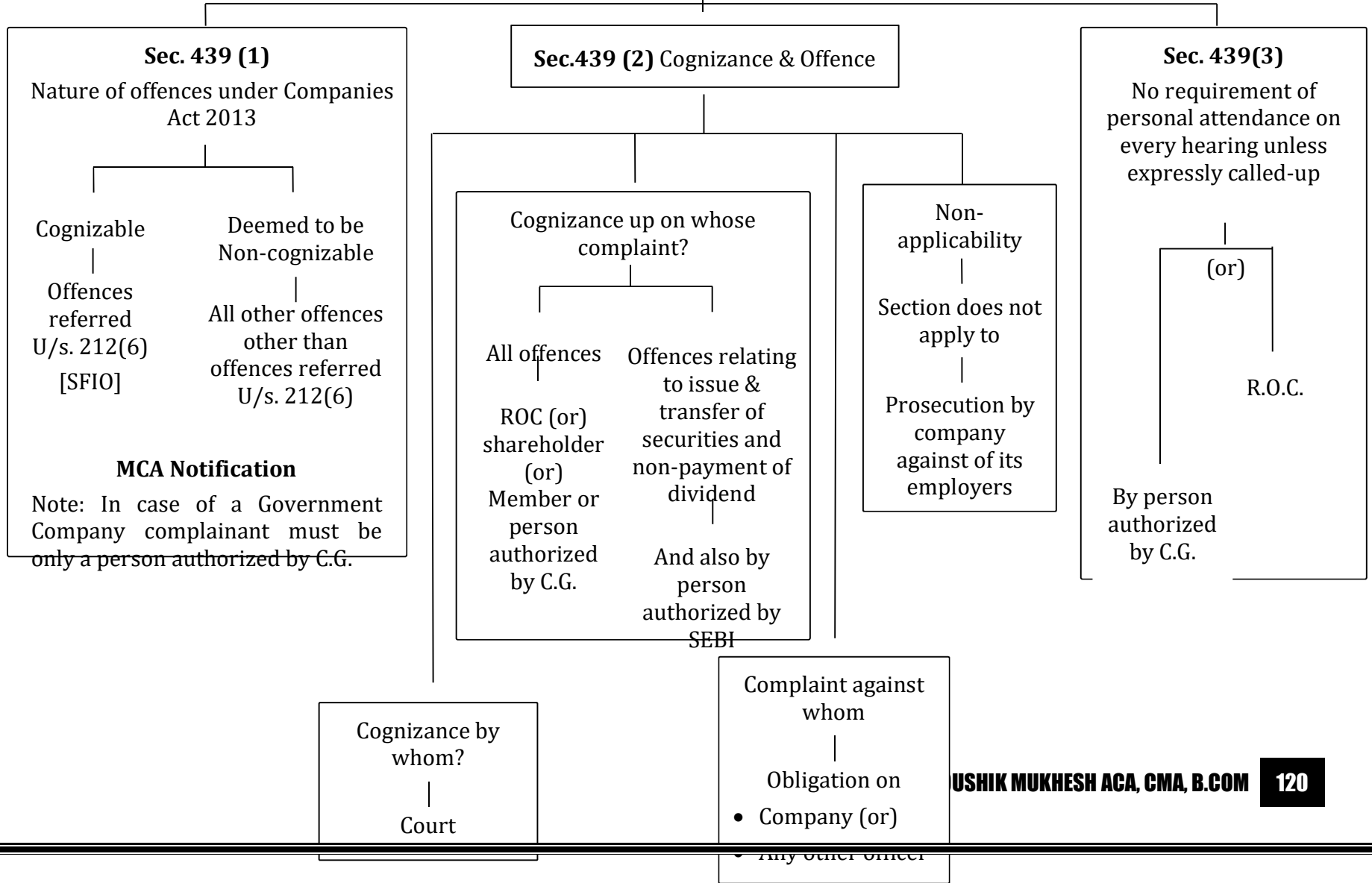
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

OFFENCES TRIABLE BY SPECIAL COURT – SEC.436



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.439: OFFENCES TO BE NON – COGNIZABLE



MCA Notification

Note: In case of a Government Company complainant must be only a person authorized by C.G.

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.437

APPEALS AND REVISIONS AGAINST THE ORDERS OF SPECIAL COURT

Appeals to whom?

High Court

Procedure

Chp. – XXIX and
Chp. – XXX of Cr.P.C.
shall apply

SEC.438

APPLICABILITY OF THE CODE TO THE PROCEEDINGS BEFORE THE SPECIAL COURT

Capacity of Special Court

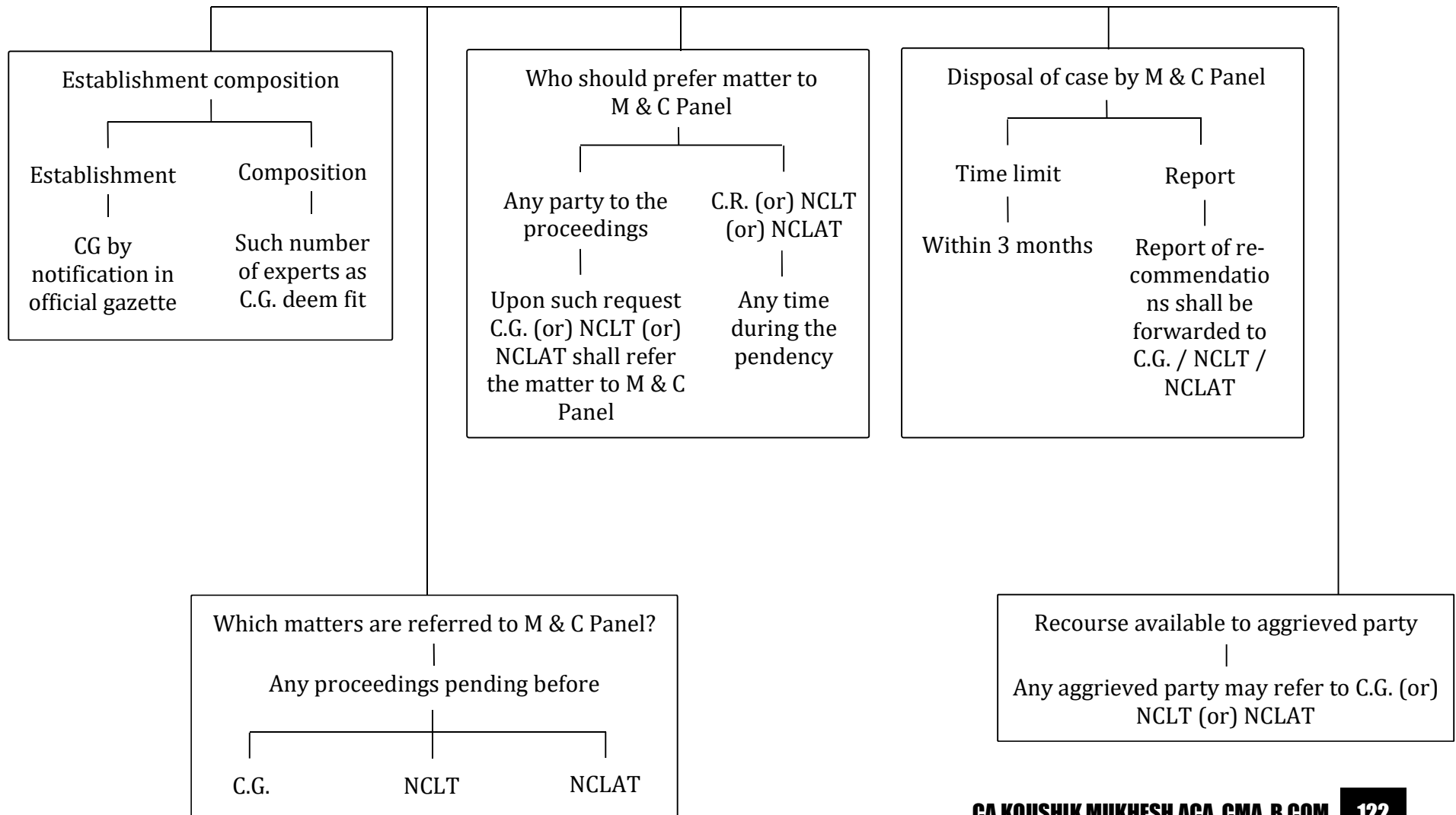
Special Court shall be deemed to be Court of Sessions or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class

Capacity of person making prosecution

Deemed to be a Public Prosecutor

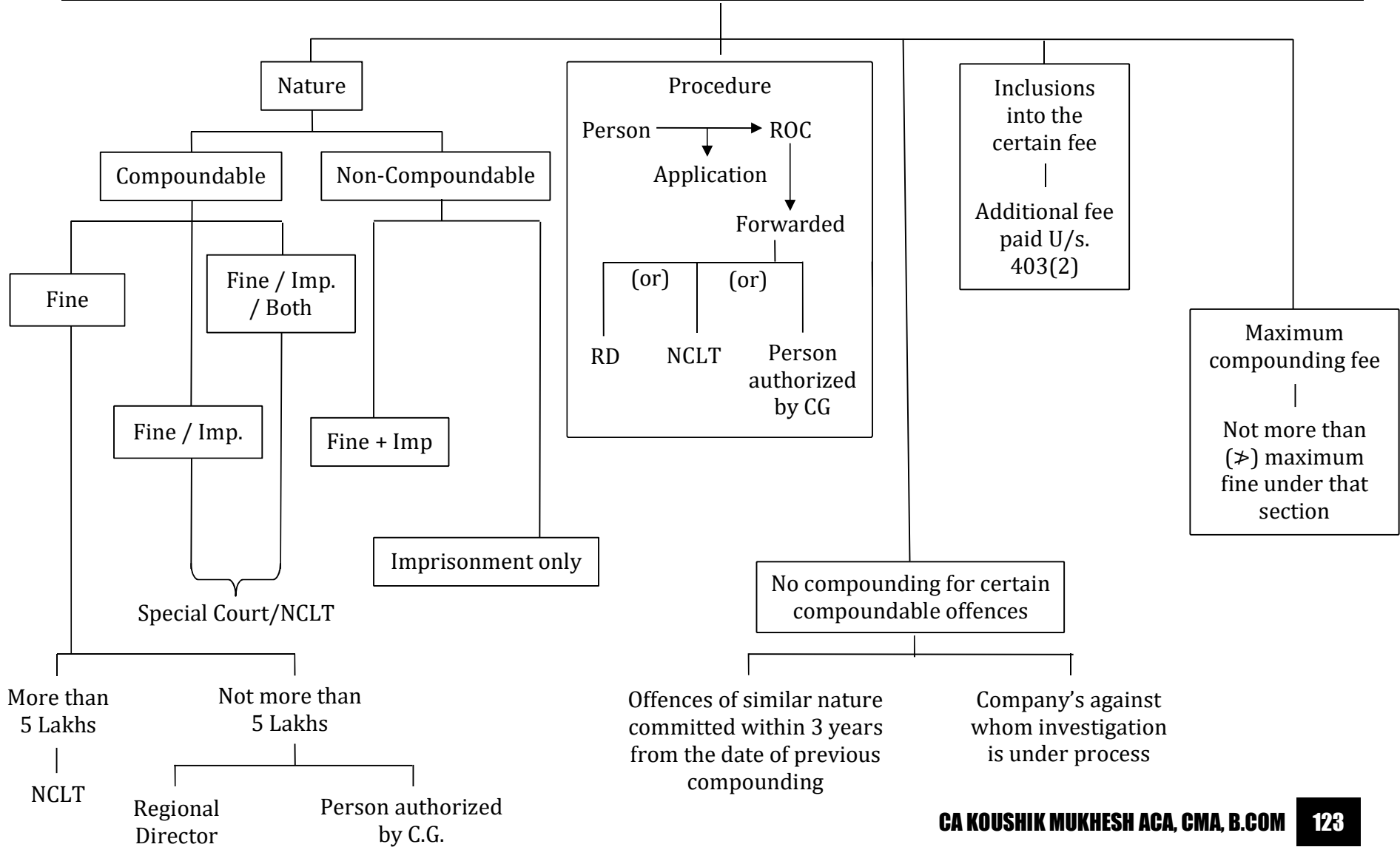
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

MEDIATION AND CONCILIATION PANEL – SEC.442



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

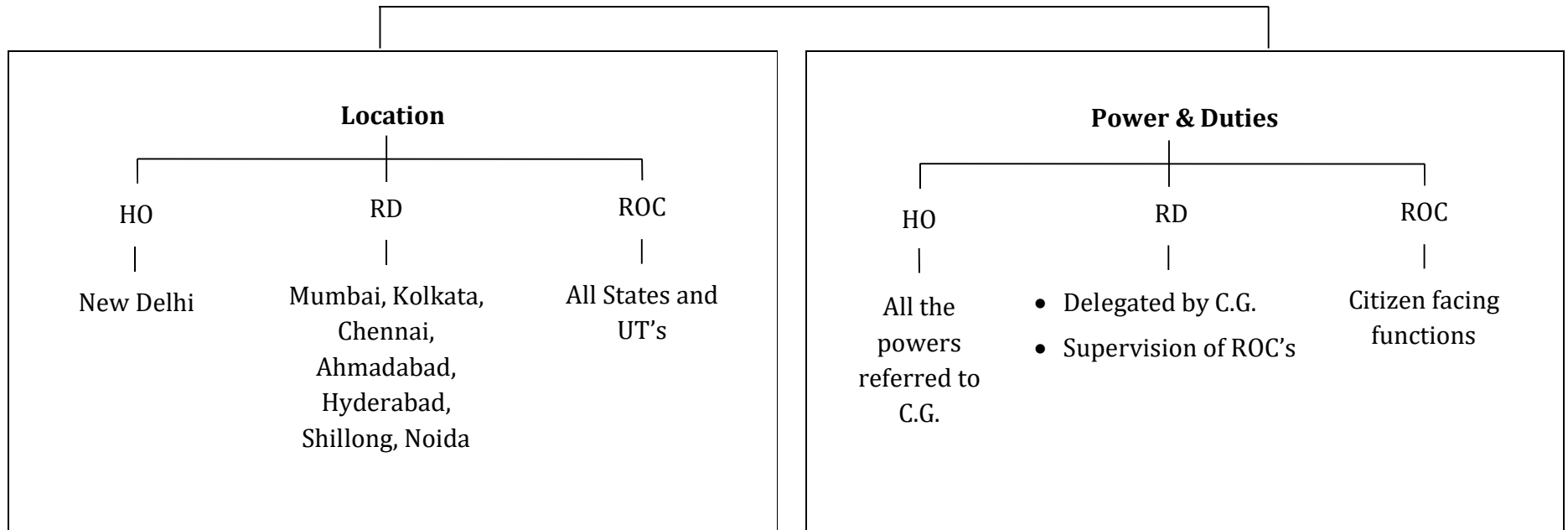
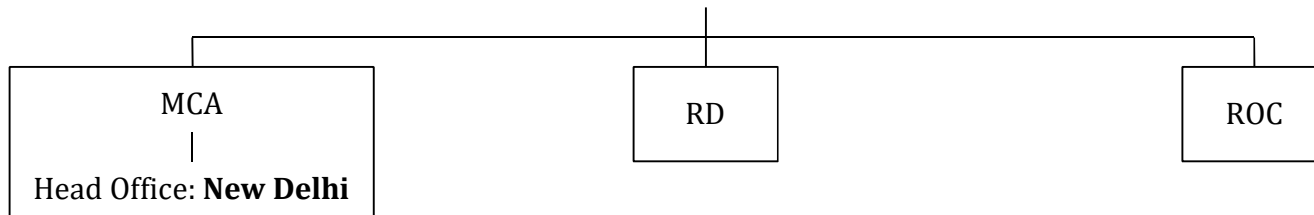
SEC.441 – COMPOUNDING OF OFFENCES



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

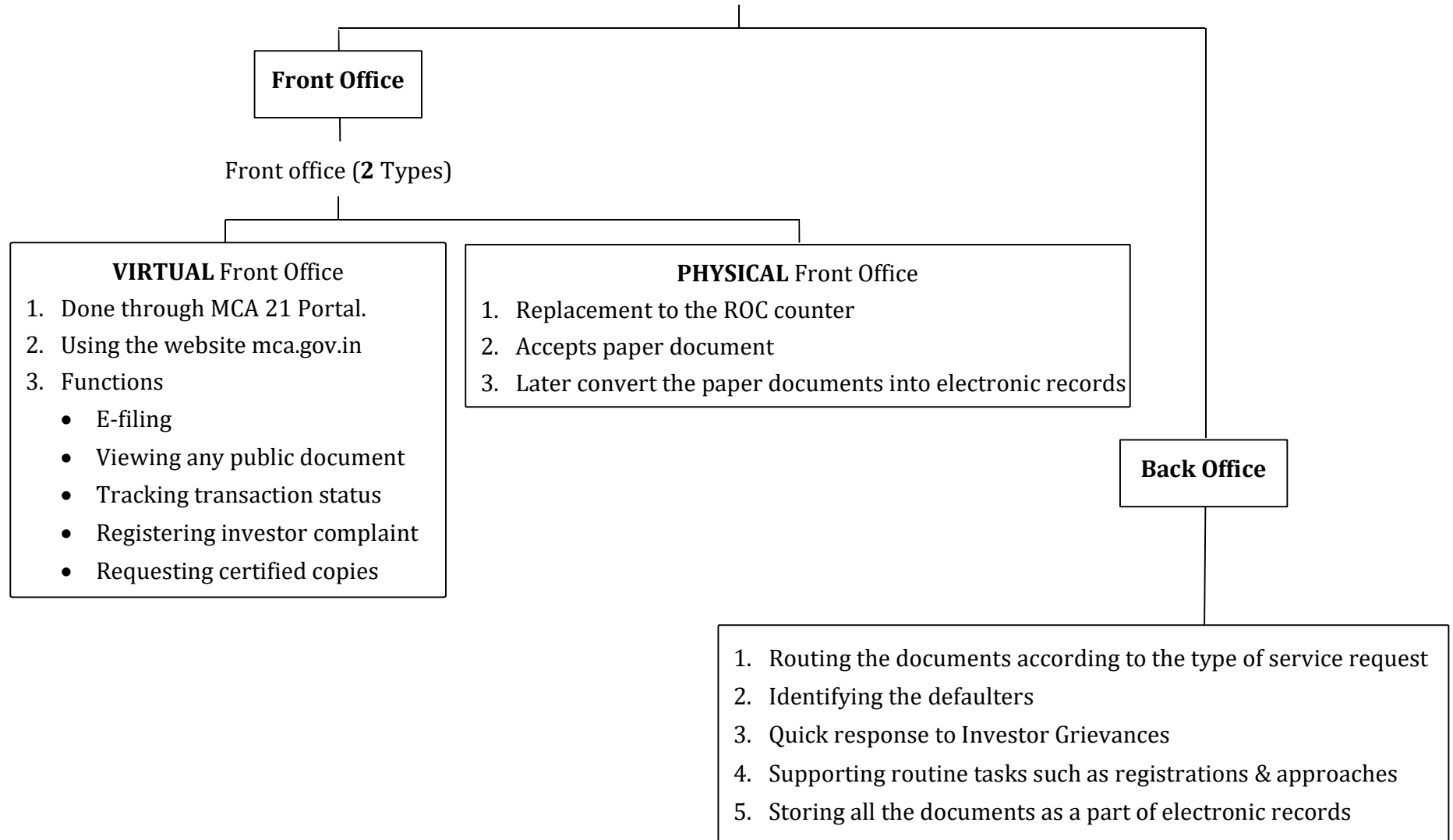
E-GOVERNANCE

Architecture of MCA



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

Types of offices under MCA (Value Added Services)



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

BENEFITS AND GOALS OF MCA-21

- Expeditious incorporation of companies
↓
Speed
- File any document quickly & easily
- Easy access to relevant documents
- Registration & verification of charges at anytime, anywhere
- Inspections of public documents at anytime from anywhere
- Redressal (solving) of investor grievances (complaints)
- Professional able to give their services efficiently & effectively

SCOPE OF MCA-21 PROGRAM

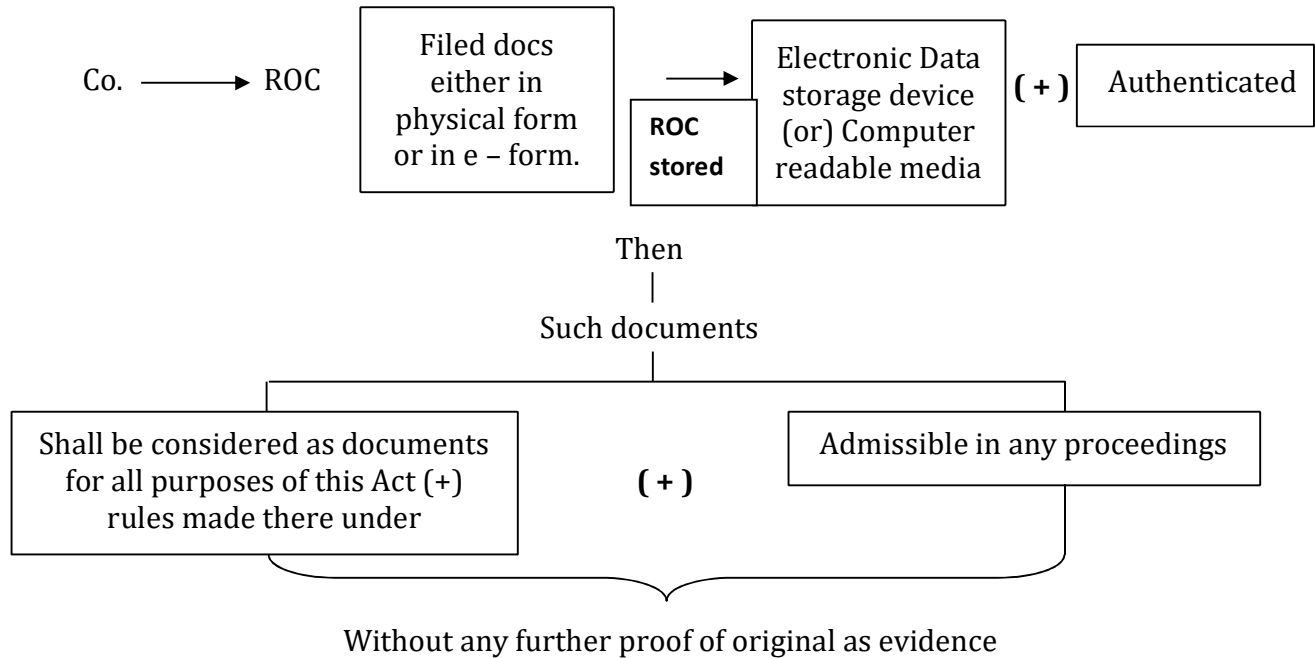
- Providing electronic services with speed
- Development of application system
- Setting up of IT infrastructure
- Setting up of digital signature requirement & security
- Setting up of temporary front offices and subsequent shutdown
- Migrating legacy data and digitalization of paper documents

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

REGISTRATION OFFICES AND FEES

ADMISSIBILITY OF CERTAIN DOCUMENTS AS EVIDENCE – SEC.397

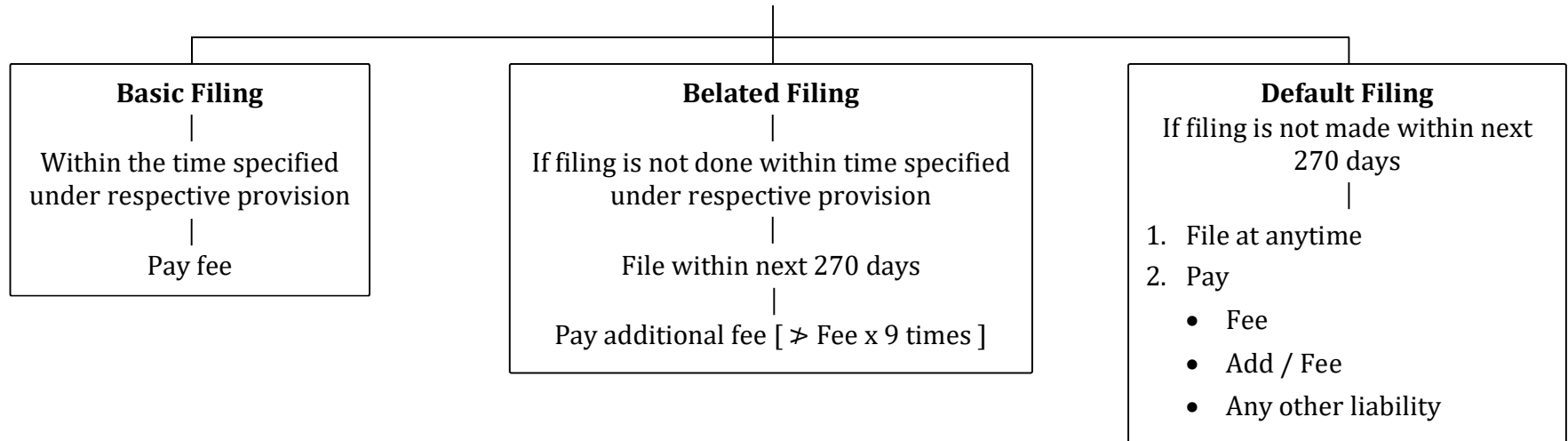
Notwithstanding anything contained in any other law for the time being in force



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

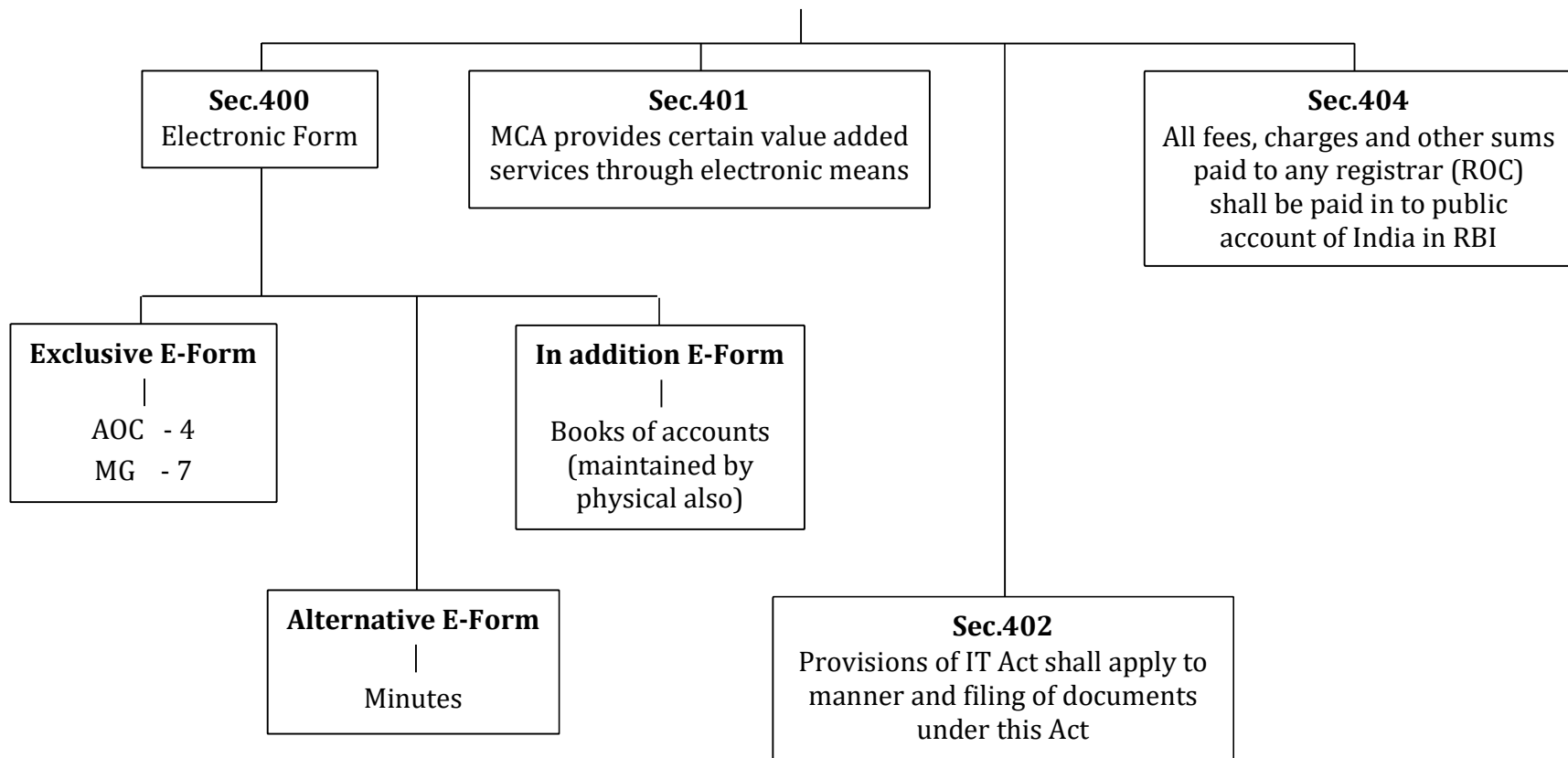
FEE FOR FILING – SEC.403

Any document, form / application which is required to be filed, registered, recorded / submitted shall be filed _____



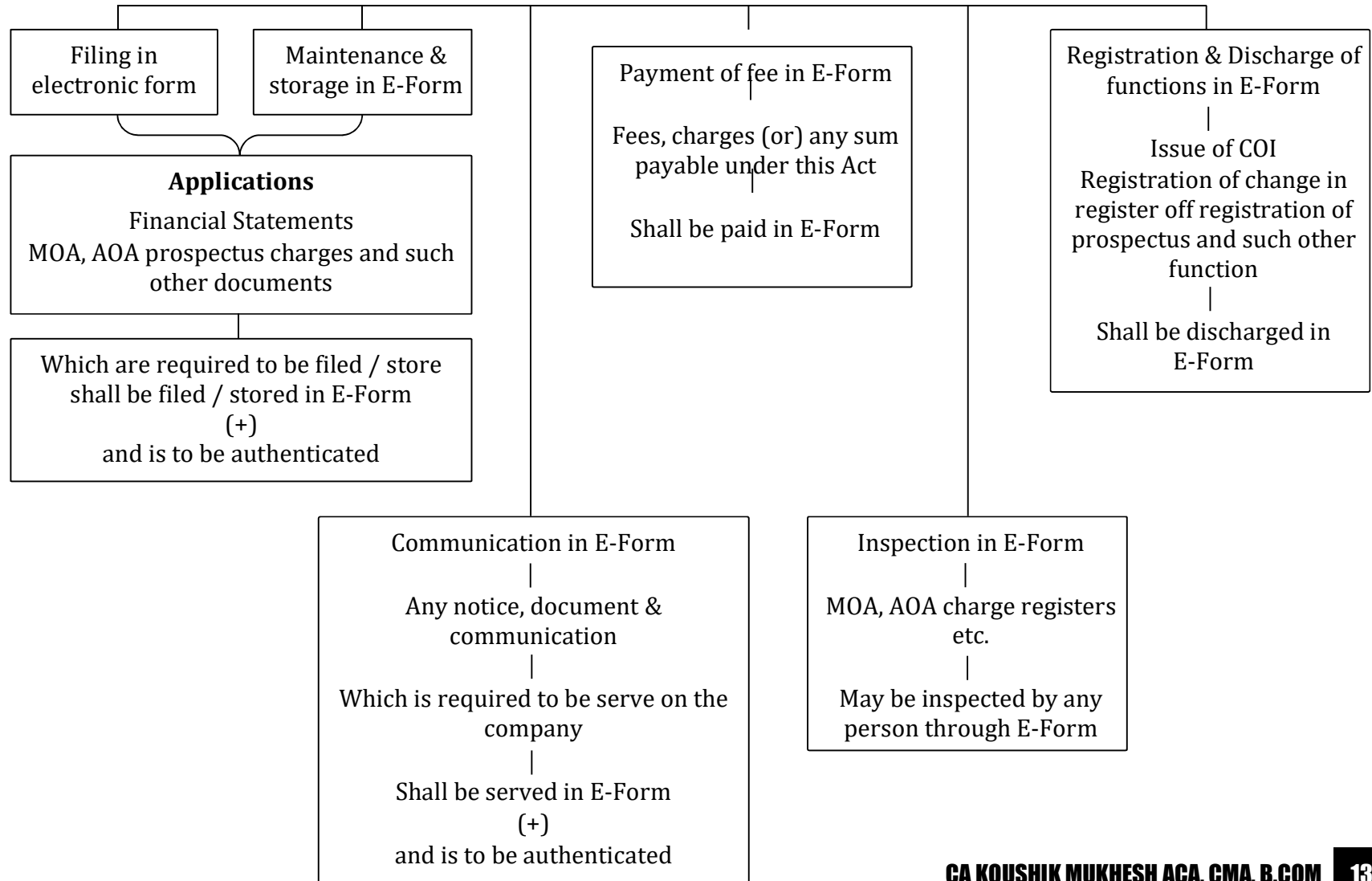
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

MISCELLANEOUS QUESTIONS



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SECTION 398 – FILING OF DOCUMENTS ETC IN ELECTRONIC FORM



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.399 - INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS [KEEP BY ROC]

Inspection

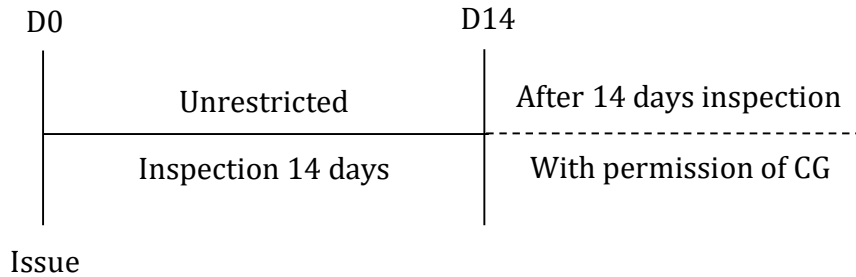
Any person authorized may inspect any document in electronic form / means provided such document is filed with ROC

Certified copies

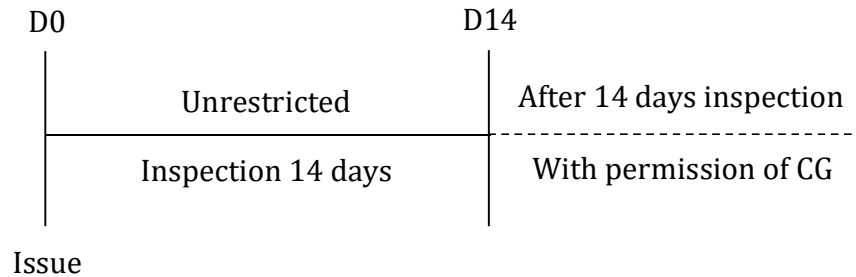
Any person authorized may require COI (or) any document to be certified by the Registrar upon payment of fee

Exceptions

- Documents delivered with prospectus

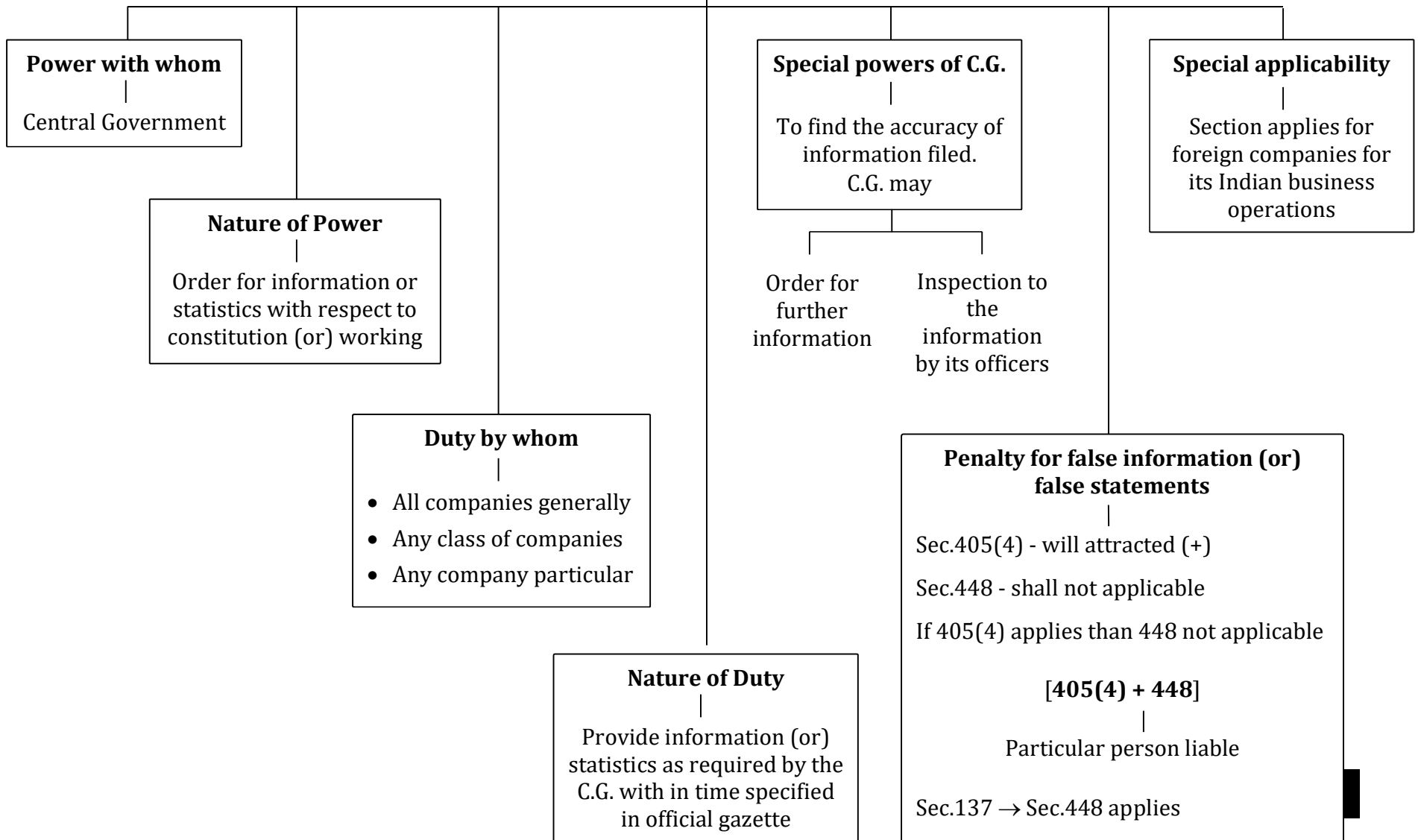


- Expert's concerned attached to the prospectus U/s.388.



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.405 – COMPANIES TO FURNISH INFORMATION AND STATISTICS (Refer Sec.448)



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

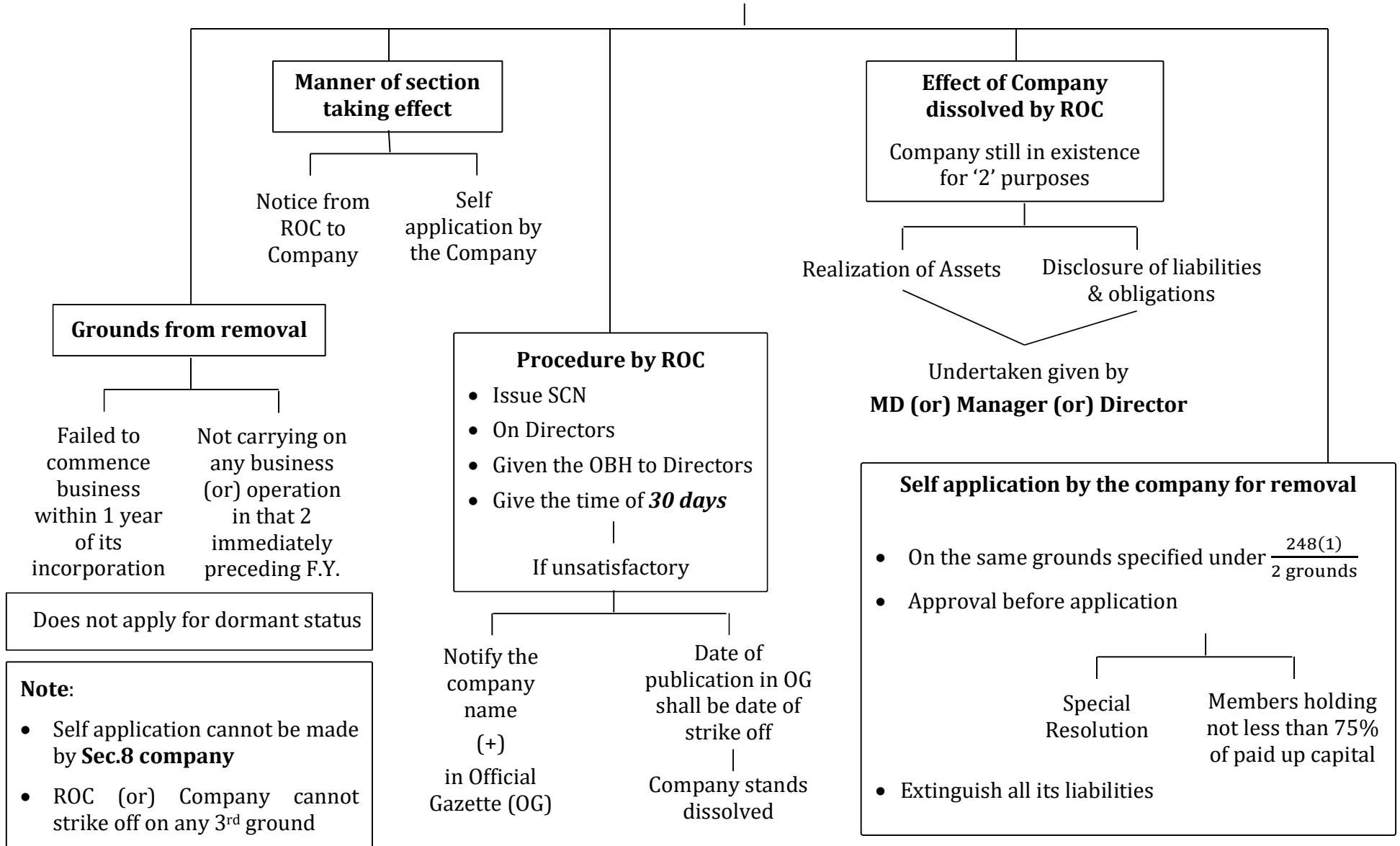
REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Learning objectives

1. Power of Register to remove the name [Sec.248]
2. Restrictions on making applications [Sec.249]
3. Effects of company notified as dissolved [Sec.250]
4. Fraudulent application for removal [Sec.251]
5. Appeal against removal [Sec.252]

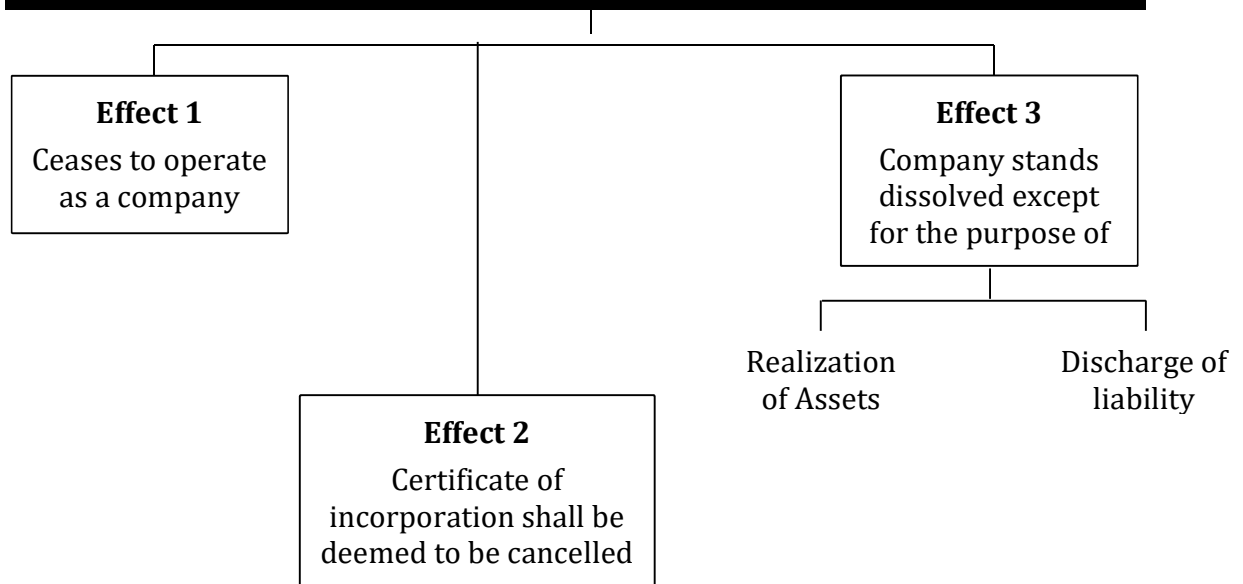
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.248 – POWER OF REGISTRAR TO REMOVE NAME OF COMPANY FROM REGISTER OF COMPANIES

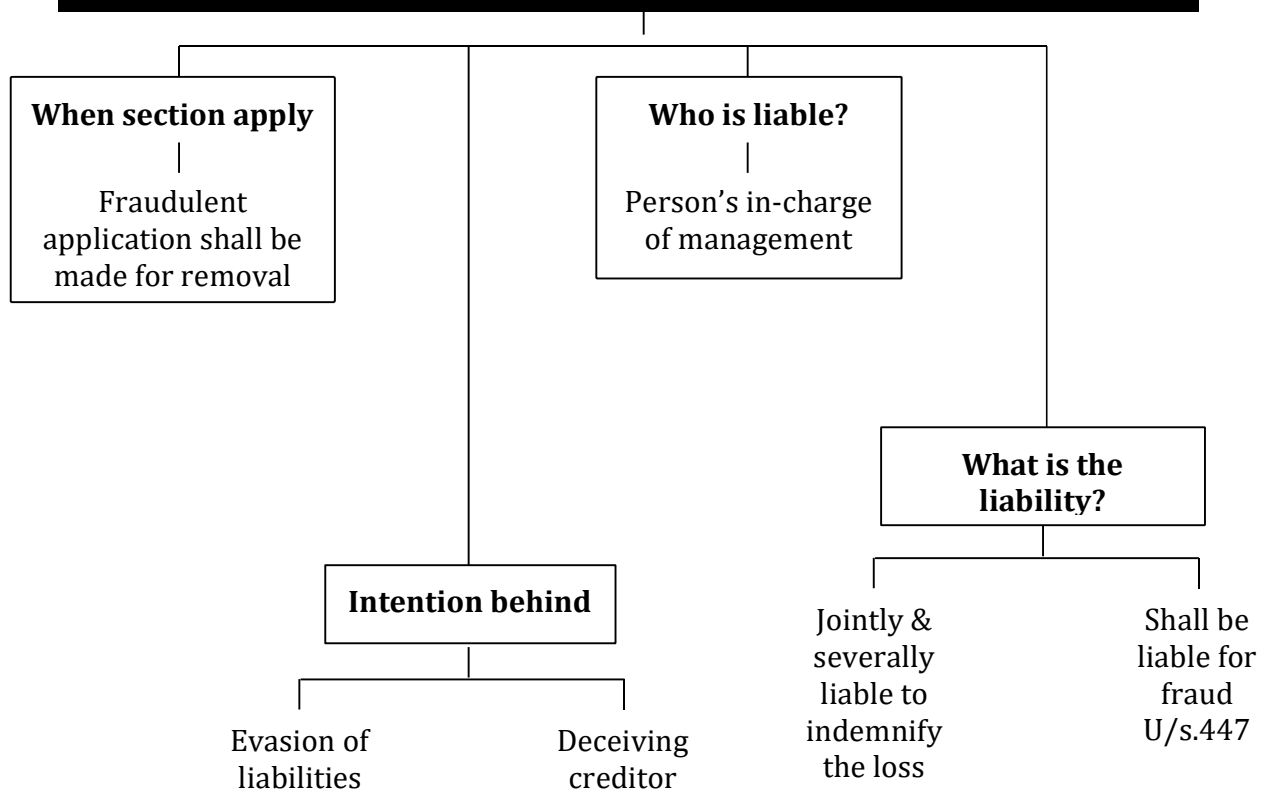


COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.250 – EFFECT OF COMPANY NOTIFIED AS DEFAULT

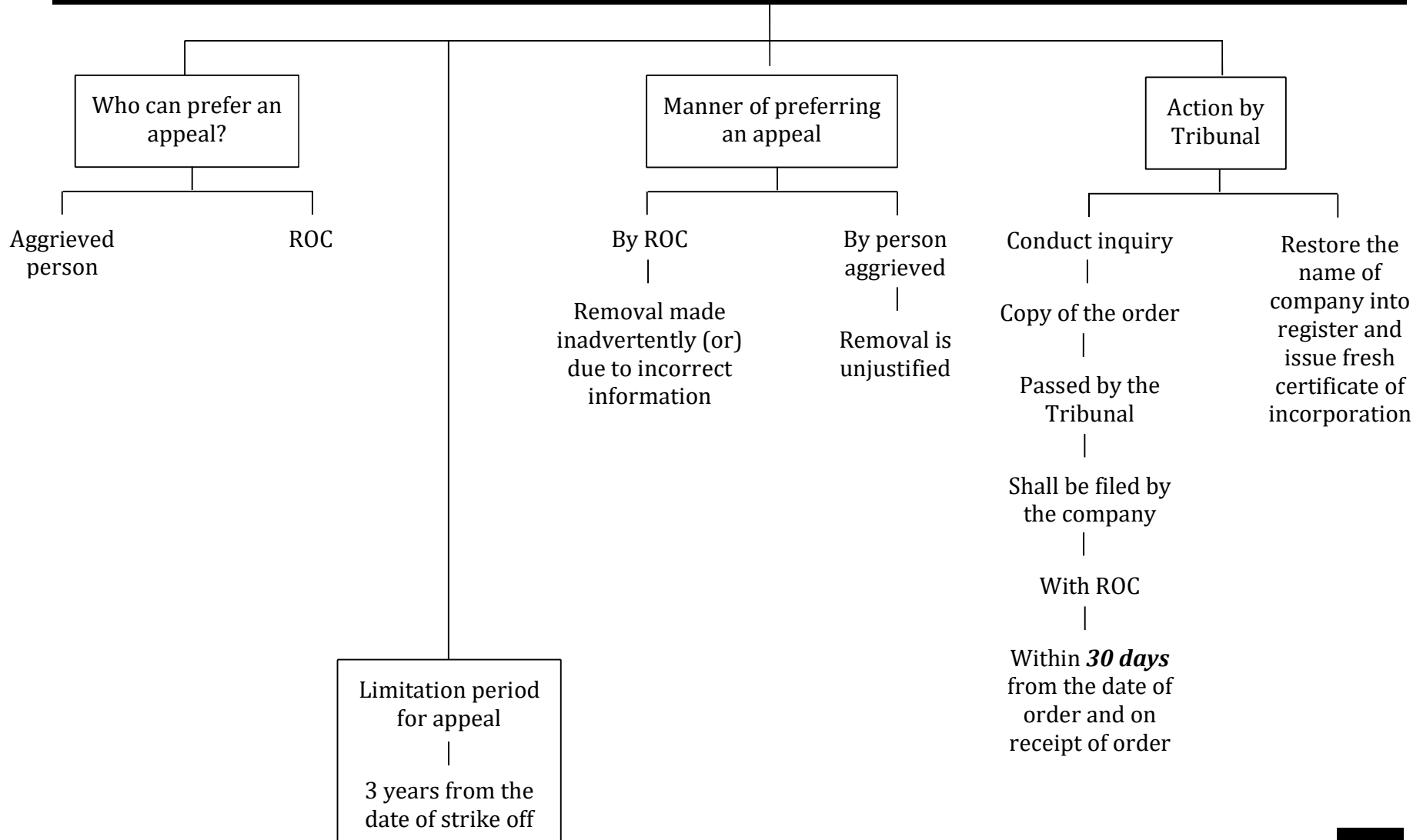


SEC.251 – FRAUDULENT APPLICATION FOR REMOVAL



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

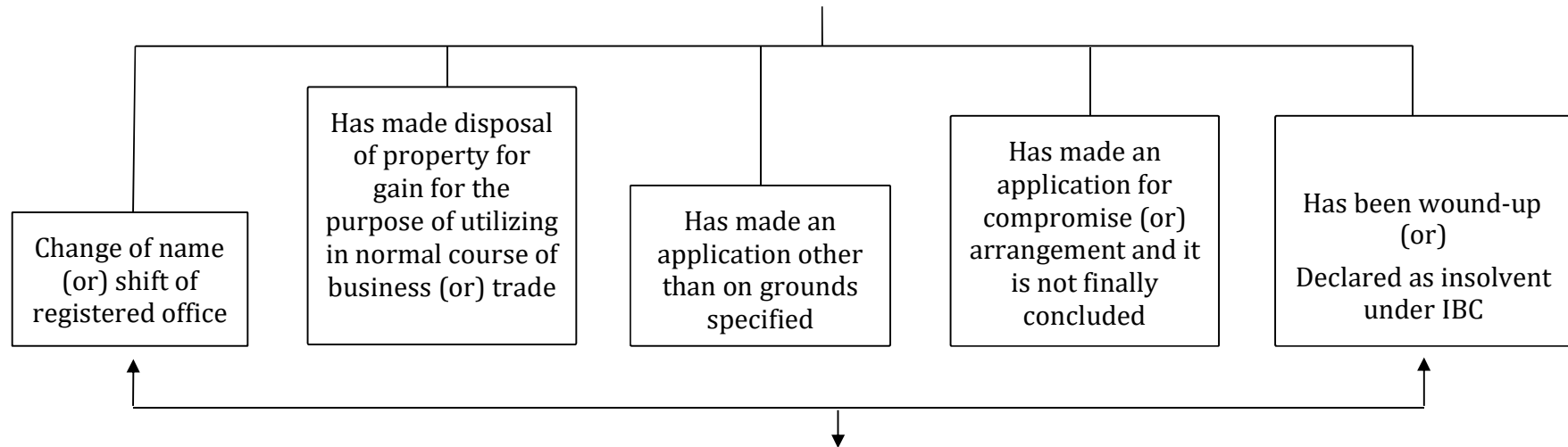
SEC.252 – APPEAL TO TRIBUNAL



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

RESTRICTIONS ON MAKING APPLICATIONS [only restrictions on self application]

Under Sec.248 in certain situations Sec.249



- All the above grounds shall happen 3 months prior to make application.
- Section does not apply for ROC application for removal

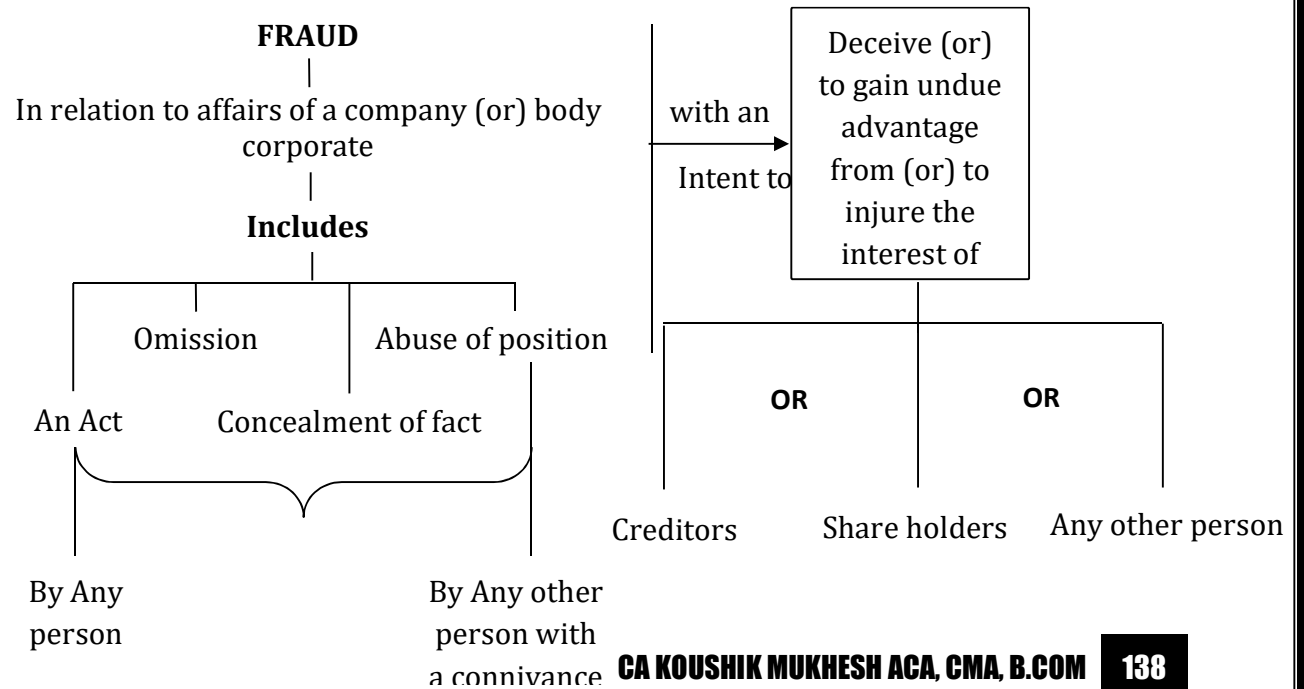
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

MISCELLANEOUS PROVISIONS OF COMPANIES ACT 2013

Learning objectives (Part - 1)

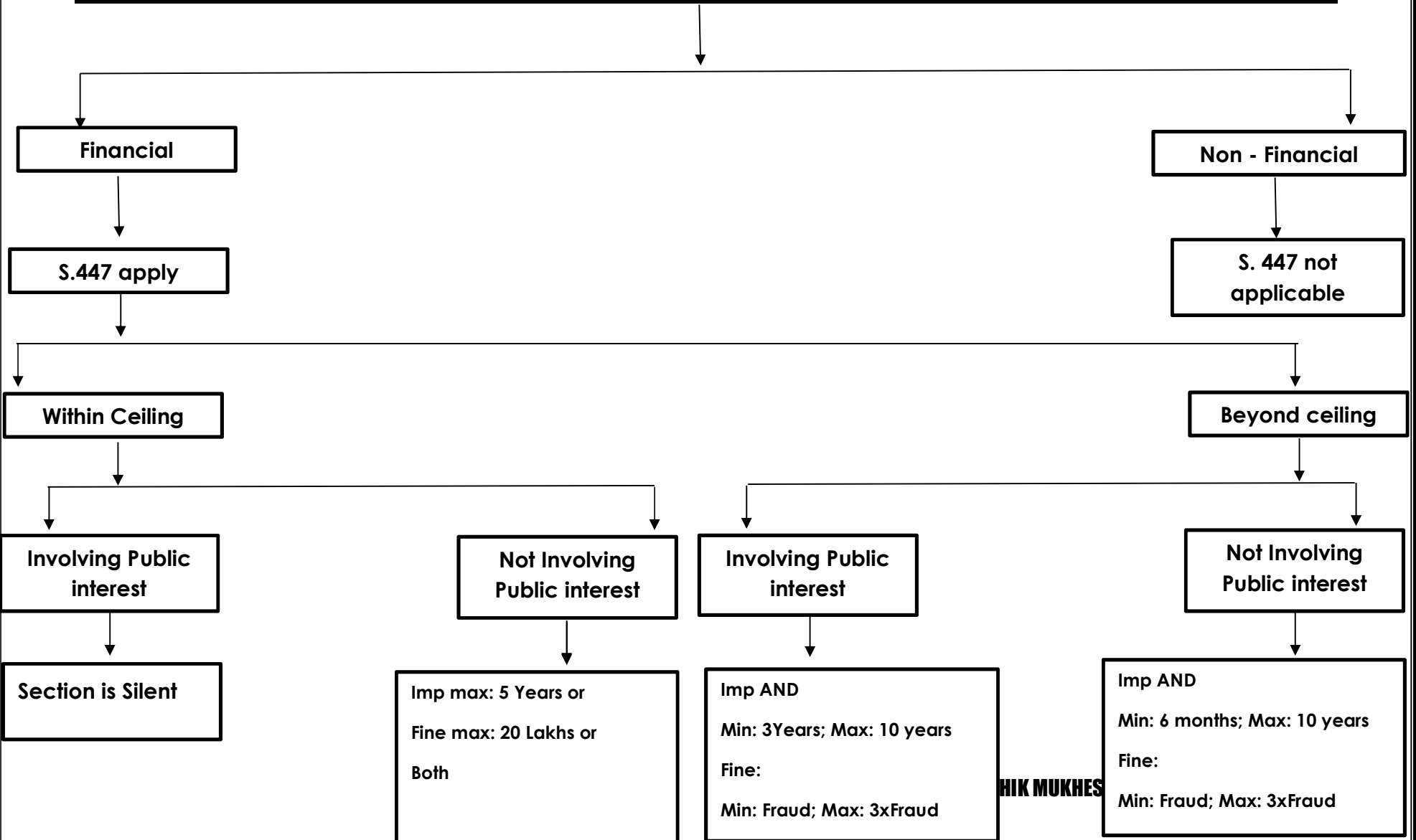
Punishment for Fraud	Punishment for False statement	Punishment for False evidence	Adjudication of penalties
Punishment for Repetitive default	Condonation of Delay	Penalty for Wrongful withholding of property	
Punishment where no specific penalties provided		Grant of Relief in certain cases	

PUNISHMENT FOR FRAUD [SEC.447]



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

FRAUD



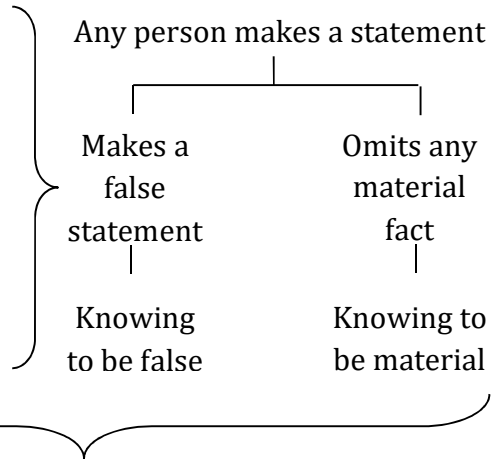
HIK MUKHES

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

PUNISHMENT FOR FALSE STATEMENT [Sec.448]

If in any

- Return
- Report
- Certificate
- Financial Statements
- Prospectus
- Statement (or)
- Any other documents



Shall liable under Sec.447

Sec.448 applies only if other section is silent on punishment of false statement.

Example:

405 → 448 → Not apply

137 → 448 → Apply

PUNISHMENT FOR FALSE EVIDENCE [SEC.449]

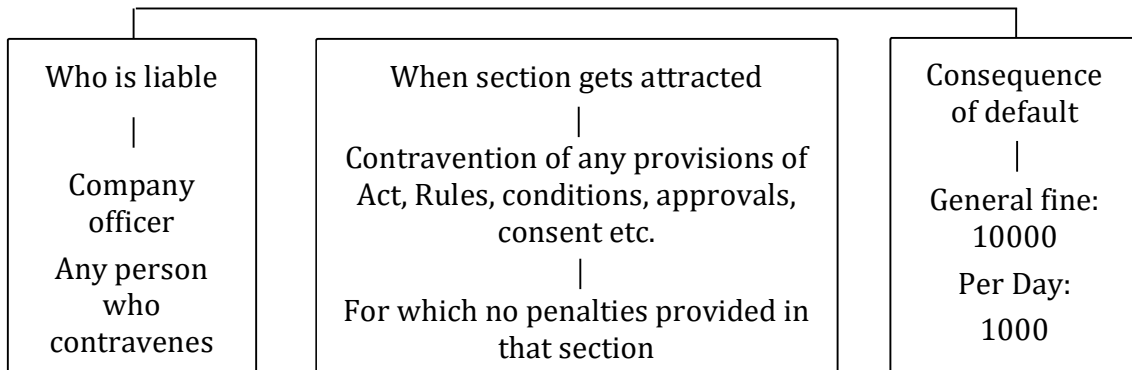
If any person intentionally gives a false evidence upon

- Examination on oath
- Solemn affirmation
- Any affidavit and so on

Such person shall be liable under section 449

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.450 – PUNISHMENT WHERE NO SPECIFIC PENALTIES PROVIDED



SEC.451 – PUNISHMENT FOR REPETITIVE DEFAULT

If a company officer commits an offence under this Act

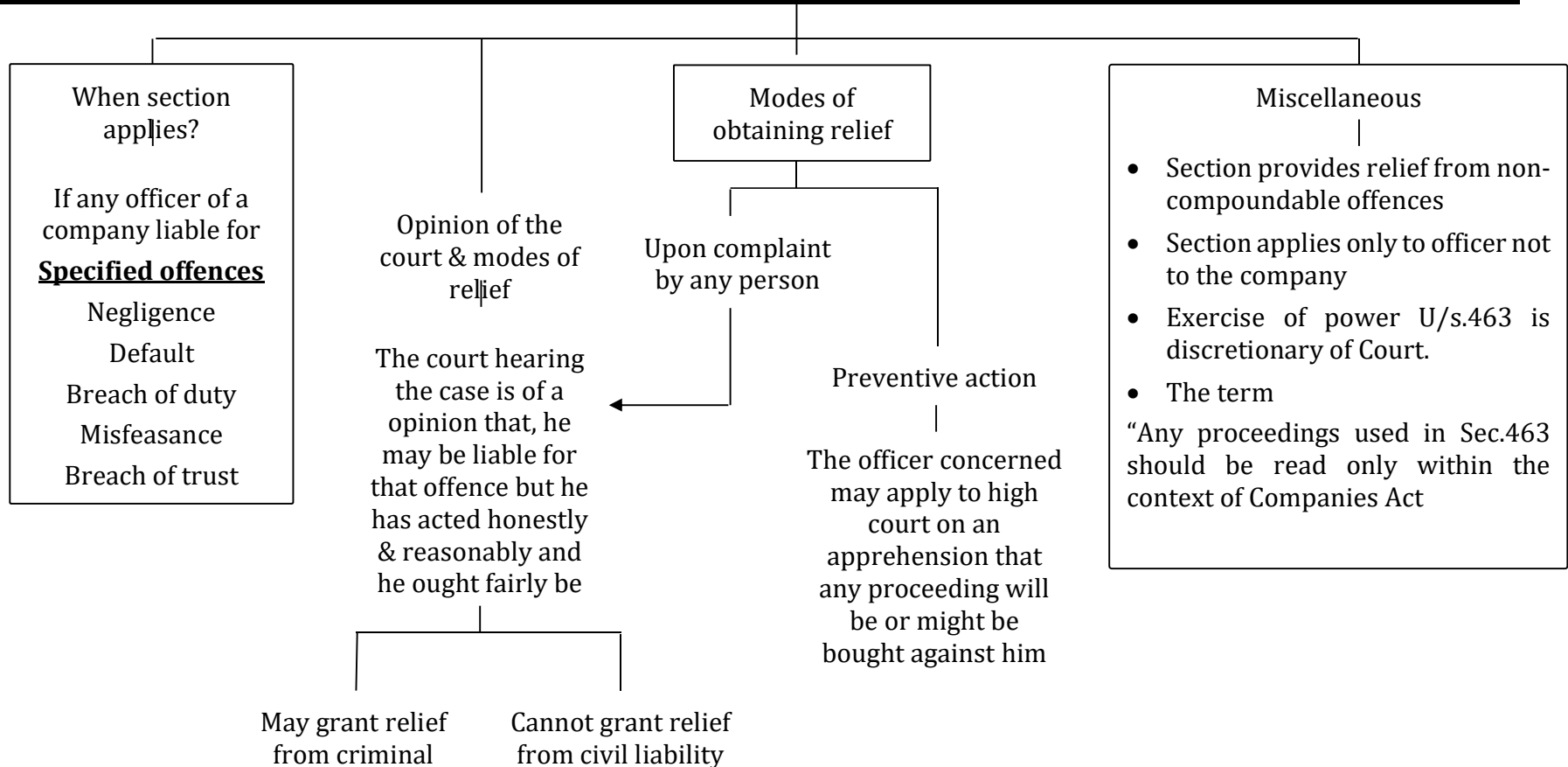
Punishable with fine (or) imp

Any same offence has been committed for second (or) subsequent time within period of 3 years

Then fine shall be doubled

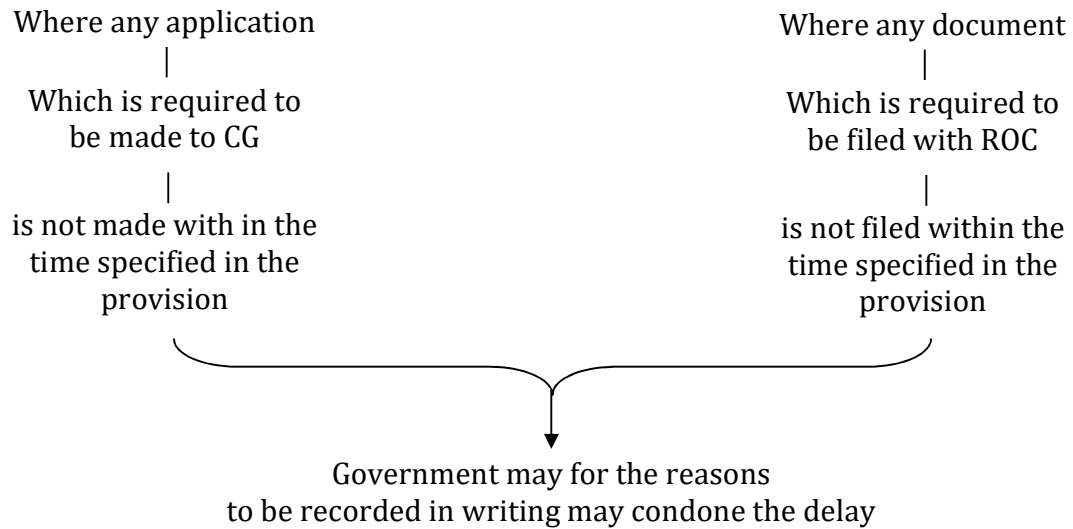
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.463 – GRANT OF RELIEF IN CERTAIN CASES



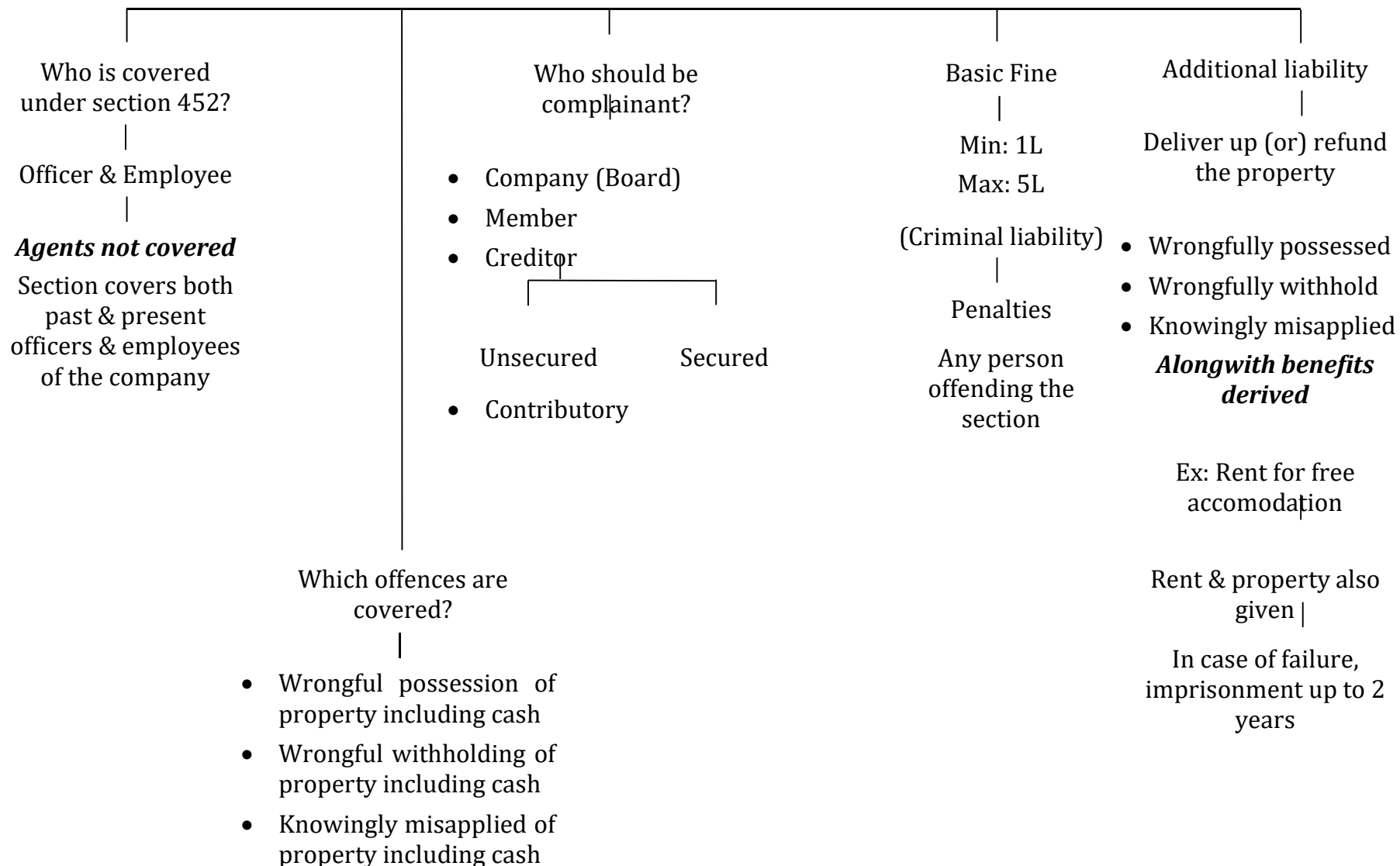
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.460 – CONDONATION OF DELAY



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.452 – PENALTY FOR WRONGFUL WITHHOLDING OF PROPERTY OF COMPANY



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

SEC.454 – ADJUDICATION OF PENALTIES

Establishing authority & adjudicating authority

- Established by C.G.
- A.A. shall be an officer not below the rank of ROC

For the purpose of adjudging the declaring penalties under this Act

Before finalizing the penalty an OBH shall be given

Decision of RD shall be final and binding and penalty levied by RD (or) AA shall be paid within 90 days of such levy

AA should state non-compliance in the notice

Appeal may be made to RD within 60 days

Consequences of non-payment within 90 days

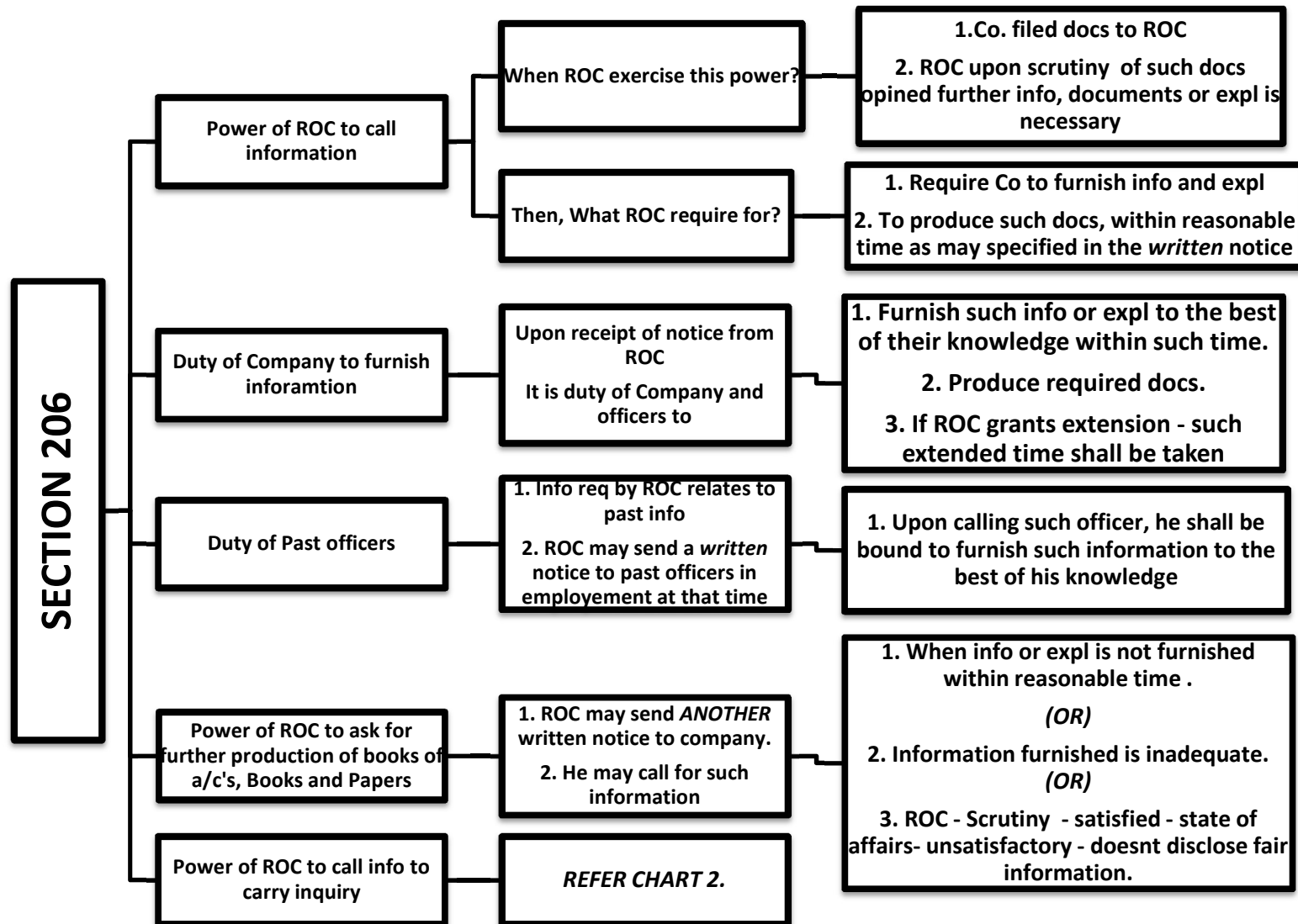
Refer penalty

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 1: POWER TO CALL FOR INFO, INSPECT BOOKS AND CONDUCT INQUIRIES – SECTION 206: (CHART 1)



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 1A: POWER OF ROC TO CALL FOR INFORMATION TO CARRY OUT INQUIRY: (CHART 2) – SECTION 206(4):

BASIS OF SECTION 206(4): CHART 1 + INQUIRY AFTER GIVING REASONABLE OPP OF BEING HEARD:

Section 206(4)

Basis of inquiry

Information
furnished to
him

representation
made by any
person

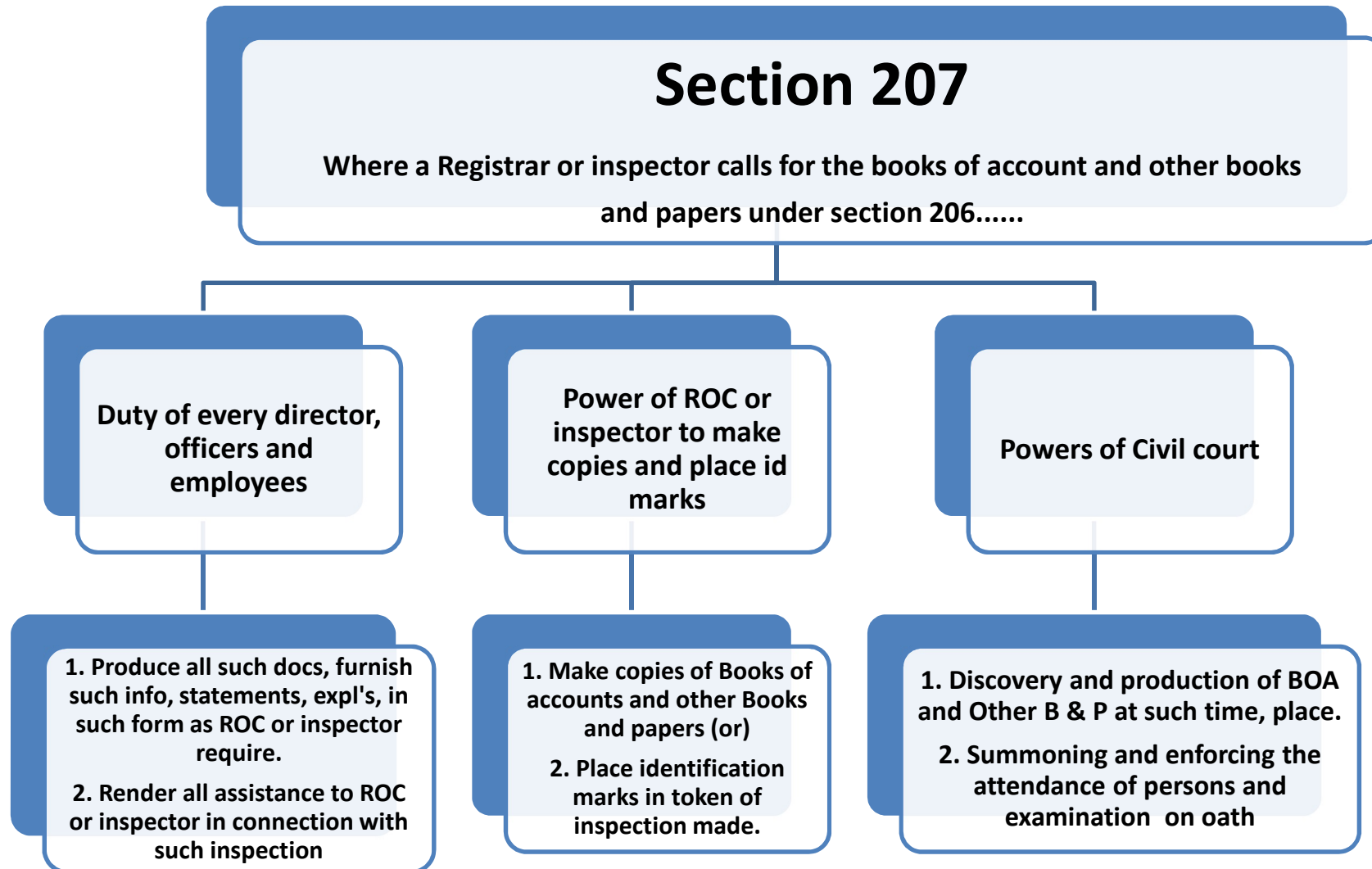
C1. Business is carried on for a fraudulent or unlawful purpose or not in compliance of act (or)

C2. Greivances of investors are not being addressed.

1. Before exercising such powers, ROC shall inform the company of allegations made against it by a written order.
2. CG, if circumstances justify directs ROC or an inspector to conduct an inquiry.
3. If C1 or C2 is satisfied, officer in default shall be punishable u/s 447.

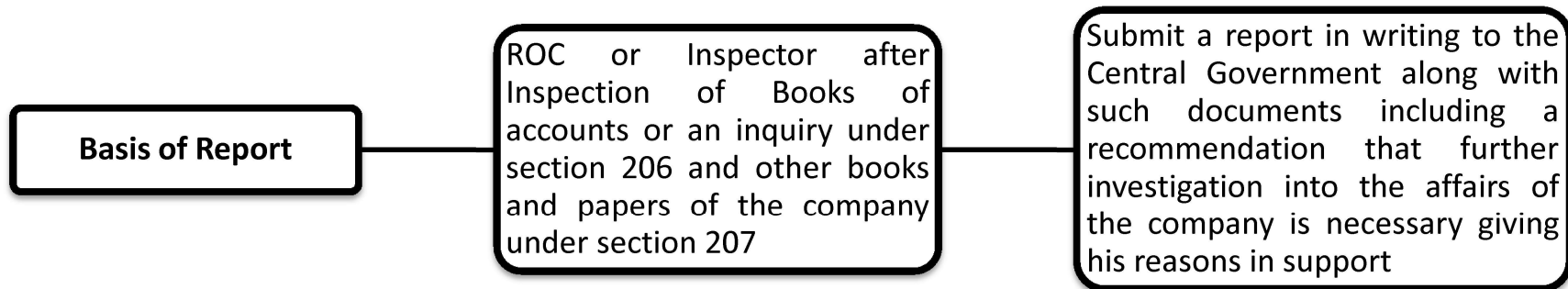
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 2: CONDUCT OF INSPECTION AND INQUIRY – SECTION 207 (CHART 3):



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 2A: REPORT OF INSPECTION – [SECTION 208] (CHART – 3A):

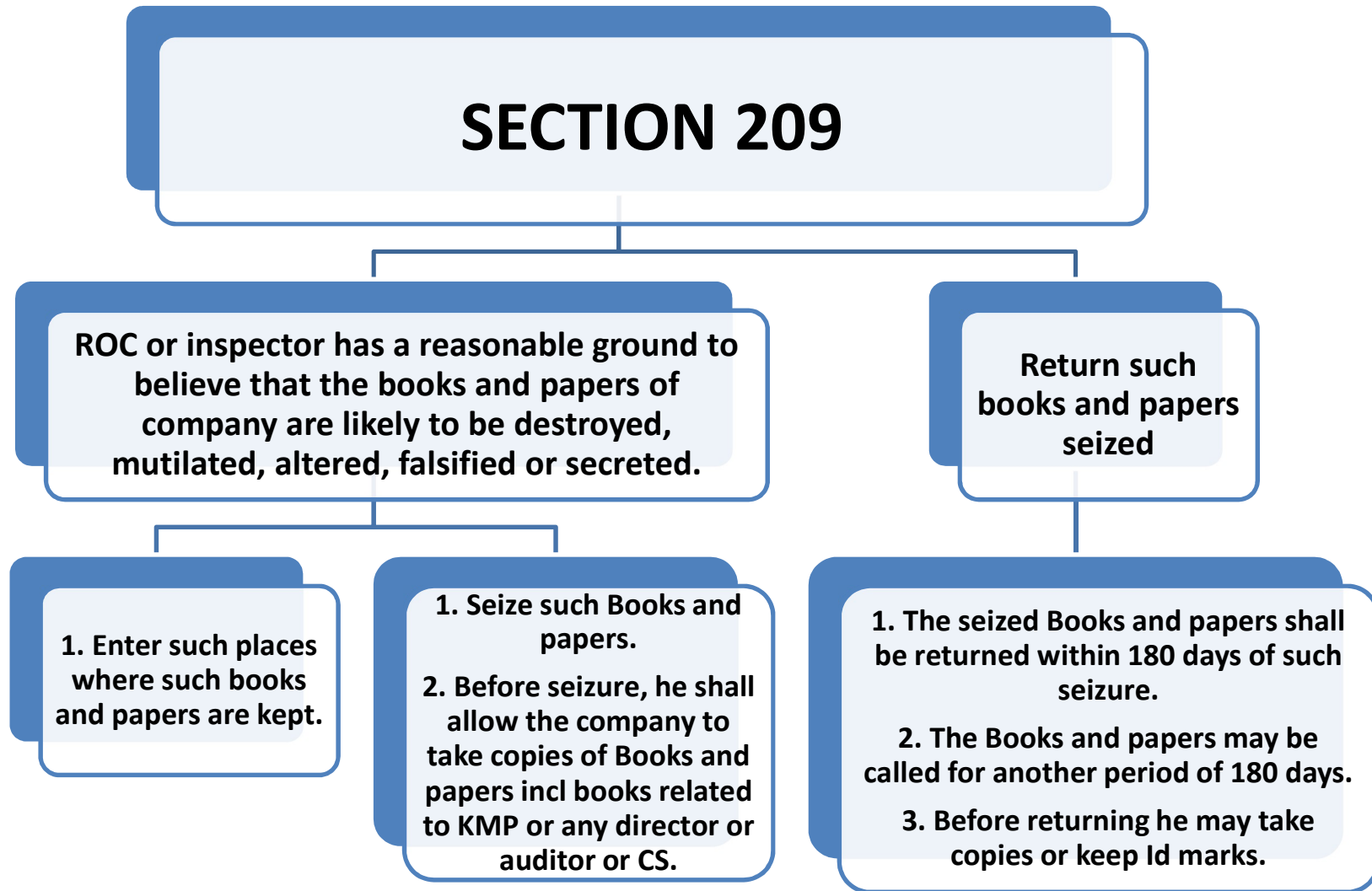


On receipt of the report, the Regional Director-

- ▶ Shall examine the report and obtain legal advice, if required;
- ▶ Shall direct initiation of prosecution if he agrees with the recommendation of the registrar or inspector to initiate prosecution against the company, officers or employees, present or past of the company, or any other person connected with the affairs of the company; and
- ▶ Shall inform the central government (along with reasons for non-acceptance of recommendation of registrar or inspector, wherever he disagrees) about the action taken on the report submitted by registrar or inspector.

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 3: SEARCH AND SEIZURE – SECTION 209 (CHART 4):



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 4: INVESTIGATION INTO AFFAIRS OF THE COMPANY – SECTION 210 (CHART 5):

Section 215:

No firm, body corporate or other association shall be

Section 210

Power of CG -
When it order
Investigation?

Duty of CG

On receipt of report of Registrar or inspector on basis of inspection or inquiry conducted.

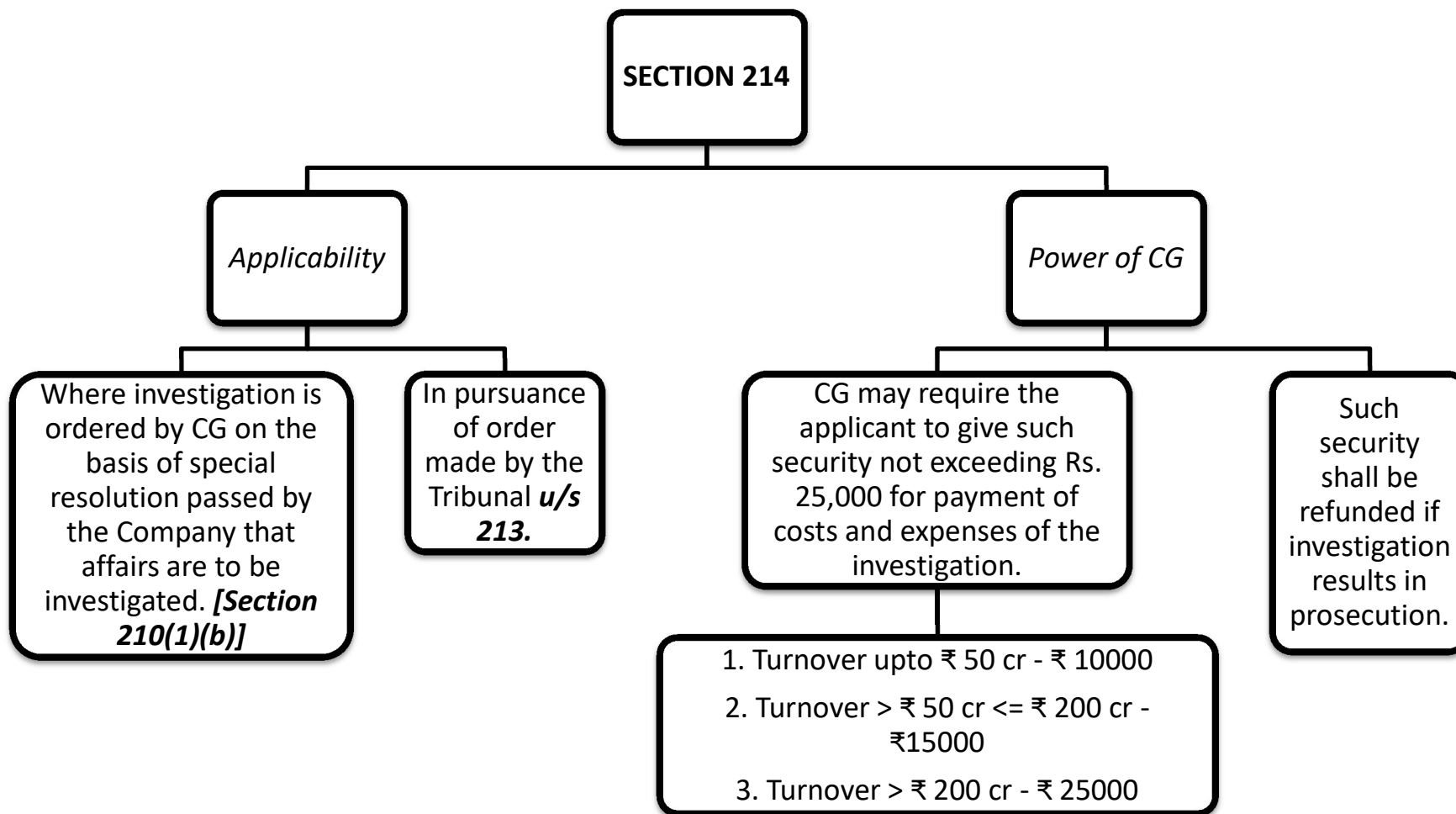
Special resolution passed by the company that affairs of the company are ought to be investigated.

If CG is satisfied that it is required in public interest.

1. Where an order is passed by the court or tribunal in any proceedings that affairs are ought to be investigated - CG **SHALL** order investigation

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 5: SECURITY FOR PAYMENT OF COSTS AND EXPENSES OF INVESTIGATION – SECTION 214 (CHART 6):



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 6: INVESTIGATION OF OWNERSHIP OF THE COMPANY – SECTION 216 (CHART 7):

Section 216

Discretion of CG to order investigation

C1: Appoint inspectors to investigate and report on matters relating to Company and membership

For determining the true persons who are financially interested in success and failure of the company

C2: Appoint inspectors to investigate and report on matters relating to Company and membership

For determining the true persons who are able to control or materially influence policy of the company

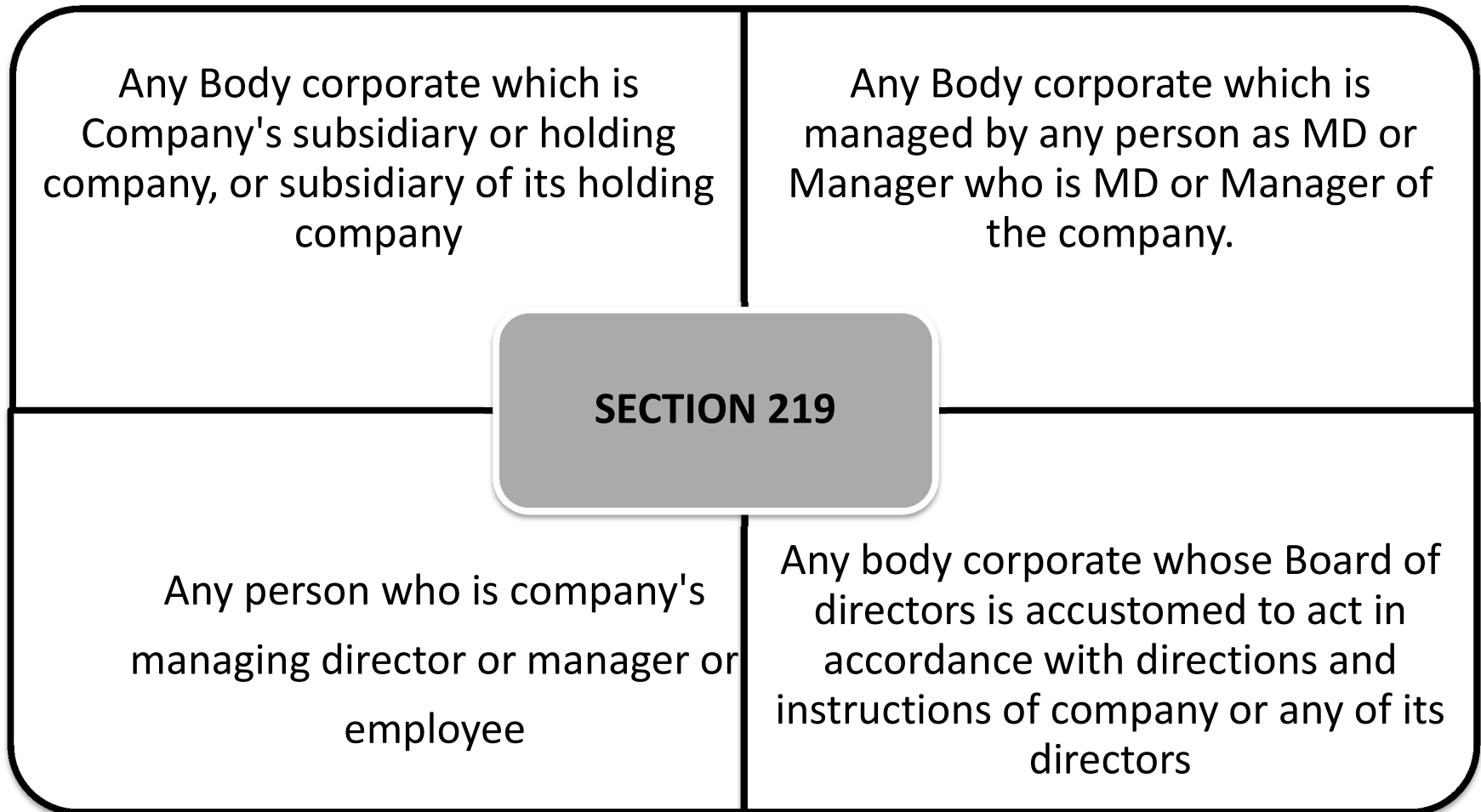
Scope and period of investigation

1. CG may determine scope of the investigation.
2. CG shall appoint one or more inspectors either suo motu or if Tribunal orders for an investigation into the membership of the Company.
2. It may also limit the scope of investigation to the extent of shares and debentures.

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 7: POWER OF INSPECTOR TO INVESTIGATE INTO AFFAIRS OF RELATED COMPANIES ETC - SECTION 219

(CHART 8)



TOPIC 8: SEIZURE OF DOCUMENTS BY THE INSPECTOR – SECTION 220 (CHART 9):

SECTION 220

Inspector during the course of investigation has a reasonable ground to believe that the books and papers of company are likely to be destroyed, mutilated, altered, falsified or secreted.

1. Enter such places where such books and papers are kept.

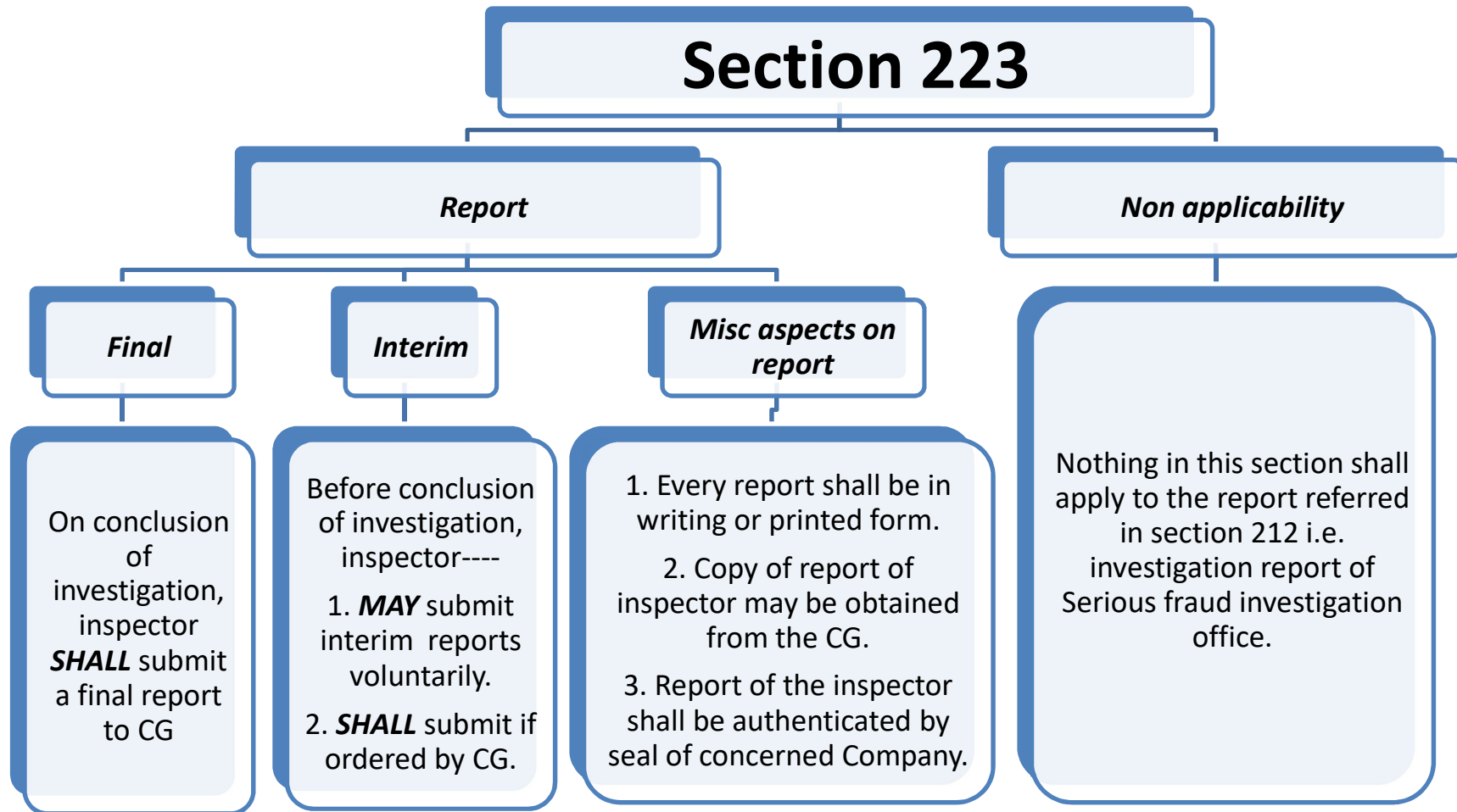
1. Seize such Books and papers (incl persons covered u/s 219).
2. Before seizure, he shall allow the company to take copies of Books and papers incl books related to KMP or any director or auditor or CS.

Retention and Return such books and papers seized

1. The inspector shall be entitled to keep in his custody books and papers for a period as he may considers necessary but not later than conclusion of investigation.
2. Before returning he may take copies or keep Id marks.

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 9: INSPECTORS REPORT – SECTION 223 (CHART 10):



TOPIC 10: ACTION TO BE TAKEN IN PURSUANCE OF INSPECTOR'S REPORT – SECTION 224 (CHART 11):

Section
224

Prosecution

If on basis of inspectors report CG is of opinion that any person is guilty of any *CRIMINAL* offence.

It is the duty of officers and employees of the company to give assistance in connection with prosecution.

**Recovery of
damages**

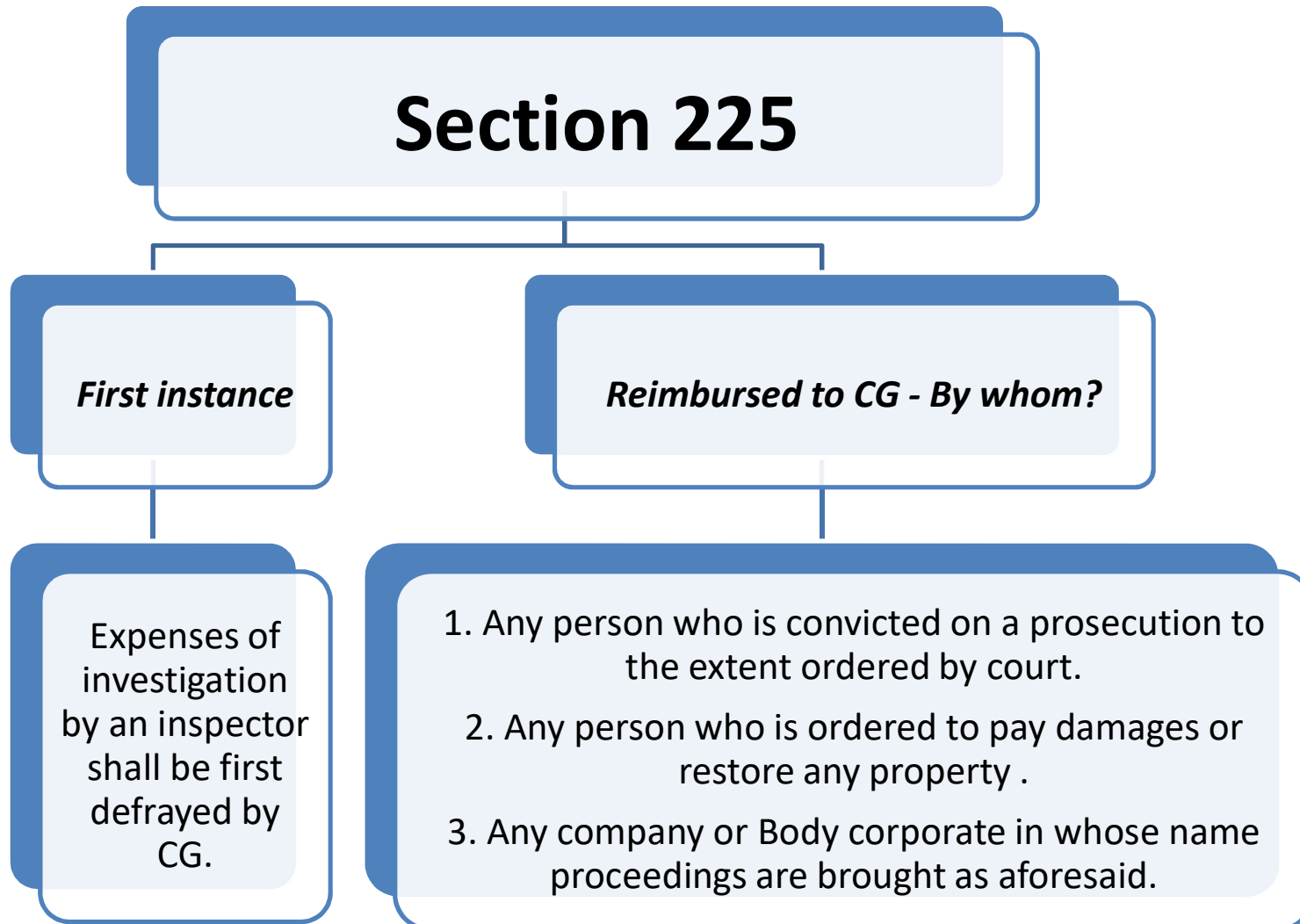
Recovery of damages in respect of fraud, misfeasance, or other mis conduct with promotion , formation or management of such company or body corporate.

Recovery of property of such company or body corporate which has been mis applied.

CG may order winding up in exceptional circumstances.

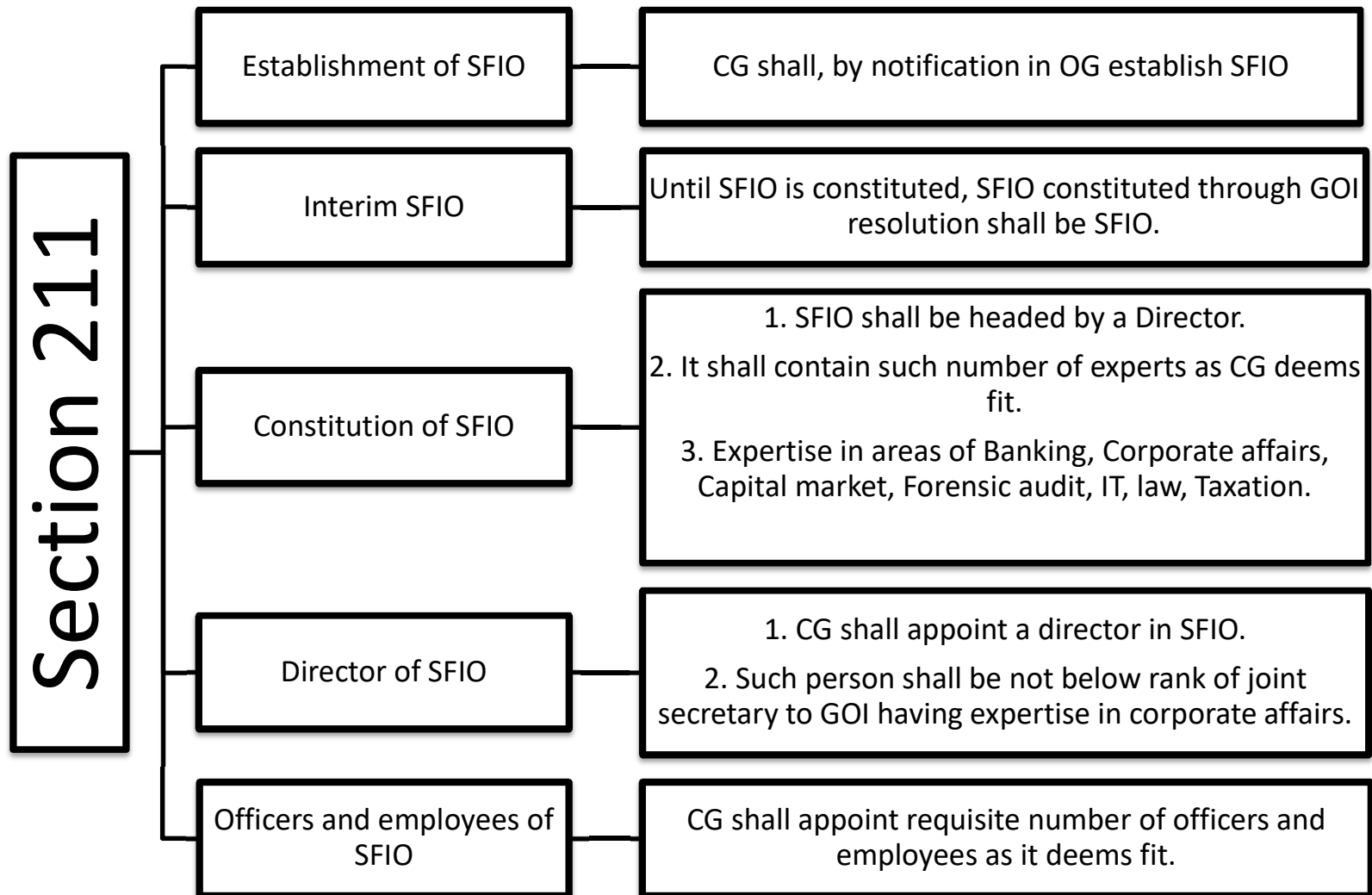
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 11: EXPENSES OF INVESTIGATION – SECTION 225 (CHART 12):



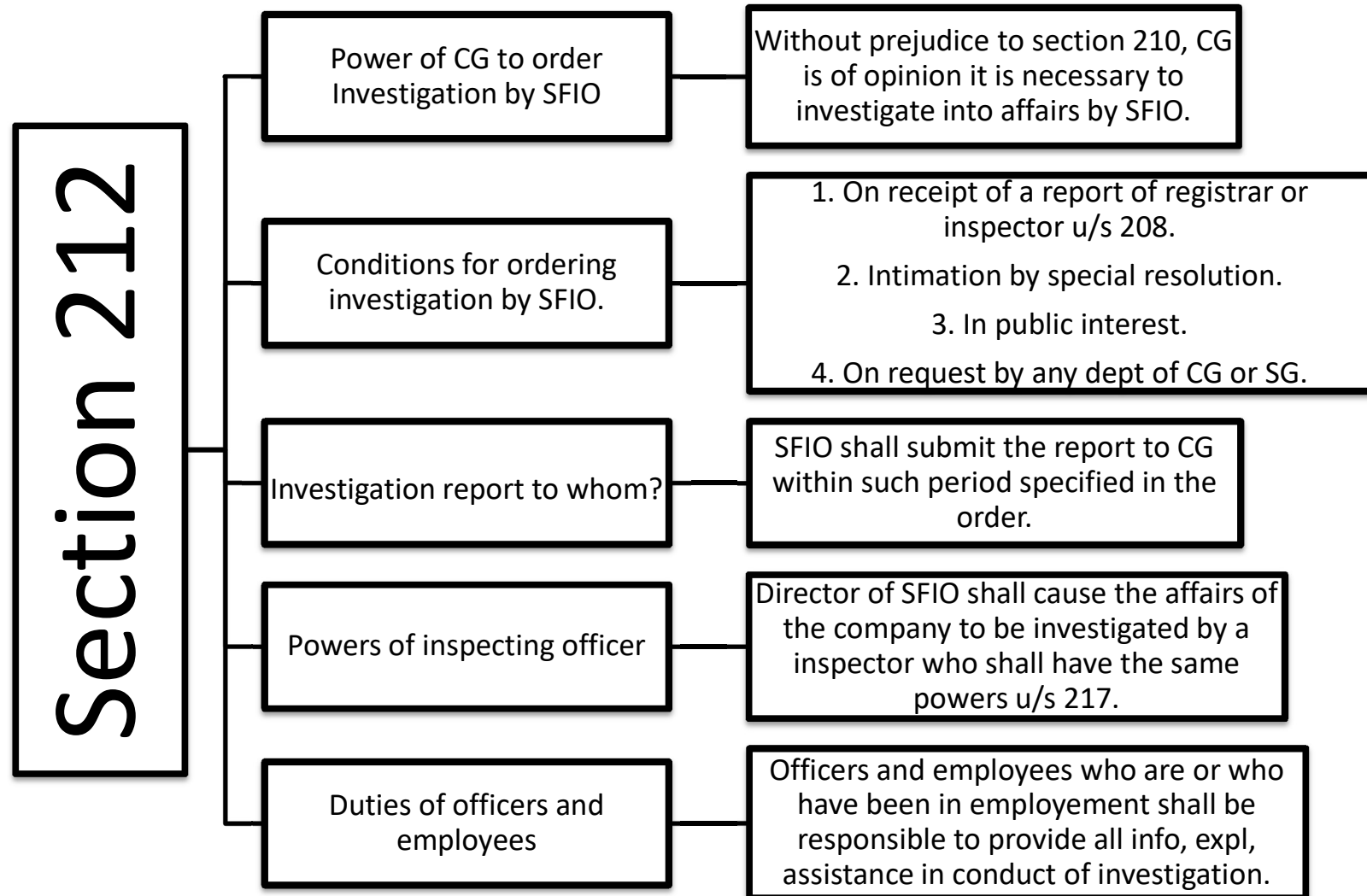
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 12: ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE – SECTION 211 (CHART 13):



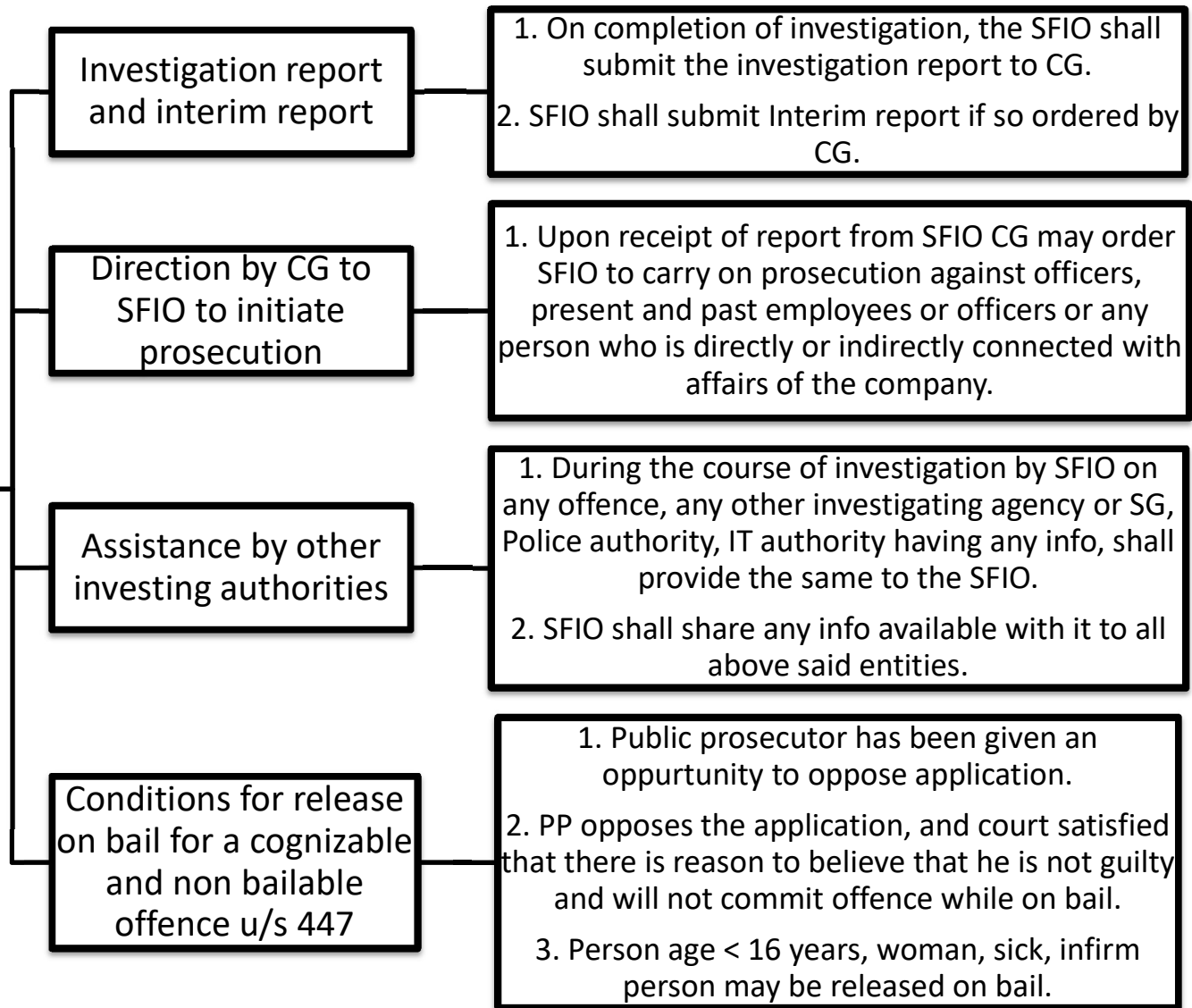
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 13: INVESTIGATION INTO AFFAIRS OF THE COMPANY BY SFIO – SECTION 212 (CHART 14):



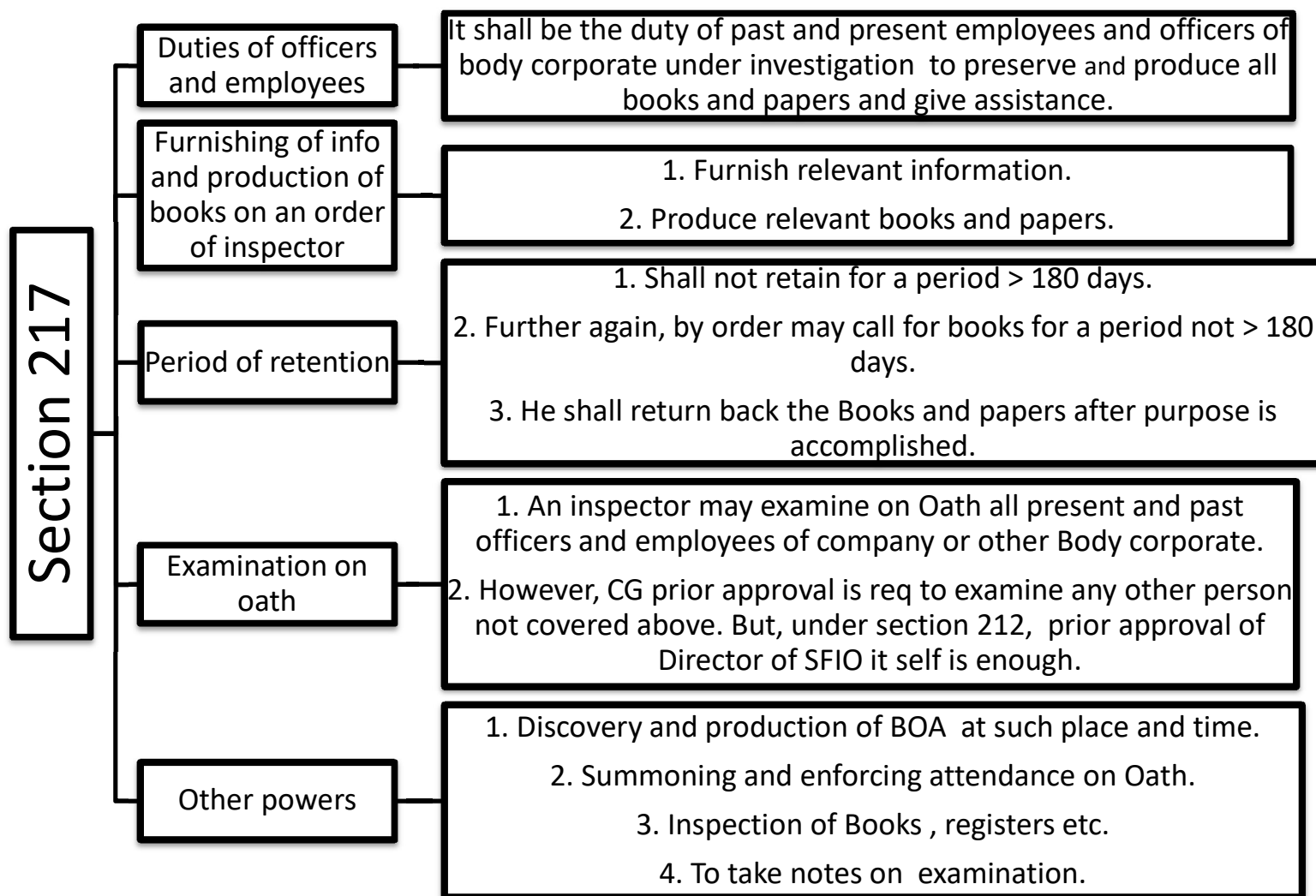
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

Section 212 contd...



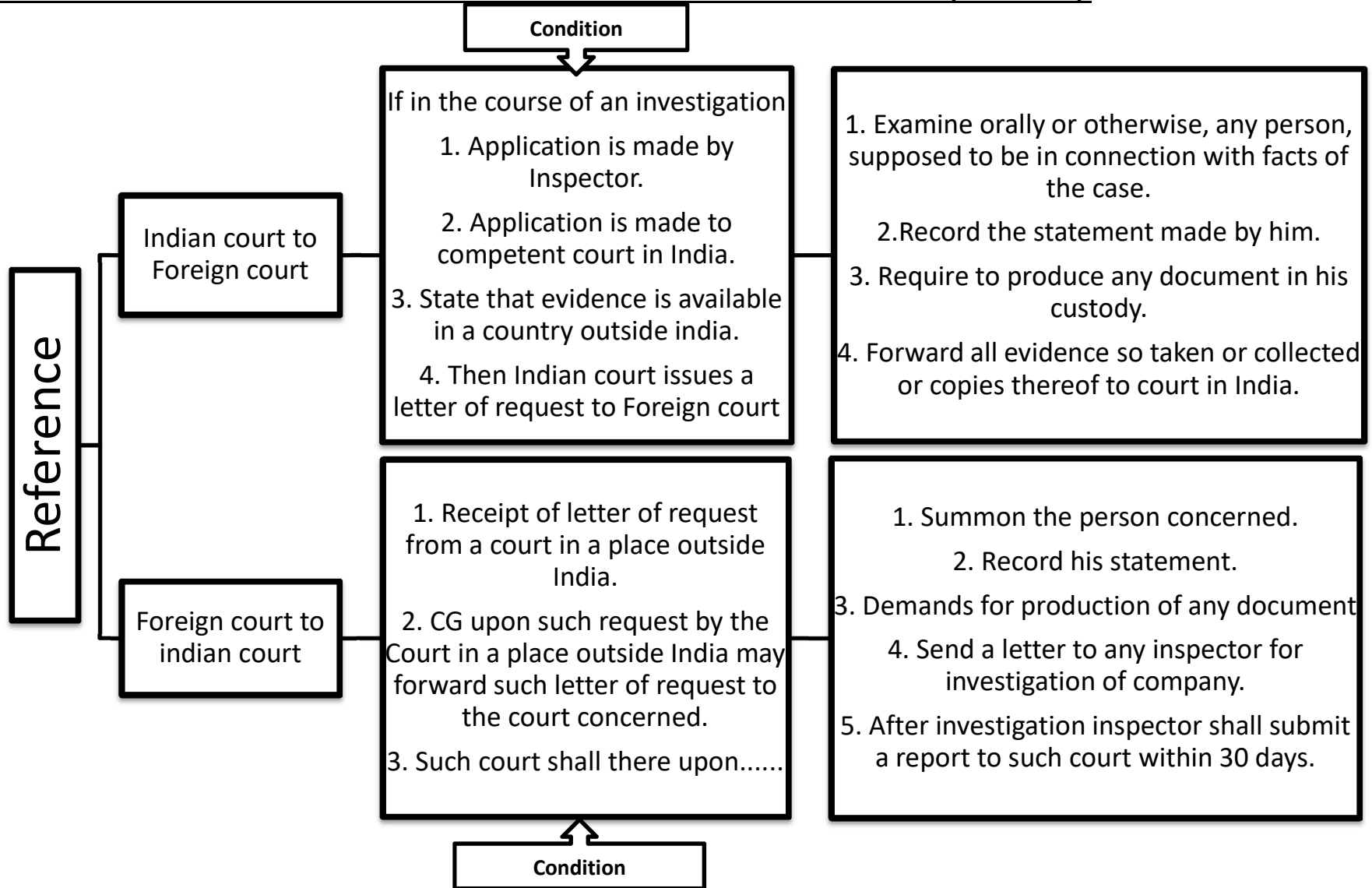
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 14: POWERS OF INSPECTOR – SECTION 217 (CHART 15):



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 15: REFERENCE BY INDIAN COURT TO FOREIGN COURT AND VICE VERSA (CHART 16):



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 16: INVESTIGATION INTO THE AFFAIRS OF THE COMPANY IN OTHER CASES [SECTION 213] – CHART 17:

<i>Option</i>	<i>Application by whom</i>		<i>Nature of complaint</i>	<i>Action taken</i>
1	Company having Share Capital	Company not having Share Capital	Supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company.	The Tribunal may order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct. Provided that if after investigation it is proved that— (i) the business of the company is being conducted with intent to defraud its creditors, members or any
	Not less than 100 members or members holding not less than 1/10 th of the total voting power	Not less than 1/5 th of the Total number of registered members		
2	Any other person or otherwise		<ul style="list-style-type: none"> ▶ The business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose. ▶ persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of 	Provided that if after investigation it is proved that— (i) the business of the company is being conducted with intent to defraud its creditors, members or any

COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

		<p>fraud, misfeasance or other misconduct towards the company or towards any of its members; or</p> <ul style="list-style-type: none">▶ the members of the company have not been given all the information with respect to its affairs including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company	<p>other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or</p> <p>(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.</p>
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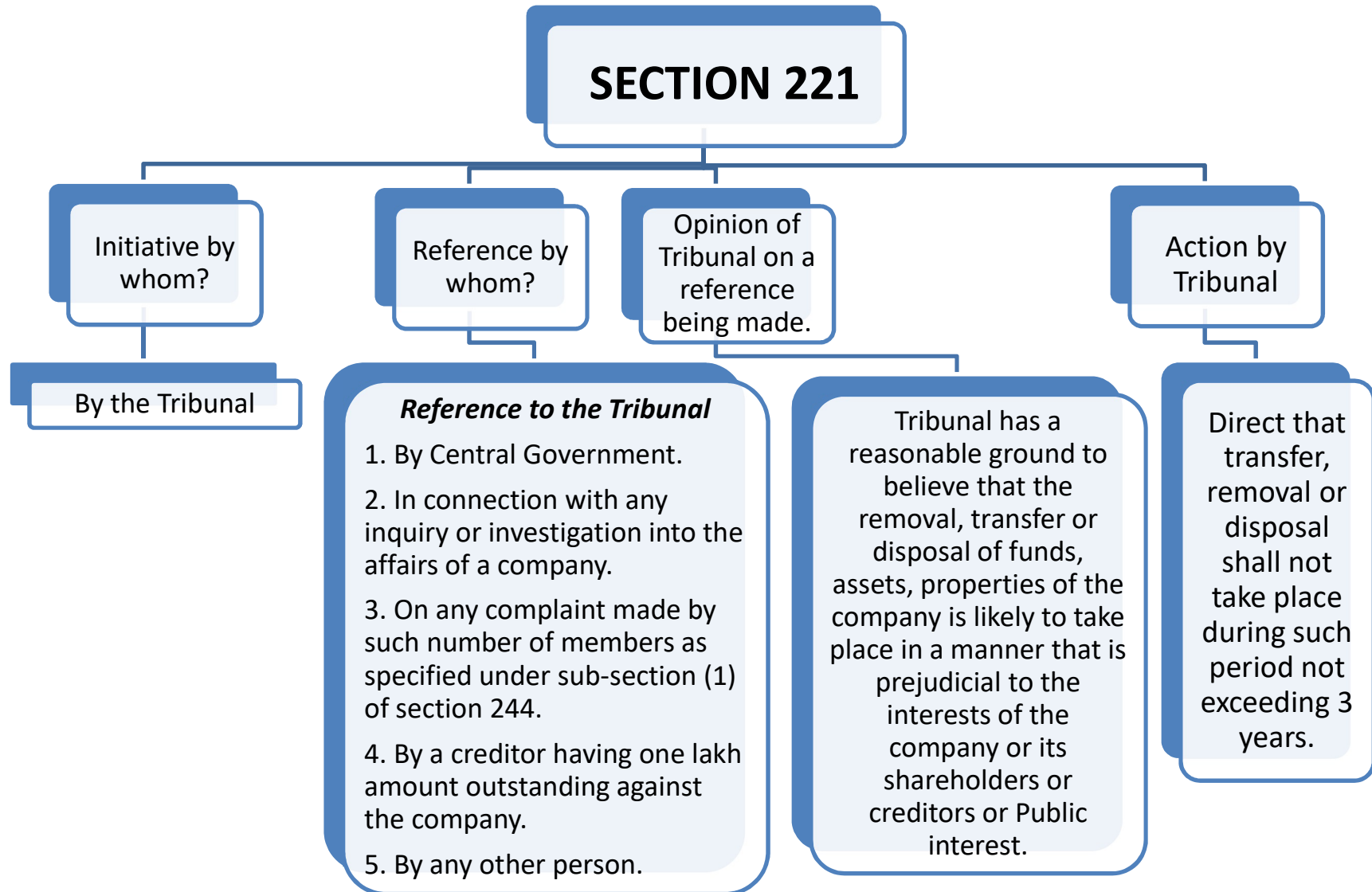
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 17: PROTECTION OF EMPLOYEES DURING INVESTIGATION [SECTION 218] – CHART 18:

<i>When Section gets attracted?</i>	Section gets attracted during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership under section 216.
<i>Proposed action by Company?</i>	<input checked="" type="checkbox"/> To discharge or suspend any employee; <input checked="" type="checkbox"/> To punish him, whether by dismissal, removal, reduction in rank or otherwise; or <input checked="" type="checkbox"/> To change the terms of employment to his disadvantage.
<i>Compliance by Company?</i>	The company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.
<i>Action by Company in case of no reply</i>	If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
<i>Company dissatisfied with objection raised by tribunal – Remedy available</i>	If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal.

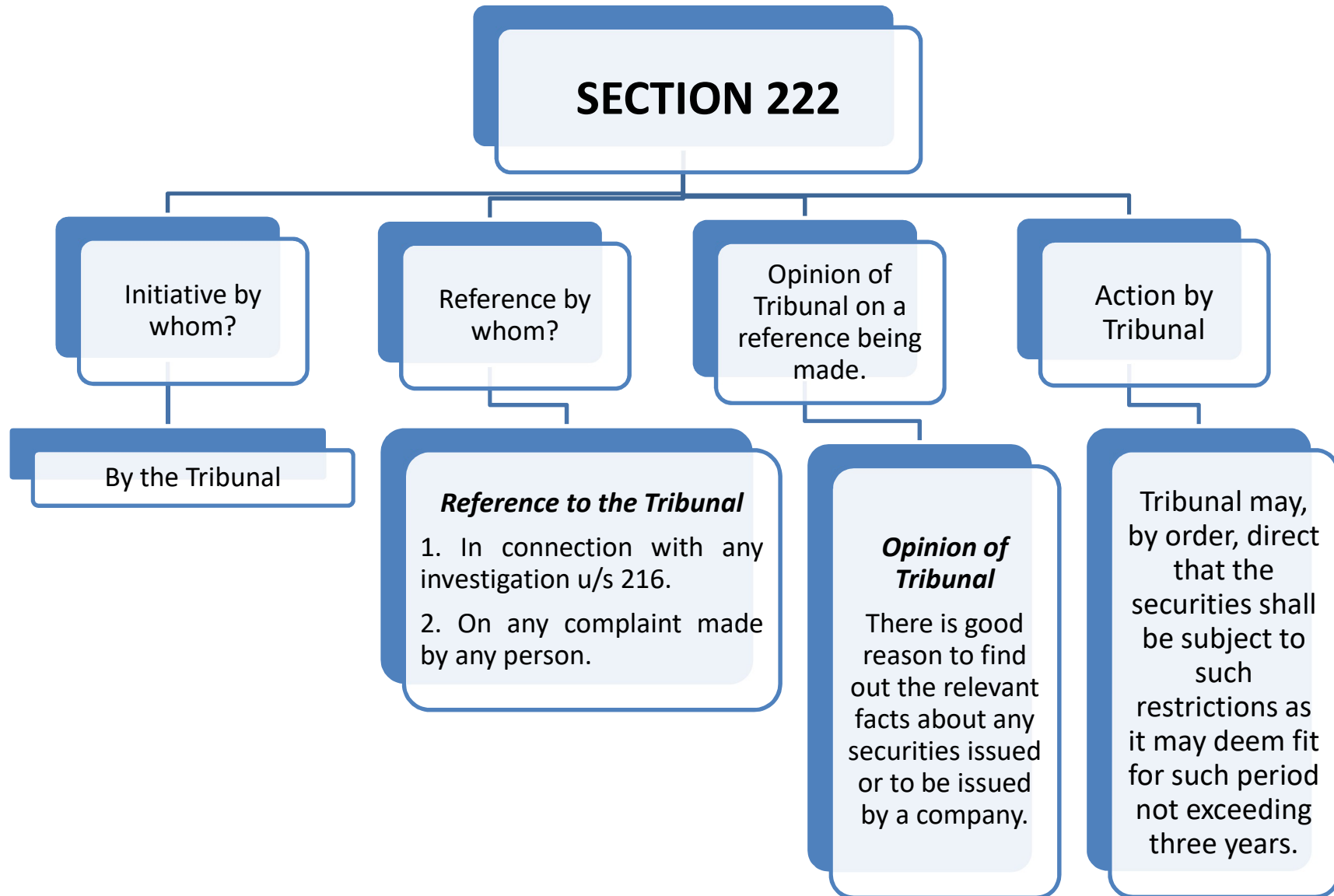
COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 18: FREEZING OF ASSETS OF COMPANY ON INQUIRY AND INVESTIGATION [SECTION 221] – CHART 19



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

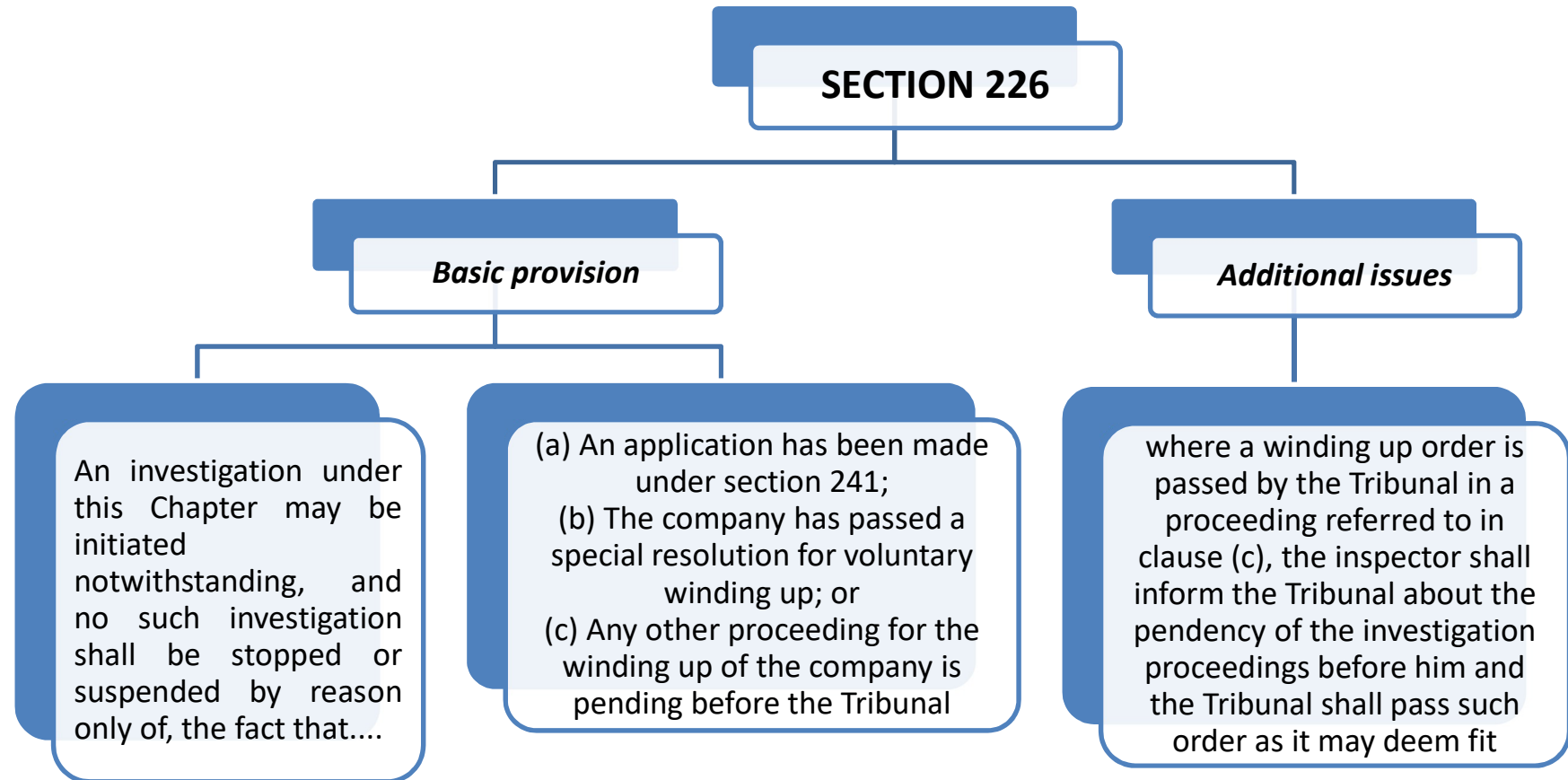
TOPIC 19: IMPOSITION OF RESTRICTIONS UPON SECURITIES [SECTION 222]:



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

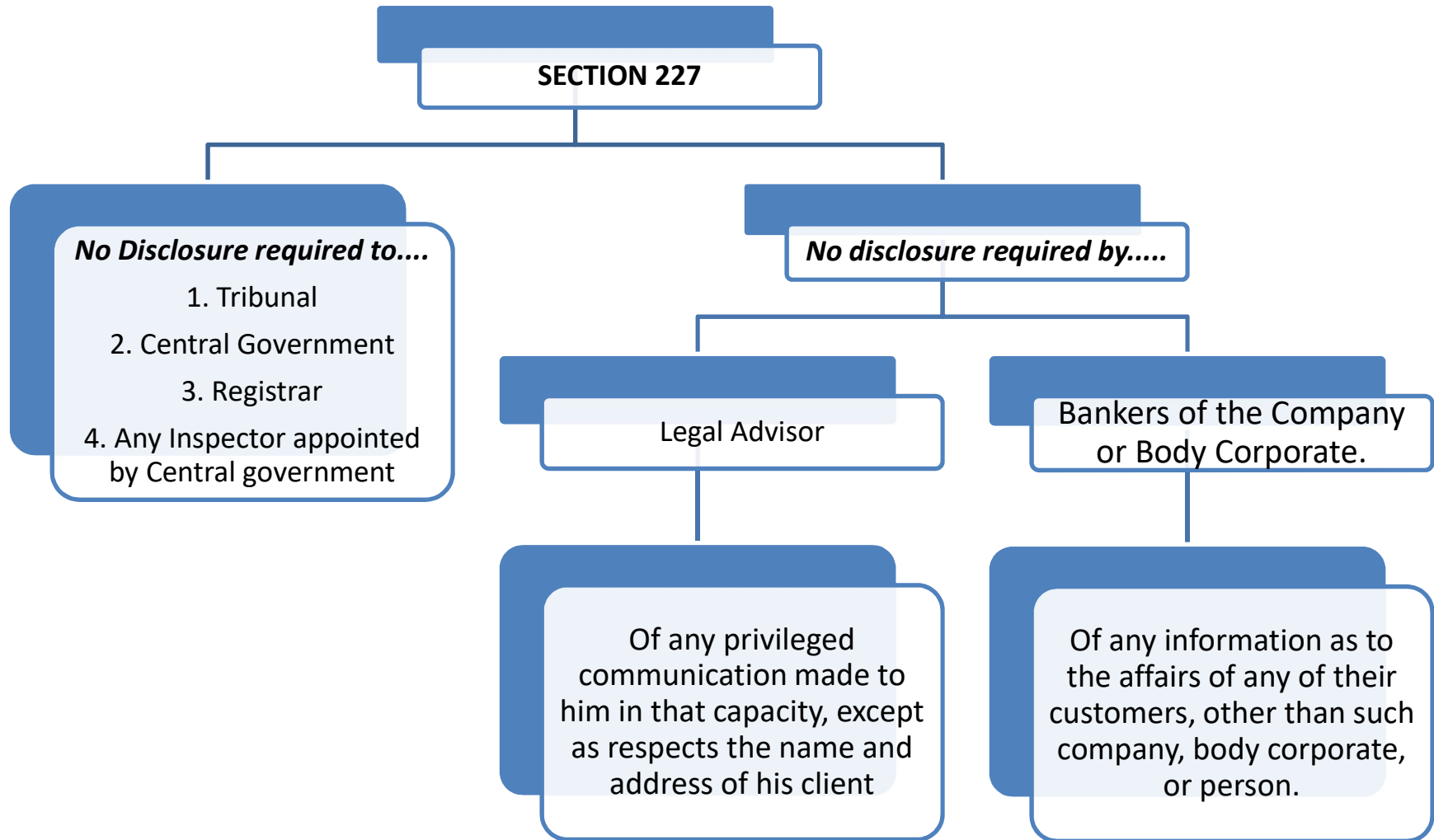
TOPIC 20: VOLUNTARY WINDING UP OF COMPANY, ETC., NOT TO STOP INVESTIGATION PROCEEDINGS

[SECTION 226]:



COMPANY LAW CHARTS – PROCEDURES AND OTHERS (PART – II)

TOPIC 21: LEGAL ADVISERS AND BANKERS NOT TO DISCLOSE CERTAIN INFORMATION [SECTION 227]:



LAW CHARTS – PROCEDURES AND OTHERS

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PREVENTION OF OPPRESSION AND MISMANAGEMENT

Need for chapter

Majority rule

|

Company

|

Ground Rule

|

Decisions of majority to prevail

|

Simple Majority

|

Foss V/s. Harbottle

|

Facts

|

Filed complaint

2 SH's

Court

|

Directors of the company

|

Involved in

|

Invalid & irregular transactions
dismissed by Court

(GROUNDS)

Proper plaintiff is
the company

Unproductive
litigation

Multiplicity of
suits avoided

LAW CHARTS – PROCEDURES AND OTHERS

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2. Definition of the term oppression

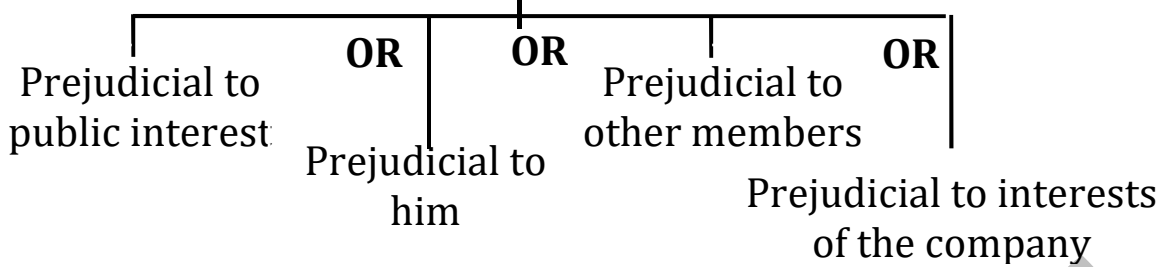
- The term oppression is not defined under the Companies Act
- It should be understood from facts & circumstances of each and every individual case.
- Generally the term oppression includes acts which are
 - ✓ Burdensome
 - ✓ Harsh and
 - ✓ Wrongful
- As per Shanti Prasad Jain U/s. Kalinga Tubes Ltd. case the term oppression includes
 - ✓ Lack of probity and
 - ✓ Lack of fair dealings
- As per Elder V/s. Elder and Watson Ltd. case the term oppression includes
 - ✓ Intend to defraud
 - ✓ Frauds
 - ✓ Misfeasance (or)
 - ✓ Other misconduct
- The conduct complained of
- Should be
- At the lowest involve
- A visible departure
- From standards of fair dealings and fair play
- On which every SH
- Who entrusts his money with the company
- Is entitled to rely

3. Conditions for claiming oppression/mismanagement: S-241

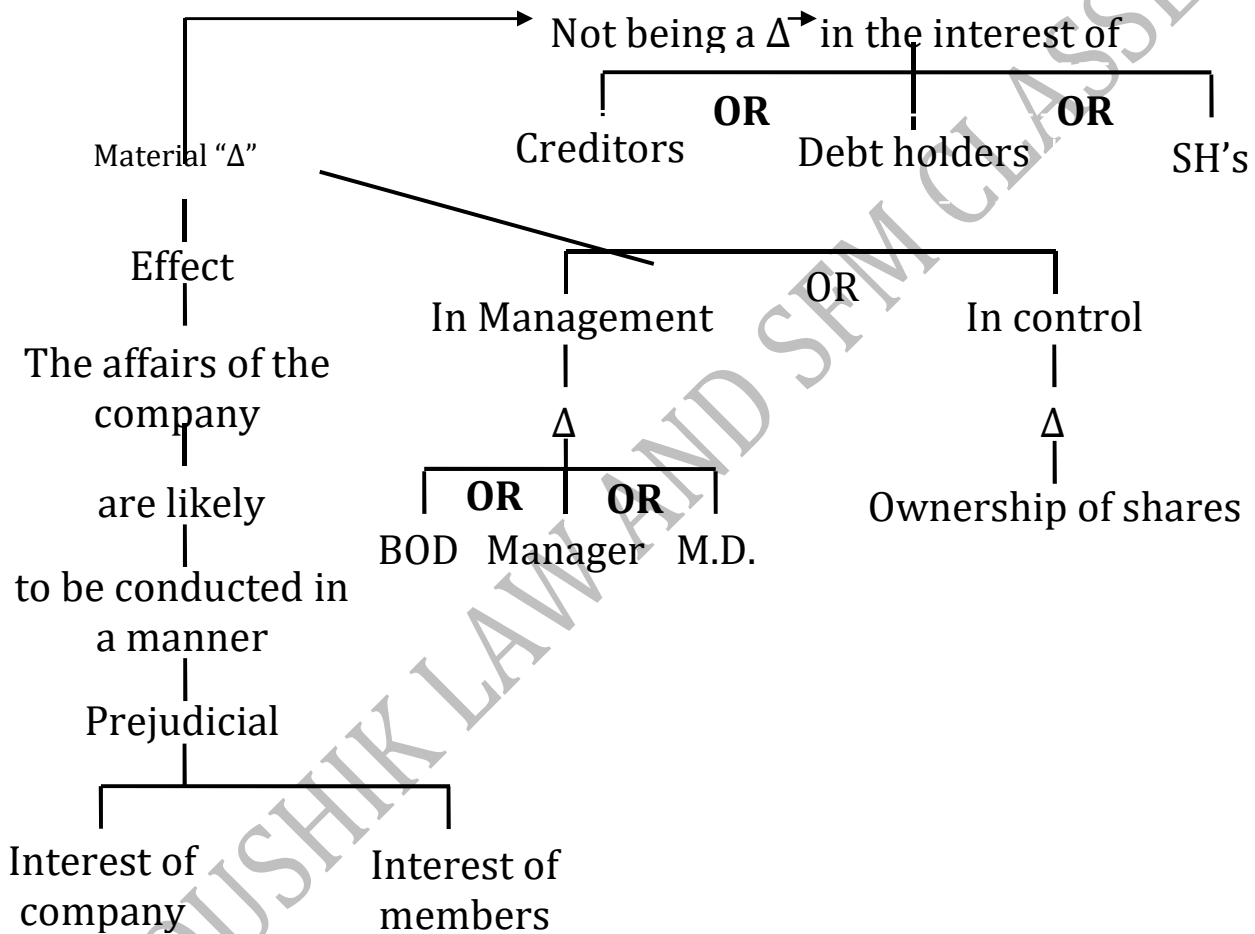
Condition-1: The affairs of the company have been (or) are being conducted in a manner

LAW CHARTS – PROCEDURES AND OTHERS

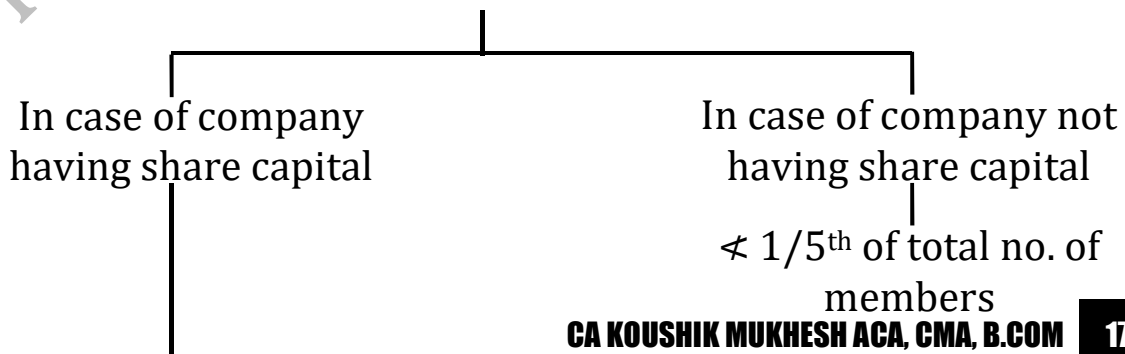
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Condition-2:



4. Right to apply S.244



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OR

- | | |
|--|--|
| • 100 members | Member's holding |
| (or) | ≠ |
| • 1/10 th of total no. of members | 1/10 th of the 'Issued Share Capital' |
| | |
| Not required any holding % | Here holding % |

Notes:

- Application can be made only by a member
- In the case of "Bellador Silks Ltd."

|
It was held that

|
Where majority directors override the minority directors

|
The latter cannot claim U/s.241 since no oppression is caused in capacity as a member

- In Rajahmundry Electric Supply Corporation Ltd.

V/s.

V. Nageshwar Rao

It was held that

|
Where some members whose consent for application later sold the shares and cease to become SA's of the Company

|
The application is still maintainable

LAW CHARTS – PROCEDURES AND OTHERS

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i.e. req. Quorum→checked→ at the time of application and not thereafter

- The applicant members

|

Must have paid all calls on shares held by him

5. Powers of Tribunal – S.242

|

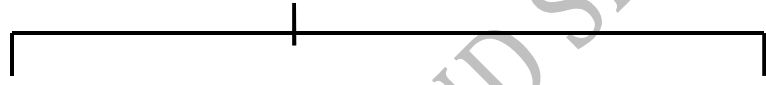
On any application

|

Made U/s.241

|

Tribunal is of an opinion that



Opinion I

“The affairs of the company have been (or) are being conducted _____ interests of company (same as S-241)

Opinion II

That to windup the company would unfairly prejudice such member / members

|

But the facts would justify passing a winding up order on just and equated grounds

LAW CHARTS – PROCEDURES AND OTHERS

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Action taken by Tribunal

Against Oppression

1. Regulate Company's affairs in future
- Resolutions passed shall be subjected to ratification by Tribunal.
2. Purchase the shares of members as the tribunal deem fit.
3. If purchase is made by company.

|

Consequent reduction of share capital

4. If purchase is made by other member

|

Restriction on further transfer

5. Prohibition on allotment of shares

Against mismanagement

6. Terminate / Set-aside / Modify

|

Agreements

|b/w

Company & Directors / MD / Manager

7. Terminate / Set-aside / Modify

|

Agreements

|b/w

Company & officers other than directors

8. Removal of director's / officers concerned

LAW CHARTS – PROCEDURES AND OTHERS

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9. Appointment of directors in the place of those removed

- This appointed director cannot be removed u/s.169

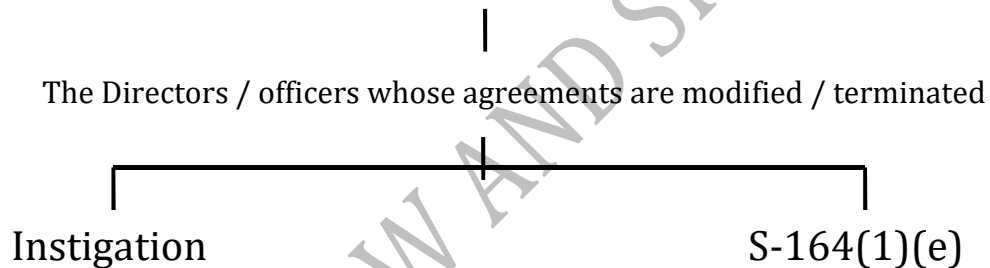
10. Recovery of costs / penalties etc.

11. Such other consequential powers

Special powers of Tribunal

1. Tribunal has power to alter the MOA / AOA
2. The alteration made shall have effect as if it has been made by company in a General Manager.
3. Company doesn't have power to rector the altered articles without leave of tribunal.

S-243 Effect of termination / Modification of agreements



- Case laws on mismanagement
 - ✓ R.S. Mathur V/s. H.S. Mathur

Company

Director

Abuse of management powers

Removed u/s.274/169

after

Mr. A →

6 m's

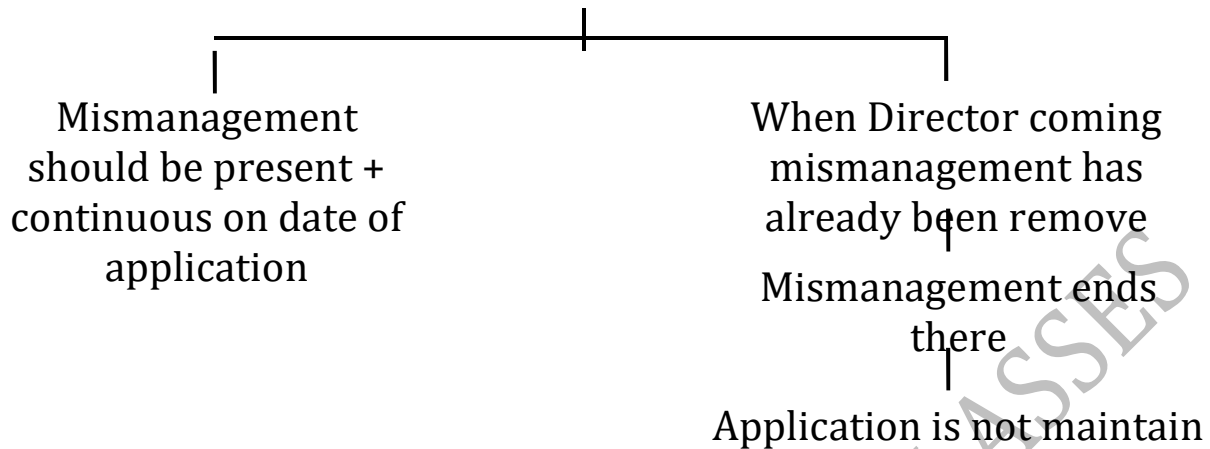
Applied to tribunal

Member (20% capital)

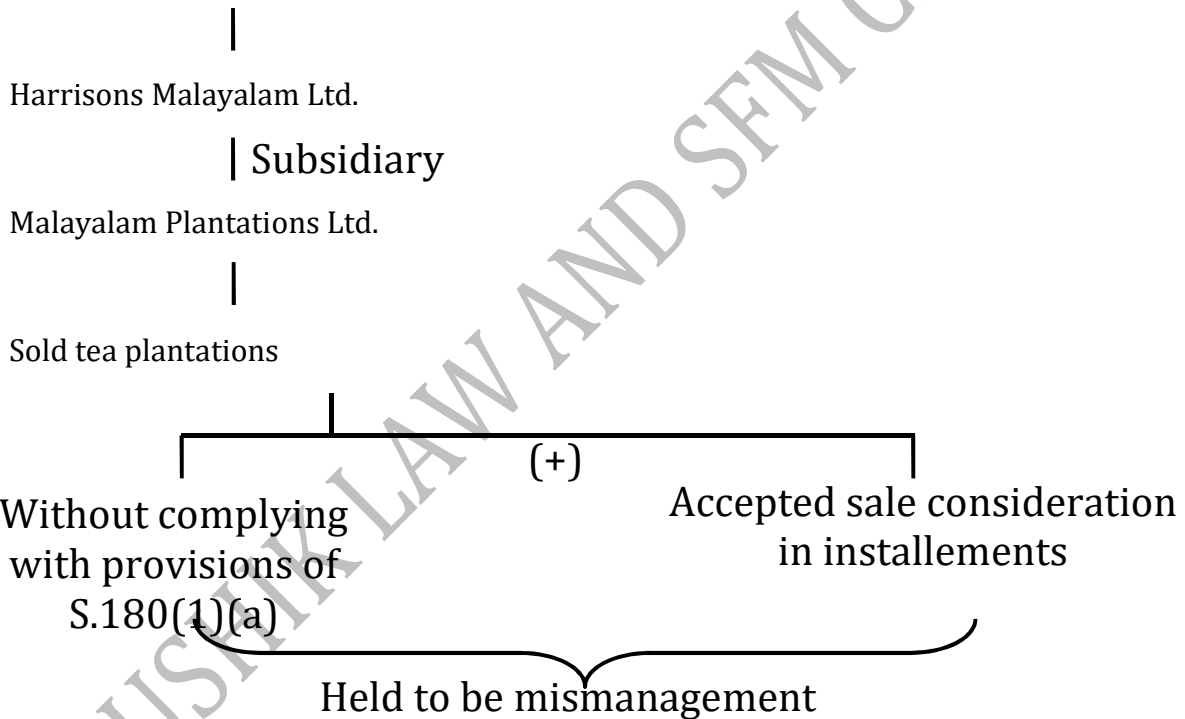
Dismissed the application

LAW CHARTS – PROCEDURES AND OTHERS

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JUDGEMENT



2. Malayalam Plantations Ltd:



LAW CHARTS – PROCEDURES AND OTHERS

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3. Suresh Kumar Langi V/s. Supreme Motors Ltd.

|

Serious disputes among directors

|

Causing prejudice to company

|

Held to be mismanagement

4. Sheth Mohanlal Ganapatram V/s. Shri Sayaji Jubilee Cotton & Jute Mills Company Ltd.

|

SH's raised allegation

|

Certain directors involved in

|

Invalid & irregular transactions

|

Judgement

|

Mere allegation is not maintainable

|

SH's shall prove that it is prejudicial to installment of Members / Company

5. Thomas Vettom V/s. Kuttanad Rubber Company Ltd.

|

Company earned adequate profits

|

LAW CHARTS – PROCEDURES AND OTHERS

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But didn't declare described

|

SH's applied to tribunal claiming mismanagement

|

Judgement

|

Bonafide decision of not recommending dividend cannot be termed as mismanagement

6. Ranjan Dutta V/s. Bholanath Paper House Ltd.

|

It was held that continuation of directors

|

Even after expiry of their term

|

Shall be held to be mismanagement

- Can majority claim relief against oppression

|

S-244 requires members to make an application

|

For claiming relief

OR

Majority Minority

Case laws reference:

1. V. Sabastean V/s. City Hospital Pvt. Ltd.
2. Sindri Iron Foundry (P) Ltd.

|

- Since two registered offices are set-up
- Two separate meetings are held

LAW CHARTS – PROCEDURES AND OTHERS

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- Minority taken possession of books of accounts
- Selling properties to unauthorized SH's persons

Court shall pass an order to put end to the matters complained off.

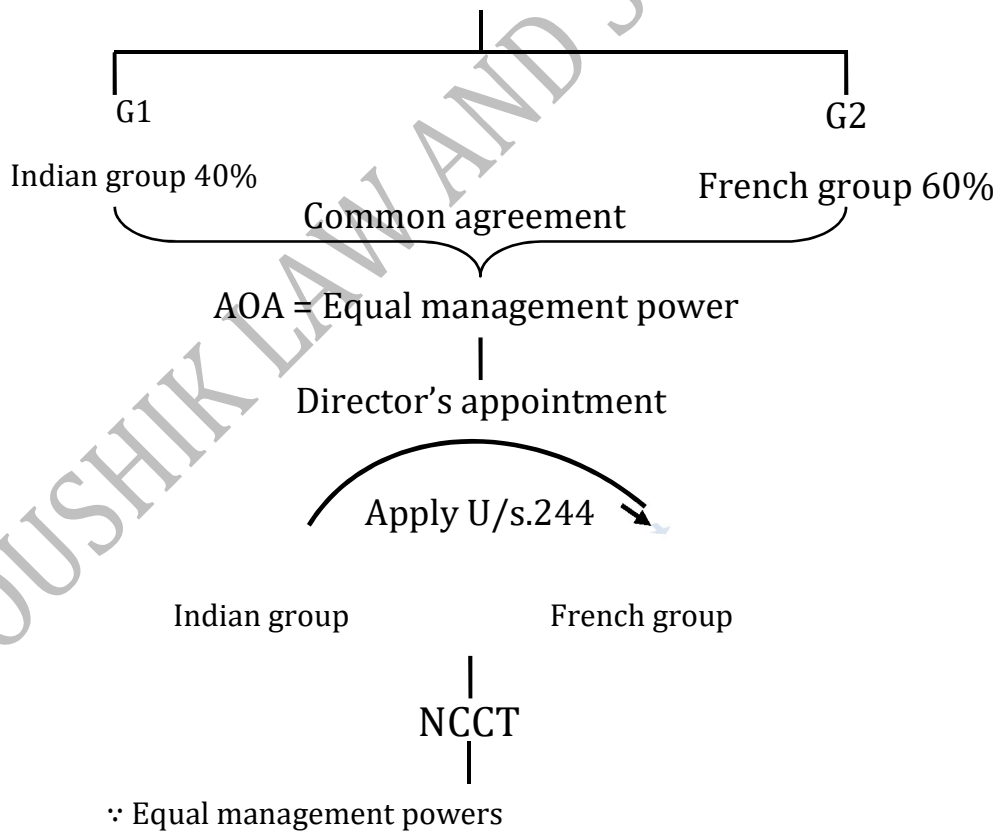
- Appointment of directors by proportional representation

Author Note: What is PR in the contest of (CA.2013)

PR is a method of appointment of directors in company in proportion to the shares held by the

Advantages of PR:

Case: Gnanasambandam V/s. Tamilnadu Transport Pvt. Ltd.

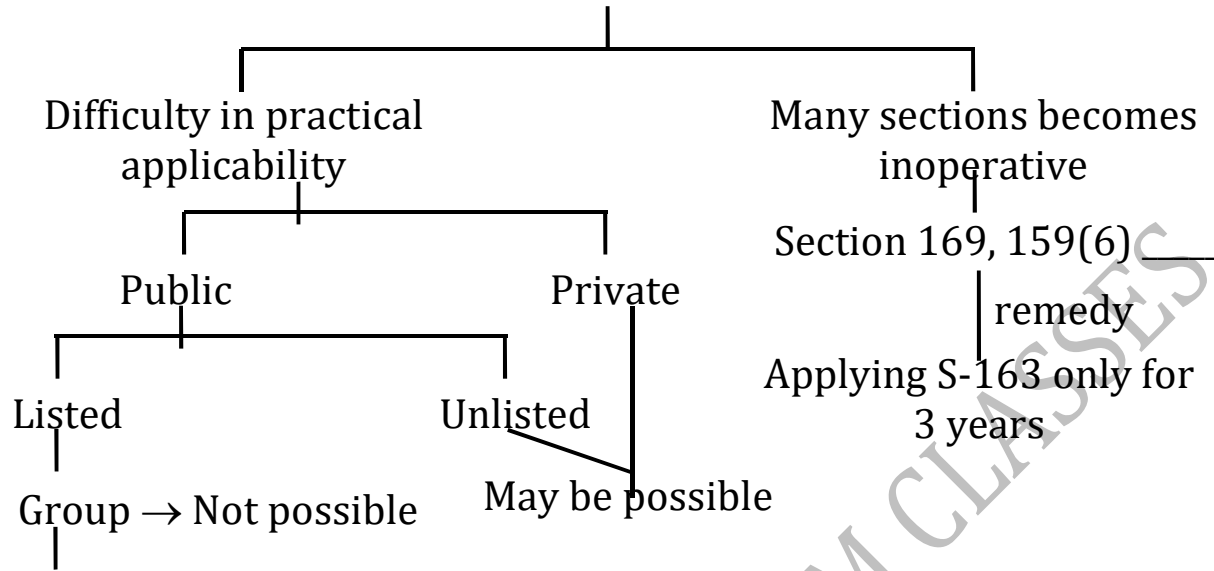


- Oppression
- Majority overriding minority
- Dead lock

LAW CHARTS – PROCEDURES AND OTHERS

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Disadvantages of proportional representation



Remedy for this will be

“S-151” small shareholder’s directors

- Section shall apply to all companies “Public (or) Private”
- Power to appoint directors by ‘PR’ shall be derived from AOA
- When company adopted ‘PR’

≤ 2/3rd of total no. of directors

Shall enter through ‘PR’

- Periodicity of appointment

Once in every 3 years

- Filling of casual vacancy if any

S.161(4) shall apply

- Overriding effect

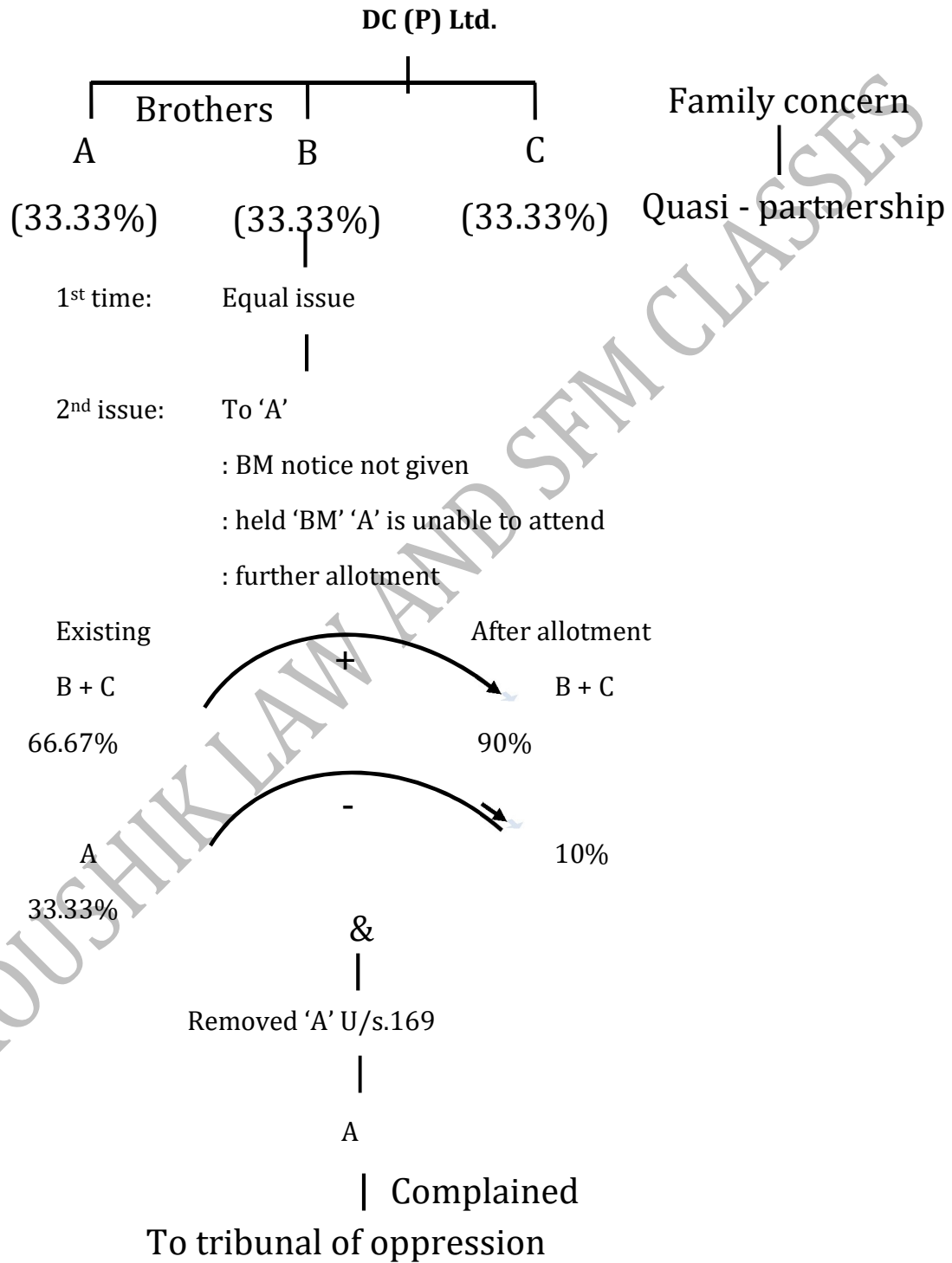
LAW CHARTS – PROCEDURES AND OTHERS

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This section has overriding effect over all inconsistent and conflicting provisions

Case Law:

Dale and Carrington Investment (P) Ltd. V/s. P.K. Parthapan (Hon'ble S.C. for India)



LAW CHARTS – PROCEDURES AND OTHERS

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PROVISIONS AT A GLANCE

Sl. No.	Section	Content
1	2(42) read with rule 2(1)(c)	Definition of Foreign Company
2	379	Application of Act to foreign companies
3	380	Documents, etc., to be delivered to Registrar by foreign companies
4	381	Accounts of foreign company
5	382	Display of name, etc., of foreign company
6	383	Service on foreign company
7	384	Debentures, Annual return, Books of accounts etc.
8	385	Fee for registration of documents
9	386	Interpretation
10	387	Dating of prospectus and particulars to be contained therein
11	388	Provisions as to expert's consent and allotment
12	389	Registration of prospectus
13	390	Offer of Indian Depository Receipts
14	391	Application of sections 34 to 36 and Chapter XX
15	392	Punishment for contravention
16	393	Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

LAW CHARTS – PROCEDURES AND OTHERS

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1. DEFINITION OF FOREIGN COMPANY [SECTION 2(42) READ WITH RULE 2(1)(C) OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

Particulars	Details	
Test – 1	Company or Body Corporate should be incorporated outside India.	
Test – 2	It has a place of business in India.	
	Test – 2A	May be by itself or through agents.
	Test – 2B	May be physically or in electronic mode.

Meaning of the term 'Electronic mode'

Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014 provides that for the purposes of section 2(42) of the Act, 'electronic mode' means carrying out business electronically based, whether main server is installed in India or not, including, but not limited to:—

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

2. APPLICATION OF ACT TO FOREIGN COMPANIES [SECTION 379] [AMENDED BY THE COMPANIES (AMENDMENT) ACT, 2017]

(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.

(2) Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in

LAW CHARTS – PROCEDURES AND OTHERS

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India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Particulars	Details	
Types of Companies under this Chapter	There are 3 types of Companies under this Chapter -----	
	Type – 1	Company incorporated outside India
	Type – 2	Company incorporated outside India + having place of business in India in any form and not falling into requisite criteria specified under section 379(2).
	Type – 3	Company incorporated outside India + having place of business in India in any form and falling into requisite criteria specified under section 379(2).
Applicability of Section	Type – 1	Section 387 – Section 391, for every prospectus issued or for every issue of Indian depository receipts.
	Type – 2	[Section 380 – Section 386 and Section 392, Section 393] and [Section 387 – Section 391, for every prospectus issued or for every issue of Indian depository receipts.]
	Type – 3	[Section 380 – Section 393] + Such other provisions of this Act.
Analysis on Type – 3 Company	Basic Status required	There must be a Foreign Company
	Basic Holding required	Not less than 50% of its paid up share capital is held by specified parties.
	Paid up share Capital means what?	<ul style="list-style-type: none"> ❖ Equity (or) ❖ Preference (or) ❖ Partly Equity and Partly Preference.
	Who are the specified parties?	<ul style="list-style-type: none"> ❖ One or more citizens of India (or) ❖ One or more companies or Bodies Corporate incorporated in India. ❖ One or more citizens of India AND One or more companies or Bodies Corporate incorporated in India.
	What if, all conditions are satisfied	Such a company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

3. SERVICE ON A FOREIGN COMPANY [SECTION 383]

LAW CHARTS – PROCEDURES AND OTHERS

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Particulars	Details
Essence of the section	Mode of service of any document on a foreign company since there is no registered office in India.
Deemed registered office	Address of any person whose name and address have been delivered to the Registrar under section 380.
What can be served?	Any process, notice, or other document required to be served on a foreign company.
Mode of service	<ul style="list-style-type: none"> ❖ Post or ❖ Electronic means.

4. DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION [SECTION 384 READ WITH RULE 7 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

Sl.no.	Section applicable	Content covered by the Section	Other Details
1	Section 71	Issue of debentures	Mutatis Mutandis apply
2	Section 92	Annual return	<ul style="list-style-type: none"> ◆ Every Foreign Company ◆ Shall prepare and file ◆ Within 60 days from the last day of its financial year ◆ To the registrar ◆ An Annual return ◆ In Form FC – 4.
3	Section 135	Corporate Social responsibility	Mutatis Mutandis apply
4	Section 128	Books of accounts	<p>Keep at its Principal place of business in India the Books of accounts with respect to Indian business operation-----</p> <ul style="list-style-type: none"> ◆ Sums received and expended. ◆ Purchases and Sales. ◆ Assets and Liabilities.
5	Chapter VI	Registration of Charges	Mutatis Mutandis apply to charges on properties which are created or acquired by any foreign company.

LAW CHARTS – PROCEDURES AND OTHERS

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6	Chapter XIV	Inspection, Inquiry and Investigation	Mutatis Mutandis apply for its Indian business.
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5. INTERPRETATION [SECTION 386 READ WITH RULE 10 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

Expression	Meaning	Other Details
Certified [Rule 10]	<ul style="list-style-type: none"> ◆ Certified to a true copy (or) ◆ Certified to be a correct translation. 	<ul style="list-style-type: none"> ◆ All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules. ◆ Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of- <ul style="list-style-type: none"> ♣ The official having custody of the original; or ♣ A notary (Public) of the country (or part of the country) where the company is incorporated. ◆ Where such translation is made within India, it shall be authenticated by----- <ul style="list-style-type: none"> ♣ An advocate, attorney or pleader entitled to appear before any High Court; or An affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.
Director	Includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act.	
Place of business	Includes a share transfer or registration office.	

6. FEE FOR REGISTRATION OF DOCUMENTS [SECTION 385 READ WITH RULE 8 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

LAW CHARTS – PROCEDURES AND OTHERS

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Particulars	Details
Payment to whom?	Payment to registrar.
Payment for what?	For registering any document required by the provisions of this Chapter.
Specifications in Rule 8	<ul style="list-style-type: none"> ◆ Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated outside India and these rules shall be construed accordingly. ◆ The fee to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014. ◆ If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

7. DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES [SECTION 380 READ WITH RULE 3 AND RULE 6 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

Particulars	Details
When section apply?	When a foreign company want a registered place of business in India.
What are required to be filed? [Rule 3]	<ul style="list-style-type: none"> ◆ A certified copy of ----- <ul style="list-style-type: none"> ♣ Charter ♣ Statutes ♣ Memorandum ♣ Articles and ♣ Any other instrument defining constitution of the company. <ul style="list-style-type: none"> ♣ If the instrument is not in the English language, a certified translation thereof in the English language. ◆ Full address of registered office outside India. ◆ Full address of principal place of business in India. ◆ Particulars of opening and closing of a place of business in India on earlier occasion or occasions. ◆ The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company u/s 383.

LAW CHARTS – PROCEDURES AND OTHERS

Reach @ 9866728874: Fb page: Koushik law and SFM updates

	<p>Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode [Section 383]</p> <ul style="list-style-type: none"> ◆ Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad. ◆ Following particulars with respect to directors and secretary. <ul style="list-style-type: none"> ♣ Personal name and Surname. ♣ Name of father, mother and spouse. ♣ Date of Birth. ♣ Residential address. ♣ Nationality. ♣ PAN number. ♣ Pass port number and ♣ e – mail id. 	
<p>Existing Foreign company not subjected to compliance under this section.</p>	<ul style="list-style-type: none"> ◆ Foreign Company is existed before commencement of this act. ◆ However, it has not delivered to the Registrar the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956. ◆ In such a case, after the commencement of this act, it need not comply with provisions of this section but is required to comply with provisions of section 592. 	
<p>Time limit for submission</p>	<p>Original</p>	<p>Within 30 days of the establishment of its place of business in India.</p>
	<p>Modification</p>	<p>Within 30 days of such alteration.</p>
<p>List of Place of businesses [Rule 6]</p>	<p>Every foreign company shall file with the Registrar, along with the financial statement, in Form FC – 3, a list of all the places of business established by the foreign company in India as on the date of balance sheet.</p>	

8. ACCOUNTS OF FOREIGN COMPANY [SECTION 381 READ WITH RULE 4 AND RULE 5 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

Particulars	Details
<p>What section deals with?</p>	<p>Accounts of a Foreign Company.</p>
<p>Periodicity</p>	<p>Every Calendar year.</p>
<p>Requirement under the section</p>	<p>Make out a balance sheet and profit and loss account.</p>

LAW CHARTS – PROCEDURES AND OTHERS

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<p>Manner of preparation of P&L and Balance sheet. [Rule 4]</p>	<ul style="list-style-type: none"> ◆ Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including----- <ul style="list-style-type: none"> ♣ Documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies. ♣ Documents relating to copies of latest consolidated financial statements of the parent foreign company , as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country. <ul style="list-style-type: none"> ♣ Where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.
<p>Special statements to be filed. [Rule 4]</p>	<ul style="list-style-type: none"> ◆ Statement of Related party transactions. ◆ Statement of repatriation of profits. ◆ Statement of Transfer of Funds.
<p>Time limit for filing</p>	<ul style="list-style-type: none"> ◆ The documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate.
<p>Extension in time limits</p>	<ul style="list-style-type: none"> ◆ The Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.
<p>Audit of accounts of a Foreign Company [Rule 5]</p>	<ul style="list-style-type: none"> ◆ Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of sub-section (1) of section 381 and Rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

9. DISPLAY OF NAME ETC, OF FOREIGN COMPANY [SECTION 382]

Particulars	Details
<p>What to display?</p>	<ul style="list-style-type: none"> ◆ The name of Company. ◆ Country of its incorporation. ◆ If the liability of the members is limited, that fact.
<p>Where to display?</p>	<ul style="list-style-type: none"> ◆ Outside of every office or place where it carries on business in India. ◆ In all business letters, billheads and letter paper, and in all notices, and other official publications of the company. ◆ To be stated in every prospectus.
<p>Nature of display</p>	<ul style="list-style-type: none"> ◆ To be conspicuously exhibited in-----

LAW CHARTS – PROCEDURES AND OTHERS

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- ♣ In legible English characters and
- ♣ Also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

10. PUNISHMENT FOR CONTRAVENTION [SECTION 392]

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees, or with both.

11. COMPANY'S FAILURE TO COMPLY WITH PROVISIONS OF THIS CHAPTER NOT TO AFFECT VALIDITY OF CONTRACTS, ETC. [SECTION 393]

Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Particulars	Details	
When section gets attracted?	If any foreign company fails to comply with the provisions of this Chapter.	
What is the consequence of non – compliance?	Basic punishment	As provided in section 392
	Additional consequence	As provided in section 393
Additional consequence	Not affected	Affected
	<ul style="list-style-type: none"> ◆ Validity of any contract, dealing or transaction entered into by the company. ◆ Its liability to be sued in respect thereof 	<ul style="list-style-type: none"> ◆ Bring any suit, ◆ Claim any set-off, ◆ Make any counter-claim or ◆ Institute any legal proceeding.

LAW CHARTS – PROCEDURES AND OTHERS

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Till when, the additional consequence continue?	Until the company has complied with the provisions of this Act applicable to it.
--	--

12. DATING OF PROSPECTUS [SECTION 387]

Particulars	Details
Basic provision	No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and contains particulars with respect to the following matters, namely----
Particulars to be contained	<ul style="list-style-type: none"> (i) The instrument constituting or defining the constitution of the company; (ii) The enactments or provisions by or under which the incorporation of the company was effected; (iii) Address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected; (iv) The date on which and the country in which the company would be or was incorporated; and (v) Whether the company has established a place of business in India and, if so, the address of its principal office in India.
Non – applicability of Section [387(1)(a)(i)(ii)and (iii)]	In the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.
Certain conditions to be void [Section 387(2)]	<ul style="list-style-type: none"> ◆ Any condition which requires a waiver from any of the conditions specified in section 387(1)(a)(i to v) from any applicant for securities shall be void. ◆ Any condition purporting¹ to impute² him with notice of any contract, documents or matter not specifically referred to in the prospectus shall be void.
Application form to accompany the prospectus [Section 387(3)]	<ul style="list-style-type: none"> ◆ Issue of application form shall not be made to any person in India unless ----- <ul style="list-style-type: none"> ♣ Application form is issued along with prospectus.

¹ To pretend to be or to do something, especially in a way that is not easy to believe (especially false).

² To say that someone is responsible for something that has happened, especially something bad, or that something is the cause of something else.

LAW CHARTS – PROCEDURES AND OTHERS

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	<ul style="list-style-type: none"> ♣ Such prospectus shall comply with provisions of this Chapter and ♣ Such prospectus doesn't contravene provisions of section 388.
Exception from Section 387(3) [Proviso to Section 387(3)]	♦ If the form of application is issued to underwriters.
Non – applicability of this section [Section 387(4)]	<ul style="list-style-type: none"> ♦ Issue made to existing shareholders or debenture holders. ♦ Issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange.
Other liabilities to operate normally [Section 387(5)]	♦ Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

13. PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT [SECTION 388]

Particulars	Details
Basic Provision	No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India if the following circumstances are established.
What are the circumstances?	1 Prospectus includes a statement purporting to be made by an expert, but the expert has not given his written consent.
	2 Prospectus includes a statement purporting to be made by an expert, but the expert has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus.
	3 Prospectus doesn't include a statement made by an expert and has not withdrawn the consent.
	4 Where a waiver is provided from section 33 and section 40 to any person liable.
Manner of including statement	A statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

14. REGISTRATION OF PROSPECTUS [SECTION 389 READ WITH RULE 11 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014]

LAW CHARTS – PROCEDURES AND OTHERS

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Particulars	Details
Basic Provision	No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India unless the following conditions are satisfied.
What are the conditions? [Section 389]	1 Certified by Chairperson and two other directors.
	2 Approved by the Managing body.
	3 Delivered to ROC for registration.
	4 Prospectus states on the face of it that a copy has been so delivered.
Rule 11	Such other documents as may be specified in the rules----- <ul style="list-style-type: none"> ❖ Experts consent. ❖ Copy of contracts of appointment between managing director or manager with company. ❖ A copy of underwriting agreement. ❖ A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

15. OFFER OF INDIAN DEPOSITORY RECEIPTS [SECTION 390]

Particulars	Details
Power of Central government	<ul style="list-style-type: none"> ◆ The Central Government may make rules applicable for ----- <ul style="list-style-type: none"> ♣ The offer of Indian Depository Receipts; ♣ The requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts; ♣ The manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and ♣ The manner of sale, transfer or transmission of Indian Depository Receipts
Overriding effect	Central government shall have power to make rules notwithstanding anything contained in any other law for the time being in force.

16. APPLICATION OF SECTIONS 34 TO 36 AND CHAPTER XX [SECTION 391]

Particulars	Details
Applicability of certain sections	The provisions of section 34, 35, 36 shall apply to----- <ul style="list-style-type: none"> ❖ Every prospectus issued ❖ Every IDR issue made.

LAW CHARTS – PROCEDURES AND OTHERS

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Applicability of winding up provisions

The provisions of Chapter XX and section 376, shall apply to Foreign for closing its place of business in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

KOUSHIK LAW AND SFM CLASSES

LAW CHARTS – PROCEDURES AND OTHERS

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KOUSHIK LAW AND SFM CLASSES

ECONOMIC/ ALLIED LAWS CHARTS

APPLICABLE FOR CA FINAL NOV 2019 EXAMS ONWARDS

CA KUSHIK MUKHESH ACA, CMA, B.COM

koushikmukheshramaraju@gmail.com
CA KUSHIK MUKHESH ACA, CMA, B.COM

1

SEBI

SEBI (LODR)

Need for LODR regulations [objectives]

To align the listing conditions with the conditions specified in CA2013

Consolidate all listing arrangements into one single resolution

Applicability

SEBI (LODR) regulations applicable to every listed entity whether company or not

∴ LODR regulations applicable for any of the following issues

Straight debentures (not convertible)

Convertible debenture securities

Cumulative preference shares

Indian depository receipts

Units of mutual fund

Securitized debt instruments etc.

COMPLIANCE OFFICER

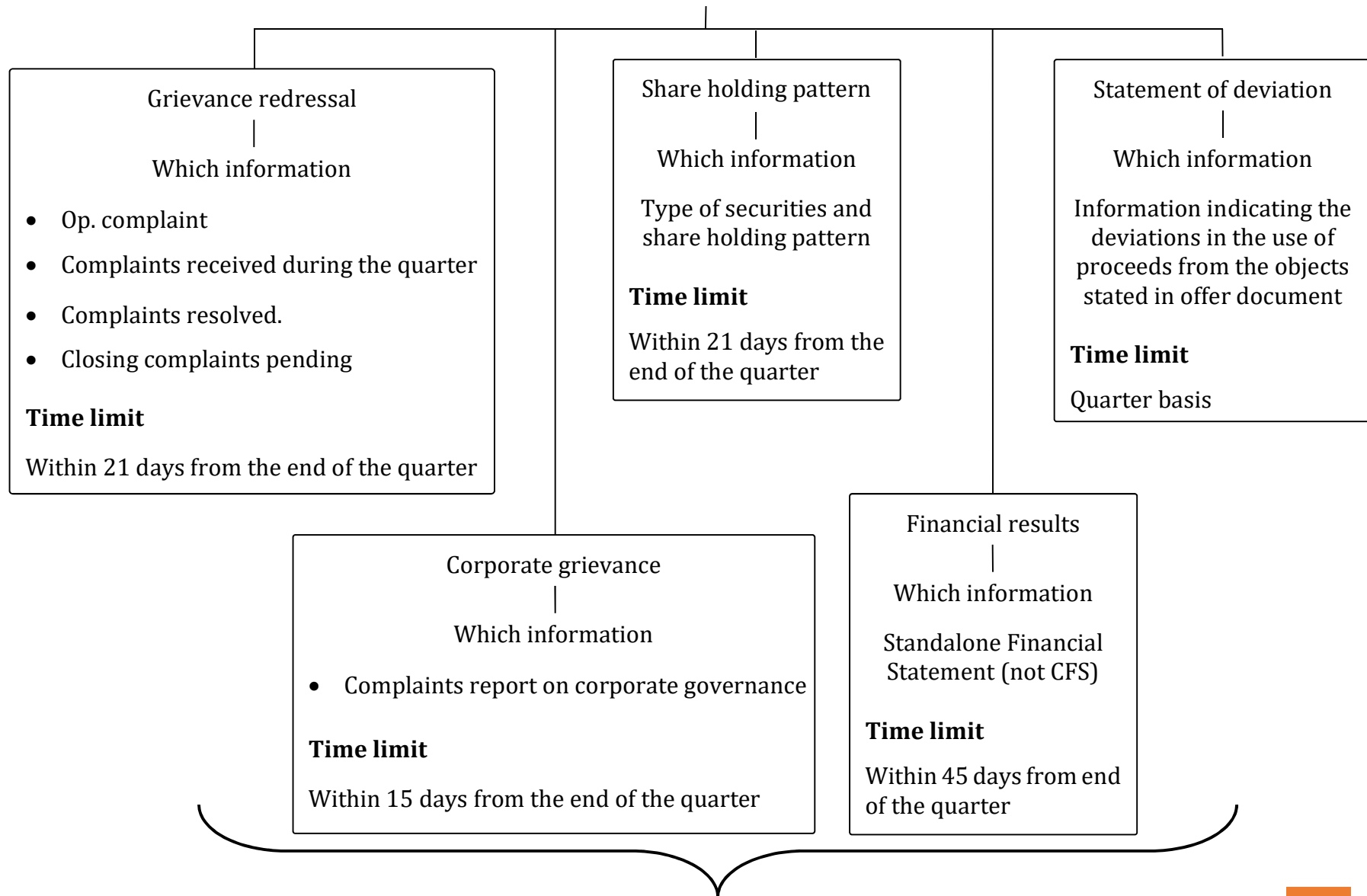
Who shall be compliance officer?

A qualified company

Role of compliance officer

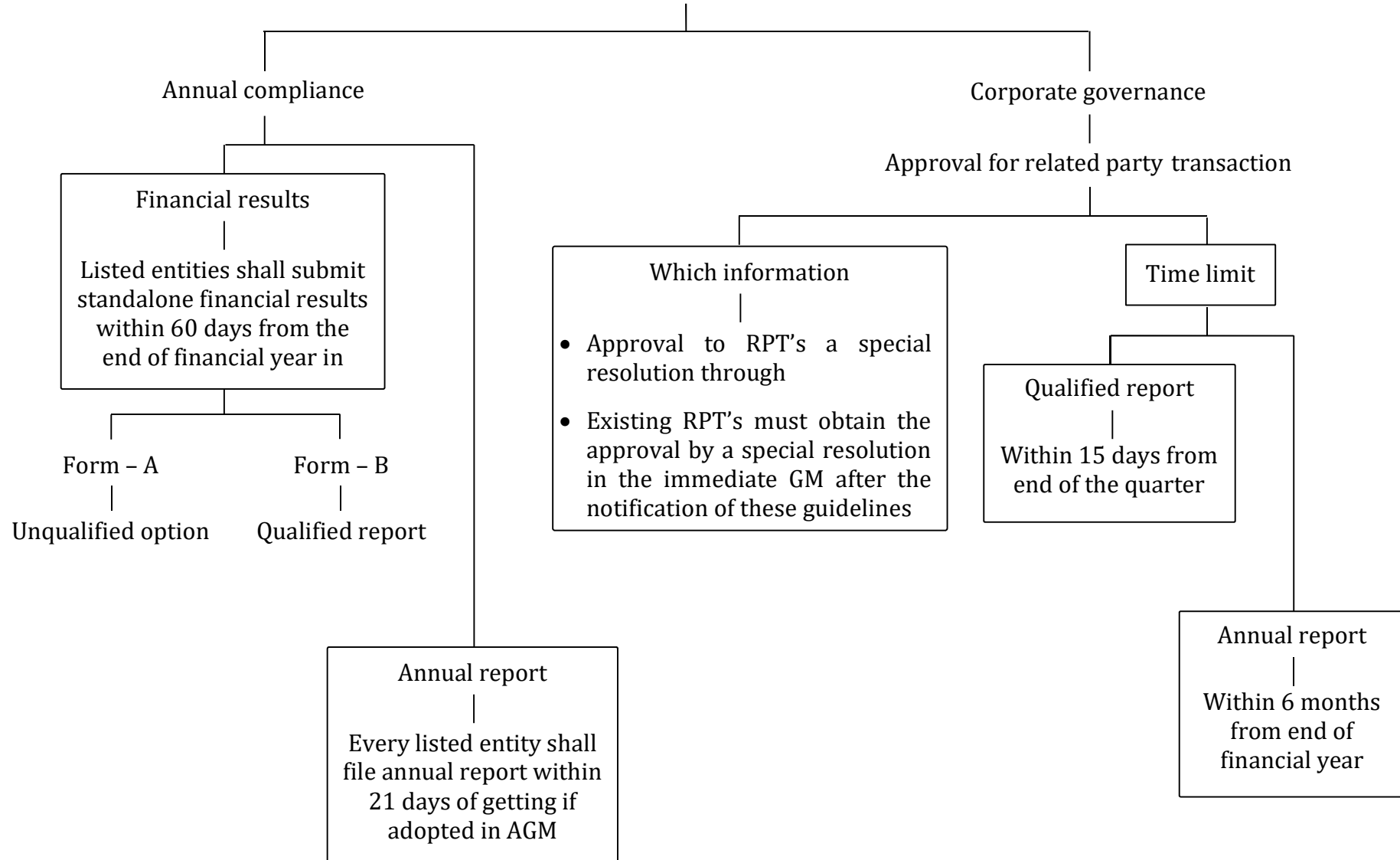
- Coordination between board and stock exchange
- Report to board and stock exchange
- Ensure - correct, authentic, comprehensive information is filled
- Monitor the e-mail ID for grievance redress
- Determining the materiality of information to be filled to stock exchange
- Comply with SS₁ and SS₂

QUARTERLY COMPLIANCE



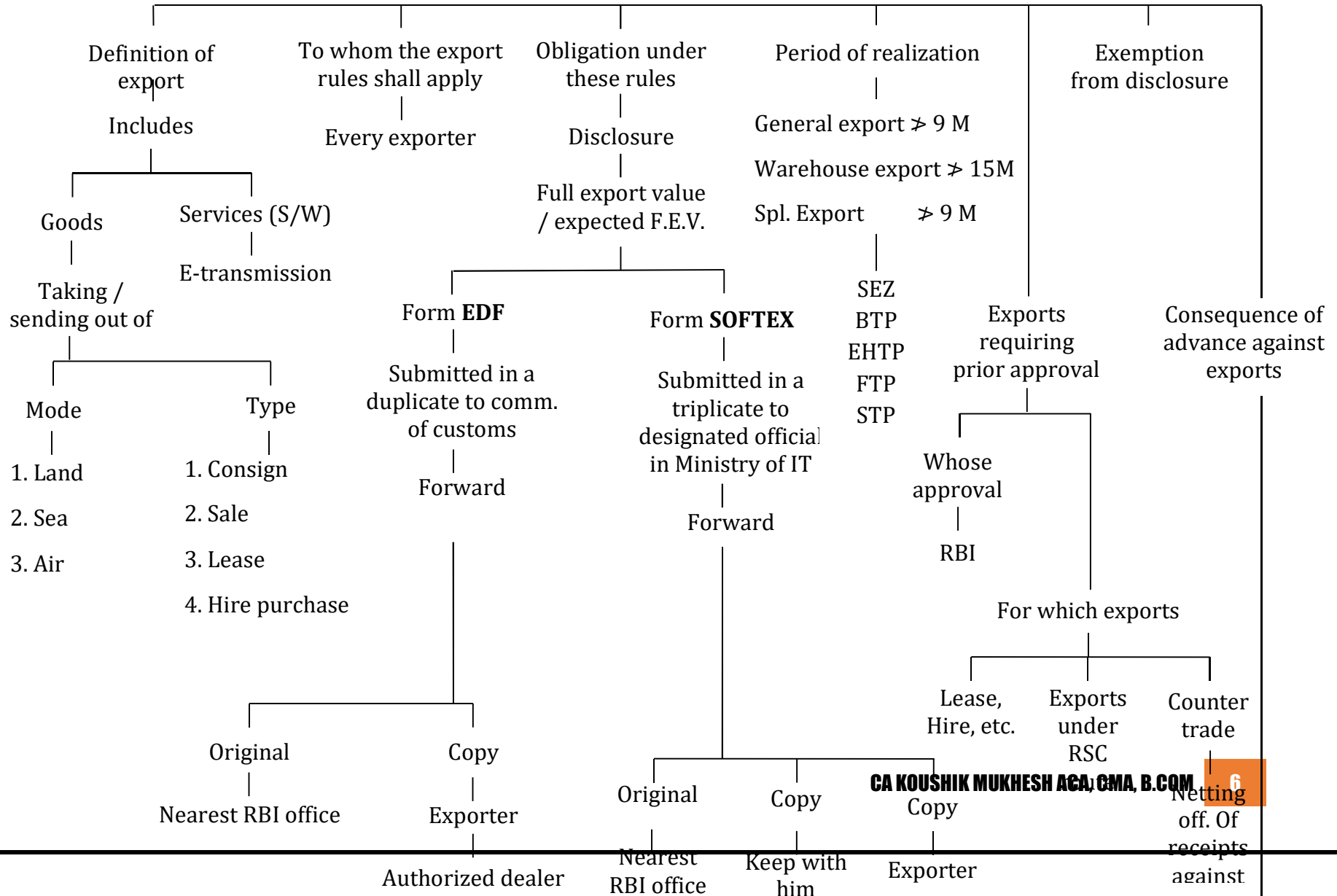
The above fillings should be made to recognized stock exchange in which the company shares are listed

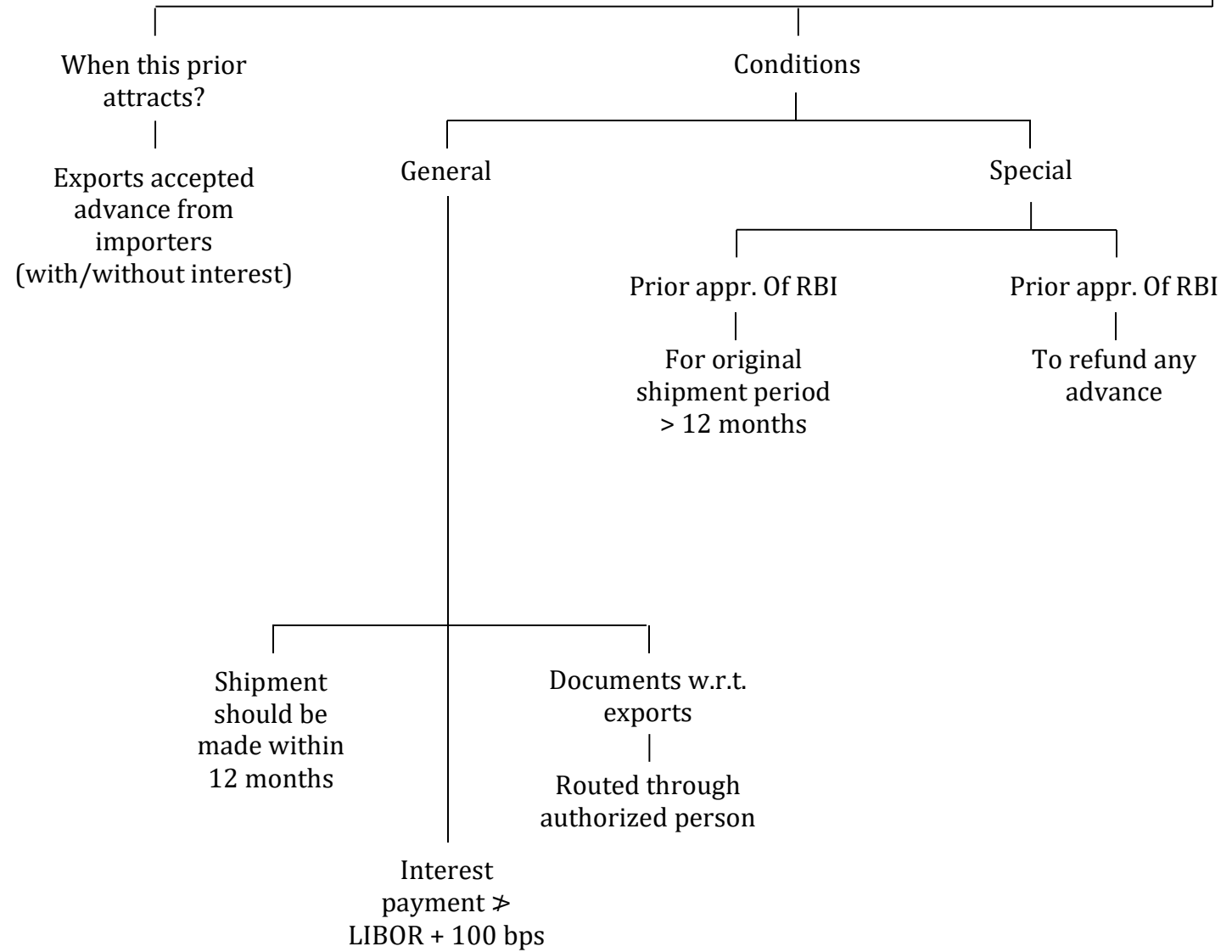
MISCELLENOUS



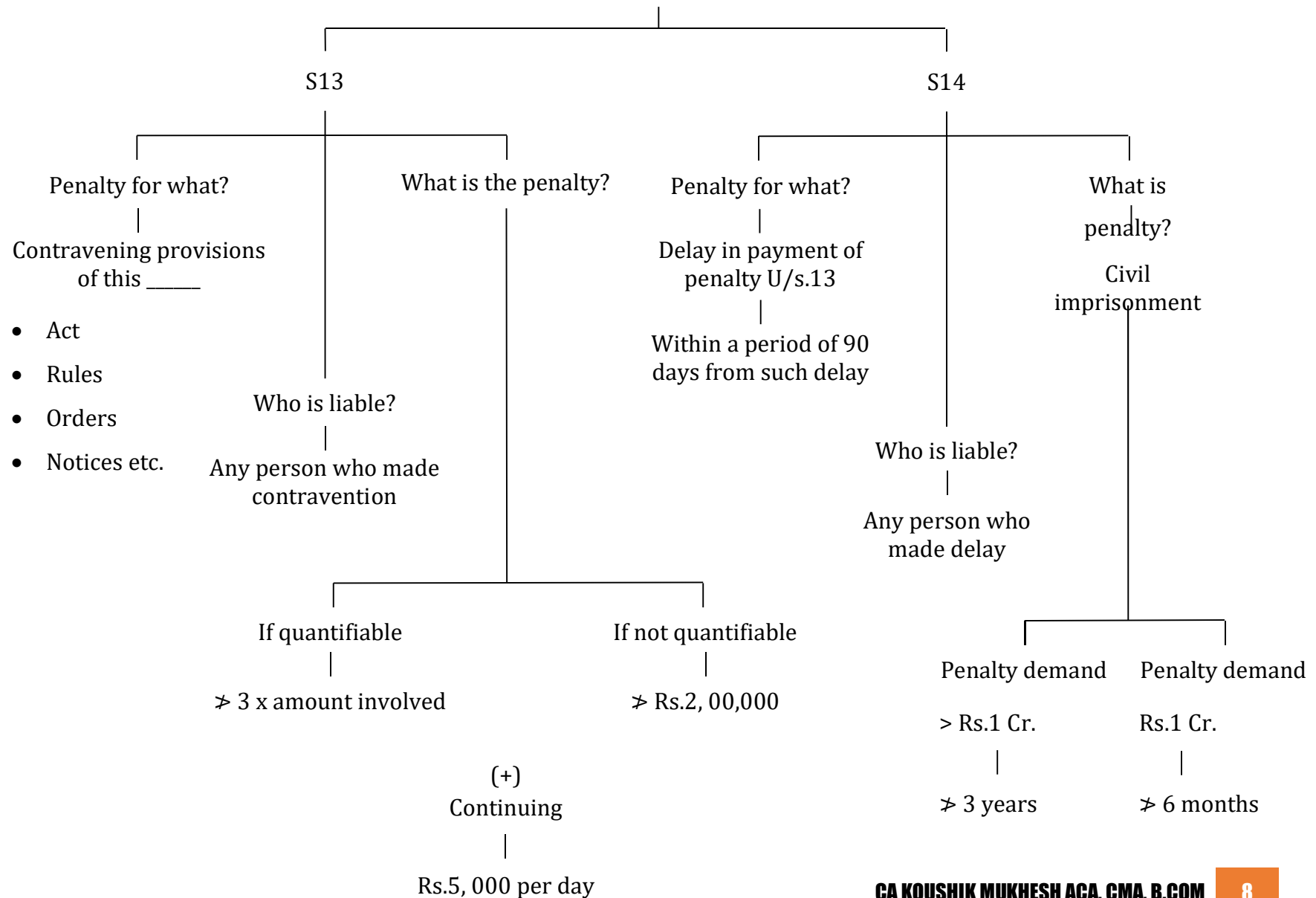
FOREIGN EXCHANGE MANAGEMENT ACT

EXPORT RULES

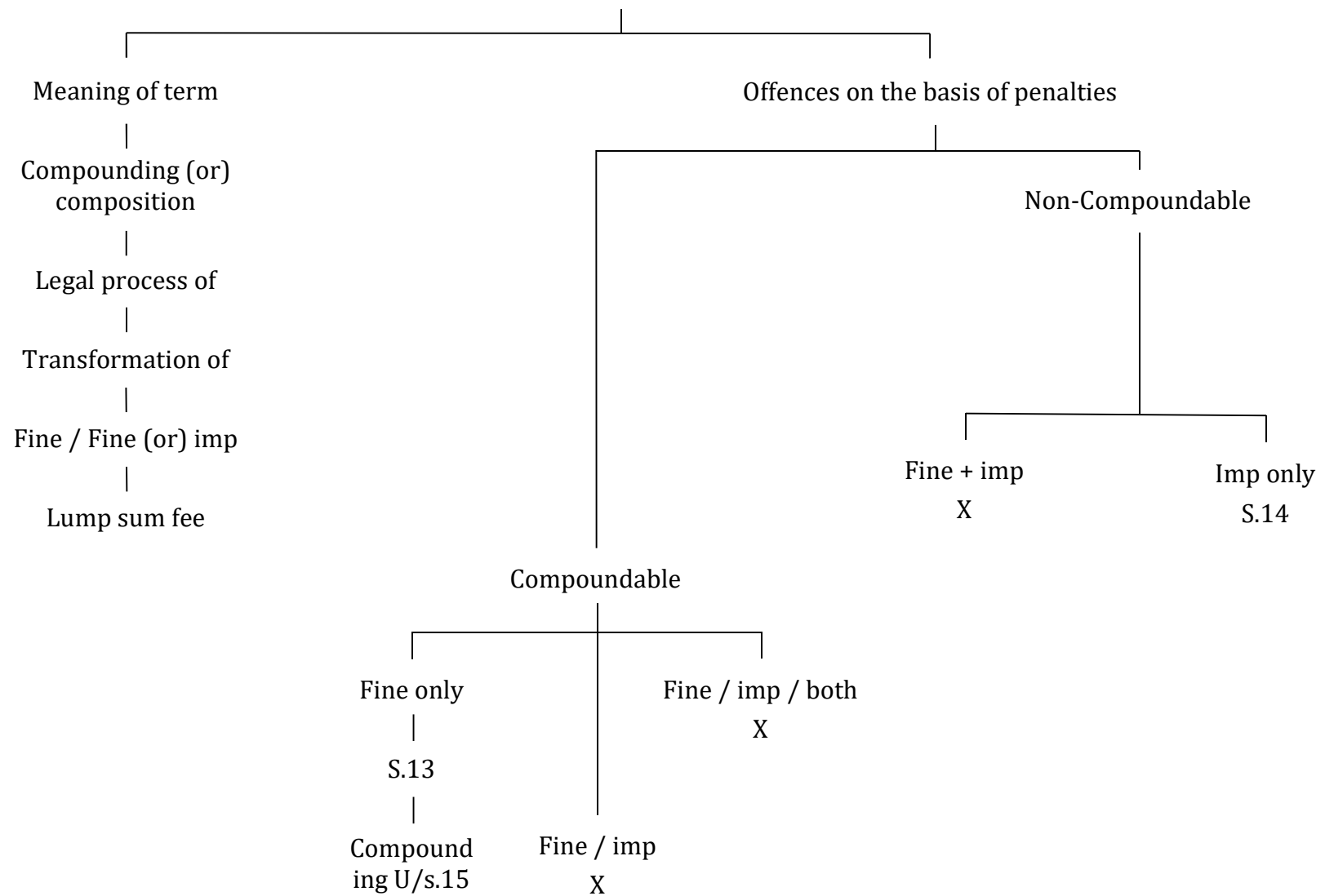




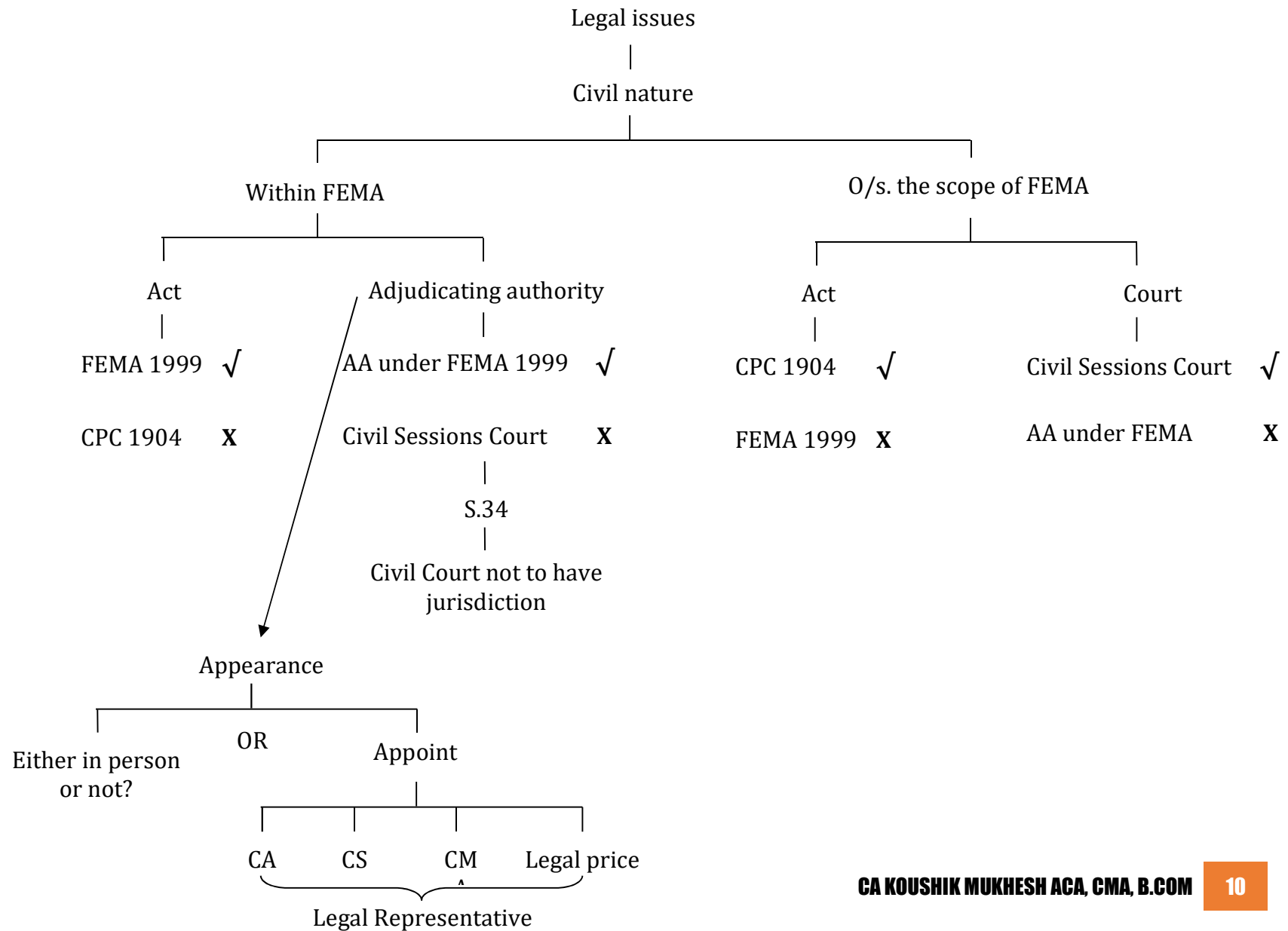
ADJUDICATION AND PENALTIES



UNDERSTANDING THE CONCEPTS OF COMPOUNDING AND CIVIL JUDICIARY

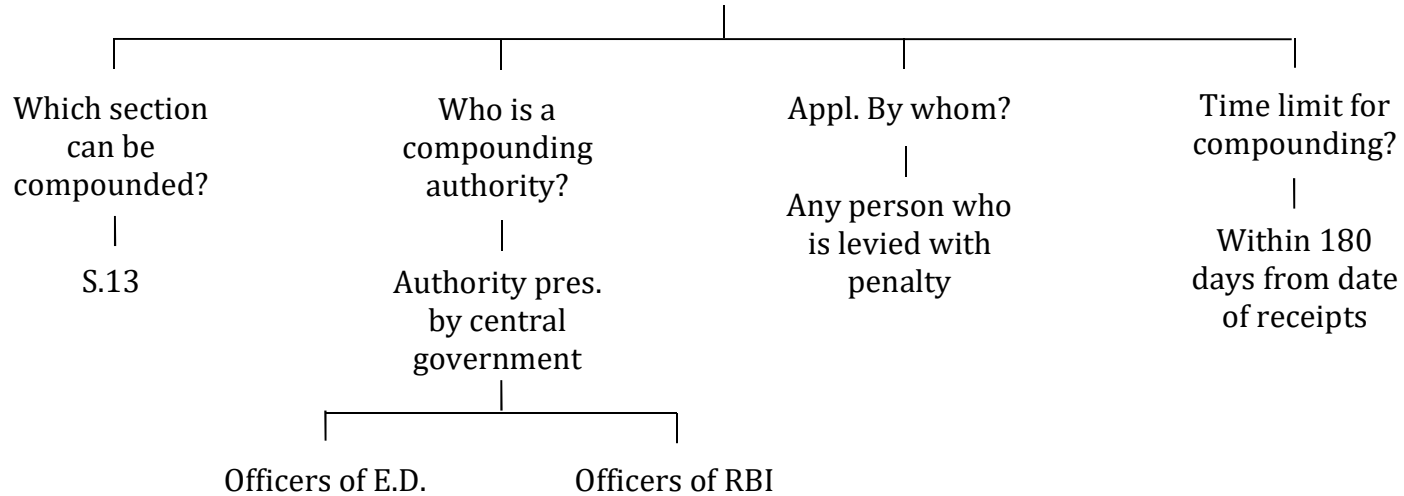


WORKING OF CIVIL JUDISCIARY



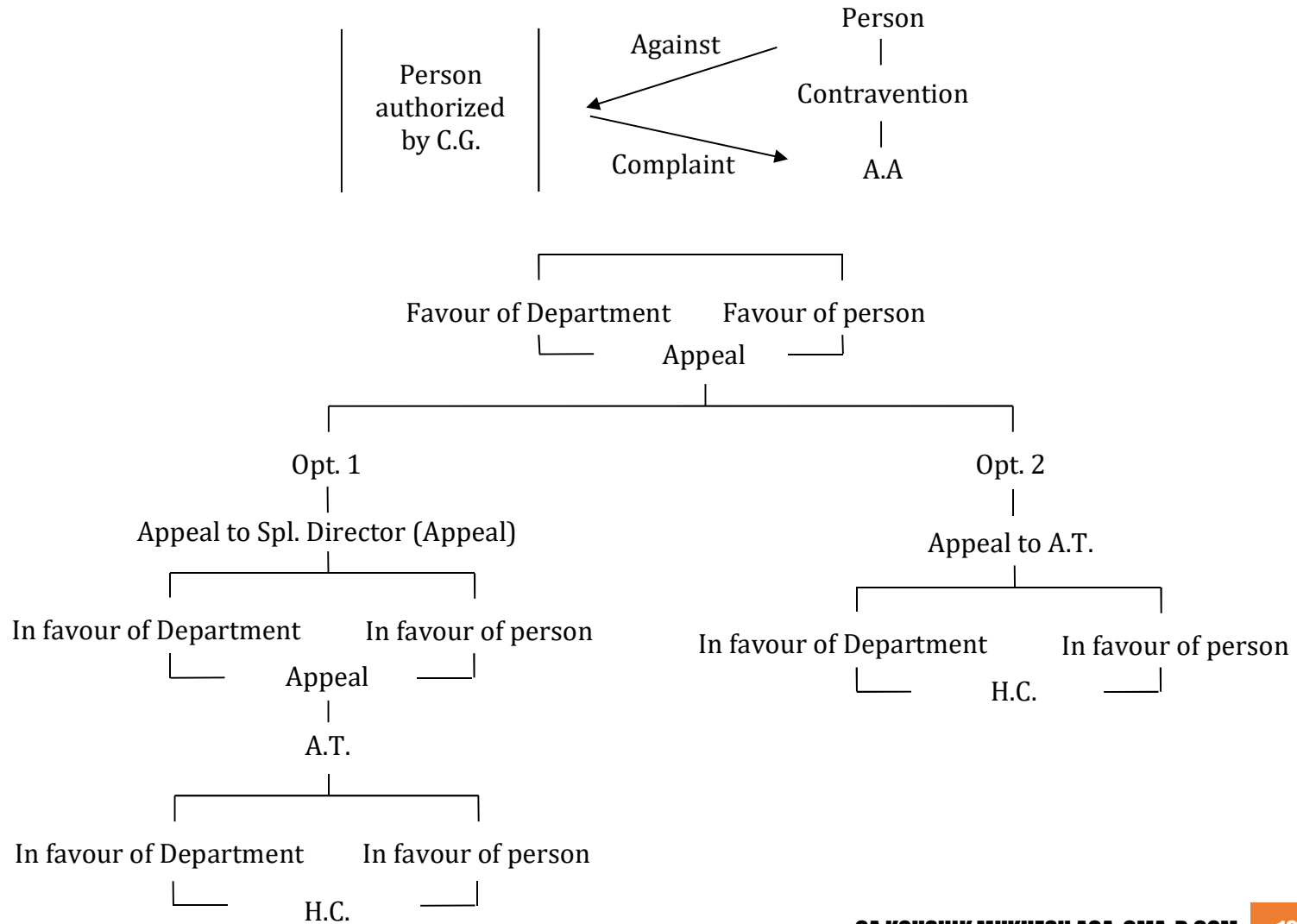
COMPOUNDING OF PENALTIES

Compounding

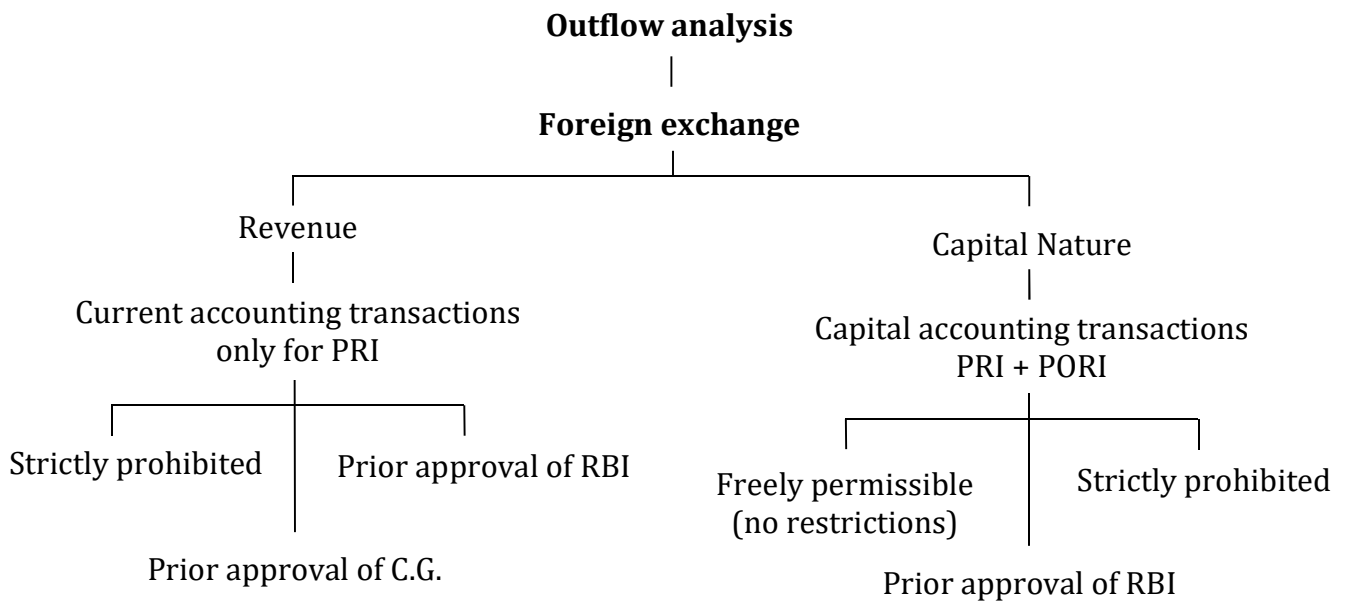


JUDICIAL FLOW UNDER FEMA

(A.T. = Smugglers + forex manipulators Act)

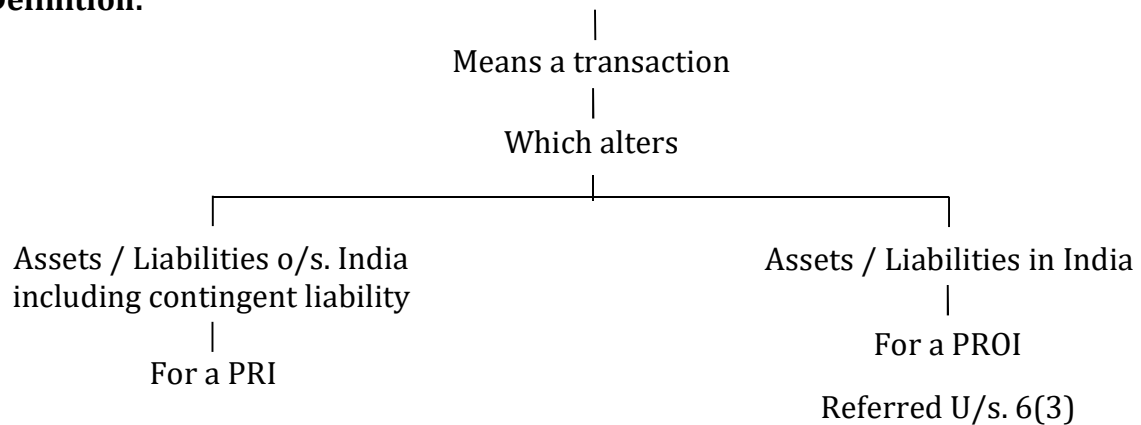


CAPITAL AND CURRENT ACCOUNT TRANACTIONS



CAPITAL ACCOUNTING TRANSACTIONS

Definition:



Includes transactions specified under Section 6(3).

PRI Balance Sheet

L		A	
IL	X	IA	X
FL	√	FA	√

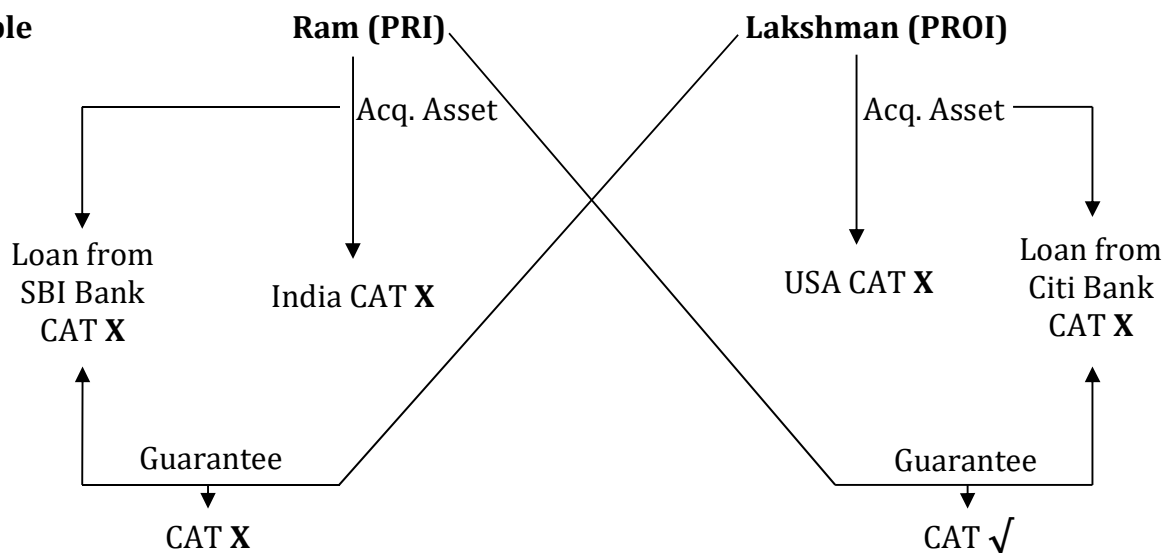
PROI Balance Sheet

L		A	
IL	√	IA	√
OL	X	OA	X

Particulars	C1	C2	C3	C4
Asset purchase	Rs.	Rs.	\$	\$
Loan taken	Rs.	\$	\$	Rs.
PRI	X	√(ΔL)	√(ΔL+ΔA)	√(ΔA)
PORI	√(ΔL+ΔA)	√(ΔA)	X	√(ΔL)

ANALYSIS ON CONTINGENT LIABILITIES

Example



CAPITAL ACCOUNTING TRANSACTIONS REQUIRING NO APPROVAL (FREELY PERMISSIBLE AND NO RESTRICTIONS)

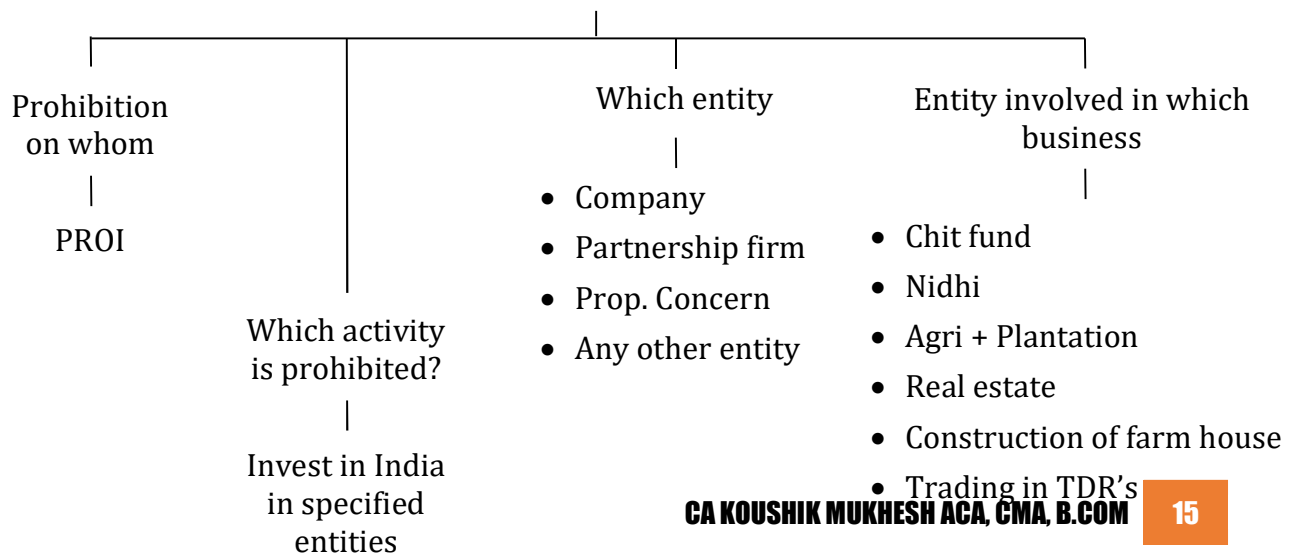
**Amortization of loans
PRI Balance Sheet**

L		A
CITI (\$) loan \$1L @ 10% p.a. for 5 years	\$1.00L	
(+) Default interest	\$0.10L	There is no flow of currency it is only merely a book entry(so freely permissible) there is no need permission)
Revised CITI Bank loan	\$ 1.10L	Both the CAT + No flow of foreign exchange

**Depreciation on Direct Investment
PRI Balance Sheet**

L	A
	X Inc. (US) shares \$ 100 L
	(-) permanent diminution @ 30% \$ 30 L
Both the CAT + No flow of foreign exchange	Revised value of interest \$ 70L

CAPITAL ACCOUNTING TRANSACTIONS THAT ARE STRICTLY PROHIBITED

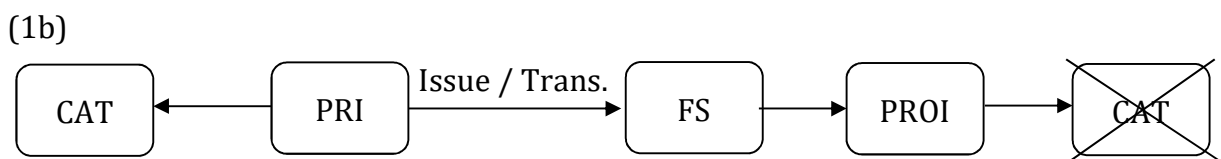
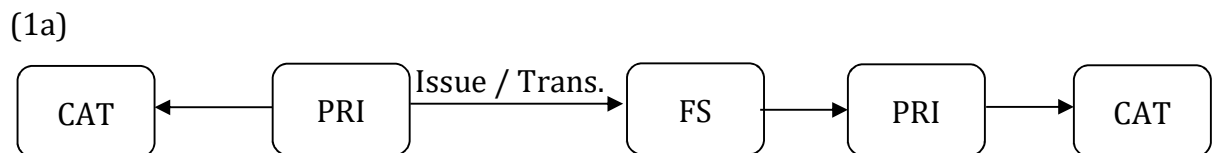
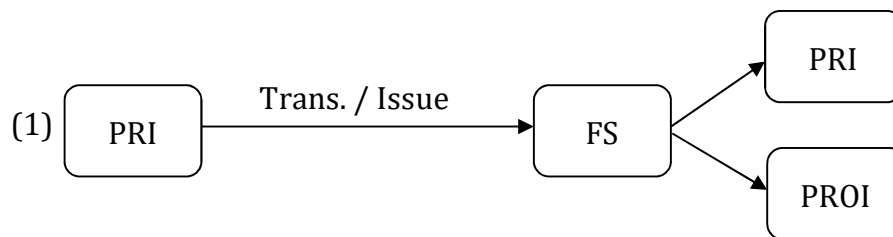


CAPITAL ACCOUNTING TRANSACTIONS REQUIRING RBI APPROVAL

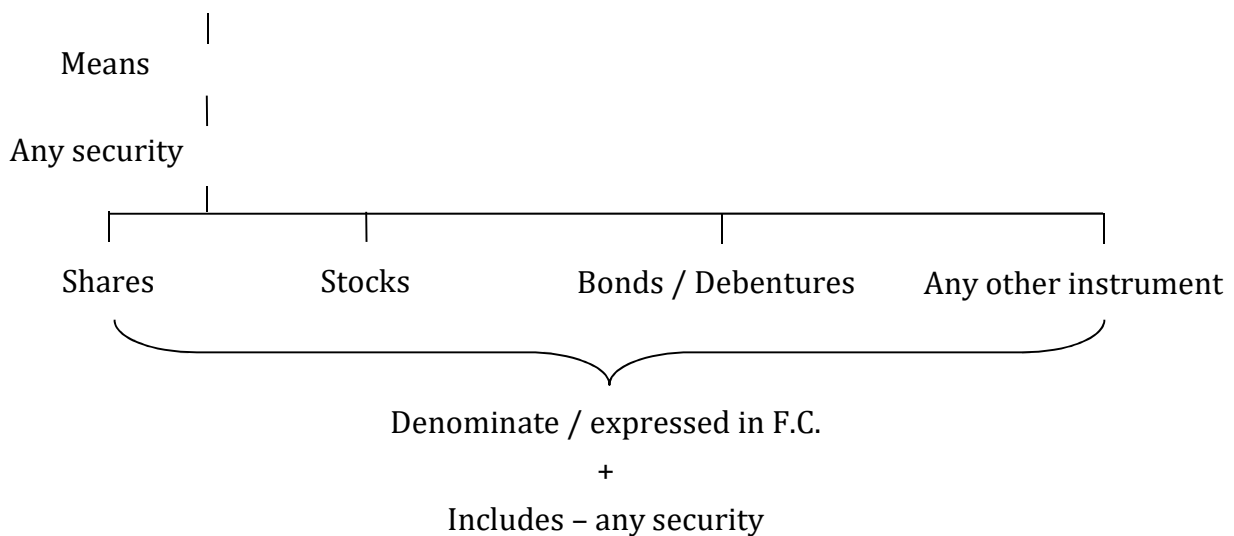
Transactions not falling under enchausive list of free permissible and enchausive list of strictly prohibited shall automatically falling under the residual category of RBI approval.

Analysis on certain transactions

1. Transfer of issue of any foreign security by a person resident in India



FOREIGN SECURITY DEFINITION



Expressed in F.C.

Return / Redemption

Example:

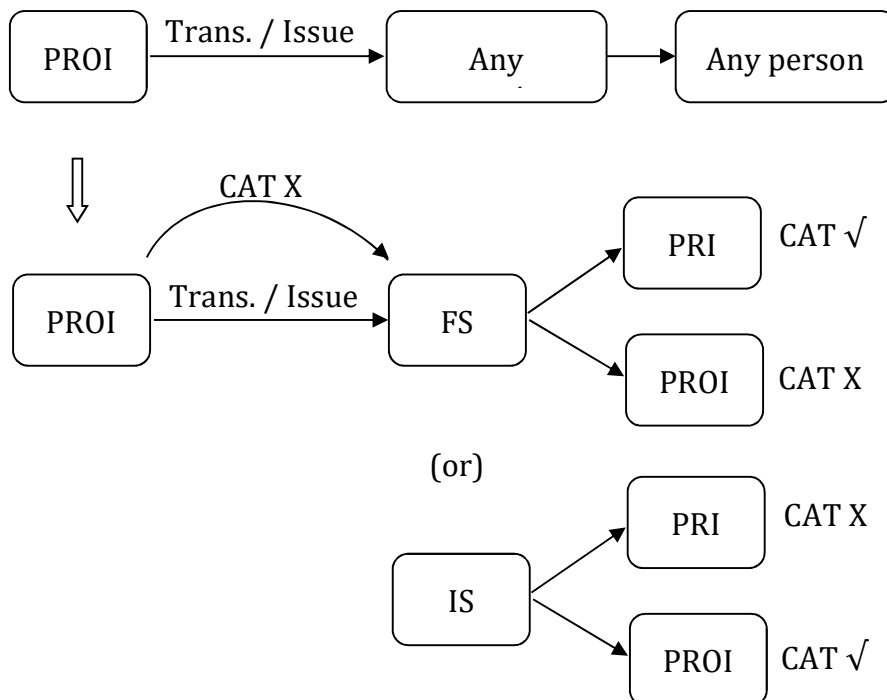
I.C.

Security issued in F.C. (denominated / expressed)

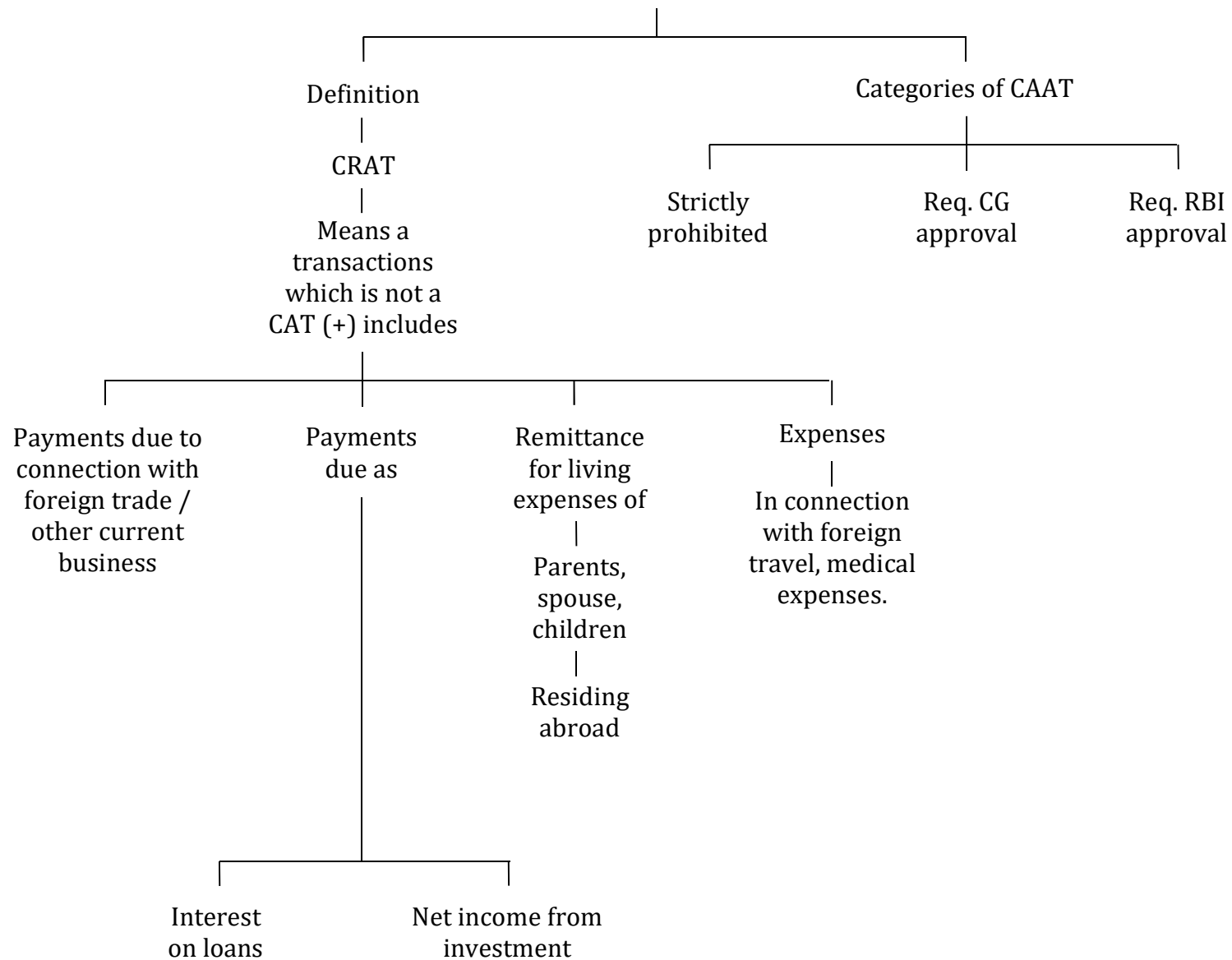
Pattern of redemption / return is as follows.

	C ₁	C ₂	C ₃	C ₄	C ₅	C ₆	C ₇	C ₈
Expressed / denominated in	JC	FC	FC	FC	IC	IC	FC	IC
Return	FC	FC	IC	FC	IC	FC	IC	IC
Redemption	FC	FC	FC	IC	IC	IC	IC	FC
FS	X	√	√	√	X	X	√	X

2. Transfer or issue of any security by a person resident outside India



CURRENT ACCOUNT TRANSACTIONS



CURRENT ACCOUNT TRANSACTIONS

Strictly prohibited (Sch-I)

1. Remittance out of income from lottery winning
2. Remittance out of income from racing, riding and other hobbies
3. Remittance for purchase of lottery tickets, banned magazines & football pools etc.
4. Payments made when dividend balance is applicable
5. Payment of export commission under RSC route
6. Payments for callback services
7. Interest on NRSRS A/c.
8. Travel payment to Nepal / Bhutan
9. Payment to person resident in Nepal / Bhutan

Prior CG approval (Sch-II)

1. Cultural tours
2. Payment of import by ocean transit
3. Payment of freight through ocean transit
4. Container detention charges in a ocean transit
5. Payment of commission to the agents abroad by multimodal transport operators
6. Remittance for membership of P and I club (protection and indemnity)
7. Payment of hiring charges for transponders by TV channels and internet service providers
8. Prize money or sponsorship payment
 - (a) Payment made by International / National / State level sports body → No approval required.
 - (b) Payment made by persons other than (a) above

Not exceeding \$ 1, 00,000	Exceeding \$ 1, 00,000
No CG approval	CG approval required
9. Advertisement expenditure

C1: Adv. Expenditure	C2: Foreign print media
C3: by SG, PSC	C4: \$10K

Transaction required. RBI approval (Sch-III)

Sch-III A for Individual

1. Business travel
2. Private visit to any country other than Nepal / Bhutan
3. Gifts / Donations
4. Going abroad for employment
5. Emigration
6. Maintenance of close relative abroad
7. Medical expenses abroad
8. Medical checkup abroad
9. Payments made to a person accompanying the patient abroad
10. Expenses in connection with medical treatment abroad
11. Any other current account transaction

Exceeding \$ 2, 50,000

Sch-IIIB other than individual

A. Contributions

Purpose

1. Creation of chairs
2. Contribution to fund (other than investment fund)
3. Donation to a technical instrument in the same field

Quantum

1% of foreign earning in PFY's
(Or)
\$ 50, 00,000
Whichever is less

B. Agents commission for sale of residential or commercial plots in India exceeding \$ 25K (or) 5% of inward remittance whichever is HIGHER

C. Consultancy services

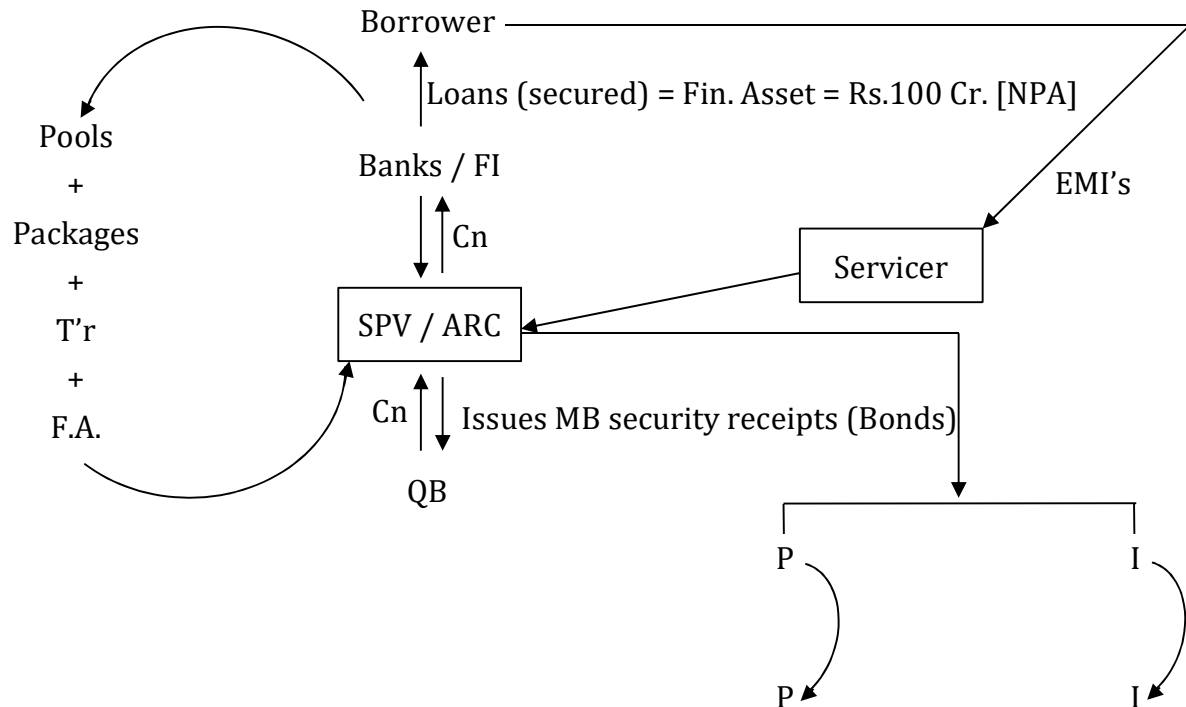
Infrastructure consultancy exceeding \$ 1 Cr.

Software consultancy exceeding \$ 10L

SECURITISATION ACT 2002

Need	Remedy	Parties involves	Terms involved
Banks Loans Customers Out of funds Cannot sanction loans Potential customers	Sell loans difficult lack of liquid secondary market securitisation	<ul style="list-style-type: none"> • Obligor / borrower • Originator / Secured Creditor • ARC / SPV • Q.B's • Reg. authorities <ul style="list-style-type: none"> ▪ SEBI ▪ RBI • Adj. authorities <ul style="list-style-type: none"> ▪ DRT ▪ Appellate Tribunal • Sponsor / services 	<ol style="list-style-type: none"> 1. Pass through certificates 2. Credit enhancement facility 3. Security receipts

PROCESS OF SECURITISATION



DIVISION OF CHAPTER

Part - I

- Basic definition

Part - II

- Registration of ARC and miscellaneous issues

Part - III

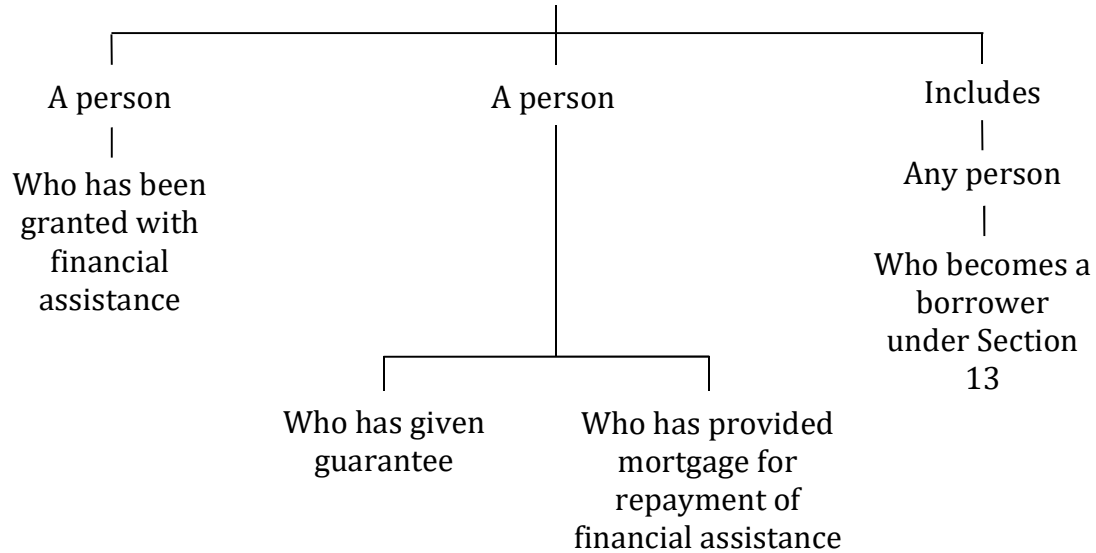
- Enforcement of security interest

Part - IV

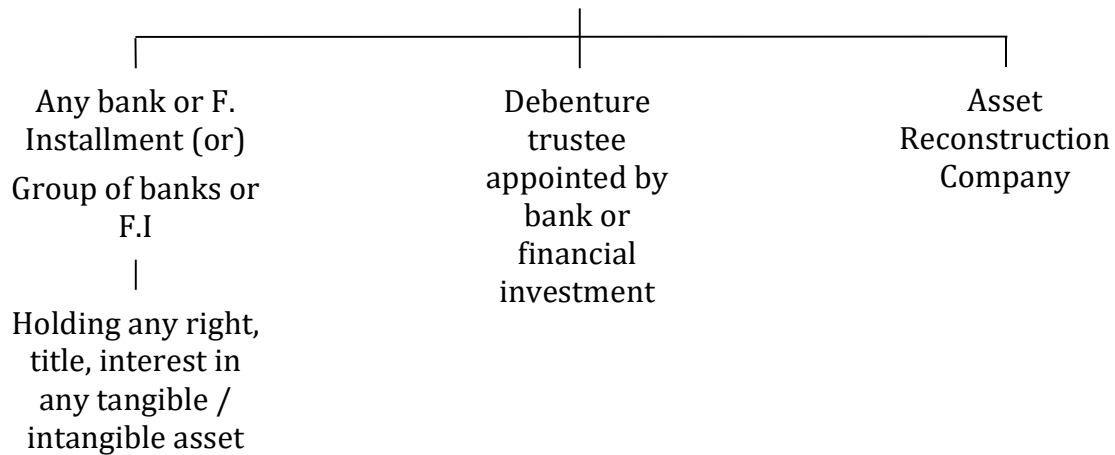
- Central registry

PART I - BASIC DEFINITION

1. Borrower (means)



2. Secured Creditor (means)



3. Asset Reconstruction Company:

Means a company registered under Sec.3 with RBI for the purpose of asset reconstruction / securitization / both

4. Qualified Buyer means

Insurance company	Financial instrument	Banks
SFC	Asset managing company of MF	Foreign investment, investors etc.

Meaning of terms securitization and asset reconstruction

Securitization

Acquisition of Financial assets by ARC from originator by issue of sec. receipts to Q.B.

Asset reconstruction

Acquisition of financial non-performing assets by ARC from bank / Financial institution for the purpose of realization of such financial assistance.

REGISTRATION OF ARC

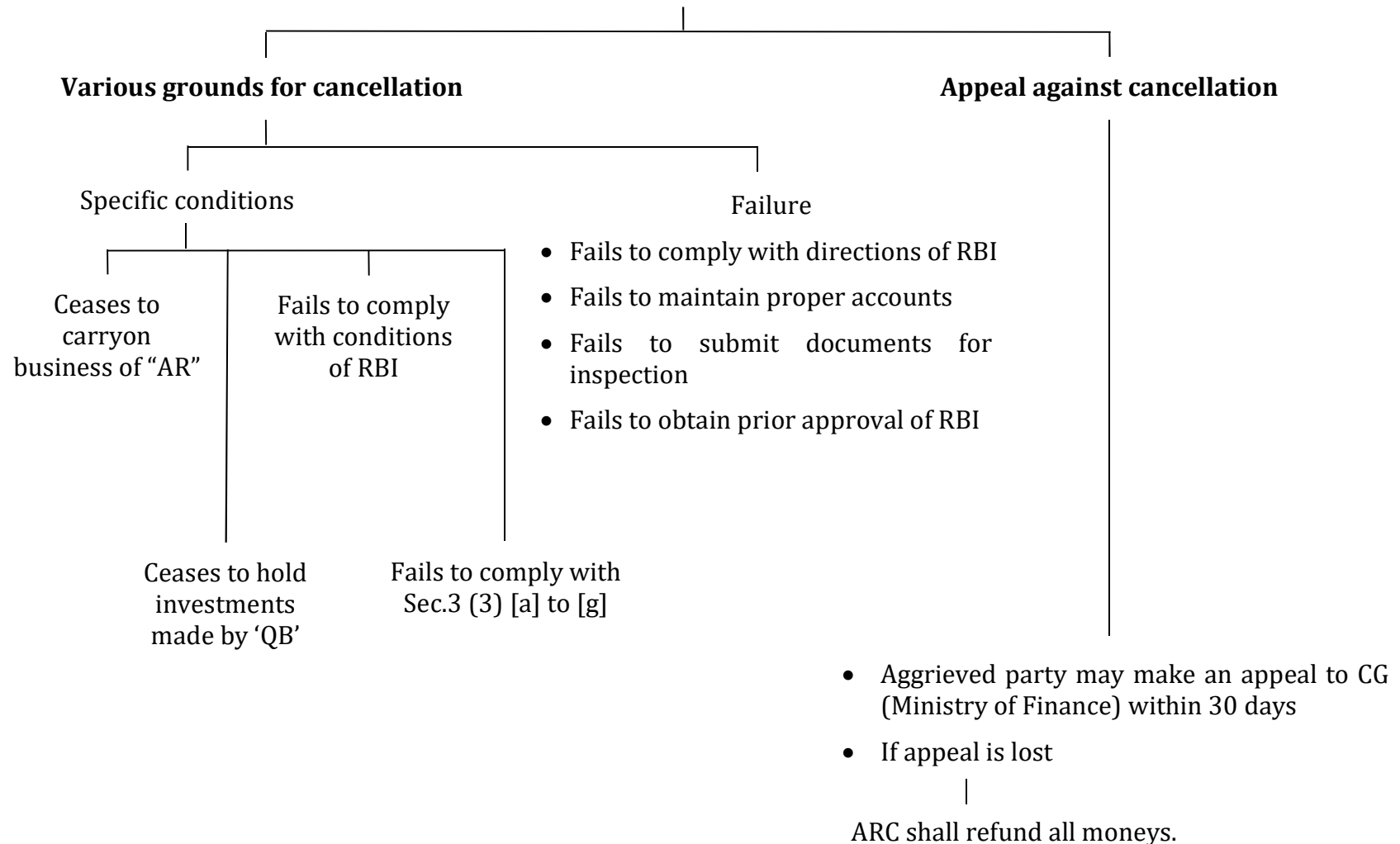
Basic conditions

- Application to RBI
- Application by ARC
- Application made for the purpose of commencement of business of asset reconstruction
- Minimum net owned funds 100 Cr.

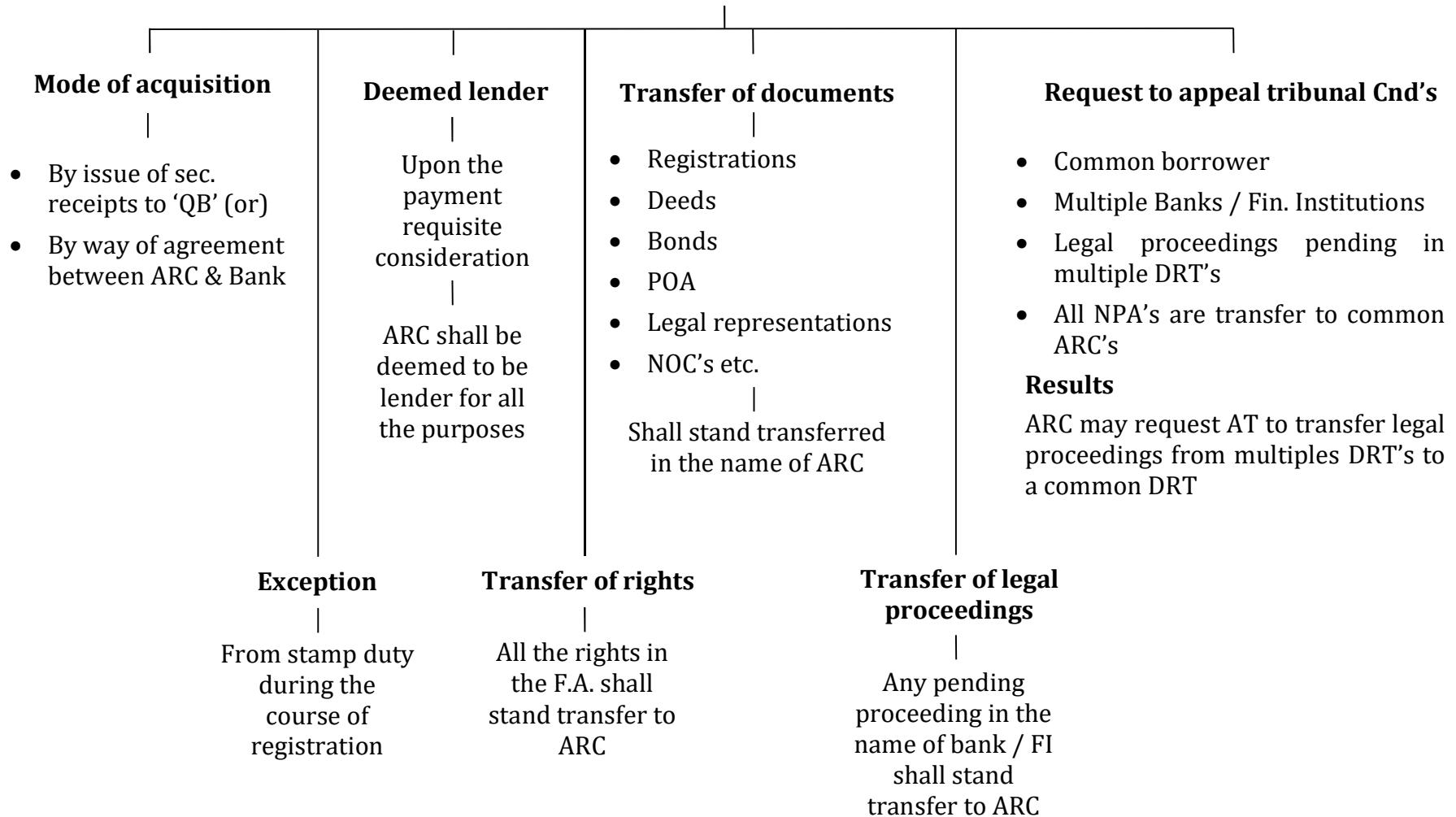
Other conditions

- No losses in PFY's
- Adequate arrangements shall be made for realization of FA
- Sponsors should be fit and proper as per guidelines of RBI
- Directors are prof. qualified
- Directors are not convicted of an offence involving moral turpitude
- Comply with prudential norms with RBI
- Comply the conditions with RBI

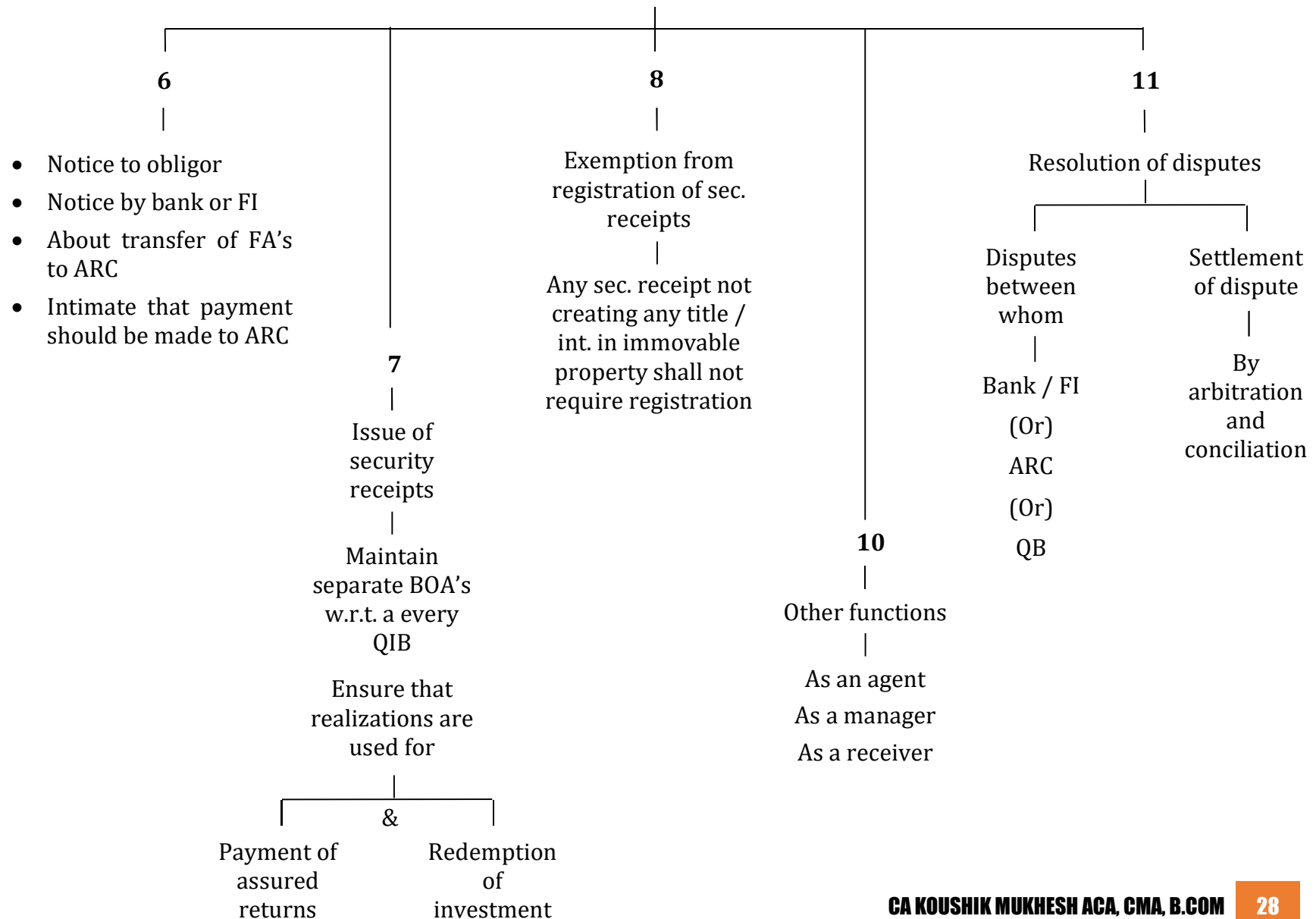
GROUNDS FOR CANCELLATION OF CERTIFICATE OF REGISTRATION



ACQUISITION OF FINANCIAL ASSETS



SECTIONS 6 TO 11



POWERS OF RBI

Sec.12

Power of RBI to issue directions

1. Directions by RBI
2. Directions to ARC
3. Nature of direction
 - Income recognition
 - Accounting standards
 - Prov. For bad doubtful debts
 - Type of FA's that can be acquired
 - Aggregate of FA's that can be acquired

Sec.12A

Power of RBI to call for statements

RBI may order ARC
To furnish statements
W.r.t. the affairs of ARC

Sec.12B

Power of RBI to conduct audit & inspection

1. RBI may conduct audit on ARC
2. The officers and employees of ARC shall render assistance during the course of audit
3. RBI also has the power to conduct inspection
4. Results of inspection

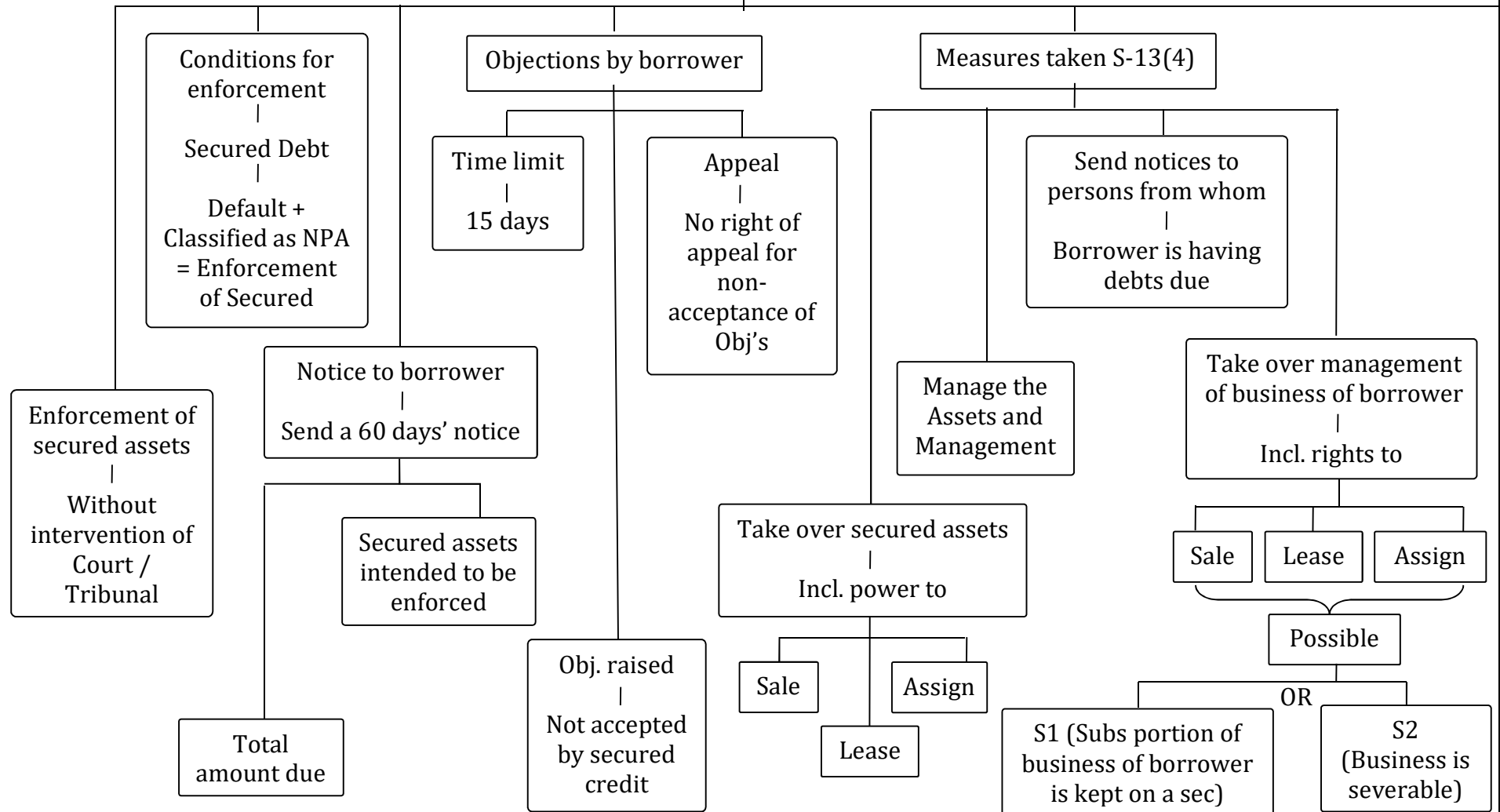
Affairs of ARC are detrimental to interest of public or investors

Remove the chairman / director and appoint addl. directors

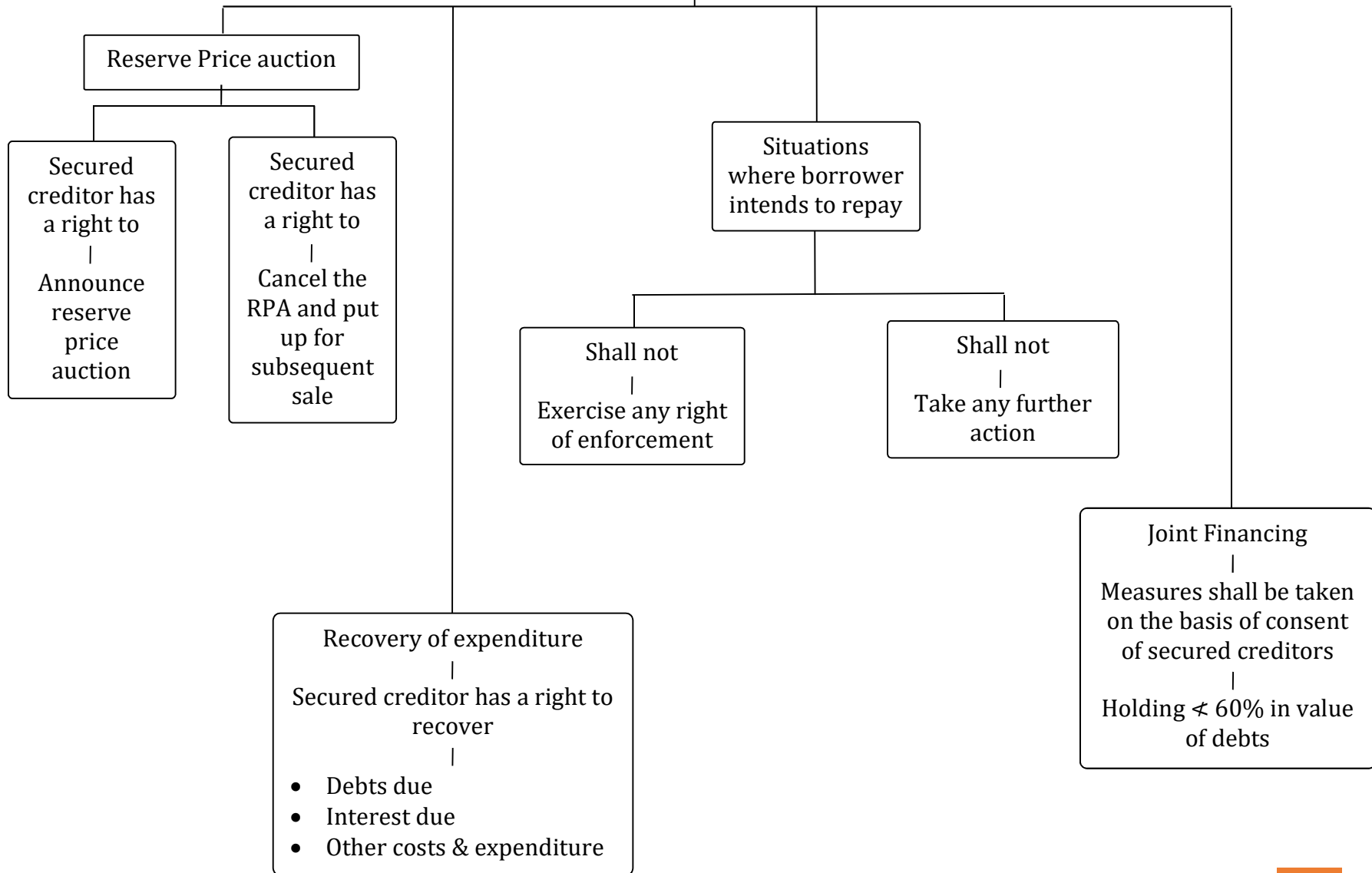
Affairs of ARC are not detrimental to interest of public or investors

No action needs to be taken

Section 13



Section 13



Section 14

Application to Magistrate

- C₁ Borrower had made default
- C₂ Secured creditor what to take the possession of secured assets
- C₃ Security creditor shall make a request to Chief Metropolitan Magistrate / District Magistrate

Result

Upon the result CMM / DM shall

Take over the secured assets

Transfer them to secured creditor

Within 30 days

Section 16

No compensation for loss of office

Section 15

Manner of takeover of management

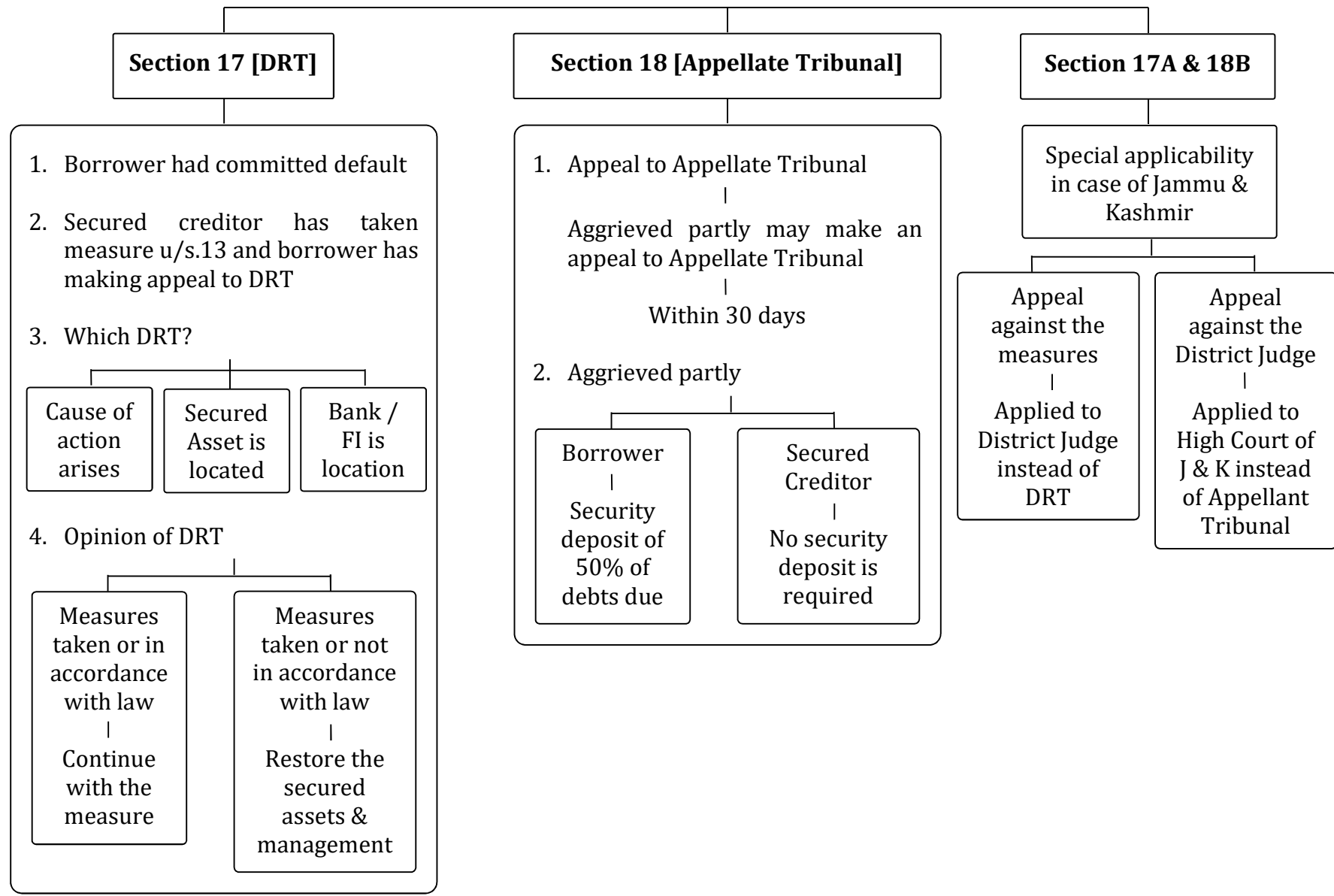
| (Read with Sec.16)

- Borrower must commit a default and secured creditor intents to the management.
- Publication in 2 newspaper about the termination

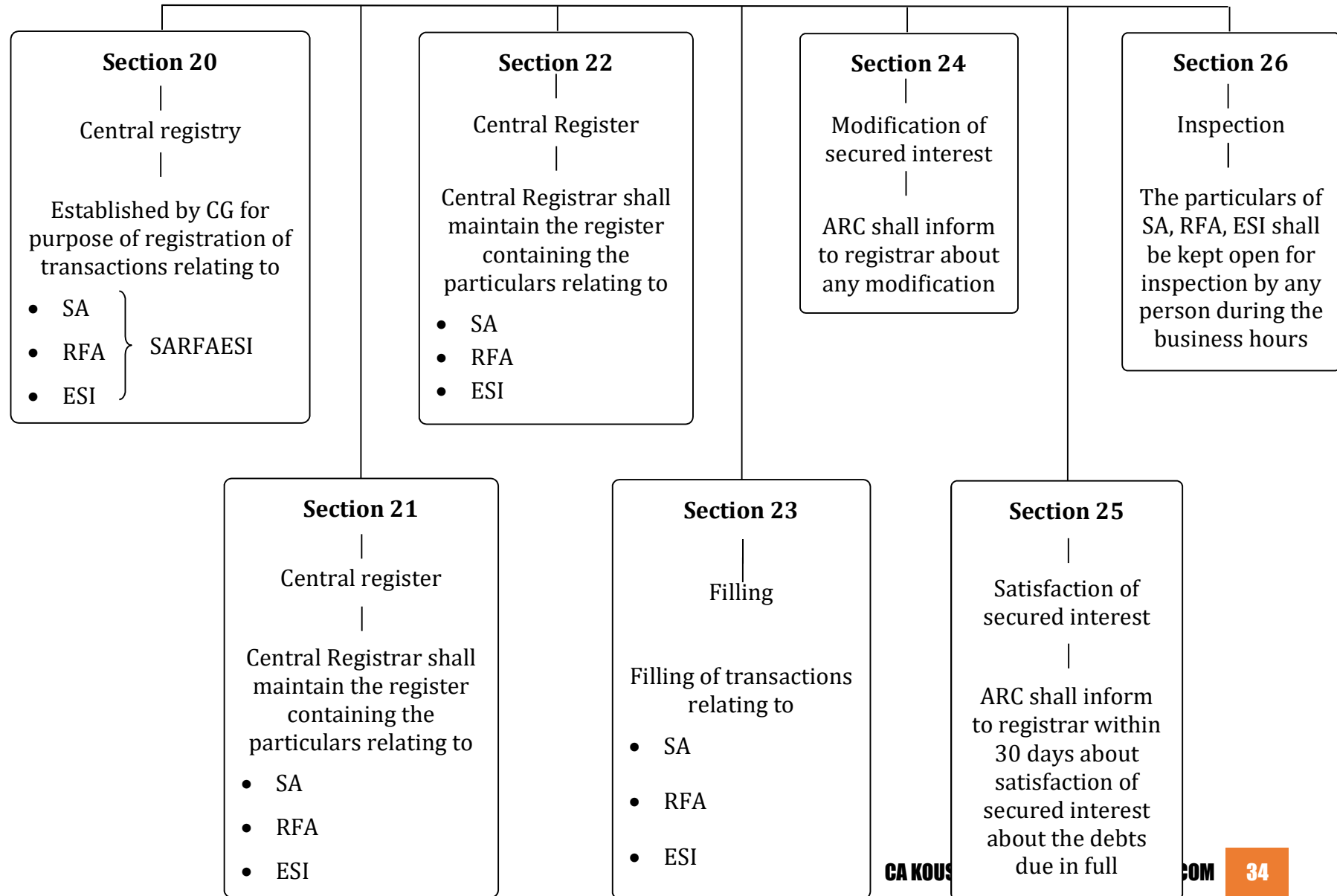
Local

English

- The date of publication in newspaper – shall be the date of deemed vacation
- Upon the publication – all the directors shall be deemed to have terminated their offices.
- Filling of vacancies
 - Company – Directors
 - Other than Company – Administrators
- They shall exercise some powers of a Director / Administrator
- Special powers
 - SH shall not nominate the new person for directorship
 - Resolution shall not take effect unless approved by secured creditor
 - Petition for winding up shall not be made unless approved by secured creditor

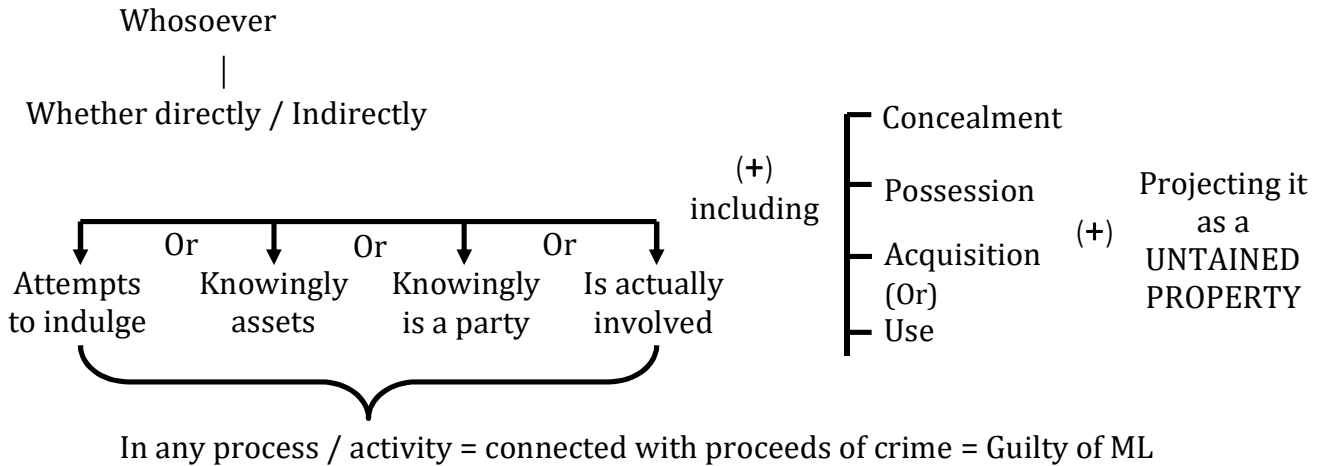


CENTRAL REGISTRY

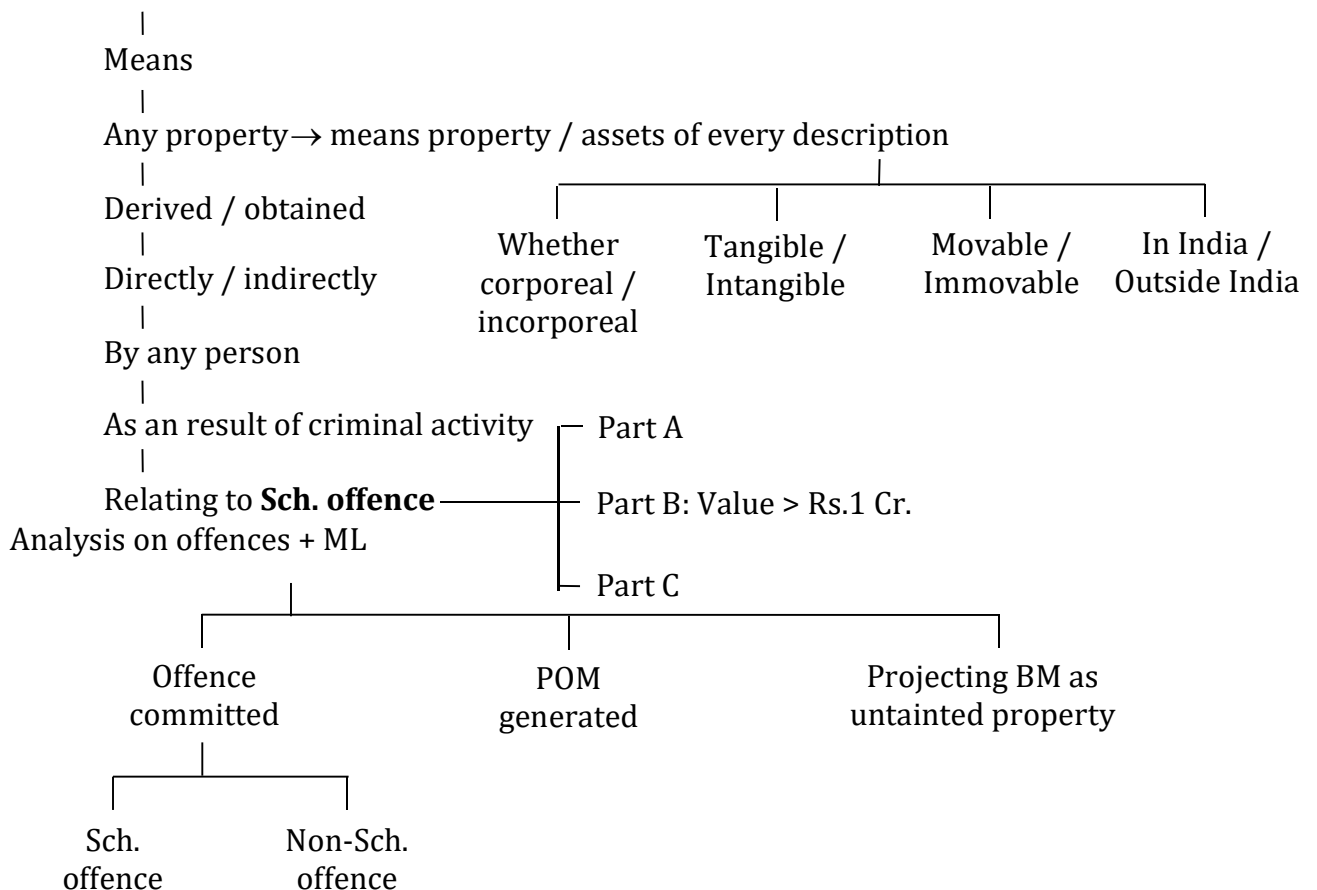


DEFINITIONS

Money Laundering



Proceeds of crime



MISCELLANEOUS DEFINITIONS

Payment system

System

The enables payment to be affected between

Payer & beneficiary

And includes

Credit Card Debit Card Smart Card (Or) Similar other

Operations

Value

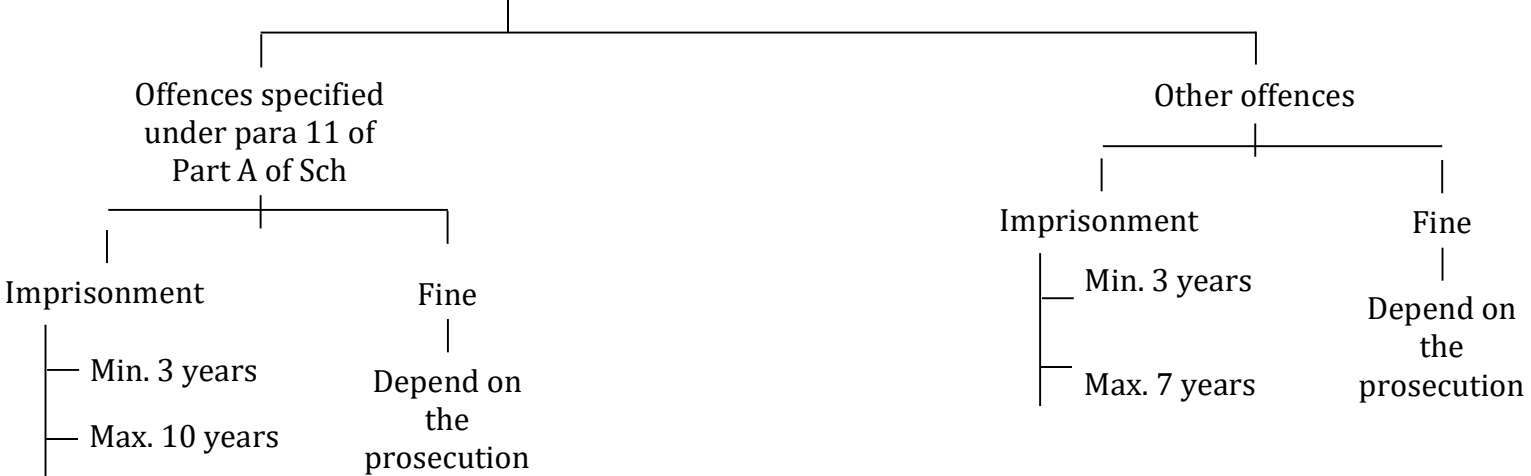
Means FMV

As on date of
acquisition

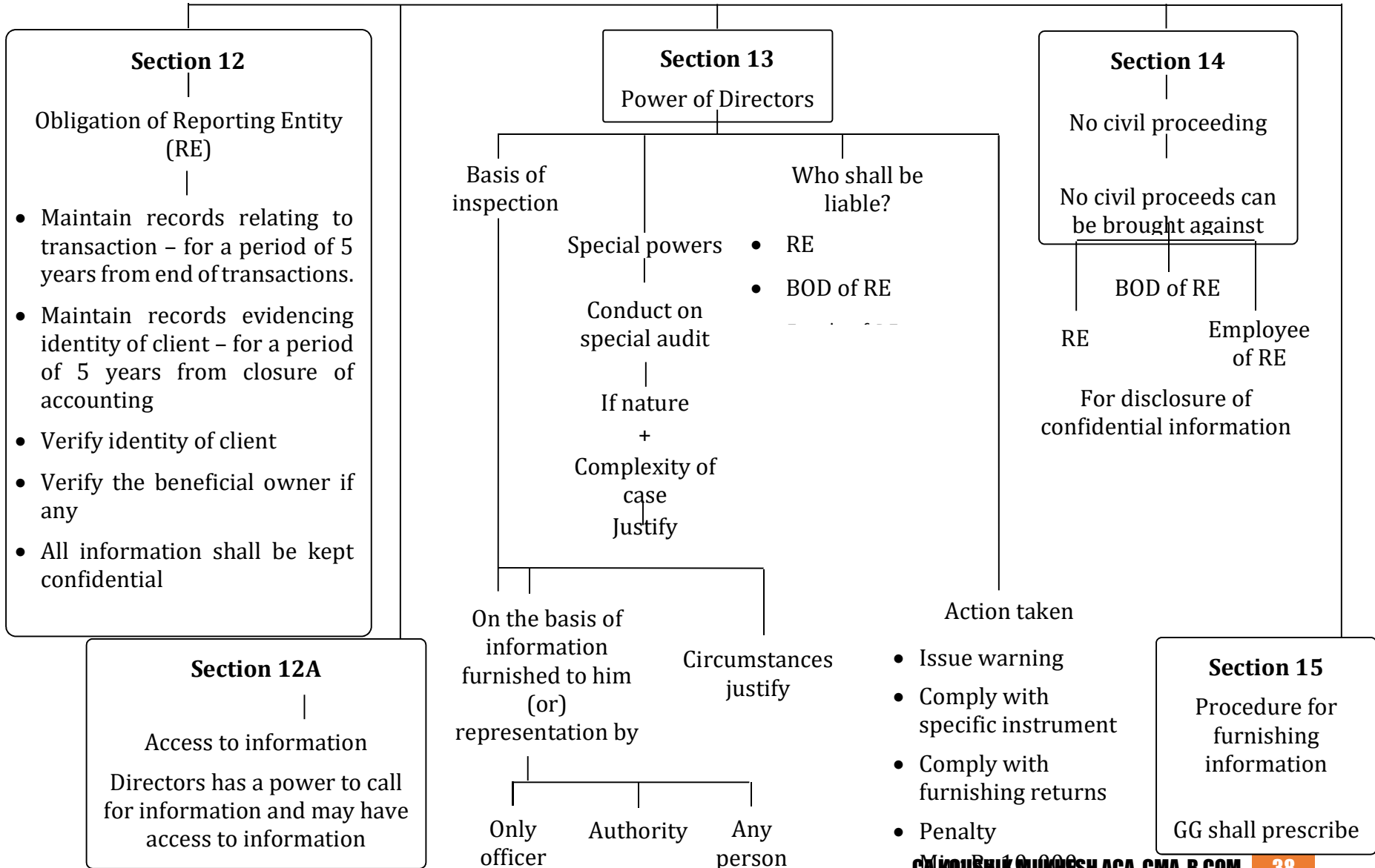
(Or)

As on date of
possession

Punishment for money laundering [Sec.4]



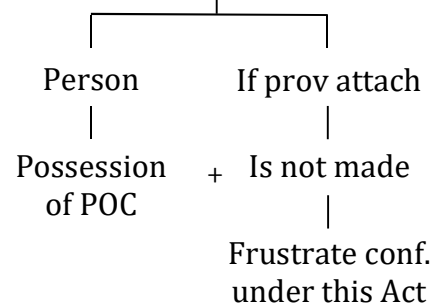
BANK RELATED SECTIONS (SEC.12-15)



Section 5

Directors of PLMA

Belief



With prior approvals of Magistrate etc.

Prior attach ≥ 180 days

Inform 'AA'

Within 30 days

⇒ Exemption = If prov. attach is not made imme, it may frustrate

Proceedings under this Act

Special Court

Guilty

Seized property

Confiscated

Vest in the CG and free from all encumbrances (S-9)

Not Guilty

Seized property

Restored to person from whose possession the property is attached

Section 8, 6

Director under Sec.5(5)

Est by CG for purpose of exercise of powers conferred under this Act

Chairman + 2 Members

Inform

AA

Inquiry

Showcause notice issued (Min. time = 30 days)

Or

Person accused of offence of ML

Person in possession of POC

Reply

Satisfactory

Dissatisfactory

Prov. attach

Confirmed attachment

(seizure) = stayed until Spl. Court Judge as guilty

AUTHORITIES AND APPEALS

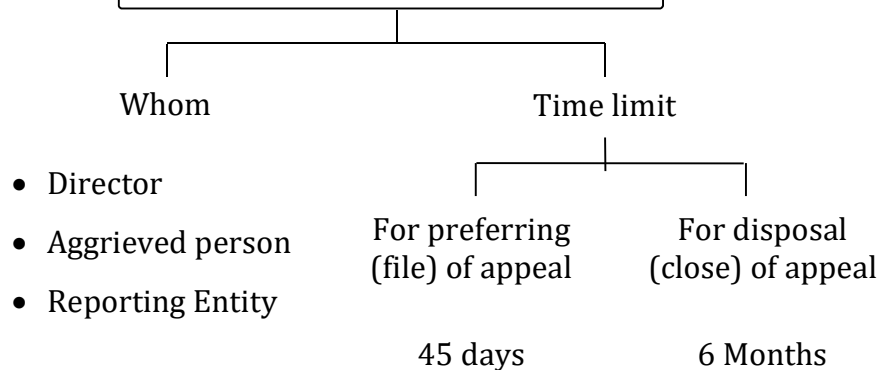
S-48 (Officers under this Act)

- Director
- Addl. Director
- Joint Director
- Deputy Director
- Assistant Director

S-25 (Est. Appellate Tribunal)

Tribunal established under smugglers and foreign exchange manipulators Act 1976 shall be deemed to be tribunal under this Act for hearing the Appeals

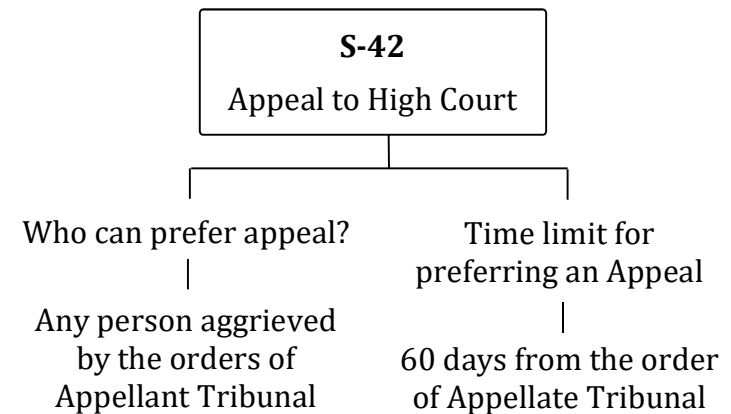
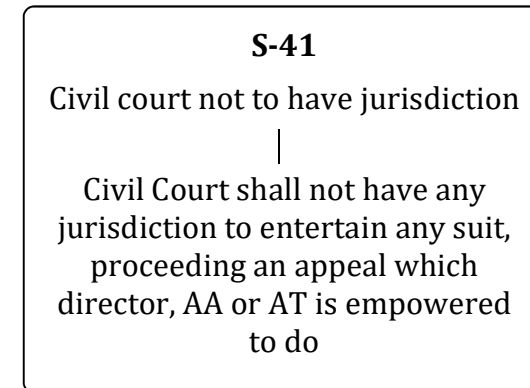
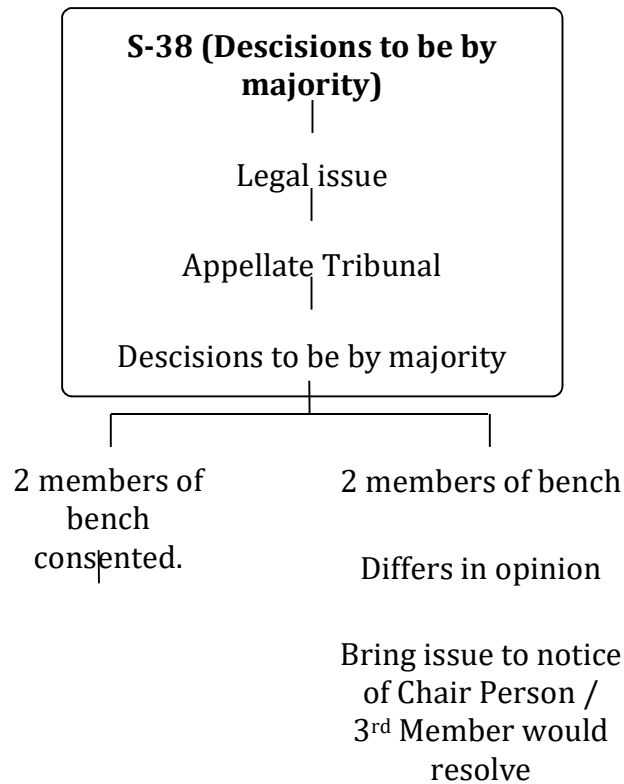
S-26 (Appeals to Appellate Tribunal)



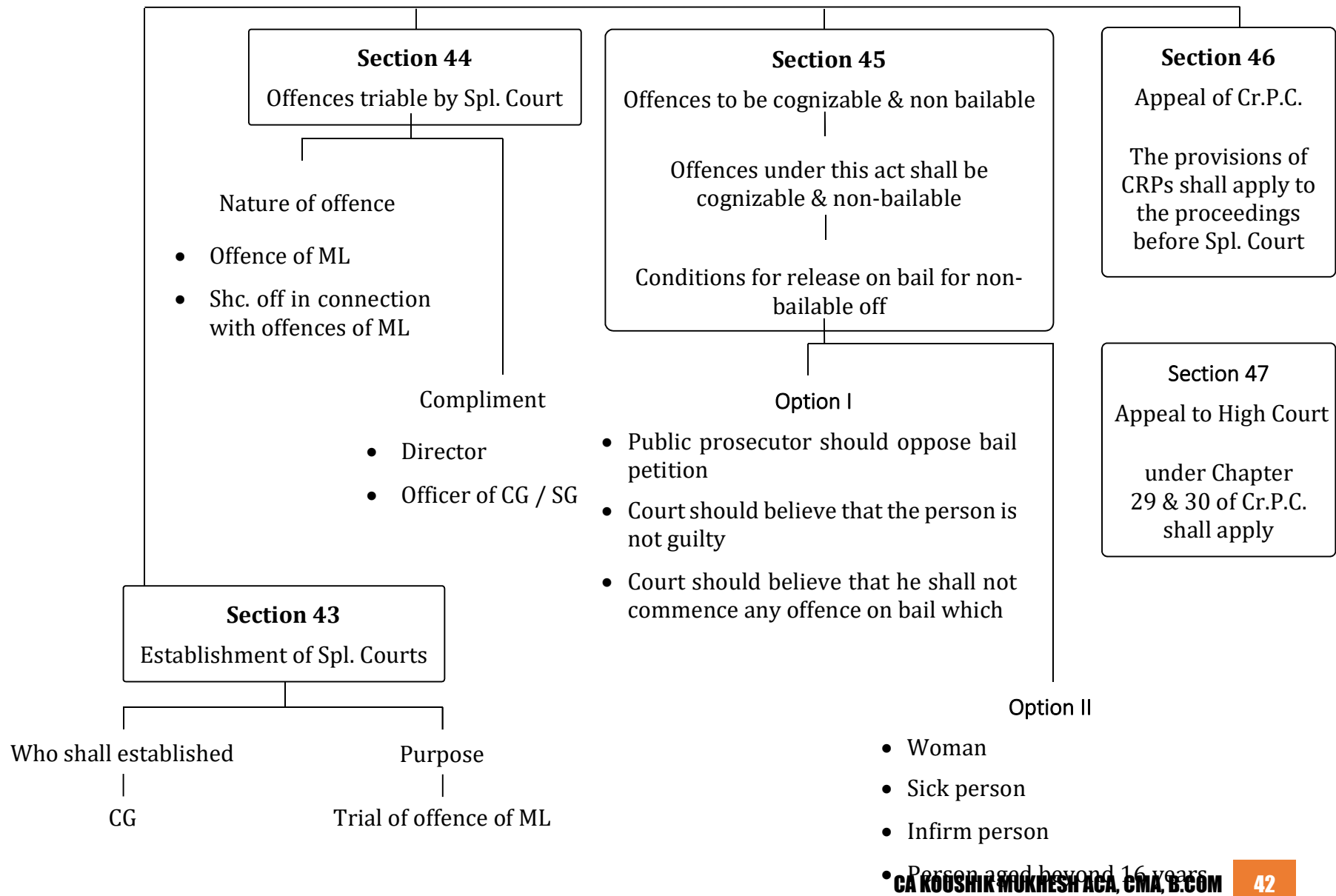
S-35 (Powers of Appeal Tribunal)

- Summoning & enforcing the attendance of person
- Examination of oath
- Discovery and production of documents
- Receiving evidence on affidavits
- Issuing commissions & examination of witnesses

CIVIL COURTS



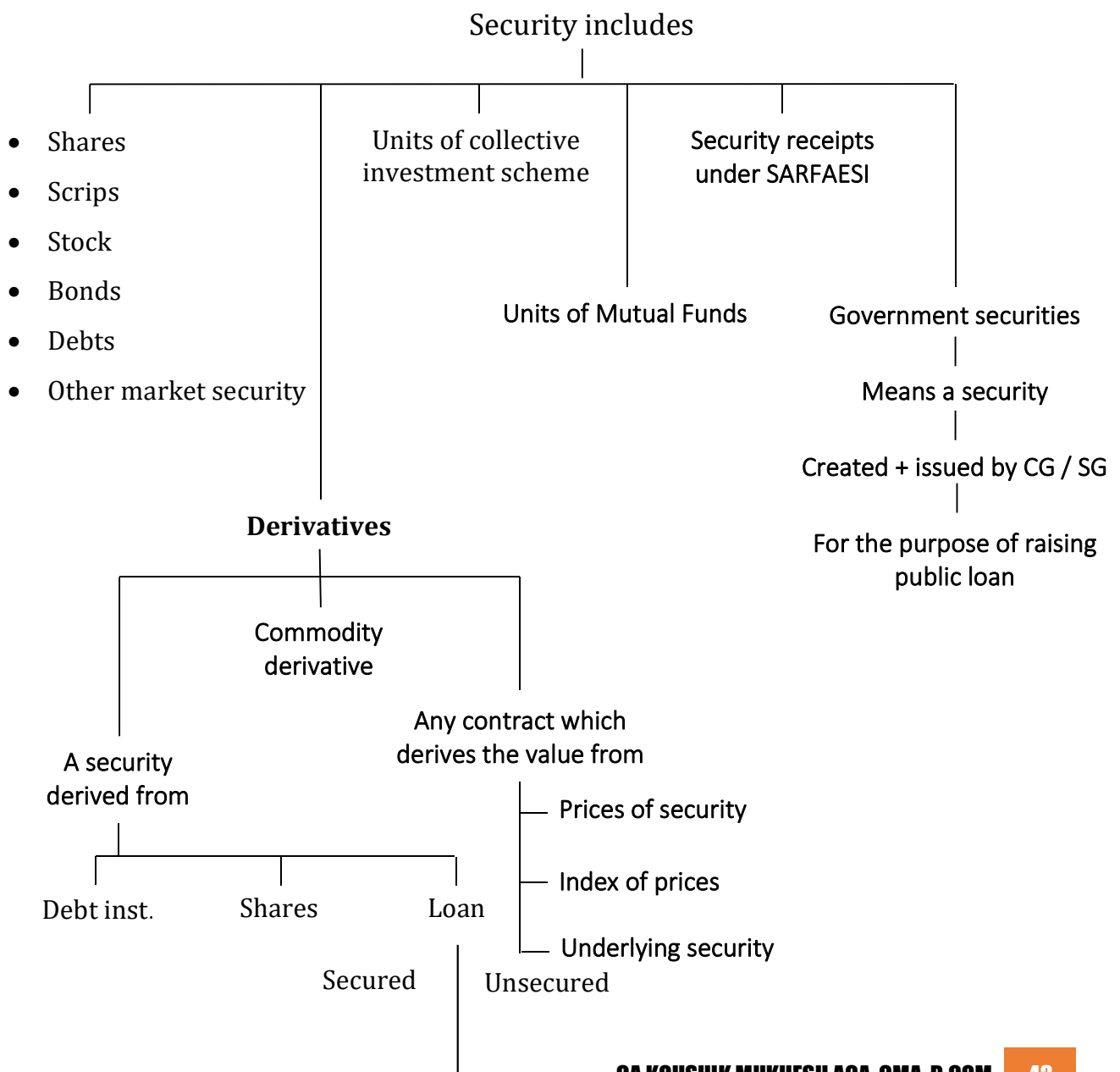
SPECIAL COURTS



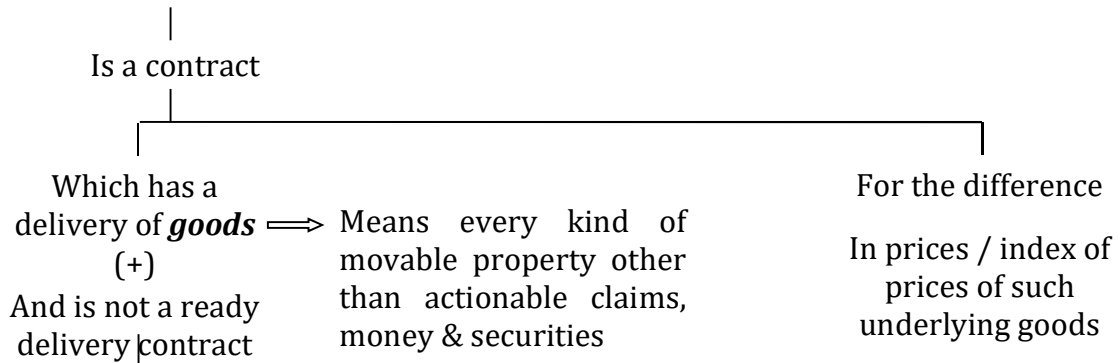
SECURITIES CONTRACTS [REGULATION] ACT, 1956

- Part I - Definitions
- Part II - Administration of Stock Exchange
- Part III - Offences, Penalties & Spl. Court

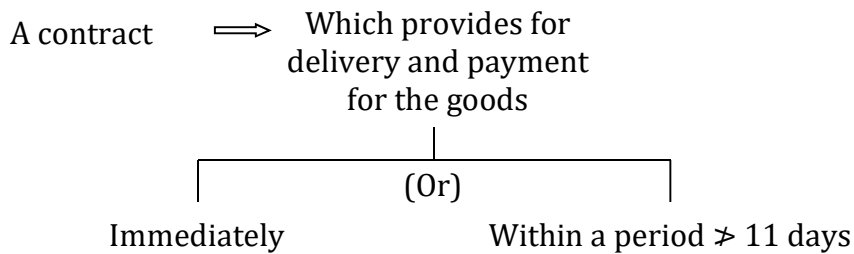
1. Basic Definitions



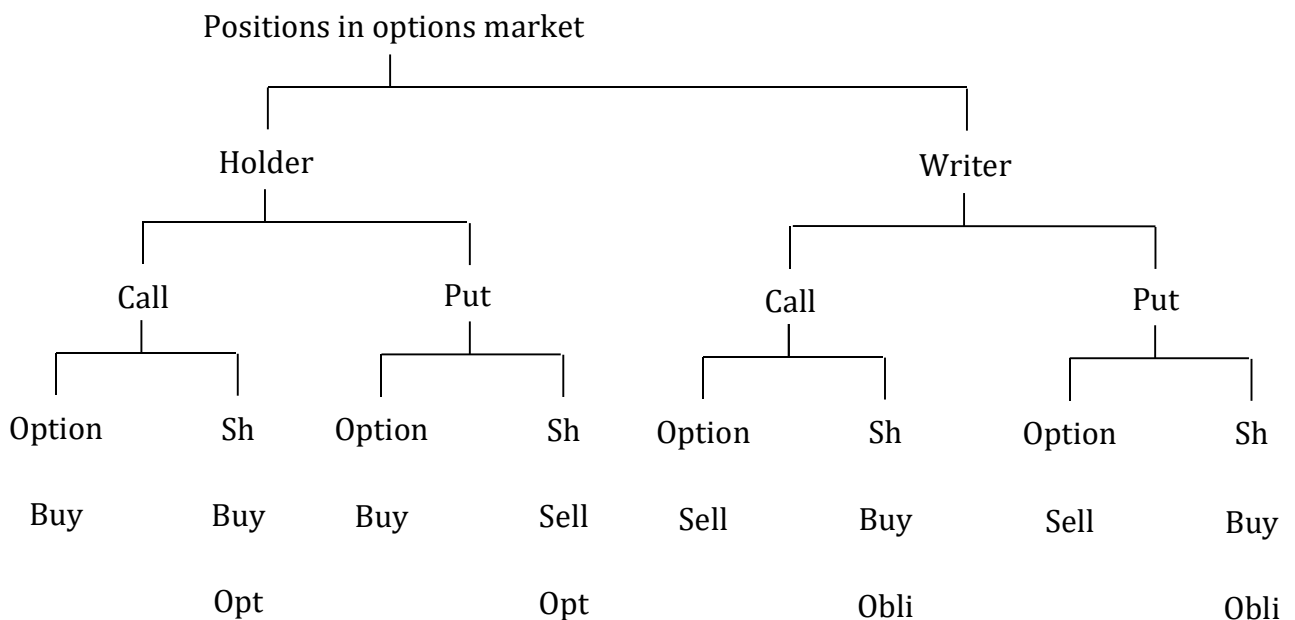
Commodity Derivative



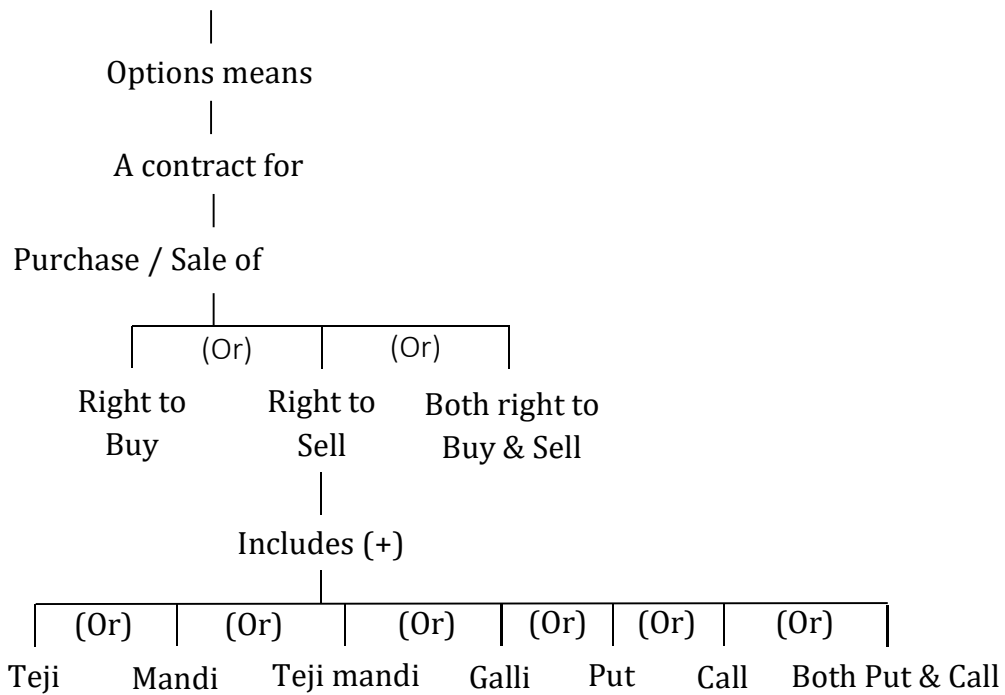
Means



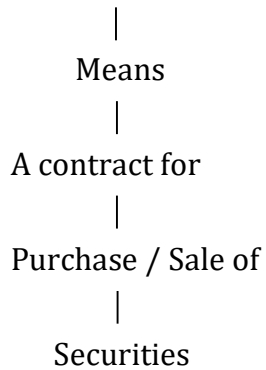
Option in Securities



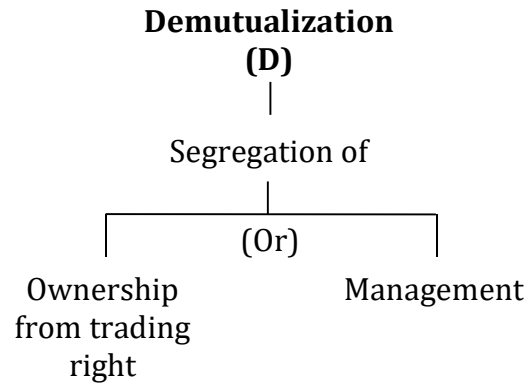
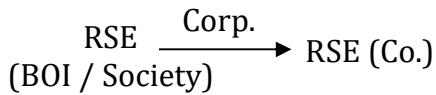
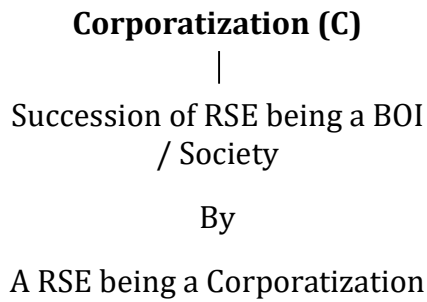
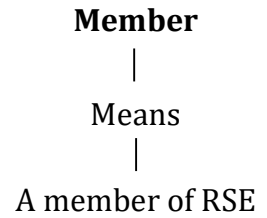
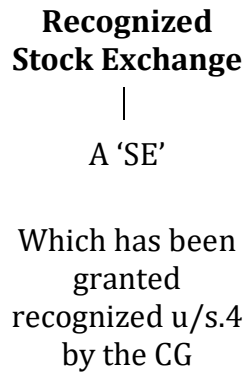
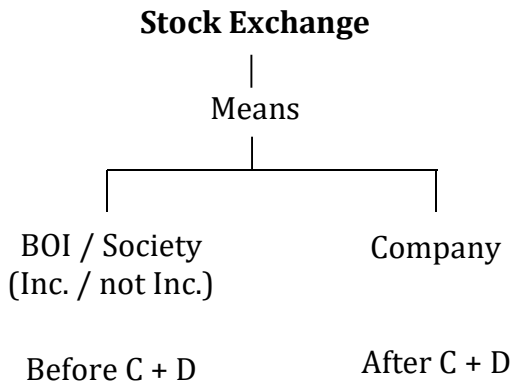
Option in Securities



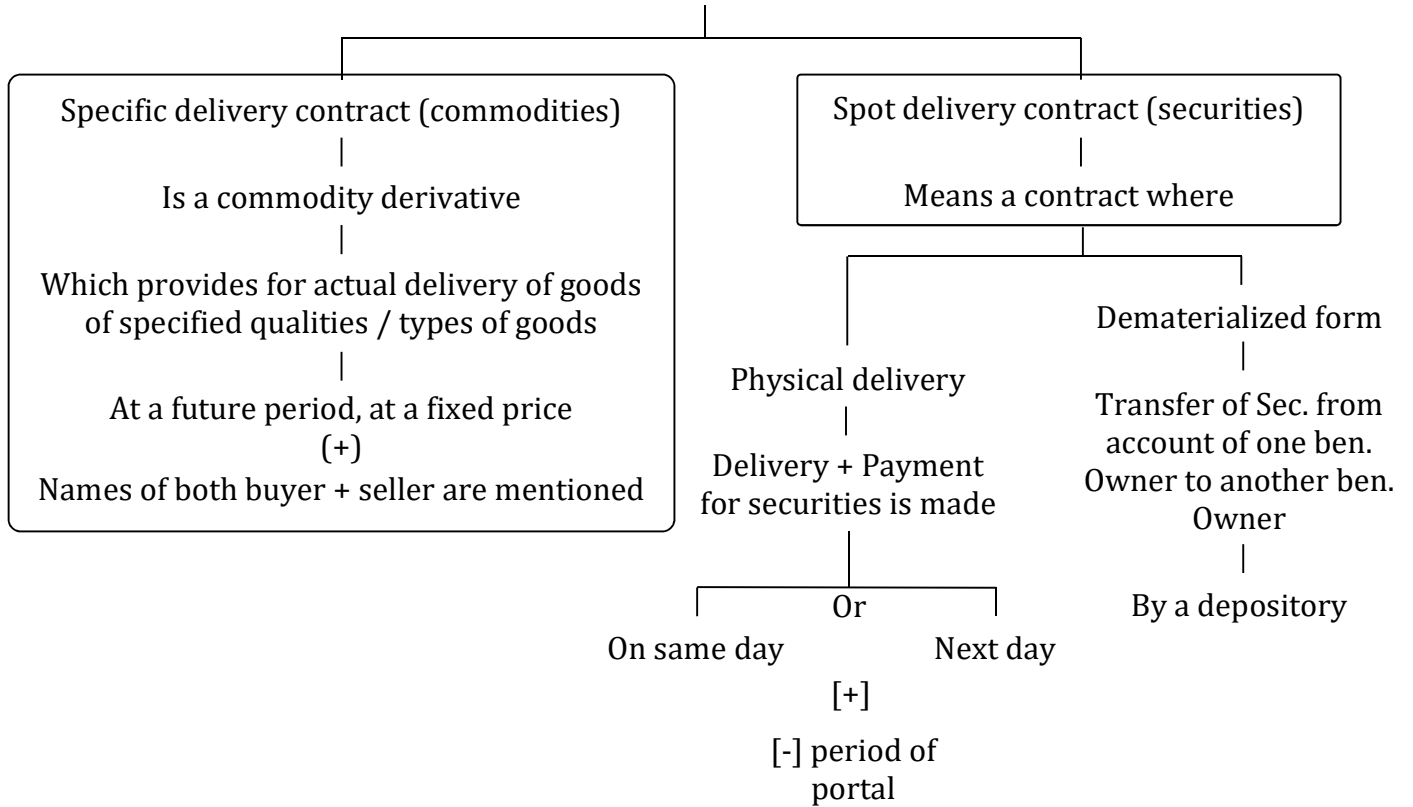
Contract



MISCELLANEOUS DEFINITIONS



TYPES OF CONTRACT FOR DELIVERY



ANALYSIS ON CRIMINAL OFFENCES UNDER SCRA

Sections attracting (28) Special Courts intervention

- Fail to comply with directions of SEBI
- Contravention U/s.13, 16 & 17
- Tran. In derivatives in contravention
- Contravention of provisions of Sec.15
- Fails to comply with provision Sec.21 & 21A
- Failure to comply with CG order U/s.22
- Owns / keeps any place other the RSE for the purpose entering into or performing any contract

Fine – Up to Rs.25 Cr.

(OR)

Imp – Up to Rs.10 Years

(OR)

Both

Est. of Special Court (26)

- Est. by CG
- Purpose of speedy trial of offences under this Act
- Special Court consists of
 - Single judge
- Qualification of single judge
 - Imm. before the appointment holding the office of
 - Session's Judge
 - Addl. Session's Judge

Offences (23M)

Punishment where no specific penalties where provided

Fine – Up to Rs.25 Cr.

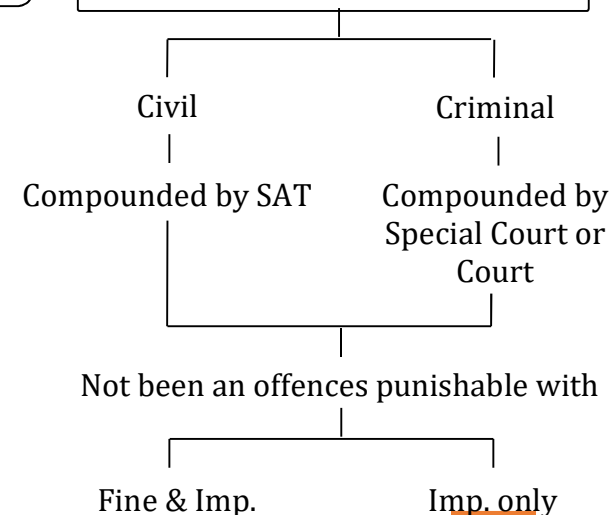
(OR)

Imp – Up to Rs.10 Years

(OR)

Both

Composition of offences (23N)



CIVIL JUDICIARY UNDER SCRA

CIVIL CONTRAVENTIONS AND CORRESPONDING PENALTIES

Part - A

- | | | |
|--|---|---|
| 1. Penalty for failure to furnish information | } | Fine – Rs.1 Lakh per day (or)
Rs.1 Cr. in aggregate
(whichever is less) |
| 2. Penalty for failure to enter into agreements with clients | | |
| 3. Penalty for failure to redress investor grievances | | |

Part - B

- | | | |
|---|---|----------------|
| 4. Failure to segregate securities / money | } | Fine –Rs.1 Cr. |
| 5. Penalty where no specific penalties provided | | |

Part - C

- | | | |
|--|---|------------------------|
| 6. Failure to comply with listing & delisting conditions | } | Fine – Up to Rs.25 Cr. |
| 7. Excess dematerialization | | |
| 8. Delivery of unlisted sec. | | |
| 9. Failure to furnish peridical returns | | |

ADURICATION OF PENALTIES

- | | |
|---------------------------|---|
| 1. Purpose: | Adj. of penalties u/s.23A to 23 H |
| 2. Who has power to adj.? | Adj. auth. |
| 3. Who shall be AA? | Any officer not below the rank of Dir.Ch. of SEBI |
| 4. Purpose of Adj.? | Holding an inquiry + Impose penalty |
| 5. Procedure: | OBH shall be given |
| 6. Civil Court Powers: | Summons / Excess of oath / D+P etc. in PLMN |
| 7. Enhancement of penalty | Power with SEBI / Penalty levied by AA is erroneous |

FACTORS TO BE TAKEN INTO ACCOUNT BY AA

1. Disproportionate gain made
2. Amount of loss caused to other party
3. The repetitive nature of default

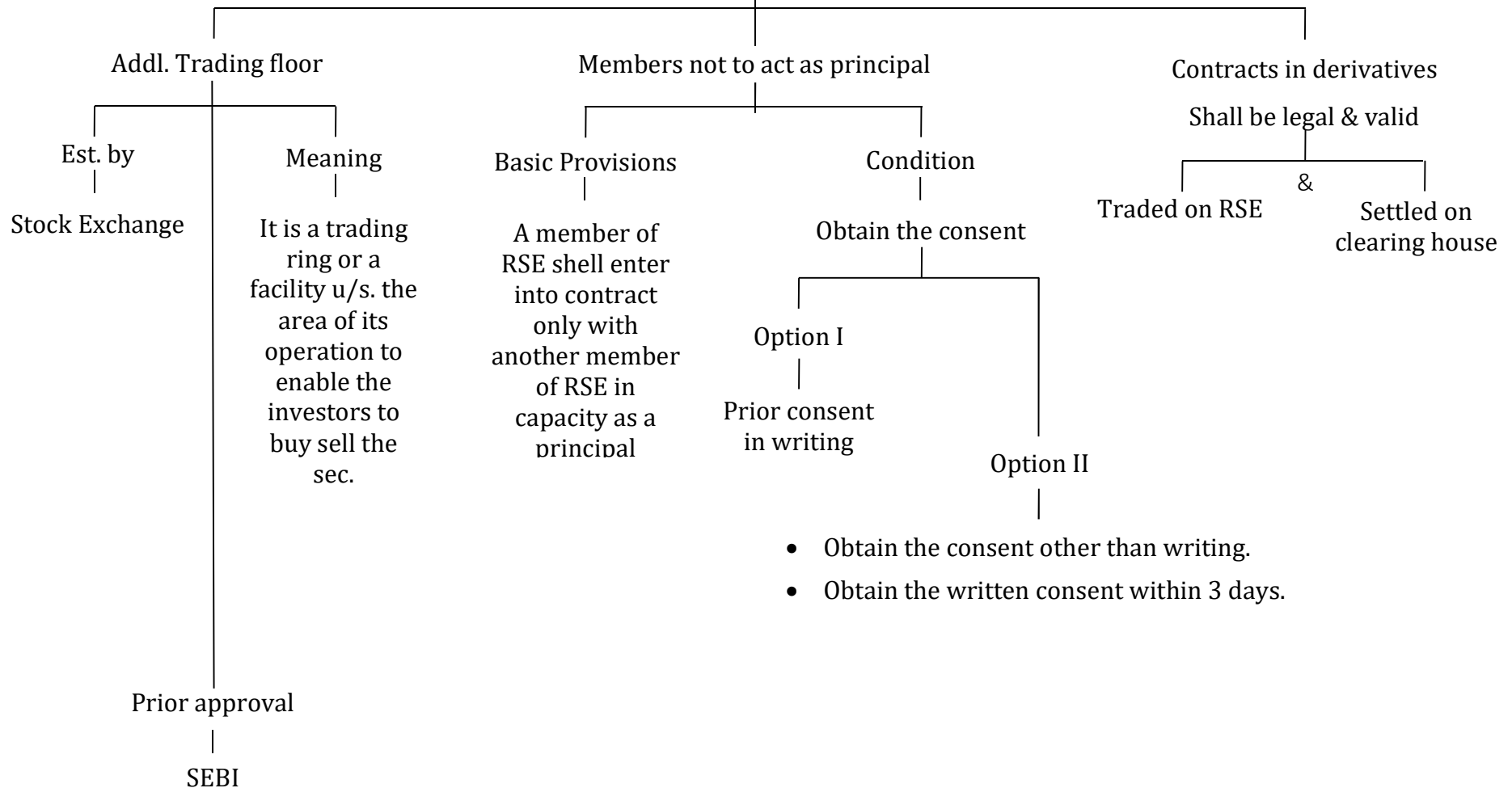
} These are to be considered while considering 23A to 23H

APPEAL TO SAT

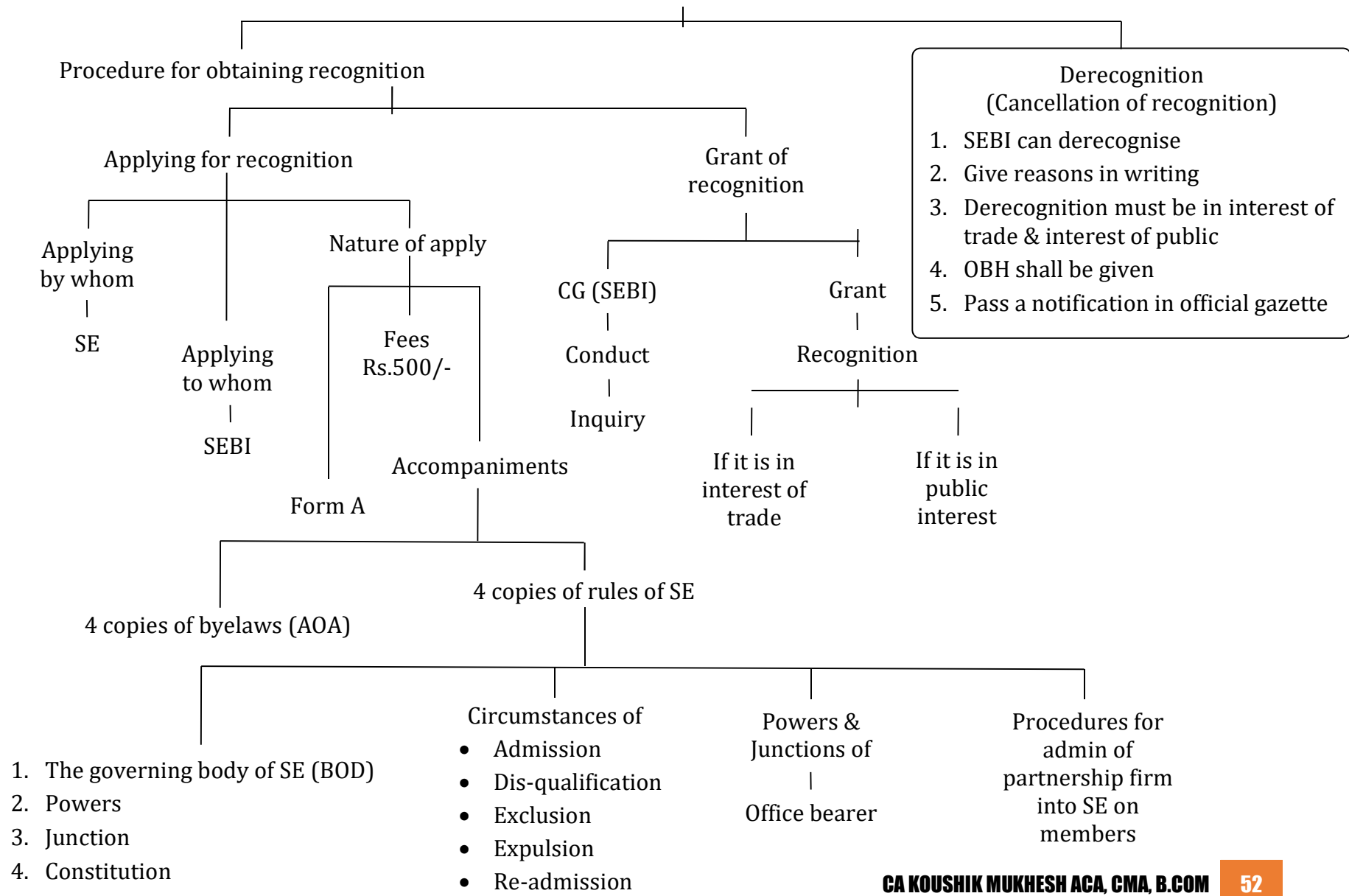
1. Circumstances of Appeal
 - Aggrieved by order of RSE
 - Aggrieved by orders of AA
 - Aggrieved by orders of SEBI for rejection of C & D
2. Appeal to whom SAT
3. Time limit for making appeal 45 days
4. Time limit for disposal of appeal 6 months
5. Opportunity of being heard

ADMINISTRATION OF STOCK EXCHANGE

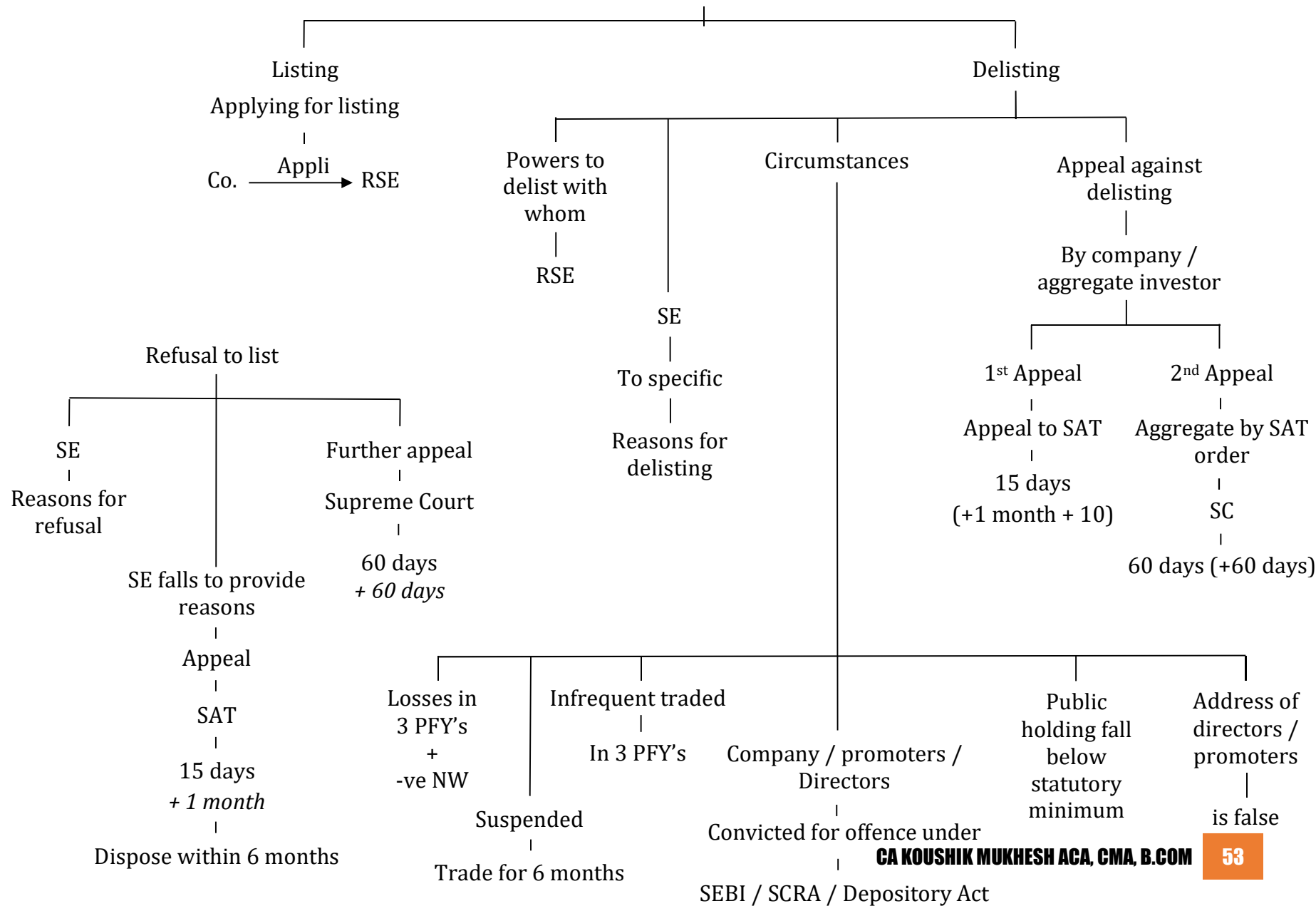
Part I



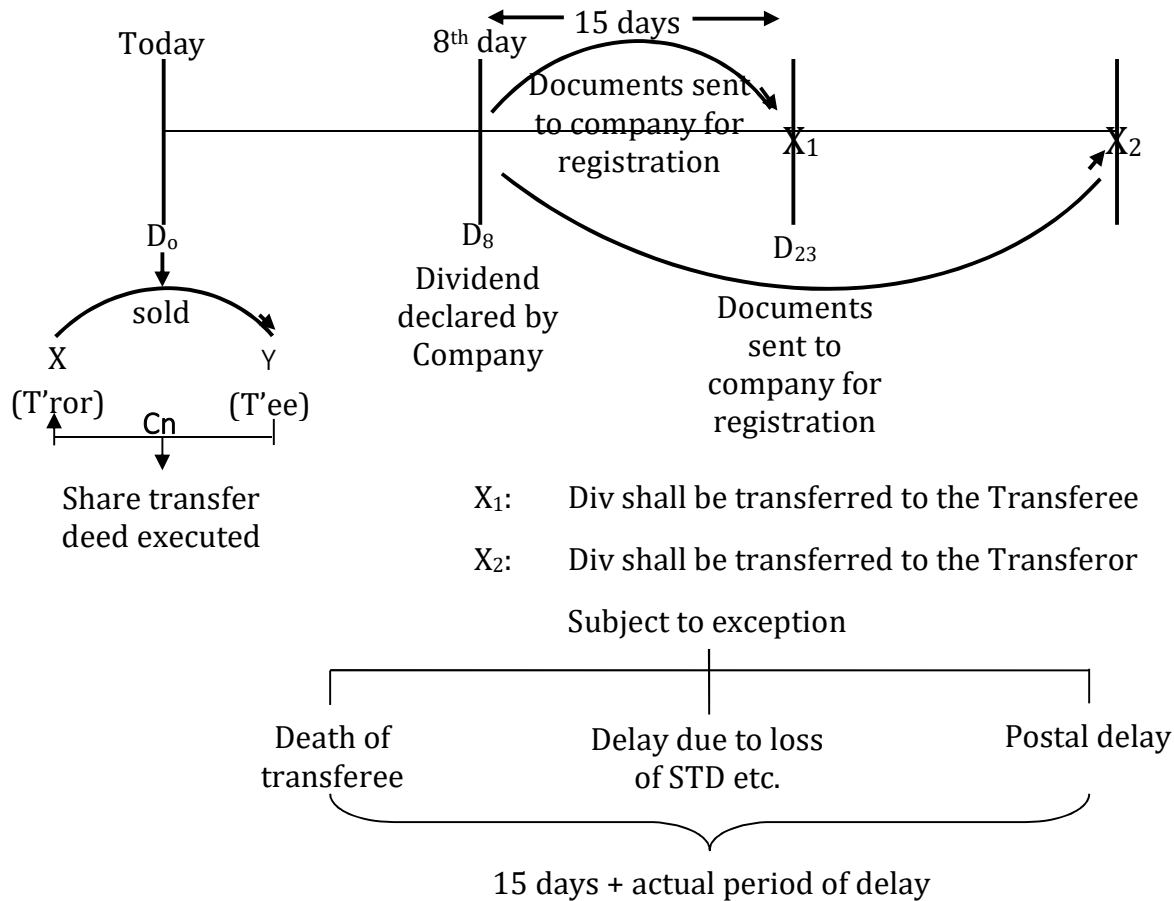
CONCEPTS OF RECOGNITION & DERECOGNITION



CONCEPTS OF LISTING & DELISTING OF SECURITIES

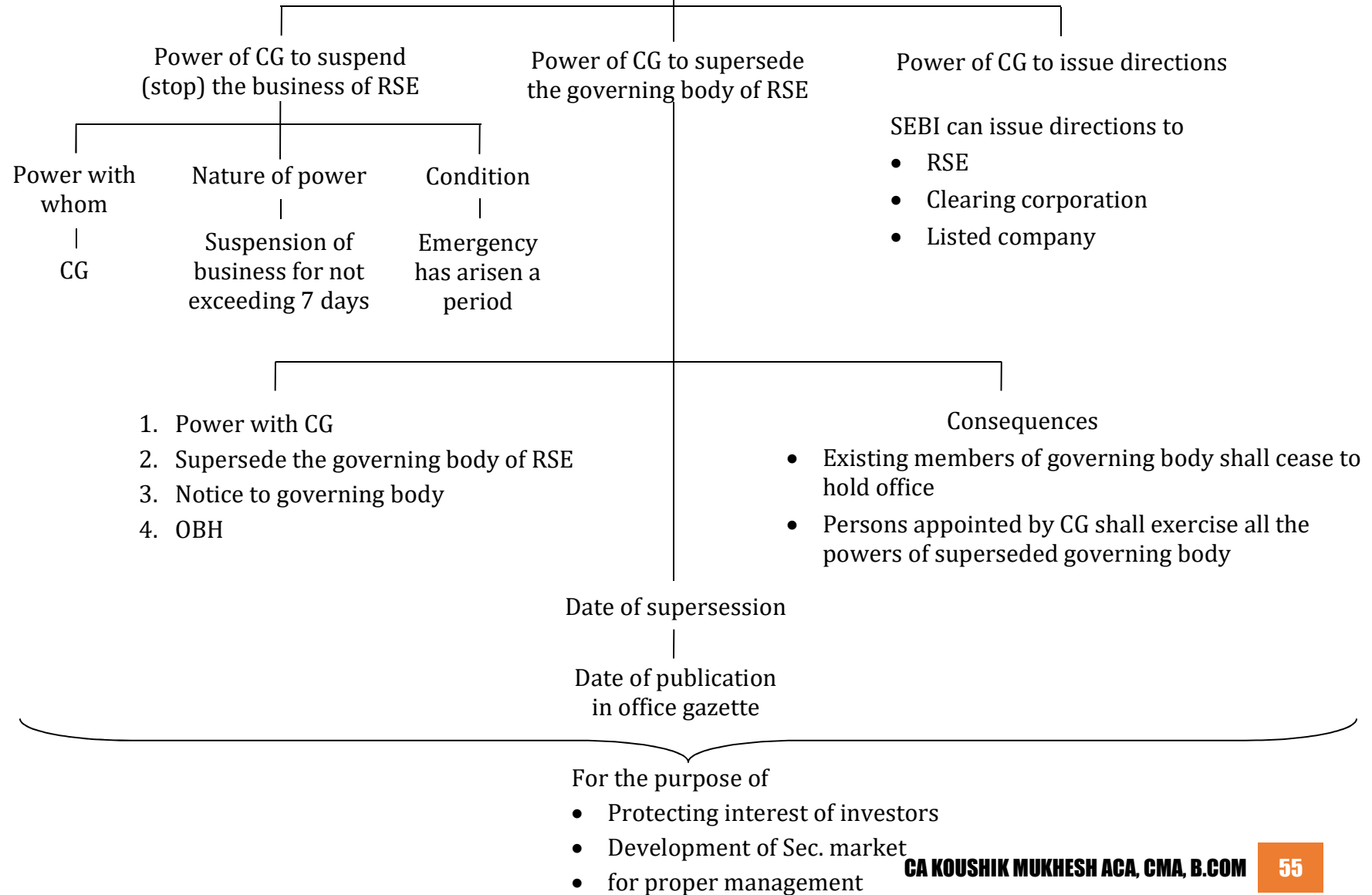


TITLE TO DIVIDENDS & RIGHT TO RECEIVE INCOME FROM COLLECTIVE INVESTMENT SCHEME



POWERS OF CG

Part I



Part II

General Powers

- SEBI has a power to order for periodical returns from RSE
- Every RSE and member shall preserve all the relevant BOA for the period not exceeding 5 years

Power of RSE to make rules imposing restrictions

- R₁: Restriction on voting rights voting rights to members only
- R₂: Restriction on voting one member – one vote irrespective of share
- R₃: Restriction on proxy RSE may provide that there is restriction on right of a member to appoint a person as a proxy to attend and vote at the meeting

Powers of enquiry

1. Power with whom – SEBI
2. Nature of power – to call for information and explanation
3. Order whom? – RSE / member of RSE
4. Order for what – information and explanation
5. Who shall conduct the enquiry officers.
6. Duty of Director / Manager / Secretary, etc. – render assistance and produce all books of accounts

Powers CG to make rules

1. Power with whom – CG
2. Nature of power
 - Make new rules
 - Amended existing rules
 - CG shall inform governing body
 - Rules comes into effect within 2 months from date of order

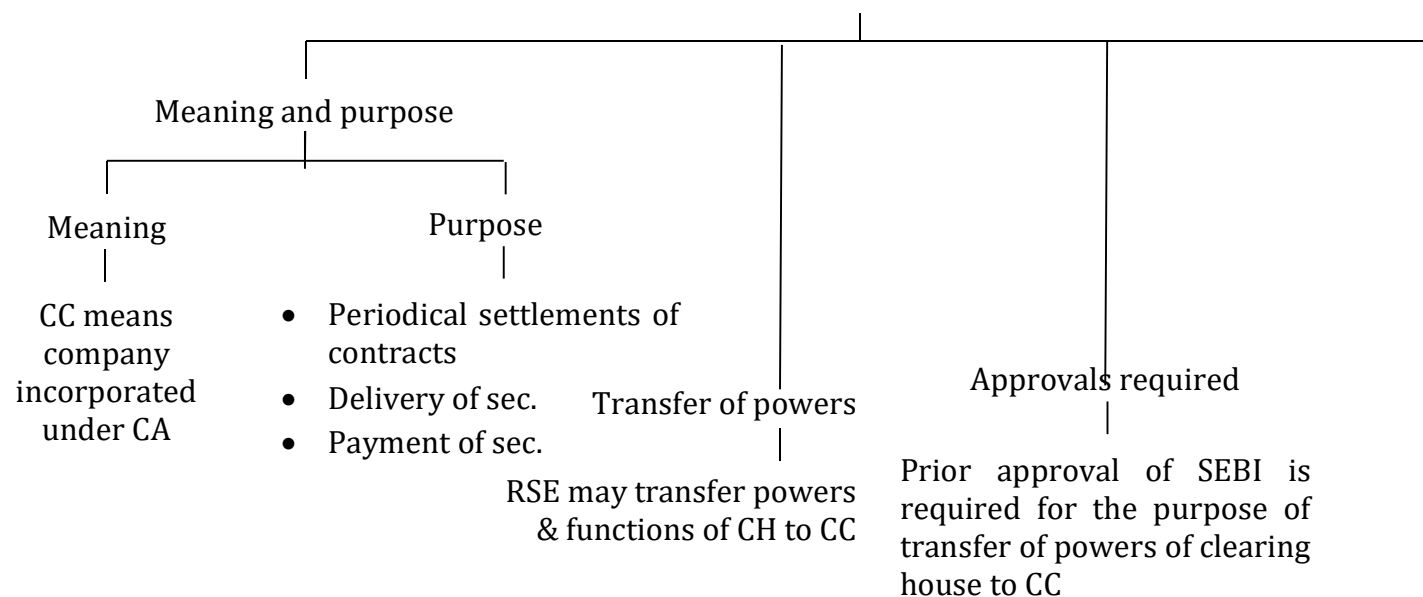
Applicability & Non-applicability of SCRA

Applicability: Act applies to whole of India including the state of Jammu & Kashmir

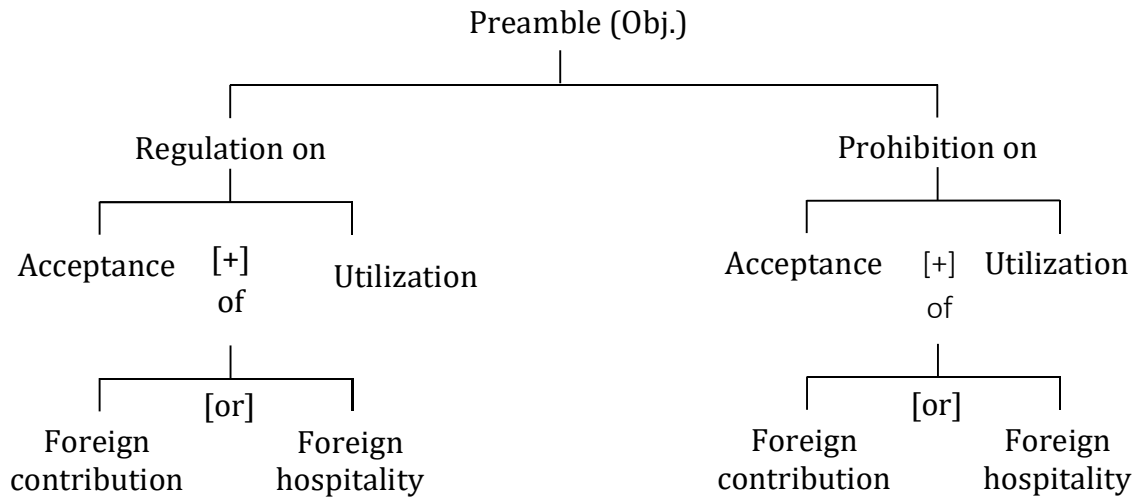
Non-applicability: Act does not apply in following cases

1. Government
2. RBI
3. Local authority
4. Any corporation set up under a separate law **Example:** RECL, NAHAI, SFC

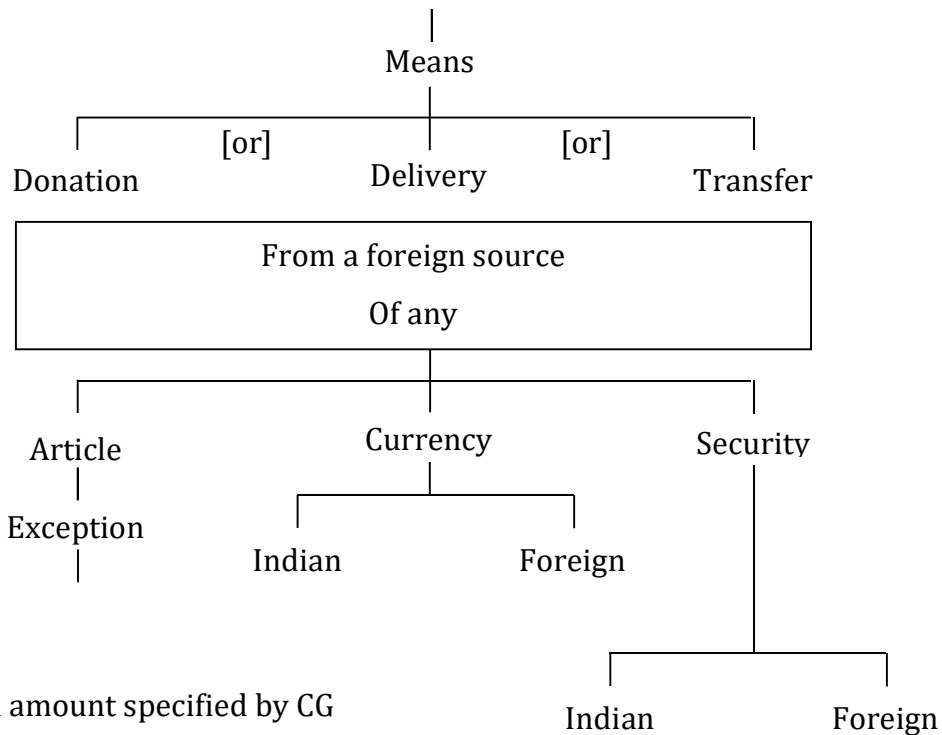
CLEARING CORPORATION



FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

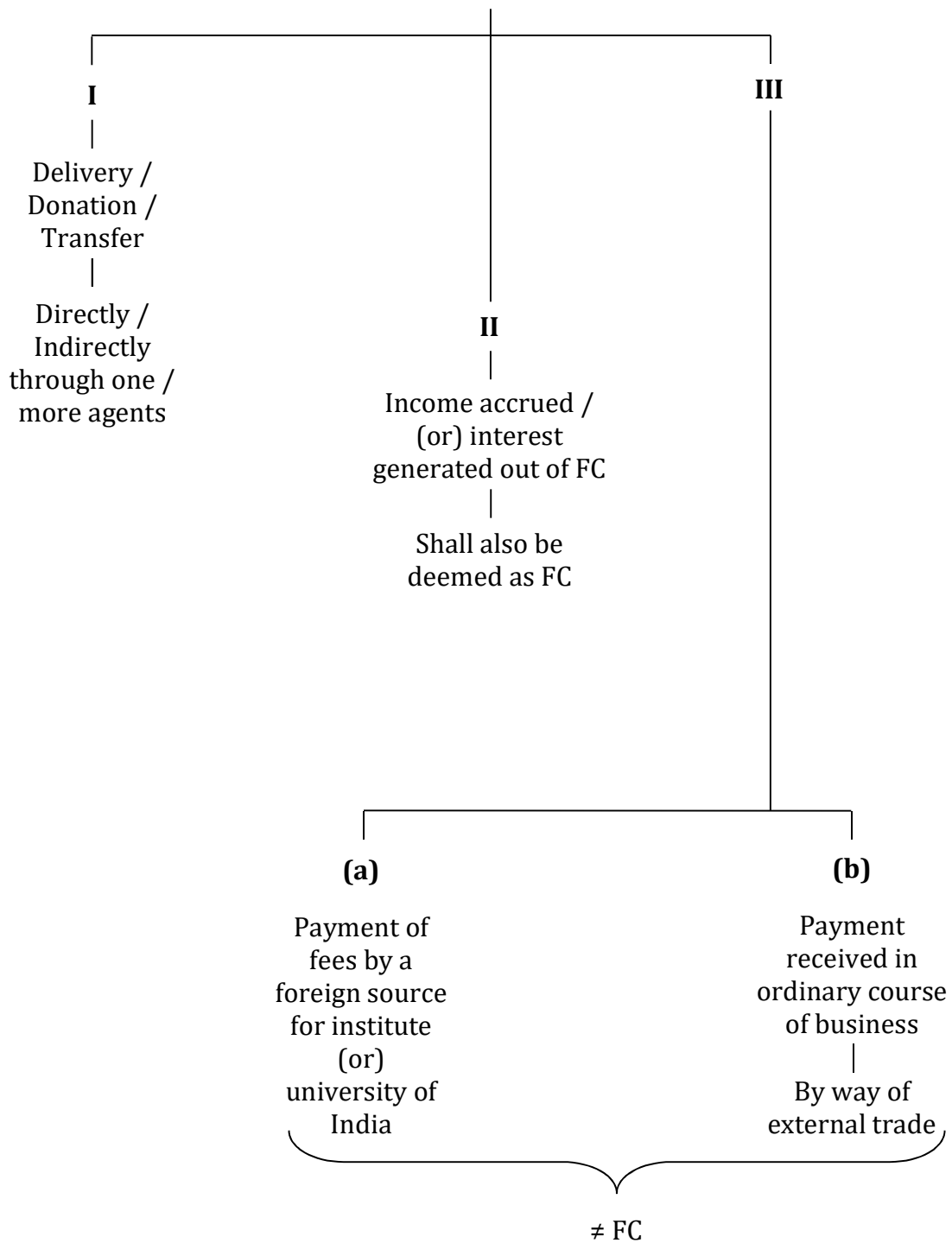


FOREIGN CONTRIBUTION

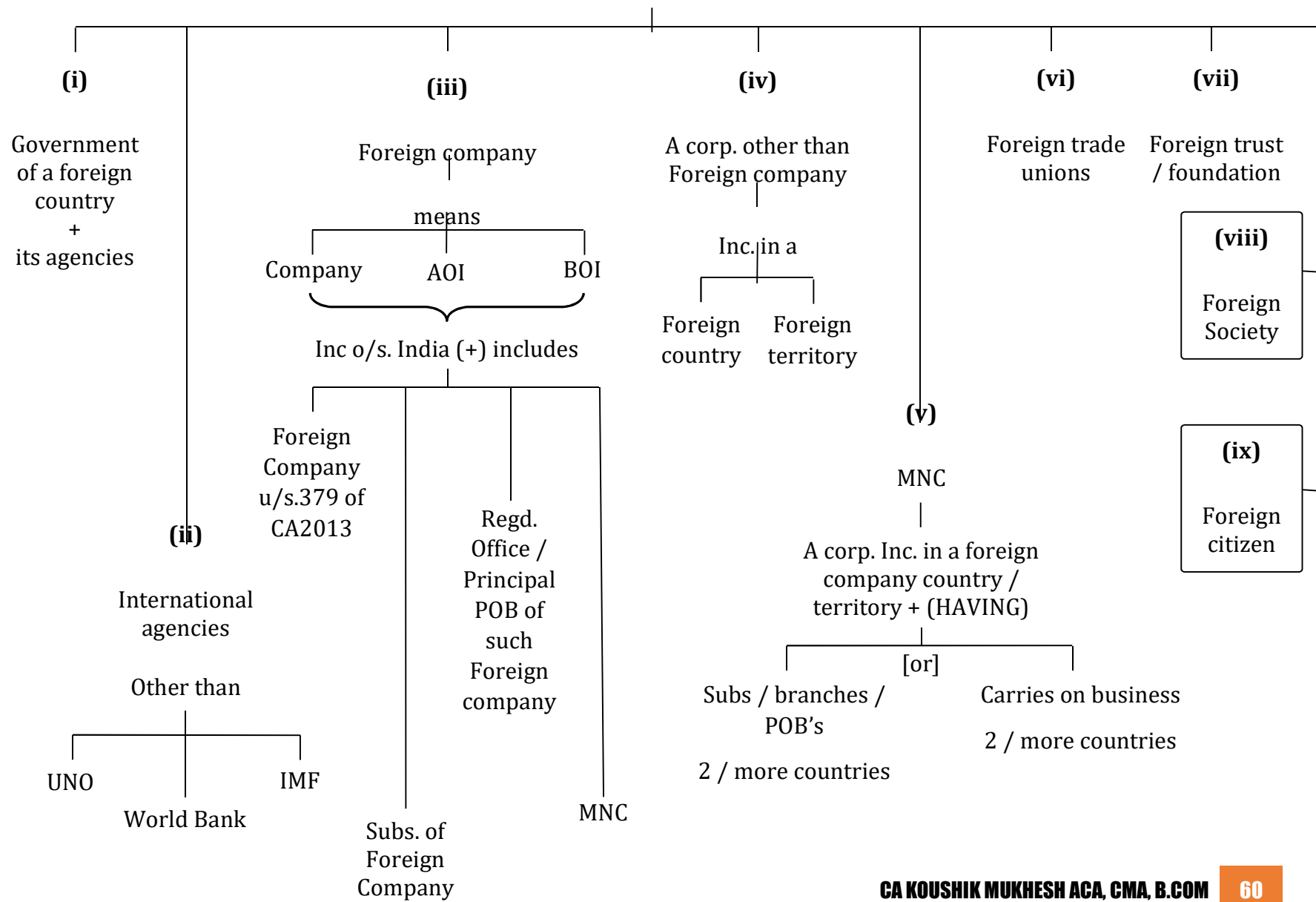


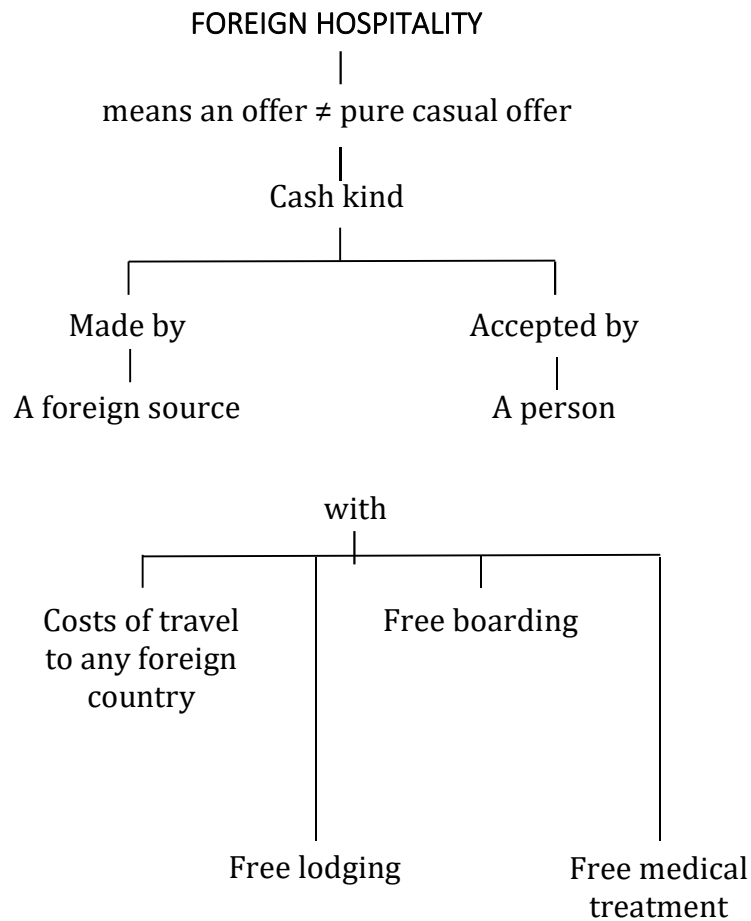
- Gift
- Personal use
- Value \nless such amount specified by CG

Explanation



FOREIGN SOURCE





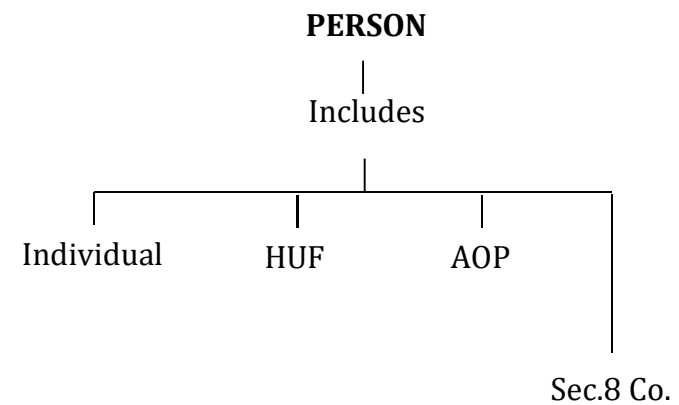
(x)

Company Inc. under CA 1956/2013

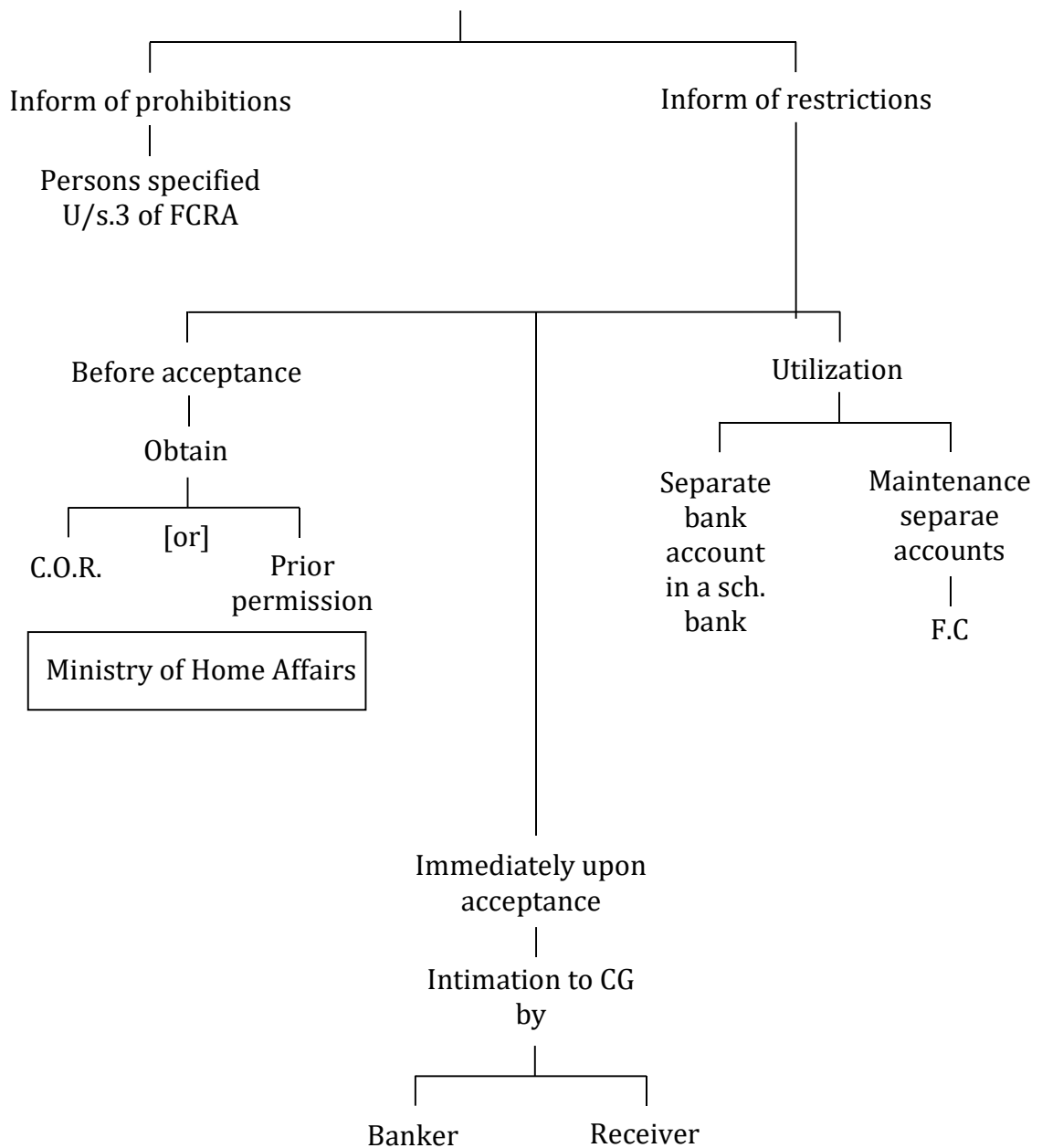
(+)

> 50% of nominal value of capital is held, singly / in an aggregate by

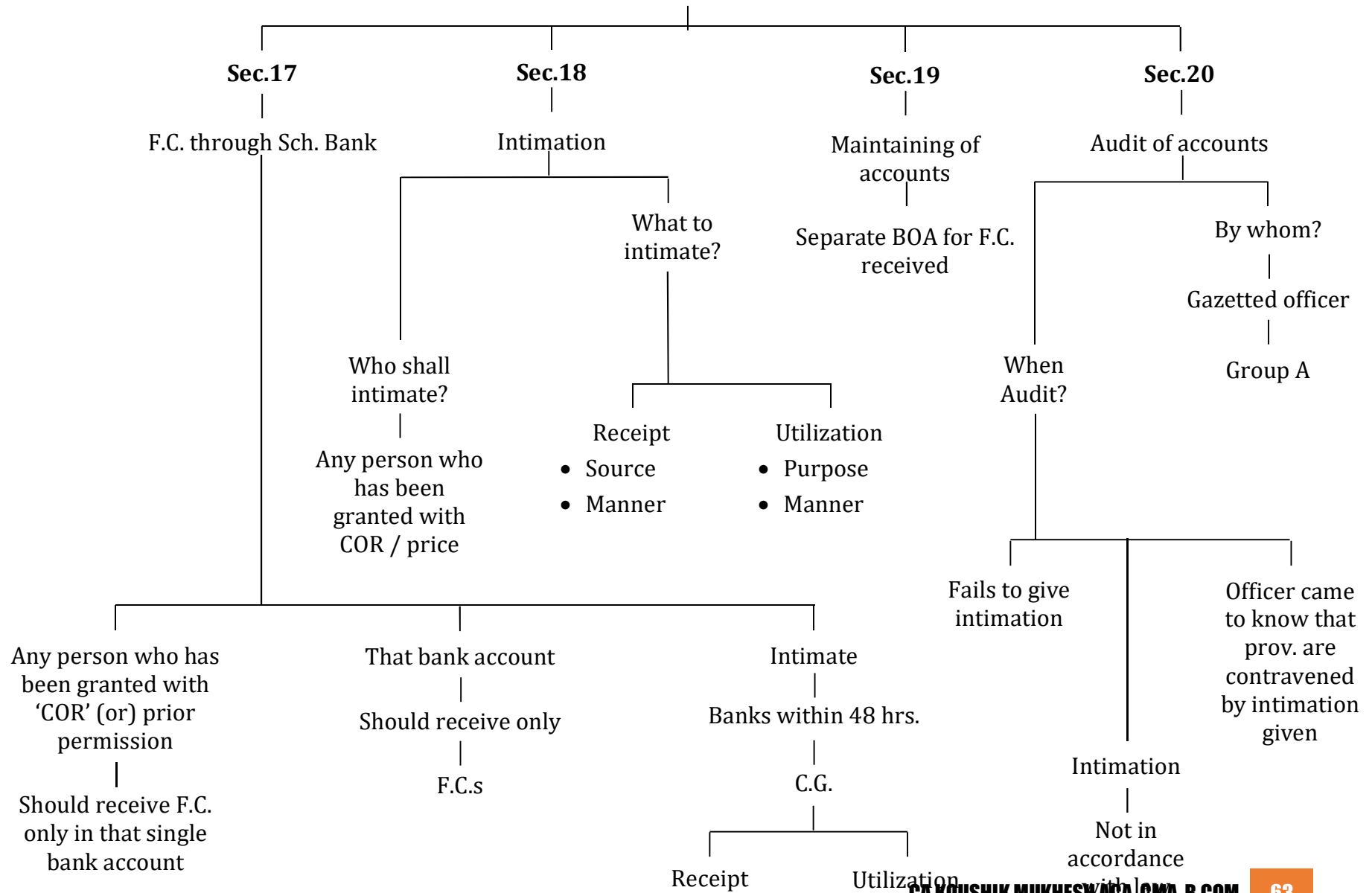
- Foreign Government
- Foreign citizen
- Foreign corporation
- Foreign trusts
- Foreign company



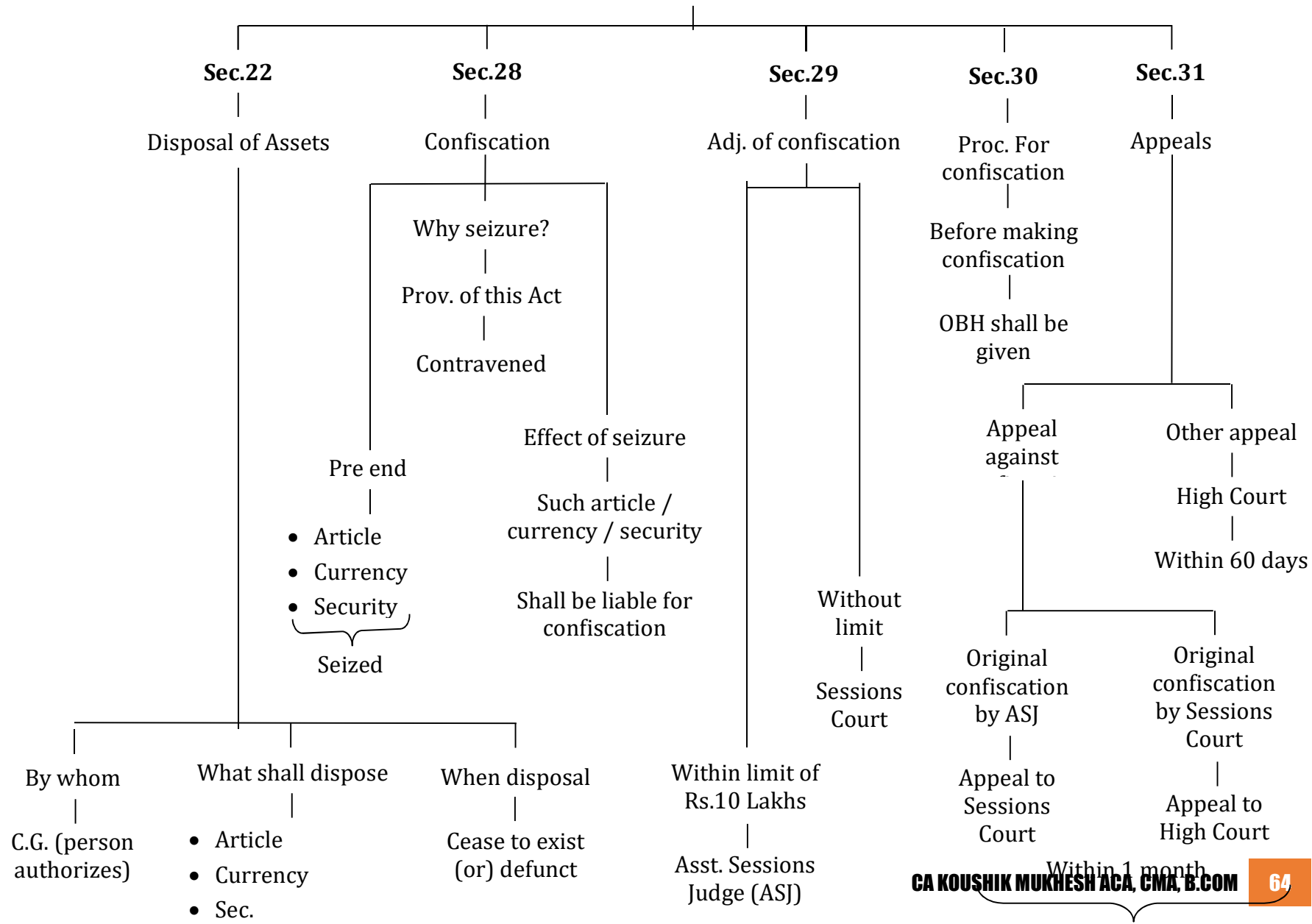
MANNER OF REGULATIONS UNDER FCRA



SECTIONS ON INTIMATION

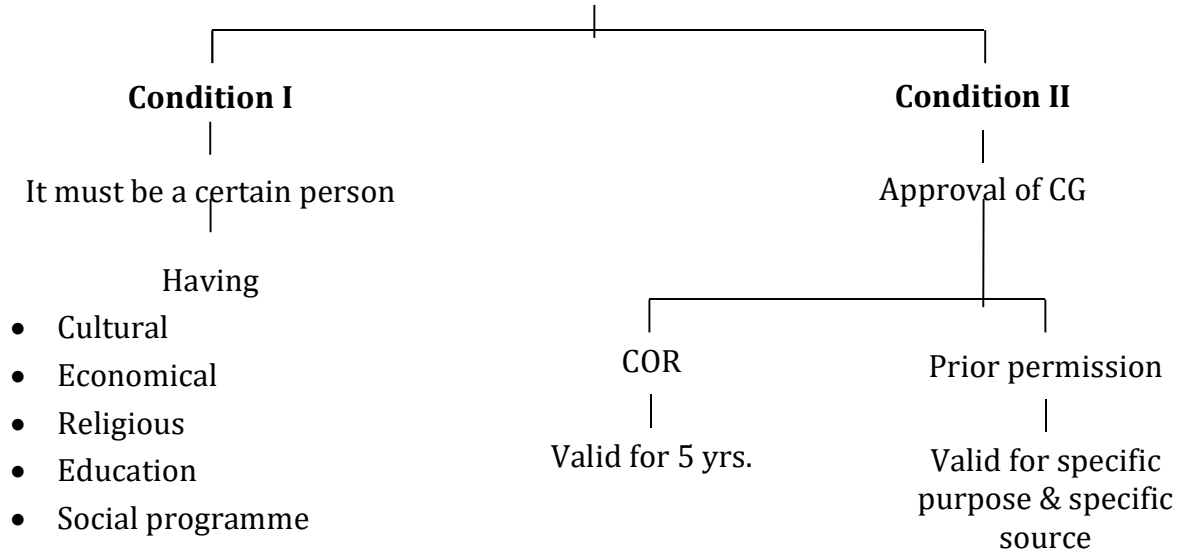


ADJUDICATION UNDER FCRA



REGISTRATION OF CERTAIN PERSONS WITH CG

Conditions for acceptance of F.C.



REGISTRATION & PROCEDURE

Grant of COR

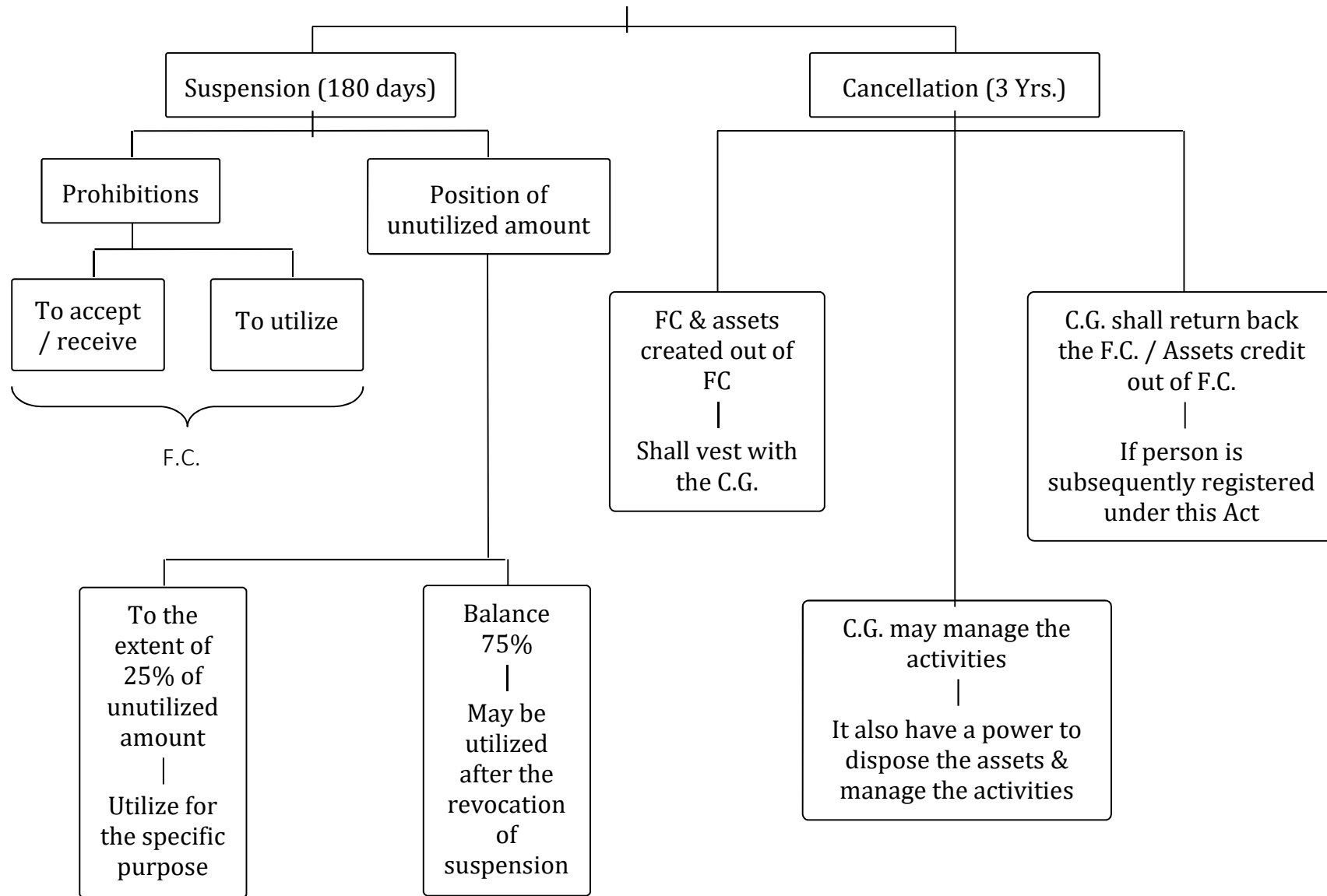
Person making an application for grant of COR / prior permission should not be

- Fictitious person / benami
- Convicted for the offence of conversion from the one religious to other by inducement of force
- Convicted for creating communal tension / disharmony
- Convicted for misutilisation / diversion of funds
- Engaged in sedition activities
- Likely to divert F..
- Contravened the prov. of this Act
- Prohibited for accepting F.C. under this Act.

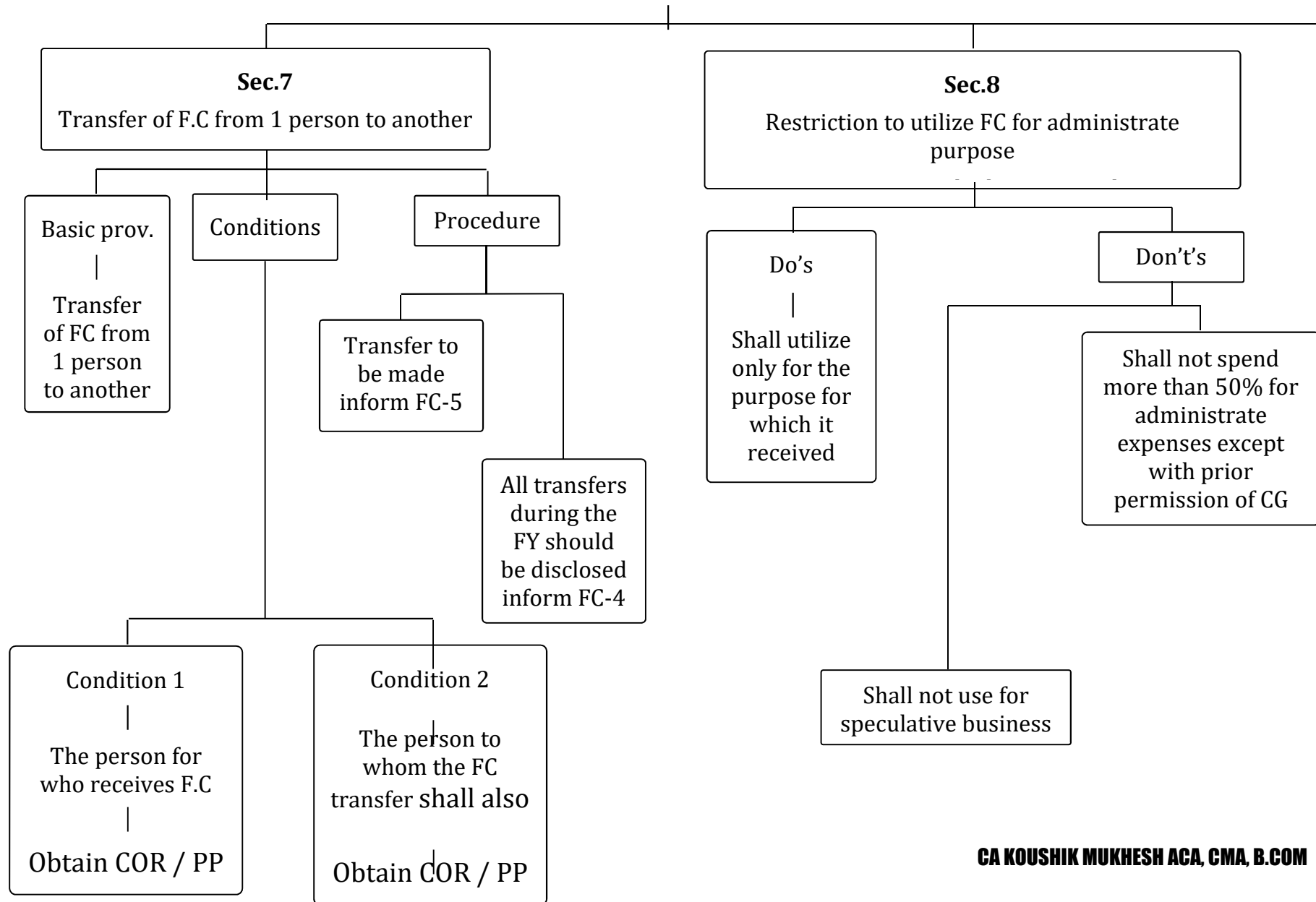
Procedure for obtaining COR

- Application to C.G.
- It must be in prescribed form accomplished with prescribed particulars
- CG shall grant COR / PP within 90 days
- CG shall specify reasons in case of any delay
- A person whose COR is under suspension cannot apply when such suspension continues
- Validity period –
 - COR – 5 years
 - PP – for specific source / purpose

REVOCAION OF COR



OTHER RESTRICTIONS & PROHIBITIONS



Sec.10
Prohibition of payment of currency received in
contravention

Basic provision
|
Any person has
received FC in
contravention
(article / currency
/ sec.)

Power of C.G.
|
Shall prohibit the
person from
paying, delivering,
transferring such
article / currency
/ sec.