CONTEMPORARY ISSUES & LATEST DEVELOPMENTS IN COMPANIES ACT 2013

~ CS POORNIMA N S

SYNOPSIS

(i) Annual Compliances of Companies & LLP

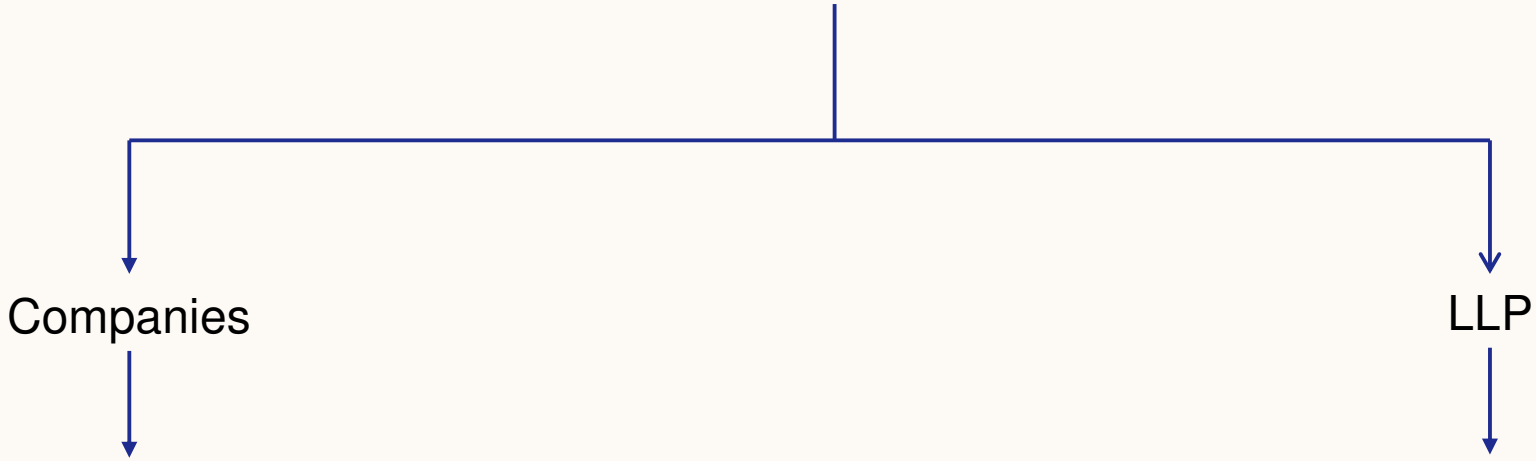
(ii) Insights on Related Party Transactions

(iii)Foreign Investments & its Compliances

(iv)Liquidation Process

(v) CSR Compliances

ANNUAL COMPLIANCES



1. MSME
2. Return of Deposits
3. DIR – 3 (KYC)
4. Form PAS – 6
5. Annual Filing Forms

1. DIR 3 (KYC)
2. Form 11 (Annual Return)
3. Form 8 (Statement of accounts & Insolvency)

MICRO & SMALL ENTERPRISES SUPPLIES, ORDER 2019

Applicability

Companies, who get supplies of goods or services from micro and small enterprises and

a) Whose payments to micro and small enterprise suppliers exceed 45 days from the date of acceptance

OR

b)The date of deemed acceptance of the goods or services as per the provisions of the Micro, Small and Medium Enterprises Development Act, 2006

Shall submit a **half yearly return** to the Ministry of Corporate Affairs stating the following:

(a) The amount of payment due; and
(b) The reasons of the delay

MEANING OF MICRO & SMALL ENTERPRISE

Manufacturing Enterprises and Enterprises rendering services	Investment in plant & machinery or Equipment	Turnover
Micro Enterprises	Does not exceed Rs. 1 Crore	Not more than Rs. 5 Crores
Small Enterprises	Does not exceed Rs. 10 Crores	Not more than Rs. 50 Crores
Medium Enterprises	More than Rs. 50 Crores	Not more than Rs. 250 Crores

DUE DATE FOR FILING FORM MSME - 1

For Half year period 'April to September' – **31st October**

For half year period 'October to March' – **30th April**

Information required in respect of such supplier to be submitted with ROC in Form MSME-1

- Total outstanding amount due
- Name of Supplier
- PAN of Supplier
- Date from which such amount is due
- Reasons for delay in payment.

PENALTY FOR NON-FILING OF FORM MSME-1

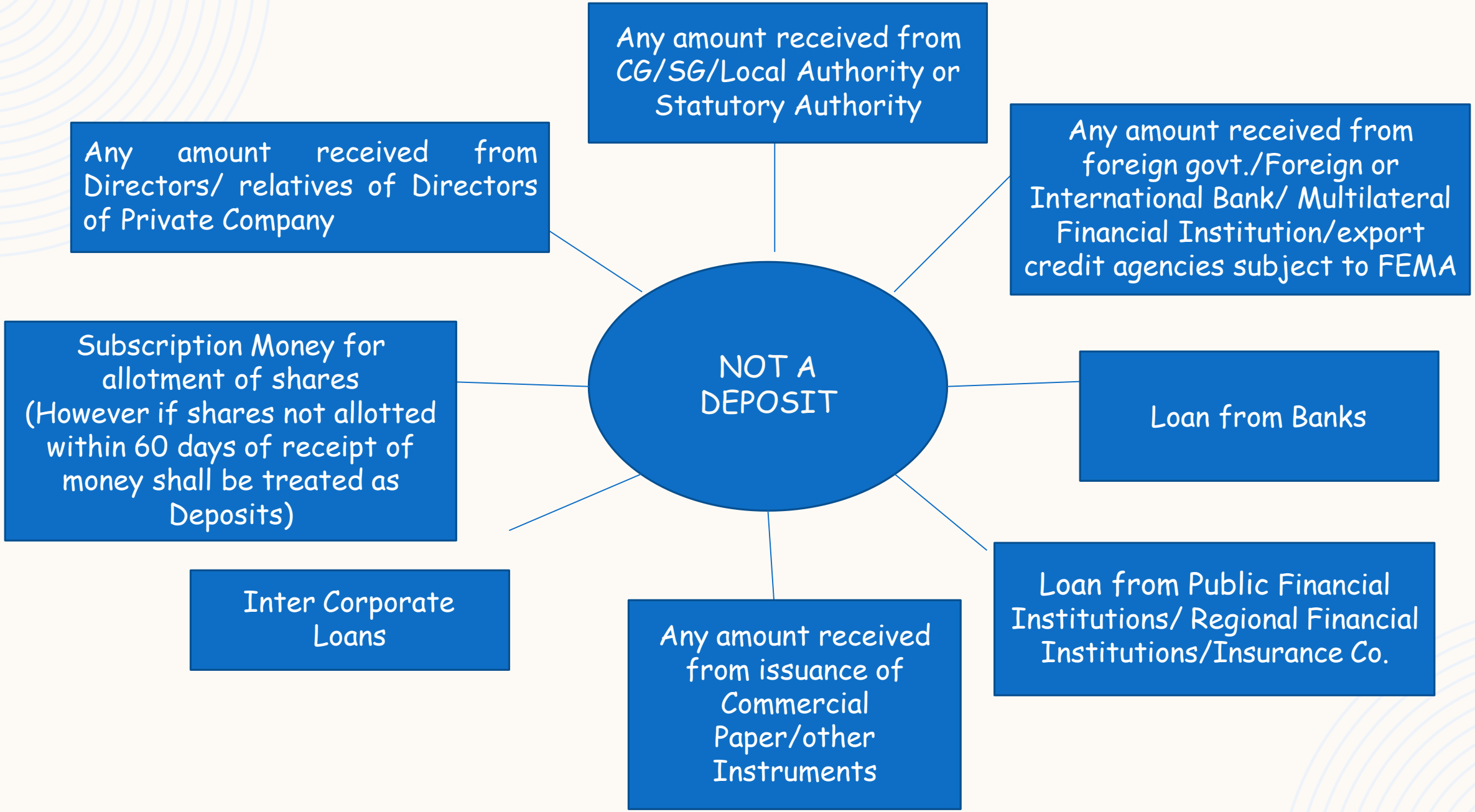
Non-compliance will lead to punishment and penalty under the provision of the Companies Act. As per Penalty Provision of Section 405 (4) of the Companies Act, 2013 Fine will be as follows:

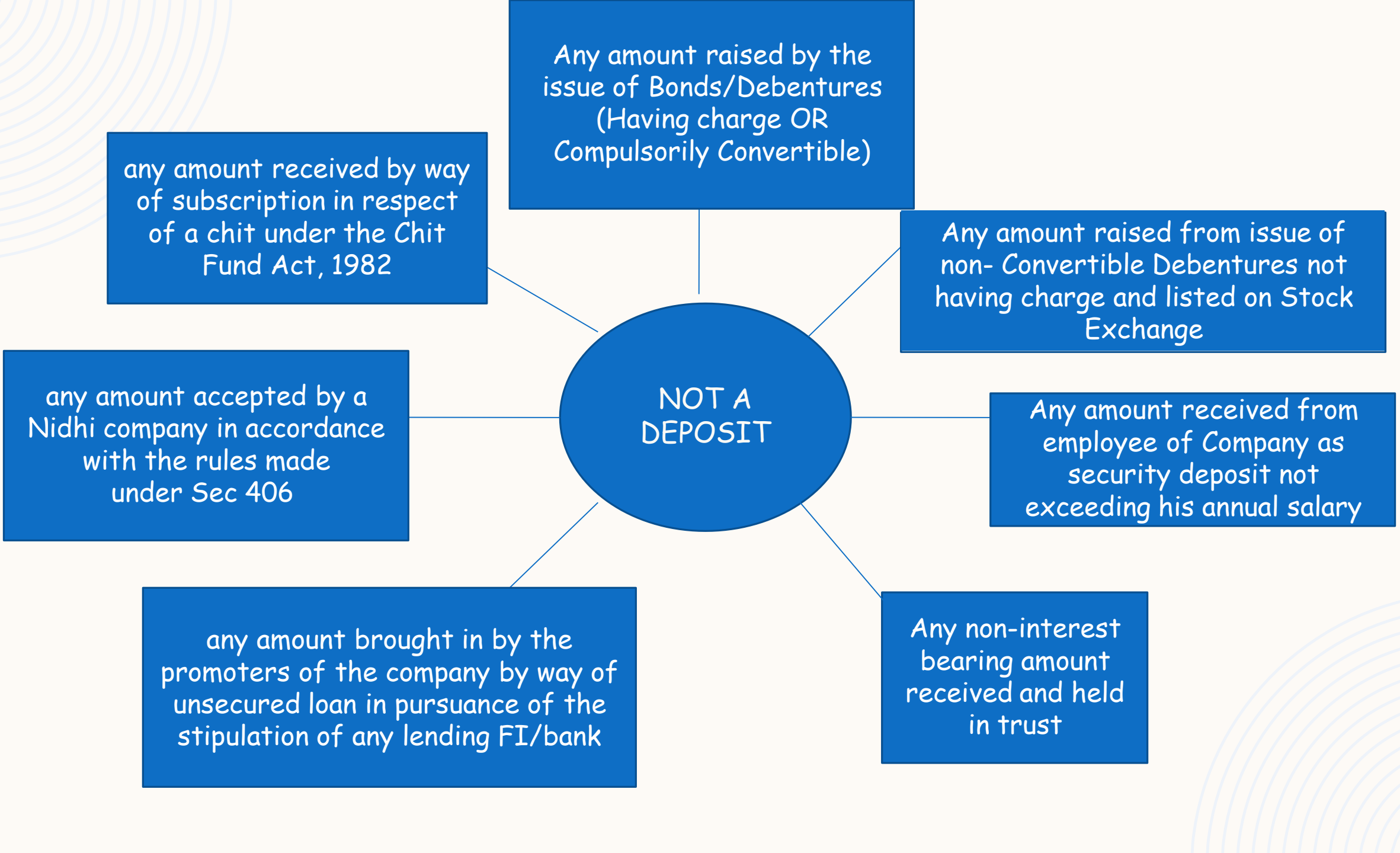
- On Company – upto Rs. 25,000
- On Directors, CFO and CS – Imprisonment – up to 6 Months Or
- Fine – not less than Rs. 25000 upto Rs. 300000 per person

RETURN OF DEPOSITS (FORM DPT-3)

What is a Deposit?

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but **does not include the following**


NOT A DEPOSIT
Any amount received from CG/SG/Local Authority or Statutory Authority
Any amount received from Directors/ relatives of Directors of Private Company
Any amount received from foreign govt./Foreign or International Bank/ Multilateral Financial Institution/export credit agencies subject to FEMA
Subscription Money for allotment of shares (However if shares not allotted within 60 days of receipt of money shall be treated as Deposits)
Loan from Banks
Inter Corporate Loans
Any amount received from issuance of Commercial Paper/other Instruments
Loan from Public Financial Institutions/ Regional Financial Institutions/Insurance Co.


NOT A DEPOSIT
Any amount raised by the issue of Bonds/Debentures (Having charge OR Compulsorily Convertible)
any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982
Any amount raised from issue of non- Convertible Debentures not having charge and listed on Stock Exchange
any amount accepted by a Nidhi company in accordance with the rules made under Sec 406
Any amount received from employee of Company as security deposit not exceeding his annual salary
any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending FI/bank
Any non-interest bearing amount received and held in trust

any amount received by the company under any collective investment scheme as per SEBI

Any amount received from
- Alternate Invst Fund
- Venture Capital Fund
- Infrastructure Investment Trusts
- Real Estate Invst Trusts
- Mutual Fund Registered with SEBI

NOT A DEPOSIT

Amount of Rs. 25 Lakhs or more received by Start-up Co. by way of Convertible note/ repayable within a period not exceeding 5 years) in a single tranche

Any amount received in the course of, or for the purposes of, the business of the Company-

a) As an advance for supply of goods or provision of services (< 365 days)
b) As advance received in consideration with immovable property
c) As security deposit for performance of the contract
d) As advance received under long term projects for supply of capital goods
e) As an advance towards consideration for providing future services
f) As an advance received and as allowed by any sectoral regulator
g) as an advance for subscription towards publication whether in print or in electronic

RULE 16- RETURN OF DEPOSITS

Form DPT-3 shall be used for filing

- Return of deposit (or)
- Particulars of transaction not considered as deposit (or)
- Both

Due date - (on or before 30th June of every year)

Who should file: Every company other than Government company

DIR-3 KYC

Rule 12A of Appointment and Qualification of Directors Rules, 2018

- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year

  submit e-form DIR-3-KYC to the Central Government on or before 30th September of immediate next financial year.

- Further where an Individual has already completed its KYC through e-form DIR-3 KYC in any previous year,

  they can complete its KYC through web verification of Mobile and Email OTP. i..e, DIR-3 KYC Web .

  However if there are any changes in the details of an Individual the same shall be submitted in e-form DIR-3 KYC only and web verification cannot be done for the same

CONSEQUENCES OF NON FILING

1. The DIN of the person shall be marked as Deactivated due to non-filing of KYC

2. The person will be able to file the form after the due date only on payment of penalty of Rs. 5,000/-

FORM PAS - 6

- As per the provisions of Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 every unlisted public company shall –

  (a) issue the securities only in dematerialized form; and

  (b) facilitate dematerialization of all its existing securities.

- Further, every unlisted public company shall also file Form PAS-6 duly certified by a Company Secretary in practice or Chartered Accountant in practice to the ROC within **60 days** from the conclusion of each half year providing

  * Details of Capital of the Company

  * Details of Changes in Share capital during the half year

  * Details of shares held by Promoters, Directors, KMP

  * Total no. of demat requests confirmed after 21 days

- Hence the due date for the Half year ended 31/03/2024 is **30th May, 2024** & Half year ended 30/09/2024 is **30th November, 2024**.

SECTION 96 OF THE COMPANIES ACT, 2013

- Every company is required to hold a General meeting each year i.e., Annual General Meeting (AGM). **One person company (OPC) is not required to hold the AGM.**

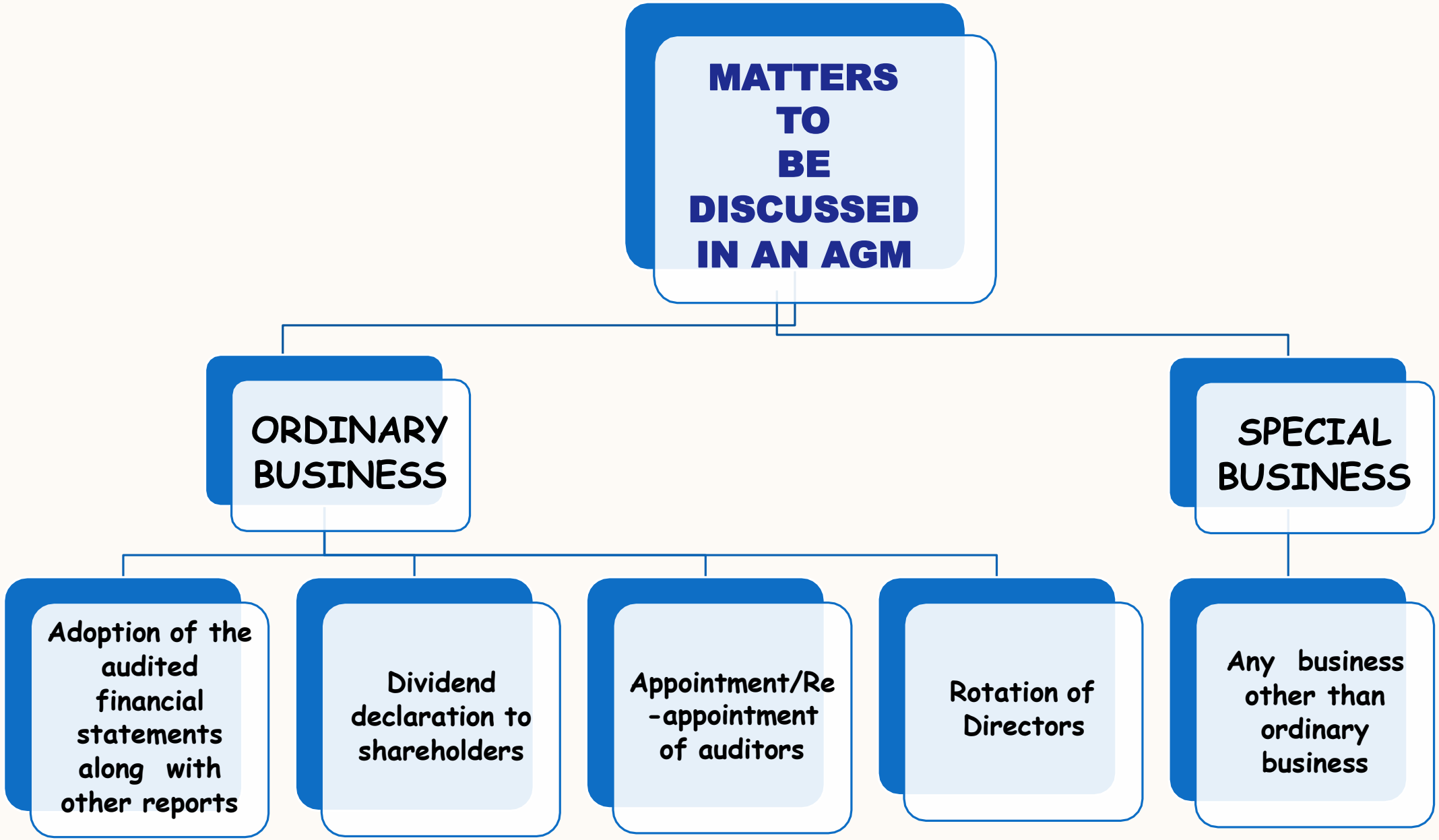
- **First AGM** should be held within **nine months** from the end of the first financial year and the **subsequent AGM's** to be held within **six months** from the end of the respective financial years.

- The gap between AGMs of 2 consecutive years shall not be more than 15 months.

- Registrar may extend the AGM for any special reason, by a period not exceeding three months. First AGM can't be extended.

- First Financial year of a Company shall be as follows:

Company has been incorporated on or after 1st day of January of a year - **the period ending on the 31st day of March of the following year**


MATTERS TO BE DISCUSSED IN AN AGM
ORDINARY BUSINESS
SPECIAL BUSINESS
Adoption of the audited financial statements along with other reports
Dividend declaration to shareholders
Appointment/Re-appointment of auditors
Rotation of Directors
Any business other than ordinary business

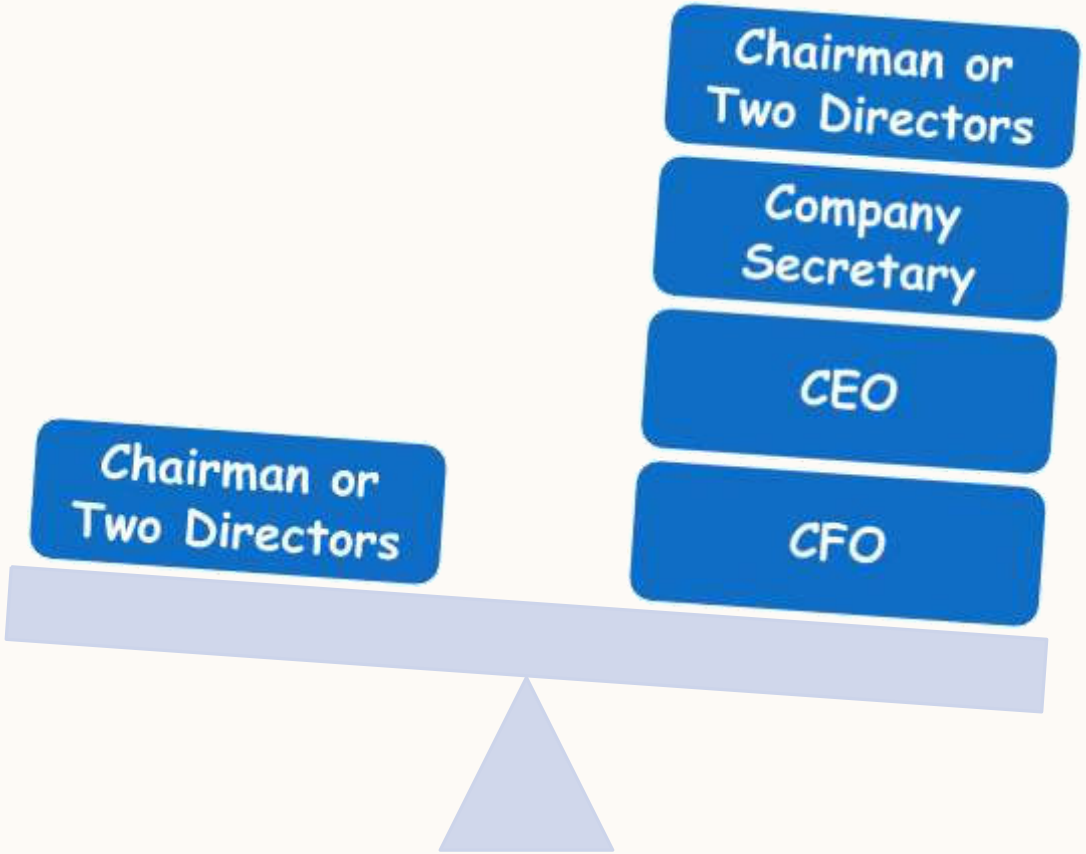
ROC FILING AFTER AGM

Name of E-form	Attachments	Due date of filing	Applicability on Company
Form ADT-1 (Appointment of Auditor)	▪ Appointment Letter ▪ Consent Letter ▪ Certified True copy of resolution passed	15 days from the conclusion of AGM	Private Company, Public Limited Companies, Listed Company, One Person Company
Form AOC-4 (Filing of Financial Statements, Boards Report along with annexures)	Financial statements, Audit Report, Boards Report, AOC-1, AOC-2, CSR Report, Secretarial Audit Report etc	30 days from the conclusion of the AGM(In case of OPC 180 days from close of Financial year)	Private Company, Public Limited Companies, One Person Company

Name of E-form	Attachments	Due date of filing	Applicability on Company
Form AOC-4(XBRL)	XML Instance File Other Attachments	30 days from the conclusion of the AGM	Listed companies in India and their Indian subsidiaries (or) a company With paid-up capital >= 5 crores (or) With T/O>=100 crores, Companies required to prepare financial statements in IND AS
Form MGT-7 (Filing of Annual Return)	List of shareholders, debenture holders, Share Transfer, MGT-8 (if applicable)	60 days from the conclusion of AGM	Private Company, Public Limited Companies, Listed Company, One Person Company
Form MGT-14 (Filing of resolutions regarding approval of Board Report and Annual Accounts)	Certified true copy of the resolution	30 days from the date of Board Meeting	Public Companies (Exempted for private companies)

Signing of Boards Report

Signing Of Financial Statements



FORM MGT-8

➢Form MGT-8 is a certification provided by a Practicing Company Secretary on a company's annual return, according to the Companies Act 2013, under Section 92(2).

➢In Form MGT-8, the CS certifies that the annual return discloses the facts correctly and adequately and that it complies with the relevant provisions of the Company's Act 2013

➢According to the rules under Section 92(2) of the Companies (Management and Administration) Rules, 2014, the following types of companies should get their annual returns certified by a practicing Company Secretary in the Form MGT-8

- Listed Company

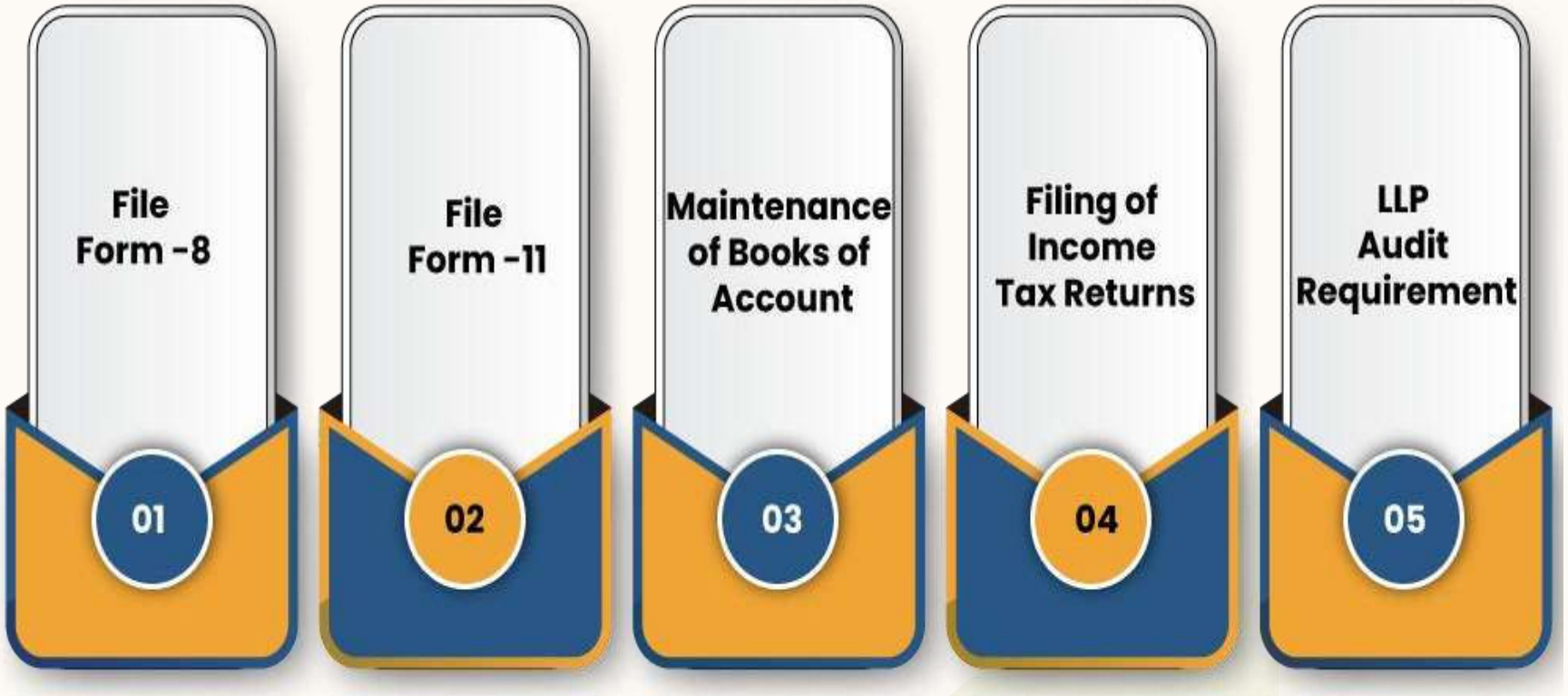
(OR

A company having a paid-up share capital of Rs. 10 Crores or more

(OR

A company with a turnover of Rs. 50 Crores or more

LLP ANNUAL COMPLIANCES



STATEMENT OF ACCOUNT AND SOLVENCY DECLARATION & AUDIT OF LLP

- Every LLP shall prepare Statement of Account and Solvency declaration within 6 months from the end of the financial year.
- The Statement of Account shall be signed by at least two Designated Partners.
- Date of Signing of Statement of Account by Designated Partners shall be **on or before 30th September**
- The same shall be filed with ROC in **Form No. 8** within 30 days of end of 6 months from the end of the financial year i.e. **by 30th October every year**.
- The Form shall be signed by minimum two designated partners of LLP.
- Audit of books of accounts of the LLP is not mandatory if the turnover does not exceed **Rs.40 Lakhs** in any financial year and contribution **does not exceed Rs.25 Lakhs**.
- Date of Signing of Statement of Solvency by Auditors can be after 30th September.

ANNUAL RETURN

- Every LLP shall file an annual return to the Registrar in LLP **Form No. 11** within 60 days of completion of its Financial Year i.e. **by 30th May every year**
- The annual return of an LLP having **turnover upto 5 crore rupees** during the corresponding financial year or **contribution upto 50 lakh rupees** shall be certified by two designated partner.
- In all other cases, the annual return shall be certified by one designated partner and shall also be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

ROUTINE COMPLIANCES

- LLP shall maintain books of accounts on accrual basis and according to double entry system of accounting.(Rule 24(2))
- All the Books of accounts, other documents and annual forms shall be preserved at its registered office for 8 years from the date on which they are made
- An LLP has to close its financial year on 31st March every year.
- Every Designated Partner to file DIR KYC-3 Form upto 30th September, annually.



Every transaction with a related party may not be a 'related party transaction'

Although

Every 'related party transaction' is necessarily a transaction with a related party

FRAMEWORK FOR RELATED PARTY TRANSACTIONS

- Companies Act, 2013 and Rules made thereunder (Section 177 & 188)
  - Secretarial Standards
  - Other Relevant Provisions
    - Section 184 – Disclosure of interest by Director
    - Section 185 – Loan to Directors
    - Section 189 – Register of contracts or arrangements in which directors are interested
    - Section 192 – Restriction on Non-cash transactions involving directors
- Accounting Standards
  - AS 18
  - IND AS 24

RELATED PARTY

AS PER THE COMPANIES ACT, 2013
(As per Section 2(76) of the Companies Act, 2013)

"related party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager [or his relative] is a member or director;

(v) a public company in which a director or manager[and holds] is a director or holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any bodies corporate which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(C) an investing company or the venturer of the company;

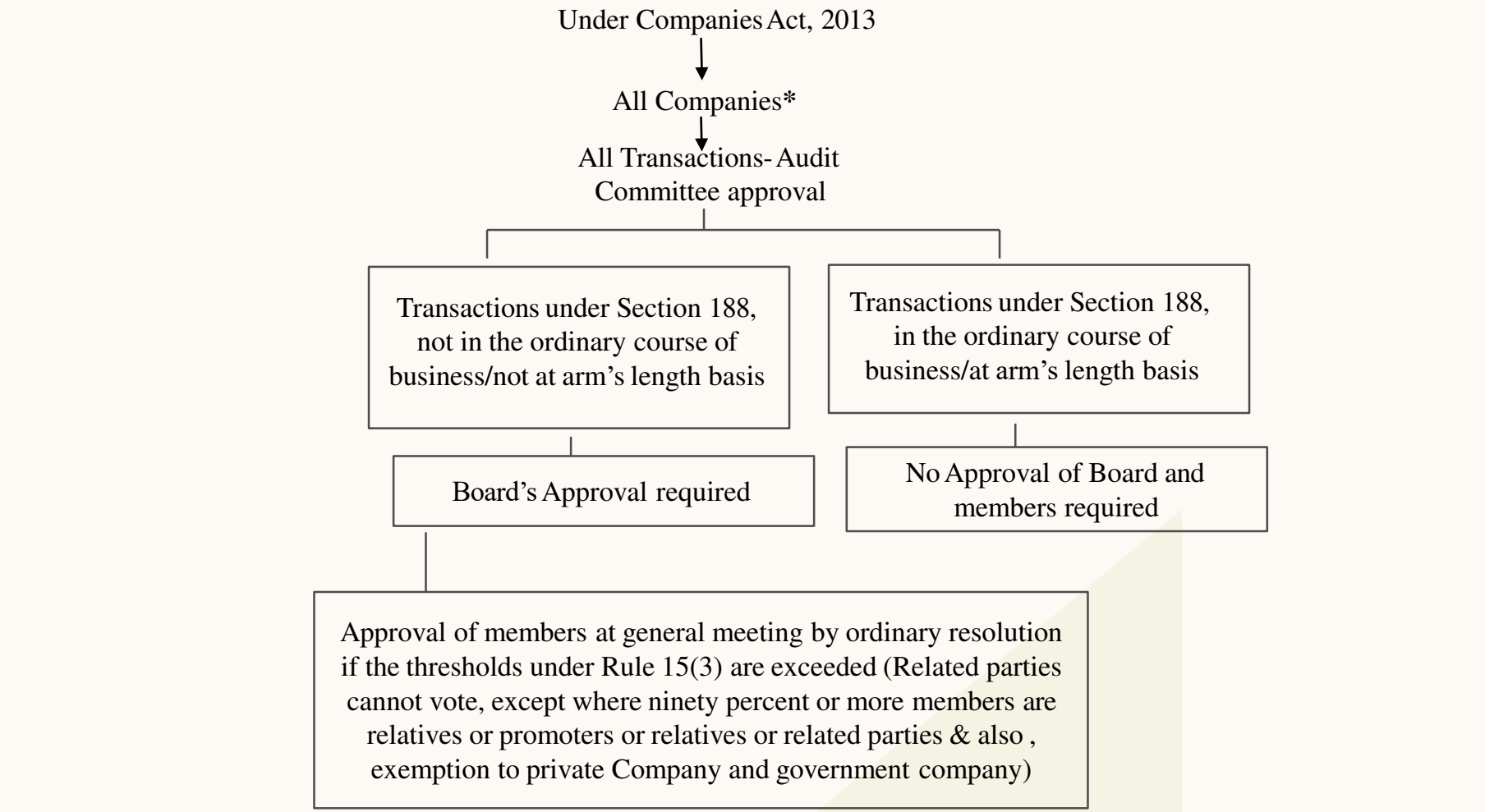
Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.]

(ix) such other person as may be prescribed;

RULE-3 OF COMPANY (SPECIFICATION OF DEFINITIONS DETAILS) RULES, 2014

A director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

APPROVAL PROCESS FOR RELATED PARTY TRANSACTION



* Except Transactions between the Holding Company and its wholly owned subsidiary

LIMITS PROVIDED FOR NEED FOR ORDINARY RESOLUTION

AS PER THE COMPANIES ACT, 2013	
Particulars of Transaction	Limits
- Sale, purchase or supply of any goods or materials, directly or through appointment of agent	10% or more of the turnover
- Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent	10% or more of the net worth
- Leasing of property of any kind	10% or more of the turnover
- Availing or rendering of any services, directly or through appointment of agent	10% or more of the turnover
- Appointment to any office or place of profit in the Company, its subsidiary or associate company at a monthly remuneration	Exceeding Rs. 2.5 lakhs per month
- Remuneration for underwriting the subscription of any securities or derivatives	Exceeding 1% of net worth
(Turnover or Net Worth shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.)	

DISCLOSURES

Board's Report

Every related party transaction shall be referred in the Board's report along with the justification for entering the said transaction in Form AOC-2.

CARO 2020

(xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards;

(xv) Whether the company has entered into any non-cash transaction with Director or persons connected with him and if so, whether the provisions of section 192 of companies act have been complies with;



FOREIGN INVESTMENTS & ITS COMPLIANCES

FOREIGN EXCHANGE MANAGEMENT ACT, 2000



FEMA GOVERNS

- A person resident outside India vis-à-vis Inbound Investment
- A person resident in India vis-à-vis Outbound Investment

FEMA - ROAMS AROUND

PERSON

Transaction

- Capital
- Current

Activity



PERSON INCLUDES...

- Person resident in India
- Not Permanently Resident
- Person resident outside India
- Definition of Person differs from the Tax Definition
- Concept of Citizenship is done away



STRUCTURE – FEMA ACT

- Current Account Transaction – Economic Interest - DIPP Policy maker [Permissible unless specifically prohibited]

- Capital Account Transaction – Forex Management –RBI Regulatory authority [Partial Capital Account convertibility]

+ FINANCIAL STATEMENT VIS-À-VIS FEMA APPLICABILITY



+ Liability - Balance Sheet



POSSIBLE TRANSACTIONS – FEMA APPLICABILITY

- Issue of Capital
- Debt
- Trade Payable includes advances for Export of sales –Services
- Written off –Import Payable
- Contingent Liability -



FDI – BUSINESS INVESTMENT

Steps :

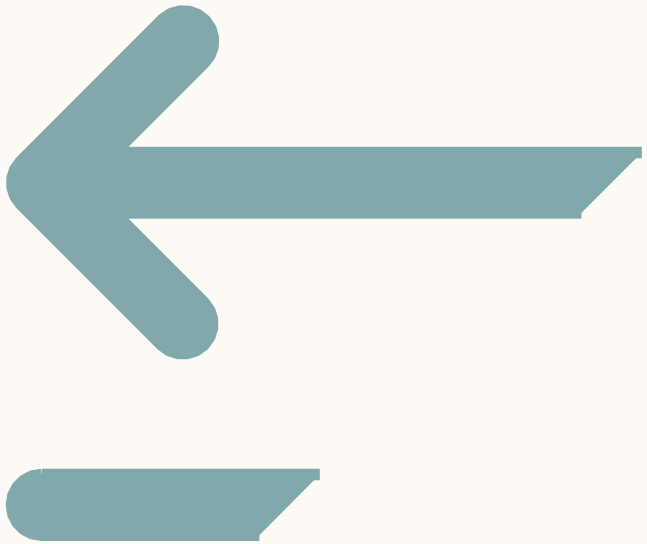
- Entry Options
- Permissible Investee
- Prohibited Person
- Permissible Sectors
- Automatic Route –Approval Route
- Compliance



FUND INFUSION ....

- Eligible Instruments
- Convertible Capital
- Permissible Sector [Sectoral Cap]
- Pricing of Shares
- Transfer of Shares
- Exit

TRANSFER OF SHARES – SPECIFIC PROVISIONS



- Transfer between non-resident to non-resident – Does not apply. Transfer under Automatic route unless original investment covered under permissible route

- Transfer between resident to non-resident or vice-versa –Pricing guidelines apply

- Pricing of Shares :

FDI

- Listed –Market Quotation
- Unlisted : R [transferor] to NR [transferee] –Not less than priced arrived as per internationally accepted recognized method
- NR [transferor] to R [transferee] –Not more than priced arrived as per internationally accepted recognized method



INTRODUCTION OF NEW DEFINITION

Overseas Investment

+ "Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

Overseas Direct Investment

+ "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in 10%, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity;

Overseas Portfolio Investment

+ "Overseas Portfolio Investment" or "OPI" means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC.

RESTRICTION & PROHIBITION



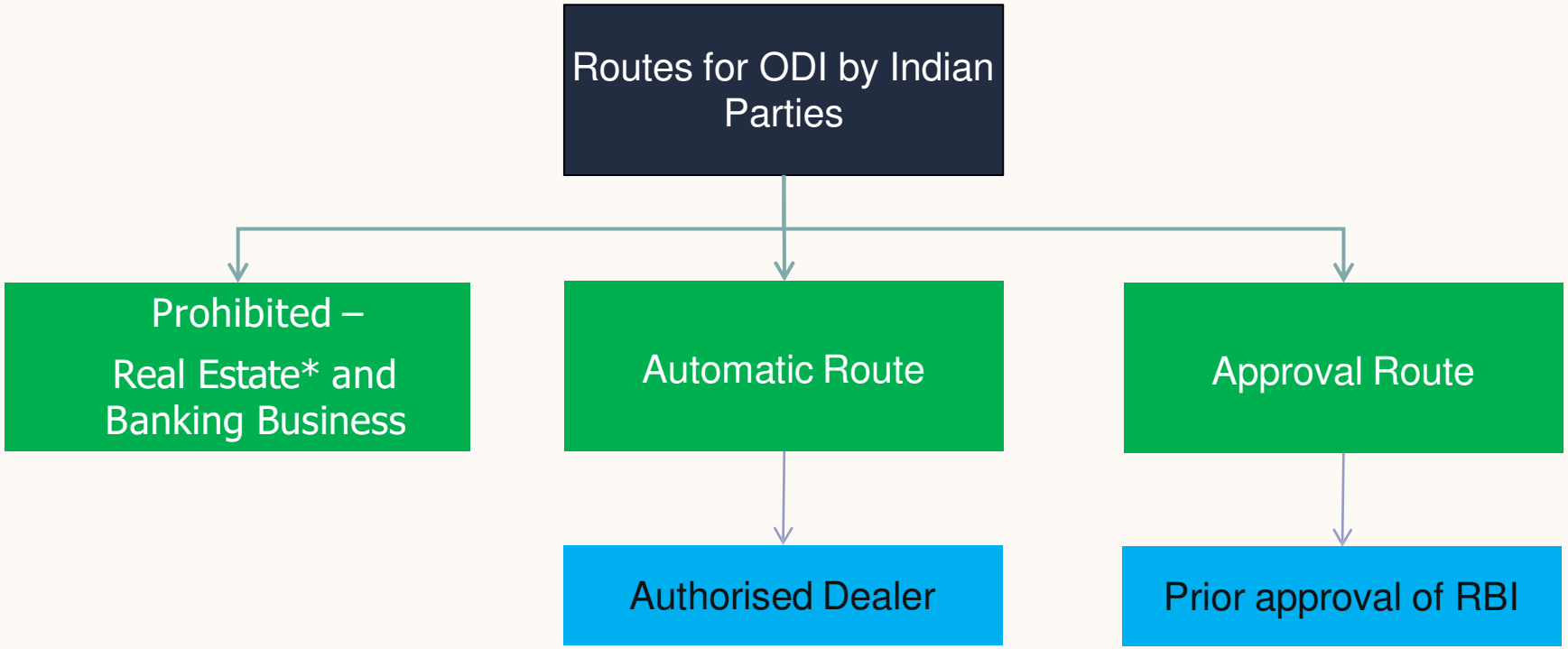
Prohibited Entities that are engaged in specified activities

- A person resident in India are prohibited from making any investment in a foreign entity engaged in:
- **(a)** Real estate activity
- **(b)** Gambling in any form
- **(c)** Dealing in financial products linked to the Indian rupee without specific approval of the Reserve Bank.

ODI in Starts-ups recognized under laws of host country to be made only from internal accruals

- Indian entities can't use borrowed funds to make an ODI in the start-ups. The new norms specify that any 'Overseas Direct Investment' in start-ups recognized under the laws of the host country or host jurisdiction as the case may be, **shall be made by an Indian entity only from the internal accruals** whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

ROUTES FOR OVERSEAS DIRECT INVESTMENTS (ODI)



*** Real Estate Business means buying and selling of real estate or trading in Transferable Development Rights but does not include development of townships, construction of residential/commercial premises, roads or bridges.**



WHO CAN MAKE OVERSEAS DIRECT INVESTMENT ('ODI') OUTSIDE INDIA?

- An Indian Party who is:

  a **company** incorporated in India; or

  a **body corporate created** under an Act of Parliament: or

  a **partnership firm registered** under the Indian Partnership Act, 1932

  Limited Liability Partnership **[LLP]** w.e.f. 7th May,2014

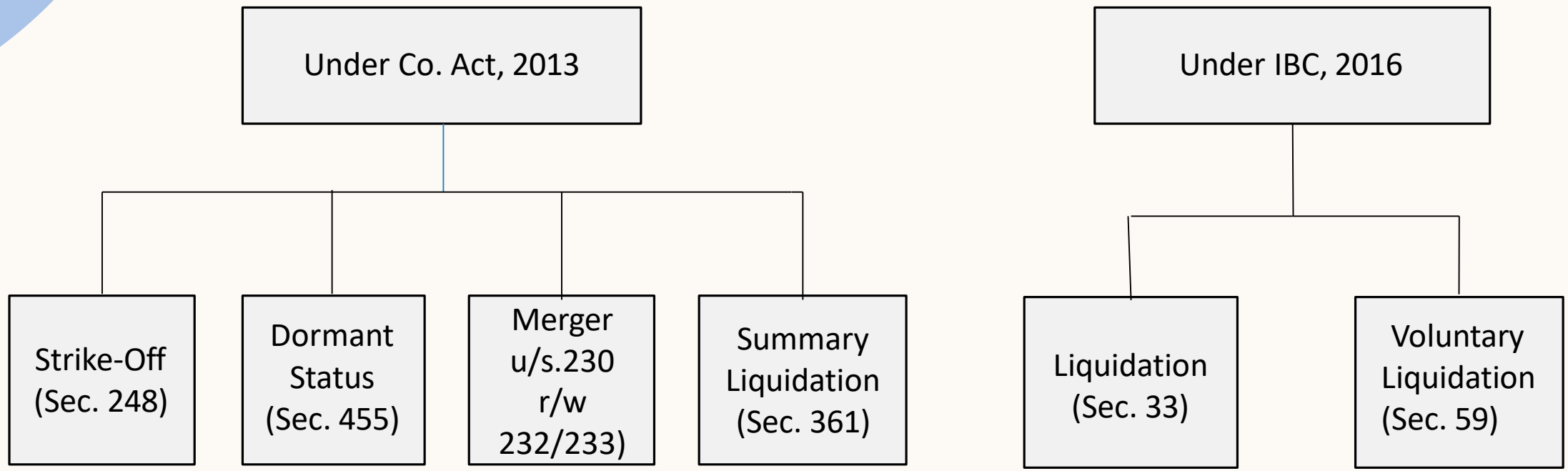
  any other entity in India as may be notified by the Reserve Bank

- An Individual –under Liberalised Remittance Scheme
- Special cases (primarily under approval Route)

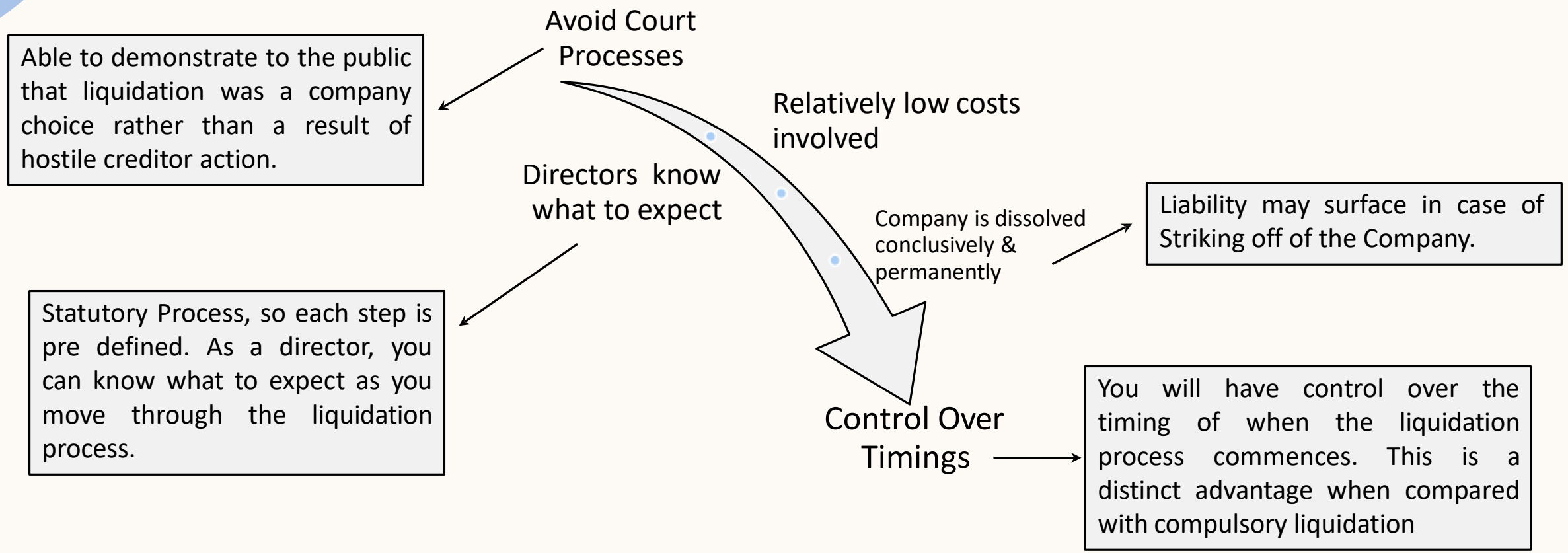
  Proprietary Firm /Trust / Society/ Un-incorporated Entities


Voluntary Liquidation

VARIOUS MODES OF EXIT



BENEFITS OF VOLUNTARY LIQUIDATION



PRE-CONDITIONS FOR VOL. LIQUIDATION- SEC 59(3)

Declaration from the majority of directors by an **affidavit**:

- company has no debt or that it will be **able to pay its debts** in full
- the company is not being liquidated to **defraud** any person
- the corporate person has made provision for preservation of its records after its dissolution [added 16/09/2022].

Above declaration shall be accompanied by

- **Audited financial statements** for the previous **two years**;
- a report of the **valuation** of the assets of the company, if any prepared by the registered valuer.

PRE-CONDITIONS FOR VOL. LIQUIDATION- SEC 59(3)

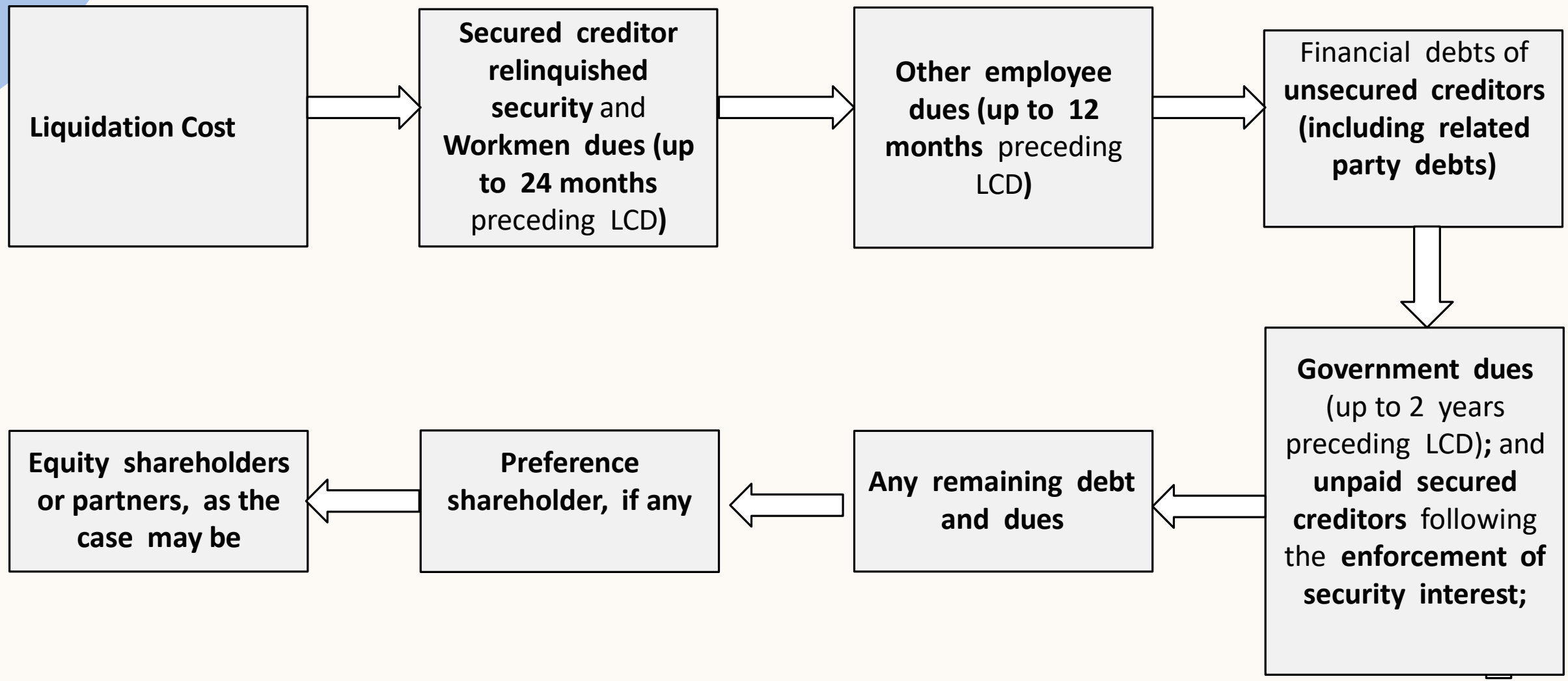
Within four weeks of the above declaration

A special resolution of the members requiring the company to be liquidated voluntarily and appointing a liquidator

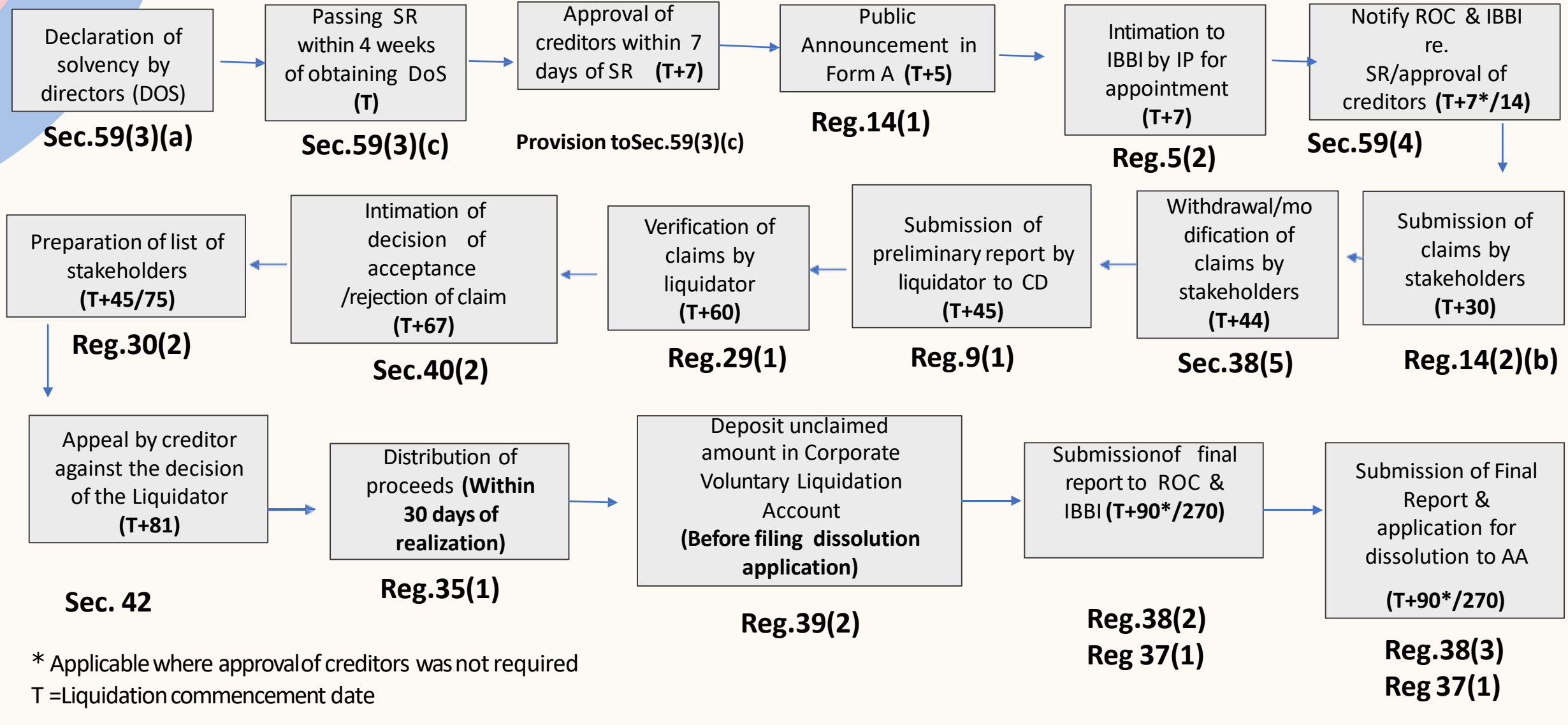
Company owes any debt to any person

Creditors representing 2/3 in value of the debt shall approve the resolution within 7 days.

DISTRIBUTION OF ASSETS IN LIQUIDATION SEC. 53 (WATERFALL)



VOLUNTARY LIQUIDATION- PROCESS FLOW CHART



* Applicable where approval of creditors was not required

T =Liquidation commencement date

INSIGHTS ON CSR



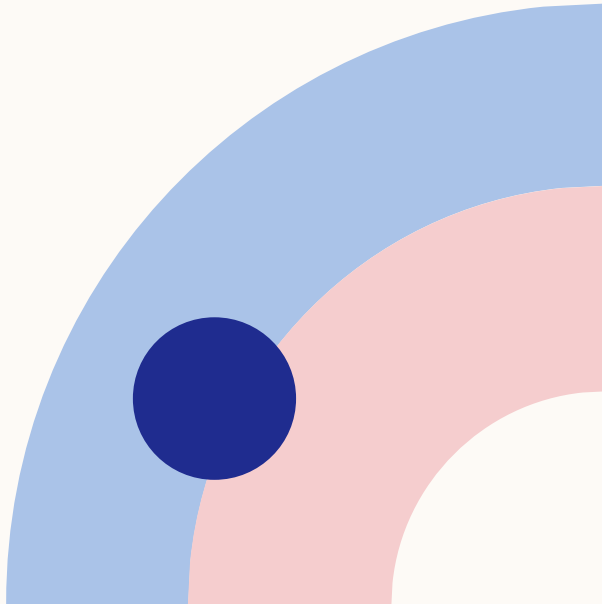
1) Which companies qualify for CSR under the Companies Act, 2013?

A company satisfying any of the following criteria during the immediately preceding financial year is required to comply with CSR provisions specified under section 135(1) of the Companies Act, 2013 read with the Companies (CSR Policy) Rules, 2014 made thereunder:

(i) net worth of rupees five hundred crore or more, or

(ii) turnover of rupees one thousand crore or more, or

(iii) net profit of rupees five crore or more.



2) Whether a holding or subsidiary of a company fulfilling the criteria under section 135(1) has to comply with the provisions of section 135, even if the holding or subsidiary itself does not fulfil the criteria?

No, the compliance with CSR requirements is specific to each company. A holding or subsidiary of a company is not required to comply with the CSR provisions unless the holding or subsidiary itself fulfils the eligibility criteria prescribed under section 135(1) stated above.

Example: Company A is covered under the criteria mentioned in section 135(1). Company B is holding company of company A. If Company B by itself does not satisfy any of the criteria mentioned in section 135(1), Company B is not required to comply with the provisions of section 135.

3) Whether CSR provisions apply to a company that has not completed the period of three financial years since its incorporation?

Yes. If the company has not completed three financial years since its incorporation, but it satisfies any of the criteria mentioned in section 135(1), the CSR provisions including spending of at least two per cent of the average net profits made during immediately preceding financial year(s) are applicable.

Example: Company A is incorporated during FY 2021-22, and as per eligibility criteria the company is covered under section 135(1) for FY 2020-21. The CSR spending obligation under section 135(5) for Company A would be at least two per cent of the average net profits of the company made during FY 2021-22 and FY 2022-23.

4) Whether contribution to the corpus of an entity is an admissible CSR expenditure?

No, the provision relating to contribution to corpus as admissible CSR expenditure has been amended and the contribution to corpus of any entity is not an admissible CSR expenditure w.e.f. 22nd January, 2021.

5) Whether contribution in kind can be monetized to be shown as CSR expenditure?

The requirement comes from section 135(5) that states that "The Board of every company shall ensure that it spends…" Therefore, CSR contribution cannot be in kind and monetized.

6) If a company spends more than the requirement provided under section 135, can that excess amount be set off against the mandatory 2% CSR expenditure in succeeding financial years?

Yes, the excess amount can be set off against the required 2% CSR expenditure up to the immediately succeeding three financial years subject to compliance with the conditions stipulated under rule 7(3) of the Companies (CSR Policy) Rules, 2014. This position is applicable from 22nd January, 2021 and has a prospective effect. Thus, no carry forward shall be allowed for the excess amount spent, if any, in financial years prior to FY 2020-21.

7) What are the different modes of incurring CSR expenditure?

(i) Activities Route
(ii) Contribution to Funds Route (Eg: Swachh Bharat Kosh, Clean Ganga Fund, PMNRF etc.,)
(iii) Contribution to incubators and R&D projects

8) Are activities undertaken by companies outside India for the benefit of resident Indians, permitted as eligible CSR activity?

Any activity undertaken by the company outside India shall not be an eligible CSR activity. The only exception is training of Indian sports personnel representing any State or Union Territory at national or international level.

9) Is it mandatory for every implementing agency to register on the MCA21 portal?

Yes, every implementing agency shall mandatorily register itself in the MCA21 portal w.e.f. 01st April 2021 in order to enable it to undertake CSR activities on behalf of the company.

10) Can funds earmarked for one project be used for another project?

Yes, the budget outlay dedicated for one project can be used against another project. In such a case, the Board and CSR Committee should appropriately record the alteration in the target spending and modify the same in accordance with the actuals.

11) What actions need to be taken if a company spends less than the amount required to be spent under CSR obligation in a particular year?

If a company spends less than the amount required to be spent under their CSR obligation, the Board shall specify the reasons for not spending in the Board's report and shall deal with the unspent amount in the following manner:

Nature of unspent amount	Action required	Timelines
Unspent amount pertains to 'ongoing projects'	Transfer such unspent amount to a separate bank account of the company to be called as 'Unspent CSR Account'.	Within 30 days from the end of the financial year.
Unspent amount pertains to 'other than ongoing	Transfer unspent amount to any fund included in Schedule VII of the Act,	Within 6 months from the end of the financial year.


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