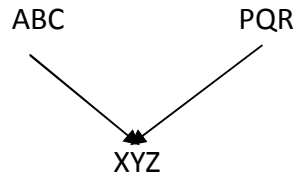


Compromise or Arrangement

Merger: It's a fusion or absorption of one company by another company.

A → B

Amalgamation: When two or more company comes together to form a new company.

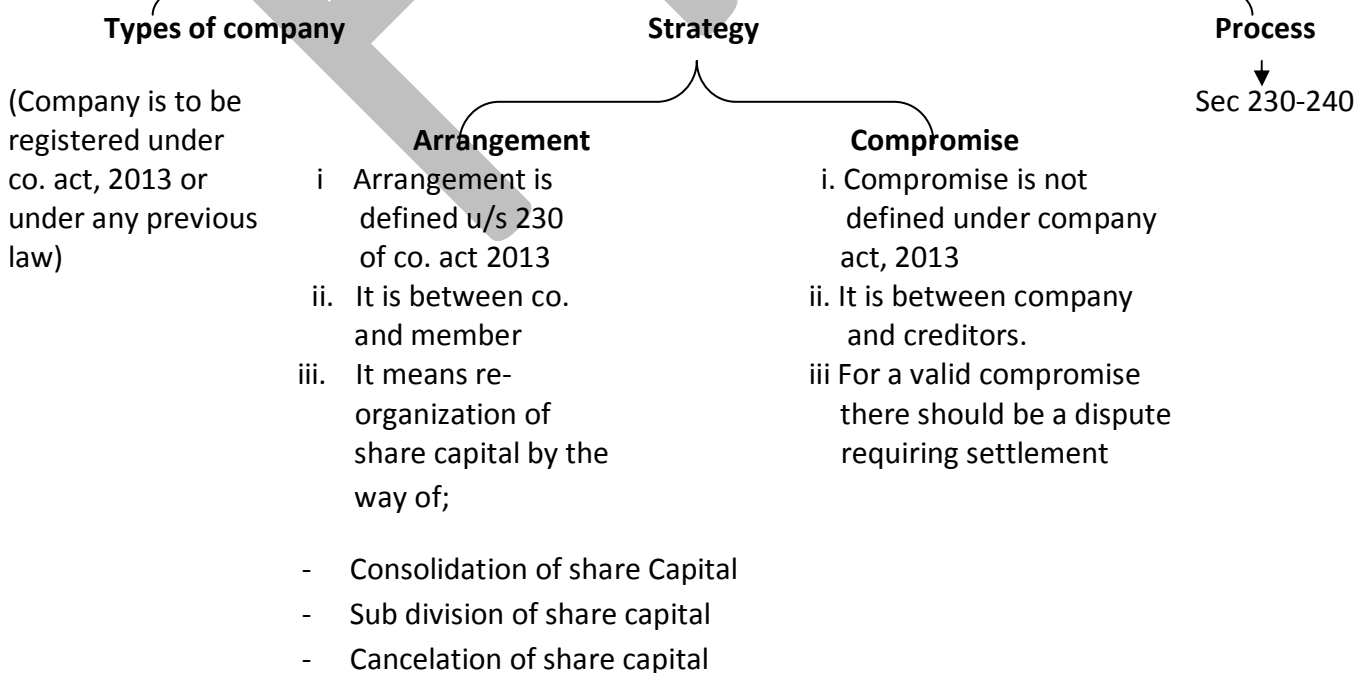
**Definition: Companies act 2013**

Companies act 2013 does not contain any definition of amalgamation or merger but as per company act 2013 both are synonyms.

Definition: Income act, 1961

Amalgamation means merger of two or more companies in such a way that;

- (a) All the asset of amalgamating company shall become asset of amalgamated company by the value of amalgamation.
- (b) All the liabilities of amalgamating company shall become liabilities of amalgamated company by virtue of amalgamation.
- (c) Not less than 3/4th in value of shareholders of amalgamating company shall become shareholders of amalgamated company by virtue of amalgamation.

Concept of Merger and Amalgamation

- Reduction of share capital
 - Conversion of shares to stock
- Or vice versa

Process of merger and amalgamation

1. Approval of Board Of Directors is required

To improve the scheme of arrangement or compromise

To make an application to tribunal for seeking meeting of members creditors as case may be.

- An appointment shall be made in NCLT-1 for seeking meeting of members or creditor as the easy may be.

2. After receiving application the tribunal shall pass following order;

- Fix the time and place for holding meeting.
- Appoint the chairman and scrutinizer for meeting.
- Determine the value of creditor or members whose meeting have to be held.
- Time period within which chairperson of meeting is required to report the result of meeting to the tribunal.

3. General meeting of respective company shall be held and resolution will be passed

In case of arrangement

Majority in no. of members present and voting.

Representing 3/4th in value of capital present and voting.

in case of compromise

Majority in no. of creditors
(Secured as well as unsecured)
present and voting.
representing 3/4th in value of debt present and voting.

4. Chairperson of the meeting within the time fixed by the tribunal submit a report of meeting to tribunal in form CAA-4

If no time period is prescribed then the report shall be submitted within 3 days from conclusion of meeting.

5. Petition to NCLT for approving scheme of arrangement or compromise

The draft approved scheme is filed to NCLT in form CAA-5 within 7 days of submission of report by chairperson.

The scheme shall be filed by company or by the liquidator.



If the company fails to file petition then it's open to any creditor or member to present petition with leave (or permission) of the tribunal.

6. Order of tribunal

The tribunal shall sanction the scheme and the order of tribunal shall be filed to ROC within 30 days of receipt of order



The order of tribunal shall be filed in CAA-6



The scheme shall become effective from the date when the order of tribunal is filed to the ROC.

RIGHT OF COMPANY (SEC. 230)

To enter into

Arrangement
between company
members

Compromise Arrangement is
Compromise is between company and member or class of
and CRS or class of CRS

App shall be made in form NCLT-1 for seeking meeting of member of creditors.

Disclosures in appointment [Sec230(2)]

The company or any other person by whom appointment is made shall disclose to tribunal by way of affidavit

Notice to whom

SEC 230(3)

The chairperson shall dispatch notice of meeting to member and CRS

The notice will be forward at least one month before the meeting of members CRS

The notice will be forward through

- (a) Speed post
- (b) Courier
- (c) Hand delivery
- (d) Registered post

SEC 230(5)

Notice to various authorities

- (a) central government
- (b) Income tax authorities
- (c) RBI
- (d) SEBI if co. is listed

(e) RSE

(f) CCI

(g) official liquidator

The notice shall be in form CAA-3

The authority has right to make representation

within period of 30 days from date of receipt of

notice.

Disclosures in notice



Details of Order of tribunal	Details of co. a) CIN b) PAN c) Name of co. d) Type of co. e) Req. E-mail f) Req. office address of co. g) Details of object of co. h) Details of change of name ,req. office, object during last 5 years i) Details of Corporate debt re- structuring j) details of director	Details of BM at which scheme was approved a) details of director present in meeting b) details of directors voted c) detail of director voted in favour & against d) detail of director who didn't vote.	Explanatory statement which shall disclose details of compromise or arrangement including parties involved in compromise & arrangement appointed date effective date	disclosure about effect of scheme on a) KMP b) Director c) promoter d) depositor e) non- promoter f) CRS	details about effect of compromise or arrangement on interest of directors and KMP.
------------------------------------	---	---	---	---	---

ADVERTISEMENT OF NOTICE

The notice of meeting shall be advertised in form CAA-2 in at least 1 english newspaper and 1 in vernacular language having wide circulation in the state where required office of company is situated or in any other newspaper prescribed by tribunal.

Regulation of notice for listed company

It stated companies shall place notice of the meeting on the website of company.

the notice of meeting shall be forwarded by listed company to SEBI & RSE for publication on their website.

APPROVAL OF MEMBER AND CRS [230(6)]

In case of arrangement		In case of compromise	
Majority in no.	Representing	Majority in no.	Representing
Of member	3/4 th in value	of CRS (secured	3/4 th in value
Present and	of capital	as well as	of debt present
voted	presented	unsecured)	& voted.
	& voted.	present and	
		Voted	

Ques : Can the tribunal dispense the meeting of CRS to be called as per sec 230

Ans: Yes, the tribunal can dispense the meeting of CRS or class of CRS if according to sec 230(9)

90% in term of value of CRS (secured as well as unsecured) give their consent affidavit.

APPROVAL OF TRIBUNAL [SEC 230(7)]

The draft approved scheme of compromise or arrangement shall be filed to the tribunal for its approval.

*As per sec 230 (8) the order of tribunal is required to be filed to ROC because the scheme shall become effective from the date when its filed to ROC.

What are the effects of passing order by tribunal?

The order of tribunal shall be -

- (a) Members
- (b) CRS or class of CRS

Process of Tribunal

Supervise the scheme	May modify the scheme	If tribunal is satisfied that
for implementation of	of compromise or	sanction u/s 230
Compromise or	arrangement, if consider	can't be implemented
Arrangement	necessary for implementation	satisfactory & co. is unable to

of scheme
 Appointment of date change
 in date of effective date
 as amalgamation co.

pay its debt. Then, tribunal
 may order for the winding
 up of companies.

Role of tribunal while sanctioning the scheme

1. That the procedural aspect provided u/s 230 has been fulfilled.
2. Meeting as per the order of tribunal u/s 230(1) has been called and held.
3. The notice of meeting as per sec 230(3) has been given to all member and CRS.
4. Requisite approval as per sec 230(6) has been taken or not
5. The scheme shall not be against the public policy disclosure of material fact has been made to the members and CRS.

Who can make objection to compromise or arrangement

According to sec 230(4) the objection to the compromise or arrangement shall be made by;

Members holding not
 less than 10 % of
 shareholders.

Or CRS holding not
 less 5% of o/s
 total debt.

Merger and amalgamation of companies u/s 232

Where an application made to the tribunal u/s 232 for sanctioning of scheme of compromise or arrangement and its shown to the tribunal that,

The compromise or
 arrangement has been
 proposed for
 reconstruction of company.

to transfer the whole or part
 of undertaking to another
 company.

OR

Merger and amalgamation
 Of company

Then the tribunal may order for the meeting of member or CRS as the case may be.

IF, the company has circulate the following document to the members and CRS;

- The draft proposed term of the scheme is adopted by director of merging company.

- Report adopted by directors of merging company explaining the effect of compromise or arrangement on shareholders, promoter, director.
- Confirmation by the director that the copy of draft of scheme has been filed to registrar.
- Valuation reports by experts.

If the tribunal is satisfied that above document is circulated to all the members and CRS and the requisite meeting has been held and requisite approval u/s 230 (6) has been obtained then, the tribunal shall pass the following orders;

- The transfer of whole or part of undertaking, property of Transfer company to transferee company as per the date fixed by the tribunal.
- Allotment of shares, debentures, securities by transferee company to transferor company shareholders.
- Dissolution of Transferor company without winding up.
- Provision for dissenting shareholders
- Where the securities is held by non-resident Indian under FDI then the allotment of shares of transferee company to such person shall be made as per the order of tribunal.
- Where Transferor Company is listed company and Transferee company is unlisted company.

Transferee company shall remain unlisted.

if the shareholder of transferor company Decided not to become shareholder of transferee company then he shall be paid compensation for the value of shares held by him in the transferor company on the basis of pre-determined valuation determined/obtained by the tribunal but it shall not be less than compensation determined by SEBI.

FAST TRACK MERGER

MERGER AND AMALGAMATION OF SAMLL COMPANY AND WHOLLY OWNED SUBSIDIARY COMPANY TO ITS HOLDING COMPANY.

A Company of scheme
In form CAA-9 shall be
Forwarded to-

- Registrar
- Official liquidator
- Any person whose right is to be affected

for inviting
objections

the company is required
to file solvency report
in form CAA-10 to the
ROC before the meeting

The objection shall be
made within 30 days
of receipt of scheme

of members and CRS.

The meeting of CRS is called by providing 21 days notice along with copy of scheme which is to be approved by majority of crs representing 9/10th in value of debt.

The objection or suggestion received are considered by company in their respective members holding atleast 90% of total no. of shares

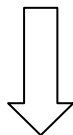
The transferee company shall within 7 days after the conclusion of meeting of members or CRS shall file copy of scheme to the ;

(a) CG in form CAA-11

(b) Registrar and official liquidator
In form GNL-1

if the registrar or official liquidator has any objection or suggestion he may communicate the same in writing to cg (regional director) within period of 30 days

if no objection is received then the CG shall approve the scheme.



if the CG after receiving objection or for any reason is of opinion that the scheme is not in public interest .
Then , the CG may file an application in form CAA-13 to the tribunal within a period of 60 days of receipt of scheme

to consider the scheme as per section

230-232.

MERGER AND AMALGAMATION OF FOREIGN COMPANY U/S 234

when the foreign company merge with Indian company or vice-versa then the prior approval of RBI is required.

important point:- the transferee company may pay to transferor company shareholder either -

- cash
- depository receipt
- partly in cash and partly in depository receipt

MERGER AND AMALGAMATION OF GOVERNMENT COMPANY U/S 237

according to section 237, where cg is satisfied that its essential in public interest that **two or more** companies should amalgamate then the cg may be order notify it in official gazette may amalgamate 2 or more companies without taking approval of tribunal.

PROVISION RELATED TO MERGER AND AMALGAMATION OF COMPANY AS PER SECTION 237

every member and creditors including debenture holder of transferor company shall have same right or interest against transferee company.

important point:- if the interest and right of transferor company of shareholder are less than his interest or right in transferee company then he is entitled to compensation determined by authority of company.

any person aggrieved by the compensation determined by authority may prefer appeal to the tribunal within a period of 30 days from date of publication of such compensation in official gazette.

PRESERVATION OF BOOKS AND PAPER OF AMALGAMATE COMPANY U/S 239

according to section 239, the books and paper of company which has been amalgamated or whose shares have been acquired shall not dispose books and paper unless the approval of cg is obtained.

the cg before granting permission may appoint to examine books and papers to determine commission of offence in connection with promotion , formation or merging of company.

LIABILITY OF OFFICER IN RESPECT OF OFFENCE

according to section 240, the liability of officer in respect of offence shall continue after merger and amalgamation of transferor company .

POWER OF ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM THE SCHEME OR CONTRACT APPROVED BY MAJORITY [SECTION 235]

according to section 235 , where a transferee company purpose the scheme of or contract involving transfer of shares of transferor company to transferee company and the scheme has been approved by 1/9

th in value of shares whose transfer is involved other than shares already held on date of offer by nominee of transferee company or subsidiary of transferee company.

important point:-the offer shall be open for a period of 4 months .

RIGHTS TO ACQUIRE MINORITY SHARES

the transferee company which has acquired 90% shares of transferor company then the transferee company shall give notice in form CAA-14 to the dissenting shareholder to acquire their shares within **2 months** after the expiry of 4 months .

RIGHT OF DISSENTING SHAREHOLDERS

the dissenting shareholders can apply to NCLT within 1 month from date of receipt of notice .

QUESTION :-when the transferee company acquires shares of dissenting shareholders ?

ANSWER:-

- where no appeal has been filed by dissenting shareholders .
- where appeal has been but such appeal has been disposed in favor of transferee company.
- then notice of transfer along with transfer instrument shall be forwarded to transferor company and the consideration of shares shall be paid to the transferor company .
- the sum received by transferor company shall be paid to the shareholder within 60 days.

PURCHASE OF MINORITY SHAREHOLDING [SECTION 236]

according to section 236, in the event of the acquirer, or a person acting in concert with such acquirer becomes registered holder of 90% or more issued equity capital of the company.

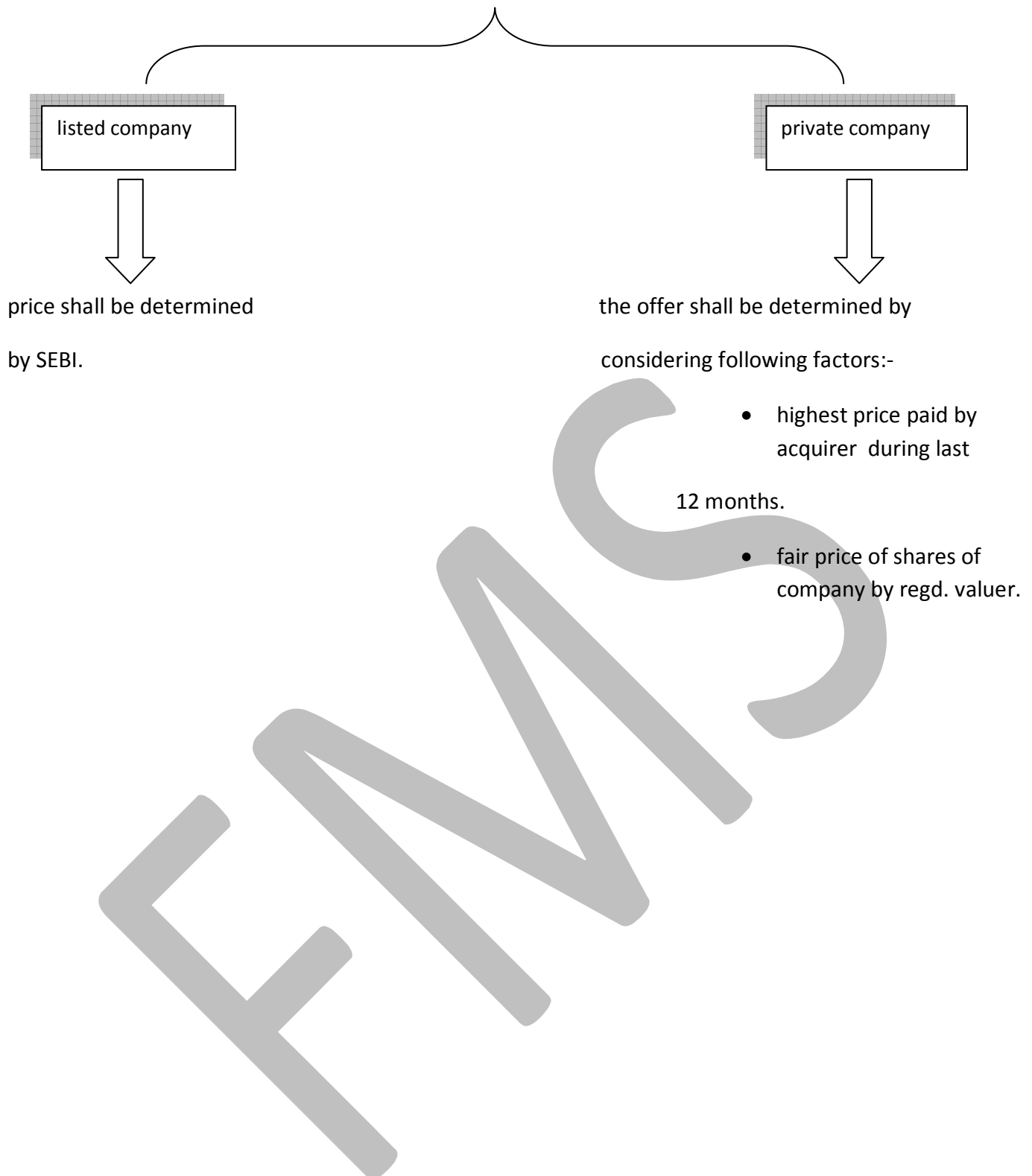
OR

in the event of any person or group of person becoming 90%, majority or 90% of the issued equity capital by virtue of :-

- amalgamation
- share exchange
- conversion

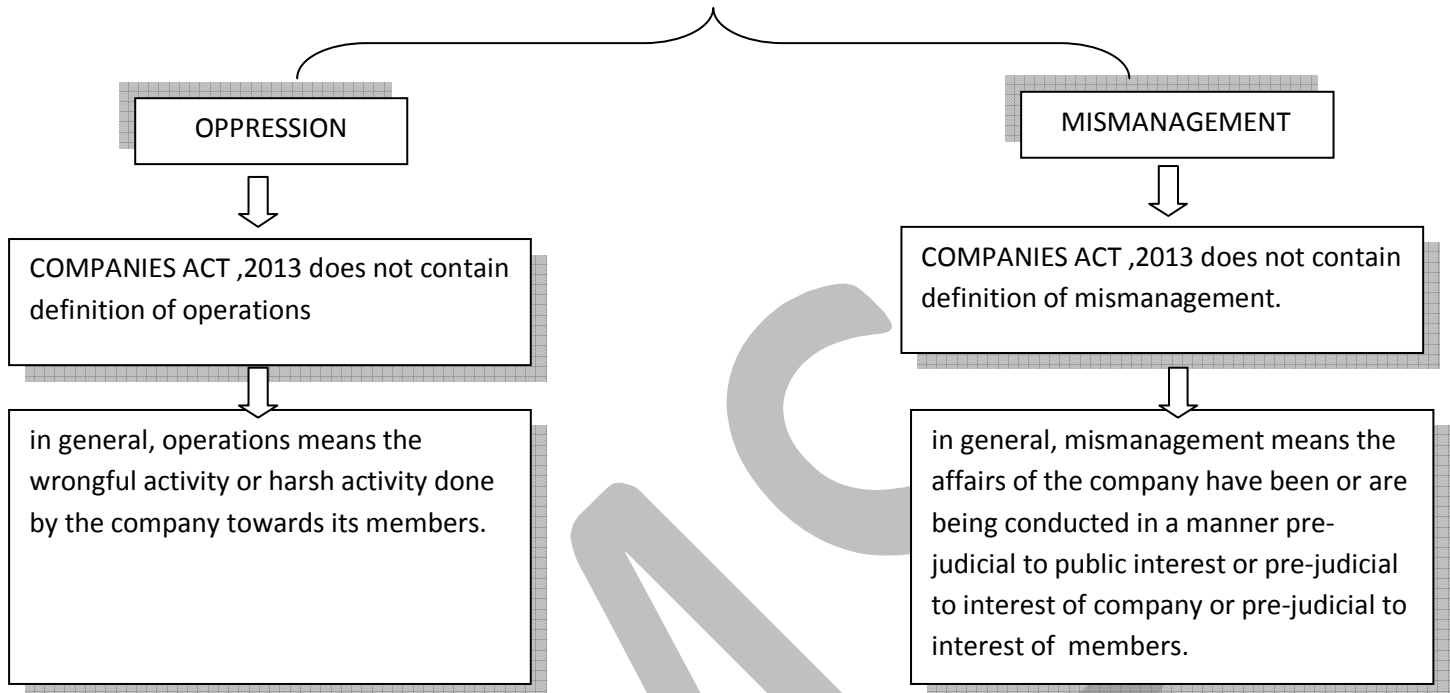
then such acquirer or person or group of person notify company of their intention to buy remaining equity shares.

DETERMINATION OF PRICE FOR PURCHASE OF MINORITY SHAREHOLDERS

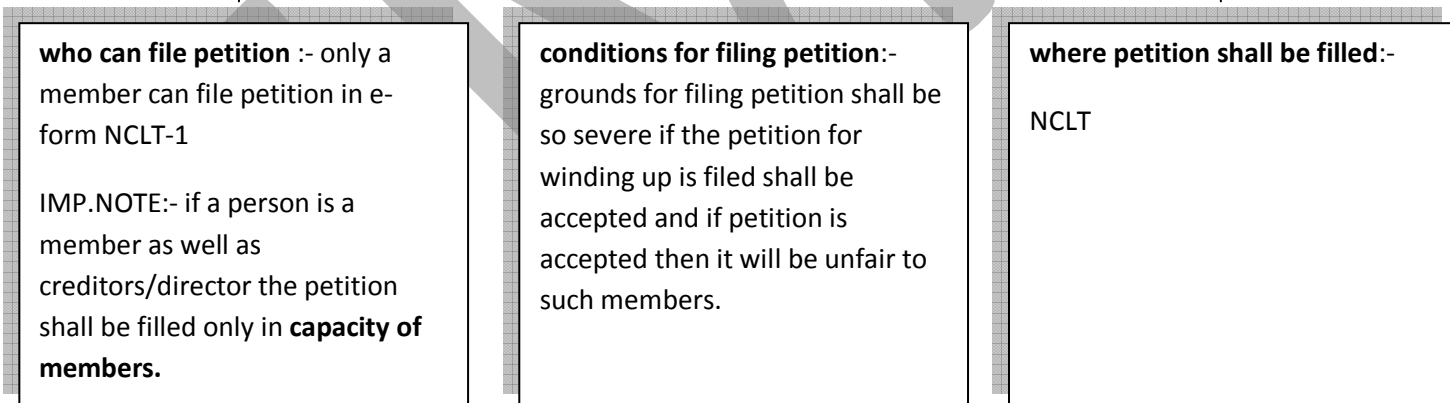


PREVENTION OF OPPRESSION AND MISMANAGEMENT

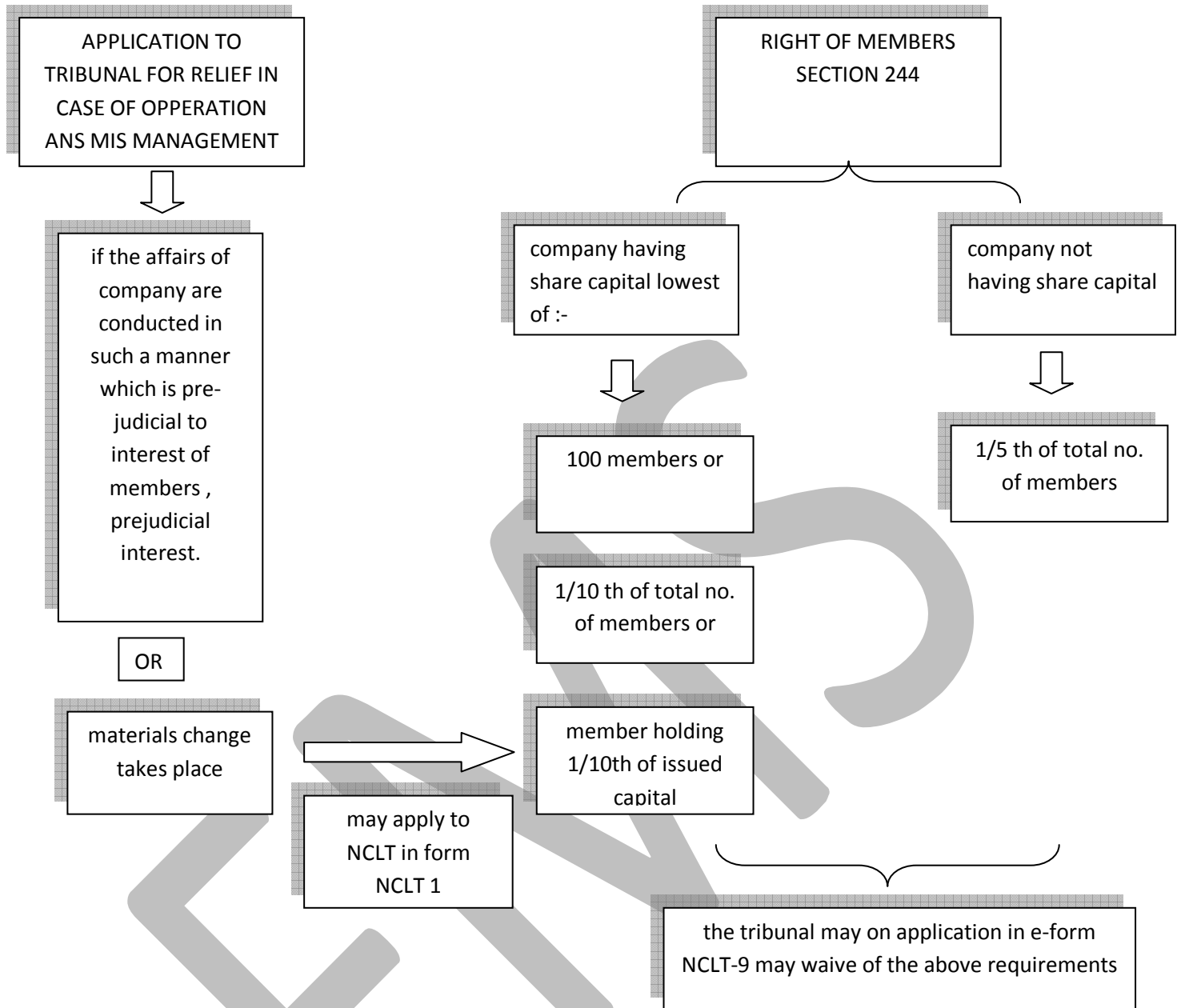
DEFINITION



CONDITIONS /GROUNDS FOR FILING PETITION



THE GROUND SHALL BE PRESENT AND CONTINUOUS



QUESTION - whether the petition made to the tribunal can be withdrawn?

ANSWER-yes, the petition made to the NCLT u/s 241 can be withdrawn with the leave (approval) of tribunal by making application in e-form NCLT -9.

QUESTION - whether central government has power to file a petition against prevention of operation and mismanagement ?

ANSWER- according to section 241(2), the cg is of the opinion that the affairs of company are conducted in a manner prejudicial to public interest then cg may apply to the tribunal for prevention of operation or mismanagement .

POWER OF TRIBUNAL U/S 242

when an petition is made to the tribunal u/s 241, then, the tribunal may pass following orders :-

1. regulation of conduct of affairs of company in future .
2. purchase of shares or interest of any member of company by another member or by company.
3. may pass order for reduction of share capital of company .
4. appointment of director
5. removal of MD, manager, director.
6. terminate ,set aside or modify any agreement between company and any person.

IMPORTANT NOTE:- such agreement may be terminate set aside or modified after providing due notice and after obtaining consent from such party.

QUESTION - whether tribunal ca pass interim order?

ANSWER-according to section 242(2), the tribunal may on the application of any party to the proceedings make any interim order which it thinks fit for regulating conduct of companies affairs.

ALTERATION IN MOA OR ARTICLES

where an order of tribunal makes any alteration in MOA or AOA then company shall not have power to alter MOA or AOA unless authorized by tribunal.

important note:- the alteration done by company shall not be inconsistent with the alteration done by tribunal.

CONSEQUENCES OF TERMINATION OR MODIFICATION OF AGREEMENT SECTION

WHERE AN ORDER IS MADE U/S 242 FOR TERMINATE ,SET -ASIDE OR MODIFIED ANY AGREEMENT THEN

such order shall not give rise to any claim against company by any person for damages or no compensation shall be paid .

no managing directors or director or manager whose agreement is terminated has to vacant office and cannot be appointed for a period of 5 years from date of order of

CLASS ACTION SUIT (SECTION 245)

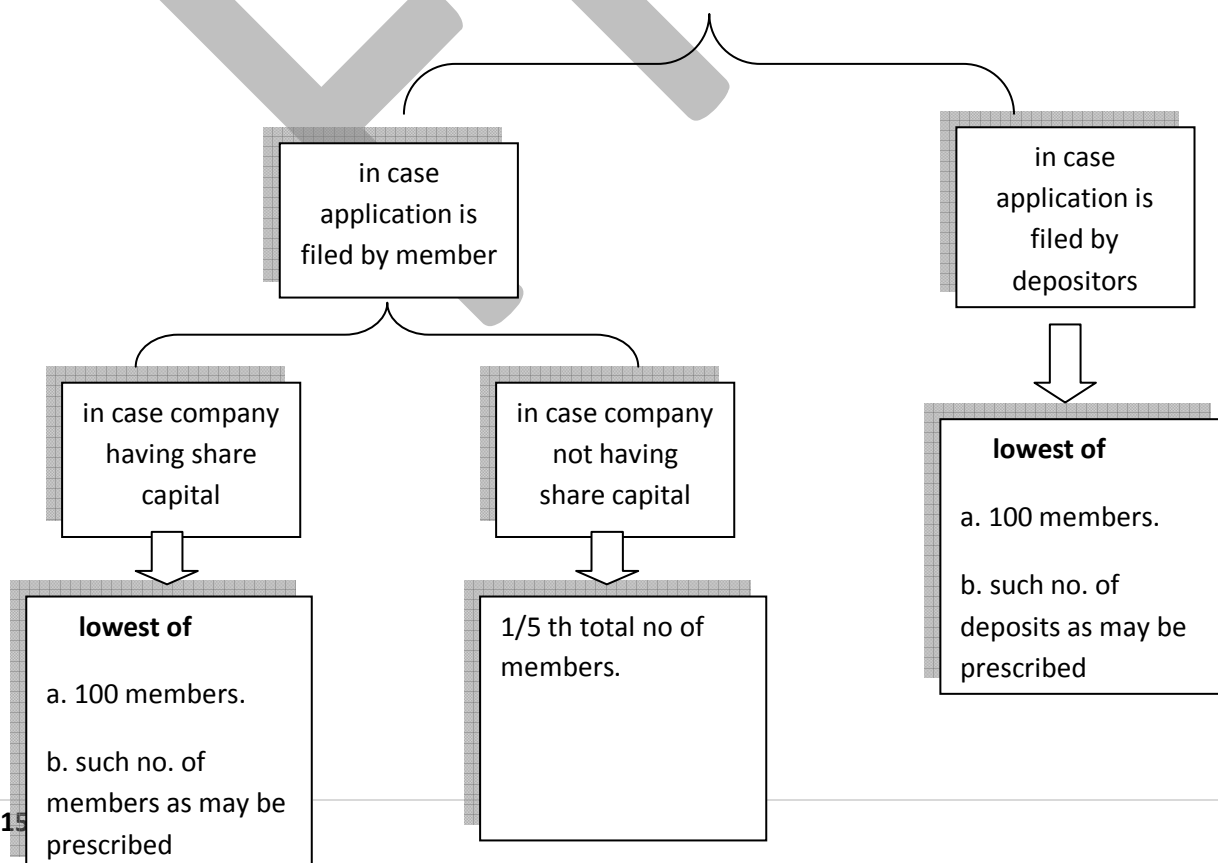
a class action suit is a lowest suit where a group of people representing common interest may approach to the tribunal to sue or to be sued.

APPLICATION OF CLASS SUIT AND LEAVE

application shall be filed in NCLT-9 to restrain :-

1. company from committing any act which ultra-virus the articles or MOA.
2. the company from committing breach of any provision of company MOA or AOA.
3. the company and its directors from acting at such resolution.
4. the company to do any act which is not allowed under Companies Act ,2013.
5. the auditor including audit firm of company for misleading statement or wrongful act.

WHO CAN FILE APPLICATION UNDER CLASS ACTION SUIT



CONSEQUENCIES AFTER ADMISSION OF APPLICATION**WHEN THE TRIBUNAL ADMIT APPLICATION IN THE TRIBUNAL**

shall issue public notice for the admission of application .

all the similar application shall be consolidated into a single application and the class member /depositor should be allowed to choose a lead applicant.

BOOKS OF ACCOUNTS

BOOKS

definition of books and papers

books and papers include:-

1. books of accounts
2. deed
3. voucher
4. writing document
5. minutes
6. registers

maintained in paper or electronic form.

BOOKS OF ACCOUNTS

it includes

record maintained in respect of

all sum of money
received and
expended by the
company.

{receipt and
payments}

all sales and
purchases of
goods and
services by the
company.

{purchase and
sales}

all assets and
liabilities of the
company.

{assets and
liabilities}

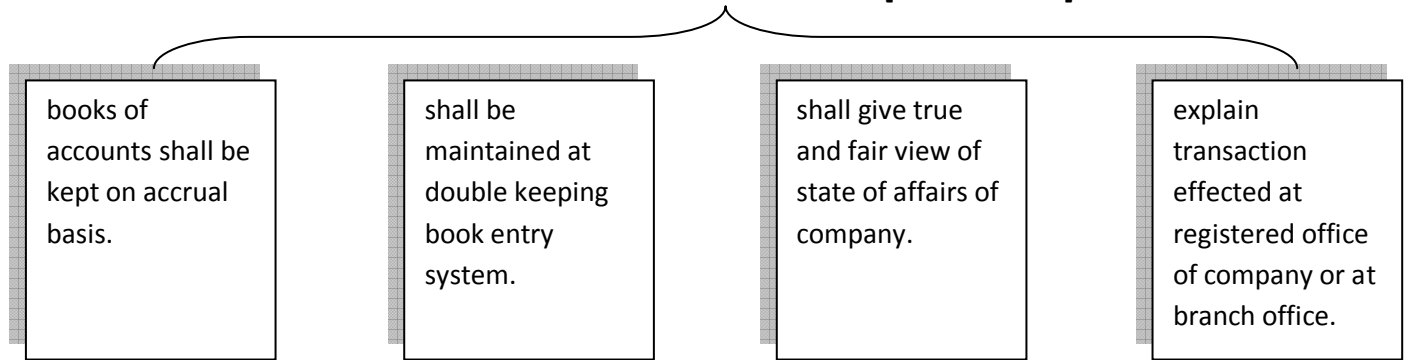
the item of cost
as may be
prescribed by
central
government.

{cost}

MANNER AND MAINTAINANCE OF BOOKS OF ACCOUNTS

every company shall prepare relevant books of accounts for every financial year.

MAINTAINANCE OF BOOKS OF ACCOUNTS [SECTION 128]



question- where books of accounts are to be maintained?

answer-the books of accounts are to be maintained at registered office of the company.

IMPORTANT POINT-the books of accounts may be kept at any other place within India decided by board of directors .

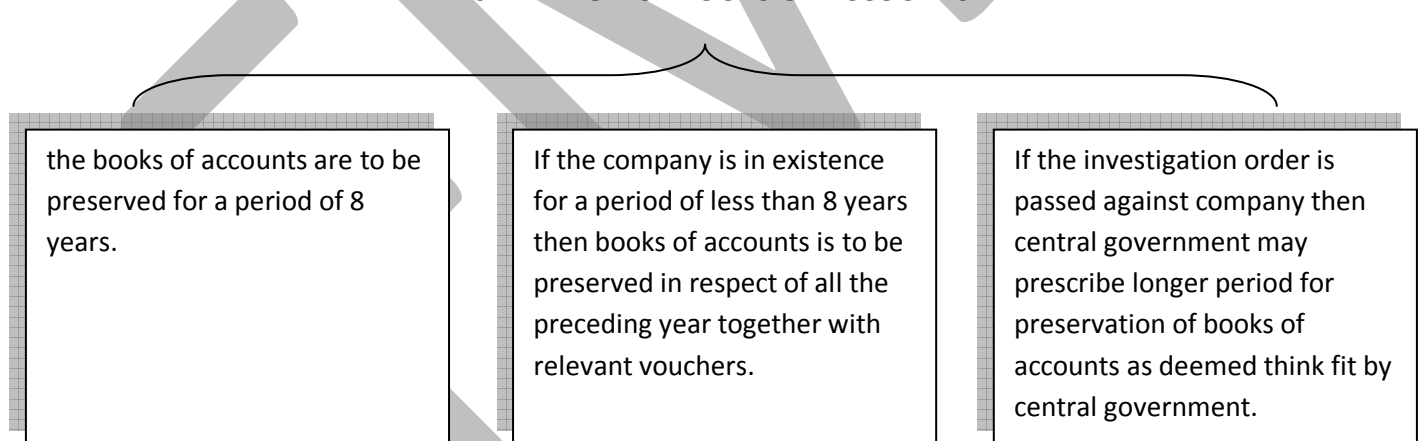
the intimation of new place is to be made within 7 days of such change to ROC in e-form AOC-5.

BOOKS OF ACCOUNTS MAINTAINED AT BRANCH

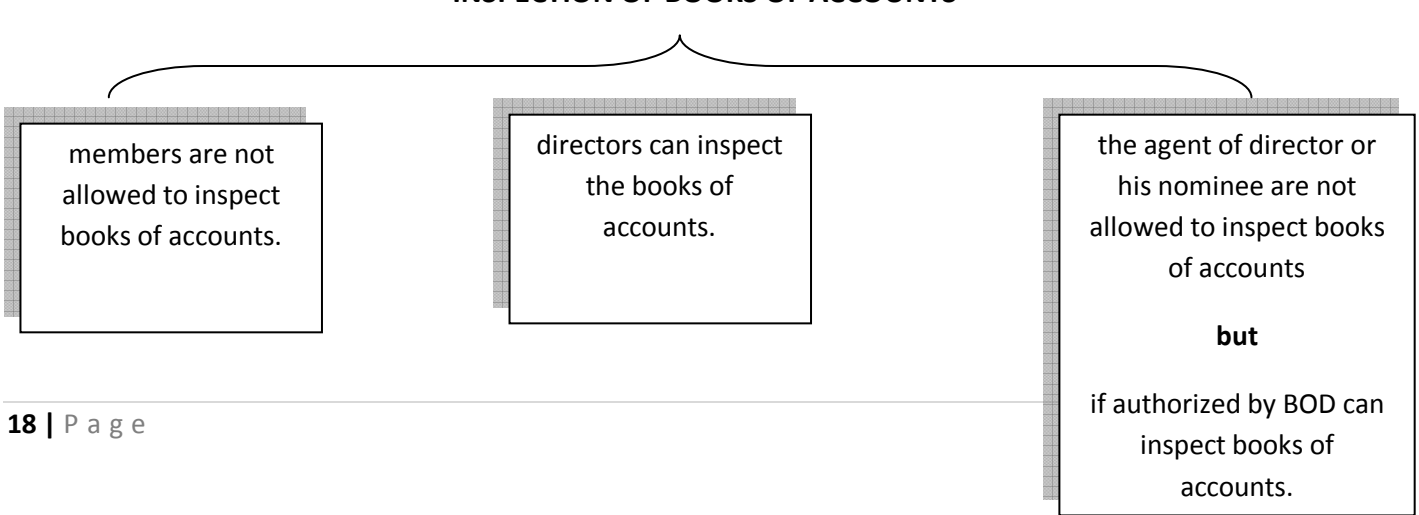
the books of accounts maintained at branch office shall be maintained as per prescribed u/s 128.

IMPORTANT POINT-the summarized written books of accounts of branch are periodically sent by branch to company at its registered office or at any place within India where books of accounts are maintained.

PRESERVATION OF BOOKS OF ACCOUNTS



INSPECTION OF BOOKS OF ACCOUNTS



Important point -

inspection is allowed during business hours.

if director demands inspection of books of accounts maintained outside India then the documents shall be available for inspection within 15 days from the receipt of request.

QUESTION- who can inspect books of accounts of subsidiary company?

ANSWER-the person who is authorized by BOD by board resolution can inspect books of accounts of subsidiary company.

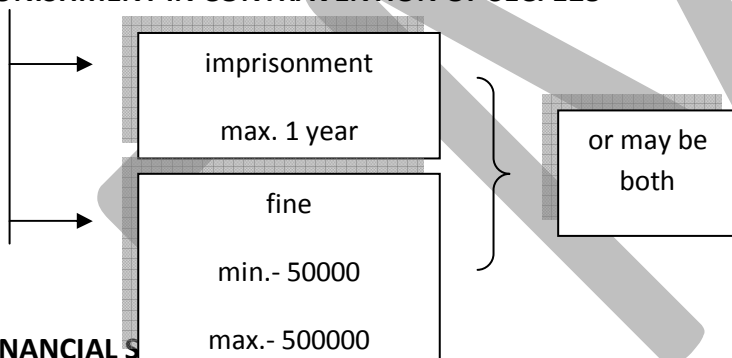
PERSON RESPONSIBLE FOR MAINTAIN BOOKS OF ACCOUNTS

managing director

WTD in charge of finance

CFO

such other person authorized by BOD

PUNISHMENT IN CONTRAVENTION OF SEC. 128**FINANCIAL STATEMENTS**

according to sec.2(40), financial statement in relation to company includes :-

balance sheet at end of financial year.

profit and loss account for financial year.

Important note-if the company is not carrying any business then income and expenditure account.

cash flow statement for financial year

a statement of changes in equity

annexure and schedule

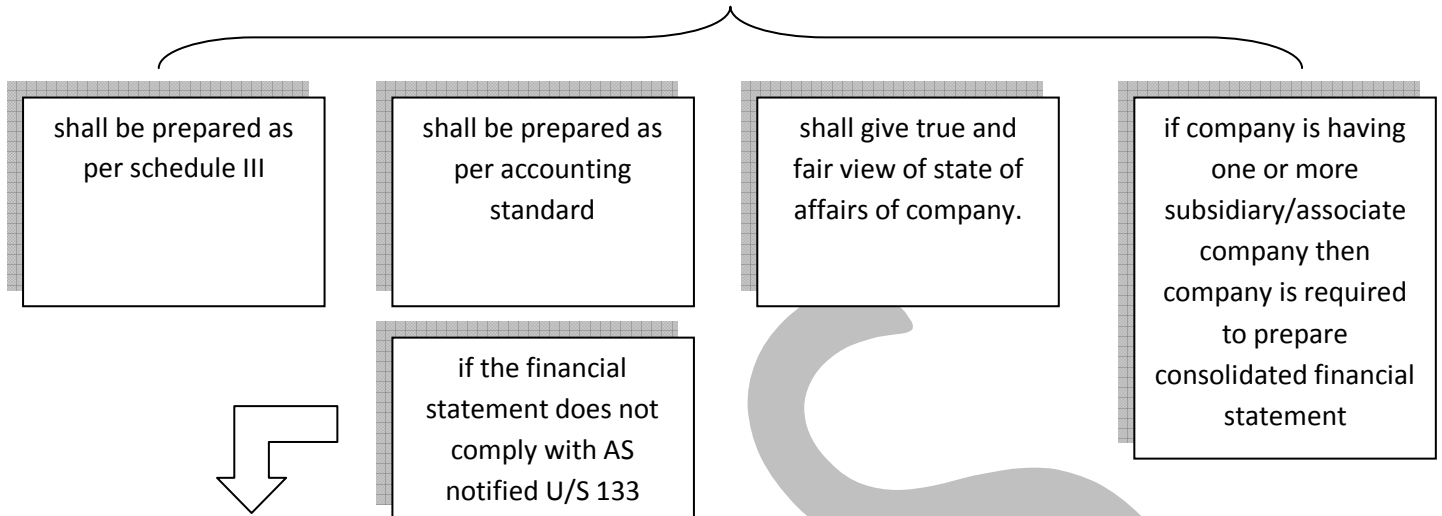
then cash flow statement is not part of financial statement . if the company is:-

OPC

small company

dormant company

METHODS OF PREPARING FINANCIAL STATEMENT



then company shall disclose following in financial statement

1. deviation from AS
2. reason for such deviation
3. financial effect if any of such deviation

NON-APPUCABILITY OF SECTION 129

banking company

insurance company

company engaged in generation or supply of electricity

government company engaged in defense production

REQUIREMENT FOR HOLDING COMPANY

if company is having one or more subsidiary or associate company shall prepare consolidate financial statement and also attach along with its financial statement a separate statement containing :-

salient features of the financial statement of subsidiaries and associate company.

IMPORTANT POINTS

the central government may exempt from above provision to the classes of company :-

in public interest .

on its own.

an the application made by respective classes of companies.

PERSON RESPONSIBLE TO MAINTAIN FINANCIAL STATEMENT

managing director

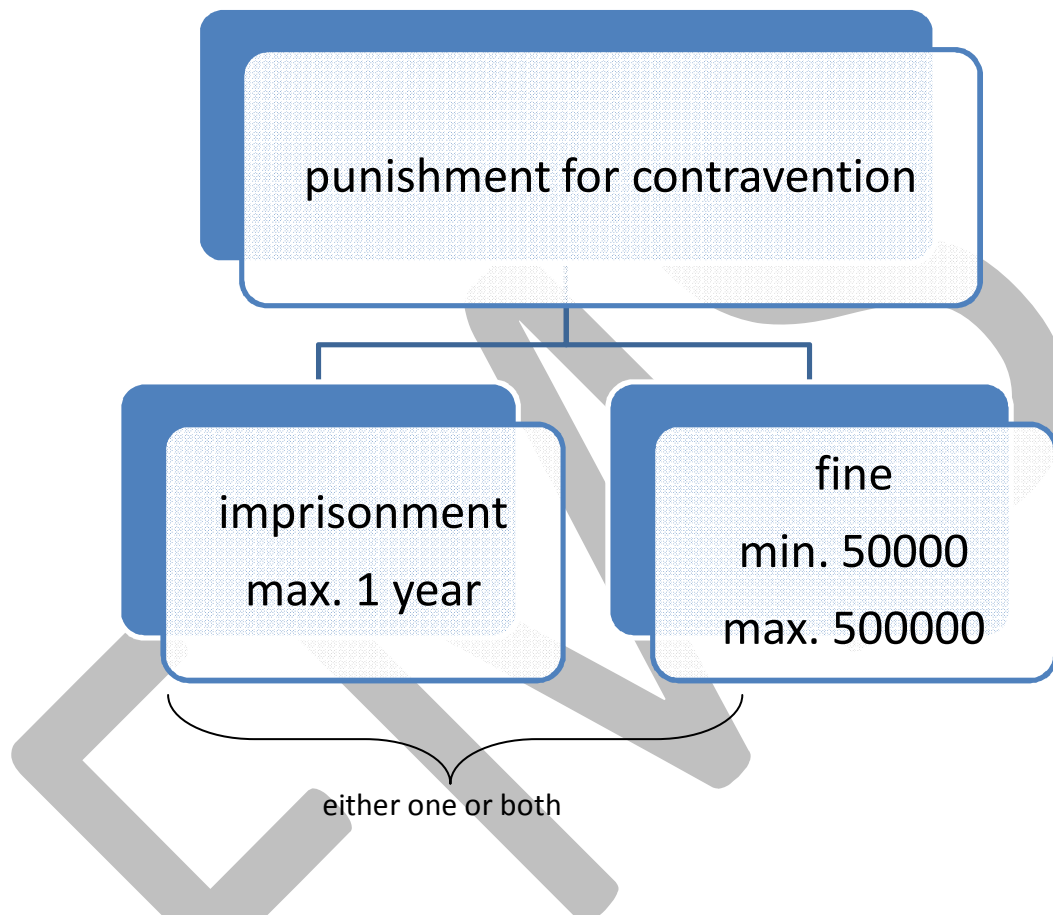
in charge of finance

CFO

An authorized person on behalf of BOD.

In the absence of above person ,all the directors shall be responsible.

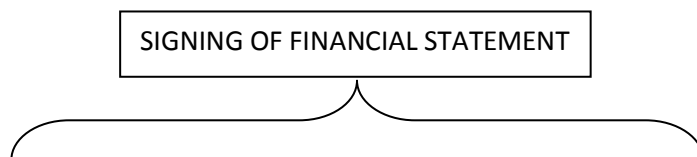
PUNISHMENT FOR CONTRAVENTION OF SEC.129



APPROVAL OF FINANCIAL STATEMENTS

the financial statement is to be approved by BOD in a board meeting before they are signed.

SIGNING OF FINANCIAL STATEMENT [SEC.124(1)]



**PUBLIC/PRIVATE
COMPANY**

1

If chair person is authorised by BOD -then chairperson shall sign financial statement.

if chairperson is not authorised by BOD then financial statements shall be signed by 2 directors out of which 1 shall be MD

**ONE PERSON
COMPANY**

if havig **ONLY** one director then by such authorised director.

CEO if he is a

director.

2 CFO and CS if he is appointed .

3

After signing of financial statement such financial statement shall be forwarded to **AUDITOR** for audit of financial statement .

CIRCULATION OF FINANCIAL STATEMENTS [SEC.136]

Documents to be circulated

1. financial statements.
2. auditors report.
3. board directors.
4. consolidated financial statements.
5. annexures and schedules.

PERSON ENTITLED TO RECEIVE ABOVE DOCUMENT

person entitled to receive above documents

members of the company .

debentures trustee.

person other than members and debentures trustee entitled to receive such documents.

TIME LIMIT FOR CIRCULATION

time limit for circulation

public /private



at least 21 days before general meeting in which they are to be adopted .

sec 8 companies



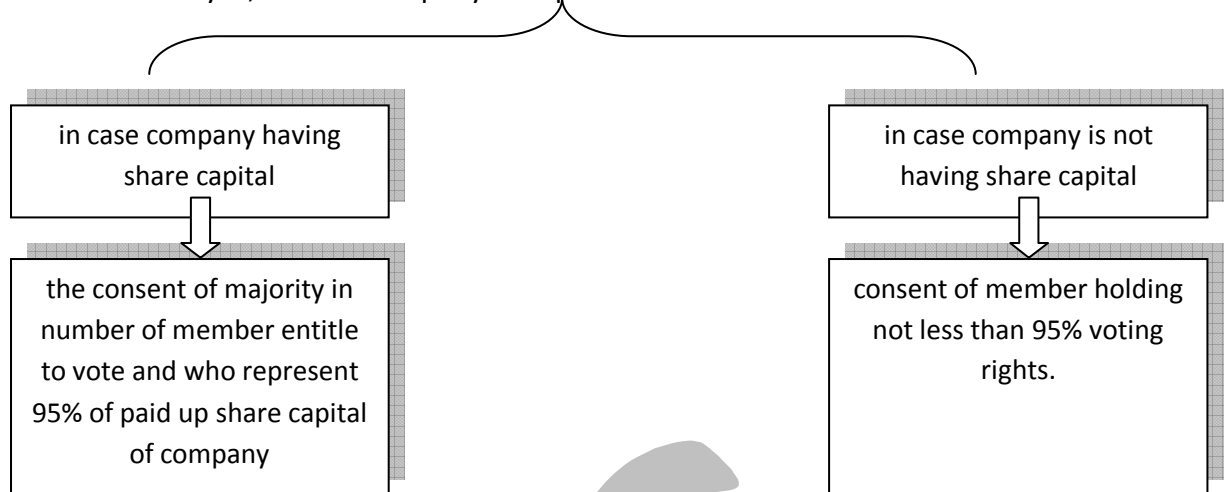
at least 14 days before general meeting in which they are to be adopted .

QUESTION

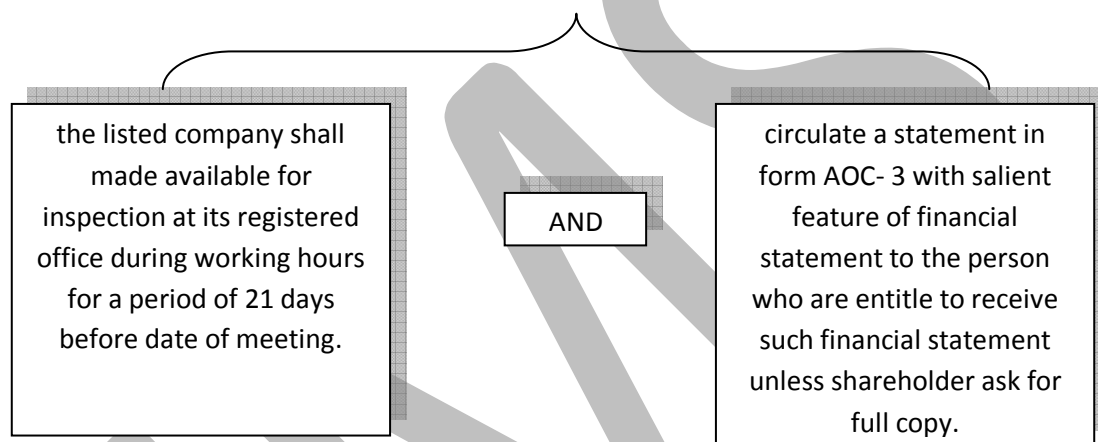
Whether the financial statement can be circulated for a days lesser than 21 days before general meeting in which they are adopted ?

ANSWER-

yes, but the company is required to obtain consent.

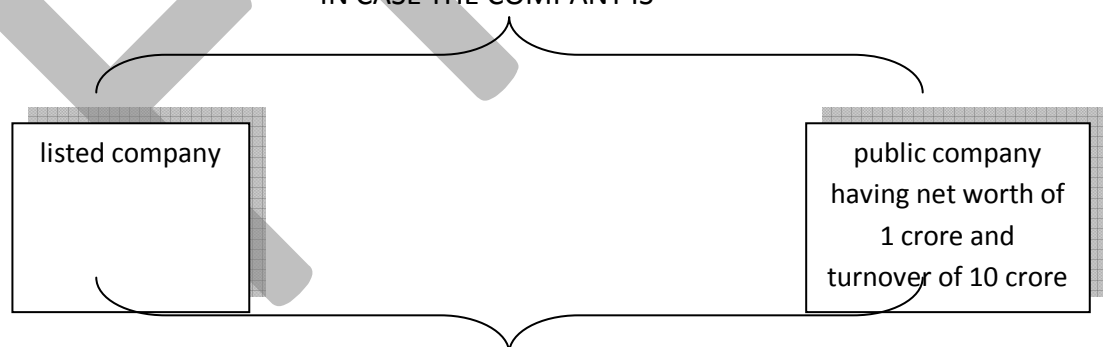


PROVISION FOR CIRCULATION FOR LISTED COMPANY

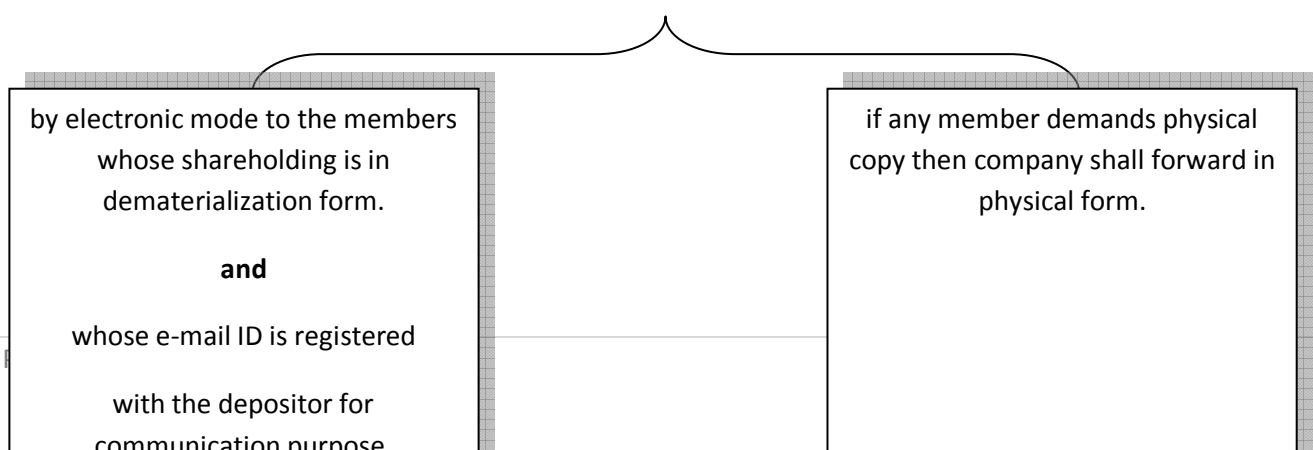


MANNER / MODE OF CIRCULATION OF FINANCIAL STATEMENT

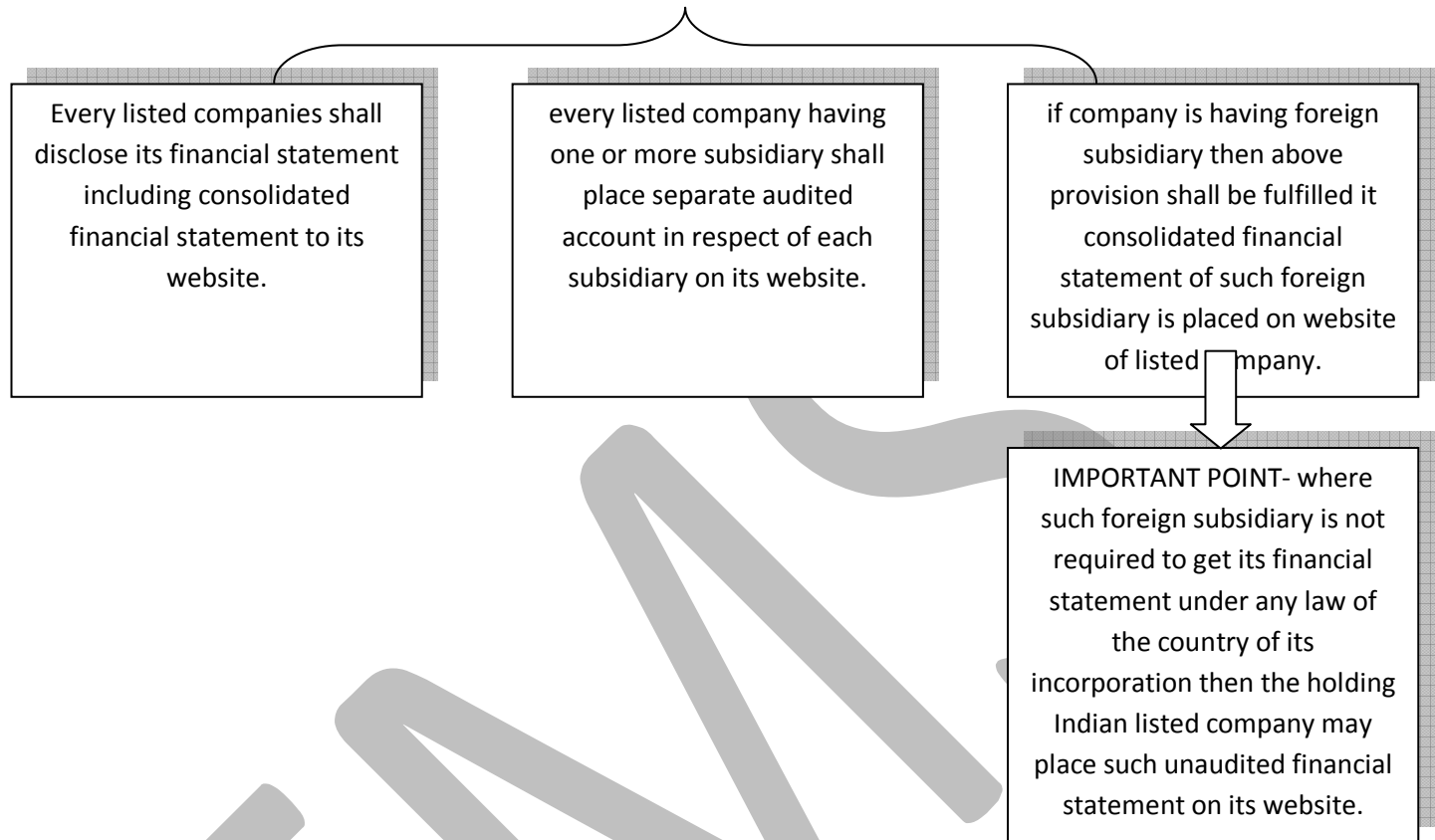
IN CASE THE COMPANY IS



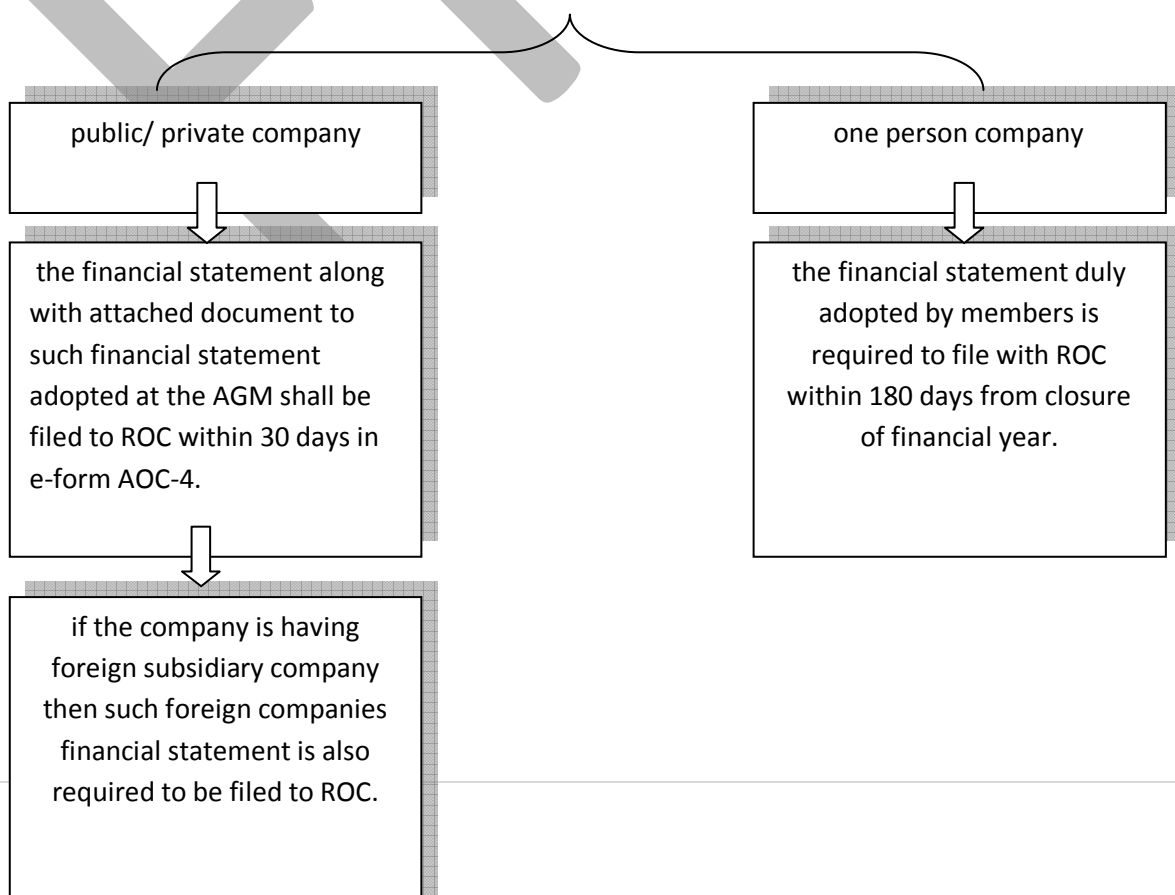
shall circulate financial statement



PROVISION RELATED TO PUBLICATION OF FINANCIAL STATEMENTS ON WEBSITES FOR LISTED COMPANIES



FILING OF FINANCIAL STATEMENT WITH REGISTRAR OF COMPANY (SEC.137)



PROVISION RELATED TO FILING OF FINANCIAL STATEMENT

where financial statement are not adopted at AGM or at adjourned AGM then such an adopted financial statement is to be filed within 30 days from date of AGM and the registrar shall consider such financial statement as provisional financial.

in case, AGM is not held then the financial statement shall be filed to ROC within 30 days of the last day before which AGM should have been held along with reason for not holding AGM.

SECTION 130 :- RE-OPENING OF BOOKS OF ACCOUNTS

according to sec.130 a company shall not re-open its books of accounts and not recast its financial statement unless an application in form NCLT-9 has been made to the tribunal.

WHO CAN MAKE APPLICATION?

1. income tax authorities
2. SEBI
3. any concerned person
4. statutory authorities

REASON FOR MAKING APPLICATION

1. Relevant earlier account were prepared in a fraudulent manner.
2. the affairs of company were mis managed

Important point-when an application is received in form NCLT -9 the tribunal shall give notice of such application shall be forward :-

income tax authority

SEBI

any concerned person

the NCLT Before passing order shall consider the representation made by above authorities and concerned person.

SECTION 131- REVISION OF FINANCIAL STATEMENT AND BOARD REPORT

according to sec.131, if it appears to the directors of the company that

the financial statement of the company is not prepared/ don't comply with provision of section 129

OR

the board report don't comply with section 134.

TRIBUNAL DUTIES AFTER RECEIVING THE APPLICATION

the tribunal shall give notice of such application to the central government, income tax authorities and shall consider the representation made by such authorities.

DISCLOSURE /PARTICULARS OF APPLICATION

the application shall disclose:-

financial year or period to which account relates

name and content details of MD, CFO, CS, officer, director responsible for maintaining of books of accounts.

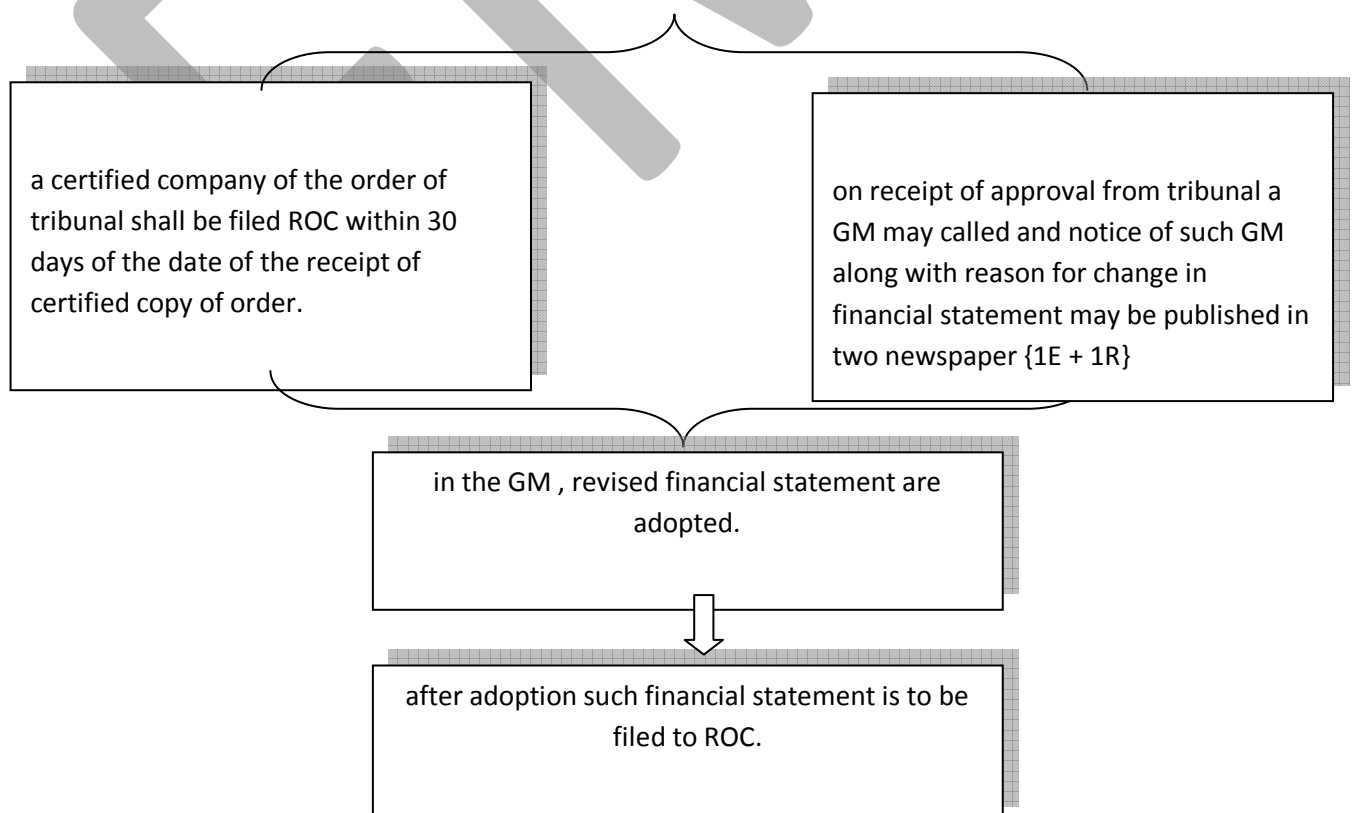
copy of board resolution passed by BOD

grounds for seeking revision

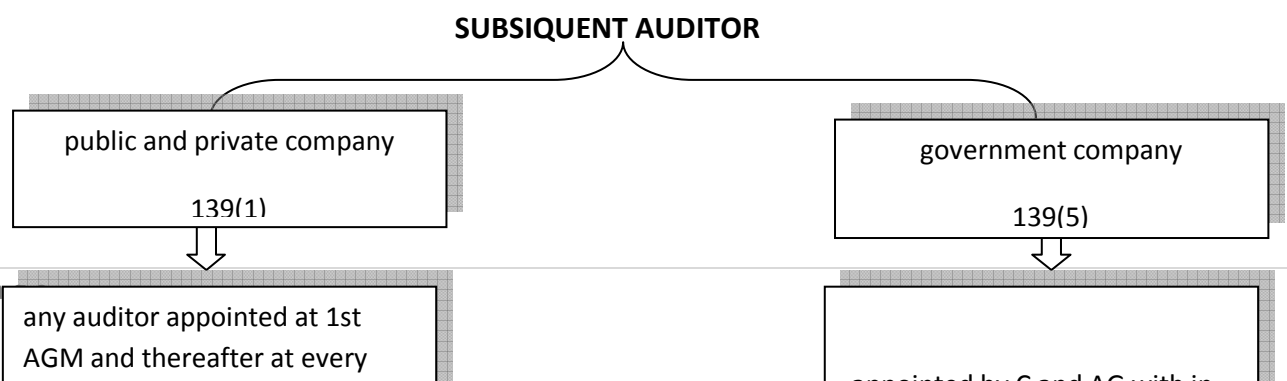
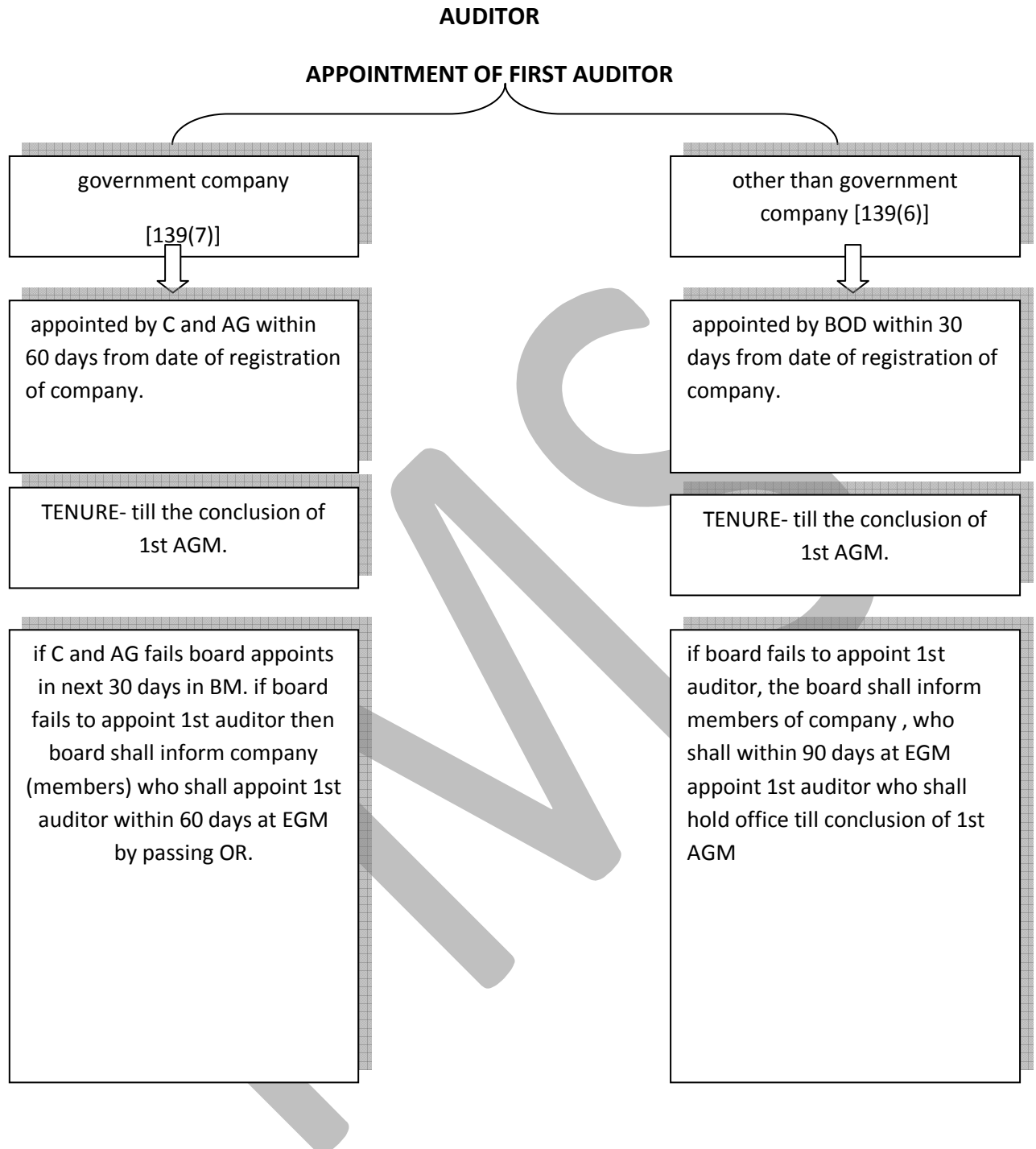
COMPANIES DUTY FOR ADVERTISEMENTS OF APPLICATION

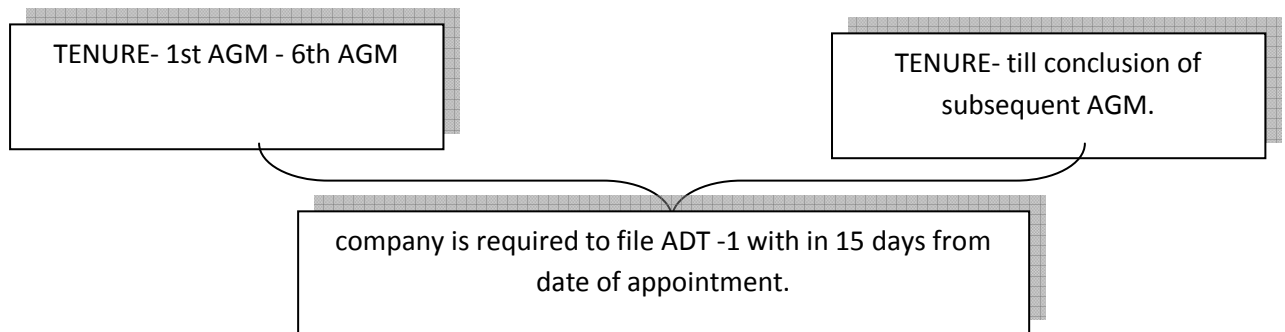
the company shall at least 14 days before the date of hearing advertise the application. in two newspaper one in english language and other in vernacular language having wide circulation in the state where registered office of company is situated.

COMPANIES DUTIES AFTER RECEIVING APPROVAL OF NCLT



Important Point-the revised financial statement or revised board report shall not be filed more than once in a year.





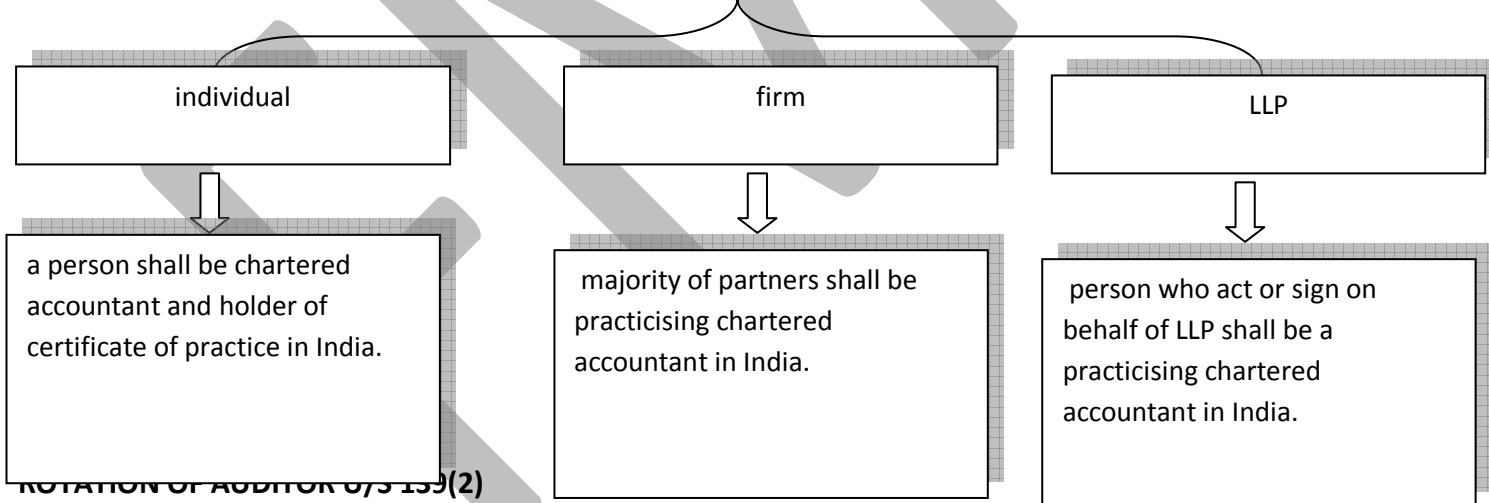
CONSENT FROM AUDITOR

When the auditor is appointed the consent from auditor is obtained and certificate is obtained from auditor that :-

1. the proposed appointment as per terms provided under companies act 2013. and,
2. the proposed appointment is within the limit laid down under companies act, 2013.

IMPORTANT POINT- for this chapter appointment includes re-appointment.

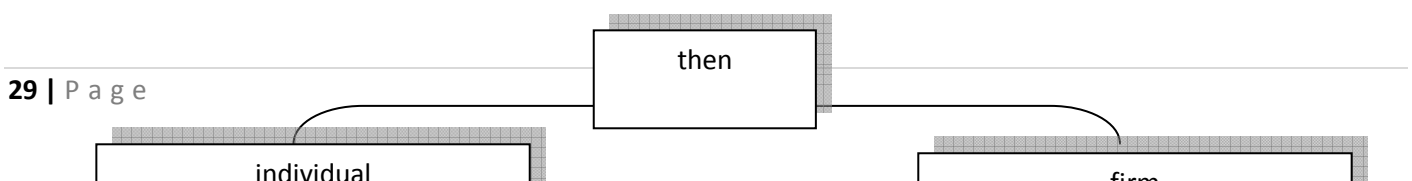
WHO CAN BECOME AUDITOR OF AN COMPANY U/S 141(1)

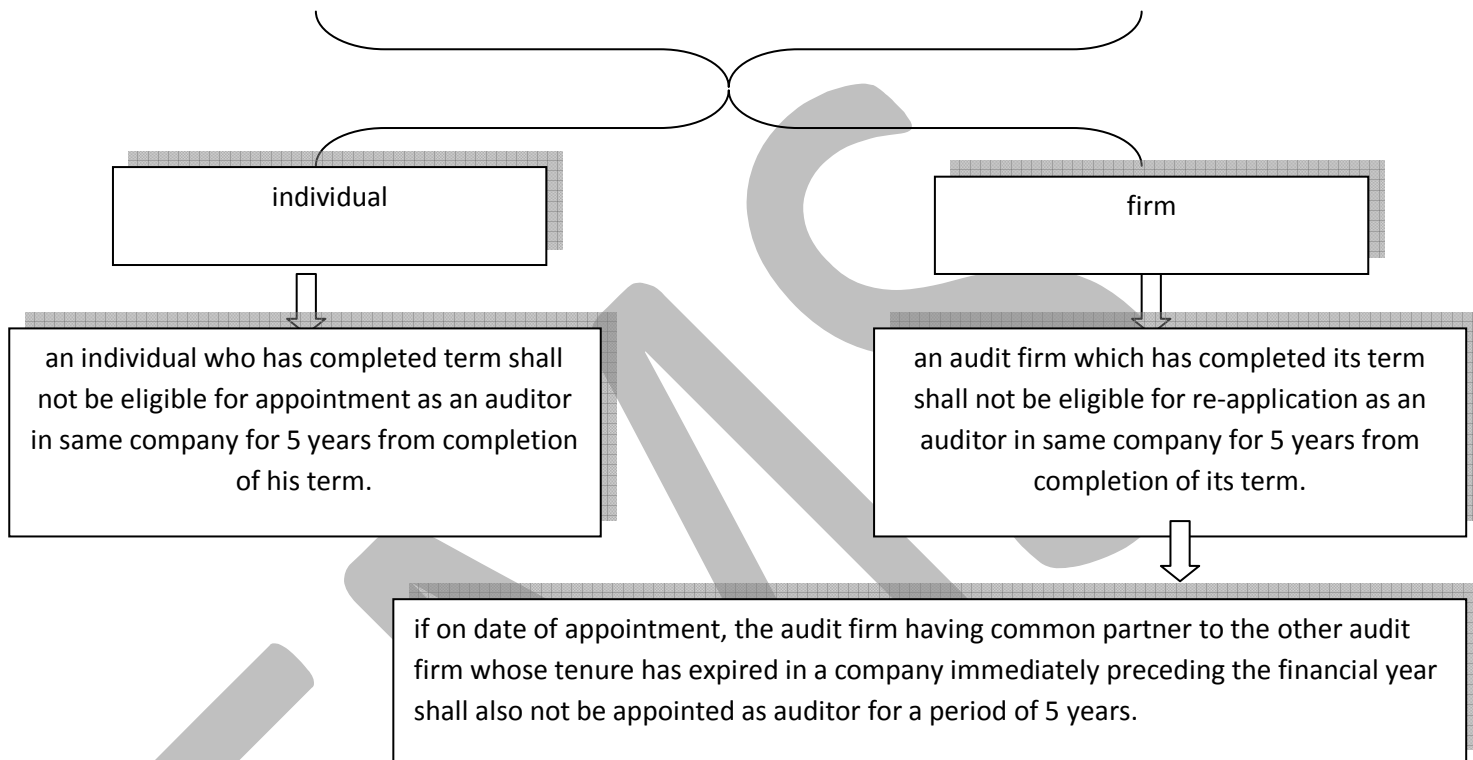


ROTATION OF AUDITOR U/S 139(2)

according to sec. 139(2)

- listed companies
- unlisted public company having paid up share capital of 10 crore or more.
- private company having paid up capital of 50 crore or more.
- all companies having paid up share capital below threshold limit as prescribed above.
- but having borrowing from financial institution and banks or public deposits of 50 crore or more.





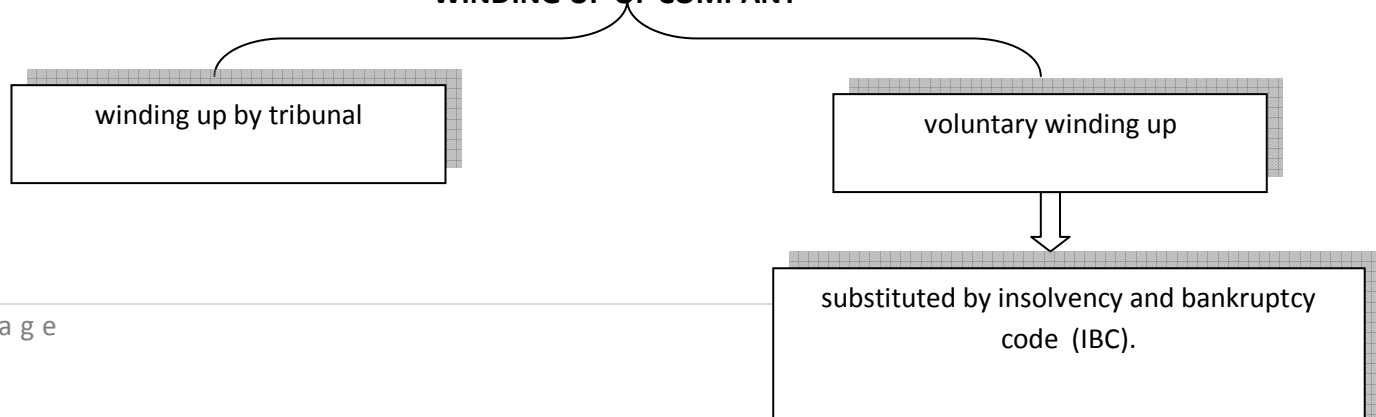
DISQUALIFICATION OF AUDITOR U/S 141(3)

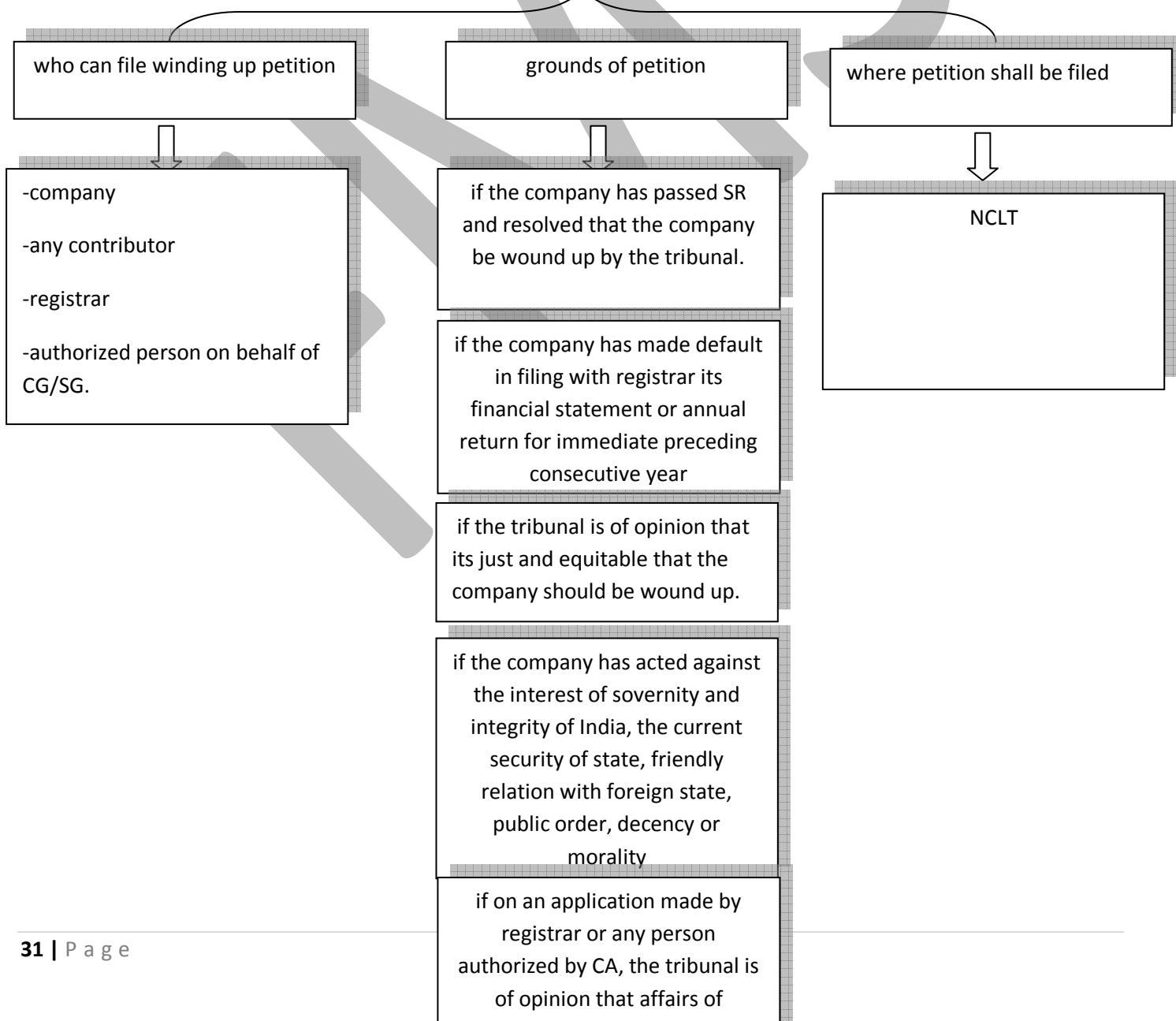
the following person shall not be appointed as an auditor of the company:-

1. body corporate other than LLP
2. any officer or employee of company
3. any person who is partner or he is in employment of an officer or an employee of company.
4. a person or his relative or partner holding security interest in company ,holding company, subsidiary company or subsidiary of such holding company.

EXEMPTION- Relative may hold security interest in company of face value not exceeding 1 lakh.

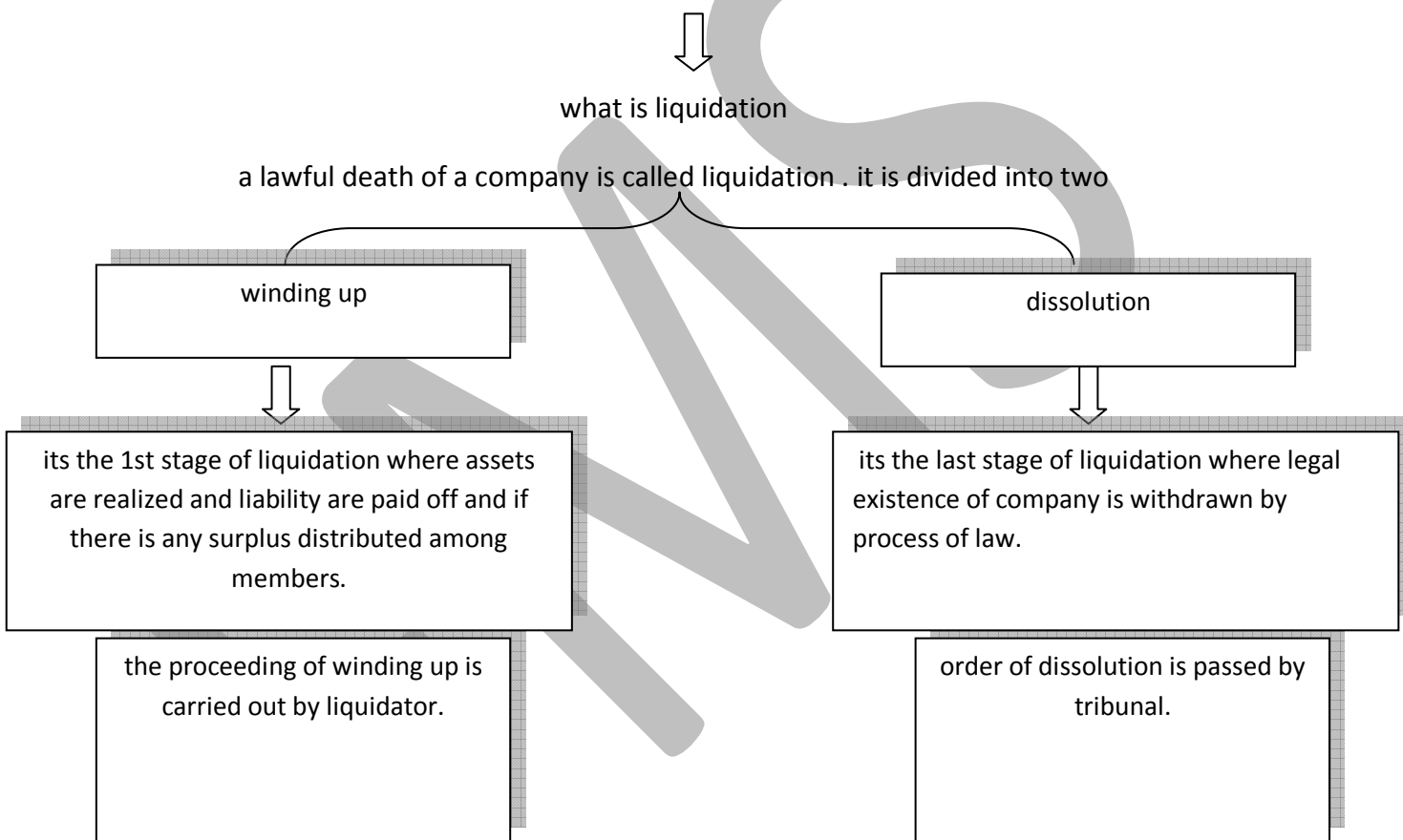
WINDING UP OF COMPANY



WINDING UP BY TRIBUNAL

IMPORTANT POINT - if application is made by registrar then previous sanction of CG is required.

WINDING UP OF THE COMPANY



WHO IS CONTRIBUTOR ?

contributor are those person who contributes towards assets of the company in course of winding up.

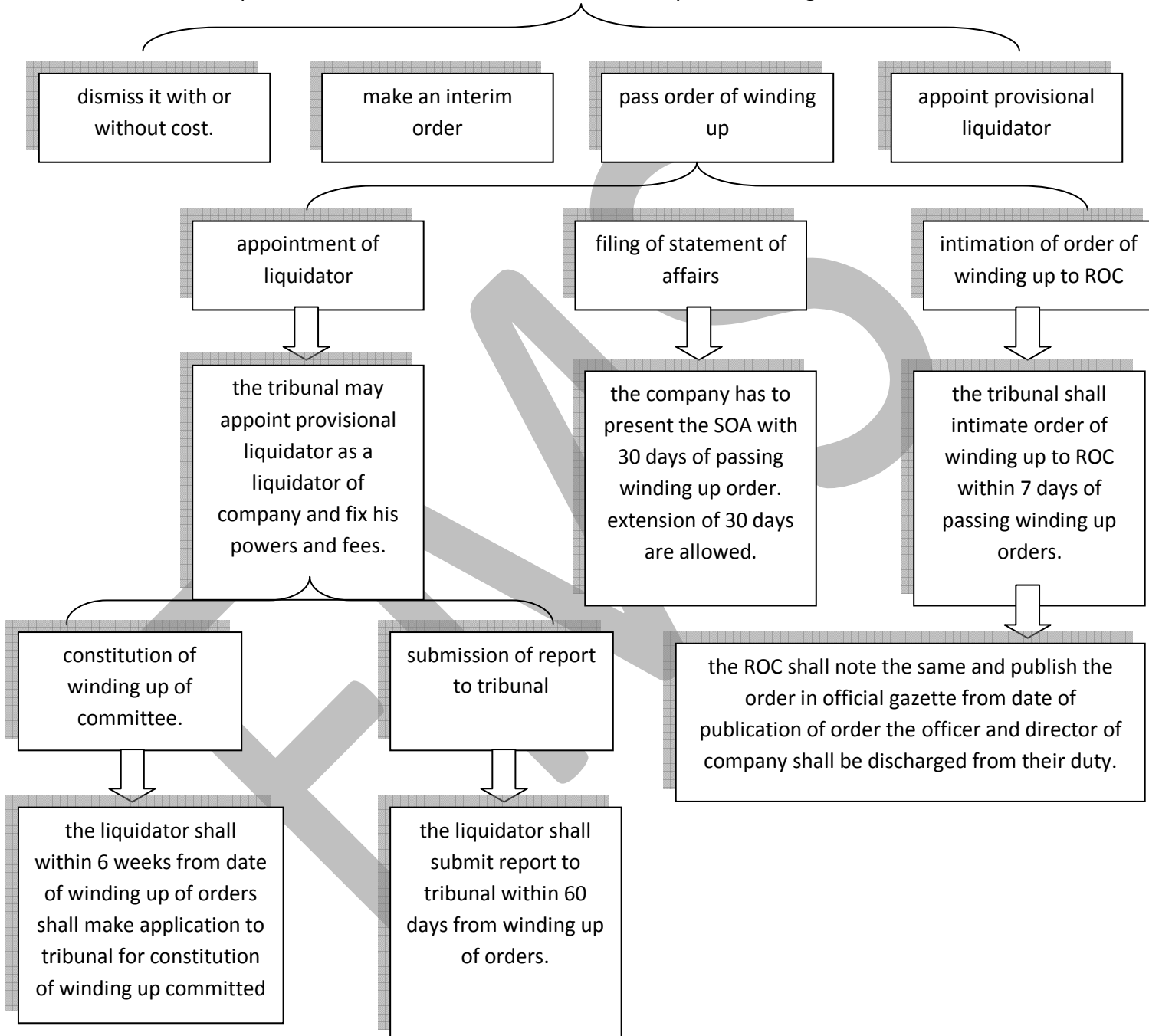
CONTRIBUTOR INCLUDES -present member and past leased member in preceding 12 months.

QUESTION- explain the type of contributor who can file winding up petition?

ANSWER- The contributor who has held shares for at least 6 month in preceding 18 months.

PROCESS OF WINDING UP

petition shall be filed in NCLT -1. NCLT shall pass following orders



DISCLOSURE IN REPORT MADE BY LIQIDATOR

1. nature and details of assets of company including location and value.
2. valuation report of assets.
3. amount of capital issued , subscribed , and paid up

4. guarantee if any extended by company
5. list of contributor and dues if any payable by them
6. details of trade mark and intellectual property
7. details of holding and subsidiary company
8. details of legal cases by or against the company

DORMANT COMPANY

according to sec 455, where a company is formed and registered for a future benefit or to hold assets or intellectual property and has no significant accounting transaction or an inactive company may make application in e-form MSC-1 to obtain status of dormant company.

MEANING OF INACTIVE COMPANY

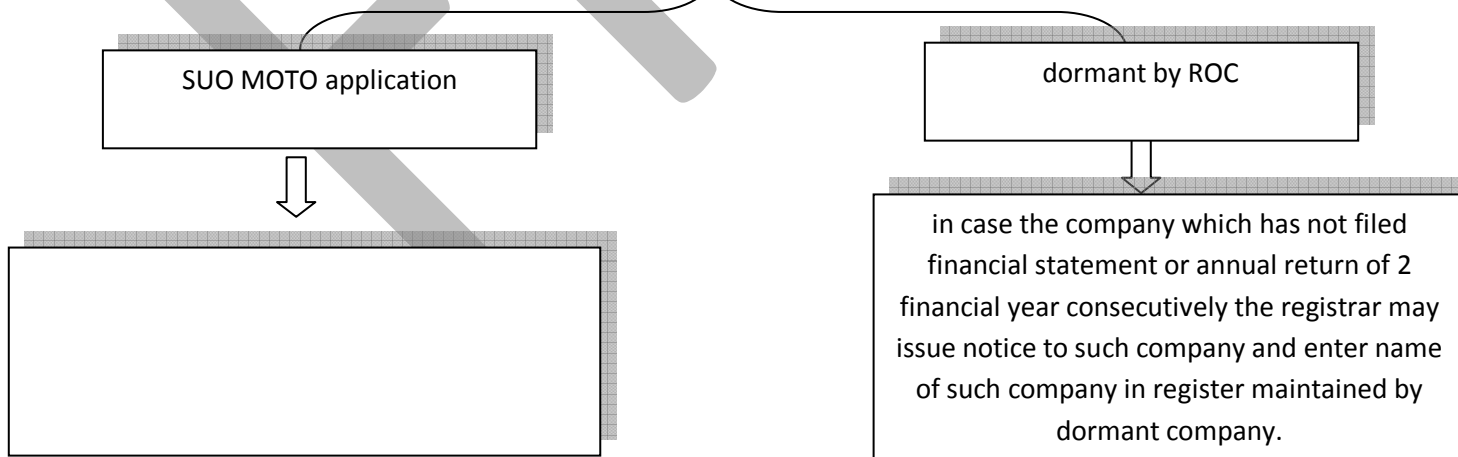
inactive company means a company which has not been carrying a business or operation or has not made any significant accounting transactions during last 2 financial years or has not filed financial statement or annual returns during last 2 financial years.

MEANING OF SIGNIFICANT ACCOUNTING TRANSACTIONS

means a transaction other than :-

1. payment of fees by ROC
2. allotment of shares to fulfill requirement of act
3. payment for maintenance of its office and records

OBTAINING DORMANT COMPANY STATUS



Maximum period for which a company can obtain status of dormant company:- for a period of 5 years.

IMPORTANT POINT- before the expiry of 5 years the company have to apply.



PROCEDURE FOR OBTAINING STATUS OF DORMANT COMPANY

1. The company shall call a board meeting to fix

day

time

date

venue

of general meeting of the company to pass SR

for making application to ROC for obtaining status of dormant company.

2. the company has to obtain statement of affairs from auditor of the company which shall disclose financial position of the company at the time of passing resolution in shareholder's meeting.
3. the company shall hold general meeting and shall pass SR and authorize one of the director to make application to ROC in e-form MSC-1 for obtaining status of dormant company or, by taking consent of 3/4 th in value of shareholders.

IMPORTANT POINT - a copy of SR shall be filed to ROC in e-form MCT- 14 within 30 days of passing resolution.

4. the registrar shall issue a certificate of dormant company in form MSC-2.

NIDHI COMPANY

nidhi company means an public company having an objective of cultivating the habit of thrift and saving amongst its members, receiving deposit from and lent to its members for their future benefits.

RULES RELATED TO NIDHI COMPANY

- every nidhi company shall have minimum paid up equity capital of 50lakh.
- no nidhi company shall issue preference shares
- nidhi company shall use word "nidhi" as a last word in the name
- requirement for nidhi:-

1. every nidhi shall have not less than 200 members.
2. net owned fund of 10lakh
3. unencumbered term deposit of not less than 10% of outstanding deposits.
4. ratio of net owned fund to deposit not more than 1:20

IMPORTANT POINT- if nidhi company fulfills above requirement then nidhi company is registered to file e-form NDH-1 within 90 days from closure of 1st financial year.

if nidhi company is not complying the provision prescribed in clause (a) or (d) then company seeks extension from regional director within 30 days from the closure of 1st financial year.

GENERAL RESTRICTIONS OF NIDHI COMPANY

no nidhi company :-

1. carry on the business of chit bus, hire purchase of finance, leasing finance, insurance or acquisition of securities issued by any body corporate.
2. issue of preference share, debenture or any debt instrument.
3. open any current account with its member.
4. carry on business other than business of borrowing or lending in its on name.

exemption- nidhi company may provide locker rent facility to its member subject to rental income from such facility not exceeding 20% of the gross income of nidhi at any point of time during financial year.

5. pledge any assets lodged by its member as security.
6. take deposit from or lend money to any body corporate.
7. enter into a partnership arrangement in its borrowings or lending activity.
8. issue any advertisement for soliciting its deposits.
9. to pay any brokerage or incentive for mobilizing deposit from members.

SHARE CAPITAL AND ALLOTMENT

- every nidhi company shall issue equity shares of nominal value not less than 10 rupees each.
- no service charge shall be levied for issue of shares.
- every nidhi company shall allot to each deposit holder at least 10 equity shares or share equivalent to value of 100.

exemption - one equity share is to be allotted to saving account holder or recurring deposit holder.

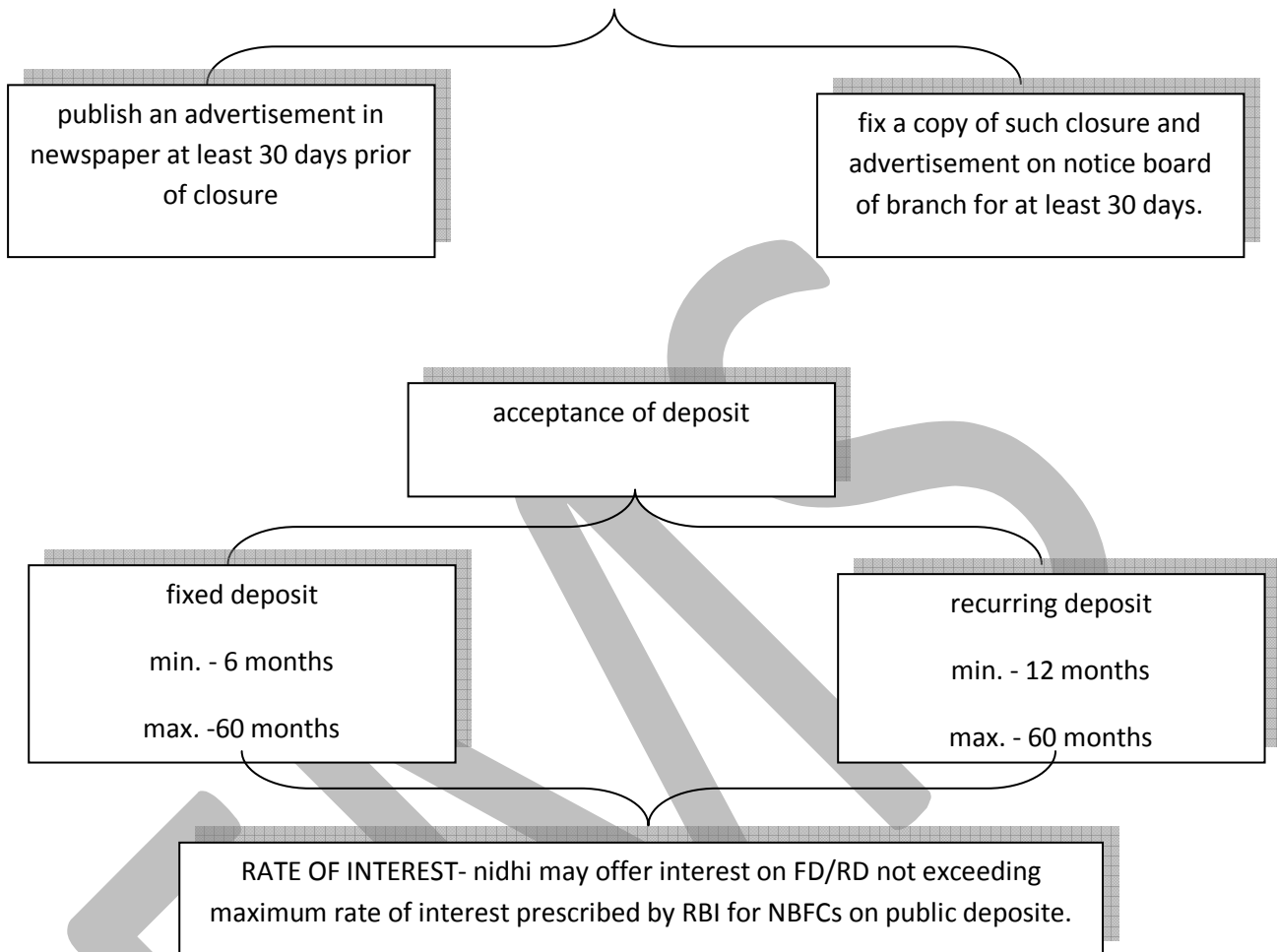
MEMBERSHIP OF NIDHI

1. a nidhi shall not admit a body corporate or trust as a member.
2. a minor shall not be admitted as a member of nidhi but deposit may be accepted in name of minor if they are made by legal guardian.

BRANCHES

- A NIDHI company may open branches only if it has earned net profit after tax continuously during the preceding 3 financial year.
- a nidhi company may open upto 3 branches with in a district.

- if a nidhi company wants to open more than 3 branches in a district , approval of regional director is required.
- and an intimation of opening is to be given within 30 days of opening to ROC.
- A NIDHI company shall not close any branch unless it :-



the maximum balance in saving account qualifying for interest shall not exceed rupees 1 lakh and the rate of interest shall not exceed 2% above rate of interest payable on saving account by nationalized bank.

RESTRICTIONS ON DEPOSIT

- no nidhi shall repay and deposit within a period of 3 months from date of acceptance.
- if the nidhi pay any deposit after 3 months then depositor shall not be allowed / entitle to any interest upto 6 months from date of deposit.
- on premature of deposit rate of interest shall be reduced by 2%.