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CMA Inter Law – Dec 24 – Exam Oriented Marathons

1. **Starting from:** 23rd Oct 2024 (Wednesday)
2. **Platform:** Arjun Chhabra Tutorial YT Channel (Click here to land on YT Channel) (No Back up – only live stream in YT)
3. **Timing:** 04:00 PM onwards (Roughly 3 hours daily)

Features of Exam Oriented Marathons

1. Comprehensive coverage of entire syllabus of Law in least possible time.
2. Covering all Important questions of Commercial Laws, Corporate Laws, Industrial Laws and Ethics.
3. MCQ Practice from ICAI MCQ Bank – 30 Marks Coverage Click here to get MCQ Bank
4. Last attempt (June 24) 100 % paper was from ACT's Material: [Click here to watch](#)
5. Covering all Past exam paper | Model Question Paper | MTP | RTP | Postal Test Paper
6. Telegram group to stay connected with Arjun Sir: [Click here to Join Group](#)

Schedule of Exam Oriented Marathons

Date	Topic	Coverage	Link	Timing
23/10	Contract	16 Marks	YT Link	04:00 PM Onwards
24/10	Soga Partnership Nego LLP	14 Marks	YT Link	04:00 PM Onwards
25/10	Director & Constitution of India	25 Marks	YT Link	04:00 PM Onwards
26 /10	Companies Act Auditor	15 Marks	YT Link	04:00 PM Onwards
27/10	Industrial Law	15 Marks	YT Link	04:00 PM Onwards
-	MCQ Practice	30 Marks	YT Link	-
-	Ethics	15 Marks	YT Link	-

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Arjun Chhabra (CS LLB LLM)

Directors

Need for directors

1. Company is an artificial person

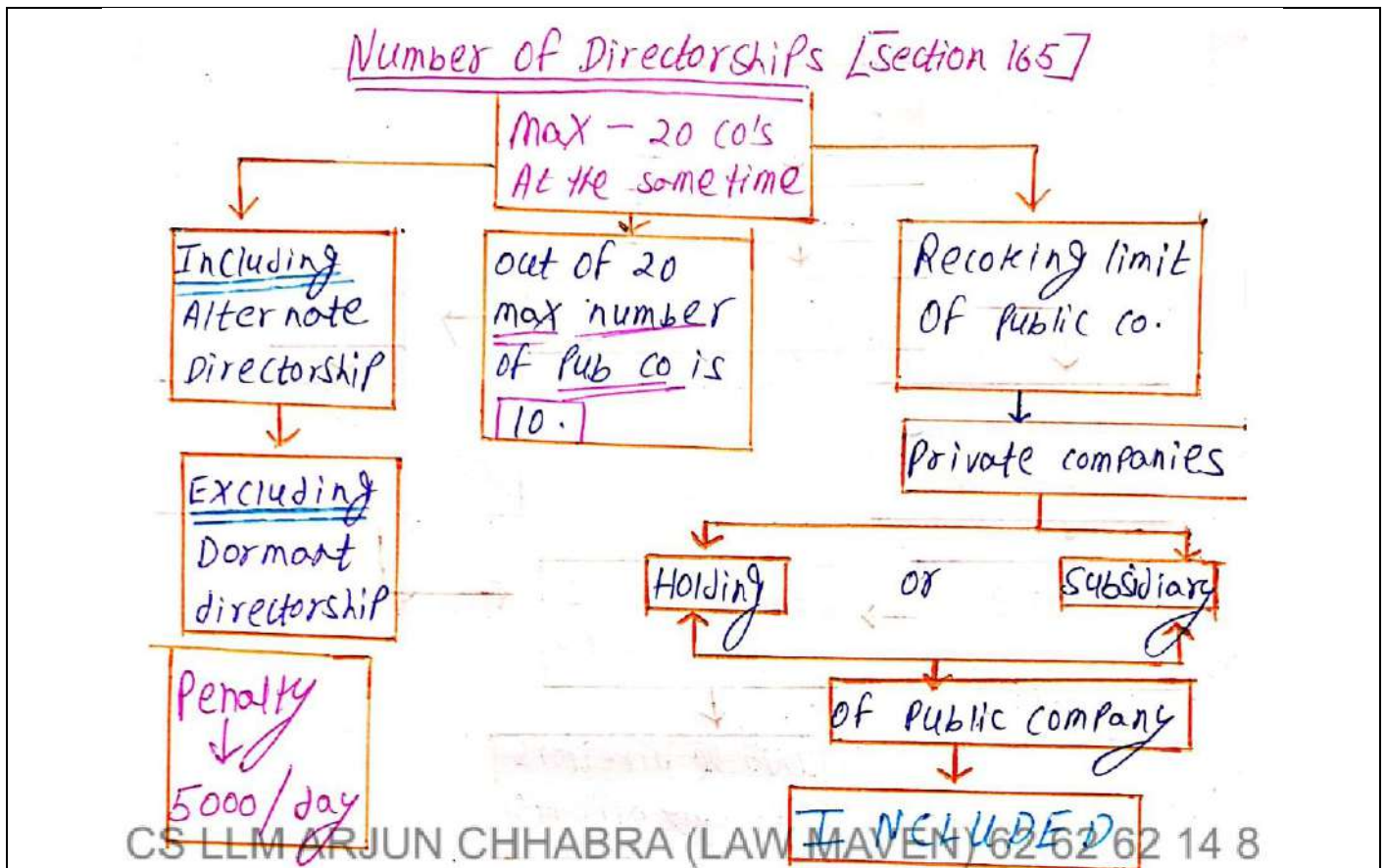
- On incorporation, a company becomes a legal person.
- A company is not a natural person, i.e. it has no mind or body of its own, it has no eyes to see, no ears to hear, no hands to sign and no brain to think and take decisions. Therefore, a company cannot act by itself and consequently it has to depend upon some human agency to act in its name.
- The two human agencies, through which a company acts, are the members of the company and the Board of directors. In other words, the decision-making powers of a company are vested in its two organs, viz. the members of the company and the Board of directors. The Board is the managerial body to whom is entrusted the whole of the management of the company. It is constituted by the members. Directors are accountable to the members in as much as members are empowered to appoint them and remove them.

2. Separation of ownership from management

- The members have no inherent right to participate in the management of the company. They generally lack the expertise to manage the affairs of a company.
- Therefore, a specialised body of persons, called as directors are appointed by the members to manage the affairs of the company.

3. Statutory requirement to have directors

- As per section 149(1), every public company shall have a minimum of 3 directors,
- every private company shall have a minimum of 2 directors and
- every one Person Company shall have a minimum of 1 director.
- The maximum number of directors shall be fifteen. A company may appoint more than 15 directors after passing a special resolution.



Meaning of 'director' and 'Board of directors' [Section 2(34) and Section 2(10)]

As per Clause (34) of Section 2 of the Companies Act, 2013, 'director' means a director appointed to the Board of a company.

Here Appointed means:

1. A resolution has been passed to appoint a director.
2. Proposed person has consented to become director.
3. He has assumed the office of director i.e he is acting as director.

It means that a person shall be regarded as a director **only if he is appointed as a director** by the company. In other words, if a person occupies the position of a director (i.e. he functions as a director), but is not appointed as a director, he shall not be regarded as a director.

Mere designation of director does not satisfy the term "appointed"

As per Clause (10) of Section 2 of the Companies Act, 2013, 'Board of Directors' or 'Board', in relation to a company, means the **collective body of the directors** of the company.

All the powers vested in the Board of directors are **exercisable by the directors collectively**, i.e. by the Board. An **individual director has no authority to act** on behalf of the company, unless he is so authorised by the Act, articles, a resolution of the Board of directors or a resolution of the members.

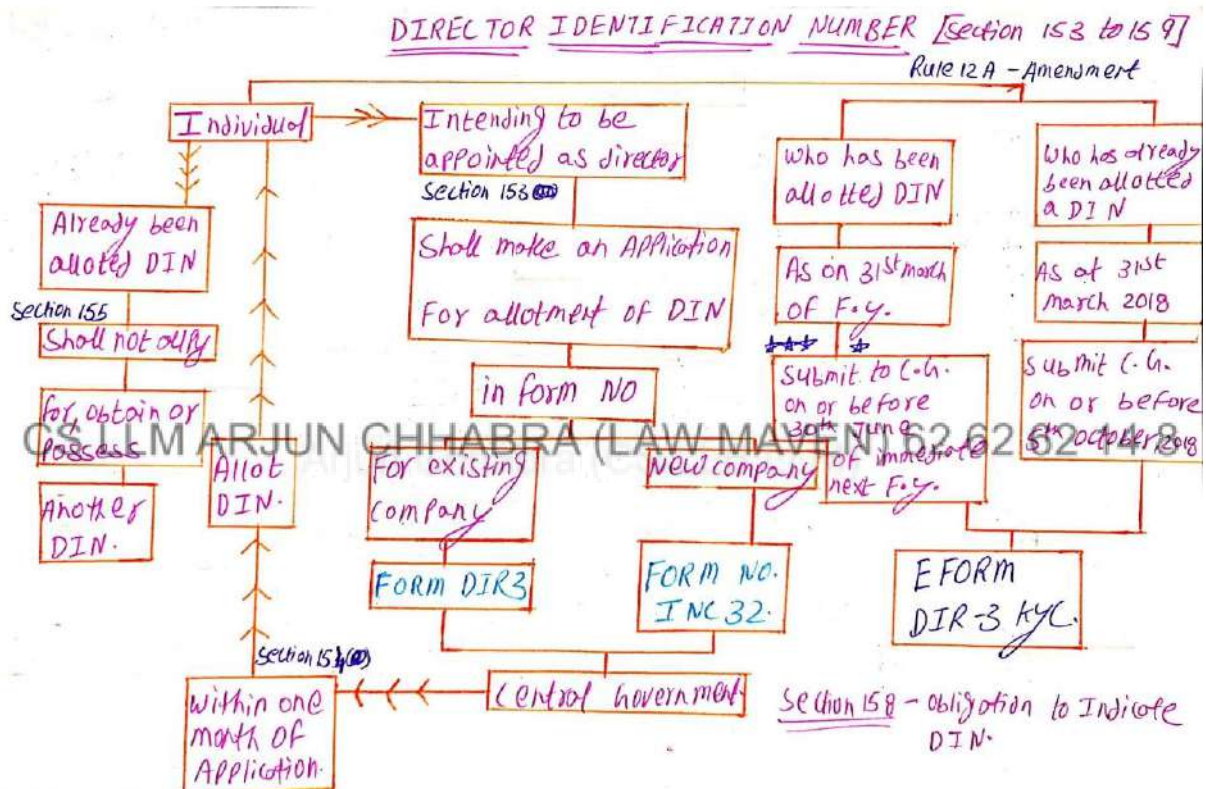
Meaning of executive directors' and 'non-executive directors'	
Executive directors	Non-executive directors
<ul style="list-style-type: none"> The directors who are in the employment of the company are called as executive directors or inside directors. A whole time director and managing director are covered in this category of directors. They take active interest in the day-to-day affairs of the company. 	<ul style="list-style-type: none"> Directors who are not in the employment of the company are called as non-executive directors or part time directors or outside directors. This category includes professional directors and nominee directors. They are not intimately connected with the company except through attending the Board meetings. They have an unbiased attitude towards the working of the company.
<p>Managing Director Section 2(54) defines the term 'Managing Director'</p> <ul style="list-style-type: none"> as a director, who by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of Managing director, by whatever name called. <p>Nominee Director Section 161 (3) A 'nominee director' means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by the Government or any other person to represent its interests.</p> <p>Whole time director [Section 2(94)] 'Whole-time director' includes a director in the whole-time employment of the company.</p>	

Only individuals to be directors (Sections 149)

- The Board of directors of every company shall consist of individuals only. Thus, no body corporate, association, firm or Limited Liability Partnership (LLP) shall be appointed as a director.
- The reason behind the provision is that the office of a director is similar to a trust. So, there should be somebody readily available who can be held responsible for the failure to carry out obligations of such an office.

Question 1:

Write short notes on Director Identification Number [5 Marks – Dec 19] [5 Marks – Dec 17]



Answer:

- No person shall be appointed as a director of the company unless he has been allotted a Director Identification Number (DIN) under section 153.
- Director Identification Number is allotted by the central government to every individual who is to be appointed as director of a company after receiving the application form in prescribed Form No. DIR-3 along with the fees for the same.
- The form shall be attested by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice.
- The central government shall process the application form within one month of receiving the same and allot the Director Identification Number to the applicant after approving the application or give intimation of rejection of the application.

5. The DIN once allotted shall remain valid for the life time of the director and it will not be allotted to any other person.

Question 2:

What are the disqualifications of a person for the appointment as a director under the Companies Act, 2013? [8 Marks – Dec 19] [10 Marks – June 18] [8 Marks – MTP Dec 23 Syllabus 2016] [7 Marks MQP Set 1 Syllabus 2022] [June 24 - 7 Marks]

Answer:

The Companies Act does not prescribe any academic or professional qualifications for directors. There is also no mandatory share qualification as per the Act, unless the Articles of Association of the company prescribes for the same. Therefore, a director neither needs any minimum professional qualification nor any share qualification unless the articles of a company suggest for the same.

Grounds of disqualification [Sec. 164(1)]

A person who/against

- (a) Unsound mind: Declared by a Court
- (b) Undischarged insolvent
- (c) Applied to be adjudicated as an insolvent + Application is pending
- (d) Convicted by a Court for any offence (whether involving moral turpitude or otherwise)

+

Imprisonment (6 months or more)

✓ Disqualified for 5 years (from the expiry of sentence)

Convicted by a Court for any offence (whether involving moral turpitude or otherwise)

+

Imprisonment (7 years or more)

✓ Disqualified for lifetime.

- (e) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force.
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call.
- (g) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years.
- (h) he has not obtain DIN.
- (i) Not complied with Sec. 165(1) [i.e. his directorships exceed the limit specified u/s 165(1)]

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

(2) No person who is or has been a director of a company which—

(a) has not filed

➤ financial statements

or

➤ annual returns

➤ for any continuous period of three financial years; or

(b) has failed to

➤ repay the deposits accepted by it

or

➤ pay interest thereon

or

➤ to redeem any debentures on the due date

or

pay interest due thereon

or

➤ pay any dividend declared

and

such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

Test Yourself:

State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a director of a public company:

- (i) Mr. A, who has huge personal liabilities far in excess of his assets and properties, has applied to the Court for adjudicating him as an insolvent and such application is pending.
- (ii) Mr. B, who was caught red-handed in a shop lifting case 2 years ago, was convicted by a Court and sentenced to imprisonment for a period of 8 weeks.
- (iii) Mr. C, former bank executive, was convicted by a Court 8 years ago for embezzlement of funds and sentenced to imprisonment for a period of 1 year.
- (iv) Mr. D is a director of DLT Ltd., which has not filed its annual returns pertaining to the annual general meetings held in the calendar years 2014, 2015 and 2016.

Answer:

- (i) As per Section 164(1), Since, Mr. A has himself applied to the Court for adjudicating himself as an insolvent, he is disqualified to be appointed as director, even if his application is pending.

(ii) As per Section 164(1), In the present case Mr. B was caught red-handed in a shop lifting case and was sentenced to imprisonment for a period of 8 weeks i.e. less than 6 months, he is not disqualified and can be appointed as director.

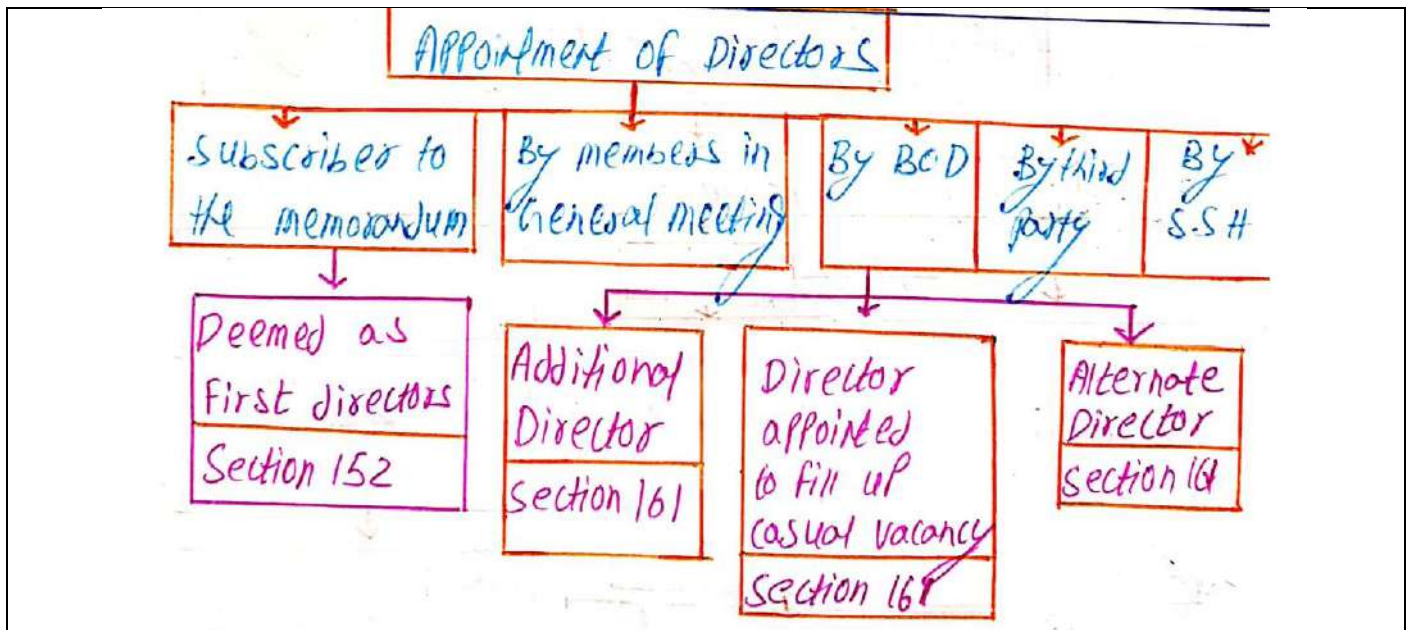
(iii) As per Section 164(1), if any person has been convicted by a Court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for 6 months or more, he is disqualified to be appointed as director for next 5 years from the date of expiry of the sentence. Since, more than 5 years has been elapsed form the date of expiry of the sentence, Mr. C can be appointed as a director.

(iv) As per Section 164(2); a person who is or has been a director of a company shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years which has not filed financial statements or annual returns for any continuous period of 3 financial years. Since, Mr. D has not filed annual returns for continuous period of 3 financial years; he is disqualified to be appointed as director for next 5 years.

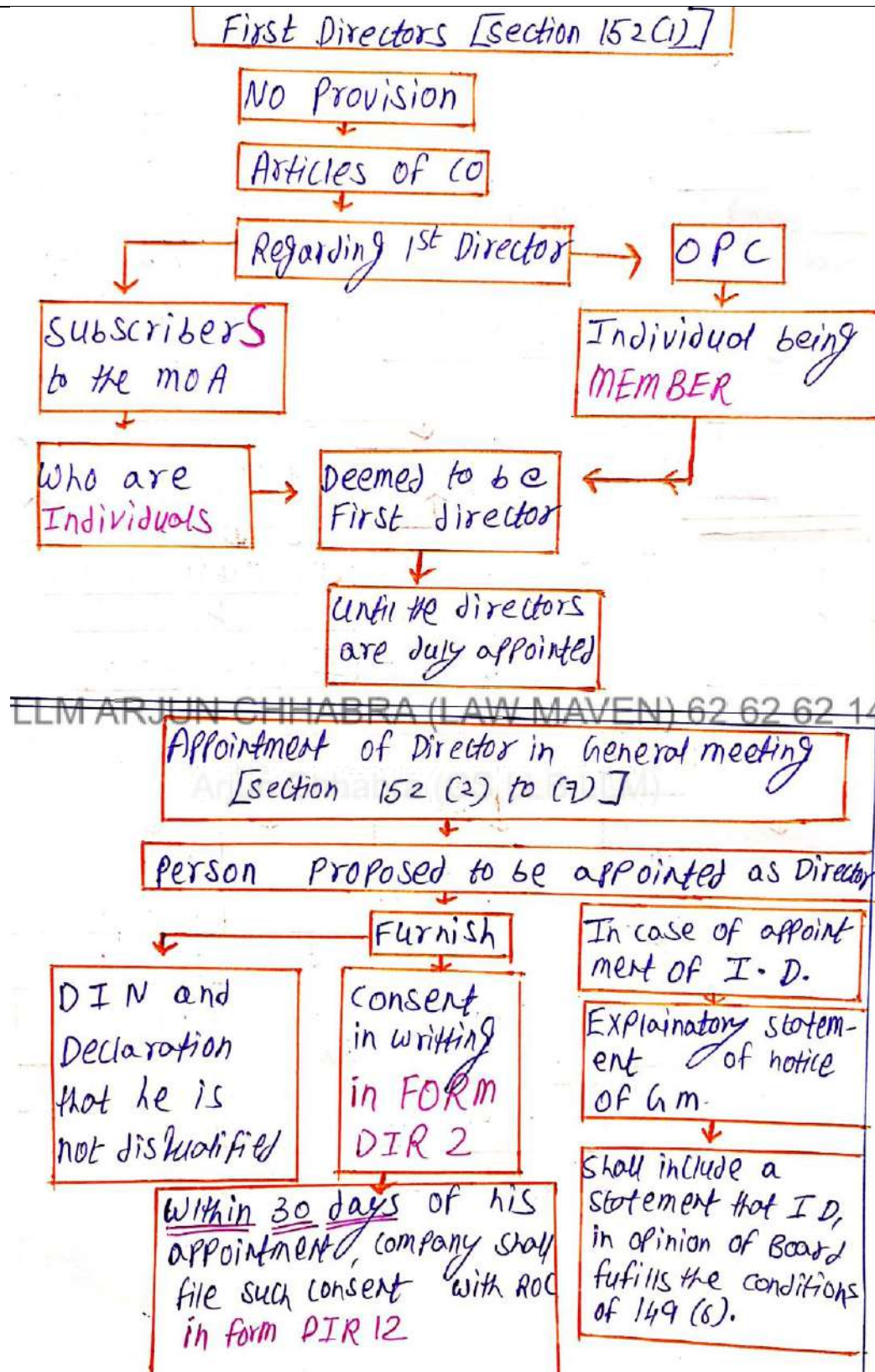
Question3:

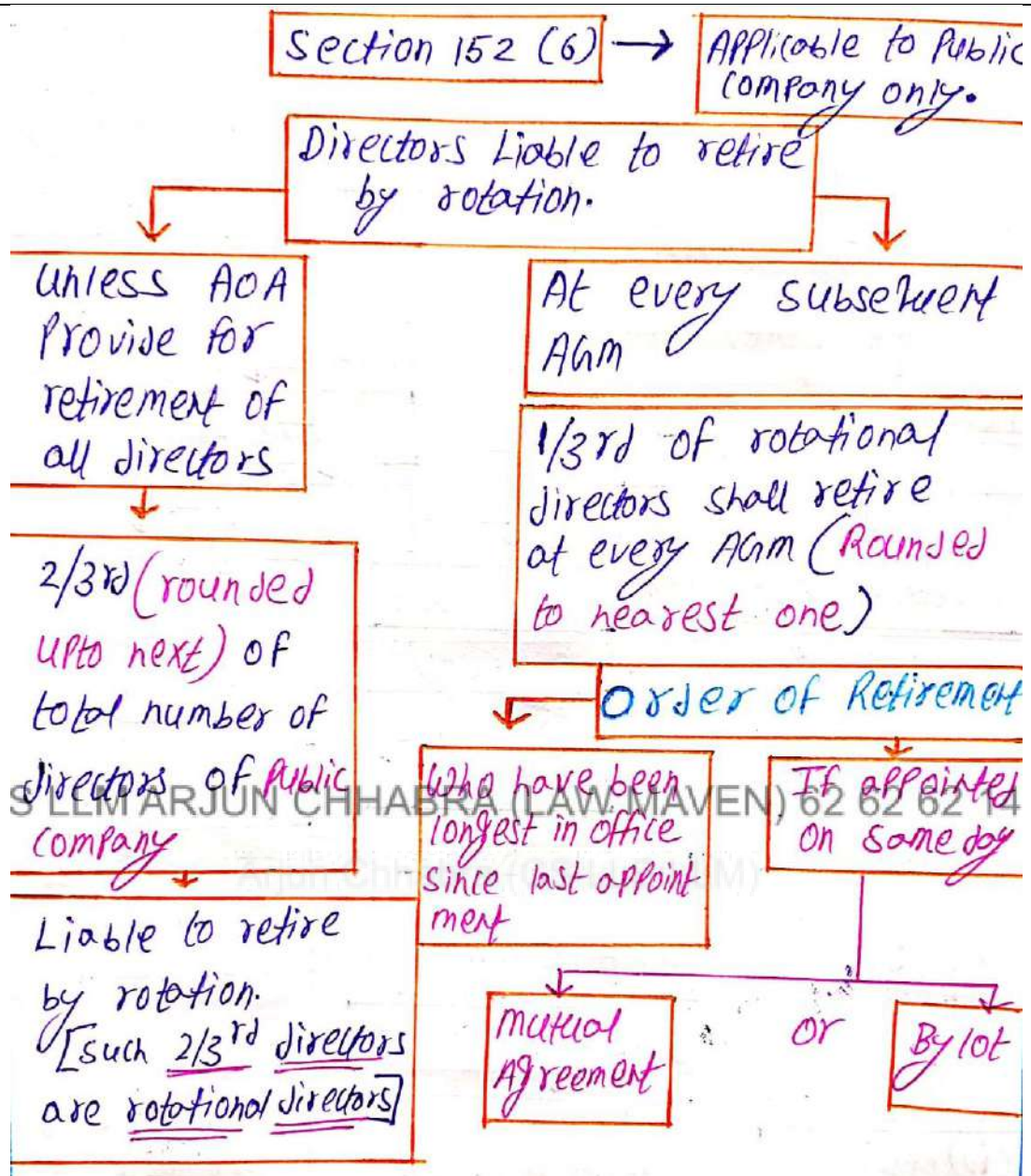
Discuss the procedure for Appointment Rotation of Directors and re-appointment of directors. [8 Marks – MTP June 20] [5 Marks – June 23 Syllabus 2022] [MQP Set 2 Syllabus 22] [10 Marks – MQP] [Dec 23 - 5 Marks (16)] [Model Question Paper Set 2 – Dec 23 – 7 Marks]

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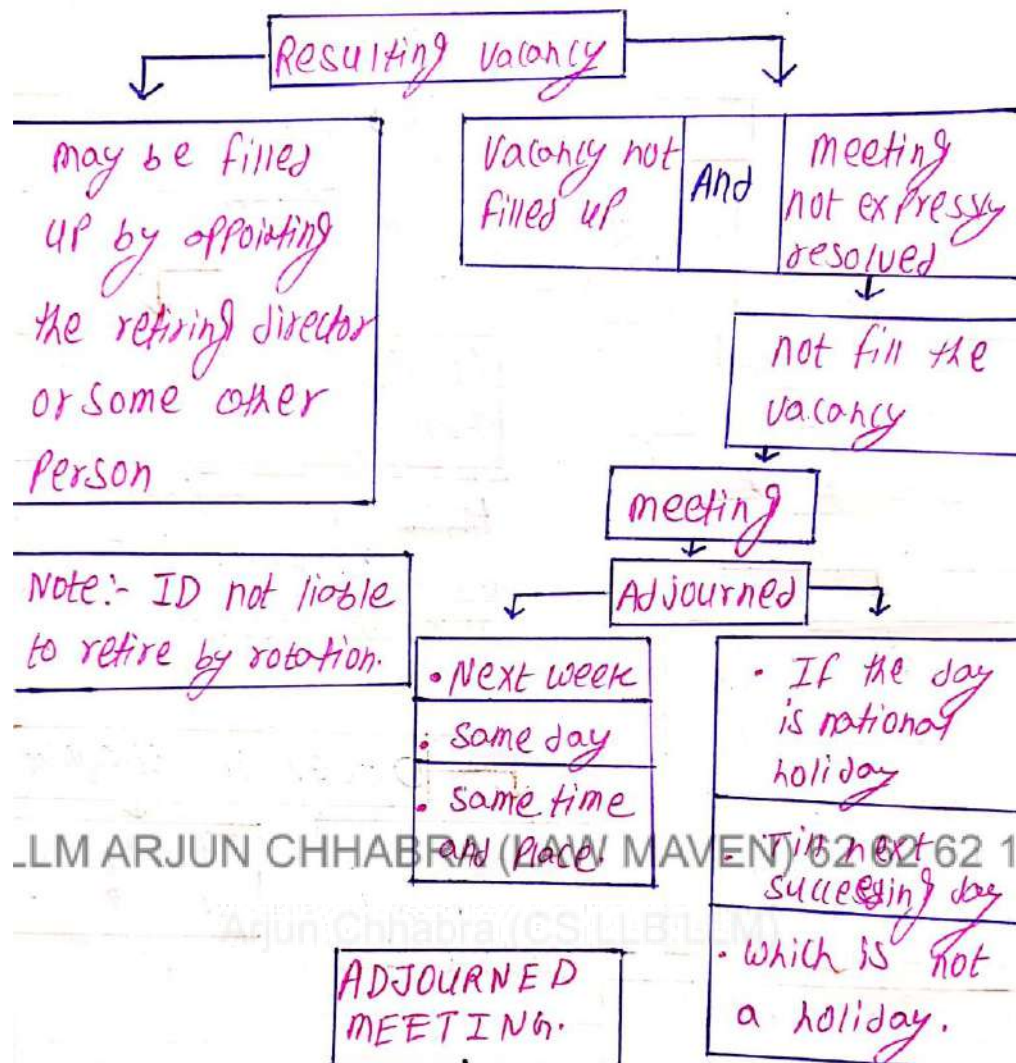


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Total Directors	3	4	5	6	7	8	9	10	11	12	13	14
Rotational Directors Total Director x 2/3 (rounded up to next)	2	3	4	4	5	6	6	7	8	8	9	10
Non-Rotational Directors Total Director - Rotational directors	1	1	1	2	2	2	3	3	3	4	4	4
Director that retire at AGM Rotational Directors * 1/3 (rounded to nearest)	1	1	1	1	2	2	2	2	3	3	3	3



Question 4:

Describe the procedure for the resignation of Director under the Companies Act, 2013. [10 Marks – June 19] [9 Marks – June 17] [10 Marks – June 23 Syllabus 2016]

Answer:

(1) A director may resign from his office

- by giving a notice in writing to the company
and
- the Board shall on receipt of such notice take note of the same
and
- the company shall within thirty days from the date of receipt of notice of resignation from a director intimate the Registrar in Form DIR-12
and
- post the information on its website, if any.
and
- shall also place the fact of such resignation in the report of Directors laid in the immediately following general meeting by the company:

Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in Form DIR-11

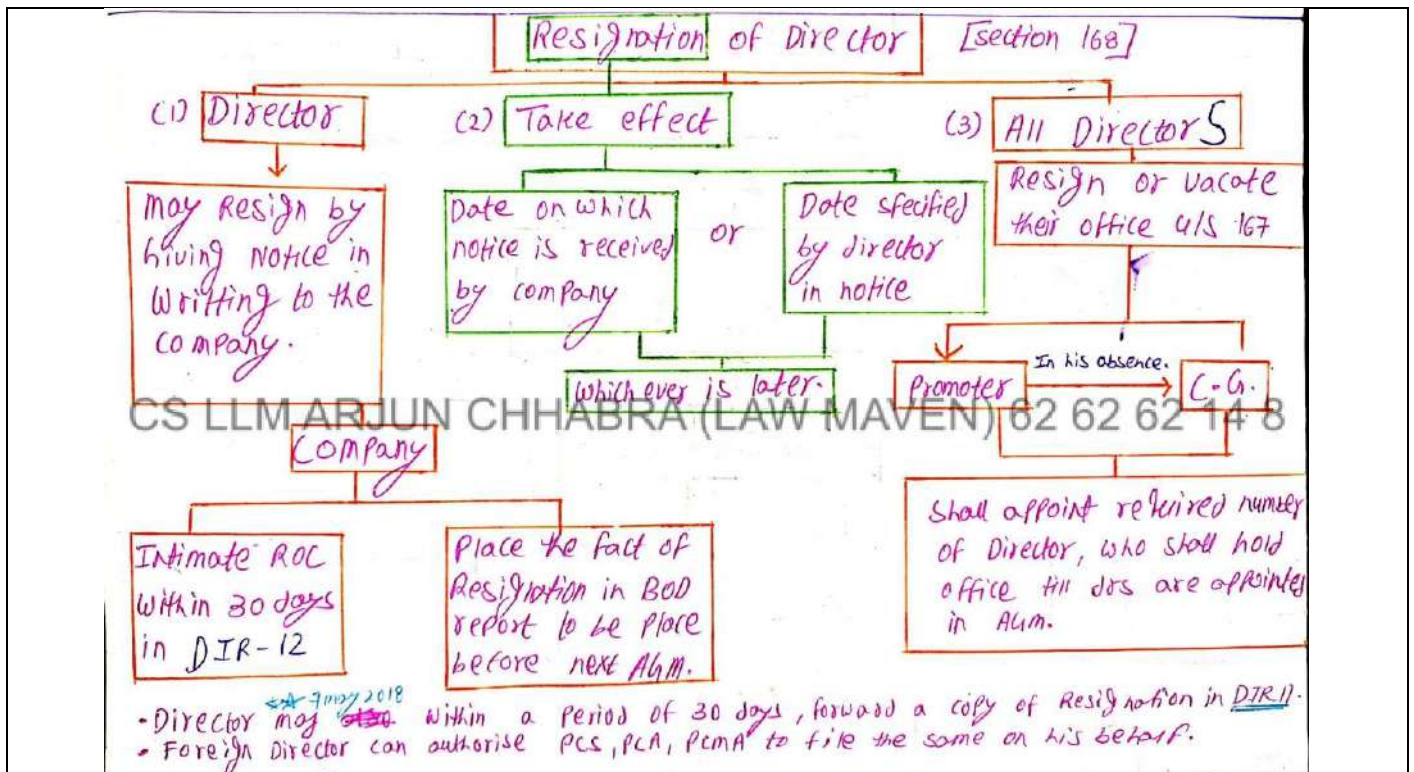
Provided that in case a company has already filed Form DIR-12 with the Registrar, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation

(2) The resignation of a director shall take effect from the date

- on which the notice is received by the company
or
- the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the Directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in general meeting.

**Question 5:**

Mr. Dilip Kumar, a director of ABC Co., resigns from his office on and with effect from 15.04.2023 by tendering his resignation letter addressed to the Chairman of the ABC Co. The letter reaches to the desk of the Chairman on 25.04.2023. Mr. Dilip Kumar did not forward a copy of his resignation along with detailed reasons for the resignation to the Registrar. The Board did not accept the resignation on the ground that the same letter has not been forwarded to the Registrar. Mr. Dilip Kumar argues that he need not to send the letter to the Registrar, hence, his resignation be accepted with effect from 15.04.2023. Analyze the situation and discuss. **[Dec 23 - 7 Marks (22)]**

Answer:

A director may resign from his office by giving a notice in writing to the company as per Section 168 (1) of the Companies Act, 2013. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, resignation of Mr. Dilip Kumar, a director of ABC Co, may be accepted and it cannot be rejected on mere the ground that the copy of the letter has not been forwarded to the Registrar, It was held in *Saumil Dilip Mehta vs. State of Maharashtra* [2002], that a director can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies.

Therefore, the resignation letter of Mr. Dilip Kumar may be accepted with effect from 25.04.2023 i.e. the date of receiving the intimation of the resignation of the director by the Chairman and not with effect from the date of sending the resignation letter.

Question 6:

Can a director be removed? If so give the procedure in detail. [10 Marks – MTP June 20] [Dec 22 – 10 Marks]

Answer:

- Directors can be either removed by shareholders or by Tribunal.
- Under Section 169 of Companies Act, 2013, shareholders have been given the inherent right to remove the directors appointed by them.
- It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors.
- Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution.

Procedure

- A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.
- The vacancy is created under this section after the removal of the director then in the same meeting of the removal another director is being appointed for time being, and a special notice of the intended appointment is provided.
- A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.
- When a director is removed as aforementioned, his office vacates automatically u/s 167.
- The removed director is liable for the damages and compensation which is required to be payable to him in lieu of his removal or termination according to the prescribed terms and conditions of the appointment.

In Queen Kuries & Loans (p.) Ltd. vs Sheena Jose, it was held that the notice must disclose the ground on which the director is proposed to be removed.

Order of tribunal for the termination or setting aside of an agreement

- Under Section 242 of the Companies Act, 2013, where an application has been made to the Tribunal under Section 241, against oppression and mismanagement of a company's affairs,
- the Tribunal may order for the termination or setting aside of an agreement which the company might have made with any of its directors.
- It may also order the removal of any of the directors of the company.

- A director so removed shall not be entitled to claim any compensation from the company for the loss of office under Section 243.
- Additionally, such a director shall not be entitled to serve as a manger, managing director or director of the company without leave of the Tribunal for a period of five years from the date of Tribunal's order terminating or setting aside his contract with the company.

Examples of Oppressive Acts:

- Exclusion of minority shareholders from decision-making.
- Unfair allocation of dividends.
- Misuse of company funds for personal gain by the majority shareholders.
- Siphoning off the company's assets.

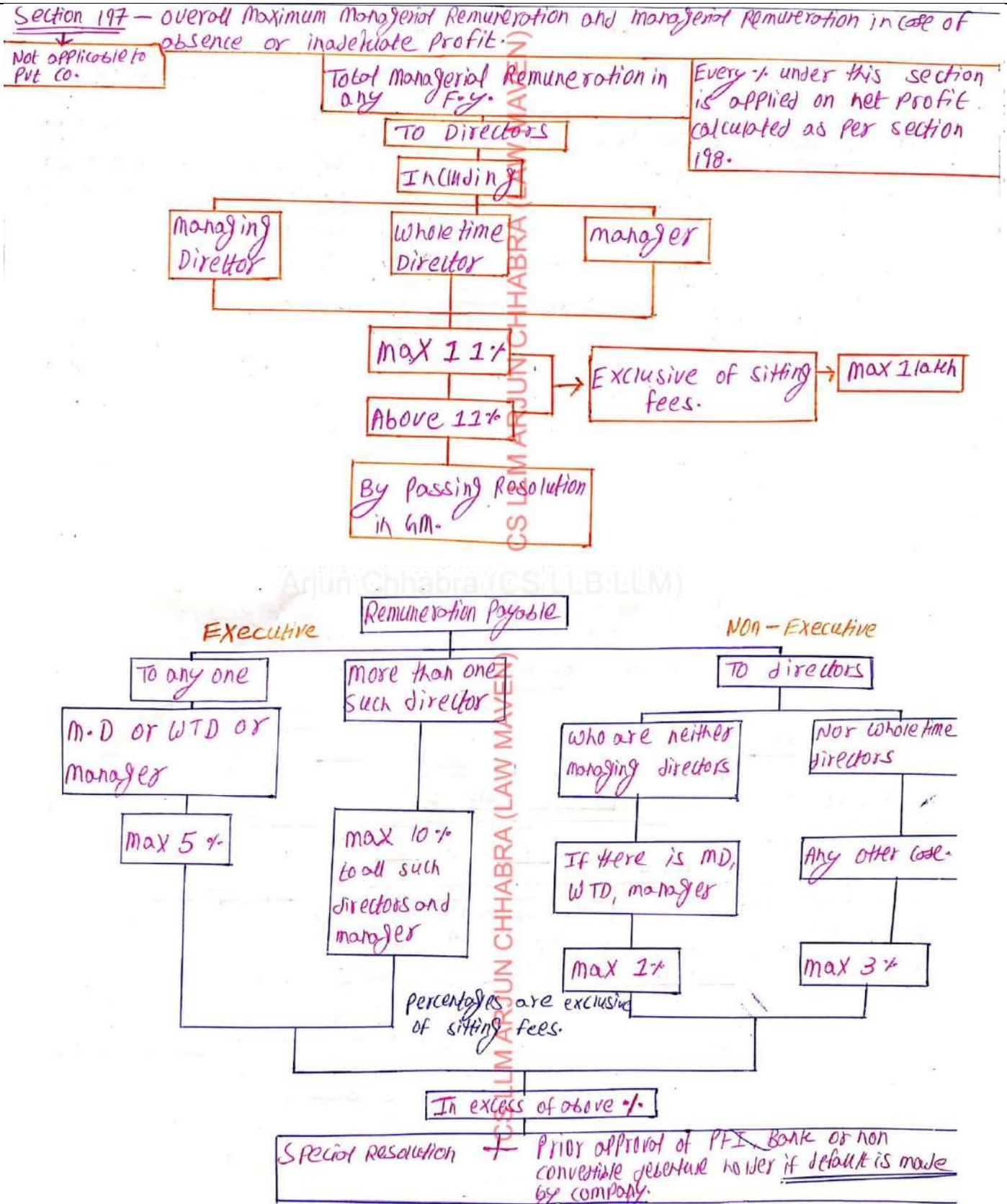
Examples of Mismanagement:

- Poor financial handling leading to financial distress.
- Decisions that benefit specific individuals rather than the company as a whole.
- Lack of proper accounting records.
- Failure to act in the company's best interest, leading to loss or bankruptcy.

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Question 7:

Examine the provisions relation to the remuneration payable to a directors including any managing or whole time director under the Companies Act, 2013. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**



Answer:

The remuneration payable to the

- directors of a company,
- including any managing or whole-time director,
- shall be determined, in accordance
- with the provisions of Companies Act
- either by the articles of the company,
- or by a resolution (special resolution if the articles so require), passed by the company in general meeting

Section 198 lays down the

- overall maximum of managerial remuneration which can be paid
- by public company or a subsidiary of a public company.
- The total managerial remuneration payable to directors or manager **in respect of a financial year shall not exceed eleven per cent of the net profits of the company.**
- But sometimes a company may make no or inadequate profits in a financial year. This does not mean that its directors shall remain unpaid.
- In such a case, the company may pay by way of minimum remuneration any sum as may be authorized.

Determination of remuneration of director

- It may be noted that the remuneration of directors can be determined only by
 - the articles of a company or
 - a resolution of the general body or a special resolution if the articles so require.
- The **directors cannot themselves fix the remuneration** of all or any one of themselves.
- A managing or whole-time director may be paid either
 - on a monthly basis
 - or a specified percentage of the net profits of the company
 - or partly by one way and partly by the other.
- But a managing director or whole-time director is not entitled
 - to draw **more than five per cent**
 - or **where there is more than one such director, ten per cent of**
 - net profits by way of remuneration.

Definition of Remuneration

As per Section 2(78) of the companies Act, 2013 'Remuneration' defined as

- any money or its equivalent given or passed to any person for services rendered by him
- and **includes perquisites** as defined under income tax Act, 1961.
- **As per Section 197 of the Act, the total managerial remuneration payable by a public company,**
- **to its directors, including managing director, whole time director and its manager,**
- **in respect of any financial year**
- **shall not exceed 11% of the net profits** of that company.
- Accordingly, a public company can pay remuneration to its directors including executive directors and non-executive directors within the limits of 11% of the net profits
- and this limits can only be exceeded with the prior approval of the members of the company by an special resolution.

- The remuneration payable to a director shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

So, even if a director is paid remuneration for special services apart from directorial services, such amount must also be included in the total remuneration in order to ascertain the limits of 11% of net profits as prescribed under Section 197(1) of the Act.

However,

- the only exception is when remuneration paid for professional services rendered by a director to the company is not included in the limit,
- if the following two conditions are satisfied:
 - The services rendered are of a professional nature and;
 - In the opinion of the Nomination and Remuneration Committee the director possesses the requisite qualification for the practice of the profession.
 - If the company does not require to have such a committee under section 178, the board can form this opinion.

Question 8:

Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013. [10 Marks – Dec 18] [MQP Set 2 Syllabus 2022]

Answer:

Powers of the Board: Section 179

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors.

But the board can act or do the things for which powers are vested with them and not with general meeting.

The following (section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely:-

- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorise buy-back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement and the Board's report;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, merger or reconstruction;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) to make political contributions;
- (12) to appoint or remove key managerial personnel (KMP);
- (13) to appoint internal auditors and secretarial auditor;

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

Question 9:

What are the different duties of a director in a company as per the Companies Act, 2013? [7 Marks – Dec 19] [RTP-Dec 2018] [RTP-Dec 2018] [6 Marks – Dec 21] [8 Marks – Dec 17] [Dec 23 - 7 Marks (22)]

Answer:

To act

1. in accordance with the articles
2. in good faith
to promote the objects of the company for the benefit of its members
in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
3. To exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
4. Not to get involved in a situation where his interest may conflict with the interest of the company.
5. Not to achieve undue gain or advantage either to himself or to his relatives, partners, or associates. If found guilty, then, liable to pay the amount of gain to the company.
6. Not to assign his office. Any assignment of office shall be void.
7. Contravention: Min Fine: 1 Lakh | Max Fine: 5 Lakhs.

Prohibition of assignment of office (Section 166)

- No director shall assign his office to any other person. Any assignment of office made by a director shall be void.
- If a director of the company contravenes the provisions of section 166, he shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh.

Question 10:

X' was appointed as a director for life by the articles of association of a private company incorporated on 1st June, 2014. The articles also empowered 'X' to appoint a successor. 'X' appointed, by will, 'G' to succeed him after his death. Can 'G' succeed 'X' as a director after the death of 'X'?

Ans. No director shall assign his office to any other person. If he does, the assignment shall be void (Section 166).

In the given case, the articles of a company empowered its director to appoint a successor. The director appointed, by his will, Mr. G to succeed him as a director after his death. The Court observed that a director is prohibited from assigning his office. The word 'his' used in section 166 indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore, such office cannot be assigned to any other person.

Therefore, appointment of a new person in such office does not amount to an assignment within the meaning of section 166 [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor].

The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of 'G' is valid and it does not amount to an assignment of office by 'X'.

X, was appointed as a Director by the Articles of Association of a public company incorporated on 1st June, 1970. The Managing Director Empowered X to appoint a successor. X appointed Y as his successor after his death. Inspect whether Y succeed X as the director of the company? **[Model Question Paper Set 1 – June 24 – 7 Marks]**

Ans. No director shall assign his office to any other person. If he does, the assignment shall be void. The articles of a company empowered X by the Managing Director to appoint a successor. Y was appointed as successor of X after his death.

The Court observed that a director is prohibited from assigning his office. The word 'his' used indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore such office cannot be assigned to any other person.

Therefore, appointment of a new person in such office does not amount to an assignment [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor]. The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of 'Y' is valid and it does not amount to an assignment of office by 'X'.