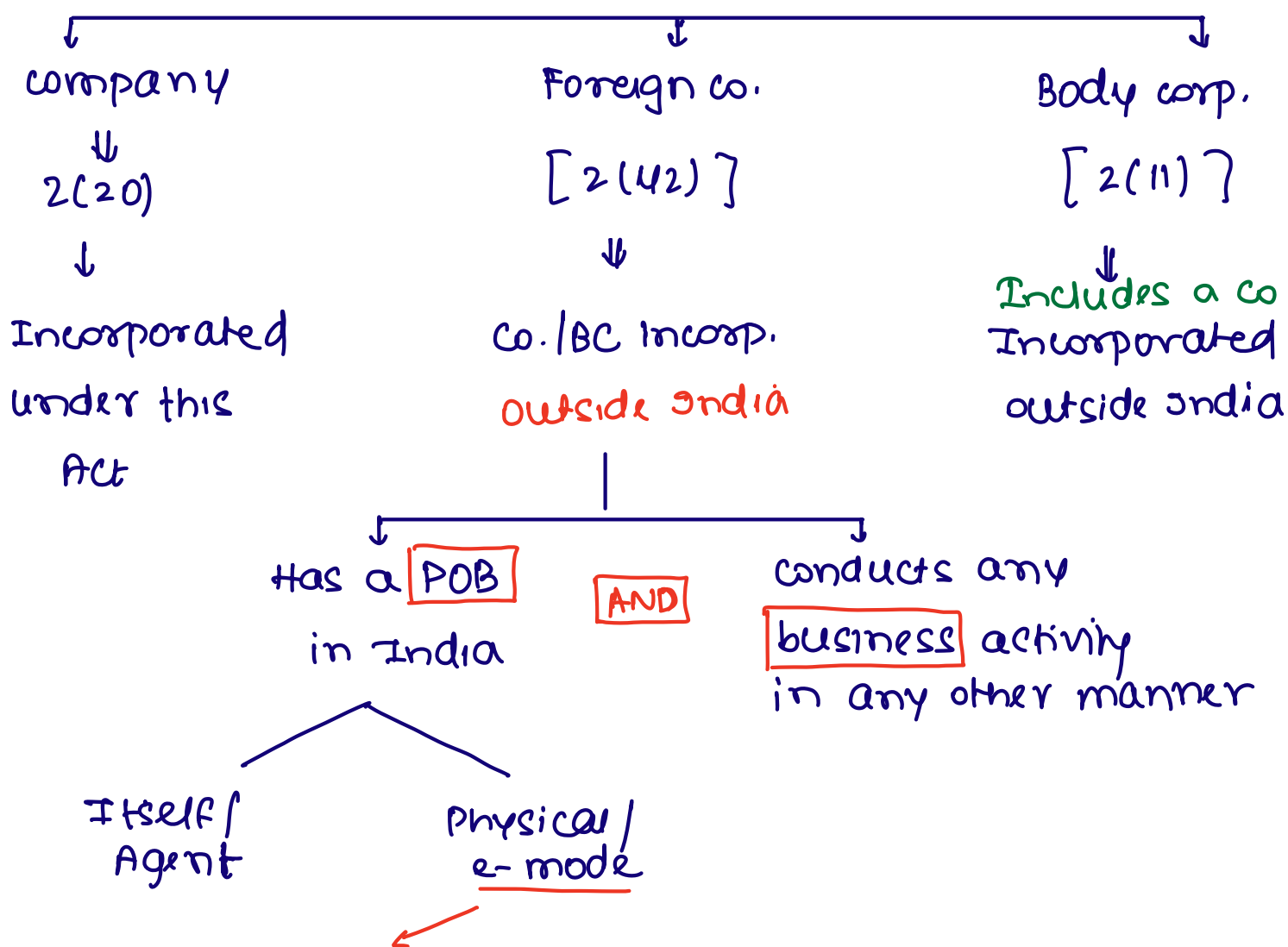


CHAPTER - 11 : FOREIGN COMPANY

(Chp XXII of Co. Act 2013) [Sec 2(42) + 379...393A]



E-mode means carrying out following e-based transactions (whether main server is in India or not):

(i) • B2B or B2C transaction

• Data interchange

• Other digital supply transaction [Netflix & chill!]

- (ii) offering to accept deposit
or
Inviting deposits /
subscription to securities
- } — on India
or
— from citizens
of India

Note! E-offering of sec. or listing in IFSC = Not construed
emode for sec 2(42).

- (iii)
- Financial settlement [Razorpay]
 - Web based marketing [Google Ads]
 - Advisory & transactional services
 - Database services & product
 - Supply chain management

- (iv) Online services
- Telemarketing
 - Telecommunication
 - Telemedicine
 - Education & info. research.

- (v) Related data com. services.

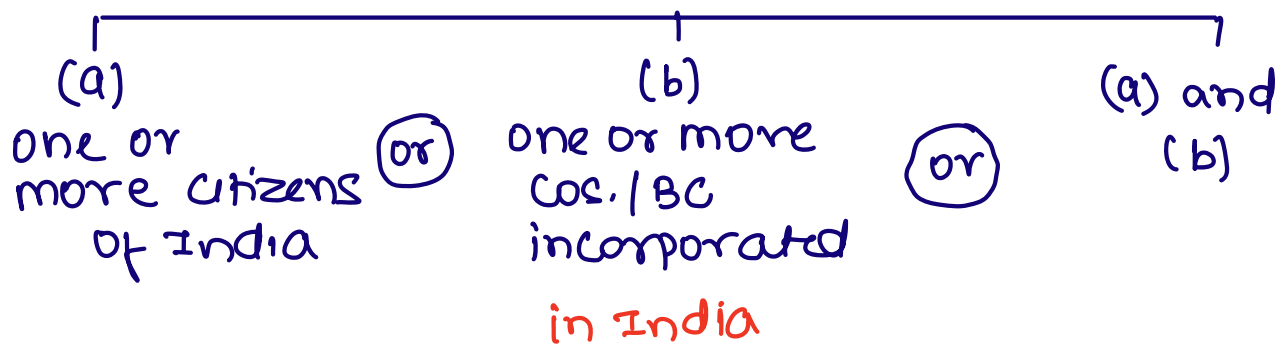
Above services may be conducted via

- Email
- mobile devices
- social media
- cloud computing
- Doc mgt.
- voice / data
transmission

Section 379: Application of Act to FC

(1) sec 380 - 386
x
392 - 393 } → Applicable to FC
(Indian ops)

(2) Where $\geq 50\%$ of PUSC of FC is held by:



W.r.t. Business carried on by it in India] Act to apply as if co. incorporated in India



Section 380: Documents to be delivered to ROC:

FC ————— within 30d of estb. of POB ————— ROC
8 documents (New Delhi)

Form FC-1

+ Approval of RBI for estb. of POB in India
(or) Declaration of AR that no approval reqd.

(a) Charter documents or MOA/AOA defining constitution.

If not in english → certified translation

(b) Full address of RO/Principal office of co.

(c) List of Directors
Secretary] of such co.

↓
Following details → Name, father/mother name,
DOB, Address, nationality, PAN, DIN,
etc

(d) Name & address of PRI authorised to accept
notices/doc. on behalf of FC.
Person Resident in India. (Authorised representative)

(e) Full address of Office in India = Deemed principal POB.

(f) Particulars of $\left\{ \begin{array}{l} \text{opening} \\ \text{closing} \end{array} \right\} \rightarrow$ of POB in India on earlier occasions.

(g) Declaration $\left\{ \begin{array}{l} \text{Directors} \\ \text{AR in India} \end{array} \right\} \rightarrow$ Not convicted/debarred
↓
From formation/mgt. of co. in India or o/s India

(h) Other prescribed doc.

Note: If FC ceases to have POB in India

- Forthwith give notice to ROC *

- obligation to deliver docs. to ROC - ceases
(provided no other POB)

* Alteration in documents delivered above

- File FC-2 with ROC within 30 days

Section 381: Accounts of Foreign company

- (1) FC Every calendar Year → ROC
- BS and PL (Prescribed form)
+
 - List of POB estb. in India as on BS date.
(Form FC-3)
- ↓

CG may exempt any FC from this compliance

- (2) If not in english → Certified translation.

Companies (Registration of FC) Rules, 2014

- (1) FC to prepare FS of Indian business ops

↓

As per — Sch III (or)

As near thereto as possible

↓

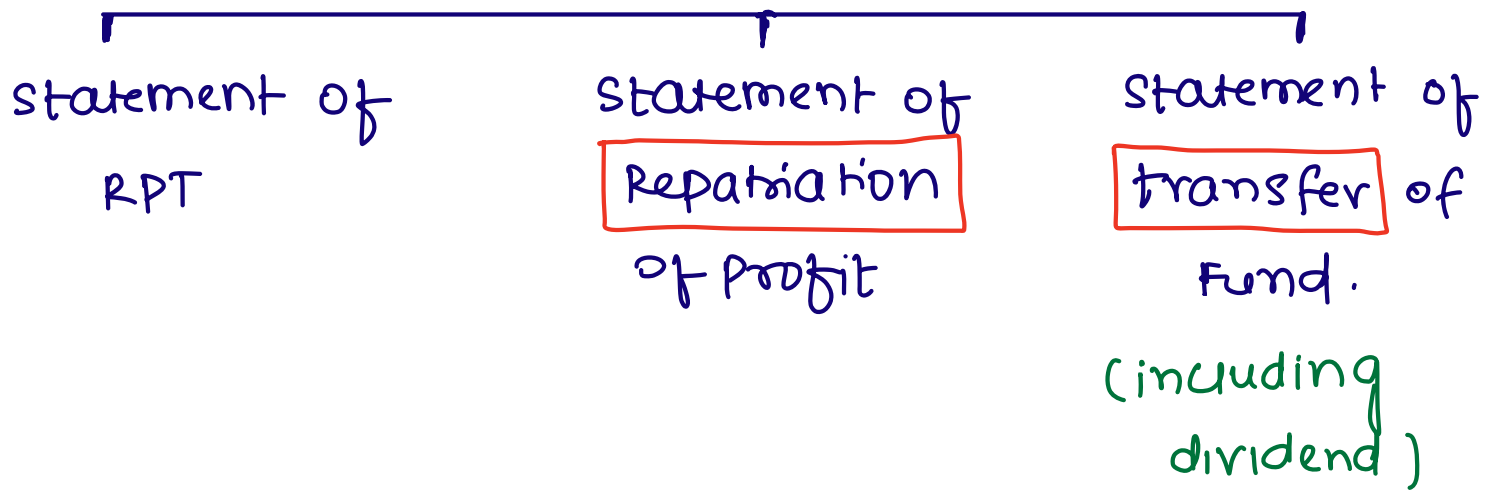
for each Financial Year

Note: Act overrides Rules

Annex documents
to FS

As required in Chp IX - Accounts
— Docs. relating to CFS of parent FC.
(English)

Additional documents along with FS:



As per Rules → Deliver $\left\{ \begin{array}{l} \text{Docs} \\ + \\ \text{FS} \end{array} \right\} \rightarrow \text{Within } \textcircled{6m} \text{ from close of } \boxed{\text{Fy}}$

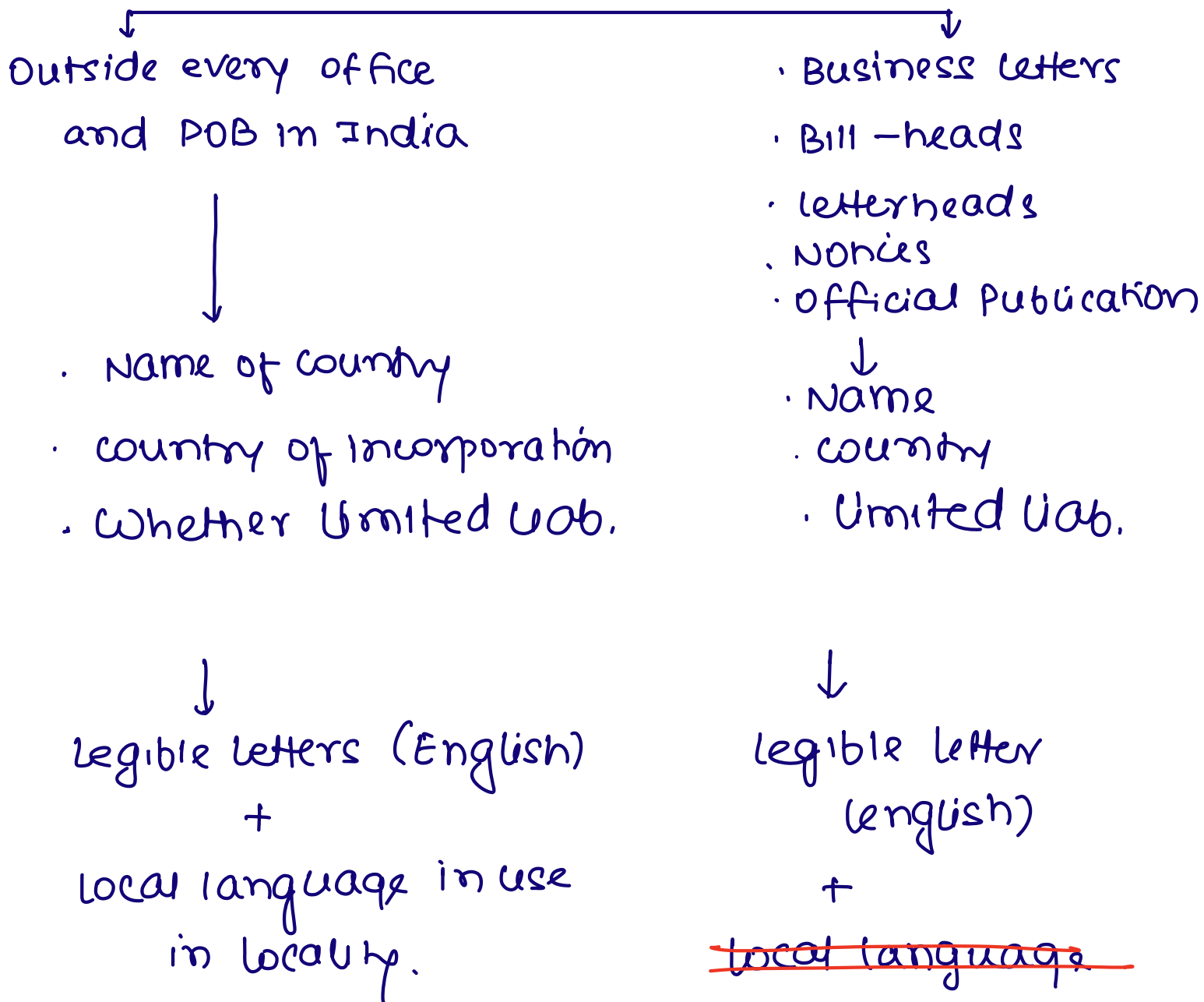
Extension:
ROC - special reason
- upto 3 months

2(41)

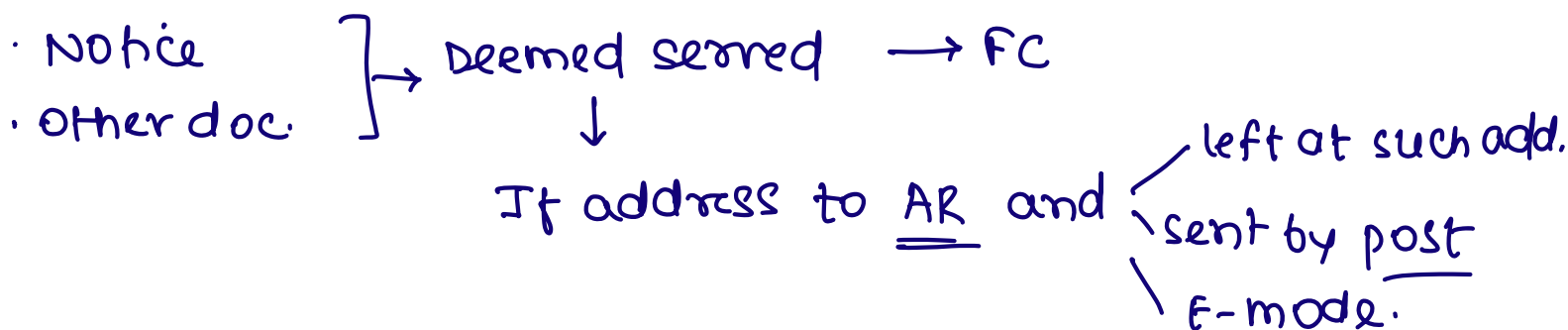
Audit of Account of FC:

- Accounts pertaining to Indian business ops
→ Audited.
- By → CA in P or Firm or LLP
- Chapter x → Applicable.

Section 382: Display of name of foreign co.



Section 383: Service of notice on FC



Section 384: Other provisions applicable

71	128	} - Applies to FC
92	Chapter VI	
135	Chapter XIV	

FC-4: Annual Return by FC → within 60d of end of FY.
to ROC.

Sec 385: FC to pay fees as prescribed. Bash!

Sec 386: Interpretation:

① "certified" means certified to be true copy
correct translation

↓
who can certify / authenticate
(In India)

Advocate or
Attorney

↓
Entitled to appear
before High Court

Affidavit by
competent person

↪ In opinion of ROC
has knowledge of
original language
& English.

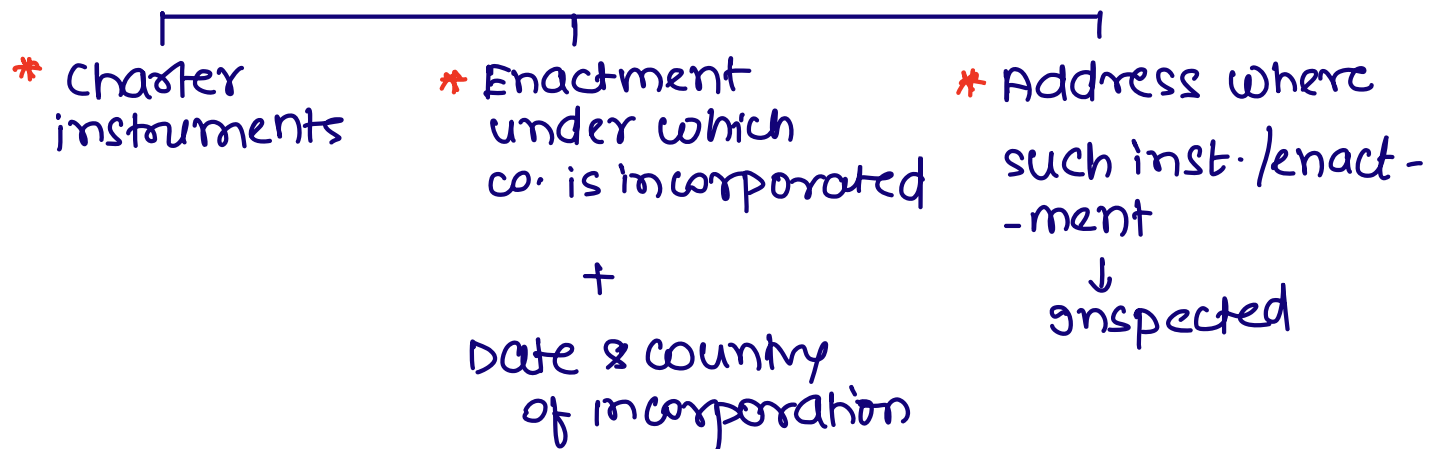
* Place of business includes Share transfer office
Registration office.

Section 387: Dating of Prospectus:

Note: sec 387 to 391 is not applicable to FC. It is applicable to co. incorporated o/s India.

(1) co. incorporated o/s India shall not issue Prospectus unless it is dated & signed, and:

(a) contains following particulars:



+ Whether POB in India/not → If so → Address

* N.A. if prospectus issued 2 years after date of entitlement to commence biz.

(b) State matters u/s 26

(2) Such co. incorporated o/s India shall not issue application form for securities unless:

such form is issued
with a valid prospectus and such issue
does not
contravene
Sec 388.

Exception = Issue of such form

to enter into underwriting
agreement

Exception to sec 387: (Except dating of prospectus)

Issue to existing member
DH
↓
of Prospectus
Application form

{E.g. Right issue}

Issue of prospectus
w.r't securities

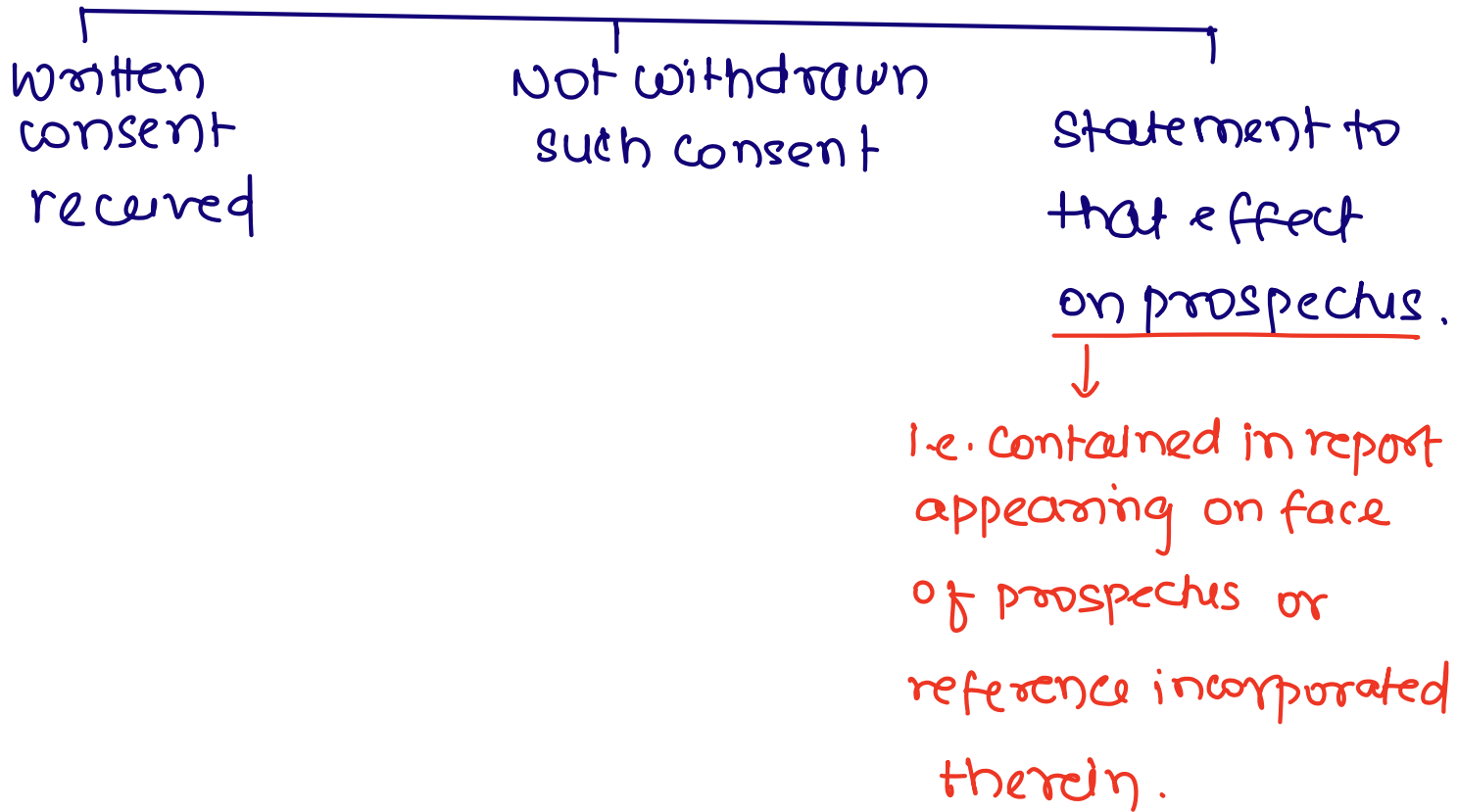
↓
Uniform
with
Previously issued ⊕ listed
on RSE.

{E.g. Bonus issue}



Section 388: Expert's Consent:

(1) A co. incorporated o/s India shall not issue prospectus including a statement purporting to be made by expert unless:



Section 389: Registration of Prospectus:

co. incorporated o/s India shall not issue/circulate prospectus in India, unless:

(a) certified copy is deliver to ROC for registration.
└─ chairman AND
 2 directors

(b) Prospectus states on face of it that it is delivered to ROC.

(c) Attach to prospectus

- Expert's consent u/s 388
- other does prescribed

Following does to be attached: [E-PUMA]

f (a) Expert's consent to issue prospectus

A (b) copy of contract → for appt of MD/manager
↳ If not in writing → written memo.

m (c) Copy of material contracts

- Not entered in OCOB
- Entered in last 2FY.

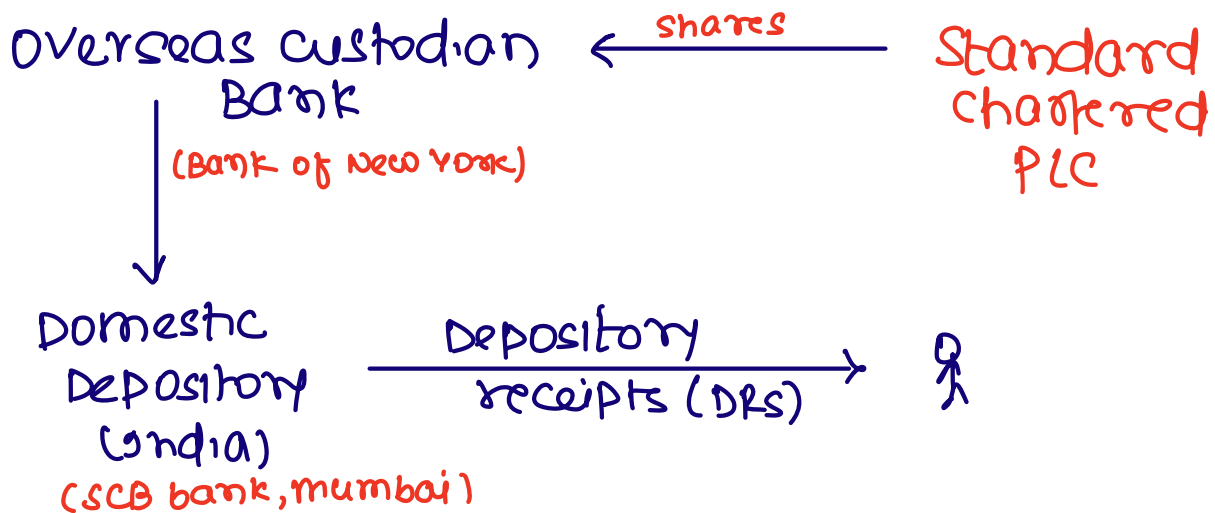
2 year	
material	✓
OCOB	x

U (d) Underwriting agreement

P (e) Copy of power of attorney (if signed by person auth. by director)

WELL
DONE

Section 390: Offer of IDRs: (+ Rules)



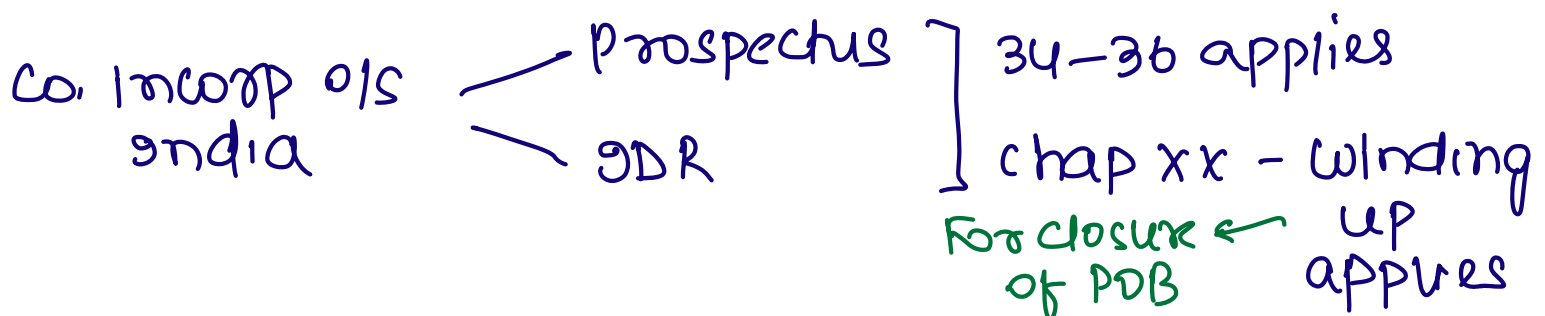
As per Rules:

Co. incorporated o/s India shall issue IDRs subject to:

- This Rule
- SEBI Regulations
- RBI directions

Student may consider reading balance from book.

Section 391: Sec 34 to 36 + Chap XX

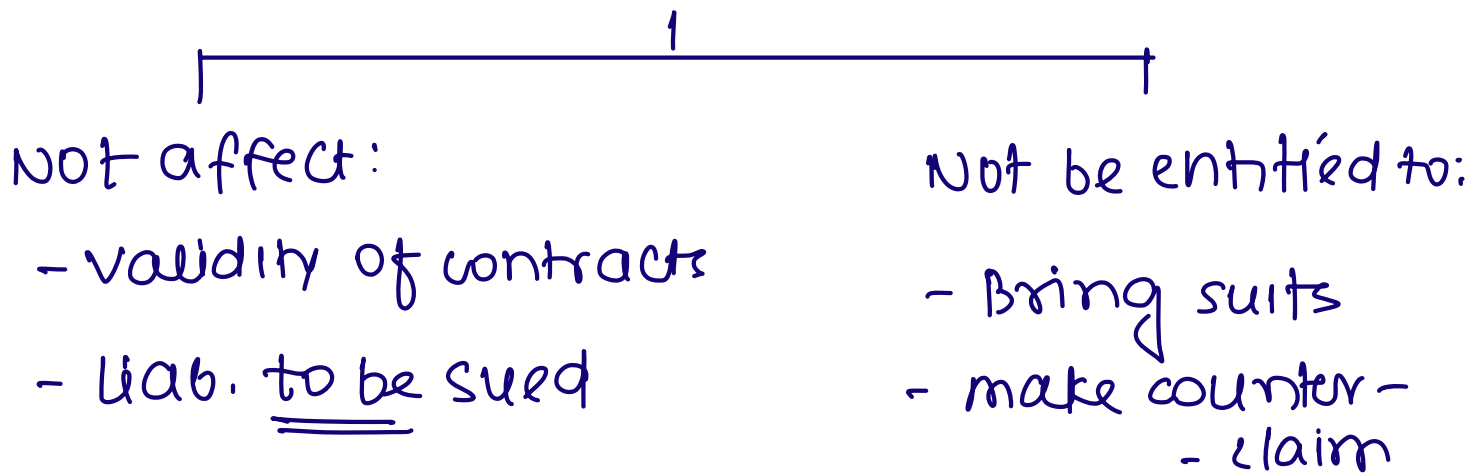


Section 392: Punishment

CO { Fine \rightarrow 1 lakh - 3 lakh
Continue \rightarrow ₹ 50,000 / day after first
DID \rightarrow 25000 - 50000

Sec 393:

Failure of Co. to comply this Chapter:



Improper use of foreign c status ↓ unless complied with.
→ liable for investigation u/s 210.

Section 393A: CG may exempt class of cos.
(Already covered).

GREAT JOB!

DONE!