

Chapter – 7

MANAGEMENT & ADMINISTRATION

Sec 88 to 95 of Companies Act , 2013

These sections deals with Register of members , Annual Return , Inspection of register etc.

Sec 96 to 122 of Companies Act, 2013

General meetings, Quorum, Notice, Proxy with other topics

This is most important topic in CA INTER Company law.

Meetings as per Companies Act.

General Meetings –

This meetings is called to discuss some issues or financial statements with Shareholders of the company.

For eg – Sec 96 AGM or Sec 100 -EGM

Board Meetings –

is the meeting of the board of directors of the company.

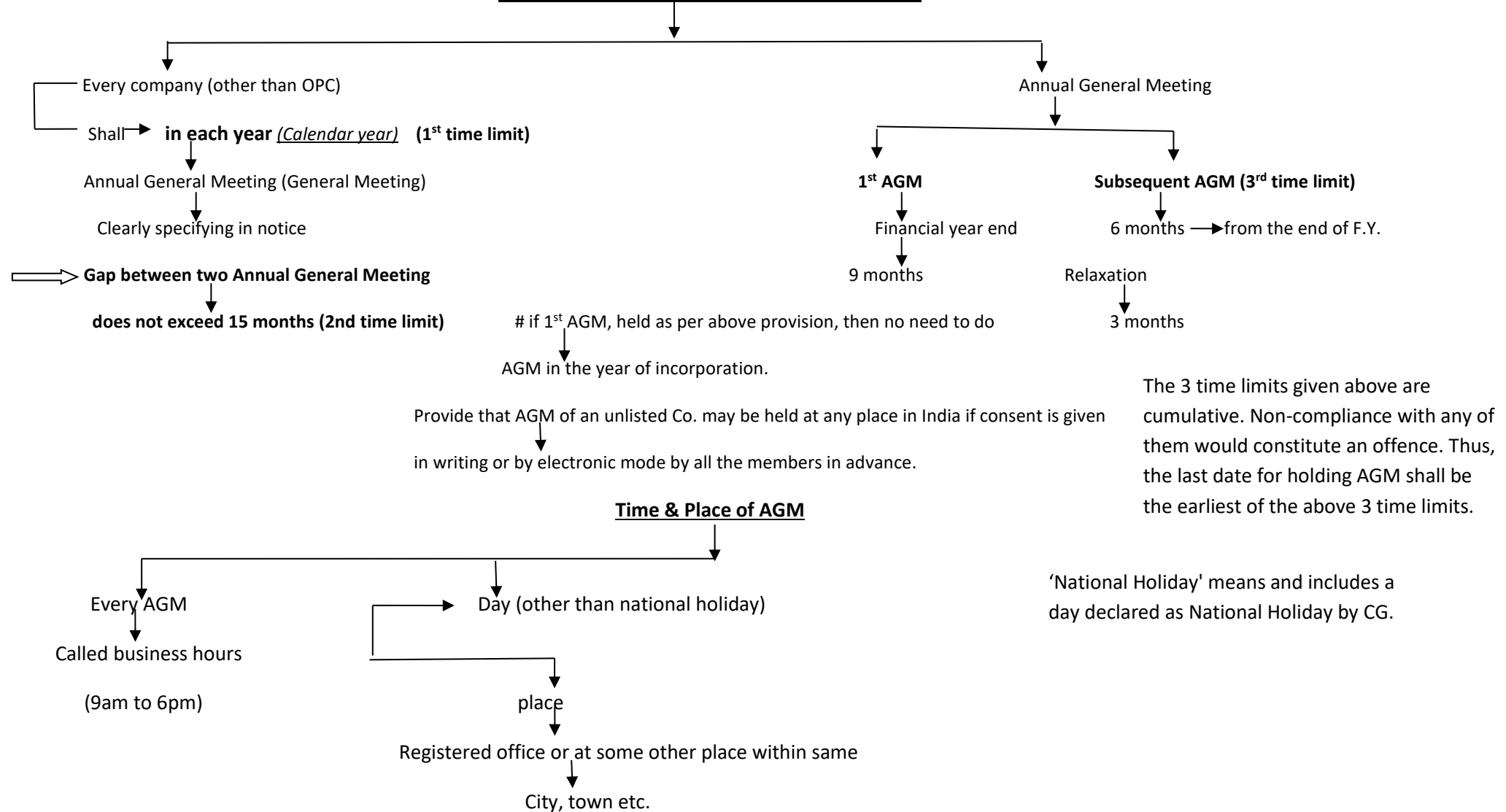
For eg- Sec 173 Board Meeting

Class meeting

is the meeting of special class of persons, like, creditors, preference shareholders, etc.

For eg – Sec 48 Meetings

Section 96 :- Annual General Meeting



FINANCIAL YEAR [Sec. 2(41)]

Definition

Meaning of 'financial year' [Sec. 2(41)]



Financial year means the period for which the financial statement of the company is made up.

Financial year means the period ending on 31st day of March every year.



In case of a company incorporated on or after 1st day of January, financial year means the period ending on 31st day of March of the following year.

A company existing on the commencement of the Companies Act, 2013 shall, within 2 years from such commencement, align its financial year in accordance with the provisions of Clause (41) of Sec. 2.

Any different period as FY - If a company is a holding company or a subsidiary or associate company of a company incorporated outside India; and it is required to follow a different financial year for consolidation of its accounts outside India, [Sec. 2(41)]

Then CG may, on an application made by such company, allow any period as its FY, whether or not that period is a year.

Exceptions of section 96 -

In case of section 8 company- In Sub-section (2) of Section 96 after the proviso and before the explanation the following proviso shall be inserted ;

Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the Board of Directors having regard to the directions, if any, given in this regard by the company in its general meeting. - Inserted by Notification dated 5th, June 2015.

In case of Government company, in Sub- section (2) of Section 96 for the words “some other place within the city, town or village in which the registered office of the company is situate”, the words “such other place as the Central Government may approve in this behalf” shall be substituted. - Notification dated 5th June, 2015.

In case of Government Company - In sub-section (2) of Section 96 for the words “ such other place as the Central Government may approve in this behalf”, the words “such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf” shall be substituted - Notification Dated 13th June, 2017

Section 97 - Power of Tribunal to call AGM.

If any default is made in holding the AGM of a Co. u/s 96,
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the Tribunal may,
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on the application of any member of the Co.,
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call or direct the calling of,
↓
an AGM of the Company
↓
provided that such directions may include a direction that one member of
the Co. present in person or by proxy shall be deemed to constitute meeting.

→ A General Meeting held in pursuance of sub-section (1) shall, subject to any
directions of the Tribunal be deemed to be an AGM of the Co. under this Act.

Section 98 - Power of Tribunal to call meetings of members, etc .

If for any reason it is impracticable to call a meeting of a Co. other than an AGM,
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the Tribunal may,
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either Suo motto or on the application of any director or member of the Co. who
would be entitled to vote at the meeting,

Order a meeting of the Company
to be called, held & conducted in
such manner as the Tribunal
thinks fit;

Give such ancillary directions as the Tribunal thinks
expedient, including directions modifying or
supplementing in relation to the calling, holding &
conducting of the meeting.

Provided that such directions may include a direction that one member of the co. present
in person or by proxy shall be deemed to constitute a meeting.

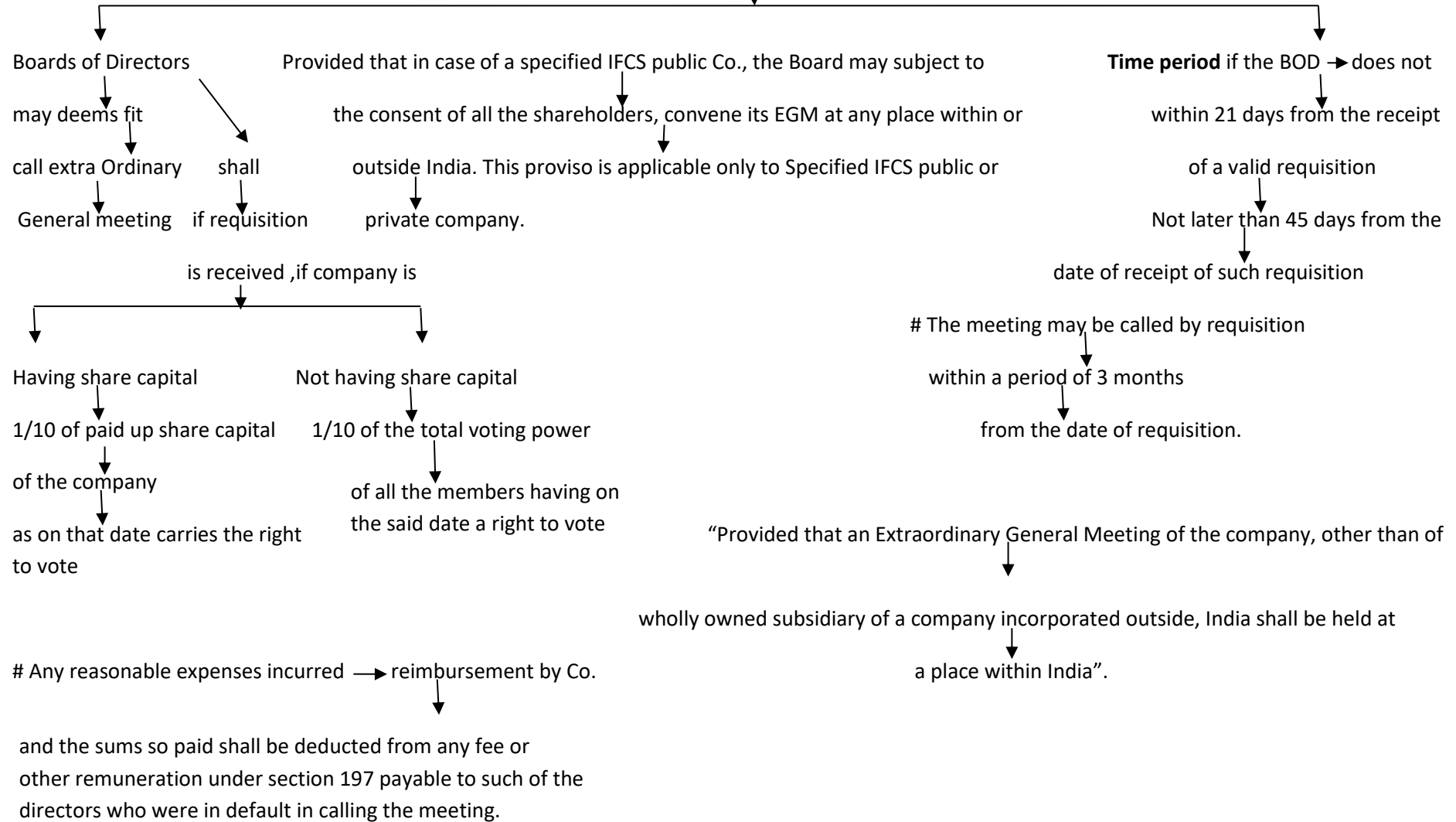
Any meeting called, held & conducted in accordance with any order made under sub-section
(1) Shall, for all purpose, be deemed to be a meeting of the Co. duly called, held & conducted.

Section 99 - Punishment for default in complying with provisions of sections 96 to 98.

If any default → is made in holding a meeting of the company in accordance with → sec 96, 97 or 98 or
→ In complying with any directions of the Tribunal

The company & every officer of the company who is in default shall be punishable with fine which may extend to Rs 1 lacs & in the case of a Continuing default, with a
further fine which may extend to 5000 /day during which such default continues.

Section 100: - Calling of Extraordinary General Meeting.



Section 101- Notice of meeting – 1st Chart

A general meeting of a company may be called
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by giving not less than 21 days (14 days for sec 8 co.)
↓
notice either in writing or through electronic mode

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the member entitled to vote at such meeting.

The notice of every meeting of the Company shall be given to –

- Every member of the Co. , legal representative of any deceased member or the assignee of an insolvent member;
- The auditor or auditors of the Co. ; and
- Every director of the company.

Special point - Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meetings.

‘Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accordance thereto-

↓
1 **In the case of an AGM** by not less than 95% of the member entitled to vote thereat; &

↓
2 **In case of any other general meeting**, by members of the company –

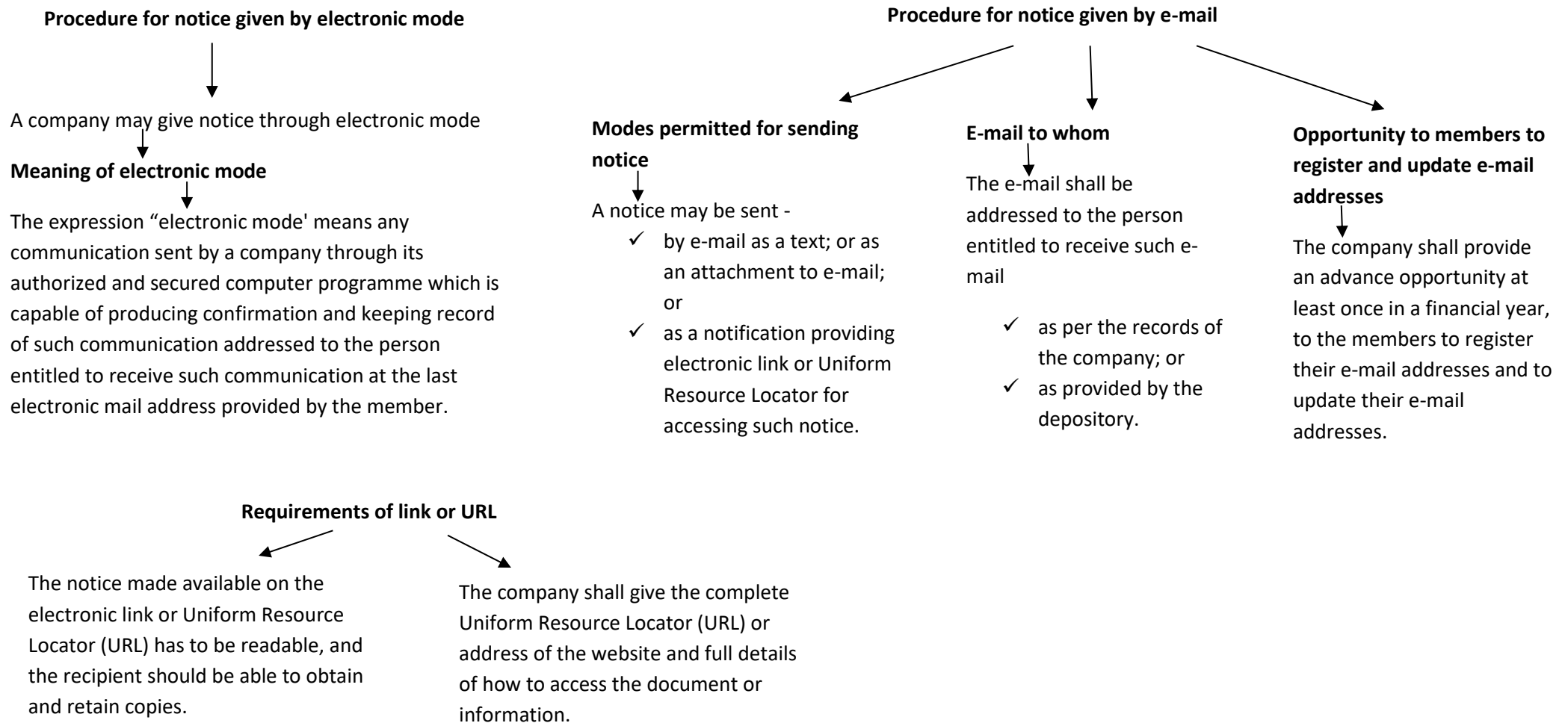
- Section 101 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise.
- Section 101 shall apply to a specified IFCS public company; unless otherwise specified in the articles of the company.

A) holding, if the company has a share capital, majority in number of members entitled to vote & who represent not less than 95% of such part of paid-up share capital of the Co. as gives a right to vote at the meeting or

B) having if the Co. has no share capital, not less than 95% of the total voting power exercisable at that meeting”

Further provided that where any member of a Co. is entitled to vote only on some resolution or resolutions to be moved at a meeting & not on the other, those members shall be taken into A/c for the purposes of this sub-section in respect of the former resolution or resolutions & not in respect of the latter”.

Section 101- Notice of meeting – 2nd Chart



Section 101- Notice of meeting – 3rd Chart

Procedure for notice given by e-mail

Maintenance of records by the company

- i. The company should use a system which produces –
 - ✓ confirmation of the total number of recipients e-mailed; and
 - ✓ a record of each recipient to whom the notice has been sent.
- ii. A copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by the company.

Subject line in the e- mail

The subject line in e-mail shall state -

- ✓ the name of the company
- ✓ notice of the type of meeting,
- ✓ place and the date on which the meeting is scheduled.

E-mails through in- house facility or outsourcing

The company may send e-mail through -

- ✓ in-house facility; or
- ✓ its Registrar and transfer agent; or
- ✓ any 3rd party agency providing bulk e-mail facility as may be authorised by the company.

Procedure for notice given by e-mail

Opportunity to members to download software

If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be -

- (i) in the Portable Document Format (PDF); or
- (ii) in a non-editable format

together with a 'link or instructions' for recipient for downloading relevant version of the software.

Failure in transmission not to affect company's obligation

- The company's obligation shall be satisfied when it transmits the e- mail.
- The company shall not be held responsible for a failure in transmission beyond its control.
- If a member fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

Notice to be placed on the website

The notice of GM shall be simultaneously placed on -

- (i) the website of the company, if any; and
- (ii) such website as may be notified by CG.

Section 102 - Statement to be Annexed to Notice.

1. Ordinary business

1. At an AGM: Following business shall be ordinary business:

- a) Consideration and adoption of financial statements, Auditors Report and Board's Report
- b) Declaration of dividend
- c) Retirement of directors by rotation and appointment of directors in the place of those retiring
- d) Retirement of auditors and appointment of auditors in the place of those retiring, and fixing of remuneration of auditors

2. At any other GM: No business shall be deemed as ordinary business.

Explanatory statement - Explanatory statement is not required for transacting any item of ordinary business.

Punishment for default

Every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of -

- (a) Rs. 50,000; or
- (b) 5 times the amount of benefit accruing to the promoter, director, manager or other KMP or any of his relatives, whichever is higher.

2. Special business

At an AGM: All business except that specified u/s 102(2)(a) shall be deemed as special business.

At any other GM : All business shall be deemed to be special business.

- ✓ Full text of the resolution must be given in the notice for transacting every item of special business.
- ✓ Explanatory statement shall be annexed to the notice for transacting every item of special business.

Contents of explanatory statement

(a) Material facts

(b) Nature of concern or interest (financial or otherwise) of -

- ✓ every director and manager
- ✓ every other key managerial person
- ✓ relatives of every director, manager and key managerial person.

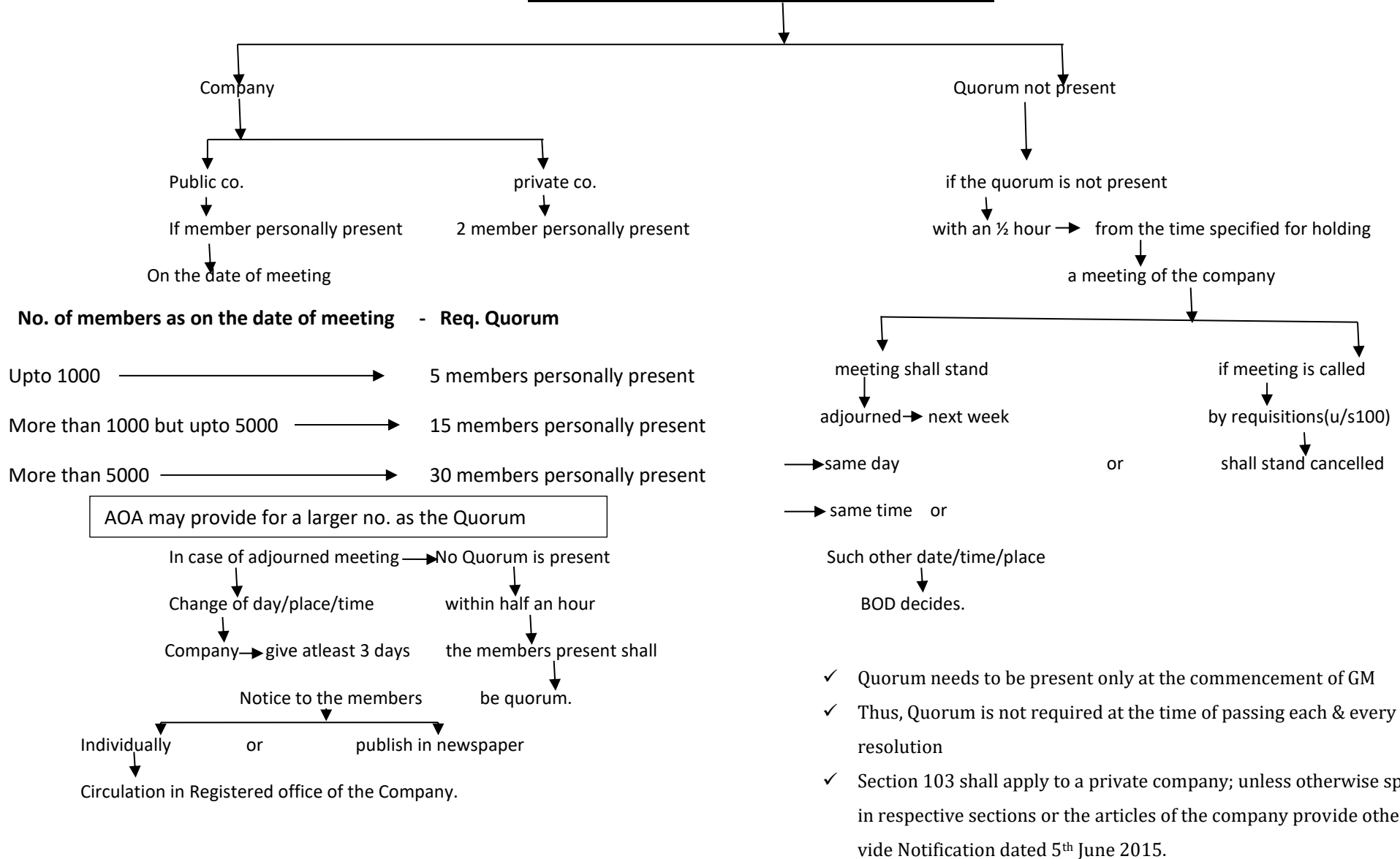
(c) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(d) If special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other KMP shall be disclosed, if the extent of such shareholding is 2% or more of the paid-up share capital of that other company.

(e) If special business refers to any document which is to be considered at the GM, the time and place where such document can be inspected shall be specified in the Explanatory Statement.

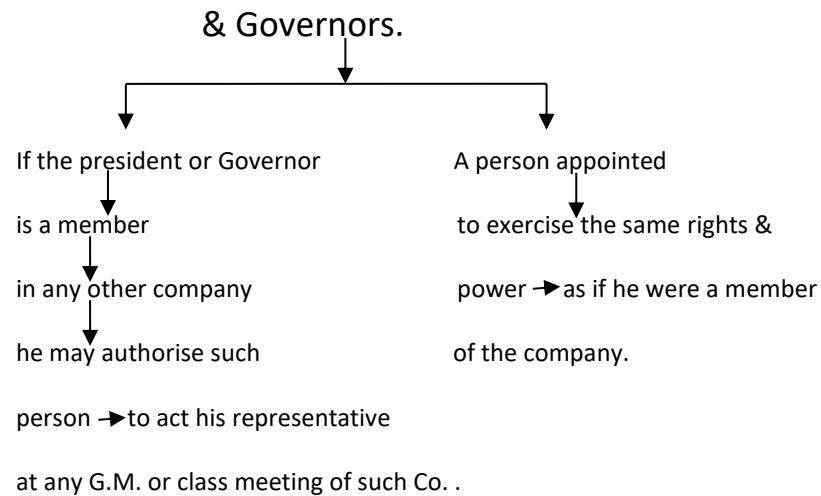
Effects of Non-disclosure - If, as a result of non-disclosure or insufficient disclosure in Exp.Statement, any benefit accrues to promoter, director, manager or other KMP or their relatives, such person shall hold such benefit in trust for the company, & shall compensate the company to the extent of benefit derived by him.

Section 103: Quorum of General Meeting

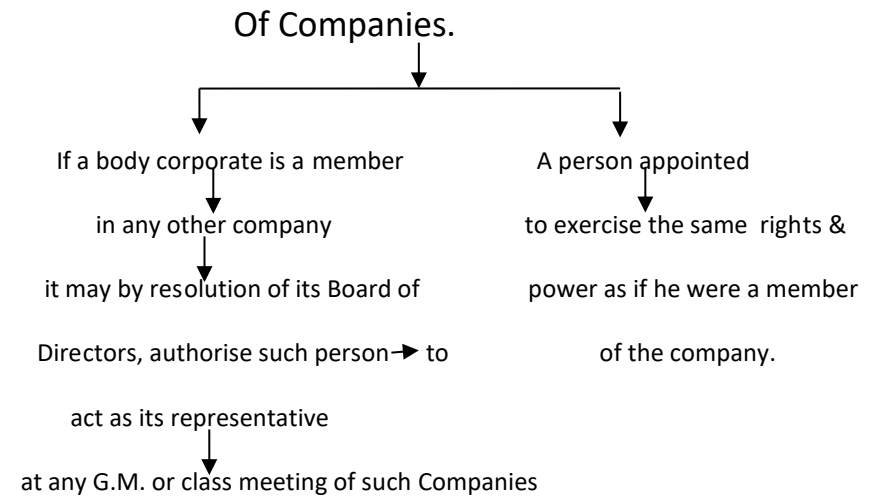


- ✓ Quorum needs to be present only at the commencement of GM
- ✓ Thus, Quorum is not required at the time of passing each & every resolution
- ✓ Section 103 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification dated 5th June 2015.

Section 112: Representation of the President



Section 113: Representation of corporation at meeting



Chairman of GM – Sec 104

Election by show of hands – Sec 104(1)

Unless the articles of the company otherwise provide,
the members personally present at the meeting
shall elect one of themselves to be the Chairman thereof
on a show of hands.

Poll for election of chairman - Sec 104 (2)

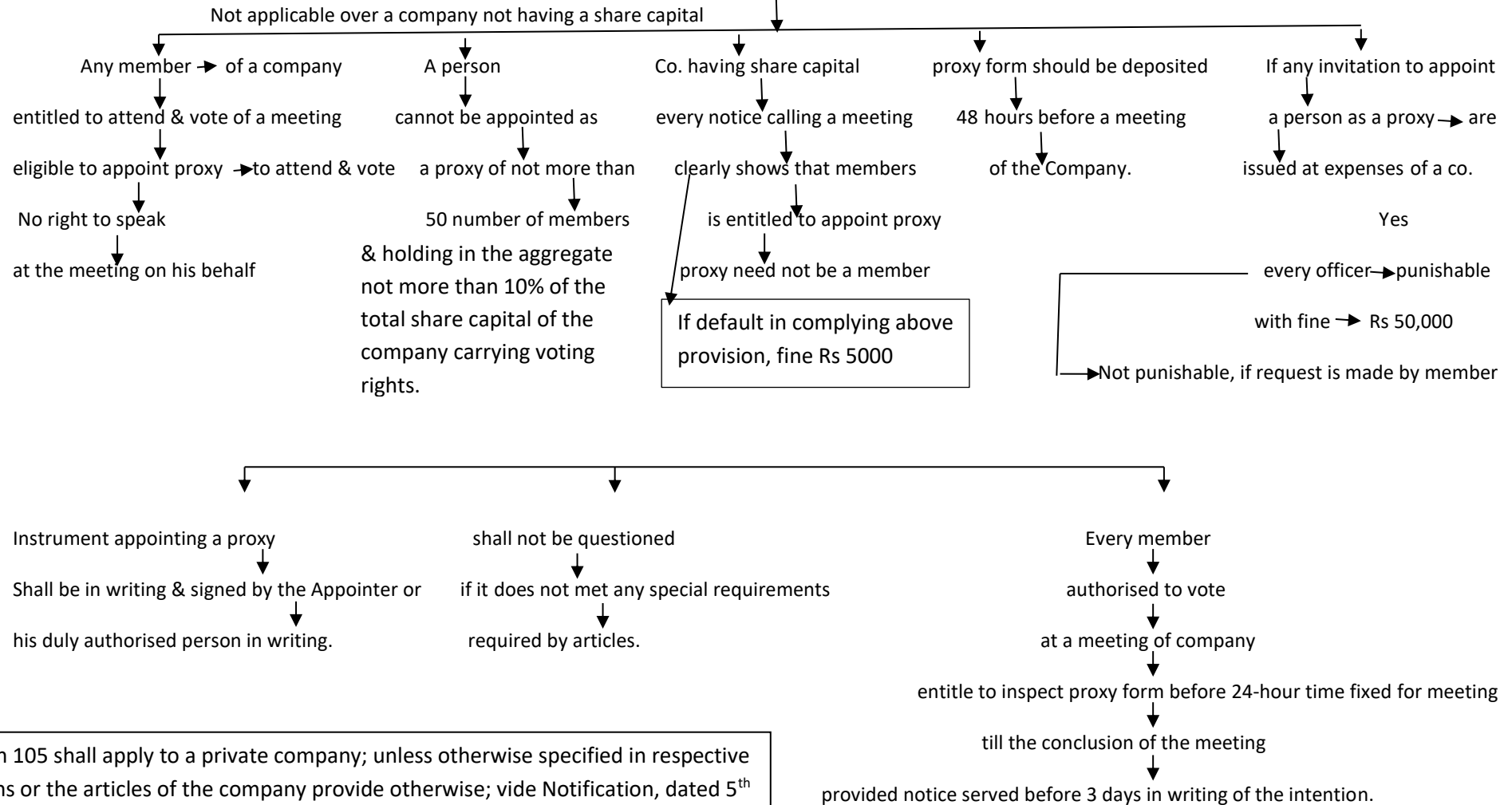
If a poll is demanded on the election of the Chairman,
it shall be taken forthwith in accordance with the provisions of
this Act and
the Chairman elected on a show of hands under sub-section (1)
shall continue to be the Chairman of the meeting
until some other person is elected as Chairman as a result of the
poll, and such other person shall be the Chairman for the rest of
the meeting.

Exceptions

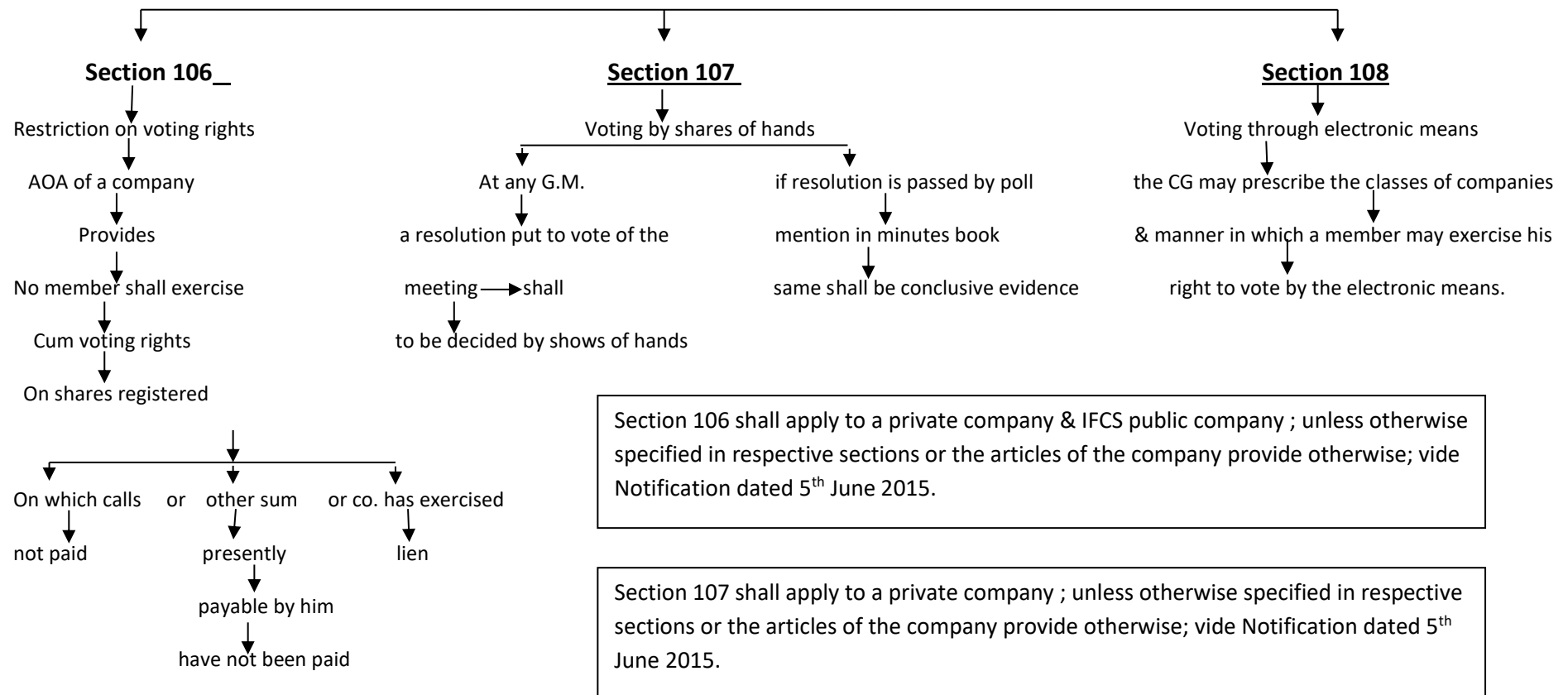
In case of private company - section 104 shall apply ,unless otherwise specified in respective sections or the articles of the company provide otherwise. - Notification dated 5th june, 2015.

In case of Specified IFSC Public Company - section 104 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

Section 105: - Proxies



Section 105 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification, dated 5th June 2015.



Sec 108 - Voting Through Electronic Means -1st Chart

Purpose

✓ A company to which Sec. 108 is applicable, shall provide to its members facility to exercise their right to vote on resolutions proposed at GMs by electronic means.

✓ Once a resolution is proposed at GM, it shall not be withdrawn.

Applicability of sec 108

As per Rule 20 of the Companies (Management and Administration) Rules, 2014, the prescribed classes of companies by CG, for this purpose, are -

(i) all companies whose equity shares are listed on a recognized stock exchange; and

(ii) all companies having 1,000 or more members.

Exemption - However, a Nidhi, or an enterprise or institutional investor referred to in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Cut-off date

Cut-off date means a date not earlier than 7 days before the date of GM for determining the eligibility to vote by electronic means or in GM.

Important terms used for e voting -

Voting by electronic means

Voting by electronic means includes remote e-voting and voting at GM through an electronic voting system which may be the same as used for remote e-voting.

Electronic voting system

Electronic voting system means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

Remote e- voting

Remote e-voting means the facility of casting vote by a member using an electronic voting system from a place other than venue of a general meeting.

Secured system

Secured system means computer hardware, software, and procedure that

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to perform the intended functions; and
- (d) adhere to generally accepted security procedures.

Sec 108 – 2nd Chart

By registered post or speed post.

By courier service.

Through electronic means, i.e registered e-mail ID of the recipient.

Modes of sending notice of GM

The notice of GM shall also be placed on the website of the company, forthwith, after it is sent to the members.

Disclosures in notice sent to the members by the company

The notice shall disclose that

- ✓ the company is providing facility for voting by electronic means
- ✓ the facility for voting, **either** through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting
- ✓ the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

The notice shall also

- ✓ indicate the process and manner for voting by electronic means;
- ✓ indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
- ✓ provide the details about the login ID;
- ✓ specify the process and manner for generating or receiving the password and for casting of vote.

Public notice by way of advertisement

The company shall cause a public notice by way of an advertisement to be published, immediately on completion of despatch of notice of GM.

The public notice shall be published at least 21 days before the date of GM.

at least once in a vernacular language of the district in which the registered office of the company is situated and

at least once in English language in an English newspaper having country-wide circulation.

The public notice shall specify the following matters:

- A statement that the business may be transacted through voting by electronic means
- The date & time of commencement & end of remote e-voting along with cut-off date
- The manner in which persons who have acquired shares and become members of the company after the despatch of notice, may obtain the login ID and password
- A statement that -
 - ✓ remote e-voting shall not be allowed beyond the said date and time
 - ✓ the manner in which the company shall provide for voting by members present at the GM &
 - ✓ a member may participate in the GM even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the GM; and
 - ✓ a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the GM.
- Website address of the company, where notice of GM is displayed
- Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.

The public notice shall be placed on the website of the company, if any.

Sec 108 (3rd Chart)

Remote e-voting important points

The facility for remote e-voting shall remain open for not less than 3 days and shall close at 5.00 p.m., on the date preceding the date of GM.

Once a member has cast his vote on a resolution,
he shall not be allowed to change it subsequently or cast the vote again.

A member may participate in GM even after exercising his right to vote through remote e- voting, but he shall not be allowed to vote again.

During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting.

At the end of the remote e-voting period,
the facility for remote e-voting shall forthwith be blocked.

Voting at GM

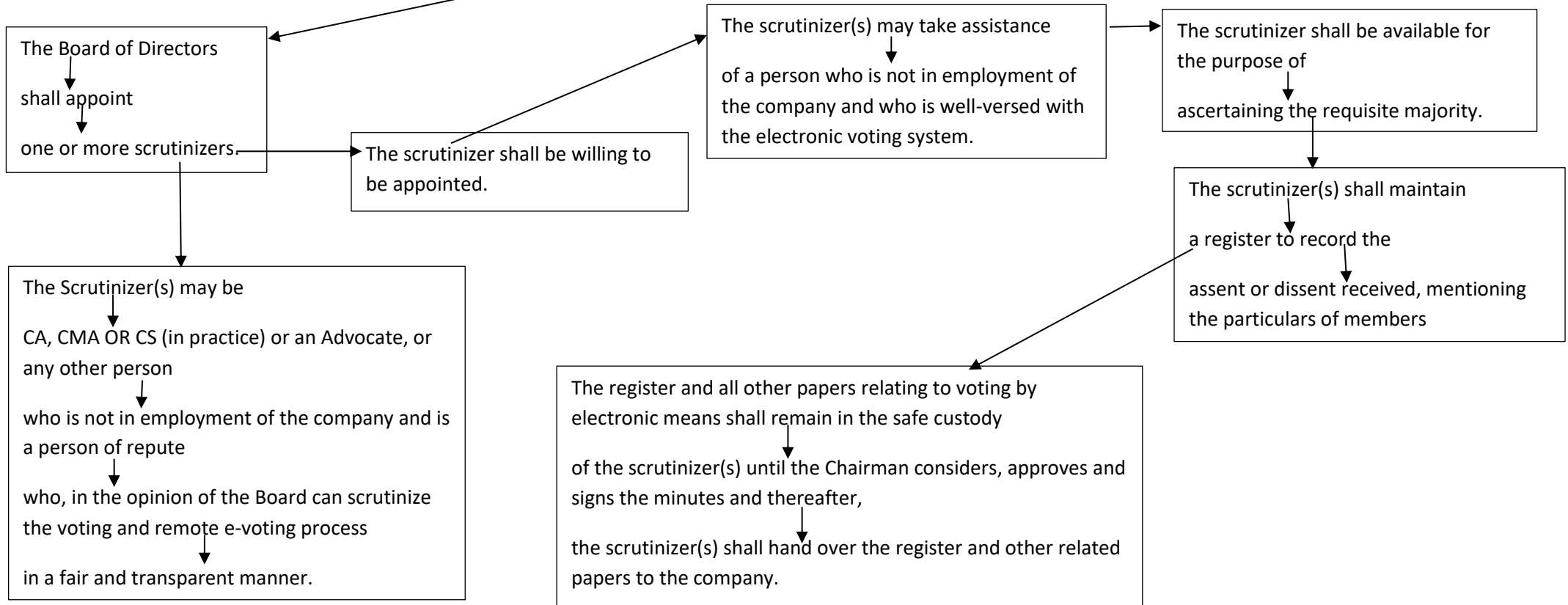
During GM, a company may opt to provide the same electronic voting system as used during remote e-voting.

In such a case, the members attending the GM and who have not exercised their right to vote through remote e-voting, shall be entitled to vote using the electronic voting system.

At the GM, after conclusion of discussion, the Chairman shall, with the assistance of scrutinizer(s), allow voting on the resolutions, by use of polling paper or by using an electronic voting system for all those members who are present at the GM but have not cast their votes by availing the remote e-voting facility.

Sec 108 (4th Chart)

Appointment of scrutinizer



Sec 108 (5th Chart)

Declaration of result of voting

The scrutinizer(s) shall, immediately
↓
after the conclusion of voting at the GM,
↓
first count the votes cast at the GM, and
↓
thereafter,
↓
the scrutinizer(s) shall unblock
↓
the votes cast through remote e-voting
in the presence of at least 2 witnesses
not in the employment of the company.

The scrutinizer(s) shall make,
↓
not later than 3 days of conclusion
of the GM,
↓
a consolidated scrutinizer's report
to the Chairman.
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The report shall contain the total
votes cast in favour of, and against,
the resolution.

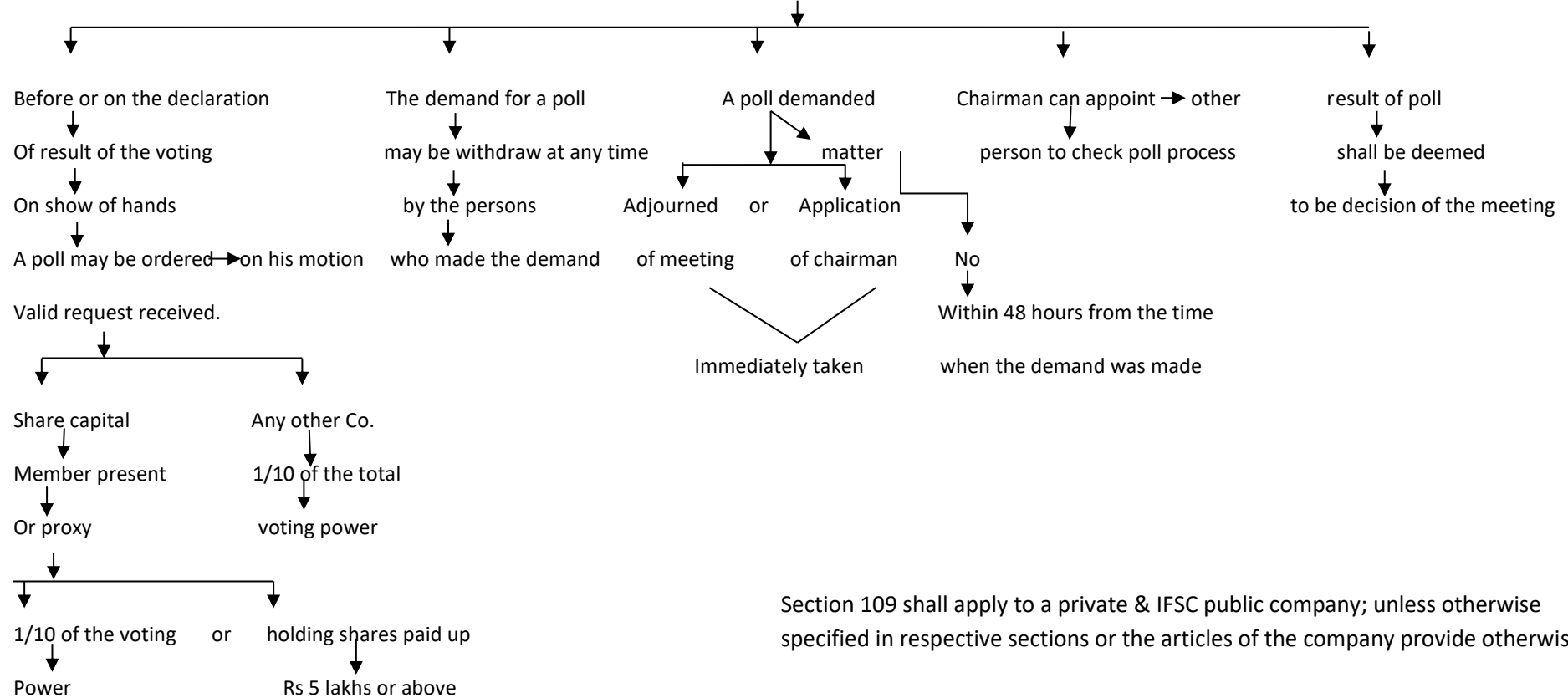
If the requisite number of votes are cast in favour of
the resolution, the resolution shall be deemed to be
passed on the date of the relevant GM.

The Chairman shall declare
the result of the voting
forthwith.

The result declared along with the
report of the scrutinizer shall be placed
on the website of the company, if any,
immediately after the result is declared
by the Chairman.

The manner in which members have cast their
votes, that is, affirming or negating the
resolution, shall remain secret and shall not be
available to the Chairman, Scrutinizer or any
other person till the votes are cast in the GM.

Section 109 :- Demand for poll



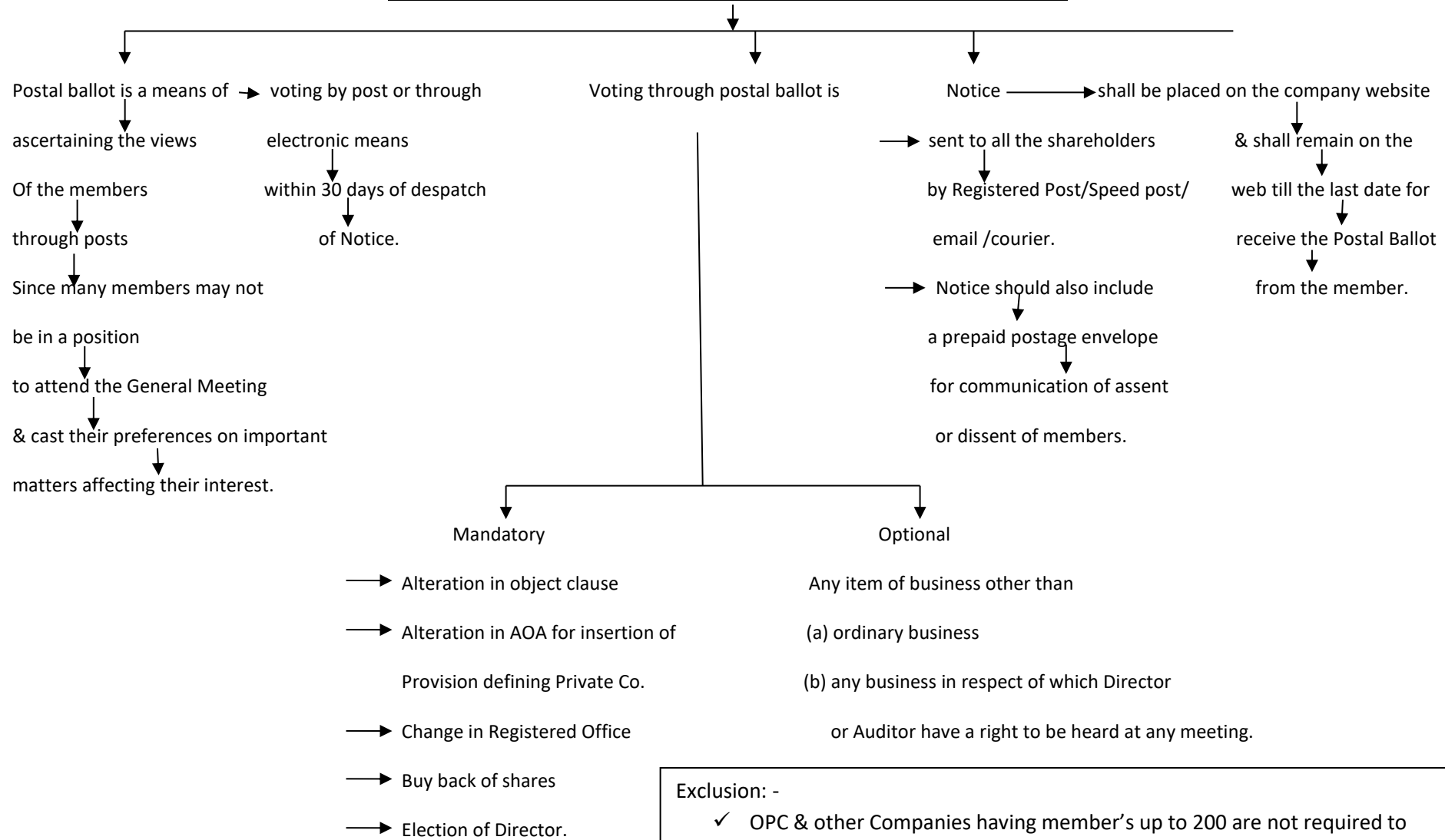
Section 109 shall apply to a private & IFSC public company; unless otherwise specified in respective sections or the articles of the company provide otherwise.

Provisions contained in Rule 21 of the Companies (Management and Administration) Rules, 2014 - Procedure for scrutinizing the poll process.

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The Chairman of the GM shall ensure the following:
↓

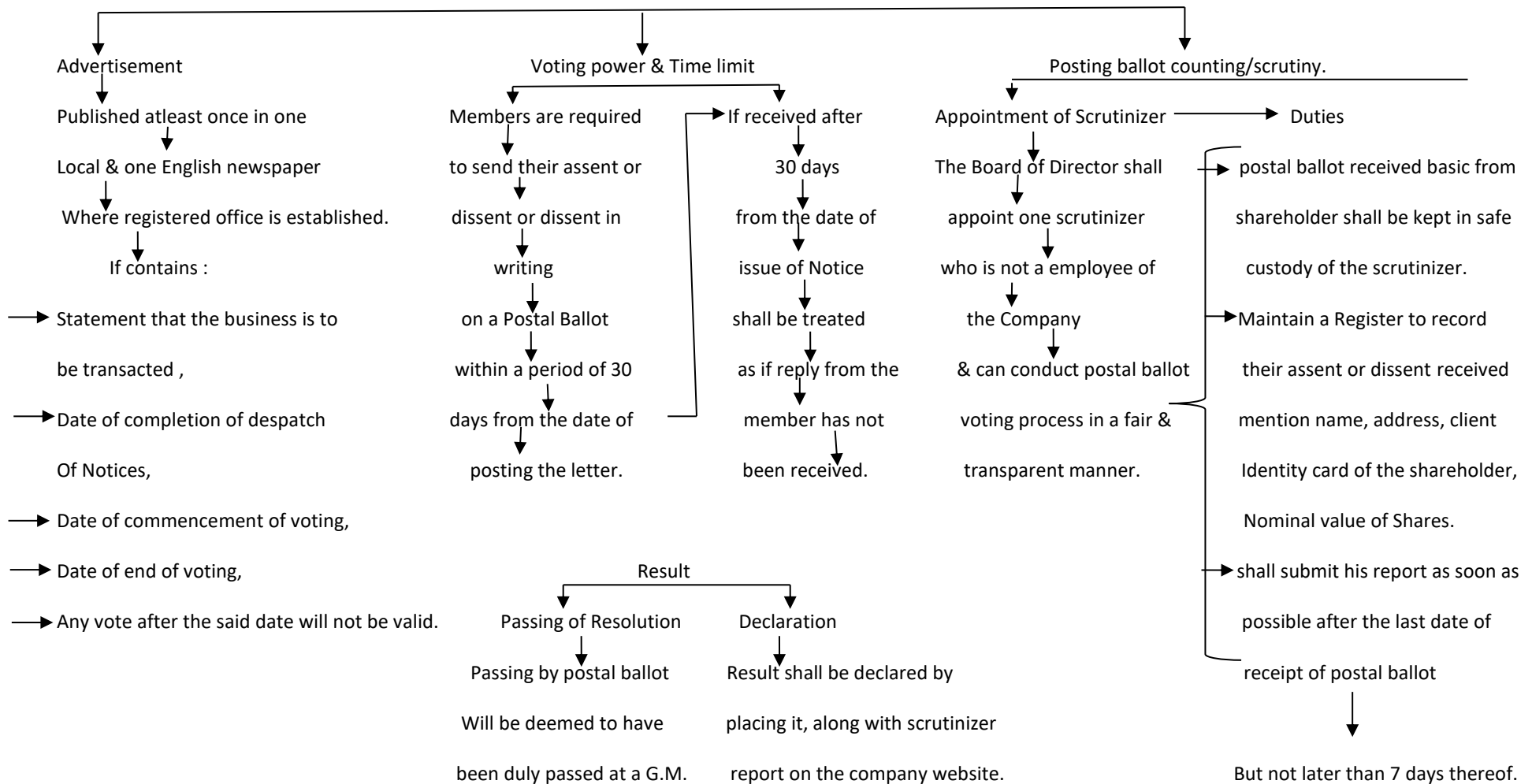
- a) The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register & Register of Proxies.
- b) The Scrutinizers are provided with all the documents received by the Company pursuant to Sec. 105, 112 and 113.
- c) The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. MGT-12.
- d) The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.
- e) The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
- f) The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
- g) In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
- h) The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- i) The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- j) Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
- k) The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
- l) The scrutinizers shall submit a report to the Chairman of the meeting in Form No. MGT-13. The report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer.
- m) The Chairman shall counter-sign the scrutinizers' report.
- n) The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.

Section 110 :- Passing of Resolution through postal Ballot

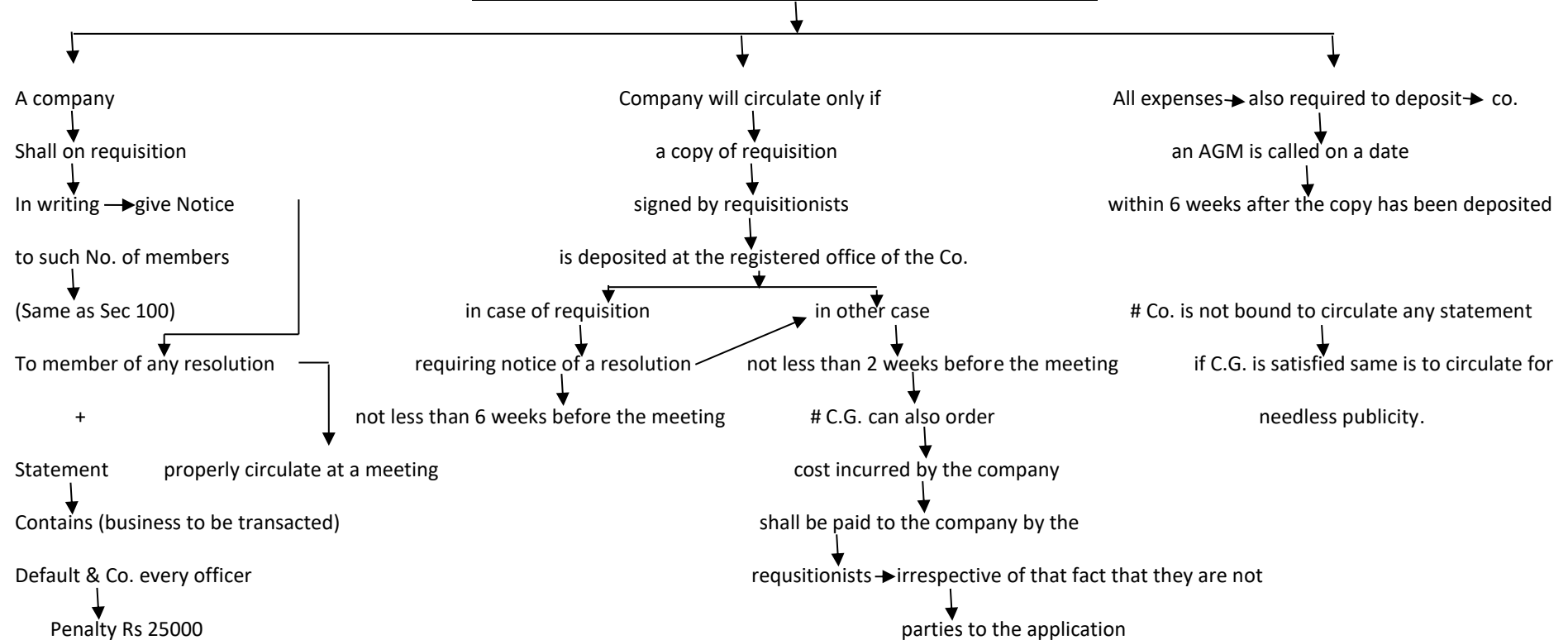


Exclusion: -

- ✓ OPC & other Companies having member's up to 200 are not required to transacted any business through postal ballot.
- ✓ Ordinary Business at AGM & any business in respect of which Director or Auditor have a right to be heard at any meeting.



Section 111 : Circulation of Member's Resolution



Ordinary & Special Resolutions (Sec. 114)

Ordinary resolution - Conditions

- (a) The notice of the GM has been duly given.
- (b) The votes cast in favour of the resolution are required to exceed the votes cast against the resolution

Special resolution -

- (a) The notice of the GM has been duly given.
- (b) The intention to propose the resolution as a special resolution has been duly specified in the notice of GM or other intimation given to the members.
- (c) The votes cast in favour of the resolution are required to be not less than 3 times the votes cast against the resolution.

Manner of casting votes -

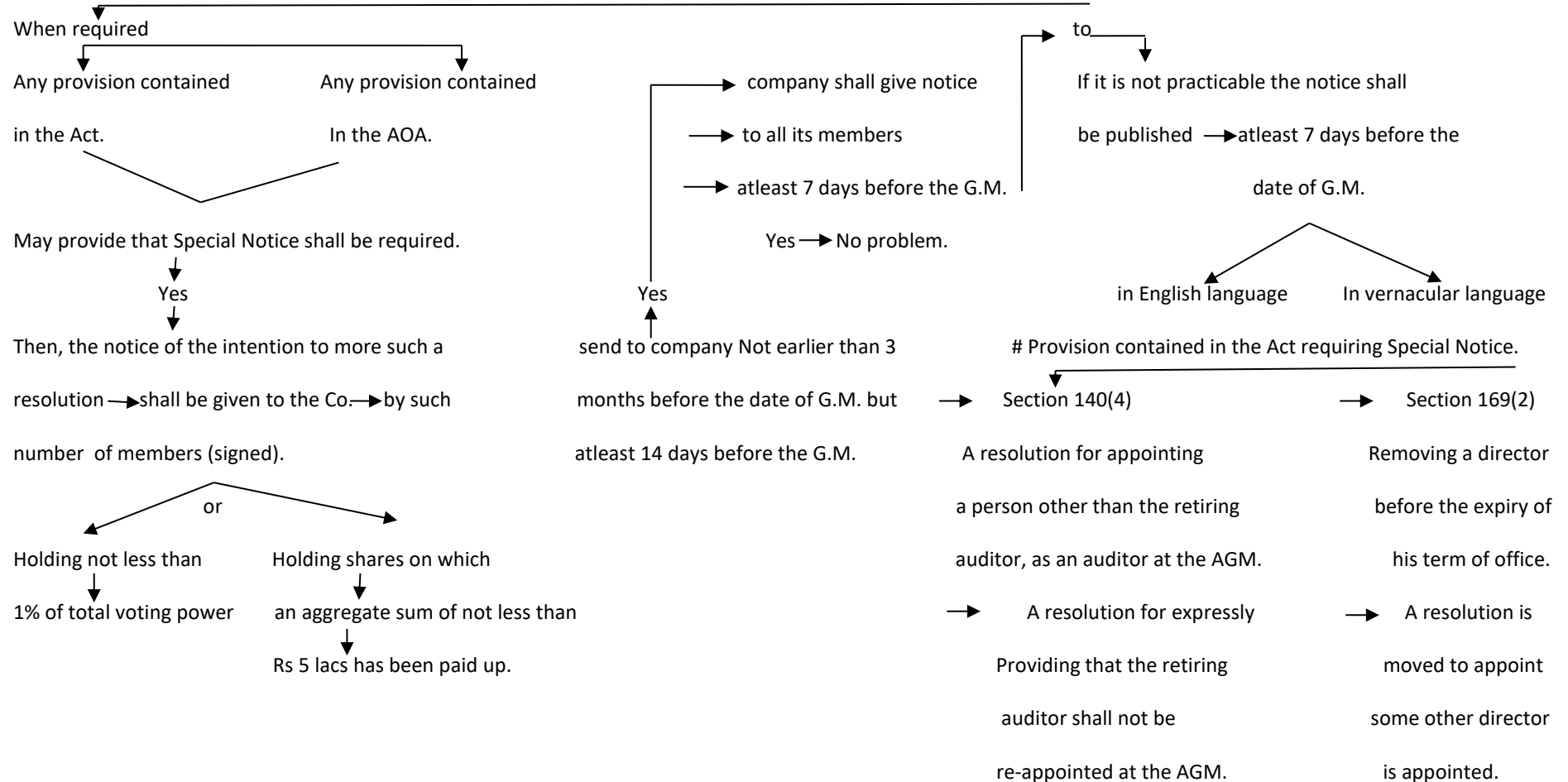
Votes may be cast by way of (a) show of hands; (b) poll; (c) electronically; or (d) postal ballot.	Votes may be cast by (a) members present in person or (b) proxies (where proxies are allowed)	Votes cast shall include the 'casting vote' of the Chairman, If any
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Filing of special resolution - A copy of every special resolution (together with explanatory statement) is to be filed with the Registrar within 30 days of passing the special resolution (Sec. 117).

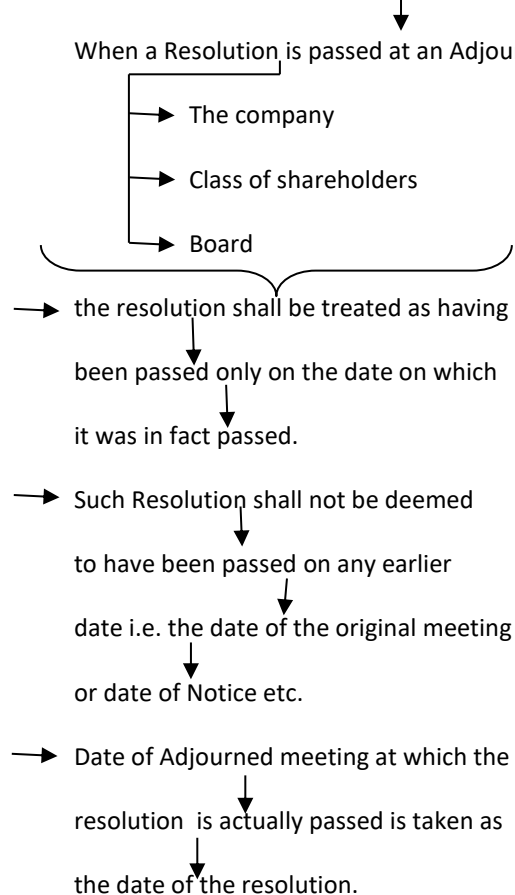
Use of 'casting vote'

- The articles of a company may empower the Chairman to use the 'casting vote'.
- The chairman may cast the 'casting vote' only in case of equality of votes.
- The Chairman has the discretion, whether to cast the "casting vote" or not.

Section 115 : Resolution Requiring Special Notice



Section 116: Resolution passed at an Adjourned meeting:-



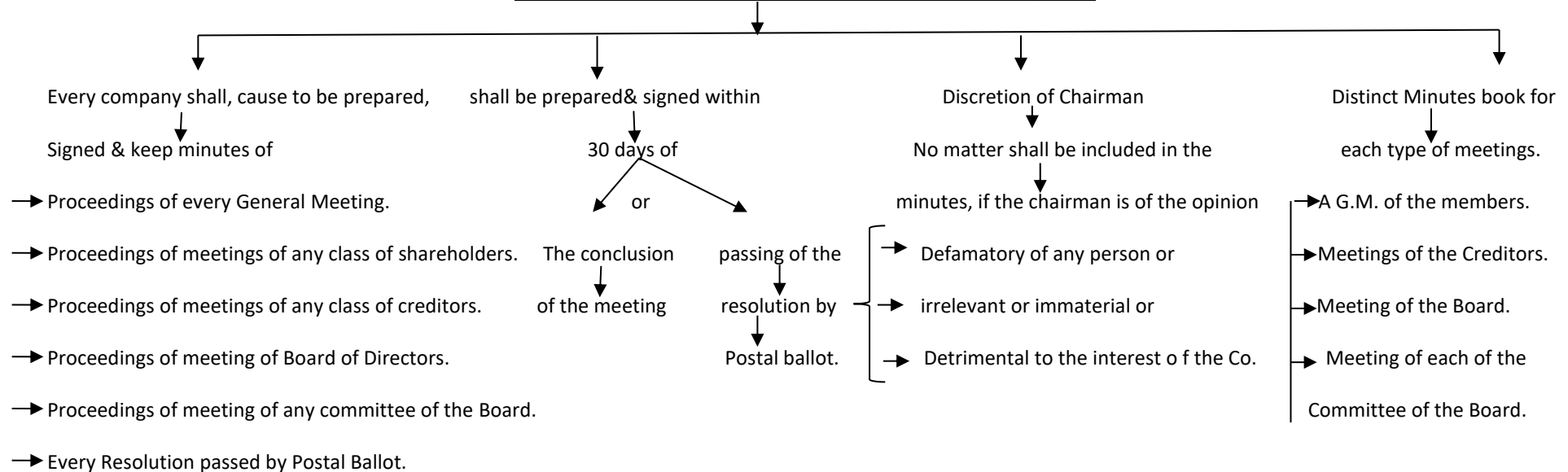
Section 117:- Filing of Resolution & agreement with ROC.

A copy of every resolution or any agreement, along with the explanatory statement u/s 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the ROC within 30 days of the passing

The provisions of this section shall apply to -

- ✓ Special resolutions
 - ✓ Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
 - ✓ Any resolution of the board of directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director
 - ✓ Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members
 - ✓ Resolutions requiring a company to be wound up voluntarily passed in pursuance of [“section 59 of the insolvency and bankruptcy code, 2016”]
 - ✓ Resolutions passed in pursuance of sub-section (3) of section 179.
- ↓
- ✓ If any company fails to file the resolution before the expiry of the period specified therein, such company shall be liable to a penalty of Rs 10000 & in case of continuing failure, with a further penalty of Rs 100 /day for each day after the first during which such failure continues, subject to a max. of Rs 2 lakh &
 - ✓ Every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of Rs 10000 & in case of continuing failure, with a further penalty of Rs 100 for each day after the first during which such failure continues, subject to a maximum of Rs 50000.

Section 118:- Minutes of General Meeting etc.



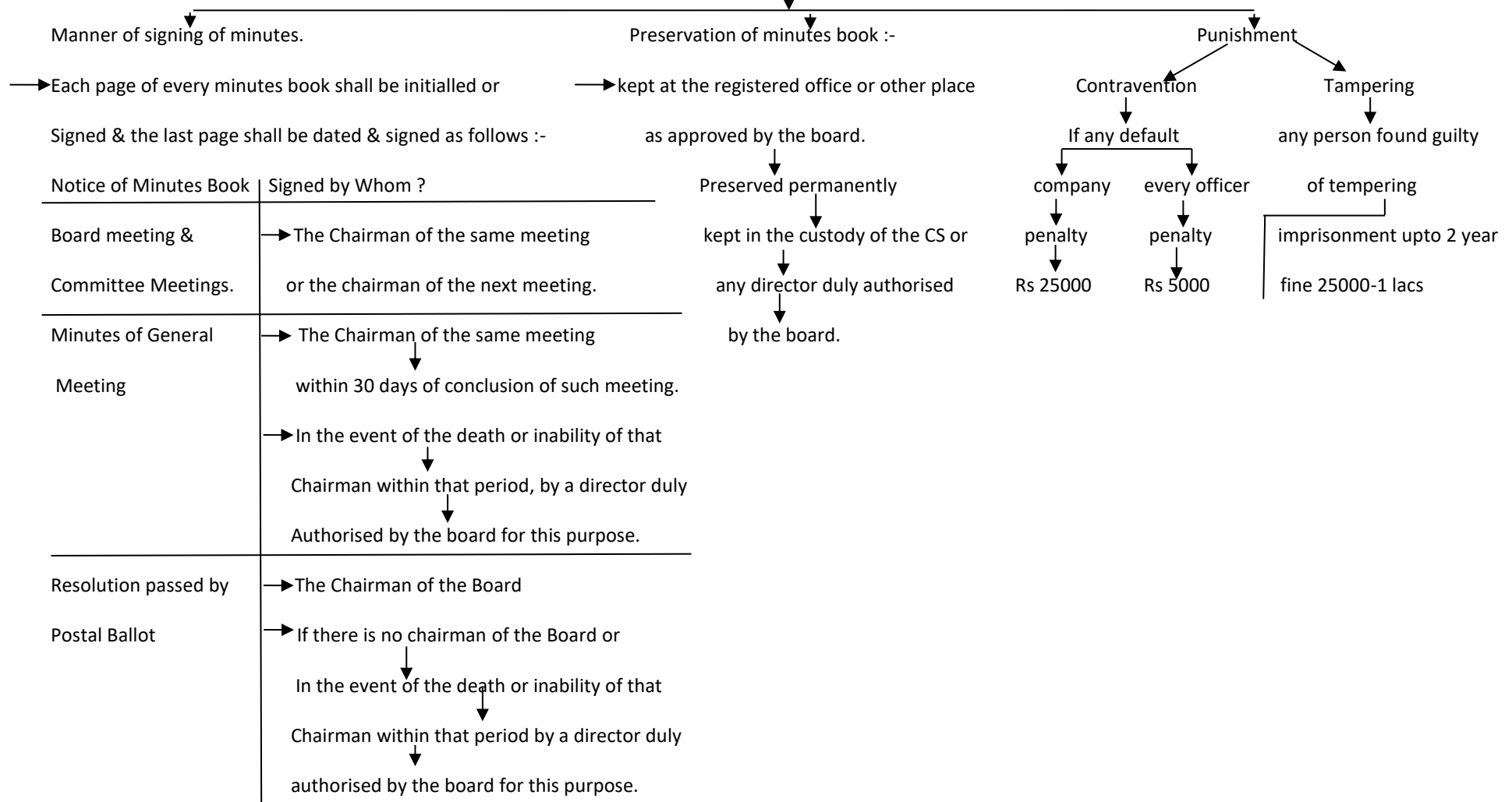
The Chairman shall exercise absolute discretion with regard to the inclusion of non-inclusion of any matter in the minutes.

Minutes shall contain a fair & correct summary of the proceedings of the meetings.

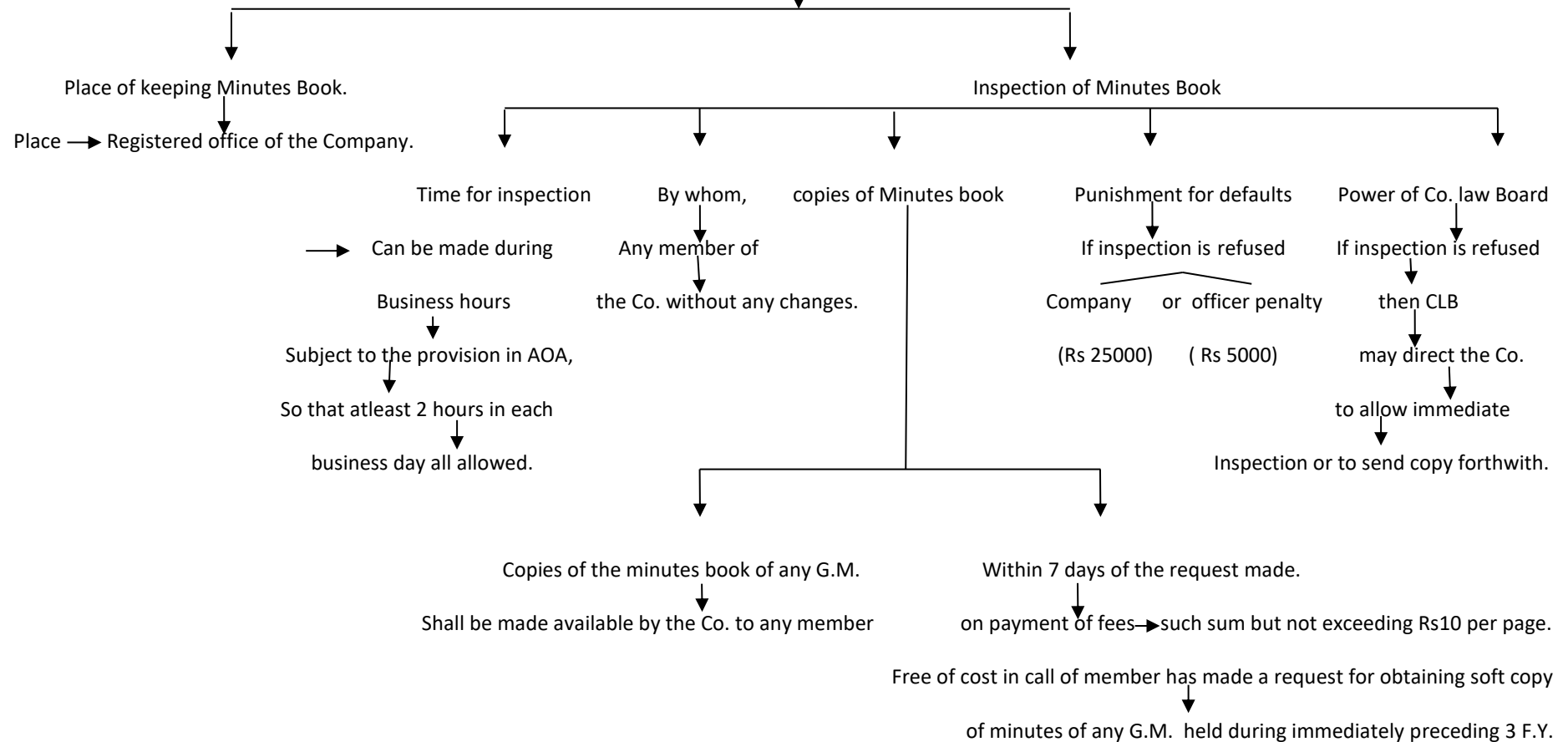
The section shall not apply to a section 8 co. as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the AOA provide for confirmation of minutes by circulation, vide Notification, dated 5th June 2015.

Provided that in case of a specified IFCS public or private Co., the minutes of every meeting of its Boards of Directors or of every committee of the Board, to be prepared & signed under sub-section (1) at or before the next Board Meeting or Committee Meeting, as the case may be & kept in the books for that purpose.

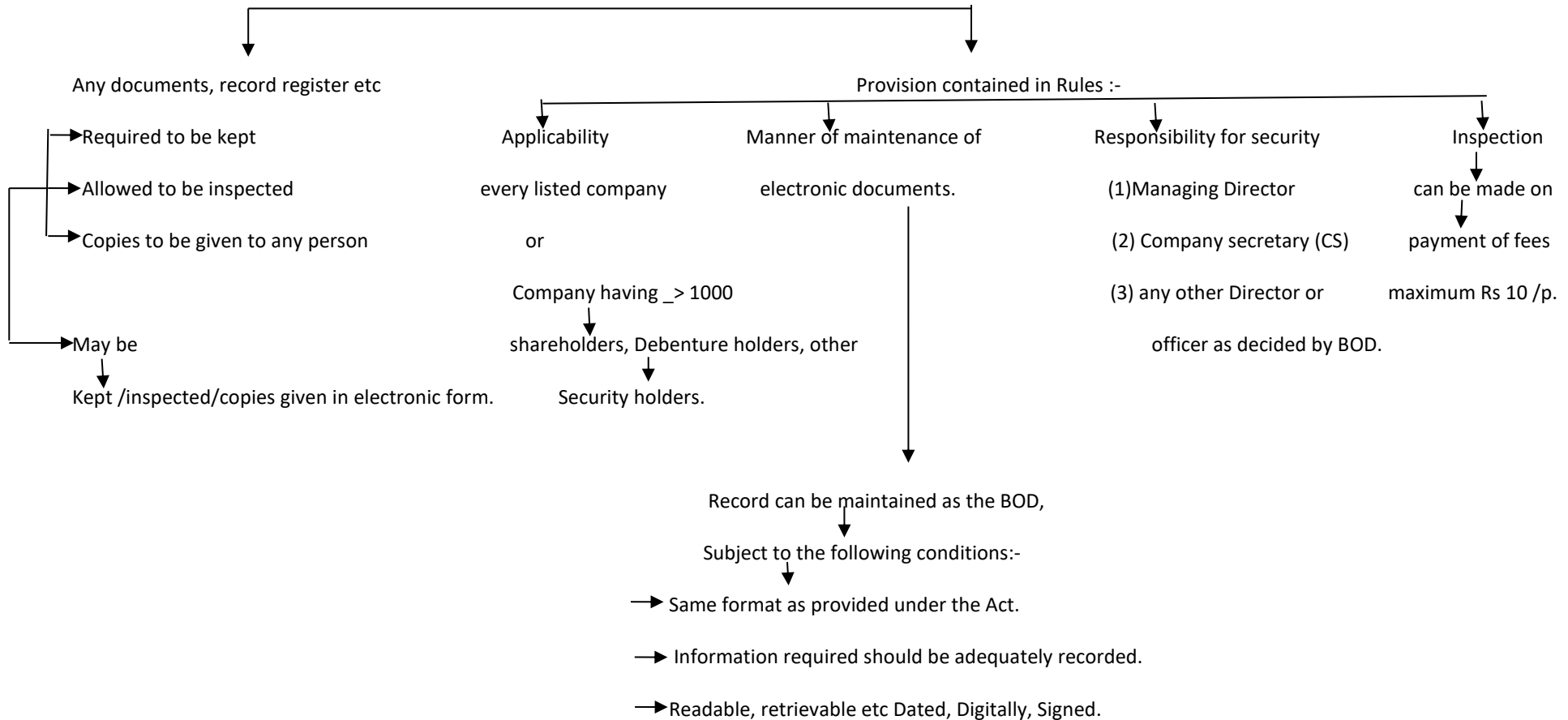
Section 118 :- (2nd Chart)



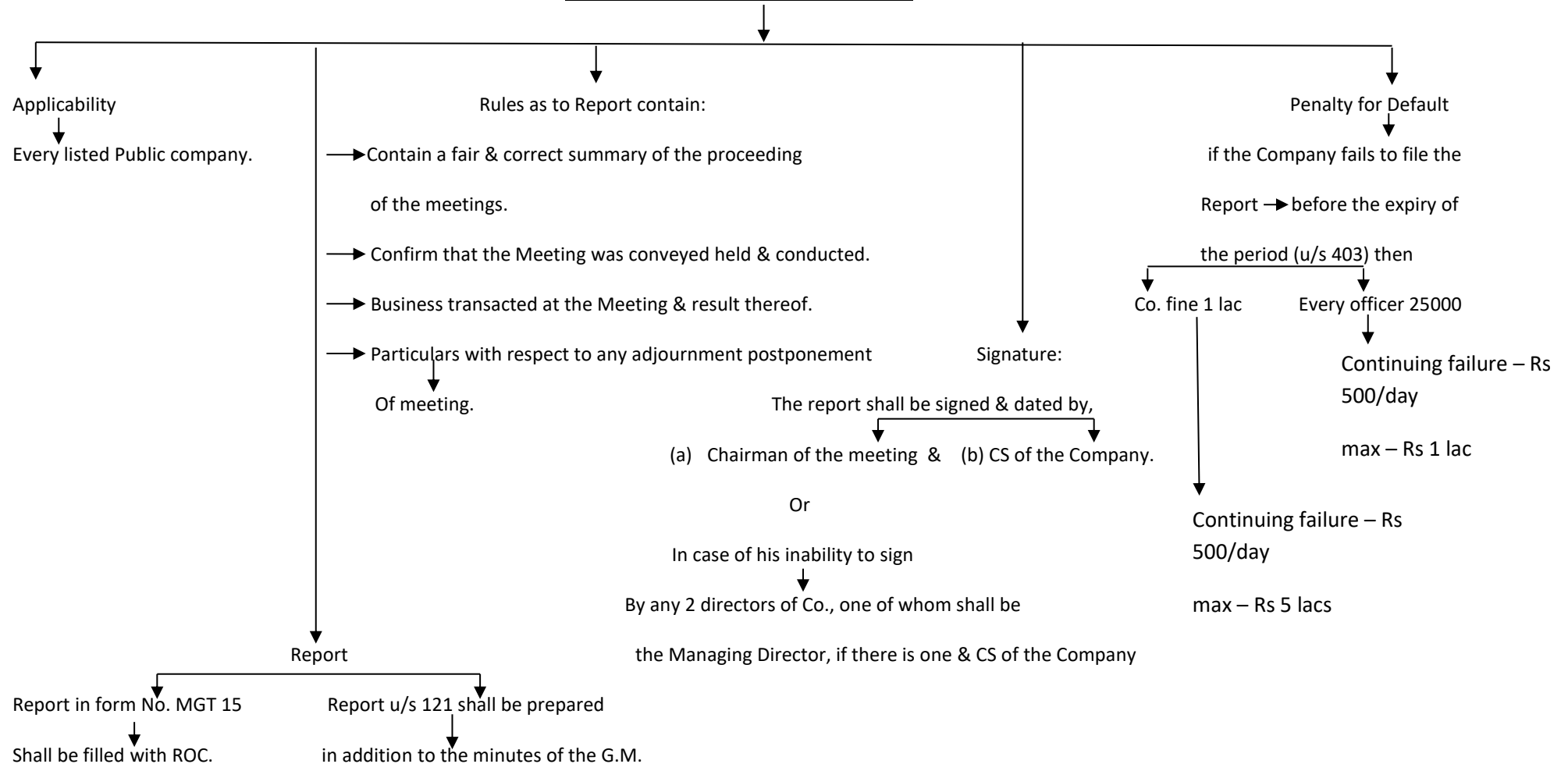
Section 119:- Inspection of Minutes of General Meeting



Section 120 :- Maintenance & Inspection of Documents in Electronic Form



Section 121:- Report to AGM



Applicability of chapter VII to OPC - (sec. 122)

