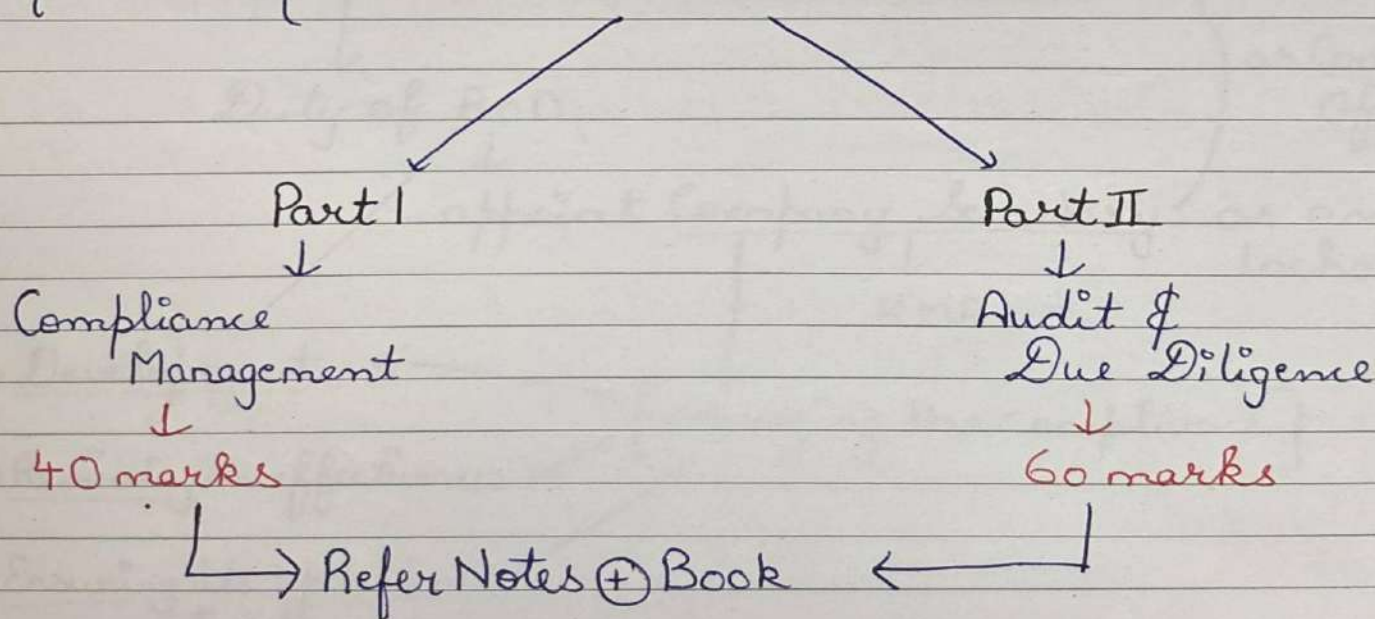


My Sister/Friends are waiting for me to become a Company Secretary.

I am the greatest, I am the best.

COMPLIANCE MANAGEMENT, AUDIT AND DUE DILIGENCE (CMADD)



Chapter 1 → Compliance Framework

No.
Date

→ Various Laws ^①, Rules ^② & Regulations ^③

↓ generates

Risk (Non Compliance Risk)

- | | |
|-------------------|--------------------------|
| 1) Penalty | 4) Cessation of Business |
| 2) Fine | 5) Goodwill |
| 3) License Cancel | |

↓
to avoid these types of risk (Non Compliance Risk)

↓
Company establish Compliance Framework

↓
Duty of BoD

↓
appoint Company Secretary

↓
KMP

as Compliance Officer

as an Incharge

- ↓
- 1) Development ← [managing the compliance]
- 2) Reviewing the effectiveness ←
- 3) Ensuring its updation & relevance ←

Inversely proportioning

No. Risk will reduce
Date ↑
Internal Control System

Compliance Framework

1) Compliance Advisory

experts who advises

[Lawyers, CS, CA, CMA]

2) Compliance Chart

Overview

of

laws
Risk
Mitigation (policy & procedure)

3) Compliance Scorecard

tool to analyse the position of organisation

Control Management System

- 1) Identification of Laws/Rules/Reg
- 2) Risk Assessment
- 3) Risk Mitigation (Techniques)
- 4) Compliance Monitoring (check)
- 5) Compliance Reporting

Policies & Procedure

Ownership Allocation

Significance of Compliance Framework

- 1) Safety value
- 2) Non compliance will be avoided
- 3) Cost reduce
- 4) Goodwill Increase.
- 5) Credibility Increase
- 6) Brand Value Increase
- 7) Company will become good Corporate Citizen.

→ Dashboard is actually a little format of compliance Chart.

Well Designed Compliance Mgmt System (Benefits)

- 1) Compliance Dashboard (*single enterprise wise dashboard*)
- 2) Compliance Policy & Procedures
- 3) Compliance Audit
- 4) Access to Rules & Regulation
- 5) Compliance Training
- 6) Compliance Task Management

Compliance Scorecard

↓
tool

to measure
compliance with
laws/rules &
regulations

Informs the
designated person
to fix the issue

→ *Compliance Owner*

Compliance Chart

overview → }
 Law applicable
 Risk assessment
 Risk mitigation

Techniques → }
 ① Identification of laws/Rules & Regulation
 ② Risk Assessment
 ③ Risk Mitigation
 ④ Compliance Monitoring
 ⑤ Compliance Reporting

Content of Compliance Chart

- 1) Identification of compliance related to laws / rules & regulations.
- 2) Identification of compliance obligation & risk associated to these compliance obligations.
- 3) Categorization of Risk into Critical, High, Medium & Low.
- 4) Compliance Risk mitigation policies on the basis of risk identified.
- 5) Identification of people to which the compliance obligation are linked and have an impact
- 6) To whom & how frequently compliance report is submitted.

Question Compliance Chart plays a very Important role in compliance framework and it is crucial to prepare the same in order to ensure Compliances in the company. Comment.

Synopsis →

- 1) Compliance Framework
- 2) Components of compliance Framework
- 3) Compliance Chart
- 4) Techniques of compliance chart
- 5) Content of compliance chart

Ans Compliance framework is an essential part of a company to ensure compliance with applicable rules & regulation. Company Secretary being the Compliance officer holds the responsibility to incorporate a compliance framework.

Compliance framework includes a

- 1) Compliance Advisory:- Team of experts who advises on applicable laws, rules & regulation.
- 2) Compliance Scorecard:- Tool to analyse the performance of organisation.
- 3) Compliance Chart:- An overview of applicable laws, risk & mitigation techniques.

Compliance chart is an overview of applicable local state & International laws, rules & regulations which indicates risk associated to the compliance obligation & risk mitigation techniques being used.

Techniques of Compliance Chart are as follows:-

- 1) Identification of laws, rules & regulation
- 2) Risk assessment
- 3) Risk mitigation
- 4) Compliance monitoring
- 5) Compliance Reporting

Contents of Compliance Chart would be as following:-

- 1) Identification of compliance related to laws/rules & regulations.
- 2) Identification of compliance obligation & risk associated to those obligation.
- 3) Categorisation of Risk into Critical, High, Medium & Low.

- 4) Compliance Risk mitigation policies on the basis of risk Identified.
- 5) Identification of people to which the compliance obligation are linked and have an impact.
- 6) To whom & how frequently the compliance report is submitted

→ Identification of applicable Laws & Regulations

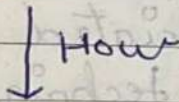
- ① CS has to identify the Laws / Rules & Regulation applicable on the company



to frame the Compliance Framework



- ② to make a compliance framework, CS has to be aware of Business Model



③ Sources

- (a) Engaging with the management
- (b) Identifying Laws / Rules & Regulation
- (c) orders / guidance given by regulatory authorities
- (d) Permits / licence → company has obtain
- (e) Treaties / agreements.
- (f) Judgments of Tribunal
- (g) Internal policies
- (h) Code of Conduct
- (i) Attending Seminars
- (j) Membership of professional groups

- ④ Laws applicable on the company (all laws studied)

Compliance Risk Assessment

① Identification of areas of Non Compliance

Detailed Risk Assessment

High Level Risk Assessment

② Rate the Risk

→ Critical
→ High
→ Medium
→ Low

While considering risk, following risk drivers should be used

③

Legal Effect

Financial Effect

Business Effect

Reputational Effect

outcomes

on the basis of this Risk Mitigation strategies are made

Policy & Procedure

Training

Detailed Risk Assessment → To ensure that risk is properly assessed & mitigated

High Level Risk Assessment → Results for Detailed risk assessment used for high Level Risk Assessment

Various level of management

① Top Level Mgmt

- ① Identifying various laws, rules & regulation
- ② Approval of policy & procedures.
- ③ Motivating the employees

② Senior Level Mgmt

- ① Formation of Policy & Procedures
- ② Guiding the Compliance Officer
- ③ Motivating the Compliance officer.
- ④ Tracking the compliance chart
- ⑤ Conflict Resolution
- ⑥ Analysis & Research on Regulatory changes

③ Compliance officer

- ① Performing Compliance Obligation
- ② Updating Compliance Obligation into compliance chart
- ③ Risk Identification & Intimation
- ④ Conflict Intimation

④ Legal Cell

- ① Identification of new & changed local laws, rules & regulation
- ② Communication in writing to Compliance Owner.
- ③ Review of system & policies & procedures.
- ④ Resolution of doubts & clarity in directions.

Compliance Monitoring

It means the ownership Allocation

'oversight' of the company's operation & activities

Involves (2 owners)

Secondary

↓
supervise

↓
Functional head

Primary

↓
Implement

↓
Employees

└───┬───> Duties in pur page <───┬───┘

Compliance Reporting

to evaluate whether the Compliance Risk surpass the Company's Risk appetite.

facilitates communication & discussion of potential Compliance Risk

Cyclical Reporting

↓
quarterly / monthly / half yearly / yearly

↓
to provide non financial risk reporting

Incidental Reporting

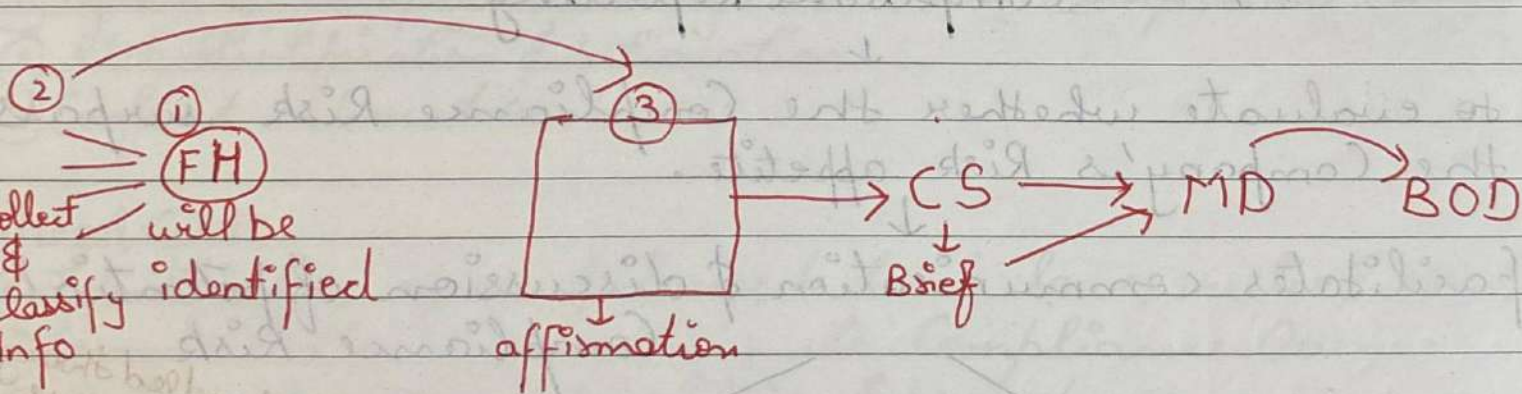
↓
Incidental matter

↓
(e.g. Integrity, damaging Co. Reput, Legal ex Regulator Sanctions, Financial loss)

Need to be handled through Risk Mgmt process

Creation / Procedure of Compliance Reporting System

- 1) Functional head should be identified for reporting of various laws.
- 2) FH then collect & classify the relevant information from various units of department & consolidate it form a report
- 3) Report should carry affirmation from Functional head that report is prepared with True & fair views
- 4) Reports forwarded to CS ^{or} MD.
- 5) CS should give a brief to MD with his opinion & comments
 ↳ and MD forwarded to BOD



Training & Implementation (Risk mitigation) (Policy & Procedures)

why

(to build awareness & understanding of)

- 1) Company framework
- 2) Roles & responsibilities
- 3) Critical & high obligation
- 4) Performance
- 5) Consequences of non compliance

what (include)



- 1) compliance framework
- 2) Roles & responsibilities
- 3) Training (briefly description)
- 4) Target Audience
- 5) Frequency of training

→ Five essential things to create Training

- 1) Make it personnel
- 2) Make it Interesting
- 3) Make it understandable
- 4) Make it accessible
- 5) Make it ongoing

Compliance Audit (As per CAG Auditing Standards)



Independent assessment of applicable laws, rules & regulation.

→ Financial → statutory → CA

→ Non financial → secretarial → CS

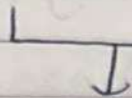
Regulatory

compliance with relevant laws, rules, & regulation.

Propriety

observance of general principles of ethical code of conduct

Secretarial Audit & CMS



dependent on mainly on the following factors

- 1) Nature of business
- 2) Geographical domain
- 3) Jurisdiction in which it operates
- 4) Whether Co's is Listed or Not.
- 5) Regulatory Authorities
- 6) Nature of Company

Note → Auditing of Compliance System is not a fault finding exercise, rather a device to improve compliance mechanism of a company.

①+

to build up strong corporate compliance system.

Role of Company Secretary in Compliance Mgmt

1) CS → recognised as an Compliance Officer/Manager of the company.

2) CS → do the all applicable disclosures as per SEBI (LORD) Reg, 2015

3) CS → advises board in relation to Compliance Risk, Responsibilities, obligation & concerns

4) In Nutshell, CS is the profession who guides the board

→ Directors Responsibility Statement [Section 134(5)]

- ① Financial statements must be prepared as per going concern basis
- ② Accounting standard should be complied while preparing FS.
- ③ Accounting policies should give true & fair view of the affairs of the Co.
- ④ Safeguarding of assets
- ⑤ compliance are done with all applicable laws.
- ⑥ Listed Co → Dr → laid down Internal financial control to be followed by the company.

→ Certain Imp. Compliances Requirement under CA, 2013

① BM → date of Incorp → IBM

30 days
+

→ 4 BM + 120 days max gap

② Notice of BM → 7 clear days + SS-1

shorter Notice → 1 ID should be present or ratified by ID.

③ Notice of GM → 21 clear days + SS-2 to ^{member} Dr ^{Legal Represent}

(Agenda + FS + annexures + Explanatory)
shorter Notice → 14 clear days

④ Financial Statement $\rightarrow$ copy of FS + Notice of AGM

$\swarrow$ CFS
AGM $\xrightarrow[FS]{30 \text{ days}}$ ROC

$\searrow$ AOC-4 / AOC-4 CFS

⑤ Annual Returns

$\swarrow$ AGM $\xrightarrow[60 \text{ days}]{MGT-7}$ ROC

(OPC/Small Co) $\rightarrow$ MGT-7A

⑥ Certificate of Annual Return $\rightarrow$ IoC $\rightarrow$ PSC

$\swarrow$ SOG $\rightarrow$ T/O

$\downarrow$
MGT-8

⑦ Appointment of Auditor

Appoint $\xrightarrow[15 \text{ days}]{ADT-1}$ RoC

⑧ Disclosure of Interest of Ds $\rightarrow$ MBP-1

[1st meeting of
1st meeting of
every FY]

⑨ Disq. of Ds. $\rightarrow$ DIR-8 (section 164)

⑩ Reg of Member $\rightarrow$ MGT-1

⑪ Appoint of Ds $\rightarrow$ DIR-12

Co will be dormant

↓
Ds of said Co → will be disqualified for 5 years in any company

↳ Penalty → Co → $S_{1,0}$ → continuing 1,000
 ↳ Individual → $S_{1,0}$ → ~~2,00,000~~ → 5,00,000 (more)

growing reporting requirements.
Company recruited various professional ~~in~~ across its
finance & secretarial Team.

Considering the CS is requested to prepare Compliance Training & Educational Programme for providing training to the new recruits.

Briefly explain the objective & contents of such Compliance Training Programme.

Ans

A strong compliance & training programme is a part of Risk Mitigation activity as it ensure a good compliance structure in the company.

Objectives of compliance Training programme -

The objective of compliance Training programme is to create awareness about:-

- 1) Compliance Framework
- 2) Roles & Responsibilities
- 3) Critical & high Compliance Obligation
- 4) Performance of Compliance Obligation
- 5) Consequences of Non Performance of Compliances

Content of Compliance Training Programme

Company Secretary while Incorporating the Compliance Training Program would ensure to include following as a part of Training Program:-

- 1) Company Framework
- 2) Roles & Responsibilities
- 3) Training structure
- 4) Target Audience
- 5) Frequency of Training

Ques You have been appointed CS of XYZ Ltd a listed company having diversified business & multi operational branch business.

On joining your office, You observe under the prevailing scenario, a comprehensive CMS is necessary.

Prepare a Checklist that should be considered by you as per desired system & what will be your responsibility as CS

Q. In due complying of Compliance System?

Answer

Compliance Mgmt System is needed in the company to ensure compliance with laws, rules & regulation and avoid Non Compliance Risk. Since, CS holds the responsibility to manage the compliances of the company. He is called as Compliance Officer.

The Compliance System & Process in a company are dependent mainly on following factors:-

- ① Nature of business
- ② Geographical domain
- ③ Jurisdiction
- ④ Listed or Unlisted Co.
- ⑤ Size of Company
- ⑥ Nature of Co → Pvt/Public/Govt.
- ⑦ Regulatory Authority in respect of business operation

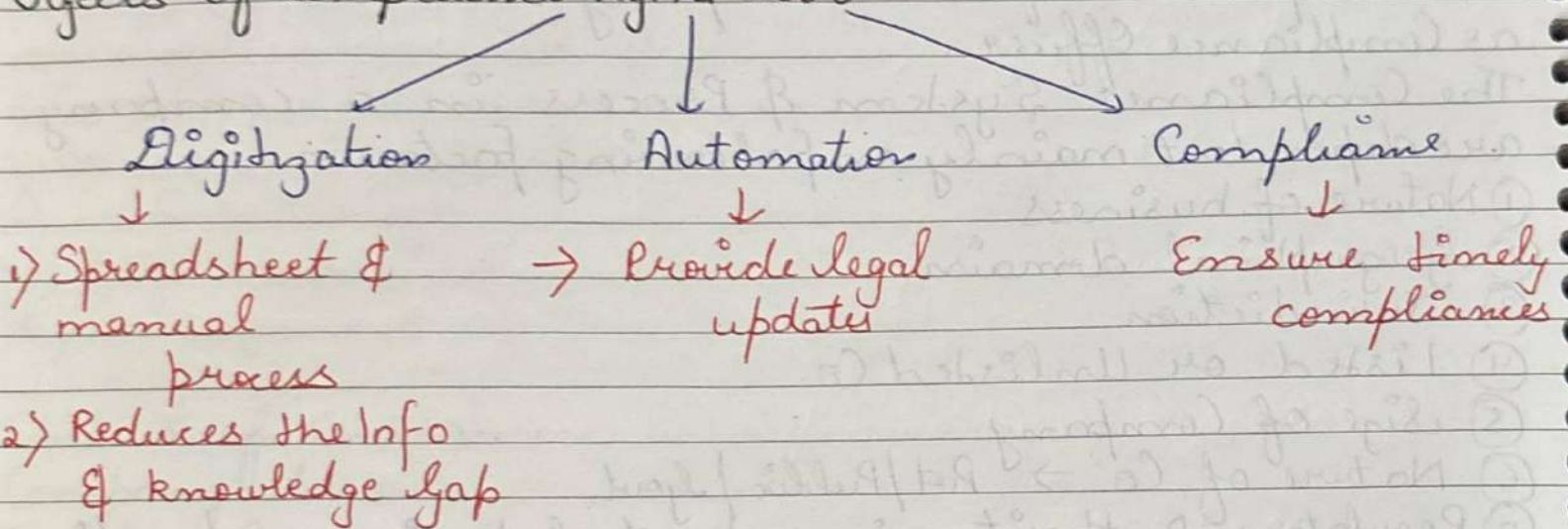
Role of Company Secretary

- ① Advise the Board of Directors about compliance, risk etc.
- ② Ensures timely disclosure as per SEBI (LODR) Reg, 2015.
- ③ Guide the BOD.

Compliance Mgmt Tool
 ↳ is a software which facilitates your compliance management.

↳ generally required in larger organisation where many risk are involved.

Objects of Compliance Mgmt Tool



→ Kinds of Compliance Mgmt Tool

① All purpose Comp. Mgmt Platform

② Industry specific Compliance Mgmt Tool

③ GRC Software (Corporate Governance, Risk, Compliance)

↓
ethics & values

↓
Identify

↓
Enterprise Risk mgmt

Benefits of Compliance Mgmt Tools

- ① Reduction in Manual Work
- ② Streamlining Implementation
- ③ Significant in Monitoring & Reporting
- ④ Risk in Human Errors reduced
- ⑤ Builds Organisation Reputation
- ⑥ Creates a Roadmap for business

→ Cloud Computing

↓
is a software to backup your all system at one place.

↓
It is becoming increasingly popular for delivering IT services.

↓
It introduces New cyber security risks & challenges that business needs to be aware of.

⊕

SEBI has also introduced cloud framework to help regulated entities to manage risks better.

Compliance Risk Monitoring plan must Include:-

- (a) Critical and high compliance risk
- (b) Key compliance Risk mitigation activities
- (c) Routine business transactions
- (d) Compliance with the laws, regulation & standard
- (e) Frequency of tracking & monitoring activities
- (f) Brief description of how tracking & monitoring activities are performed.
- (g) Recipient of the tracking & monitoring reports

→ Following Methodology adopted for Compliance Mechanism

- ① Risk Assessment
- ② Program Design / Update
- ③ Policies & Procedures
- ④ Communication, Training & Implementation
- ⑤ Ongoing Self Assessment, Monitoring & Reporting

No.

Date

Chapter → Documentation & Maintenance of Records

Date

→ Document → is a part and parcel of written, printed or electronic matter that provides information.

→ Record → is a document which is used ~~as~~ as an evidence



It includes final reports, emails or photographs etc.

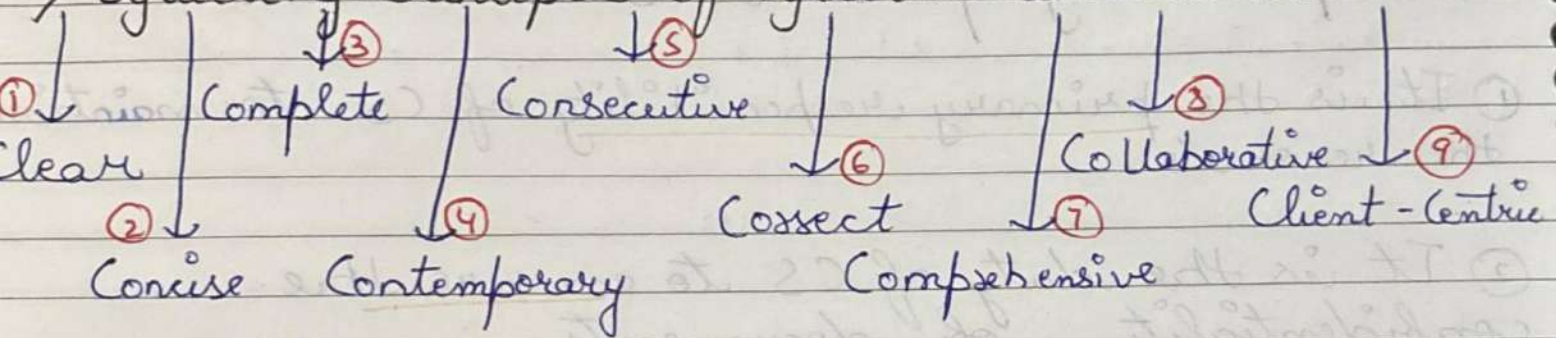
→ Responsibility of CS in documentation

- ① It is the primary responsibility of CS to maintain the records.
- ② It is the duty of CS to ensure the confidentiality of documents.
- ③ The CS is also responsible for receiving, storing, maintaining, retrieving, certifying the documents.
- ④ The CS is also responsible for maintaining documents related to JV, subsidiaries & consortiums
- ⑤ The CS is also responsible to check all the relevant documents are in accordance with law or which results in violation of law.

→ Purpose of Documentation

- ① Client Service
- ② Communication
- ③ Accountability
- ④ Professional Responsibility
- ⑤ Legal Requirement
- ⑥ Quality
- ⑦ Research
- ⑧ Resource Management

→ Guiding Principles of Good Documentation



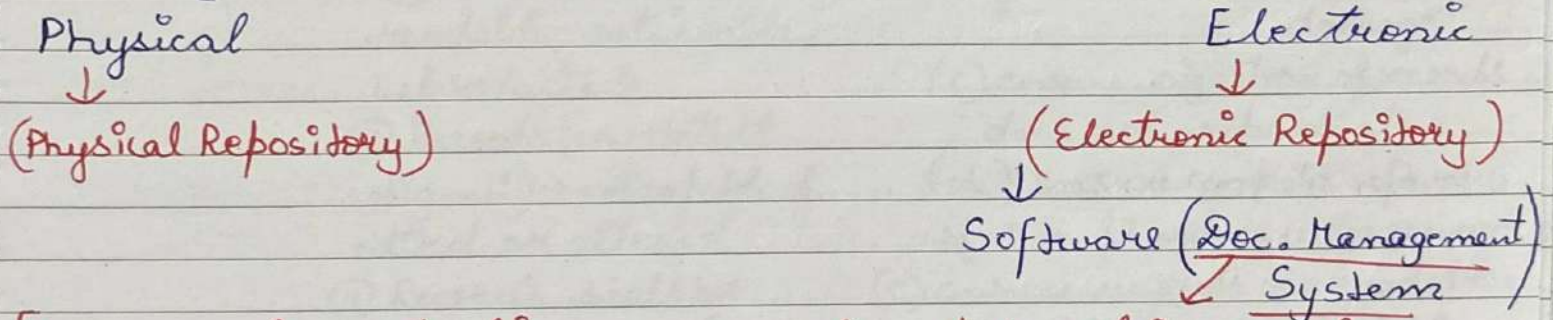
→ Examples of Poor Documentation Practices

- ① Doc. with errors, not dated & not signed.
- ② Events are not recorded in sequence or table format.
- ③ SOP (Standard Operating Procedures) adopted are not authorized
- ④ Work delegated is not documented
- ⑤ Write Overs / Multiple line through / White Out.

→ Examples of Good Documentation Process

- ① Concise, Legible & Accurate
- ② Clear Examples
- ③ Don't assume Information
- ④ Records should be completed at the time of activity.
- ⑤ Superseded Doc. should be retained for a specific period.

→ Electronic Repository of document (Place where documents are stored)



[process of controlling, managing & tracking of documents & records through electronic or physical]

- (Advantages)
- ① Tracking of documents
 - ② Locking & Unlocking of Document
 - ③ Simultaneous editing
 - ④ Document Version Control
 - ⑤ Ease in Audit trail
 - ⑥ Annotation

→ Advantages of Electronic Records

- ① Cost effective
- ② Ease of Use
- ③ Labour Savings
- ④ Search Ability
- ⑤ Portability (easy to carry)
- ⑥ Version Tracking

→ Disadvantages of Electronic Records

- ① Software Risk
- ② Format Risk
- ③ Reliability
- ④ Portability (easy to misplace or become corrupt)

→ Maintenance & Inspection of Documents in Electronic Form under Companies Act, 2013.

Section 120

maintainance of records in electronic form

⊕

Inspection of doc by RoC in electronic form.

Rule 27

→ conditions
(of Companies (Mgmt & Administration) Rules, 2014)

Applies → Every listed Co.
⊕
Co. having not less than 1000 SH, debentureholder or other security holders



- ① Records → maintained in same format & in accordance with law
- ② Records → must be readable, retrievable, reproducible.
- ③ Records (~~once dated & signed~~) → not capable of edited or altered
- ④ Records shall be capable of updation
- ⑤ Info in Records should be recorded in accordance with future reference.

Rule 28

→ security

1) Every MD, CS or drs. authorized shall be responsible for security of records.

2) The MD / CS shall
(a) provide adequate protection against unauthorized access.

(b) ensure against loss of records as a result of damage.

(c) ensure signatory of records does not repudiate.

(d) ensure computer software, system & hardware are secured

(e) ensure records are readable, retrievable & reproducible.

(f) records must kept in non-retrievable & nonerasable format.

(g) records must be backed up for a period not exceeding 1 day.

(h) limit the access of record to MD/CS & Dr. authorized.

(i) take necessary steps to ensure the integrity & confidentiality of records.

→ Physical Repository
(Repository is a place where doc. are stored)

(Virtual & Physical Repository - Comparison)

Particulars	Physical	Electronic
① Form of Doc.	Paper, Files	Video or Audio Documents
② Security of Doc.	Less Security	More Security
③ Time Req. for creation	Longer Time Req.	Less Time Required
④ Cost	High	Low
⑤ Convenience (Review)	Lot of time	Less time
⑥ Accessibility	Timing is Restricted	Can access every time
⑦ Facility to restrict access of specified Doc.	Difficulty to Implement any restriction	Access can be restricted
⑧ Facility to check who has reviewed	Not available	Available
⑨ Ability to copy Doc.	Possible	Not possible
⑩ One to One Communication with Seller	Available	Not Available

→ Coding & Nomenclature

File

Self-Descriptive
↓

① File Names are useful for small, well defined projects with existing identification schemes

② File Names are repeated within a data structure.

③ These are ^{created} done for well define projects

Non-Descriptive
↓

① File names are usually system generated (digital ID Number, Combination of date & time, name of original file).

② File Names are not repeated within a data structure

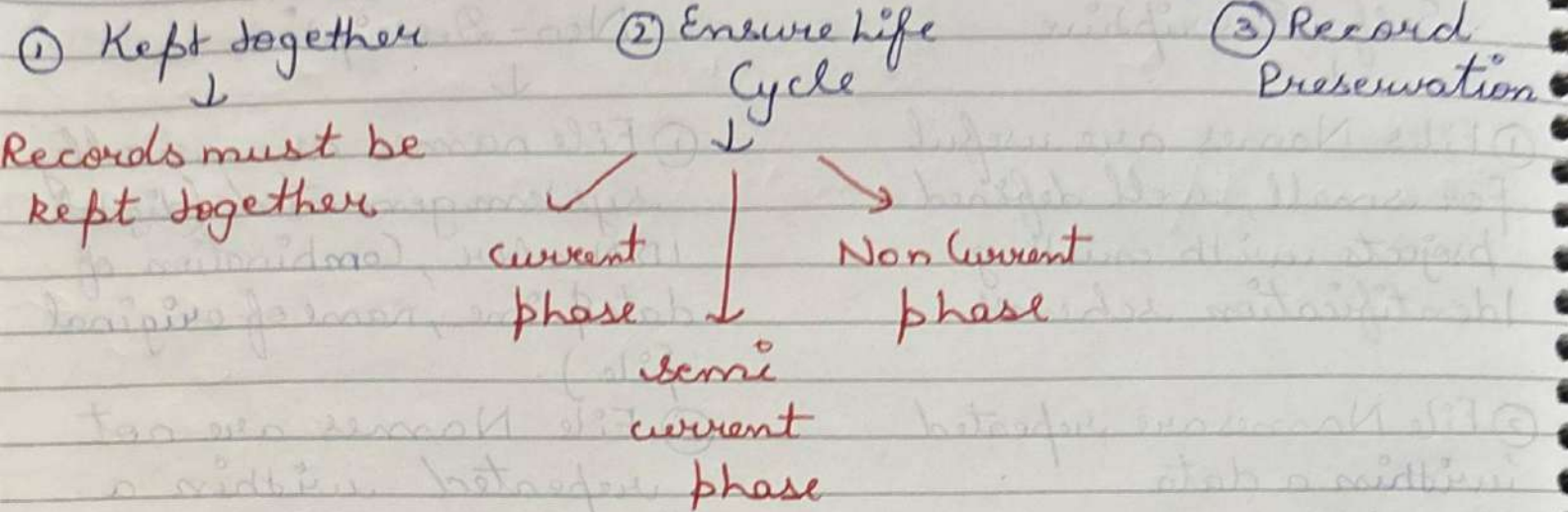
③ These are created for large scale digitization projects.

→ basic rules for general guidelines

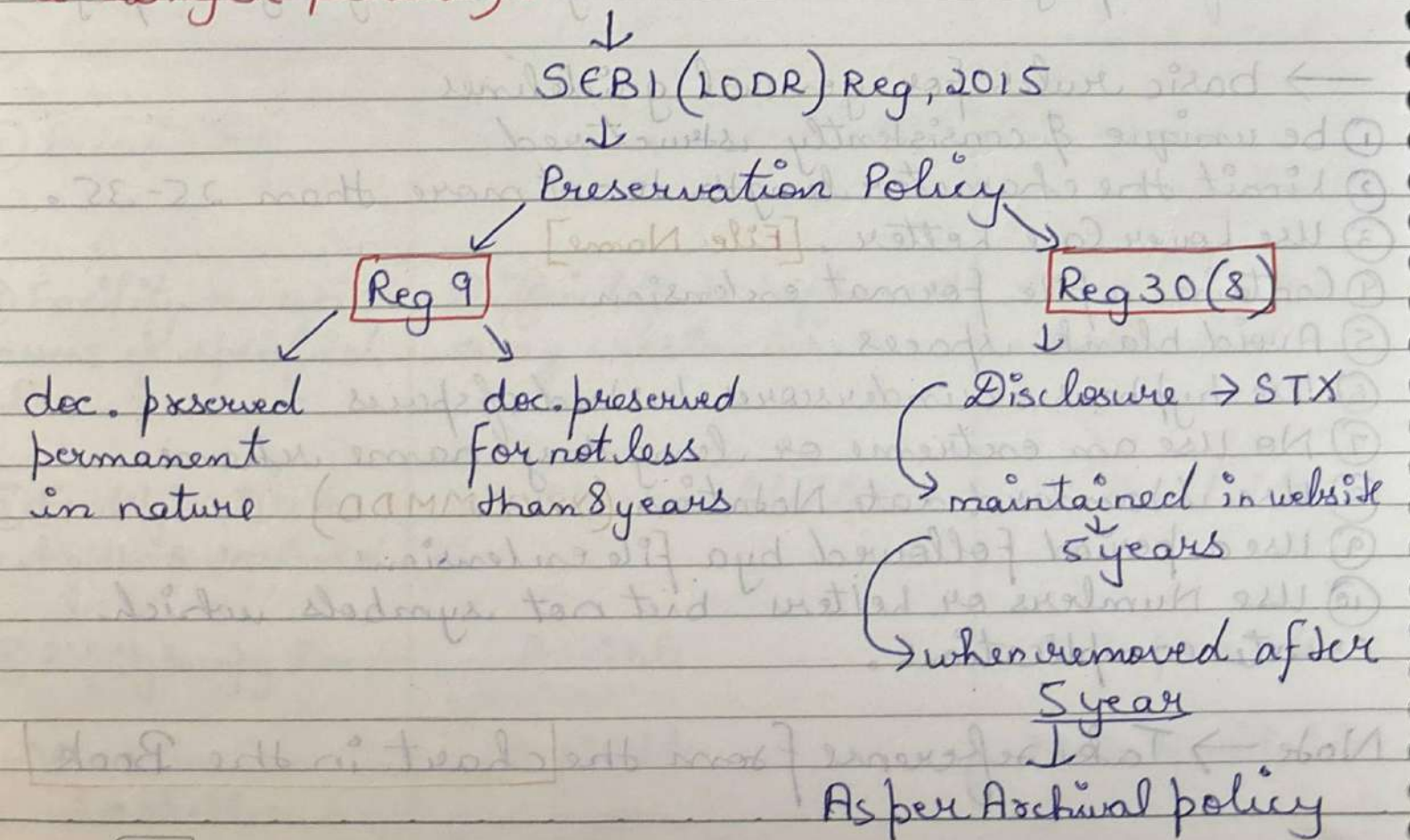
- ① be unique & consistently structured
- ② limit the character length to not more than 25-35.
- ③ Use Lower Case letter. **[File Name]**
- ④ Contain a file format extension
- ⑤ Avoid blank spaces
- ⑥ Use hyphens or underscores instead of spaces
- ⑦ No Use an extreme or lengthy name scheme.
- ⑧ Use standard date notation **(YYYYMMDD)**
- ⑨ Use a period followed by a file extension
- ⑩ Use Numbers or letters but not symbols which create complications.

Note → Take reference from the **chart in the Book**

→ Safety & Retrieval of Records



→ Preservation of Records (means Implementation of strategies to manage records & archives for a longer period).



→ Factors to be considered for the archival policy of the company.

① Analysis & Restructuring of Existing System

(a) Laws Applicable

(b) Existing system

↓
(c) determine Resource Req.
→ Plan for preservation of records

② Organising & Controlling Records

organising
the Records

Maintain the
Records

③ Providing Physical Protection for Records

Identifying
& Protecting
the Records

Implementing & maintaining
preservation
measures.

④ Managing records in record centre

Developing &
maintaining
records

transferring, storing &
retrieving records.
⊕ disposing of records

⑤ Managing Archives

acquiring &
receiving archives

providing public access
to archives

Supporting & Sustaining the Pre/og adm/ promoting record

→ Preservation of Litigation Documents
 ↳ as per directions/orders of court/Tribunal
 ↳ (If No such order)
 ↓
 for 8 years.

→ Setting up of Record Room
 ↓
 Humidity (30-40%) Temperature Light

→ Privacy of Record & its Control
 ↓

documents which shall be confidential & need complete privacy.

(1)
Customer &
Employee's
Information

(2)
Office Plans,
Office IDs &
Internal Procedure
Manuals

(3)
Contracts &
Commercial Doc.
& Trade
Secrets.

→ Suggestive Steps for Protecting Confidential Info.

- ① Physical Doc. should be stored & locked in Cabinets.
- ② Electronic Doc. should be protected through encryption & password.
- ③ Employees should refrain from leaving Confidential Info. visible on Computers.
- ④ Employee shall not discuss Confidential Info. in Public Access.
- ⑤ Employees should avoid using e-mail to transfer certain sensitive or Controversial Info.
- ⑥ All Confidential Info. should be marked as Confidential.
- ⑦ Before removing old computer, remove data & hardware should be destroyed.

Safety of Records

→ To ensure the quality of Doc., records should be maintained as an evidence to ensure quality:-

- | | | | |
|-------------------------------------|---------------------|--------------|----------------------------------|
| ① Operating Logs | ② Result of Reviews | ③ Inspection | ④ Monitoring of Work performance |
| ↓ | ↓ | ↓ | ↓ |
| Name of Individual work on same Doc | Record of changes | Access | Name of Individual |

Neelgagan

Chapter 3 → Signing and Certification

No.

Date

→ Historical background for Signing & Certification

→ Pre Certification was initially Introduced by

↓
Registration of charges (CHC-1)

↓
MCA → advised → RoC → duly certification of all e-forms

2002
~~2003 & 4~~ → Nagesh Chandra Committee
(High Level Committee on Corporate Audit & Governance)

↓
Companies (Amendment) Bill, 2003 (Sec 383C)

↓
2013 → Pre Certification was Introduced
(C.A. (Reg Offices & Fees) Amendment Rules, 2014
Certification Doc.

→ MOA/AOA

→ Registers

→ Forms filed with RoC

→ Notice of AGM/EGM

→ Attendance Reg. of meeting

→ Minutes of meeting

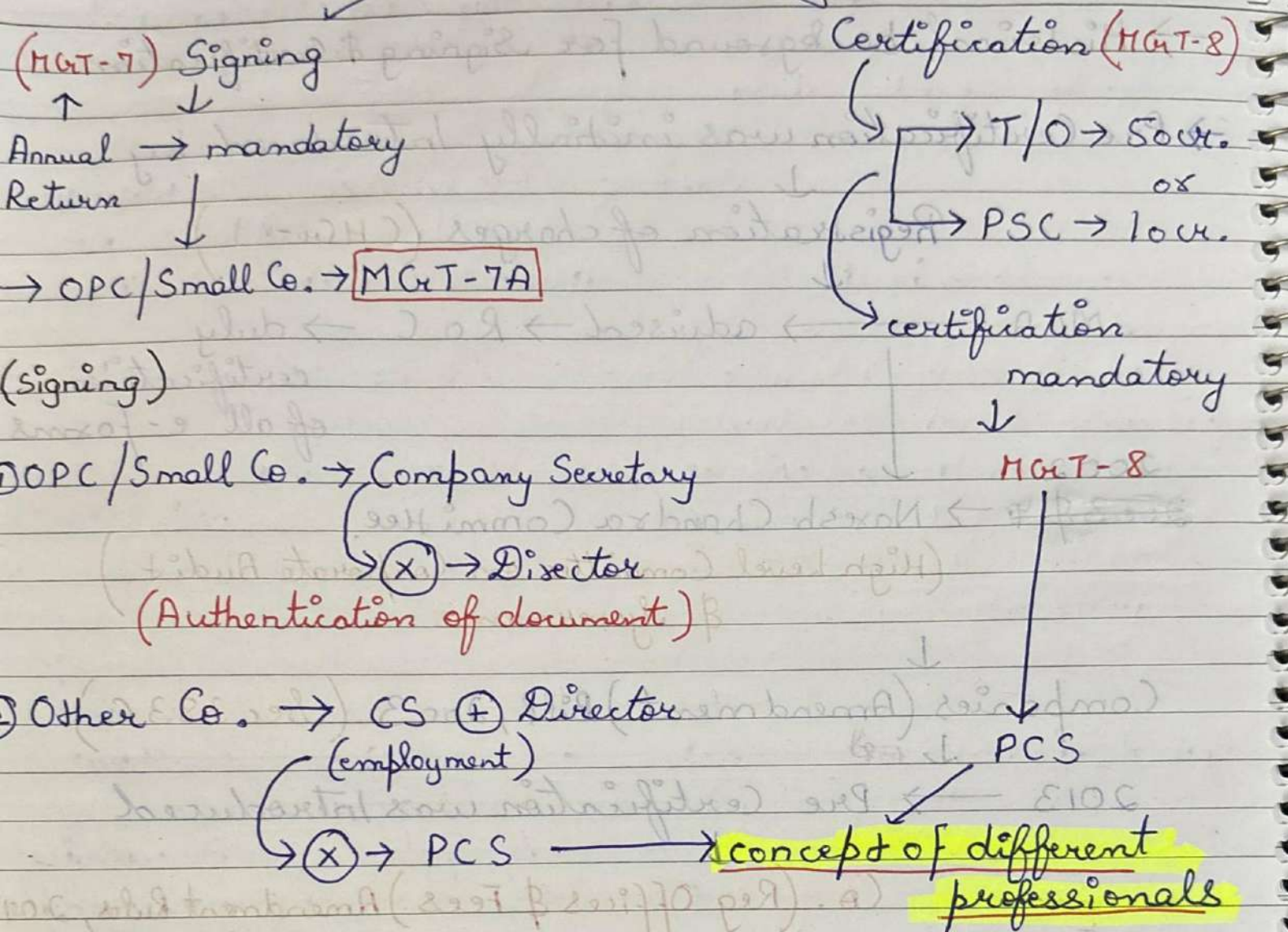
→ Financial Statements

→ Audit/Board Report

→ Any other Corp. Event.

→ Shareholding pattern

→ List of promoter



→ Consequences of Non filing of AR (Sec 92)

- | Director | Company |
|---|--------------------------------|
| Penalty → 10,000 (min) | ① Penalty → 10,000 (min) |
| 100/- per day → 50,000 (max) | 100/- per day → 2,00,000 (max) |
| Director → 3 AR (X) | ② 2 Yrs → AR (X) |
| ↳ 5 years (not eligible to become director) | Inactive Co. |
| ③ Liable to <u>Sec 447/448</u> | ③ 5 Yrs → AR (X) |
| ④ Class Action Suit → <u>Sec 245</u> | ↳ compulsory winding up |

Ques. If a company XYZ has failed to file annual return for last 2 years. What will be the legal course of Action?

Ans. According to section 92 of Companies Act, 2013 every Company should file an annual return in the form MGT-7 within 60 days of its Annual general meeting.

Provided, if Annual general meeting is not held the annual return should be filed within 60 days from the AGM which is supposed to be held.

Provided further that if AGM is adjourned the annual return should be filed within 60 days of date of adjournment.

However, if Annual return is not filed within specified time, the ROC may deliver a Show Cause Notice regarding non compliance.

Herein, the company should file its Annual return ~~for~~ within 30 days of its SCN to eliminate the process of adjudication.

As per the case law of 'Pakya Taki', Non filing / compliance of Annual return is a compoundable offence which states that the company can go in for compounding rather than adjudication.

Consequences of non filing of AR is that every Dir. shall be liable of penalty of Rs 10,000 & max to 50,000 & 2,00,000. & Company should also get the status of Inactive company.

→ Filing of Annual Return
→ Mandatory

→ AGM $\xrightarrow{60 \text{ days}}$ ROC
(MGT-7 / MGT-8)
(MGT-7A)

→ AGM (X)
↓
(date of meeting is scheduled) $\xrightarrow{\text{within 60 days}}$ ROC

→ Adjourn
↓
(date of adjournment) $\xrightarrow{\text{within 60 days}}$ ROC

Sec 92 → delay → compounding

↓
compoundable
offence

→ While signing the Form MGT-7 → CS / PCS / DX.

(facts) certifies
(1) true, correct, complete &
adequate disclosures

(2) facts are compliance
with law

declares (attachments)
(1) All stated / Attachment are
true, correct & No Info. is suppressed
& concealed

(2) All attachments are
complete & legible

Non filing of AR (MGT-7/MGT-7A)

False / Wrong Certification of AR (MGT-8)

Director

Co.

① Penalty → 10,000 - 50,000
(100/- every day)

① Penalty → 10,000 - 2,00,000
(100/- every day)

② 2 Yrs → AR (X)
↳ Not eligible to become Dir. for 5 yrs

② 2 Yrs → AR (X)
↓
Inactive Co.

③ Liable to section (447/448)

③ 5 Yrs → AR (X)
↓
Compulsory winding up

④ Class Action Suit
↓
Sec 245

Co. Act

(Liable For)

Sec 447/
448/449

Sec 92/204

Secretarial
↑
Audit

Penalty → 2 lakh

CS Act

I Schedule

II and Schedule

① Reprimand

① Reprimand

② Remove the name for 3 months

② Permanent Removal

③ Fine → 1,00,000

③ 5,00,000 (Fine)

P.T.O

→ Detailed Scrutiny of Annual Return

① PCS → has to verify the documents (at the time of certification of AR)
↓
detailed verification

② Well established Principle → Auditor
↓
is not expected to carry out 100% checking of every piece of paper generated by company.

③ PCS → cannot be expected to check every entry of all Registers

④ Professionals → ultimately responsible → for doc. certified
↓
2 PC 228

They should be careful enough to safeguard them against any negligence in respect of Inaccurate & Incomplete statement.

⑤ → Certain Techniques of Audit

Sample Checking
(Sampling)

Test Checking
(substantive checking)

→ Guidelines which can be adopted while Audit

Internal Control

Materiality

Risk Assessment

→ Opinion (by way of annexure to his certificate)

I Reservation / **II** Qualified / **III** Observation / **IV** Adverse Remarks

Unqualified

① Compliance with Law (X)

① Compliance with Law (✓)

② Misrepresentation / (✓)
Misstatement (✓)

② Misstatement / (X)
Misrepresentation (X)

→ Points regarding Opinion

① Qualifications should be stated in Bold / Italic

② If PCS is unable to form an opinion regarding any specific matter

↓
he should state clearly the fact of unable to perform

③ Scope of work is limited → PCS should state such limitation in certificate

④ Limitation are Material → PCS state 'absence of necessary Info & record, he is unable to certify compliance in the conditions of Corp. Governance by the Company.'

→ Corporate Governance Compliance Certificate by PCS

① Reg 46(2) → states the compliance with the provision of Corp. Governance

↓
CGCC → (yearly basis)

② Reg 27(2) → quarterly compliance Report on Corp. Governance
→ to STX → within 21 days from end of quarter

③ CGCC → attached with board report (sec 134)

④ certificate can be issued by Statutory Auditor/PCS

→ Imp. Points related to CGCC

① The Co. should provide access to register, Books of A/c, paper to PCS

② The PCS should relate the CGCC of prev. financial year

③ The PCS should communicate to Prev Auditor by reg. post (for the first time)

④ The PCS who issued CGCC shall make himself available at ACIM.

⑤ Any ^①failure or ^②lapse in Issuing CGCC; PCS is liable to

CA, 2013

CS, 1980

→ Mode of Issuing CnCC

① obtain draft report on Corporate

→ ② access to doc / records ④ obtain necessary info & explanation

⑤ If Co. has adopted Voluntary guidelines, PCS shall certify the compliance.

③ certify the compliance of conditions of Corp. Governance & give certificate annexed to board Report

→ Penalty for CnCC

① liable to section 448 → ④ 447.

② liable to section 449

③ liable to sec 23H of SCRA, 1956

↓
when a person fails to comply with any provision of SCRA

Penalty → upto 1 crore rupees, ~~or~~

↪ where no penalty is provided.

④ liable to Sec 23M of SCRA, 1956

↓
when a person contravenes or abets the contravention

Penalty → upto 25 crore rupees, or

Imprisonment → upto 10 years.

Ques. Azra Ltd. has not been complied in filing the Annual Return for more than 2 years. Explain in brief the penal provisions which will apply to the directors of the Company for not filing the Annual Return.

Ans. Acc. to sec 92 of CA, 2013; Annual return should be filed within 60 days from the date of AGM.

In case No AGM is held in a year within 60 days from the date of AGM is supposed to be held.

Following are the consequences for Non filing of AR:-

① Director

(a) Penalty $\rightarrow$ 10,000 Rs per day of Rs 100/- upto 50,000

(b) Disqualification $\rightarrow$ 3 AR (x)

$\rightarrow$ Not eligible for Reappointment for 5 years

(c) He will be liable u/s 447/448

(d) Class Action Suit $\rightarrow$ sec 245

② Company

(a) Penalty $\rightarrow$ 10,000 Rs per day of Rs 100/- upto 2,00,000

(b) 2 AR (x) $\rightarrow$ Co. will be declare as a dormant / inactive Co.

(c) 5 AR (x) $\rightarrow$ Compulsory winding up.

Ques. Is it mandatory to sign Financial statement from the Company Secretary?

Ans. If the Company have Whole time Company Secretary or it is mandatory on the company to appoint whole time Company Secretary. In that case it is mandatory that Financial statements are signed by whole time CS & chairperson authorized by Board of Directors or 2 directors one among whom is managing director.

However, if it is not mandatory to appoint whole time CS, the Financial statements should be signed by Chief Executive officer (CEO) / Chief Financial Officer (CFO).

→ Signing of Financial Statements

→ Section 129 & Schedule III of CA, 2013.

→ Laid before the AGM

→ Sec 2(40) → Financial statements includes:-

- balance sheet
- P&L A/c (where Co. carrying any Activity not for profit)
↳ Income & Expenditure A/c
- Cash Flow statement
- Statement of change in equity
- Explanatory Note

Sec 134(1) → FS including CFS (approved by BOD)

↓
Signed by

Chairperson (authorized by BOD)

(OR)

(+)

Chief Financial Officer
/ Company Secretary
/ Chief Executive Officer

Two Director (MD, if any)

→ Adoption & Circulation of A/c

21 clear day
Notice

Financial Year
End

within 6
months

ACM

AOC-4

within 30 days

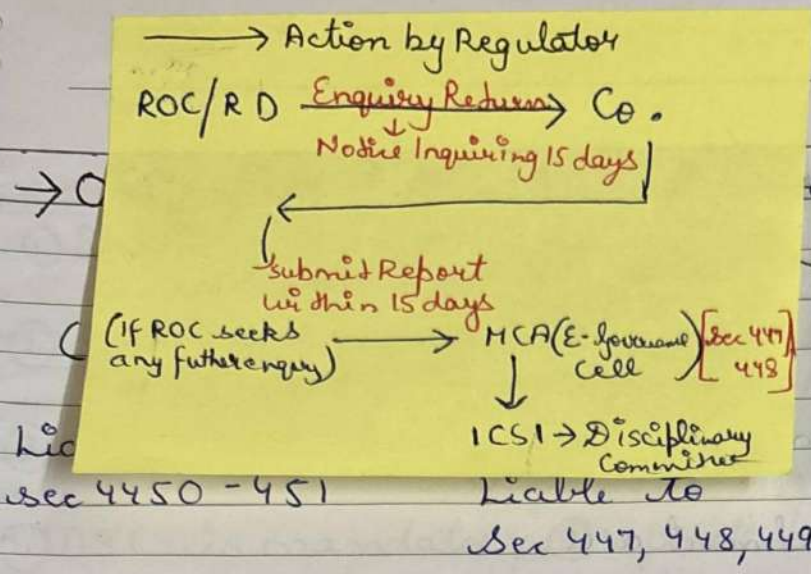
ROC

Financial Statement
adopted

→ Penalty for Contravention the Provision of Financial Statement

Company → up to 3 lakh rupees

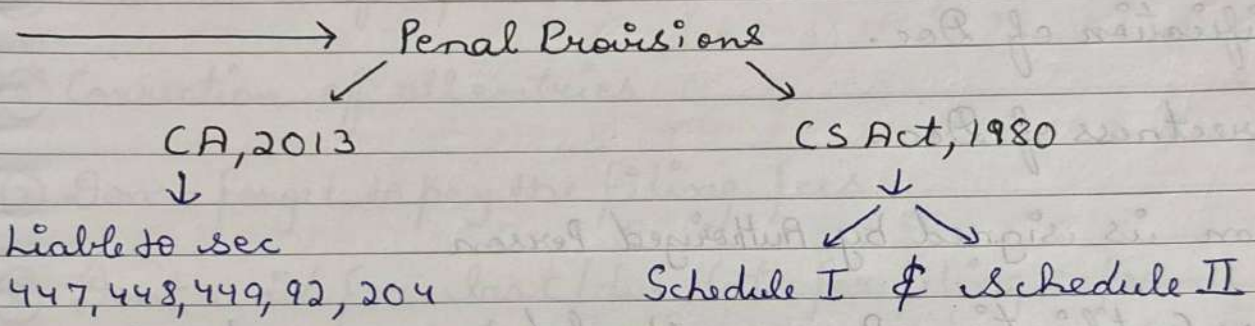
Officer in default → up to 50,000 rupees



related to Financial Statement

Certifying Professional

- Reputation is affected
- can create a bad rift with ICSI



→ Cases regarding Professional Misconduct

① CS → committed Proff. Misconduct → BOD have ⊕ Therefore, not resigned met for 4 times a year

↓

& issued CoCC

② CS → guilty → Failed to disclose illegal allotment of equity share in AGM

↓

while issuing CoCC

→ Preparations before Pre Certification.

Ensure

- ① Letter of Engagement
- ② Maintain a physical/scanned of all doc.
- ③ All relevant doc. & attachment are legible & visible
- ④ Verification of Doc.
- ⑤ Correctness of Doc.
- ⑥ Form is signed by Authorized Person
- ⑦ Before Certification, Person should be aware about relevant provisions followed by the Company.

→ Common Errors noticed in E-filing

- ① DSC is not registered/expired
- ② Payment of challan has not been done before the expiry date
- ③ Duplicate Payment have been made
- ④ Excess size of the Form
- ⑤ Approval status of e-form is not verified
- ⑥ Outdated version of e-form
- ⑦ Incorrect particulars of e-form
- ⑧ Older version of Adobe & Java

→ Consideration in filing e-forms

- ① Before filing → go through the Instruction Kit.
- ② Ensure latest version of the e-forms.
- ③ DIN is mandatory ⊕ updated
- ④ DSC is mandatory ⊕ updated
- ⑤ Attachment of e-forms should be complete ⊕ page numbered
- ⑥ Correction of all entries
- ⑦ Don't forget to pay the filing fees
- ⑧ Don't wait for last/due date for filing e-forms
- ⑨ As Trusted Advisor of Co. → keep track record of reportable events of the Co.
- ⑩ Use Various Inbuilt Utilities like → 'PREFILL' ⊕ 'CHECK' ⊕ 'PRESCRUTINY'

P.T.O

→ Register of Certification / Scope of Peer Reviewer

- ① Signing of Annual Return (MGT-7/7A)
- ② Certification of Annual Return (MGT-8)
- ③ Secretarial Audit (MR-3)
- ④ Internal Audit Sec 138
- ⑤ ~~Reg 24A~~ Reg 24A of SEBI (LODR) → Material Unlisted Subsidiary
- ⑥ Reg 40(9) of SEBI (LODR) → Transfer Certificate
- ⑦ C&CC → quarterly → within 21 days of end of quarter
- ⑧ Internal Audit of Stock Broker
- ⑨ Internal Audit of Depository Participant
- ⑩ E forms / Other forms of CA, 2013 / LLP (certification)
- ⑪ Compliance Certificate → Yearly

→ Various forms

- ① MGT-7 ⇒ Signing of Annual Return
- ② MGT-8 ⇒ Certification of Annual Return
- ③ MGT-7A ⇒ OPC / Small Company
- ④ MGT-1 ⇒ Register of members
- ⑤ MBP-1 ⇒ Disclosure of Interest of director
- ⑥ AOC-4 ⇒ Financial statement
- ⑦ AOC-4CFS ⇒ Consolidated financial statement
- ⑧ ADT-1 ⇒ Appointment of Auditor
- ⑨ MR-3 ⇒ Secretarial Audit
- ⑩ DIR-3 ⇒ DIN registration
- ⑪ DIR-3 KYC ⇒ DIN → KYC
- ⑫ CHG-1 ⇒ Application for reg. of charge
- ⑬ CHG-2 ⇒ Certificate of charge
- ⑭ CHG-3 ⇒ Modification of charge
- ⑮ CHG-4 ⇒ Satisfaction of charge
- ⑯ CHG-9 ⇒ Charge for debentures
- ⑰ INC-21 ⇒ Incorporation of company
- ⑱ INC-22 ⇒ Register office
- ⑲ INC-28 ⇒ Order of central govt.
- ⑳ INC-20A ⇒ Filed prior to the commencement of business
- ㉑ DIR-6 ⇒ change in particulars of Director → filed to MCA/ROC
- ㉒ DIR-12 ⇒ appointment of Dir. & KMP (V. Imp)
- ㉓ MR-1 ⇒ Appointment of manager / MD / WTD
- ㉔ MR-2 ⇒ Remuneration or Increase in remuneration of manager / MD / WTD
- ㉕ MSC-1 ⇒ Filed to take the status of dormant Co.
- ㉖ MSC-3 ⇒ Return of dormant Co.
- ㉗ MSC-4 ⇒ Application for active Co.
- ㉘ NDH-1 ⇒ Return of statutory compliance
- ㉙ NDH-3 ⇒ Half Yearly Return
- ㉚ GNL-1 ⇒ application to ROC

- ③① GNL-3 → details of person specified as O/D
- ③② PAS-3 → return of allotment (V. Imp)
- ③③ SH-7 → alteration of share Capital (V. Imp)
- ③④ HGT-14 → resolutions to ROC

→ SEBI regulation (Forms)

- ① Reg 40(a) → certificate that certifies all certificates have been issued within 30 days from the lodgement of transfer.
 | filed
 ↳ within 30 days from the end of FY
- ② Reg 24A → material unlisted subsidiary
- ③ SEBI (DP) Reg → Reg 55A → reconciliation of total Issued Capital (Quarterly)
 ↳ Reg 76 → reconciliation of share Capital Audit

→ Limited Liability Partnership Act

- ① Form 3 → LLP Agreement & changes
- ② Form 4 → Change in DP or partners
- ③ Form 11 → Annual return of LLP
- ④ Form 15 → Reg. office

→ Pre Certification

↳ means certification of correctness of any document by professional including PCS

→ It was Introduced to avoid delays & eventually evolved to check the correctness of documents.

Rule 8(1) (2) & (5) → Authentication of e-forms on behalf of company by Dr. / MD / CS.

Rule 8(6) → Scanned Doc. must be of original signed Document.

↳ Scanned Doc. must not be left blank

Rule 8(7) →

↓

Person signing & certifying shall ensure attachments are Complete

→ Importance of Pre Certification

① Ensure Correctness

② Pre-emptive Step

③ Aids good governance

④ Self regulation

→ Corp. Governance Principles → SEBI (LODR)

① Rights of shareholders (V. Imp)

- (a) be informed
- (b) voting right
- (c) Procedure to vote
- (d) Questions to BOD
- (e) Grievance Redressal
- (f) Protection of right of Minority Shareholders.

② Timely Information

- (a) Date/Time/Venue of General meeting
- (b) Capital Structure
- (c) Rights of shareholder

③ Equitable Treatment (V. Imp)

- (a) same series of class shall be treated equally
- (b) Shareholders participation in nomination & election of members of board of directors
- (c) framework to avoid Insider Trading
- (d) Voting rights by Foreign Shareholder
- (e) Unnecessarily no difficulty created to cast vote.

④ Role of stakeholders in Corp. Governance (V. Imp)

- (a) Respect the right of stakeholders created by law or through mutual Agreement.
- (b) provide access to relevant info. on regular basis.

- (c) effective redressal for violation of rights
- (d) effective whistle blower policy which enables the stakeholders to freely communicate their concerns about unethical practices.

⑤ Disclosure & Transparency

- (a) Minutes of the meeting shall be maintained expressing the dissenting opinion.
- (b) equal timely & cost efficient access to relevant info.
- (c) Information shall be prepared & disclosed as per the given standards.

→ Responsibility of BOD

↓ Disclosure of Info

- ① Board/KMP should disclose if they have any any material Interest in any transaction.
- ② Ensure transparency to Shareholders & maintain good Corp. Governance.

↓ Functions / Responsib of BOD

- ① Monitoring Corp practices in a Co.
- ② Selecting, monitoring & replacing KMP
- ③ Aligning KMP & remuneration of BOD in the Interest of the Co.
- ④ Transparent nomination in the panel of BOD with diversity, thought, experience & knowledge, gender.
- ⑤ Integrity of Accounting & Financial system of the Company
- ⑥ Set a Corp. Culture & values for the Org.
- ⑦ Act in good faith with due diligence & care where decision of BOD affect group of S/H differently. Shareholders should be treated equitably.
- ⑧ Sufficient No. of NED should be assigned for exercising Independent Judgement.
- ⑨ Maintain High Ethical standards & take into A/c of Stakeholders

Question

How the scrutiny of Annual Return takes place & what are the guiding principles for scrutiny of Annual return?

According to section 92 of Companies Act, 2013 every Company should file its annual return to RoC within 60 days from the date of its Annual General meeting.

At the time of scrutiny of its Annual Return some points should be remembered:-

① PCS has to verify all the related doc. before certification.

② It is a well established principle that an auditor is not expected to carry out 100% checking of every piece of paper.

③ There are certain techniques for scrutiny
↳ sample checking & test checking

Whereas, there are some guiding principles related to the scrutiny of Annual Return

① Internal Control

② Materiality

③ Risk Assessment.

No.

Date

Chapter → Legal framework governing Company Secretaries

No.

Date

→ Introduction

GDCA (Government diploma in Company Secretaryship)

Companies Act, 1956 → (Sec 25) → ICSI → company (not for profit)

ICSI Act, 1980 → statutory body

CS are recognized as KMP → Companies Act, 2013

→ Functions & duties of Company Secretary

① compliance officer ⊕ In house legal expert

② chief advisor to Board of Directors

③ CSR / BRSR / ESG (responsibility related to)

→ Section 205 of Companies Act, 2013

Rule 10 of Co. (App. & Remuneration of Managerial Personnel) Rules, 2014

→ CS → must perform the following functions & duties

- ① To report to BOD about compliance applicable to the company
- ② To facilitate the convening of meeting & attend board meeting & general meetings.
- ③ To obtain approval from the Board, GM & Govt.
- ④ To represent before various regulators
- ⑤ To assist the BOD in conducting the affairs of the company
- ⑥ To advise BOD to ensure Good Corp. Governance.
- ⑦ Such other duties assigned by BOD
- ⑧ Discharge such other duties which have been specified by the Act.
- ⑨ To ensure company Compliance with SS.

P.T.O

Role of Company Secretary

→ Reg 6 → SEBI (LODR) Reg, 2015

CS → as Compliance Officer

(a) Ensure Compliance with regulatory provision

(b) Coordination & Reporting to BOD, STX & depository about various compliance.

(c) Ensure that procedures followed are correct & authentic.

(d) Monitor the Grievances Redressal Mechanism.

→ Company Secretary as part of Senior Management

Reg 16 (D) → SEBI (LODR)

→ Senior Mgmt → Officer or personnel (one level below of MD, CEO, WTD, manager)

member of core mgmt team

excluding BOD

⊕ shall include CFO and CS (functional heads)

→ Company Secretary

employment

Practice

→ Associates & Fellow

→ Associate Company Secretary (Sec 5)
↓
qualifications

① has passed examination by dissolved company ⊕ practical training

↓
as prescribe by dissolved company

② has passed examination ⊕ practical training

↓
as prescribe under these regulations

③ has passed such other examinations

⊕ complete training o/s India

↓
recognised by c/g or ICS

④ has reg himself as a student of Institute of Chartered Secretary (ICS) on or before 31st Dec, 1972

⊕ has passed the final examination

⊕

passed the req. practical experience

of Institute of Chartered Secretaries, London (ICS)

or training

⑤ is an Indian Citizen and PROI

⊕ member of ICS

⊕

passed the examination

⊕ training in

India or o/s India

→ Fellow Member (FCS) → Sec 5

→ ACS ⊕ continuous practice for 5 years as CS

→ Reg 4(2) of CS Reg, 2020

↓

No person shall be entitled to be FCS unless he:-

(a) was FCS or Honorary FCS of the dissolved company

(b) was admitted as FCS under earlier regulations.

(c) is an ACS ⊕ has been in continuous practice in India as CS for min 5 yrs

(d) is an ACS → continuous period of not less than 5 years

⊕

possess such qualification determined by ICSI.

→ No person shall be admitted as FCS

①

(a) has been found guilty of any professional or his name has been removed from Register or Imposed fine

③

→ in preceding 5 years from date of Application

(b) has not completed such min No.s of PDCH determined by Council.

→ Certificate of Practice ⊕ Deemed to be in Practice
 of ICS Act, 1980

Sec 2(d) → 'certificate of practice'

↓
 means a certificate granted to holder to practice as Company Secretary in or o/s India.

Sec 2(2) of CS Act, 1980 → 'deemed to be in practice'

↓
 means when an Individual or partnership with one or members of ICS or such other professionals in consideration of remuneration received

a) Engages himself in the practice of CS in relation to a Company.

b) Offers to perform services → promotion, forming, incorporation, amalgamation, reconstruction, reorganisation

c) Offers to perform services as may be performed by

(i) share transfer agent

(ii) an Issue house

(iii) Share & Stock broker

(iv) Secretarial Auditor or consultant

(v) an adviser to a company on mgmt or legal matters

(vi) as an Authorized Representative w.r. to filing, registering.

d) Holds himself out to as Company Secretary in practice.

e) Renders professional service with respect to the matters of PCS

f) Renders such other services opinion by Council which are may be rendered by PCS.

→ Register of Members shall include following →

- (a) his full name, date of birth, domicile, residence or professional address.
- (b) membership No. and date on which name is entered.
- (c) his qualifications
- (d) whether he holds 'certificate of practice'.
- (e) e-mail ID, phone No., Telephone No.

→ Any change to these details → communicated within 30 days of such change

→ Removal from Register of Member (Sec 20)

- (a) who is dead
- (b) from whom a request has been received to that effect.
- (c) has not paid any prescribed fees
- (d) who is found to have become subject to any of the disabilities v/s 8. (PM) → Prof Misconduct & any other
- (e) for any other reason he ceased to be entitled to have his name on ROM.

→ Certain Provision relating to Misconduct under the CS Act, 1980

Case → ICAI v. B. Mukherjee

↓

Supreme Court held that if professional prima facie found to be under misconduct which is not specified either Schedule I and II, it would still be open for the council to enquire against the members.

→ Followings are the examples :-

- (a) when a CS makes a material misrepresentation
- (b) when CS uses the service of apprentice for purpose other than professional practice.
- (c) conviction by court or any law.
- (d) wrong publicity causing damage to clients
- (e) furnishing false declaration to Institute or Regulator.
- (f) Non Compliance with the guidelines of Council.
- (g) where he brings disrepute to the profession or Council.

Schedule I

Part I → Professional Misconduct in relation to Practising Company Secretary (PCS)

↳ Clause I → Allows any person to practise in his name

↳ Except → only a person working as a partner can use his name.

person who share
profit & Loss

⊕

take decision
together.

Clause 2 → Pays any Commission / brokerage to other person out of his profit to a person who is not a member of Institute.

Clause 3 → Accepts profit of a work of a person who is not a member of Institute.

Clause 4 → Entering into a partnership with a person who is not a member of the Institute or any other related professional body.

Clause 5 → Secures business unethically through a person who is not an Employee ⊕ who is not a partner or through means which are not permitted.

Request/Convince

Clause 6 → Solicits a client through circular / advertisement etc.

→ Advertisement is not permitted by ICSI

Clause 8 → Communicating

- ① Signing / Certification of AR.
- ② Issuance of Secretarial Audit Report
- ③ Issuance of Certificate of Securities Transfer.
- ④ Conduct of Internal Audit
- ⑤ Reconciliation of Share Capital
- ⑥ Certification of Corp. Governance.

↓
provides guidelines according to which Advertisement should be done.

professional achievements
⊕ services
other than CS
cards / Prof. Documents

→ Advertisement is prohibited by ICSI

⊕

→ what amount to advertisement depends on case to case.

→ Example →

- ① Membership of ICSI (✓)
- ② Membership of Bar Council (✓)
- ③ Company Law Consultant (X)
- ④ Income Tax Consultant (X)

Clause 8 → accepts the position without communicating to the previous Auditor.

Clause 9 → Accepts the fees on the basis of percentage of profit / when the fees is contingent upon findings

→ dependent

Clause 10 → Engages in any business / profession other than that permitted by ICSI.

-
- ① Authoring books & Articles.
 - ② Holding offices of M.Ps / M.L.As / M.L.Cs.
 - ③ Teaching Assignment under the Coaching Organisation (but only for Avg. of 3 Hours a day).
 - ④ carrying out valuation of paper.
 - ⑤ Acting as editor of professional journal.
 - ⑥ Acting as Justice of peace, Special Executive Magistrate

Clause 11 → Allows a person who is not a member of Institute to sign on his behalf.

→ Part II → Professional Misconduct in relation to members of Institute in service

↓
employment

→ Indicates 'contract of service' & not 'contract for service'

Four Factors (Indicates Contract for Service)

- (a) Master's power of selection of his servant
- (b) payment of wages or other remuneration
- (c) master's right to control the method of doing the work.
- (d) master's right of suspension or dismissal.

Clause 1 → Pays / Agrees to Pay person a part of his emoluments.
↳ profit

Clause 2 → does not secretly benefit from the employment.

→ Part III → Professional Misconduct in relation to a members of Institute generally.

Clause 1 → Not a fellow of the Institute but act as a fellow.

Clause 2 → Does Not provide Information asked by the Council / Committee of Council.

Clause 3 → Provides Information that is false in Advertisement.

→ Part IV → Other Misconduct in relation to members of the Institute

Clause 1 → Guilty of Professional misconduct if members are found guilty for any civil / criminal proceeding punishable with punishment not exceeding 6 months.

Clause 2 → Brings disrepute to the profession by his Actions.

Note → Following may amount to misconduct under Clause 2 of Part IV

- ① Sending an e-mail to No. of members criticising the decision of Council.
- ② Discussing through e-forums → Failure of Council / President / secretary
↓
by using derogatory & filthy language
- ③ Writing letter's in an aggressive / derogatory & filthy language to MCA/ROC/RD
- ④ Arranging DHARNA / agitations at the Govt / Institute offices
- ⑤ Instigating students or other members by creating a pandemonium in or around Institute related to syllabus / training / examination etc.
- ⑥ Tampering with the books of A/c / Minutes of meeting

P.T.O

Second Schedule

Part I → Matters dealt by disciplinary Committee for the matters of PCS

Clause 1 → Discloses Confidential Information of the client without the permission of client.

Clause 2 → Expresses opinion on a matter on which his firm has a substantial Interest

Clause 3 → Fails to disclose a material Information in the report, known to him.

Clause 4 → Fails to report a material misstatement to him.

Clause 5 → Grossly Negligent in conducting his professional duties.

Clause 6 → Fails to obtain sufficient Info for expressing Opinion.

Clause 7 → Fails to keep money of his client in a separate bank A/c.

Clause 8 → Fails to obtain sufficient Info. ^{or} exception necessary for expression of an opinion.

Clause 9 → Fails to invite attention to any material departure relating to secretarial practice

Clause 10 → Fails to keep money of client ^{man fee} other ~~the~~ in separate bank A/c

Part II → Clause I → Schedule II

↳ Display of particulars on website

↳ Approving Firm's Name

↳ Compulsory Attendance at PDP

↳ Dress Code

↳ Issuing Compliance Certificate

↳ Issue of Advertisement

No.

Date

conduct in relation to

provision of this Act/Rules/
rule

discloses any Confidential Information
acquired at the time of Employment.

Clause 3 → Includes in any Information any
statement / declaration submitted to the Council
which is false.

Clause 4 → Embezzlement ^{→ Theft} of money received in
Professional Capacity

→ Part III → Other Misconduct in relation to
members of Institute generally.

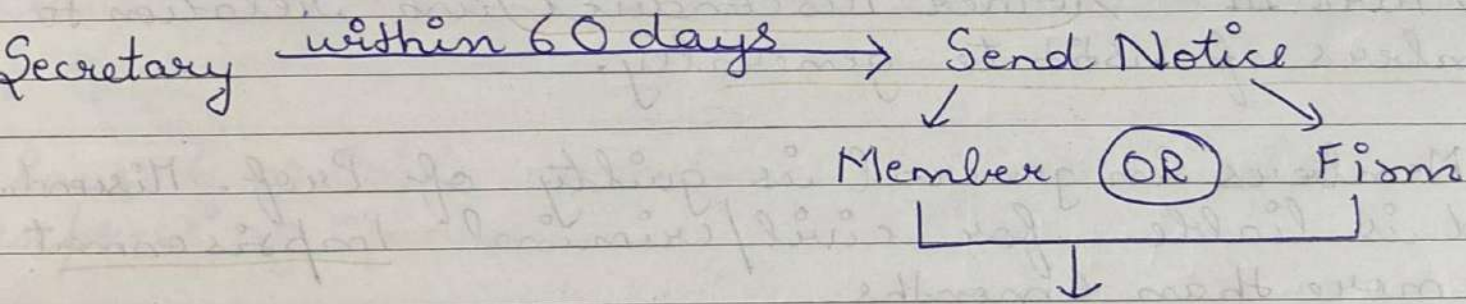
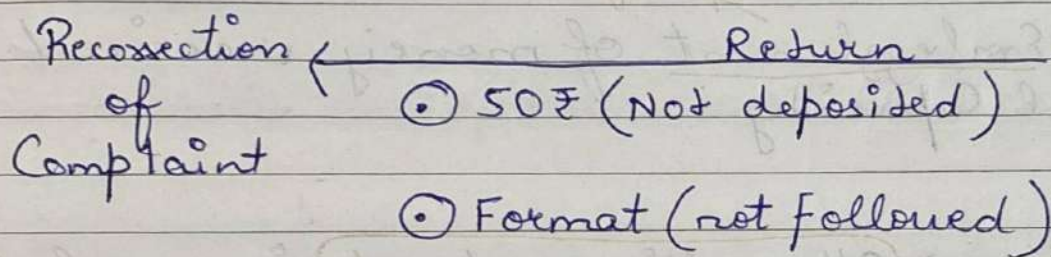
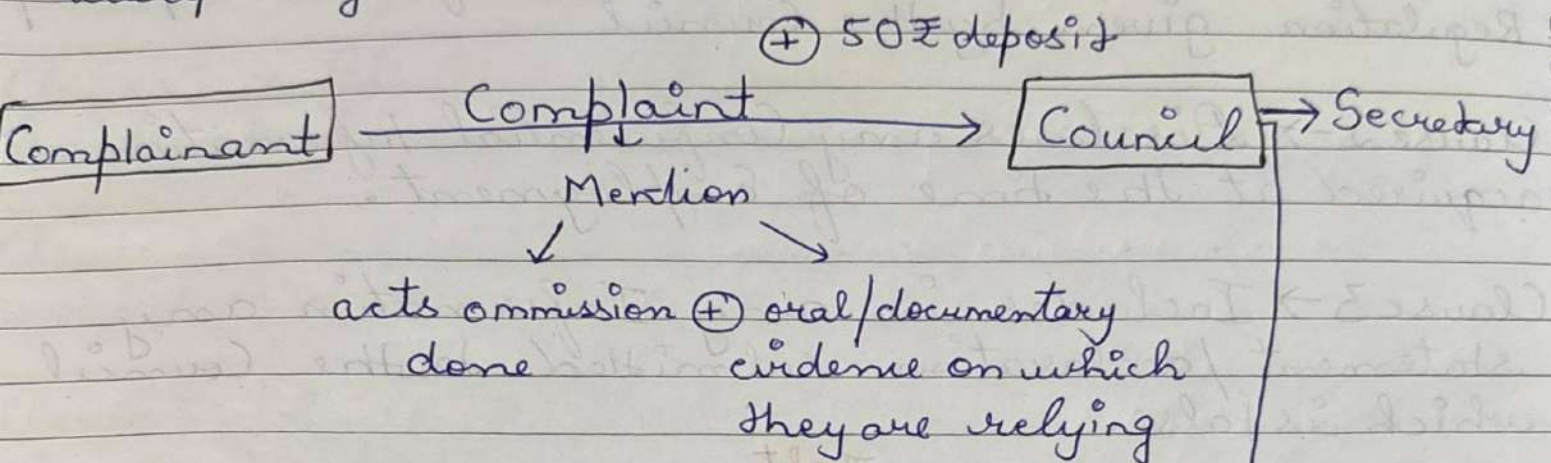
↳ Members in general is guilty of Prof. Misconduct
and is liable for civil/criminal Imprisonment
for more than 6 months.

→ Next page → Investigation of
Complaint by
disciplinary Committee

(Reg 18 of CS Reg, 1982)

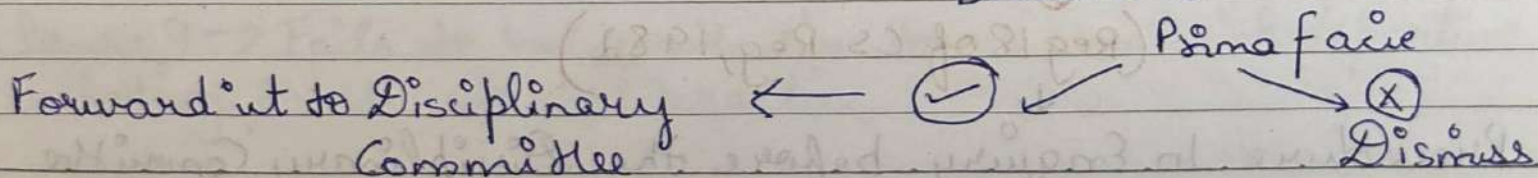
↓
Procedure In Enquiry before the Disciplinary Committee

→ Investigation
of Complaint by
Disciplinary Committee



Submit written statement
in 14 days to Secretary

after examining
the documents if he
believes →



Disciplinary Committee

1) Call for Evidence

2) Examine Witness on Oath

3) Affidavit

→ Members can represent
 ↗ Individually
 ↘ or through Legal Representative

(Reg 19) → [CS Reg, 1982] Submit the Report to Council

further
Inquiry

opinion

guilty of (-)
misconduct

guilty (x)

OOBH to the
parties

pass the
order

Pass the
Necessary
Order (+)
Commission

→ Disciplinary Mechanism

Disciplinary Directorate
Director of Discipline →

conduct meeting

↓
If Prima facie case

↓
Forward matter

I Schedule

[Board of Discipline]

→ summary disposal procedure will be followed

↓
oobh to the member

ask

↓
Director of discipline for further Inquiry / Investigation

order

- 1) Reprimand the member
- 2) Temporary Removal for not more than 3 months
- 3) Fine upto 1 lakh

II Ind Schedule

[Disciplinary Committee]

↓
(Composition)

→ Presiding → President / Vice President of Council
Officer

→ 2 members to be nominated by c/g

→ 2 members to be nominated by the members.

order

- 1) Reprimand the member
- 2) Permanent suspension from Register of Member
- 3) Fine Up to 5 lakh

→ Powers are similar to Civil Court (SUD)

- ① Summon & examining of witness on oath
- ② Issuing Commission
- ③ Issuing Inquiry
- ④ Discovery of Documents & Records
- ⑤ any other order that the Court may deem fit in the Interest of Justice

→ Appeal

Board of discipline

Disciplinary Committee

within 90 day (by member / Disciplinary Directorate)

to appellate Authority established as per ICAI, 1949

→ ① confirm / modify / set aside the order

② Impose / Reduce the Penalty

③ Order for further Inquiry / Investigation

→ UDIN (Unique Document Identification Number)

- ① It is a 17 digit system generated number.
- ② It is a unique number for Identification of documents attested by Company Secretary in Practice
↳ which shall be generated at the time of certification.
- ③ It can be generated seven days in advance of such signing
- ④ UDIN guidelines have been issued to:-
 - (a) Enable the stakeholders to verify the documents
 - (b) Prevent counterfeiting of various attestation
 - (c) Provide ease of maintaining the Register
 - (d) Ensure Compliance of the guidelines
 - (e) Auto prefill details of certification

P.T.O

→ ECSIN (Employee Company Secretary Identification Number)

- ① It is an 18 digit system generated number (alphanumeric)
- ② It is a number which is generated for Identification of CS in employment at the time of appointment as well as ceasing from the Company.

→ ICSI (Guidelines for advertisement by), 2020
Company Secretary)

→ It becomes effective from 1st April, 2020.

→ Activities permitted For advertising

- ① Display scope of work on his website
- ② Use of social media like Facebook, Instagram, LinkedIn.
- ③ Appearing on Local radio or television.
- ④ Giving speeches/lectures on seminars, conferences, programmes.
- ⑤ Holding professional seminars, conferences, workshops.
- ⑥ Sponsoring any event, seminars, conference etc.
- ⑦ Professional Updates & write ups in any mode.

→ No advertising shall be made in

- ① Violations of provisions of CS Act, 1980
- ② false or misleading
- ③ claim superiority over any other Company Secretary.
- ④ refers the Company Secretary in terms of such as 'specialist', 'expert', 'better' or 'cheapest'.
- ⑤ not contain any humorous slogan.
- ⑥ not be designed for 'pleading customers' → which might mislead customer or third parties.
- ⑦ containing fabricated or false testimonial concerning the Company Secretary.

✓ Note

CS should not list her services on Olx, Urbanclap, JustDial, Quikr.

Professional Liabilities applicable on Company Secretary

- ① avoid Conflict of Interest ④ CS be Independent
- ② liable in case of officer in Default.

Liabilities of Company Secretary in two ways :-

Statutory Liabilities

- ① Maintenance of all records & documents of Company.
- ② Arranging a statutory meeting.
- ③ Issue Share Certificates, Dividend Warrants, bonus share certificates.
- ④ Preparation of minutes

Contractual Liabilities

- ① Liable for breaching or exceeding its authority
- ② Liable for frauds
- ③ Liable for disclosing secret information
- ④ Liable to abide by all the terms & condition of the contract.
- ⑤ Protect the Interest of the company.

No.

Date

Chapter → Values, Ethics and Professional Conduct

No.

Date

→ Introduction

→ India has a very strong history in terms of Values & Ethics

└→ Shrimad Bhagvad Gita

↓

Ramayana

↓

Arya Charakya (Charakya Neeti)

→ The term 'ethics' has been derived from the greek word 'ethos'

└→ which refers to character or customs or accepted behaviour.

→ Types / Branches of Ethics (Imp)

① Descriptive Ethics → 'What do people think is right?'

② Normative Ethics → 'How should people act?'

③ Meta Ethics → 'What does right even mean?'

④ Applied Ethics

└→ How do we take moral knowledge & put into practice?

→ Difference b/w Ethics and Values?

Ethics	Values
① It is a system of moral principles	① It is the stimuli of our thinking
② It is consistent in nature.	② It is different for different persons.
③ It compels to follow a particular course of action.	③ It strongly influence the emotional state of mind.
④ It helps to determine what is right or wrong.	④ It defines our priorities for life.
⑤ It decides about incorrect or correct in a given situation	⑤ It tells us what to do or achieve in our life.
⑥ It refers to the guidelines for conduct.	⑥ It refers to the principles and ideals.

Examples

Ethics

- ① Professional Ethics
- ② Business Ethics
- ③ Environmental Ethics
- ④ Social Ethics
- ⑤ Religious Ethics

Values

- ① Respect
- ② Integrity
- ③ Responsibility
- ④ Honesty
- ⑤ Empathy
- ⑥ Courage
- ⑦ Fairness
- ⑧ Diversity
- ⑨ Sustainability

→ Ethical Practices

- ① Beneficence (Jo shi hai vo shi hai jo galat hai vo galat)
- ② Least harm (agar kuch galat karke kuch ka burra ho raha hai its OK)
- ③ Utilitarian (agar kuch galat karke bohot ka acha ho rakh hai)
- ④ Autonomy (people should look themselves first other than judging others)
- ⑤ Justice

P.T.O

→ Professional Ethics

① Ethics arise from 3 main factors

moral
attitudes

education
& use of
knowhow

application
of
standards

② Professionals (being exclusive custodians of expertise)

need to have high ethical & moral values

③ Every Professional should

desire for Introspection & dynamic movement

↓
to be a good professional & promote value & ethics

④ Principles which govern the Professional bodies

↳ ^①Integrity, ^②Professional Independence, ^③Objectivity, ^④Ethical behaviour etc.

→ Companies in India have begun to fulfil CSR either voluntarily or mandatory, respecting social ethics in the following parameters:-

① Complying with the laws

② Aiming to become a sensible corporate citizen

③ Protecting the irreplaceable earth & contributing to preserve the environment.

④ Respecting fundamental human rights

⑤ Disclosing Information in timely manner.

→ Ethical Dilemma

- It is situation in which a different choice has to be made b/w two courses of action.
- In this situation, if we obey one decision then it would bring disloyalty to the other.
- It makes the situation too difficult to choose.

(Example) → CS found his boss is doing money laundering & he/she must decide whether or not to turn him in.

Common Cases of Loss of Ethics & Values

- ① Unclear Policies in some cases
- ② Conflict b/w Organisation & Individual Goal
- ③ Cultural Value & background
- ④ Situation where a decision is taken by a manager.
- ⑤ Dynamic & different human Nature
- ⑥ Pressure from Management
- ⑦ Conflicting Values

→ How to Resolve Ethical Dilemma

- ① Ends based (Select the option that generates most good for most people)
- ② Rule based (Choose a option which creates a universal standard)
- ③ Care based (Choose a option as if you were most affected by your decision).

→ Strategy for Overcoming the Evils

→ Keep governance level at the high standards

Some of the strategies are: -

- ① Satisfaction (To achieve happiness it is essential to be satisfied)
- ② Ends not to justify the means
- ③ Ethical leadership
- ④ Character Professional should consider the Old Idiom (If Character is lost everything is lost)

→ Model Ethical Principles for Company Secretaries

- ① Strive for excellence
- ② Be trustworthy
- ③ Be accountable
- ④ Be courteous & respectful
- ⑤ Be honest, open & transparent
- ⑥ Be competent & improve continually
- ⑦ High Integrity
- ⑧ Be Confident
- ⑨ Set good Examples

→ ICSA (UK) Code of Professional Ethics & Conduct

① Integrity

→ Integrity means being honest, Impartial & Independent.
It includes :-

- acting professionally in your business
- avoiding conflict of Interest
- not accepting or offering Improper gifts
- being respectful
- avoiding disrepute to professional

② High standards of service / professional competence

→ This involves understanding, technical & professional & business development.

It includes

- (a) maintaining professional knowledge and skills as required according to your role.
- (b) acting within your level of competence
- (c) respecting the confidentiality of information acquired through professional relationships

③ Transparency

→ Members are supposed to be clear and open in their business & professional conduct.

This includes:-

- being open and frank
- not being ~~under~~ underhand in any business transaction.
- treating all work as if it is reported in public domain.

④ Professional behaviour

It involves that members act according to the relevant laws, rules & regulations.

→ Disciplinary actions might be taken for non compliance

(a) becoming bankrupt or insolvent

(b) being convicted of an offence which brings disrepute

(c) breaking Institute bye laws or Charter

(d) failing to cooperate with disciplinary investigation

(e) Failing to comply with a decision of disciplinary or

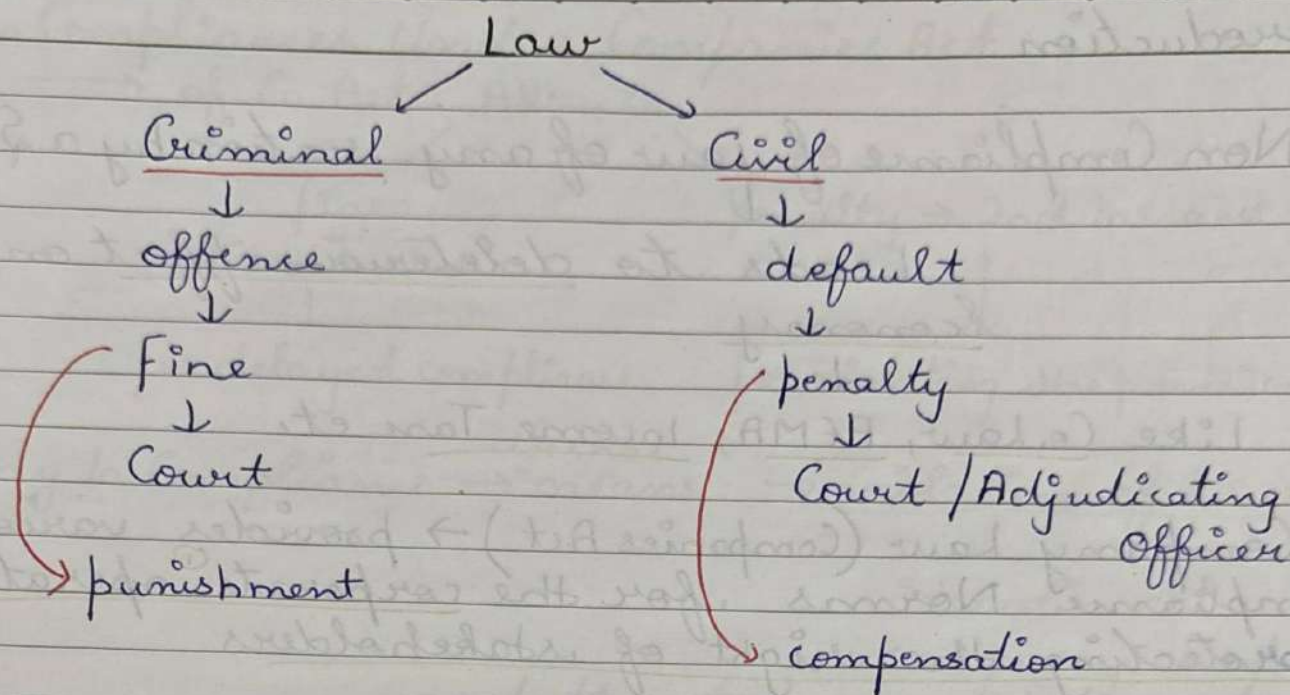
appellate tribunal

- The Singapore Association of the Institute of Chartered Secretaries & Administrators (ICSA)
- Members are required to uphold the Institute's Charter.
- Members shall at all times safeguard the interest of their employees.
- Members shall not enter into any agreement which may be in conflict with the legitimate interest of the employee or client.
- Member shall not use any confidential info. obtained in the performance of their duties for personal gain.
- Members shall ensure the currency of their knowledge, skill and technical competencies.
- Members shall refrain from conduct if they bring disrepute to profession.
- ICSI Code of Conduct

- | | |
|--|------------------------------------|
| ① Fair dealing | ② Professional Opportunity |
| ③ Mistakes of Other Solicitor | ④ Confidentiality |
| ⑤ Inadvertent disclosure | ⑥ Conflicts of Interest |
| ⑦ Undertaking | ⑧ Integrity of evidence |
| ⑨ Client documents | ⑩ Dealing with the Media |
| ⑪ Dealing with other person professionally | ⑫ Anti-discrimination & Harassment |

No.

Date



Fine

- $\rightarrow$ A fine is a penalty of money that a court decides which has to be paid as a punishment for a crime or other offence.
- $\rightarrow$ It has been used as a punishment for a criminal offence.
- $\rightarrow$ It can be only imposed by court of law.
- $\rightarrow$ It is imposed as a punitive measure.

Penalty

- $\rightarrow$ Penalty is a 'punishment imposed for breaking a law, rule or contract' which is imposed by an appropriate authority.
- $\rightarrow$ It has been used to incite civil offence.
- $\rightarrow$ It may be even imposed by Administrative Officer.
- $\rightarrow$ It is used as a compensatory measure for breach of civil obligation.

Introduction

→ Non Compliance of Law of any section by a Society

↓
Leads to deleterious effect on the Economy

↓
Like Co. Law, FEMA, Income Tax etc.

→ Company Law (Companies Act) → provides various compliance Norms for the corporate^① operation & protecting the right of stakeholders.

→ Civil Law

- ① Civil Law deals with Private disputes or defaults.
- ② Its objective is to resolve & redress the dispute or damages between the parties
- ③ Order can be passed for damage & compensation

→ Criminal Law

- ① Criminal Law deals with the offences that are committed against the society.
- ② Its objective is to punish the offender & is reflection of the public policy of a country.
- ③ Order can be passed for fine, imprisonment, life imprisonment & Death Penalty.

→ Non Compliances Under Companies Act
 of Co. Act Attracts

fine
 ↓
 First Instance

↓
 for delayed compliance

penalty → 2nd Instance

↓
 for violating the provisions

→ Delay In Compliance ^{does not} → means → violation of law

↓
is continued until
 company complies

←
 and attracts
 penalty

→ Companies Act also have option for Compounding

↓
can be filed by

✓
 either
 suo motu

↓
 or through
 Regulator

Ques. Company law is a Civil law or Criminal Law?

P.T.O

Answer.

Civil law is a law which deals with Private disputes or defaults, whereas, Criminal law is a law which deals with the offences that are committed against the Society.

Companies Act, 2013 is a mixture of both civil as well as criminal provisions. The civil and criminal provisions under the Act can be identified by non compliance / contravention of its provisions.

The words 'liable to penalties' denotes civil nature of compliance, whereas the words 'punishable with fine and/or imprisonment and/or both' denotes criminal nature of non Compliance.

Therefore, Companies Act is a mixture of both civil as well as criminal provisions.

→ Offences to be Non Cognizable

As per 2(n) of CrP, 1973 ^{any act or omission} punishable by any law for the time being in force.

Offences

Cognizable (1st Schedule)

non Cognizable

→ Non bailable

→ Bailable

→ serious

→ Not serious

→ No Warrant required

→ Warrant required

→ 2(1) of CrP, 1973

Companies Act (all offences)

Sec 439

Non Cognizable

→ Warrant required

Cognizable

→ Fraud

Section 447

20 sections

Exception

→ Warrant required

→ Section 439 provides, all Offences under Companies Act are Non Cognizable

Except → section 212(6) i.e. → those involving fraud

→ An officer may done offence either by connivance (officers are aware of unlawful act. Accidentally or unknowingly)

Section 439 → provide Court will take cognizance of the offence under this Act only if Complaint filed by RoC, a SCHO or member of company, person authorized by c/g.

Provided → SEB → can file complaint for def of securities, Non payment of dividend

Provided → Nothing of this sec shall apply to prosecution by a Co. or officer.

→ Offences to be Cognizable & Non bailable

Sec 212(6) → offences shall be cognizable & no person accused shall be released on bail or on his own bond unless —

① The Public Prosecutor has given an opportunity to oppose the application.

④

② The Court is satisfied for reasonable grounds

→ A person who is under ^① age of 16 years, ^② Woman or ^③ sick or ^④ Infirm

→ may be released on bail if Special Court directs.

→ However, the Special Court shall not take cognizance of this offence except if complaint is made by —

① the Director, SFIO.

② any officer of C/g → authorized by general or special order.

→ If there is Non compliance in a company, fine can be imposed (in case of offence & penalty can be imposed in case of default).

Companies Act, 2013 (Offences)

Co. Involving
fraud

Co. Not Involving
fraud

OR

non-Compoundable

compoundable

Imprisonment
only

fine & Imprisonment

Inspect / Inquiry / Investigation

fine
only

fine or
Imprisonment

fine or
Imprisonment or
both

→ Sec 447 → Punishment for Fraud

Any Act or Omission, concealment of any fact or abuse of position committed with any person or any other person with connivance

- with Intent to deceive
- to gain undue advantage
- injure the Interest of

→ company → SCH → creditors → any other person whether or not there is any wrongful gain or loss.

Amt. Involved

→ At least (10 lakh or 1% of Turnover) whichever is less

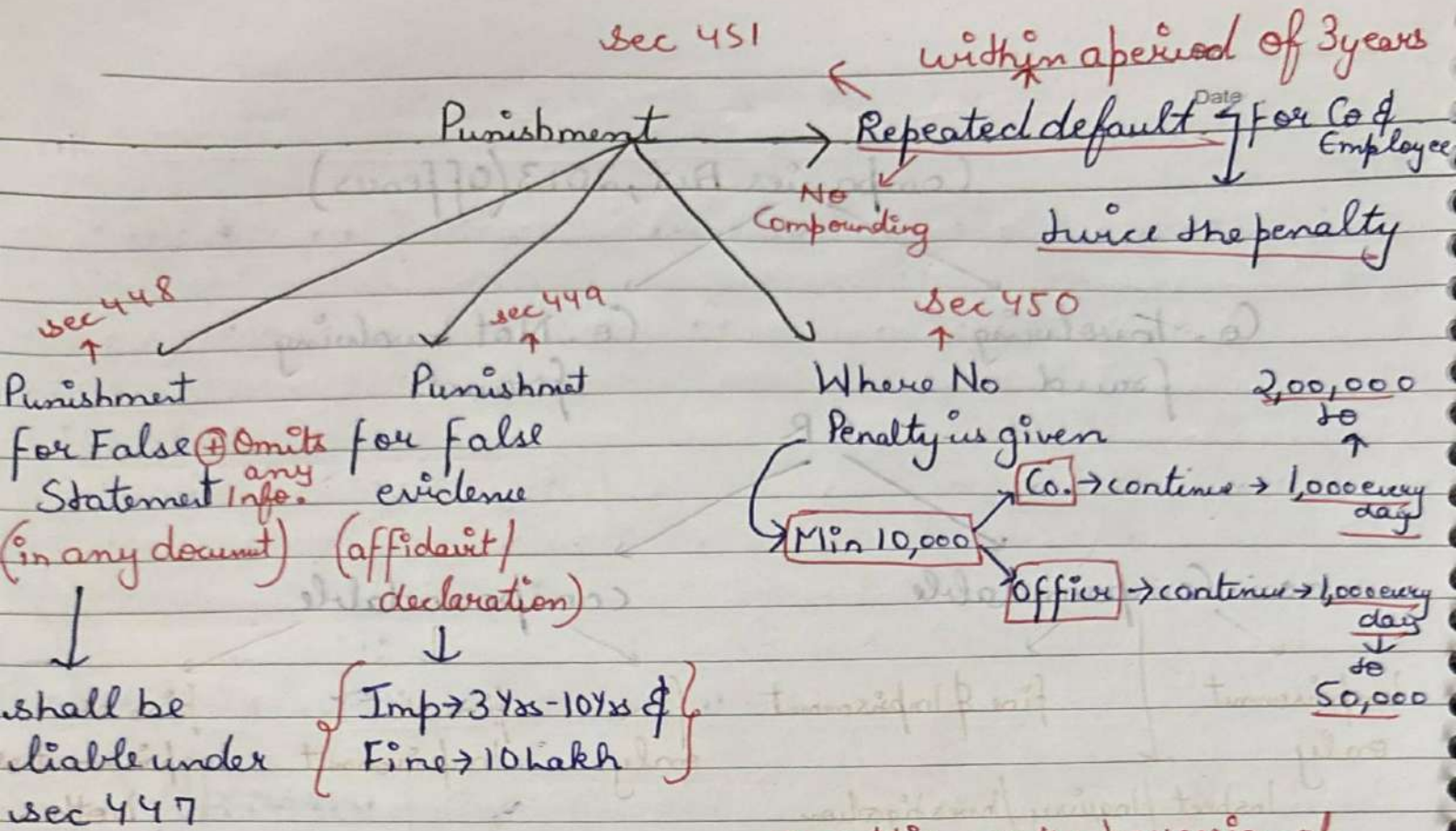
→ If Involve Public Interest → Min Imp → 3 years and

Imp → 6 months - 10 yrs &
Fine → 3 times the Fraud

→ Less than (10 lakh or 1% of Turnover) whichever is less

Imp → up to 5 years or
Fine → up to 50 lakh both

⊕
does not Involve Public Interest



→ Punishment for Wrongful withholding of Property (Sec 452) or Misuses the possession of property

↳ if officer or employee wrongfully obtains possession of property

↳ may be liable to

- ↳ Imp → up to 2 years
- ↳ Fine → 1,00,000 - 5,00,000

(Exempt)

It shall not be ordered for wrongful possession or withholding of property if

→ PF, pension Fund, gratuity or other fund maintained by the Co.

→ Compensation or liability for Compensation under the Workmen Compensation Act in case of death & disability

sec 453

→ Punishment for use of word 'limited' or 'Pvt. Ltd'

→ Fine → not less than 500 to 2,000 for every day until the name has been used.

→ Special court → sec 435 → constituted by c/g in consultation with CJ of HC

↓
provided for speedy trial of offences

Imp → up to 2 Years

↓
JMFC

2 Years or
Imp → More than 2 Years

↓
Session Judge

→ Power of Special Court [Sec 436]

→ All offences specified u/s 435(1) → shall be triable only by Special Court of such area.

specified by HC

→ Where a person accused under this Act, he shall be forwarded to magistrate u/s 167 of CrP.C, 1973

↓
such magistrate may authorize the detention as he thinks fit

JM → max 15 days in whole

EM → 7 days in whole

↓
However, if magistrate thinks detention is unnecessary

→ he shall order such person forwarded to SC.

↓
may exercise same

power u/s 167 of CrP.C.

Imprisonment up to 3 years

→ Special Court → discretionary power → summon case
 → Provided
 ↓
 Imprisonment imposed should not exceed 1 year

→ Summon
 ↓
Imp up to 2 Years

Warrant
 ↓
Imp more than 2 Years

Ques. What are the penal provisions under Companies Act, 2013 for making false statement.

Answer

According to section 448 of Companies Act, 2013; If any person knowingly makes a false statement submits a false document or certifies the false report shall be liable under section 447.

According to section 447 of Companies Act, 2013; Fraud means any act, omission, concealment of fact or abuse of its position with any person or any person with connivance with intention to deceive, gain undue advantage or injure the interest of Company, stakeholders, creditors or any other person whether or not there is any wrongful gain or loss.

→ If amount Involved in fraud is ^{at least} 10,00,000 or 1% of Turnover (whichever is less)

→ then → Imprisonment will be from 6m - 10 years
(+)

Fine → fine ranging from - 3 times of amt. Involved in fraud.

However, if public Interest is Involved Imp will be at least 3 years - 10 years.

→ If amt. Involved in fraud is less than 10,00,000 or 1% of Turnover (whichever is less)

→ then → Imprisonment - up to 5 years

Fine ← - up to 50 lakh rupees or

→ (Section 436) → Power of Special Court

(1) Acc. to sec 167 of CrPC, JMFC or MM has the power to authorize judicial custody for not more than 15 days at a time & max 60/90 days depending on the offence.

Similarly, executive magistrate can order a judicial custody for not more than 7 days at a time.

Acc. to sec 436 if magistrate considers detention of accused is unnecessary, matter is transferred to Special Court, & Special Court has the same power of sec 167 of CrPC.

② Any offence involving Imprisonment upto 3 years can be trial by Special court in a summary way, provided in case of conviction, Imprisonment more than 1 year will not be passed.

Moreover, when Special Court proceed with Summary Trial and it appear & sentence of Imprisonment will be more than 1 year, Special Court will trial it as a regular trial.

→ Decriminalisation of Offences under Companies Act, 2013 — Reduction in Penalties (inhouse adjudication mechanism)

① The MCA has constituted a committee headed by Mrs. Injeti Srinivas, to review the offences under Companies Act, 2013 for decriminalisation of offences & inhouse adjudication → to recommend improvements to be made c/g.

② Based on recommendation, c/g brought changes in Companies Act, 2013 by passing

↳ Co. (Amendment) Act, 2019

③ It was done because of → promoting ease of doing business
 ↳ to foster growth of corporates
 ↳ to relax the corporates for stringent penal provisions

④ The Companies (Amendment) Act, 2020 → provides

- ① removes the Imprisonment for certain offences &
- ② substitutes fines by penalty
- ③ reduces amt. of payable as penalty
- ④ In certain minor omissions, penal consequences has been omitted.

⑤ Default or Non Compliance lead to restriction of withdrawal of benefits

- failure of filing Annual return (sec 92)
- failure of filing Financial statement (sec 137)

may result into :-

- (a) withdrawal of exemption to a private company
- (b) Co. being ineligible to undertake buy back
- (c) disqualification of director
- (d) Co. being classified into inactive company.

→ Adjudication of Offences (recommend by JJ Ixami for in house adjudication mechanism)

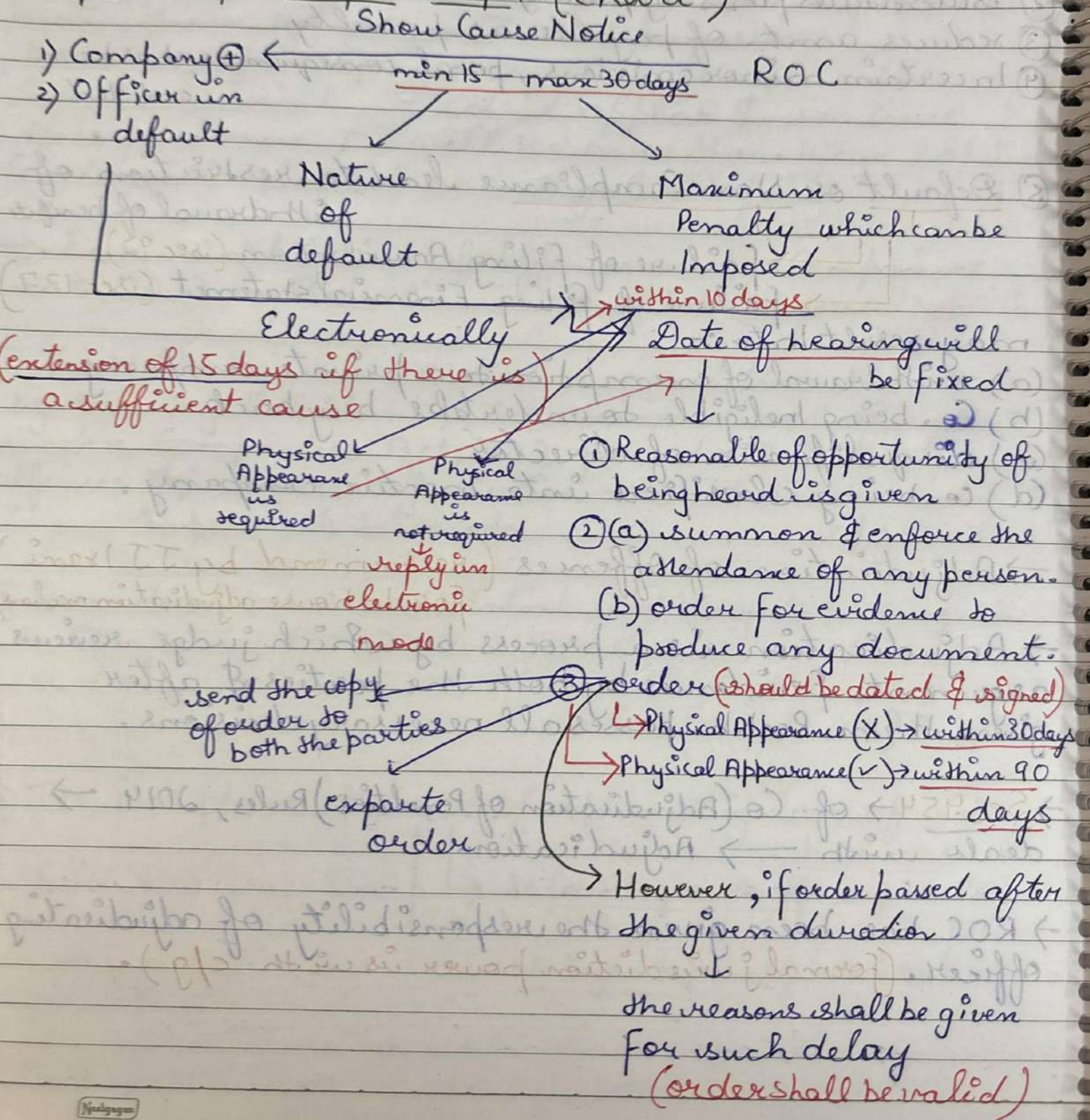
→ Adjudication is a process by which judge reviews arguments & evidences by both the parties & after given them Roohh passes all necessary decisions.

→ Sec 454 → of Co (Adjudication of Penalties) Rules, 2014 → deals with → Adjudication.

→ ROC has been given the responsibility of adjudicating officer. (formal jurisdiction power is with c/g).

→ Adjudication Process under the Companies Act, 2013

Step 1 + Step 2 + Step 3 + Step 4 (Chart)



- MCA Compliance Monitoring System (MCA/Electronic)
- (MCACHS Portal) is an Artificial Intelligence Initiative by MCA 21 by MCA
- Purpose → issuing SCN^{electronically} for non-compliance under CA, 2013
- ⊕
submitting replies from Ds. / Co. for clarification & submission
- Based on replies, RoC shall initiate penal actions for violations referred in SCN.
- Steps for filing reply to SCN
- ① Visit the MCACHS portal.
 - ② Click on 'Reply for SCN Tab'.
 - ③ Click the relevant section for which SCN has Issued.
 - ④ Fill the CHS reference number on SCN & search.
(System will validate the Number)
 - ⑤ After validation, click on 'Send OTP'.
 - ⑥ OTP will send on the e-mail on which SCN has received.
 - ⑦ Click on 'Submit Reply' & reply once submitted cannot be altered.
 - ⑧ The system will show a confirmation message & 'Action' tab will show reply status.

→ Penalty Imposed by Adjudicating Authority

① Adjudicating officer will impose penalty on company & officer in default.

② Factors for calculating quantum of penalty :-

- (a) size of the Co.
- (b) nature of business carried by the company
- (c) Nature of default
- (d) Repetition of default
- (e) amount of disproportionate gain to the Co.
- (f) amount of loss caused to an investor
- (g) Injury to public interest

③ Penalty shall be paid through MCA portal only.

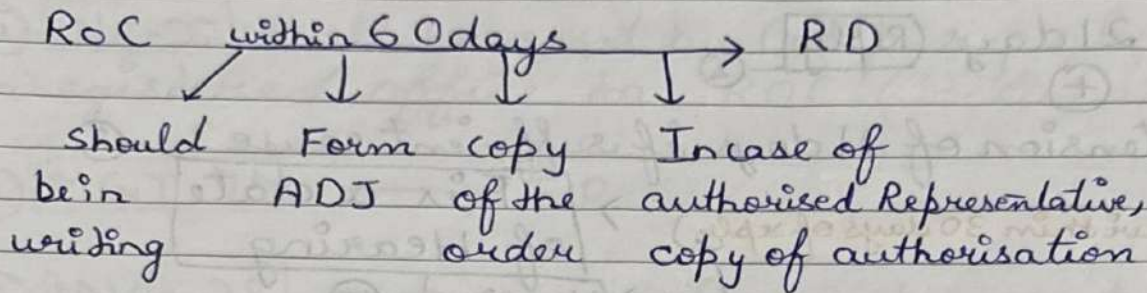
④ All sums of penalties shall be credited to Consolidated Fund of India

⑤ In case of default in MGT-7 & AOC-4 & SCN has issued for 30 days & Co. has rectified his default

→ No penalty shall be imposed.

⑥ Before imposing penalty, AO shall give Roobh to Co.

→ Appeal against the order of AO.



→ Registration of appeal

① Endorsement of date of appeal

→ Scrutinise

No Error

Error (✓)

↓
Register appeal
⊕ give a serial number

↓
14 days to Rectify

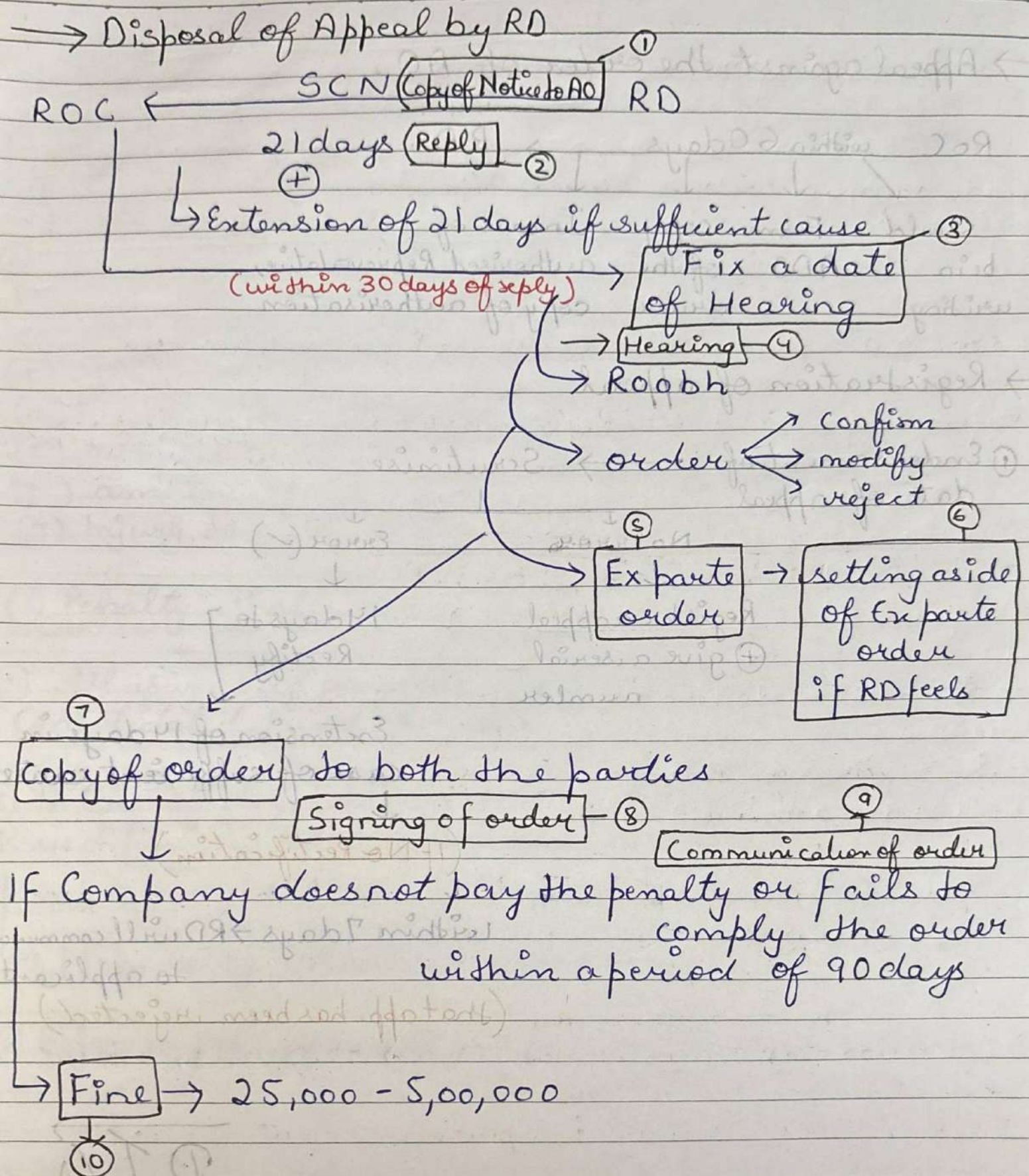
↓
Extension of 14 days in case of sufficient cause

↓
(If No Rectification)

↓
within 7 days → RD will communicate to applicant.

(that app. has been rejected)

P.T.O



transcript of B. F. ...

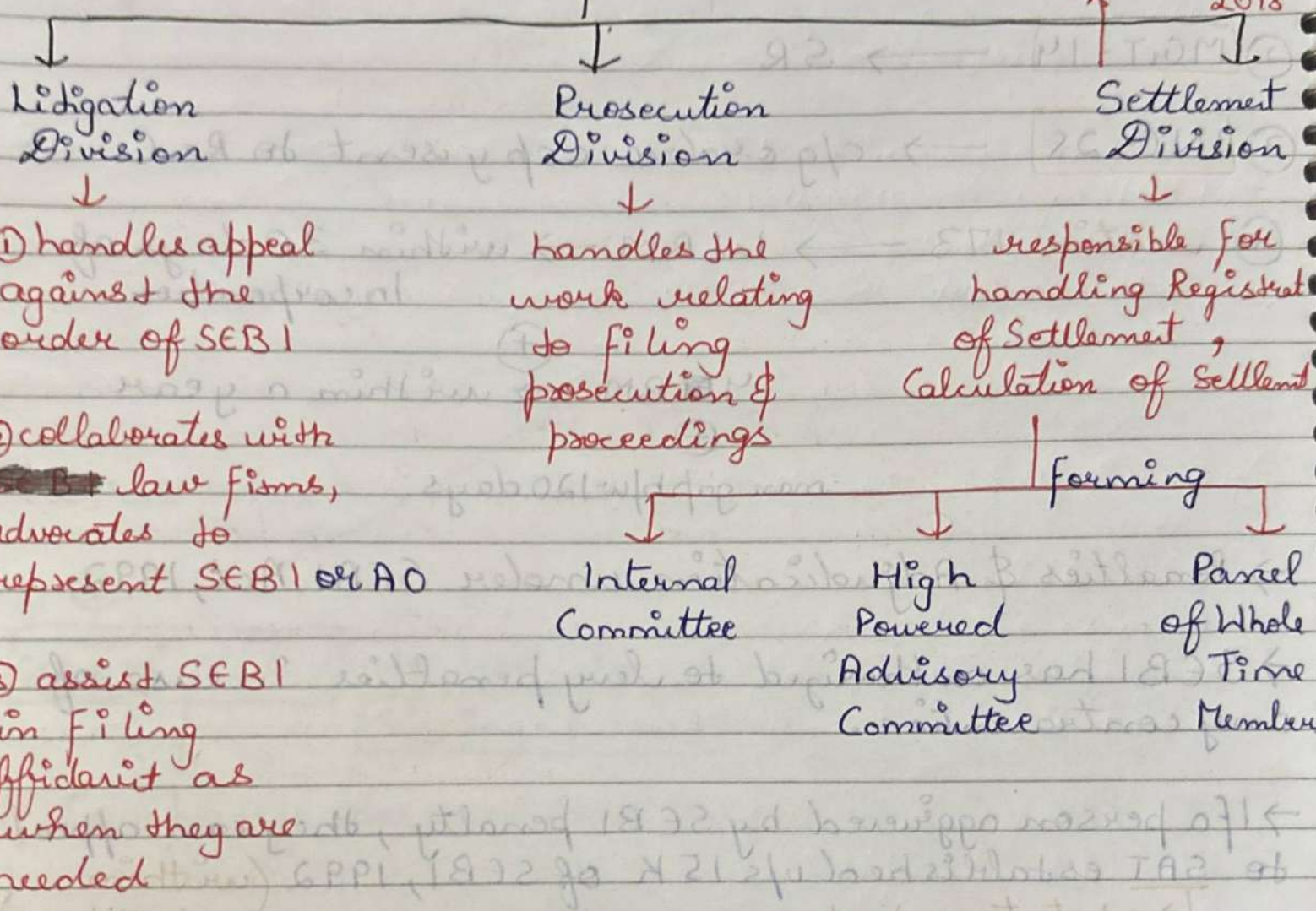
- max gap b/w 120 days

→ SEBI has authorized to levy penalties in case of any contravention.

↳ statutory body

P.T.O

→ The **Enforcement Department** is responsible for handling appeal against SEBI before SAT etc.



Ques 'Cr' is the general manager, (HR) of XYZ Ltd. He wrongfully withholds the flat of the company and also lets it out on rent to someone. XYZ Ltd has filed a complaint against 'Cr'. What are the penalties for such a conduct under Companies Act, 2013.

According to section 452 of Companies Act, 2013 → deals with wrongful withholding of property which means:-

- ① wrongfully obtaining possession of any property including cash of the company
- ② having any property including cash in his possession wrongfully withholds or knowingly applies it for purposes other than expressed or directed.

However, wrongful withholding of property does not relates to:-

- provident fund or pension fund was not paid by the Co to its employee
- If Compensation has not been paid by the company to its employee in case of death or disability

In the Instant Case, Cr is the general manager of XYZ Ltd who wrongful withhold the Co. property & lets it out to someone else.

Because Cr wrongful withholds the property & knowing applies it for the purpose other than those expressed or directed. He is liable u/s 452 for wrongful withholding of property.

Acc. to sec 452, a person liable for wrongful withholding of property will be punished for following :-

Imprisonment → at least 2 years

OR

Fine → 1,00,000 - 5,00,000

Ques Mrs Geeta is MD of HEL Ltd. She has been arrested for an offense covered u/s 497 of CA, 2013 on a complaint made by Director, SFIO. Geeta seeks your legal advice to know the condition under which she can be released on bail. Advise Geeta?

Acc. to sec 497 of CA, 2013 deals with Fraud.

Acc. to sec 212 (6), which deals with offences related to fraud, offences shall be cognizable. No person accused of any offense under those section shall be released on bail or his own bond, unless :-

1) Public Prosecutor has given an opportunity to oppose the petition
or

2) The Court is satisfied that there are reasonable ground, that he is not guilty of offense.

A person who is under age of 16 years, women, sick or infirm will be get released if Special Court directs.

In the Instant Case, Geeta Desia, the MD of HEH Ltd. has been arrested u/s 447 which is a cognizable offence & bail cannot be granted unless the Prosecutor has given the right to oppose the application.

However as a CS, we would advise, since Geeta is a woman she can be released on bail if the Special Court directs.

→ CS of a Co was allotted a flat during the tenure of his employment. He has retired on 31st March 2019 & as per the terms of employment he is required to vacate his flat within 1 month of ceasing his employment. He seeks 1 year to vacate the premise on ground of his children's education. The Co. wants him to vacate it & seeks your advice under the given circumstances.

Acc. to Sec 452 of CA, 2013 → deals with wrongful withholding of property which means:-

- ① wrongfully obtains possession of any property including cash of the company.
- ② having any property including cash in his possession wrongfully withhold or knowingly applies it for purposes other than expressed or directed.

However, wrongful withholding of property does not relate to:-

- if PF was not paid by the company to its employee.

- if compensation was not paid by the company to its employee.

In the Instant Case, CS of a Company who wrongful withhold the Co's property. Because, CS wrongful withholds the property of Company, he is liable u/s 452 of Companies Act, 2013.

Acc. to sec 452 of Co. Act, 2013, CS is liable and will be punished for the following :-

Imprisonment → at least 2 Years OR

Fine → 1,00,000 - 5,00,000

Note

→ SEBI has power to Issue directions & levy penalty.

→ Power to adjudicate (Both of SEBI & SCRA)

Judge → SEBI → Market Manipulation → appoint Adjudicating officer → not below the rank of Division chief
↓ Power

- ① Examination of books / Doc.
- ② Summon to enforce the attendance of any person

→ Adjudicating
Officer

→ make a report

↓
send to Board (SEBI).

↓
on the basis of report make
enquiry

→ mandatory for Board (to give Roobh).

→ Holding of Enquiry (Both of SEBI & SCRA)

← SCN
min - 14 days AO

reply

→ After considering ~~AO~~ reply AO
may or may not fix a
Date of Hearing (by issuing a notice)

↓
for appearance of person
personally or through AR

① Explain the offence

② OOBh

③ Have power to summon

enforce the attendance
of any person

or to give / provide
books / doc

④ order

→ send of copy of order to both the parties

→ Factors to be taken into account while adjudging Quantum of Penalty (Both of SEBI & SCRA)

- ① The amount of disproportionate gain to Co.
- ② The amount of loss caused to Investor
- ③ Repetitive nature of default

(All sums by way of penalty → shall be credited to
↓
Consolidated Fund of India)

→ Recovery of Amounts

(If any person fails to pay the penalty, or fails to comply with the order)

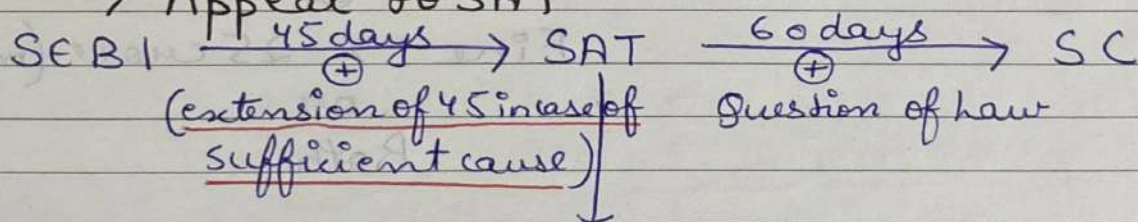
SEBI → will appoint Recovery officer → to recover the amount

- ① attachment & sale of person's movable property
- ② attachment of person's bank A/c.
- ③ Attachment & sale of person's Immovable property
- ④ Arrest of person & his detention in prison
- ⑤ Appointing a receiver for the mgmt of person's movable & Immovable property.

→ Continuance of proceeding

- ① In case a person dies, his legal Rep (LR) will be liable to pay the sum.
- ② Any proceeding for disgorgement, refund or action (except for proceeding of levy of penalty) → shall be deemed to initiated against his LR
- ③ All the provisions of this act shall apply to his LR.
- ④ The liability of LR → limited to the estate of deceased person
- ⑤ If LR creates any charge on estate of deceased
↓
he will be personally liable

→ Appeal to SAT



① OOBH

② order → confirm
→ modify
→ reject

③ copy of order send to both the parties

→ Appeal file to SAT → to be disposed off within 6 months

→ Powers are similar to Civil Court (S11 D)

- ① Summon & examining of witnesses on oath
- ② Issuing Commission
- ③ Issuing Inquiry
- ④ Discovery of documents & records
- ⑤ any other order that the Court may deem fit in the Interest of Justice.

→ Offences & Composition of certain offence

- If any person do contravention (where no penalty)

↓
he will be liable to

Imp → upto 10 years

or

Fine → 25 crore (max)

or

Both

- If any person fails to pay the penalty

↓
he will be liable to

Imp → atleast 1 month

or

Fine → 25 crore (max)

or

Both

• Compounding applications are filed to SAT

→ Power to grant Immunity

① C/g on recommendation of SEBI → may Immune any person from prosecution

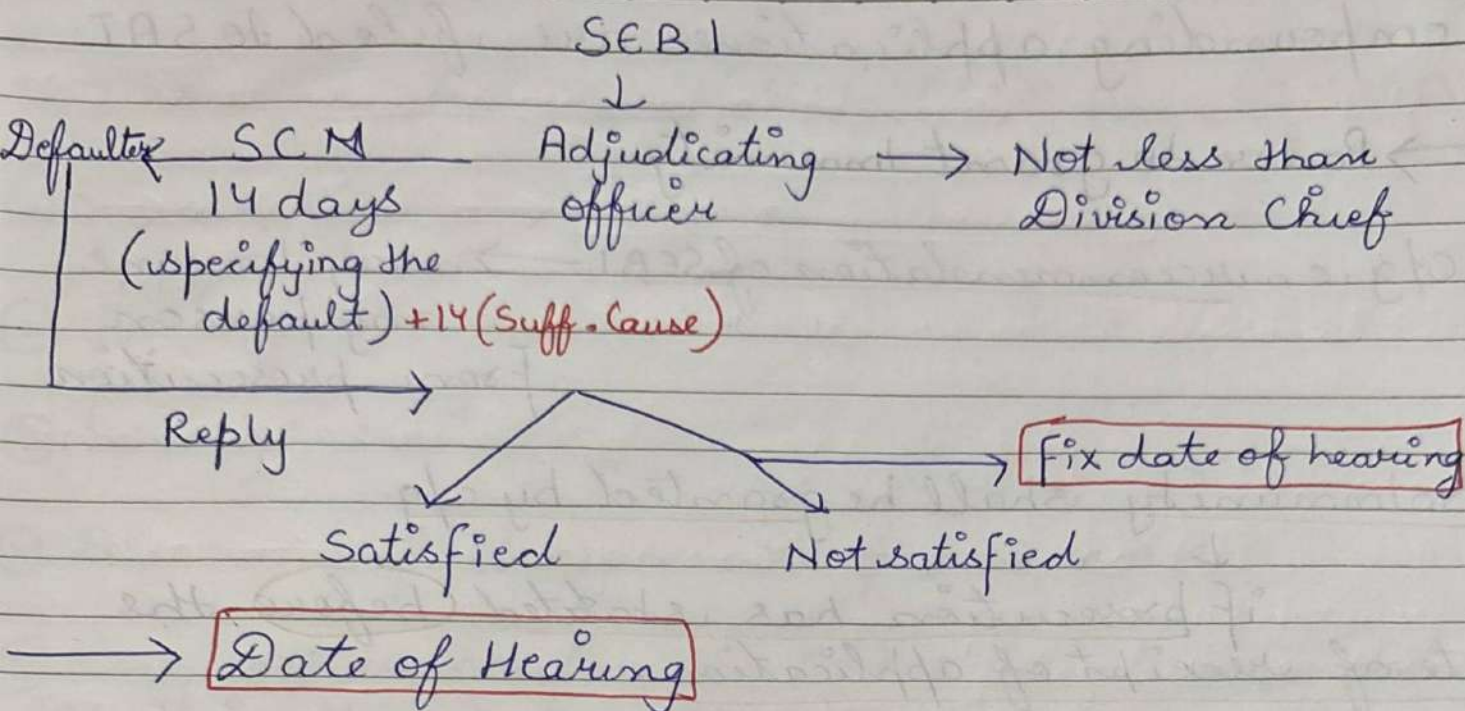
② No Immunity shall be granted by c/g

↓
if prosecution has started before the date of receipt of application.

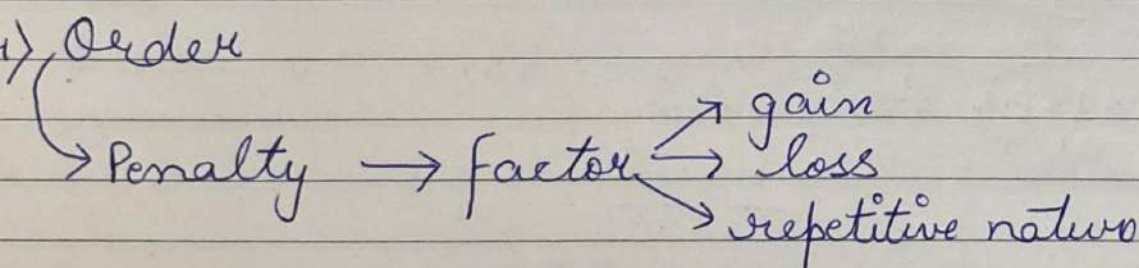
③ recommendation of SEBI are not binding

④ c/g may at any time revoke its Immunity if its terms & condition on the basis Immunity has granted is not Complied

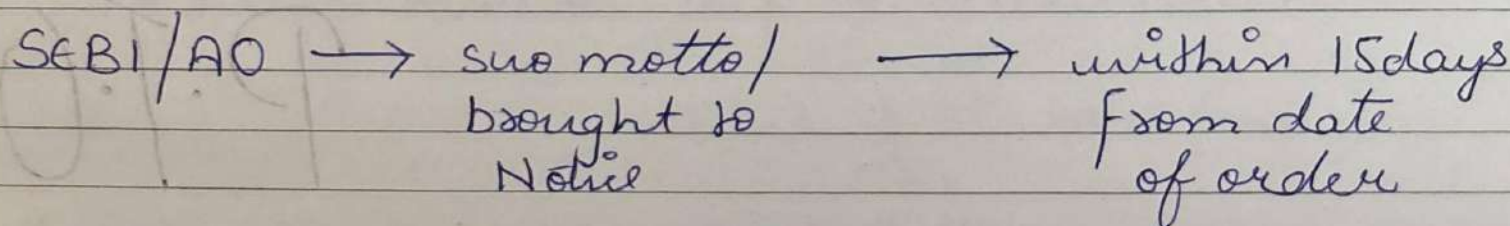
P.T.O



- 1) Explain the offence
- 2) OOBH
- 3) Summons → to produce documents
→ enforce attendance

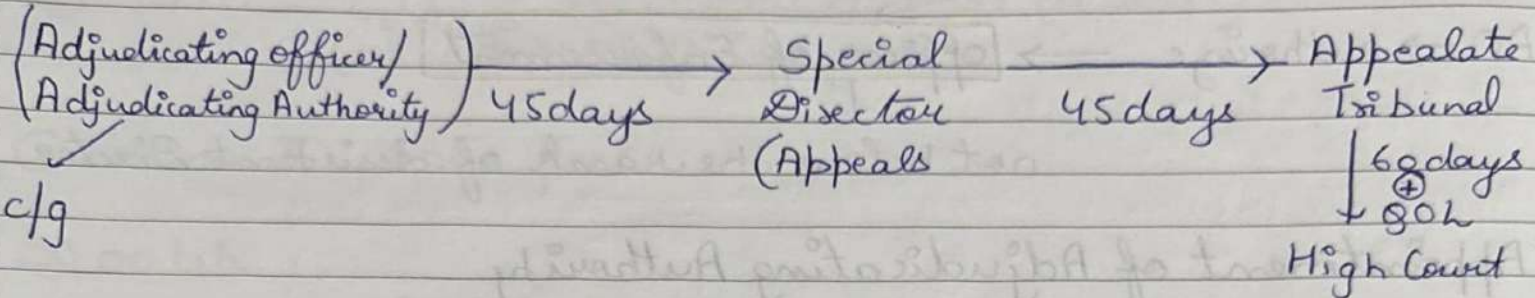


Rectification

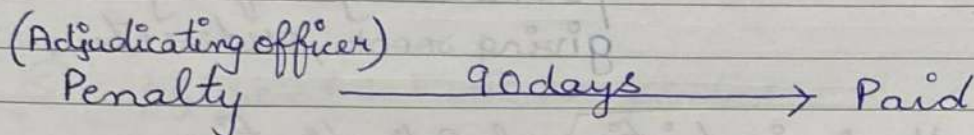


→ FEMA

(Bodies)

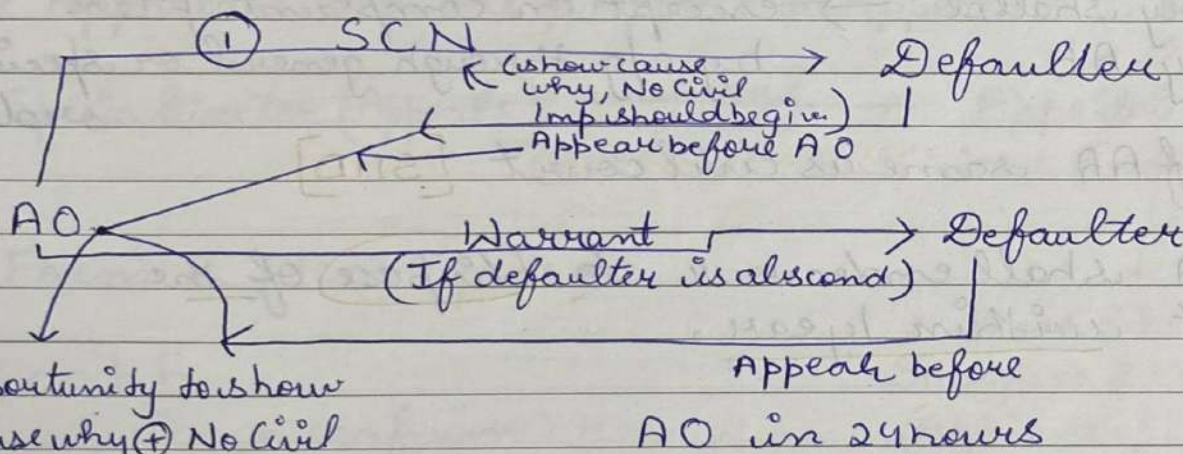


→ Enforcement of the orders of Adjudicating Authority



If Penalty is Not (x) Paid →

Civil Imprisonment



Certificate of Imp

(Default) > 1 crore → 3 years

(Default) Below 1 crore → 6 months only

Power of recover arrears of penalty

AO → authorize → Officer of Enforcement

↓
not below the rank of Assistant Director

Appointment of Adjudicating Authority

① c/g → appoint officers → to be AA
for holding inquiry
giving oath, order etc.

② c/g will specify the jurisdiction of Adjudicating Authority

③ No Inquiry shall be → except on complaint filed
done by AA by c/g through general or special
order

④ Powers of AA same as civil court [SIID]

⑤ Every AA shall endeavour to dispose of the
complaint within 1 year.

⑥ If order cannot be disposed in said period
→ AA shall state reasons

The Tribunal will make an attempt to dispose of the case
within 180 days

Date

→ Appeal to Special Director (Appeals)

① AO $\xrightarrow{45 \text{ days}}$ Special Director (Appeals)
⊕ (45 days) → Sufficient cause

② Form I, 5000 fees

③ oobh

④ order $\begin{cases} \rightarrow \text{Confirm} \\ \rightarrow \text{Modify} \\ \rightarrow \text{Set Aside} \end{cases}$

⑤ copy sent to both the parties

⑥ Power → civil court [S11D]

→ Appellate Tribunal & Appeal to Appellate Tribunal

① Special Director (Appeals) $\xrightarrow{45 \text{ days}}$ Appellate Tribunal
⊕ (45 days) → Sufficient cause

② Form II, 1000 (fees)

③ oobh

④ order $\begin{cases} \rightarrow \text{confirm} \\ \rightarrow \text{modify} \\ \rightarrow \text{set aside} \end{cases}$

constituted under
Smugglers & FE Manipulators
(Forfeiture of Property) Act,
1976.

⑤ copy sent to both the parties

⑥ Power same as civil Court [S11D]

Note → Civil court have no jurisdiction in these appellate bodies. But they are guided by the provisions of natural justice.

→ Appeal to High Court

Appellate Tribunal $\xrightarrow[\text{+ 60 days (if sufficient cause)}]{\text{60 days + 30 days}}$ High Court

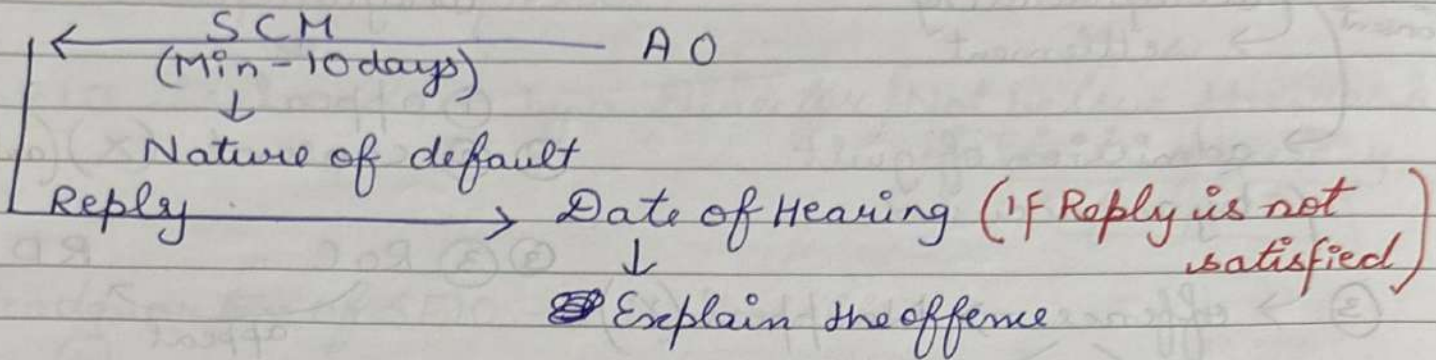
→ Service of notice, requisitions or orders

- ① by delivering to the person or his authorized person
- ② by sending through reg. post to the address of his place of residence (or) where he last carried on his business.
- ③ by affixing it on door or some other conspicuous part
 $\rightarrow$ mentioned in ② above
- ④ by publishing in a leading newspaper (Vernacular + English)
 of residence of $\leftarrow$
 ② mentioned above

P.T.O

→ FEM [Adjudication Proceedings & Appeals] Rules, 2000

→ C/g → will appoint → AA → for holding Inquiry
Rule 4



① OObh

② Summen → produce document
→ enforce the attendance of any person

③ order → confirm
→ modify
→ set aside
→ Impose penalty
⊕

sent order to both the parties

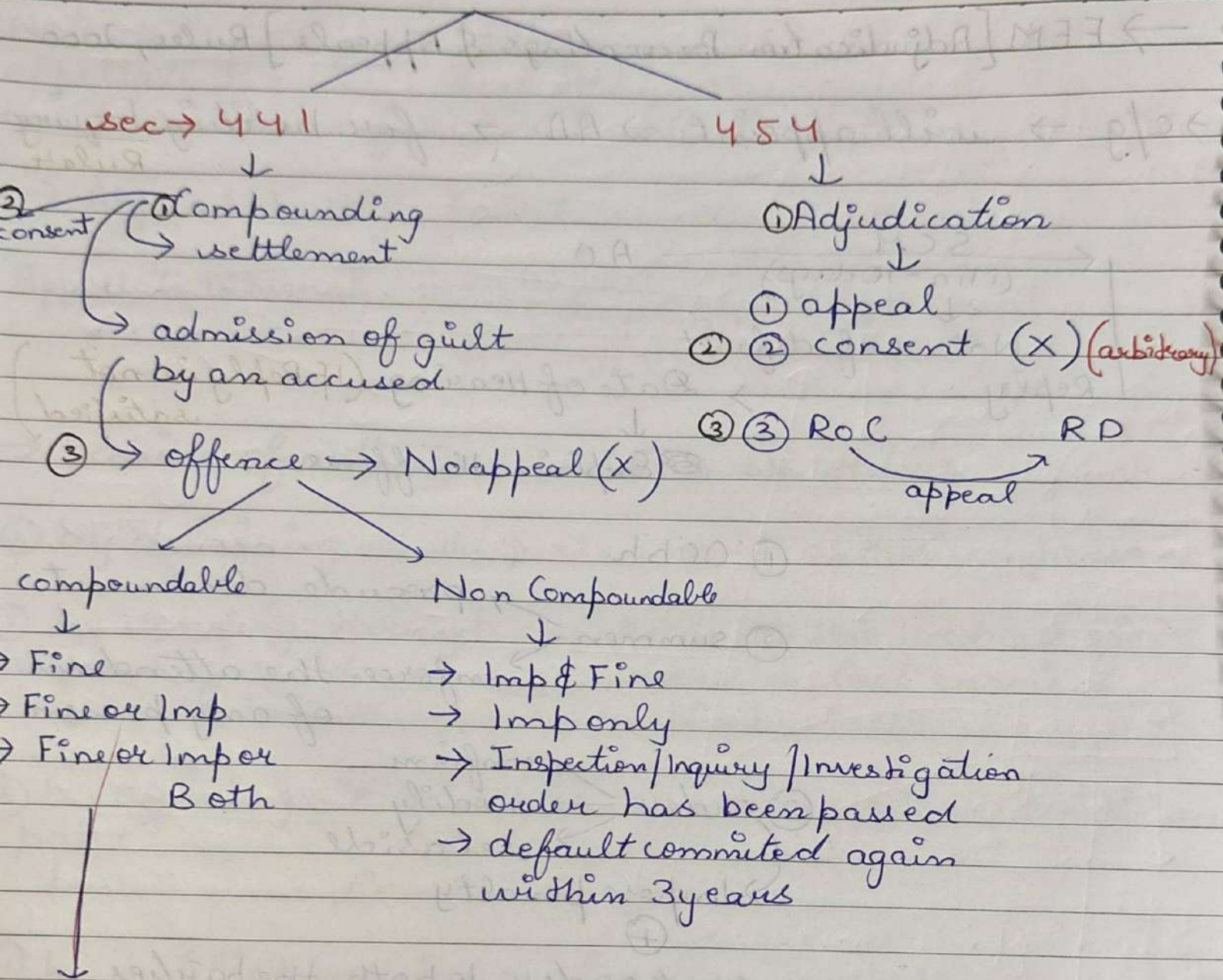
→ Penalty for repeated default

↓
twice the amt of penalty, if it commits again such default within 3 years

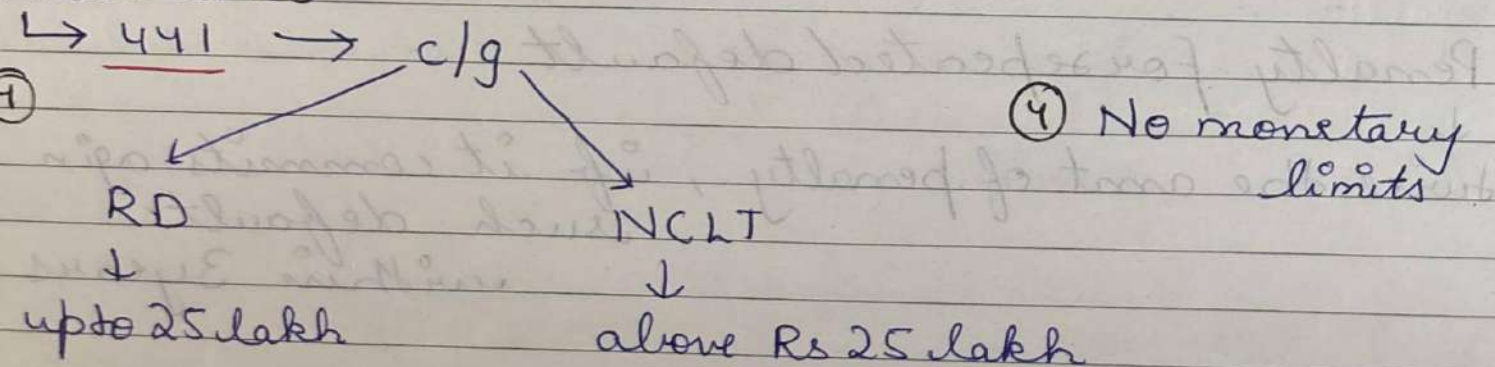
→ Diff b/w 441 & 454

No.

Date



Authorities



→ Complaint by Registrar & SFIO

① SFIO → multidisciplinary org, under MCA
↙ (consisting of)
Director ⊕ Expert in fields

② SFIO is headed by a Director [Not below the rank of Joint Secretary of Govt.]

③ Headquarter of SFIO → New Delhi
⊕

5 Regional offices → Mumbai, Delhi, Chennai, Kolkata & Hyderabad

④ Investigation offered to SFIO u/s 210

(a) ROC report by Inspection u/s 208

(b) SR passed

(c) In public Interest

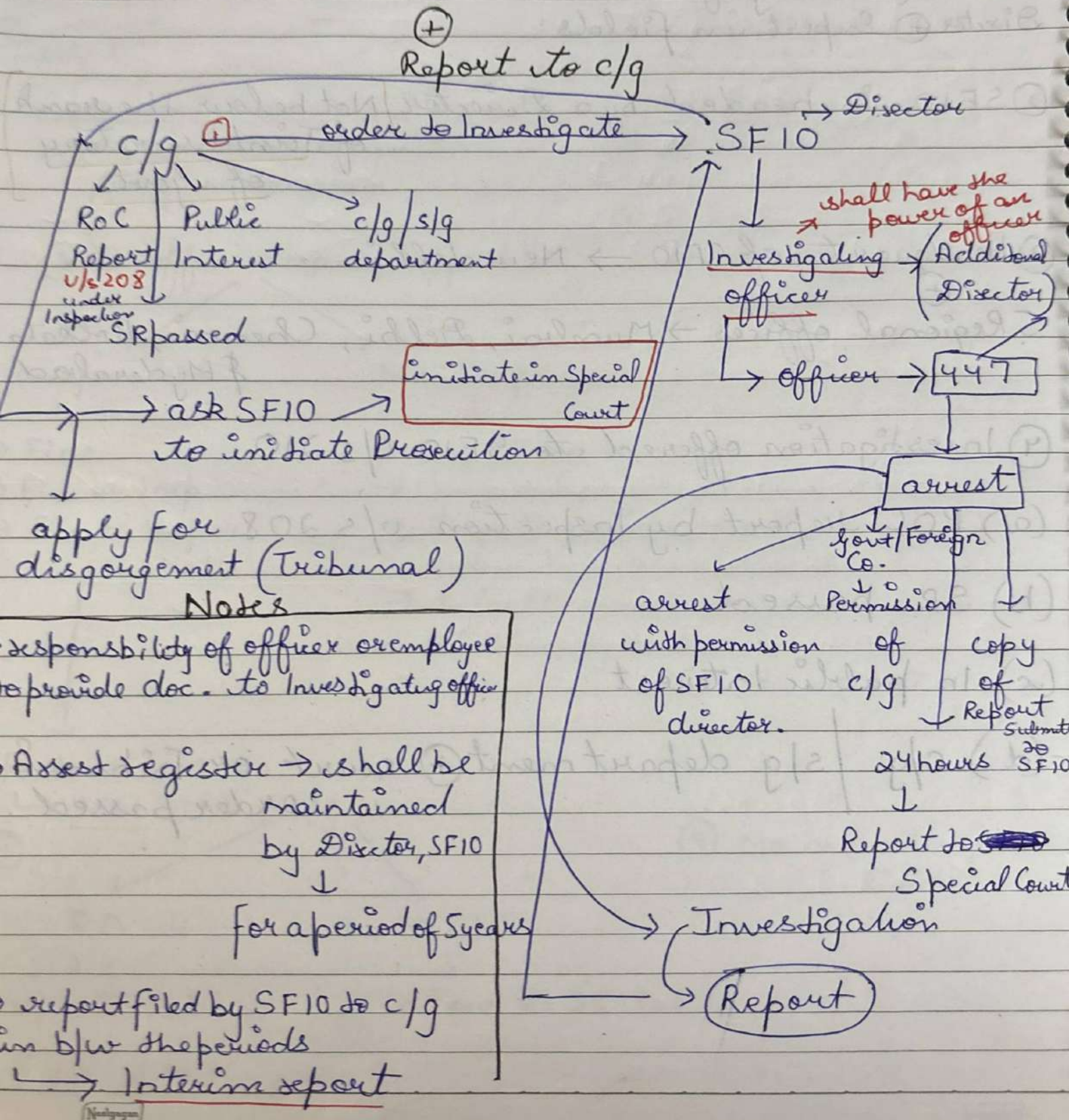
(d) c/g / s/g department ⊕ court or Tribunal order passed.

Important

→ No other agency of govt. can Intervene if SFIO is Investigating
u/s 212

→ Investigation by SFIO (+) → Power to Arrest

→ Co. (Arrest in connection with Investigation by SFIO) Rules, 2017



→ Cognizable → Non Bailable

→ Prosecution has a right to defend



Exception



age ≥ 16 or below { Infirmed / Sick / Women

→ Investigating report filed by Investigating Officer to Special Court

↳ shall be deemed a report filed by Police Officer

→ Tribunals

(Tribunal (NCLT))



→ President
→ Judicial member
→ Technical member

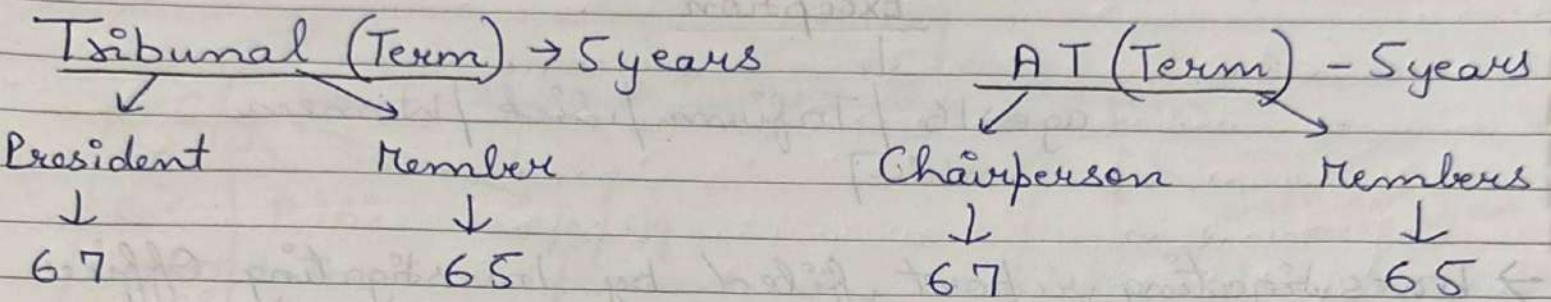
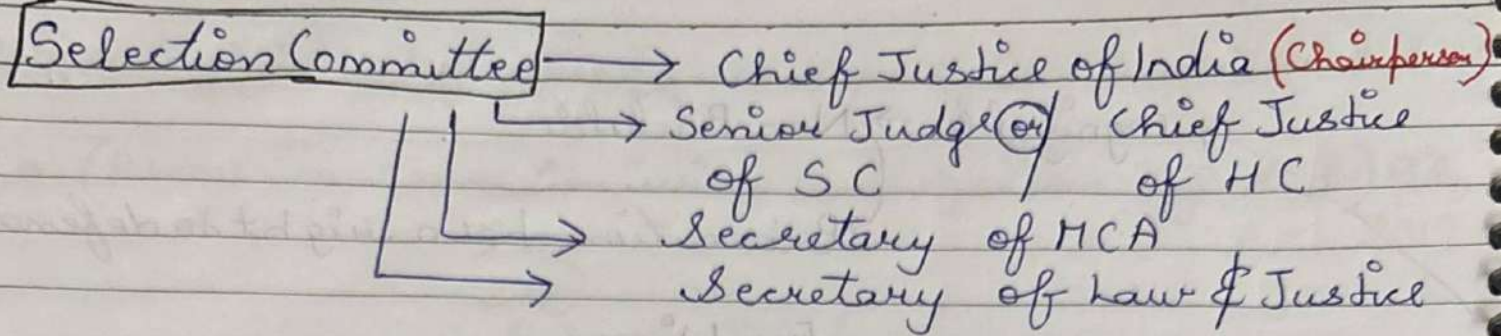
(Appellate Tribunal (NCLAT))



→ Chairperson
→ Judicial member
→ Technical member

→ [President of Tribunal ⊕ Chairperson & JM of AT] → appointed by Chief Justice of India

→ [Members of Tribunal ⊕ TM of AT] → appointed by selection committee



→ If there is equality of votes → Chairperson will have a casting vote.

→ Non appointment of members of Tribunal or AT
 ↓
 shall be Invalid
 ↓
 by a reason of vacancy or any defect in constitution of Selection Committee

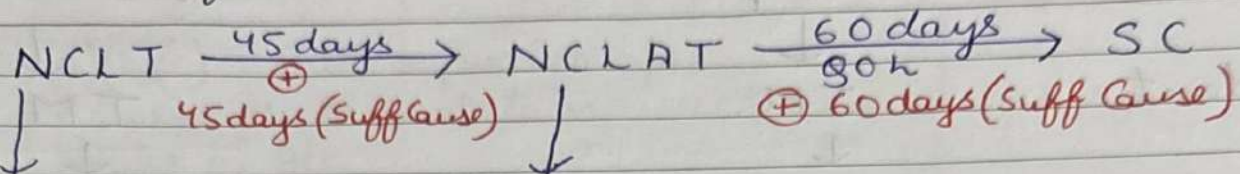
→ Tribunal & Appellate Tribunal (Powers)

↳ Power same as Civil Court [S11D]
 (+)

→ They are bound by the principle of Natural Justice

→ All proceeding shall be deemed to be Judicial Proceedings.

→ Orders of Tribunal ⊕ Orders of AT ⊕ Appeal to SC



① oobh

① oobh

② order → confirm
→ modify
→ set aside

② order → confirm
→ modify
→ set aside

③ copy of order send to both the parties

③ copy of order send to both the parties

④ [SIID]

④ [SIID]

⑤ appeal to NCLAT within 45 days

⑤ appeal to SC within 60 days

⑥ rectify its order within 2 years

→ Forms

NCLT-1 → Petition or app. filed with Tribunal
⊕ NCLT-2 → attachments

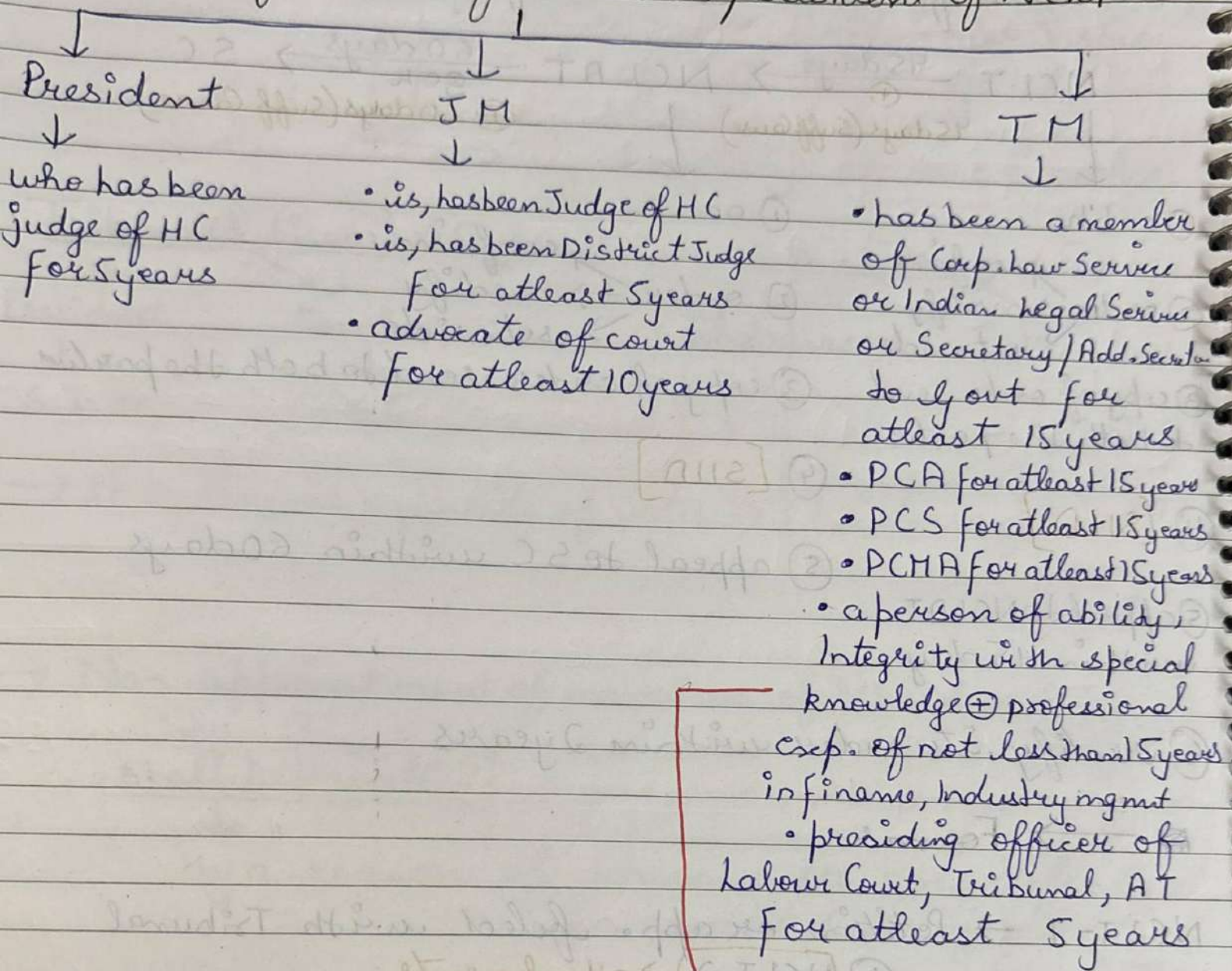
NCLT-4 → General heading for Proceedings

NCLT-6 → General affidavit verifying petition

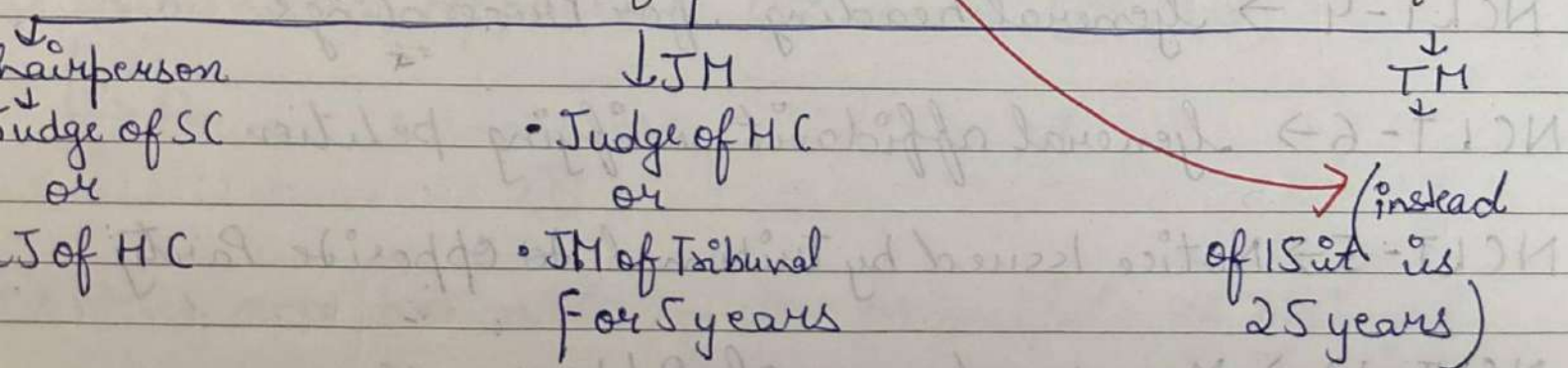
NCLT-5 → Notice Issued by Tribunal to Opposite Party

NCLT-12 → Memorandum of Appearance

→ Qualification of members / President of NCHT



→ Qualification of Chairperson & Members of AT



?? $\Rightarrow$ penalty of 1,00,000

$\oplus$ 1,00,000 (everyday) if contravention continues

$\hookrightarrow$ upto 1,00,00,000

No.

Date

$\rightarrow$ Penalties under SEBI

Penalties (Amt.)

ISA	(a)(b)(c) $\rightarrow$ Fails to furnish Info, Return or to maintain books of A/c	??
ISB	Failure to enter into an agreement with clients	??
ISC	Fails to address grievance of customers	??
ISD (a)-(f)	Any default in case of mutual funds (CIS)	??
ISE	Failure to observe rules & regulation by AMC	??
ISEA	Any default in case of AIF, <u>Invit</u> , <u>Reit</u>	(??) or (3x the amt. of gain) whichever is higher
ISEAB	Any default in case of <u>Investment Advisor</u> , <u>Research Analyst</u>	??
ISF (a)(c)	Defaults in case of <u>SB</u> (Stock Broker)	??
ISF (b)	$\rightarrow$ charges an amt. of brokerage in excess of specified	1 lakh rupees or (5 x the amt. of brokerage) whichever is higher
ISG	Penalties for Insider trading	[10 lakh - 25 crore] or (3x the amt. of profit) whichever is higher

15H	Non disclosure for acquisition of shares & takeovers (any default)	$(10 \text{ lakh} - 25 \text{ crore})$ or $(3 \times \text{amt. of profit})$ ↓ whichever is higher
15HA	Person Indulges in Fraudulent & UTP relating to securities	$(5 \text{ lakh} - 25 \text{ crore})$ or $(3 \times \text{amt. of profit})$ ↓ whichever is higher
15HAA	Penalty for alteration, destruction of records.	$(1 \text{ lakh} - 10 \text{ crore})$ or $(3 \times \text{amt. of profit})$ ↓ whichever is higher
15HB	Penalty where no separate penalty has been provided	$(1 \text{ lakh} - 1 \text{ crore})$

→ Penalties under SCRA, 1956

23	general penalty in which person	① Fine → upto 25 crore (or)
(a)-(i)	fails to comply with <u>ANY</u> provision of SCRA	② Imp → upto 10 years (or) with Both
23A	Fails to furnish Info, Return or the maintain of books of A/c	" "
23B	Fail to enter into an agreement with client	" "
23C	Fails to address grievances of Investor	" "
23D	If broker / subbroker fails to segregate the money & uses the money for other purpose	" "

23E	If mutual fund, CIS, Reit, Invit, AIF fails to comply listing conditions	(5 lakh - 25 crore)
23F	If an Issuer dematerialises securities MORE than the Issued Securities	(5 lakh - 25 crore)
23G	If a RSTX fails to furnish return to SEBI	(5 lakh - 25 crore)
23GA	If a RSTX, Clearing Corp. fails to comply the rules & reg. made by SEBI.	(5 crore - 25 crore) or (3x amt. of gain) ↓ whichever is higher.
23H	Where No penalty has been provided	(1 lakh - 1 crore)

→ Penalties for FEMA

→ Person contravenes provision of FEMA

↳ @Penalty → amt. quantifiable → up to ~~2 lakh~~ thrice the sum involved

↳ amt. not quantifiable

↳ up to 2 lakh rupees

⊕

● if contravention continues → 5,000 (every day)

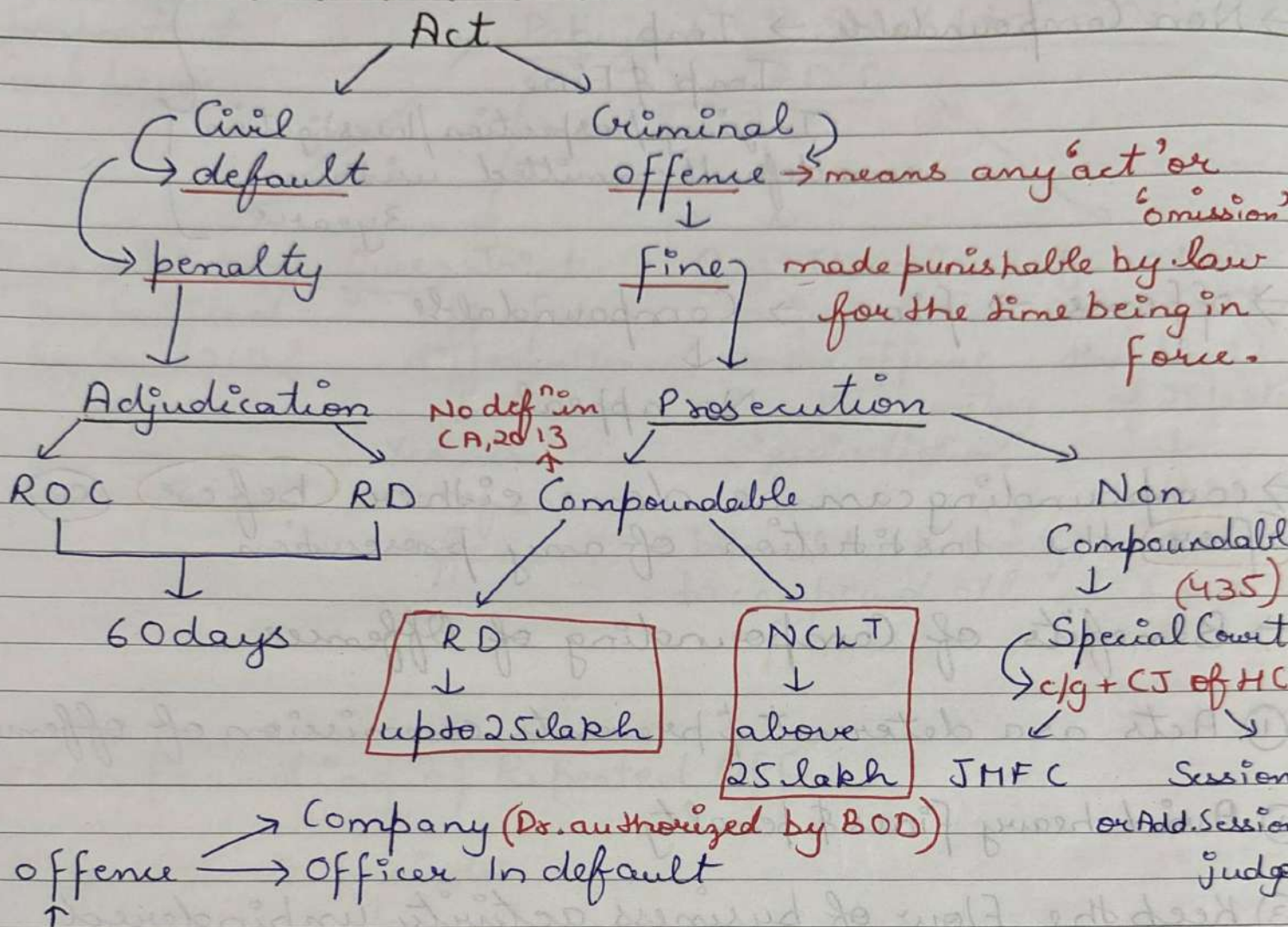
No.

Date

Chapter → Relief and Remedies

No.

Date



→ Sec 441 → Compounding Settlement mechanism

→ admission of contravention, pleading guilty & seeking redressal for same.

→ RD

→ upto 25 lakh

→ NCLT

→ above 25 lakh

→ compoundable →

Fine

Imp / Fine

Imp / Fine / Both

→ Non Compoundable → Imp
 Imp & Fine
 Inquiry / Inspection / Investigation
 same default committed within
 3 years

→ offence → fine → Compoundable
 ↓
 No appeal

→ compounding can be done either before (or) after the Institution of any prosecution

→ Benefits of Compounding of Offences

- ① Acts as a deterrent & prevents commission of offence.
- ② Avoid heavy fines & penalty
- ③ Keep the flow of business activity unhindered
- ④ Help to maintain dignity
- ⑤ Does not burden Court with cases
- ⑥ Less time consuming & summary proceedings
- ⑦ No Disq. of directors, since fees payable on compounding are not treated as penalty.

Important
Case Law

Pahujia Taki Seed Ltd & Ors.
V. R.O.C

Ques → Joint App.
can be filed
by Co. / O.D?

↓
Yes, in
same offence

Ques → Joint
app. for
different years?

↓
Yes, in
case of same
offence

Ques → Tribunal
has jurisdiction
to the offence
less than monetary
jurisdiction?

↓
Tribunal has authority
to compound all
offences

Ques → How
to quantify
the limit
of 25 lakhs?

↓
Individually,
it is
seen
(not
aggregate)

→ Compounding of Repeated Offence

↳ Sec 441 → provides
↓

that Co & O.D have committed same offence
in which it was compounded within 3 year
ago

↓
that offence cannot be compoundable.

Ques Whether an offence punishable under the relevant provision of the CA, 2013 with 'fine only' or with 'Imprisonment or fine' if repeated within a period of 3 years results into a mandatory Imprisonment for the defaulters & whether the same can be compounded or not?

Ans According to section 441 of Companies Act, 2013; it provides there are some relevant provisions of this Act which can be compounded by RD/NCLT. It is a settlement mechanism which saves time of Court proceeding.

Compounding means admission of guilt and seeking redressal for the same.

Compoundable offences are those offence which states :-

- fine only
- fine or Imprisonment
- fine or Imprisonment or both

Non Compoundable offences are those offences which states :-

- Imprisonment only.
- Imp & fine
- Inquiry / Inspection / Investigation is pending
- Offence committed within 3 years ~~within~~ which is compounded.

→ Following will be decided in BM

- ① App. for Compounding
- ② Authorizing Director for Signing
- ③ Appoint CA/CS → to represent before Authorities

→ Filing App of Compounding with ROC

- ① App. (Triplicate)
- ② BR passed
- ③ Affidavit
- ④ Memorandum of appearance, power of attorney
- ⑤ General profile & history of Co.
- ⑥ Copy of Notice received from ROC

similar offence was committed by him & compounded under section 441, the offence cannot be compounded.

Considering the above relevant case, the Imprisonment of defaulter can be imposed.

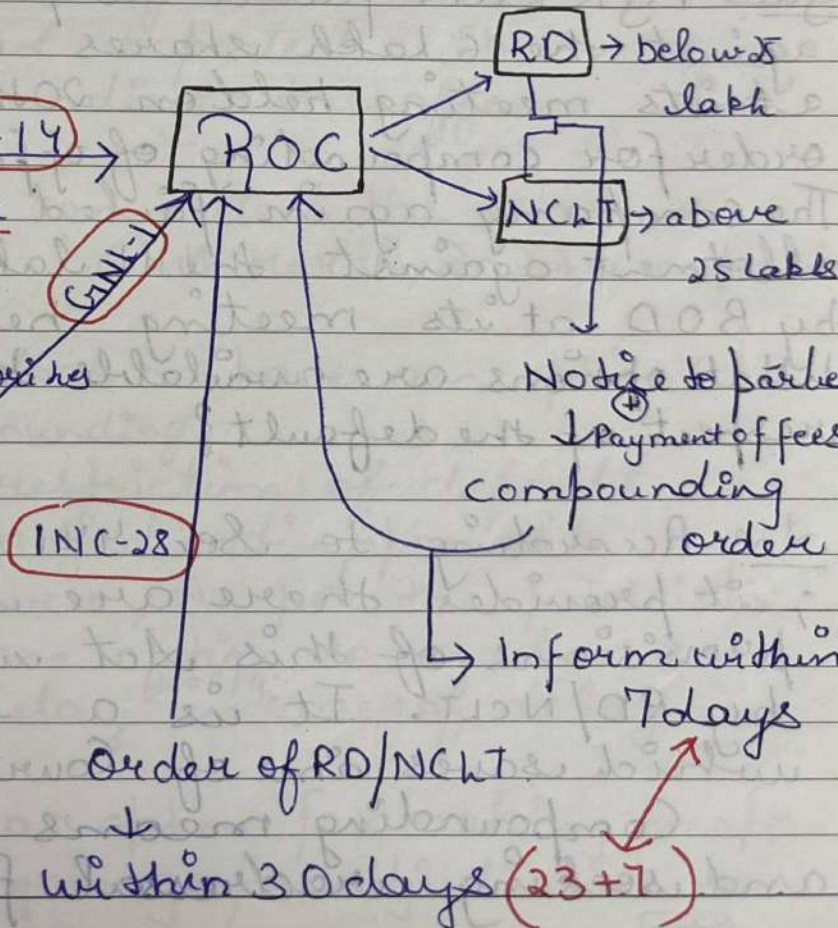
→ Procedure for Compounding + App. to ROC

① Compoundable ~~✓~~

- ② (a) BM
- (b) Resolution
- (c) Authorizing a Director to sign
- (d) Appoint CA/CS → to represent before authorities

→ Application to ROC

↓
Triplicate



Effect of Compounding

Prosecution (x) → compounding (✓) → No prosecution is allowed

Prosecution (pending) → compounding (✓) (x)

↓
Prosecution
(discharge)

↓
Prosecution
(will continue)

Note → 3 years are counted from the date of order of compounding in case of Repeated default

Ques PQR Ltd. failed to file return of allotment against the 16 lakh shares allotted by the BOD at its meeting held on 20th April, 2019 and got order for compounding of offence on 10th June, 2020. The company again failed to file return of allotment against the 11 lakh shares allotted by BOD at its meeting held on 4th March, 2022. What options are available to the company in respect of the default?

Ans According to Sec 441 of Companies Act, 2013; it provides there are some relevant provisions of this Act which can be compounded by RD/NCLT. It is a settlement mechanism which saves time of Court's proceedings.

Compounding means admission of guilt and seeking redressal for the same.

Compoundable offences are those offences which states:-

- fine only
- fine / Imp
- fine / Imp / Both

Non Compoundable offences are those offence which state:-

- Imp only
- fine ⊕ Imp ⊕ both
- Inquiry / Inspection / Investigation is pending
- same default occurred within 3 years.

In the Instant Case, PQR Ltd. failed to file return of allotment in 2019 which was compounded on 10th June, 2020. According to Sec 441 of CA, 2013 If the Offences compounded repeated within 3 years from the date of compounding the offense will be non compoundable.

Because PQR Ltd committed the same offense within 3 year i.e 4th March, 2022 → compound cannot be done.

Hence, the company does not have an option to make an App. for compounding.

However No such restriction of default is Imposed u/s 454 on adjudicating penalty by adjudicating officer. Moreover, As per the provision of CA, 2013 → Co. has an option to make an App. for condonation of delay ^{Sec 454} in case of delay in filing of document to ROC.

Thus PQR does not have an option for making an app for compounding, but they can go for adjudication or condonation of delay.

→ Other Provisions of sec 441 of CA, 2013

① Authority (RD/NCLT) → may ask for amt. (penalty)
↓
before compounding

② Offence will be compounded if

- sum has been paid
- ⊕ has an evidence

③ Amt. asked by Authorities (RD/NCLT) shall not exceed
↓
max. amt of fine imposed for offence.

④ Sum will be determined by Authorities
↓
additional fees paid by company

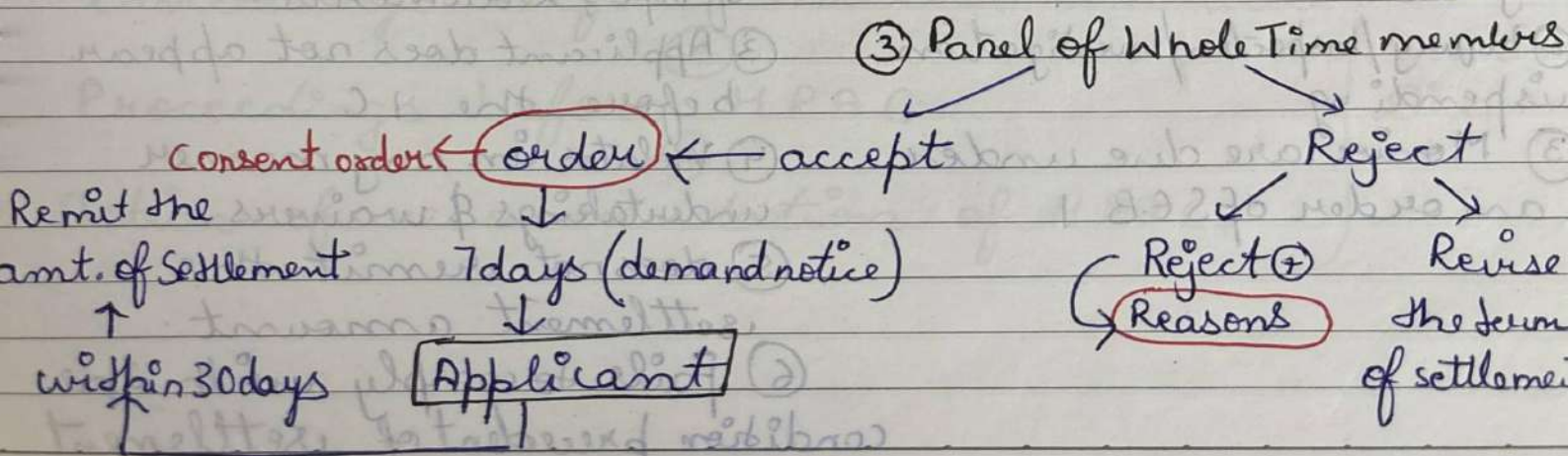
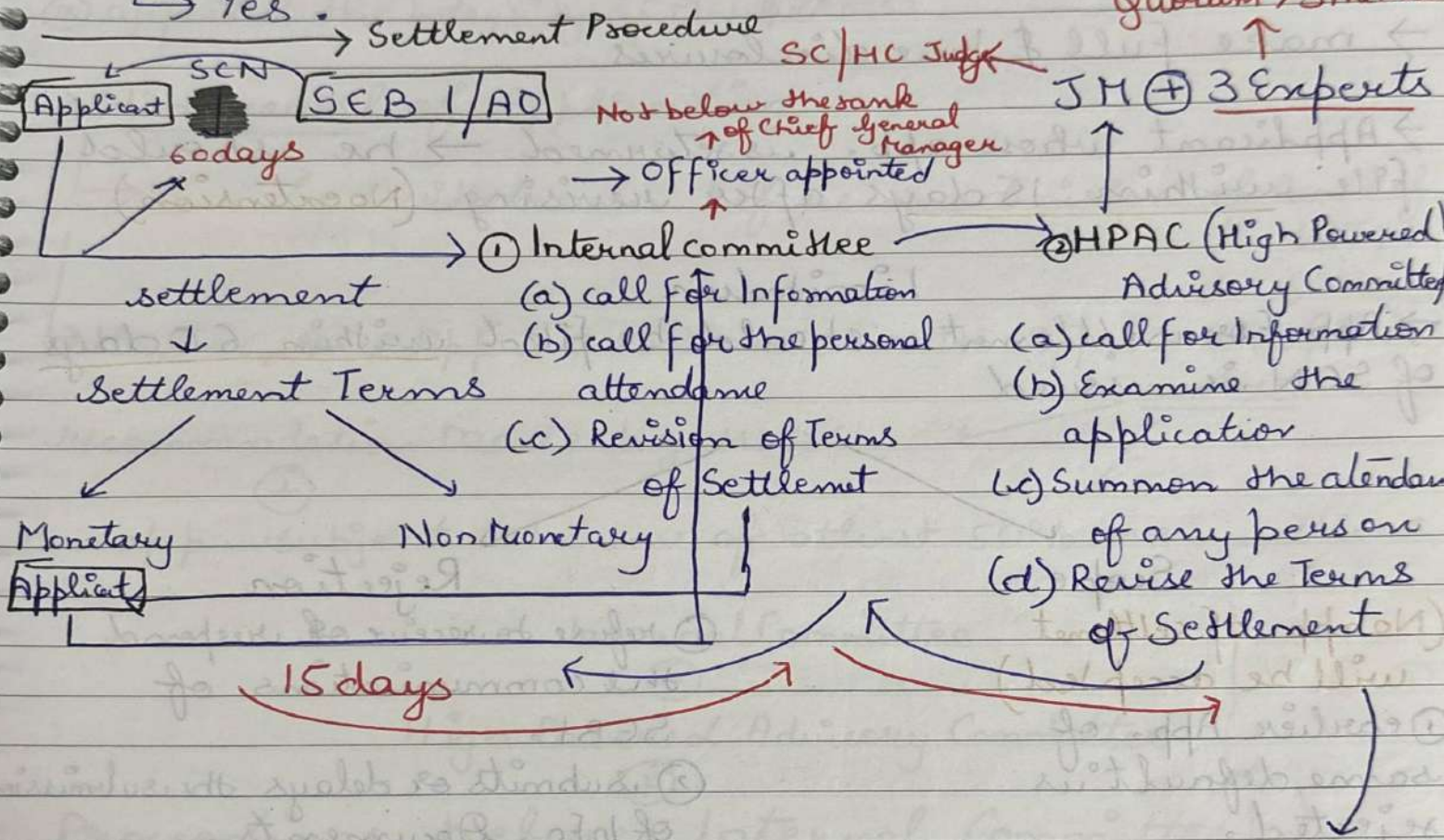
⑤ Prior to making application for compounding
↳ it is essential & Co. should ensure to put an end to failure or removal of default

→ Penalty for Non Compliance of Order of RD/NCLT

↳ Twice the amt. provided in the corresponding section.

Note → ① Does NCLT / AD have any discretionary power to reject the App.
→ No, → but Yes if they give valid reason

② Whether NCLT has power to review its decision?
→ Yes. Term → 3 year
Quorum → 3 members



→ SEBI (Settlement Proceedings) Reg, 2018

Application for settlement

- in form specified in Para A of Schedule 1.
- non refundable fees @ form to SEBI
- make full & true disclosures
- Applicant whose app. is returned → he should file within 15 days after revising (**No extension**)

Limitation

- App. for settlement should be filed within 60 days of SCN is issued

Scope

- No app. of settlement will be accepted)**
- 1) earlier App. of same default is rejected.
- 2) Inquiry/Inspection/Investigation is pending
- 3) Monies are due under an order of SEBI

Rejection

- ① refuse to receive or respond the communications of SEBI.
- ② submits or delays the submission of Info, Documents.
- ③ Applicant does not appear before the IC
- ④ Violates in any manner undertakings & waivers.
- ⑤ does not remit the settlement amount.
- ⑥ fails to comply with the condition precedent of settlement

→ Board may not settle any matter if in opinion Default is

- ① has market wide Impact
- ② causes losses to large No. of Investors
- ③ affected the Integrity of Market

→ Withdrawal of Application

→ can be withdrawn before the decision of Panel of WTM

→ However, Once App. is withdrawn → No App. can be filed ^{of similar default} unless a recommendation made by HPAC.

④ an app. subject to increase of at least 50% over settlement

Internal Committee

④

High Powered Advisory Committee

④

Proceedings before Internal Committee

④

Proceedings before HPAC

④

Action of recommendation of HPAC

done in Diagram

Notes:- ① If 1 member of HPAC seeks recusal, other 2 will give recommendations

② If there is No Majority → decision of JM will be taken as decision of HPAC

And

If JM seeks recusal → decision of remaining 2 or more will be taken as decision of HPAC

③ Where all member seeks recusal, → The BOARD may constitute another HPAC

Settlement Terms

① Suspension or Cessation of business activity

② Exit from management

③ Disgorgement on account of Inaction of Applicant

④ Refraining from acting as a director or employee of Intermediary

⑤ Cancel securities & Reduce holding of securities issued fraudulently

⑥ Lock in securities

⑦ Implementation of enhanced policies & procedures to prevent future SE violation.

⑧ Provide training & education to employees.

Note ① Money received through App.

↓
credited to SEBI General Fund, Settlement Amt

⊕

(excluding the Amt)

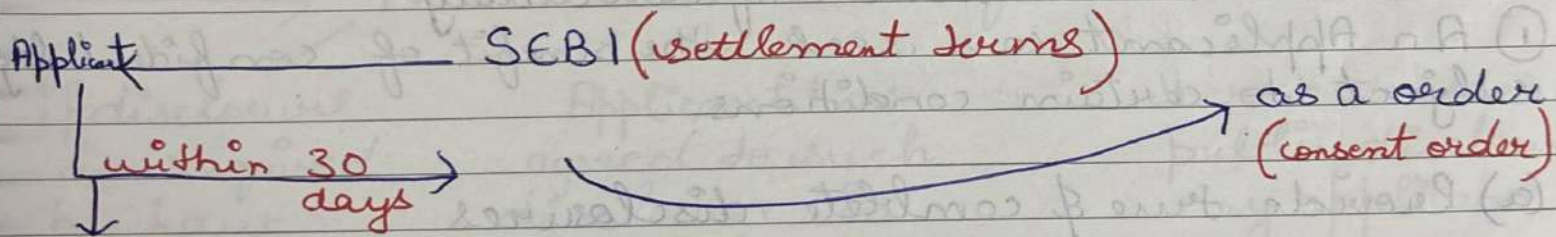
↳ credited to Consolidated Fund of India

⊕

profit made by Applicant may be disgorged as part of settlement

↳ shall be credited to IEPF.

→ Summary Settlement Procedure



① File the application

② comply with the terms

③ Remittance the amt. of settlement

④ ⊕ 15 days → Revision of terms

→ Summary Settlement Procedure (Defaults)

- ① Delayed disclosures
- ② Non disclosures related to Co. listed on STX
- ③ Disclosure not made in specified format
- ④ Delayed compliances
- ⑤ such other default as specified by SEBI.

Note → If Applicant failed to make full & true disclosure or failed to cooperate



No Summary Settlement Procedure under this chapter

→ Settlement with Confidentiality

① An Applicant can seek the benefit of confidentiality subject to certain conditions

(a) Provide true & complete disclosures

(b) Cooperate fully, continuously & expeditiously throughout his investigation/inspection/inquiry.

(c) Not concealing, destroying, manipulating or removing the relevant documents.

(d) cease to participate in violation of securities law.

- ② To ensure Confidentiality, The Applicant or his AR may make an app (containing all relevant doc [⊕]) evidences
- ③ Upon satisfaction, SEBI assure the benefit of confidentiality
- ④ The SEBI may at any stage → reject the application
- ⑤ App. shall be made prior to → Inquiry / Investig / Inspection

→ Confidentiality

Identity of applicant

documents, records provided by applicant

→ Not be treated as Confidential

if disclosure is required by law

Applicant has agreed to such disclosure in writing

there has been public disclosure by applicant

P.T.O

→ Settlement Orders

- ① Settlement Order shall not be admissible as evidence.
- ② Settlement Order will not affect the right of Third Party.

③ Settlement order can be Revoked

✓
Applicant not
comply with
settlement order

→ SEBI has
knowledge of
Info. given
is false.

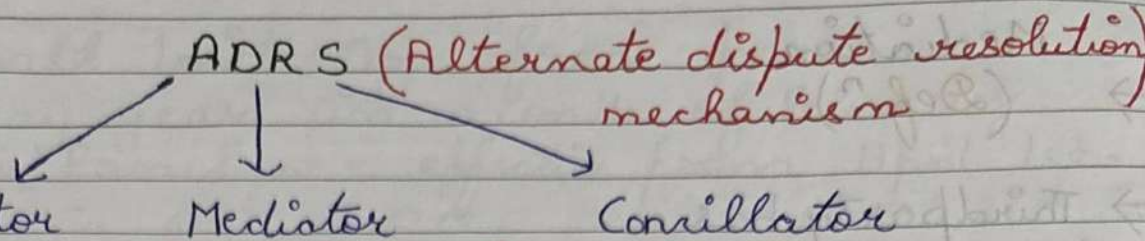
④ IF Settlement Order is revoked

↓
No Amount paid is refunded.

⑤ All doc. & Info. provided will not be admitted as evidence

P.T.O

→ Mediation & Conciliation



- to reduce the burden of court
- speedily & justly

Mediation

- is a voluntary, party-centred & restructure negotiation process where a neutral third party redress the dispute by using specialised communication & negotiation techniques.

- Mediator does not give advise to the parties.

Conciliation

- It is a process in which Independent person is appointed by the parties with mutual consent to resolve the dispute by using similar techniques of mediation
- Conciliator can give advise which are not binding on parties.

P.T.C

→ Diff b/w Mediation & Conciliation

Mediation (Def ⁿ)	Conciliation (Def ⁿ)
→ Third party has less involvement	More participant
→ Mediator cannot suggest to parties	Conciliator can suggest
→ Decision is called settlement	Decision is called order.

→ Advantages of Mediation & Conciliation

- ① Informal
- ② Confidential
- ③ Quick & Inexpensive
- ④ Speedy disposal of cases

→ Mediation & Conciliation under CA, 2013

- ① RD shall prepare a panel of experts to be appointed as M&C in respective regions shall be placed on website of MCA.
- ② RD may Invite Applications
- ③ RD may reject App., but he should provide reasons for it.

④ Interested Applicant make an App. → MDC-1

⑤ The RD shall Invite App. from person Interested every year in month of February & update the Panel w.e. effective from April 1st.

→ Qualifications For mediation & Conciliator

① he has been Judge of SC

② he has been Judge of HC

③ he has been District or Session Judge

④ he has been member or register of Tribunal

⑤ he has been officer of Indian Corp. Law Service or Indian Legal Service for 15 years

⑥ he has been Legal Practitioner for a period of 10 years.

⑦ he has been PCA, PCS, PCMA for a period of 15 years.

⑧ he has been President or Member of any State Consumer Forum

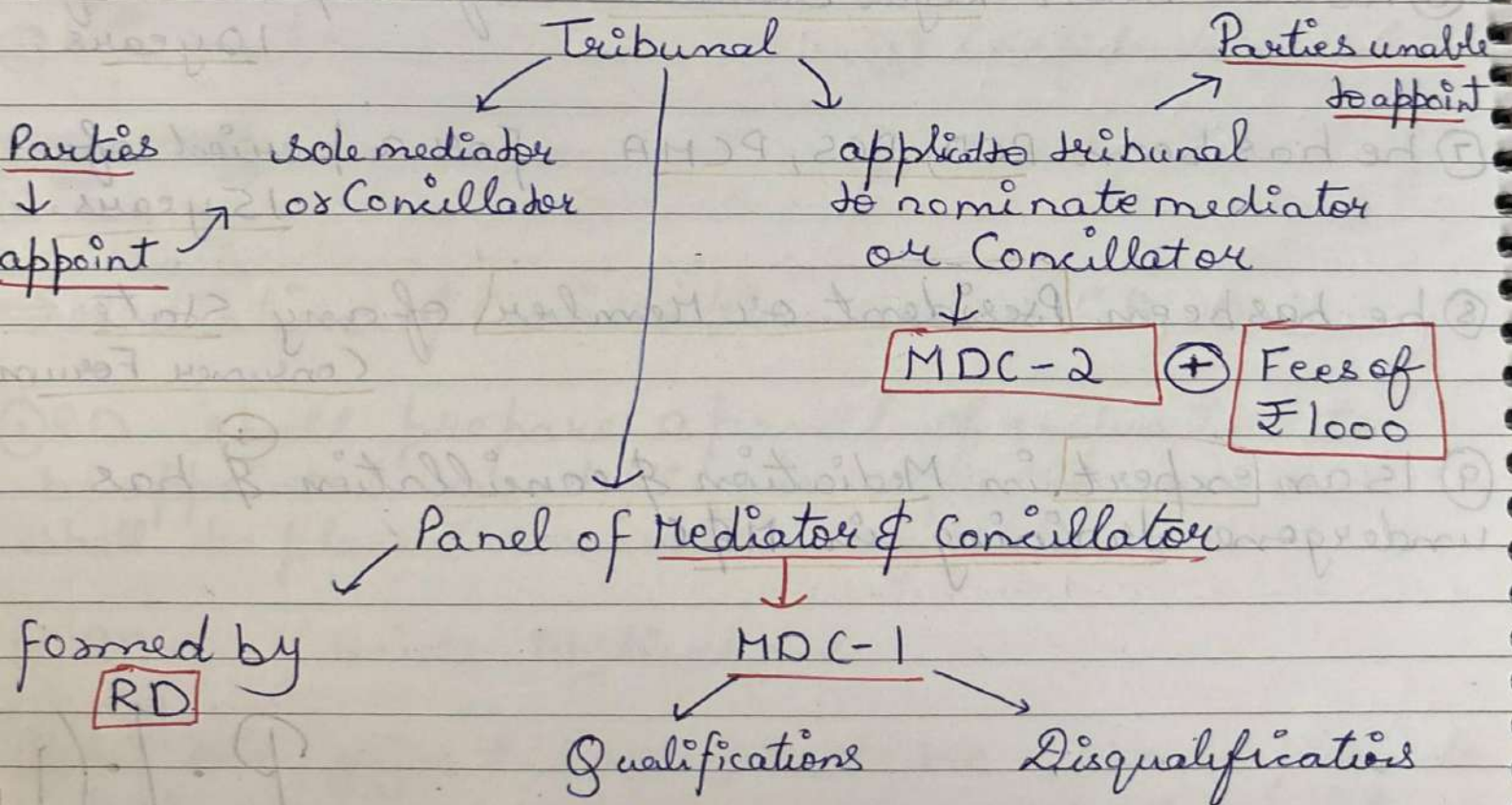
⑨ Is an expert in Mediation & conciliation & has undergone training in M&C

P.T.O

→ Disqualifications

- ① is an Undischarged Insolvent or his App. is pending.
- ② has convicted of any offence of moral turpitude
- ③ has been removed or dismissed from the service of Govt.
- ④ he has been punished in any disciplinary proceedings.

→ Conditions for app. for App. of Mediator or Conciliator



→ c/g or Tribunal may suo-moto refer a matter to Panel
 ↳ in Public Interest

- Deletion the name of M & C From the Panel
- The RD may delete after giving the reasons
 - ① Roobh to M & C.
- Withdrawing Name from Panel (RD)
- ① Any M & C who wants to withdraw make an App.
 - ↓
 - to RD ① reasons
- ② RD will take a decision within 15 days of receipt.
- Duty of mediator or conciliator to disclose certain facts. (M & C)
- ① If any M & C has a reasonable doubt of his Independence or Impartiality
 - ↓
 - he shall disclose to c/g or Tribunal or AT
- ② If any M & C from time of appoint has reasonable doubt of his Independence or ^{most} Impartiality
 - ↓
 - he shall disclose to parties without any delay.
- Withdrawal of Appointment (c/g or Tribunal)
- If c/g or Tribunal receives any Info. of Independence or Impartiality of M & C
 - ↓
 - it may withdraw the app. & appoint new M & C.

Procedure for disposal of matters (M&C)

- ① He will fix dates & time of each M&C session
 (+)
consultation with parties.
- ② He shall fix the place decided by c/g or Tribunal or AT
 or
place where parties jointly agree
- ③ He may conduct joint or separate meeting with parties.
- ④ Each party 10 days prior to session
 ↓
provide brief memorandum of issues which is to be resolved
- ⑤ Each party shall ~~not~~ provide all info. as required by M&C.

Representation of parties

- either personally or through his authorized attorney
 (+)
 permission of M&C (or) Tribunal

Consequence of Non attendance of parties at sessions.

If parties fail to attend 2 consecutive sittings

↓
 the session will be failed (+) M&C shall report to c/g or Tribunal or AT.

Role of M&C

- ① Resolve the disputes
 - ② Communicate each other view to reduce misunderstanding
 - ③ clarifying prioritize
 - ④ exploring area of compromise
 - ⑤ He shall not suggest / advise to the parties.
- Parties alone responsible for taking decision
- Only Conciliator (Not mediator)
- ↓
- can give suggestion for settlement ⊕ it is not binding upon parties.
- Time limit for Completion of M&C.
- ↓
- 3 months ⊕ 3 Months extension (in case of Sufficient cause)
- Confidentiality, disclosure & Inadmissibility of evidence
- ① If M&C receives any Info → he may disclose to same to other party.
- However, if party gives Info with a special condition of confidentiality → he will not disclose.

② The receipt or preparation of records, reports or other doc
made by M & C
↓
shall also be confidential

③ There shall be no audio or video recording of sessions.

④ All the info, records, proceeding in the process of M & C
↓
shall not be admissible as evidence in Court.

→ Communication b/w M & C & Tribunal

↓
There shall be no communication

except (limited to) :-

① failure of party to attend the session

② consent of parties

③ assessment not suited for settlement

④ settlement of dispute b/w the parties
About

→ Settlement agreement ⊕ Fixing date for recording settlement

order passed by M & C → forward to Tribunal

↓
will fix date for recording of settlement

(within 14 days from order of M & C)

↓
if parties are satisfied and settle their dispute

↓ (Tribunal will pass an order)

→ Settlement agreement
(binding upon the parties)

Expenses of mediation & Conciliation

① Fees of M & C → shall be borne by both the parties equally.

② Fees of Witness & of documents/records

↓
borne by parties individually.

P.T.O

→ Ethics to be followed by M&C

- ① Should be Independent & Impartial.
- ② Follow the rules & observe with due diligence.
- ③ Uphold the Integrity & fairness of M&C process.
- ④ be faithful related to confidentiality.

Note → If there is M&C proceeding

↓
No Judicial proceeding shall start.

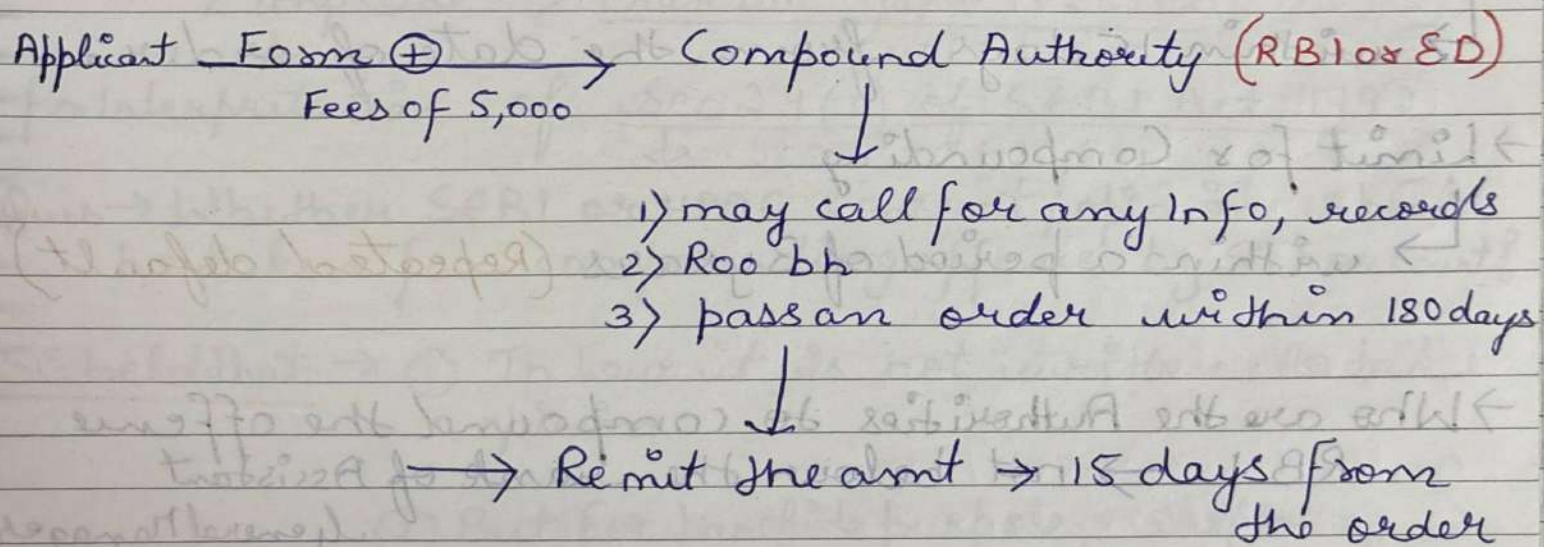
→ Matters ^{not} to be referred for Mediation & Conciliation

- 1) Cases Involving fraud
- 2) Criminal ⊕ Non Compoundable offences
- 3) Cases Involving public Interest
- 4) Matters in which Inquiry / Investigation / Inspection _{is} pending.

→ Defⁿ of Officer in Default?

- ① WTD
- ② KMP
- ③ where there is no KMP, then Authorized Ds.
- ④ Any director on whose advise the BOD of a Co. functions
- ⑤ every Ds. who is aware of the contravention
- ⑥ STA or MB in case of issue or transfer of shares.

→ Compounding Procedure under FEMA, 1999.



→ Factors considered while considering Compounding Application

① Amt. of gain of unfair advantage.

② Amt. of loss caused

③ Economic benefits occurred.

④ Repetitive nature of contravention

⑤ Contraveners Conduct in undertaking the transaction

→ Payment of Amt. Compounded & Certificate of Compounding

→ within 15 days from the date of order.

→ Limit for Compounding

→ within a period of 3 years (Repeated default)

→ Who are the Authorities to compound the offence

RB 1 → not below the rank of Assistant General Manager

ED → not below the rank of deputy Ds. or Deputy Legal Advisor

→ Power of RBI to compound Contravention Offence of

- upto 10 lakhs → Assistant General Manager
- 10 - 40 lakhs → Deputy General Manager
- 40 - 100 lakhs → General Manager
- Above 100 lakhs → Chief General Manager

→ Power of ED to compound Contraventions Offence of

- upto 5 lakhs → Deputy Director
- 5 - 10 lakhs → Additional Director
- 10 - 50 lakhs → Special Director
- 50 - 100 lakhs → Special Ds. + Legal Advisor
- above 100 lakhs → Special Ds. + Director of ED

→ Imp Case → Prakash Gupta V. SEBI



for Interpretation of Sec 24(1) of SEBI Act, 1992



Ques → Whether SEBI or MPAC consent/opinion should be taken for compounding offence by SAT or Court?

SC held that → ① In law it is not written to take opinion

② But for bonafide purpose, it may take SEBI opinion regarding compounding Application.

→ Question / Answers

① A PCS wants to establish his practice in the field of Mediation & Conciliation. He wants to know whether he would not be eligible to be appointed as M&C as per Rule 5 of Co. (M&C) Rules, 2016. Advise him.

Ans

As per Rule 5 of Co. (M&C) Rules, 2016. Power is vested with R D to appoint a panel of M&C. All those who are qualified can make an application in MDC-1 for appointment as mediator and Conciliator.

Qualification of M&C would be as following:-

- ① Judge of SC
- ② Judge of HC
- ③ Judge of District / Session Court
- ④ Member of State Consumer Forum
- ⑤ PCS/PCA/PCMA → experience of 15 years
- ⑥ Legal Practitioner → experience of 10 years

However, Anybody who applies for a panel of M&C, should not possess following disqualifications

- ① Undischarged Insolvent
- ② committed contravention of moral turpitude
- ③ removed / dismissed of any position by c/g or s/g.
- ④ disciplinary proceeding is pending.

Considering the above provisions we would advise that if PCS wants to establish his practice in H&C, he would need the minimum experience of 15 years.

Ques. XYZ Software Technologies Ltd. of Bengaluru was engaged in business of software exports. During the past years, it had exported its services to its Parent entity in USA but failed to realize and repatriate the foreign exchange due on its exports to India, within the stipulated time. The AA imposed a penalty under the provisions of FEMA, 1999. Being aggrieved by the penalty, the Co. seeks your advise to file an appeal. Advise the Company.

Answer

As per the provisions of FEMA, 1999 the appeal against the order of Adjudicating officer lies with Special Ds. (Appeal), & appeal against the order of Special Ds. (Appeal) will be filed to Appellate Tribunal.

In the Instant Case, since aggrieved party is not satisfied with the penalty imposed by AO, We would advise the Co. to file an appeal to SD (Appeal) within 45 days from the date of the order of AO.

Procedure for filing of Appeal before SD(Appeal) would be as following:-

- ① An app. will be filed in Form I (triplicate) with a DD of 5,000/-.
- ② On the date of hearing, the Authority would give oobh to both the parties and pass an order either confirming, modifying or setting aside the order of AO.
- ③ copy of order will be given to both the parties
- ④ If Co. is not satisfied with the order of SD(Appeal), An appeal can be made to Appellate Tribunal within 45 days from the date of the order of SD(Appeals).
- ⑤ Power of authorities will be as similar to civil court. (SIID)

Ques: Though the term 'settlement' is widely used in STX. and securities market, SEBI (Settlement Proceedings) Reg, 2018 has different meaning to it? Discuss it and also brief on the terms of settlement as per aforesaid regulation.

Answer

Settlement is the term which is widely used in STX but the SEBI (Settlement Proceedings) Reg, 2018 suggest a different meaning.

→ Settlement means a giving an option to an offender to pay money in lieu of his prosecution or it is a mechanism which avoids a prolonged litigation.

As per SEBI → settlement terms include a settlement amt. & non monetary terms which includes

- ① Suspension or cessation of business
- ② Exit from Management
- ③ Disgorgement on account of Inaction of applicant
- ④ Cancel securities or reduce holdings
- ⑤ Lock In of securities
- ⑥ Implementation of enhanced policies & procedures to prevent future Sh violations.

Ques A PCS who is in practice since 2010 with LLB degree is intends to be empanelled as 'M&C' under Co. (M&C) Rules, 2016. Can he be empanelled? If Not, Why?

↓
same as Question No. 1

↓
written before (except conclusion).

Since, He is PCS who is practicing since 2010, he can apply for a panel of M&C after he has the necessary 15 years of continuous practice.

Additionally it is noted that an Individual with an LLB degree is not authorized to practice law unless they are registered as an advocate with the Appropriate Bar Council.

Therefore, the PCS ^{does not} ~~need~~ reach the eligibility criteria & thus, He can not be empanelled as 'M&C'.

