



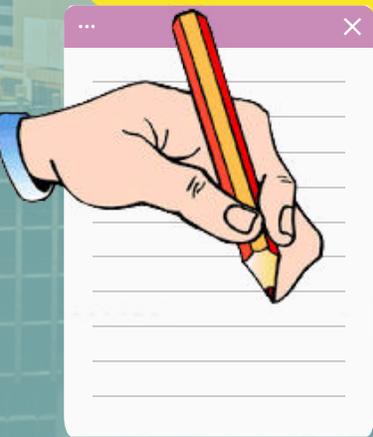
PS EXECUTIVE



SBIL/SBEC

SETTING UP OF BUSINESS OUTSIDE INDIA

HANDWRITTEN



**CLASS
NOTES**

**USE CODE
AVC**



CS AMIT VOHRA SIR



unacademy

LET'S CRACK IT!

Chapter - 11

Setting up of Business outside India and Issues Relating Thereto

① Introduction

Year 1991 was Golden year for Indian Economy



foreign investment Policies

Changed and opened gates for foreign investments to enter Indian Territory



This made Indians eligible to set up business abroad

Automatic Route for overseas investment was introduced (+)

(+)

Cash remittances were allowed



Basic intent



To provide Indian industry access to new markets and technologies

To increase their competitiveness globally and help Country's Export efforts

Introduction of FEMA 1999



Changed entire perspective on foreign exchange



Aimed to

facilitate external (+) promote Trade and payments

Development (+) Maintenance

foreign market in India

India Signing various

MOUs, FTAs, Bilateral talks

with other nations

Such as

India - Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA)

India - UAE Comprehensive Partnership Agreement (CEPA)

India - Australia Economic Cooperation and Trade Agreement (Ind Aus ECTA)

According to RBI → Overseas Direct Investment (ODI)

Investment by way of

Acquisition of unlisted equity Capital of foreign Entity

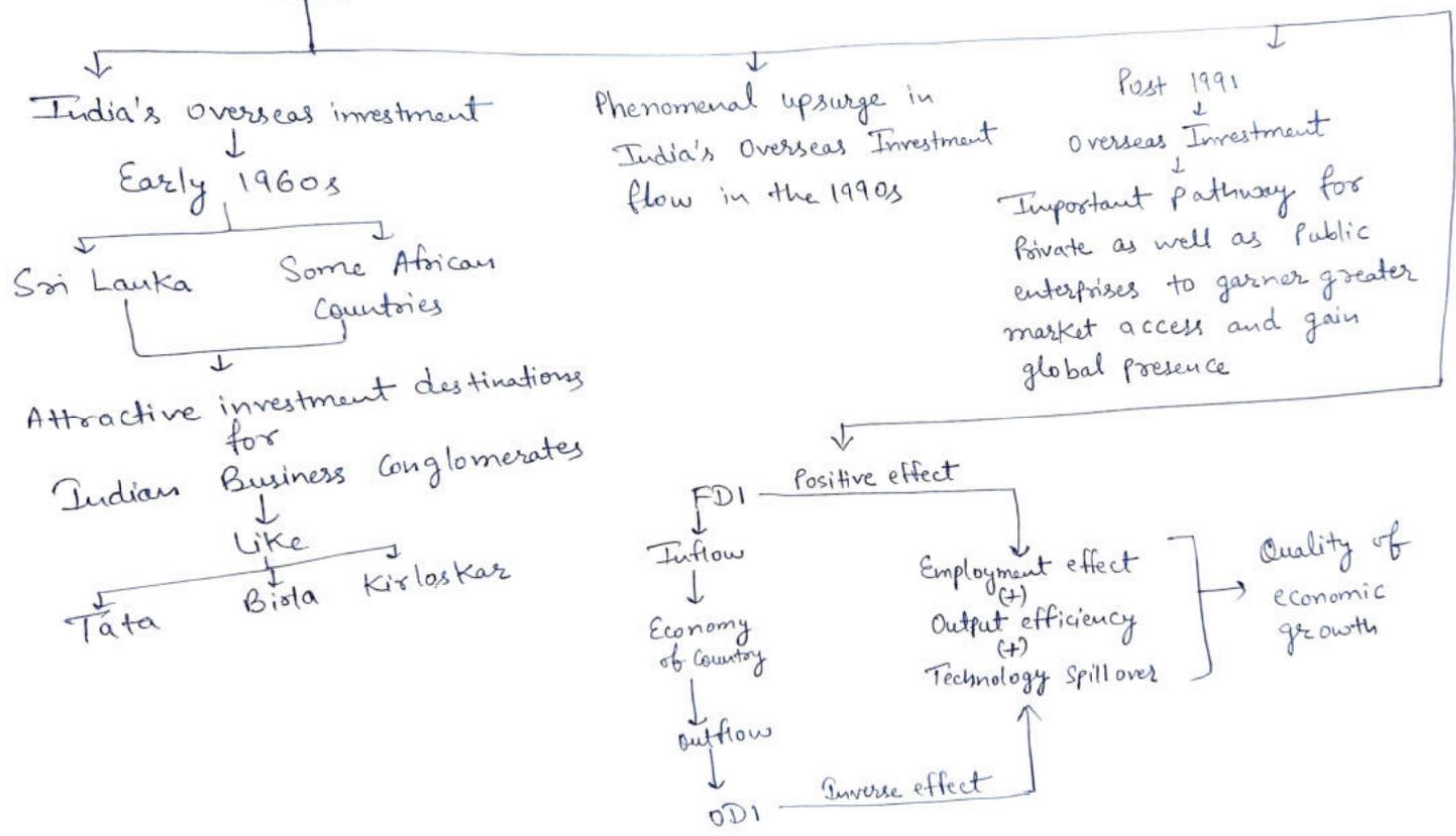
OR Subscriptions of MoA of foreign Entity

OR Investment in 10% or more of Paid up Equity Capital of listed foreign Entity

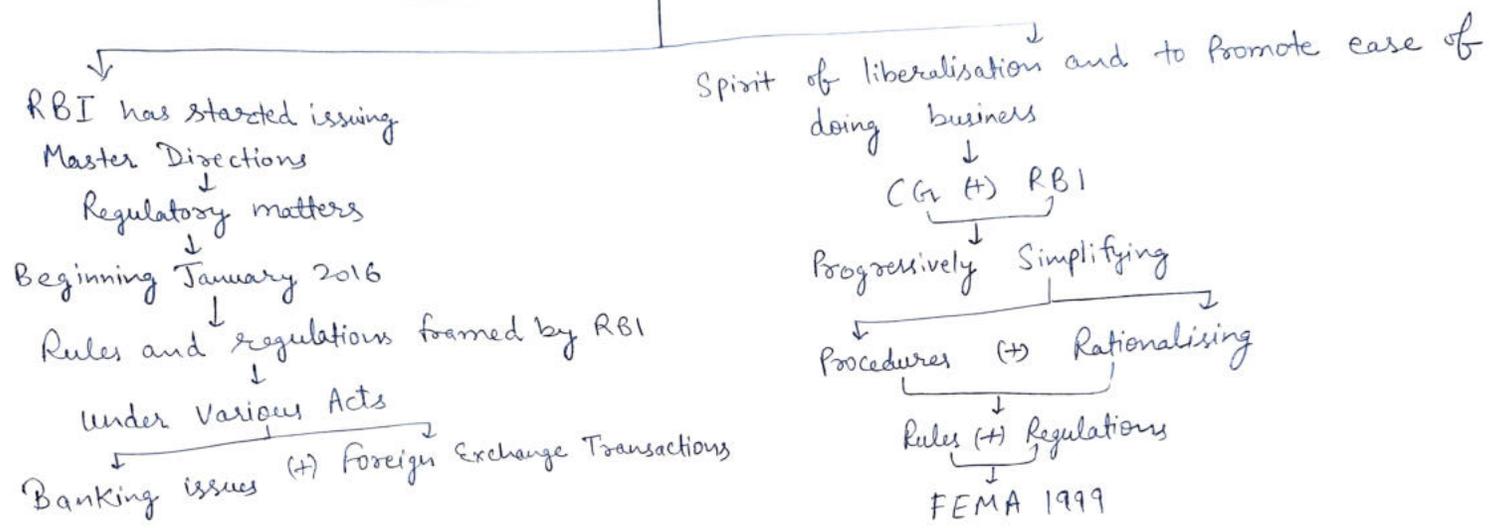
OR Investment with Control if investment is less than 10% of Paid up Equity Capital of listed foreign Entity

* Note → If Investment by person resident in India (PRI) in equity Capital of foreign entity is classified as ODI
↓
shall treated as ODI
↓
Even if it falls to level below 10% or such person loses control in foreign Entity

③ Evolution

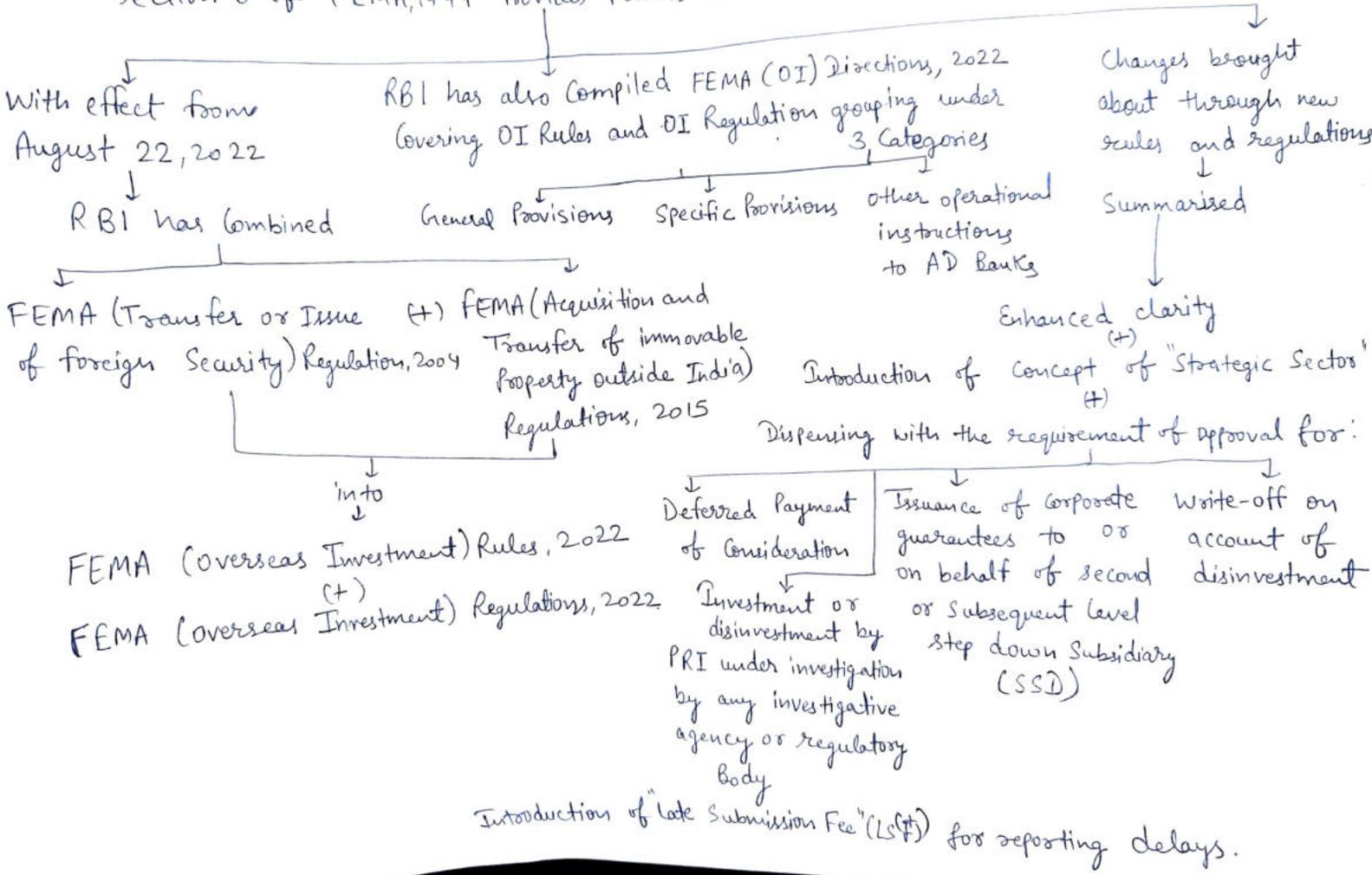


④ Authority governing setting up of Business outside India - Reserve Bank of India 4

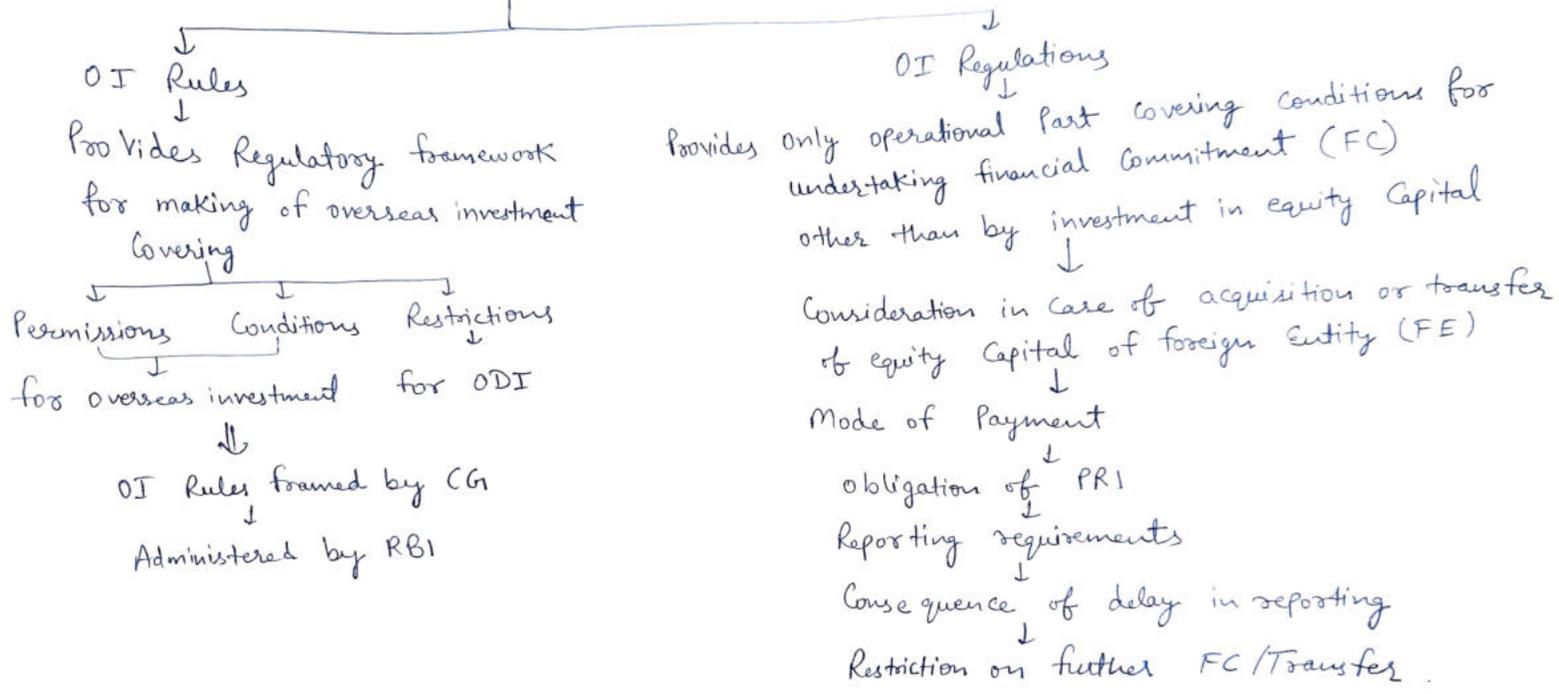


⑤ Foreign Exchange Management Act, 1999

Section 6 of FEMA, 1999 provides Powers to RBI

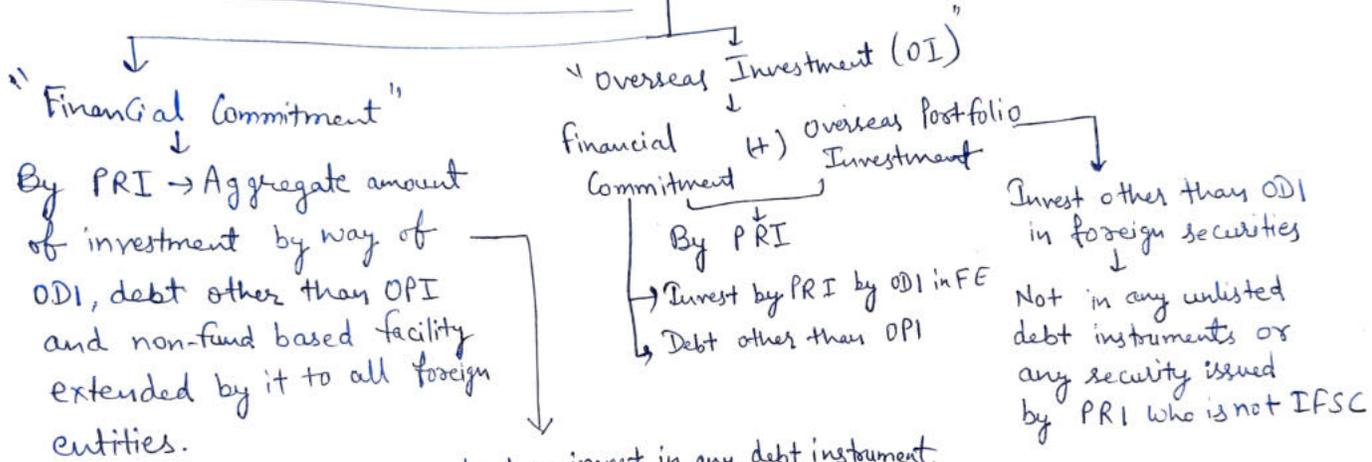


⑥ OI Rules v/s Regulations



⑦ Overseas Investment

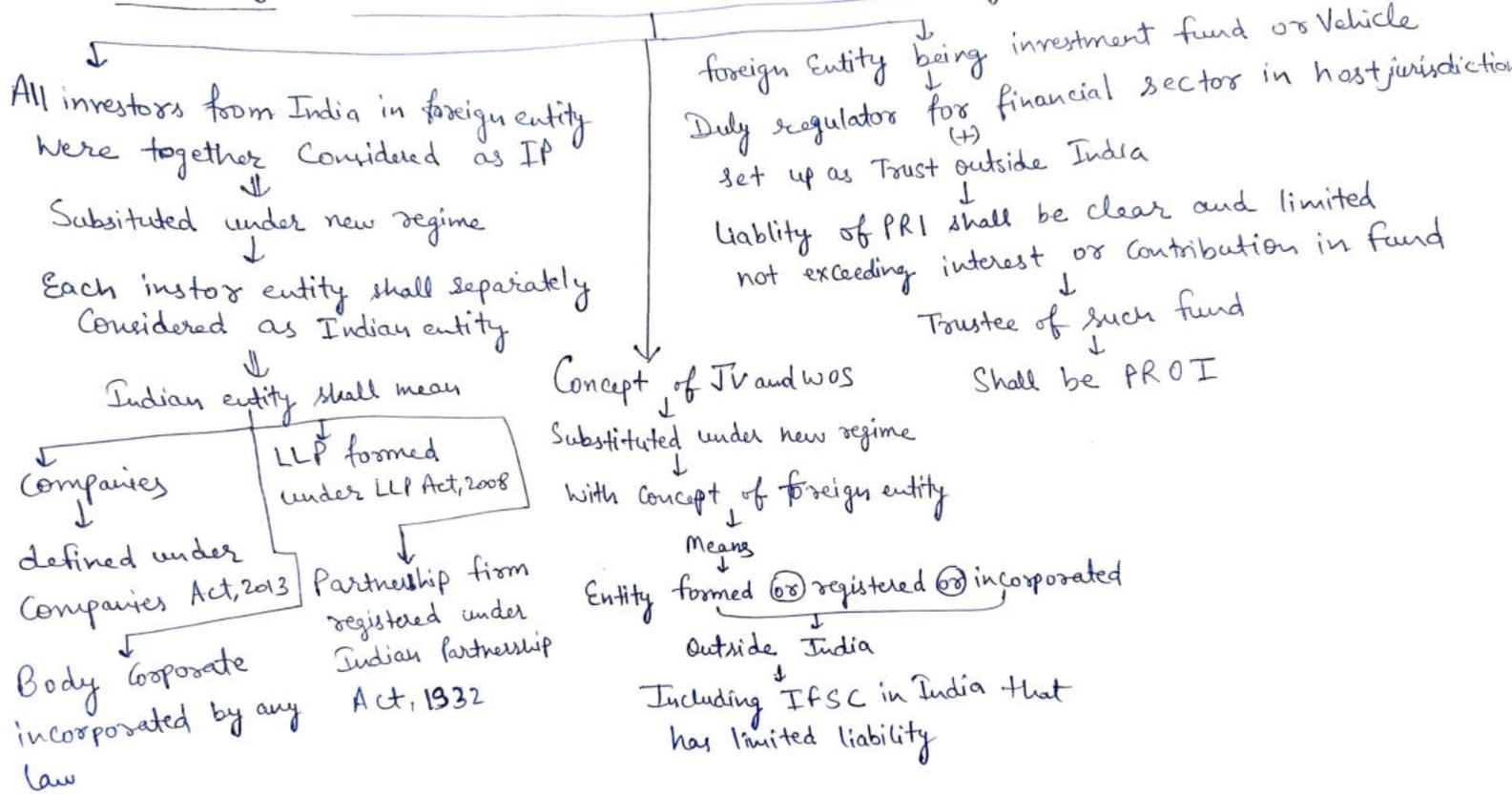
OI Rules Combine two to define "Financial Commitment" and separately define the term "Overseas Portfolio Investment"



Indian entity may lend or invest in any debt instrument, issued by foreign entity or extend non-fund based Commitment To or on behalf of foreign entity -> including overseas Stepdown Subsidiaries of such Indian Entity Subject to following conditions Indian Entity

is Eligible to make ODI On or before date of making such financial Commitment has made ODI in foreign entity has acquired control in foreign entity

Eligibility (Entities are Referred To as "Indian Entity")



9

Non - Applicability

Investment by financial institution in an IFSC

Acquisition or Transfer of any investment outside India made out of Resident foreign Currency Account

Acquisition or Transfer of any investment outside India made out of foreign Currency resources held outside India by Person employed in India for a specific duration or for a specific job

Duration does not exceed 3 years

Acquisition or transfer of any investment outside India in accordance with Section 6(4) of FEMA Act
Investment → in → Foreign Security
or
Any immovable Property outside India

Acquired when Person was resident outside India
or
Inherited from Person who was resident outside India

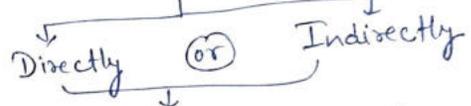
Prohibitions

No PRI shall make ODI in a foreign entity Engaged in

- Real estate activity
- Gambling in any form
- Dealing with financial Products linked to the Indian rupee without Specific approval of RBI

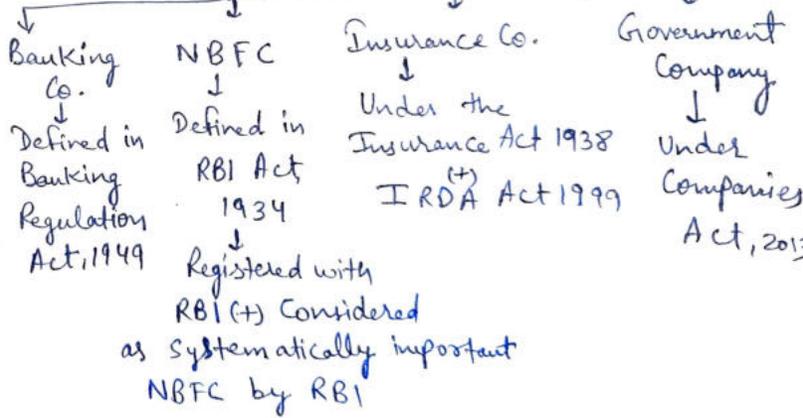
Any ODI in Start-ups recognised under Laws of host Country
 ↓
 Shall be made by Indian entity only
 from internal accruals
 ↓
 in case of resident individuals from own funds

No PRI shall make financial commitment in foreign entity that has invested in India
 ↓
 At the time of making financial commitment or any time thereafter



resulting in structure with more than 2 layers of subsidiaries

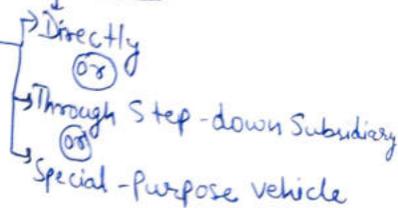
Such restriction shall not apply to following Companies



11) Automatic Route - Rule 9 of OI Rules, 2022

Subject to prescribed limits and conditions

Any overseas investment by PRI shall be made in foreign entity
Engaged in bona-fide business activity



* "Step-down Subsidiary"

Entity in which foreign entity has control

Also → for investments made through Step-down Subsidiary to qualify as OI and be permissible under OI Rules

It shall have Limited Liability

New Rule → Expansive → It allows OI into an entity engaged in bona-fide Business including through multiple layers of Step-down Subsidiary or Special Purpose Vehicle

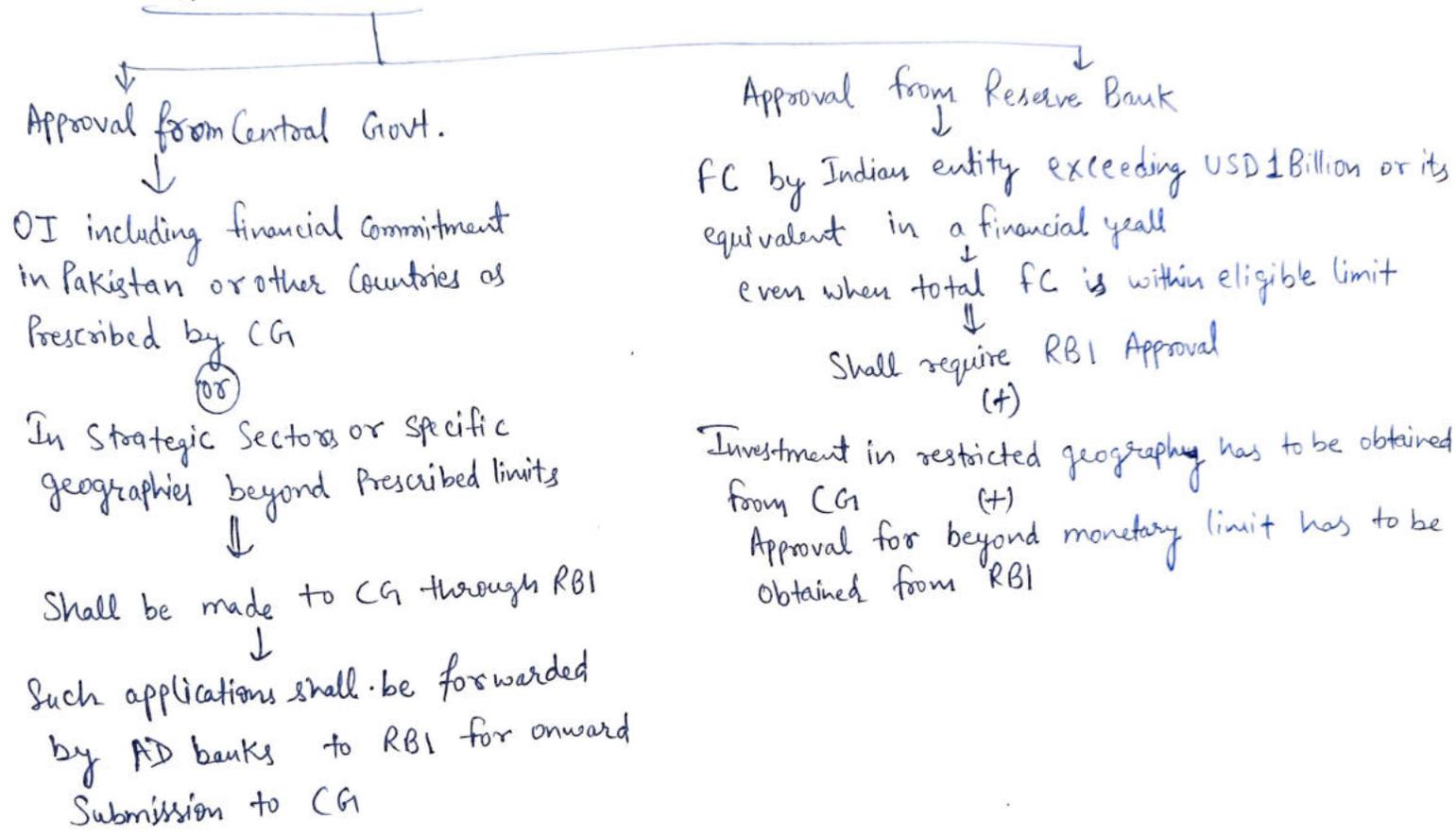
* "Bona-fide business Activity"

Any business activity permissible under any law in force in India or the host Country.

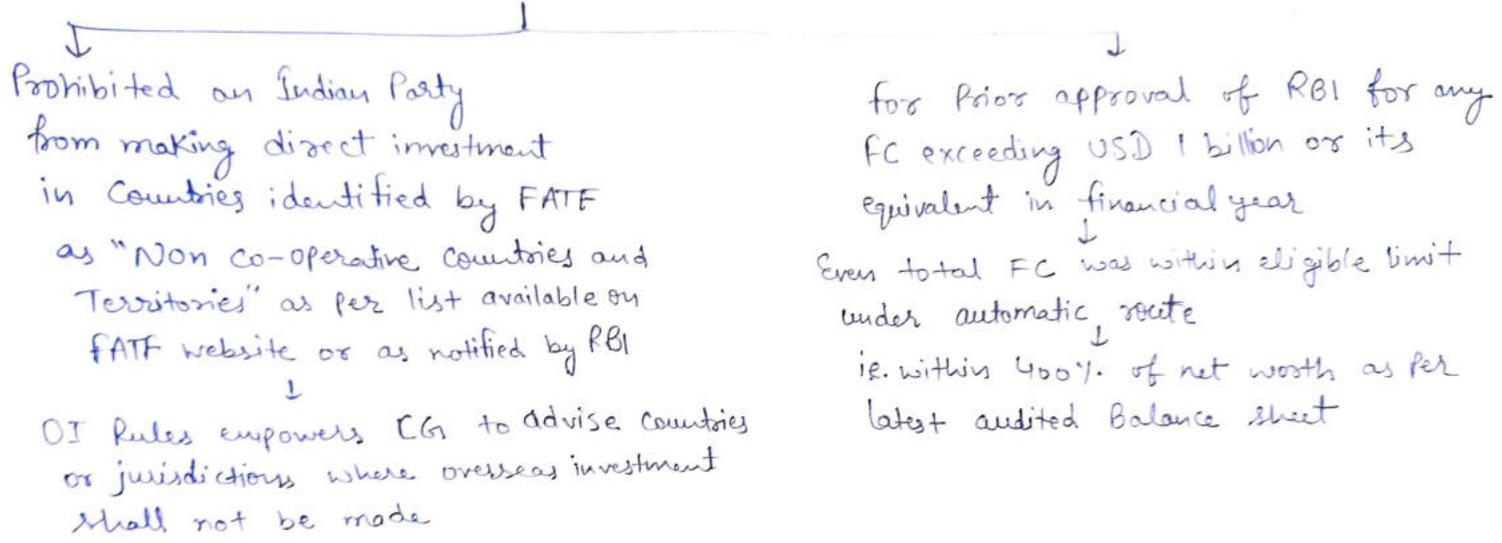
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Approval Route

12



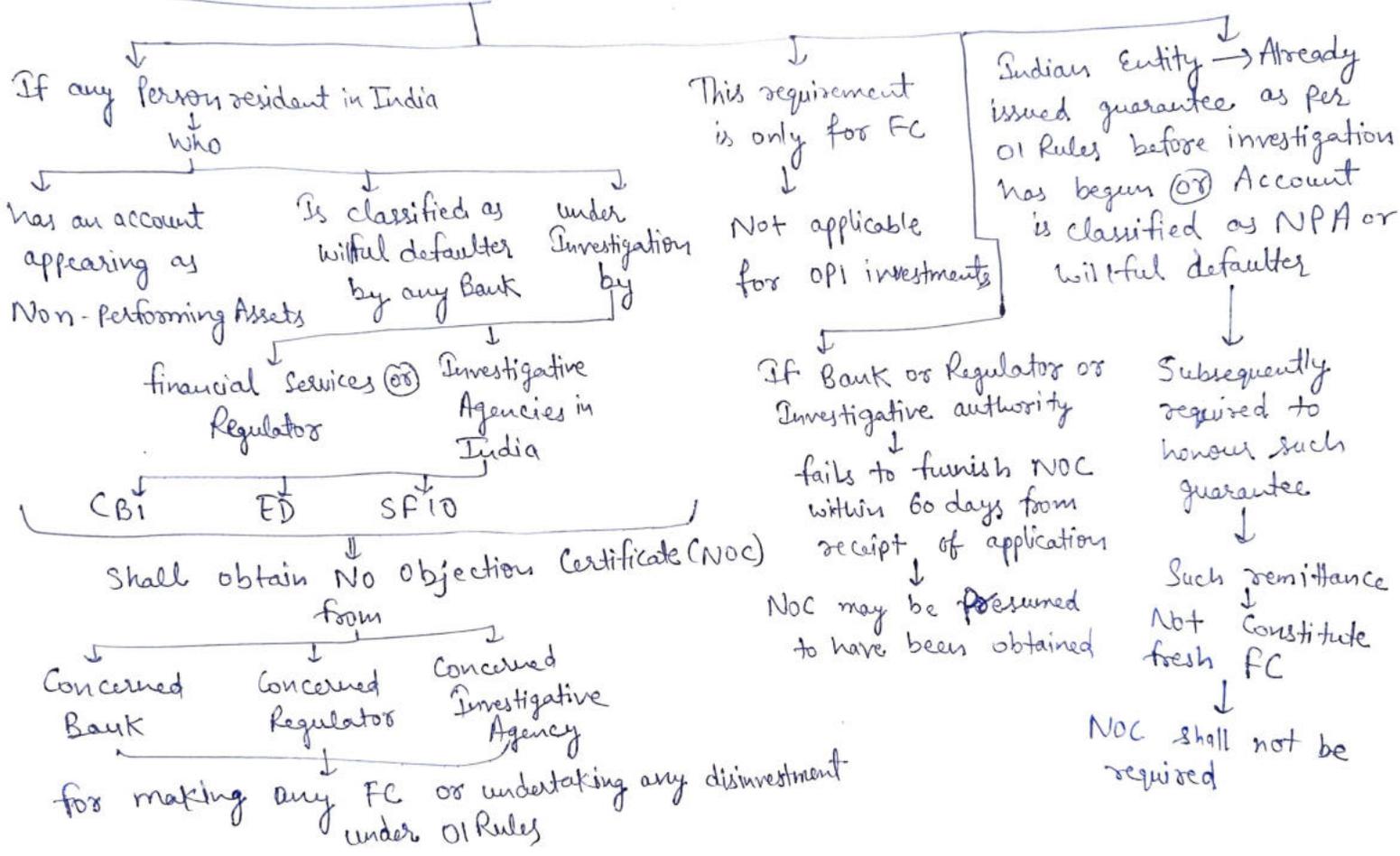
ODI Master Directions



* Approval requirement → dispensed for →

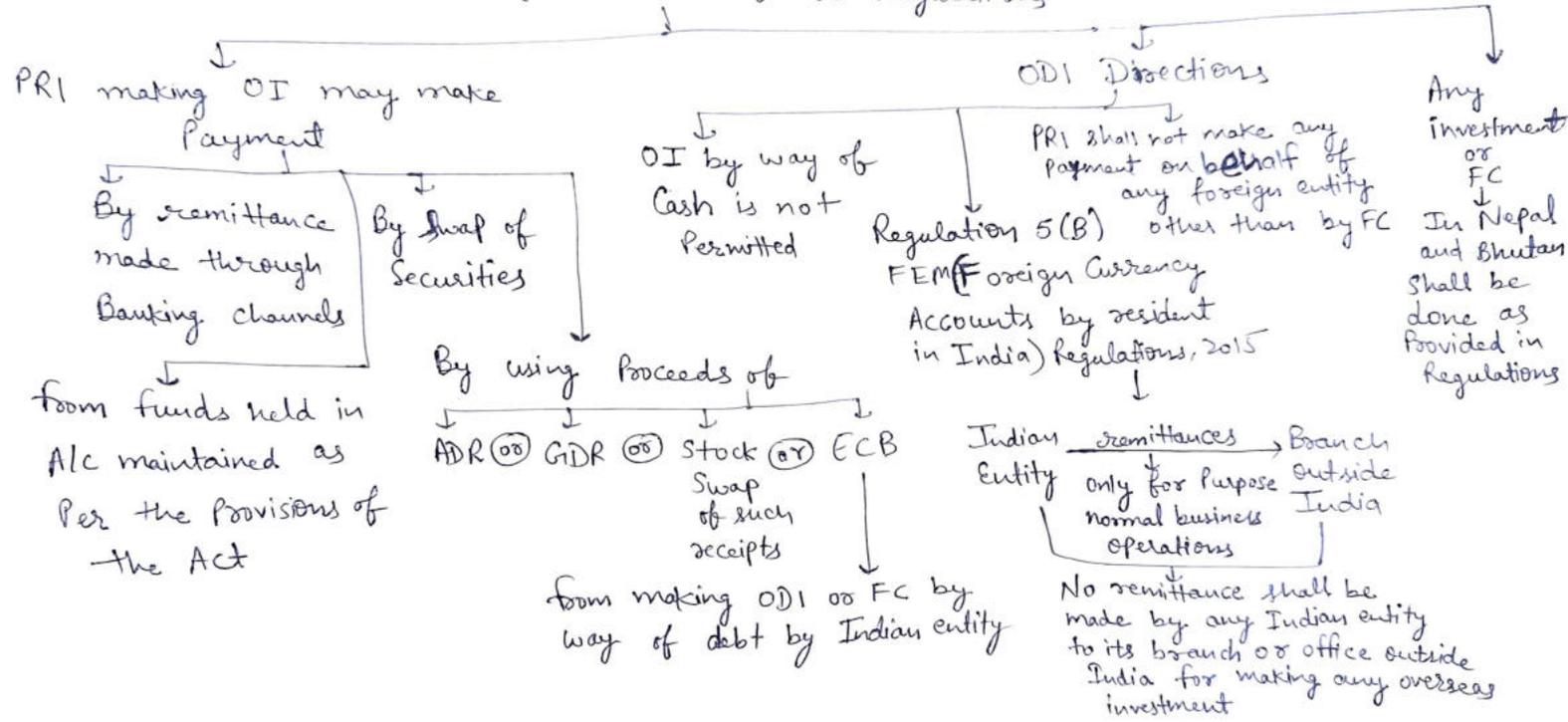
- deferred payment of Consideration,
- Investment or disinvestment by PRI under investigation
- Issuance of Corporate guarantee to or on behalf of second or subsequent step down Subsidiary.
- write-off on account of disinvestment

(14) No objection Certificate → Rule 10



Mode of Payment by PRI for making overseas Investment

Regulation - 8 of OI Regulations



PRI making OI may make Payment

By remittance made through Banking channels

By Swap of Securities

from funds held in A/c maintained as per the provisions of the Act

By using Proceeds of

ADR

GDR

Stock

ECB

Swap of such receipts

from making ODI or FC by way of debt by Indian entity

ODI Directions

OI by way of Cash is not Permitted

PRI shall not make any payment on behalf of any foreign entity other than by FC

Regulation 5(B) FEM Foreign Currency Accounts by resident in India Regulations, 2015

Any investment or FC in Nepal and Bhutan shall be done as provided in Regulations

Indian Entity remittances only for purpose of normal business operations Branch outside India

No remittance shall be made by any Indian entity to its branch or office outside India for making any overseas investment

16) Foreign Direct Investment Policy

Department for Promotion of Industry and Internal Trade (DPIIT)

Nodal Department for formulation of the Policy on FDI (+)

Responsible for

Maintenance (+) Management

Data on inward FDI into India ↓

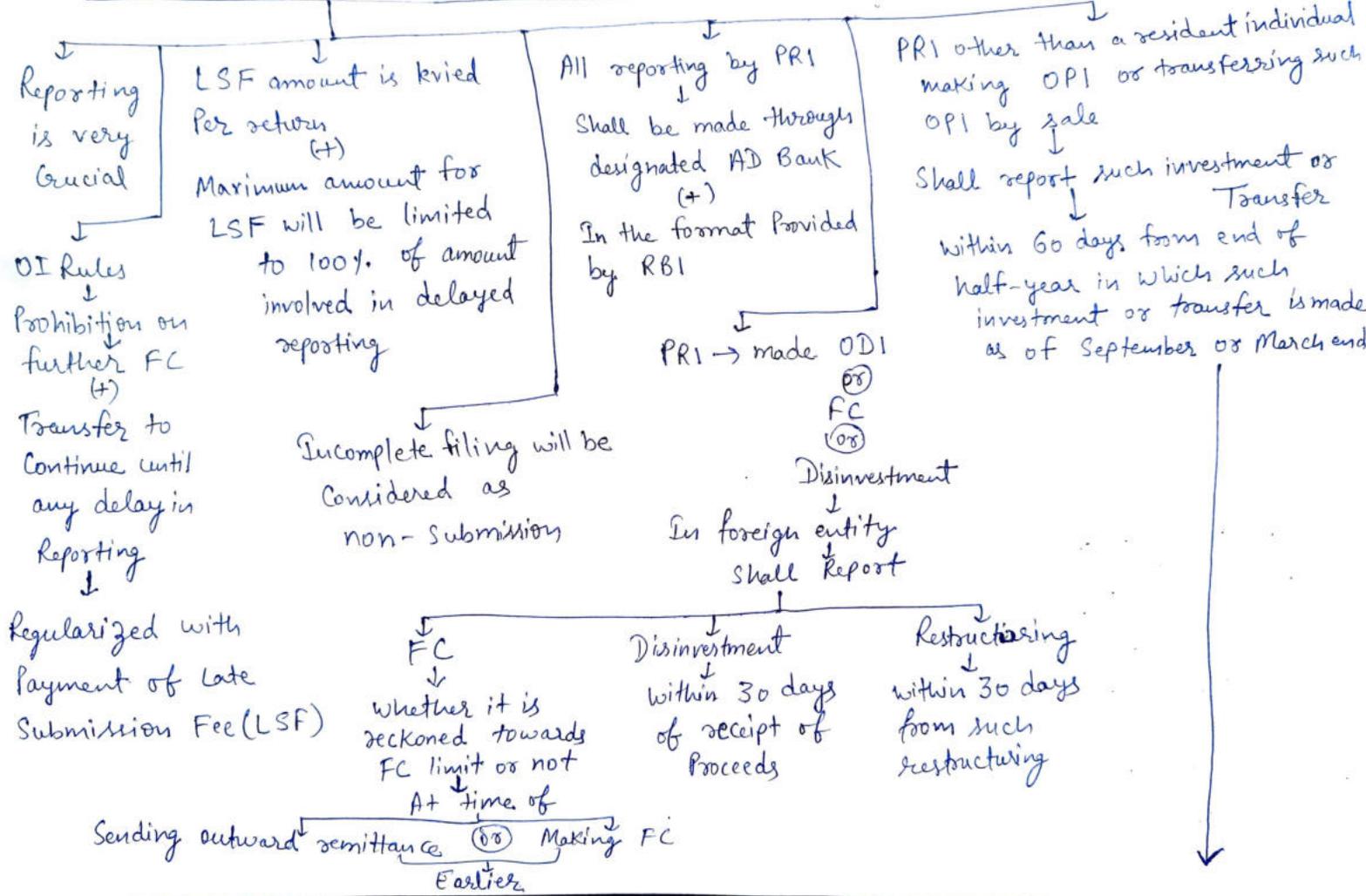
Based on remittances reported by RBI

Govt. → Liberal Policy on FDI

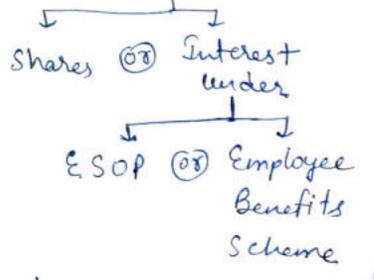
FDI upto 100% is Permitted under automatic route in most Sectors

DPIIT Plays an active role in Liberalization (+) Rationalization
↓
FDI Policy

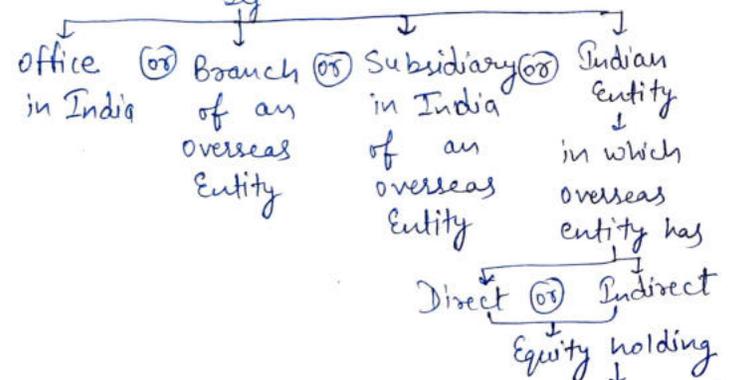
17 Reporting requirements for FC and OPI



OPI by way of Acquisition



Reporting shall be done by



where resident individual is an Employee or Director

Annual Performance Report (APR)

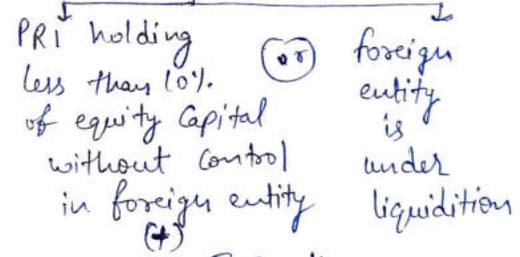
PRI acquiring equity Capital in foreign entity
Reckoned as ODI

Shall submit APR → for each foreign entity
Every year 31st December (+)

where accounting year of such foreign entity ends on 31st Dec.

APR shall be submitted by 31st Dec of next year

No APR shall be required

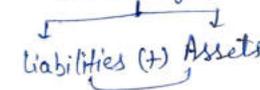


No other FC other than by way of equity Capital

Indian Entity

Made ODI

Shall Submit Annual Return on foreign



within Time decided by RBI

To Department of Statistics and Information Management, RBI

(19) Issues in choosing Location outside India

Geographical location of the Business

- Infrastructure
- Access
 - ↓
 - Transportation
 - ↓
 - Goods Materials Personnel
- Relevance to supply-chain
- Availability of talent Pool for Productions (labour), Services and Management
- Risks

Economic Aspects

- Ease of doing Business
- Cost of doing Business
- Laws → Labour and Quality of labour force.
- Laws → Taxation
- Incentives → local, Regional, State economic development incentives

Social Aspects

- Trade bodies, interaction between Commercial entities of both nations
- Expatriate - friendliness of nation for relocating key employee Personnel

Political Aspects

- Friendly Country, MFN Status
- Long-standing and established legislatives Precedents with Companies going through regulatory recourse
- Regulatory Environment

Technological Aspects

- Intellectual Property Protection
- Power, Communication, Telecom
 - ↓
 - Availability, quality and Cost issues

Setting up of a Business in New Zealand

Regulator → New Zealand Companies office

After choosing Business name, structure.

Apply online for registration

with Companies office ↓	IRD number application	for GST (+) New Zealand Business Number (NZBN)
-------------------------	------------------------	--

Online application

must have

A Real Me login	An Online Service A/c with Companies Register
-----------------	---

Secure your Business Name

Protect your name → Use our ONEcheck tool as your Starting Point

Register a domain Name

Get a web address

Visit Domain Name Commission's list of authorized registrars

Reserve your Company Name

must be unique

Can be reserved up to 20 working days

Incorporate under Companies Act, 1993

must have

Atleast one

Share	Shareholder	Director
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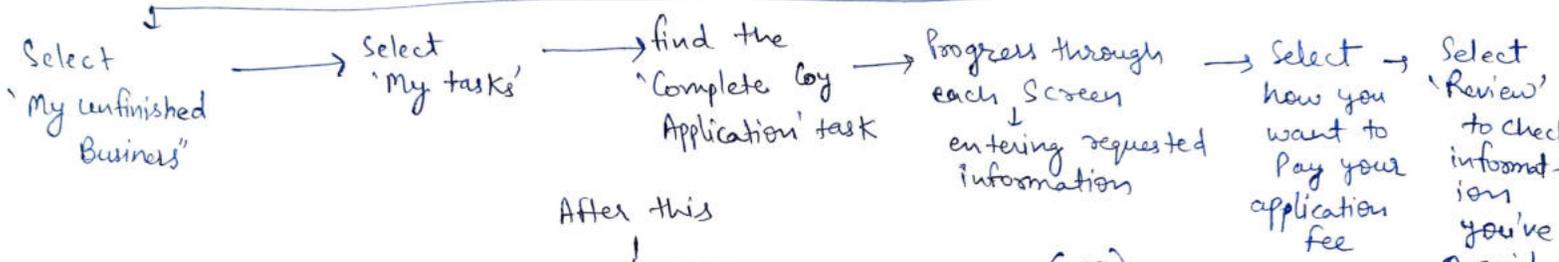
A Registered office

An address for Service



To register Company online → click on link in the email sent
when Company name reservation is approved

Log in to your account → follow these steps

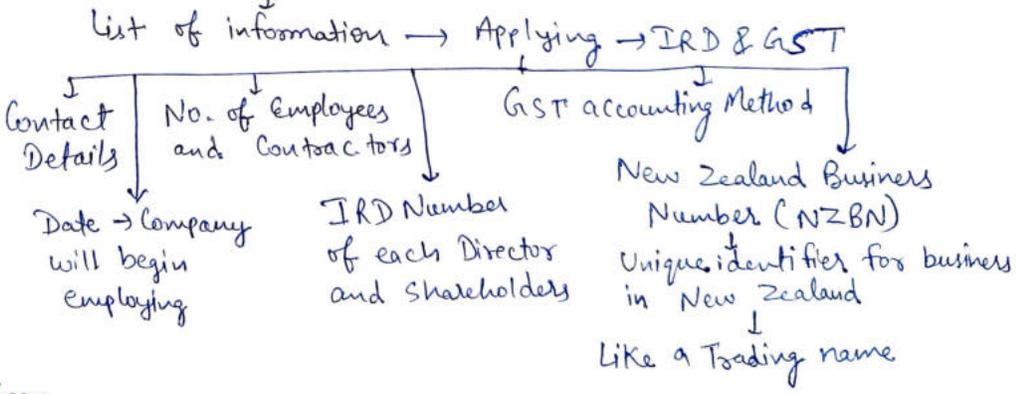


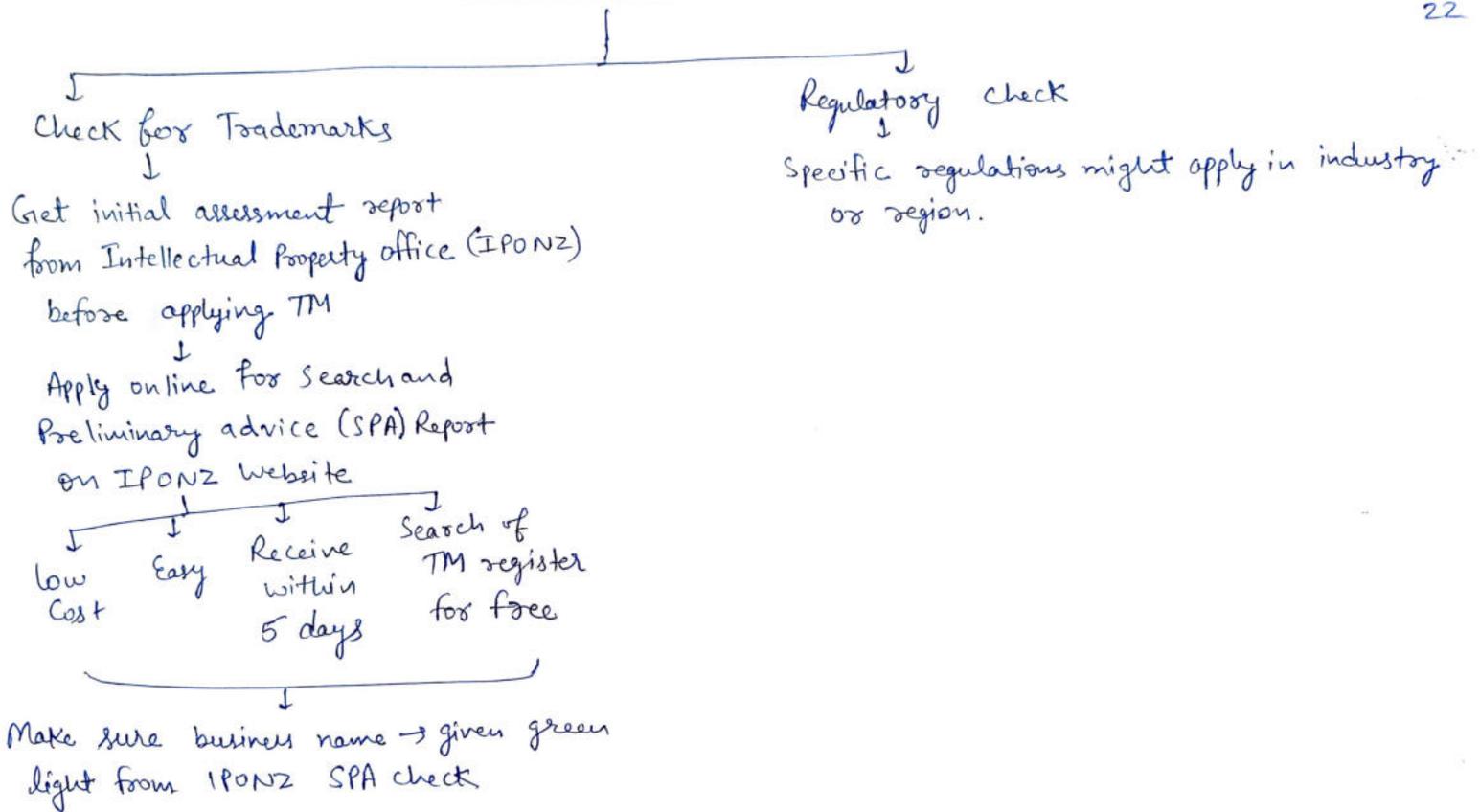
founders
↓
Receive notification within few minutes by email with Director & Shareholder Consent forms

Applicant → fax signed consent forms within 20 working days

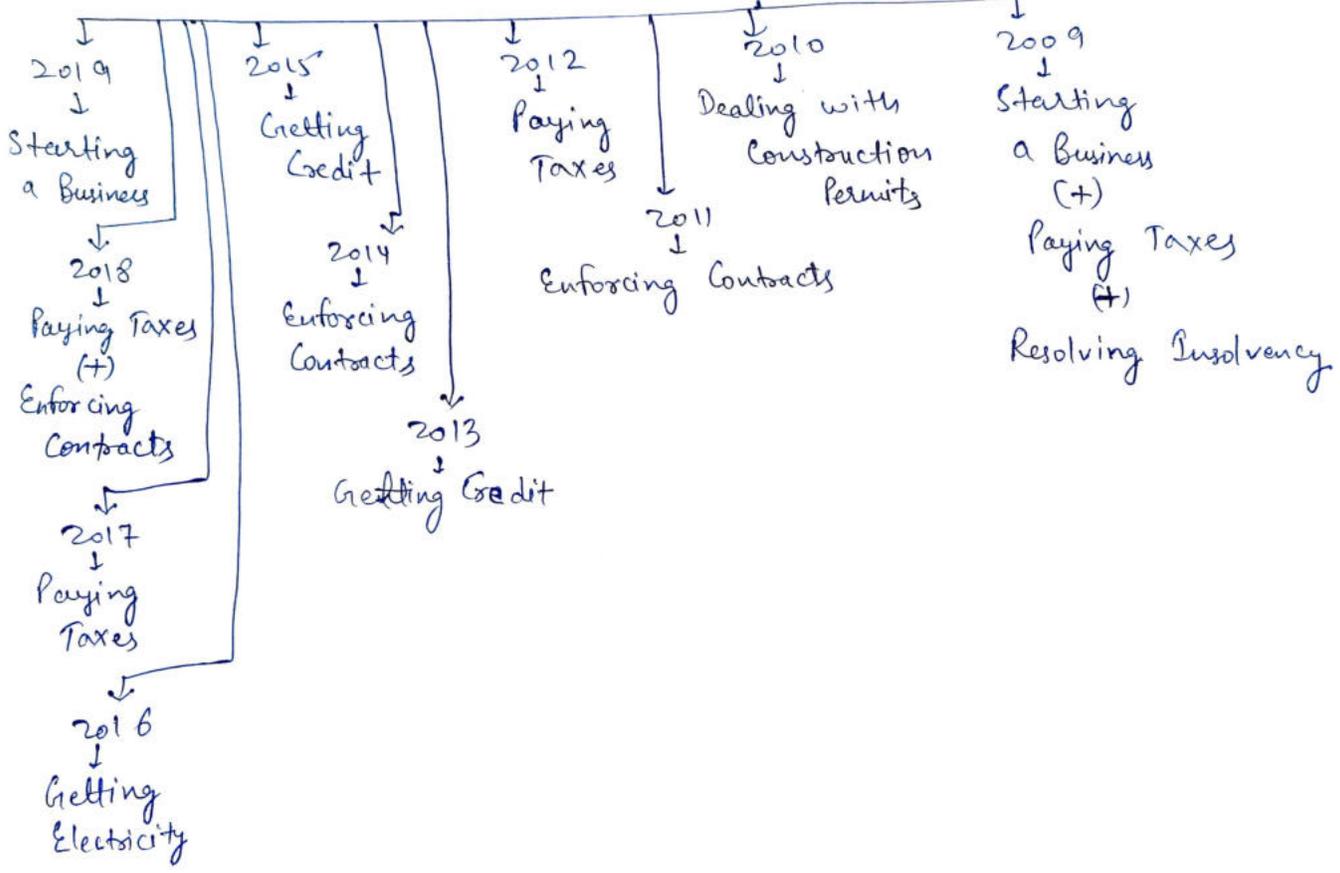
COI will be issued via email in few minutes when last Consent form is accepted

After this
Promoters → apply online for IRD
↓
At same time of incorporation Register for GST





23 Business Reforms in New Zealand (World Bank Doing Business Report 2020)



Setting up of Business in Singapore

Regulator: Accounting and Corporate Regulatory Authority (ACRA)

Choose your business entity

Apply for name reservation

Set up your Company within 120 days of name approval

Open a Bank account and take necessary business registrations and Licenses

Sign up for Employee Compensation Insurance at an insurance agency

Company Name
Must be approved by ACRA

Shareholders
Minimum one

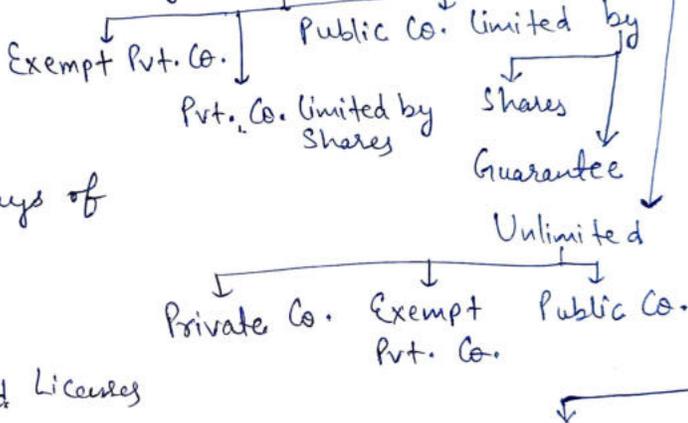
Directors
At least one must reside in Singapore

Company Secretary
Must be Singapore resident

Paid up Capital
At least S\$1

Registered Address
A physical office is required

7 types of Companies

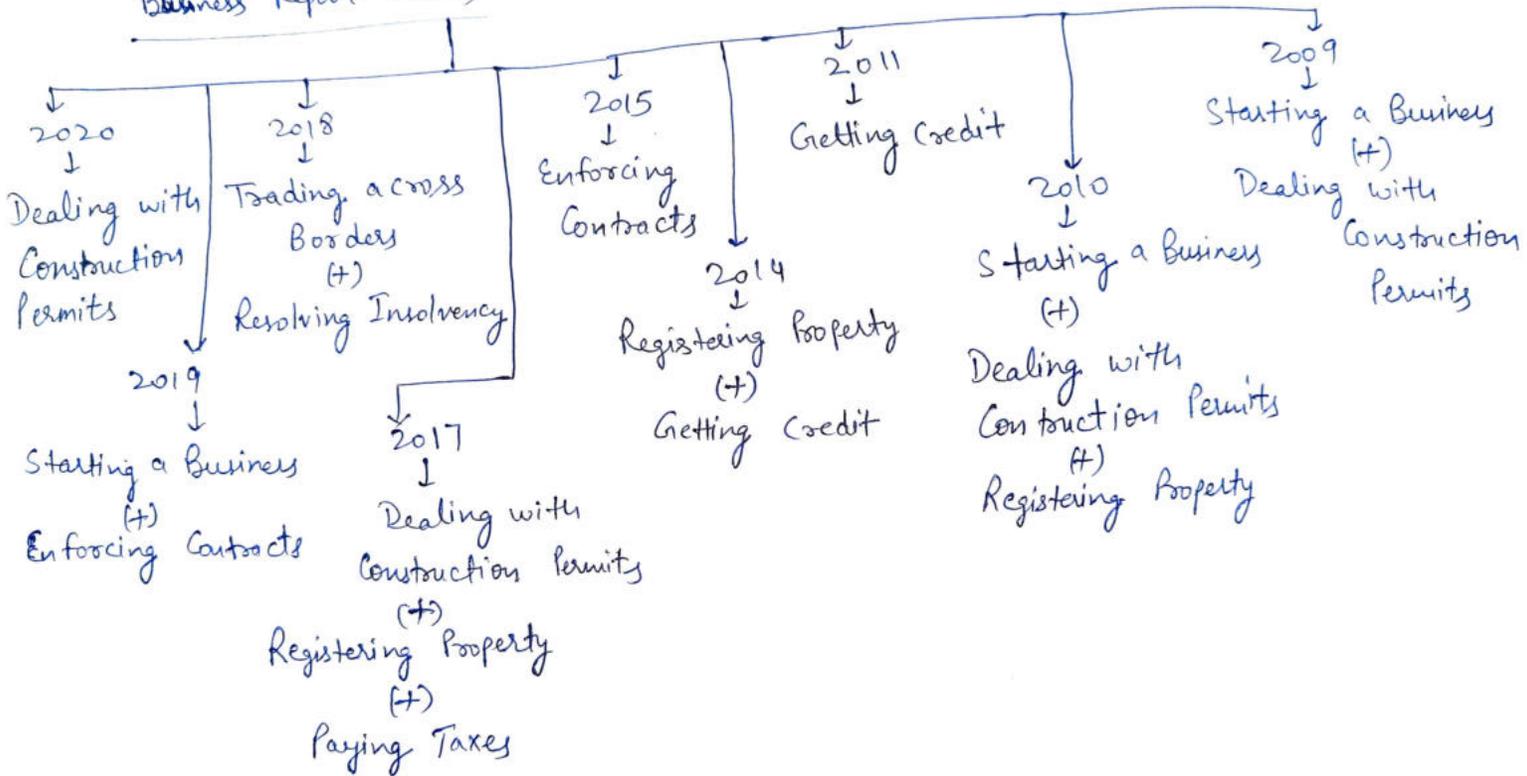


A Pvt. Ltd. Co. → governed by Singapore Companies Act
Designations include

Sign up for Employee Compensation Insurance at an insurance Agency

25

Recent Initiatives in Singapore for Setting up of Business (World Bank Doing Business Report 2020)



26 Setting up of a Business in Hong Kong SAR, China

↓
Search for Company name at
Companies Registry (www.icris.cr.gov.hk)
or at the mobile website
(www.mobile-cr.gov.hk)

↓
Register your Company with Companies
Registry
↓

Submit forms for Company incorporation
along with applicable fees
↓

Open a bank account and get Permits
and Licenses
↓

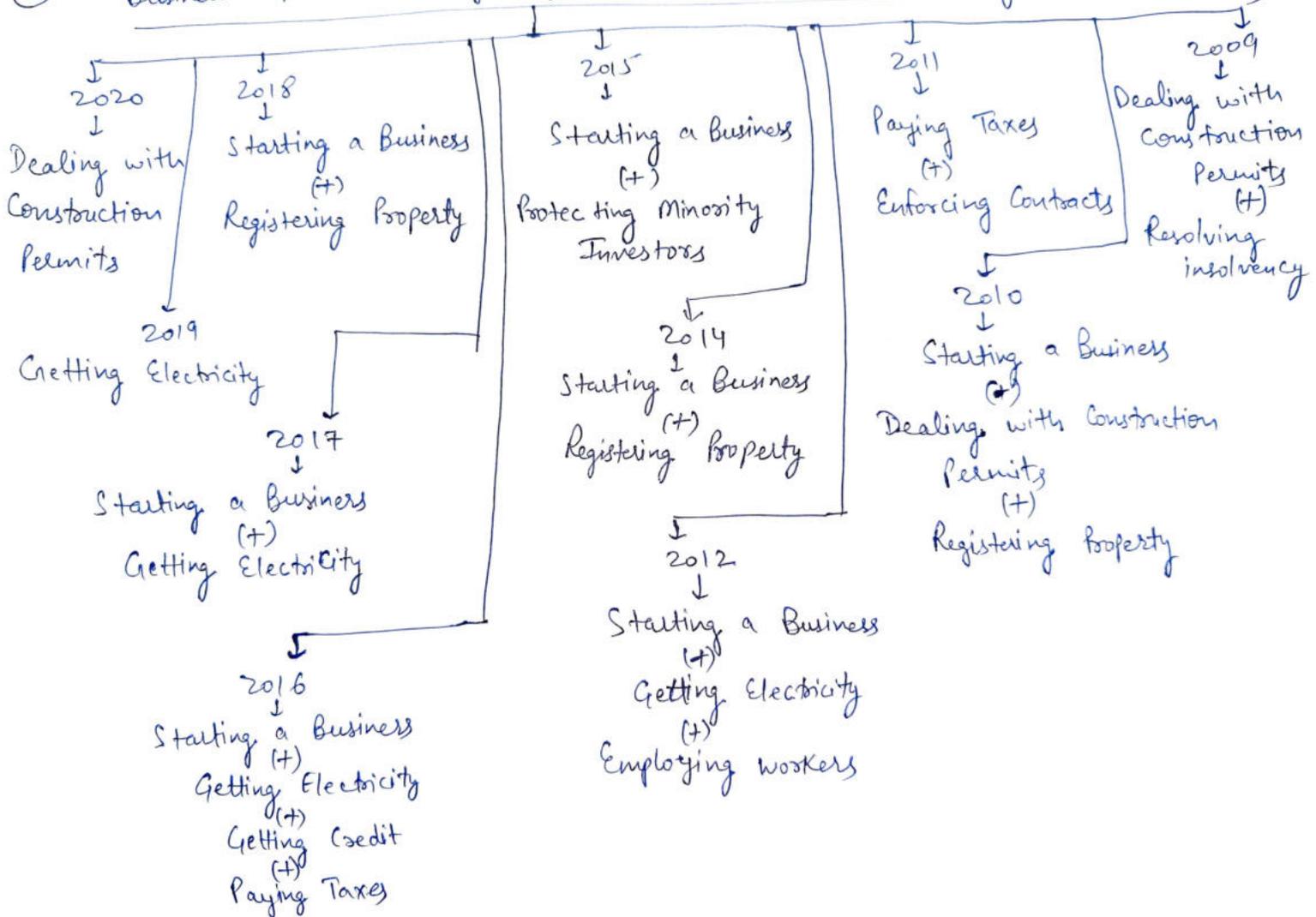
Pension and Insurance Requirements

→ Sign up Employee's Compensation Insurance and
Mandatory Provident fund (MPF) Schemes
with a Private Company or a Bank

(27)

Business Reforms in Hong Kong SAR, China (World Bank Doing Business Report 2020)

27



28 Setting up of Business in New York City

Reservation of Name and pay a fee of USD 20 by filing with the New York State Department of State Division of Corporations

↓
file the Company's articles of organization with the department

↓
Enter into an operating agreement before, at the time of, or within 90 days after filing of articles of organization

↓
Apply for federal identification number (EIN) for tax and employer purposes (IRS Form SS-4)

↓
Register as a sales tax vendor and obtain Certificate of Authority (DTF-17)

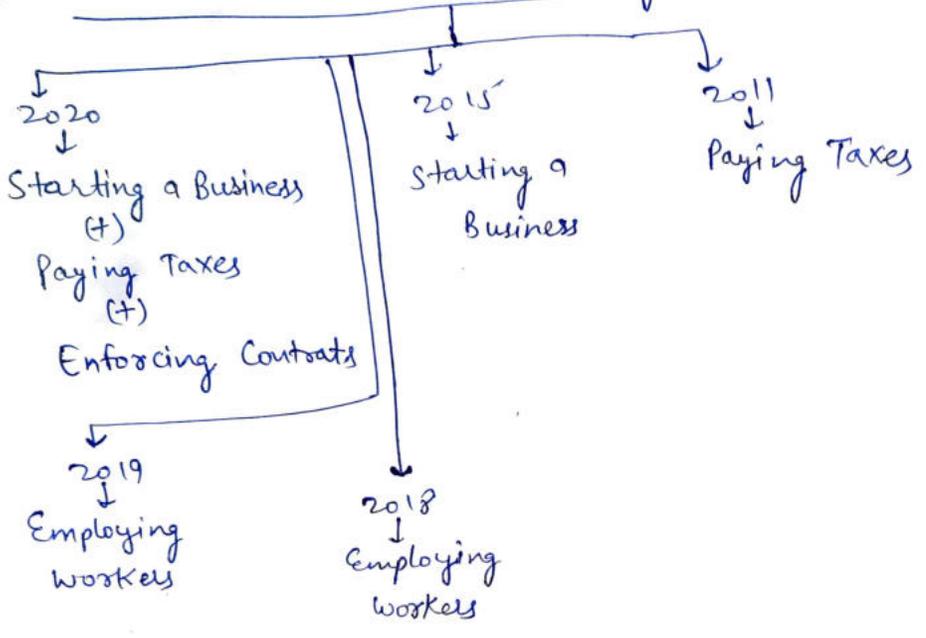
↓
Avail Certificate of Authority and then Register as an employer with Unemployment Insurance Division at state labor Department

Arrange for publication and submit Certificate and affidavits of Publication

Arrange for workers Compensation and disability insurance



29 Business Reforms in New York City



30 Setting up of a Business in United Kingdom

Complete application form IN01 and file for registration with Companies House

⇒ Information to ROC → (Statement of Compliance of Companies Act (+) Applications form IN01

Register for PAYE → Pay-as-you-earn Tax
↓
Deducts tax from Employee wages or Salary

Register for VAT

Sign up for employer's liability insurance

Employers' Liability (Compulsory Insurance) Act 1969

All employers in UK to maintain such insurance from approved insurance Company

includes

- Proposed name of Company (+)
- Country of Registrations office (+)
- Limited by shares or Guarantee (+)
- Public or Private

Name & Address of Subscriber (+)

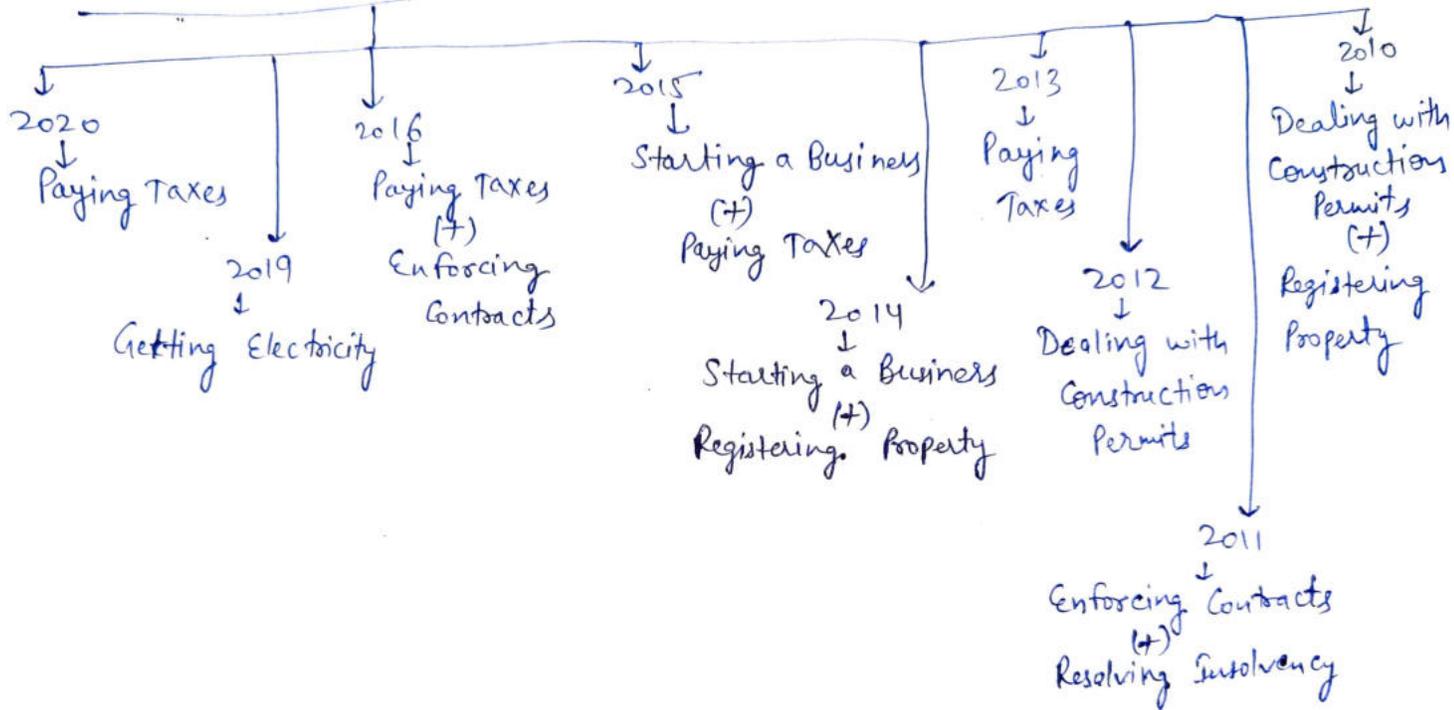
Statement of Proposed officers, first Directors and Company Secretary (+)

Statement of intended registered office address

(31)

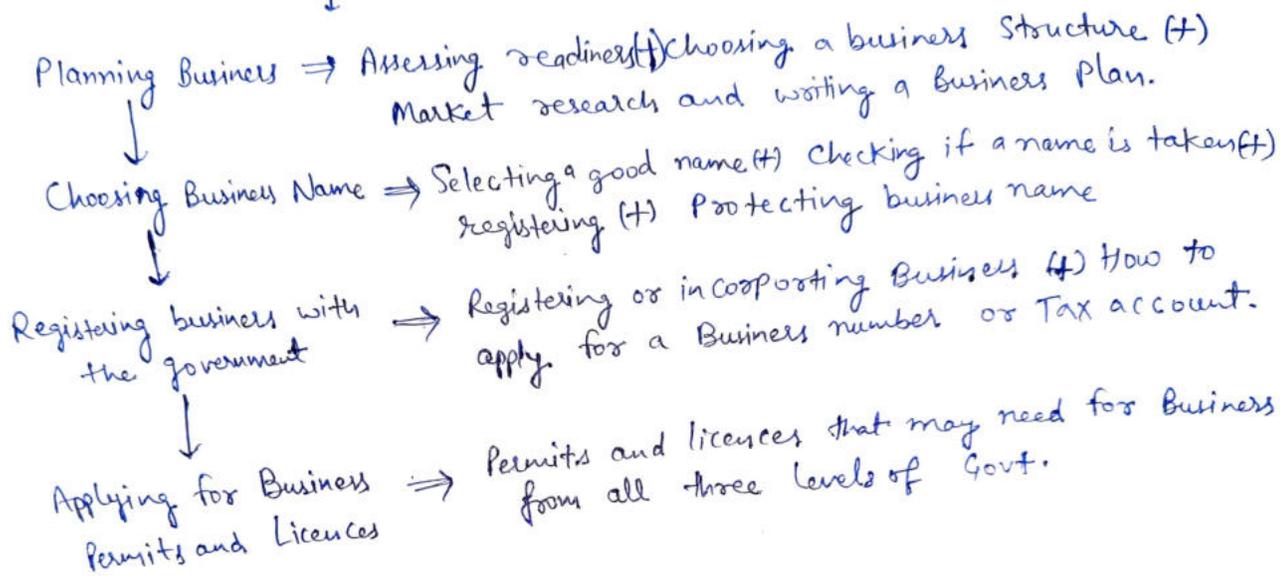
Business Reforms in UK (World Bank Doing Business Report 2020)

31



(32) Setting up of a Business in Canada

32



(33) Setting up of a Business in Australia.

↓
Australian Business Number (ABN) ⇒ Customers, Suppliers and Australian Taxation office use this Number to identify Business.

↓
Business Name ⇒ Helps customers identify Business from others.
↓
free to Register

↓
Tax registration for Business ⇒ Not all taxes will apply to Business → depends on type of Business

↓
Licences and Permits ⇒ from zoning laws to a food licence → Permit will vary depends on business and industry

↓
Company ⇒ legal entity in its own right

↓
Trade mark ⇒ To protect the Business name and brand from being used by others