

CA INTERMEDIATE



CHANKYA

NITI

**INCORPORATION OF
COMPANY**

One-Shot Lecture



By – CA Gurpreet sir



TOPICS COVERED

➔ SECTION 3-22





LAWS KE GOD

CORPORATE AND OTHER LAWS

- **CA Inter : Ranked 23rd in India (1st in Maharashtra)**
- **CA Final : Ranked 25th in India**
- **Specialization: Expert in teaching law with basics and with variety of examples**
- **Professional Background: Former Grade A Officer at Indian Oil Corporation Limited, a prestigious Fortune 500 company.**
- **Teaching Impact: Empowering over 50,000 CA students with practical knowledge and success strategies**



CA GURPREET SINGH



Companies Act, 2013 ⇒ Parliament



Companies Rules



⇒ CG

(Ministry of Corporate Affairs)

Regional Director

Registrar of Co.
(RoC)

Disputes

Judicial Authorities

Court ⇒ District Court ⇒ High Court ⇒ Supreme Court

Quasi Judicial Authority ⇒ National Company Law Tribunal (NCLT)



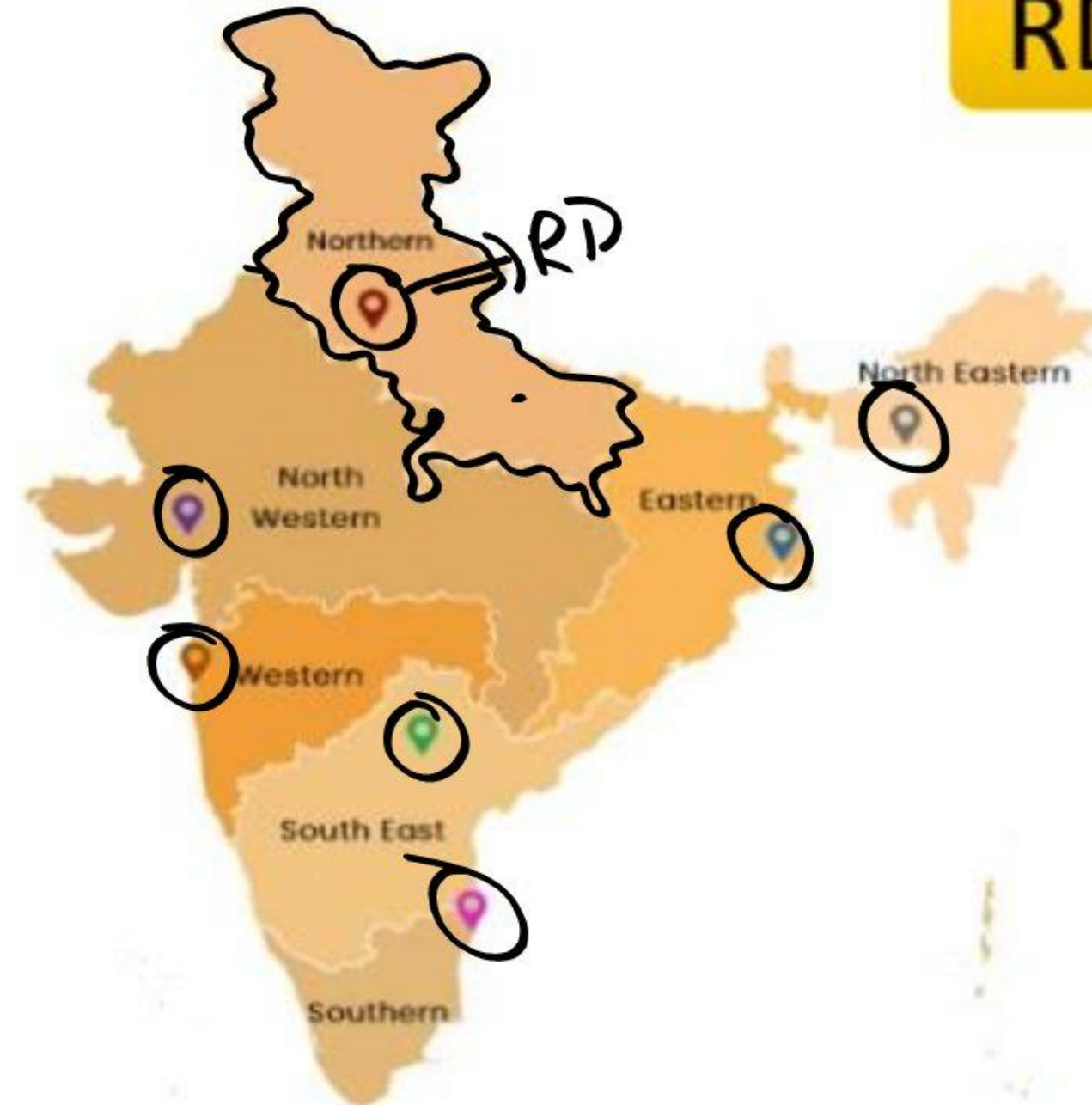
Topic: Authorities



ROC



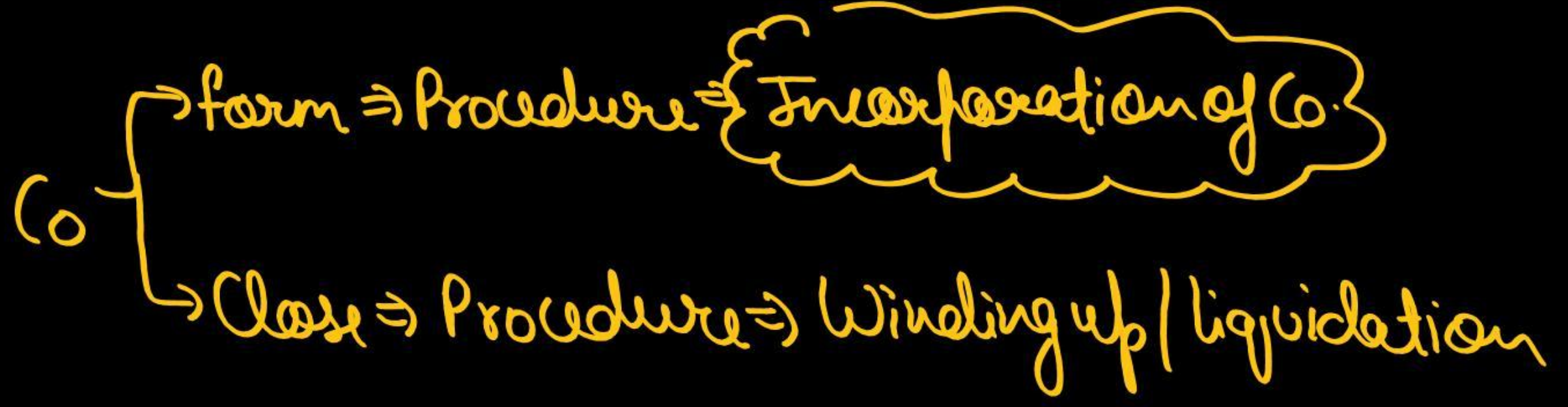
RD





Incorporation of Company

& Matters Incidental thereto





Topic: Incorporation of Company

SPICE = Simplified Proforma for Incorporating a Company Electronically



Churpreet Sir



Gurpreet Sir

Promoters

INC-32

**Files SPICE + form
With addition
Documents**



**Registrar of Companies
(RoC)**

**Checking
by RoC**



**Roc enters
the Company
in Register of
Company**



CA Of Promoters

CIN

Corporate Identification Number



**RoC Issues
Certificate of Incorporation**



Promoter??

⇓
layman language

Person ⇒ idea ⇒ Co ✓

✓ ⇒ necessary steps ⇒ Co.

⇒ hire profession

⇒ Promotion activities

Promoter
under the Companies Act,
2013

- ① Prospectus as promoter
 - ② Annual Return as promoter
 - ③ Control affairs of Co. → directly
→ Indirectly
 - ④ Order ⇒ BOD accustomed to Act
- ⇒ Person ⇒ Professional capacity
↳ he cannot be treated as promoter



PROMOTER [Section 2(69)]



Promoter means a person;

- a. who has been named as promoter in a prospectus or
- b. who is identified as promoter by the Co. in the annual return; or
- c. who has control over the affairs of the Co., directly or indirectly whether as a shareholder, director or otherwise; or
- d. in accordance with whose advice, directions or instructions the Board of **Directors of the Co. is accustomed to act,** but shall not include a person who is acting merely in a professional capacity such as attorney, technical or functional experts.



Section-3 \Rightarrow formation of Co.

Public Co	Pvt. Co	OPC
Min ^m 7 person	Min ^m 2 person	Exact 1 person

MOA \Rightarrow Subscribe \Rightarrow Subscriber to MOA



FORMATION OF CO. [SECTION 3]



1. A Co. may be formed for any lawful purpose by
 - minimum 7 Persons in case of a Public Co.
 - minimum 2 persons in case of a Private Co.
 - 1 person in case of OPC

By subscribing to memorandum & complying with requirements of this Act.

2. Co. formed as specified above may be incorporated either as;
 - a. Companies limited by shares; or
 - b. Companies limited by guarantee; or
 - c. Unlimited liability companies.

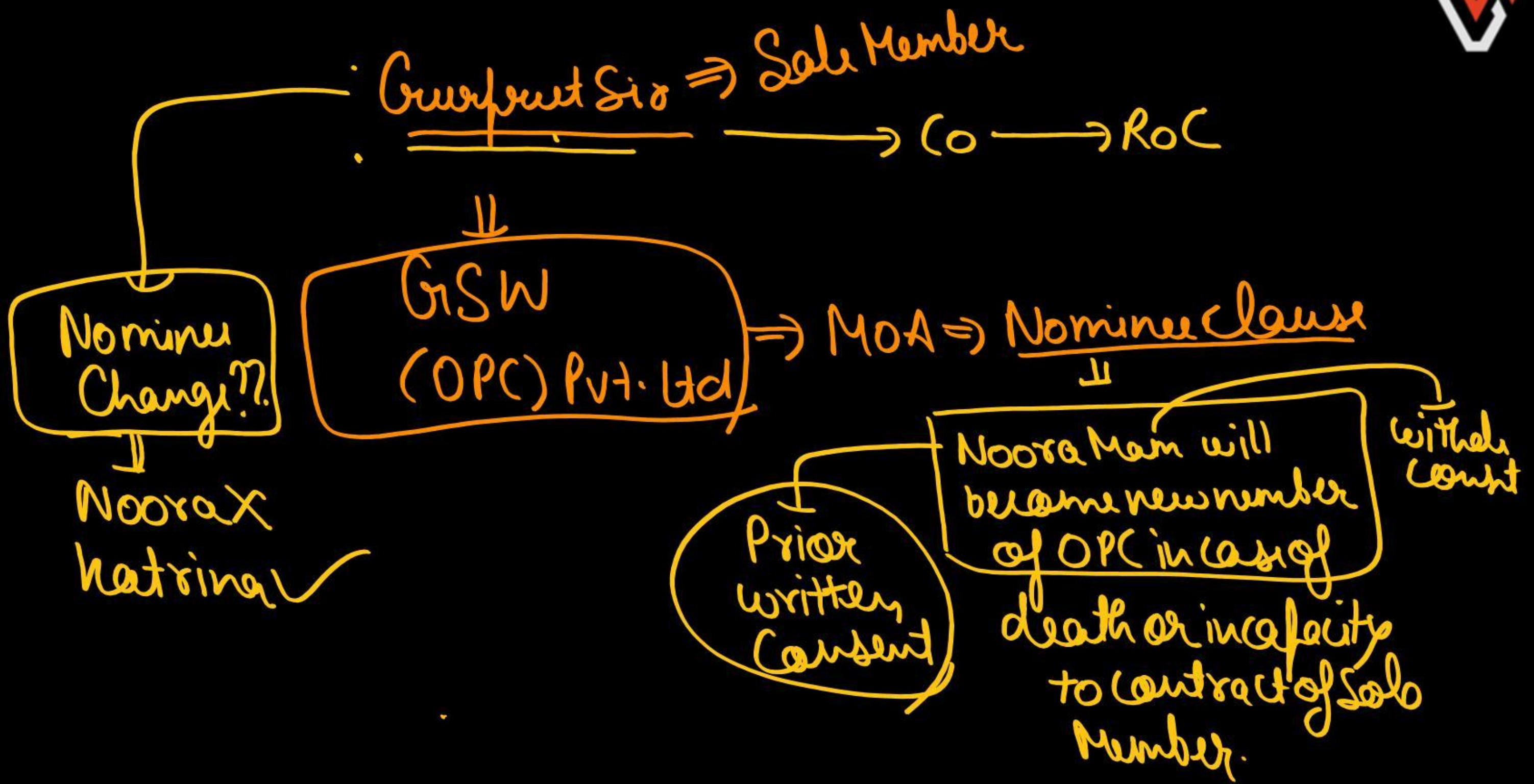


One Person Co.

Min^m Member } 1
Max^m Member }

Min^m Dir 1
Max^m Dir 15

Employer
⇒ No limit





Who can be member or nominee
in OPC

⇒ Natural Person

⇒ Indian Citizen

⇒ Major (18 Saal complete)

⇒ Resident in India or not

Person ⇒ if 4 ⇒ 120 days ⇒ India



	Member Nominee	Reason
ABC Ltd.	No	Not a natural person
Raju (17 Years) old Indian Citizen residing in India	No	Not a Major
Sid (28 Years) Indian Citizen but not Indian Resident	Yes	All Condition Satisfied





	M/N	Reason
⇒ Gurpreet Singh (28 Yrs) Indian Citizen, Indian Resident	Yes	
⇒ Mr. John (50 Yrs) <u>USA Citizen</u> Indian Resident	No	Not an Indian Citizen



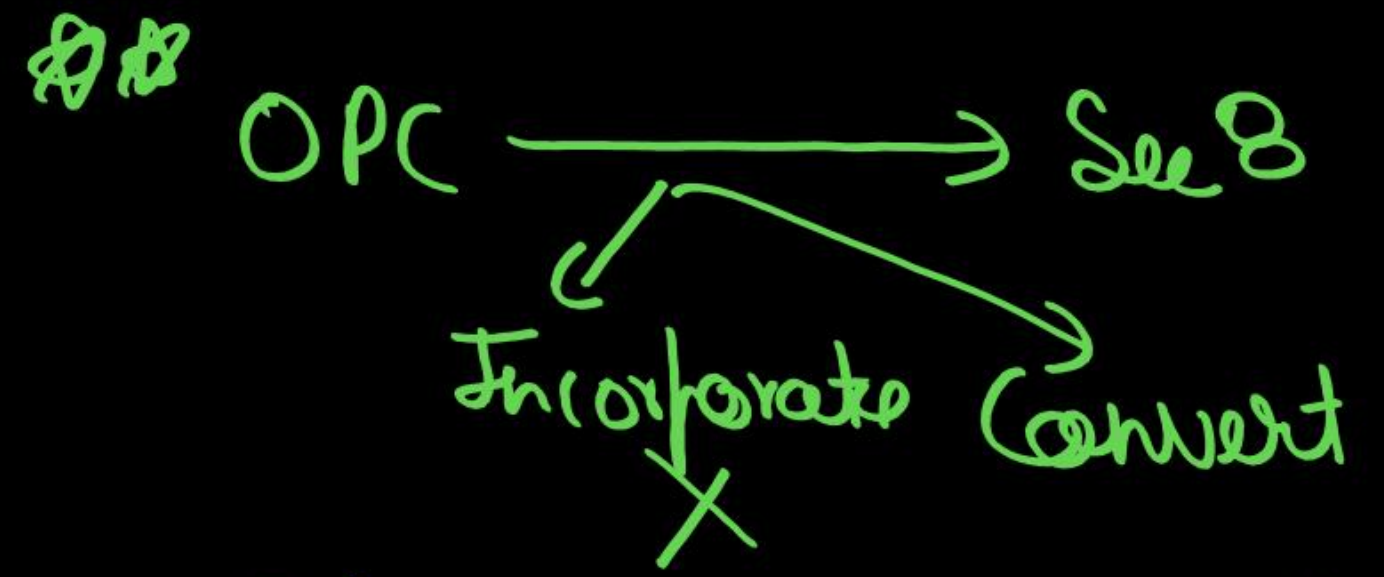
Member
of
OPC


Person
 OPC₁ Member ✓
 OPC₂ Member ✗


 OPC₁ Nominee ✓
 OPC₂ Nominee ✗


 Mr. A
 OPC₁ Member ✓
 OPC₂ (circled)
 Nominee (circled)
 ≠
Member

↓
180 days



OPC \Rightarrow Non Banking financial activities
 \Rightarrow Invest in securities of other BC



ONE PERSON CO. (OPC)



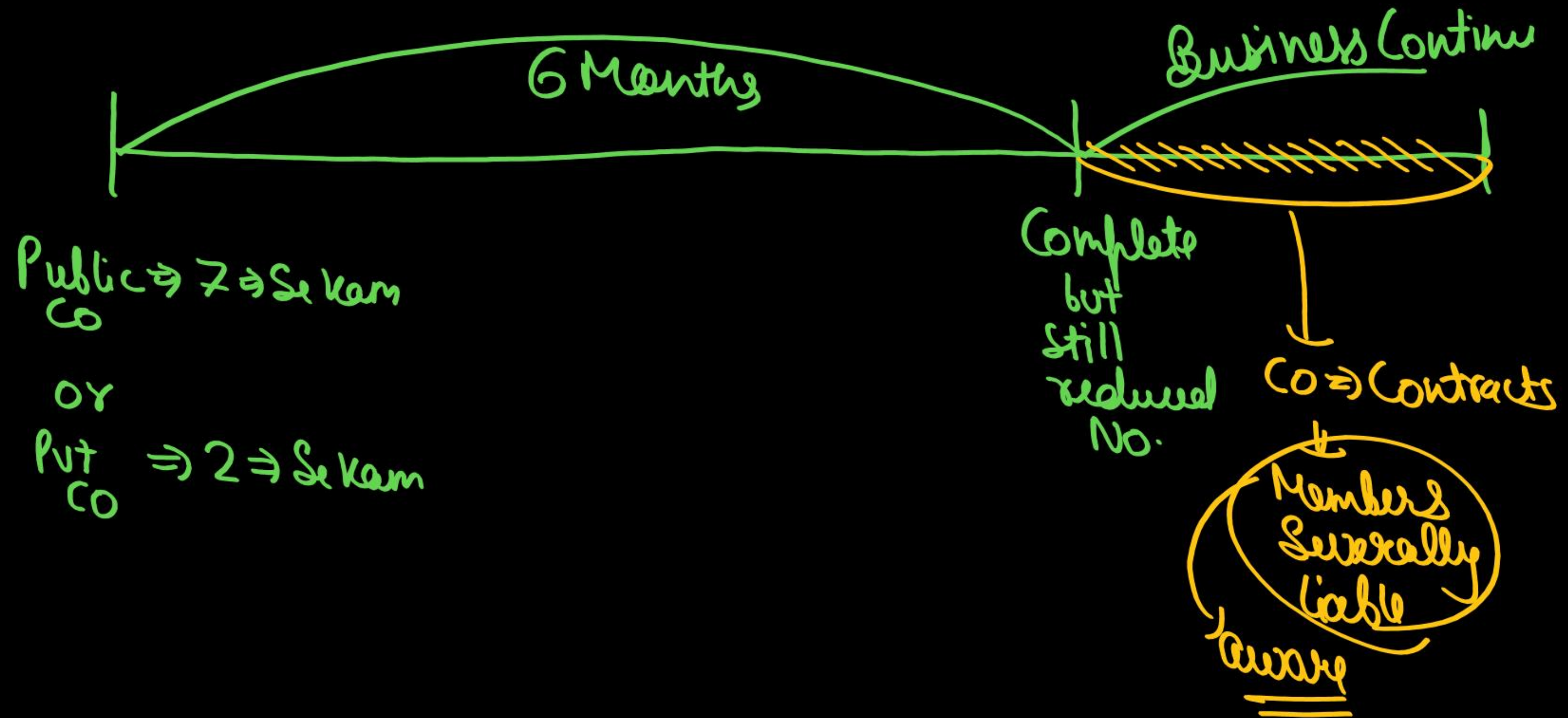
1. Nominee clause ⇒ MOA of Co. to indicate name of other person who, becomes member of OPC in case of death/incapacity of subscriber of OPC
2. Change of name in nominee clause shall not be deemed as alteration of MOA
3. Nominee to give his prior written consent
4. Nominee may withdraw his consent any time by giving notice to member & OPC
5. Member of OPC may change the name of nominee
 - by giving notice in prescribed form
 - Intimating Co. about such change
 - On receipt of such intimation, Co. to inform ROC



6. Only **natural Person** + **Indian citizen** whether **resident in India or otherwise**
 - shall be eligible to incorporate OPC
 - Shall be eligible to become nominee for member of **OPC**
7. Natural Person shall **not be member of more than 1 OPC** at any point of time & the said person shall not be nominee of more than 1 OPC
8. Where a natural person **become member in 2 OPC** due to nominee in OPC, such person shall **meet eligibility criteria within 180 days**
9. No minor shall become member or nominee of OPC
10. No minor can hold **share with beneficial interest**
11. **OPC cannot be incorporated or converted into sec 8 Co.**
12. OPC can be converted to Private/ Public Co.
13. OPC cannot carry out Non-banking financial investment activities
14. OPC cannot invest in securities of any body Corporate



Section 3A





MEMBERS SEVERALLY LIABLE IN CERTAIN CASES [SECTION 3A]

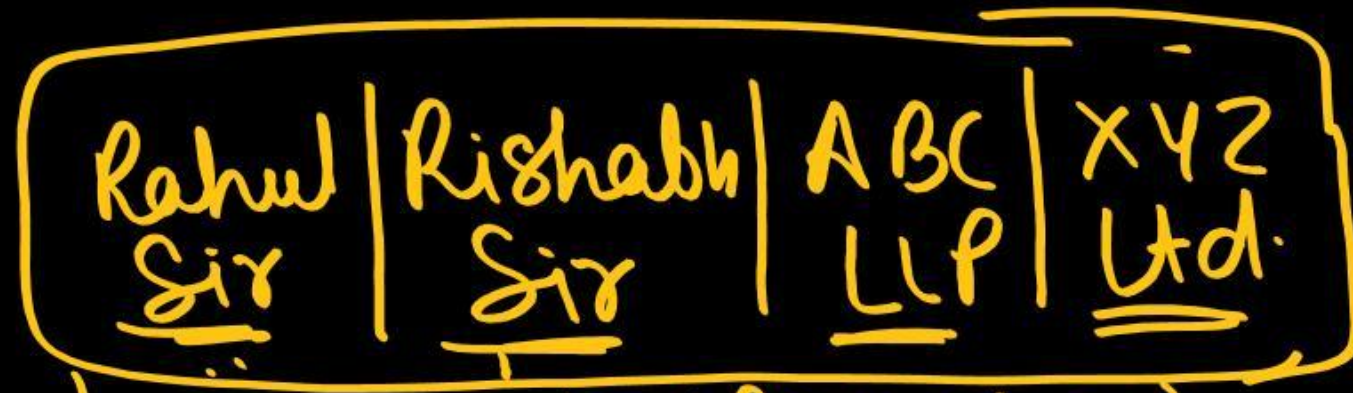


If at any time, the no. of members is reduced below prescribed limit (i.e. 7) in case of public Co. or 2 in case of Pvt Co.)

AND

Co. carries on business for more than 6 months while no. of members is so reduced, then every person who carries on business after those six months is cognizant (aware) of the fact that business is carried with reduced members shall be liable for the payment of the whole debts of the Co. contracted during that time (after elapse of six months) and may be severally sued therefor

Section-7 ⇒ Incorporation of Co.



⇓ (Promoters)

↳ Person

decide

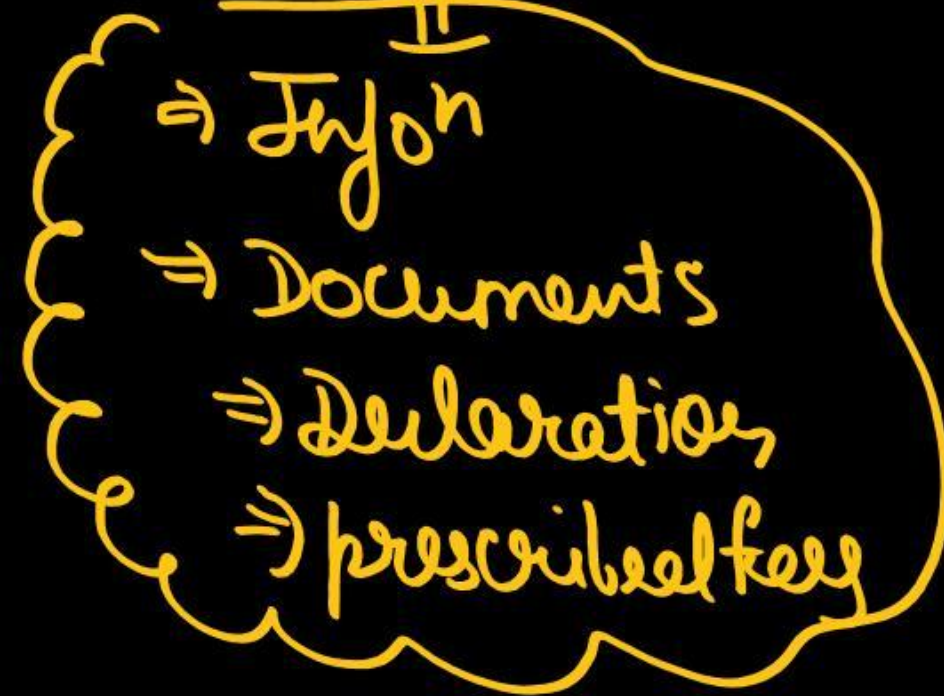
⇓
Co's first dir

Mr. X
Mr. Y

} AOAC A Certificate

⇒ SPICE + form

⇒ RoC



Register of Co's

⇓
Issue Certificate of Incorporation



Infoⁿ

- ① Correspondence Address
- ② Interest of first directors in other firm or Body Corp
- ③ Particulars of Individual Subscriber to MOA
B.C. ←
- ④ Particulars of first directors

Documents

- ① MOA } duly
- ② AOA } signed by Subscriber to MOA
- ③ Written consent from each first director
- ④ Proof of Identity of every subscriber to MOA
- ⑤ Proof of Identity of every first Director

Declaration

- ① Declaration of Compliance
- ② Declaration by every Subscriber to MOA & person named as first director



INCORPORATION OF CO. [SECTION 7]



1. Application in SPICe+(INC-32) with ROC within whose jurisdiction the RO of Co. is proposed to be situated along with the following info.& documents:-
 - MOA (INC-33) and AOA (INC-34) duly signed by all subscribers to MOA
 - Declaration(INC-8) that requirements of Act & rules w.r.t. incorp. is complied with, by
 - a) advocate CA Cost Accountant, CS in practice engaged in formation of Co.
 - b) Person named in AOA as director, manager, Secretary of Co.
 - Address for Correspondence till Registered office is established
 - Interest of First directors in other firms/Body Corporate & consent to act as directors of Co.



- **Particulars of subscribers to MOA+ Proof of identity** *(Individuals)*
 - a. Name (including surname or family name) and recent Photograph affixed
 - b. Father's/Mother's name
 - c. Nationality, Proof of nationality in case the subscriber is a foreign national
 - d. Date and Place of Birth (District and State)
 - e. Educational qualification and Occupation
 - f. Permanent Account Number
 - g. Email id and Phone number of Subscriber
 - h. Permanent residential address and also Present address
 - i. Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old



- j. Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non Resident Indians – Passport)
- k. If the subscriber is already a director or promoter of a Co.(s), the particulars relating to name of the Co.; Corporate Identity Number; Whether interested as a director or promoter



⇒ XYZ Ltd

ABC Ltd

Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the ROC

- a. The name of the body corporate and Corporate Identity Number of the Co. or Registration number of the body corporate, if any
- b. GLN, if any → Global Location Number
- c. The registered office address or principal place of business
- d. E-mail Id
- e. If the body corporate is a Co., certified true copy of the board resolution specifying inter-alia the authorization to subscribe to the MOA
- f. If the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the MOA
- g. In case of foreign bodies corporate, the details relating to the copy of certificate of incorporation of the foreign body corporate; & the registered office address.



- Particulars of first directors + Proof of identity
name, including surname or family name, the Director Identification Number (DIN), residential address, nationality and such other particulars
- Declaration (INC-9) from each subscribers to MOA & person named as First directors in AOA that
 - a) He is not convicted of offences with respect to promotion, formation or management of any Co.
 - b) Not found guilty of any fraud/misfeasance or breach of duty to any Co. under this Act or previous Co. law during last 5 years
 - c) all docs filed with ROC for registration contain correct complete & true information to best of his knowledge & belief.



2. On basis of above, ROC shall register and issue certificate of Incorporation (COI)
3. ROC shall allot Corporate Identity Number(CIN) which shall be distinct identity for Co. & included in COI. CIN is a 21 alpha-numeric digit based unique identification number, comprising data sections/elements that reveals the basis aspects about Co..
4. Co shall maintain & preserve at its Registered office, copies of all docs & info. as originally filed till its dissolution.
5. If person furnishes any false/incorrect particulars of information suppresses any material information of which he is aware in any docs filed with ROC, such person is liable for action u/s 447
6. If after incorporation, it is proved that Co. is incorporated by furnishing false/incorrect information or representation or by suppressing any material info or by fraudulent action then Promoters, first directors & person making declaration shall be liable for action u/s 447



Pre-Incorporation

⇓
Person

⇓
Sec 447 ⇒ Penalty for fraud

Post-Incorporation

Person

⇓
Promoter,
first directors
and
Person Making
declaration

⇓
Sec 447



⇓
NCLT ⇒

- ⇓
- a) Any order as it may deem fit
- b) Member ⇒ unlimited
- c) Winding up
- d) Removal of Name
- e) Mgt



7. Where a Co. has been got incorporated by
- a. furnishing false or incorrect information or representation, or
 - b. by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such Co. or
 - c. by any fraudulent action, then on application made to National Co. Law Tribunal (NCLT or Tribunal), It may pass order
 - i. for regulation of mgt. of Co. including changes in MOA/AOA
 - ii. Direct liability of members shall be unlimited
 - iii. Direct removal of name of Co. from Register of Cos.
 - iv. for winding up of Co.
 - v. as it may deem fit

Prior to passing such order- Reasonable opportunity of being heard (OOBH) to Co. + take into consideration transactions already entered into by Co.



Sec 8
↓
license ⇒ Co
↓
limited liability
↓
not limited X
limited X

Charitable Co
or
Not for Profit Co.
or
licensed Co.

⇒ foundation
⇒ federation
⇒ Electoral trust



FORMATION OF COMPANIES WITH CHARITABLE OBJECTS, ETC. [SECTION 8]

1. Where CG (delegated to RoC) is satisfied that a person / AOP proposed to be register as Limited Co.

Has in its objects to promote

- Education
- Commerce
- Arts
- Science
- Research
- Social *Welfare*
- Religion
- Charity
- Protection of environment
- Other objects

Intends to apply profits or other income in promoting its objects

Prohibits payment of any dividend to its members



2. Once license is issued, then ROC shall register such Co. as limited Co. without addition of word "limited" or "Private limited" as the case may be.
3. Can a firm become member of Sec 8 Co. ⇒ Yes
4. Sec 8 Co. requires prior permission from
 - CG (delegated to RD) for alteration of its MOA
 - CG (delegated to RoC) for alteration of its AOA
5. By passing SR at GM, Sec 8 Co. can be converted to any other kind of Co.
6. Reasons for Revocation of license:-
 - Contravenes of any requirements of Section 8
 - Contravenes any condition subject to which the license is issued
 - affairs of Co. are conducted fraudulently or in violation of the objects of the Co. or prejudicial to public interest



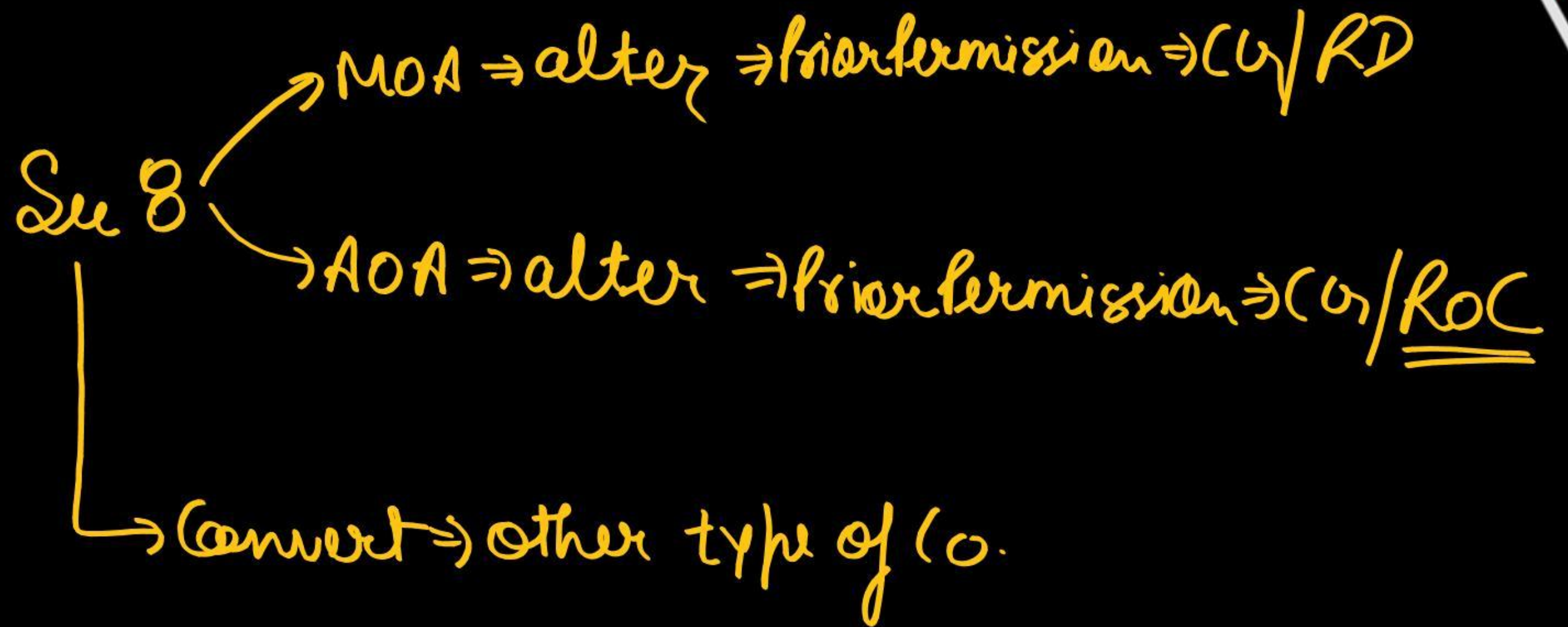
Sec 8 Co ⇒ license ⇒ Gradbad

Co ⇒ Power ⇒ Penalties & Fine

License Revoke (withdraw)
↓
Sec 8 Co ⇒ Normal Co
↓
limited / Pvt Ltd word only

Public Interest
→ Windup
→ Amalgamate with another Sec 8 Co. having similar object

- (a) Contravene ⇒ Sec 8 & Provⁿ
- (b) Contravene ⇒ Conditions → license
- (c) Violate ⇒ object of the Co.
- (d) Against Public intt
- (e) fraudulent activities





8. Powers of CG (delegated to RD)

a) after giving reasonable OOBH

- revoke license
- direct the Co. to convert its status
- change its name to add word "limited" or "private limited".

b) Where license is revoked, CG may, in public interest

- after reasonable OOBH
- Order for winding up under the Act or
- amalgamate such Co. with other Sec 8 Co. having similar objects

c) In case of winding up, any surplus asset left after satisfaction of its debts & liabilities

- transfer to another Sec 8 Co. subject to T&C imposed by Tribunal or
- Sold & proceeds of such assets credited to Insolvency & Bankruptcy Fund *

$$\begin{array}{r} \text{Assets} \Rightarrow 700\text{cr.} \\ \text{Liab} \Rightarrow 500\text{cr.} \\ \hline 200\text{cr.} \end{array}$$



9. Punishment for default

Particulars	Co.	Directors & officer in default
<u>Minimum fine</u>	<u>₹ 10 Lakhs</u>	<u>₹ 25,000</u>
<u>Maximum fine</u>	<u>₹ 1 Crores</u>	<u>₹ 25 Lakhs</u>

10. When it is proved that affairs of Co. were conducted fraudulently, every officer in default liable for action u/s 447



CONVERSION OF SECTION 8 CO. INTO OTHER KIND OF CO.

Sec 8 Co. may convert itself into Co. of any other kind :-

- a. Sec 8 Co. shall pass SR at GM for approving such conversion
- b. Explanatory statement to notice must mention the detailed reason of such conversion.
- c. File application in INC-18 with RD along with a certified true copy of the SR and a notice convening meeting including the explanatory statement for approval for conversion.



Sec 8C0

→ Notice of GM → GM Conduct ⇒ SR Pass

Notice Specified Problem

Appel'n
file with
R.D
for approval

Representation

⇓
Copy of Appel'n
⇒ ROC ⇒ Recovery

GM Call
⇓
SR Pass
⇓
MOA & NOA
Change
Copy ⇒ ROC
File
Certify

Approval

R.D

Reject
⇓
OORIT

Copy
⇓
R.D
Submit

⇓
Notice ⇒ Newspaper
(English +
Urdu)



Also attach the proof of serving of the notice served by registered post or hand delivery, to:

- the Chief Commissioner of Income Tax having jurisdiction over the Co.,
- Income Tax Officer who has jurisdiction over the Co.,
- the Charity Commissioner,
- the Chief Secretary of the State in which the registered office of the Co. is situated,
- any organisation or Department of the CG or SG or other authority under whose jurisdiction the Co. has been operating.
- If any of these authorities wish to make any representation to RD, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Co..



- d. A copy of the application with annexures shall also be filed with the RoC
- e. Within a week from application filing date, Co. shall, publish a notice in INC-19 at its own expense in English and Vernacular newspaper, and a copy of the notice shall be sent forthwith to the RD & same shall be uploaded on the website of the Co., if any, and as may be notified or directed by the Central Government.
- f. The Co. should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the RD and all other returns required to be filed under the Act up to the date of submitting the application to the RD

Note: *In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.*



- g. RD shall issue order approving the conversion subject to T&C as may be imposed
- h. Before imposing conditions or rejecting application, the Co. shall be given a reasonable OOBH by the RD
- i. On receipt of the approval , the Co. shall convene a general meeting to pass a RS for amending its MOA & AOA thereafter file these with the RoC
- j. On receipt of the documents, the ROC shall register the doc and issue the fresh Certificate of Incorporation (COI).



Sec 9 ⇒ Effect of Registration

⇓
Certificate of Inc ⇒ issued

⇓
Birth ⇒ Body Corp ⇒ Name ⇒ MOA
Mentis





EFFECT OF REGISTRATION [SECTION 9]



Subscribers to the MOA and All other persons, who may from time to time, become members of the Co.

From the date of incorporation specified in the COI, become body corporate, by the name specified in MOA

Under said name

Exercising all the functions of an incorporated Co.

Power to acquire, hold and dispose of property

To contract and to sue and be sued.

Having perpetual succession

movable and immovable

tangible and intangible

Section 4 → Memorandum of Association



MOA
OR
Memorandum

Importance
of MOA

- ⑤ Capital clause
- ⑥ Association clause / Subscription clause
 - ↳ Min. Share
- ⑦ Nominee clause

Content of MOA

- ① Name clause ⇒ Limited / Pvt limited
- ② Situation clause
 - OR
 - Registered office clause
 - OR
 - Domicile clause
- ③ Object clause
 - ↳ Name of state
 - ↳ Main object
 - ↳ Incidental object
- ④ Liability clause



MOA ⇒ Constitution defining
↳ Charter doc

MOA }
AOA } Public
 Doc

→ Doctrine of
Constructive
Notice

||
Sec 399 of
CA, 2013

Mr. X Co



MEMORANDUM OF ASSOCIATION [SECTION 4]



1. Fundamental document for formation of Co.
2. Content of MOA need to be in compliance with Companies Act, 2013
3. MOA contains object of Co. beyond which its action cannot go.
4. MOA is a public document u/s 399 of companies Act, 2013
5. Every person entering into Contract with the Co. is presumed to have knowledge of conditions contained in MOA. (Doctrines of Constructive notice)
6. Shareholders must know the purposes for which this money can be used by Co.
7. Co. cannot depart from MOA → otherwise ultra vires Act
8. The MOA of a Co. shall be in respective forms specified in Tables A, B, C, D and E in Schedule I to the Act

7 Schedules
↓
first schedule
↓
format → MOA
→ AOA



Shareholders → CO Invest



Paise ⇒ Kis activity



CONTENT OF MOA



a) Name clause:-

- Name of the Co. with last word "**limited**" for Public Co. or "**Private limited**" for Private Co. Not applicable to Sec 8 Co.

b) Registered office Clause/ Domicile clause/ Situation clause:-

- **name of state** in which the registered office of Co. is to be situated

c) Object clause:-

- **object** for which the Co. is proposed to be incorporated & **any matter incidental thereto**

d) Liability clause:-

- Liability of members of Co., **whether limited or unlimited**
- limited by shares \Rightarrow liability of members is limited to unpaid amount of shares
- limited by guarantee \Rightarrow liability of members is limited upto the amount undertake to contribute in the event of winding up.



e) Capital clause:-

- In case of Co. having share capital, amount of authorised share capital, divided into amt & no. of shares

f) Nominee clause:-

- In case of OPC, name of person who, in the event of death/incapacity of subscriber, shall become the new member of OPC.

g) Subscription Clause

- number of shares each subscribers agree to subscribe opposite to his name which shall not be less than one share



New Co \Rightarrow Name Reserve \Rightarrow SPICE + form

\rightarrow Applⁿ \Rightarrow RoC \Rightarrow 20 days from the date of approval

\perp
Extend \Rightarrow Addⁿ fees

Option-1

\perp
₹ 1000 Pay \Rightarrow 20 days \Rightarrow 40 days from date of approval
 \perp
Extra

\perp
₹ 2000 Pay \Rightarrow 20 days \Rightarrow 60 days from date of approval
 \perp
Extra

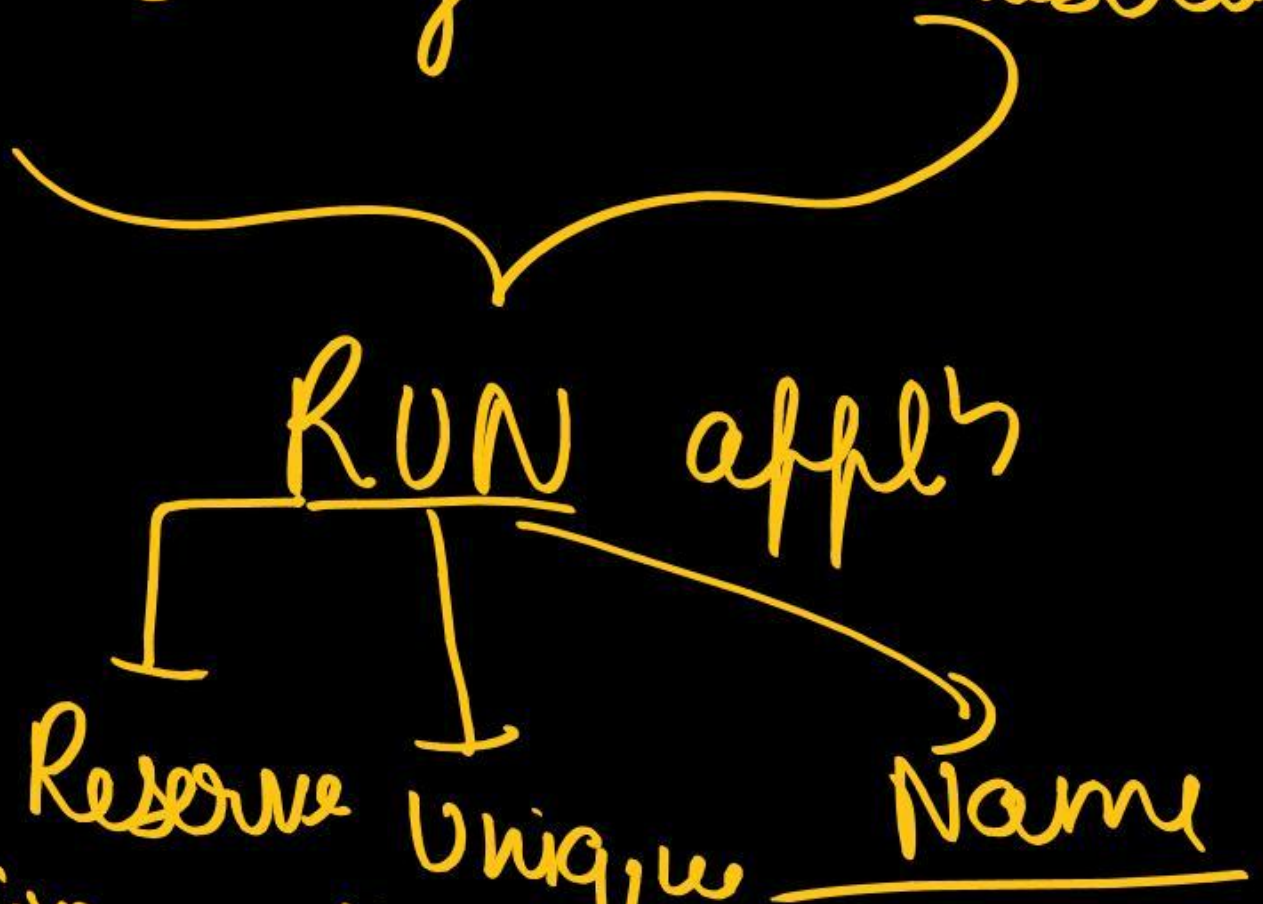
Option 2

\perp
3000 Pay
 \perp
40 days Extra

\perp
60 days from the date of app



Old Co. \Rightarrow Name Change \Rightarrow Name Reserve



Co \Rightarrow Identical / Resembling
X X

\Rightarrow other Co

\Rightarrow Registered trademark



Application for reserving name



Name reservation for New Co.

- a) A person may make an application in **SPICe+INC-32** with RoC for reservation of name of proposed Co.
- b) Resubmission shall be allowed **within 15 days**, for rectification of defect, if any.
- c) Upon receipt of an application the RoC may reserve the name for a **period of twenty days** from the date of approval

Name reservation for Existing Co.

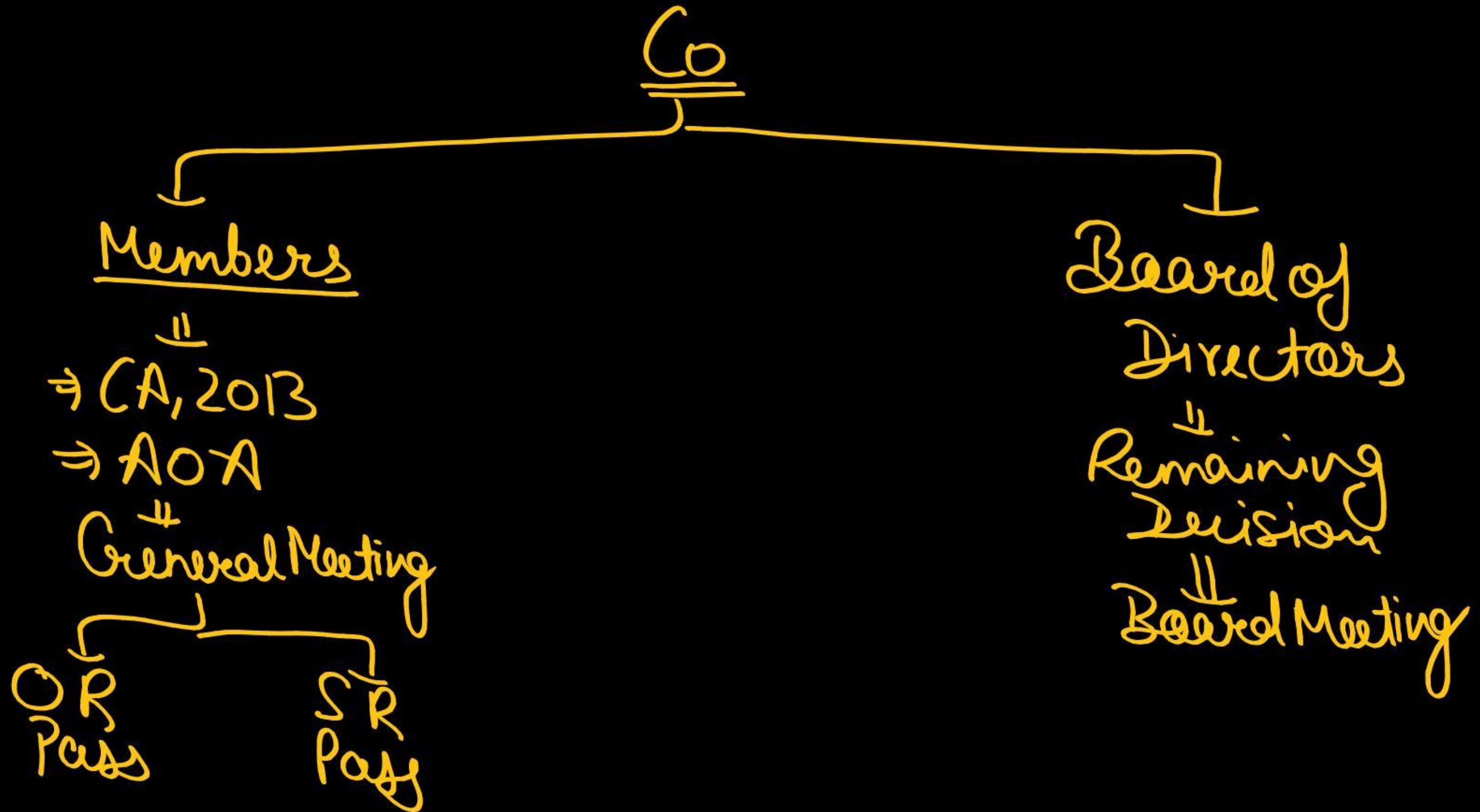
- a) A person may make an application, using web service **RUN (Reserve Unique Name)** to the RoC for the reservation of a name to which the company proposes to change its name.
- b) Resubmission shall be allowed **within 15 days**, for rectification of defect, if any.
- c) Upon receipt of an application from existing Co., the RoC may reserve the name for a **period of sixty days** from the date of approval



2. An application for extension of reservation of name can be made before expiry of 20 days;
 - a. For another 20 days (total of 40 days) with fee of Rs 1000, which may be further extend by another 20 day (total of 60 days) with fee of Rs 2000.

Or
 - b. For another 40 days (total of 60 days) with fee of 3000

Base Building





C₀ ⇒ Mr. X Auditor ⇒ OR Pass
V_f > V_A

Total 180 Members

↳ Attend ⇒ 160 Members

Not Voted ⇒ 10 Members

Vote ⇒ 150 Members

Case	V _f	V _A	OR
Case 1	100	50	Pass
Case 2	50	100	Not Pass
Case 3	75 + 1 <u>76</u>	75	OR Pass

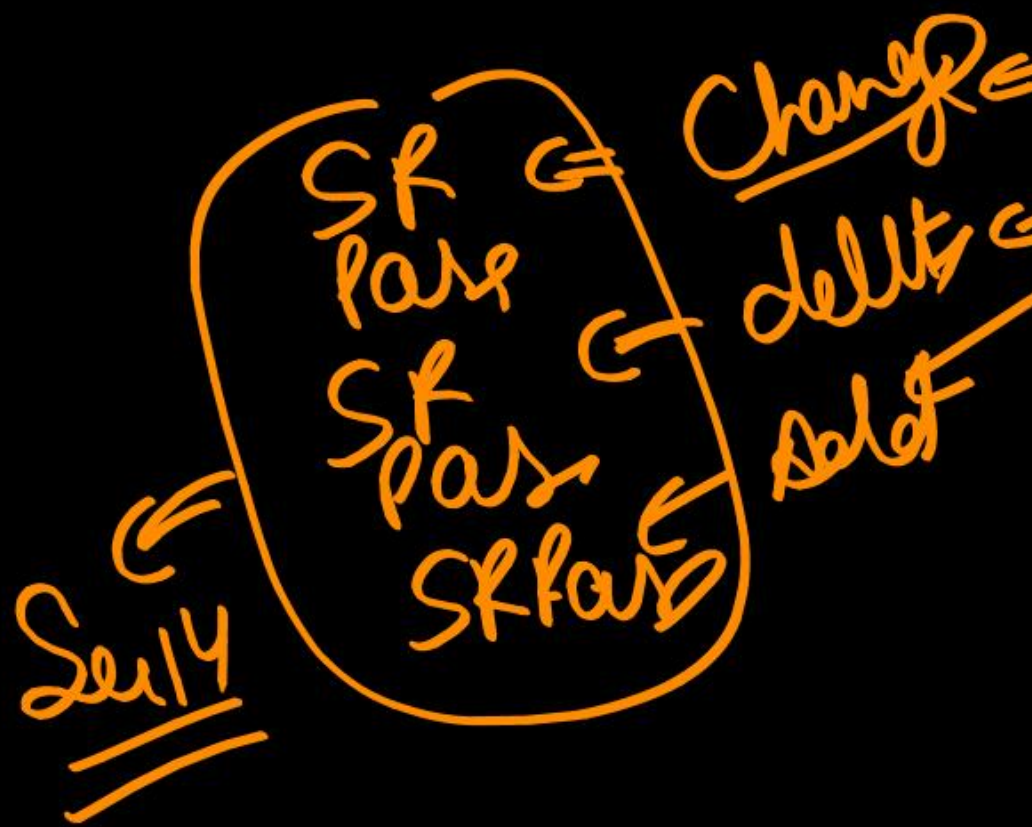
Co ⇒ MOA Alter ⇒ Sec 13 > SR ⇒ $V_f \geq 3 \times V_A$
AOA Alter ⇒ Sec 14



11
Total ⇒ 180 Member
Meeting ⇒ 160 Members
Not Voted ⇒ 10 Members
Voting ⇒ 150 Members

<u>Case 1</u> ⇒ V_f	V_A	$3V_A$	SR
100	<u>50</u>	150	Not Passed
Case 2 ⇒ 120	30	90	Pass
Case 3 75	75	225	Not Passed

AOA \Rightarrow Internal Rules & Regulations



- ①
- ②
- ③
- ④
- ⑤

⑤ Gurpreet Singh will remain director of the company until the age of 75 years. This clause can be changed/deleted only when 95% of members approved.

\Rightarrow Currently SR Pass \neq 75% \neq VF

\Rightarrow Entrenchment

- \rightarrow Pvt Co \Rightarrow All Members
- \rightarrow Public Co. \Rightarrow SR Pass

OR \Rightarrow $V_f > V_A \Rightarrow$ More than 50%

SR \Rightarrow $V_f \geq 3 \times V_A \Rightarrow$ At least 75%

100



Entrenchment

Meaning

⇓

When specified provision of AOA can be altered only if procedure more restrictive than SR is complied with.

Manner of Inclusion

At the time of Incorporation

After Incorporation, Articles Amend

Pvt Co
All Members

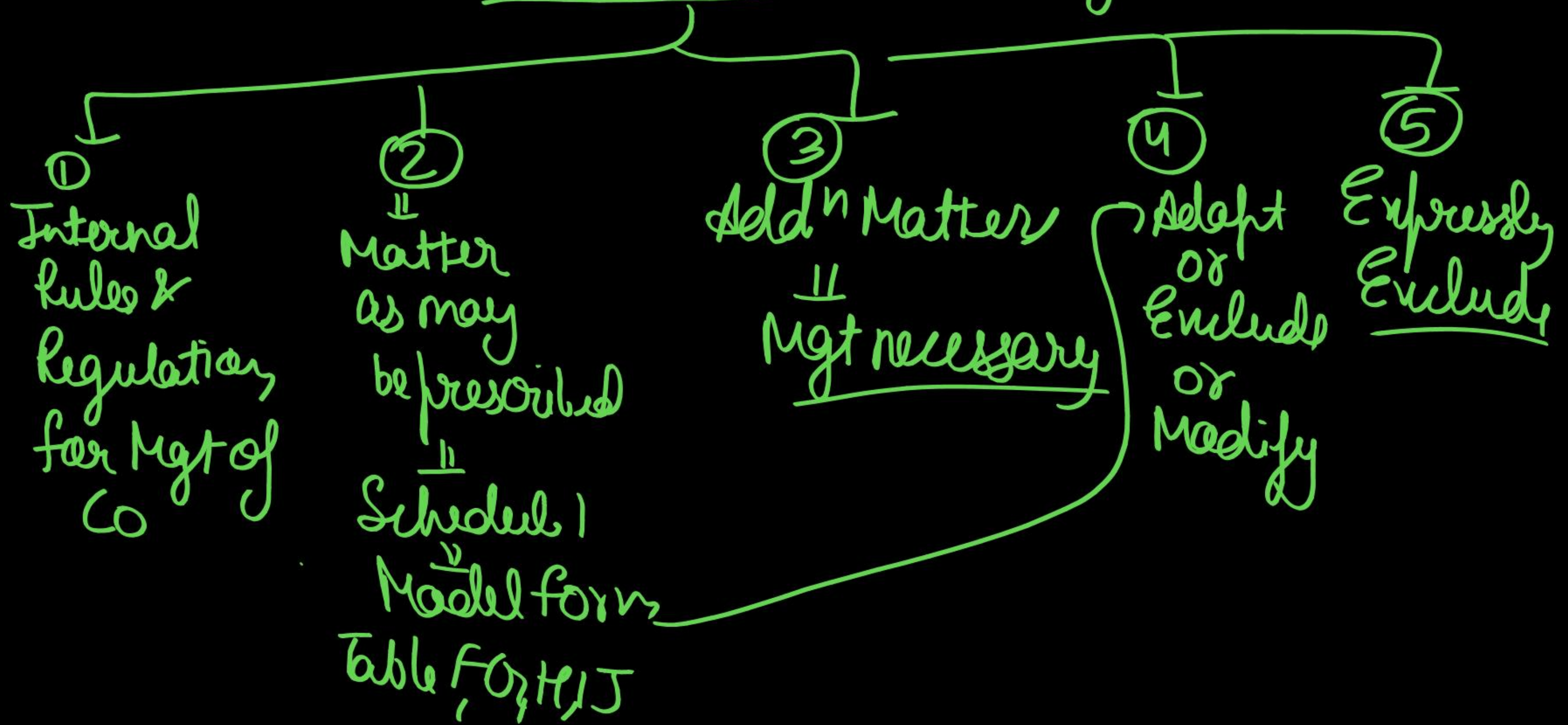
Public
SR Co

Notice to RoC

New Co
SP Form

Old Co
MGT-14

Section-5 ⇒ Articles of Association





ARTICLES OF ASSOCIATION – AOA [SECTION 5]

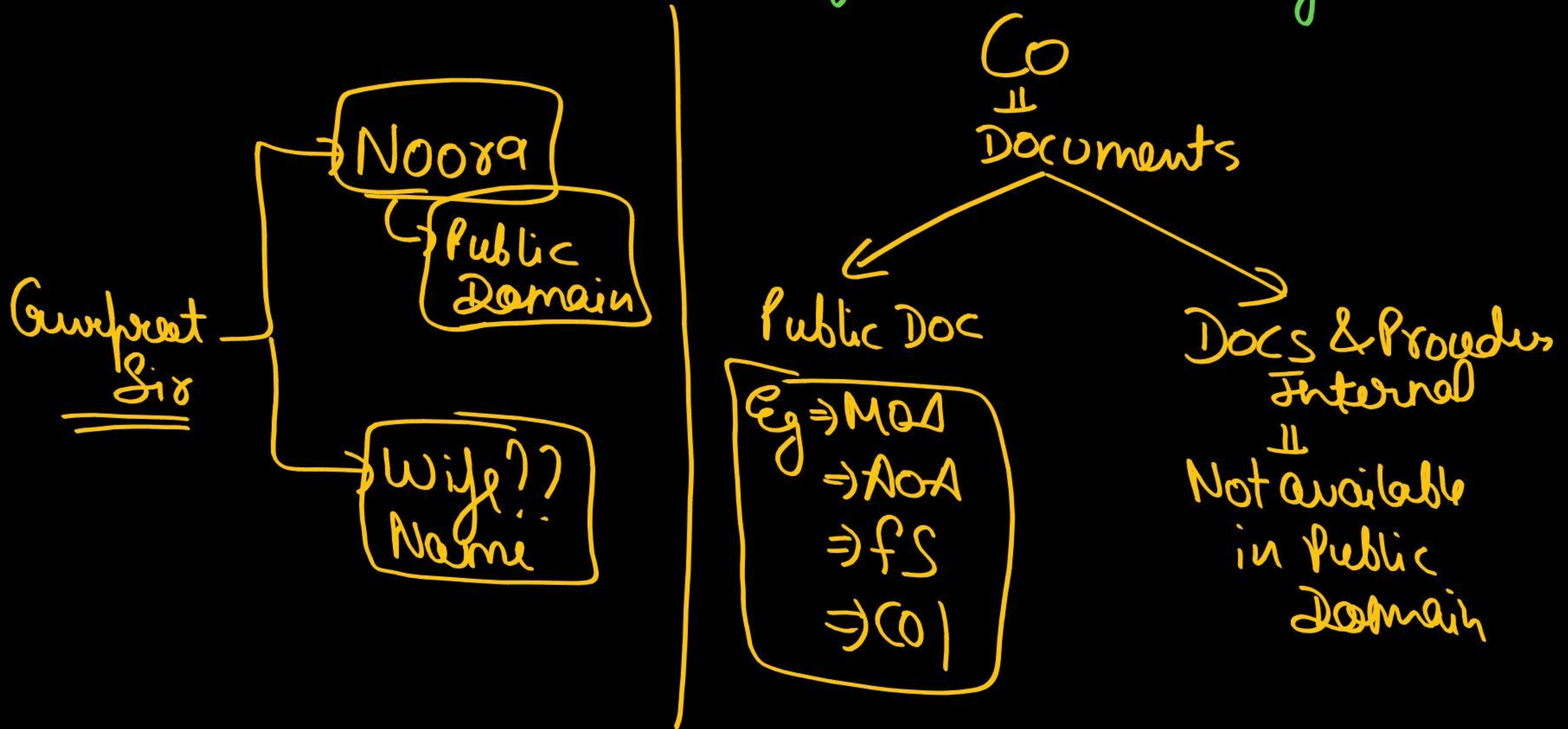


1. AOA shall contain internal rules & regulations for management of Co.
2. AOA to include such matters as may be prescribed (forms given in Schedule I)
3. Co. may include additional matters in AOA as may be considered necessary for mgt.
4. Entrenchment
 - a) AOA may contain provision for entrenchment
 - b) Meaning:- Specific provision of AOA may be altered only if conditions that are more restrictive than those applicable in case of special resolution, are met or complied with.
 - c) Provision for entrenchment shall be made
 - either on formation of a Co. or
 - by amendment in AOA agreed by
 - All members in case of Pvt Co.
 - SR in case of public Co.



- d) Co. must give notice to ROC of provision of entrenchment
- New Co. - INC-32 (SPEAK)
 - Existing Co. - MGT-14 within 30 days
5. AOA shall be in respective forms specified in **Tables F, G, H, I & J** in Schedule I to the Act
6. Co. may **adopt all or any regulations** contained in the model articles applicable to such Co.
7. Any Co., which is registered after the commencement of this Act either **exclude or modify expressly** or else it applies what stated in model forms applicable to that Co.

Doctrine of Indecent Management



✓ Doctrine of Ultra vires

Doctrine of C.N ↓
Void

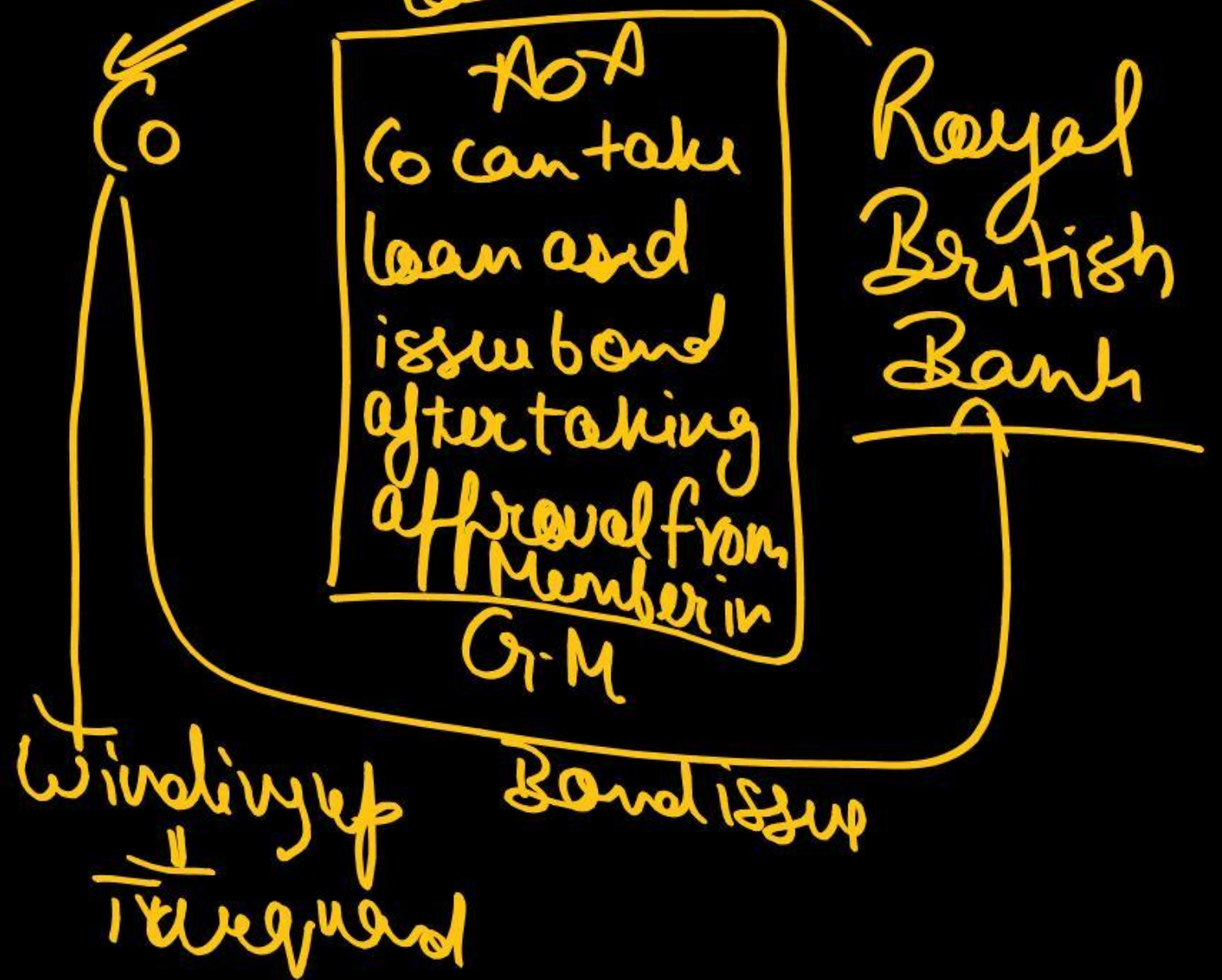
Co
↓
MOA ⇒ Same as
Business
↓
Object

Co → 1000 Mobiles → Mr. X
Sell phone
← Price



Doctrine of Indecar Mgt.

↓
Royal British V/S Turquand





DOCTRINE OF INDOOR MANAGEMENT



Doctrine of Indoor Management

1. Persons dealing with Co. cannot assumed to have knowledge of internal problems of Co.
2. Stakeholders need not enquire whether necessary meeting was convened & held properly or whether necessary resolution was passed properly.
3. This doctrine helps protect outsiders from the Co.
4. Outsiders are entitled to presume that internal proceedings and requirements have been duly met



DOCTRINE OF INDOOR MANAGEMENT



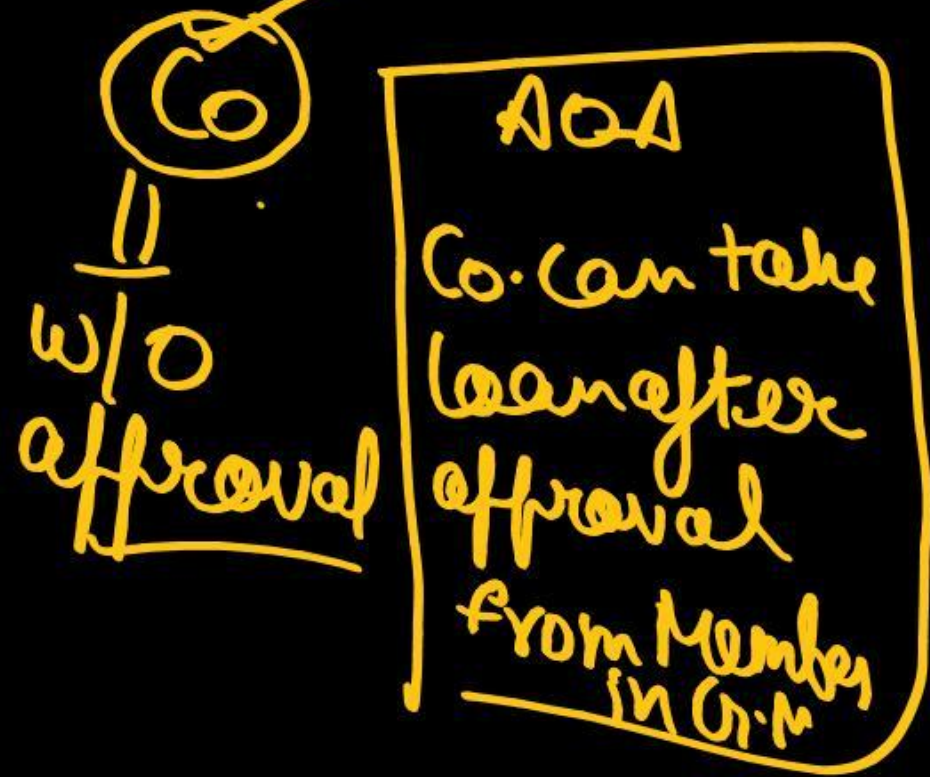
Basis for Doctrine of Indoor Mgt

- what happens internal in Co. is not matter of public knowledge.
- Outsider can only presume the intentions of a Co., but not know the information he/she is not access to.
- If not for the doctrine, Co. could escape creditors by denying the authority of officials to act on its behalf

Exceptions of Doctrine of Indebted Management

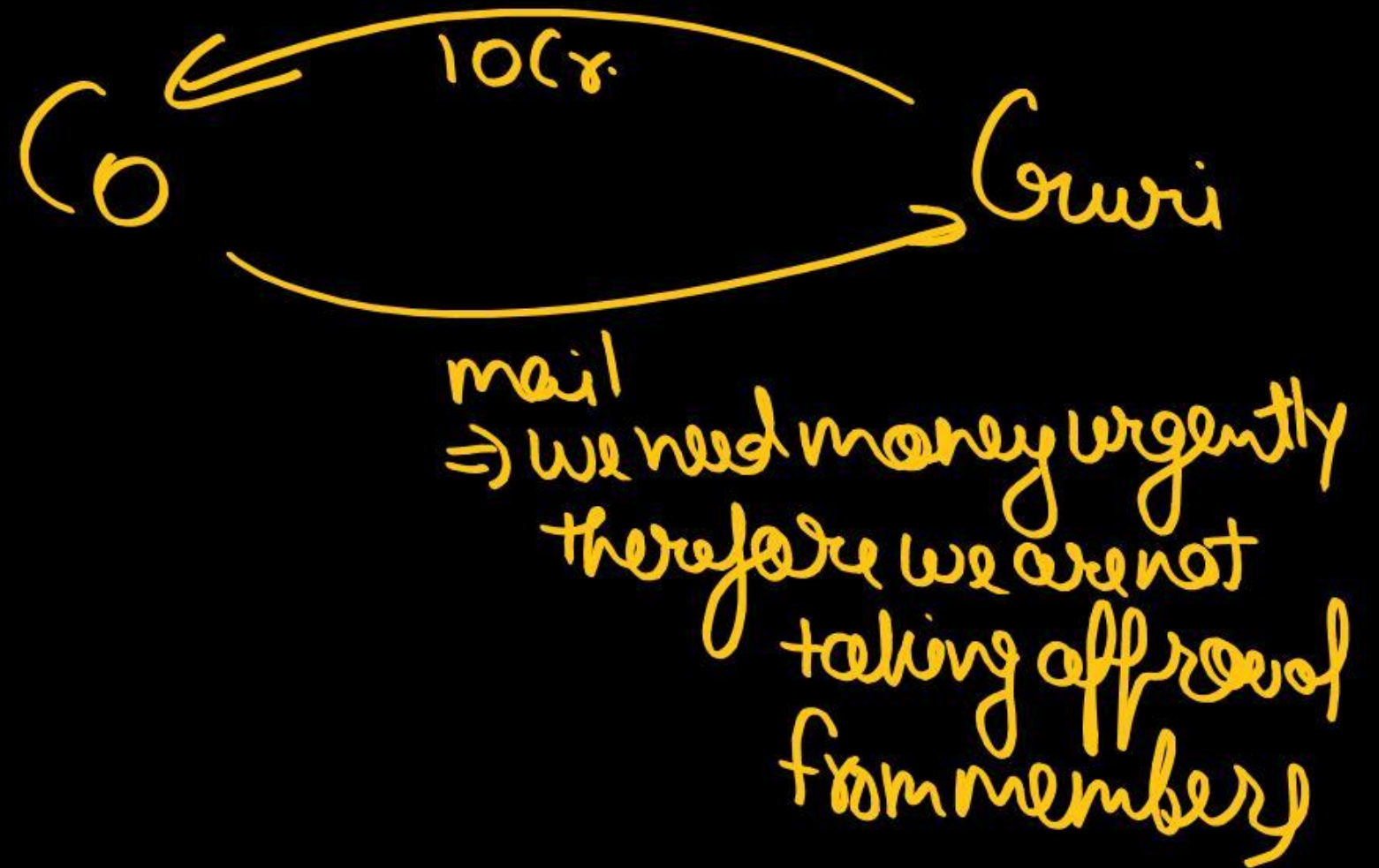


No knowledge of Irregularity
||
DOIM Applicable
10Cr 109m



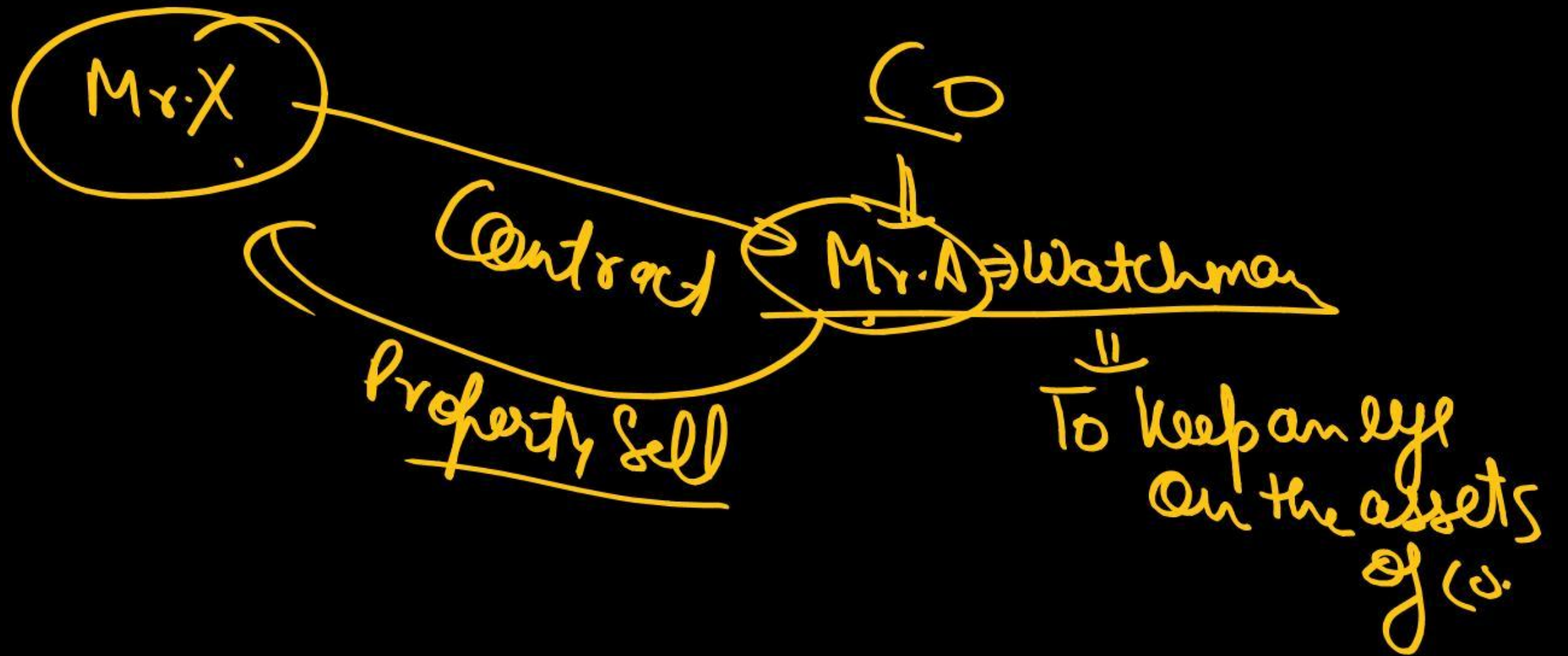
Co. w/o

Knowledge of Irregularity
||
DOIM not applicable





② Negligence





EXCEPTION TO DOCTRINE OF INDOOR MANAGEMENT



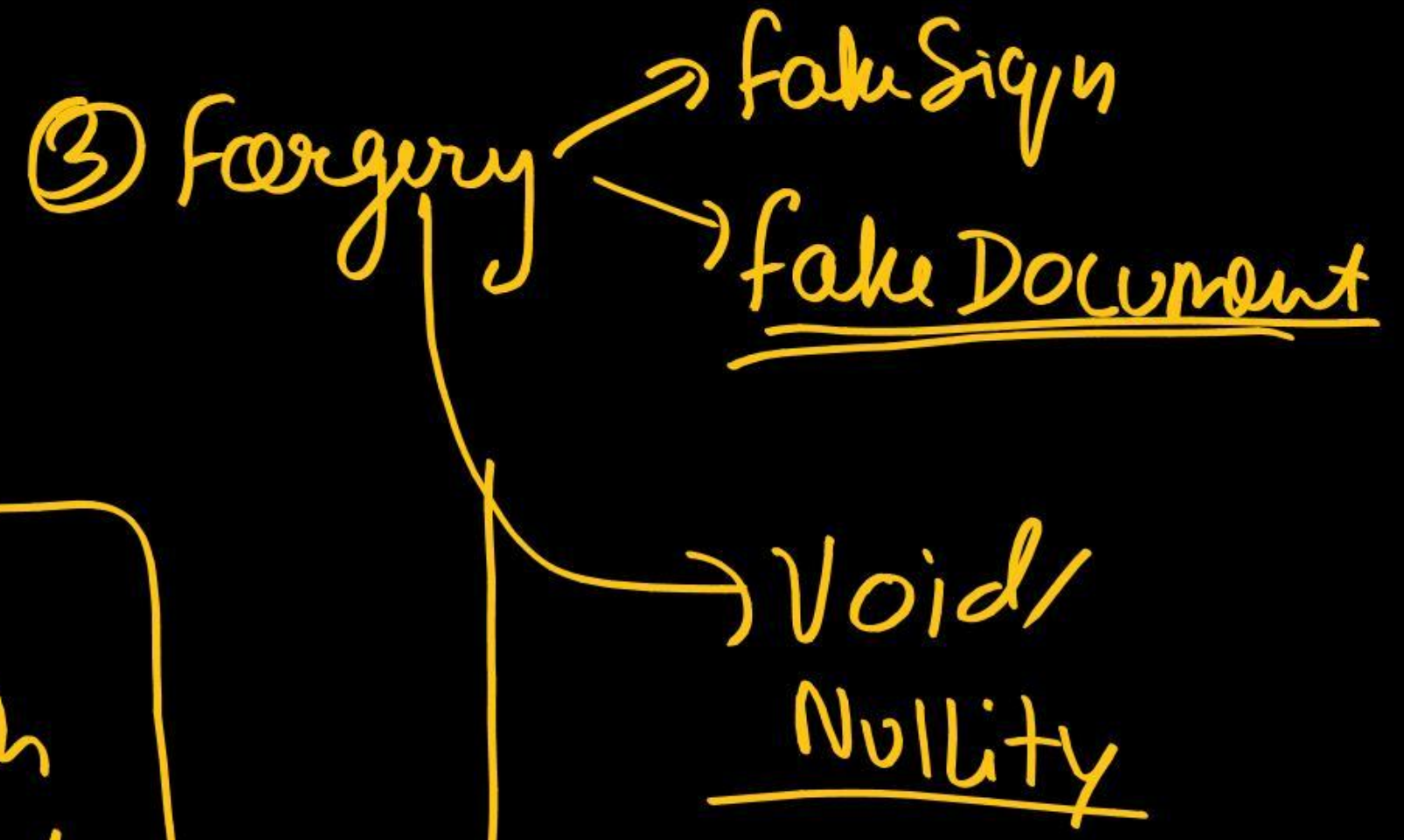
1. Knowledge of irregularity

In case, outsider has actual knowledge of irregularity within the Co., benefit under Doctrine of Indoor Mgt would no longer be available. In fact, he / she may be considered part of irregularity

2. Negligence

If with minimum of effort, irregularities within a Co. could be discovered, the benefit of Doctrine of Indoor Mgt. would not apply.

The protection of rule is also not available where the circumstances surrounding the contract are so suspicious as to invite enquiry & the outsider dealing with Co. does not make proper inquiry.



I, Rishabh
Kohra, transfer
my whole prop
to Gurpreet

←
Forged Sign



EXCEPTION TO DOCTRINE OF INDOOR MANAGEMENT



3. Forgery

The rule does not apply where person relies upon document that turns out to be forged since nothing can validate forgery.

4. Where the question is in regard to the very existence of an agency.

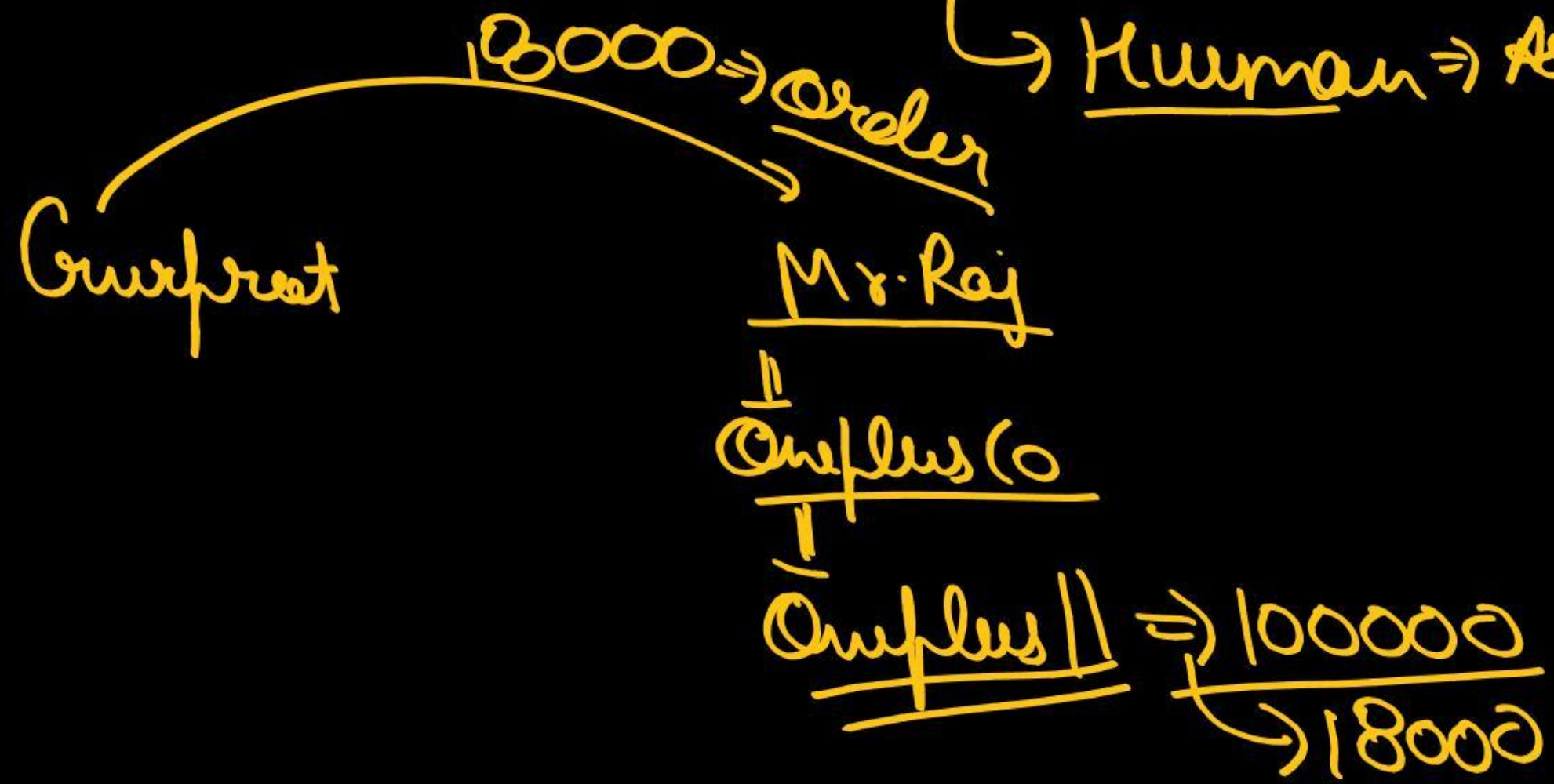
5. The act done is not merely ultra vires the directors/officers but ultra vires the Co. itself.



④ Existence of Agency

(o) ⇒ Human body

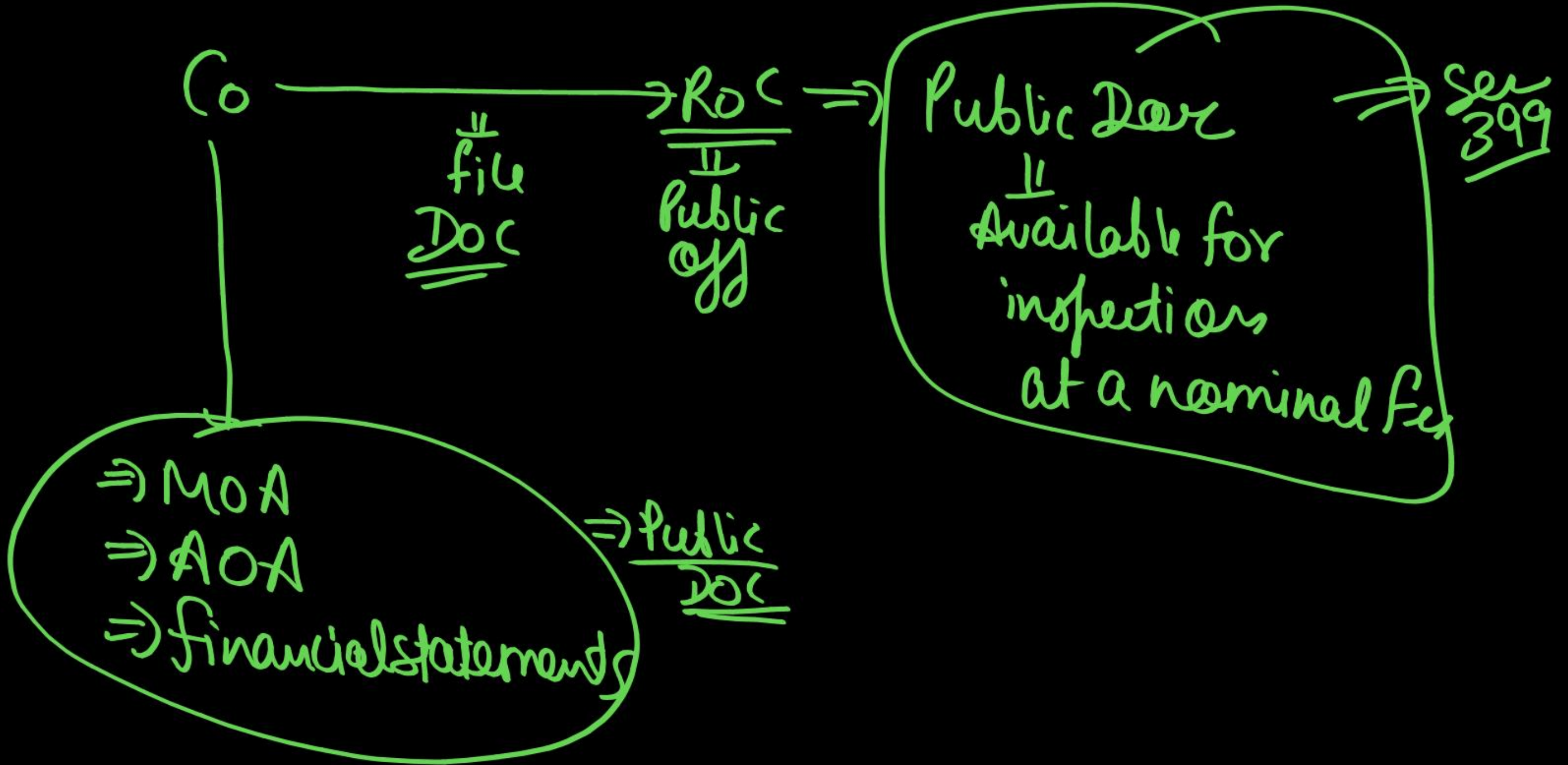
↳ Human ⇒ As agent





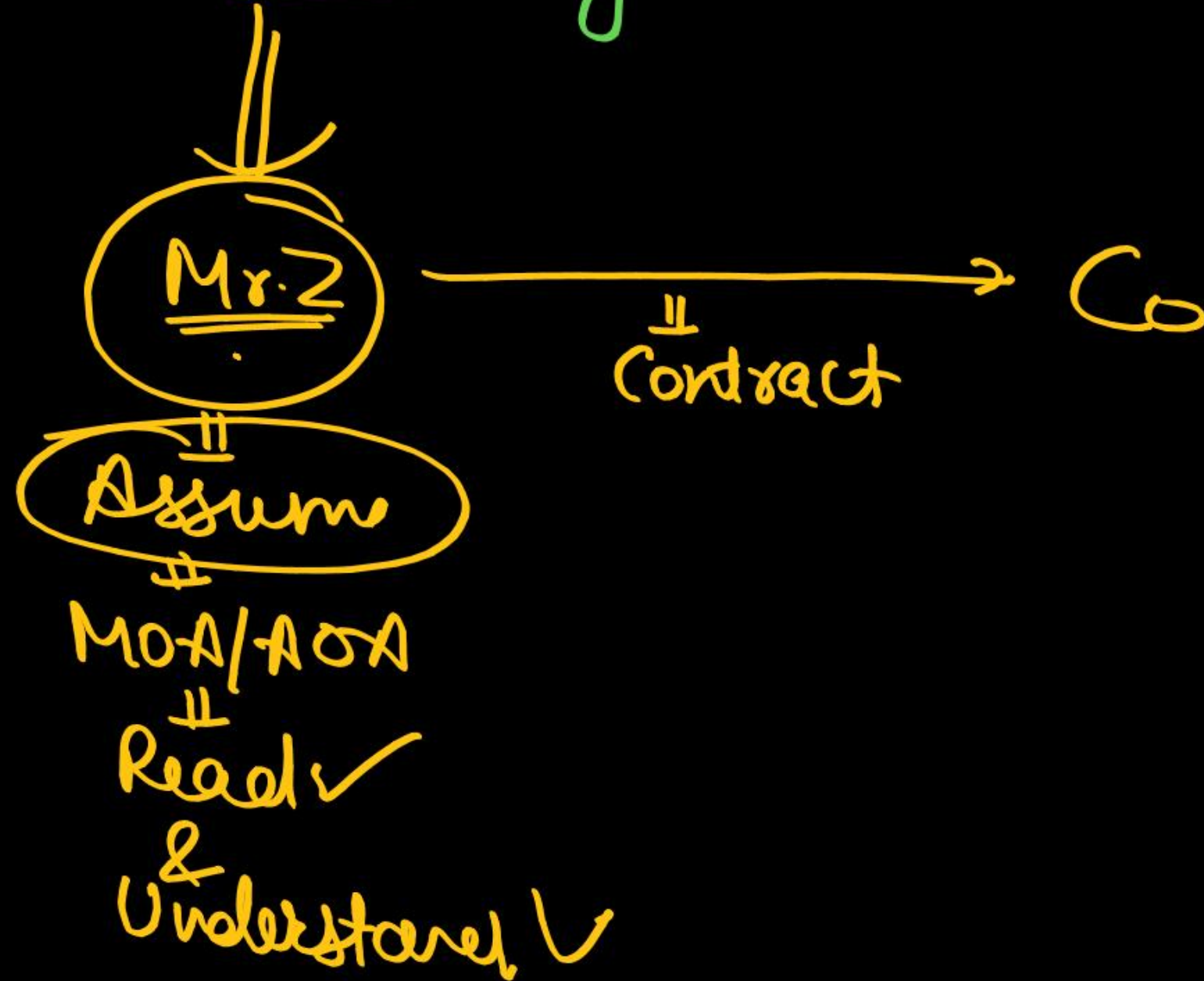
- ✓ ① Doctrine of Constructive Notice
- ✓ ② Doctrine of Ultra Vires

- Imp ←
- ③ Doctrine of Indoor Mgt. or Turquand Rule
 - ④ Exceptions to Doctrine of Indoor Mgt





Doctrine of Constructive Notice





Doctrine of Ultra Vires

↳ legal term ⇒ Beyond Power



Topic: Memorandum of Association – MOA [Section 4]



Doctrine of Ultra Vires



Gurpreet Samose Wallah

MOA Pvt Ltd

Object = Selling SAMOSE



→ Ultra vires the MOA

GSW Pvt Ltd.

Sold 1000 Phones

For Rs.xxxxx

Mr. A

GSW Pvt Ltd. ULTRA VIRES the MOA Hence Void

⇒ Not Legally Bnd

Mr. A Cannot Sue GSW And Vice-Versa



① Ultra viruses the MOA
or
Ultra viruses the Co.

Cannot be ratified
Even all SH cannot
satisfy

② Ultravirus the AGA

Can be
ratified
by SH

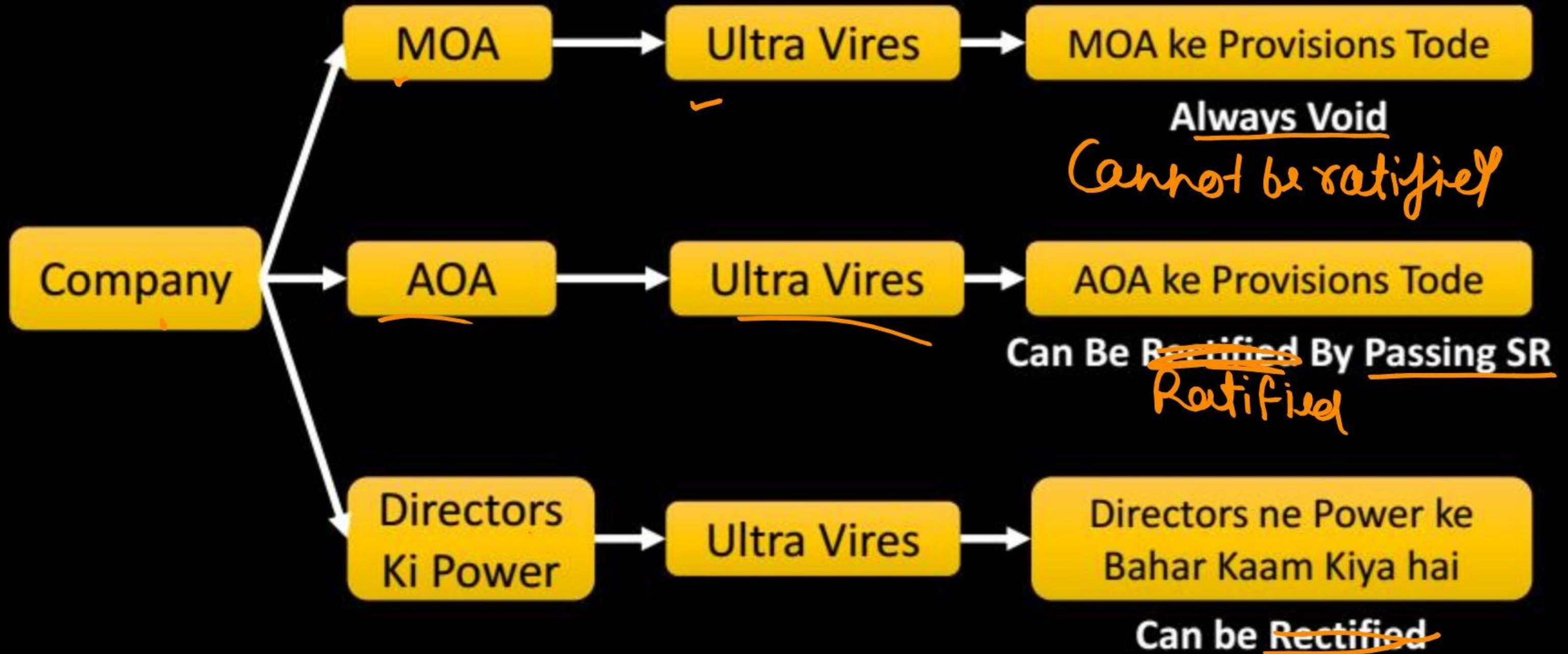
③ Ultravirus the power
of Directory



Topic: Memorandum of Association – MOA [Section 4]



Doctrine of Ultra Vires





Topic: Memorandum of Association – MOA [Section 4]

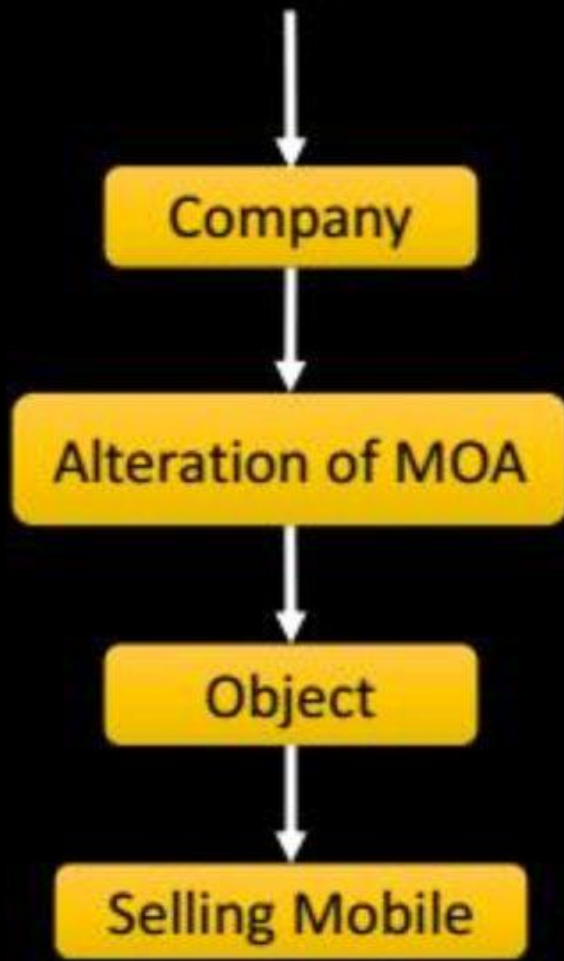
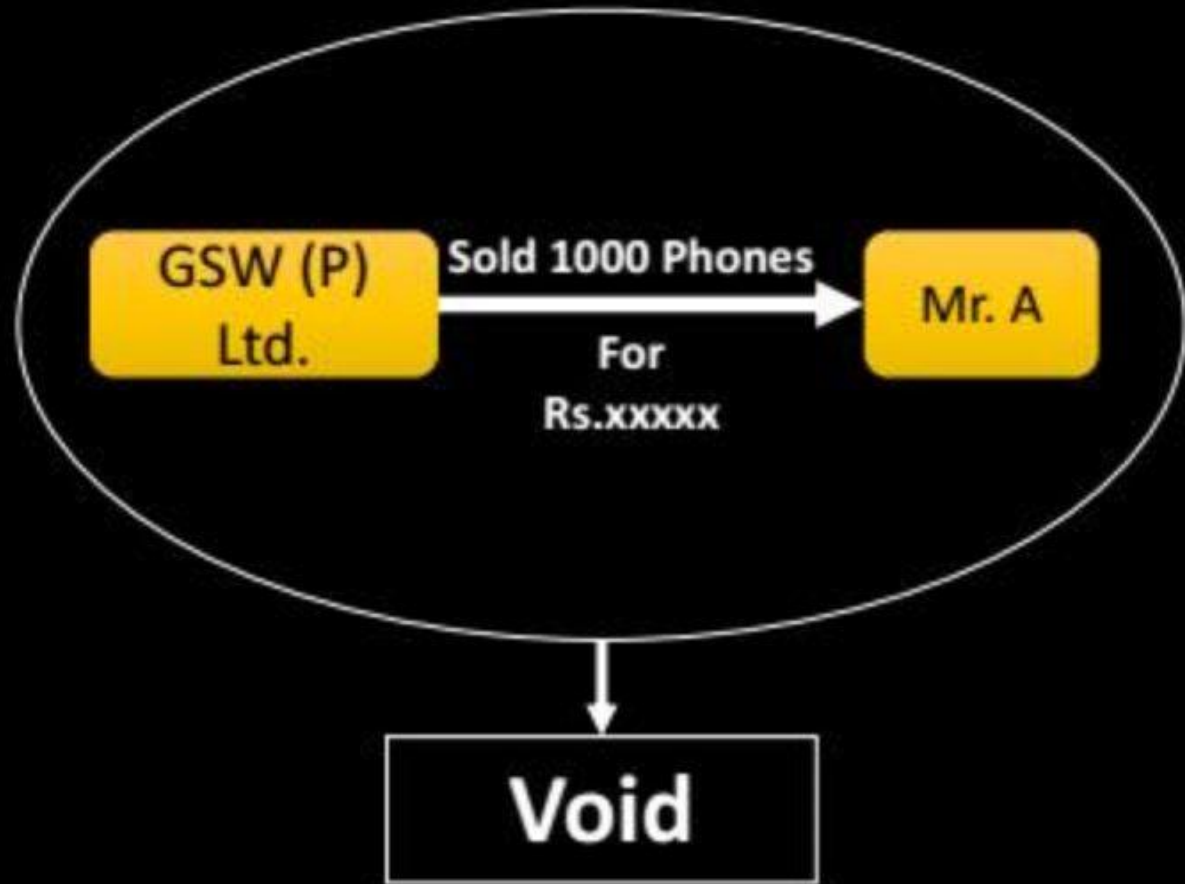


Prospective Effect

10 April

13 April

15 April





DOCTRINE OF ULTRA VIRES



1. The Word 'ultravires' means beyond powers.
2. In case of Co. whatever is not stated in MOA as objects is prohibited by Doctrine of ultra vires.
3. An act which is ultra vires is void & does not bind the Co.
4. The doctrine of ultra vires was first enunciated by the House of Lords in a classic case of Ashbury Railway Carriage and Iron Co. Ltd. v. Riche.
5. Effect :-
 - a. Whenever an ultra vires act is about to be undertaken, any member of the Co. can get an injunction to restrain it from proceeding with it.
 - b. Neither party (even outsider) can sue for enforcement or specific performance of such agreement.



Section 6

Act v/s MOA

Act v/s AOA

Act v/s Agreement

Act v/s Member Resⁿ

Act v/s Board Resⁿ

Act ✓



ACT TO OVERRIDE MOA, AOA, ETC. [SECTION 6]



Save as otherwise expressly provided in this Act

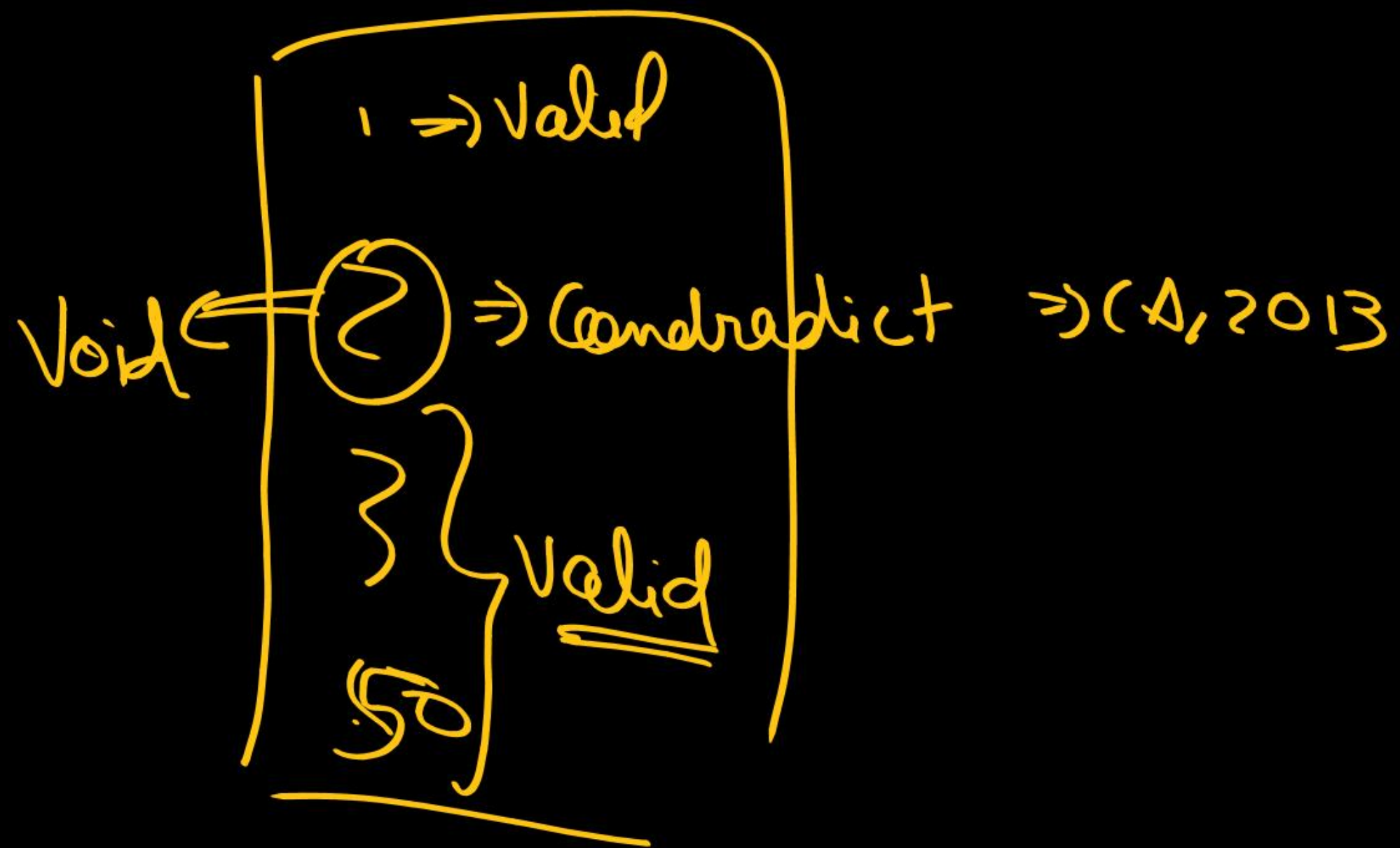
a) Provisions of this Act shall have overriding to the provisions contained in

- ⇒ MOA
- ⇒ AOA
- ⇒ Agreement executed by Co.
- ⇒ BOD resolution
- ⇒ Member resolution

b) any provision contained in MOA, AOA, agreement or resolution shall be void which is conflicting to the provisions of this Act.



AOA





EFFECT OF MEMORANDUM AND ARTICLES [SECTION 10]

1. When the MOA and AOA got registered; it shall bind the

a. Members to the Co.;

b. Co. to the members;

c. Members to the members;

To observe all the provisions of the MOA and of the AOA, as signatory thereof.

2. All monies payable by any member to the Co. under the memorandum or articles shall be a debt due from him to the Co..

Example - A Co. can recover calls in arrear from a member as forcefully as it is recovering loan due.

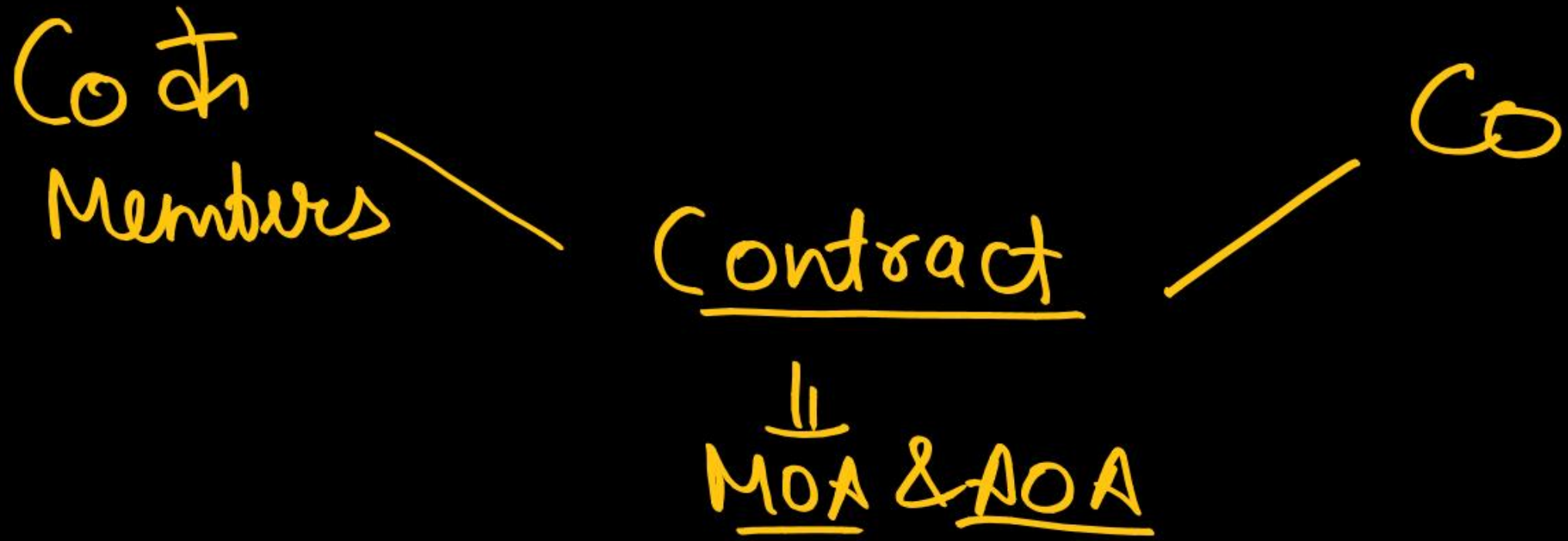
Note :- "No Article can constitute a contract between the Co. and a third person."

(Other than member)



MOA \Rightarrow Member \Rightarrow Share \Rightarrow FIO \Rightarrow Members





- Members ⇒ bind to Co
- Co ⇒ bind to Members
- Members bind to other Members



Sec 13 → Alteration of MOA



ALTERATION IN MOA [SECTION 13]

1. Co. may alter the provisions of its memorandum with the approval of the members by a special resolution.
2. Further, Co. shall file with the ROC copy of such special resolution.

⇓
Generally



3. Change in Name clause

Voluntary Change

Section 13

- 1. Special Resolution (SR)
- 2. Approval of CG (RoC)
- 3. Copy of SR + CG approval filed with ROC
- 4. ROC certify name change & issue fresh COI in INC-25

Compulsory Change

Name reserve under Section 4(5)(ii) with incorrect information

If Co. registered with identical or similar name of other Co. or registered trademark (Sec 16)

RoC
Co. not incorporated

Reserved Name cancelled
&
Applicant liable for Penalty upto ₹ 1 Lakh

Co. Incorporated

After giving OOBH ROC will
- order to change name within 3 months by passing OR
- Strike off from register
- petition for winding up

CG (RD) Suo moto
order Co. to change name within 3 months by passing OR

Application to CG (RD) of proprietor of Trademark within 3 years
CG order Co. to change name within 3 months by passing OR
If Co. fails, CG shall allot new name



4. Change in Registered office Address

No change in State (Section 12)

Change in State (Section 13)

Within same city, town, village

Outside local limits of city, town, village

Same State but change in ROC

Board Resolution

Special Resolution

Board Resolution ✓

Special Resolution ✓

RD(RD) approval ✓

CG Approval (delegated to RD)

Notice to ROC of both states by Co.

ROC issues Fresh COI

Board Resolution only

Board Resolution

Special Resolution

RD to communicate within 30 days of receipt of application

Co. to file same with ROC within 60 days

ROC certify within 30 days Of date of filing confirmation

Notice to ROC (30 days)

Notice to ROC (30 days)



Procedure to change registered office of Co..





6. Change in object clause

Case 1

Case 2

Co. has unutilised money which raised through prospectus from pubic

⇒ Co ⇒ Public

- Special Resolution (SR) through Postal ballot
- details of such resolution published in 2 newspapers (English+Vernacular) and placed on website of Co., if any indicating justification for such change
- Exit opportunity to dissenting SH by promoters & SH having control as per SEBI regulations

VVF
VVA ⇒ Dissenting SH

Seamless

500 Cr

50 Branch

10 Cr/branch

300 Cr Spent

200 Cr unutilised

Issuance

Other Cases

Only Special Resolution

ROC file



The notice in respect of the resolution for altering the objects shall contain the following particulars, namely;

- a. Total money received; $\Rightarrow 500\text{Cr}$.
- b. Total money utilised for the objects stated in the prospectus; $\Rightarrow 300\text{Cr}$.
- c. Un-utilized amount out of the money so raised through prospectus, $\Rightarrow 200\text{Cr}$.
- d. Particulars of the proposed alteration or change in the objects; *Increase*
- e. Justification for the alteration or change in the objects;
- f. Amount proposed to be utilised for the new objects; $\Rightarrow 200\text{Cr}$.
- g. Estimated financial impact of the proposed alteration on the earnings and cash flow of the Co.;
- h. Other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
- i. Place from where any interested person may obtain a copy of the notice of resolution to be passed.



Section 14 \Rightarrow Alteration of AOA

Normal Rule \Rightarrow AOA change \Rightarrow SR Pass

Pvt Co $\xrightarrow[\text{3 Baatein Hatake}]{\text{1}}$ Public Co

Public Co $\xrightarrow[\text{3 Baatein Add Karke}]{\text{1}}$ Pvt Co \Rightarrow (Orth) Approval



ALTERATION OF AOA [SECTION 14]



1. By passing SR, Co. may alter its AOA
2. Alteration of AOA includes conversion of
 - a) Pvt Co. to Public Co.
 - b) Public Co. to Pvt. Co. (subject to CG approval)
3. Where a Pvt Co. alter its article such that it does not include restriction which a Pvt. Co. is required to include in AOA as per Act, such Pvt. Co. shall cease to be private from date of alteration
4. Following documents shall be filed with ROC within 15 days of alteration of AOA for registration
 - Every alteration of AOA
 - Approval of CG for such alteration
 - Printed copy of altered articles
5. Any alteration of AOA registered shall be valid as if it were originally in the articles



$\text{CO}_1 \rightarrow \text{MOA} \Rightarrow \text{Sec 13 follow}$

$\text{CO}_2 \rightarrow \text{AOA} \Rightarrow \text{Sec 14 follow}$

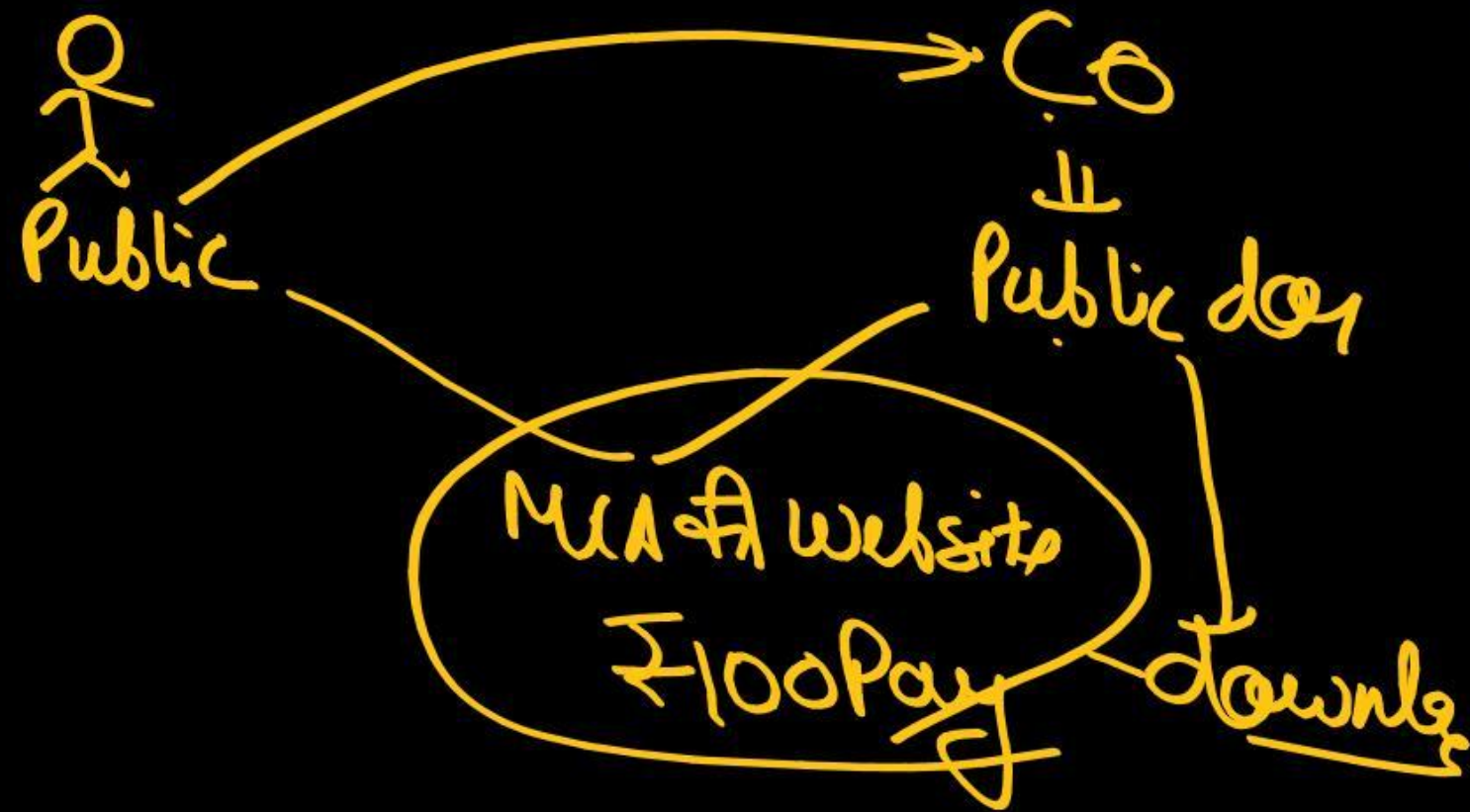


ALTERATION OF MEMORANDUM OR ARTICLES TO BE NOTED IN EVERY COPY [SECTION 15]

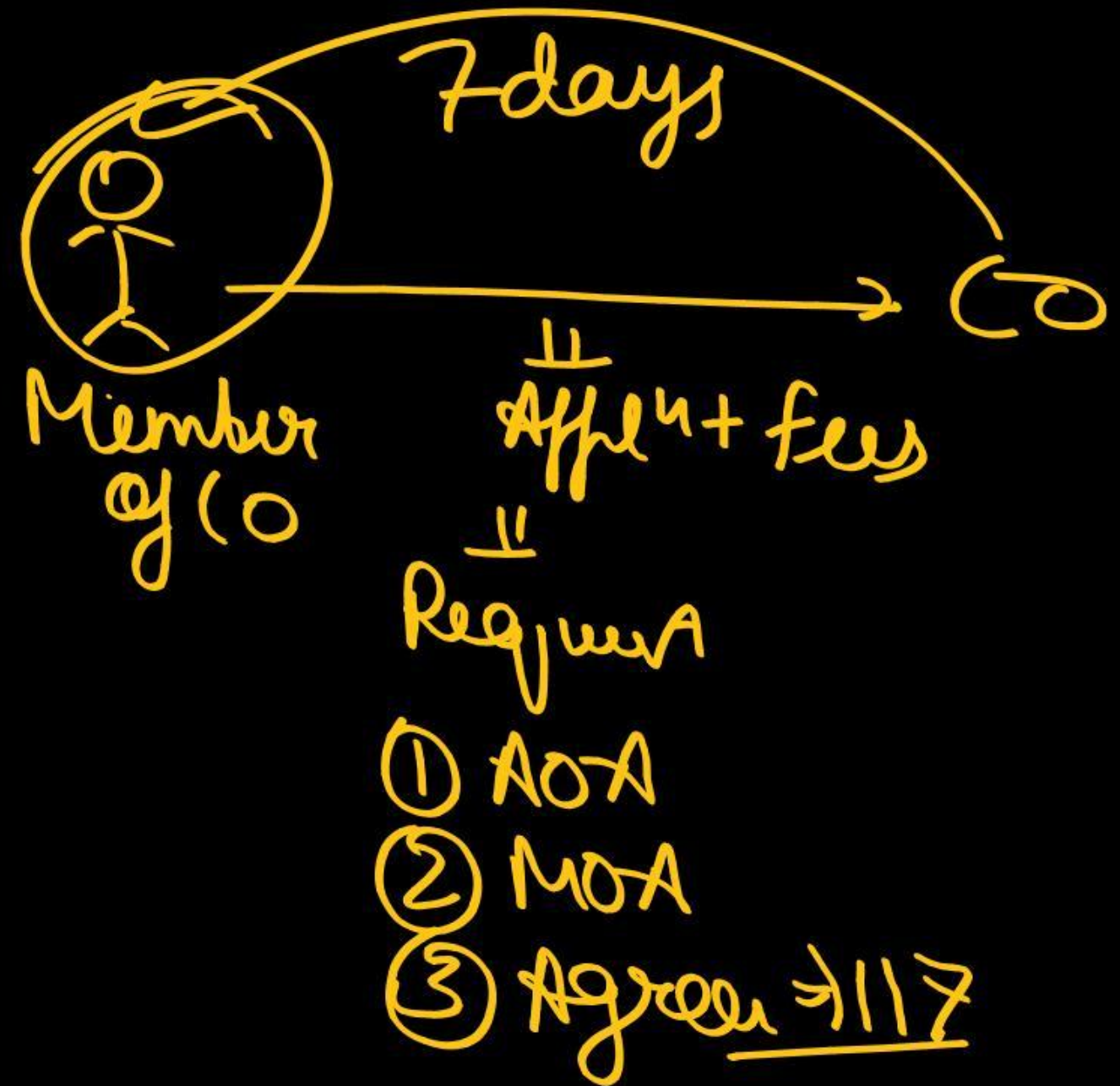
1. Every alteration made in memorandum and articles of a Co. shall be noted in every copy
2. On default ⇒ Co. & every officer in default - liable to penalty of ₹1000 for every copy issued w/o alteration

$$10 \text{ (copy)} \Rightarrow 10 \times 1000 \Rightarrow 10000$$

Section 399



Sec 17





Section 17- Copies of Memorandum/articles etc. to be given to members

1. On being requested by member, Co. shall send to him within 7 days of request subject to payment of such fees as may be prescribed copy of each of following documents
 - MOA ✓
 - AOA ✓
 - Agreements & resolutions u/s 117(1) not included in MOA/AOA
2. If default u/s 17 → Co. + every officer in default - ₹1000/ day or ₹ 1 lakh whichever is lower

Section 12 \Rightarrow Registered office of Co.





REGISTERED OFFICE OF Co. [SECTION 12]



1. Within 30 days of incorporation and at all times there after, Co. shall have a Registered office (RO) capable of receiving communication & notices
2. Co. shall furnish to ROC, verification report of RO within 30 days of incorporation
3. Change in RO- Refer chart
4. Every Co. shall
 - a) paint / affix its name, address of RO on the outside of every office in which its business is carried on, in a conspicuous place, in legible letters in languages in general use in that locality
 - b) have its name engraved in legible characters on its common seal, if any
 - c) following details printed in all its business letters, bill heads, letter papers & other official publications



- Name ✓
- RO address ✓
- CIN ✓
- Telephone number ✓
- Fax number, if any ✓
- e-mail ✓
- website address ✓

d) have its name printed on hundies, promissory notes, bills of exchange & such other docs as prescribed

Note:- In case of name change during last 2 years, print or affix the former name as well
In case of OPC, words "One person Co." to be mentioned in bracket below such name.



5. If any default is made in complying with this section, Co. & every officer in default shall be liable to penalty of ₹ 1000 / day during which default continues but not exceeding ₹ 1 lakh
6. If ROC has reasonable ground to believe (RGTB) that Co. is not carrying any business or operation, he may cause a physical verification of RO in prescribed manner & if any default is found to be made in complying with requirements of sub-section (1),
→ Initiate action for removal of name of Co. from Register of Cos.



Su 10A

Co having share capital



Business X

Borrowing X

||
Unless

↓
2 conditions



COMMENCEMENT OF BUSINESS ETC. [SECTION 10A]



1.

Co. having share capital shall not

Commence any business

or

Exercise any borrowing powers

Unless

Declaration in form INC-20A by a director within 180 days of incorp is filed with ROC that as on date of declaration, every subscriber has paid the value of shares agreed to be taken

The Co. has filed with ROC, a verification of RO provided u/s 12 (2)

Content of said form shall be verified by CS/CA/Cost Accountant in practice

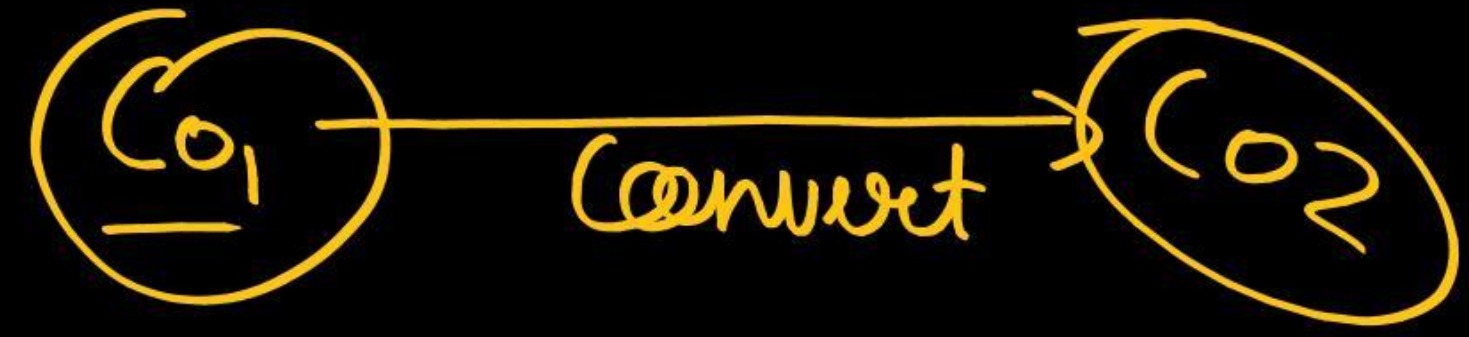
In case Co. requires registration / approval from any sectoral regulator- such registration / approval obtained & attached with the declaration.



2. If any default under this section, Co. - ₹ 50000 & officer in default, ₹ 1000/day up to ₹ 1 Lakh
3. If no declaration is given within 180 days & ROC has RGTB that Co. is not carrying on any business or operations, ROC may initiate action for removal of name of the Co. from register of Cos.



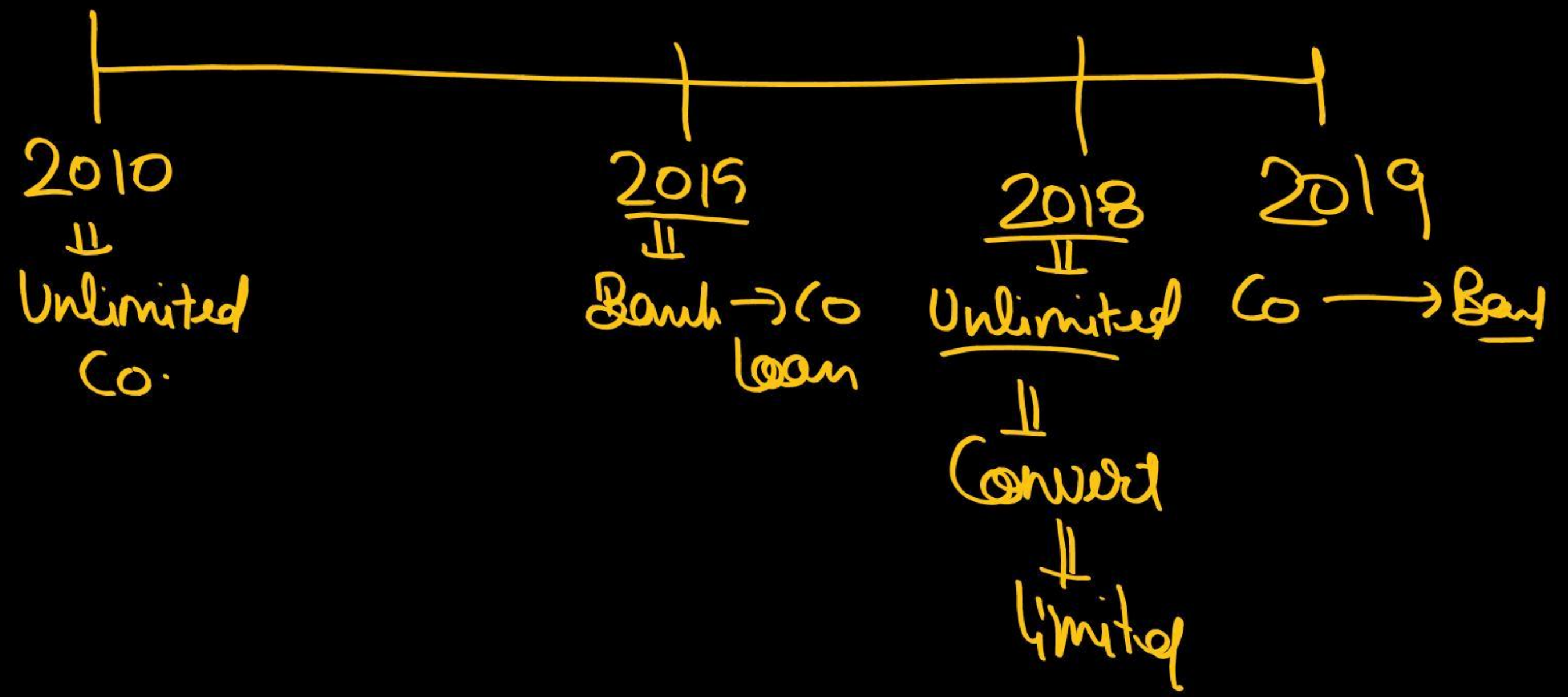
Sec 18 \Rightarrow Conversion of CO. Already Registered.

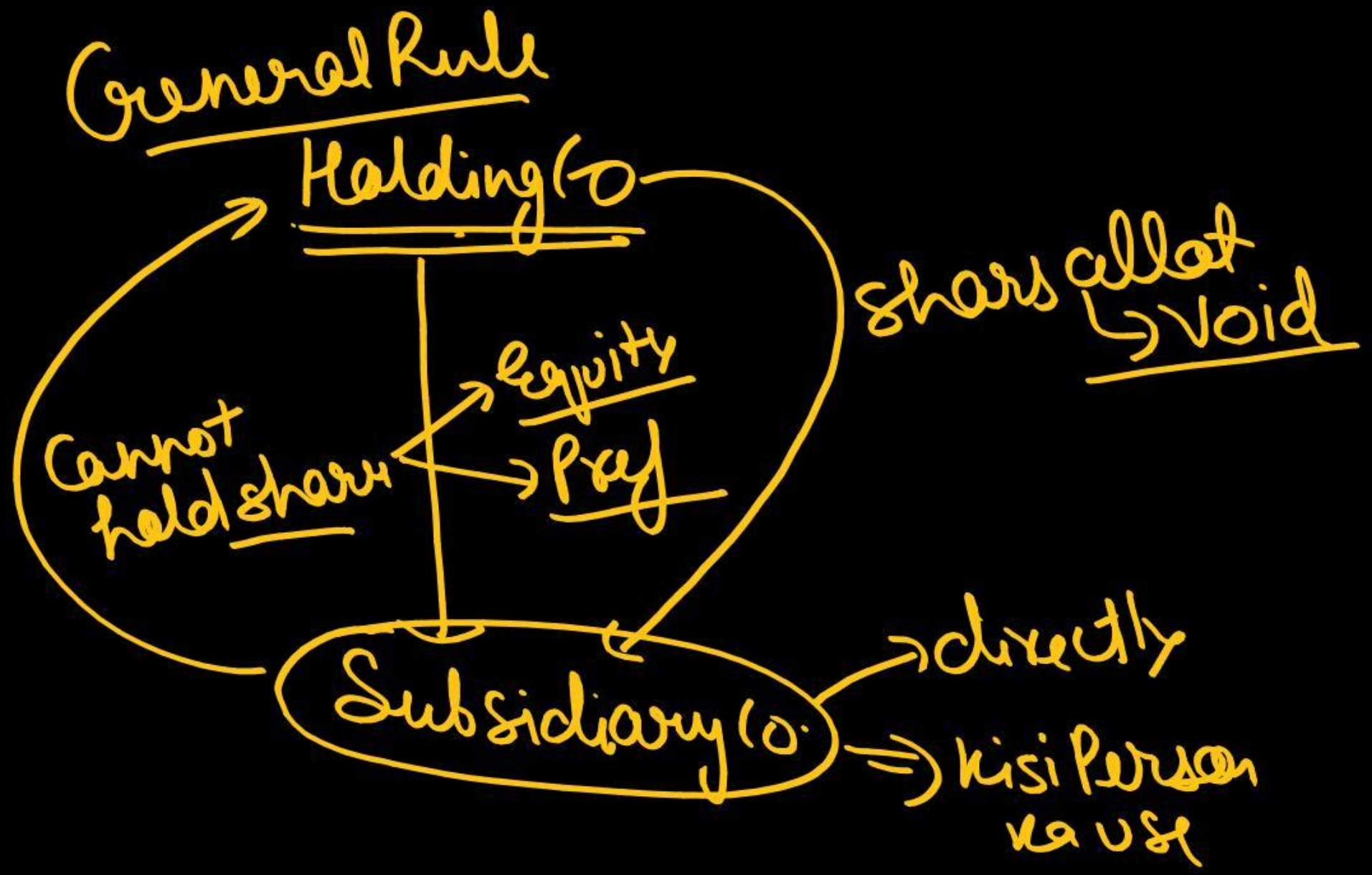




CONVERSION OF COMPANIES ALREADY REGISTERED [SECTION 18]

1. Co. of any class registered under this Act may convert itself as Co. of other class under this Act by alteration of MOA & AOA
2. Where conversion is required to be done under this section
 - On application made by Co.
 - ROC after satisfying himself that provisions of this chapter is complied with
 - ROC shall close the former registration of Co.
 - issue fresh COI in same manner as its first registration.
3. The registration of Co. under this section shall not affect any debts, liabilities, obligation, contracts entered / incurred before conversion may be enforced in the manner as if such registration had not been done







① ⇒ Voting Rights

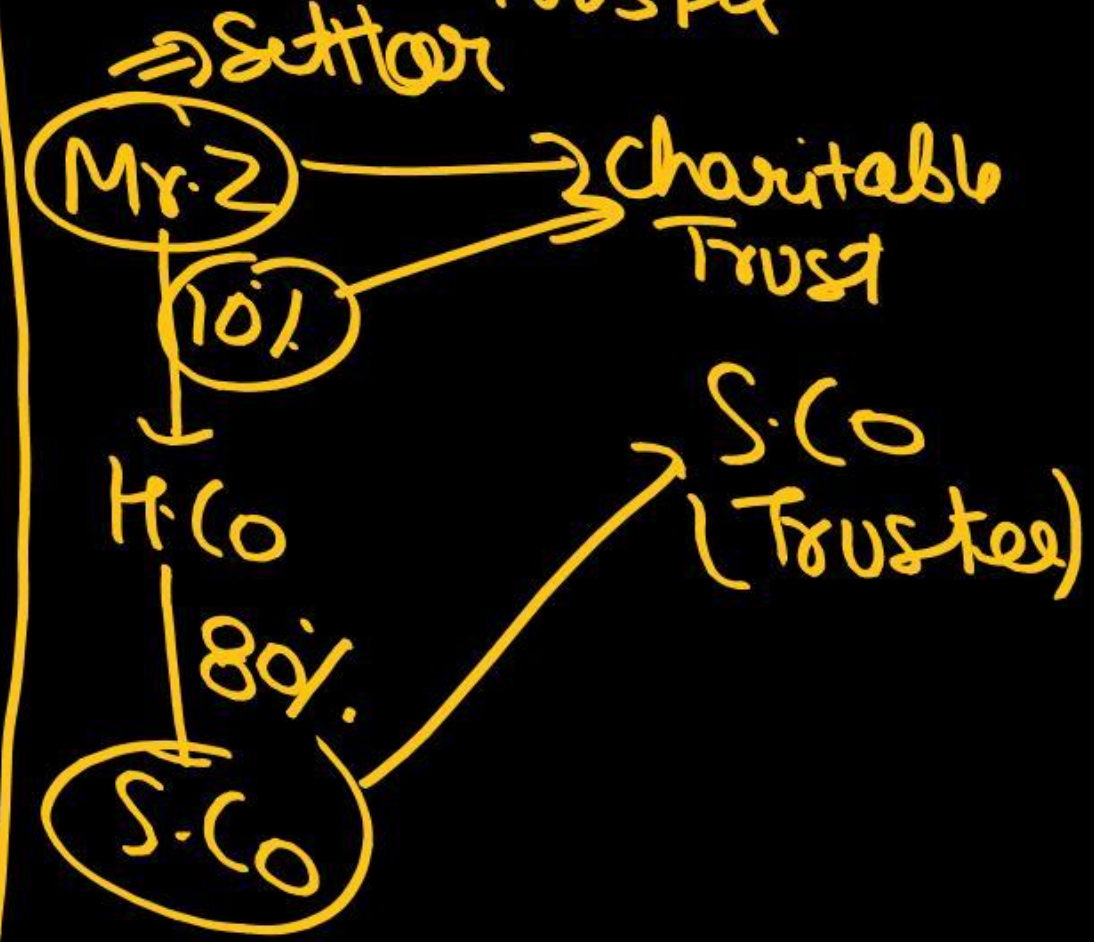
If Subsidiary Co. is legal rep of deceased Member of H. Co



3 Exemptions

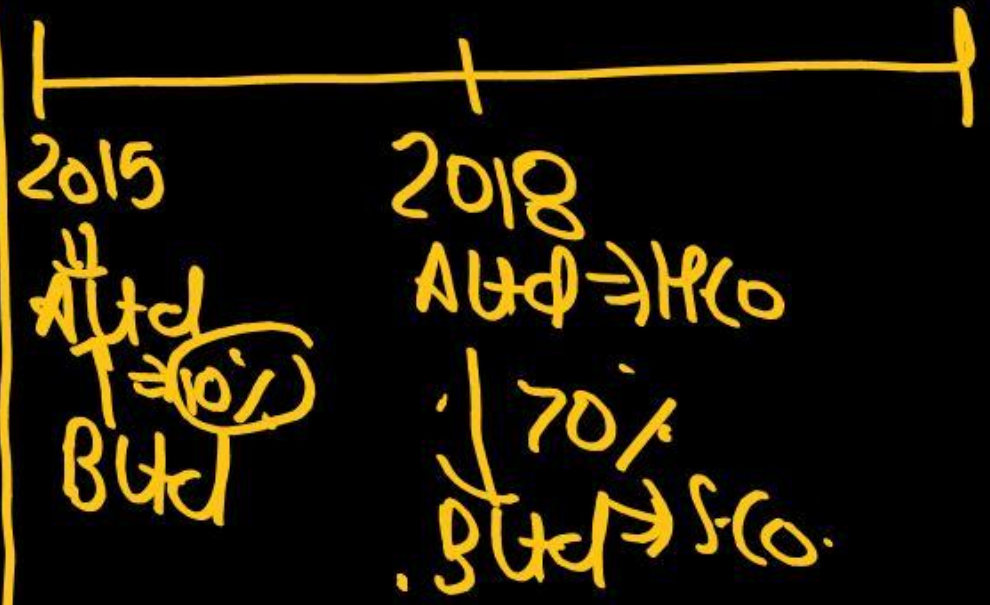
② ⇒ Voting Rights

Subsidiary Co. held shares as Trustee



③ ⇒ NO Voting Rights

Agar Subsidiary Co ke पास Holding Co. ke shares ↓ Subsidiary banne





SUBSIDIARY CO. NOT TO HOLD SHARES IN HOLDING CO. [SECTION 19)

V V V V V V V V
Imp

⇒ **No Co.** (itself/nominees) shall **hold any shares in its holding Co.**

⇒ No Holding Co. shall allot / transfer its shares to any of its subsidiary Co.

⇒ Any such allotment / transfer of shares of Co. to its subsidiary shall be void

Exceptions :-

1. Where subsidiary Co. holds such shares as legal representative of deceased member of holding Co.	2. Where Subsidiary Co. hold such shares as trustee	3. Where subsidiary Co. is shareholder even before it became subsidiary Co. of holding Co.
Right to vote allowed to subsidiary Co.		Right to vote not allowed



SERVICE OF DOCUMENTS [SECTION 20]



1. Document may be served on Co. or its officer by sending it at RO of Co. by
 - Registered post ✓
 - Speed Post ✓
 - Courier Service ✓
 - Leaving it at its RO ✓
 - Means of such electronic or other mode as may be prescribed (fax/email)
2. Document may be served on ROC or any member by sending it to him by
 - Post
 - Registered post
 - Speed Post
 - Courier
 - Delivering at his office or address
 - Means of such electronic or other mode as may be prescribed
3. Member may request delivery through particular mode by paying fees as determined in AGM

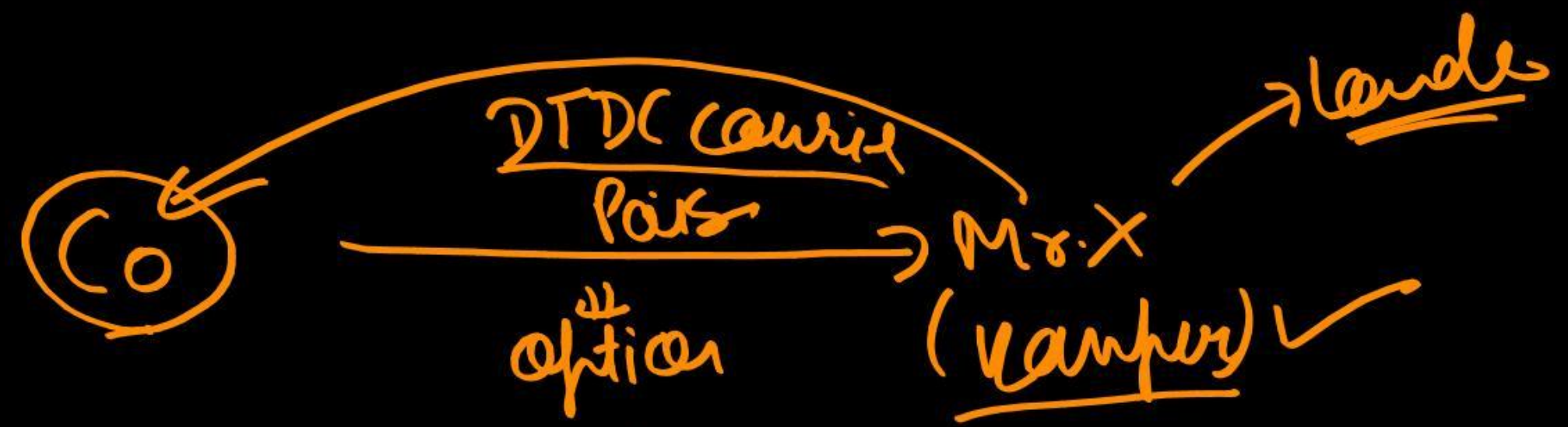


Sec 2D ⇒ Service of Documents

doc sent → Co
or
officer
Kaha } → R.O of Co
Kaisi } →

→ Registrar
(ROC)

→ Co's
Members



- ① ⇒ Post
- ⇒ R.P
- ⇒ S.P
- ⇒ C.S
- ⇒



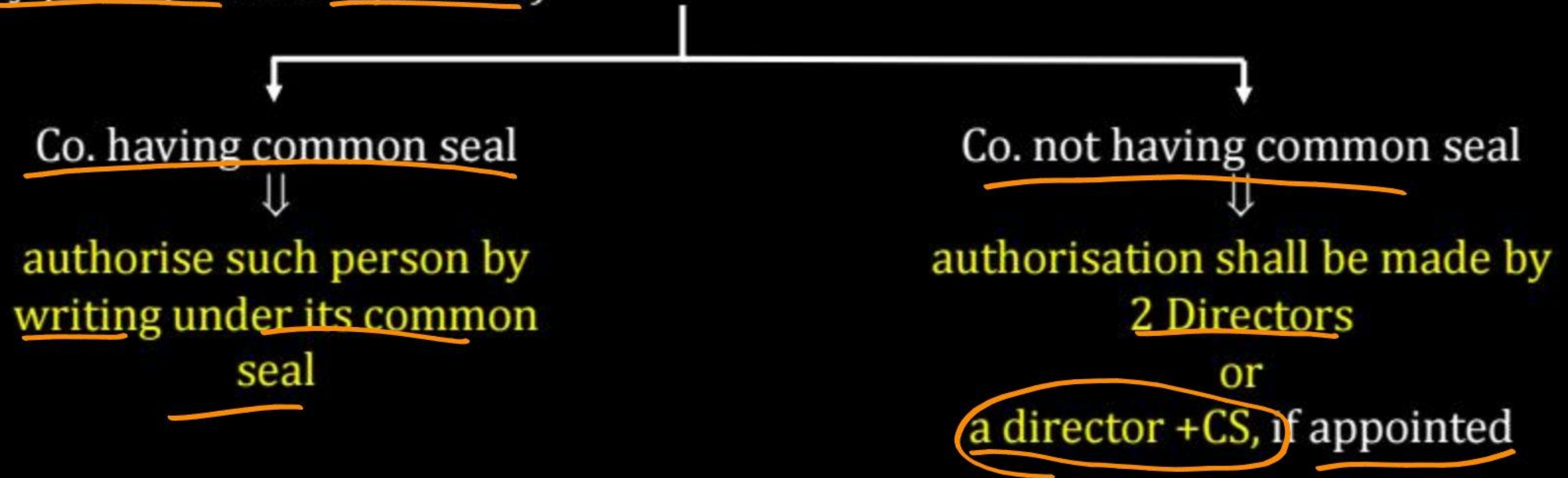
AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [SECTION 21]

Save as otherwise provided in this Act

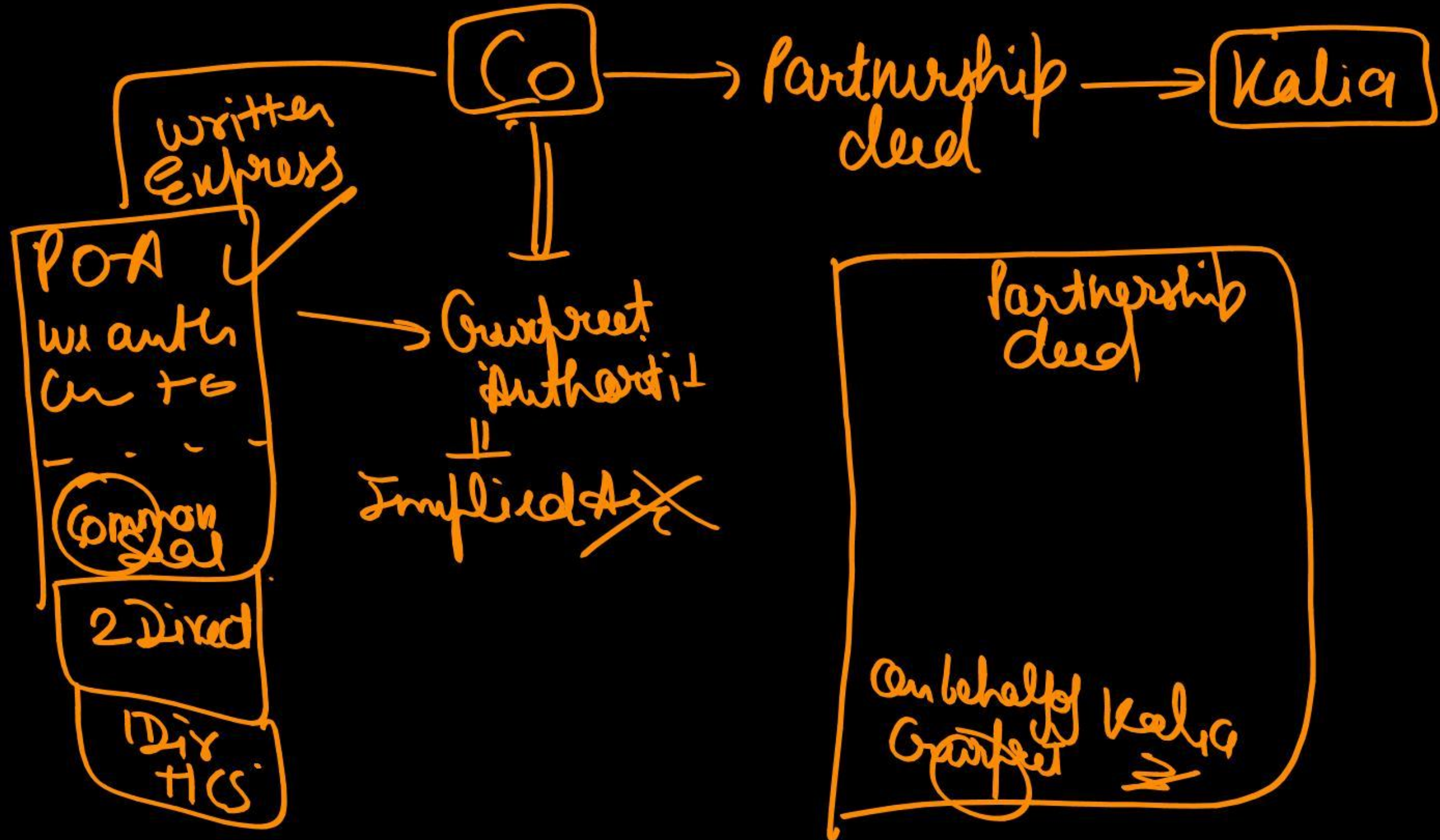
- a) Document or proceeding requiring authentication by Co. or
- b) Contracts made by or on behalf of Co. may be signed by
 - KMP or
 - Officer or employee of Co. duly authorised by Board in this behalf



2. Co. may authorise any person as its attorney to execute other deeds on its behalf in any place (India or o/s India)



3. Deed signed by such attorney on behalf of Co. & under his seal shall bind the Co.





#Q.1. Entrenchment enhance the protection. Modern Furniture Limited, an existing private company willing to insert the provisions for entrenchment; it

- A Can amend the article by passing an ordinary resolution
- B Can amend the article by passing a special resolution
- C Can amend the article agreed by all the members
- D Can't amend article to made the provisions for entrenchment



#Q.2. Today, it's May 2023. Mr. Nilanjan Chattopadhyay a 24 years old Indian youngster, who returned back to India in January month of 2023 after completing his education in bio-nutrient and willing to form an OPC; but not sure about the requirements or pre-conditions regarding eligibility. He read some articles on provisions related to OPC and concluded;

- i. OPC can be formed by Indian Citizen only ⇒ Valid
- ii. He can't form OPC because in immediate previous year he was not resident in India ⇒ Invalid

- | | | | |
|-------------------------|---|------------------------------------|--|
| <input type="radio"/> A | Both the conclusions are valid | <input type="radio"/> B | None of the conclusion is valid |
| <input type="radio"/> C | First conclusion is invalid | <input checked="" type="radio"/> D | <u>Second conclusion is invalid</u> |



#Q.3. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of from the date of approval

A 90 days

B 60 days ✓

C 30 days

D 20 days



#Q.4. Modern Furniture incorporated on 30th June 2022, its directors filled a declaration under section 10A (1)(a) regarding receipt of payment i.e. value of share (against share subscribed by subscriber) to registrar on 18th April 2023. The company and its officers (officers who are in default) shall be charged with penalty of:

A Rs 1,11,000 and Rs 1,11,000 respectively

B Rs 50,000 and Rs 1,11,000 respectively

C Rs 1,11,000 and Rs 50,000 respectively

D Rs 50,000 and Rs 1,00,000 respectively

30 June 2022
→ 18 days

18 April



#Q.5. I.T.C limited changed its name to ITC limited. Company and officers thereat made default by failing to make alteration in every issued copy of memorandums and articles. In this context you are required to pick incorrect statements out of followings

- i. Alteration shall be made to every copy of MOA/AOA because these are considered as public document. \Rightarrow *Correct*
- ii. Alteration shall be made to every copy be it in electronic form or otherwise. \Rightarrow *Correct*
- iii. Penalty shall be rupees one thousand for every copy of the articles issued without such alteration. \Rightarrow *Correct*

A ii only

B iii only

C ii and iii only

D None of i, ii, and iii



1.	C Can amend the article agreed by all the members
2.	D Second conclusion is invalid
3.	B 60 days
4.	D Rs 50,000 and Rs 1,00,000 respectively
5.	D None of (i), (ii) and (iii)



Thank
you