

CA INTERMEDIATE



CHANKYA

NITI

COMPANIES INCORPORATED

OUTSIDE INDIA

One-Shot Lecture



By – CA Gurpreet sir



TOPICS COVERED

➔ **SECTION 73-76A**



Company



Company

means a

Company

incorporated

under this Act (CA, 2013)

or previous law

(CA, 1956)

Foreign Co

means

- (a) Company or body corporate incorporated outside India
- (b) having PoB in India either at its own or through agent
- (c) conducts business activity in India in any other manner





① Vishwas GA Pvt-Ltd.
(Incorporated under
CA, 2013)

Co.

✓

foreign Co.

X

② Reliance Industries
limited (Incorporated
under CA, 1956)

✓

X

③ ABC limited incorporated
in Delhi doing business in
Singapore

✓

X



④ Uber Inc. incorporated
in USA and doing
Online business in India
through Uber application

Co.

foreign Co.



⑤ Didi Inc. incorporated
in China and doing
business only in China
& not in India



Co. Incorporated
O/S India



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



Foreign Co. [Section 2(42)]



“Foreign Co.” means any Co. or body corporate incorporated outside India which-

- has a PoB in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner.

→ PoB in India through Electronic Mode → Rules



^(Imp)
“electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

- a. Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- b. Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- c. Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- d. Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- e. All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Note :- Electronic mode excludes electronic based offering of securities in IFSC

POB includes share transfer / registration
in India





- (i) As per provisions of the Companies Act, 2013, define the status of Hillways Ltd., a Company incorporated in London, which has a share transfer office at Mumbai?
- (ii) LMP Paper Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Explain whether it will be treated as a Foreign Company under the Companies Act, 2013?

⇒ Assumption
 ||
 Business activity in India

↳ foreign Co.

foreign Co.

- (i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.
- (ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' (in India) to find and enter contracts with them on behalf of the company. ⇒ foreign Co.
- (iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

⇒ Not a foreign Co.

foreign Co.

(ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

↳ Not a foreign Co.



- (i) A Company incorporated outside India and registered in Moscow, Russia has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India. ⇒ foreign Co.
- (ii) A Company which is incorporated outside India employs agents in India but has no place of business in India. ⇒ Not a foreign Co.
- (iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company. ⇒ foreign Co.
- (iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried and taken out at the Board Meetings held only in India. ⇒ Not a foreign Co.



Company v/s foreign Co.
||
Companies Act, 2013
Some provisions
of CA, 2013 ⇒ apply



Application of act to foreign companies [section 379]

- i. Sections 380 to 386 (both inclusive), sections 392 and 393 shall apply to all foreign companies
- ii. Minimum 50% of paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign Co. incorporated outside India is held by:
 - i. one or more citizens of India; or
 - ii. by one or more companies or bodies corporate incorporated in India; or
 - iii. by one or more citizens of India and one or more companies or bodies corporate incorporated in India,whether singly or in aggregate, such foreign Co. shall also comply with provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to its Indian business as if it were a Co. incorporated in India.

3

Case 1

foreign Co.

↓

Section



Case 2

Indian Citizen/
Indian Co/BC

Min^m 50% PUSC
(Eq/Prof)

foreign Co.

+

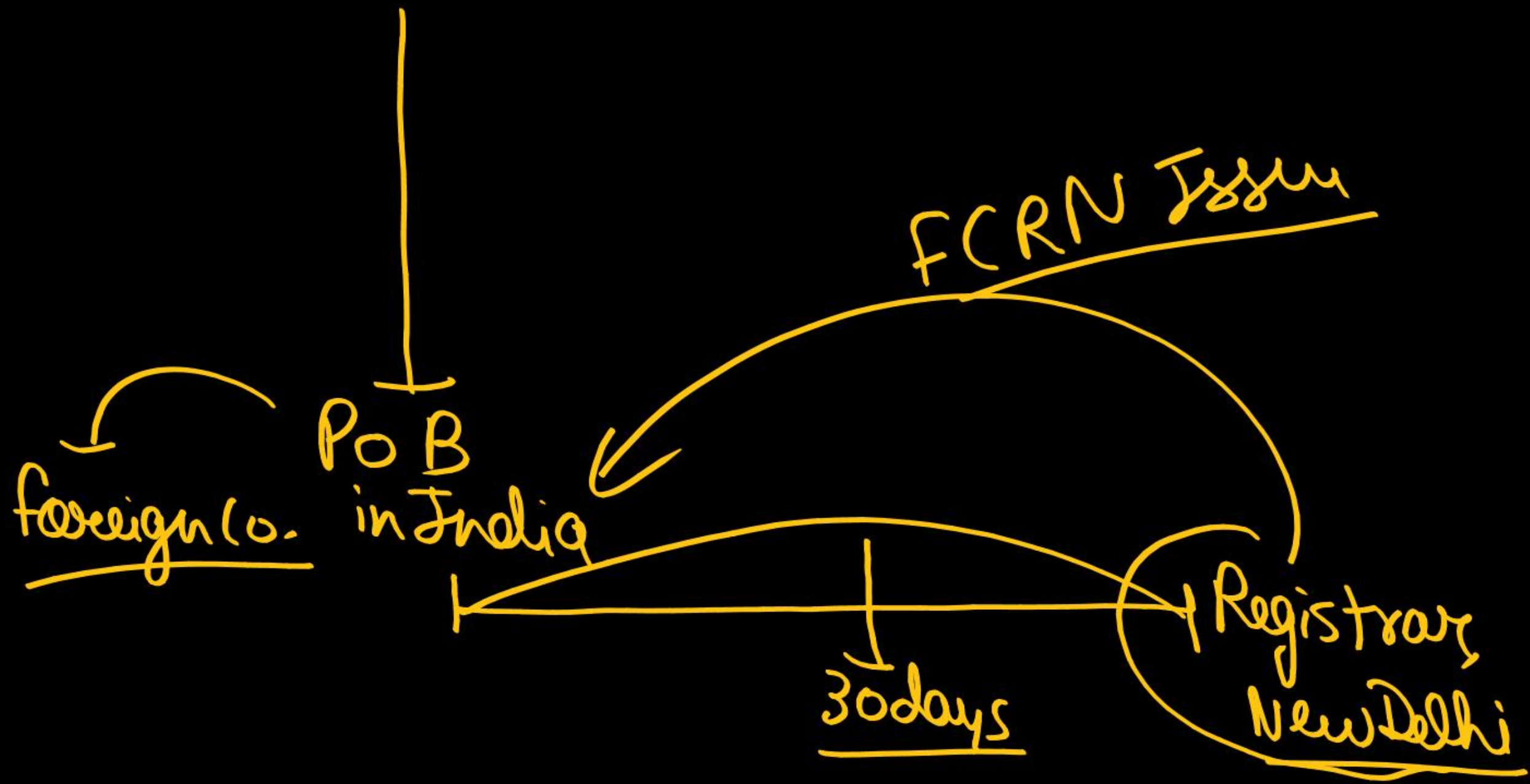
Extra Provⁿ ⇒ Rules Prev

"

treat this foreign
Co as Indian Co.



Co. Incorporation India



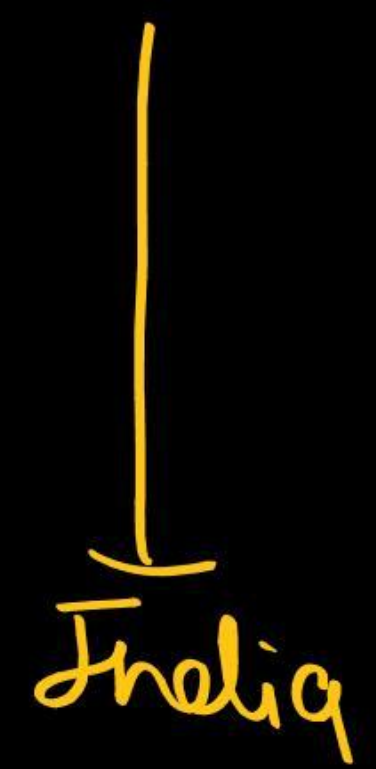


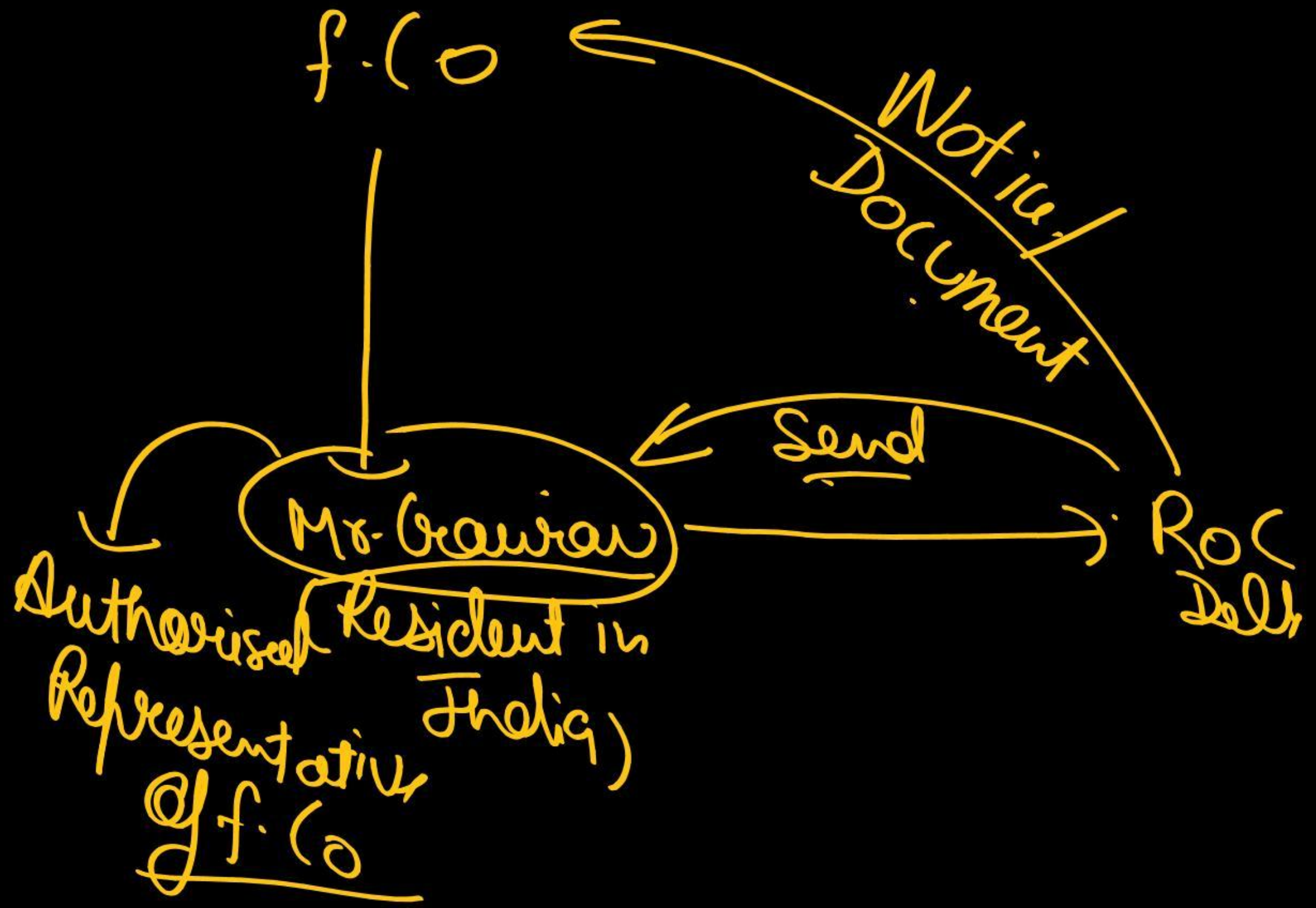
Documents, etc., to be delivered to roc by foreign companies [section 380]

- i. Every foreign Co. shall deliver in Form FC-1 to RoC, New Delhi for registration within 30 days of establishment of its PoB in India:
 - a. a certified copy of charter, statutes or memorandum and articles defining constitution of Co. If instrument is not in English language, a certified translation thereof in English language;
 - b. the full address of registered or principal office of Co.
 - c. a list of directors and secretary of Co. containing such particulars as may be prescribed; (refer Note)



f.co \Rightarrow Disruptors \Rightarrow O/S India



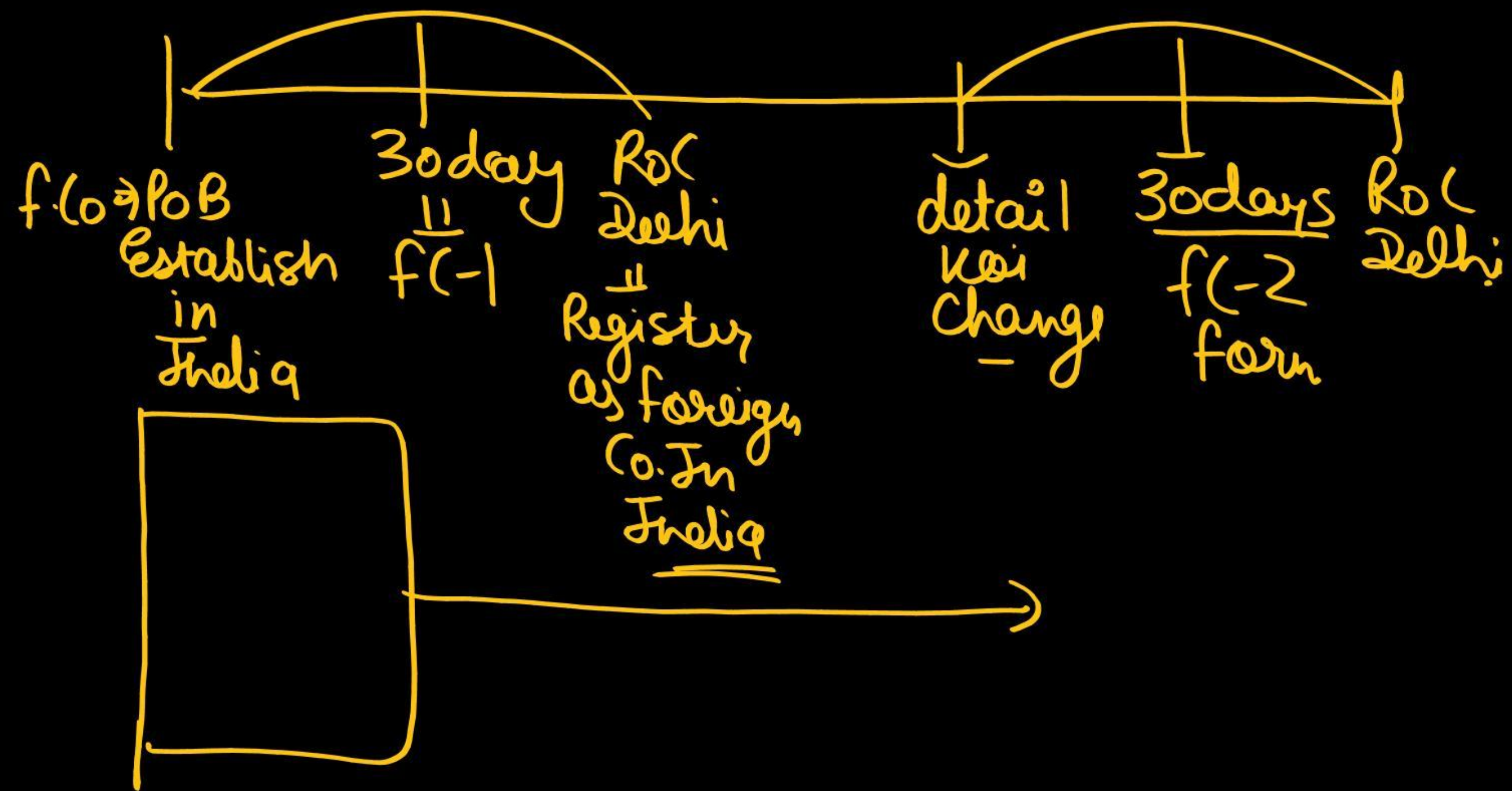




- d. the name and address of one or more persons resident in India authorised to accept on behalf of Co. service of process and any notices or other documents required to be served on Co.;
- e. the full address of office of Co. in India which is deemed to be its principal PoB in India;
- f. particulars of opening and closing of a PoB in India on earlier occasion or occasions;
- g. declaration that none of directors of Co. or authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
- h. any other information as may be prescribed.

Application shall be supported with an attested copy of approval from RBI under FEMA or Regulations, and from other regulators, if any, approval is required or a declaration from authorised representative of such foreign Co. that no such approval is required.

Foreign Co. shall file particulars of alteration with RoC in form FC-2 along with prescribed fees within 30 days of alteration.





f.Co

—————→ RoC, Delhi

⇒ f(-1)

⇒ details

+

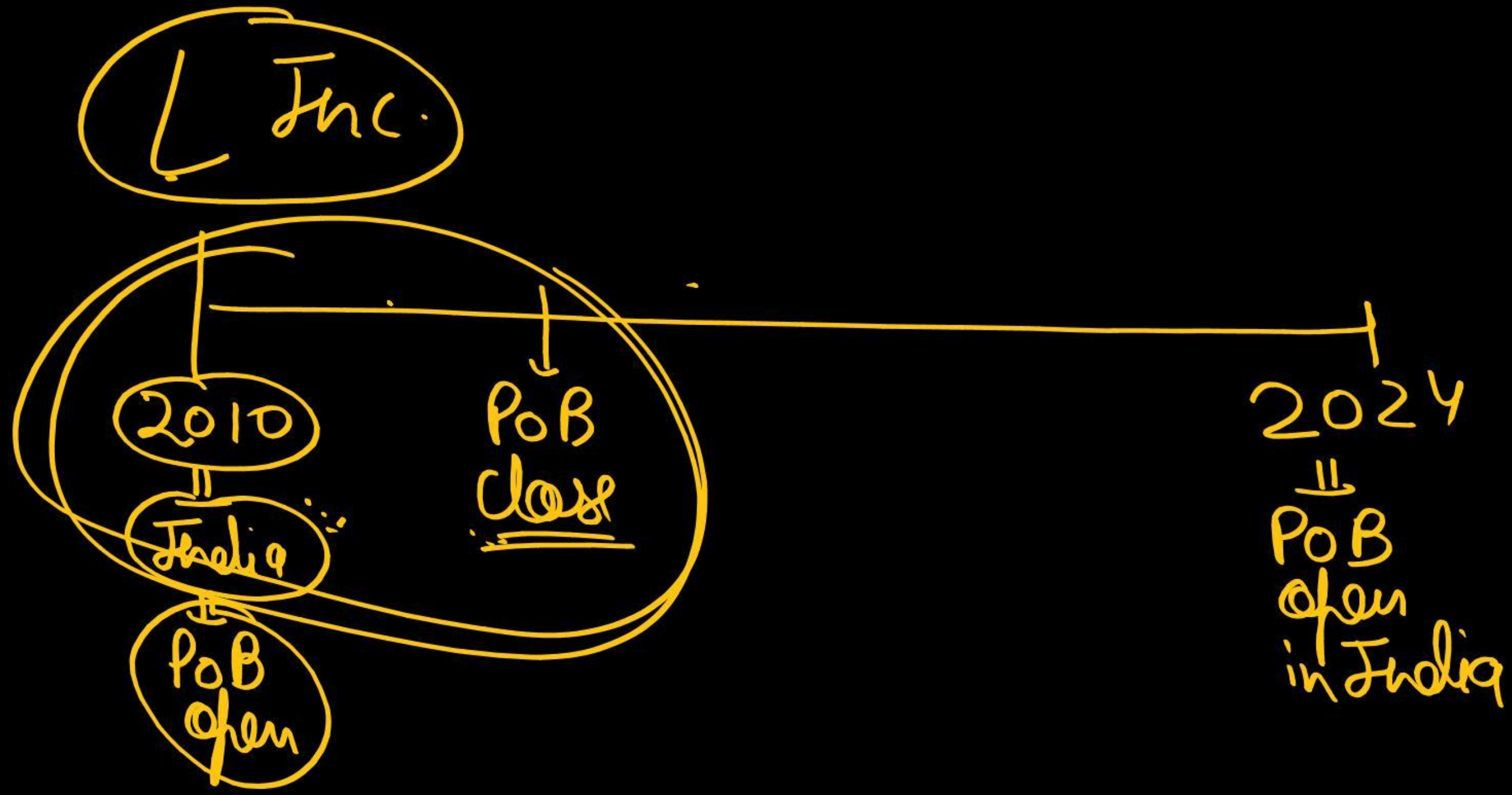
RBI की Approval ⇒ FEMA

Regulator की Approval ✓
or

→ If approval not applicable
→ declaration denied



- f.o
 - ✓ Mr-A
 - ✓ Mr-B
 - ✓ Mr-C
 - ✓ Mr-D
- } Director
- X Ms.E ⇒ Co. Secretary
- ✓ Mr.f ⇒ Authorised Representative in India



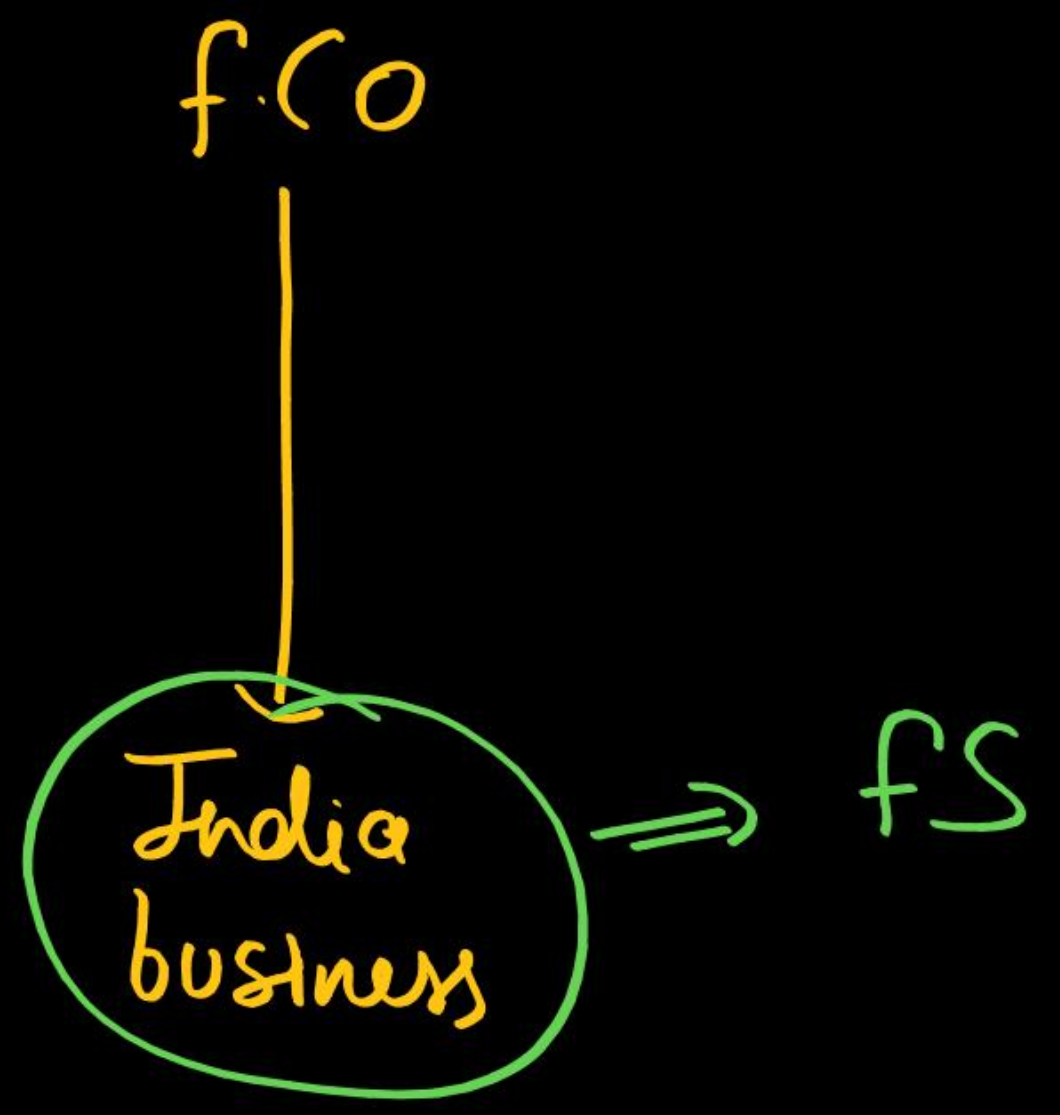


Note - The list of directors and secretary or equivalent of foreign Co. shall contain following particulars, for each of persons included in such list, namely:

- 1) Name and surname in full;
- 2) any former name or names and surname or surnames in full;
- 3) father's name or mother's name or spouse's name;
- 4) date of birth;
- 5) residential address;
- 6) nationality;
- 7) if present nationality is not nationality of origin, his nationality of origin;
- 8) passport number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
- 9) income-tax PAN, if applicable;



- 10) occupation, if any;
- 11) whether directorship in any other Indian Co., DIN, Name and CIN of Co. in case of holding directorship;
- 12) other directorship or directorships held by him;
- 13) Membership Number of Secretary only; and
- 14) e-mail ID.

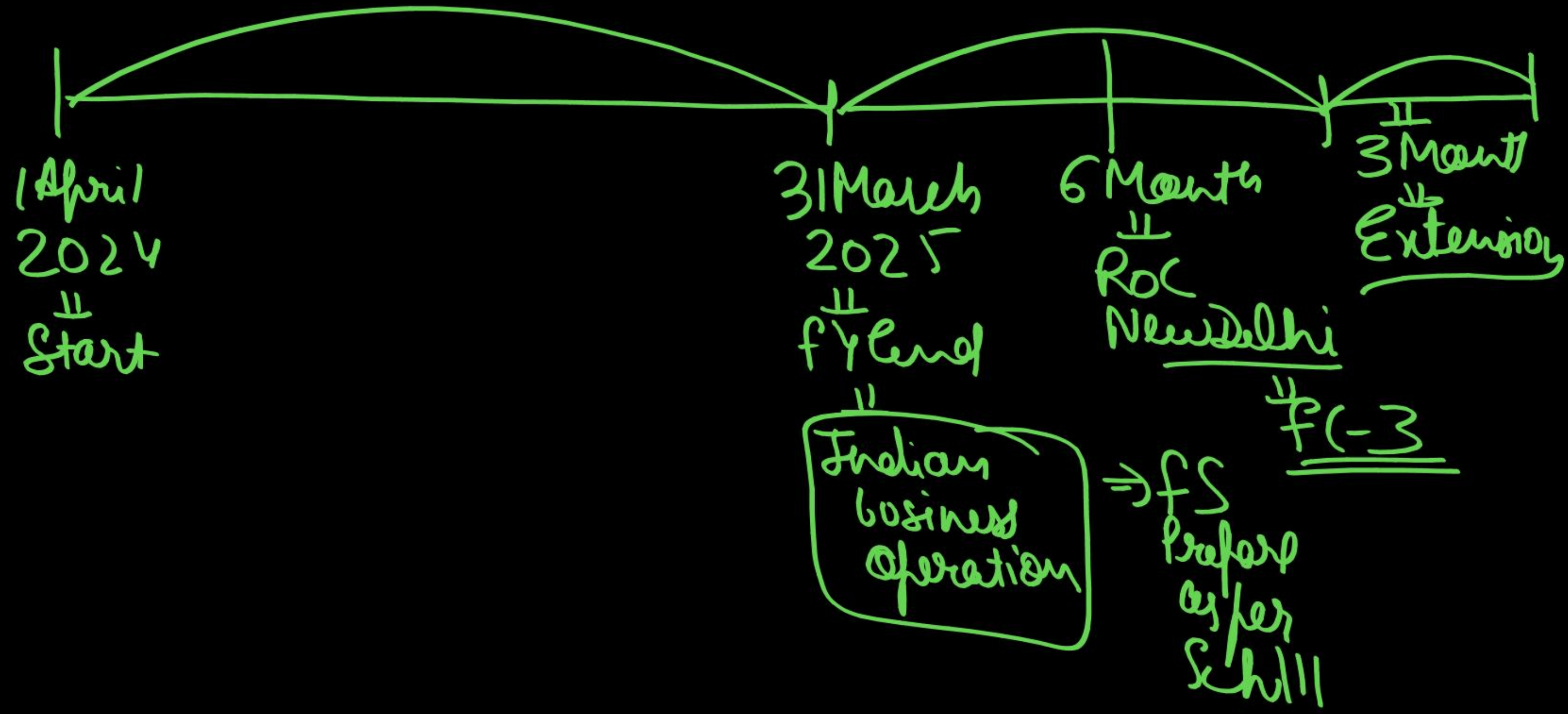




Accounts of foreign Co. [SECTION 381]



- 1) Unless exempted by CG, every foreign Co. shall
 - a) Prepare Balance sheet & Profit and Loss Account for every FY as per Schedule III along with prescribed documents
 - Documents required to be annexed as per Chapter of Accounts of Companies
 - Statement relating to CFS of the parent foreign Co.
 - Statement of related party transactions
 - Statement of repatriation of profits
 - Statement of transfer of funds (including dividends, if any)
 - List of all PoB in India as on the date of balance sheet
 - b) Deliver to RoC copy of above mentioned documents in Form FC-3
 - a) Within 6 Months of Close of FY
 - b) Extension upto 3 months by RoC on application by Foreign Co.





Accounts of foreign Co. [SECTION 381]



2) Audit of Accounts of Foreign Co. -

- Every foreign Co. shall get its accounts pertaining to Indian business operations audited by a practicing CA in India or firm or LLP of practicing CAs.
- The provisions of Chapter X i.e. Audit and Auditors and rules made there under shall apply, mutatis mutandis, to foreign Co.

Sec 139 - Sec 148





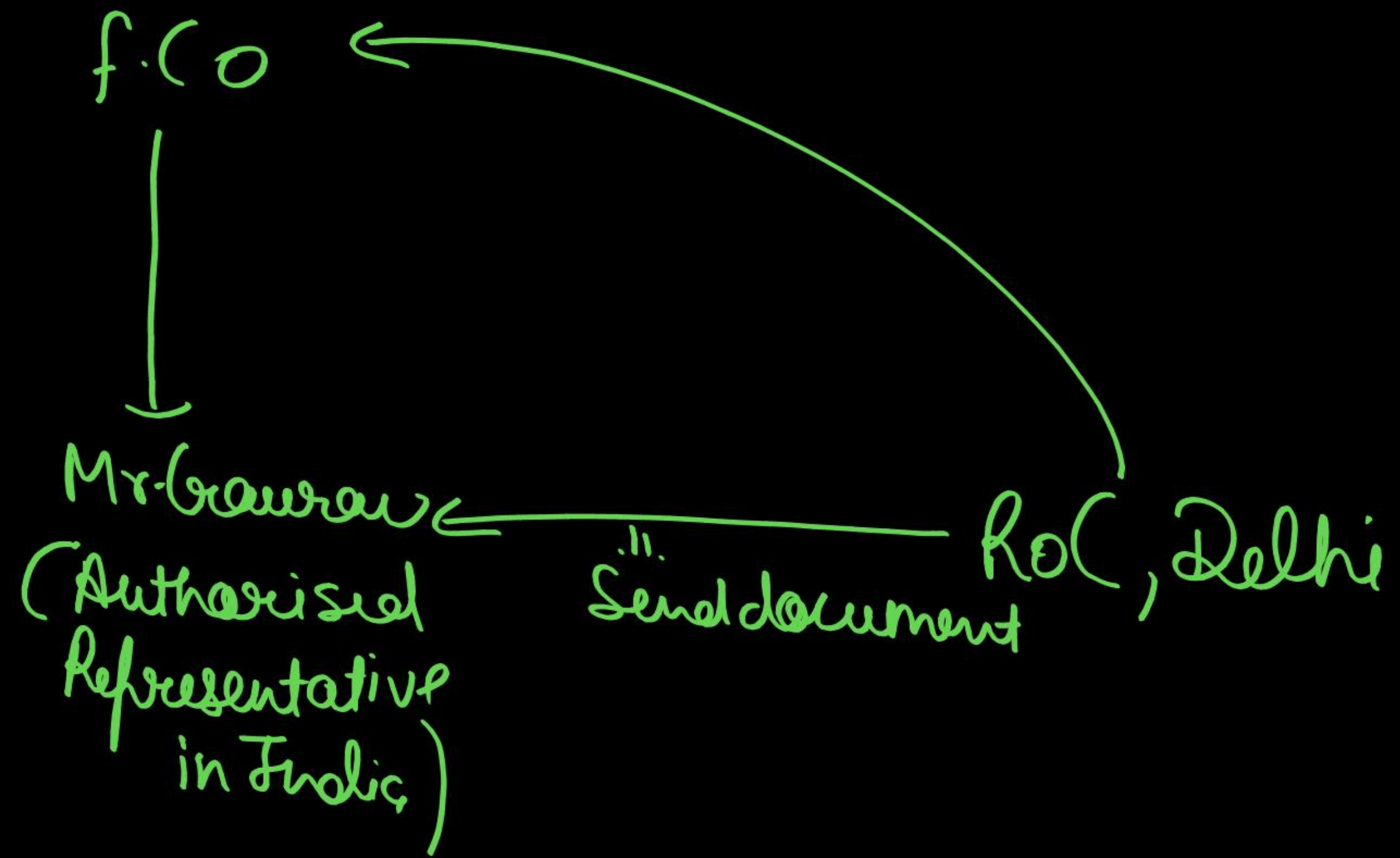
DISPLAY OF NAME, ETC., OF FOREIGN Co. [SECTION 382]

Foreign Co. has duty to <u>conspicuously</u> <u>exhibit following</u>	<ul style="list-style-type: none">- Name of Foreign Co.- Name of Country of Incorporation- liability of members is limited
Location	Outside every office/PoB in India
Language	Legible characters in English Legible characters in Local language

we



<u>Foreign Co.</u> shall mention	<ul style="list-style-type: none">- Name of Foreign Co. ✓- Name of Country of Incorporation ✓- liability of members is limited ✓
Location	<ul style="list-style-type: none">- Business letters ✓- Bills heads ✓- Letter papers ✓- Notices ✓- Official Communications ✓
Language	Legible characters in English language





SERVICE ON FOREIGN CO. [SECTION 383]



- Any notice or document required to be served on a foreign Co shall be deemed to be served,
- if addressed to any person whose name and address have been delivered to RoC under section 380 and
- left at, or sent by post to, address which has been so delivered to RoC or by electronic mode.



Debentures, annual return, registration of charges, books of account and their inspection [section 384]

Section 71 – Debentures	Apply Mutatis Mutandis to Foreign Co.
Section 92 – Annual Return ↳ MGT-7 ↳ MGT-7A	Applicable to Foreign Co. file annual return in Form FC-4 within 60 days from last day of its FY
Section 135 – CSR	Applicable to Foreign Co.
Section 128 – Books of Accounts	Applicable to Foreign Co., subject to modifications:- - BoA kept at principal PoB in India - BoA kept with respect to monies received and spent, sales and purchase made, and assets and liabilities, in course of or in relation to its business in India.



Debentures, annual return, registration of charges, books of account and their inspection [section 384]



Section 77 to 87 – Registration of Charges

Apply Mutatis Mutandis to Foreign Co.

Section 206 to 229 – Inspection, Inquiry & investigation

Apply Mutatis Mutandis to Foreign Co.



Interpretation [SECTION 386]

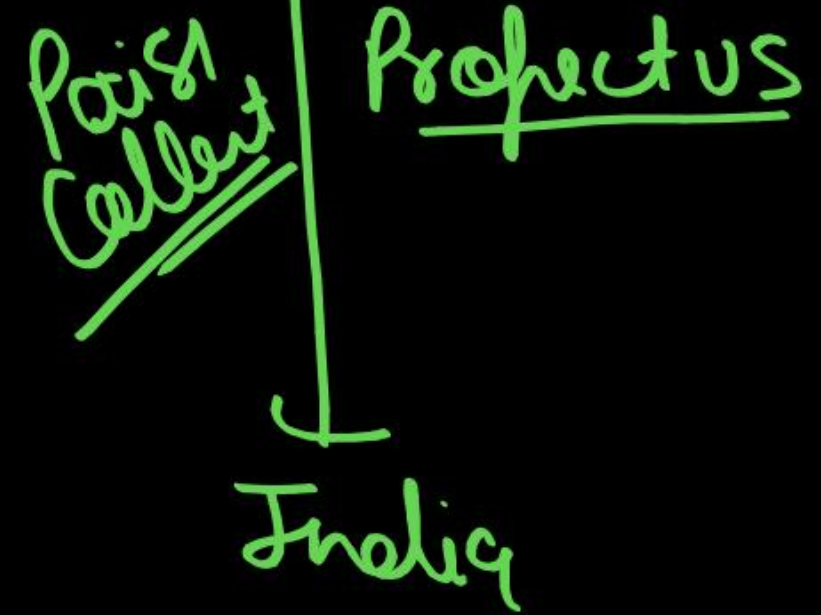


For purposes of foregoing provisions of this Chapter, expression:

- a. “Certified” means certified in prescribed manner to be a true copy or a correct translation;
- b. “Director”, in relation to a foreign Co., includes any person in accordance with whose directions or instructions Board of Directors of Co. is accustomed to act; and
- c. “PoB” includes a share transfer or registration office.



Co-Incorporated O/S India → POB in India
→ No POB in India





Prospectus ⇒ Sec 26



Misstatement ⇒ Sec 34 ⇒ Criminal liab



Sec 36

Sec 35 ⇒ Civil liab



Dating of prospectus and particulars to be contained therein [SECTION 387]

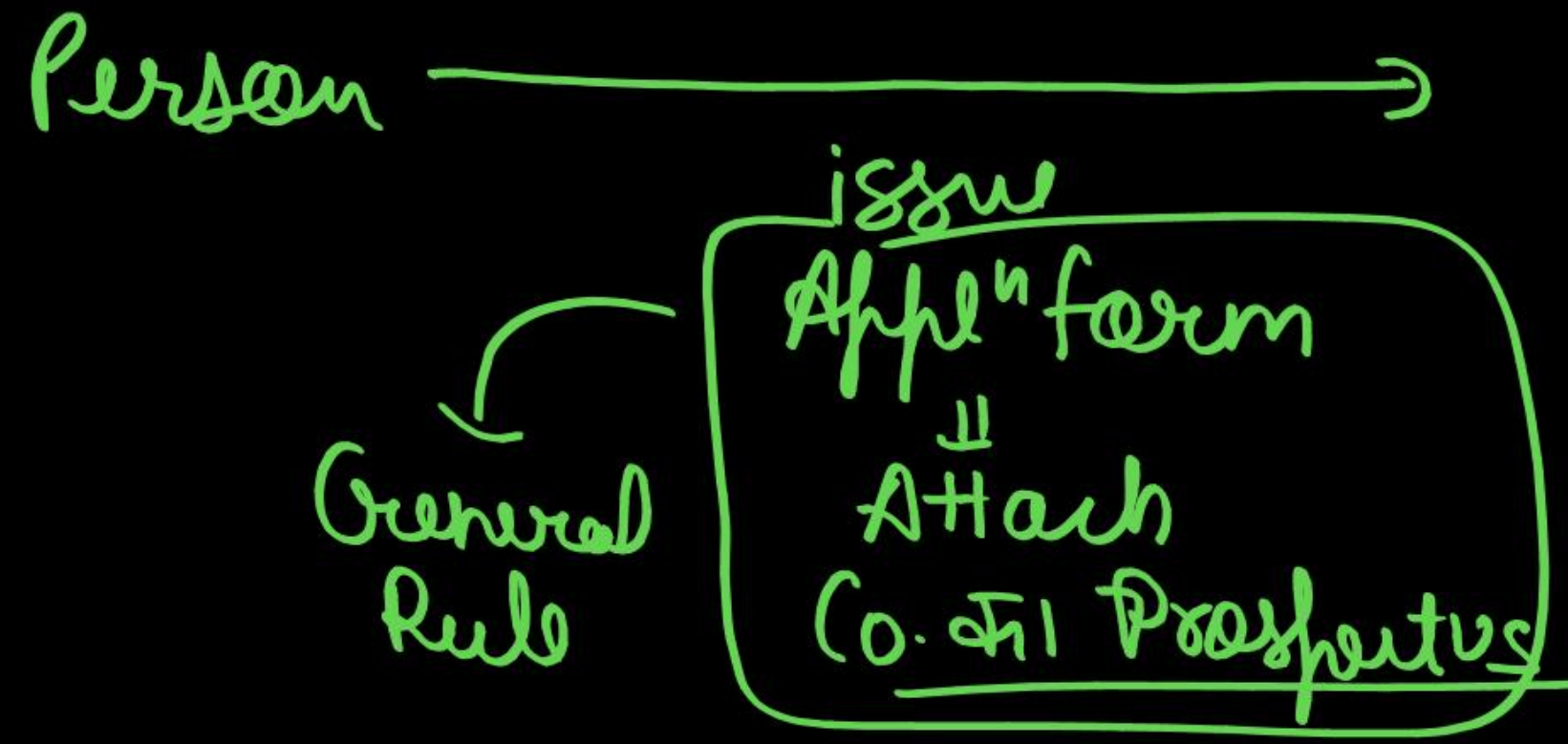
No person shall issue any prospectus in India offering to subscribe for securities of a Co. incorporated outside India unless—

- a. states matters specified u/s 26 (Matters to be stated in prospectus).
- b. contains following particulars :—

- 1) instrument defining constitution of Co.;
- 2) provisions under which incorporation of Co. was effected;
- 3) address in India where instrument, enactments or provisions, or copies thereof can be inspected;
- 4) date of incorporation;
- 5) name of country in which Co. was incorporated and
- 6) whether Co. has established PoB in India and, if so, address of its principal office in India, and

Provided that points (1), (2) and (3) shall not apply in case of a prospectus issued more than 2 years after date at which Co. is entitled to commence business.

Co. Incor
PoB
dw



Exception ⇒ Appⁿ form ⇒ Person ⇒ Underwriting Agrees
(w/o Prospectus)



Any condition **binding applicant to waive compliance with any requirement of section 387(1) shall be void.**

No person shall issue application form to any person in India unless form is issued with a prospectus provided that this shall not apply in connection with underwriting agreement



Co. Incorp
O/S India

⇒ Prospectus

⇓
Expert Statement

Prospectus
→ ~~Expert stat~~
⇒ Reference

✓ ① Written Consent

② Written consent not withdrawn

③ Prospectus ⇒ Statement



Provisions as to expert's consent and allotment [section 388]

- i. No person shall issue in India any prospectus of a Co. incorporated outside India
 - a. Containing expert statement if
 - He has not given his written consent
 - He has withdrawn his written consent before delivery of prospectus for registration
 - b. If prospectus does not have effect of rendering all persons bound by section 33 and section 40

Note – for purpose of this section, statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on face thereof or by reference incorporated therein.

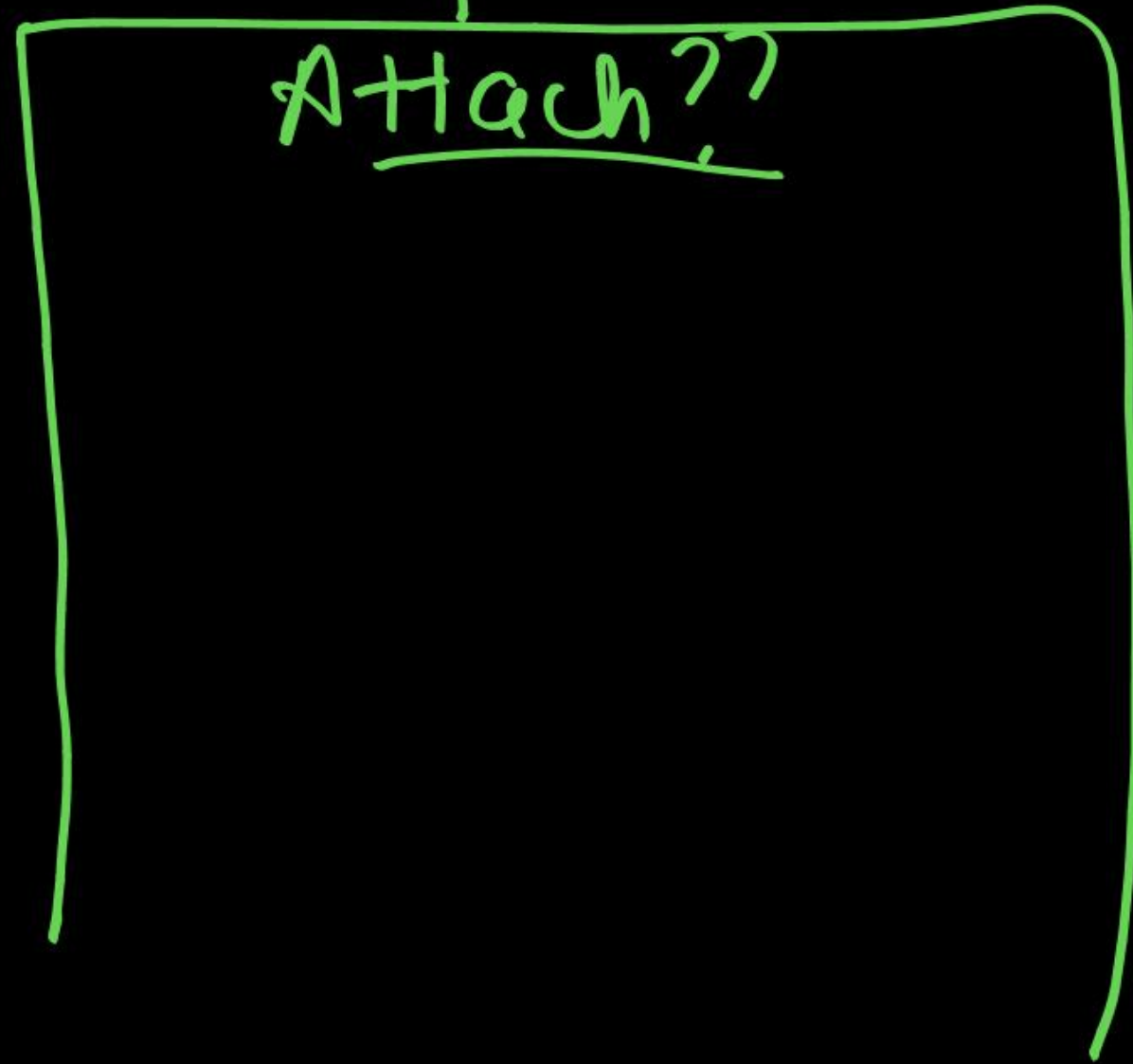


Co. In corp
O/S India

⇒ Prospectus
prepare

→ RoC

file
for registration





Registration of prospectus [SECTION 389]



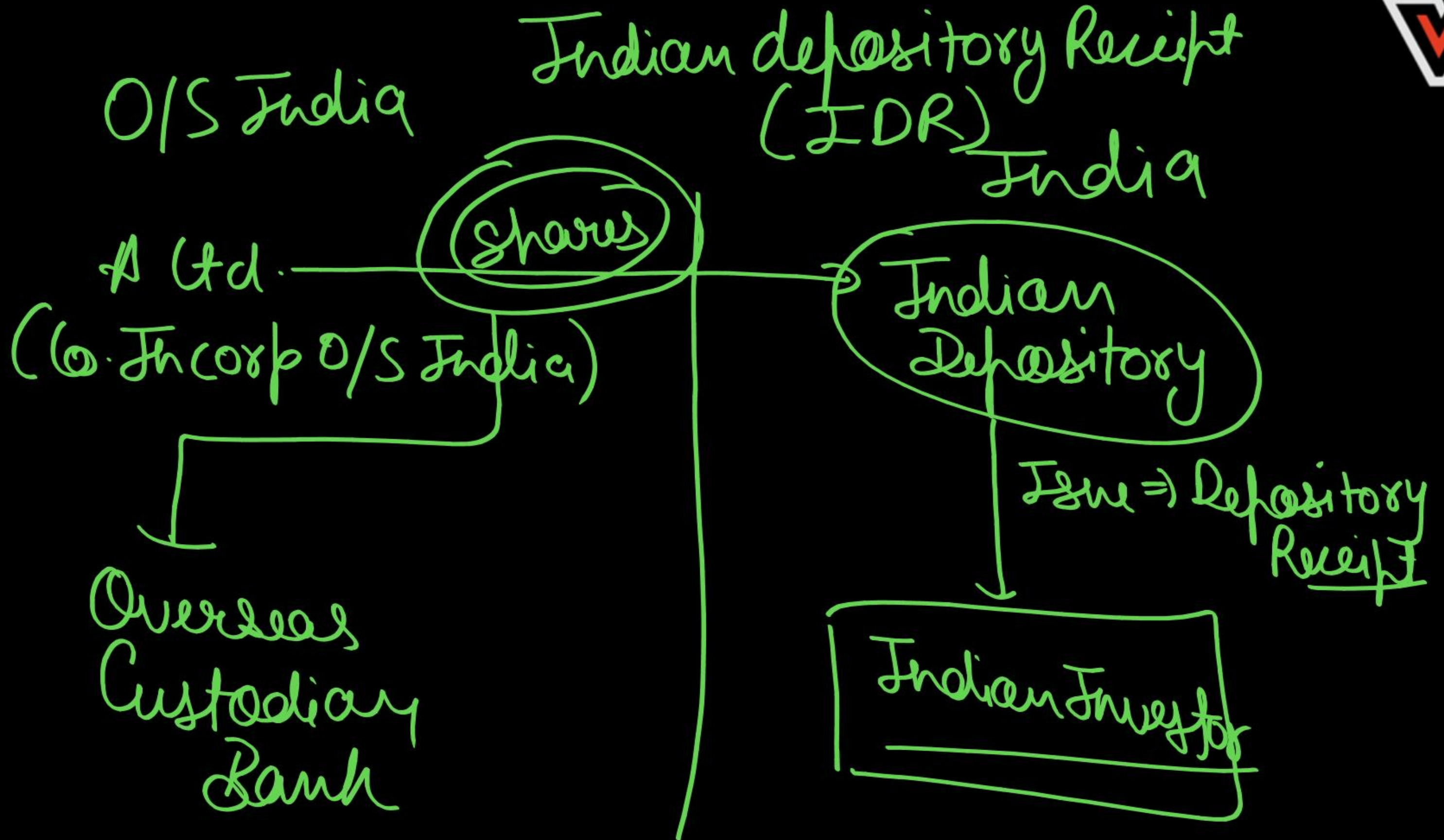
No person shall issue, circulate or distribute in India any prospectus of a Co. incorporated outside India, whether Co. has or has not established a PoB in India, unless before issue of prospectus in India;

- ✓ a copy of prospectus certified by chairperson of Co. and two other directors has been delivered for registration to RoC; and
- ✓ the prospectus states on face of it that a copy has been so delivered, and
- ✓ there is attached to copy, expert consent to issue of prospectus and
- ✓ such documents as may be prescribed.



According to Companies (Registration of Foreign Companies) Rules, 2014, following documents shall be attached to prospectus:

- a. consent of expert to issue of prospectus;
- b. a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- c. a copy of any other material contracts entered within preceding 2 years not in ordinary course of business
- d. a copy of underwriting agreement; and
- e. a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.





Offer of Indian Depository Receipts [SECTION 390]



CC may make rules applicable for—

- i. the offer of Indian Depository Receipts (IDR);
- ii. the requirement of disclosures in prospectus or letter of offer issued in connection with IDR;
- iii. the manner in which IDR shall be dealt with in a depository mode and by custodian and underwriters; and
- iv. the manner of sale transfer or transmission of IDR, by a Co. incorporated outside India, whether Co. has or has not established any PoB in India.



Co-Incorp O/S India

Sec 34/
35/
36

↳ Prospectus issue

↳ JDR offer



Application of sections 34 to 36 and chapter XX [SECTION 391]

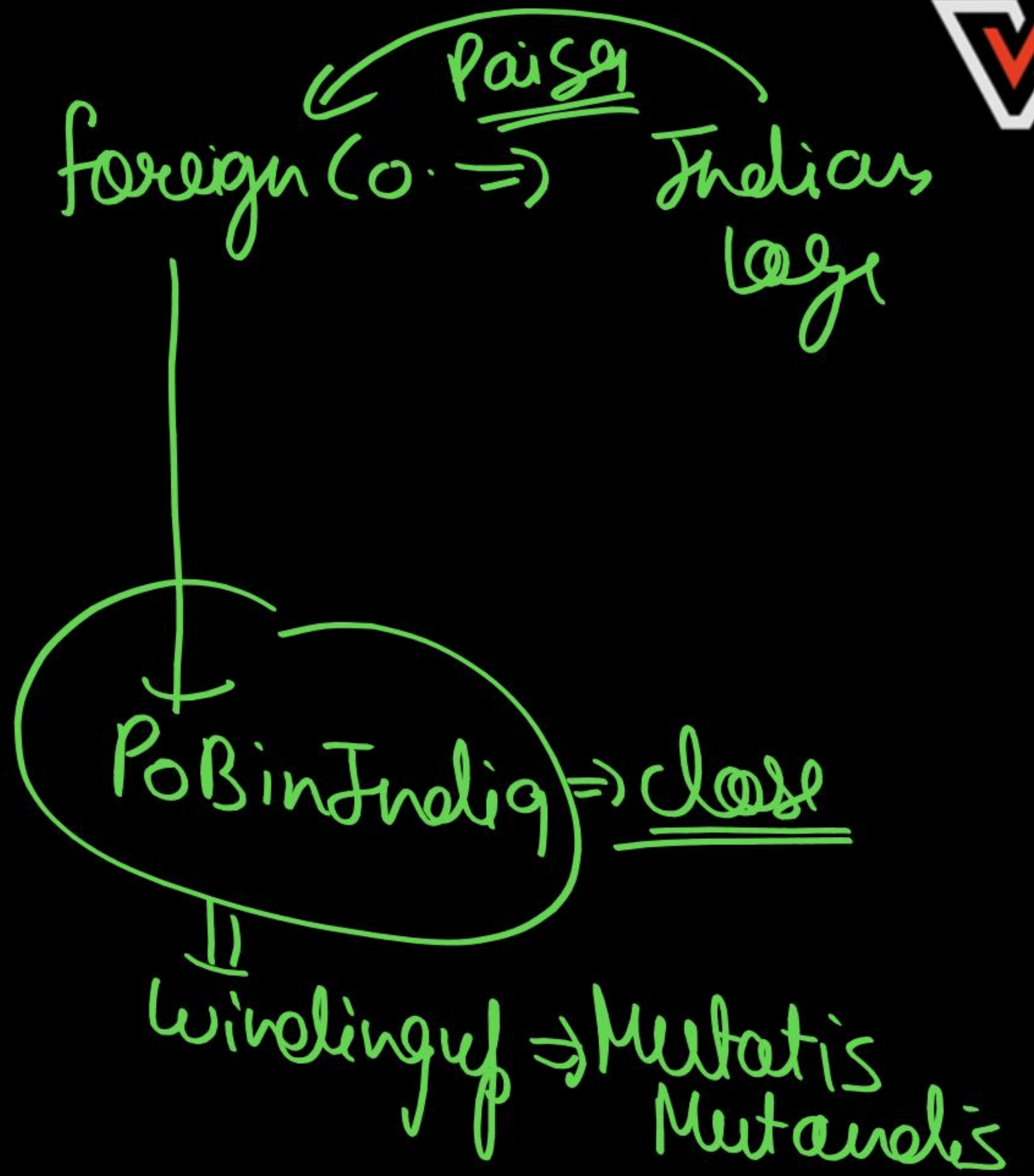
Provisions of sections 34 to 36 (both inclusive) shall apply to—

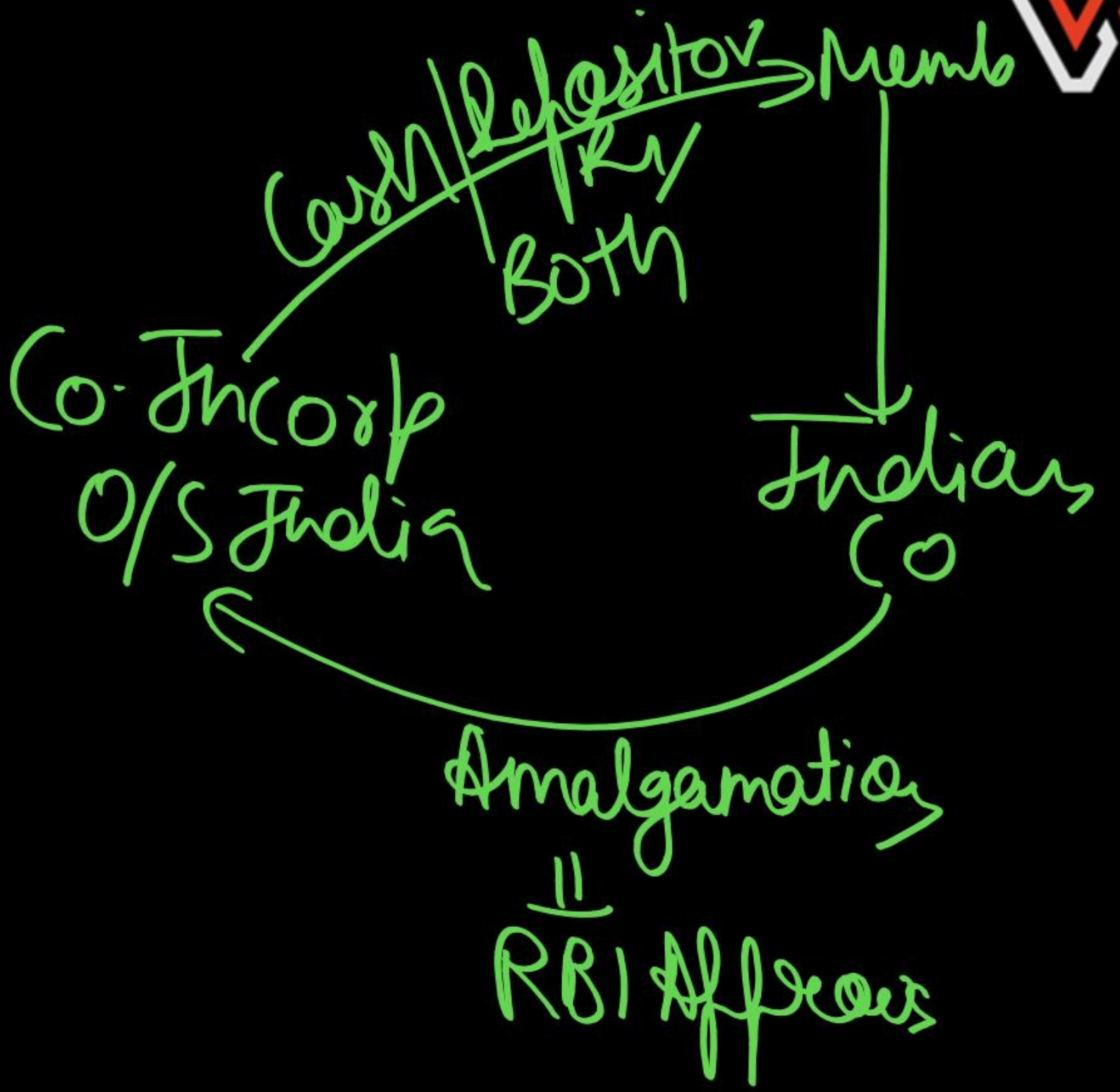
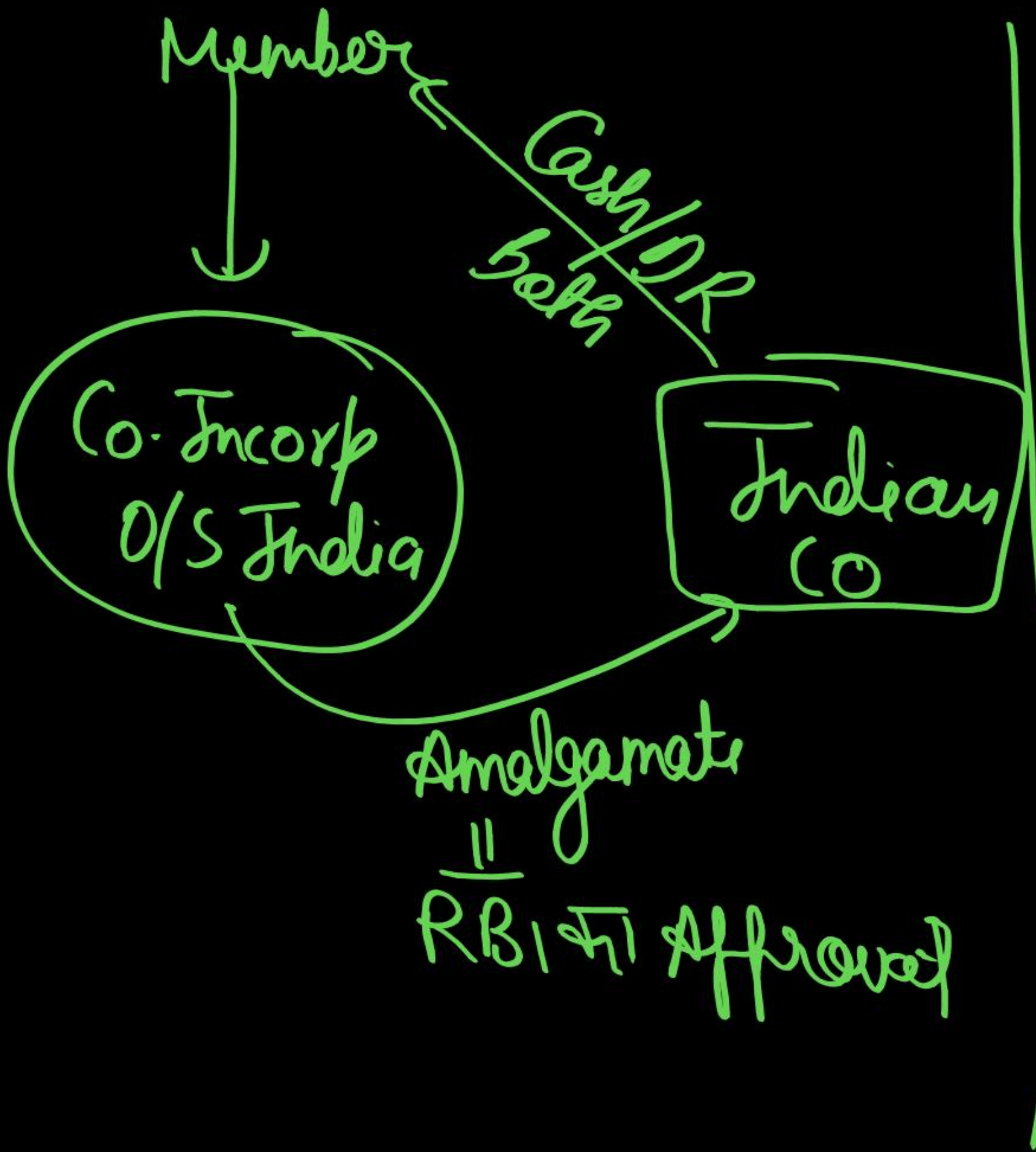
- i. the issue of a prospectus by a Co. incorporated outside India under section 389;
- ii. the issue of IDR by a foreign Co.

Provisions of Chapter XX (i.e. Chapter on Winding up) shall apply mutatis mutandis for closure of PoB of a foreign Co. in India as if it were a Co. incorporated in India in case such foreign Co. has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.



India Int'l Co.
↓
Wind up
↓
Chapter XX
of CA, 2013







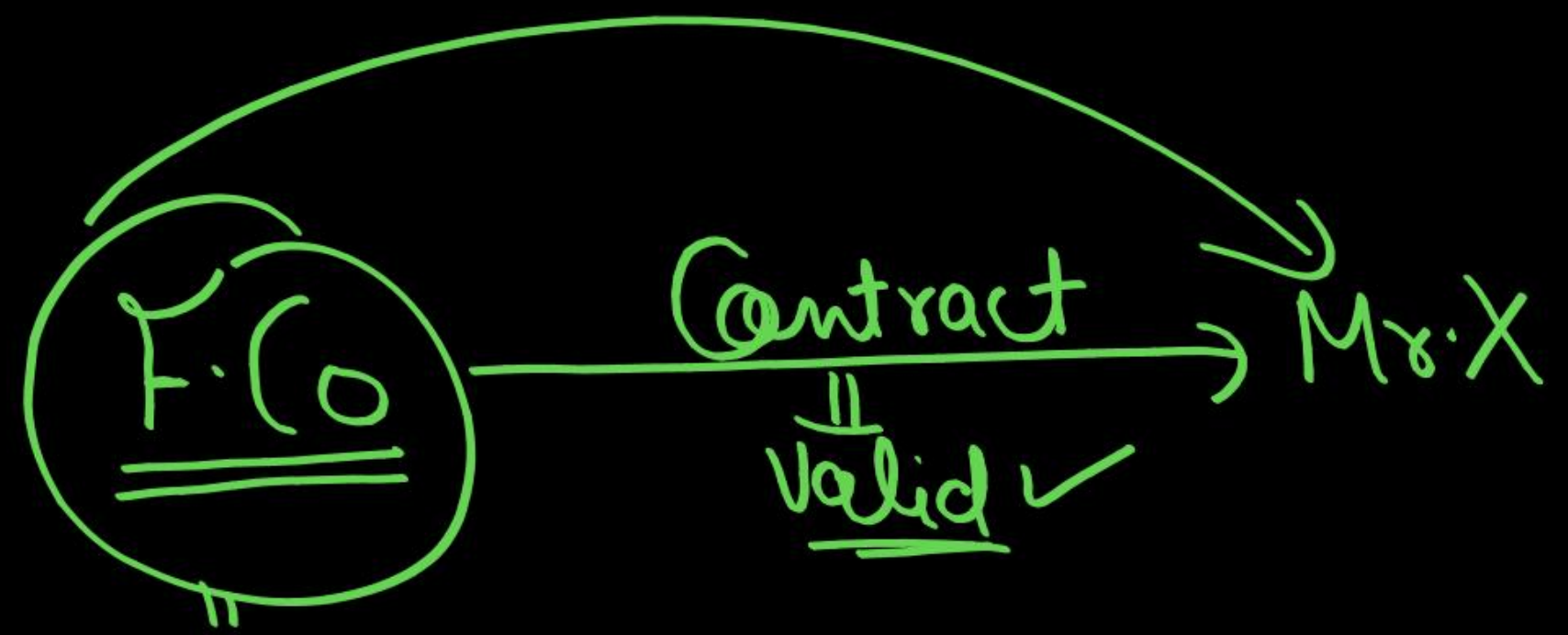
Merger of Foreign co. [SECTION 234]



- Provisions of Chapter XV shall apply mutatis mutandis to schemes or mergers and amalgamations between companies registered under this Act and companies incorporated in jurisdictions of such countries as may be notified from time to time by CG.
- A foreign Co., may with prior approval of RBI, merge into a Co. registered under this Act or vice versa and terms and conditions of merger may provide for payment of consideration to shareholders of merging Co. in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts
- Here “foreign Co.” means any Co. or body corporate incorporated outside India whether having a PoB in India or not.



foreign Co \Rightarrow Contravention





Punishment for Contravention [SECTION 392]



Punishment for contravention of this chapter by Foreign Co. :

1. Fine on foreign Co. in range of 1 lac rupees to 3 lac rupees.
2. In case of continuing default an additional fine on foreign Co. to tune of 50,000 rupees /day after first during which contravention continues.
3. Punishment for every officer in default shall be fine of a minimum amount of 25,000 rupees, but which may extend to 5 lac rupees.



Co.'s failure to comply with provisions of this chapter not to affect validity of contracts, etc [section 393]

- Any failure by a Co. to comply with provisions this chapter
- shall not affect validity of any contract, dealing or transaction entered into by Co. or its liability to be sued
- However, Co. not be entitled to bring any suit/ claim any set-off/ make any counter-claim / start any legal proceeding any such contract until Co. has complied with provisions of this Act



Action for Improper Use or Description as Foreign Co.

If any person or persons trade or carry on business under any name or title or description as a foreign Co. registered under Act or rules made thereunder, that person or each of those persons shall, unless duly registered as foreign Co. under Act and rules made thereunder, shall be liable for investigation under section 210 of Act and action consequent upon that investigation shall be taken against that person.



Exemptions under this chapter



The CG may by notification exempt any class of-

- a. foreign companies;
- b. companies incorporated outside India, whether Co. has or has not established a PoB in India,

in so far as they relate to offering for subscription in securities, requirements related to prospectus, and all matters incidental thereto in IFSC



Thank
you