:

Section 6:- Act to override Memorandum of Association(MOA), Article Of Association (AOA) etc.

Provision of this act shall have effect notwithstanding anything to the contrary contained in.

- The MOA or AOA of a Company or
- Any agreement executed by it or
- Any resolution passed by the Company in General Meeting or by its Board of Directors.

Wheather the same be registered, executed or passed, before or after the Commencement of this Act.

Any provision contained in MOA/AOA

inconsistent to the

provisions of this Act

become void

Section 9:- Effect of Registration

- Artificial Person
- Separate legal entity. (Case law- Soloman Vs. Soloman & Company Ltd.)
- Perpetual Succession
- Separate Property.
- ~~Common Seal~~ xxxxxxxxx xxxx
- Capacity to sue.
- Transferability of Shares.
- Limited Liability.

Common seal required removed from Companies act 2015

Section 10:- Effect of MOA & AOA.

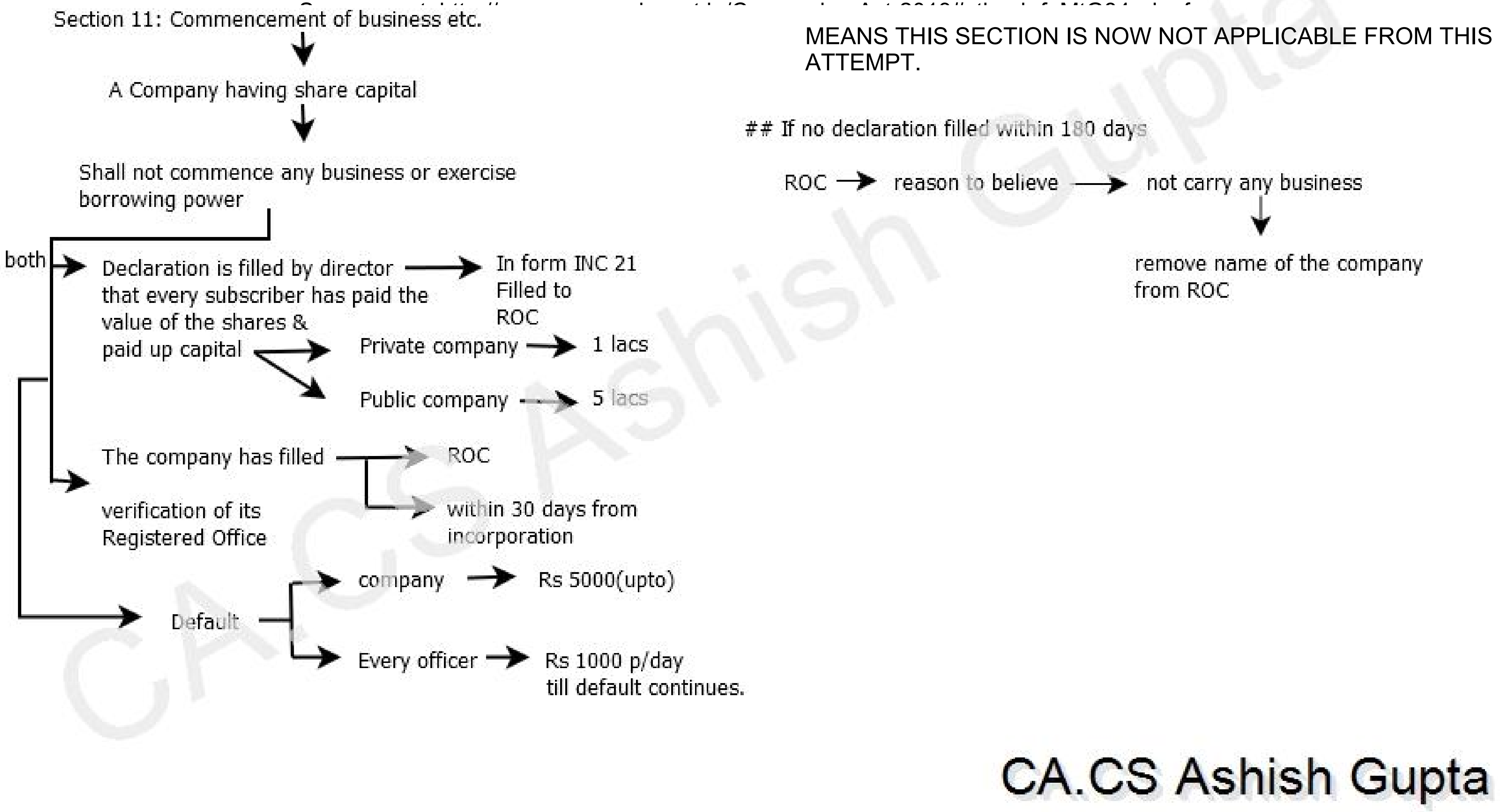
After registration → Company & member are binding.

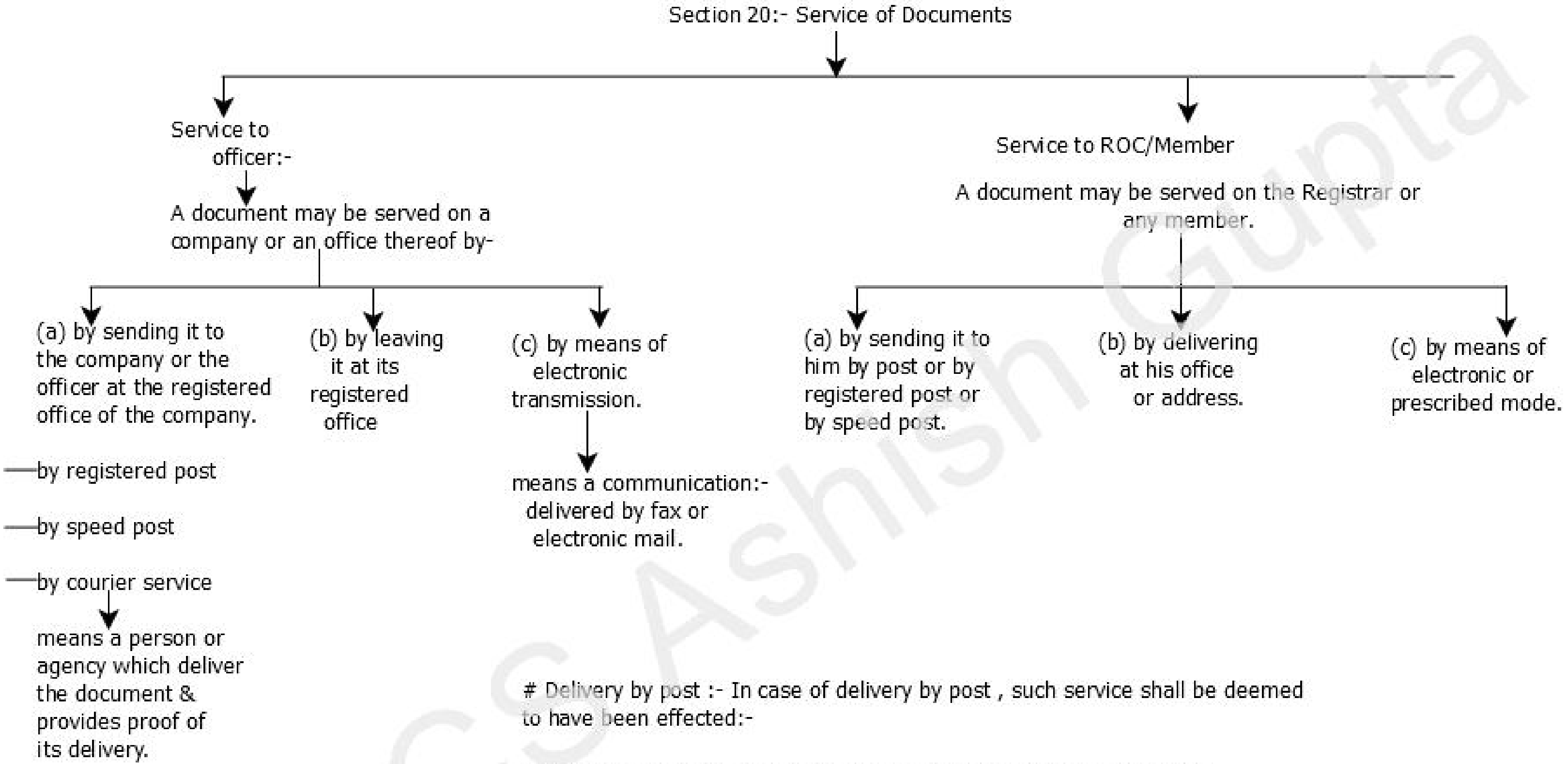
From all the Provisions of MOA/ AOA.

:

1Omitted by The Companies (Amendment) Act, 2015 w.e.f. 29th of May, 2015

MEANS THIS SECTION IS NOW NOT APPLICABLE FROM THIS ATTEMPT.





Section 20:- Service of Documents

Service to officer:-

A document may be served on a company or an office thereof by-

(a) by sending it to the company or the officer at the registered office of the company.

- by registered post
- by speed post
- by courier service

means a person or agency which deliver the document & provides proof of its delivery.

(b) by leaving it at its registered office

(c) by means of electronic transmission.

means a communication:- delivered by fax or electronic mail.

Service to ROC/Member

A document may be served on the Registrar or any member.

(a) by sending it to him by post or by registered post or by speed post.

(b) by delivering at his office or address.

(c) by means of electronic or prescribed mode.

Delivery by post :- In case of delivery by post , such service shall be deemed to have been effected:-

(a) In the case of a notice of a meeting , at the expiration of 48 hours after the letter containing the same is posted &

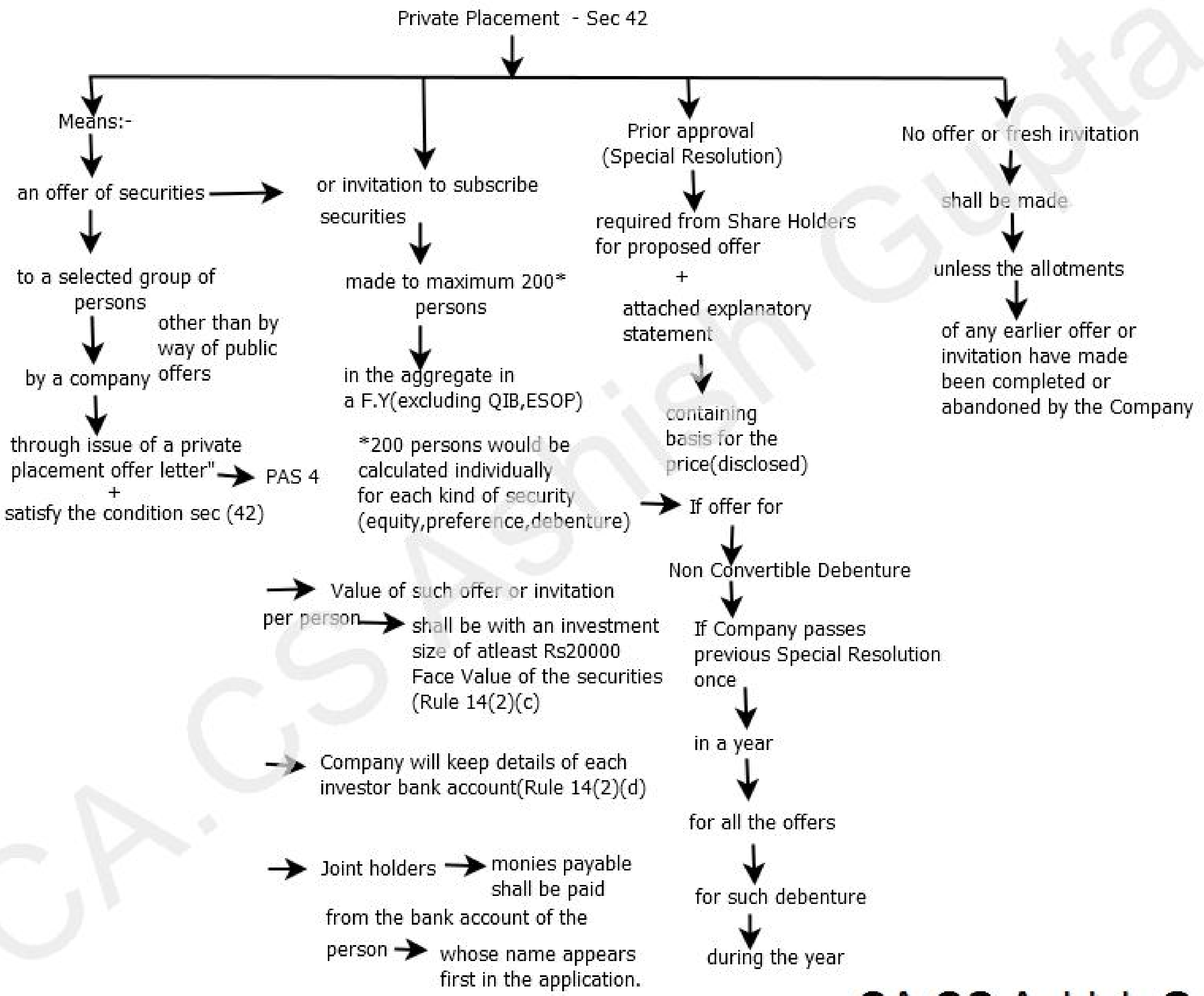
(b) In any other case ; at the time at which the letter would be delivered in the ordinary course of post.

Sub-section (2) shall apply for Nidhi company; the document may be served only on members who hold shares of more than Rs 1000 in face value or more than 1% of the total paid-up share capital of the Nidhis whichever is less.

For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhiis situated; and publication of the same on the notice board of the Nidhi.

vide Notification ,dated 5th June 2015.

:



Private Placement - Sec 42

Means:-
an offer of securities → or invitation to subscribe securities
to a selected group of persons
by a company other than by way of public offers
through issue of a private placement offer letter" → PAS 4
+
satisfy the condition sec (42)

or invitation to subscribe securities
made to maximum 200* persons
in the aggregate in a F.Y(excluding QIB,ESOP)
*200 persons would be calculated individually for each kind of security (equity,preference,debenture)

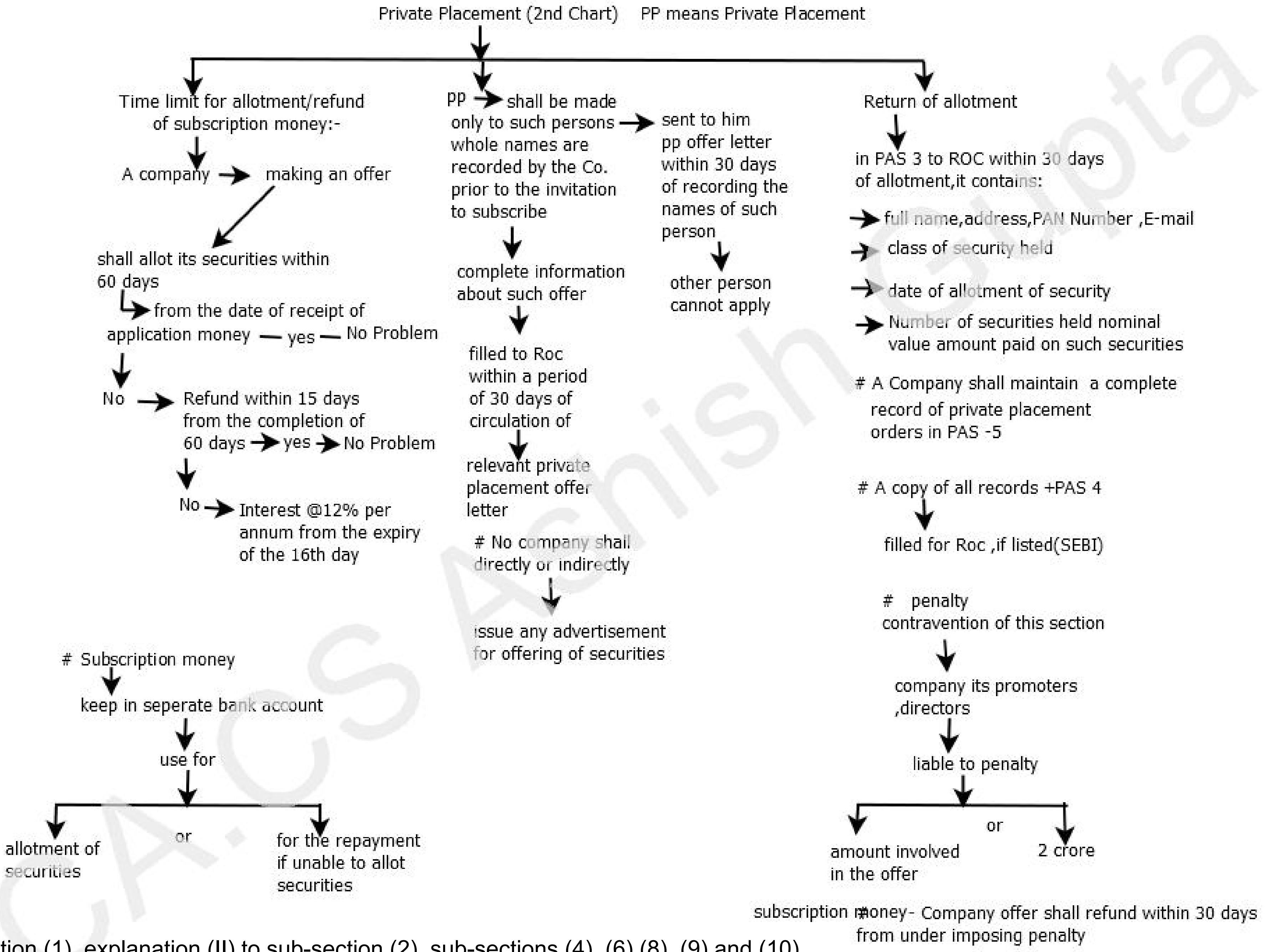
→ Value of such offer or invitation per person → shall be with an investment size of atleast Rs20000 Face Value of the securities (Rule 14(2)(c)

→ Company will keep details of each investor bank account(Rule 14(2)(d)

→ Joint holders → monies payable shall be paid from the bank account of the person → whose name appears first in the application.

Prior approval (Special Resolution)
required from Share Holders for proposed offer
+
attached explanatory statement
containing basis for the price(disclosed)
→ If offer for
Non Convertible Debenture
If Company passes previous Special Resolution once
in a year
for all the offers
for such debenture
during the year

No offer or fresh invitation
shall be made
unless the allotments
of any earlier offer or invitation have made been completed or abandoned by the Company



Private Placement (2nd Chart) PP means Private Placement

Time limit for allotment/refund of subscription money:-

A company → making an offer

shall allot its securities within 60 days

→ from the date of receipt of application money — yes — No Problem

No → Refund within 15 days from the completion of 60 days → yes → No Problem

No → Interest @12% per annum from the expiry of the 16th day

Subscription money

keep in seperate bank account

use for

allotment of securities

or

for the repayment if unable to allot securities

pp → shall be made only to such persons whole names are recorded by the Co. prior to the invitation to subscribe → sent to him pp offer letter within 30 days of recording the names of such person

other person cannot apply

complete information about such offer

filled to Roc within a period of 30 days of circulation of

relevant private placement offer letter

No company shall directly or indirectly

issue any advertisement for offering of securities

Return of allotment

in PAS 3 to ROC within 30 days of allotment,it contains:

→ full name,address,PAN Number ,E-mail

→ class of security held

→ date of allotment of security

→ Number of securities held nominal value amount paid on such securities

A Company shall maintain a complete record of private placement orders in PAS -5

A copy of all records +PAS 4

filled for Roc ,if listed(SEBI)

penalty contravention of this section

company its promoters ,directors

liable to penalty

amount involved in the offer

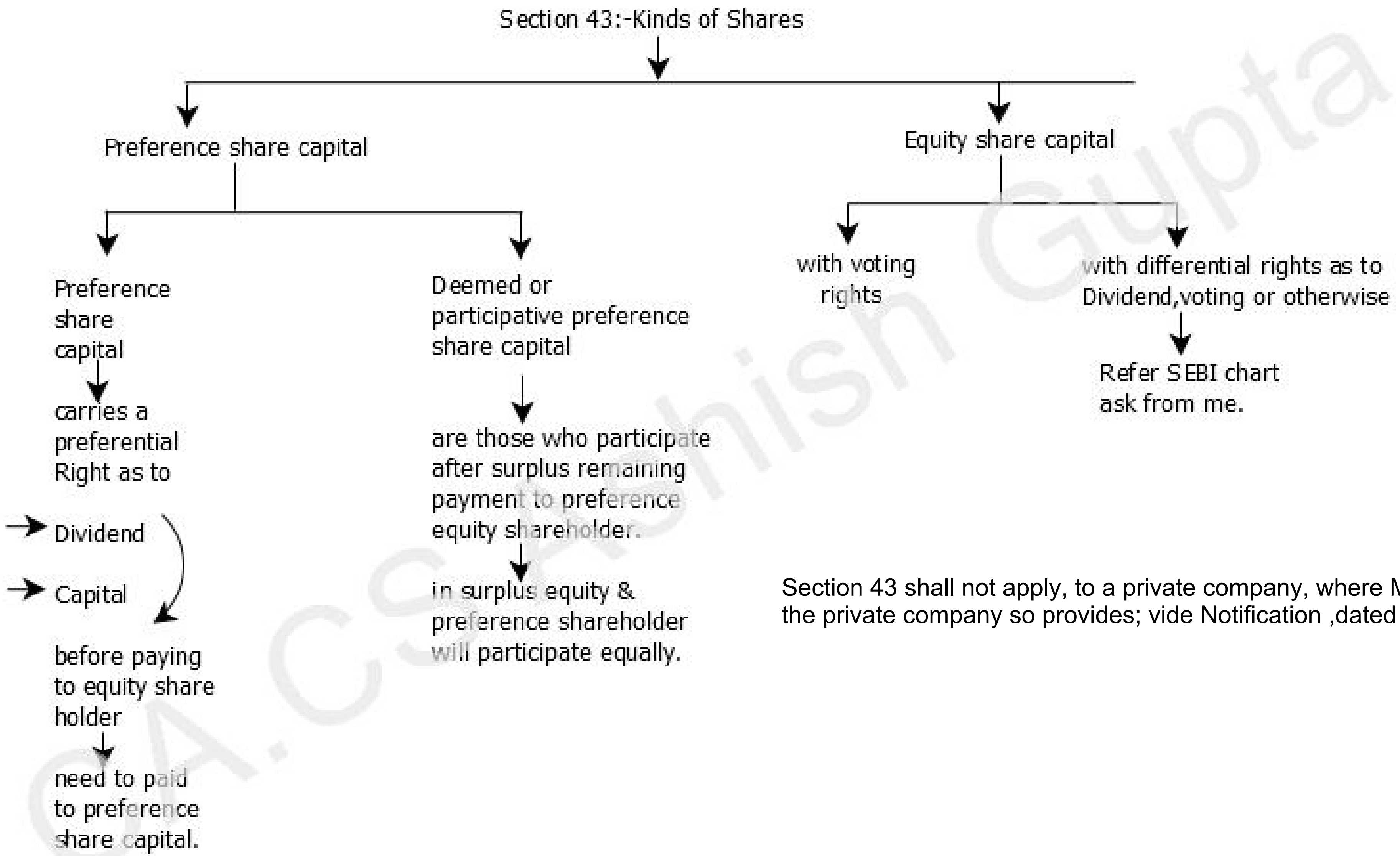
or

2 crore

subscription money- Company offer shall refund within 30 days from under imposing penalty

Except subsection (1), explanation (II) to sub-section (2), sub-sections (4), (6),(8), (9) and (10) nothing in this section shall apply to a Nidhi company vide Notification ,dated 5th June 2015.

:



Section 43:-Kinds of Shares

- Preference share capital
  - Preference share capital
    - carries a preferential Right as to
      - Dividend
      - Capital
    - before paying to equity share holder
    - need to paid to preference share capital.
  - Deemed or participative preference share capital
    - are those who participate after surplus remaining payment to preference equity shareholder.
    - in surplus equity & preference shareholder will participate equally.
- Equity share capital
  - with voting rights
  - with differential rights as to Dividend,voting or otherwise
    - Refer SEBI chart ask from me.

Section 43 shall not apply, to a private company, where MOA or AOA of the private company so provides; vide Notification ,dated 5th June 2015.

Section 47: Voting Rights of Shareholders

Voting rights of equity shares:

shall have a right to vote on every resolution placed before company.

Clause(b)

→ On a poll

the voting right of every equity shareholdert shall be in proportion

to his share in the paid up equity share capital of the Company.

Clause (b) shall apply to Nidhi company,that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders, vide Notification, dated 5th June 2015

Every Preference shareholder

shall have a right to vote

- On matters directly affected his right.
- Resolution for the winding up of the Company
- Matters for the repayment or reduction of share capital.
- On a poll

the voting right of every equity shareholder shall be in proportion

to his share in the paid up equity share capital of the Company.

Earned Voting Rights

If the dividend on any class of preference shares → is not paid for 2 years or more

Then → every preference shareholder of such class

shall have a right to vote on every resolution placed before the Company.

Section 47 shall not apply to a private company, where memorandum or articles of association of the private company so provides vide Notification dated 5th June 2015.

Section 49: Calls on shares of same class to be made on uniform basis.

Calls on shares of same class must be made n uniform basis.

However, Shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

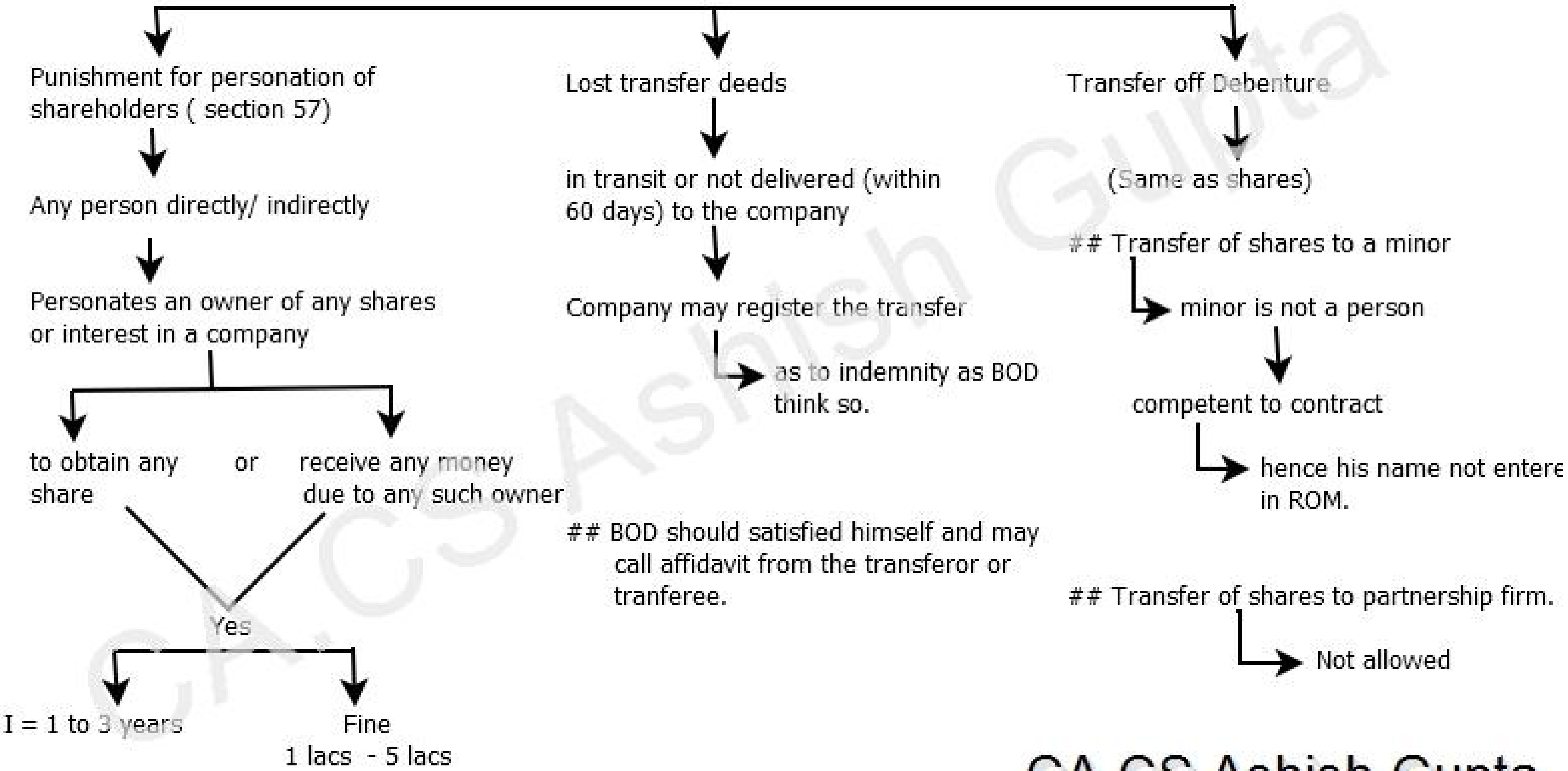
Value per calls:- As per table F, a call must not exceed 1/4th of the Nominal value of the Shares or be payable at less than 1 month from the date fixed for the payment of the last preceding call.

Notice:-

→ Call is made by serving a notice to payment upon members as per section 20.

→ The Notice should specify the amount payable & the time within which payment shall be made.

Table- F → Provades for atleast 14 days Notice.



Punishment for personation of shareholders (section 57)

Any person directly/ indirectly

Personates an owner of any shares or interest in a company

to obtain any share or receive any money due to any such owner

Yes

I = 1 to 3 years

Fine 1 lacs - 5 lacs

Lost transfer deeds

in transit or not delivered (within 60 days) to the company

Company may register the transfer

as to indemnity as BOD think so.

BOD should satisfied himself and may call affidavit from the transferor or tranferee.

Transfer off Debenture

(Same as shares)

Transfer of shares to a minor

minor is not a person

competent to contract

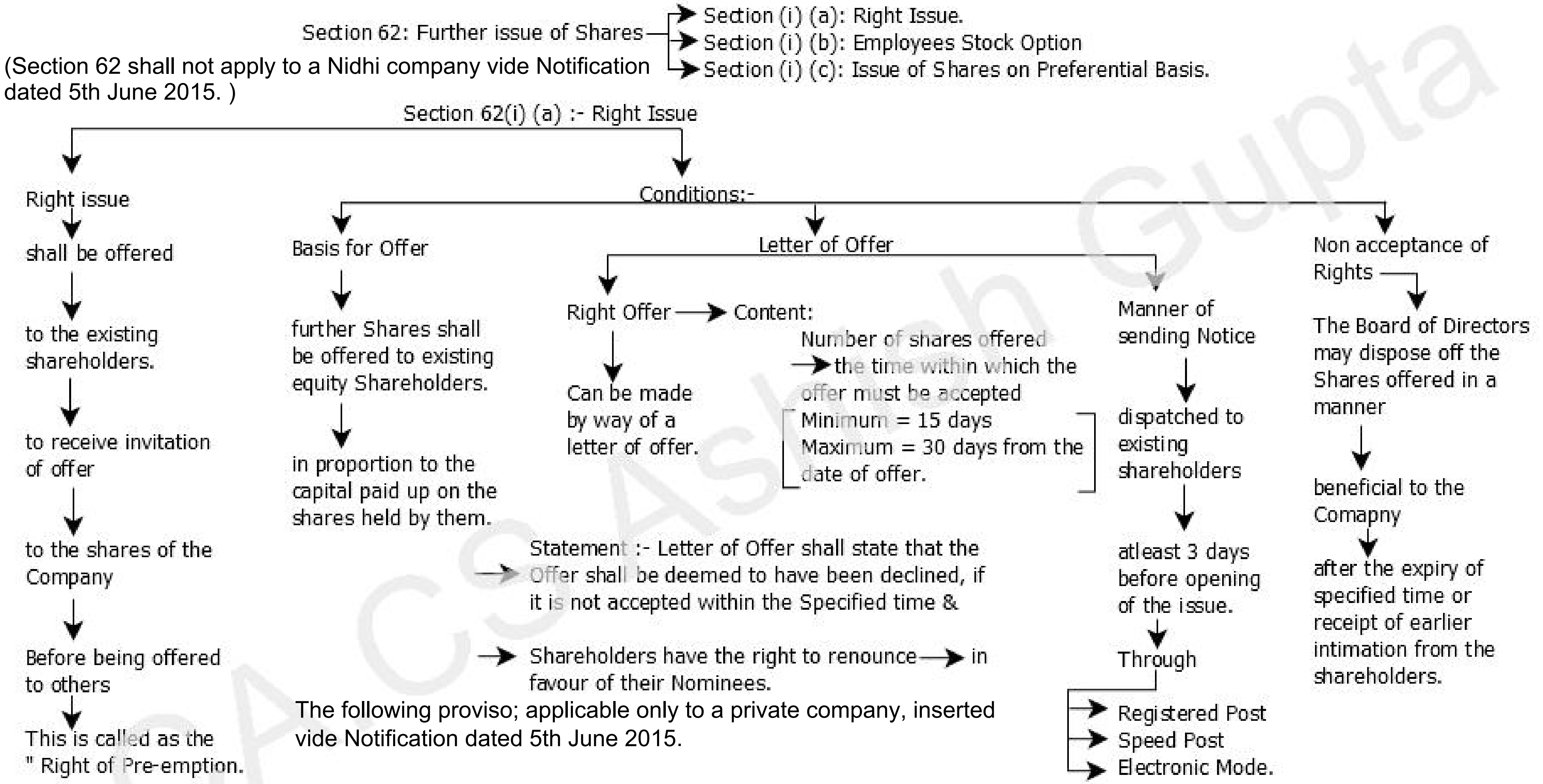
hence his name not entere in ROM.

Transfer of shares to partnership firm.

Not allowed

The following provisos shall be applicable only for Govt company; inserted vide Notification, 5th 06 2015.

Provided further that the provisions of this sub-section,if a instrument is duly executed and stamped, shall not apply with respect to bonds issued by a Govt company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond:
Provided also that the provisions of this sub-section shall not apply to a Govt Company in respect of securities held by nominees of the Govt.



Section 62: Further issue of Shares

- Section (i) (a): Right Issue.
- Section (i) (b): Employees Stock Option
- Section (i) (c): Issue of Shares on Preferential Basis.

(Section 62 shall not apply to a Nidhi company vide Notification dated 5th June 2015.)

Section 62(i) (a) :- Right Issue

Right issue → shall be offered → to the existing shareholders. → to receive invitation of offer → to the shares of the Company → Before being offered to others → This is called as the " Right of Pre-emption.

Conditions:-

Basis for Offer → further Shares shall be offered to existing equity Shareholders. → in proportion to the capital paid up on the shares held by them.

Letter of Offer

Right Offer → Content:

Number of shares offered

→ the time within which the offer must be accepted

Minimum = 15 days

Maximum = 30 days from the date of offer.

Right Offer → Can be made by way of a letter of offer.

→ Statement :- Letter of Offer shall state that the Offer shall be deemed to have been declined, if it is not accepted within the Specified time &

→ Shareholders have the right to renounce → in favour of their Nominees.

Manner of sending Notice → dispatched to existing shareholders → atleast 3 days before opening of the issue. → Through

- Registered Post
- Speed Post
- Electronic Mode.

Non acceptance of Rights → The Board of Directors may dispose off the Shares offered in a manner → beneficial to the Comapny → after the expiry of specified time or receipt of earlier intimation from the shareholders.

The following proviso; applicable only to a private company, inserted vide Notification dated 5th June 2015.

Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case ninety percent, of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.

CA.CS Ashish Gupta

Section 67:-Restriction on buy back or financing purchase of own share

Sub-section (1) shall not apply to a Nidhi company, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

Aspect	Description	
Applicability	Limited companies(either by shares or Gaurantee) & having share capital.	Public companies
Prohibited Activity	By back of securities by the company.	financing others (directly or indirectly,by way (a) making loan (b) giving gaurantee (c) providing security to acquire its own shares of its holding company.
Exceptions:-	(a) Reduction in capital is effected under the Act. (b) Purchase u/s 242 pursuant to Tribunal's order	(a) Lending of money by a Banking company in the ordinary course of its business. (b) Lending for subscription of fully paid shares by trustee to be ,held for the benefit of the company's employees subject to conditions. (c) Loans, upto 6 months salary,to employees (other than Directors or KMP0 enabling them to purchase its fully paid shares in its holding company ,to be held by themselves by way of beneficial ownership.
Penalty	(a) Company :- Fine Minimum=1 lacs, Maximum= 25 lacs (b) Every officer in default:-Imprisonment=upto 3 years Minimum=1lacs & Maximum= 25 lacs.	

The following items are not covered by the restriction given above-

(a) Purchase of Shares by one member from another membe by Tribunal's order.

(b) Private Companies.

(c) Acquisition in subsidiary.

Section 67 shall not apply to private companies -

(a) in whose share capital no other body corporate has invested any money;
(b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or fifty crore rupees,whichever is lower; and
(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

vide Notification F No 1/ 1/2014- CL.V dated 5th June 2015.

Rule 14: Register of Deposits

It contains

- Name Address & PAN of the Depositor
- Particular of Guardian
- Particular of nominee
- Deposit receipt number
- Date and amount of each Deposit
- Duration of deposit
- Date on which each deposit is repayable
- Rate of interest
- Due date for payment of interest
- Details of deposit insurance
- Particulars of deposit security

Entry made within 7 days from the date of deposit receipt.

Register of deposit keep for 8 years from the Financial Year in which the latest entry is made in the register.

Rule 15: Premature repayment of deposits

Company make a repayment of deposits

On the request of depositor

after the expiry of 6 month but before the expiry of the period

the rate of interest payable on such deposit

reduced by 1% for the remaining period

Rule 16: Return of deposits to be filled with ROC

Form No. DPT 3, file to ROC on or before 30 June of each year

For every 31st march

Rule 17: Penal rate of interest

Penal rate of interest@ 18% per annum on every matured and claimed but remains unpaid

Sec 76A - Punishment for contravention of Section 73 & 76.

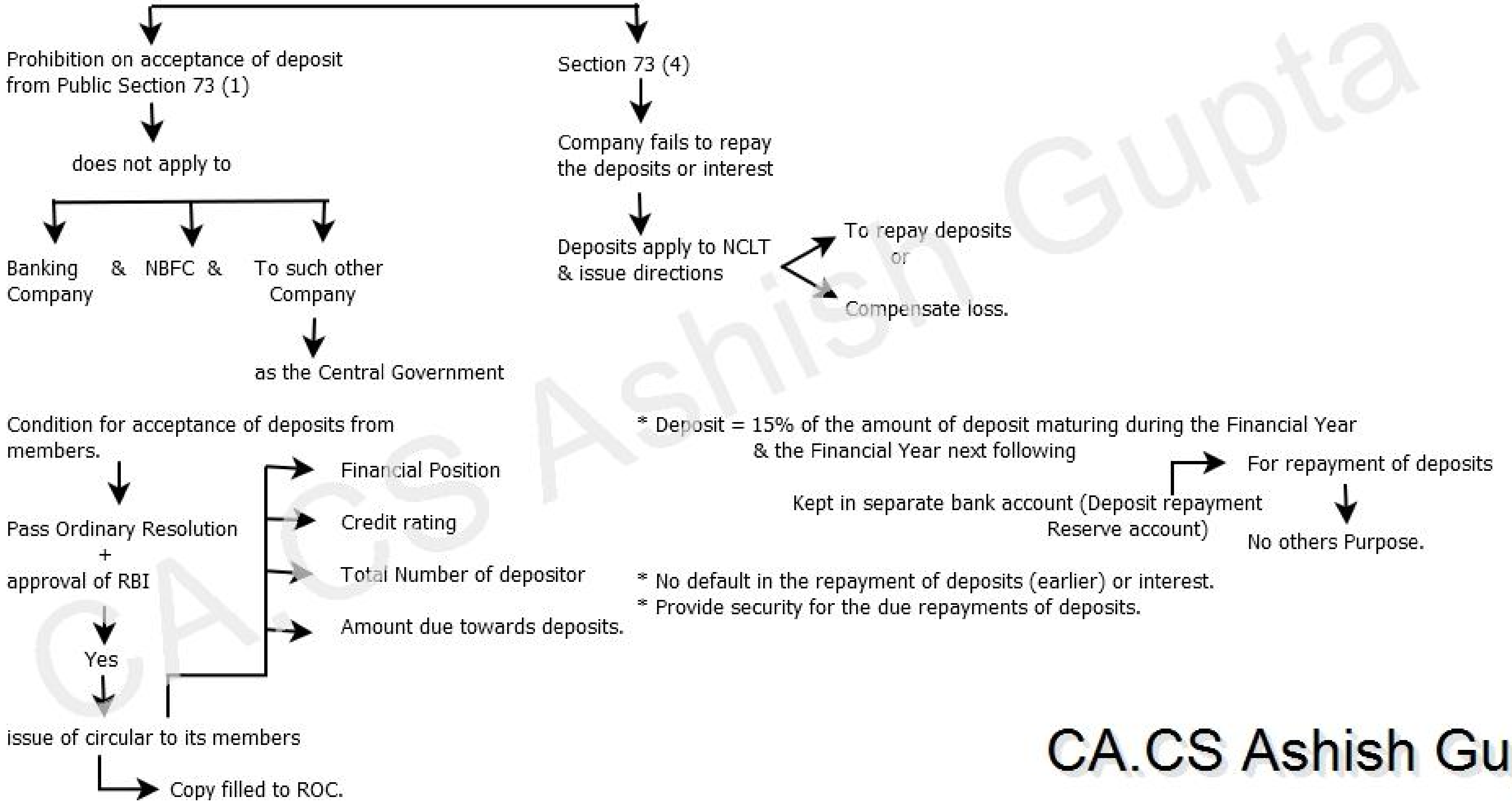
Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under sec 73 or sec 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than Rs 1 crore but which may extend to Rs 10 crore &

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than Rs 25 lakh but which may extend to Rs 2 crore or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

:



Prohibition on acceptance of deposit from Public Section 73 (1)

does not apply to

Banking Company & NBFC & To such other Company

as the Central Government

Section 73 (4)

Company fails to repay the deposits or interest

Deposits apply to NCLT & issue directions

To repay deposits or Compensate loss.

Condition for acceptance of deposits from members.

Pass Ordinary Resolution + approval of RBI

Yes

issue of circular to its members

Copy filled to ROC.

Financial Position

Credit rating

Total Number of depositor

Amount due towards deposits.

* Deposit = 15% of the amount of deposit maturing during the Financial Year & the Financial Year next following

Kept in separate bank account (Deposit repayment Reserve account)

For repayment of deposits

No others Purpose.

* No default in the repayment of deposits (earlier) or interest.

* Provide security for the due repayments of deposits.

Clause (a) to (e) shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified; vide Notification dated 5th June 2015.

Section 89:- Declaration in respect of beneficial interest in any share

Duties of Registered owner /Beneficial owner

Duties of	Registered owner	
Description	Name of a person entered in the ROM of a company (i.e Registered owner) as the holder of shares in that company ,but does not hold the beneficial interest in such shares.	Person who holds or acquire a beneficial interest in share of a company(Beneficial Owner) but shares stands registered in other names.
Duty	Registered owner shall file a declaration to company.	Beneficial owner shall file a declaration to company.
Time Limit	within 30 days from the date on which his name is entered in the ROM.	within 30 days after acquiring such beneficial interest.
Form	MGT-4(in duplicate)	MGT-5(in duplicate)

In both the above cases ,if any change occurs in the Beneficial interest to such shares, the Registered owner & Beneficial owner shall file a declaration of such change to the company ,within 30 days.

Duties of Company:-

(a) Noting in Register :-The Company shall make a note of such declaration in the Register of Member.

(b) Return to ROC:-Within 30 days from the date of declaration, the company shall file a return in form No.MGT-6 to the ROC.

Penalty for Non-compliance

Registered owner`

(a) such person is punishable with fine of maximum Rs.50000

(b) For continuing Default:-Fine upto Rs 1000 for every day after the first during which the faliure continues,is also leviable.

Beneficial Owner
(a) Company & every officer

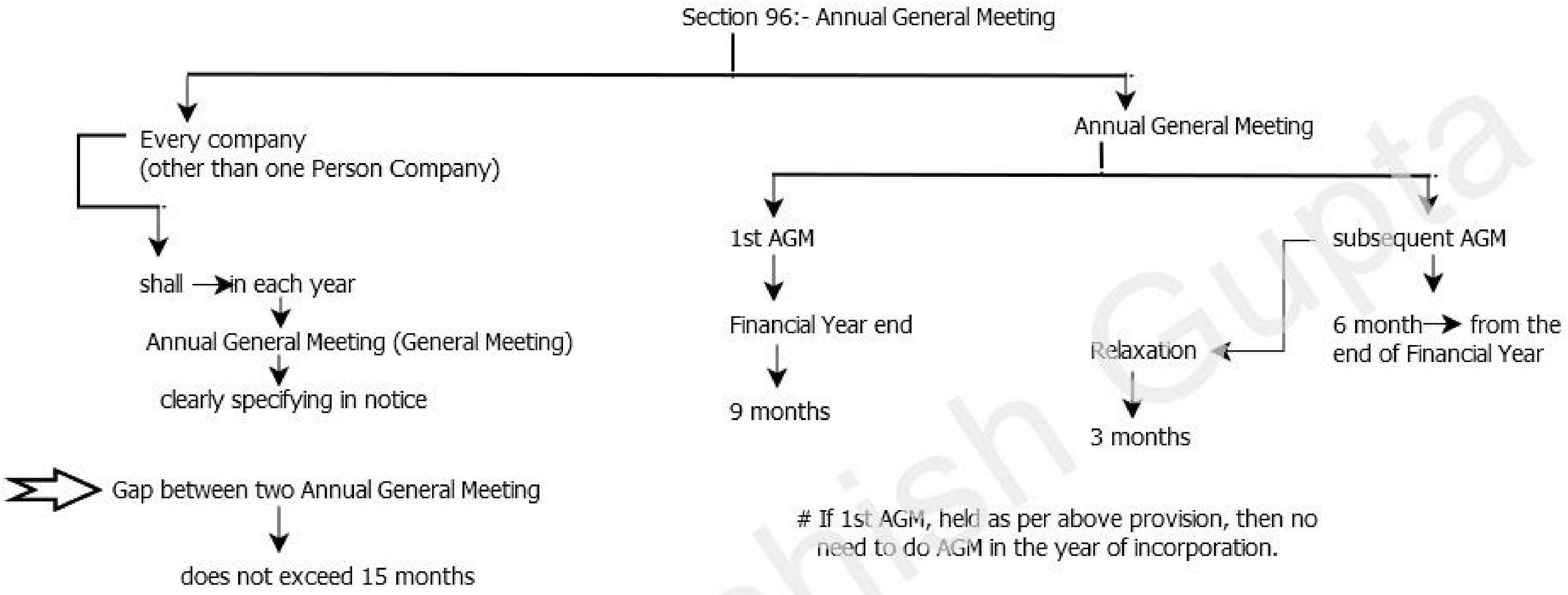
minimum=Rs.500

Maximum=Rs.1000

(b) For continuing default

Fine Rs 1000 for every day after the first during which the faliure continue,is also leviable.

Section 89 shall not apply to a Government company vide Notification ,dated 5th June 2015.



Section 96:- Annual General Meeting

Every company (other than one Person Company)

shall → in each year

Annual General Meeting (General Meeting)

clearly specifying in notice

Gap between two Annual General Meeting

does not exceed 15 months

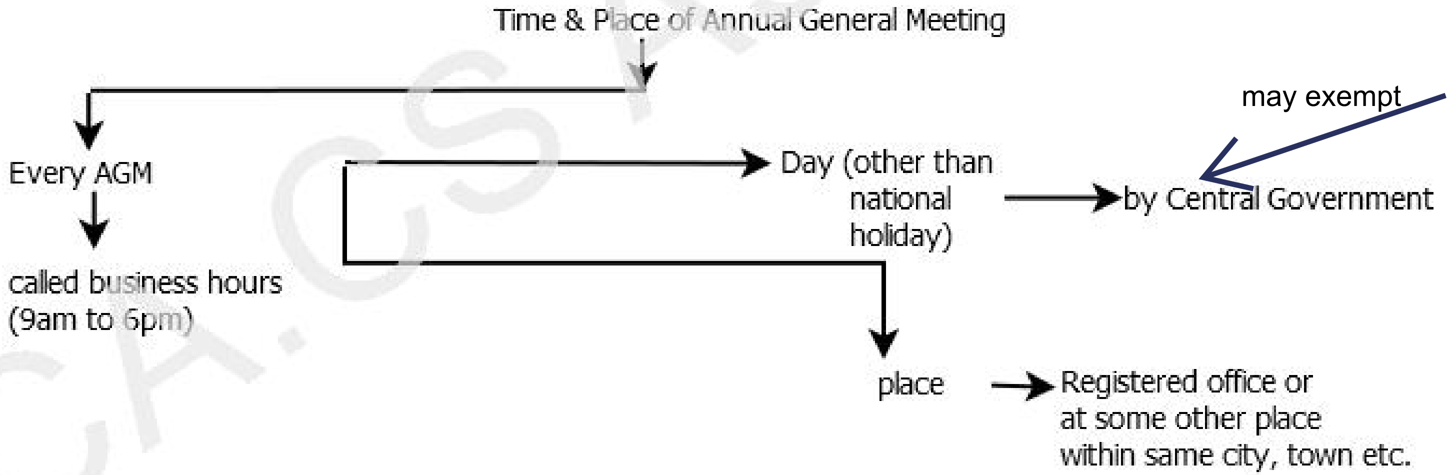
Annual General Meeting

1st AGM → Financial Year end → 9 months

subsequent AGM → 6 month → from the end of Financial Year

Relaxation → 3 months

If 1st AGM, held as per above provision, then no need to do AGM in the year of incorporation.



Time & Place of Annual General Meeting

Every AGM → called business hours (9am to 6pm)

Day (other than national holiday) → by Central Government

may exempt

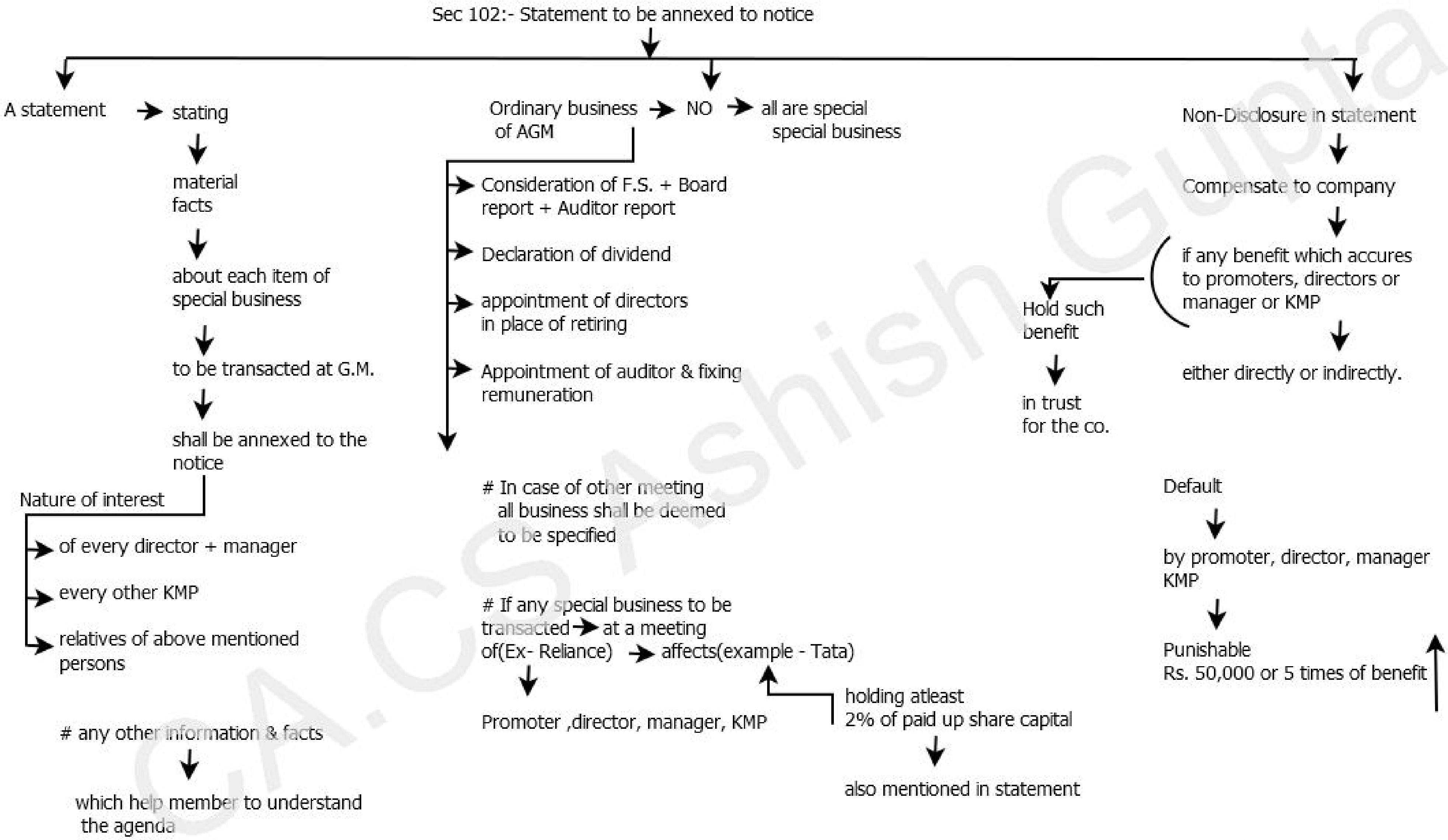
place → Registered office or at some other place within same city, town etc.

The following proviso is applicable only to Section 8 company, inserted vide Notification, dated 5th June 2015.

Provided further that the time, date and place of each AGM are decided upon before-hand by the BOD's having regard to the directions, if any, given in this regard by the company in its GM.

The words "some other place within the city, town or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" shall be substituted for a Govt company vide Notification, dated 5th June 2015.

:



Sec 102:- Statement to be annexed to notice

A statement → stating → material facts → about each item of special business → to be transcated at G.M. → shall be annexed to the notice

Nature of interest
- of every director + manager
- every other KMP
- relatives of above mentioned persons

any other information & facts → which help member to understand the agenda

Ordinary business of AGM → NO → all are special special business
- Consideration of F.S. + Board report + Auditor report
- Declaration of dividend
- appointment of directors in place of retiring
- Appointment of auditor & fixing remuneration

In case of other meeting all business shall be deemed to be specified

If any special business to be transacted → at a meeting of(Ex- Reliance) → affects(example - Tata)

of(Ex- Reliance) → Promoter ,director, manager, KMP

holding atleast 2% of paid up share capital → affects(example - Tata)

holding atleast 2% of paid up share capital → also mentioned in statement

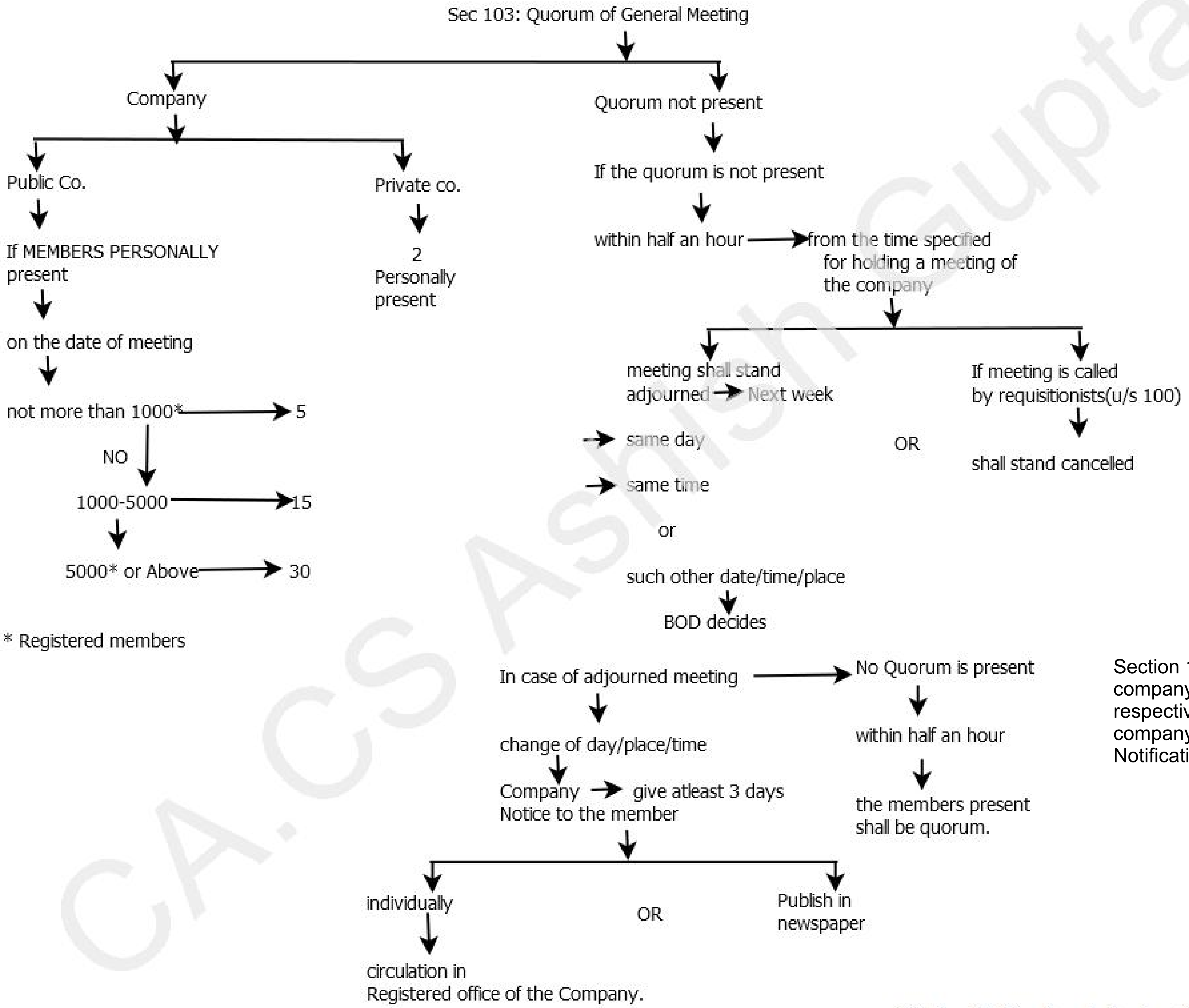
Non-Disclosure in statement → Compensate to company → if any benefit which accures to promoters, directors or manager or KMP → either directly or indirectly.

if any benefit which accures to promoters, directors or manager or KMP → Hold such benefit → in trust for the co.

Default → by promoter, director, manager KMP → Punishable Rs. 50,000 or 5 times of benefit

Section 102 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification CL.V dated 5th June 2015.

:



Sec 103: Quorum of General Meeting

Company

Public Co.

If MEMBERS PERSONALLY present

on the date of meeting

not more than 1000* → 5

NO

1000-5000 → 15

5000* or Above → 30

* Registered members

Private co.

2 Personally present

Quorum not present

If the quorum is not present

within half an hour → from the time specified for holding a meeting of the company

meeting shall stand adjourned → Next week

→ same day

→ same time

or

such other date/time/place

BOD decides

OR

If meeting is called by requisitionists(u/s 100)

shall stand cancelled

In case of adjourned meeting → No Quorum is present

within half an hour

the members present shall be quorum.

change of day/place/time

Company → give atleast 3 days Notice to the member

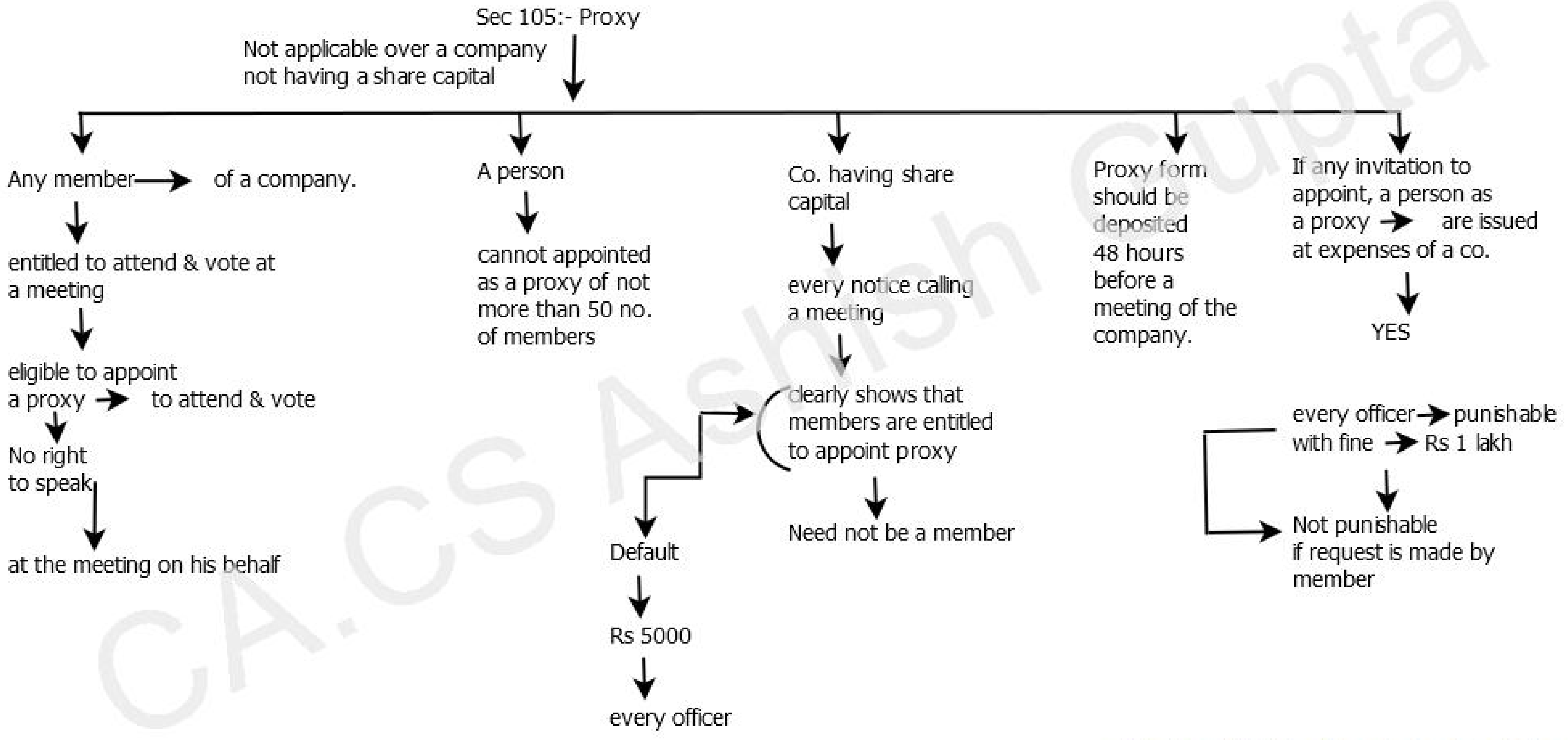
individually

circulation in Registered office of the Company.

OR

Publish in newspaper

Section 103 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification CL.V dated 5th June 2015.



Sec 105:- Proxy

Not applicable over a company not having a share capital

Any member → of a company.

entitled to attend & vote at a meeting

eligible to appoint a proxy → to attend & vote

No right to speak

at the meeting on his behalf

A person

cannot appointed as a proxy of not more than 50 no. of members

Co. having share capital

every notice calling a meeting

clearly shows that members are entitled to appoint proxy

Need not be a member

Default

Rs 5000

every officer

Proxy form should be deposited 48 hours before a meeting of the company.

If any invitation to appoint, a person as a proxy → are issued at expenses of a co.

YES

every officer → punishable with fine → Rs 1 lakh

Not punishable if request is made by member

Section 105 (2nd Charts)

Instrument Appointing a proxy

Shall be in writing & Signed by the Appointer or his duly authorised person in writing.

Shall not be Questioned

If it does not met any special requirement required by articles.

Every member

Authorised to vote

at a meeting of company

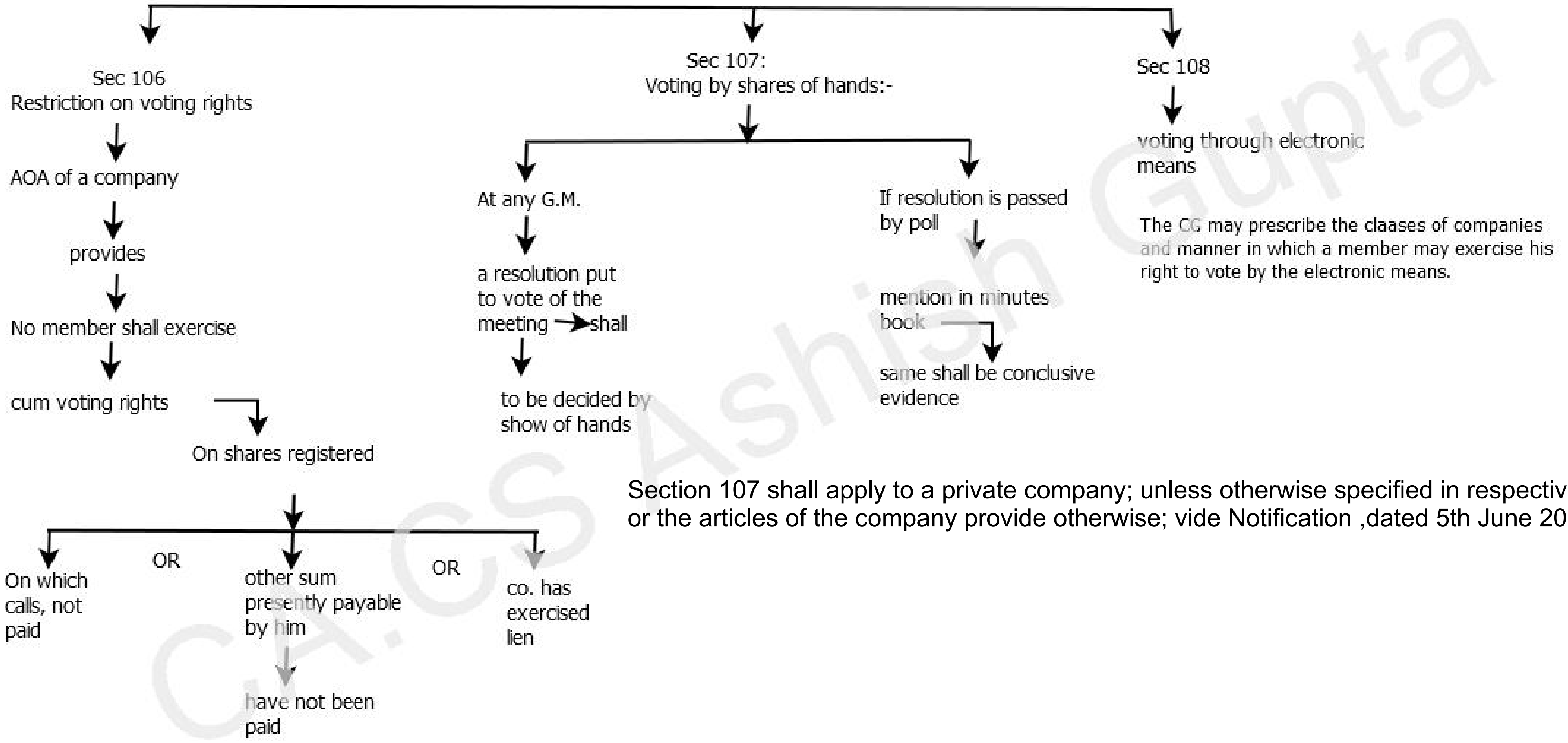
entitle to inspect proxy Form before 24 hour time fixed for meeting

till the conclusion of the meeting

Provided notice served before 3 days in writing of the intention.

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

:



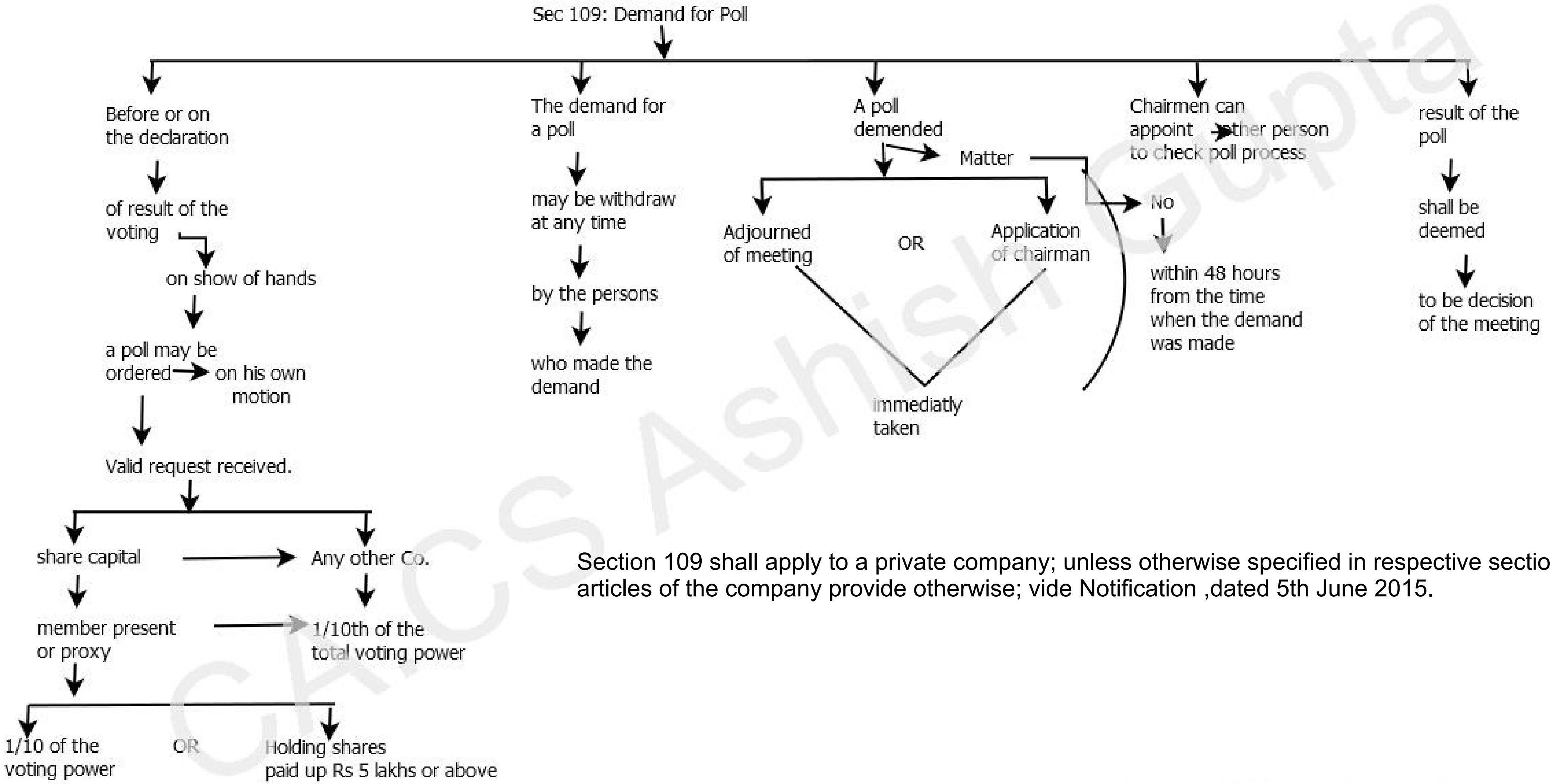
Sec 106
Restriction on voting rights
AOA of a company
provides
No member shall exercise
cum voting rights
On shares registered
On which calls, not paid
OR
other sum presently payable by him
have not been paid
OR
co. has exercised lien

Sec 107:
Voting by shares of hands:-
At any G.M.
a resolution put to vote of the meeting → shall
to be decided by show of hands
If resolution is passed by poll
mention in minutes book
same shall be conclusive evidence

Sec 108
voting through electronic means
The CG may prescribe the claases of companies and manner in which a member may exercise his right to vote by the electronic means.

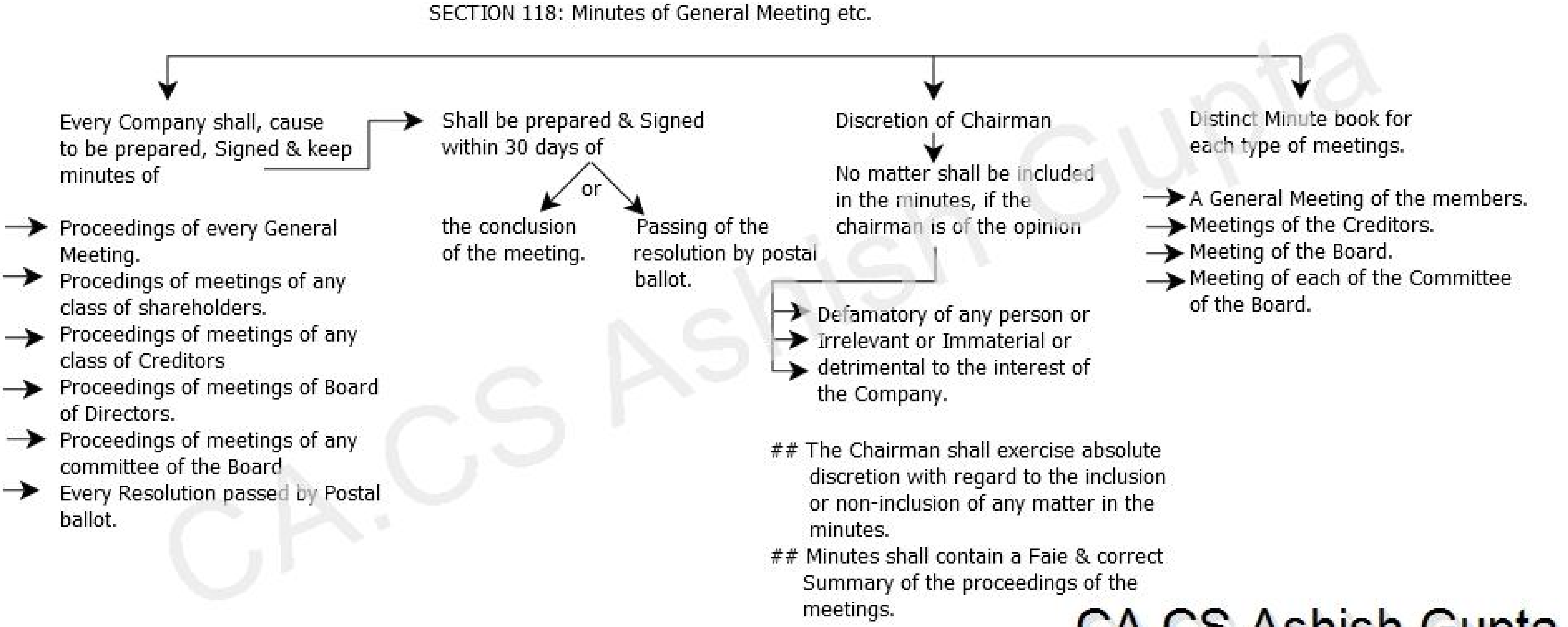
Section 107 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification ,dated 5th June 2015.

Section 106 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification dated 5th June 2015.



Section 109 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification ,dated 5th June 2015.

CA.CS Ashish Gupta



SECTION 118: Minutes of General Meeting etc.

Every Company shall, cause to be prepared, Signed & keep minutes of

- Proceedings of every General Meeting.
- Procedings of meetings of any class of shareholders.
- Proceedings of meetings of any class of Creditors
- Proceedings of meetings of Board of Directors.
- Proceedings of meetings of any committee of the Board
- Every Resolution passed by Postal ballot.

Shall be prepared & Signed within 30 days of

- the conclusion of the meeting.
- or
- Passing of the resolution by postal ballot.

Discretion of Chairman

No matter shall be included in the minutes, if the chairman is of the opinion

- Defamatory of any person or
- Irrelevant or Immaterial or
- detrimental to the interest of the Company.

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

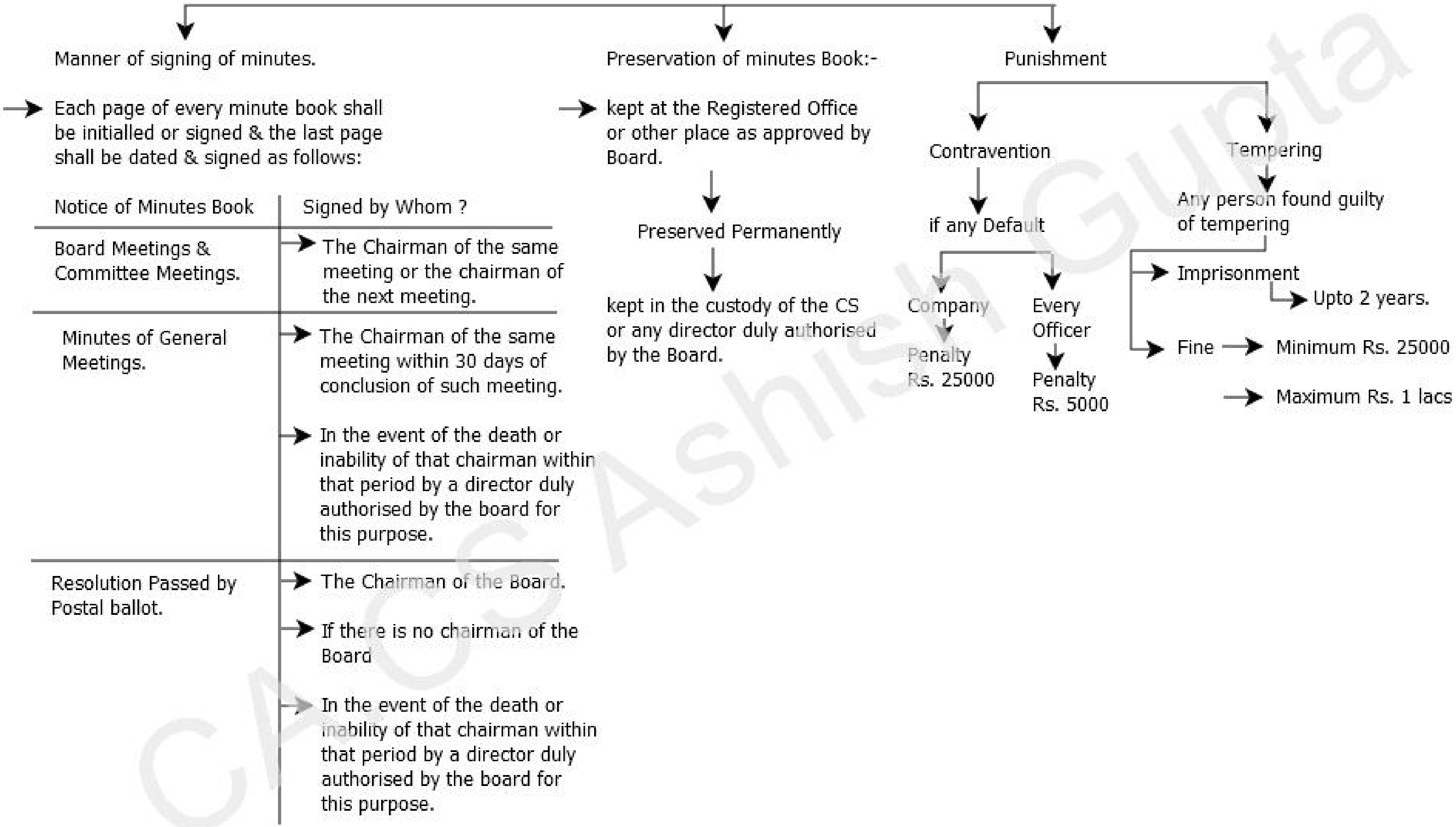
Minutes shall contain a Faie & correct Summary of the proceedings of the meetings.

Distinct Minute book for each type of meetings.

- A General Meeting of the members.
- Meetings of the Creditors.
- Meeting of the Board.
- Meeting of each of the Committee of the Board.

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

Sec 118 - (2nd Charts)



Manner of signing of minutes.

Each page of every minute book shall be initialled or signed & the last page shall be dated & signed as follows:

Notice of Minutes Book	Signed by Whom ?
Board Meetings & Committee Meetings.	The Chairman of the same meeting or the chairman of the next meeting.
Minutes of General Meetings.	The Chairman of the same meeting within 30 days of conclusion of such meeting. In the event of the death or inability of that chairman within that period by a director duly authorised by the board for this purpose.
Resolution Passed by Postal ballot.	The Chairman of the Board. If there is no chairman of the Board In the event of the death or inability of that chairman within that period by a director duly authorised by the board for this purpose.

Preservation of minutes Book:-

kept at the Registered Office or other place as approved by Board.

Preserved Permanently

kept in the custody of the CS or any director duly authorised by the Board.

Punishment

Contravention

if any Default

Company → Penalty Rs. 25000

Every Officer → Penalty Rs. 5000

Tempering

Any person found guilty of tempering

Imprisonment → Upto 2 years.

Fine → Minimum Rs. 25000

→ Maximum Rs. 1 lacs