

Chapter -1 Dividend (Section 123-127)

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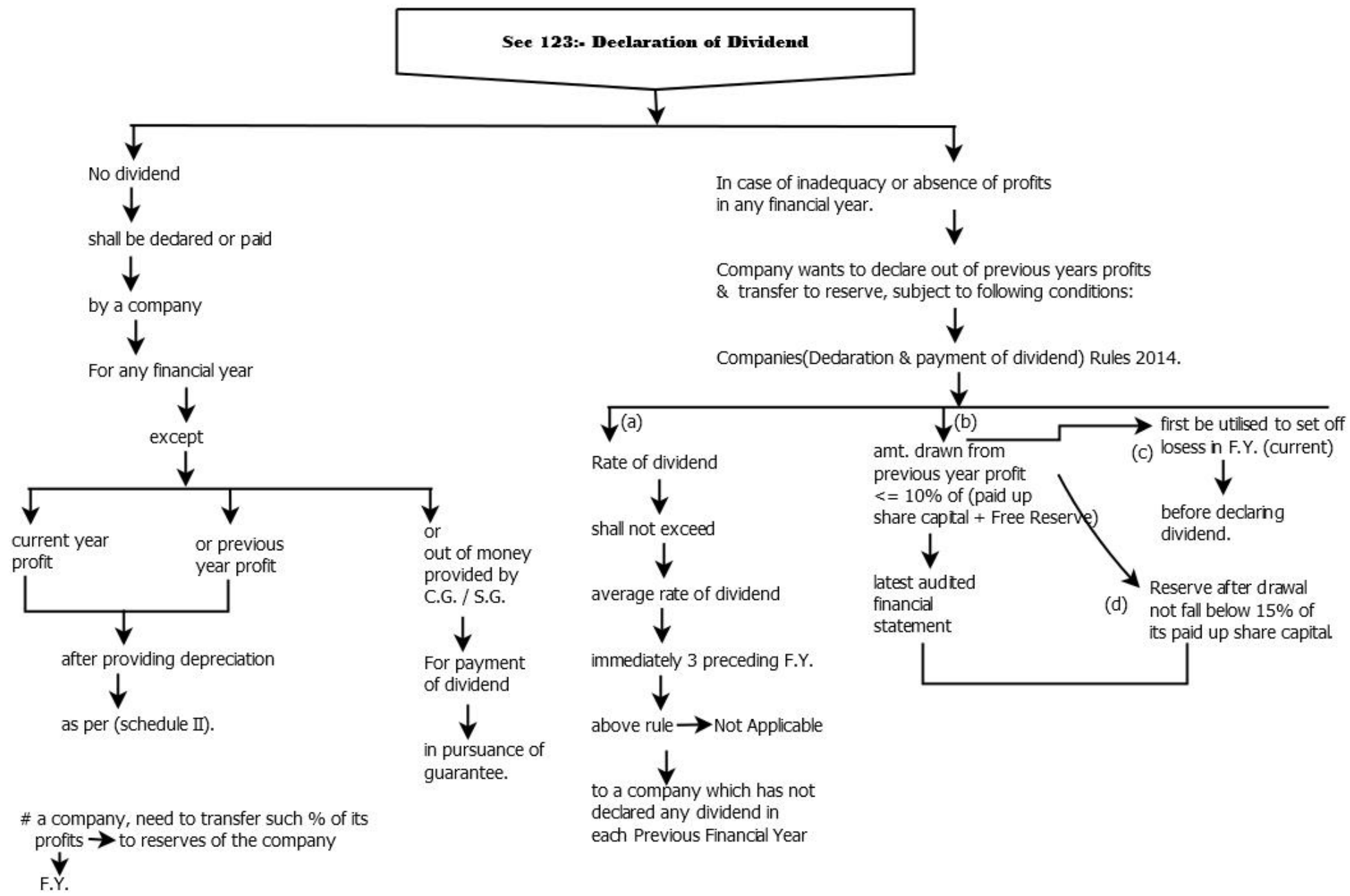
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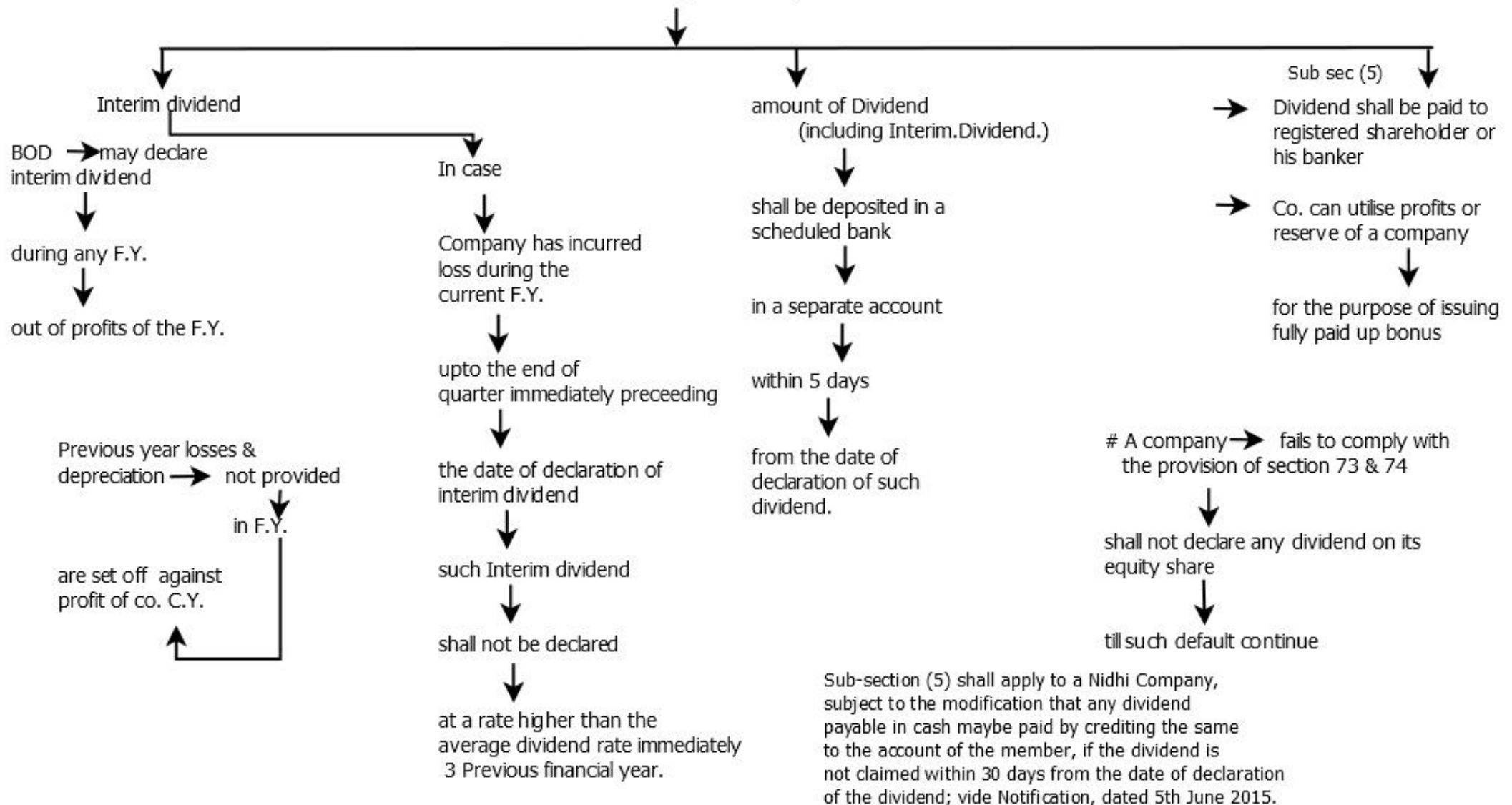
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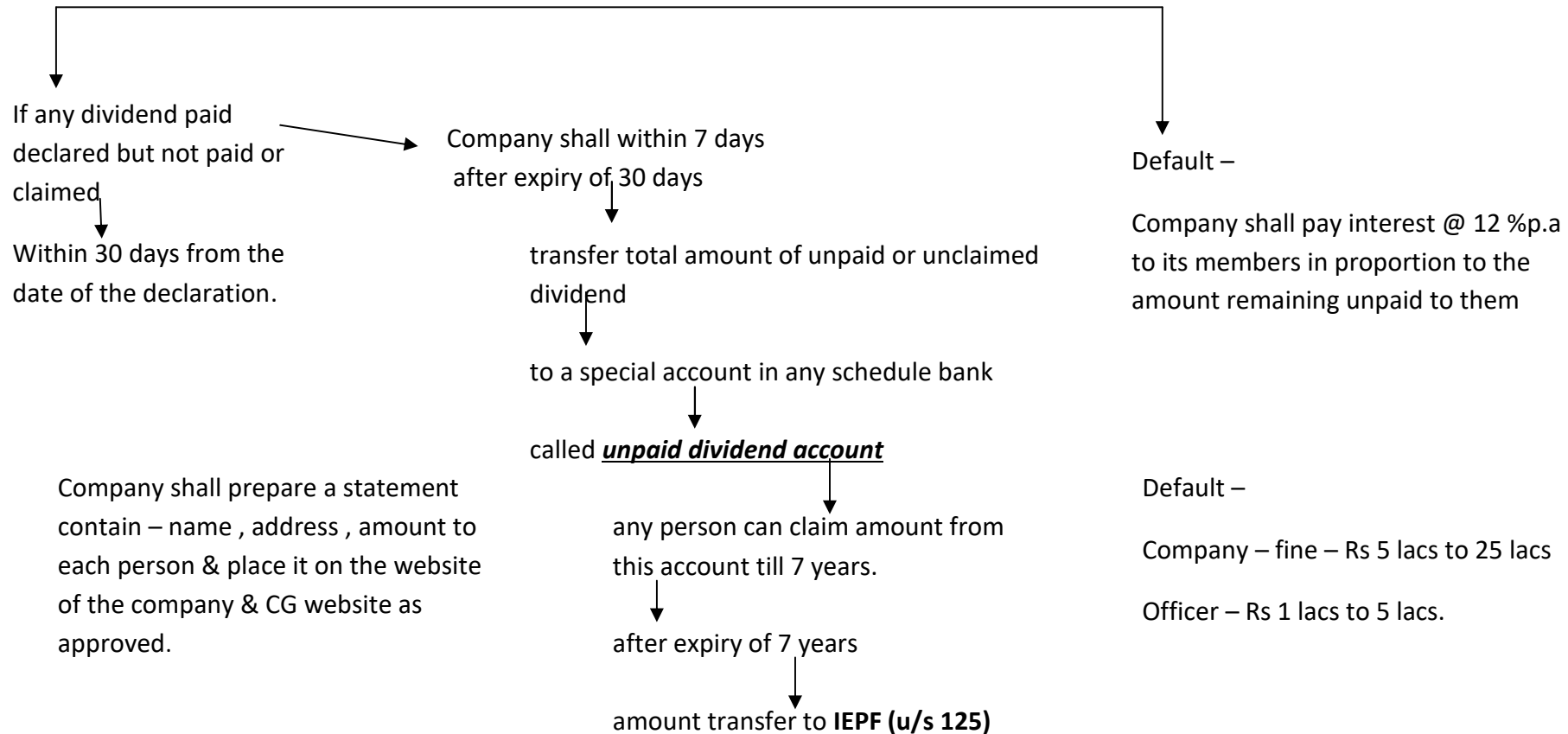


Second proviso to section 123 (1) & also Sub sec (4) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; vide Notification, dated 5th June 2015. [CAA, 2015]

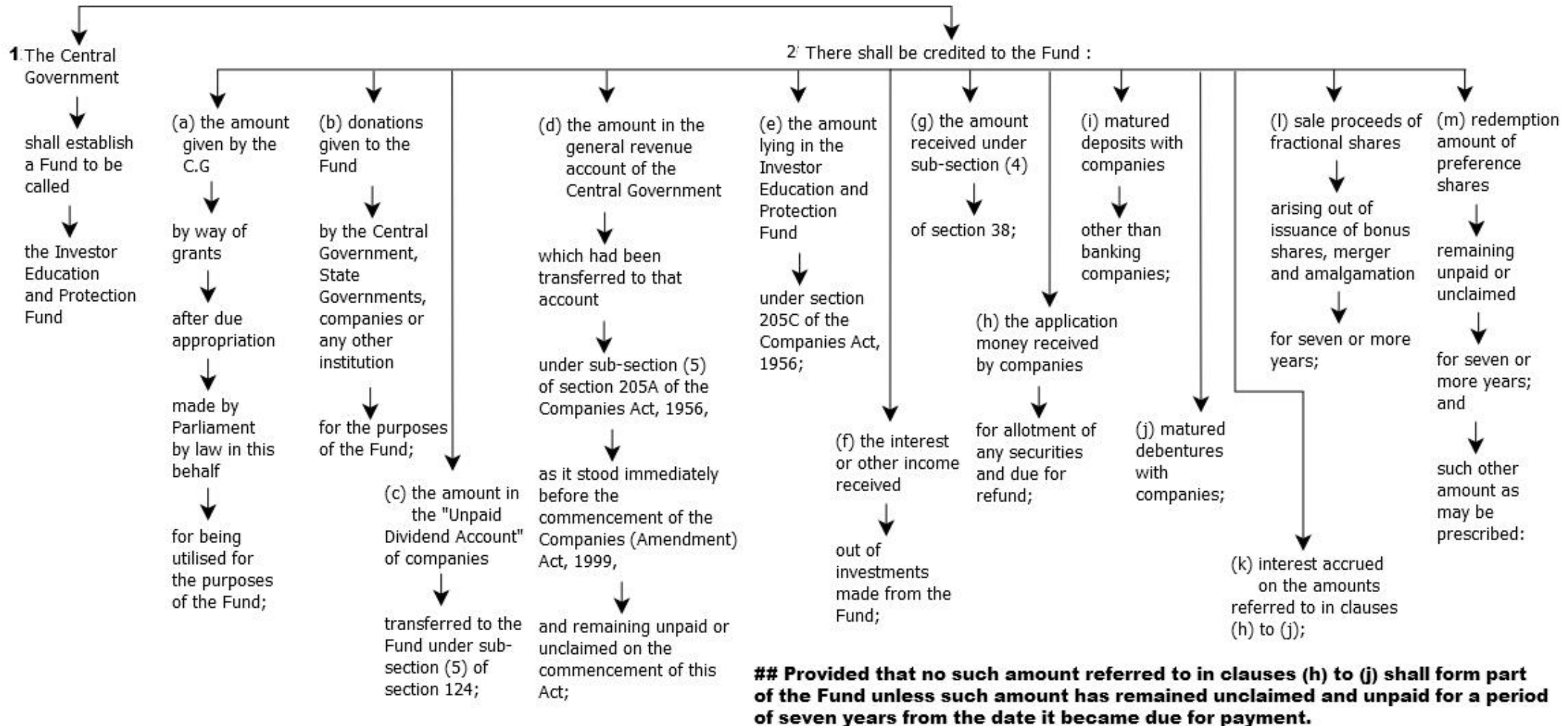
Sec 123 (2nd chart)



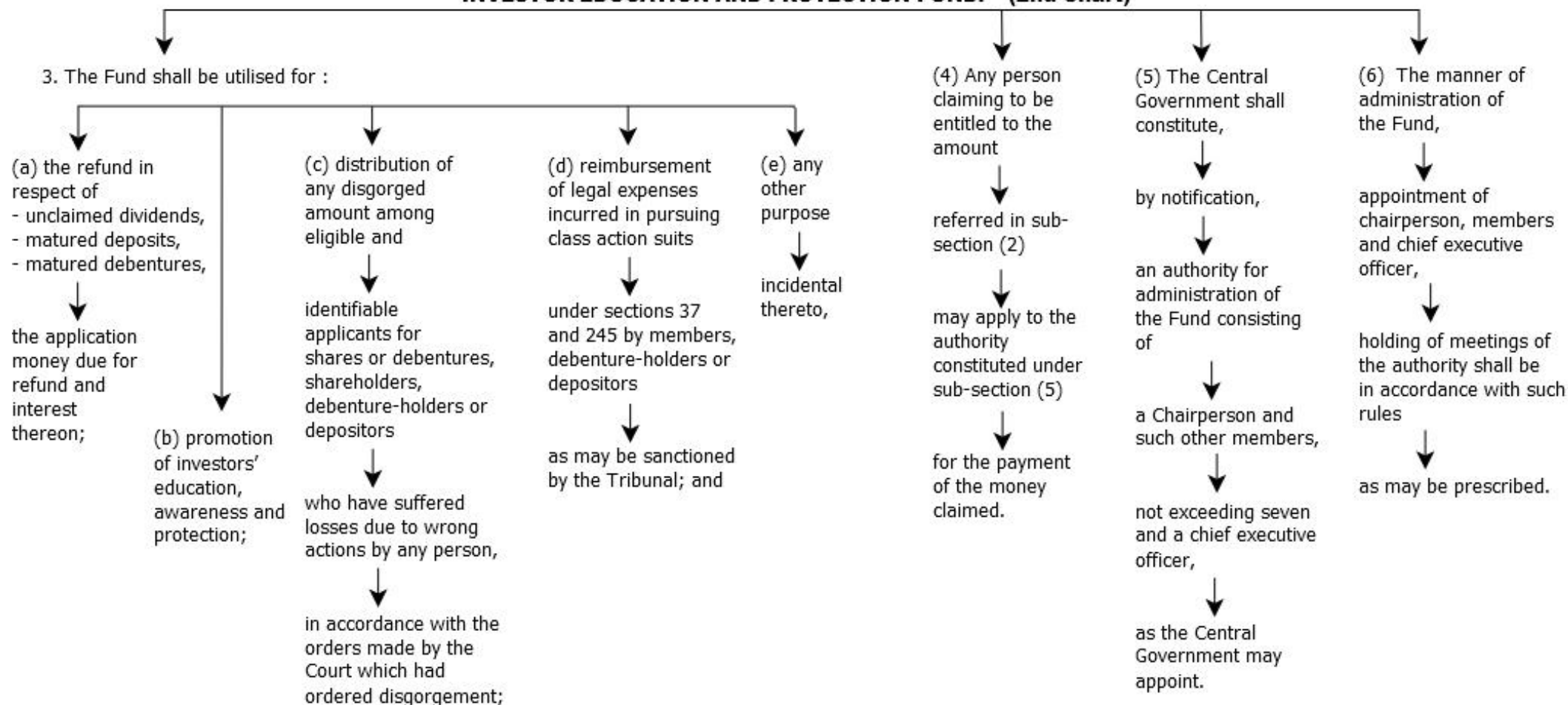
Sec 124 – Unpaid Dividend Account



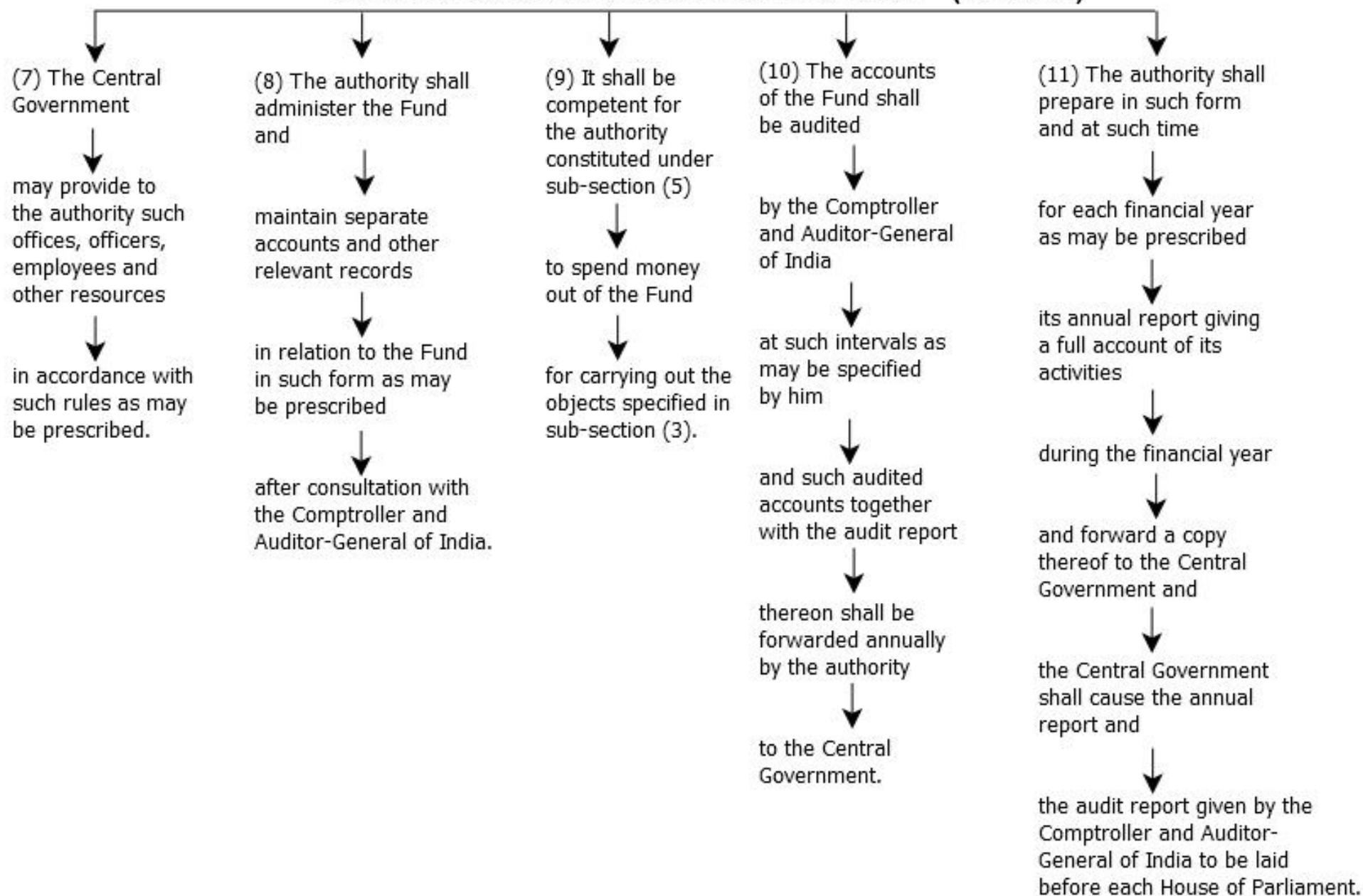
SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND.



SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND. (2nd Chart)



SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND. (3rd Chart)



Sec 125 - These rules may be called the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.

Composition of the Authority.- (I) The Authority shall consist of the following, namely:-

- (a) Chairperson
- (b) six members
- (c) Chief Executive Officer

(2) The Chief Executive Officer shall be the convenor of the Authority.

Chairperson of the Authority.- The Secretary. Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority.

Chief Executive Officer of the Authority.- The Central Government shall appoint a person to be the Chief Executive Officer of the Authority.

Members of the Authority.- The Central Government may appoint the following as the members of the Authority, namely:—

- i. a person not below the rank of Executive Director to be nominated by the Reserve Bank of India as ex-officio member;

- ii. a person not below the rank of Executive Director to be nominated by the Securities and Exchange Board of India as ex-officio member;
- iii. four persons having special knowledge and experience of not less than fifteen years, in finance, management, accountancy or law with one person from each discipline and such person shall have special knowledge, or professional experience, which shall in the opinion of the Central Government shall be useful to the Authority.

The term of office of members of the Authority.- The members of the Authority appointed shall hold office for a period of 3 years and shall be eligible for reappointment;

Provided that no member shall hold office for more than three terms.

Provided further that a member shall be eligible for reappointment after expiration of cooling off period of three years after his term and member also right to relinquish by giving 3 months notice .

The members appointed shall hold office for a period of three years or till attaining the age of 65 years whichever is earlier.

The Central Government shall remove a member from office if he—

- is, or at any time has been, adjudicated as insolvent
- is of unsound mind and stands so declared by a competent court;
- has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

- has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

Provided that no member shall be removed under this sub-rule unless he has been given a reasonable opportunity of being heard in the matter.

The number of officers and employees of the Authority.- The Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day to day functions as are set out in Schedule I to these rules.

Functions of the Authority.-

1. Subject to the provision of the Act, the Authority shall have the duty to administer the Fund for Investor Education and Protection.
2. The general management of the affairs of the Authority shall vest in the Chief Executive Officer, who may exercise powers, which may be authorised by the Authority.
3. The Chief Executive Officer shall function under superintendence and direction of the Chairperson.
4. Without prejudice to the generality of the provisions, the functions of the Authority shall include the following, namely:-
 - The Authority may constitute permanent Committees for overseeing its functions;
 - Each Committee shall comprise two members, Chief Executive Officer and concerned functional head, who shall be the secretary of the Committee. The Committee shall be headed by an ex-officio member;

- The Committee may invite experts with special knowledge and expertise, as and when required to assist it on any specific issue;
- The Authority may outsource, if required, work related to Funds and Shares Management.
- The broad functional divisions of the Authority shall be as per Schedule II to these rules.

Meetings.-

- i. The Authority and its Committees shall meet at such times and places as it may consider necessary.
- ii. The Authority and its Committees shall determine its own procedure for holding of meetings.
- iii. If the Authority or its Committees has to hold a meeting elsewhere than in New Delhi, the approval of the Chairperson of the Authority shall be obtained indicating the reasons thereof.
- iv. The Authority and the Committees shall meet at least once in a quarter and at least four such meetings shall be held in a financial year: Provided that not more than one hundred and twenty days shall intervene between two consecutive meetings.
- v. The meeting of the Authority shall be presided over by the Chairperson.
- vi. If for any reason, the Chairperson is unable to attend a meeting, any other Member chosen by the Members present from amongst themselves at the meeting shall preside over the meeting.
- vii. In case of difference in opinion on any question before the Authority, or any of its Committees, the views of the majority shall be taken as the final decision.

- viii. More than fifty percent appointed Members of the Authority shall constitute the quorum for the transaction of business at a meeting of the Authority
- ix. Two members of a Committee shall constitute the quorum for the transaction of business at a meeting of the Committee.
- x. For journeys performed by a non-official member of the Authority or Committee or a special invitee in connection with the work of the Authority or Committee, the actual expenditure for attending the meeting shall be reimbursed, subject to maximum of such expenditure limit applicable to a Senior Administrative Grade officer of Government of India.

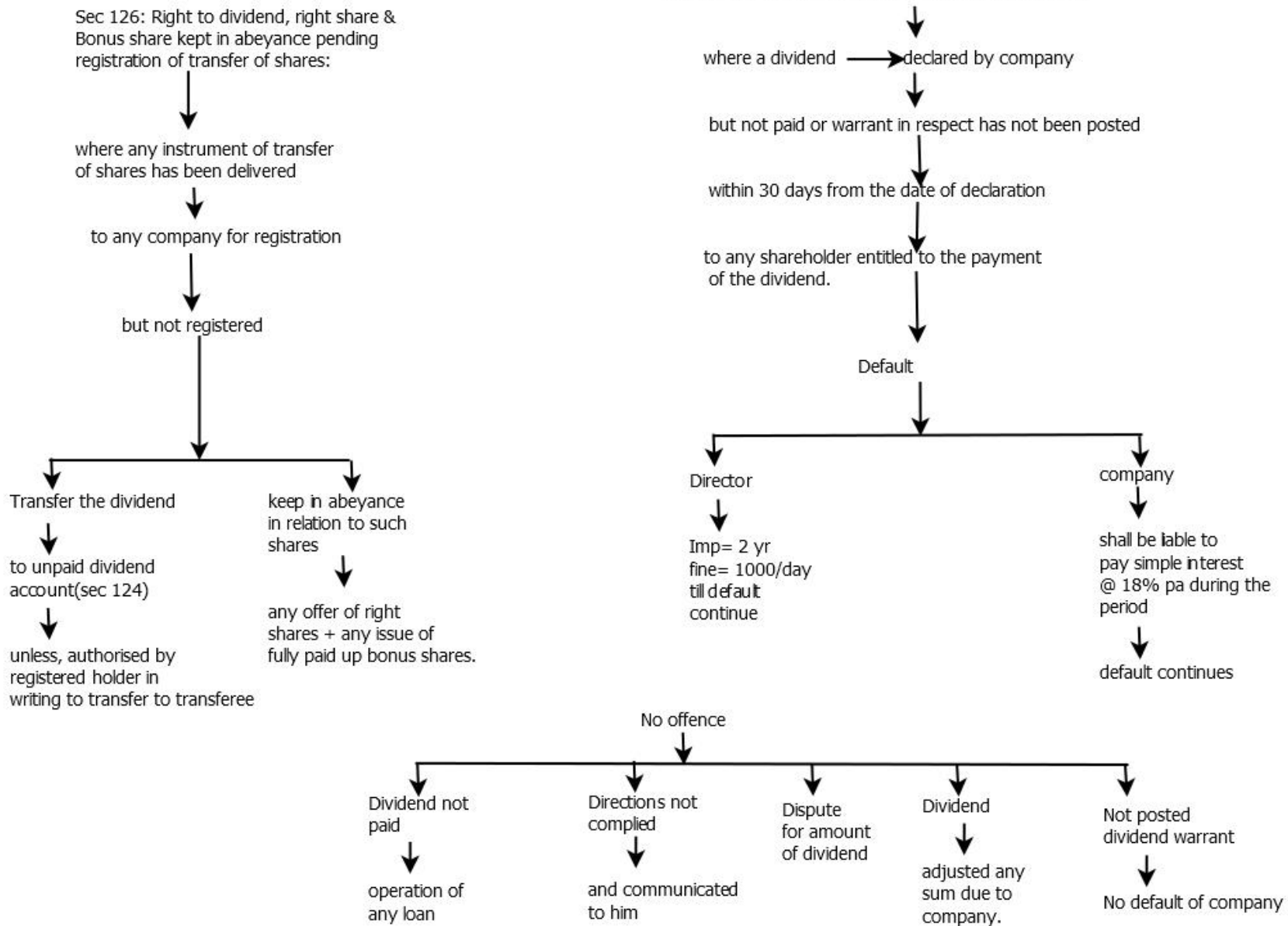
- any laches in the procedure of the Authority and its Committees not affecting the merits of the case.

Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything, which is in good faith done or intended to be done under these rules.

Member not to participate in meetings in certain cases.- A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority and its Committees, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority and its Committees, and the member shall not take any part in any deliberation or decision of the Authority and its Committees with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Authority.- No act or proceeding of the Authority and its Committees shall be invalid merely by reason of-

- any vacancy in, or any defect in the constitution of the Authority and its Committees;
- any defect in the appointment of a person acting as a member of the Authority and its Committees;



Section 127 shall apply to a Nidhi company, subject to the modification that where the dividend payable to a member is Rs 100 or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months; vide Notification ,dated 5th June 2015.

Q.1 Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher than recommended by the board of directors.

Ans. As per Regulation 80 contained in Table F of Schedule I to the Companies Act, 2013, a company in general meeting declare dividends, but no dividend shall exceed the amount recommended by the Board.

Following conclusions are worth noting;

- (a) The power to declare dividend vests in the members, but the members can exercise such power only if the dividend proposed/recommended by the Board.
- (b) The rate of dividend proposed/recommended by the Board may be reduced by the members.
- (c) The rate of dividend proposed/recommended by the Board cannot be increased by the members.
- (d) Any provision in the articles, which authorises the members to declare dividend higher than the rate recommended by Board, is void.

Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than recommended by the Board of directors is not valid.

Conditions for declaration and payment of dividend (Section 123 of the Companies Act, 2013)

Q 2. Advise the BOD of a public limited company in relation to following matters, under the provisions of the Companies Act-

- i. Sources out of which the company can declare dividend.

- ii. Transfer of profits to reserves before declaring dividend, for a particular financial year.

OR

The BOD of N Ltd limited proposes to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the BOD of the said company explaining the relevant Provisions?

Ans .

1. Sources of dividend

The fundamental rule is that dividend is to be declared or paid only out of profits. In other words, the dividend for financial year can be declared or paid only out of the following sources:

- Profits of the company for that financial year (after providing for depreciation)
- Profits of the company for any previous financial year(s) and remaining undistributed (after providing for depreciation)
- Moneys provided by the Central Government or State Government in pursuance of a guarantee given by it.

2. Provision for Depreciation

Depreciation shall be provided in accordance with the provisions of Schedule II.

3. Transfer to reserves

A company may before the declaration of any dividend in any financial year, transfer such percentage of its profits for the financial year as it may consider appropriate to the reserves of the company.

Advanced Practical Problems

Transfer of profits to reserves

Q.3 Rich Ltd. has made a profit of Rs. 200 crore during the financial year 2014-15. A dividend @ 25% was proposed and declared for the financial year 2014-15. However, Rich Ltd. did not transfer any profits to reserves. Is it a contravention of the provisions of the

Companies Act 2013 ? Would your answer be different, if Rich Ltd. had transferred 15% of its profits to reserves?

Ans. As per First Proviso to section 123(1), a company may transfer such percentage of its profits to reserves as it may deem fit. In the present case, the decision of the company not to transfer any profits to reserves is valid since it is the discretion of the company whether to transfer any profits to reserves or not. Irrespective of the rate of dividend, the Companies Act, 2013 does not make it mandatory for the company to transfer any percentage of its profits to reserves.

Had Rich Ltd. transferred 15% of its profits to reserves, it would also have been valid since a company may transfer to reserves such percentage of its profits as it may deem fit.

Liability of the company and of the directors in case of non-payment of dividend within the time limit

Q.4 The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the company, up to 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act. [CA (Final) Nov. 2013]

Ans. As per section 127 of the Companies Act, 2013, the dividend shall be paid within 30 days from the date of declaration of dividend. In case, the dividend warrant is posted by the company within 30 days of declaration of dividend, it is considered to be a sufficient compliance of section 127 of the Companies Act, 2013.

In the present case the company has failed to post the dividend warrant within 30 days of declaration of dividend, and so, this amounts to contravention of section, 127 of the Companies Act, 2013, attracting the penal provisions of section 127 of the Companies Act 2013, stated as under:

- i. Mr. Ranjan has the right to sue the company for recovery of dividend along with interest. However, the company shall be liable to pay Simple interest @ 18% per annum, and not 20% per annum.
- ii. Every director who is knowingly a party to the default, shall be liable for imprisonment upto 2 years and shall also be liable for fine of not less than Rs. 1,000 per day for each day of default.

Payment of dividend to shareholders made after 45 days - Consequences

Q.5 The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its on its paid-up equity share capital which was later on approved by the company's AGM. In the meantime the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result dividend was paid to shareholders after 45 days. Examining the provisions of 'the Companies Act, 2013, state.

- i. Whether the act of directors is in violation of the provisions of the act and also the consequences that shall follow for the above act of directors?
- ii. What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?

[CA (Final) Nov. 2014]

Ans. As per section 127 of the Companies Act, 2013, the dividend shall be paid within 30 days from the date of declaration of

dividend. In case, the dividend warrant is posted by the company within 30 days of declaration of dividend, it is considered to be a sufficient compliance of section 127 of the Companies Act, 2013.

- i. In the present case, XYZ Company Limited has failed to pay the dividend within 30 days of declaration of dividend, and so, this amounts to violation of section 127 of the Companies Act, 2013, attracting the penal provisions of section 127 of the Companies Act, 2013, stated as under :
 - a) XYZ Company Limited is liable to pay simple interest @ 18% per annum
 - b) Every director who is knowingly a party to the default, is liable for imprisonment upto 2 years and is also liable for fine of not less than Rs. 1,000 per day for each day of default.

(ii) As per section 127, there shall not be a contravention of section 127 where dividend is lawfully adjusted by the company against any sum due to it from the shareholder.

Thus, where the amount of dividend is adjusted by the company against sums due to the company from the shareholders, it shall not amount to a violation of section 127.

Practical Problems from CA Examinations

Whether Board is entitled to revoke the interim dividend?

Q.6 Board of Directors of M/s. RPP Ltd. in its meeting held on 29th May, 2014 declared an interim dividend payable on paid up Equity Share Capital of the Company In the Board Meeting scheduled for 10th June, 2014, the Board wants to revoke the said declaration. You are required to State with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so. [CA (Final) June 2009 (Modified)]

Ans. As per section 2(35) of the Companies Act, 2013, dividend includes any interim dividend. Therefore, all the provisions applicable to final dividend shall equally apply to interim dividend.

Thus, interim dividend once declared, like final dividend, is a debt due from the company. Accordingly, once declared, interim

dividend cannot be revoked except under the same circumstances in which the final dividend can be revoked.

The amount of interim dividend is to be compulsorily deposited in a separate bank account, within 5 days of passing the Board resolution declaring the interim dividend [Section 123(4) of the Companies Act, 2013].

All the provisions contained in Section 123 and Section 127 of the Companies Act, 2013 shall, as far as may be. also apply to any interim dividend.

As per section 127 of the Companies Act, 2013, dividend must be paid within 30 days of its declaration. Thus, interim dividend must also be paid within 30 days of its declaration, i.e., within 30 days of date of passing the Board resolution declaring the interim dividend.

In the instant case on declaration of interim dividend by the Board in a Board Meeting held on 29th May, 2014, the Liability of the company to pay the interim dividend has become certain, and the payment of interim dividend must be made within next 30 days, viz. on or before 28th June 2014.

Therefore, revocation of interim dividend in the Board Meeting held on 10th June, 2014 is not possible.

Is it permissible to declare dividend @20% out of reserves or out of profits retained in the P&L Account ?

Q.7 A public company has been declaring dividend at the rate of 20% on equity shares during the last 3 years . The company has not made adequate reserves which can be utilised for maintaining the rate of dividend at 20% Advise the company as to how it should go about it if it wants to declare dividend at the rate of 20% for the year 2014-15 . Would your answer be different if the company utilised only the profits made in the previous year and retained in the profits and loss account for the purpose of payment of dividend at the rate of 20% for the year 2014-2015 ?

Hint - In the present case, the average rate of dividend declared by the company during the preceding 3 financial years is 20%. So, the

company may declare dividend at the rate of 20%, subject to fulfillment of all the conditions contained in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, i.e. the total amount to be drawn from reserves shall not exceed 1/10th of the sum of paid-up share capital and free reserves, and the balance of reserves after such withdrawal shall not fall below 15% of paid up share capital.

The dividend of 20% shall be first proposed by the Board of directors, and then, in the AGM, the members shall have to pass an ordinary resolution declaring the dividend at the rate of 20%.

Payment of dividend by utilising credit balance of Profit and Loss Account

Carried forward profits which have not been transferred to the reserves (i.e. credit balance in the Profit and Loss Account) can be utilised for payment of dividend without any restriction. Such utilisation does not amount to declaration of dividend out of reserves.

Thus, the company may declare dividend @20% for the year 2014-2015 out of the accumulated profits retained in the Profit and Loss Account without any restriction, and without fulfilling any condition contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

Is it permissible to declare dividend @20% out of reserves if the average dividend in past 3 years was 10%?

Q.8 The agenda for the meeting of the Board of Directors of M/s. Brilliant Enterprises Ltd. held on 20-6-2015 for adopting the annual accounts for the year ended 31- 03-2015 included an item relating to declaration of dividend. At the meeting it became apparent that the profits made during the year ended 31.03-2015 were inadequate to declare dividend. It is intended by the Board that

the dividend be declared at the rate of 20%, whereas the dividend was declared lay the company @ 10% in each of the past 3 financial years. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares . [CA (Final) May 2011 (Modified)]

Hint - In the present case. the average rate of dividend declared by the company during the preceding 3 financial years is 10%. So, the company cannot declare dividend at the rate of 20% as per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014. Accordingly,-the maximum dividend that can be declared is 10%.

The dividend of 10% shall be first proposed by the Board of directors, and then, in the AGM, the members shall have to pass an ordinary resolution declaring the dividend at the rate of 10% .

Is it permissible to declare dividend @15% out of free reserves?

Q.9 X & Co. Ltd. made a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2015 and as a result the company was not in a position to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15%. on the equity share payable out of the free reserves. The paid up share capital of the company and its free reserves as on 31st March. 2015 (as per the audited Balance Sheet) are Rs 2 crore & 10 crore respectively. The average dividend declared by the company in the last three years is 25%. Examine the validity of declaration of Dividend. [CA (Final) May 2010 (Modified)]

Ans. The present case is discussed as under:

- a) The average rate of dividend declared by the company during the preceding 3 F.Y is 25% . so , for the current FY , the rate of dividend shall not exceed 25% .

- b) The maximum amount that may be drawn from the reserves shall not exceed 10% of (Rs. 2 crore + Rs 10 crore) i.e Rs 1.2 crore
- c) Out of the amount drawn from the reserves (Rs. 1.2 crore), loss for the current financial year (Rs. 0.20 crore) shall first be set off .
- d) Available balance in reserve = Rs 10 crore – 1.2 = Rs 8.8 crore

Hence , company can declare dividend @ 25%

Q.10 WL Limited is facing loss in business during the current financial year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so?

Declaration of Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, such interim dividend

shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $8+10+12=30/3=10\%$].

Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.