

Limited Liability Partnership (LLP) Act, 2008

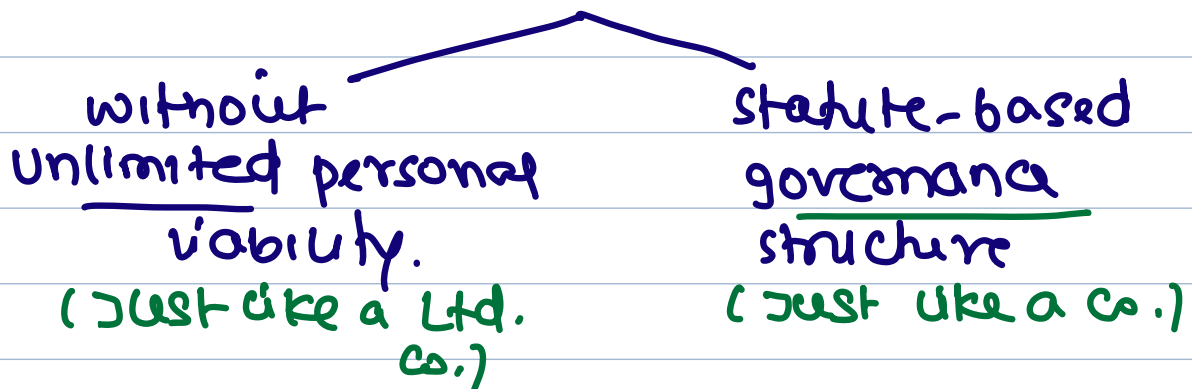
Introduction:

- LLP Act was passed by Parliament on 12/12/2008 and received President's Assent on 09/01/09
- It contains 81 sections (sec 81 got deleted recently). and 4 schedules

		LLP Agreement	
I	- Mutual Rights & Duties in absence of "		
II	- conversion from Firm to LLP		
III	- "	" Pvt. Co	" "
IV	- "	" Unlisted Public Co.	" "

- Need for this Act:

To provide an alternative to traditional Partnership



• Benefits of LLP:

Liability

Firm → limited to extent of Assets.

Partner → Limited to extent of agreed contribution.

Allows flexibility of organizing internal structure
(like removal, addition, etc. of partners)

Sec 2: Definition:

1. Address: → Partners —
—> indiv. → usual Residential address
—> BC → Registered address.

##

2. Body corporate:

means



company
u/s 2(20)

includes



→ LLP regt. under this Act

→ LLP incorp. o/s India

→ Co. incorp. o/s India

Excludes



① Corporation sole
(samay ko → OPC)

② Co-op society

③ BC notified by CA.

③ Financial Year : 01st April → 31st March
next year.

if LLP is incorporated → FY to end on 31st March
AFTER 30/09 of next following
year.

15th Aug 2023 → FY end
31. 03. 2024

15th Jan 2024 → 31.03. 2025.

15th Dec 2023 → 31.03. 2025

14th Nov 2024 → 31/03/2026
incorp

④ Foreign LLP : → LLP which is formed, incorp.
or regd → o/s India
→ Having POB in India.

#

⑤ Small LP: means a LP

- (i) Having contribution $\leq$ 25 lakhs or higher amt. as may be prescribed (not exceed ₹ 5 crore)
- AND**
- (ii) Turnover $\rightarrow$ As per "Statement of Accounts & solvency"
- $\downarrow$
- $\leq$ 40 lakhs or such higher amt as may be prescribed (not exceed 50 crore).

(or)

(iii) meets such other T&C as may be prescribed.

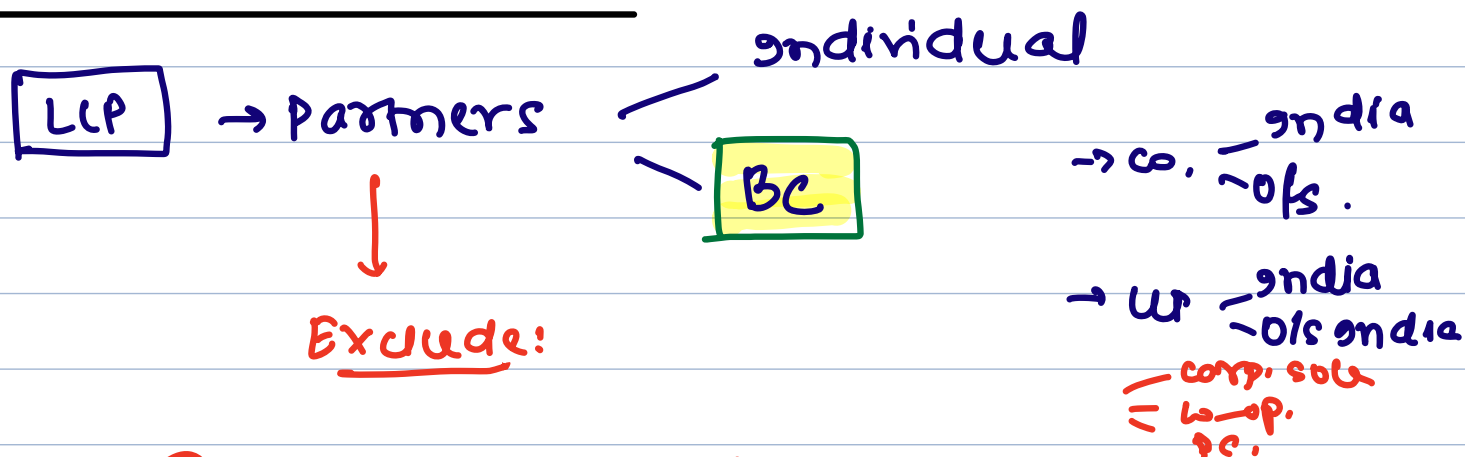
• (i) & (ii) or (iii)

Section 4: Save as otherwise provided,

IPA shall not apply to LPs



Section 5: Partners:



① Unsound mind → Declared by competent court.

② Undischarged insolvent

③ Applied to be adjudged as insolvent + such application is pending.

Note: HUF is not a BC and hence cannot be a partner in LLP.

② Foreign LLP can become partner in Indian LLP.

Section 6: Min. no. of Partners

Minimum → 2 partners

Max → No limit

Provided that: If no. of partners is reduced below 2 and LLP carries on business for > 6m → Such only partner shall be personally liable for obligations incurred by LLP after 6m.

Section 7: Designated Partners

① At least 2 Designated Partners — and v

↓
At least 1 DP → RESIDENT

↓
stay in
India
during FY
(current) ≥ 120 days

② Incorporation documents

↳ specify → who shall become DP?

↓
All partners → DP

+ LLP agreement

③ DP $\xrightarrow{\text{Prior written consent}}$ LLP $\xrightarrow{\text{30 days WC} \rightarrow \text{forward}}$ RoC

↓
DPIN → Designated Partner Identification No.

failure: LLP and each DP:
 $₹5000 + ₹100/d < \begin{matrix} \text{LLP} & ₹50k \\ \text{DP} & ₹25k \end{matrix}$

note: If you have DIN, DPIN is not required &

Vice-versa

Section 8: Liabilities of DP:

Unless otherwise provided, DP shall be:

Responsible for doing
all the acts of LP
including filing of
docs. returns, etc.

Liable to all
penalties imposed
on LP for
any contravention.

Section 9: Change in DP in case of vacancy (casual vacancy)

LP may appoint DP within 30 days of
vacancy due to any reason.

If LP does not appoint & there are no DP
→ Each partner shall be deemed DP

Section 10: Punishment u/s 7 and 9

LLP contravenees → 2 DP
or
1 Resident DP

~~Designated~~
LLP and each Partner

₹10,000
+

₹100/day

↓
max → LLP → 1 L

→ Partner → 50k

P. Firm

LLP

Co.

Invest?

Partner

Partner

— indiv —
— bc —

Member

Run?

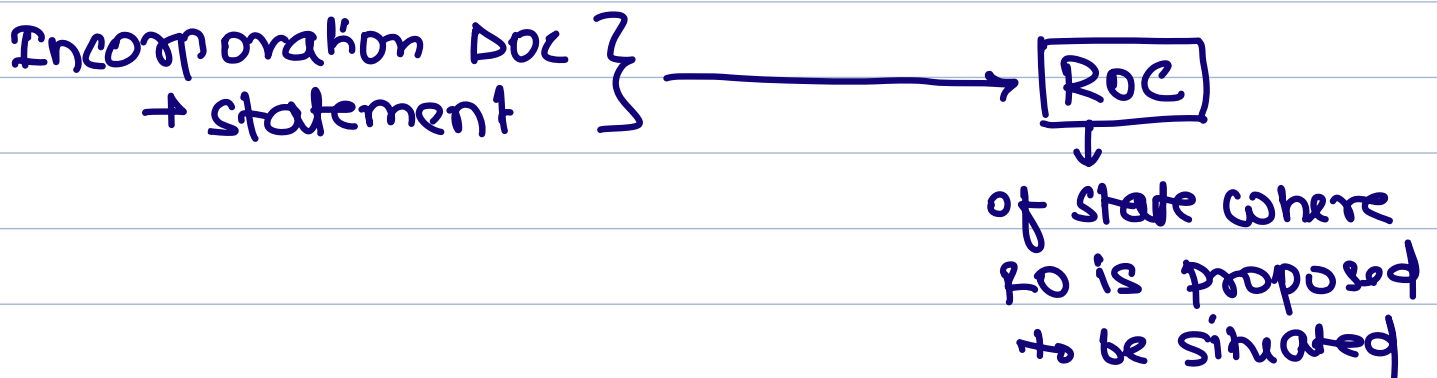
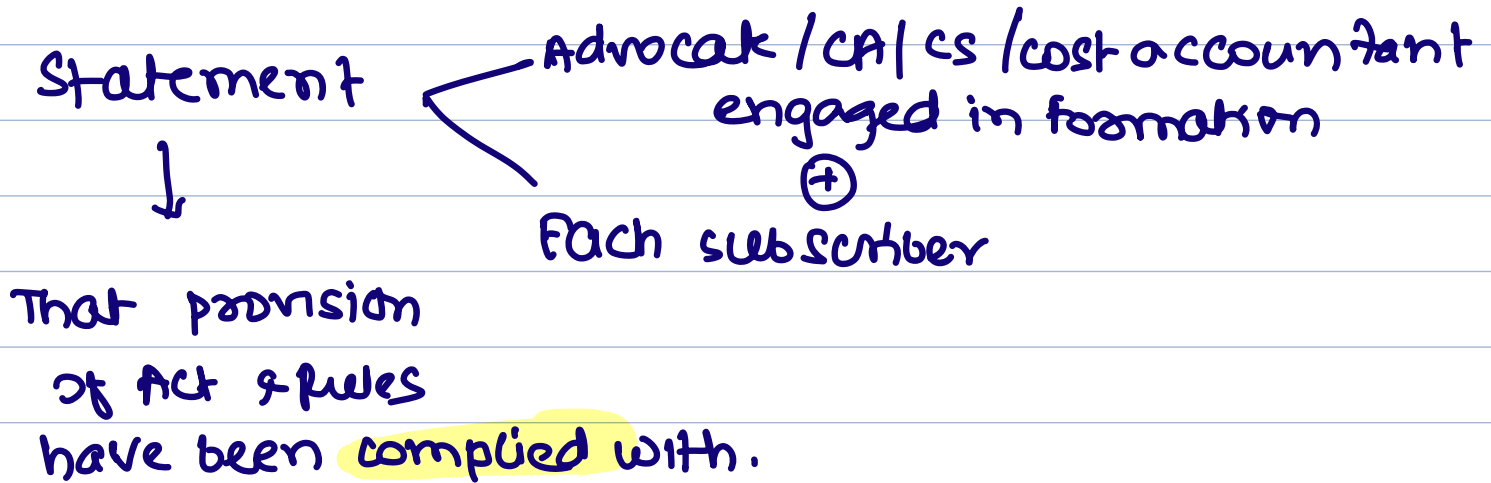
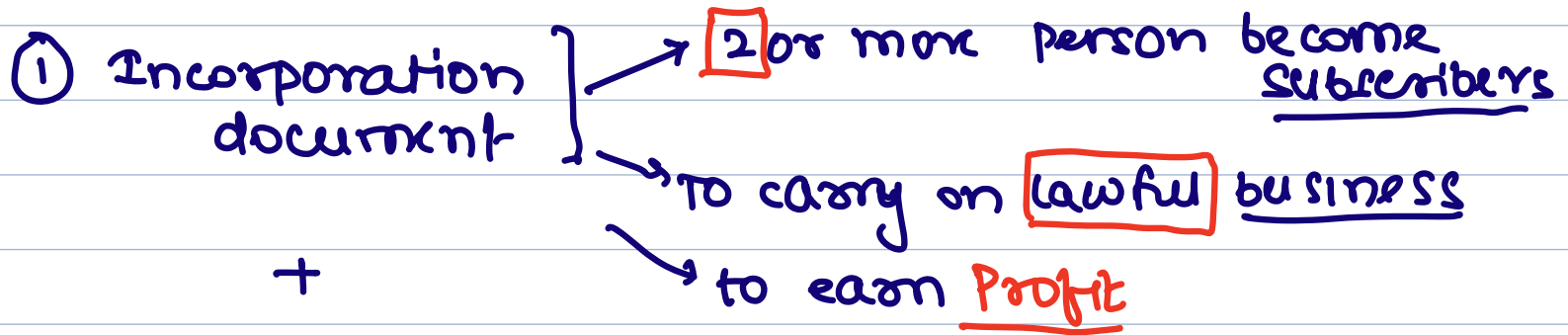
Partner
(working)

Designated
Partner (indiv)

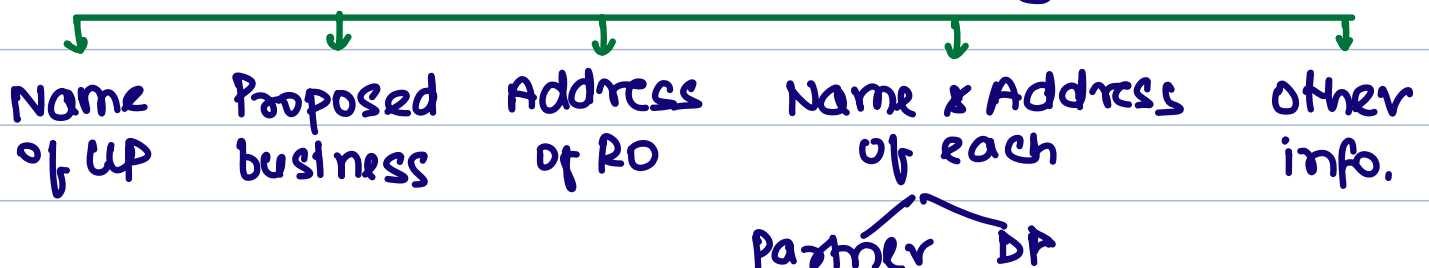
Director

←

Section 11: Incorporation document



② Incorp. doc. to include the following:



③ If a person makes a **Statement**

knowing
it to be
FALSE

OR

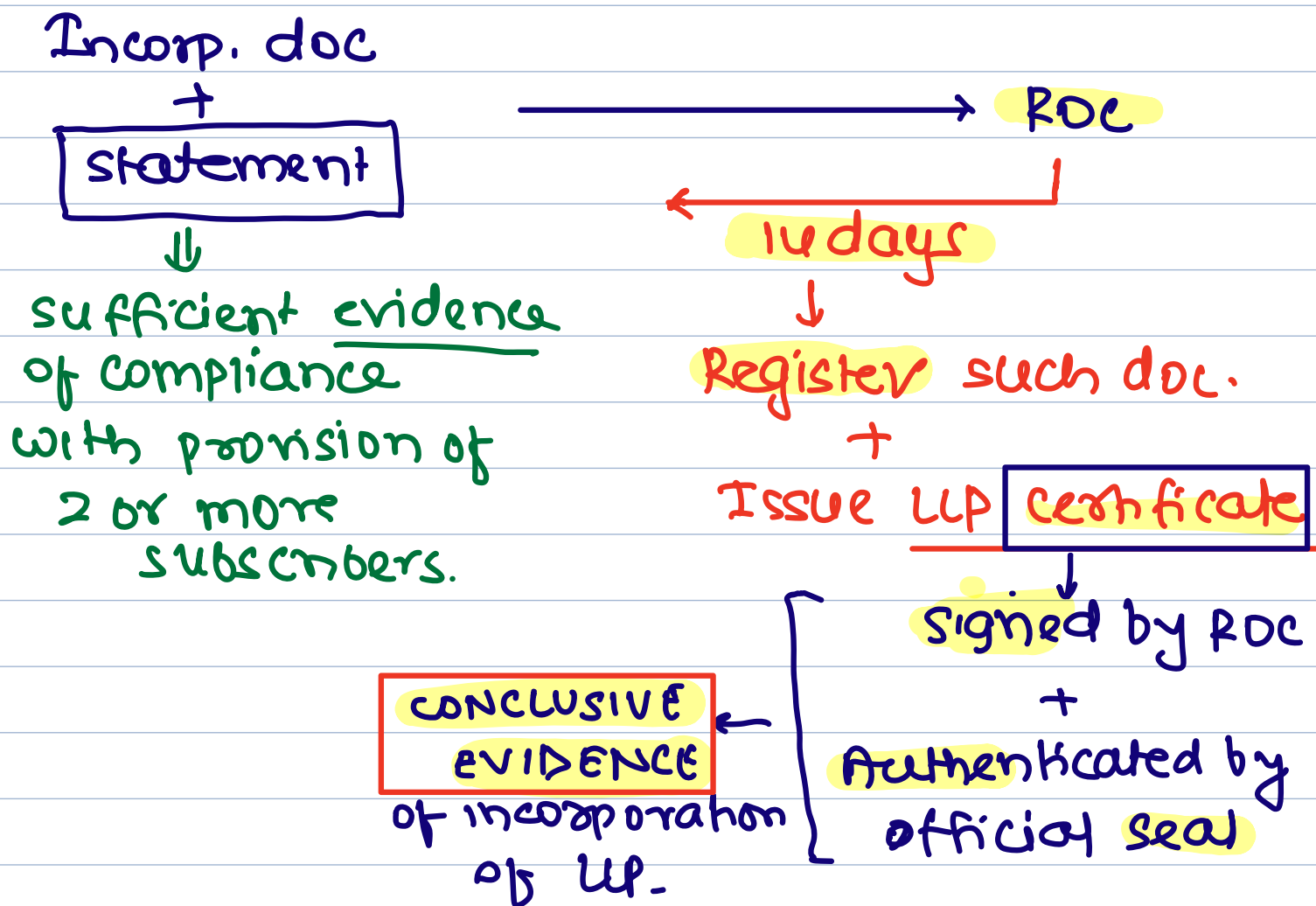
Does not believe
it to be TRUE

Imprisonment → 2 years

AND

Fine → 10k to 5 lakh

Section 12: Incorp. by Registration



Section 13: RO and changes therein

① Every LP shall have a **RO** to which all notices & communication — Addressed
— served.

② Manner of service of notice to LP:

- LLP
- Partner
- DP

} — serve **at RO**

— sending it by post
or
— Registered post
or
— Any other prescribed manner.

③ change in RO → file notice to ROC in prescribed manner

④ contravention: LLP and its partner (**not DP**)



₹ 500/day upto max
₹ 50k

Section 14: Effect of registration

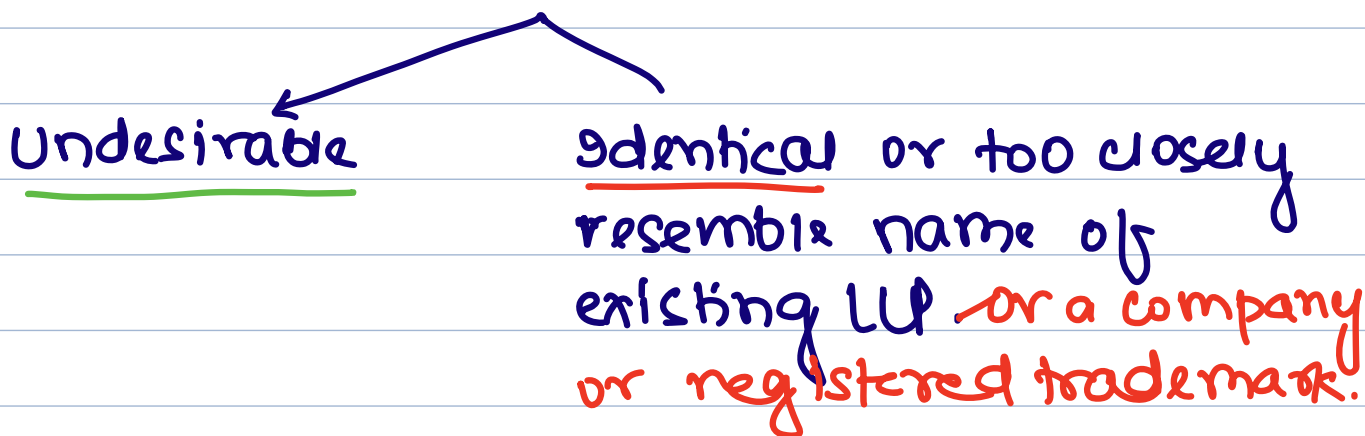
• sue/be sued • Hold properties • may have common seal.

Section 15: Name:

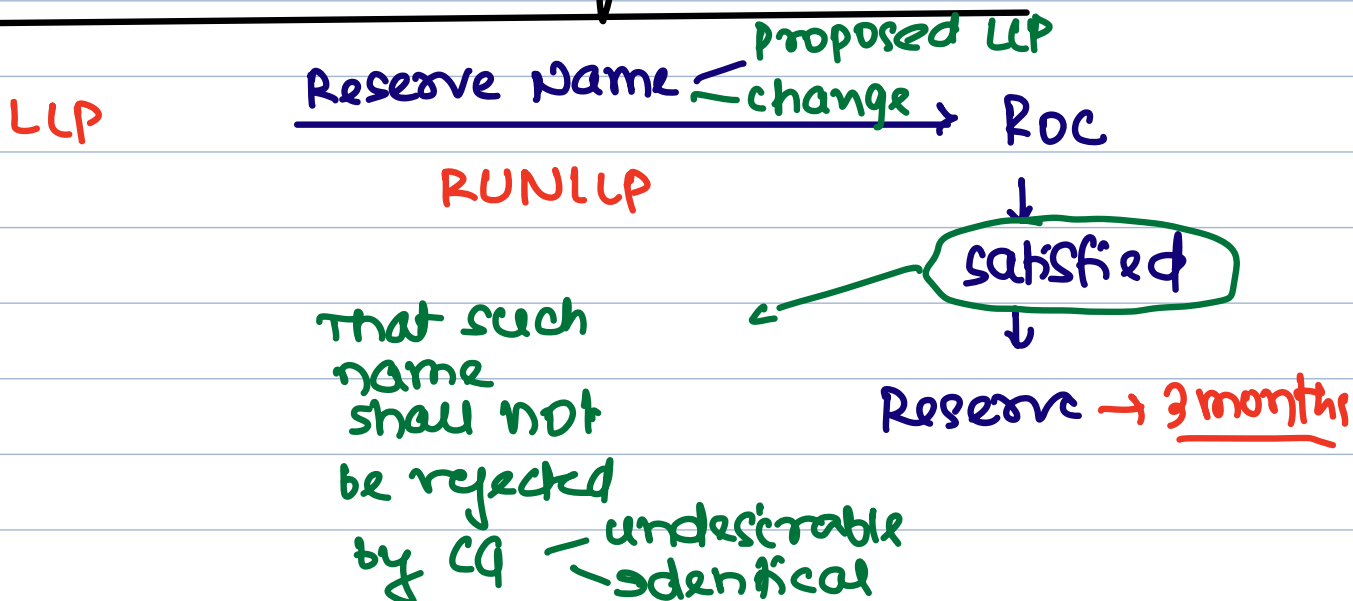
- ① suffix → LLP
→ Limited Liability Partnership.

E.g. ABC LLP or ABC Limited Liability Partnership.

- ② No LLP shall be registered with a name, which in the opinion of Cg:



Section 16: Reservation of name



Section 17: Rectification of Name

[CG cannot act under this section - CUO make]

→ Call se.
If through inadvertance or otherwise



UP is registered with a name

— identical
or
— too closely resembles



- Name of other UP or company
- (or)
- Registered trade mark



On application by UP or co.
└─ Proprietor → CG

Application within 3 years of
- incorporation
or
- Registration
or
- Name change

Direct name change → 3m



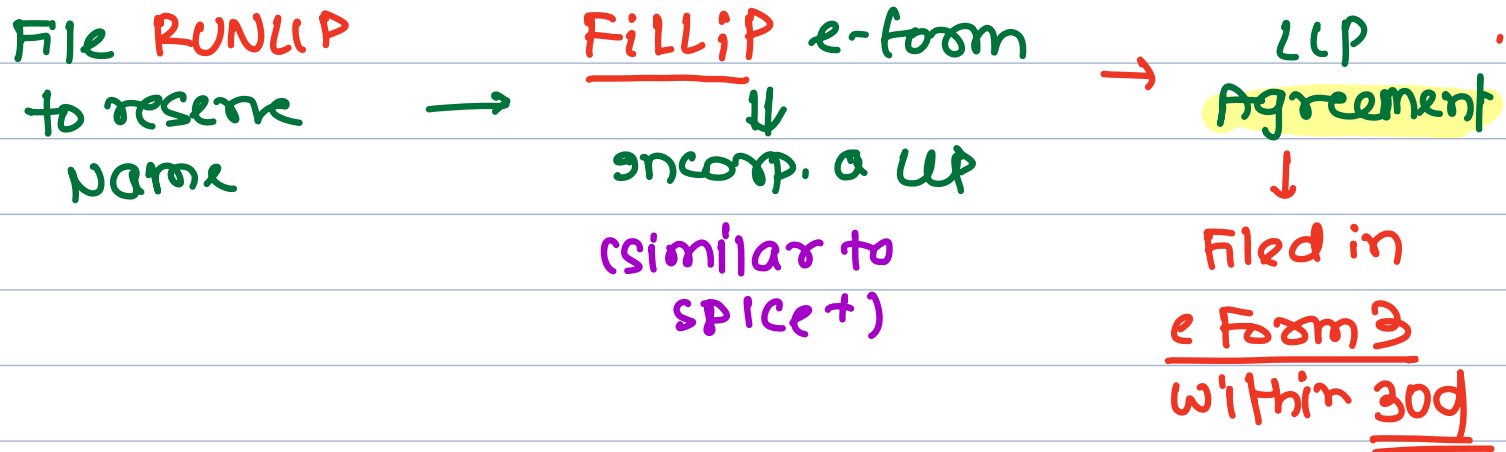
15d → ROC
└─ 30 days
Col

* Default in complying:

CG → Allot new name → ROC
↓
fresh col.

↓
LP can subsequently
change this name

Summary of steps to incorp. LP:



PARTNERS AND THEIR RELATION

Section 22: Eligibility to be Partner

Incorp. doc. → subscribers → Partners

LLP Agreement → Partners

Section 23: Relationship of partners

① Mutual R & D of $\left\{ \begin{array}{l} \text{partners of LP} \\ \text{LP and its partners} \end{array} \right\}$ Governed by LLP Agreement

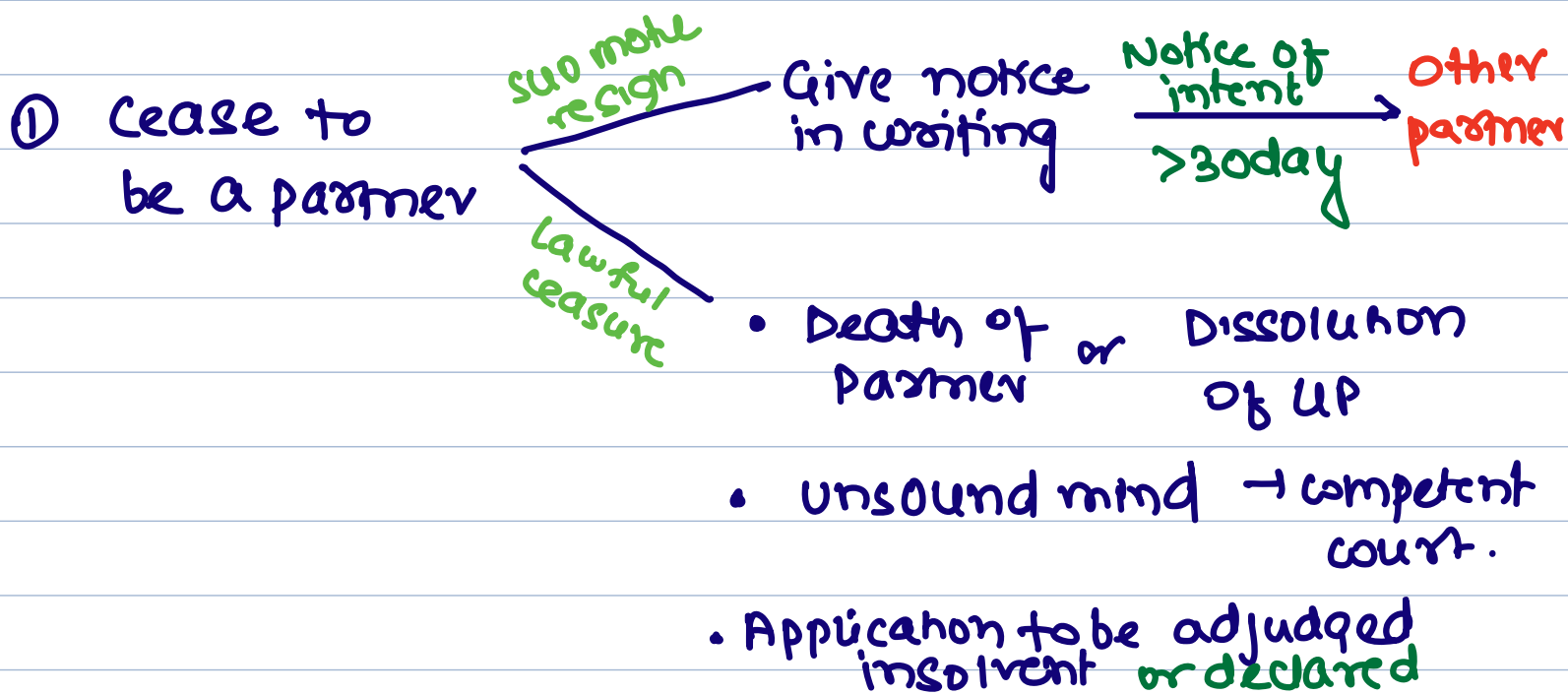
Note: It means, in a way, LLP Agreement becomes mandatory.

② Changes in LP Agreement $\xrightarrow{(30 \text{ days})}$ File with ROC in prescribed manner + fees

③ Agreement in writing before incorporation of LP between subscribers
↓
It shall be valid only if **RATIFIED** by All Partners upon incorporation.

④ Absence of LP Agreement
→ schedule 1 to determine Mutual P & D.

Section 24: Cessation of Partnership interest



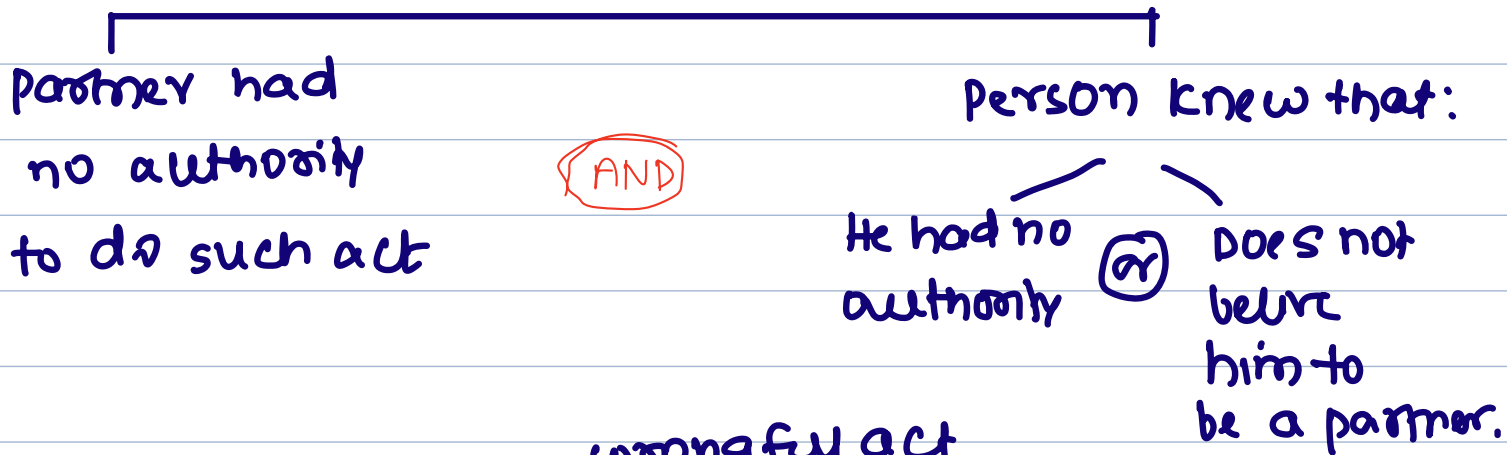
Extent & Limitation of Liability

Sec 26:

Partners are agents of LP but not of other partners.

Sec 27: Extent of Liab. of LP

1. LP is NOT BOUND by the act of partner if:



2. LP is liable for — wrongful act
or
omission
↓

By any partner in OCOB:

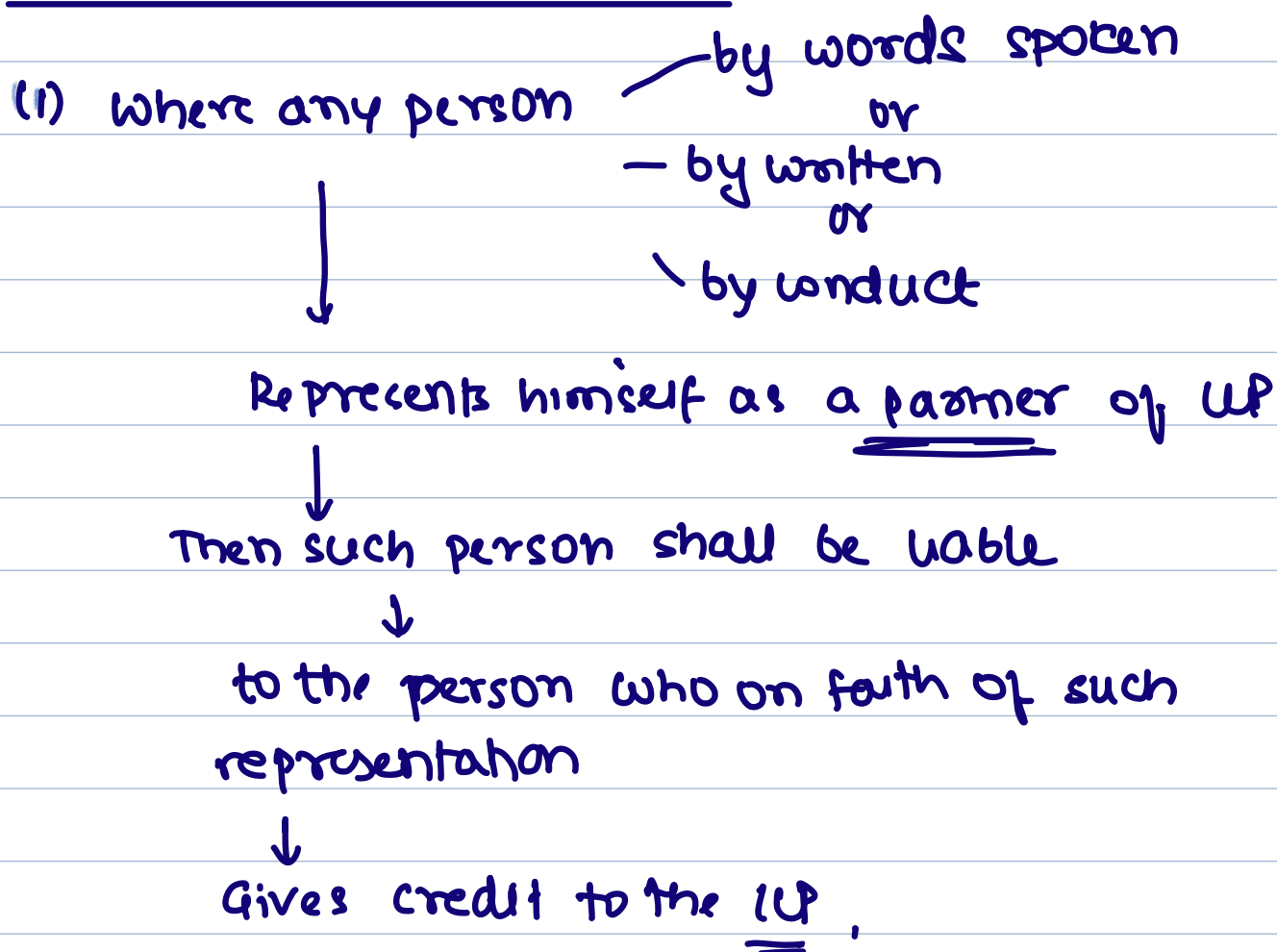
3. obligation of LP = solely obligation of LP

4. liabilities of LP = met out of properties of LP.

Section 28: Extent of Liab. of partner:

1. Partner is not liable solely by reason of being a partner.
2. However, he shall be personally liable for his own wrongful act and omission
↓
i.e. not Liab. for act of other partners.

Section 29: Holding out:



However, UP shall be liable to the extent of credit received.

(2) Where after a partner's death, business of LLP is continued with the same name, it shall not make the LR/his estate liable for act of LP after his death.

↓
Jardod.

Section 30: Unlimited Liability in case of Fraud

(1) Where an act is carried out by

- LLP
- Any partner

 with an intent to defraud

- creditor
- Any person

 liability of

- LLP
- Responsible partner

 } unlimited.

(2) Punishment: (fraud)

Jail upto 5 years AND Fine

- 50k.
- to
- 5 lakh.

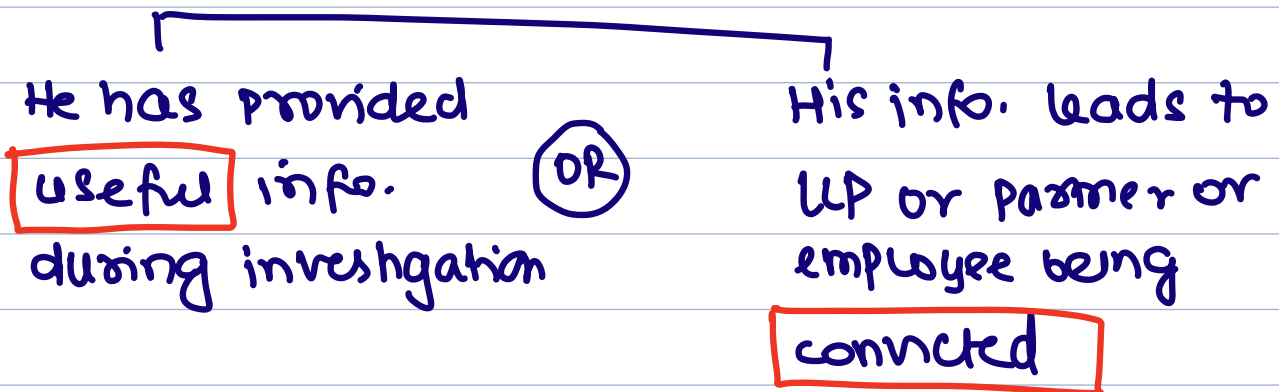
(3) Moreover, such LP/Partners of its employee shall be liable to compensate to any person who suffered losses.

Note: LLP shall not be liable if partner/employee acted w/o knowledge of LLP.

Section 31: Whistle Blowing

1. court/tribunal may - reduce
- waive } penalty against
any partner/
employee

If it is satisfied that:



2. NO partner of employer may be:

Discharged Demoted suspended
Threatened Harassed

merely because he provided info. to court/Trib.

CONTRIBUTION

32: Form of contribution:

- tangible (movable / immovable)
- intangible

monetary value of contribution → Disclosed in BoA.

33: obligation to contribute:

- obligation shall be as per LP agreement
- creditor may enforce partners to contribute as per original obligation

↓

if he extends credit to LP relying on such LP agreement.

~~GMP~~ FINANCIAL DISCLOSURE

34: maintenance of BOA & Audit:

- cash or Accrual basis
- Double entry system
- kept at RO
- Audit as prescribed.

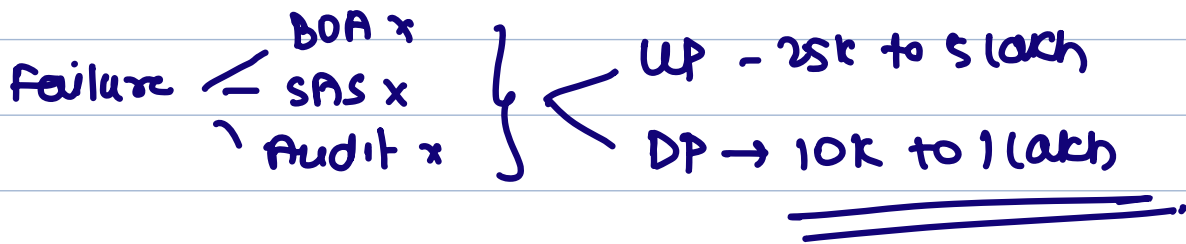
Statement of Account & Solvency: (SAS)

LP $\xrightarrow{\text{End of FY - 6m}}$ ROC

signed = ALL DPs

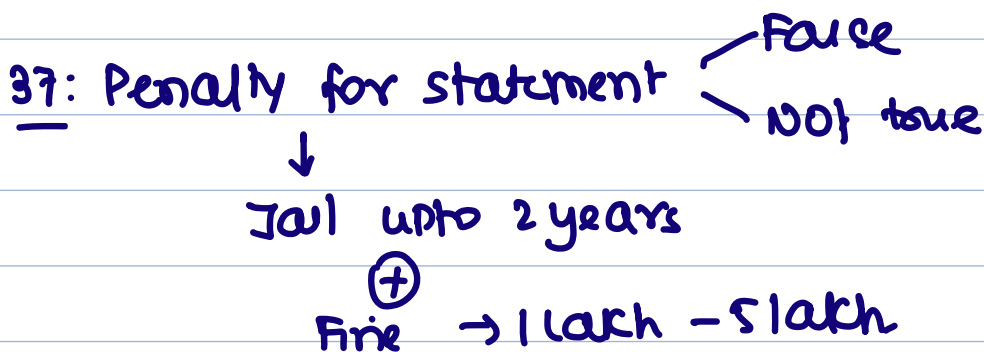
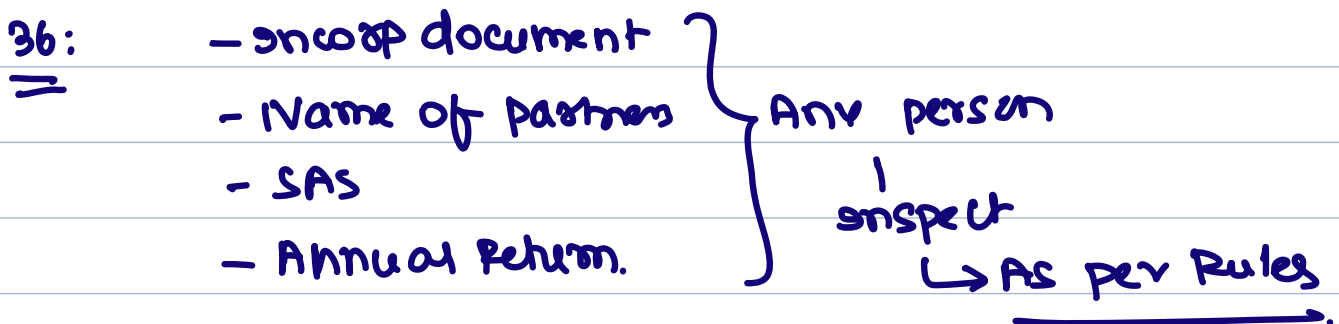
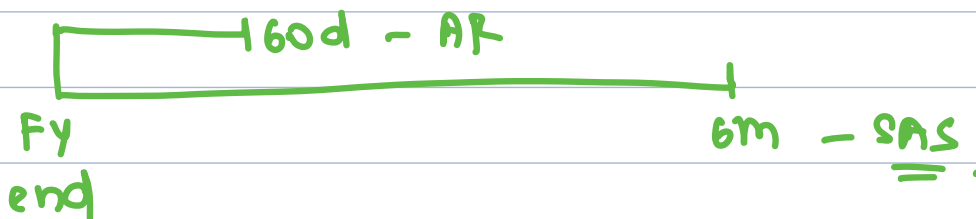
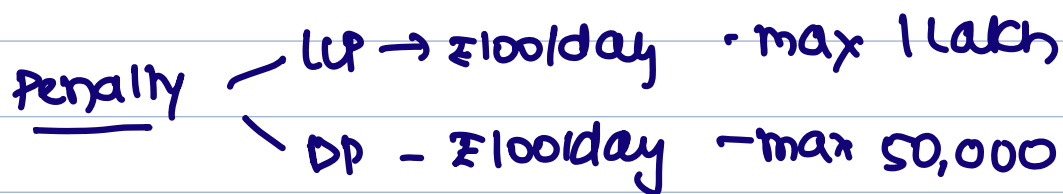
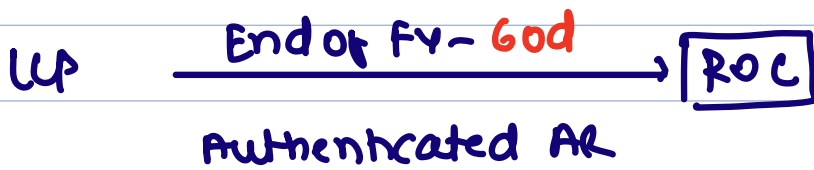
Penalty for non-compliance:

Not filing with ROC $\left\{ \begin{array}{l} \text{LP} \rightarrow \text{₹100/day} \rightarrow \text{max 1 lakh} \\ \text{DP} \rightarrow \text{₹100/day} \rightarrow \text{max 50,000} \end{array} \right.$

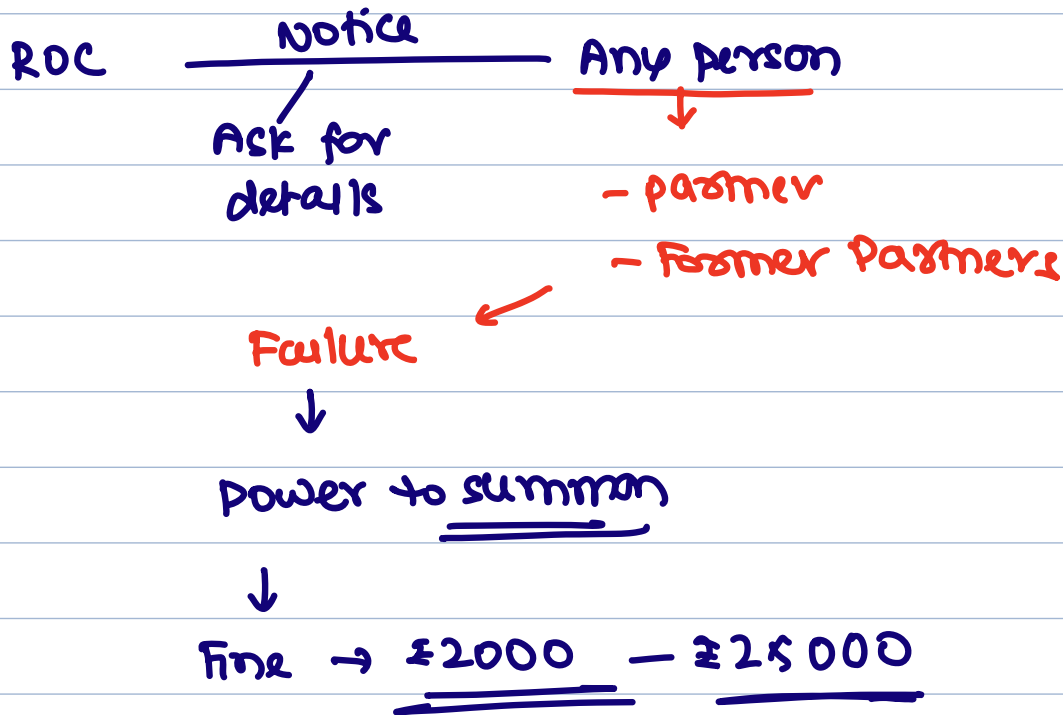


34A: Accounting & Auditing Standards
 → **CQ + NFA**

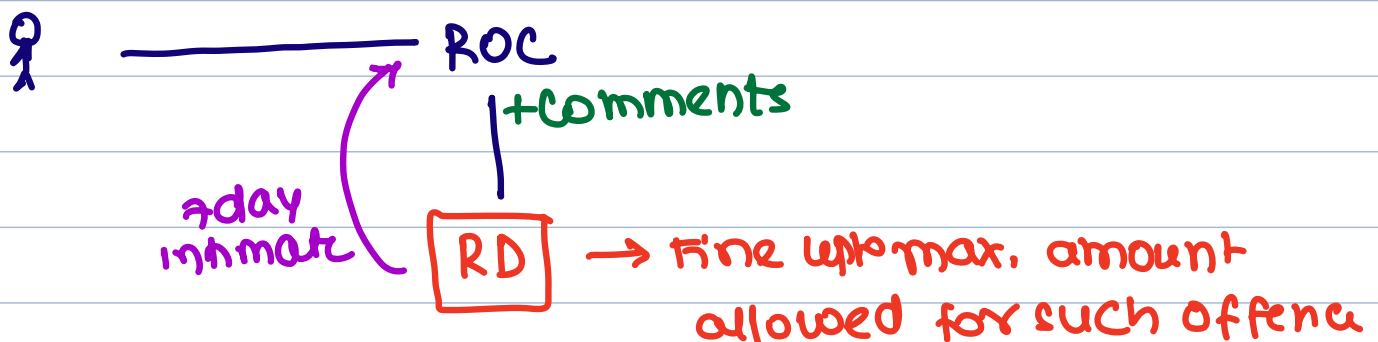
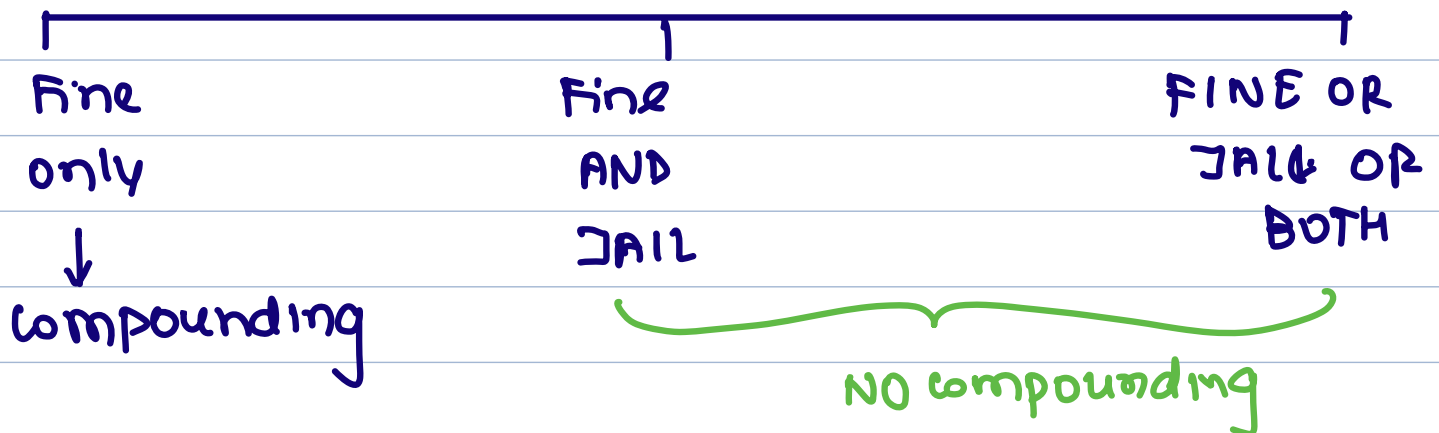
35 Annual Return:



38: Power of Registrar to obtain information:



39: Compounding of offence:



Prosecution
is not initiate



NO prosecution
shall be
initiated

is initiated



ROC

— Court
(inform)



Discharge

from compounding

3 year

similar
offence

First
offence



Compound

second / subsequent



cannot be
* compound *

After 3y



First
offence

During compounding:

RD

enquiry
Doc.

UP



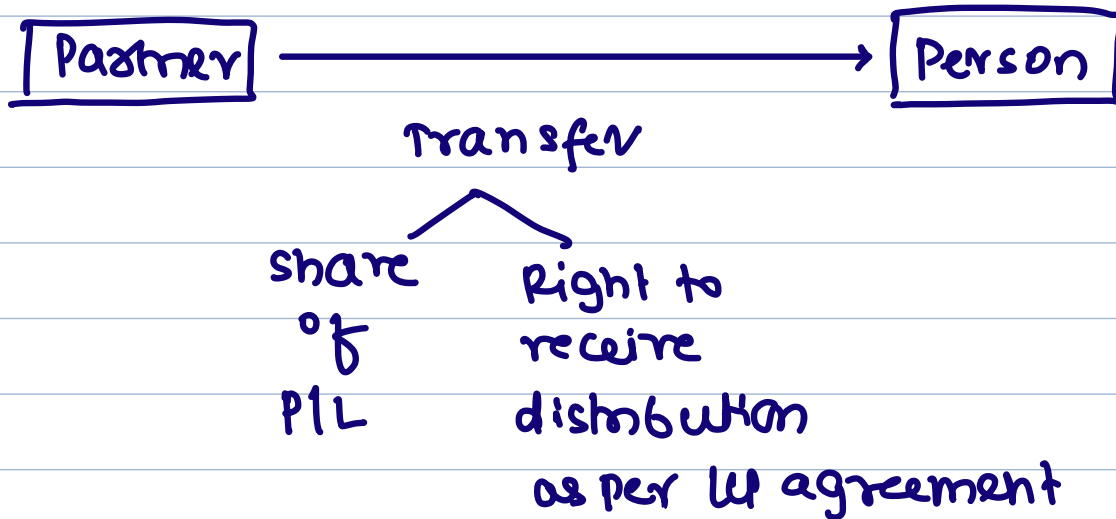
Failure



Penalty = max fine x Twice

ASSIGNMENT & TRF OF PARTNERSHIP INTEREST

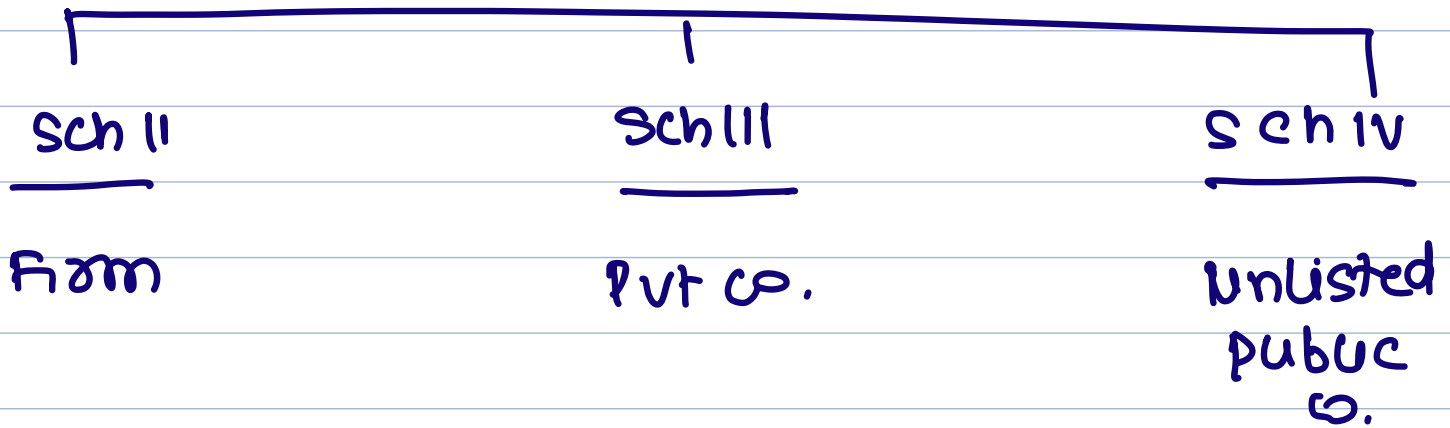
Section 42: Partner's transferable Interest



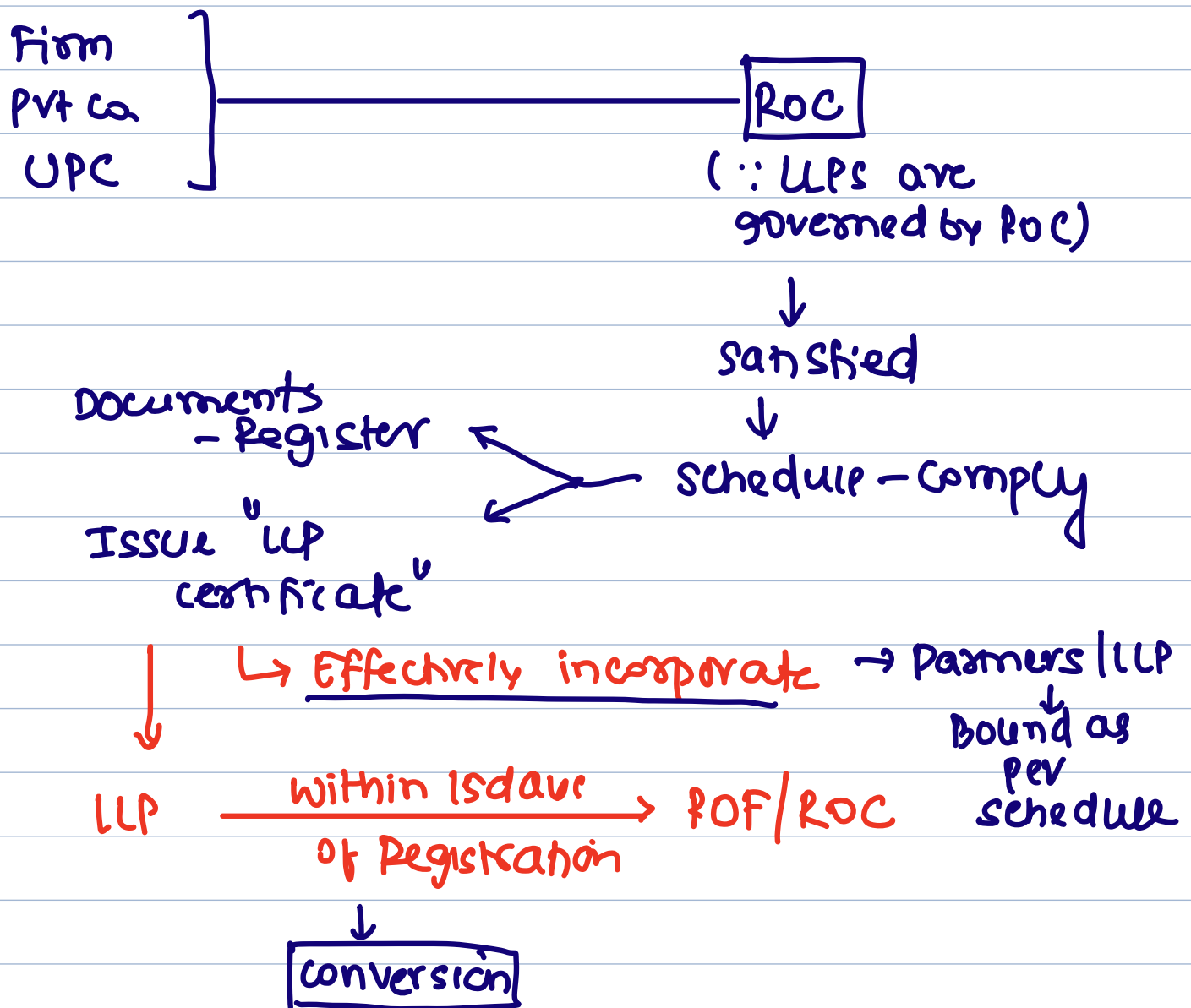
Transfer does not, by itself:

- cause disassociation of partner or dissolution of UP
- Entitle transferee
 - Participate in mgt. or
 - Access info. of UP transaction.

CONVERSION OF LLP



58: Registration and effect of conversion:



Effect of registration:

The following shall be the effect:

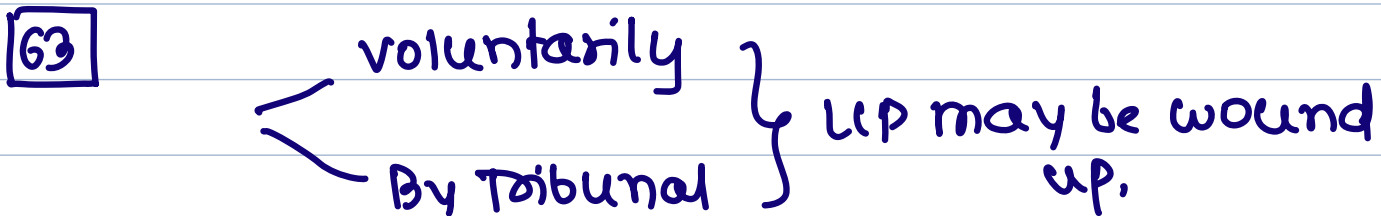
- There shall be LLP by name specified in certificate.
- All assets, interest, liabilities → Transferred to LLP.
- Firm/co. → Deemed dissolved,

59: foreign LLP → CG may prescribe rules.

COMPROMISE / ARRANGEMENT OF LLP

Refer scribble

WINDING UP & DISSOLUTION



4 matters:

Circumstance where tribunal may order WUP:

1. If LP decides to be wound up.
2. No. of partners $\downarrow$ 2 for $> 6m$
3. LP has acted against the:
 - sovereignty & integrity of India
 - security of state
 - public order
4. Default in filing $\left[\begin{matrix} \text{SAS} \\ \text{AND} \\ \text{AR} \end{matrix} \right]$ 5 consecutive years.
5. Tribunal - opinion - Just & equitable

MISCELLANEOUS

66 Business transaction:

Partner $\rightarrow$ lend money
 $\rightarrow$ transaction business } LP

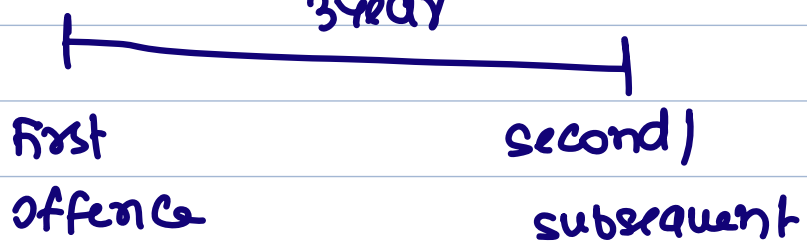
69 Doc — File — Time Limit — x
 $\downarrow$
Additional fees

~~amp.~~

70

Enhanced punishment

within
3 years



↓
Jail same
Fine Twice.

Read difference → LLP & from } from TUS
 → LLP & co.