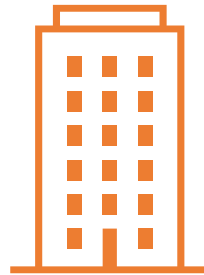


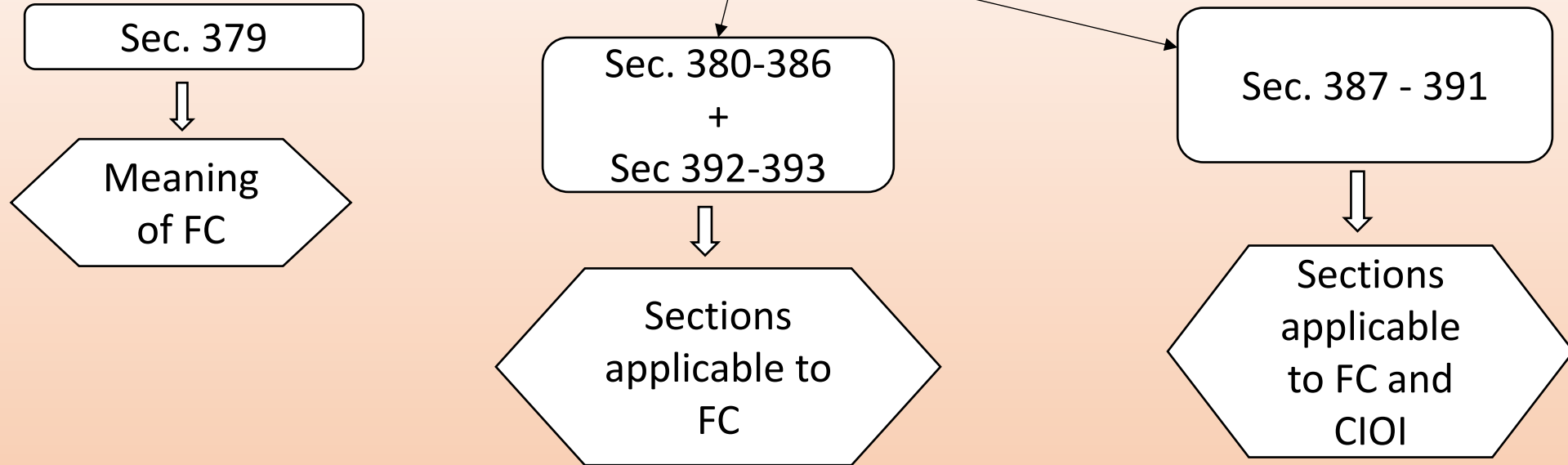
# Foreign Companies

(Section 379-393 CA,2013)



Presented by Shubhangi V

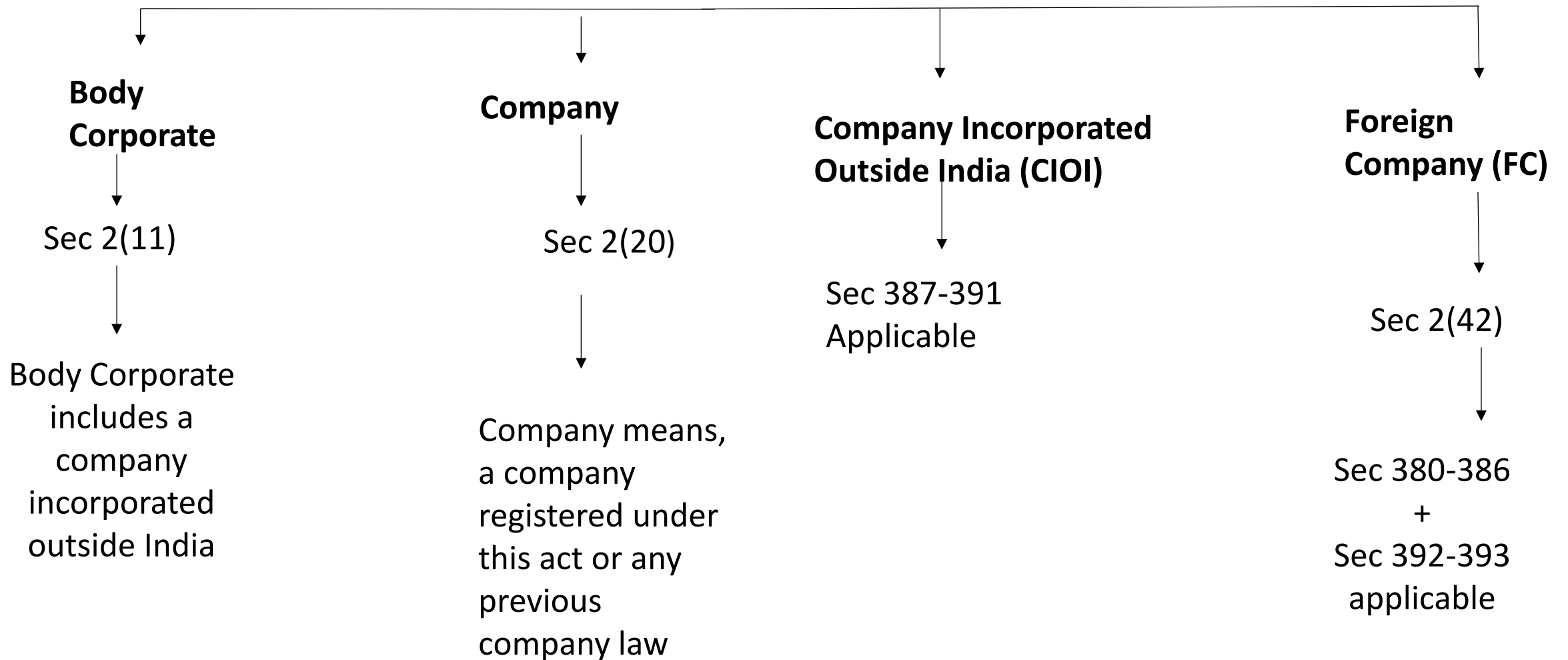
# Sec. 379-393



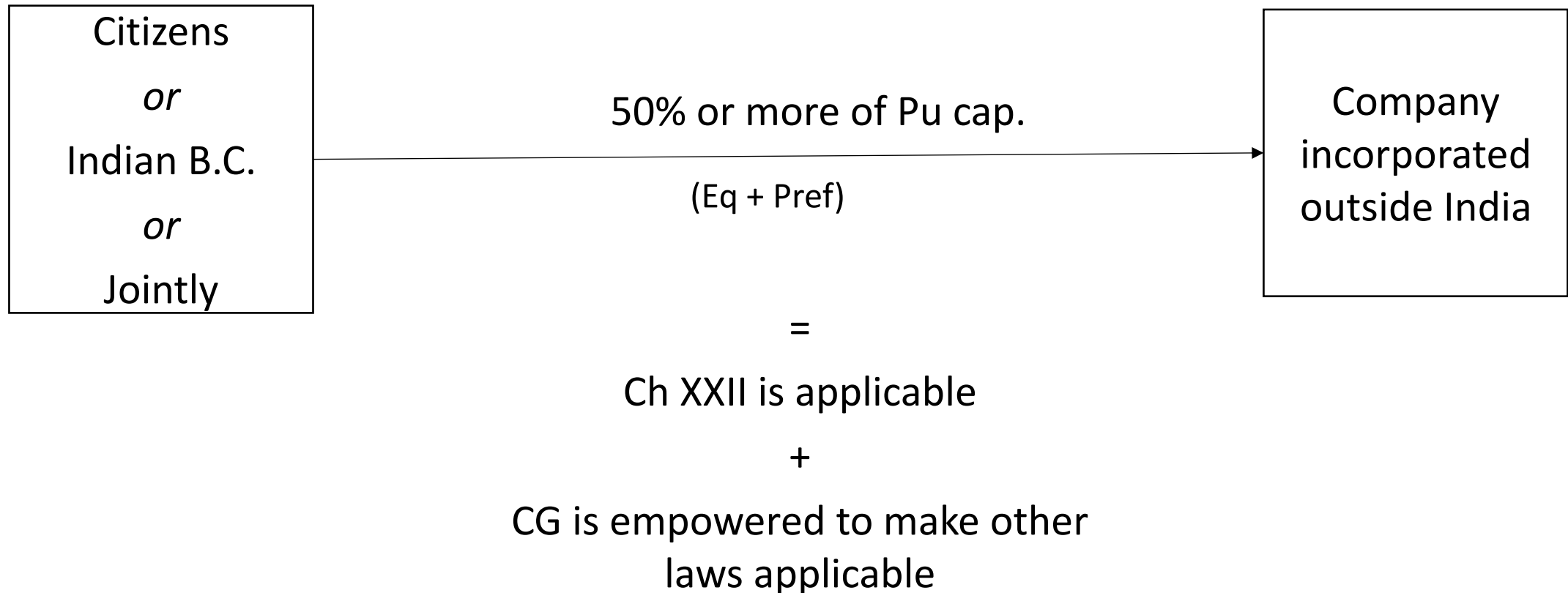
## [Sec. 379] – Application of the Act to Foreign Companies



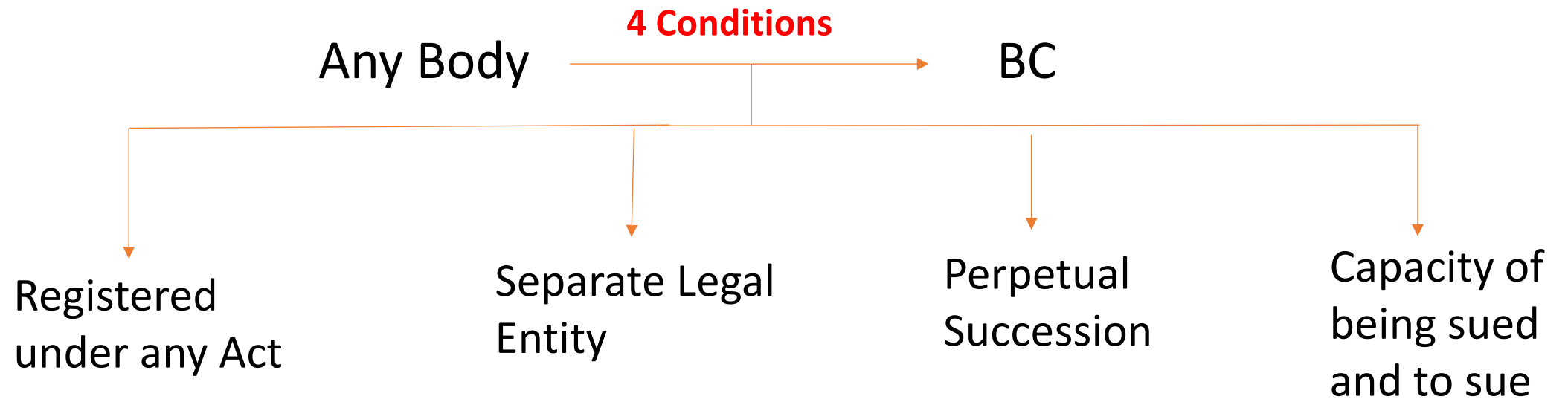
# 4 TERMS - Definitions



# Sec- 379(2)- Power of CG to apply other laws on the FC



# [2(11)] – Body Corporate (BC)



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## Sec 2(70)-

“**prospectus**” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a *body corporate*

# [Sec. 2(42)] – Foreign Company



**Means**

**WHICH**

**AND**

A company  
Or  
a body corporate  
incorporated outside

Conducts any  
business  
activity in  
India in any  
other manner

Has a place of business  
in India whether by:

- By itself
- Through an Agent
- Physically
- Electronic mode

# Important Clarification

Company Law Committee



Report



MCA Publish



February 2016



Suggestion

A company which is incorporated outside India  
**and**  
Conducts any business activity in India  
**Without**  
having any place of business in India  
*Would*  
Also be covered under Sec. 2(42)  
i.e it shall be a foreign company

Conclusion

Foreign

Company

Company/B.C  
incorporated outside  
India

Place of business in India  
**Or**  
Doing business in India



# Questions

**Q1** – Is RIL a Company under Sec. 2(20) of the Act?

**Q2** – Is Apple Inc. a Company under Sec. 2(20) of the Act?

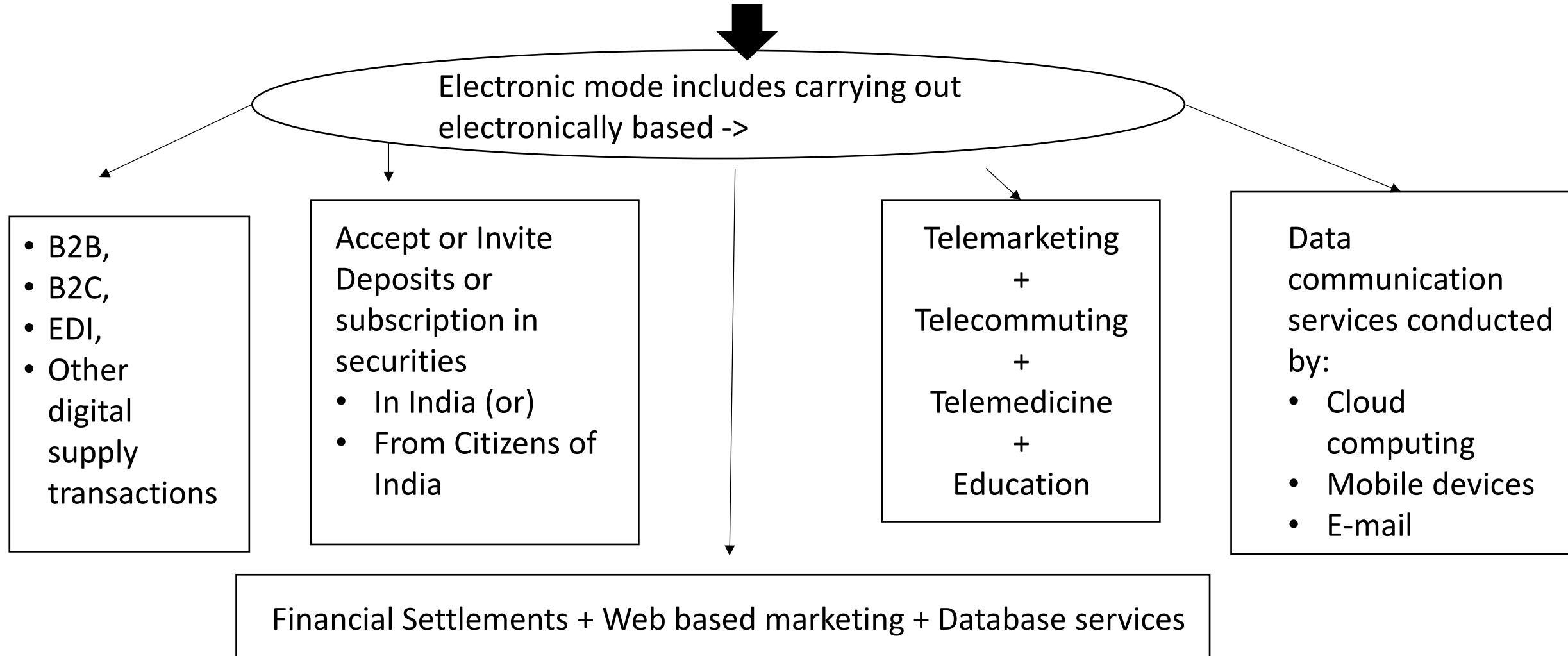
**Q3** – Are Apple Inc. and RIL body corporates under Sec. 2(11) of the act?

**Q4** – Is Apple Inc. a Foreign company?

**Q5** – Is Apple Inc. a company incorporated outside of India?

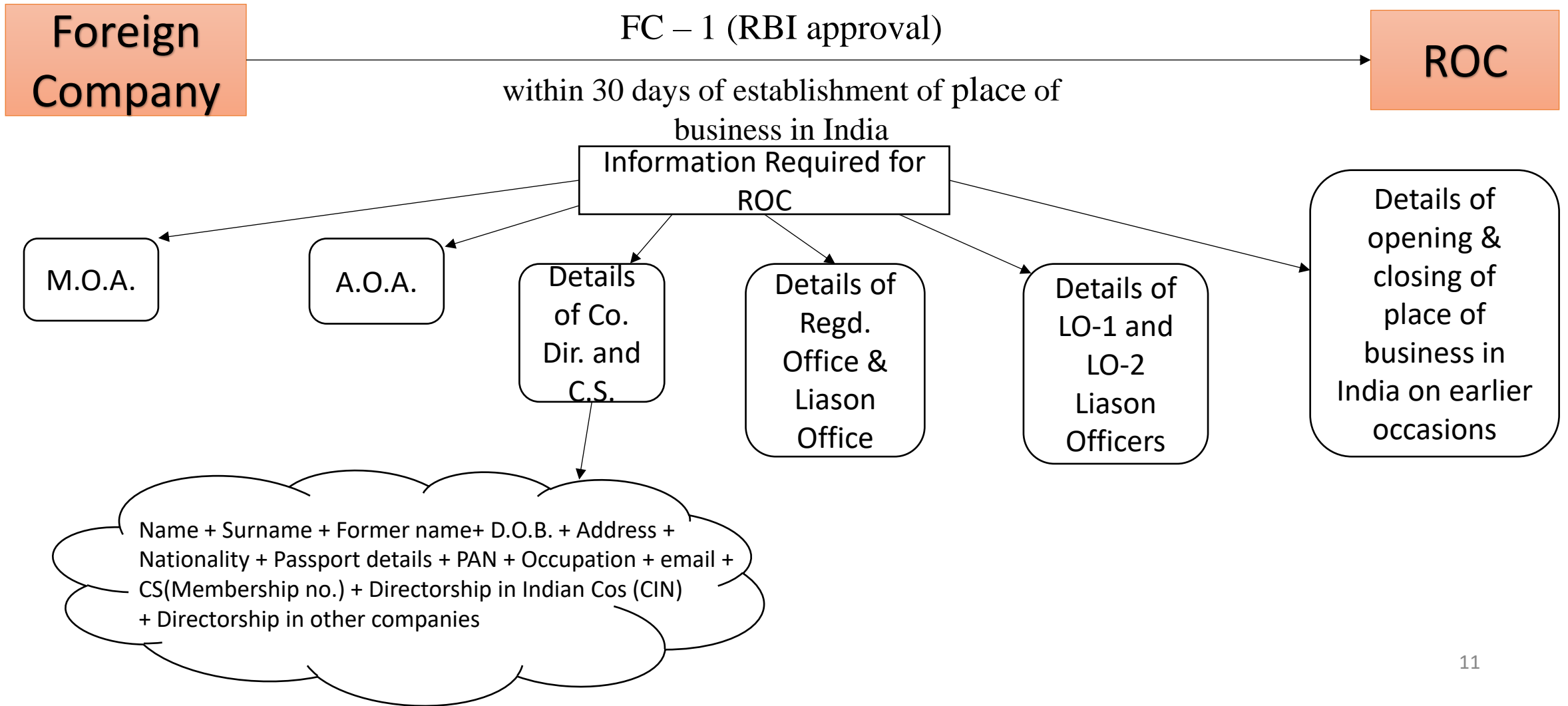
**Answers on 26 & 27**

# Rule 2(1)(c) of Companies (Registration of Foreign Companies) Rules, 2024

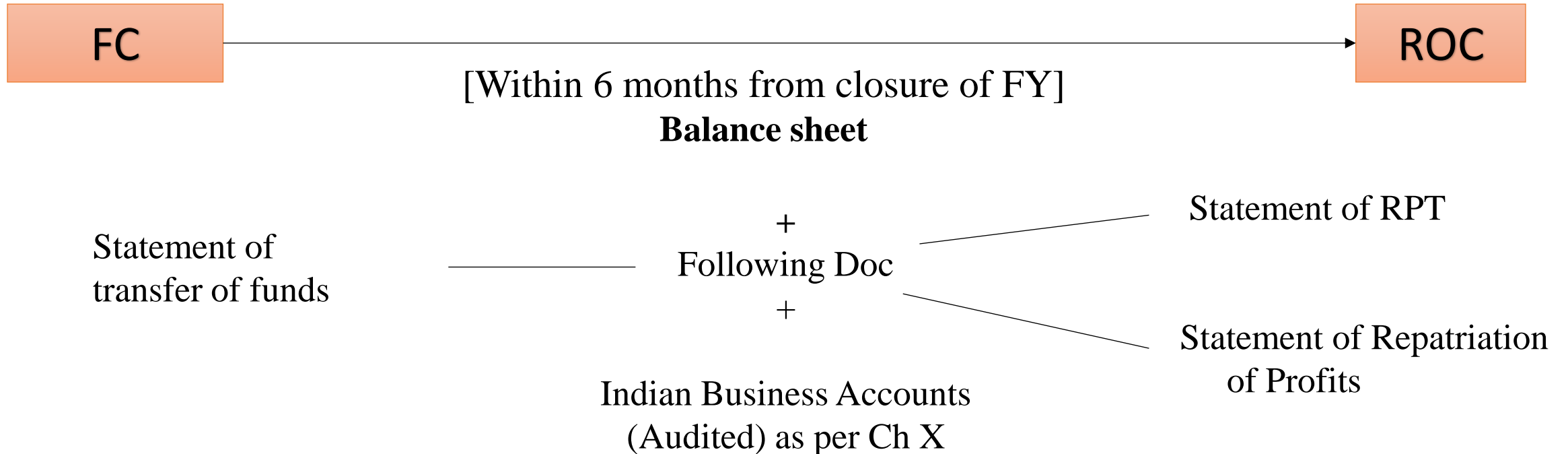


**NOTE:** Electronic media includes the transactions, whether the server is installed in India or outside India

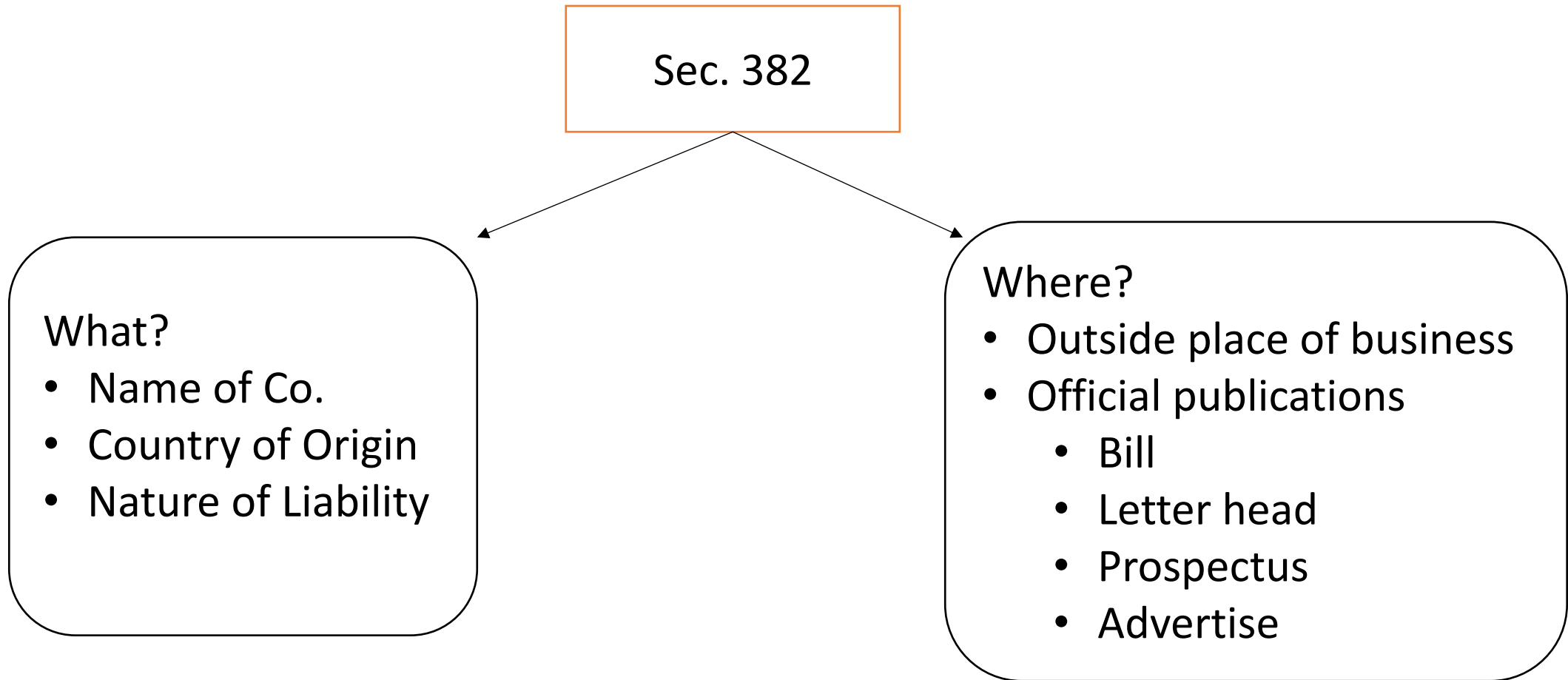
# [Sec. 380] – Documents to be delivered to Registrar by Foreign Companies



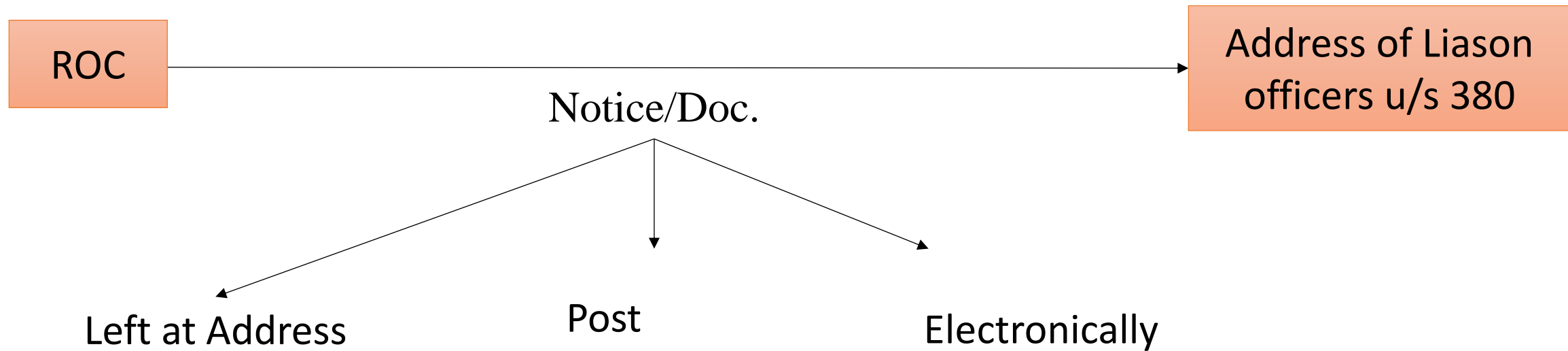
# [Sec. 381] – Accounts of Foreign Companies



# [Sec. 382] – Display of Name etc. of Foreign Company



# [Sec. 383] – Service of Documents to Foreign Company



# [Sec. 384] Certain provisions of the Act shall also apply to FC

**Rule 7 – Sec. 71 + 92 + 128 + 135 + Ch VI + Ch XIV**

*With respect to  
Indian Business  
only*

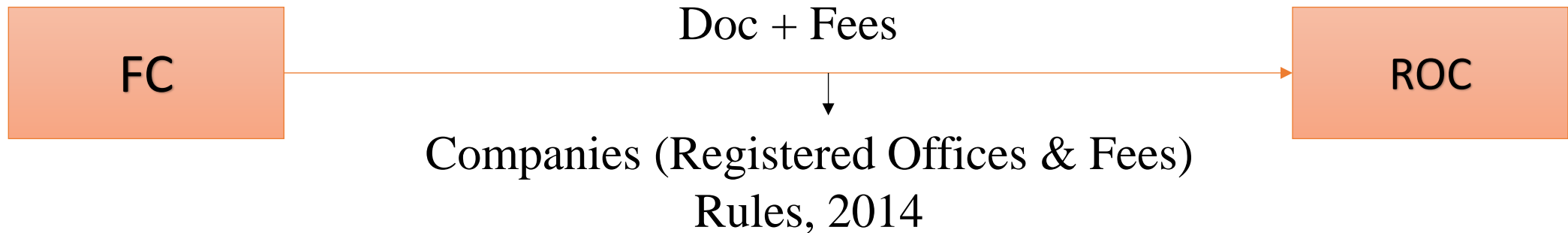
FC

FC -4 (Annual Return)

In 60 days of last day of Financial Year

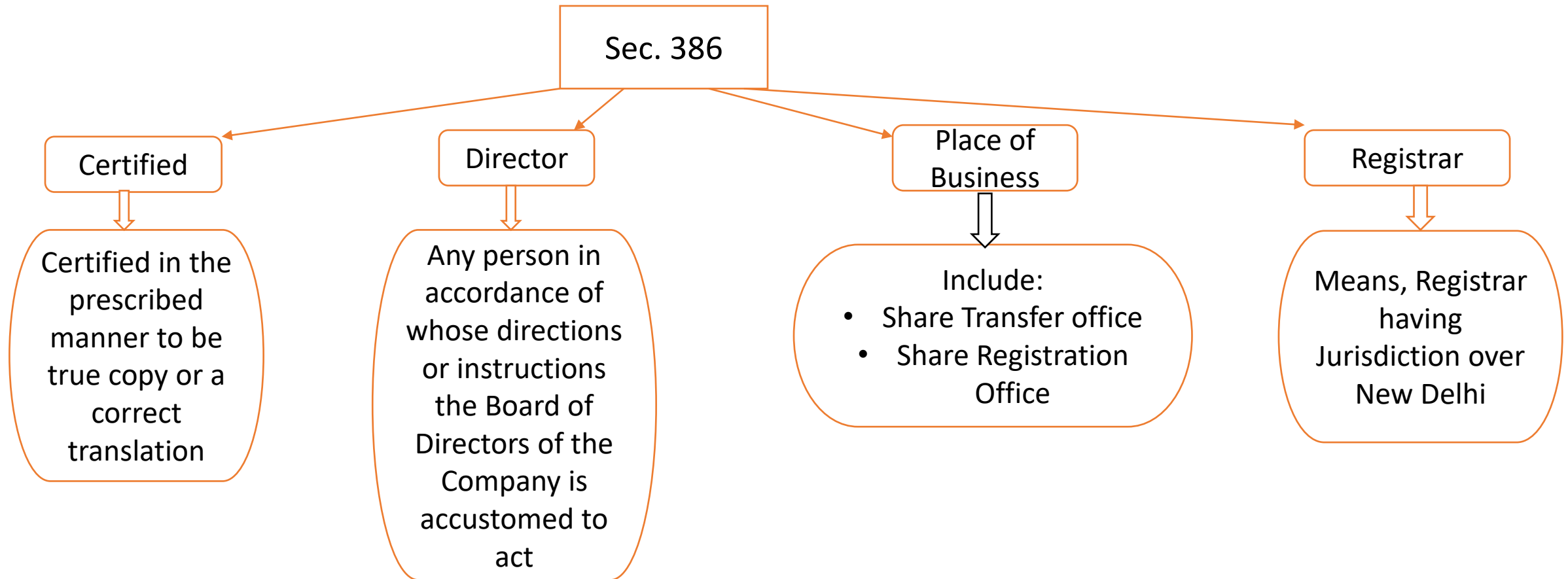
ROC

# [Sec. 385] – Fee for registration of documents

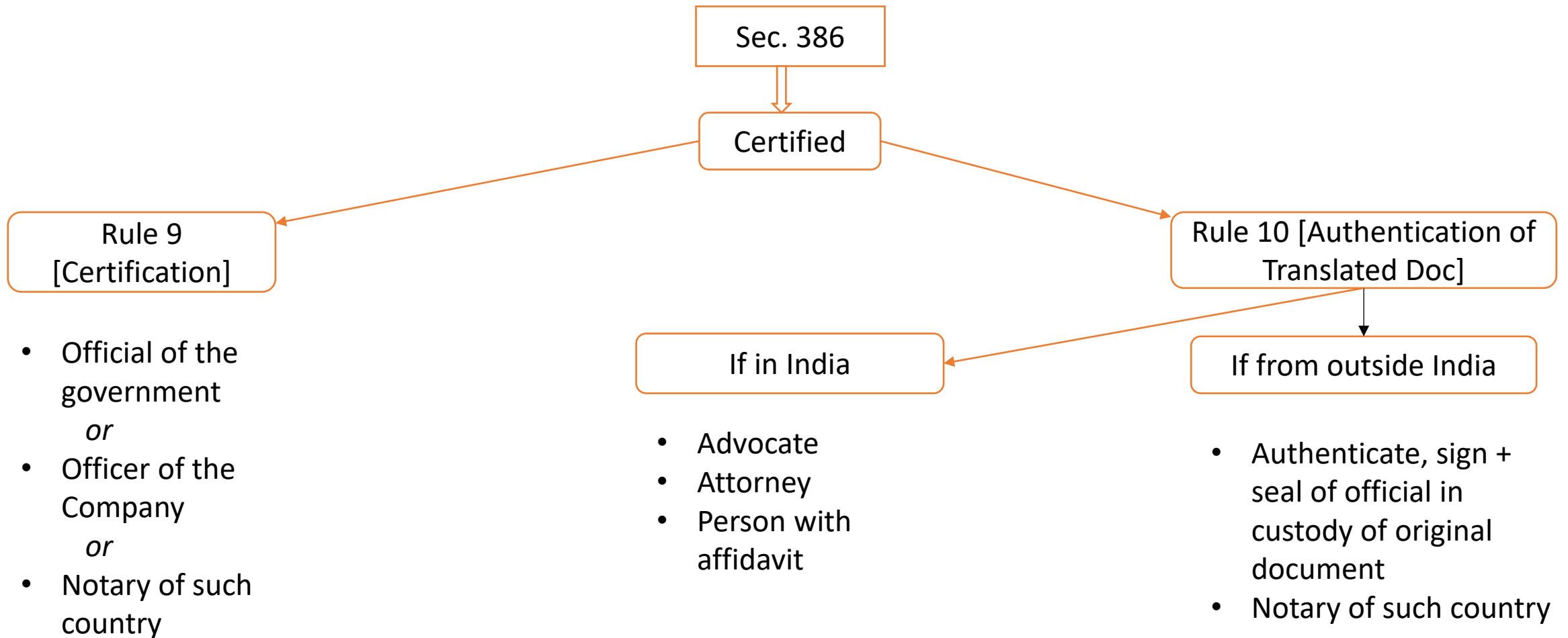




# [Sec. 386] - Interpretations



# [Sec. 386] - Interpretations



# Case Studies

- **CS 1** – UK Company + Share Registration office in Mumbai = FC?
- **CS 2** – Indian Citizens incorporated a company in Canada for the purpose of carrying on business there = FC?
- **CS 3** – A company incorporated in India but all the shares are held by foreigners = FC?

Answers on 27 & 28

- **CS 4** – A company incorporated in London and operates its business in London has shareholders who all are Indian Citizens = FC?
- **CS 5** – Clynton Ltd. Is a company registered in Australia. Although it has no place of business in India yet, is doing online business through telemarketing in India = FC?

# [Sec.387-391] Public Issue (FC or Company Incorporated Outside India)

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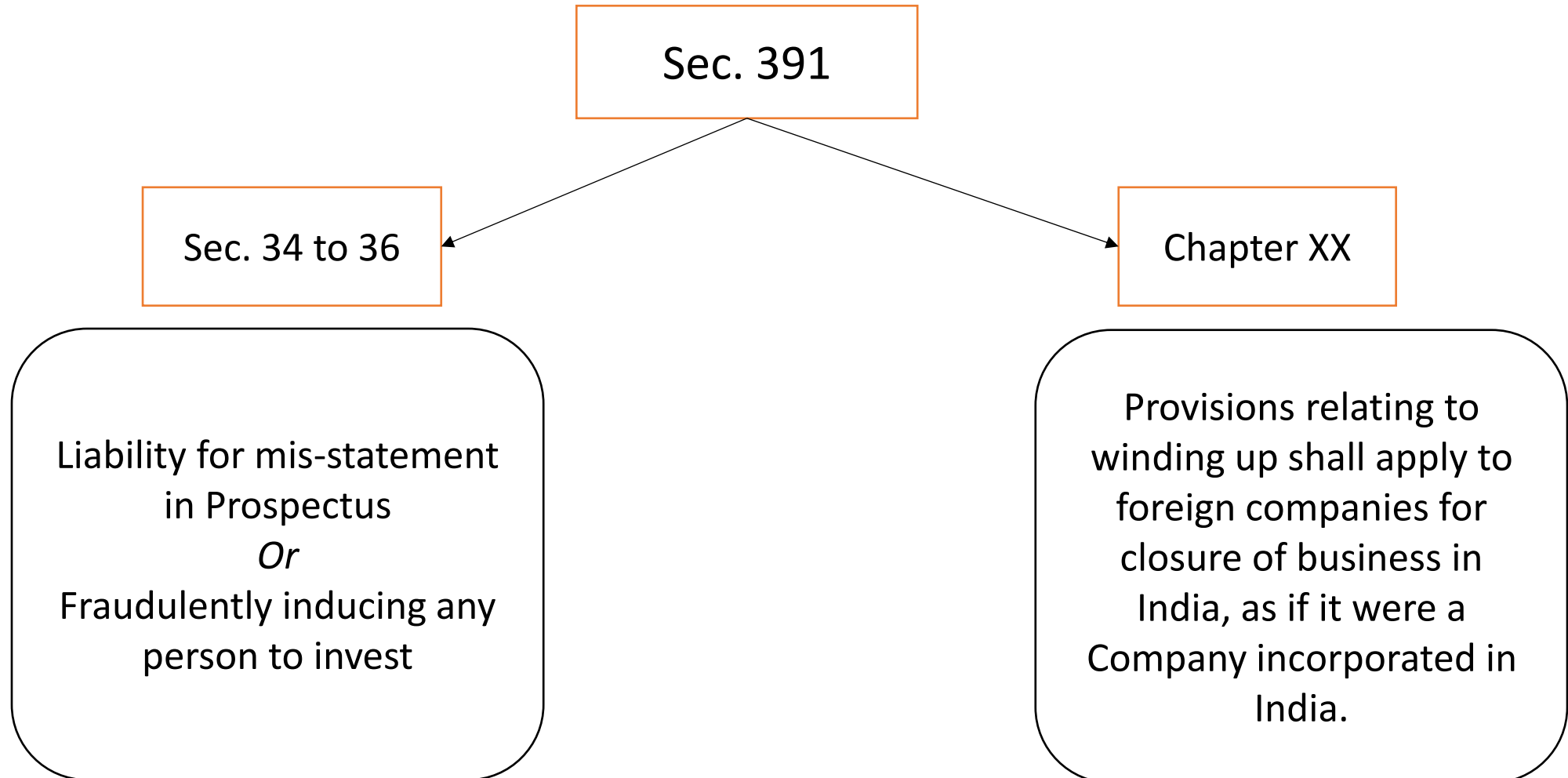
# [Sec. 390] – Offer of Indian Depository Receipts

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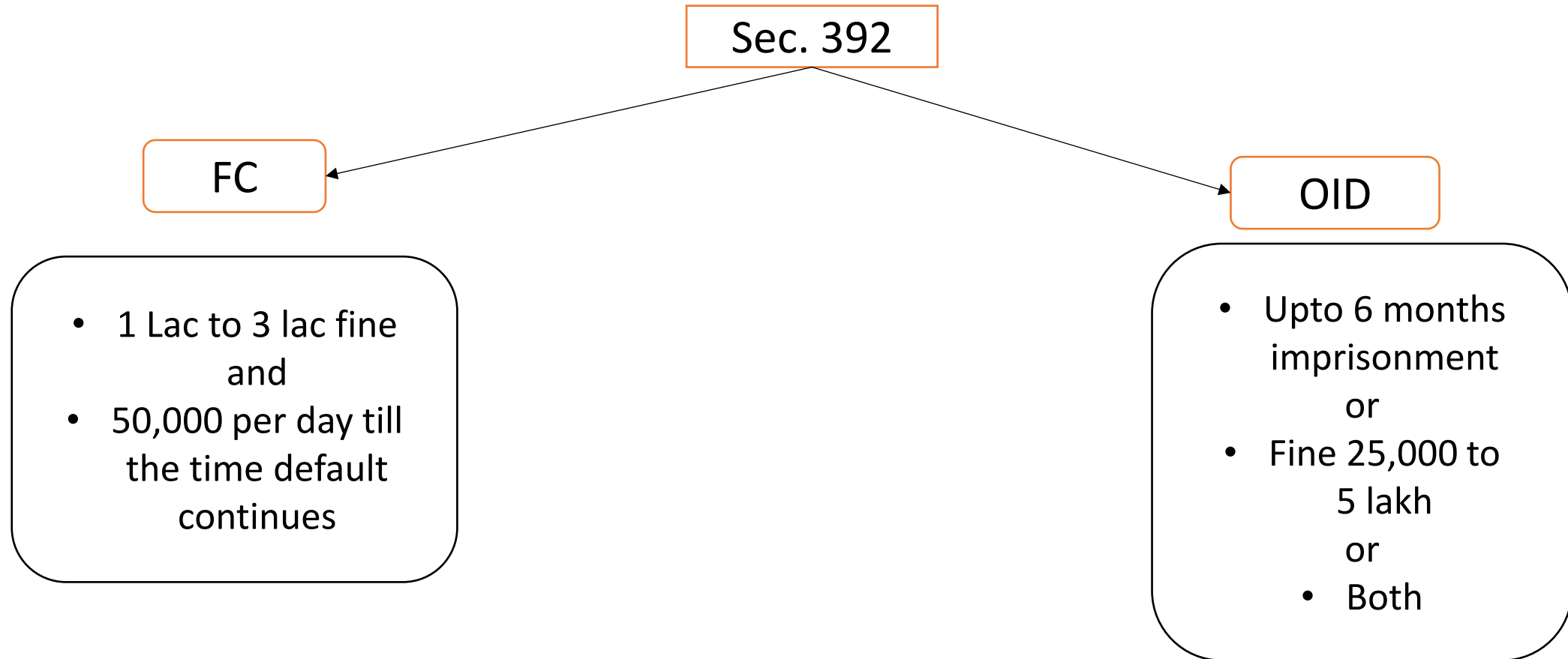
Depository  
Receipts  
are:

- is an instrument
- issued by a body corporate
- to its investors
- residing abroad
- denominated in foreign currency
- issued against ordinary shares of issuer company

# [Sec. 391] – Application of Certain sections to companies incorporated outside India



# [Sec. 392] – Punishment for Contravention of Chapter XXII





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

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# Answers

- Q1- **YES**

Reliance Industries Limited is a Company incorporated u/s 2(20) of the Companies Act, 2013. Hence, it is a Company.

- Q2- **NO**

Apple Inc. is not a Company incorporated u/s 2(20) of the CA, 2013 and is incorporated under the laws of US. Thus, is not a Company under the CA,2013.

- **Q3 – YES**

Both Apple Inc. and RIL satisfies the 4 conditions for a body to be termed as body corporate. Hence, both are Body Corporates.

- **Q4 – NO**


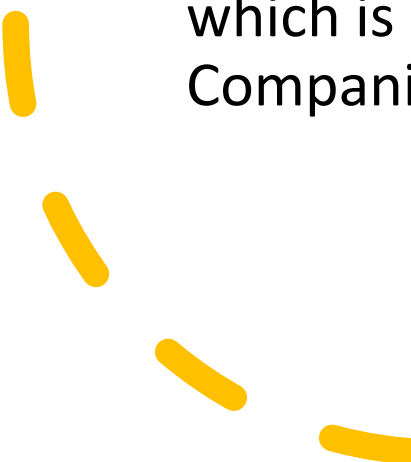
Apple Inc. is not a Foreign Company as it does not have a place of business in India and it has not filed FC-1 to RoC to obtain a status as such u/t CA,2013.

- **Q5- YES**

Apple Inc. is incorporated outside India and has its business outside India. Thus, it is a Company Incorporated Outside India ( CIOI) and not a FC.

# Answers to Case Studies

- **CS 1** : It is a Foreign Company ( FC) as Share Registration Office is in Mumbai. Section 386 states that the place of business u/s 2(42) of the CA, 2013 includes Share Transfer Office and Share Registration Office.
- **CS 2** : If a company is incorporated outside India and has a business outside India, such a Company is not a Foreign Company and will be termed as a Company Incorporated Outside India (CIOI) . Thus, in this case it is not a FC.

- 
- **CS 3** : It is not a FC as the shareholding has no relation to a Company being a Foreign Company. Also, since the Company is incorporated in India, it falls u/t definition of Company u/s 2(20) of CA, 2013.
  - **CS 4** : As stated in the previous case study, the ownership of the Company has nothing to do with the definition of Foreign Company. Hence, it is not a FC.
  - **CS 5** : It is a FC as it is conducting its business in India through telemarketing which is one of the electronic modes of business defined u/r 2(1)(c) of The Companies (Registration of Foreign Companies) Rules, 2014.
- 

# THANK YOU

Shubhangi V

