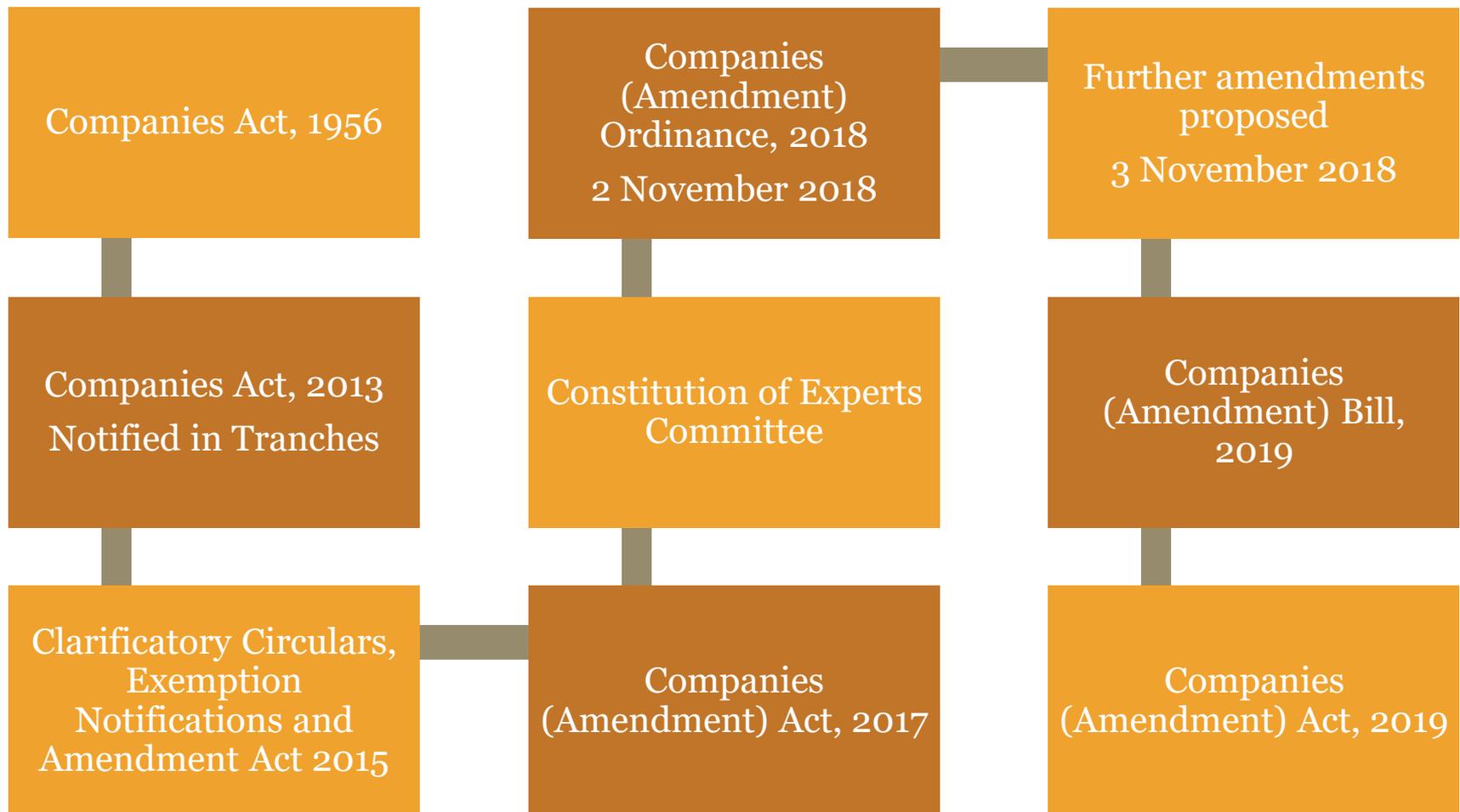


Recent Amendments Companies Act, 2013

8 February 2020

The Story so far



Recent “Developments”

NFRA

CAA 2019 “Companies (Amendment) Act, 2019”

CAA 2019

- The Companies (Amendment) Act, 2019 (“CAA 2019”) has not only taken into consideration the amendments that were originally notified in the Companies (Amendment) Ordinance, 2018, Companies (Amendment) Ordinance, 2019 and Companies (Amendment) Second Ordinance, 2019 but has also brought about other key changes
- The amendments implemented through the ordinances have already been in effect since 02 November 2018
- Other than the above, certain amendments under CAA 2019 have been notified on 14 August 2019, while certain others are yet to be notified

Key Objective 1

- De-criminalization of non-serious or procedural offences

Key Objective 2

- Institution of transparent and technology driven adjudication mechanism

Key Objective 3

- De-clogging the NCLT by shifting certain powers to the Regional Director

Key Objective 4

- Controlled governance to curb Shell Companies

De-criminalisation of Offences

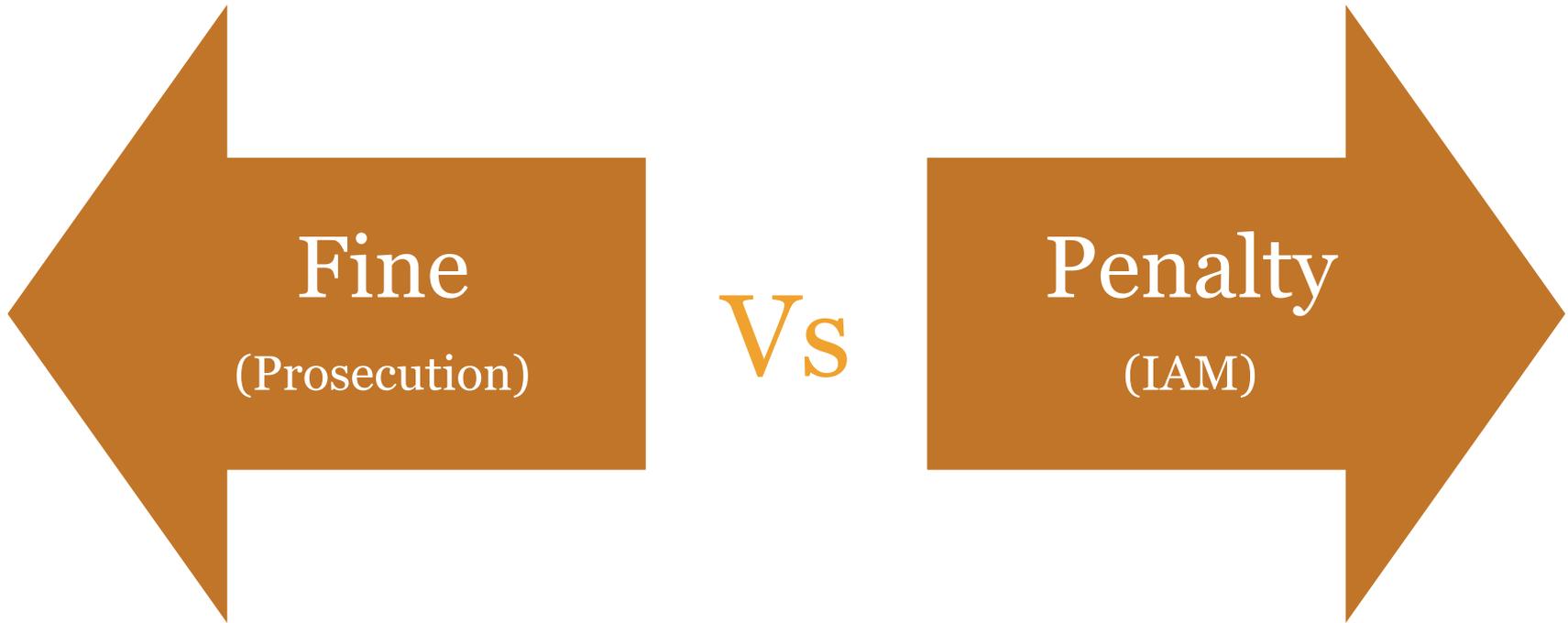
[Effective from 02 November 2018]

Certain offences have been re-categorised as defaults carrying civil liabilities to bring them under an in-house adjudication mechanism. The key provisions amended are as follows:

- Issue of shares at a discount (Sec. 53)
- Intimation to Registrar for alteration of share capital (Sec. 64)
- Non-filing of annual return within the due date (Sec. 92)
- Default in complying explanatory statement requirements (Sec. 102)
- Default in complying with proxy requirements (Sec. 105)
- Failure/ delay in filing certain resolutions (Sec. 117)
- Failure to file report on AGM (Sec. 121)
- Failure/ delay in filing financial statement (Sec. 137)
- Failure/ delay in filing statement by the auditor after resignation (Sec. 140)
- Contraventions related to Director Identification Number (Sec. 157)
- Contravention in appointment of Directors (Sec. 159 and Sec. 165)
- Managerial remuneration (Sec. 197)
- Appointment of Key Management Personnel in certain class of companies (Sec. 203)

De-criminalisation of Offences

[Effective from 02 November 2018]



Some questions:

1. What is the difference?
2. What is the impact?
3. What about repeated offences

De-clogging of NCLT

[Effective from 02 November 2018]

Compounding

- Offences which are punishable with fine up to Rs. 25 Lac (as against Rs. 5 Lac earlier) shall be dealt with by the Central Government

Conversion

- Alteration of Articles of Association amounting to conversion of a Public Company into a Private Company shall be subject to approval of the Central Government

Financial Year

- Application for financial year other than April – March shall be subject to approval by the Central Government

Curbing Shell Companies

[Effective from 02 November 2018]

Declaration of Commencement of Business

- Companies incorporated after 2 November, 2018 with share capital, shall not commence any business or exercise any borrowing powers unless:
 - A declaration is filed by a director within 180 days of the date of incorporation, confirming that every subscriber has paid the value of shares agreed to be taken
 - Company has filed the verification of its registered office with the Registrar
- In case no declaration is filed within 180 days of incorporation and the registrar has reasonable cause to believe that the company is not conducting any business or operations, the registrar may initiate the removal of its name from the register of companies

Physical Verification of Registered Office

- Registrar has been vested with the power to conduct physical verification of the registered office and initiate strike-off of the company, if there is reasonable cause to believe that the company is not conducting any business or operations
- Database is created by way of ACTIVE form

Other Changes

[Effective from 02 November 2018]

SBO	<ul style="list-style-type: none">• Responsibility is cast upon the Company• Punishment clause altered
Dematerialization of securities	The Central Government can now prescribe and mandate even private limited companies to issue and hold securities in DEMAT form
Prospectus for public offer	The previous provision required a company to deliver a copy of the prospectus to the registrar for registration. However, with the amendment, the requirement has been changed from “registration” to “filing”
Powers of the Central Government and NCLT in case of oppression and mismanagement	<ul style="list-style-type: none">• The Central Government is now empowered to initiate a case against unfit and improper persons (i.e. persons concerned in the conduct and management of a company, who have been found guilty of fraud, misfeasance, not conducting the business in accordance with sound business principles or practices, etc.) and refer the same to NCLT to make inquiry and give its decision• In case the NCLT concludes that such a person is not fit and proper, then such person can be debarred from holding an office of director or any other office connected with a company for a period of 5 years. Further, such person shall not be entitled to be paid any compensation for the loss of office

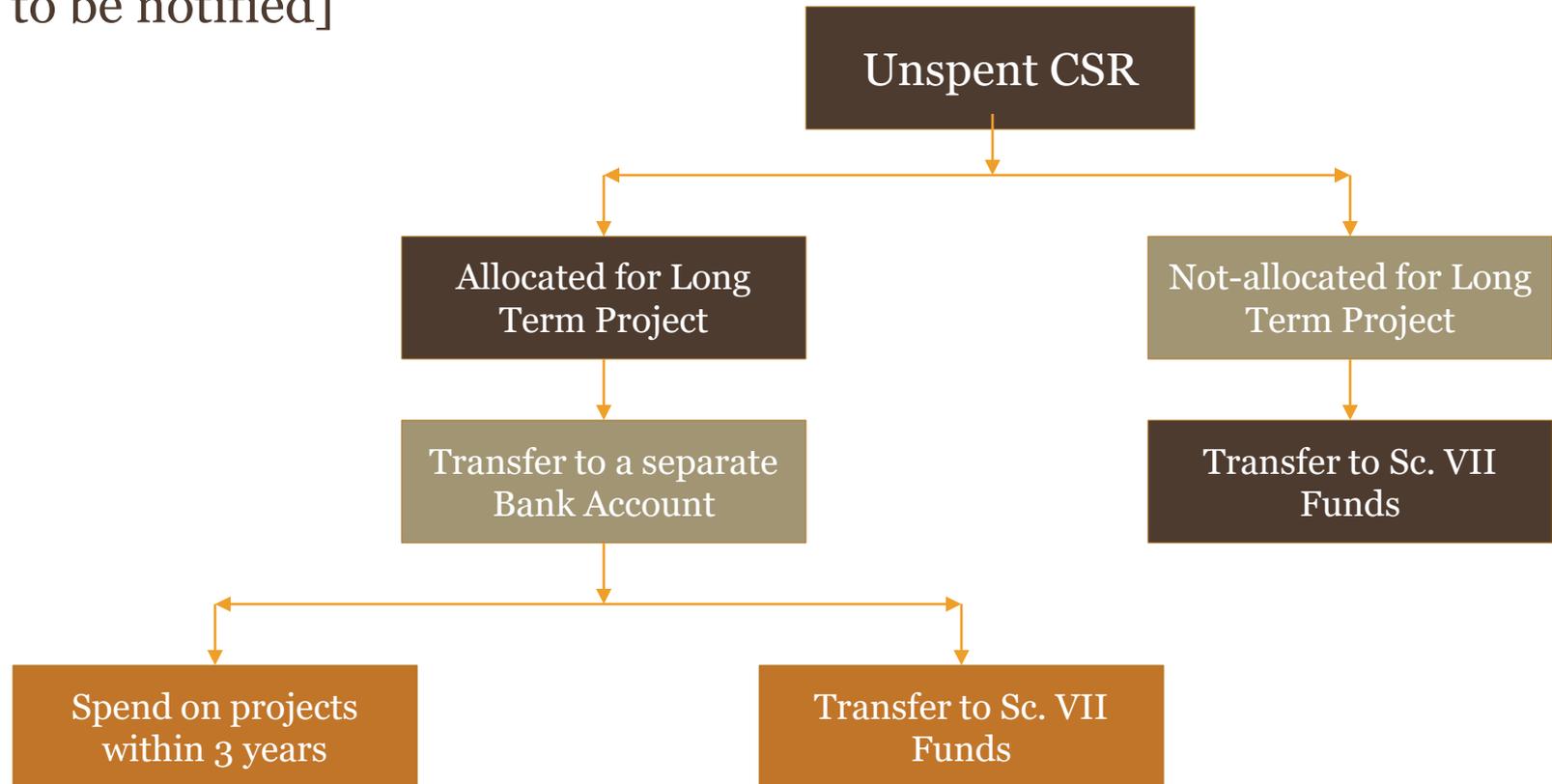
Other Changes - CSR

[Yet to be notified]



Other Changes - CSR

[Yet to be notified]



Company liable to a fine ranging from INR 50,000 to INR 2,500,000, and every officer in default can be punished with imprisonment that may extend to 3 years or with a fine ranging from INR 50,000 to INR 500,000 or both

Other Amendments

Definition of Related Party [Section 2(76)]

Effective from 09 February 2018

Existing clause under CA 2013

Any **company** which is –

- (a) A holding, subsidiary or an associate company of such company;
- (b) A subsidiary of a holding company to which it is also a subsidiary

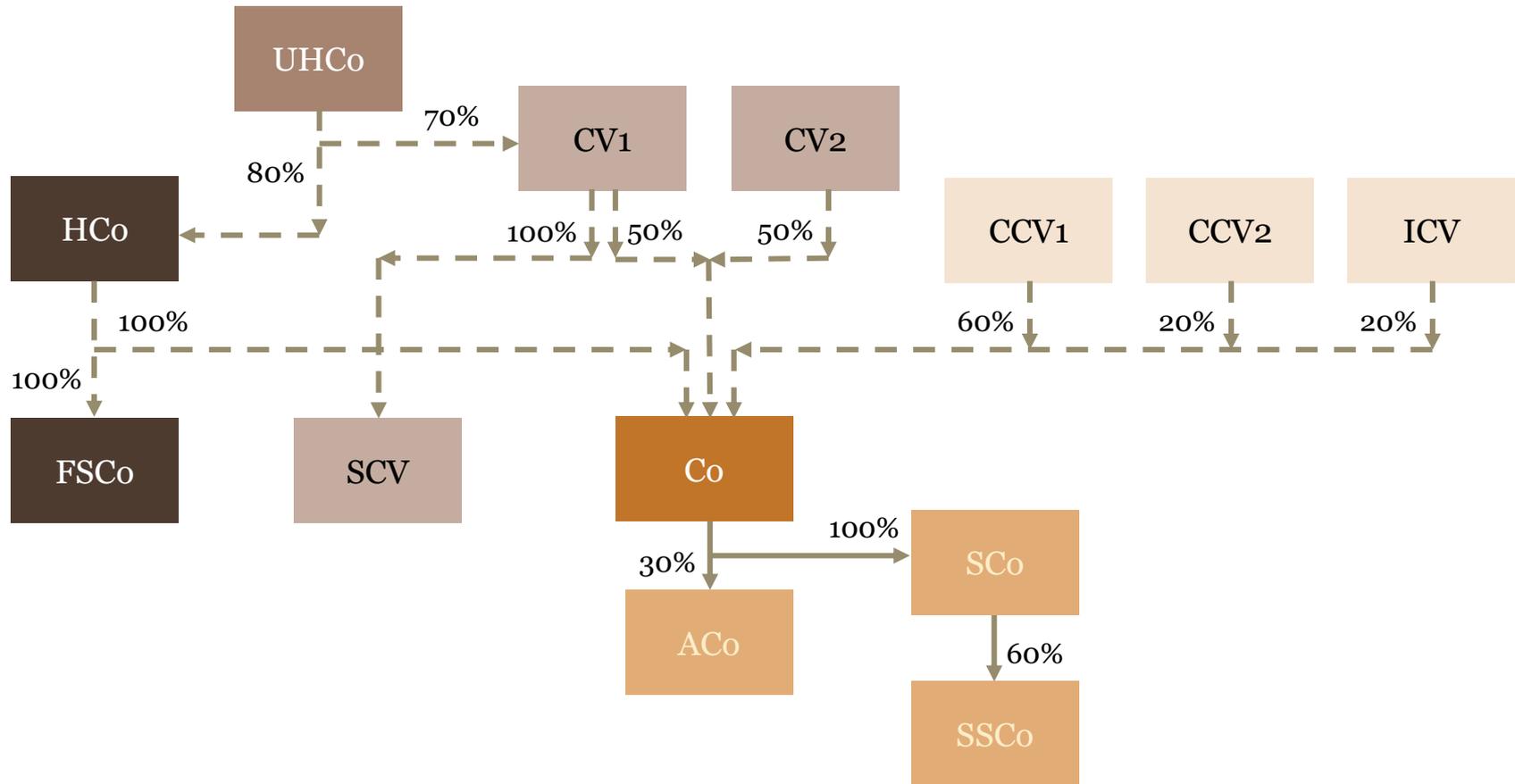
New clause under CAA 2017

Any **body corporate** which is –

- (a) A holding, subsidiary or an associate company of such company;
- (b) A subsidiary of a holding company to which it is also a subsidiary
- (c) An investing company or the venture of the company.**

Explanation: For the purpose of this clause, “investing company or the venture of the company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate

Definition of Related Party [Section 2(76)] - Example



Related Party Transactions

[Effective from 18 November 2019]

Transaction	Limits
Sale, purchase or supply of any goods or materials, directly or through appointment of agent	*10% or more of the Turnover or INR 100 Crore, whichever is lower
Selling or otherwise disposing of, or buying, property of any kind, directly or through appointment of agent	*10% or more of the Net worth or INR 100 Crore, whichever is lower
Leasing of property of any kind	*10% or more of the Net worth or 10% or more of the Turnover or INR 100 Crore, whichever is lower
Availing or rendering of any services, directly or through appointment of agent	*10% or more of the Turnover or INR 50 Crore, whichever is lower
Appointment of a related party to a office or place of profit in the company, its subsidiary, or associate company	monthly remuneration > INR 2.5 Lakh
Underwriting the subscription of any securities or derivatives thereof, of the company	> 1% of Net Worth

Data Bank of IDs

[G.S.R. 840(E) dated 22 October 2019 effective from 1 December 2019]

Enlist on Data Bank

IDs already holding office on the date of notification are required to be enlisted on the Data Bank within 3 months from the date of commencement i.e. 1 December 2019

Renewal

IDs to ensure that the inclusion of the name in the Data Bank is renewed whenever required

Declaration of Compliance

ID to submit Declaration of compliance with these rules at the time of submission of declaration under Section 149(7)

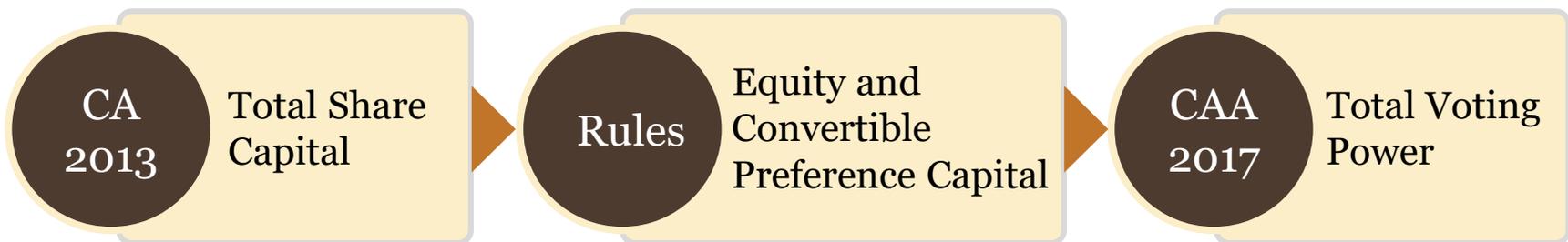
Proficiency Test

Pass a proficiency test within a period of 1 year from the date of inclusion of name in the Data Bank

Definition of Associate Company and Subsidiary Company

Effective from 07 May 2018

- Significant Influence
 - Total voting power
 - Participation in business decisions
- Joint Venture' defined



Definition of Associate Company [Section 2(6)]

Effective from 07 May 2018

CAA 2017

- ‘Significant influence’ means control of at least 20% of the **Total Voting Power** or control of **or participation** in business decisions under an agreement
- The term Joint Venture is now defined

CA 2013

- ‘Significant influence’ is determined on the basis of **Total Share Capital**
- The term Total Share Capital was further clarified to be **Equity Capital and Convertible Preference Capital** in the relevant rules

Definition of Subsidiary Company [Section 2(87)]

Effective from 07 May 2018

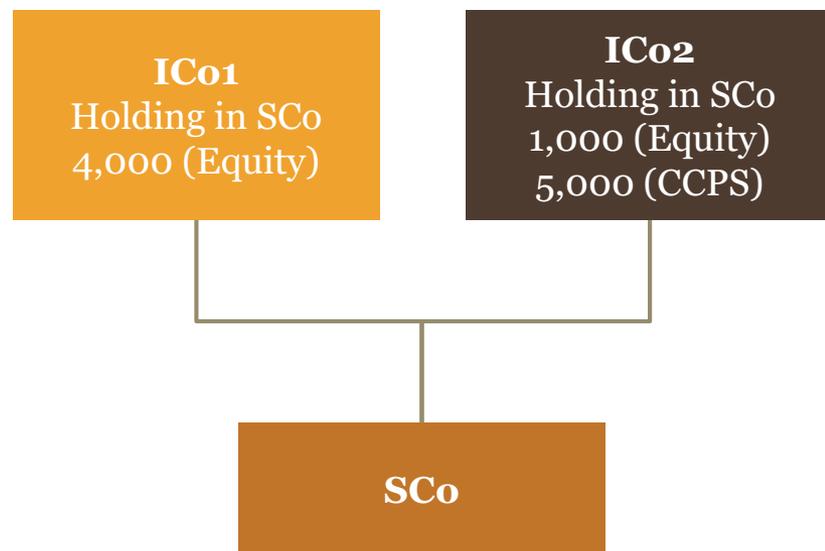
CAA 2017

- Control of more than one half of the **Total Voting Power**

CA 2013

- Control of more than one half of **Total Share Capital**
- The term Total Share Capital was further clarified to be **Equity Capital and Convertible Preference Capital** in the relevant rules

Definitions of Associate Company and Subsidiary



CA 2013

- SCo becomes a subsidiary company of ICo2 as ICo2 is holding more than 50% of the equity and convertible preference capital
- SCo becomes an associate company of ICo1 as ICo1 is holding more than 20% of the equity and convertible preference capital

CAA 2017

- SCo becomes a subsidiary company of ICo1 as ICo1 is holding more than 50% of the total voting power
- SCo becomes an associate company of ICo2 as ICo2 is holding more than 20% of the total voting power.
- However, where dividend is not paid to ICo2 on the CCPS for consecutive two years, then ICo2 will get voting powers as equity shares, thereby making ICo2 the Holding Company of SCo

Type of Capital	No. of Shares
Equity	5,000
CCPS	5,000
Total	10,000

Definition of Associate Company and Subsidiary Company

Effective from 07 May 2018

Meaning of “Participation in Business Decisions”

- ◆ The term “Associate Company also refers to “control of or participation in business decisions under an agreement”
- ◆ The term “business decisions” is not defined and therefore, has vast coverage. It can inter alia include a Company having right to nominate persons to be appointed as Directors on the Board etc.
- ◆ ‘Participation’ can’t be only said to be to vote on a decision, mere participation in the debate and abstinence from voting may also be covered.

Declaration of Beneficial Interest [Section 89]

Key Changes:

- The term “Beneficial Interest’ is defined as follows,

“(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or*
- (ii) receive or participate in any dividend or other distribution in respect of such share.”*

Proposed Amendments

- **The Company Law Committee**
- First Report of the Committee – Categorization of offences
- Proposal to further decriminalize the offences and other proposals

1

- Decriminalization of further **44** offences including CSR provisions

2

- Easing managerial remuneration in loss making companies

3

- Identification of “Systemically Important unlisted public companies” and quarterly filings

Ensuring Ease of Doing Business

CRC

- Central Registration Centre (CRC) Set up to process applications across the nation

Company Name

- RUN, a web based form
- Revised naming guidelines with illustrations provided

No Fee

- No Registration Fees is application for companies incorporated with up to Rs. 15 Lac of Authorised Capital
- No minimum PUC Requirement

Section 8 Cos

- Applications for License of Section 8 Companies also vested with CRC reducing the length of the procedure

SPICe+

- PAN, TAN, GSTN, EPFO and ESIC Registrations and Bank Account opening possible along with incorporation application

Conversion

- Conversion of societies and trusts permitted
- Requirement of members is reduced from 7 to 2

DVRs

- Rules with respect to DVRs liberalized
- Cap extended from 26% to 74%
- Track record not required

Start ups

- Special provisions with respect to ESOPs, Sweat Equity Shares
- Certain Exemptions

Beneficial Ownership

Declaration of Beneficial Interest [Section 89]

Key Changes:

- The term “Beneficial Interest’ is defined as follows,

“(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or*
- (ii) receive or participate in any dividend or other distribution in respect of such share.”*

Significant Beneficial Owners [Section 90]

Effective from 09 February 2018

Existing clause under CA 2013

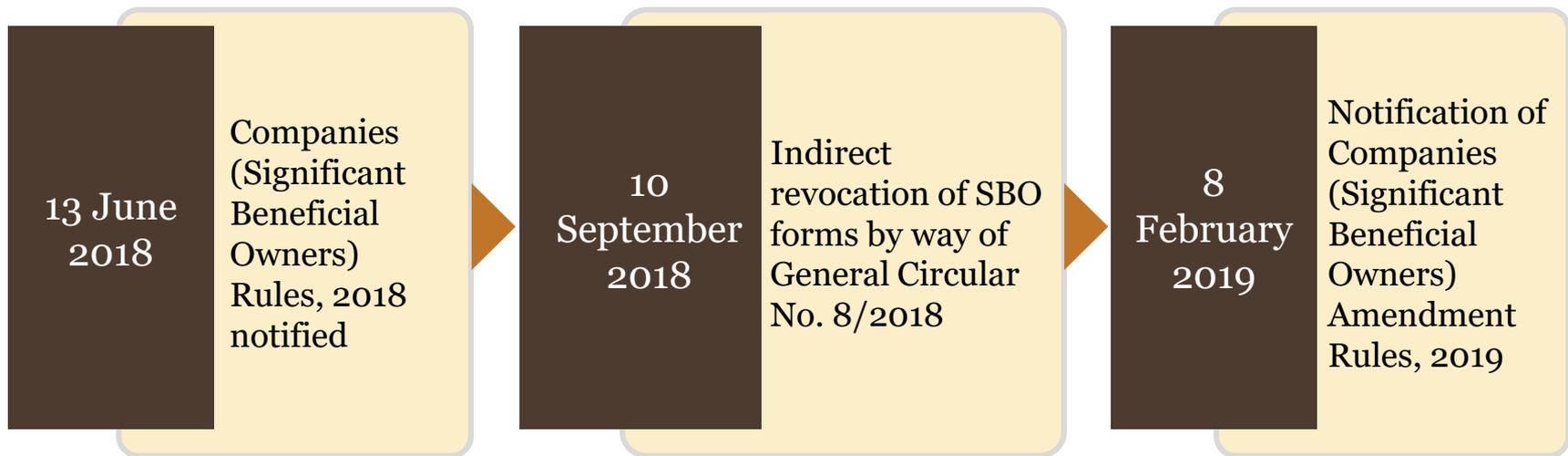
Earlier provision providing power to the Central Government to investigate beneficial ownership of shares in certain cases has been replaced with the new provisions where the onus of disclosure is put on the shareholders / beneficial owners and companies.

New clause under CAA 2017

Revised Section 90 prescribes disclosure and reporting requirements on Significant Beneficial Ownership (“SBO”) in the Company as follows:

- Disclosure of SBO by a person holding it
- Company to report the disclosure as above to the RoC
- Company to maintain Register of SBO in the prescribed file based on the disclosures received

Development on SBO Rules



General Circular No. 8/2018 dated 10 September 2018 was issued as a result of various representations made to the MCA on difficulties of implementation of the SBO Rules

Significant Beneficial Owners [Section 90]

Definitions of SBO Rules

SBO for a reporting Company means;

an individual, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such Reporting Company, namely:

- 1) holds **indirectly, or together with any direct holdings**, not less than ten per cent. of the shares;
- 2) holds **indirectly, or together with any direct holdings**, not less than ten per cent. of the voting rights in the shares;
- 3) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- 4) **has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone**

No compliance required in case of Direct Holding

Direct Holding means

- holding in the name of the individual or
- acquisition of beneficial interest in compliance with sub-section (2) of section 89

Significant Beneficial Owners [Section 90]

Determination of SBO (Indirect Holding)

Body Corporate	HUF	Partnership	Trust	Pooled Fund
<p>An individual, who -</p> <ul style="list-style-type: none">• holds majority stake in that member; or• holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member	<ul style="list-style-type: none">• Karta of the HUF	<p>An individual, who –</p> <ul style="list-style-type: none">• is a partner; or• holds majority stake in partner body corporate or• holds majority stake in the ultimate holding company of partner body corporate	<p>An individual who –</p> <ul style="list-style-type: none">• is a trustee in case of charitable or discretionary trust• is a beneficiary in case of specific trust• is an author / settlor in case of revocable trust	<ul style="list-style-type: none">• General partner or Investment Manager or CEO in case the fund is based out in member jurisdiction• In case of non fund based out of non member jurisdiction, as per the entity type

Other Key Definitions

Majority Stake

- holding more than one-half of the equity share capital in the body corporate; or
- holding more than one-half of the voting rights in the body corporate; or
- having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate

Significant Influence

Significant Influence means the power to **participate, directly or indirectly**, in the **financial and operating policy decisions** of the reporting company but is not control or joint control of those policies.

Acting Together

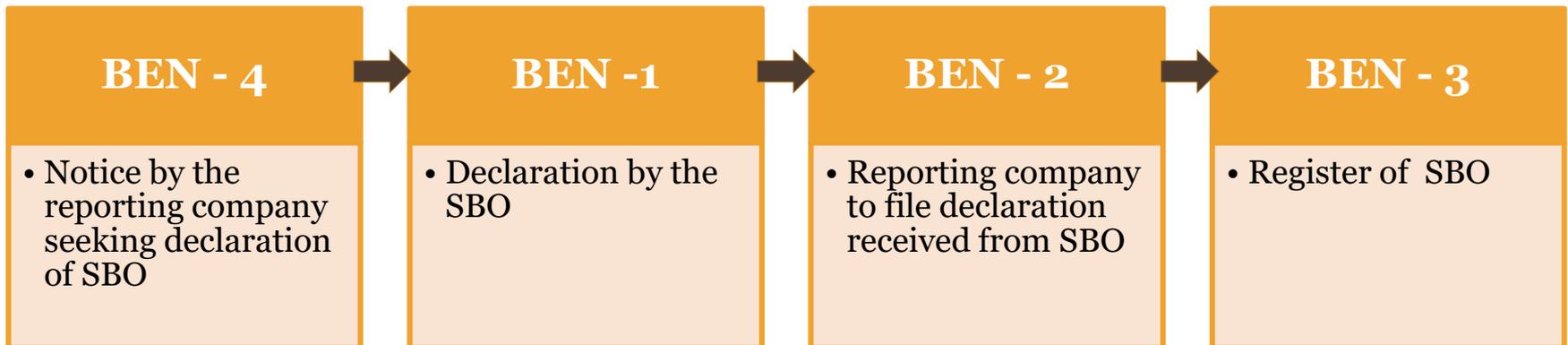
Any individual or individuals acting through any person or trust, act with common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be

Shares

Equity Shares, GDR, CCPS and CCDS

Compliance Required

- Onus of compliance on the Reporting Company
- In case of in case declaration is not provided or in case of incorrect disclosure, Reporting Company to approach NCLT
- NCLT may order -
 - Restriction on Transfer of shares
 - Suspension of dividend right
 - Suspension of voting right
 - Any other restriction on all or any of the rights attached with the shares in question



Thank You!