



Recent Amendments in Indian Stamp Act, 1899

Vinita Nair
Vinod Kothari & Company

1006-1009 Krishna Building
224 AJC Bose Road
Kolkata – 700017
Phone 033-40010157/ 22813742/
22817715

403 – 406, Shreyas Chambers
175 D.N. Road, Fort,
Mumbai-400 001
Phone: +91 22 2261-4021

A/11, Hauz Khas
New Delhi-110016
Phone: 011- 41315340

www.vinodkothari.com
Email: corplaw@vinodkothari.com

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Gist of amendments

- **Jurisdictional arbitrage no longer available in case of financial securities transactions**
 - as all financial securities transactions will be chargeable with a uniform rate of stamp duty;
 - Power of State Government to levy stamp duty on issue of shares taken away.
- **Demat transfers of securities will also be subject to stamp duty;**
- **Commercial Papers will be stamped as debentures;**
- **Responsibility to collect stamp duty has been fixed on S.E, Clearing Corporation and Depository**
 - The stock exchanges, clearing corporations and the depositories have been cast with the responsibility of collecting stamp duty and remitting to the concerned State Government. The depositories are required to collect the same before executing any transaction in the depository system and the stock exchanges are required to collect the same on the settlement date. Failure to collect the same will attract penal provisions.
 - Rules have been notified for collection of stamp duty.

Provisions Amended (1/2)

Section 2 Definitions

Section 8A Securities dealt in depository not liable to stamp duty.

Section 9A & 9B Liability of instruments of transactions in relation to securities

Section 21 Determination of value of stocks and marketable securities

Provisions Amended (2/2)



Section 29 Duties by whom payable



Section 62A Penalties w.r.t. non-compliance of Section 9A



Section 73A Power of CG to make rules

Indian Stamp (Collection of stamp-duty through stock exchange, clearing corporations and depositories) Rules, 2019

Constitutional power to levy Stamp duty

**CONSTITUTION
OF INDIA
Article 246
Schedule VII**

**Union List
Entry 91**

Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

**State List
Entry 63**

Rates of stamp duty in respect of documents other than those specified in the provisions of Union list with regard to rates of stamp duty.

❖ **Union List did not have power to specify rates of stamp duty in respect of issue of shares, the same comes under the purview of the State Legislature.**

Amendments vide Budget, 2019

- In case of financial securities transactions, stamp duties would be levied on one instrument relating to one transaction and get collected at one place through the Stock Exchanges.



- The duty so collected will be shared with the State Governments seamlessly on the basis of domicile of buying client.
- Amendments effective from 1st April, 2020
 - Earlier effective date – January 9, 2020

Overview of arrangement of the charging Sections

Stamp duties of the liability of instruments to Duty (Chapter II Part A)

1. Instruments chargeable with duty (Sec. 3)
2. Use of several instruments in single transaction (Sec. 4)
3. Instrument relating to several distinct matters (Sec. 5)
4. Instruments covered under several description of Schedule I (Sec.6)
5. Securities dealt in depository not liable to stamp duty (Sec. 8A)

Stamp duties of the liability of instruments of transaction in stock exchanges and depositories to duty (Chapter II Part AA)

1. Instruments chargeable with duty for transactions in stock exchanges and depositories (Sec. 9A)
2. Instruments chargeable with duty for transactions other than through stock exchanges and depositories (Sec.9B)

Key Definitions amended/ inserted

Key Definitions – 1/8

Allotment List – Section 2(1)

Relevance: Forms the basis for levy on stamp duty on issue of securities and collection by depositories

- A list containing details of allotment of the securities intimated by the issuer to the depository under sub-section (2) of section 8 of the Depositories, Act, 1996.

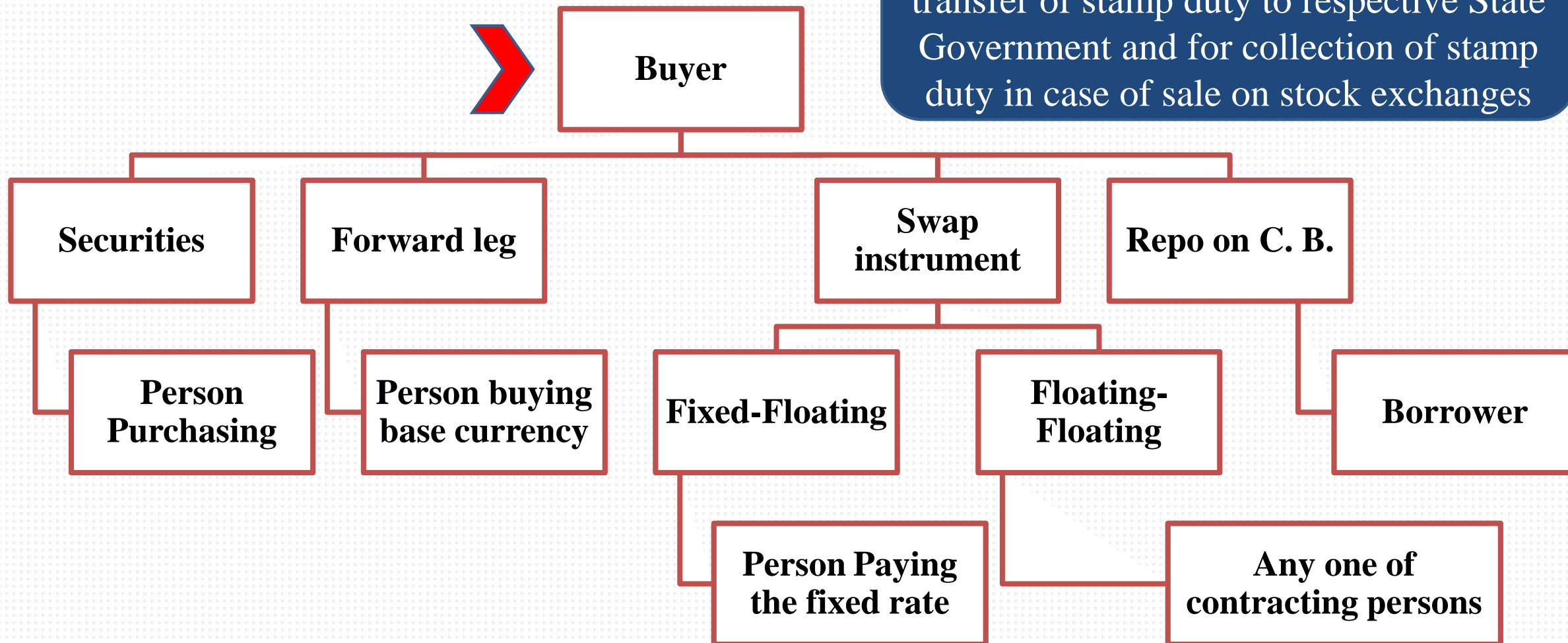
Clearance List - Section 2(7A)

Relevance: Forms the basis for levy on stamp duty on sale of securities on stock exchange.

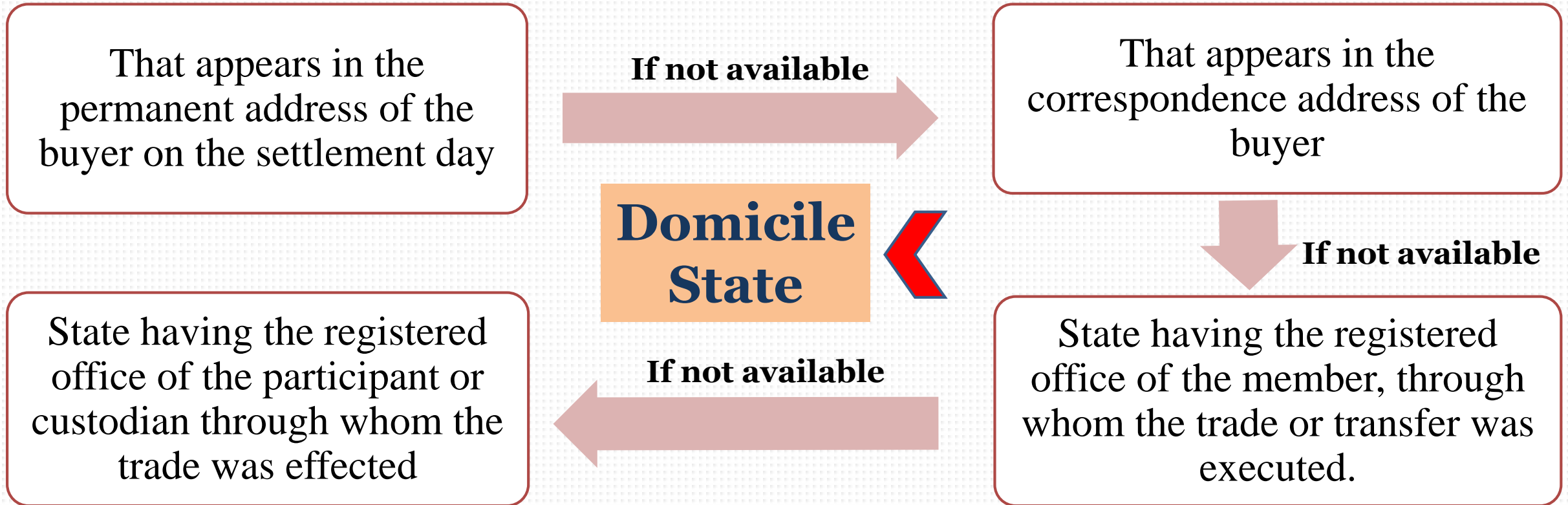
- A list of transactions of sale and purchase relating to contracts traded on the stock exchanges submitted to a clearing corporation in accordance with the law for the time being in force in this behalf.

Key Definitions - 2/8

Relevance: Forms the basis for determination of domicile state for transfer of stamp duty to respective State Government and for collection of stamp duty in case of sale on stock exchanges

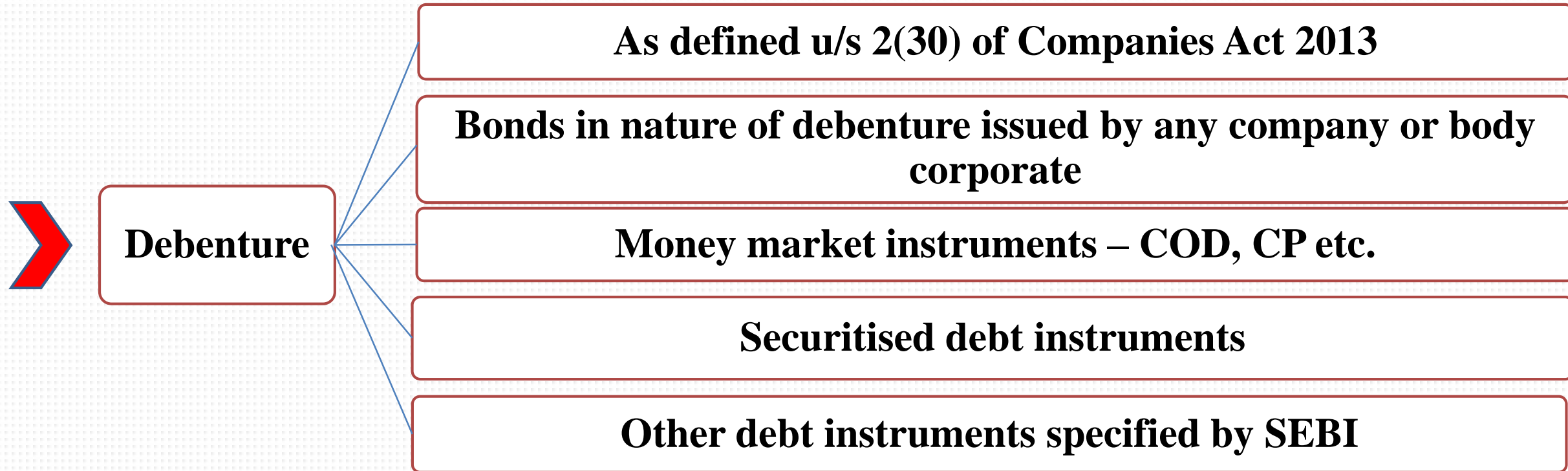


Key Definitions - 3/8



Relevance: Forms the basis for identifying the state of the buyer. The duty so collected will be shared with the State Governments seamlessly on the basis of domicile of buying client.

Key Definitions - 4/8



Key takeaway: 'Debenture' has been excluded from the definition of 'Bond'. The definition is wider than that provided under Companies Act, 2013.

Key Definitions - 5/8

Instrument

Every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded

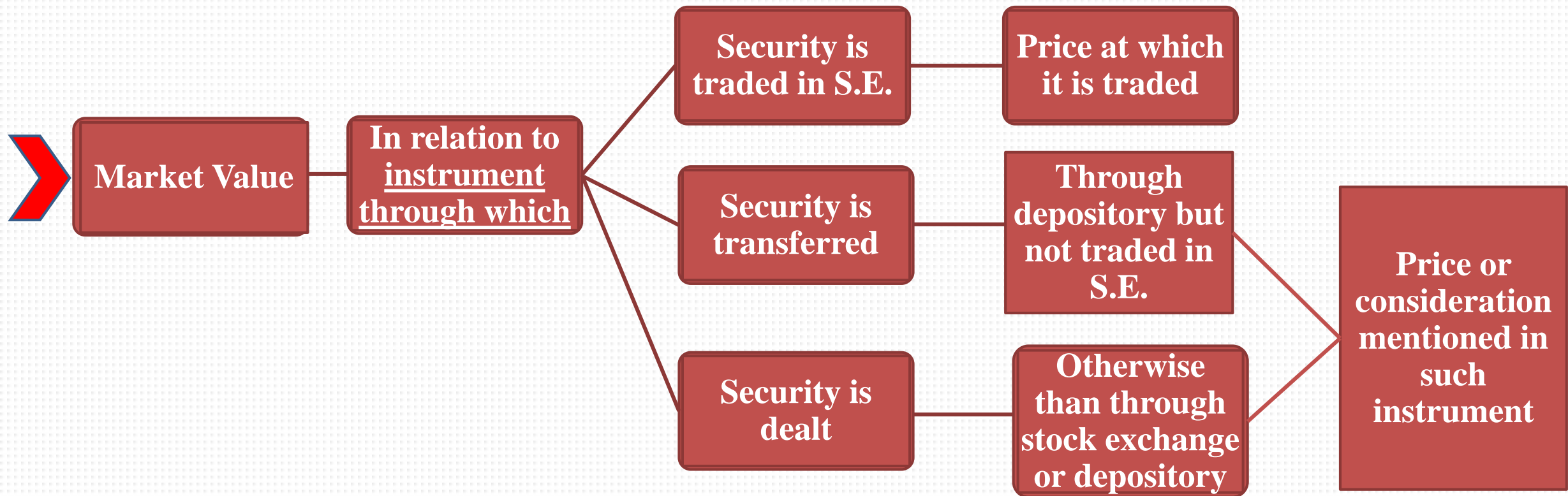
A document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

Any other document mentioned in Schedule I

Does not include such instruments as may be specified by the Government, by notification in the Official Gazette

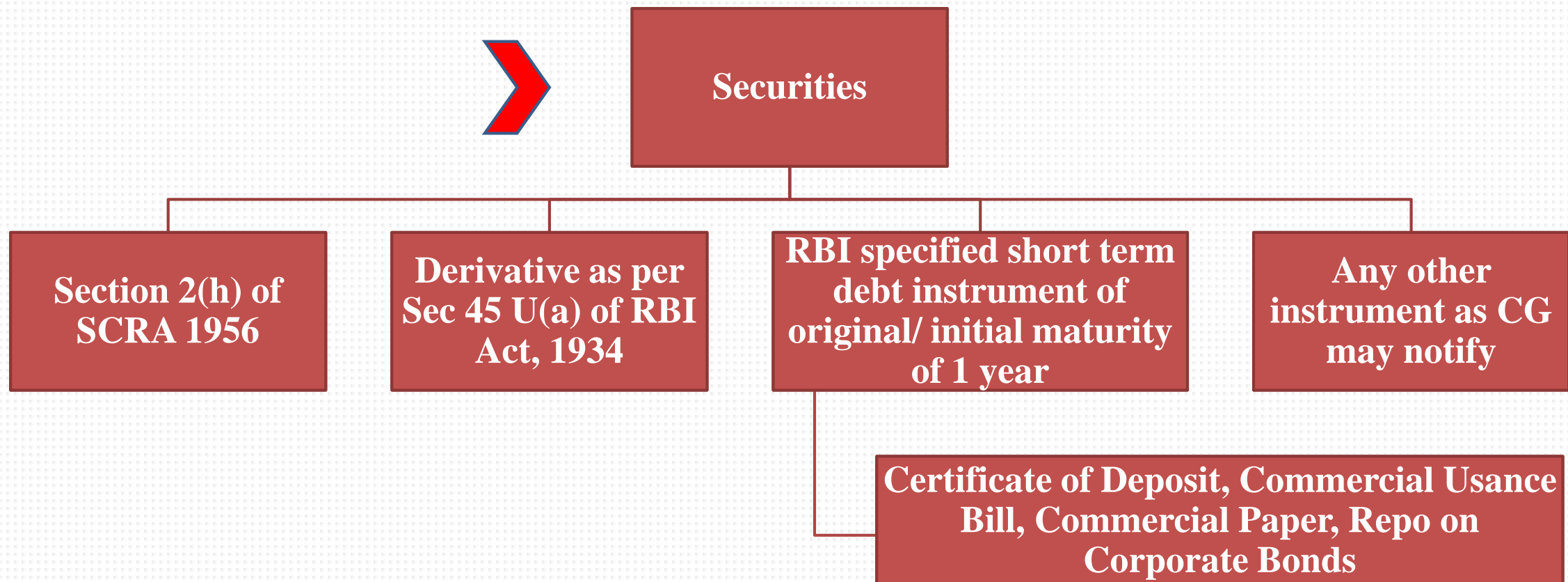
Key Takeaway: The scope has been widened to include a document created for transaction in a stock exchange or depository.

Key Definitions - 6/8



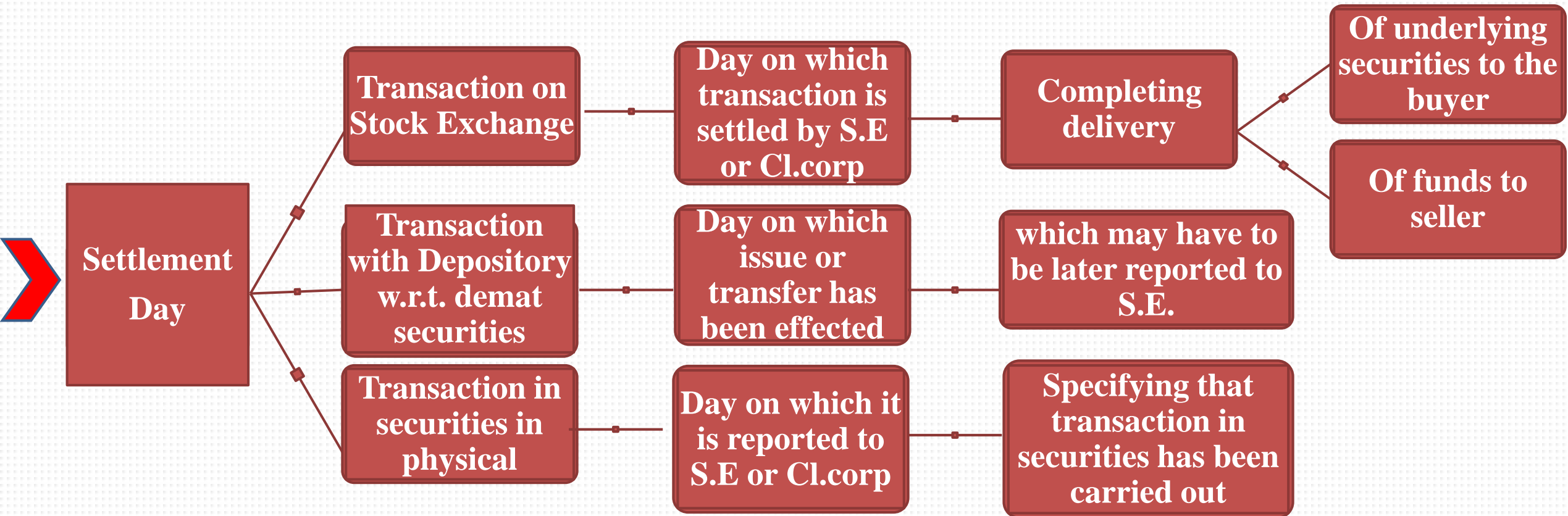
Relevance: Forms the basis for levy of stamp duty on sale of security through S.E and on issue of securities.

Key Definitions - 7/8



Relevance: Sale, transfer, issue, re-issue of and options in securities attracts stamp duty. The scope has been widened to include money market instruments within the meaning of securities.

Key Definitions - 8/8



Relevance: The definition has been introduced under Indian Stamp Rules 2019. The term is essential to identify the day for collection of duty under section 9A(1) in respect of sale of securities through a stock exchange.

Duty in case of several instruments used in single transaction [Sec. 4]

Principal instrument shall be chargeable with the highest duty which would be chargeable in respect of any of the said instruments employed. Other instruments will be chargeable with duty of Rs. 1 [Section 4 (1)]

Exception inserted vide amendment: In the case of any issue, sale or transfer of securities, instruments which are chargeable with duty for transactions in stock exchanges and depositories will be the principal instrument and no stamp-duty shall be charged on any other instruments relating to any such transaction.

Stamp duty amendments w.r.t. securities dealt with by a depository [Sec 8A]

Key Takeaway: Demat transfers of securities/ units of MF will be subject to stamp duty.

Section 8A

Securities issued to one or more depositories need not be stamped (*only duty chargeable on total amount of securities*)

Issue of certificate on remat would attract same stamp duty as is payable on duplicate share certificate (*deleted*)



Transfer of registered ownership of securities from a person to depository (Demat) or from depository to beneficial owner (Remat) [*no change*]

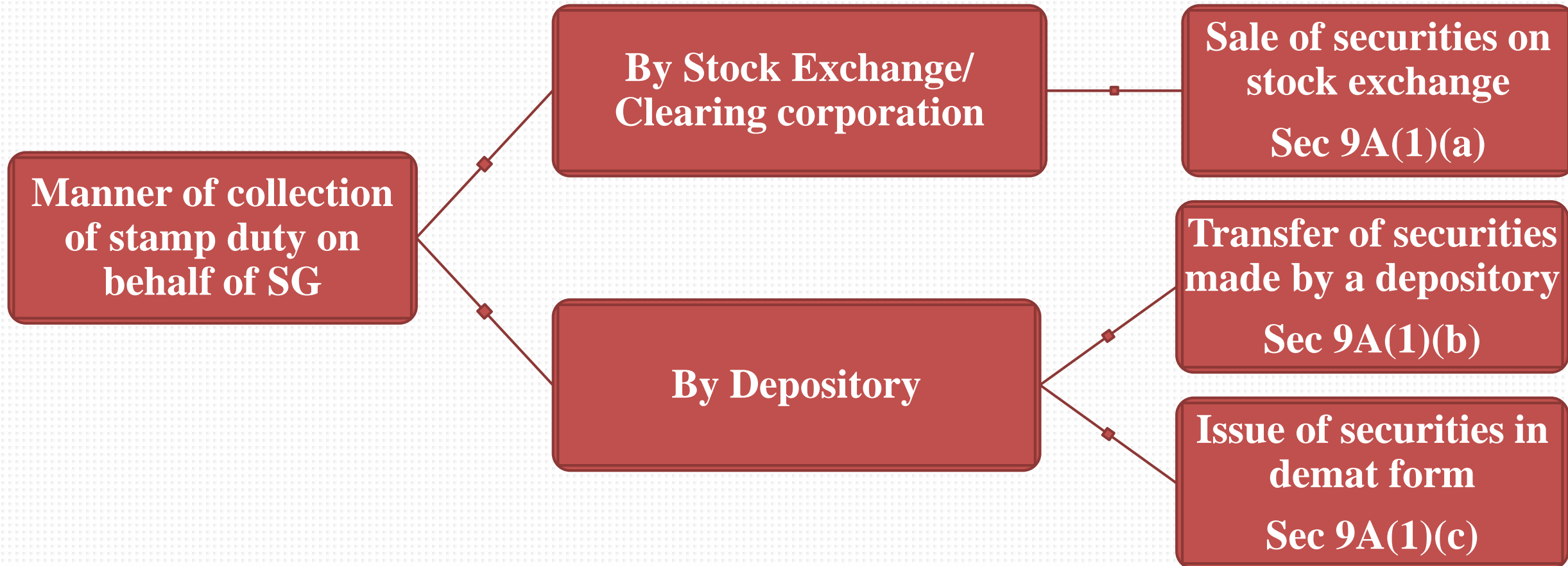
Transfer of beneficial ownership of securities (*exemption deleted*)



Transfer of beneficial ownership of units of Mutual fund (*exemption deleted*)

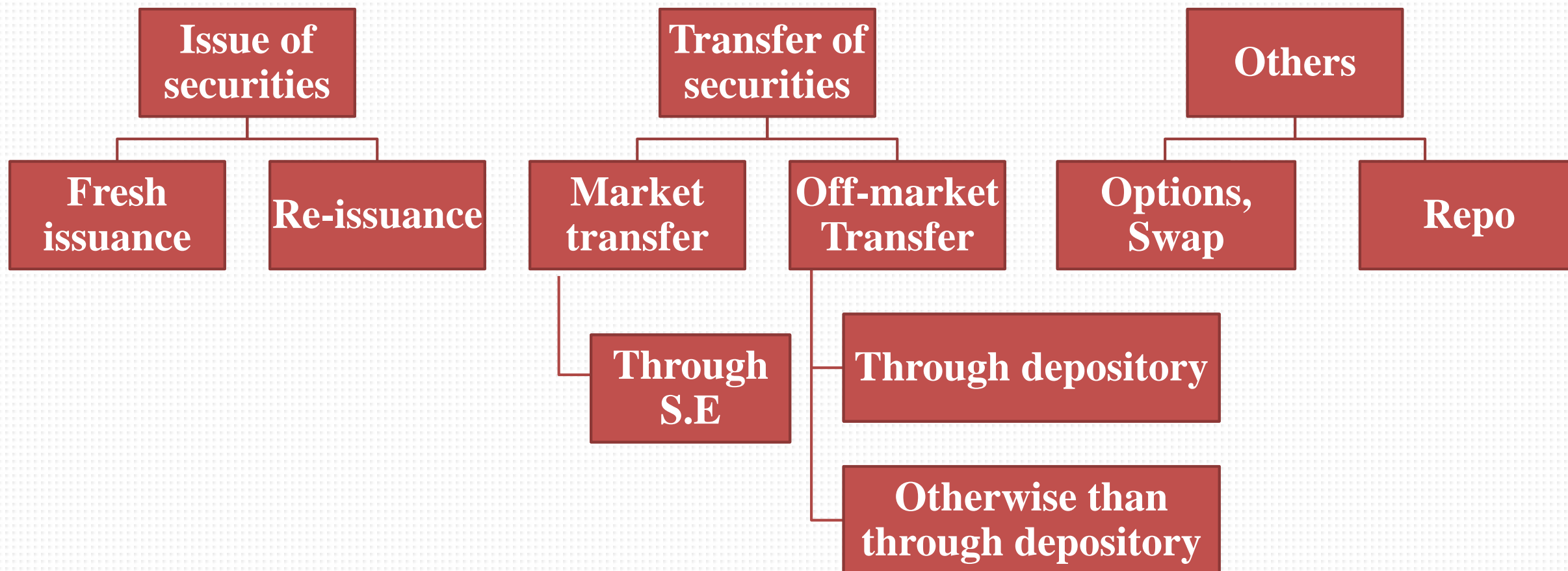


Section 73A – Power of CG to make rules



Payment of Stamp Duty: by whom, to whom, when and on what value..

Transactions with respect to securities



Sale of securities made through stock exchange

[Sec 9A (1) (a)]

Kind of transaction under section 9A(1)		Sale of securities whether delivery based or otherwise through a stock exchange
Stamp Duty	Payable on:	Clearance List
	By whom	Buyer of securities
	On what value:	Market value of securities at the time of settlement of transactions.
	Collected by:	Stock exchange or clearing corporations
	Collected when:	On the settlement date

Open offer, tender offer, OFS made through stock exchange [Rule 3(2)]

Kind of transaction under Rule 3(2)		Open offer, tender offer, OFS made through stock exchange
Stamp Duty	Payable on:	Clearance List
	By whom	Offeror of securities
	On what value:	Market value/offer price of securities
	Payable when:	On completion of offer

Transfer of securities made by a depository

[Sec 9A (1) (b)]

Kind of transaction under section 9A(1)(b)		<ul style="list-style-type: none"> • Off-market sale for a consideration, delivery based or otherwise • Over the counter trades occurring in demat or electronic form
Stamp Duty	By whom	Transferor of securities
	On what value:	Entire sale consideration even if consideration is partly paid or in instalments
	Collected by:	Depository on behalf of State Government

Transfer of securities in case of pledge [Rule 5 (7)]

Kind of transaction under Rule 5(7)		Invocation of pledge
Stamp Duty	By whom	Pledgee
	On what value:	Market value of securities
	Collected by:	Depository on behalf of State Government

Acquisition of securities from Minority Shareholders [Rule 6 (5)]

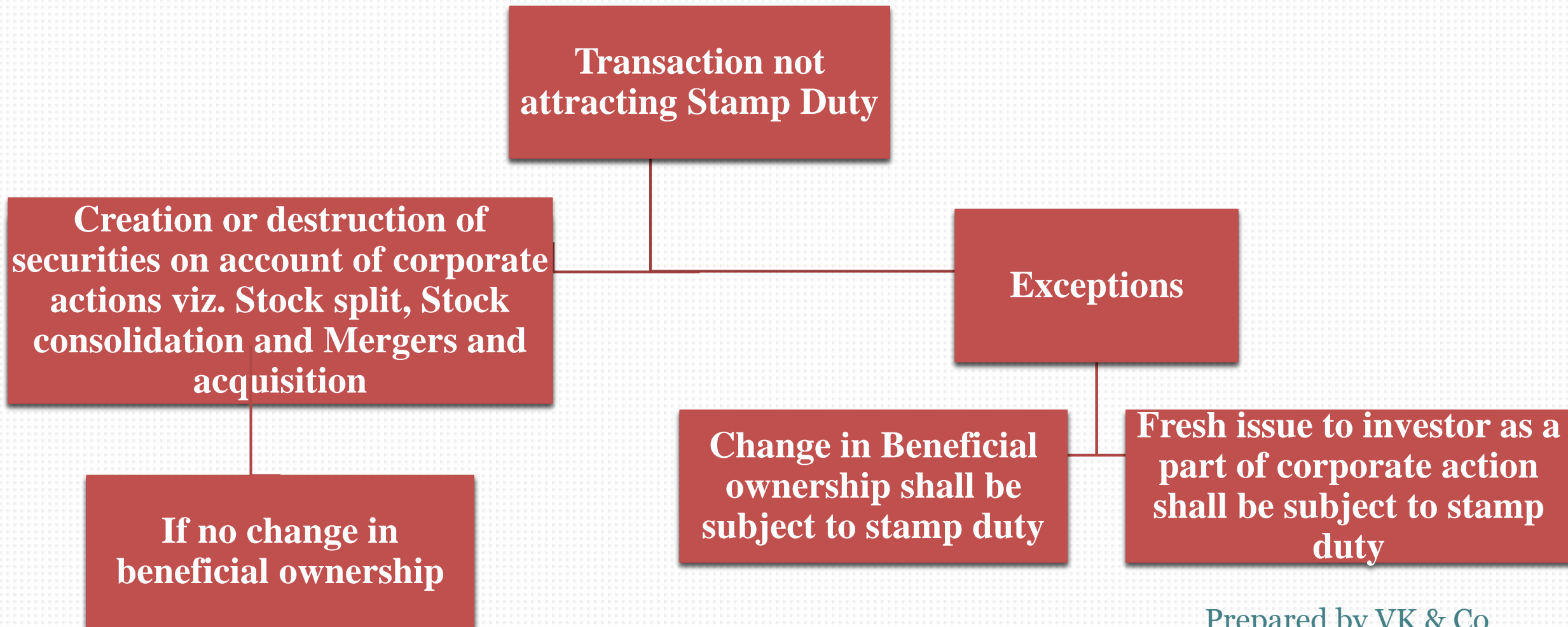
Kind of transaction under Rule 6(4)		Transfer pursuant to acquisition of shares from minority shareholders under Section 236 of Companies Act, 2013
Stamp Duty	By whom	Issuer
	On what value:	Offer price of securities
	Collected by:	Depository on behalf of State Government

Issue of securities in Demat form

[Sec 9A (1) (c)]

Kind of transaction under Section 9A(1)(c)		Creation/change in records of a depository pursuant to issue of securities in Demat form
Stamp Duty	Payable on:	Allotment List
	By whom:	Issuer of securities
	On what value:	Total market value of securities
	Collected by:	Depository on behalf of State Government

Transactions not attracting stamp duty [Rule 6 (3)]



Issue of securities in physical form under Section 9B

Kind of transaction under Section 9B(a)		Issue of securities in physical form otherwise than through a stock exchange or clearing corporation
Stamp Duty	Payable at:	the place where registered office is situated
	By whom:	Issuer of securities
	On what value:	Issue price

Sale/transfer of securities in physical form

Section 9B

Kind of transaction under Section 9B(b)		Sale/ transfer of securities in physical form otherwise than through a stock exchange or clearing corporations
Stamp Duty	Payable at:	Domicile of buying client <i>Not expressly provided. On the basis of rationale provided for demat transfers</i>
	By whom:	Seller or transferor of securities
	On what value:	On the consideration

Timeline for transfer of Stamp duty u/s 9A(4)

2. Transfer stamp duty within 3 weeks of the end of each month after deducting facilitation charges



Stock Exchange/Clearing Corporation/Depository

1. Collection of stamp duty

Buyer is located in India

SG where residence of buyer located

having trading member or broker

SG where registered office of trading member or broker of such buyer

State Government

Buyer is located outside India

Where there is no trading member

SG having registered office of the participant



Buyer/Transferor/Issuer

Penalty for non compliance of Section 9A

Non compliance of:	Penalty specified u/s 62A
<p>Failure to collect stamp duty by stock exchange or clearing corporation or depository</p> <p style="text-align: center;">OR</p> <p>Failure to transfer the duty to the SG</p>	<p>Fine:</p> <p>Minimum Rs 1 lakh</p> <p>Maximum 1% of of the collection or transfer so defaulted.</p>
<p>Failure to submit details of the transaction of securities by stock exchange or clearing corporation or depository</p> <p style="text-align: center;">OR</p> <p>Submission of false documents/ declaration to the Government</p>	<p>Fine:</p> <p>Rs 1 lakh for each day during which such failure continues</p> <p style="text-align: center;">OR</p> <p>Rs 1 crore, whichever is less.</p>

Determination of value of stocks and marketable securities under section 21

Before

Duty shall be calculated on Average price or the value as on the date of instrument

After

Duty shall be calculated on Market value of the securities

Market value shall be

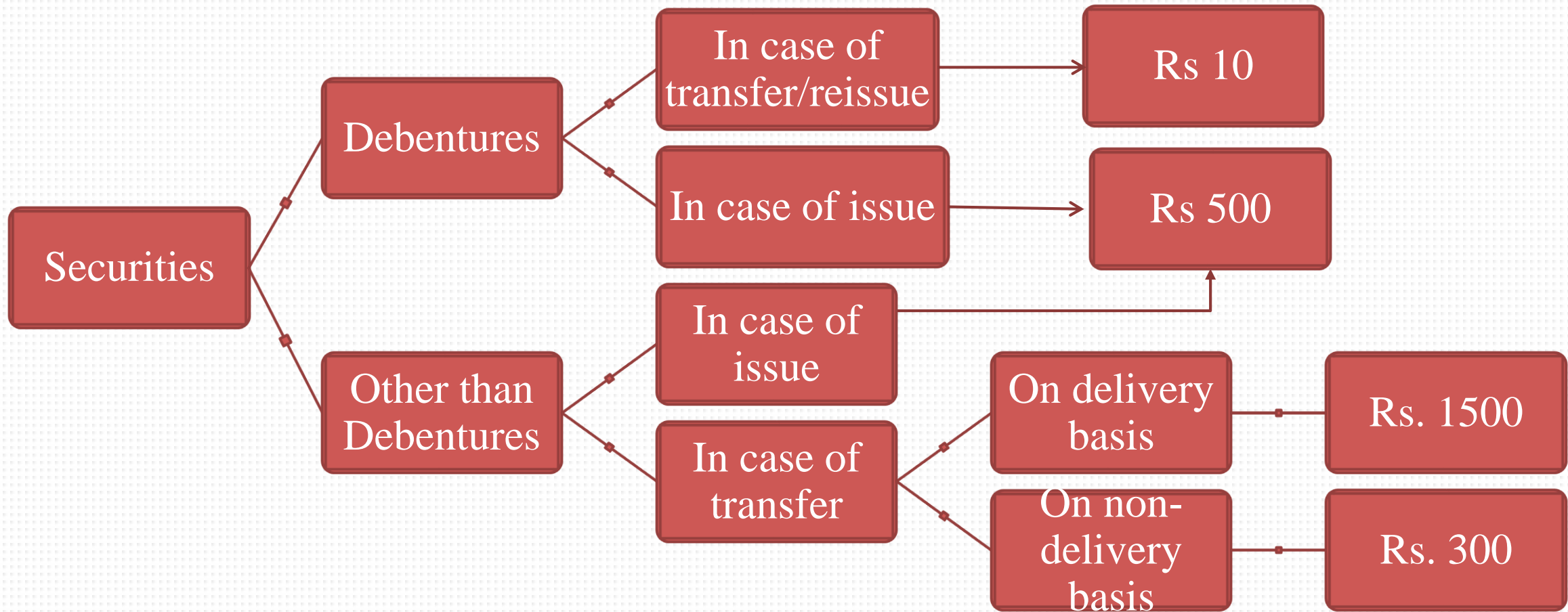
In case of securities = As per the definition

In case of options in any securities = Premium paid by the buyer

In case of repo on corporate bonds = Interest paid by the borrower

In case of swap = only the first leg of the cash flow

Stamp duty for every Rs 1 crore: Schedule I (Article 27 & 56A)



Stamp duty for every Rs 1 crore: Schedule I (Article 27 & 56A)

