Fundamentals of Company Law

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History of Company Legislation in India

- Joint Stock Companies Act, 1850
- Companies Act, 1857
- Companies Act, 1866
- Indian Companies Act, 1882
- Companies Act, 1913
- Companies Act, 1956
- Companies ACT, 2013

Definition of Company

- S.2(2) of Companies Act, 2013
  - "company" means a company incorporated under this Act or under any previous company law

Characteristic Feature of Company

- Incorporate association
- Legal entity distinct from its members
  - Salomon v A Salomon & Co Ltd [1896] UKHL 1
  - Lee v Lee's Air Farming Ltd [1960] 3 All. ER 420
- Lifting the Corporate Veil
  - Statutory provision
  - Judicial interpretation
- Artificial person
- Limited liability
- Separate property
- Transferability of shares
- Perpetual succession
- Common seal

Advantages and Disadvantages of Incorporation

Advantages	**Disadvantages**
Independent legal entity	Formality and expense
Limited liability	Loss of privacy
Perpetual succession	Divorce control from ownership
Transferability of shares	Control by few
Infinite membership	Greater public accountability
Separate property	Possibility of frauds

Kinds of Company

- Private companies 2(68)
  - Once person company 3(1)(C)
  - Small company 2(85)
- Public company 2(71)
- Limited liability
  - Limited by shares; guarantee; limited by guarantee as shares 4(1)(d)(i); 4(1)(d)(ii) and S.285
- Unlimited Liability Company 3(2)
- Statutory companies
- Registered companies
- Government companies 2(45)
- Foreign companies
- Holding and subsidiary companies 2(46) and 2(87)

Formation and Incorporation of Company

- Section 3 to 22 of the Companies Act, 2013 (herein after called the Act) read with Companies (Incorporation) Rules, 2014 made under Chapter II of the Act (herein after called 'the Rules') cover the provisions with regard to incorporation of companies and matters incidental thereto.
- Promotion
  - Promoter 2(69)
  - Legal basis; duties and liability
- Registration
  - Simplified Performa for Incorporating Company Electronically (SPICE)
- Floatation
  - Certification of incorporation
- Commencement of business

Memorandum of Association

- 2(56) of the Companies Act, 2013, memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.
- Name clause
- Registered office clause
- Object clause
- Doctrine of ultra vires
- Liability clause
- Capital clause
- Association of subscription clause

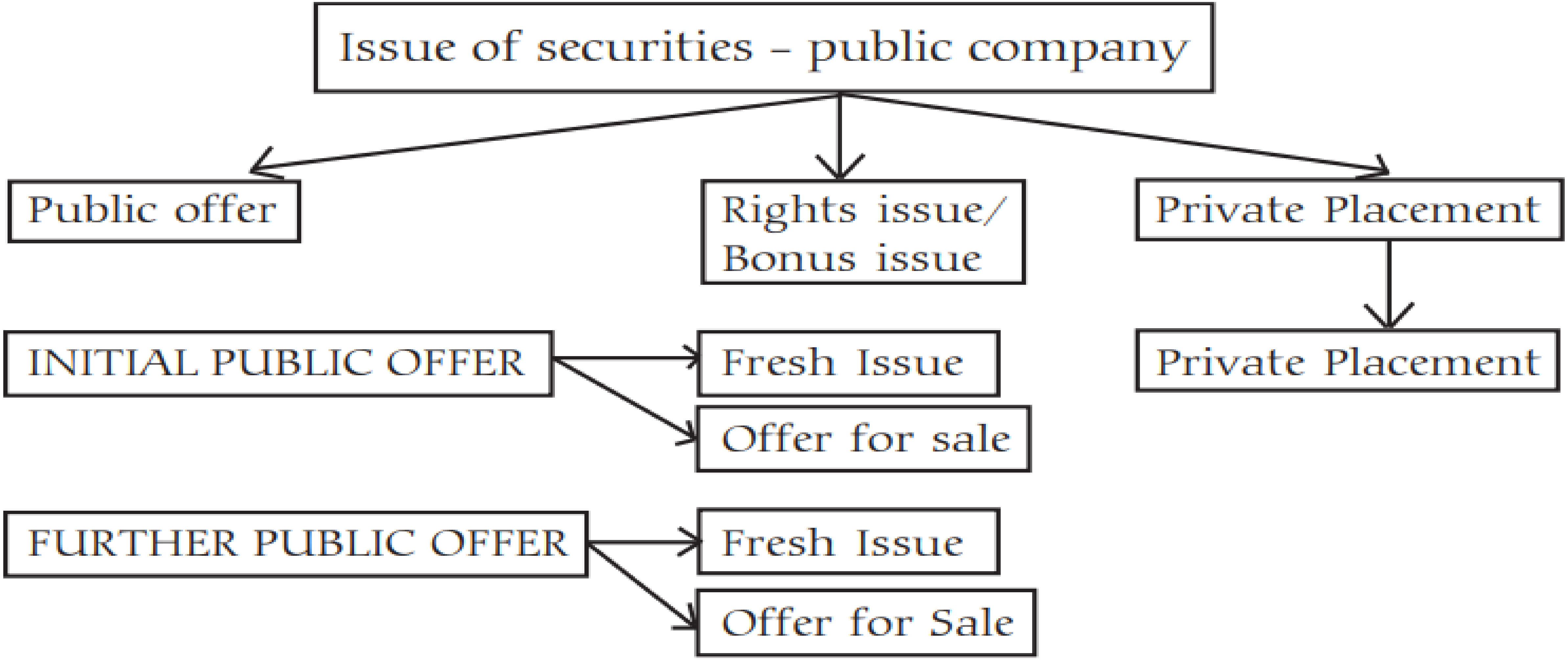
Article of Association

- 2 (5) "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.
- Provisions for entrenchment
- Alteration of articles
  - Conversion of private company into a public company
  - Conversion of public company into private company
- Doctrine of constructive notice
- Doctrine of indoor management
  - Exceptions
    - Outsider had knowledge of irregularity; no knowledge of articles; forgery; negligence; oppression

Prospectus

- 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

Prospectus and Allotment of Securities



Contents of Prospectus

- Information to be given in prospectus
- Reports to be set out in prospectus
- Declaration to be made
- Other matters

Types of prospectus

- Deemed prospectus; 25
- Shelf prospectus; 31
- Red-herring prospectus; 32

Misstatement of Prospectus

- What amount to misstatement? 34 (1)
- Liability
  - Civil 35(1)
  - Criminal 34 and 447
- Golden Rule for framing of prospectus

Share and Share Capital

- Equity share
  - With voting rights
  - With differential rights as to dividend
- Preference share
  - Participation or non participation
  - Cumulative and non cumulative
  - Redeemable and irredeemable
- Right shares
- Bonus shares

Meetings

- Shareholder meetings
  - Statutory meetings
  - Annual general meetings
  - Extraordinary general meeting
  - Class meeting
- Board meeting
- Meetings of the committees of board
- Meetings of debenture holders
- Meetings of creditors
- Meetings of contributories in winding up

Directors

- 2 (34) “director” means a director appointed to the Board of a company
- Who may be appointed as director?
- Qualification/disqualification
- Legal position
  - Agents
  - Trustees
- Appointment
  - Minimum and maximum
  - Women director
- Independent director 149(6)
- Removal of Director

CSR

Corporate Social Responsibility
Corporate Acountability
Responsible Business
Creating Shared Value
Beyond Philanthropy
Sustainability