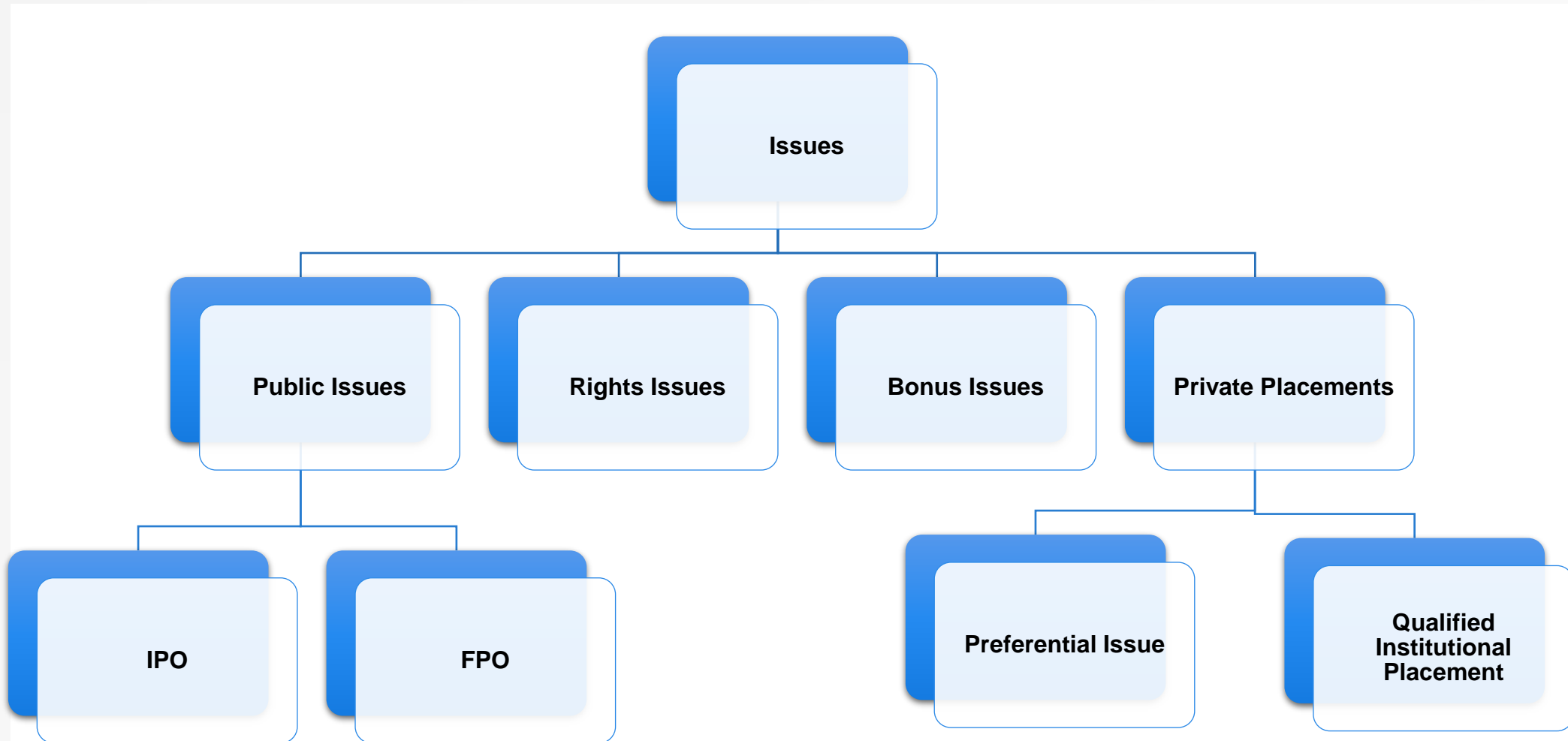


PRIVATE PLACEMENT



**-By Pranav Shah
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Modes of Issues



IPO

- Initial Public Offering.
- Done by unlisted company.
- Fresh issue of securities/ offers its existing securities for sale/ Combination of both.
- Securities issued for the first time to the public.
- Paves way for listing and trading of the issuer's securities in the Stock Exchange(s).

FPO

- Further Public Offer / Follow-on Offer.
- Done by already listed company.
- Fresh issue of securities / Offer for sale of securities to public .

Rights Issue

- Done by already listed company.
- Issue of securities to its existing shareholders (as on a Record date).
- Record Date is fixed by the issuer.
- The rights offered in a particular ratio to the number of securities held by existing shareholders as on the record date.

Bonus Issue

- Done by already listed company.
- Issue of shares to existing shareholders (as on a record date).
- Existing shareholders need not make any payment for “Bonus” shares.
- Shares are issued out of the company’s free reserve or share premium account.
- Issued in a particular ratio to the number of securities held on record date.

Preferential Issue

- Done by already listed company.
- Issue of shares / convertible securities (like warrants) to a select group of persons.
- Subject to prescribed norms such as minimum pricing, minimum public shareholding and lock-in.

QIP

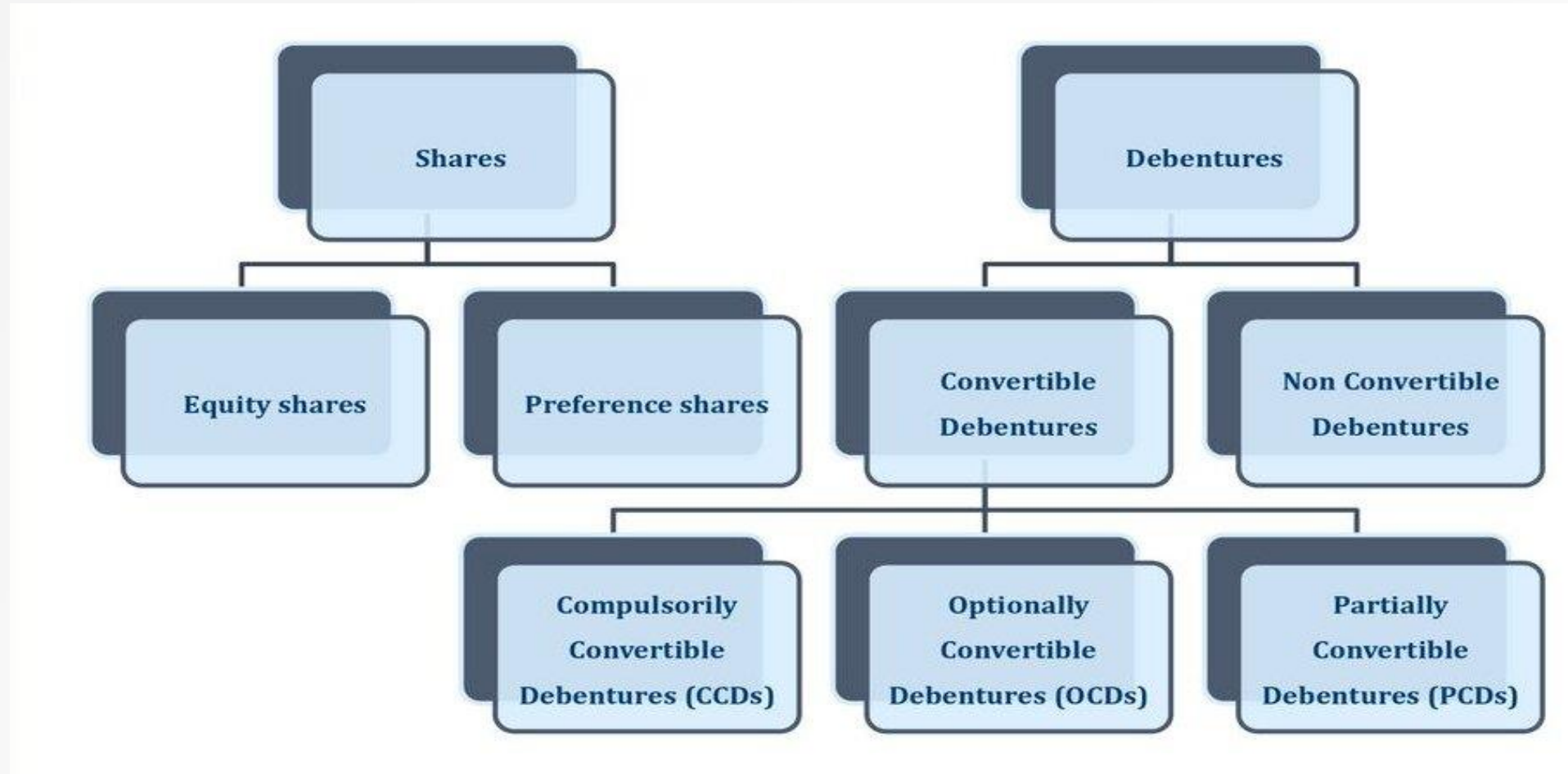
- Qualified Institutional Placement.
- Done by already listed company.
- Issue of shares / convertible securities (like warrants) to Qualified Institutional Buyers (QIBs).
- Subject to prescribed norms such as minimum pricing and minimum public shareholding.

Meaning

"Private Placement" means any offer of securities or invitation to subscribe securities to a **selective group of persons** by a company (other than by way of public offer) through issue of a private placement offer letter (PPOL) and which satisfies the conditions specified in this section"

- Offer shall **not be made to more than 50 persons in a single offer of not more than 200 persons in aggregate** (excluding qualified institutional buyers & employees of companies being given under ESOP) in a financial year.
- If an offer or allotment is made to more than 200 in aggregate in a financial year it shall be **deemed to be public offer**.

Securities of which Private Placement can be done-



Applicable Section & Rules-

- **Section 39 and 42** of the Companies Act, 2013 read with **rule 12 and 14** Companies (Prospectus and Allotment of Securities) Rules, 2014.
- **Section 71** of the Companies Act, 2013 in case of private placement of debentures.
- **Section 62** of the Companies Act, 2013 in case of private placement of convertible debentures.
- **Section 180** of the Companies Act, 2013 in case of private placement of Non-convertible debentures.

Prior checking points:

- Whether **authorized share capital is sufficient** for issue of shares through private placement and if authorized capital not enough, then first alter the capital clause of the memorandum of association of the company.
- Whether **articles of association authorise for issue** of shares through private placement and if not, then first alter the articles of association to include provisions for issue of shares through private placement.
- Confirm that shares which are to be issued through private placement are **fully paid up shares**

Important points of PPOL-

- Shall be in **Form PAS-4**
- It shall **not carry right of renunciation**
- The application form has to be **serially numbered and addressed** specifically to the person to whom the offer is made along with the Offer Letter. Allotments can be made only to such persons.

- The payment for subscription should be through the bank account of the person subscribing to the securities and the company should keep a **record of the bank account** from where such payments have been received.
- **No cash transaction** is permitted.
- The money so received shall be kept in a **separate bank account** of the company and utilised only for allotment (or repayment).
- **No advertisement** of offer.

- **Minimum gap between two offers-**

A company can come with a new offer after completion of the earlier offer. However, no fresh offer or invitation shall be made unless the allotments with respect to any previous offer or invitation have been completed or been withdrawn or abandoned by the company.

- **Allotment-**

Securities are to be allotted within 60 days from the date of receipt of the application money and if the company fails to allot securities, has to repay the application money to the subscribers within 15 days from the date of completion of 60 days and in case the company fails to repay the application money within the aforesaid period, the company is liable to repay application money along with interest at the rate of 12% p.a. from the expiry of the 60th day.

Procedure for Private Placement of Shares-

1. Check **Provision in Article** regarding Private Placement

2. Call **Board Meeting**
 - To Prepare Offer Letter
 - Make Proposal for Private Placement
 - Prepare list of persons to whom option will be given
 - Call Extra ordinary General Meeting

3. Call **Extra ordinary General Meeting:**

Pass **Special resolution**- will be **valid for 12 month**

- If not completed private placement in 12 Month pass another Special resolution
- Approve Draft Offer Letter by Special resolution.

4. File **Form MGT-14** with ROC Attachments:

- Notice of EGM
- CTC of SR
- Minutes

5. Issue offer letter in **Form PAS-4** within **30 days** of record of name of persons.
6. Prepare **complete record** of Private Placement in **Form PAS-5**.
7. File **Form PAS-4 + PAS-5** with ROC within **30 days** of issue of offer letter.
8. Make **Allotment of shares within 60 days** of receipt of Money from the persons to whom right was given.
9. Call **Board Meeting for allotment of shares**.

10. File **Form PAS-3** with ROC within **30 days** if Allotment.

Attachments:

- List of Allottees
- BR for allotment of share

11. File **Form MGT-14** along with Resolution pass in Board meeting for allotment of shares.

12. **Issue of Share Certificates.**

Penal provisions for non-compliance with the required provisions of law-

- If a company defaults in filing the return of allotment within the period prescribed in Form PAS-3- The company, its promoters and directors shall be liable to a penalty for each default of **one thousand rupees for each day** during which such default continues but not exceeding **twenty-five lakh rupees**.
- If a company makes an offer or accepts monies in contravention of Section 42- The company, its promoters and directors shall be liable for a penalty which may extend to the **amount raised through the private placement or two crore rupees, whichever is lower**, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

Thank
you

Pranav Shah

Knowledge management team.

Mehta & Mehta | Company Secretaries |

12th June, 2021

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