

# Company Law

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# *What are SHARES?*

## Definitions:

**Sec 2(46) of THE COMPANIES ACT, 1956:**

"A share is a share in the share capital of a Company, and includes stock receipt where there is a distinction between stock and shares is expressed or implied."

***Borland's Trustee v Steel Brothers & Co Ltd* [1901] 1 Ch 279** is a [UK company law](#) case, concerning the enforceability of a company's constitution and the nature of a company [share](#).

# Share capital

## Meaning of Share Capital:

- ❖ Denotes the amount of capital raised by the issue of shares, by a company.
- ❖ Collected through the issue of shares and remains with the company till its liquidation.  
Owned capital of the company
- ❖ The shareholder are the owners of the company.
- ❖ The total share capital is divided into small parts and each part is called a share.
- ❖ Share is the smallest part of the total capital of a company.

# Types of share capital

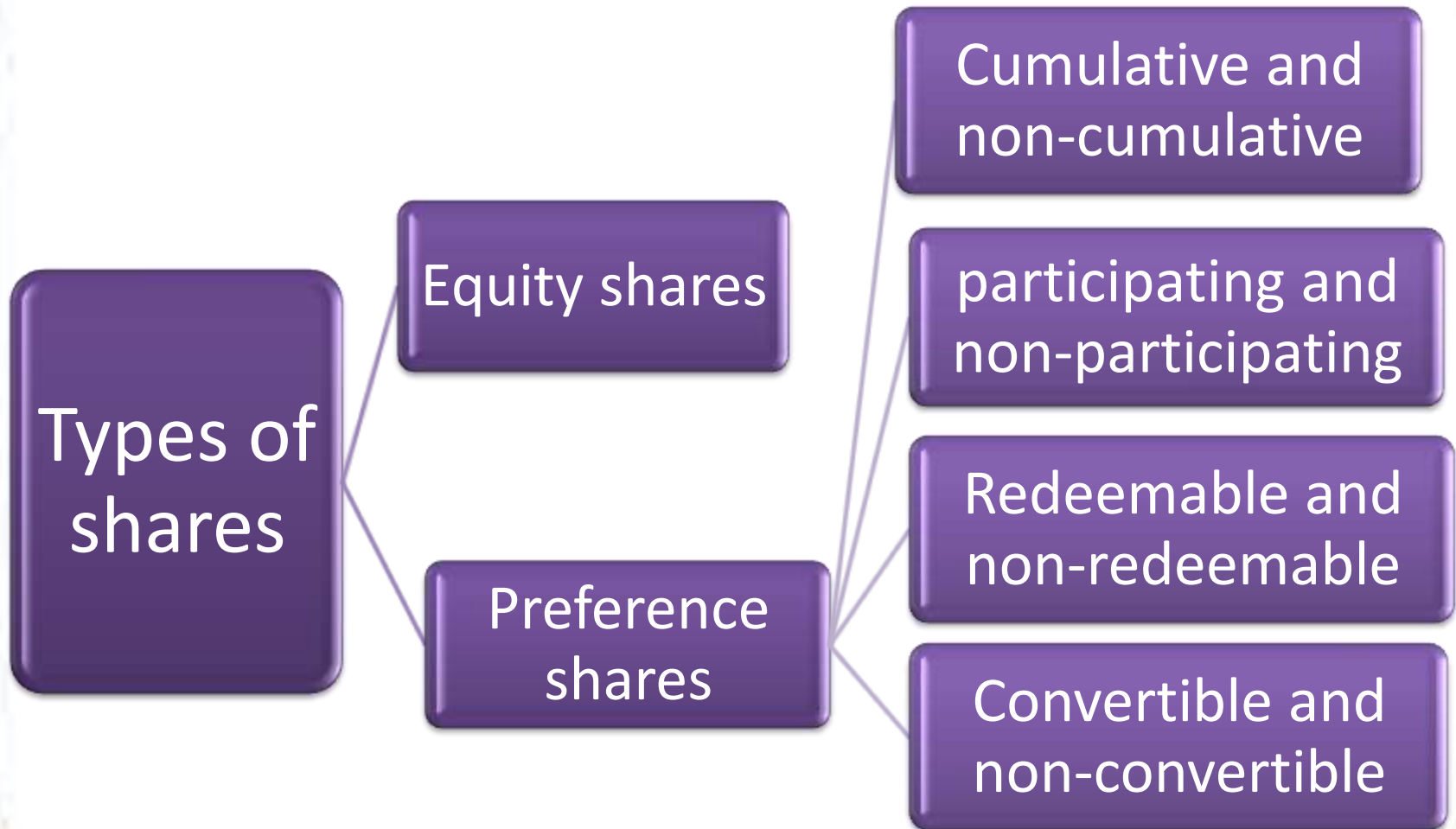
Authorized capital

Issued capital

Subscribe capital

Called up capital

Reserve capital



# Equity shares

- Equity shares are those shares which are ordinary in the course of company's business.
- They are also called as ordinary shares.
- According to section 85 (2), “Equity share capital” means, with reference to any such company, all share capital which is not preference share capital.



# **RIGHTS OF EQUITY SHAREHOLDERS**

- **THE RIGHT TO RESIDUAL INCOME**
- **RIGHT OF CONTROL**
- **PRE-EMPTIVE RIGHT**
- **RESIDUAL CLAIMANTS OVER ASSETS**

# Advantages

- INCOME.
- TRANSFEBILITY OF SHARES.
- OWNERSHIP.
- EASILY LIQUIDATED.

# Disadvantages

- UNCERTAINTY OF INCOME.
- RISKY INVESTMENT.
- HARMFUL SPECULATION.

# TYPES OF EQUITY SHARES



➤ Blue Chip Shares.

➤ Income Shares.

➤ Growth shares.

➤ Cyclical Shares.

➤ Defensive shares.

➤ Speculative share.

Section 86 of the Companies Act, 1956 was amended with effect from 13-12-2000 whereby issue of differential shares was permitted. Where the voting rights on new shares are different from the voting rights on the equity shares already issued, the new shares are known as Differential Voting Rights Shares (DVRS). A company can issue new equity shares with higher or lower voting rights as compared to the rule of one share one vote applicable for the existing equity shares. This write-up deliberates upon law relating to differential voting rights shares.

**According to Section 86 of the *Companies Act, 1956* was amended with effect from 13-12-2000**

“New issues of share capital to be only of two kinds.—The share capital of a company limited by shares shall be of two kinds only, namely:—

- (a) equity share capital—
  - (i) with voting rights; or
  - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed;
- (b) preference share capital.”

# Preference shares

According to **section 85 (1)** “Preference share capital” means, with reference to any company limited by shares, whether formed before or after the commencement of this Act, that part of the share capital of the company which fulfils both the following requirements, namely:—

- (a) that as respects dividends, it carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax; and
- (b) that as respects capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid up or deemed to have been paid up, whether or not there is a preferential right to the payment.

# Advantages

1. Raising long
2. No need to mortgage property
3. Repayment of capital.
4. Rate of return is guaranteed.

# Disadvantages

1. Permanent burden
2. Not advantageous to investors
3. Cost of raising the preference share capital is higher.

# Types of preference shares

## 1. Cumulative preference shares:

Carry the right to fixed to a fixed amount of dividend at a fixed rate. Dividend is payable even out of future profit, if current profit is not sufficient for this purpose.

## 2. Non-cumulative preference shares:

carry the right to a fixed amount of dividend, in case no dividend is declared in a year due to any reason, the right to receive such dividend for that year expires.

### 3. Participating preference shares:

in addition to right a fixed dividend, the shareholders have the right to participate in the surplus profits, after payment of equity dividend at a stipulated rate.

### 4. Non-participating preference shares:

are the shares on which only a fixed rate of dividend is paid every year, without any additional rights in profits and surplus in case of winding up of the company.

5. Redeemable preference shares:

under section 80, these shares are issued on condition that the company will repay after a fixed period of time.

6. Non-redeemable preference shares:

do not carry the agreement regarding redemption of at a certain period. Section 80 (5A) provides irredeemable preference shares.

7. Convertible preference shares:

which can be converted into equity shares at their option.

8. Non-convertible preference shares:

which cannot be converted into equity shares at their option.

Distinguish between equity shares and preference shares:

1. Participation in management
2. Sequence of dividend
3. Sequence of refund of capital
4. Refund of capital during life time
5. Permanency of dividend
6. Compulsion
7. Cumulative nature

# Other matters relating to shares

1. Underwriting agreements:  
commission not exceeding 2.5% the value of shares and not exceeding 5% in case of debentures may be paid to persons agreeing to subscribe or procure subscription for shares or debentures.
2. Issue of shares at a premium:  
securities issued at a price above par or nominal value.

3. Issue of shares at a discount:

issue of shares below par or face value. Discount not exceed 10%. For default penalty up to Rs.50/-

4. Sweat Equity Shares:

issue to a class of employees for providing know-how or making available rights in the nature of intellectual property or value additions.

5. Buy Back of shares or Safety Net:

company buying back its own shares or securities. Maximum permissible is 25% of the total paid up capital.

6. Price Band:

is within which the investors can bid.

7. Book Building:

is the process undertaken by which a demand for securities proposed to be issued by a body corporate is elicited and built up.

8. Green Shoe Option:

is an option of allocating shares in excess of the shares including the public issue.

9. Call on shares:

is the demand on its shareholders to pay up the whole or part of the unpaid amount of shares.

# Allotment of shares

## GENERAL RULES REGARDING ALLOTMENT:

1. Made by proper authority
2. Reasonable time
3. Unconditional
4. communicated



# Statutory restriction on allotment

1. Minimum subscription
2. Statement in lieu of prospectors
3. Opening of subscription list



# Effects of irregular allotment

1. Liable to be fined
2. Cancellation/ voidance of allotment
3. Void or lapsed allotment



# Declaration of dividend on share capital

- All the J.S.Co. with share capital have to declare dividend; which can be paid out of current year's profit or cumulated profit of earlier year.
- Dividend need to be transferred in the separate bank account.
- Prohibition: a company which fails to redeem the irredeemable shares within stipulated time cannot declare dividend.

# Steps involved in declaration of dividend

1. Computation of dividend
2. Transfer of profits to reserves
3. AGM
4. Time limit for payment of dividend
5. Transfer to unpaid dividend account





# Transfer of shares

Transfer of shares can take place under :

1. The Companies Act, 1956
2. The Depository Act, 1996



# Transmission of shares

Takes place when:

1. Shareholder dies.
2. Shareholder become insolvent.
3. Company is a shareholder and it goes into liquidation.

# capital increase

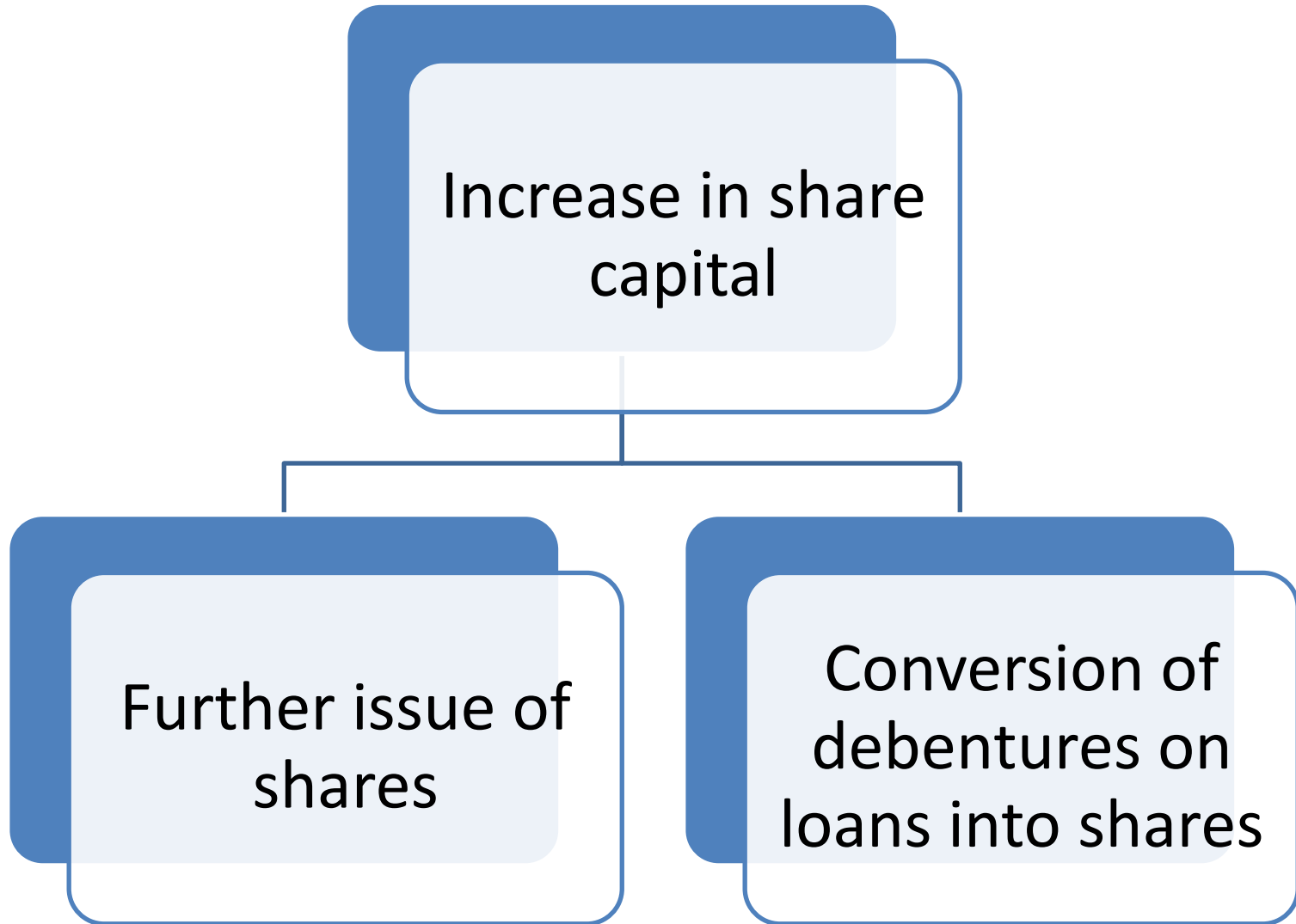
## Definition:

A method used by corporations to raise share capital by giving existing shareholders the right to subscribe to new shares for cash. Alternatively, capital can be raised by exchanging assets such as shares in another company or by raising the par value of existing shares. New investors have the opportunity to become shareholders. Also known as seasoned equity offering.



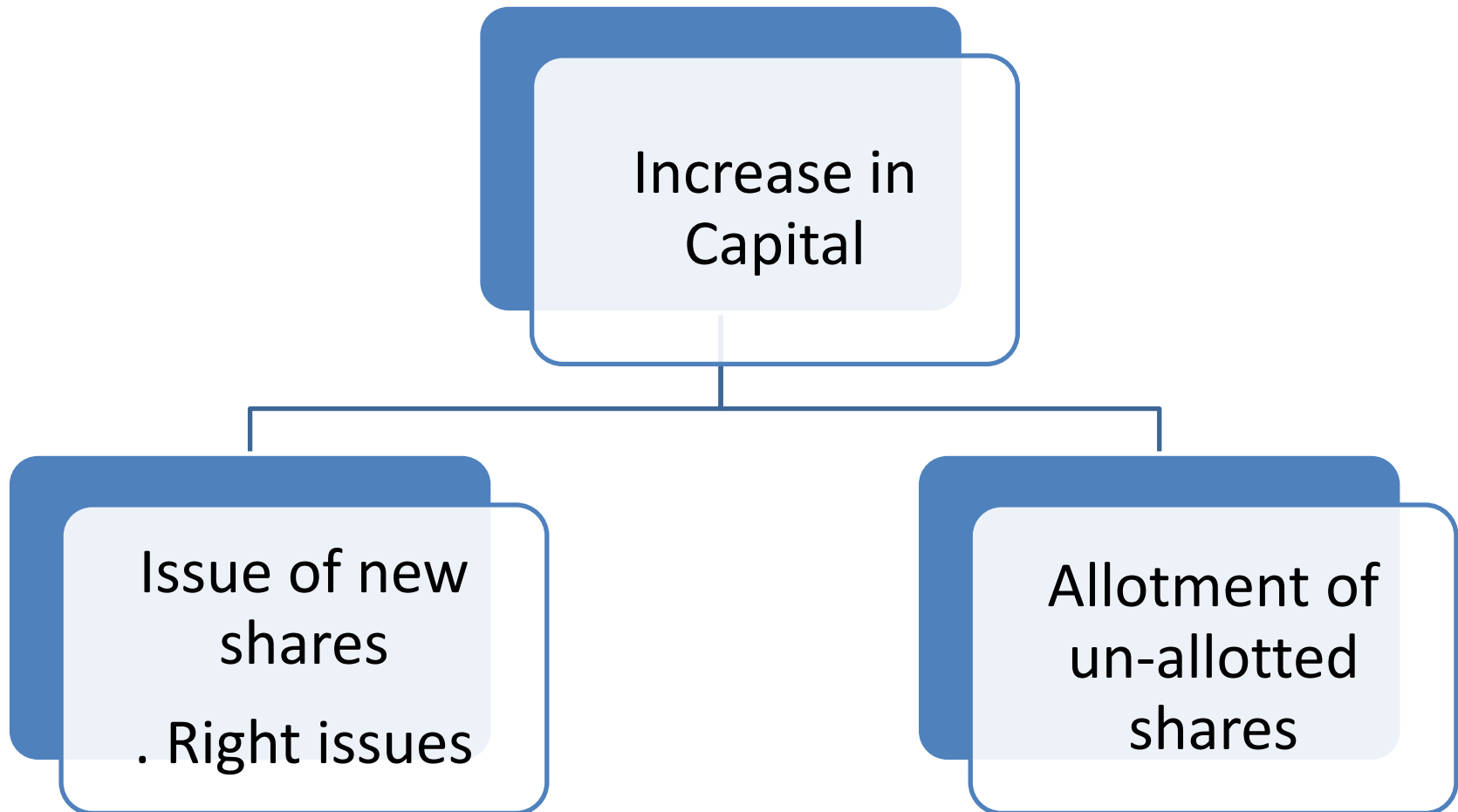
**Why Do companies  
Increase Share Capital ?**

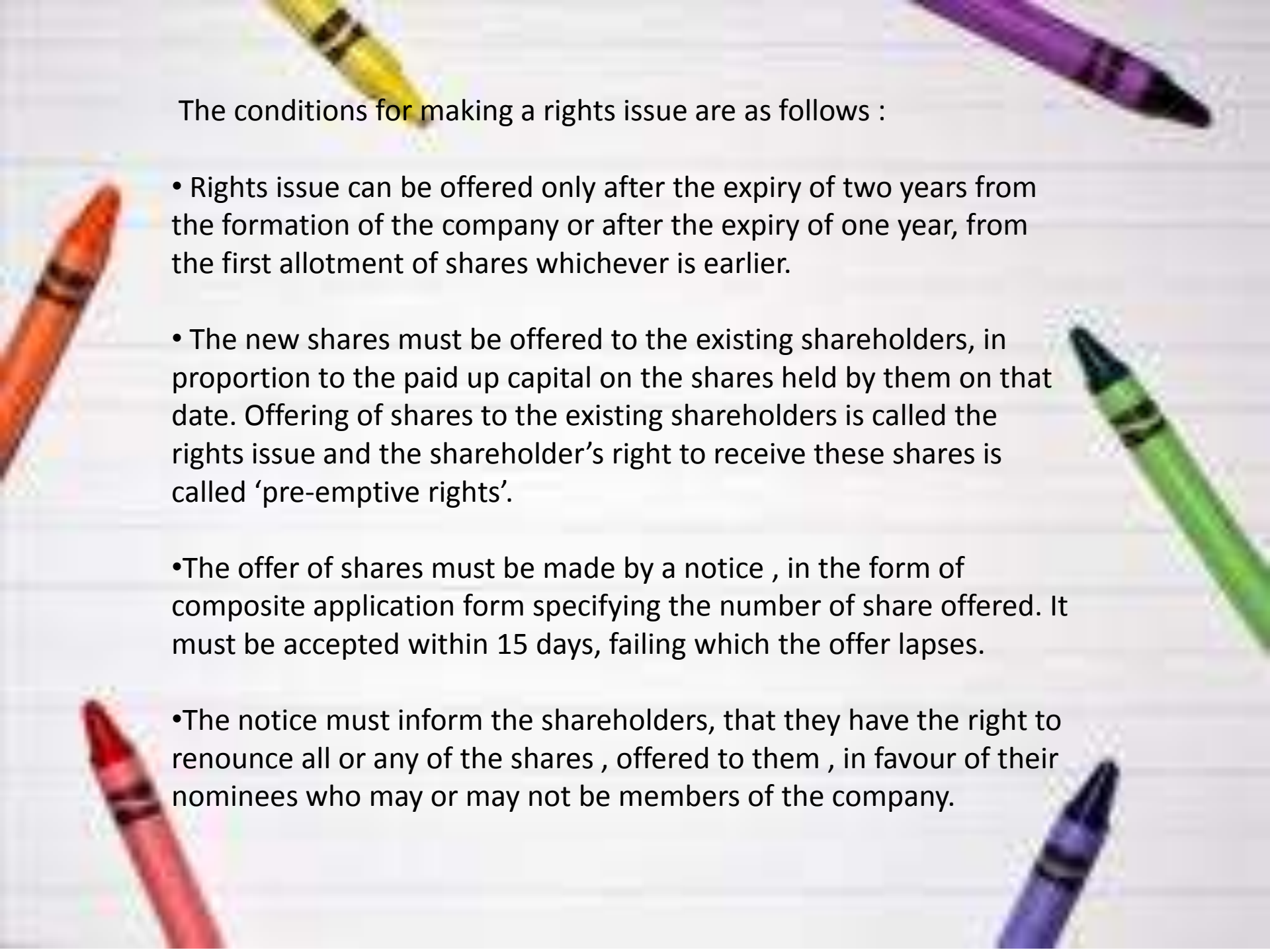
# INCREASE IN THE SHARE CAPITAL



# Further issue of shares


A company by passing an ordinary resolution in its general meeting may,



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The conditions for making a rights issue are as follows :

- Rights issue can be offered only after the expiry of two years from the formation of the company or after the expiry of one year, from the first allotment of shares whichever is earlier.
- The new shares must be offered to the existing shareholders, in proportion to the paid up capital on the shares held by them on that date. Offering of shares to the existing shareholders is called the rights issue and the shareholder's right to receive these shares is called 'pre-emptive rights'.
- The offer of shares must be made by a notice , in the form of composite application form specifying the number of share offered. It must be accepted within 15 days, failing which the offer lapses.
- The notice must inform the shareholders, that they have the right to renounce all or any of the shares , offered to them , in favour of their nominees who may or may not be members of the company.



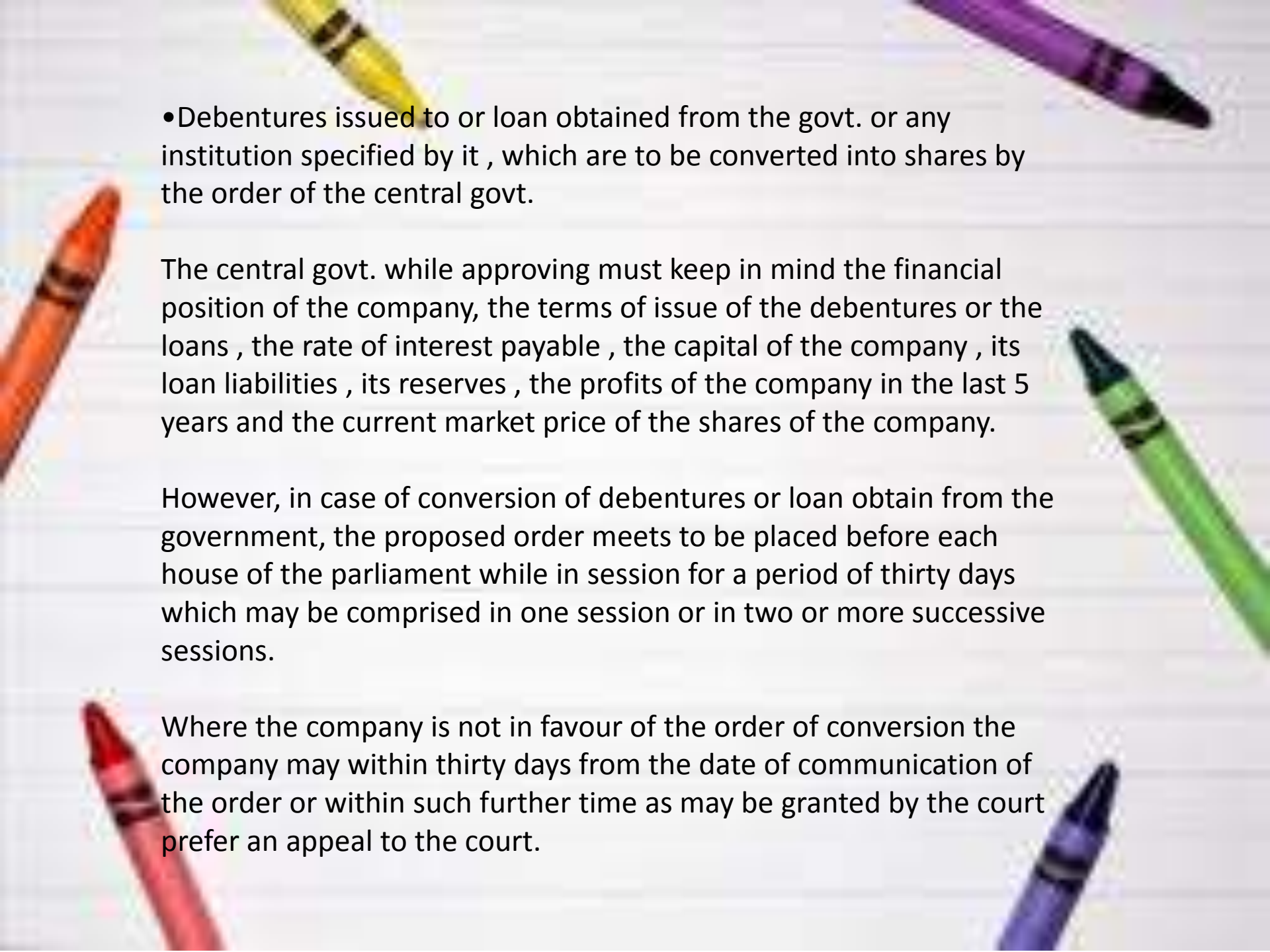
Although further issue has got to be firstly offered to the existing shareholders, there are certain circumstances under which the company can directly issue the shares to the outsiders in total exclusion of the existing shareholders. Those circumstances are

- Where the company passes through a special resolution in the general meeting , deciding to offer new shares directly to outsiders; or
- Where the company passes an ordinary resolution and obtains the approval of the central government
- Where the existing shareholders decline to accept the shares
- Where the new share are issued within two years of the formation of the company or within one year of the allotment made , for the first time after its formation
- Where the company is a private company

## Conversion of debentures or loans into shares

The debentures or loans may be converted into shares , thus having the effect of increasing the authorized capital of the company. This is done under the following circumstances

- Where the shares are issued against the conversion of debentures or loans provided the following two condition are satisfied
- That the company by passing special resolution as accorded approval to the terms of issue of such loans or debentures; and
- That the terms of issue of such loans or debentures have either been approved by the central govt. before the issue of the debentures or the raising of the loans or are in conformity with the rules, in any, made by the central govt. in this behalf

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- Debentures issued to or loan obtained from the govt. or any institution specified by it, which are to be converted into shares by the order of the central govt.

The central govt. while approving must keep in mind the financial position of the company, the terms of issue of the debentures or the loans, the rate of interest payable, the capital of the company, its loan liabilities, its reserves, the profits of the company in the last 5 years and the current market price of the shares of the company.

However, in case of conversion of debentures or loan obtain from the government, the proposed order meets to be placed before each house of the parliament while in session for a period of thirty days which may be comprised in one session or in two or more successive sessions.

Where the company is not in favour of the order of conversion the company may within thirty days from the date of communication of the order or within such further time as may be granted by the court prefer an appeal to the court.

# SEBI guidelines on right issue

1. Rise fund in exceed of 50 lakhs.
2. A merchant banker.
3. Minimum subscription clause.
4. Right issue.
5. Underwriting.
6. Depository for decentralization of securities.
7. Paid up shares.
8. right issue during period of commencing.
9. Pending conversion
10. Not withdrawal the right issue after announcement.

Thank you.....

