



Different Kinds of Issue of Shares

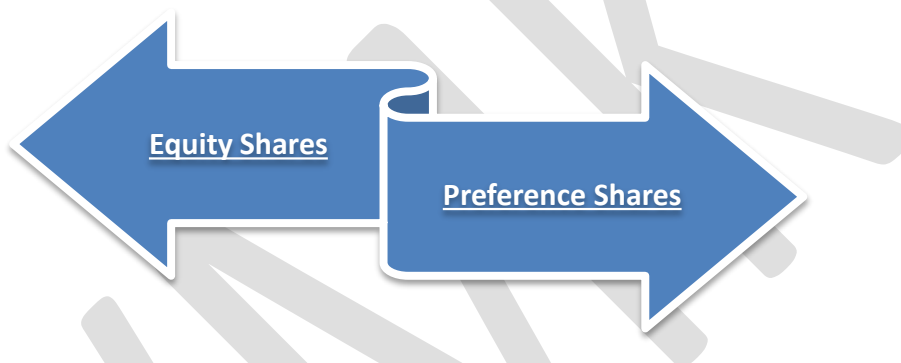
Section 2(84) of Companies Act, 2013:

Share means a share in the share capital of company and includes stock.

It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend.

Types of Shares:

There are two types of shares under Companies Act, 2013:



Equity Shares: All the Share Capital which is not preference share capital.

Preference Shares: Issued Capital which carries a preferential right with respect to:

- ❖ Payment of dividend; and
- ❖ Repayment of capital.

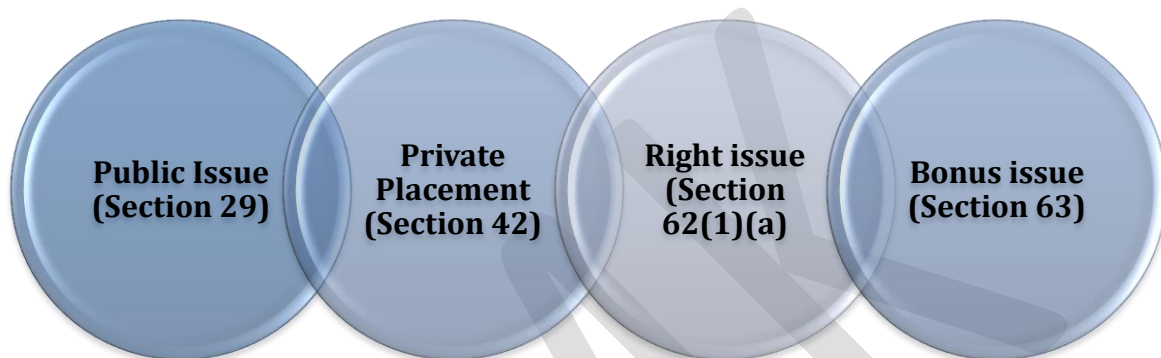
S.No.	Equity Shareholders	Preference Shareholders
1	Right to vote on EVERY resolution placed before the company	Right to vote on ONLY following resolutions: 1. Directly affect the rights attached to his preference shares; 2. Winding up; 3. Repayment/reduction of equity/preference share capital;
2	Voting Right ON A POLL = In proportion to his share in the paid-up equity share capital.	Voting Right ON A POLL = In proportion to his share in the paid-up preference share.



Section 23 of Companies Act, 2013:

Section 23 says company may issue shares by way of:

- Public Offer through Prospectus (IPO and FPO) It is only for public companies;
- Private Placement;
- Right issue;
- Bonus Issue.



Issue of Shares by Right Issue

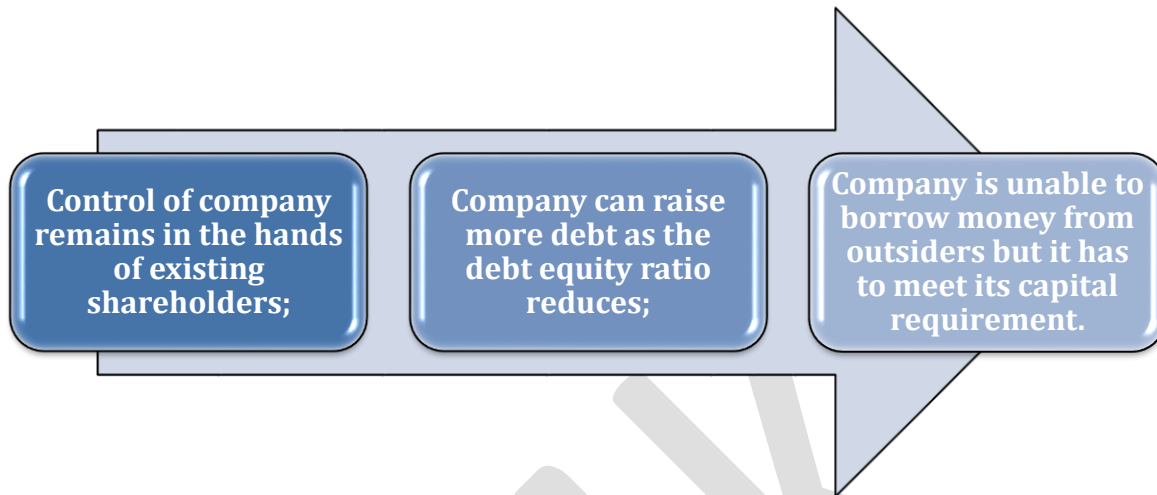
Section-62(1) (A) of Companies Act, 2013

What do you get to know from term Right Issue?

- An invitation to the existing shareholders to purchase additional shares of the company in proportion to their paid up capital at a discounted price (i.e., lower than the market price)
- In other words, a Company having a share Capital proposes to increase its subscribed capital by the issue of further shares; such shares shall be offered to the **existing holders of equity shares** in proportion to the paid up share capital on their shares at the time of further issue by sending a letter of offer. **(This is also called pre-emptive right of existing shareholders)**
- Provisions of Right issue under section 62 are applicable to all types of Companies.



Why to do right issue, what are the reasons?



Procedure for Right Issue:

- Board Meeting to be called for approving such issue;
- Company shall inform its shareholders regarding number of shares offered and limiting a time **not being less than 15 days (or such lesser number of days as prescribed under Rule 12A*) and not exceeding 30 days to decide.**

*As per Rule 12A of Companies (Share Capital and Debentures) Rules, 2014, the time period within which the offer shall be made for acceptance shall be not less than 7 days from date of offer.

- Offer letter and Notice shall be send to shareholders by Registered post/Speed post/ Electronic mode/ Courier having proof of delivery atleast 3 days before issue opening;
- If the shareholder does not convey to company his acceptance for further issue of shares he shall be deemed to decline the offer.
- Offer shall be open for atleast 3 days after issue of offer.
- Offer shall be remain open for minimum 15 days and maximum 30 days;
- However in case of private companies, if 90% of members agree in writing/electronically, lesser period can be specified;
- Option of renunciation can be given (Renunciation should not be restricted by the AOA);



- **File MGT-14** with Registrar within 30 days of passing of Board Resolution. The requirement to file MGT-14 is exempt in case of private companies vide Notification dated 04-01-2017.

For more details refer the link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1Mg==&docCategory=Notifications&type=open>

- Call the Board meeting for allotment & thereafter file **Form PAS-3** within 30 days from the date of allotment of securities;
- Company shall issue share certificates (SH-1) along with making entries in the Register of members (MGT-1);
- Unsubscribed shares, if any can be disposed of by the Board in any manner which is not dis-advantageous to the Company and its shareholder(s).

Note:

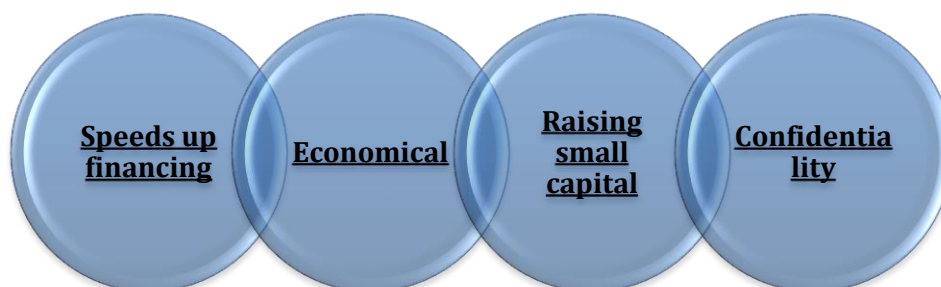
For every issue, return of allotment in Form PAS-3 is to be filed with the ROC irrespective of whether the shares is allotted through Private Placement; Employee Stock Option Plan; Right issue.

Issue of Shares on Private Placement Basis

Section 42 of Companies Act, 2013

Any offer or invitation to subscribe or issue of securities to a **selected group of persons** by a company (other than by way of public offer) through private placement offer-cum-application form, which satisfies the conditions specified in section 42 of the Companies Act, 2013.

Advantages of issuing shares on private placement basis are:





Procedure for issuing shares on Private Placement Basis:

- Issue of securities where offer is made only to a selected group of persons who have identified by the Board (herein referred to as “identified persons”) not exceeding 200 in number [excluding Qualified Institutional buyers and employees of Company being offered securities under a scheme of employee stock option under Section 62(1)(b)].
- Prior Special Resolution is required for making an offer or invitation to subscribe to securities through private placement as per Rule 14 of Companies (Prospectus of Securities) Rules, 2014.
- However in case of Non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified under **Section 180(1)(c)*** then, Special resolution passed shall be valid for one year for all offer of Non-convertible debentures;

*As per Section 180(1)(c) of Companies Act, 2013 to borrow money, where the money to be borrowed, together with the money already borrowed by company **will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loan** obtained by company banker's in ordinary course of business, then it requires consent of members by special resolution.

- In case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a special resolution only once in a year for all the allotments to such buyer during the year;
- In the explanatory Statement as annexed with the notice for conveying shareholders' meeting.

Explanatory Statement shall contain the following disclosures-

- i. Particulars of offer including date of passing Board resolution;
- ii. Kinds of securities offered and the price at which security is being offered;
- iii. Basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- iv. Name and address of Valuer who performed valuation;

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- v. Amount which the company intends to raise by way of such securities;
 - vi. Material terms of raising such securities, proposed time schedule, purposes or objects of offer;
-
- Issue Offer cum Application letter in Form PAS-4.
 - Maintain complete record of private placement Offers in Form PAS-5;
 - No renunciation of right (Private Placement offer and application shall not carry any right of renunciation);
 - Payment to be received only from the Bank Account of subscriber;
-
- Application money received shall be kept in a **separate bank account** in a Scheduled Bank and shall not be utilized for any purpose other than-
 - i. For adjustment against allotment of securities; or
 - ii. For the repayment of monies where the company is unable to allot securities.
-
- Securities to be allotted within 60 days from the date of receipt of application money;
 - File PAS-3 (Return of Allotment) within 15 days from date of allotment of securities;
 - Amount received can be utilized only after filing of Form PAS-3;
 - Valuation from registered Valuer;
 - During the Offer period company issuing securities shall not make any public advertisements to inform the public at large.

Consequences of Non-Compliance:

- **If Company is not able to allot the securities within 60 days**, then company has to repay the application money to subscribers within 15 days. Thereafter, defaulter shall be liable to refund application money along with interest @ 12% p.a. from the 16th day;
- If securities are allotted to more than 200, then the offer shall be deemed to be public Offer and provisions of SCRA & SEBI shall be applicable;
- **If a Company defaults in filing the return of allotment (PAS-3)** then the company, its promoters and directors shall be liable to penalty of Rs. 1000 for each day of default but not exceeding Rs. 25 lakh;
- **In case of contravention of provisions of Section 42 of Companies Act, 2013**, penalty may extend to:

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Amount raised **OR** Rs. 2 Crore, whichever is lower

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Refund all monies with interest @ 12% p.a. within 30 days of the order imposing penalty

Difference between Right Issue and Private Placement:

S.No.	Basis of Difference	Right Issue	Private Placement
1	Applicable provisions of Companies Act, 2013	Section 62(1)(a) of Companies Act, 2013 read with Rules 12A of Shares (Capital and debentures) Rules, 2014.	Section 42 of Companies Act, 2013 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014.
2	Type of Security	Only shares can be issued (i.e., Equity and Preference)	Any security can be issued (Equity, Preference, Debenture, etc.)
3	Eligible for Offer	Issue of shares to existing Equity shareholders in proportion to their existing shareholding	Offer of shares to investors or any selected group of person or any outsider (other than by way of public offer). Invitation to persons not exceeding 200.
4	Approval Required	Approval of Board of Directors through Board Resolution required. (Here BR shall be passed only in Board Meeting not through Resolution by Circulation)	Both Board and Shareholder approval required (General Meeting- AGM, EGM)
5	Offer period	Minimum period: 15 days. Maximum period: 30 days (however, in case of a private company, if consent from 90% of the shareholders is obtained, then the offer period can be less than defined above but not less than 7 days).	No specific minimum offer period defined under this section.
6	Format of offer Letter	Required.	PAS-4 (Offer Letter).
7	Forms to be filled	1. MGT-14 (within 30 days from passing of Board Resolution); 2. PAS-3 needs to be filed (within	1. MGT-14 (within 30 days passing of special resolution in general meeting); 2. PAS-3 (within 15 days of

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		30 days of passing of the board resolution for allotment of shares).	allotment of securities).
8	Separate Bank Account	No separate bank account required.	Separate bank account required in Scheduled Bank.
9	Fund utilisation	Fund can be utilized any time after receipt of same.	Fund can be utilised only after filing PAS-3 i.e., Return of allotment.
10	Valuation Report	Valuation Report is not mandatory in case of Right issue.	Valuation Report is mandatory in case of private placement.
11	Renounce the offer letter option	Shareholders have rights to renounce/accept/reject the offer letter (Subject to authorization in AOA).	Right of renunciation is not available in case of Private placement.
12	Mode of Receipt of Subscription money	Subscription money can be received through a banking channel.	Subscription money can be received only through a banking channel and not by cash.
13	Explanatory Statement	Not required because shareholder approval is not required.	Notice should contain Explanatory statement as per Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014.

* Time period for allotment of securities was within 60 days from the date of receipt of application money in case of right issue and private placement.

Bonus Issue

Section 63 of Companies Act, 2013

A bonus issue is an offer given to the existing shareholders of the company to subscribe for additional shares. Instead of increasing the dividend payout, the companies offer to distribute additional shares to the shareholders. For example, the company may decide to give out one bonus share for every ten shares held.

A company **may, if articles provide**, capitalize its profits by issuing fully-paid bonus shares. The issue of shares by a company is a common feature.



When a company is prosperous and accumulates large distributable profits, it converts its accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members don't have to pay any amount for such shares. They are given free. The bonus shares allotted to the members don't represent taxable income in their hands.

Advantages of Issuing Bonus Shares

- Fund flow is not affected adversely;
- Market value of members' shareholding increases with the increase in number of shares in the country;
- Bonus share is not an income. Hence, it is not a taxable income;
- Paid up share capital increases with the issue of bonus shares.

Sources for issue of Bonus Shares:

According to Section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

- Its free reserves;
- The securities premium account; or
- The capital redemption reserve account.

No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.

Conditions for Issue of Bonus Shares:

In terms of Section 63(2), no company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless

- It is authorized by its articles;
- It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- The bonus shares shall not be issued in lieu of dividend. {Section 63(3)}

Prescription under Rule 14 of Companies (Share Capital and debentures) Rules, 2014 with regard to Bonus Issue of Shares states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.



Process for Bonus Issue of Shares:

1. Before proceeding for the decision for issue of bonus shares, the management should ensure that all the conditions or prohibitions as specified under Section 63 of the Companies Act, 2013 read with Rule 14 of Companies (Share Capital & Debentures) Rules, 2014, are duly taken care of.
2. Convene a Board Meeting, after giving seven days' notice as per section 173(3) to all the directors of the company, to approve the following:
 - Issue of Bonus Shares to the shareholders (Subject to approval of shareholders in Extraordinary general meeting in case of not authorized by Articles of Association);
 - Quantum of bonus shares to be issued and the ratio at which the shares are to be offered as Bonus Shares;
 - Decide the date, time and place to hold the Extraordinary General Meeting (EGM).
3. File **Form MGT-14** within 30 days of passing Board Resolution for issue of bonus shares as per sections 117 & 179(3)(c). The requirement to file MGT-14 is exempt in case of private companies vide Notification dated 04-01-2017.

For more details refer the link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1Mg==&docCategory=Notifications&type=open>

4. Convene Extraordinary General Meeting for the following purposes:
 - Pass Ordinary Resolution (Pass Special Resolution, in case bonus issue is not authorized in the Articles of Association of the Company) to approve the Bonus Issue;
 - Quantum of bonus shares to be issued and the ratio at which the shares are to be offered as Bonus Shares.
5. File **Form MGT-14 with ROC within 30 days in case Company passes the Special Resolution** approving the Bonus Issue along with explanatory statement.
6. Convene a Board Meeting, after giving seven days' notice as per section 173(3) to all the directors of the company, for the purpose of passing resolution for allotment of Bonus Shares and issuing of Shares Certificates in Form SH-1.
7. File the return of allotment in **Form PAS-3** within 30 days from the date of allotment made along with the following attachments:

– List of allottees which shall include the following information:

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- the full name, address, Permanent Account Number and E-mail ID of such shareholders;
- the class of shares held;
- the date of allotment of shares;

– The number of shares held, nominal value.

– Certified copy of the Board Resolution passed for allotment of Bonus shares.

8. In case of allotment of shares, issue fresh shares certificates in Form SH-1 to all such persons to whom shares have been allotted within 60 days from the date of allotment.
9. Update the Register of Members (MGT-1) on issue of share certificates to the shareholders under Section 88 of Companies Act, 2013.

Note:

- If the company announcing a bonus issue after the approval of your Board of Directors and does not require shareholder's approval for capitalization of profits or reserves for making the bonus issue, the Company must implement the bonus issue **within 15 days from the date of approval of the issue by Board of Directors.**
- If the Company is required to seek shareholder's approval for capitalization of profits or reserves for making the bonus issue, the bonus issue must be implemented **within 2 months from the date of meeting of Board of Directors** wherein the decision to announce the bonus shares was taken subject to shareholder's approval.

Difference between Right Shares and Bonus Shares:

BASIS	RIGHT SHARES	BONUS SHARES
Definition	It is entitlement to existing shareholders to receive invitation of offer of shares of a company in case it makes further issue of capital.	It is capitalization of undistributed profits, where shares are allotted to existing shareholders free of cost.
Payment of shares	Shareholders must pay for the right shares accepted by them.	Bonus shares are free of cost and shareholders need not pay for these shares.
Paid up	Right shares may be partly paid up.	Bonus shares are always fully paid up.
Receipt of funds	Issue of right shares result in receipt of funds in the hands of the Company.	Issue of bonus shares does not result in receipt of funds in the hands of the Company.
Right to renounce	Right to renounce is available.	Not applicable.



Public Issue (IPO & FPO)

A public issue of specified securities by an issuer can be either in the form of Initial Public Offering (IPO) or Further Public Offering (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer.

As per the ICDR Regulations, the issuer shall comply with the following conditions before making an IPO of specified securities. The conditions need to be satisfied both at the time of filing the draft offer document (commonly referred to as the Draft Red Herring Prospectus) and at the time of registering or filing the final offer document (commonly referred to as the Prospectus) with the Registrar of Companies.

Eligibility requirements for an Initial Public Offer:

- 1) The issuer has **net tangible assets of at least Rs. 3 Crores** on a restated and consolidated basis, in each of the preceding three full years of (12 months each) of which not more than 50% is held in monetary assets;

*However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project. This limit of 50% shall not apply in case of IPO is made entirely through an **offer for sale***.*

- 2) The issuer has an **average operating profit of at least Rs.15 Crores**, calculated on a restated and consolidated basis, during the three preceding years with operating profit in each of the three preceding years;
- 3) The issuer has a **Net worth of atleast Rs.1 crore** in each of the preceding three full years, calculated on a restated and consolidated basis.
- 4) In case the issuer has changed its name within the last one year, atleast 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

***Offer for Sale (OFS)** is a financial mechanism where companies are allowed to divest shares in the stock market, providing investors an opportunity to buy shares directly from promoters of the company.

Entities not eligible to make an Initial Public Offer:

- 1) If the issuer, any of its promoter(s), promoter group, selling shareholder(s) are **debarred from accessing the capital market by SEBI**;
- 2) If any of the promoter(s) or director(s) of the issuer is a promoter or a director of any other company **which is debarred from accessing the capital market by SEBI**;

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- 3) If the issuer or any of its promoter(s) or director(s) is a **willful defaulter or a fraudulent borrower**.
- 4) If any of the promoter(s) or director(s) of the issuer is a **fugitive economic offender**.
- 5) If there are any **outstanding convertible securities** or any other right which would entitle any person with any option to receive equity shares of the issuer except outstanding options granted to the employees under an employee stock option scheme and fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the Red Herring Prospectus or the Prospectus.

General Conditions:

An issuer making an initial public offer shall ensure that:

- it has made an application to one or more Stock Exchanges to seek an **in-principle approval for listing** of its specified securities on such Stock Exchanges and has chosen one of them as the Designated Stock Exchange;
- it has entered into an **agreement with a depository** for dematerialization of the specified securities already issued and/or proposed to be issued;
- all its specified securities held by the promoters are in **dematerialized form** prior to filing of the offer document;
- all its existing partly paid-up equity shares have either been **fully paid-up or have been forfeited**;
- It has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.
- The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.
- The amount for general corporate purposes, and such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, **shall not exceed 35% per cent** of the amount being raised by the issuer. However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer

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document and the offer document, **shall not exceed 25% per cent** of the amount being raised by the issuer.

Further, such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

Eligibility criteria for Further Public Offer:

1. An issuer shall be eligible to make a FPO, if it has **not changed its name in the last 1 year period** immediately preceding the date of filing the relevant offer document.
2. If an issuer has changed its name in the last 1 year period immediately preceding the date of filing the relevant offer document, such issuer shall make FPO if at least 50% of the revenue in the preceding 1 full year has been earned from the activity suggested by the new name.
3. If an issuer doesn't satisfy the above mentioned conditions, it may make a FPO only if, the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

Entities not eligible to make a FPO:

1. If the issuer, any of it's a promoter, promoter group or director(s), selling shareholder(s) are **debarred from accessing the capital market by SEBI;**
2. If any of the promoter(s) or director(s) of the issuer is a promoter or a director of any other company which is **debarred from accessing the capital market by SEBI.**
3. If the issuer or any of its promoters or directors is a **willful defaulter or a fraudulent borrower.**
4. If any of the promoters or directors of the issuer is a **fugitive economic offender.**



Conclusion

From reading and observing the whole about different kinds of issue of shares, it was concluded that:

- ❖ An issue is a process of offering securities in order to raise funds from investors. Companies may issue bonds or stocks to investors as a method of financing the business.
- ❖ Moreover, shares are essential for the development and growth of the company. It is the proof of ownership of part of the company. The more shares a person has, the more the company he/she owns.
- ❖ Section 29 of the Companies Act, 2013 provides that every company making public offer of any security, shall issue the securities only in dematerialized form by complying with the provisions of Depositories Act, 1996 and the regulations made thereunder.
- ❖ Private Placement means any offer or invitation to subscribe or issue of securities to selected group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.
- ❖ The issue of bonus shares by a company is a common feature. A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares.
- ❖ The Board of Directors of a company shall exercise the power to issue the securities including debentures on behalf of company by means of resolutions passed at the meeting of Board and not by passing of resolution by circulation.