COMPANY LAW; MODE OF RAISING CAPITAL FOR COMPANIES IN NIGERIA.

Capital plays an important role in the running and management of a company. where a a company is short of capital, it may be a ground for winding up that company or could even attract regulatory sanctions.

A company could need capital for various reasons like working capital to capital for specific projects or to boost its share capital base.

Whichever reason a company requires capital it would have to raise same the same way.

A company could raise capital either by:

- Debt
- Equity

Debt Option: this refers to a situation where a company obtains capital from a 3rd party that puts the company under an obligation to repay such debt with or without interest. Debt capital could be in any of the following forms:

a. Overdraft; this is a type of debt capital whereby a company is allowed by its bankers to draw money in excess of its account balance.

b. Bank loans (sometimes referred to as bank facility): this is a type of debt created upon a company receiving a credit facility by a financial institution. This facility may or may not be backed up by collateral. A loan is said to be backed up by a collateral if the loan or facility is secured by an asset which may or may not be the property of the company. Where the loan is secured by a real estate property, it is referred to as a mortgage.

Question: what is the difference between an Overdraft and a bank loan?
Although both are facilities there exists some difference between a bank loan and an overdraft. Below are some of the differences between both facilities:

1. An overdraft is granted only subject to the fact that the applicant has an account with the bank unlike a loan, the applicant need not have an account with the bank.

2. Where a loan is granted a separate account is created (this is known as the loan account) unlike an overdraft the facility is contained in the same account.

Other forms of facilities include:

- Intercompany lending where a company lends money to a sister company.
- Facilities from non-financial companies in the form of investment.

c. Debentures: a debenture is an acknowledgement of a debt by a company. in other words, a debenture is an instrument issued by a company to the holder acknowledging the fact that the company owes the holder the amount stated in the instrument and has agreed to pay the said sum at an agreed period.

It would be observed that there is some semblance between a debenture and a bond in fact some scholars have used the both words inter-changeably. The major differences between a debenture and a bond are stated below:

Equity Option
A company may raise capital by creating and selling new or additional shares or sell all or part of its unissued share capital.

Equity for the purpose of this paper is used in its loosed form and means an interest in a company's share capital of a member who is entitled to share in the capital or income of such company.

Equity unlike debt makes the holder of such equity to be part owners of the company.

Where a company chooses to raise capital by way of equity, the shares created could either be ordinary shares of preference shares. The difference between these classes of shares lies in the benefits enjoyed by the holder of such equity.

Whichever class of equity the company seeks to create and sell the methods is basically the same. These methods include:

- By way of private placement
- By way of listing
- By way of initial public offer
- By way of introduction

Whichever capital raising option a company chooses it is import the services of a legal practitioner with vast experience in this type of transaction is retained.

Douglas Okojie is a finance lawyer based in Lagos Southwest Nigeria is a Partner in the law firm of Corkwell and Reids Solicitor a budding commercial law firm in Lagos Nigeria