UNIT 6: CORPORATE LAW

UNIT TERMINOLOGY

A

AGM
accrue
acquisition
Agenda
amalgamation
Amalgamation Agreement
Annual General Meeting
Annual Report
Articles
Articles of Association
auditor
authorized share capital

B

balance sheet
balance sheet insolvent
Banking Resolution(s)
bankruptcy
bearer
bearer bond
board of directors
bond
bondholder
bonus issue
breach of contract
business corporation(s)
Business Licence
By-law(s)

C

CEO
CFO
capital
capitalization issue
cash flow insolvent
Cease-Trade Order
Certificate of Amalgamation
Certificate of Continuance
Certificate of Dissolution
Certificate of Good Standing
Certificate of Incorporation
Certificate of Intent to Dissolve
chief executive officer
chief financial officer
class(es)
class-action lawsuit
collateral
common share(s)
common shareholder
company
Consent Resolutions
Consent to Use of Name
Constitution
continuance
continuation
contravention
copyright
corporate finance
corporate law
corporate records department
corporate seal
corporation
creditor(s)
Crown corporation(s)
cumulative preference share(s)

D

date of maturity
debenture
Debenture Agreement
debt securities
default
defective product liability
director(s)
disclosure
dissolution
distribute
dividend
Dividend Notice
due-diligence investigation

E

employment law
equity securities
Exceptional Resolution
expenses
extra-provincial company
extra-provincially registered company

F

face value
federal incorporation
Final Prospectus
financial corporation(s)
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first director
franchise
Franchise Agreement
franchisee
franchisor
free issue

G

good standing
grant price
guarantor

H

hybrid securities

I

IPO
income statement
Incorporation Agreement
Incorporation Application
incorporator(s)
Information Circular
initial public offering
insider trading
insolvent
intellectual property
investment money
investor(s)

J

joint and several

K

kind

L

LLP
labour law
leave
legal entity
liable
limited liability
limited liability business corporation
limited liability partnership
liquidation
liquidator

M

market price
market value
material change
material information
maturity date
member(s)
merger
Minutes
Moody's Investors Service (Moody's)

N

name search
non-cumulative preference share(s)
non-offering company
non-profit(s)
non-reporting company
not-for-profit corporation(s)
not-for-profit organization(s)
not in good standing
Notice of Annual General Meeting
Notice of Articles
Notice of Meeting
Notice of Offices
NUANS®
NUANS® Name Search Report

O

offering company
officer(s)
Ordinary Resolution
ordinary share(s)
ordinary shareholder

P

par value
partners
partnership
Partnership Agreement
patent
periodic disclosure
post-incorporation documentation
preference share(s)
preference shareholder
preferred share(s)
president
Press Release
Primary Prospectus
private company
pro rata
Prospectus
provincial incorporation
Proxy
proxyholder
public company

Q

quorum

R

records book
records office
registered office
reporting company
resolution
return
revenue

S

S&P
scrip issue
search house
secretary
securities
Securities Commission
security
Separate Resolution
share(s)
Share Certificate
shareholder(s)
shelf company
society
sole proprietorship
Special Resolution
Standard & Poor's
stock(s)
stock dividend
stock option
stock split
stockholder(s)
strike price
struck off
subscriber(s)

T

takeover
timely disclosure
tipping
trademark
traditional partnership
traditional warrant
treasurer

U

ULC
Unanimous Resolution
underwriter
unlimited liability
unlimited liability company
unlimited liability partnership

V

verification(s)

W

warrant(s)
Warrant Indenture
warrantholder
winding-up
without par value

DOCUMENTS

The following documents referenced in this unit are available for download from our website: www.tusker-international.com in the Student Resource Centre. The password is: **ADT999**.

- Document 1: Articles of Incorporation
- Document 2: Dividend Notice
- Document 3: Post-Incorporation Resolutions
- Document 4: Share Certificate & Registers
- Document 5: Special Resolution
- Document 6: Notice re: Appointment of Liquidator.

INTRODUCING CORPORATE LAW

Corporate law involves providing legal services to sole proprietorships, partnerships, corporations, societies, etc. The legal services may include:

- incorporating a company
- maintaining corporate records
- dissolving a company
- assisting a company to list on a stock exchange
- handling corporate takeovers and mergers
- handling real estate transactions including leases
- preparing contracts
- representing a company in litigation matters.

Before we delve into the specifics of corporate law, let's look at corporate legislation.

CORPORATE LEGISLATION

There is both federal and provincial legislation relating to corporate law. For example, the Canada Business Corporations Act, RSC 1985, c C-44 (CBCA) is a federal act governing, among other things, the incorporation and operation of companies doing business throughout Canada that want to operate under the same business name in every province.

Examples of other federal acts are:

- Bankruptcy and Insolvency Act, RSC 1985, c B-3
- Copyright Act, RSC 1985, c C-42
- Patent Act, RSC 1985, c P-4
- Trademarks Act, RSC 1985, c T-13.

Each province has its own act and regulations governing corporate matters within the province. The names of these acts vary from province to province; for example:

- Business Corporations Act (Alberta, British Columbia, New Brunswick, Nunavut, Ontario, Québec)
- Companies Act (Nova Scotia)
- Corporations Act (Newfoundland & Labrador)
- The Business Practices Act (Manitoba)
- The Business Corporations Act and The Business Names Registration Act (Saskatchewan)
- Franchises Act (Alberta, Prince Edward Island)
- Societies Act (Alberta, Northwest Territories, Nova Scotia, Yukon).

As you can see, some of the names of the Acts are very similar. So you must be careful to cite/key them accurately.

Now let's move on to look at corporate structures. The most common corporate structures are the sole proprietorship, corporation, partnership, society, and franchise. Let's look at these now.

SOLE PROPRIETORSHIP

A **sole proprietorship** is the simplest form of business ownership. It is formed when a person wants to operate a business on their own. To establish a sole proprietorship, all that is usually needed is a **Business Licence** and registration of the business in accordance with local municipal and provincial laws.

The following are some advantages and disadvantages of a sole proprietorship.

ADVANTAGES	DISADVANTAGES
➢ keeps the profits ➢ runs the business the way they want ➢ keeps the operation of the business private ➢ does not need to spend time and money maintaining sophisticated financial records or to file an Annual Report with the provincial corporate registry.	➢ **Unlimited liability**. This means that if the owner runs into financial difficulties, **creditors** – people to whom the owner owes money – can make claims against the owner's personal assets; e.g., home, car, etc. ➢ Difficulty getting financing.

While a sole proprietorship does not have to maintain financial records beyond simple lists of **revenue** (money coming into the business) and **expenses** (office supplies, postage, rent, insurance, etc.), there are many simple accounting programs that allow sole proprietors to keep good-quality financial records – a definite plus if the sole proprietor is audited by Canada Revenue Agency.

Now let's take a look at the most common type of corporate structure: a corporation.

CORPORATION

A **corporation**, commonly referred to as a **company**, registered in accordance with the provisions of the Canada Business Corporations Act (federal company) or the provincial company legislation (provincial company) is a legal entity. The term **legal entity** means that, when incorporated, a

company acquires all the powers of an individual. It can accumulate assets, go into debt, enter into contracts, sue or be sued under civil (tort) law, or be prosecuted under criminal law.

A provincially incorporated company operating in another province is called an **extra-provincial company** or **extra-provincially registered company**.

Corporation Types

There are several different types of corporations. The following are the most common:

- Federal and provincial **Crown corporations**; e.g., Canadian Broadcasting Corporation, Canada Post Corporation, VIA Rail, Canada Inc. that are established by special federal or provincial Acts
- **Financial corporations**; e.g., Royal Bank of Canada
- **Business corporations**; e.g., Bombardier, Inc.

Corporation Forms

There are two main forms of corporations:

1. The most common form of corporation is the **limited liability business corporation**. The owners of the corporation are the **shareholders**, often referred to as **stockholders**, who buy **shares** – **stock** – in the company.

   A corporation that offers its shares for sale to the public is called a **public company**, **reporting company**, or **offering company**.

   A corporation not offering its shares to the public is called a **private company**, **non-reporting company**, or **non-offering company**.

   When a shareholder buys a share they subscribe to a common fund called the **capital**. The shareholder is issued a **Share Certificate** indicating their shareholding – the number and type of shares.

   A Share Certificate without the value of the share printed on its face is known as a **without par value** share. Conversely, a Share Certificate with a value printed on it is called a **par value** share. Par value, also known as **face value**, is the price at which a company's shares are issued.

   For more information on shares, see page 154.

   Shareholders share in the profits of a corporation in proportion to their shareholdings. The extent of each shareholder's liability is limited to their initial investment. If a shareholder purchases 1,000 shares in Company X at a price of $2 per share, then the maximum that the shareholder could ever lose would be $2,000. Even if Company X went bankrupt, the shareholder would not be liable for any of the company's debts.

   A word of caution is necessary here. One of the highly touted advantages of a corporation is its limited liability. This is not always the case. Many small businesses have few assets so when business owners ask banks for loans, the banks insist on personal guarantees. This means, of course, that the limited liability aspect of the business disappears. If the business defaults on the loan, the bank will go after the personal assets of the business owner(s). So, if you are thinking of setting up a business, talk with an accountant and/or a lawyer, to see what options are available to you in order to preserve the limited liability aspect of incorporation. For example, they might suggest that family property be registered in the

name of a family member not associated with the company and secured with a Marriage Agreement and Will.

There's a lot to think about isn't there? Do you also see how various areas of law are drawn together to form a package of products for clients? In our previous example, the areas of corporate law, family law, and wills and estates law are involved.

2. In some provinces there is another type of corporation – the **unlimited liability company** (**ULC**). Basically, the shareholders are liable for the debts and liabilities of the company; however, the liability does not become an issue until the company dissolves (ceases to exist). Under a ULC, shareholder liability is **joint and several**. This means that one shareholder can be sued and held liable for the entire debts and liabilities of the company. In addition, in some jurisdictions, the shareholder liability continues even if the company changes through **amalgamation** – joining with another company – or becoming a limited company.

   Right now, you are probably thinking: Why on earth would a shareholder want to be part of a ULC when they can be part of a limited company? The answer is that a ULC benefits certain U.S. companies with operations in Canada. A ULC works well with the U.S. Internal Revenue Code rules plus, in most jurisdictions, ULCs do not require resident directors. However, the current cost for incorporating a ULC is much higher. For example, in British Columbia the current cost is $1,030 compared with $380 for incorporating a limited company.

   The following are some advantages and disadvantages of a corporation.

ADVANTAGES	DISADVANTAGES
➢ Tax savings and deferral ➢ Limited liability ➢ Credibility – easier to raise funds, obtain loans, attract investors, etc.	➢ Time and resources to handle increased paperwork ➢ High fees to incorporate, plus annual fees to remain in good standing ➢ Double taxation if dividends declared (corporate tax, income tax of shareholders).

Now let's move on to look at a partnership.

PARTNERSHIP

As you learned in Unit 2, a **partnership** is a corporate structure, registered under a province's partnership legislation. When two or more people operate a business together, they often form a partnership. A law firm is an example. Other professionals such as accountants, architects, and engineers often form partnerships as well.

Individuals in a partnership are called **partners**. They pool their money and expertise, jointly own and operate the business, and share in the profits and losses. Most partnerships have a **Partnership Agreement** that sets out items such as professional liability, management structure, duties of the partners, rules and procedures relating to the operation of the partnership, partner compensation, etc.

Types

There are two main types of partnership:

1. A **traditional partnership**, sometimes called an **unlimited liability partnership**, where any one partner is responsible for the errors and debts of any other partner.
2. A **limited liability partnership** (**LLP**) is one where some or all of the partners have a degree of **limited liability**. This generally means that one partner is not **liable** – legally responsible – for another partner's or that partner's staff's negligence or misconduct. However, each partner is personally liable for their own and their own staff's actions. The partnership itself is liable for the negligence of all partners and employees, and normally maintains business liability insurance.

The following are some advantages and disadvantages of a partnership.

ADVANTAGES	DISADVANTAGES
➢ Each partner brings specific expertise to the business ➢ Tax simplicity ➢ Shared decision making.	➢ Liability issues ➢ Often messy and acrimonious when partnership dissolved.

Even small businesses often prefer to set up a corporation rather than a sole proprietorship or partnership because they feel it gives them more security and credibility.

Now let's look at a society.

SOCIETY

A **society** is a group of people who share a common charitable, cultural, recreational, or scientific/health interest; e.g., Canadian Cancer Society, Ottawa Horticultural Society, and Canadian Medical and Biological Engineering Society.

Societies are registered and governed by provincial legislation and are legal entities. A society usually has a **Constitution** that sets out its name and purpose and **By-laws** that describe how the society is to be managed. Societies are not established to make money: They are **not-for-profit organizations**. This means that any money they make, or funds they collect, must be used for the purposes of the society itself.

The following are some advantages and disadvantages of a society.

ADVANTAGES	DISADVANTAGES
➢ Easy to form ➢ Open to all who are interested ➢ Limited liability.	➢ Limited resources ➢ Inefficient management ➢ Paralysis due to personal agendas, absence of motivation, etc.

Large societies funded by donations or memberships are usually incorporated and are known as **not-for-profit corporations** or **non-profits**. The advantages of doing so are:

➢ The society may be eligible for government grants and to become a registered charity with

Canada Revenue Agency

- Limited liability; i.e., one member of the society may not be held liable for the debts of the society
- The society, as a separate legal entity, may enter into contracts
- Greater public acceptance and recognition.

Now let's look at the last type of corporate structure, the franchise.

FRANCHISE

A **franchise** is a clone of an existing successful business that operates under a Franchise Agreement. Examples of Canadian franchises are Tim Hortons®, Budget Brake & Muffler®, Pet Valu®, etc.

Franchise Agreement

A **Franchise Agreement** is normally between two parties: the franchisor and the franchisee. The **franchisor** is the party who develops the system for reproducing (cloning) the business. The **franchisee** is the party who rents the franchisor's trademark and method of doing business. A **trademark** is a graphic, word(s), or name legally registered or established by use as representing a product or company.

Sometimes there is a third party – a guarantor. A **guarantor** is a company or person who guarantees acceptance of liability should the franchisor or franchisee default.

A Franchise Agreement normally sets out the rights of the parties, the renewal terms, the start-up and training details, the marketing, and the suppliers.

The following are some advantages and disadvantages of a franchise.

ADVANTAGES	DISADVANTAGES
➢ Proven business model ➢ Instant name recognition ➢ Lower costs for supplies from franchisor's suppliers (volume discounts) ➢ Ongoing marketing by the franchisor.	➢ High fees and/or royalties ➢ Refurbishment frequency and costs (new corporate colours, new décor, etc.) ➢ Minimum purchase quotas.

Ready to test your new knowledge? Let's begin.

TEST YOUR KNOWLEDGE 1

Read the following sentences. Select the correct legal term(s) from those listed in the parentheses.

1. Shayleigh purchased 100 shares in K Company. Shayleigh is actually subscribing to a common fund called the (common stock, par value, capital, joint and several) of K Company.
2. (Legal entity, Liable, Unlimited liability, Limited liability) means that if the owner of the business runs into financial difficulties (creditors, the Crown, debtors, shareholders) can make claims against the owner's personal assets.

3. A provincially incorporated company operating in another province is called a/an (ULC, unlimited, Crown, extra-provincial) company.
4. A/an (partnership, franchise, sole proprietorship, extra-provincial company) is a clone of an existing successful business.
5. The simplest form of business ownership is a (corporation, partnership, sole proprietorship, franchise).
6. A (shareholder, partner, creditor, guarantor) is a company or individual who guarantees acceptance of liability should the franchisor or franchisee default.
7. A (society, franchise, partnership, corporation) is a group of people who share a common charitable, cultural, recreational, or scientific/health interest.
8. A corporation is a registered (public company, legal entity, ULC, legal corporation) meaning that it can sue or be sued.
9. A reporting or (offering, public, Crown, registered) company is a corporation that offers its shares for sale to the public.
10. VIA Rail Canada Inc. is an example of a/an (unlimited, public, Crown, joint and several) corporation.

INCORPORATING

A company operating in Canada may incorporate federally or provincially. Most start-up companies incorporate provincially but we will look at both processes, starting with federal incorporation.

FEDERAL INCORPORATION

Documentation & Procedures

Companies wanting to operate across Canada must incorporate federally – **federal incorporation**. While law firms will prepare all the necessary paperwork on behalf of a corporation, some business owners prefer to save money by preparing their own documentation.

Corporations Canada's website provides all the documentation and procedures required to incorporate a federal company.

The documentation currently required for a federal incorporation is:

- Form 1 (Articles of Incorporation)
- Form 2 (Initial Registered Office Address and First Board of Directors)
- NUANS® (Newly Updated Automated Name Search) report
- Corporate Name Information Form (optional)
- Filing fee.

NUANS® is a database of existing and reserved business names applied for in Canada.

The above documents must be prepared correctly and filed electronically with Corporations Canada Online Filing Centre.

If the documentation is in order, Corporations Canada will issue a Certificate of Incorporation showing among other things the company name and the incorporation date and number.

Now let's have a look at provincial incorporation.

PROVINCIAL INCORPORATION

History

A short history of incorporation law may help you to understand why there are variations in the incorporation documentation required by various provinces.

Prior to 1970, an incorporator could apply for a Grant of Letters Patent from the Crown or register a Memorandum and Articles of Association.

During the 1970s, there was a wave of corporate law reform, with the result that most provinces now use a model of incorporation statute based on the federal Canada Business Corporations Act. This calls for documents similar to the Memorandum and Articles of Association to be prepared; however, Prince Edward Island still currently uses a Letters Patent-based statute.

On-Line v. Law Firm

As with federal incorporation, a business owner wanting to incorporate provincially – **provincial incorporation** – may do so on-line without using a law firm. However, many business owners have neither the time nor expertise to handle all of the necessary paperwork, that is why they have a law firm do the work on their behalf.

Choosing a Name

When a prospective client approaches a law firm to request assistance with incorporating a company provincially, the law firm usually asks the client for three potential company names. Each province has regulations stipulating acceptable names.

Most provincial corporate registries prefer that company names have three distinct components. The following shows the breakdown for a company named DSG Home Interiors Ltd.

1.	A distinctive element	DSG
2.	A descriptive element	Home Interiors
3.	A corporate designation	Ltd.

Other corporate designations that you are probably familiar with are: Limited, Ltée, Limitée, Corporation, Inc., Incorporated, and Incorporée.

For your information, unlimited liability companies cannot use a corporate designation such as Limited, Incorporated, or Corporation in their names. They have to use ULC or Unlimited Liability Company.

Name Search

The law firm then conducts a **name search** in the provincial corporate registry (the name of the registry varies from province to province) to see whether any other corporation in the province has the same name. If there is a corporation in the province or local geographic area with a similar name, the law firm may have to obtain a **Consent to Use of Name** from the existing corporation.

Many provinces require that a countrywide NUANS® search be conducted. A **NUANS® Name Search Report** is a document that lists business names and trademarks that sound similar to the name being proposed. It may be ordered online or a search house may do this on behalf of the law

firm. A **search house** is an independent, private business that charges a fee to conduct a NUANS® search. The search house fee is a disbursement on the law firm's bill to the client.

See page 29 if you have forgotten what a disbursement is.

Shelf Company

Most law firms incorporate shelf companies. A **shelf company** has the incorporation number as part of its name; e.g., 12345 B.C. Ltd. or 12345 B.C. ULC. This type of company does not require a name search; however, the incorporation documents must indicate that a shelf company is being incorporated.

The purpose of a shelf company is to have a ready-made company on the "shelf" at the law firm. If a client wants to incorporate a company immediately, then the law firm gives the shelf company documentation to the client who then has a registered company. If the client wants to change the name of the company, this can be done in the future.

You may already have come across a shelf company. If you check invoices and sales receipts, you will often see names such as 1234567 AB Ltd., d.b.a. Millie's Market. This is a shelf company. **d**.**b**.**a**. means *doing business as*.

Incorporation Documentation

Once a company name has been provisionally approved, the incorporation documents are prepared by the law firm and sent to the corporate registry, or filed electronically. These usually include a Memorandum, a set of Articles, a Notice of Offices, and a filing fee. The names of the documents vary slightly from province to province; for example, in British Columbia the documents are currently **Incorporation Application**, **Incorporation Agreement**, and **Notice of Articles**.

- The Memorandum or Application normally includes the:
  - proposed name of the new company
  - restrictions on the business to be conducted by the company
  - **authorized share capital** – the maximum value of **securities** (shares) the company may legally issue
  - names, addresses, and occupations of the subscribers
  - number, type/kind, and class of shares taken by each subscriber
  - Articles
  - details of the registered and records office.

The **subscribers** or **incorporators** are the first owners of the company. They sign the incorporation documents and, when the company is incorporated, become **members** (shareholders). A lawyer may be a subscriber and, following incorporation, transfer their shares to the client. A lawyer is the subscriber when a shelf company is incorporated.

Refer to Unit 6, Document 1 for a precedent of Articles of Incorporation for an Alberta company.

Be careful, however, not to confuse the Alberta Articles of Incorporation with the following information relating to the rules of a corporation – called Articles.

- The **Articles** or **Articles of Association**, that form part of the incorporation documents (depending on the province), are the rules governing the internal management of the new company. They are similar to By-laws. The wording of the Articles may be stipulated in

provincial legislation; however, if it is not, a law firm may use a standard set of Articles or tailor the Articles to the client's needs.

The following is an excerpt from a set of company Articles:

> 4.5 Before allotting any shares the directors shall first offer those shares *pro rata* to the members; but if there are classes of shares, the directors shall first offer the shares to be allotted *pro rata* to the members holding shares of the class proposed to be allotted, and if any shares remain, the directors shall then offer the remaining shares *pro rata* to the other members. The offer shall be made by notice specifying the number of shares offered and limiting a time for acceptance. After the expiration of the time for acceptance or on receipt of written confirmation from the person to whom the offer is made that he or she declines to accept the offer, and if there are no other members holding shares who should first receive an offer, the directors may for three months thereafter offer the shares to such persons and in such manner as they think most beneficial to the company; but the offer to those persons shall not be at a price less than or on terms more favourable than the offer to the members.

The term ***pro rata*** means in proportion.

✧ Some provinces require a **Notice of Offices** listing the proposed registered and records offices of the company. Sometimes this information is included in either an Incorporation Agreement or Incorporation Application.

The **registered office** is where legal documents may be served on the company. The **records office** is where the company's records book is kept. A **records book** contains the original copies of a company's legal documents, including the Certificate of Incorporation.

Sometimes a corporate client will ask a law firm to act as the registered and/or records office of the company.

Certificate of Incorporation

Provided that the documents submitted to the corporate registry are correct, the registry issues a **Certificate of Incorporation** and sends it to the law firm for filing in the company's records book.

See this unit's cover page 141 for a precedent of a Certificate of Incorporation.

Corporate Records Maintenance

Many law firms have a **corporate records department** whose staff are responsible for preparing corporate documents, filing them in the provincial corporate registry, and keeping clients' records books up to date.

Now that you have an overall picture of the incorporation process, let's look at the specific roles of shareholders, directors, and officers.

SHAREHOLDERS, DIRECTORS, & OFFICERS

Shareholders

As you have already learned, a shareholder owns a share in a company. Shareholders may buy shares with cash or may receive shares *in lieu* of services that they have provided to the company. Alternatively, shareholders may receive shares by virtue of being beneficiaries of a deceased person's estate.

When a shareholder buys or is given shares, they will be issued a Share Certificate indicating ownership of a specific number, type/kind, and class of shares. Ownership means that the shareholder shares in the company's profits in proportion to their shareholding. In most corporate structures, if the company takes a loss, the shareholder is not liable for paying the company's debts. The only thing the shareholder can lose is their initial investment.

At the shareholders' meetings, the directors report on the company's status.

Directors

A company's Articles usually indicate the number of directors and if the directors must also be shareholders. A **first director** is a person named as a director in the incorporation documents. Usually a reporting company has a minimum of three directors and a non-reporting company a minimum of one.

At each Annual General Meeting (you will learn about this meeting later in this unit), the shareholders elect the board of directors. The **board of directors** monitors the corporation's operation and is directly answerable to the shareholders. If the shareholders are not happy with the board, they may vote for the removal of one or all of the directors.

The role of a **director**, besides reporting to the shareholders, is to oversee the day-to-day running of the company and to elect officers of the company.

Officers

Officers are assigned to perform specific duties; for example, the **president** and/or **CEO** (**chief executive officer**) heads up the company and makes the major decisions, the corporate **secretary** maintains the corporate records and schedules and attends corporate meetings, and the **treasurer** or **CFO** (**chief financial officer**) manages the company's finances.

A small company usually has at least two officers: a president and a secretary while large companies have additional officers such as vice-presidents.

Note: Typically a CEO is the highest-ranking officer of a company and the president is the second highest; however, in many companies the CEO and president are often one and the same.

Officers do not need to be directors or shareholders; however, the president is usually a director. In small companies, the shareholders are often both directors and officers. Officers have signing authority on many legal documents and bank accounts. Note: In some provinces companies do not have to have officers.

As you have learned, when a company is being incorporated there are many things to consider not the least of which is securities (shares) the company will issue. Let's look at this in more detail.

INTRODUCTION TO SECURITIES

Securities include shares, bonds, and other ownership investments. There are several ways individuals may invest or loan money to a company. Two of the common methods are investing in shares or bonds.

Shares

Two share types, sometime referred to as **kind** of shares, are common shares and preference shares.

1. **Common shares** are also known as **ordinary shares**. A holder of common shares – the **common shareholder/ordinary shareholder** – is usually entitled to vote at shareholders'

meetings. Some companies issue different **classes** of common shares; e.g., Class "A", Class "B", etc. with differing voting rights.

If the company is profitable, it will declare a **dividend** – a cash payment – on common shares. For example, a $1 dividend on each share. Sometimes, however, a **stock dividend** is declared and the shareholder receives more shares.

A company's Articles outline the rules the directors have to follow with respect to dividends; for example:

> 18.8 A resolution declaring a dividend may direct payment of the dividend wholly or partly by the distribution of specific assets or of paid-up shares, bonds, debentures, or other debt obligations of the Company, or in any one or more of those ways, and, where any difficulty arises in regard to the distribution, the directors may settle the same as they think expedient, and in particular may fix the value for distribution of specific assets, and may determine that cash payments shall be made to a member on the basis of the value so fixed in place of fractional shares, bonds, debentures, or other debt obligations in order to adjust the rights of all parties, and may vest any of those specific assets in trustees on such trusts for the persons entitled as may seem expedient to the directors.

2. There are several types of **preference shares** sometimes called **preferred shares**; however, most do not entitle the **preference shareholder** to vote at shareholders' meetings. Usually the amount of any dividend is a fixed percentage; e.g., 5% preference shares.

   So what is the advantage of holding these shares? If a company makes a profit, the preference shareholders are paid dividends before the common shareholders. When a company makes a small profit, preference shareholders are paid a dividend whereas the common shareholders are not. If a company is dissolved, the preference shareholders are often entitled to share in the remaining property of the company.

   Most preference shares are **cumulative preference shares** meaning that if the company does not make timely dividend payments, the dividends will **accrue** – accumulate. Conversely, **non-cumulative preference shares** do not accrue dividends.

When a dividend is declared by a company, a **Dividend Notice** is prepared.

Dividend Notice

Refer to Unit 6, Document 2 for a precedent of a Dividend Notice.

As you read the wording, keep in mind a couple of things. First, this company has both common and preference shares. Second, because the company has issued several series of preferred shares, it is able to select which series will receive what dividend.

Bonds

A **bond** is a loan to a company. At the time a bond is issued, the interest rate is stipulated as is the **date of maturity**: the date the loan plus interest becomes due. When the owner of the bond, the **bondholder**, wants to cash in the bond, they will receive the initial investment plus interest to date. While this investment carries less risk than owning shares, the rate of return is normally low compared to dividends on shares. A **bearer bond** is a special type of bond. Like cash, it has no registered owner and therefore must be kept in a secure place such as a safety deposit box.

The Articles of a company normally have some provisions relating to the issue of bonds. The following is an example:

> 8.1 The directors may from time to time at their discretion authorize the Company to borrow any sum of money for the purposes of the Company and may raise or secure the repayment of that sum in such manner and on such terms and conditions, in all respects, as they think fit, and in particular, and without limiting the generality of the foregoing, by the issue of bonds or debentures, or any mortgage or charge, whether specific or floating, or other security on the undertaking or the whole or any part of the property of the Company, both present and future.

Debentures

A **debenture** is unsecured debt backed only by the integrity of the borrower, not by collateral. The details of a debenture are normally set out in a **Debenture Agreement**.

Loans are usually secured with **collateral** – assets pledged in case of **default** (non-payment). This is not the case with a debenture.

Two terms relating to securities are market value and rating.

Market Value & Rating

Market value is the actual price that a **financial instrument** (share, bond, etc.) is worth at any given time for trade on the stock market. A financial instrument may trade above or below par. In the case of shares, the market value is based on the company's credit rating. In the case of bonds, the market value is based on interest rates and the time to maturity.

A **rating** is an assessment tool assigned by a securities analyst or rating agency to a security. The rating assigned (AAA to C or D) indicates the stock or bond's level of investment opportunity, desirability, and risk. Two of the main rating agencies are **Moody's Investors Service** (**Moody's**) and **Standard & Poor's** (**S&P**).

Ready to test your new knowledge? Let's begin.

TEST YOUR KNOWLEDGE 2

Test your knowledge by answering the following questions.

1. What is the purpose of incorporating a shelf company?
2. What information does NUANS® provide?
3. Explain the meaning of *authorized share capital*.
4. What are Articles?
5. Differentiate between a company's registered office and its records office.
6. Who are the first owners of a company?
7. Where is a company's Certificate of Incorporation filed?
8. Name three usual officers of a corporation.

9. Describe the difference between common shares and preference shares.
10. What is a bond?

MAINTAINING CORPORATE RECORDS

The services of a law firm do not end when a Certificate of Incorporation is issued. At this stage, the law firm prepares what is known as the **post-incorporation documentation** and performs specific post-incorporation procedures. In the majority of law firms this documentation is prepared by a legal administrative assistant or legal assistant.

POST-INCORPORATION PROCEDURES

Filing Incorporation Documents in the Records Book

When the Certificate of Incorporation is received by the law firm, it is checked for accuracy and filed with copies of the incorporation documents (Articles, etc.) in the company's records book.

Most law firms purchase records books with hard covers so that the contents do not get damaged. The books usually have a series of tabbed guides which assist in filing the various company documents in the correct place. It is important to ensure that documents are filed correctly because certain documents may be viewed by the general public, shareholders, directors, etc., whereas others cannot.

Note: If someone enters a law firm and asks to see a records book, that person must be identified; i.e., shareholder, auditor, etc. Follow your law firm's protocol. In most situations, a legal assistant or paralegal will accompany the visitor to a meeting room and stay in the room while the visitor looks at the appropriate sections of the records book.

Corporate Seal

Once the records book has been organized and all the necessary documents filed in it, the law firm orders a corporate seal, if required.

A **corporate seal** is a device used to emboss the company name on paper documents. See the unit cover page 141 for a picture of a corporate seal.

The laws in many provinces stipulate that companies conducting land transactions must use a corporate seal.

When the law firm receives the corporate seal, it will either give the seal to an officer of the company or retain it in the law firm offices for safekeeping. It is very important that all corporate seals are properly labelled with the correct company name and kept in a safe place. Many law firms keep corporate seals in their corporate records department.

Diarizing for the AGM

The next procedure is to diarize for a month prior to the anniversary date of the incorporation of the company. This diary entry is to remind the law firm to check whether the company is planning an Annual General Meeting, or waiving its right to hold one. The diary entry is also used to remind the law firm to watch for receipt of the company's Annual Report, which is normally generated by the provincial corporate registry.

Directors' & Shareholders' Meetings

As soon as the Certificate of Incorporation is received, the first directors and the shareholders, often called **members**, must organize the company. This can be done by the law firm arranging a directors' meeting and a shareholders' meeting.

At the first meeting, the first directors:

- appoint officers
- allot shares in the new company
- pass Banking Resolutions, etc.

At the shareholders' first meeting, the shareholders:

- approve and adopt the incorporation documents
- accept any resignations of first directors
- appoint any new directors
- appoint an **auditor** (if required) – an accounting professional who officially examines and checks the company's financial accounts annually
- approve the transfer of any shares from the first directors to the shareholders.

It is quite usual for a lawyer to act as the first director of a company until its incorporation and then to resign in favour of permanent directors. This is particularly true of shelf companies.

If the first directors resign, then the new permanent directors meet to formally appoint the directorships, approve the transfer of shares from the first directors to the shareholders, etc.

Minutes

If the first directors and shareholders hold meetings, then the law firm prepares Minutes of the Meeting of the First Directors and Minutes of the Meeting of the Shareholders. **Minutes** are a formal, written record of the business transacted and resolutions adopted at a meeting. A **resolution** is a formal expression of some action, transaction, or decision made at a meeting.

As the wording of the Minutes is standard, a law firm usually has precedents stored electronically and merely accesses them and inserts the necessary information. In more automated offices, a database containing information on the new company is merged with the word processing documents.

Consent Resolutions

If the first directors and shareholders do not meet, the law firm prepares Consent Resolutions of the Subscribers and Consent Resolutions of the Directors. The **Consent Resolutions** provide the same information as Minutes but a meeting has not been held. To validate these Resolutions, they must be signed by all of the first directors and subscribers (shareholders).

Refer to Unit 6, Document 3 for precedents of Consent Resolutions of Subscribers and Directors (Post-Incorporation Resolutions).

The original, signed copies of Minutes, Resolutions, and Consent Resolutions are filed in the company's records book.

Share Certificates & Registers

In the next phase of post-incorporation procedures, the law firm prepares Share Certificates for the shareholders and makes entries in the Register of Allotments, Register of Transfers (if any transfers

of shares between the first directors and the shareholders have taken place), and Register of Members/Shareholders. The Register of Directors is also completed.

Refer to Unit 6, Document 4 for precedents of a Share Certificate, Register of Members, and Register of Directors.

Records books may be purchased with Share Certificates and Registers in them. The law firm completes the Share Certificate number, the company name, the shareholder's name and address, the number and class of shares, and the date the Share Certificate is issued. Some companies have their Share Certificates custom printed.

The Share Certificates, together with their completed stubs (like a cheque book stub), are kept in the company's records book at the law firm; however, if a shareholder wants their Share Certificate, the law firm gives the Certificate to the shareholder but keeps the completed stub in the records book.

The Registers are also kept in the company's records book.

Resignations & Consents of Directors

If any of the first directors resign at the initial meetings and new, permanent directors are appointed (as is usually the case with a shelf company), the following documents are normally prepared:

- Resignation of First Director (for signature by the director resigning)
- Consent to Act as a Director (for signature by the new, permanent director appointed).

A separate document is required for each resignation and appointment. If actual meetings of the first directors and shareholders are held, Resignations and Consents are prepared prior to the meetings. However, if no meetings take place, the Resignations and Consents are prepared at the same time as the Consent Resolutions. Again, as these are standard documents, computerized precedents can be used.

As you may recall, the provincial corporate registry must be advised of any new directorships. If the first directors resign and new, permanent directors are appointed at post-incorporation, the law firm prepares the necessary documentation and files it with the registry.

Each provincial registry has its own rules and regulations, so ensure that you read and follow them.

Banking Resolutions

The new company also needs to maintain bank accounts.

If the bank accounts have already been opened by the principals of the company, then the law firm obtains the original, signed **Banking Resolutions** prepared by the bank. The incorporators should have these documents.

Billing the Client

Once all of the post-incorporation documentation has been prepared, the law firm arranges for signature of the documentation and prepares a bill for the corporate client.

While there appears to be a lot of post-incorporation documentation, it can be quickly and easily prepared using computerized precedents. Many law firm corporate records departments use checklists to ensure that they prepare all the necessary documentation for their clients.

So, what happens next?

THE FIRST YEAR

Once a company has been incorporated and the post-incorporation procedures completed, the law firm will probably not be involved with the corporate client again until it is time for the Annual General Meeting of shareholders. However, during the course of the first year, the corporate client may call upon the law firm to assist with specific transactions such as buying a factory or leasing a warehouse or office space.

The company may also ask the law firm to check various contracts and agreements to establish the company's legal position.

In addition, the company may want to do specific things relating to itself. For example, the company may want to change its name, issue new shares, or appoint new directors.

The law firm can assist the client by preparing the necessary documentation, advising on arrangements for shareholders' and/or directors' meetings, and filing required documentation with the provincial corporate registry.

At the end of the first year following incorporation, annual procedures have to be followed. The procedures include checking the Annual Report and holding an Annual General Meeting.

Let's look at the Annual Report first.

THE ANNUAL REPORT

When a company incorporates, the provincial corporate registry records the name, the directors, and the registered and records offices of the company.

Corporate Registry Involvement

If a company wants to change its name, the location of its registered or records office, or its directors, the registry must be advised because it generates an **Annual Report** based on the information it currently has.

The documentation required to make changes varies from province to province; however, the provincial corporations legislation stipulates what is needed. For example, a Notice of Change of Directors is normally required whenever there is a change in directorship.

Most corporate registries are computerized and law firms have access to many records. This makes the recordkeeping and amending process much faster.

The corporate registry usually prepares an Annual Report on the anniversary date of incorporation and sends it (or e-mails it) to the company's registered office for verification.

If a law firm is the registered office, the corporate records staff checks the Annual Report against the company's records book to ensure that all changes have been recorded with the registry.

If everything is in order, the law firm processes the Annual Report and pays the required filing fee. This fee is a disbursement on the law firm's bill to the corporate client.

Contravention

When an Annual Report is not filed on time, a fine is sometimes levied.

If an Annual Report is overdue and there are no active directors, the company is in **contravention**.

Good Standing

If no Annual Report is filed, the company is **not in good standing** and may eventually be **struck off** the registry records. This means that the company cannot operate legally without applying for a reinstatement, which costs money.

It is critical, therefore, that law firms maintain efficient diary systems to keep all companies in **good standing**.

A company may sometimes be asked to produce evidence of good standing. This is done by applying to the registry for a **Certificate of Good Standing**.

See the precedent of a Certificate of Good Standing on the unit cover page 141.

The second annual procedure is the holding of an Annual General Meeting.

THE AGM

By law, a company must hold an **Annual General Meeting** (**AGM**) 18 months after incorporation and then at least every 15 months in the subsequent years. These times vary from province to province.

There are provisions in most provincial company legislation for small, non-reporting companies to waive the holding of an AGM but Consent Resolutions must be prepared.

AGMs are often held in hotels or conference centres, so it is important to make arrangements well before the required date because facilities are often booked months (or years) in advance.

Notice of AGM

Whenever an AGM is to be held, a Notice of Annual General Meeting is prepared. There are, however, provisions in some provincial company legislation to waive this requirement under certain circumstances.

A **Notice of Annual General Meeting** outlines the time, day, date, and place of the meeting. It may incorporate an Agenda. An **Agenda** is a list of the business to be discussed at the meeting.

Proxy

Another document that often accompanies the Notice of Annual General Meeting is a Proxy. A **Proxy** is a legal document used by a shareholder to authorize someone else (the **proxyholder**) to attend the meeting in the place of the shareholder and vote on behalf of the shareholder.

The wording of a Proxy is often contained in a company's Articles. If not, the provincial company legislation often contains precedent wording.

The Articles often contain specific rules regarding proxyholders. For example:

> 10.5 Where there are joint members registered in respect of any share, any one of the joint members may vote at any meeting, either personally or by proxy, in respect of the share as if he were solely entitled to it. If more than one of the joint members is present at the meeting, personally or by proxy, the joint member present whose name stands first on the register in respect of the share shall alone be entitled to vote in respect of that share. Several executors or administrators of a deceased member in whose sole name any share stands shall, for the purpose of this article, be deemed joint members.

The following is a precedent of a Proxy:

ABC COMPANY LTD.

PROXY

I, _____ of _____, in the _____ of _____ being a member of ABC COMPANY LTD. ("the Company"), of Montreal, Québec, hereby appoint _____ of _____, as my proxy to vote for me and on my behalf at the Annual General Meeting of the Company to be held on the 5th day of April, 20--.

SIGNED this _____ day of _____, 20--.

_____
Shareholder

Minutes

After the AGM, Minutes are prepared and signed. When approved, they are filed in the records book (or minute book, if the company maintains a separate minute book).

The format of Minutes and Resolutions varies, so look at previous sets for the format to use. For new companies, use the law firm's own precedents.

Throughout the year, the directors and shareholders may have several meetings.

MEETINGS, MEETINGS, MEETINGS

Notice of Meeting

Whenever meetings are scheduled, a **Notice of Meeting** is prepared. The wording is virtually the same as that of the Notice of Annual General Meeting. Again, there are provisions in some provincial company legislation to waive this requirement under certain circumstances.

The following is a precedent of a Notice of Meeting:

THE XYZ COMPANY

NOTICE OF DIRECTORS' MEETING

Notice is hereby given that a Meeting of the Directors of The XYZ Company will be held on Wednesday, November 20, 20--, at 11:00 a.m. in Boardroom #3 at the Company headquarters at 600 Station Road, Regina, Saskatchewan, for presentation of the proposal to lease the warehouse at 3400 St. Clair Street in Saskatoon, and for the transaction of such other business as may properly come before the meeting.

Dated this 30th day of October, 20--, at Regina, Saskatchewan.

M. Q. HOLLAND
Secretary

Location

Most directors' meetings are held at the company's registered office, whereas shareholders' meetings and AGMs are often held in hotels or conference centres. However, in the case of small companies (which are the majority of companies in Canada), meetings are held where the company operates its business. Sometimes these companies have meeting rooms. In the case of home-based businesses, directors' and shareholders' meetings may be held around the dining room table!

The Articles of a company usually have a number of provisions relating to meetings. The following relates to meetings of directors:

> 14.1 The directors may meet together at such places as they think fit for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings, as they see fit. The directors may from time to time fix the quorum necessary for the transaction of business and unless so fixed the quorum shall be a majority of the directors then in office. The president of the Company shall be chairperson of all meetings of the directors; but if at any meeting the president is not present within 30 minutes after the time appointed for holding the meeting, the directors present may choose some one of their number to be chairperson at that meeting. A director may at any time, and the secretary, on the request of a director, shall convene a meeting of the directors.

A **quorum** is the minimum number of people who must be present for a meeting to be valid.

Irrespective of where meetings take place, the proceedings must be documented in Minutes or Consent Resolutions. Most small businesses opt for the latter. Whichever document is used, it must be signed and filed in the company's records book. Some large companies, because of the volume of Minutes, have a minute book strictly for the Minutes and a records book for all other documents, registers, certificates, etc.

Ready to test your new knowledge? Let's begin.

TEST YOUR KNOWLEDGE 3

Read the following sentences and then fill in each blank with the appropriate term or phrase.

1. A/an _____ is prepared by the corporate registry on the anniversary date of a company's incorporation.
2. A company will be in good _____ if it files its Annual Report on time.
3. A/an _____ is the minimum number of people who must be present in order for a meeting to be valid.
4. The laws in many provinces stipulate that companies conducting land transactions must use a corporate _____.
5. Another term for a shareholder is a/an _____.
6. The formal, written record of the business transacted at a meeting is called the _____.
7. A/an _____ is used by a shareholder to authorize another person to attend a meeting and vote on behalf of the shareholder.

8. A Notice of Annual General Meeting may incorporate a/an _____ listing the business to be discussed.
9. _____ provide the same information as Minutes but a meeting has not been held.
10. Share Certificate stubs are kept in _____.

HANDLING SPECIAL PROCEDURES

During the life of a company, many specialized procedures occur; for example, change of name, continuation, amalgamation, and dissolution. All these procedures require resolutions to be made and passed. Let's look at the various types of resolutions.

TYPES OF RESOLUTIONS

Most company's Articles indicate what type of resolution is required for each specialized procedure. So, look first in the company's records book which contains the Articles. If you cannot find anything there, look at provincial or federal legislation.

The following are the common types of resolutions:

- Ordinary Resolution
- Special Resolution
- Separate Resolution
- Unanimous Resolution
- Exceptional Resolution.

Listed below are general descriptions of resolutions; however, keep in mind that companies may have different interpretations based on their Articles.

Type	Description
Ordinary Resolution	Passed by a majority of votes cast by shareholders; i.e., over 50%
Special Resolution	Requires no less than $^{2}/_{3}$ of votes (often $^{3}/_{4}$ stipulated in a company's Articles) cast by shareholders or signed by all shareholders
Separate Resolution	Allows only shareholders holding a particular class or series of shares to vote
Unanimous Resolution	Passed by being consented to in writing by all shareholders entitled to vote
Exceptional Resolution	Passed at a general meeting or by all shareholders consenting in writing. A Notice of Meeting must have been sent out and the voting majority specified in the company's Articles (usually greater than that required under a Special Resolution) must be reached.

Ordinary & Special Resolutions

Ordinary and Special Resolutions are the most commonly used.

Here is a precedent of an Ordinary Resolution.

SOUTHWEST ENERGY SYSTEMS INC.

ORDINARY RESOLUTION

RESOLVED THAT the acquisition, on the terms and subject to the conditions of the offer set out in the Offer Document dated May 12, 20--, a copy of which was produced to the meeting and for identification purposes signed by the chair of the meeting, and the Transaction Agreements, **BE AND ARE HEREBY APPROVED**, and the directors be and are hereby authorized to waive, amend, vary, or extend any of the terms of the Offer Document and the Transaction Agreements and to do all things as they may consider to be necessary or desirable to implement and give effect to, or otherwise in connection with, the acquisition and any matters incidental to the acquisition.

DATED at Prince Albert, Saskatchewan, this day of , 20--.

_____
SHELBY MORGAN

_____
DANUTA KATRINA LUI

Refer to Unit 6, Document 5 for a precedent of a Special Resolution.

Certified Copy of Resolution

Many corporate procedures require a certified copy of a Resolution. To do this, add the following wording after the signatures on the Resolution:

I hereby certify that the foregoing is a true copy of a Special Resolution of the Company, and that such Resolution is still in full force and effect.

DATED at Saint John, New Brunswick, this day of , 20--.

_____
[NAME OF PRESIDENT], President
[NAME OF COMPANY]

Now that you know about the types of resolutions, let's look at some specialized corporate procedures starting with changing the company name.

NAME CHANGE

When a company decides to change its name, there are certain procedures that are relatively standard in most provinces.

Procedures

1. The shareholders must pass a Special Resolution agreeing to change the name of the company and update its Articles and/or other incorporation documentation.
2. A name search – usually a NUANS® – to ensure that the proposed new name of the company is available for use.
3. Reserve the new name.
4. Prepare the name change documentation for the corporate registry and pay the appropriate fee. Note: Many corporate registries have on-line forms and filing, so instead of submitting certified copies of the Shareholders Special Resolution, the wording may have to be copied and pasted into the on-line form.
5. If all of the name change documentation is in order, the corporate registry will:
   - send the company a Certificate of Change of Name (or similar document)
   - send the company a certified copy of the Notice of Articles (or similar document) as altered
   - publish a Notice of Change of Name in the provincial Gazette.

Another relatively common specialized corporate procedure is a continuation.

CONTINUATION

If a company wants to move from one province to another without changing its name, it applies for a **continuance** or **continuation** into the new province.

Documentation

If, for example, a company wants a continuance from British Columbia into Nova Scotia, the current documentation to be filed with the Nova Scotia Registry of Joint Stock Companies is:

- Petition and accompanying Affidavit in Verification
- Special Resolution of the Members (Shareholders)
- Certificate of Good Standing from the B.C. Registrar of Companies
- Letter from the B.C. Registrar of Companies acknowledging the request by the company to leave B.C., that there are no objections to the transfer, and that the laws of B.C. permit such a transfer
- Memorandum of Association to comply with the Nova Scotia Companies Act
- Articles of Association – the existing Articles of the company are acceptable as long as they comply with the Nova Scotia Companies Act
- Legal opinion from the company's B.C. law firm
- List of Directors
- Notice of Registered and Recognized Agent

plus, of course, a filing fee. In addition, the company would have to conduct a NUANS® search before filing the documentation.

Certificate of Continuance

Once the Registry of Joint Stock Companies in Nova Scotia receives and approves the

documentation, it issues a **Certificate of Continuance**. The company files the original Certificate in its records book and sends a copy to the Registrar of Companies in B.C. in accordance with s 311(1) of the Business Corporations Act of British Columbia.

While the above outlines the procedure for one province, the overall process is similar in other provinces.

Now let's look at another relatively common specialized corporate procedure: amalgamation.

AMALGAMATION

An **amalgamation**, often called a **merger**, is the joining of two or more companies to form a new company. The terms are set out in an **Amalgamation Agreement**.

In some provinces it is necessary to obtain a Court Order to amalgamate; in other provinces such as Nova Scotia, an amalgamation is done by submitting documentation to the corporate registry.

Documentation

The following is the documentation currently required by the Registry of Joint Stock Companies in Nova Scotia relating to the amalgamation of ABC Company and XYZ Company:

- Certified copy of Special Resolution of the Members of ABC Company
- Certified copy of Special Resolution of the Members of XYZ Company
- Statutory Declaration of the president of ABC Company
- Statutory Declaration of the president of XYZ Company
- Amalgamation Agreement
- Filing fee.

Special Resolutions of Members

Refer to Unit 6, Document 5 for a precedent of the Special Resolution of the Members of ABC Company relating to the amalgamation.

Notice that this Resolution is to be signed by all shareholders of ABC.

The Special Resolution mentions that the Amalgamation Agreement is attached as Schedule A. This means that you key "Schedule A" in the top righthand corner of the Agreement's first page and attach the document to the Resolution.

Statutory Declarations

The Statutory Declarations of the presidents basically say that the president of the company:

- has reviewed the Amalgamation Agreement
- has investigated and considered the effects of the amalgamation upon the rights and interests of all parties
- believes that the amalgamating company will be able to pay its liabilities and that no creditor will be prejudiced by the amalgamation.

Refer to Unit 2, Document 3 for a precedent of an amalgamation Statutory Declaration.

Certificate of Amalgamation

Once the Registry of Joint Stock Companies in Nova Scotia receives and approves the documentation, it issues a **Certificate of Amalgamation**. The company files this Certificate in its records book.

Another type of specialized corporate procedure relates to insolvency and bankruptcy.

INSOLVENCY & BANKRUPTCY

Unfortunately, despite some valiant efforts, many companies do not survive for more than a few years. When this happens, the company will become insolvent or bankrupt.

The federal acts relating to insolvency and bankruptcy are the Bankruptcy and Insolvency Act, RSC 1985, c B-3 and the Companies' Creditors Arrangement Act, RSC 1985, c C-36. Each province has its own legislation.

Insolvency

A company that is **insolvent** is unable to pay its debts as they become due in the normal course of business. A company may be **cash flow insolvent**, meaning that it cannot pay its debts when they are due, or **balance sheet insolvent** meaning that its liabilities exceed its assets.

Bankruptcy

Bankruptcy is a determination of insolvency made by a court. The court issues an Order which is intended to resolve insolvency.

Neither insolvency nor bankruptcy ends the existence of a company. However, if a company decides to cease operation then it must wind-up, liquidate, and dissolve.

WINDING-UP, LIQUIDATION, & DISSOLUTION

Winding-Up

Winding-up a business means that the business ceases its normal activities – pays any outstanding taxes, terminates contracts, etc. – and moves towards dissolution. **Dissolution** is the legal termination of a company which ends its existence as a corporation.

Liquidation

As part of the winding-up process, if a company has assets and liabilities, then the process of liquidation takes place. **Liquidation** is the process of selling assets and converting them into cash – which is then used to pay off debt. The person or company that is in charge of the liquidation process – often an accounting firm – is called the **liquidator**. However, before the liquidation process is started, the company must apply for and receive a **Certificate of Intent to Dissolve** or similarly named document from the corporate registry.

Refer to Unit 6, Document 6 for a precedent of a Notice to Shareholders, Creditors, Contributories, and Members regarding the appointment of a liquidator.

Certificate of Dissolution

When the assets are liquidated and the liabilities discharged, a **Certificate of Dissolution** is obtained from the corporate registry. The required documentation varies based on the province and whether the company has issued shares. Most dissolutions require a Special Resolution of the

Shareholders agreeing to dissolve the company and Articles of Dissolution or similarly named document.

Once the corporate registry issues a Certificate of Dissolution, the company legally ceases to exist.

Now that you know a little more about some specialized corporate procedures, let's move on to look at corporate securities in more detail.

CORPORATE SECURITIES

The corporate securities area of law deals primarily with large companies – public, reporting, or offering companies – that trade their securities on a stock exchange. A **security** is a tradable financial asset used to raise **capital** – money – in public and private markets. The nature of what can and cannot be called a security generally depends on the jurisdiction in which the assets are being traded.

Legislation & Regulation

Currently there is no Canadian federal securities legislation nor national securities regulator, instead each province or territory has its own securities laws and its own securities regulator – usually called the **Securities Commission**.

Role of Corporate Securities Lawyer

The main role of a corporate securities lawyer is to ensure that a company follows the law when dealing with matters concerning the company's securities. Any changes or decisions regarding a company's securities is commonly referred to as **corporate finance**. In some law firms, the corporate securities department also handles takeovers and mergers as well as corporate governance and securities litigation matters. We will look at these topics in a short while.

While corporate securities is a large area of law worthy of a complete course, for the purposes of this book, we will look at the basics.

Types of Corporate Securities

Let's start with the three main types of securities:

1. Equity
2. Debt
3. Hybrid.

EQUITY SECURITIES

Equity securities provide ownership rights to the holders. Equity securities nearly always refers to shares most of which generate regular earnings for shareholders in the form of dividends; e.g., common shares.

You were introduced to shares on pages 146 and 154. If you need to review your knowledge, refer back to those pages.

DEBT SECURITIES

Debt securities provide debt rights to the holders. Debt securities differ from equity securities in an important way: they involve borrowed money and the selling of a security. They are issued by a company or government and sold to another party for a certain amount with a promise of repayment plus interest. They include a fixed amount that must be repaid by the company or government, a specified rate of interest, and a **maturity date** – the date by which the total amount of the security must be paid. An example of debt security is a Canada Savings Bond.

A **debenture** is a marketable security issued by an organization to raise money for long-term activities and growth.

You were introduced to bonds and debentures on pages 155 and 156. If you need to review your knowledge, refer back those pages.

HYBRID SECURITIES

Hybrid securities are a combination of equity and debt securities and include rights to buy, sell, or trade an option. A **stock option** is the right, but not the obligation, to purchase stock in the future at a price set at the time the option is granted (by sale or as compensation by a company).

Now that you know the three main types of securities, let's look at stock splits and stock options (mentioned above) in a little more detail.

STOCK SPLITS

All reporting companies need a regular stream of investment money coming into the business. **Investment money** is money that a company receives when shareholders buy shares. As you probably know, companies whose shares are traded on a stock exchange have to be aware of the price of their shares virtually minute by minute. Sometimes, when the price of a single share rises to, say, $90 per share, it may be in the company's best interest to split those shares to attract more investors. This process is called a **stock split**.

As corporate finance involves working in a worldwide marketplace, there are region-specific terms. In Europe, a stock split is referred to as a **scrip issue**, a **bonus issue**, a **free issue**, or a **capitalization issue**.

So how does a stock split affect shareholders? A company might offer existing shareholders a 2-for-1 or a 3-for-1 split. The following table illustrates how this works:

Type of Split	No. of Shares and Price	Total Investment
No split	100 shares @ $90	$900
2-for-1 split	200 shares @ $45	$900
3-for-1 split	300 shares @ $30	$900

The result is that the shareholder has the same total investment but more shares. If a 3-for-1 split is offered, company shares at $30 will be more attractive to investors because they are cheaper.

To effect a stock split, there has to be a Directors' Resolution, such as:

"WHEREAS, it is deemed to be advisable and in the best interests of ABC CO. LTD. (the "company") and its shareholders to increase this company's authorized number of shares to FIVE HUNDRED THOUSAND (500,000) and concurrently to declare a three (3) for one (1) stock split of this company's common stock in which every one (1) share of this company's common stock is split and converted into three (3) shares of this company's common stock.

NOW, THEREFORE, BE IT RESOLVED THAT, upon approval of the shareholders of the company, Article 14.9 of this company's Articles of Incorporation be amended to read as follows:"

As you can see, there will have to be a Shareholders' Resolution as well. This would usually be a Special Resolution because the company's Articles are being amended.

STOCK OPTIONS

Many reporting companies offer stock options to their employees as a form of compensation. A stock option is a right – not an obligation – to buy the company's shares at a fixed price known as the **grant price** or **strike price**, before a specified expiration date. So, for example, an employee might be offered a stock option of 1,000 shares at $20 per share. If the company is profitable and its share price rises to, say, $60, then the employee can buy up to 1,000 shares at $20 per share ($20,000) instead of the current price of $60 ($60,000), sell them and make a profit of $40,000.

As with a stock split, there would have to be Directors' and Shareholders' Resolutions.

Following is a Shareholders' Resolution relating to an employee stock option plan:

RESOLUTION OF THE SHAREHOLDERS OF

XYZ CORPORATION

EMPLOYEE STOCK OPTION PLAN

RESOLVED THAT:

1. The Employee Stock Option Plan ("the Plan") dated May 12, 20--, presented to the shareholders of the corporation, be and the same is hereby approved; and
2. The directors of the corporation are hereby authorized and directed for and on behalf of the shareholders to execute all such documents and to take such actions as, in their opinion, may be necessary or advisable to execute the Plan document and notify the employees of the corporation of the Plan's creation.

Pursuant to the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16, including subsection 104(1) thereof, the foregoing Resolutions are hereby executed by all the voting shareholders of the corporation.

DATED at Sarnia, Ontario, this day of May, 20--.

_____
Shareholder

_____
Shareholder

There would be a similar Resolution – with minor wording changes and a different section of the Act – for signature by the directors.

WARRANTS

A **warrant** entitles the **bearer** (the holder, commonly called the **warrantholder**) to buy a specific number of shares in the issuing company, if they so choose, at a predetermined price for a specified period of time. There are various types of warrants. A **traditional warrant** is a security, usually attached to a bond, that acts as an inducement to buy the bond.

Warrants are listed on the options exchange and trade independently of the bond. This means that the warrantholder can detach the warrants from the bond and sell them on a stock exchange.

If an issuing company decides to buy back its warrants, it convenes a meeting of the warrantholders and passes an Extraordinary Resolution to amend the **Warrant Indenture** (Agreement) under which the warrants were originally issued.

It is usual for an Extraordinary Resolution to require a quorum of warrantholders of not less than 50% of the outstanding warrants and an affirmative vote of not less than $66^2/_3\%$ of the votes cast at the meeting (each warrant being entitled to one vote).

Now that you know a little more about stock splits, stock options, and warrants, let's move on to look at the distribution of securities.

DISTRIBUTION OF SECURITIES

Both private and public companies can **distribute** – sell – stock in their company; however, it's public companies that list and sell their shares on a stock exchange.

IPOs & Prospectuses

Before a company can list its shares on a stock exchange, certain procedures have to be followed. In Canada, unless otherwise exempt, an initial distribution of securities, commonly called an **initial public offering** (**IPO**), cannot occur without the filing of a Prospectus with securities regulators. A **Prospectus** is a comprehensive disclosure document that provides detailed information on the issuer's business and the securities being offered. This is to protect investors. **Investors** are individuals or organizations that put money into companies with the expectation of making a profit – **return** – on their investment.

When the securities regulators have reviewed the Prospectus, sometimes called the **Primary Prospectus**, and commented on it, the company then updates the Prospectus and files it as a **Final Prospectus**. The company is then able to list their shares on a stock exchange.

Most private companies – those with fewer than 50 shareholders who are normally family, friends, and business associates – do not have to file a Prospectus when they want to distribute shares.

An **underwriter** is a financial institution that pledges to buy all of the unsold shares in an issue of new shares.

Offering securities for sale is one thing but reporting companies also have continuous disclosure obligations.

CONTINUOUS DISCLOSURE OBLIGATIONS

The term **disclosure** refers to making a matter known either orally or in writing. The continuous disclosure obligations of a reporting company are:

1. **Periodic disclosure** refers to disclosing information at regular intervals; for example, quarterly and annual financial statements, shareholder meeting materials, Annual Reports, etc. You may be familiar with the glossy **Annual Report** booklets that reporting companies prepare each year. These are designed to attract new investors, inform existing investors, and include the company's financial statements – **balance sheet** and **income statement**.

   Another periodic disclosure document is an Information Circular for a company's shareholders. An **Information Circular** outlines important matters on the agenda at the annual shareholders' meeting or a special shareholders' meeting. The Information Circular also solicits proxy votes and provides procedures for voting on key issues.

2. **Timely disclosure** refers to disclosing any information relating to a material change as and when it becomes available. A **material change** is one that might affect the market price or value of any of the company's securities. The **market price** of a security is the current buying or selling price. Any disclosure is usually made by means of a Press Release. A **Press Release**, as the name implies, is an official, written statement issued to the press – media – giving information on a particular matter. In Canada, companies must file their periodic and timely disclosure documents on www.sedar.com, a free electronic database for the general public.

As mentioned earlier, corporate securities law may also include takeovers and mergers.

TAKEOVERS & MERGERS

A **takeover**, or **acquisition**, occurs when Company A takes over Company B and establishes itself as the new owner. Company B ceases to exist. A takeover is usually hostile. On the other hand, a **merger** is a benign joining together of two companies of a similar size to form a new company, usually under a new name.

Now that you know more about corporate securities law, let's move on to look at corporate litigation.

CORPORATE LITIGATION

Corporate litigation may arise from a variety of situations and have a number of remedies, not all of which result in a court case. Let's look at a few of these situations now, starting with lack of disclosure.

Lack of Disclosure by a Reporting Company

A breach of periodic, timely, and continuous disclosure requirements by a reporting company may result in administrative or civil proceedings such as the company being:

- placed on the securities regulatory authority's list of defaulters
- issued a temporary or permanent **Cease-Trade Order** – the company's shares cannot be traded on a stock exchange

- de-listed from a stock exchange
- sued by investors for misrepresentations in Information Circulars, Annual Reports, etc.

A civil action requires **leave** – permission – of the court. Provincial securities legislation does set liability limits and provides for defences. Court approval is also required for settlements and costs.

A defendant company, including its directors and officers, will not be liable for timely disclosure infringements if they can show that they conducted a reasonable due-diligence investigation. A **due-diligence investigation** takes verifications and precautions to identify or prevent any foreseeable risks. **Verifications** are declarations that statements are true.

Now let's look at another common source of litigation: insider trading.

Insider Trading

Insider trading refers to trading in a public company's stock by someone who has private, material information about that stock. **Material information** refers to any facts, figures, data, or documents that a reasonable investor would regard as significant to their decision to sell or buy a security.

When someone who knows undisclosed material information about a public company and informs other people about such information, this is referred to as **tipping**.

In Canada, insider trading is illegal and is enforced.

Other common corporate litigation matters relate to breach of contract and defective product liability.

Breach of Contract & Defective Product Liability

As mentioned in Unit 3, corporate litigation stems from situations including breach of contract and defective product liability. A **breach of contract** occurs when a party to a contract does not abide by the terms of the agreement. **Defective product liability** usually occurs when consumers find that a product does not work properly or is dangerous. A product may be anything from a bicycle to a pharmaceutical (drug, medication, etc.).

Many defective product liability cases are class-action lawsuits. A **class-action lawsuit** is a type of lawsuit where one of the parties is a group of people who are represented collectively by a member or members of that group.

Another common source of corporate litigation relates to ownership of intellectual property.

Ownership of Intellectual Property

In Unit 3, as you may recall, **intellectual property** refers to an individual's or company's rights to a creative work or invention that they may **patent**, **copyright**, or **trademark**. Refer to page 56 if you cannot remember what these three terms mean.

When ownership rights are in question, litigation is often the only course of action.

A final common source of corporate litigation relates to employees.

Employment & Labour Law

Companies that have employees are sometimes subject to employment and labour litigation.

- **Employment law** relates to issues arising between employees and employers and includes Employment Agreements.
- **Labour law** relates to issues arising among employees, employers, and unions including Collective Agreements.

Both employment and labour law cover a wide range of issues including workplace health and safety; harassment and discrimination; hours of work; holidays; wages; and much more. The amount of employment and labour legislation is vast and differs from province to province.

We will look at employment and labour law in more detail in Unit 9.

Ready to test your new knowledge? Let's begin.

TEST YOUR KNOWLEDGE 4

Indicate whether the following statements are true (T) or false (F) by circling the appropriate answer.

1. A stock option is an obligation to buy company shares at a fixed price known as the grant price. T / F
2. Dissolution is the legal termination of a company which ends its existence as a corporation. T / F
3. Another name for a stock split is a script issue. T / F
4. Unanimous Resolutions are the most commonly used. T / F
5. A warrant is a security that entitles the bearer to buy stock. T / F
6. Liquidation is the process of selling assets and converting them into cash which is then used to pay off debt. T / F
7. An amalgamation is often called a takeover. T / F
8. If a company wants to move from one province to another without changing its name, it applies for a continuance into the new province. T / F
9. An initial distribution of securities is called an IPO. T / F
10. A company is balance sheet insolvent when it cannot pay its debts when they are due. T / F

EXPAND YOUR KNOWLEDGE

1. Research the documentation required and fees charged to incorporate a company on-line in your province. Discuss your findings with your colleagues.
2. Locate a short Partnership Agreement precedent/template. Review the suggested wording. Discuss your findings with your colleagues.
3. Research the reason for, and the outcome of, the franchisee/franchisor dispute *2462192 Ontario Ltd.* v. *Paramount Franchise Group Inc.,* 2019 ONSC 2962 (CanLII). Discuss your findings with your colleagues.
4. Review the *Stream Three Inc.* v. *Yellowknife (City),* 2022 NWTSC 10 (CanLII) case. What was the reason for this application? What was the outcome? Discuss your findings with your colleagues.
5. Research examples of both a corporate poison pill and a white knight strategy. Discuss your findings with your colleagues.

6. There are limitations on a Canadian corporation's capacity to protect its directors and/or officers who are sued. Research this issue and identify how directors/officers can protect their personal assets. Discuss your findings with your colleagues.
7. Research the services offered by Moody's and S&P and the usefulness of the information these companies offer. Discuss your findings with your colleagues.
8. Review the following cases:
   - *Centum Above All Financial Inc. et al* v. *Canada Revenue Agency*, 2021 MBQB 230
   - *Nti Boilers Inc*. v *Muelink & Grol B.V.,* 2021 CanLII 139442 (NBQB)
   - *Comren Contracting Inc*. v *Bouygues Building Canada Inc*., 2020 NUCJ 2
   - *Michael Wilson & Partners Ltd*. v *Dow*, 2022 BCSC 1136.

   Discuss with your colleagues the reasons for, and outcomes of, the above cases.