

creditors
creditors

Sole proprietorship

records book

5

Corporate Law

Consent Resolutions

AGM

par value

directors

TERMINOLOGY

AGM	federal incorporation	preference shareholder
accrue	franchise	preference shares
acquisition	Franchise Agreement	president
Agenda	franchisee	private company
Amalgamation Agreement	franchisor	provincial incorporation
Annual General Meeting	good standing	Proxy
Annual Report	guarantor	proxyholder
Articles	incorporators	public company
Articles of Association	insolvent	quorum
assets	LLP	records book
auditor	legal entity	records office
authorized share capital	liable	Register of Directors
bankruptcy	limited liability	Register of Shareholders
bond	limited liability partnership	registered office
bondholder	liquidation	reporting company
capital	liquidator	resolution
Certificate of Dissolution	members	secretary
Certificate of Good Standing	merger	securities
Certificate of Incorporation	Minutes	Separate Resolution
common shareholder	NUANS®	shelf company
common shares	name search	society
company	non-cumulative	sole proprietorship
Consent Resolutions	preference shares	Share Certificate
continuance	non-offering company	shareholders
continuation	non-reporting company	Special Resolution
contravention	not in good standing	stock dividend
corporate law	Notice of	struck off
corporate records	Annual General Meeting	subscribers
department	Notice of Meeting	takeover
corporate seal	offering company	traditional partnership
corporation	officers	treasurer
creditors	Ordinary Resolution	Unanimous Resolution
Crown corporation	ordinary shareholder	unlimited liability
cumulative preference	ordinary shares	unlimited liability partnership
shares	par value	winding-up
directors	partners	without par value
dissolution	partnership	
dividend	Partnership Agreement	
Exceptional Resolution	post-incorporation	

SCENARIO 10

Two years have passed. Yalda's divorce is now finalized but she realizes that money is going to be an on-going issue. Asu is taking business management courses at community college. His arrest (while he was not charged) was a wake-up call. He's studying hard and spends more and more time with Yalda and Sabeen. He's told Yalda that he thinks that Mustafa is going back to the old country. Yalda knows that if that happens, the court mandated support and maintenance will probably cease. She needs to make plans – and fast!

Both Yalda and Kayleigh are excellent cooks. They've often talked about putting their skills to work – maybe operating a catering company together. Yalda thinks the time is right to take the next step – so does Kayleigh. Asu thinks it is a great idea and offers his business management skills. He says there are a lot of things to think about and suggests that Yalda and Kayleigh consider the various business structures that are available – partnership, corporation, etc.

The following is some corporate law terminology Yalda and Kayleigh will learn about as they embark on their new venture.

INTRODUCTION TO CORPORATE LAW

WHAT IS CORPORATE LAW?

Corporate law involves providing legal services to sole proprietorships, partnerships, corporations, societies, etc.

CORPORATE STRUCTURES

The five most common corporate structures are the:

1. sole proprietorship
2. corporation
3. partnership
4. society
5. franchise.

SOLE PROPRIETORSHIP

The simplest form of business ownership is a **sole proprietorship**. A sole proprietorship is formed when a person wants to operate a business on her or his 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.

A disadvantage of a sole proprietorship is that it carries **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.

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.

There are many different types of corporations:

- A **Crown corporation** (Canada Post Corporation) that is established by special provincial or federal act
- A financial corporation (The Bank of Montreal)
- A business corporation (Chrysler Canada Inc.).

Shareholders and Shares: The owners of a corporation are the **shareholders** who buy shares in the company. When a shareholder buys a share he or she subscribes to a common fund called the **capital** and is issued a **Share Certificate** indicating his or her shareholding – the specific number and type of shares.

Note: The term **without par value** means that the value of the share is not printed on the Share Certificate. Conversely, a Share Certificate with a value printed on it is called a **par value** share.

Shareholders share in the profits of a corporation in proportion to their shareholdings. The extent of each shareholder's liability is limited to his or her 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 would 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; i.e., limited liability.

There are different classes of shares. Two of the most common classes are common shares and preference shares.

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

Most **preference shares** do not entitle the **preference shareholder** to vote at shareholders' meetings. The dividend, always paid "in preference" to ordinary shares, is a fixed percentage; e.g., 5% preference shares. Many preference shares are **cumulative preference shares** which means that if the company does not make dividend payments, the dividends will **accrue** – accumulate. Conversely, **non-cumulative preference shares** do not accrue dividends.

Public v. Private Corporations: A corporation that offers its shares for sale to the public is called a **public company, reporting company, or offering company**; conversely, a

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

Directors: The **directors** oversee the day-to-day operation of the corporation and appoint the corporate officers.

Officers: Most corporations have at least two **officers**, a president and a secretary. The officers have signing authority on many legal documents and bank accounts.

Officers are assigned to perform specific duties; for example, the **president** heads up the company and makes the major decisions, the corporate **secretary** maintains the corporate records and attends corporate meetings, and the **treasurer** manages the company's finances. A small company has at least two officers: a president and a secretary while large companies have additional officers; e.g., vice-presidents.

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.

PARTNERSHIP

As you learned in Unit 1, 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 also.

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.

In a **traditional partnership**, sometimes called an **unlimited liability partnership**, any one partner is responsible for the errors and debts of any other partner.

On the other hand, 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 their staff's negligence or misconduct. However, each partner is personally liable for their own and their staff's actions. The partnership itself is liable for the negligence of all partners and employees, and normally maintains liability insurance.

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.

FRANCHISE

A **franchise** is a clone of an existing successful business which operates under a **Franchise Agreement**. Examples are McDonald's[®], Midas[®], Boston Pizza[®].

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.

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. Note: The term "guarantor" is used in any legal document where there is an acceptance of liability by a third party.

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.

INCORPORATION

FEDERAL/PROVINCIAL INCORPORATION

In order for a company to operate legally in Canada, it must be incorporated federally or provincially.

A company wanting to operate across Canada normally incorporates federally (**federal incorporation**). On the other hand, a company wanting to operate in one province normally incorporates provincially (**provincial incorporation**).

To begin incorporating a company, a potential company name must be chosen, a name search conducted, and incorporation documentation prepared.

CHOOSING A NAME

A person incorporating a company must select three potential names, preferably with three distinct components. For example:

1.	A distinctive element	Aurora
2.	A descriptive element	Media Systems
3.	A corporate designation	Ltd.

NAME SEARCH

For a provincial incorporation, a **name search** is conducted in the provincial corporate registry to see whether any other corporation in the province has the same name as any of the three proposed names.

Federal incorporation and many provincial incorporations require that a countrywide NUANS[®] search be conducted. NUANS[®] is a database of existing and reserved business names applied for in Canada.

INCORPORATION DOCUMENTATION

Once a company name has been provisionally approved, the incorporation documents are prepared and sent to the appropriate registry.

The incorporation documentation 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 can legally issue
- names, addresses, and occupations of the subscribers
- number and kind 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).

The **Articles** or **Articles of Association** are the rules governing the internal management of the new company.

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. The **records book** contains the original copies of a company's legal documents. Often a law firm acts as the registered and/or records office of the company.

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

Provided that the documents submitted to the appropriate registry are correct, the registry issues a **Certificate of Incorporation** showing among other things the company name and the incorporation date and number.

SHELF COMPANY

Many law firms incorporate shelf companies. A **shelf company** has the incorporation number as part of its name; e.g., "12345 B.C. Ltd." 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 a law firm. If a client wants to incorporate a company immediately, then the law firm gives the shelf company to the client who then has a ready-made company. If the client wants to change the name of the company, this can be done in the future.

POST-INCORPORATION

When a Certificate of Incorporation is issued to a company, the company can operate legally. At this time, however, certain **post-incorporation** procedures and documentation are required.

POST-INCORPORATION PROCEDURES & DOCUMENTS

1. The Certificate of Incorporation and other incorporation documents must be filed in the company's records book.
2. A **corporate seal** is ordered, if required. A corporate seal is used to emboss the company name on paper documents. The laws in many provinces stipulate that companies conducting land transactions must use a corporate seal.

When a 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.

3. Directors and shareholders' (members) meetings must be held to organize the company.

If the first directors and shareholders hold actual meetings, then Minutes are prepared. **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.

If the first directors and shareholders do not meet, Consent Resolutions are prepared. **Consent Resolutions** provide the same information as Minutes but a meeting has not been held. For these Resolutions to be valid, they must be signed.

Note: It is at these meetings that the new company decides whether to appoint an **auditor** – an accounting firm that officially examines and checks the company's financial accounts annually.

4. Share Certificates, together with their completed stubs (like a cheque book stub), are prepared and kept in the company's records book or given to the shareholders.
5. The **Register of Shareholders** and **Register of Directors** are completed and filed in the company's records book.

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.

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 varies from province to province; however, the provincial corporations legislation stipulates what is needed.

The Annual Report is checked against the company's records book to ensure that all changes have been recorded with the registry. If everything is in order, the Annual Report is filed in the corporate registry.

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**.

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 all companies remain in **good standing**.

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

THE AGM

By law, a company must hold a meeting of shareholders and directors called an **Annual General Meeting (AGM)** 18 months after incorporation and then at least every 15 months in the subsequent years.

A **Notice of Annual General Meeting** outlines the time, day, date, and place of the meeting. It may also incorporate an Agenda. An **Agenda** is a list of the business to discuss at the meeting (election of directors, appointment of auditor, etc.).

Another document that often accompanies the Notice 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 her or his behalf.

MEETINGS, MEETINGS, MEETINGS

Throughout the year, the directors and shareholders may have meetings. Whenever such meetings are scheduled, a **Notice of Meeting** is prepared.

For any of these meetings to be valid, there just be a quorum. A **quorum** is the minimum number of people who must be present. This number is stipulated in the company's Articles.

SPECIAL CORPORATE 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.

RESOLUTIONS

The following table illustrates the common types of resolutions:

Ordinary Resolution	Passed by a majority of votes cast by shareholders; i.e., over 50%
Special Resolution	Requires no less than $\frac{2}{3}$ of votes (often $\frac{3}{4}$ 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.

NAME CHANGE

When a company decides to change its name, the shareholders must pass a Special Resolution agreeing to change the name of the company and update its Articles and/or other incorporation documentation.

CONTINUATION

If a company wants to move from one province to another without changing its name, it must first pass a Special Resolution of the Members (Shareholders) and then apply for a **continuance** or **continuation** into the "new" province.

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**.

TAKEOVERS AND 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.

INSOLVENCY AND BANKRUPTCY

A company that is **insolvent** is unable to pay its debts as they become due in the normal course of business. **Bankruptcy** is a determination of insolvency made by a court.

Neither insolvency nor bankruptcy ends the existence of a company.

WINDING-UP, LIQUIDATION, & DISSOLUTION

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.

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**.

When the assets are liquidated and the liabilities discharged, a **Certificate of Dissolution** is obtained from the corporate registry.

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

STUDENT ACTIVITIES

ACTIVITY 1

Refer to the Articles of Incorporation on page 156 of the Documents section.

- What are **Articles of Incorporation**?
- What is the legal term for **Ltd.** in the company name? Hint: Company names have three distinct components.
- Define the term **common shares**. How many common shares is this company authorized to issue?
- What do the terms **directors** and **incorporators** mean?

ACTIVITY 2

Refer to the extracts from a company's set of Articles on page 157 of the Documents section.

- Define the term **Articles**.
- In Article 4.3, what does the term **pro rata** mean?
- Research the meaning of the terms **bond**, **mortgage**, and **debenture** that appear in Article 8.6.
- Article 9.2 refers to a **proxy**. What does this mean?
- What does the term **quorum** in Article 13.8 mean?
- Define the terms **resolution** and **dividend** that appear in Article 17.9. Research the meaning of the term **vest** in this Article.

ACTIVITY 3

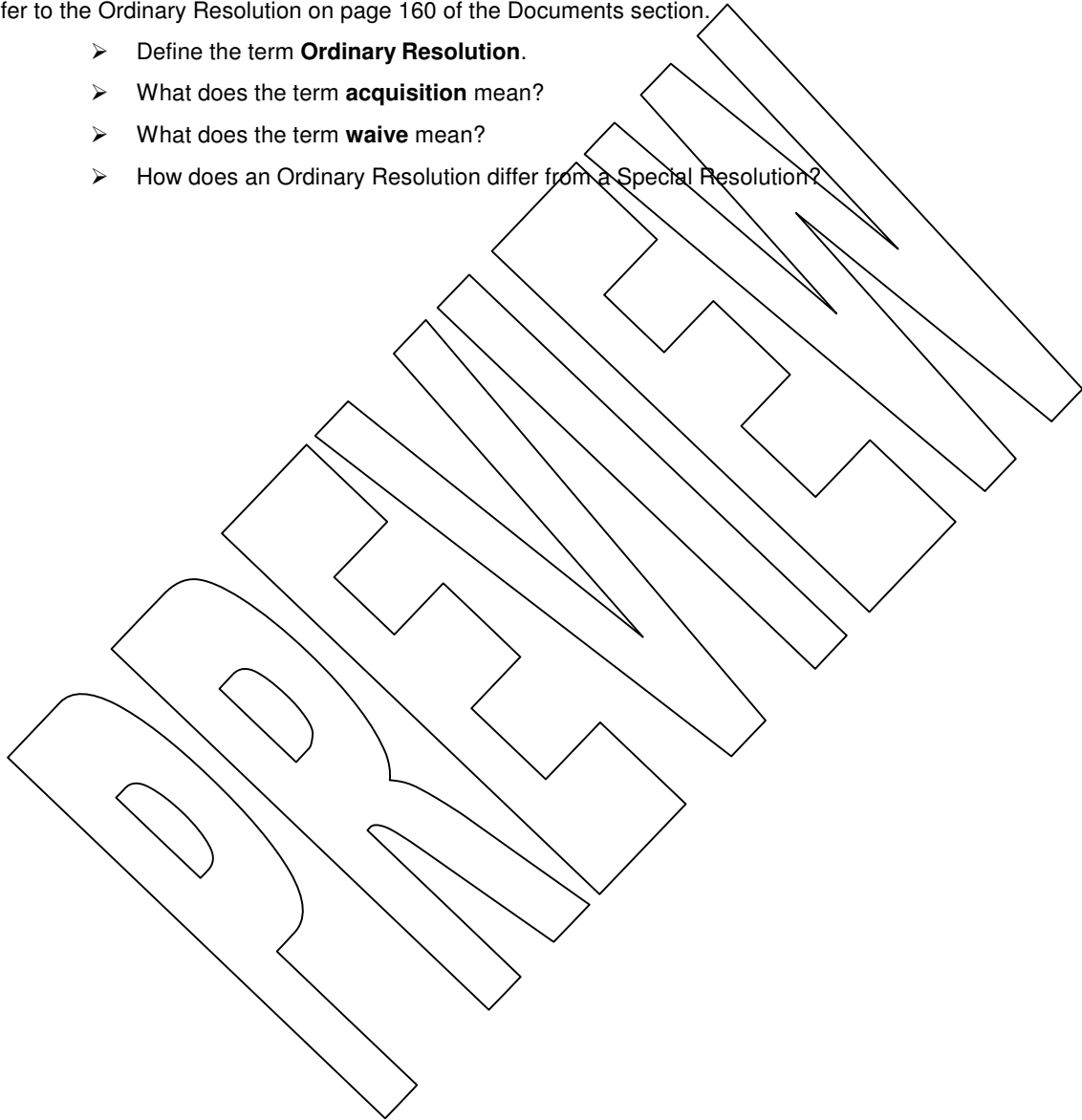
Refer to the Consent Resolutions of the Subscribers on page 158 of the Documents section.

- What are **Consent Resolutions**?
- Define the term **subscribers**.
- What is an **Annual General Meeting**?
- Differentiate between a company's **records office** and its **registered office**.
- What does the term **auditor** mean?

ACTIVITY 4

Refer to the Ordinary Resolution on page 160 of the Documents section.

- Define the term **Ordinary Resolution**.
- What does the term **acquisition** mean?
- What does the term **wave** mean?
- How does an Ordinary Resolution differ from a Special Resolution?



DISCUSSION TOPICS

1. Discuss the advantages and disadvantages of Yalda and Kayleigh forming a corporation as opposed to a partnership.
2. Discuss the provisions and terminology of any Partnership Agreement that Yalda and Kayleigh may decide to have prepared.
3. The Consent Resolutions of the Subscribers to the Memorandum of Shadow Mountain Equipment Corporation (Documents section) mention waiving the appointment of an auditor. Discuss what this means.
4. If Yalda and Kayleigh were to incorporate and to issue shares in their company to their children, discuss how this might be done equitably. Take into consideration such things as number of children, voting rights, and different classes and kinds of shares.
5. If Yalda and Kayleigh's business venture turned out to be profitable and Yalda had not divorced Mustafa, discuss what claims Mustafa might have against the business profits.

UNIT COMPREHENSION

SECTION A

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

1. The simplest form of business ownership is a/an _____.
2. _____ means that if the owner of a business runs into financial difficulties, _____ can make claims against the owner's personal _____ (home, car, etc.).
3. A corporation is a registered _____ meaning that it can sue or be sued.
4. Canada Post is an example of a/an _____ corporation.
5. The owners of the corporation are the _____.
6. Jason purchased a share in Company A. Jason is actually subscribing to a common fund called the _____ of Company A.
7. A/an _____, or _____ company is a corporation that offers its shares for sale to the public.
8. _____ oversee the day-to-day operation of a corporation.
9. When two or more people operate a business together, they often form a/an _____.
10. _____ means legally responsible.
11. A/an _____ is a group of people who share a common charitable, cultural, recreational, or scientific/health interest.
12. A/an _____ is a clone of an existing successful business.
13. A/an _____ is a company or person who develops a system for reproducing the business under a Franchise Agreement.
14. A/an _____ is a company or person who rents a trademark under a Franchise Agreement.
15. The _____ is where legal documents may be served on a company.
16. The _____ is the maximum value of _____ (shares) the company can legally issue.
17. The _____ office is where a company's records book is kept.
18. The _____ are the rules governing the internal management of a company.

SECTION B

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

1. A/an (Notice of Annual General Meeting, Proxy, Certificate of Incorporation, Annual Report) is prepared by the corporate registry on the anniversary date of a company's incorporation.
2. A company will be in good (books, arrears, standing, maintenance) if it files its Annual Report on time.
3. The (records book, incorporation book, minute book, post-incorporation book) contains the Certificate of Incorporation.
4. The laws in many provinces stipulate that companies conducting land transactions must use a corporate (record, notice, seal, stamp).
5. Another term for a shareholder is a/an (lawyer, member, incorporator, director).
6. The formal, written record of the business transacted at a meeting is called the (Consent Resolutions, Minutes, Agenda, Record).
7. A (Shareholder's Resolution, Notice of AGM, Proxy, Consent Resolution) is used by a shareholder to authorize another person to attend a meeting and vote on behalf of the shareholder.
8. Whenever a meeting of directors or shareholders is scheduled, a (Consent Resolution, Proxy, Register of Directors/Shareholders, Notice of Meeting) must usually be prepared.
9. In many provinces, if a/an (Annual Report, Certificate of Incorporation, Notice of Change of Directors, Notice of AGM) is not filed on time, a fine is levied against the company.
10. When a company makes a profit, (common, preference, ordinary, priority) shareholders are paid a dividend first.

SECTION C

Match the following legal terms to the definitions in the table. Place your answer(s); e.g., h, in the Answer column.

- | | | |
|------------------------|-------------------------------|---------------------------------|
| a. Winding-up | h. Merger | o. Certificate of Incorporation |
| b. Ordinary Resolution | i. Shareholder | p. Liquidation |
| c. Continuation | j. Not in good standing | q. Certificate of Good Standing |
| d. Insolvent | k. Bankruptcy | r. Annual Report |
| e. Dissolution | l. Acquisition | |
| f. Amalgamation | m. Special Resolution | |
| g. Separate Resolution | n. Certificate of Dissolution | |

Definition	Answer
1. Resolution passed by a majority of votes cast by shareholders	
2. The joining of two or more companies to form a new company	
3. Selling assets and converting them into cash	
4. The legal termination of a company	
5. Procedure to move a company from one province to another without a name change	
6. Type of resolution required for a corporate name change	
7. Another name for a takeover	
8. Resolution made by shareholders of a particular class or series	
9. Benign joining together of two companies	
10. Terminate contracts and cease normal business activities	
11. Determination of insolvency made by a court	
12. Document issued by the corporate registry prior to a corporate seal being ordered	
13. Member of a company	
14. Document checked against a company's records book	
15. Company unable to pay its debts	