

CORPORATIONS TERMINOLOGY

Term	Field of Law	Definition	Code §§/pg #s
Articles of Incorporation	Corporations	Public record of corporation; any third party dealing w/ co is thus on notice; those db with the co need to know what constitutes approval of a particular act → must be included in AoI, which, unlike bylaws, is a public document	
Book value	Accounting	Value of a company based on its own financial statements; value of assets based on historical cost	
Business Judgment Rule	Corporations	Automatically applies when (a) directors have made conscious business decisions (<i>i.e., not a case of nonfeasance</i>), (b) no charge of breach of loyalty (<i>i.e., is a duty-of-care case</i>); and (c) directors' decision does not constitute illegal conduct. Classic formulation: behavior that is not grossly negligent or reckless, or that has "any rational business purpose," satisfies the BJR. <i>Not a rule of conduct; rule of conduct = duty of care</i> . BJR = rebuttable presumption that directors acted in good faith, were informed, and acted in best interests of company.	p. 529, 530–32; ALI § 4.01(c) (524); Del. GCL § 102(b)(7); MBCA § 2.02(b)(4)
Capital investment	Corporations	Entails risks of the venture	
Capital Surplus	Corporations	Amount of consideration received for shares in excess of the amount of capital or stated capital; lawyers' term for what accountants call "paid in capital in excess of par"	p. 244–45
Capitalization	Accounting, Corporations, Partnership	Financing for a company; capitalization = equity + debt	p. 239
Cash flow	Accounting	Earnings/income stream along with operating expenses	
Credit	Accounting	Increase to liabilities on balance sheet (decrease from assets)	

Current ratio	Accounting	[Current assets] / [current liabilities]	CP 42
Debit	Accounting	Increase to assets on balance sheet (decrease from debt or equity)	
Debt	Corporations, Partnership	Contractual liability; must always be repaid, including interest; interest payments on debt = tax-deductible (dividends not tax-deductible)	p. 251
		Debt allows you to use less of your own money → higher ratio between your investment & possible returns	
		More debt → higher leverage → higher risk	
Debt-to-Equity Ratio	Accounting	[Total liabilities] / [Shareholders' Equity]	
Director	Corporations	Highest management of corporations; elected by shareholders; collective actions as the Board constitute actions of the corporation	
Dissociation	Partnership	One partner leaves the partnership, but the partnership carries on.	UPA § 701
Dissolution	Partnership	When partnership ceases carrying on business	
Distributions	Corporations	Usually payback to shareholders of amounts previously invested by them in the corporation; distributed from amount paid to corporation in excess of par; <i>not taxable</i>	p. 246
Dividends	Corporations	Return on shareholders' investment in stock; paid out of corporate earnings. Non-contractual, but once dividends start being issued, ceasing to do so would send a "terrible signal to the market"—would imply that management thinks the company is in poor financial health. <i>However</i> , payment of dividends for <i>preferred stock</i> is (semi-)contractual because of the need to pay dividends; <i>taxable at time of distribution</i>	Del. GCL § 170

Draw	Partnership	Cash distributions to partners	p. 113
Duly authorized	Corporations	Requirement that when shares of stock are issued, the corporation had sufficient shares authorized in its charter to cover the issuance	p. 254, 243; Del. GCL § 102(a)(4)
Duty of care	Corporations	Standard of conduct for directors; applies to malfeasance and nonfeasance; directors must act in good faith in what they rsbly believe to be the best interests of the corp; held to ordinary negligence std in nonfeasance; focus is on <i>process</i> of decision making, not <i>substance</i>	p. 508; MBCA § 8.30; Del. GCL § 141(a)
Duty of loyalty	Corporations	When subject to legal challenge, burden of proof is on Δ directors to show that they did <i>not</i> breach their duty of loyalty. Greater concern with duty-of-loyalty charges because of the way the transaction is structured.	Del. GCL § 144; pp. 577–98
Earned surplus	Accounting	Company earnings not distributed as dividends; lawyers’ term for what accountants call “retained earnings”	
Extraordinary matters	Partnership	Requires unanimous votes for partnership action; no real guidelines for what constitutes “extraordinary matters” outside of UPA (1997) § 401(i),(j) → voting matters should be worked out ahead of time due to lack of statutory guidelines	UPA § 401(i),(j)
Fully paid	Corporations	Proper type and amount of consideration given for a share of stock; fully paid usu = nonassessable; MBCA: adequate consideration → nonassessable & fully paid.	p. 255–56; MBCA § 6.21
Issuance	Corporations	Original sale of stock	
Liquidation value	Accounting	Proceeds from sale of all company assets	

Loan	Corporations	Entitled to repayment in dissolution/insolvency; does not entail risks of venture; insulated from effects of poor business but does not enjoy increase in return based on good business performance	
Margin call	Corporations	Buyer borrows \$ to buy more stock; collateral for loan = stock already owned; when stock drops in value, creditor can require buyer to sell off stock to pay off loan; those sales further drive down the market (increases supply while demand goes down). Timing in control of seller.	
Net working capital	Accounting	[Current assets] – [current liabilities]	CP 41
Officer	Corporations	Agents of the corporation, appointed or elected by directors	Del. GCL § 142; MBCA § 8.40
Paid in capital in excess of par	Corporations	Amount of consideration received for shares in excess of the amount of capital or stated capital; accountants' term for what lawyers call "capital surplus"	p. 244–45
Par value	Corporations	Minimum price for stock stated in AoI; having a par value is often optional under modern statutes. Stated capital = (outstanding shares) x (par value). In some states such as Delaware, having no par value leads to relatively high taxation rates on stock. MBCA does not require par value	p. 242, 244; Del. GCL § 154
Preemptive rights	Corporations	When a corporation issues more stock, certain buyers have priority on option to buy; particularly important in close corps	p. 273–74; MBCA § 6.30
Prime Rate of Interest	Accounting	Interest rate charged by financial institutions to their best customers: those (businesses) that have the best financial health; those most likely to pay the loans back; now 5%	

Promoter	Corporations	An entrepreneur responsible for bringing together all the components required to transform a business opportunity into a business operation. <i>See also</i> pp. 225–26 (promoter’s liability; novation; contract language; written options)	pp. 222, 225–26
Proper purpose	Corporations	Threshold requirement for a shareholder to gain access to corporate books and records. In Delaware, must be “reasonably related to [the stockholder’s] interest as a stockholder.” Cannot be adverse to the corporate’s interest, but motive to gain control ≠ improper. Soliciting proxies OK; purchasing additional shares OK. Getting shareholder list for union to communicate with shareholders re: Δ’s labor relations OK.	p. 348; 8 Del. C. § 220(b)
Proxy voting	Corporations	Method of representing a shareholder at a meeting in the shareholder’s absence; proxy voting is available to shareholders, but not directors	p. 338
Record date	Corporations	Anyone who owns shares as of a certain date is considered to be a shareholder for a given corporate action— <i>e.g., dividends: anyone who owns a share as of X date gets that dividend; same for votes</i>	
Retained earnings	Accounting	Company earnings not distributed as dividends; accountants’ term for what lawyers call “earned surplus”	
Rights	Corporations	Short-term warrants expiring within one year	p. 241
Share, book value	Corporations	[value in equity] / [# outstanding shares] when there’s only one class of stock; need balance sheet to calculate	

Shareholder	Corporations	Diffuse owners of the corporation; most important corporate function (aside from providing capital) is to elect directors; generally exercise their power at meetings	p. 338–39
Shareholder agreement	Corporations	Allows shareholders to vary structure and power of corporations, including eliminating Board or circumscribing its power; altering distributions from the corporation; establishing directors or officers, or their terms of office or manner of selection and removal; etc.	MBCA § 7.32
Stated Capital	Corporations	Aggregate par value of outstanding shares (Del. stat. uses “capital” for par stock and “stated capital” for no-par stock; lawyers often use “stated capital” to refer to both)	p. 244; Del. GCL § 154
		<i>Reducing stated capital:</i> ¹ Transfer excess over aggregate par to surplus <i>or</i> redeem and cancel shares	
		<i>Increasing stated capital:</i> ² Issue new shares or transfer from surplus to capital	
Stock, common	Corporations	In simplest corporate capital structure, represents sole ownership interest in the corporation; usually tied to voting rights	p. 240
Stock, issued	Corporations	Sold or distributed stock	
Stock, outstanding	Corporations	Stock still held by shareholders	

¹ Shareholders might push for this because they want dividends

² Lenders might push for this because they *don't* want dividends issued

Stock, preferred	Corporations	In corporate structures with multiple classes of stocks, preferred stock usually carries prioritized right to distributions (or dividends)—although dividends usually limited to stated amounts—and repayment in dissolution; usually does not carry voting rights; ³ usually callable (i.e., corporation can require preferred shareholders to sell their shares to the corporation at a price stated in the corporate charter)	p. 240–41; MBCA § 7.21
Stock, redeemed	Corporations	Company buys back shares; as if never issued.	
Stock, treasury	Corporations	Stock repurchased by company but not canceled; can be reissued	
S-type corporation	Corporations	Requirements: (1) no more than 75 shareholders; (2) incorporation in the U.S.; (3) only one class of stock; (4) shareholders must be indivs, estates, or certain kinds of trusts; (5) no nonresident-alien shareholders; (6) corp cannot be a life-insurance company or other certain types; (7) all shareholders must agree	
Termination	Partnership	Point in time when all partnership affairs are wound up	
Thin incorporation	Corporations	Originally: “extreme situations such as nominal stock investments and an obviously excessive debt structure” Now refers primarily to “the extent to which stockholder loans may be used to finance a corporation”	p. 263

³ Exception when dividends are in arrears for a stated period (often 12 months); preferred stockholders gain right to elect some or all of the corporation’s directors until all dividends in arrears have been paid (240). Default under MBCA § 7.21 is that each share gets one vote (“each outstanding share, regardless of class, is entitled to one vote”), which is usually varied in the AoI so that there are no voting rights unless dividends unpaid.

Voting trust	Corporations	Classic def'n = formed under trust law with voting stock as its corpus; trustee gains legal title to shares; trustee votes shares according to terms of the trust, which may be specifically enforced	p. 424–25; MBCA § 7.30; Del. GCL § 218
Voting, cumulative	Corporations	Shareholders' votes for directors can be distributed at will. E.g., 100 shares & 2 directors = 200 votes, distributable 100/100 or 1/199 or any other way.	p. 380
Voting, straight	Corporations	Shareholders' votes for directors must be cast in blocks: one block = # of shares; number of blocks = # of directors to be elected. E.g., 100 shares & 2 directors = two blocks of 100 votes cast. Can't cast blocks for same director.	p. 380
Warrants	Corporations	Transferable long-term options to acquire shares from a corporation at a specified price	p. 241
Watered stock	Corporations	Stock issued for less than full amount of permissible consideration; stock remains outstanding & less than fully paid. Dilutes value of other issued shares.	p. 256
Winding up	Partnership	Process of settling partnership affairs after liquidation; ≈ liquidation	
Written consents	Corporations	Can be used in lieu of or supplemental to in-person meetings; very useful when people hold multiple positions in a corporation; makes clear in which role a person is acting. In Del., written consents cannot take the place of an annual meeting; directors designated through consents hold office only until the next annual meeting.	p. 310; 8 Del. C. § 228; MBCA § 7.04; pp. 339, 342