



Control and Minority Protection: Canada: International Joint Ventures

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1. In the absence of specific provisions in the shareholders' agreement or bye-laws of a company, what protections are automatically given to a minority shareholder under local law?

The Canada Business Corporations Act, the federal legislation that governs business corporations, provides several protections for minority shareholders, many of which are also available under provincial business corporations statutes, including:

- **Oppression.** Where a shareholder believes that the affairs of a company have been conducted in an oppressive or unfairly prejudicial manner, it can apply to the court for a remedy. The court has broad discretion to make any order it considers appropriate, including:
 - restraining the conduct complained of;
 - appointing directors in place of any of the directors then in office;
 - appointing a receiver or receiver-manager;
 - compensating the aggrieved person; and
 - liquidating and dissolving the company.
 - **Derivative action.** A shareholder can apply to the court for leave to bring an action on behalf of a company to remedy a wrong to the company. The court must be satisfied that:
 - the directors of the company do not plan to initiate an action themselves;
 - the shareholder is acting in good faith; and
 - it appears to be in the best interests of the company that the action be brought.
 - **Dissent and appraisal rights.** A shareholder has the right to require a company to buy its shares for fair value where that shareholder dissents from a shareholder vote approving certain fundamental corporate changes.
 - **Shareholder proposals.** A shareholder who is entitled to vote at an annual meeting and owns more than 1% of the company's voting shares or voting shares with a fair market value of at least C\$2,000 (as at 31 August 2010, C\$1 was EURO.75) can submit a proposal to the company to be discussed and voted on at the next annual meeting.
- ## 2. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors and so on)?

The Canada Business Corporations Act requires that certain corporate actions be approved by special resolution (at least 66

2/3% of the votes cast by the shareholders entitled to vote on the resolution), including:

- Changing the company's name or its registered office.
- Adding, changing or removing any restriction on the business or businesses that the company can carry on.
- Amending the company's constating documents (articles and bye-laws).
- Approving an amalgamation (merger) of the company with another company.
- Approving the sale or lease of all or substantially all of the company's assets.
- Approving the liquidation and dissolution of the company.

3. Are there any statutory restrictions on quorum or voting requirements at director and shareholder meetings? Do they need to be proportionate to shareholdings?

A company's quorum and voting requirements at director and shareholder meetings is usually contained in the company's bye-laws. If no quorum has been set, the quorum is established by the federal and provincial business corporations statutes. The Canada Business Corporations Act provides that the quorum for a directors' meeting is a majority of the number of directors or the minimum number of directors required by the articles. The quorum for a shareholders' meeting is the holders of a majority of the shares entitled to vote at the meeting, present in person or by proxy.

Quorum and voting requirements do not need to be proportionate to shareholdings.

4. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Under corporate law, the statutory voting requirements cannot be varied to protect minority shareholders. However, in the case of certain corporate actions that affect the shareholders of a particular class or series differently than other shareholders, the shareholders of the class or series so affected may be entitled to vote separately in respect of that corporate action. These types of protections would normally be found in the terms of the shares themselves or in a shareholders' agreement.

Under provincial securities law, majority approval by independent shareholders is required for certain transactions, including some transactions involving a related party.