



Shareholders' Agreement and Bye-laws: Canada: International Joint Ventures

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1. What are the main documents that regulate the constitutional arrangements and day-to-day operation of a joint venture company incorporated in your jurisdiction? (Please answer this and other questions in respect of the corporate vehicle that is most likely to be used for a private joint venture with two or more corporate shareholders.)

The main documents required to establish and maintain a company are:

- **Articles of incorporation.** Incorporation under Canadian federal and provincial business corporations legislation is accomplished by delivering articles of incorporation in the form prescribed by regulation to the appropriate government department, together with the required supporting materials and fees. The articles of a company incorporated under the Canada Business Corporations Act must include:
 - the name of the company;
 - the address of the company's registered office in Canada;
 - any restrictions on the businesses that the company may carry on;
 - a description of the share capital structure, including the classes and maximum number of shares that the company is authorised to issue (the authorised capital is often unlimited) and the rights, privileges, restrictions and conditions attached to each class (which may include subdivision into separate series);
 - any restrictions on the issue, transfer or ownership of shares; and
 - the number of directors or the minimum and maximum number of directors.
- **Bye-laws.** The bye-laws of a company are general regulations that constitute the rules that regulate the manner in which the business affairs of the company are conducted. At or around the date of incorporation, a company typically prepares a general bye-law that deals with matters such as:
 - the execution of documents;
 - the company's financial year end;
 - the procedures to be used in connection with meetings of directors and shareholders;

- the provision for committees of directors; and
- the duties of the officers of the company.
- **Unanimous shareholders' agreement.** A unanimous shareholders' agreement is a written agreement between all the shareholders of a company that governs the manner in which the company should operate, and may include:
 - restrictions on its business;
 - restrictions on share transfers;
 - minority shareholder protections; and
 - restrictions on the powers of the directors to manage the business and affairs of the company.

2. Is it possible to amend the constitutional documents of a company? If so, what are the relevant voting requirements?

Subject to any unanimous shareholders' agreement, the articles of a company can be amended only by way of a special resolution of the shareholders, which requires the approval of at least 66 2/3% of the votes cast by the shareholders entitled to vote on the resolution.

The bye-laws of a company can be amended by the directors, subject to ratification by ordinary resolution of the shareholders (approval by at least 50% of the votes cast by the shareholders entitled to vote on the resolution) and subject to any unanimous shareholders' agreement.

3. Is every shareholder automatically bound by a company's constitutional documents?

Yes.

4. Is it necessary for a company's constitutional documents to be registered and open to public inspection?

Yes. Under Canadian federal law, the articles of incorporation are public documents. In addition, the company's articles, bye-laws, a copy of any unanimous shareholders' agreement, the minutes of meetings and resolutions of shareholders must be maintained at



the company's registered office. Any shareholder or creditor of the company and the director appointed to carry out the duties and exercise the powers of the "director" under section 260 of the Canada Business Corporations Act can examine the company's documents during usual business hours. Similar requirements apply under provincial business corporations legislation.

5. Is it necessary for a shareholders' agreement to be registered and open to public inspection?

No. There is no requirement under Canadian federal or provincial business corporations legislation to register a unanimous shareholders' agreement given that it is a private contractual agreement between the shareholders. The unanimous shareholders' agreement may, however, be subject to examination by any creditor of the company and the director appointed under the Canada Business Corporations Act.

6. Is a company bound by its constitutional documents?

Yes, a company's articles and bye-laws bind the company, its directors and shareholders. However, if a unanimous shareholders' agreement exists, it may supersede the specific provisions set out in the company's articles and bye-laws.

7. Is it common practice for a joint venture company to be a party to a shareholders' agreement relating to the joint venture?

Yes. A company is typically a party to the unanimous shareholders' agreement given that the agreement usually imposes obligations on both the shareholders and on the company itself. The terms and conditions of a unanimous shareholders' agreement apply, in priority, to the provisions of the company's articles of incorporation (see *Question 11*).

8. What are the remedies for breach of a shareholders' agreement?

The remedies available for a breach of a unanimous shareholders' agreement are similar to the remedies available for breach of contracts generally. Such remedies include damages, specific performance, an injunction or a declaration as to the rights of the parties.

In addition, if a company is not in compliance with the unanimous shareholders' agreement, a shareholder may apply to a court for an order directing the company to comply with, or restraining the company from acting in breach of, any provisions of the agreement. The court may also make any further order it considers appropriate.

9. What are the remedies for breach of a company's constitutional documents?

If a company is not in compliance with its constating documents (articles and bye-laws), a shareholder can apply to a court for an order directing the company to comply with, or restraining the

company from acting in breach of, any provisions of its constating documents. The court may also make any further order it considers appropriate.

10. In which document would you commonly insert the following provisions:

The following list sets out in which document a particular provision would be found:

(a) Object and scope of the venture.

Articles of incorporation or unanimous shareholders' agreement or both.

(b) Capitalisation and funding. Articles of incorporation or unanimous shareholders' agreement or both.

(c) Board composition and management arrangements. Unanimous shareholders' agreement.

(d) Distribution of profits (including dividend policy).

Unanimous shareholders' agreement.

(e) Provisions for dealing with deadlock. Unanimous shareholders' agreement.

(f) Termination provisions. Unanimous shareholders' agreement.

(g) Restrictive covenants. Articles of incorporation or unanimous shareholders' agreement or both.

(h) Rights to appoint and remove directors.

Unanimous shareholders' agreement.

(i) Quorum for board and shareholder meetings.

Unanimous shareholders' agreement.

(j) Procedures for shareholders' meetings. Unanimous shareholders' agreement.

(k) Division of shares into classes. Articles of incorporation.

(l) Chairman's casting vote. Unanimous shareholders' agreement.

(m) Notice provisions. Unanimous shareholders' agreement.

(n) Share transfer provisions. Unanimous shareholders' agreement.

(o) Minority protection (veto rights and so on).

Unanimous shareholders' agreement.

11. In the event of a conflict between a shareholders' agreement and a company's constitutional documents, which document is likely to prevail?

In the event of a conflict between the articles of incorporation and a unanimous shareholders' agreement, the terms and conditions of the unanimous shareholders' agreement prevail.