

Is A Change In Transfer Restrictions In A Shareholder Agreement Subject To Qualification?

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A recent [post](#) discussed whether amending a shareholders agreement is subject to qualification under the California Corporate Securities Law of 1968. For the purpose of that discussion, it is important to recognize that not every “shareholders agreement” is a shareholders agreement. Under the CSL, a “shareholders’ agreement” is a written agreement among all of the shareholders of a close corporation (or if a close corporation has just one shareholder, between the shareholder and the corporation) or a substantially similar agreement pursuant to the laws of a foreign jurisdiction. 10 CCR § 260.001(h) & Cal. Corp. Code § 186. What about those other shareholders agreements - those whose parties are shareholders of corporations that are not close corporations?

Assuming (but not concluding) that changes to these other shareholder agreements are changes in the rights, preferences, privileges, or restrictions of or on outstanding equity securities within the meaning of Section 25120, I would expect that such changes would in most cases would be exempt under Corporations Code Section 25103(e). That statute exempts *any* change in the rights, preferences, privileges, or restrictions unless materially and adversely affect any class of equity securities to:

- add, change, or delete assessment provisions;
- change the rights to dividends thereon;
- change the redemption provisions;
- make them redeemable;
- change the amount payable on liquidation;
- change, add, or delete conversion rights;
- change, add, or delete voting rights;
- change, add, or delete preemptive rights;
- change, add, or delete sinking fund provisions;
- rearrange the relative priorities of outstanding equity securities;
- impose, change, or delete restrictions upon the transfer of equity securities in the organizational documents for the entity;
- change the right of holders of equity securities with respect to the calling of special meetings of holders of equity securities; and
- change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation or entity

organized primarily to provide services or facilities to its shareholders or members.

Note that many of the above provisions would be provisions that must be included in the articles or bylaws to be effective. See Cal. Corp. Code Section 204. While many shareholder agreements include restrictions on transfer, the statute refers only to restrictions in the “organizational documents” of the entity.

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