



# California Corporate & Securities Law

## **Seeing Red And More Than 50% Ownership May Mean A 90% Vote**

By [Keith Paul Bishop](#) on November 14, 2011

California broadly authorizes a **corporation** to sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its assets when the principal terms have been **approved by the board**. If the sales is not in the usual and regular course of business, the principal terms must also be **approved by the outstanding shares**. Cal. Corp. Code § 1001(a). For a discussion of the meaning of “approved by the outstanding shares”, see this [post](#) from last week.

If the acquiring party is in **control** of or under common control with the disposing **corporation**, then the principal terms of the sale must be approved by at least 90% of the **voting power** of the disposing **corporation**. Cal. Corp. Code § 1001(d). The term “**voting power**” is defined to mean the power to **vote** for the election of **directors** at the time any determination of **voting power** is to be made and does not include the right to **vote** upon the happening of some condition or event that has not yet occurred. Cal. Corp. Code § 194.5. The statute includes a special rule when different **classes** of **shares** are entitled to **vote** as separate **classes** for different members of the **board**. The point of this requirement is analogous to other provisions in the California General Corporation Law that are intended to prevent cashing out of minority **shareholders** (Sections 1101 and 407). The 90% threshold is the same that required to effect a **short-form merger** (Section 1110).

There are at least two exceptions to this rule. First, a higher **vote** is not required if the disposition is to a **domestic** or **foreign corporation** or **other business entity** in consideration of the nonredeemable **common shares** or nonredeemable **equity securities** of the acquiring party or its **parent**. Presumably, this is an exception because the minority shareholders are not being squeezed out. Second, an exception is made if the terms and conditions of the transaction (and the fairness thereof) are approved by the Commissioner of Corporations, Commissioner of Financial Institutions, Insurance Commissioner, or Public Utilities Commission. Cal. Corp. Law § 1001(e).

Should you be wondering why this post has so many terms in red, I’ve done this to illustrate how just many terms are defined in the General Corporation Law. Although the GCL often includes a reference to the definitional sections in parenthesis, this practice is by no means universal. Further, many terms such as “corporation” “vote” and “class” are common and readers may not expect that the GCL has defined these in particular ways.

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