

Foreign ownership and control in Canadian communications

Until recently, Canada has had strict foreign ownership and control restrictions applicable to both telecommunications carriers and broadcasters. These rules with respect to telecommunications carriers have changed.

Recent amendments to the *Telecommunications Act* included in [Bill C-38, the Jobs, Growth and Long-term Prosperity Act](#), which received royal assent on June 29, 2012 and came into force the same day provide that Canadian ownership rules will no longer apply to a telecommunications common carrier if the carrier and all its affiliates have total annual telecommunications revenues that represent less than 10% of total Canadian telecommunications revenues, as determined by the CRTC. See an excerpt below from the revised Telecommunications Act.

PART II
ELIGIBILITY TO OPERATE
CANADIAN OWNERSHIP AND CONTROL

Marginal note: Definitions

16. (1) The following definitions apply in this section.

"entity"
« entité »

"entity" means a corporation, partnership, trust or joint venture.

"joint venture"
« coentreprise »

"joint venture" means an association of two or more entities, if the relationship among those associated entities does not, under the laws in Canada, constitute a corporation, a partnership or a trust and if all the undivided ownership interests in the assets of the Canadian carrier or in the voting interests of the Canadian carrier are or will be owned by all the entities that are so associated.

"voting interest"
« intérêt avec droit de vote »

"voting interest", with respect to

- o (a) a corporation with share capital, means a voting share;
- o (b) a corporation without share capital, means an ownership interest in the assets of the corporation that entitles the owner to rights similar to those enjoyed by the owner of a voting share; and

- o (c) a partnership, trust or joint venture, means an ownership interest in the assets of the partnership, trust or joint venture that entitles the owner to receive a share of the profits and to share in the assets on dissolution.

Marginal note: Eligibility

(2) A Canadian carrier is eligible to operate as a telecommunications common carrier if

- o (a) it is an entity incorporated, organized or continued under the laws of Canada or a province and is Canadian-owned and controlled;
- o (b) it owns or operates only a transmission facility that is referred to in subsection (5); or
- o (c) it has annual revenues from the provision of telecommunications services in Canada that represent less than 10% of the total annual revenues, as determined by the Commission, from the provision of telecommunications services in Canada.

Marginal note: Canadian ownership and control

(3) For the purposes of paragraph (2)(a), an entity is Canadian-owned and controlled if

- o (a) in the case of a corporation, not less than 80% of the members of the board of directors are individual Canadians;
- o (b) Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of the entity's voting interests; and
- o (c) the entity is not otherwise controlled by persons that are not Canadians.

Marginal note: Prohibition

(4) No Canadian carrier shall operate as a telecommunications common carrier unless it is eligible under this section to operate as such.

Marginal note: Exemption

(5) Paragraph (2)(a) and subsection (4) do not apply in respect of the ownership or operation of

- o (a) international submarine cables;
- o (b) earth stations that provide telecommunications services by means of satellites; or
- o (c) satellites.

Marginal note: Exception

(6) A Canadian carrier that is eligible to operate under paragraph (2)(c) remains eligible to operate even if it has annual revenues from the provision of telecommunications services in Canada that represent 10% or more of the total annual revenues from the provision of telecommunications services in Canada as long as the increase in its annual revenues from the provision of telecommunications services in Canada to 10% or more of the total annual revenues from the provision of telecommunications services in Canada did not result from the acquisition of control of another Canadian carrier or from the acquisition of assets used by another Canadian carrier to provide telecommunications services.

Marginal note: Acquisition

(7) A Canadian carrier to which subsection (6) applies is not authorized to acquire control of a Canadian carrier or acquire assets used by another Canadian carrier to provide telecommunications services.

Marginal note: Notice

(8) A Canadian carrier that is eligible to operate under paragraph (2)(c) shall notify the Commission when it acquires control of another Canadian carrier or acquires assets used by another Canadian carrier to provide telecommunications services.

Marginal note: Affiliates

(9) For the purposes of determining annual revenues from the provision of telecommunications services in Canada under this section, the annual revenues of a Canadian carrier include the annual revenues from the provision of telecommunications services in Canada of its affiliates as defined in subsection 35(3).

1993, c. 38, s. 16;
1998, c. 8, s. 2;
2010, c. 12, s. 2184;
2012, c. 19, s. 595