Airports (Ownership — Interests in Shares) Regulations 1996

Statutory Rules 1996 No. 341 as amended

made under the

Airports Act 1996

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Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Airports (Ownership — Interests in Shares) Regulations 1996*.

2 Object

The object of these Regulations is to identify the interests in shares that are to be disregarded in giving effect to certain of the ownership provisions of the Act.

Note Part 3 of the Act imposes certain ownership restrictions on airport-operator companies. Part 4 of the Act contains provisions dealing with schemes designed to avoid the ownership restrictions applying to airport-operator companies, including provisions that allow the Minister to direct a person to dispose of a stake in an airport-operator company in certain circumstances.

3 Interpretation

(1) In these Regulations, unless the contrary intention appears:

Act means the *Airports Act 1996*.

holder, of a declaration, is the person who applied for the declaration to be made.

investment fund means:

(a) a fund of the kind generally known as a unit trust (except a unit trust of the kind generally known as a discretionary trust); or

(b) a statutory fund, withing the meaning of the *Life Insurance Act 1995*, of a life insurance company; or

(c) a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or

(d) an exempt public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

(2) An expression used in these Regulations, and in the Schedule to the Act, has the same meaning as it has in the Schedule.

4 Who is a holder of a beneficial interest

(1) For these Regulations, a ***holder of a beneficial interest*** is a person who holds any beneficial interest in an investment fund, including:

(a) a beneficial interest held by the person jointly with another person; and

(b) a beneficial interest that is prospective, because the person:

(i) has entered into a contract to purchase a beneficial interest in the capital or income of the fund; or

(ii) has a right, otherwise than by reason of holding an interest in the fund, to have a beneficial interest in the fund transferred to the person or to the person's order (whether exercisable presently, or in the future, and whether or not subject to a condition); or

(iii) has a right to acquire a beneficial interest in the fund under an option (whether exercisable presently, or in the future, and whether or not subject to a condition).

(2) For these Regulations, a person is a holder of a beneficial interest regardless of:

(a) the remoteness of the interest; or

(b) the way in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to a restraint or restriction.

(3) For these Regulations, an interest is not a beneficial interest if:

(a) the interest is held solely as security under a moneylending agreement; and

(b) the ordinary business of the holder includes the lending of money.

(4) If:

(a) a person holds a beneficial interest in an investment fund as a loan security; and

(b) the ordinary business of the person includes the lending of money; and

(c) the loan security is enforced; and

(d) as a result of the enforcement, the person becomes the holder of the interest; and

(e) the person holds the interest for a continuous period (***the holding period***) beginning at the time when the security was enforced;

the person is taken not to hold the interest at all times during so much of the holding period as occurs during whichever of the following periods is applicable:

(f) the period of 90 days beginning when the security was enforced; or

(g) if the Secretary, by written notice, allows a longer period — the end of that longer period.

Part 2 Foreign-ownership — investment funds

5 Purpose

This Part prescribes a kind of interest in a share that must be disregarded in ascertaining whether, within the meaning of section 40 of the Act, an unacceptable foreign-ownership situation exists.

6 Prescribed interest in a share — foreign-owned investment funds

For paragraph 9 (1) (c) of the Schedule to the Act, a person's interest in a share is an interest of a prescribed kind if the interest arose solely as a result of an action by the person in his, her or its capacity as trustee or manager of an investment fund in relation to which a declaration is made under subregulation 7 (4).

7 Prescribed interest holder — foreign-owned investment funds

(1) For paragraph 9 (1) (c) of the Schedule to the Act, a person to whom regulation 6 applies is prescribed if the Secretary declares the investment fund, of which the person is trustee or manager, to be a substantially Australian investment fund.

(2) Application may be made by the person mentioned in subregulation (1) to the Secretary, in writing, for a declaration that an investment fund is a substantially Australian investment fund.

(3) An application must be accompanied by evidence to establish the fact that the investment fund is a fund in which a beneficial interest in less than 40% of the capital, and 40% of the income, is held by persons who are foreign persons.

(4) The Secretary must:

(a) if reasonably satisfied that the investment fund is eligible to be declared a substantially Australian investment fund:

(i) make the declaration; and

(ii) within 7 days of making the declaration:

(A) give a copy of the declaration to the applicant; and

(B) publish a notice of the declaration in the *Gazette*; or

(b) if not so satisfied — refuse to make the declaration.

(5) If the Secretary refuses to make a declaration, the Secretary must, within 7 days of making that decision, give the applicant written notice of the decision:

(a) stating the reasons for the decision; and

(b) stating that, subject to the *Administrative Appeals Tribunal Act 1975*, the person may apply to the Administrative Appeals Tribunal for review of the decision.

(6) If an investment fund is declared, and the holder of the declaration is aware of the existence of a fact or circumstance that, had it existed and been known to the Secretary at the time the declaration was made, is likely to have resulted in the declaration not being made, the holder must give the Secretary details of the fact or circumstance, in writing, before the end of 7 days after becoming aware of it.

(7) If an investment fund is declared, the holder of the declaration must comply with any request from the Secretary to give the Secretary information reasonably available to the person that could affect the eligibility of the investment fund to remain declared a substantially Australian investment fund.

(8) If an investment fund is declared, the holder of the declaration must, before the end of 30 days after each anniversary of the date on which the declaration is made, give the Secretary a written statement that the holder believes, if that is the case, that the investment fund is eligible to remain declared a substantially Australian investment fund.

Part 3 Associate of an airline

8 Purpose

This Part prescribes a kind of interest in a share that must be disregared in ascertaining whether, within the meaning of section 44 of the Act, an unacceptable airline-ownership situation exists.

9 Prescribed interest in a share — investment fund whose trustee or manager is an associate of an airline

For paragraph 9 (1) (c) of the Schedule to the Act, a person's interest in a share is an interest of a prescribed kind if:

(a) the interest is an interest in a share in an airline; and

(b) the person, in his, her or its capacity as the trustee or manager of an investment fund, is an associate of the airline; and

(c) the interest arose solely as a result of an action by the person in his, her or its capacity as trustee or manager of an investment fund.

10 Prescribed interest holder — investment fund whose trustee or manager is an associate of an airline

(1) For paragraph 9 (1) (c) of the Schedule to the Act, a person to whom regulation 9 applies is prescribed if the Secretary declares the investment fund, of which the person is trustee or manager, to be a distanced investment fund.

(2) Application may be made by the person mentioned in subregulation (1) to the Secretary, in writing, for a declaration that an investment fund is a distanced investment fund.

(3) An application must be accompanied by evidence to establish:

(a) the fact that neither the trustee or manager of the investment fund is an associate of the airline within the

meaning of paragraph 5 (1) (j) of the Schedule to the Act; and

(b) the fact that the investment fund is a fund in which a beneficial interest in less than 40% of the capital, and 40% of the income, is held by persons who are foreign persons.

Note Paragraph 5 (1) (j) of the Schedule to the Act mentions the situation where, for example, an airline is accustomed, or under an obligation, to act in accordance with the direction, instruction or wish of an associate.

(4) The Secretary must:

(a) if reasonably satisfied that the investment fund is eligible to be declared a distanced investment fund:

(i) make the declaration; and

(ii) within 7 days of making the declaration:

(A) give a copy of the declaration to the applicant; and

(B) publish a notice of the declaration in the *Gazette*; or

(b) if not so satisfied — refuse to make the declaration.

(5) If the Secretary refuses to make a declaration, the Secretary must, within 7 days of making that decision, give the applicant written notice of the decision:

(a) stating the reasons for the decision; and

(b) stating that, subject to the *Administrative Appeals Tribunal Act 1975*, the person may apply to the Administrative Appeals Tribunal for review of the decision.

(6) If an investment fund is declared, and the holder of the declaration is aware of the existence of a fact or circumstance that, had it existed and been known to the Secretary at the time the declaration was made, is likely to have resulted in the declaration not being made, the holder must give the Secretary details of the fact or circumstance, in writing, before the end of 7 days after becoming aware of it.

(7) If an investment fund is declared, the holder of the declaration must comply with any request from the Secretary to give the Secretary information reasonably available to the person that could affect the eligibility of the investment fund to remain declared a distanced investment fund.

(8) If an investment fund is declared, the holder of the declaration must, before the end of 30 days after each anniversary of the date on which the declaration is made, give the Secretary a written statement that the holder believes, if that is the case, that the investment fund is eligible to remain declared a distanced investment fund.

10AA Airlines holding stakes in certain airport-operator companies

(1) For paragraph 9 (1) (c) of the Schedule to the Act, a person's interest in a share is prescribed if the result of the person's holding the interest is that an airline has a stake in the airport-operator company for Essendon, Archerfield, Moorabbin, Parafield or Jandakot Airport.

Note The effect of disregarding those interests is that the limitations on ownership by airlines do not apply to the 5 airports mentioned.

(2) For that paragraph, the owner of the share is prescribed.

Part 3A Shares in other airports

10A Purpose

This Part prescribes a kind of interest in a share that must be disregarded in ascertaining whether, within the meaning of section 50 of the Act, an unacceptable cross-ownership situation exists.

10B Prescribed interest in a share — other airports

For the purposes of paragraph 9 (1) (c) of the Schedule to the Act, an interest in a share is an interest of a prescribed kind if the interest is an interest in a share in an airport-operator company for:

(a) Melbourne (Tullamarine) Airport; or

(b) Brisbane Airport; or

(c) Perth Airport.

10C Prescribed interest holder — other airports

(1) For the purposes of paragraph 9 (1) (c) of the Schedule to the Act, a person is a prescribed person if:

(a) the person has an interest of a kind mentioned in regulation 10B (***prescribed interest***); and

(b) the Secretary declares that the conditions set out in subregulation (3) have been met; and

(c) the person, or an associate of the person, acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport.

(2) A person who has an interest of a kind mentioned in regulation 10B, or an associate of a person who has an interest of a kind mentioned in regulation 10B, (the ***applicant***) may apply to the Secretary, in writing, for a declaration that the conditions mentioned in subregulation (3) have been met.

(3) For subregulations (1) and (2), the conditions are:

(a) that the applicant has given an undertaking to the Secretary:

(i) to dispose of the prescribed interest; or

(ii) otherwise to ensure that its stake in an airport-operator company mentioned in regulation 10B is reduced, so that an unacceptable cross-ownership situation does not (and would not, in the absence of this regulation) exist in relation to a pair of airport-operator companies and in relation to the applicant;

within 12 months after the applicant acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport; and

(b) that the applicant has outlined to the Secretary a firm strategy and timetable to comply with the undertaking given under paragraph (a).

(4) The Secretary must:

(a) if reasonably satisfied that the applicant has met the conditions, and that the application is made in good faith:

(i) make the declaration; and

(ii) within 7 days of making the declaration:

(A) give a copy of the declaration to the applicant; and

(B) publish a notice of the declaration in the *Gazette*; or

(b) if not so satisfied — refuse to make the declaration.

(5) If the Secretary refuses to make a declaration, the Secretary must, within 7 days of making that decision, give the applicant written notice of the decision:

(a) stating the reasons for the decision; and

(b) stating that, subject to the *Administrative Appeals Tribunal Act 1975*, the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

(6) If the Secretary makes a declaration under subregulation (4) in relation to an applicant, and the applicant is aware that it is no longer willing or able to comply with its undertaking under

paragraph (3) (a), the applicant must tell the Secretary that this is so within 7 days after becoming aware of it.

(7) If the Secretary makes a declaration under subregulation (4) in relation to an applicant, the applicant must comply with any request from the Secretary to give the Secretary a report on the progress that it has made towards:

(a) disposing of the prescribed interest; or

(b) ensuring that its stake in an airport-operator company mentioned in regulation 10B is reduced;

in accordance with its undertaking under paragraph (3) (a).

(8) A declaration under this regulation ceases to have effect, unless it is revoked earlier under regulation 11, at the end of 12 months after the applicant acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport.

(9) Despite regulation 10B and subregulation (1), a prescribed interest held by the applicant, or by an associate of the applicant, is disregarded only for the purpose of determining whether an unacceptable cross-ownership situation is created by the acquisition of a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport in relation to which the undertaking under paragraph (3) (a) is given.

Part 4 Revocation of declarations and review of decisions

11 Revocation of a declaration

(1) The Secretary may revoke a declaration made under subregulation 7 (4), 10 (4) or 10C (4) if:

(a) there are reasonable grounds for believing that a fact or circumstance exists that, had it existed and been known to the Secretary at the time the declaration was made, is likely to have resulted in the declaration not being made; or

(b) the holder of the declaration does not comply with subregulation 7 (6), (7) or (8), 10 (6), (7) or (8) or 10C (6) or (7), as the case requires.

(2) A revocation takes effect 30 days after notification under subregulation (3).

(3) Before the end of 7 days after a declaration is revoked, the Secretary must give the holder written notice stating:

(a) the reasons for the revocation; and

(b) the date of effect of the revocation; and

(c) that, subject to the *Administrative Appeals Tribunal Act 1975*, the holder may apply to the Administrative Appeals Tribunal for review of the decision to revoke the declaration.

12 Review of decisions

(1) Subject to the *Administrative Appeals Tribunal Act 1975*, an applicant for a declaration under regulation 7, 10 or 10C may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary, under subregulation 7 (4), 10 (4) or 10C (4), to refuse to make the declaration.

(2) Subject to the *Administrative Appeals Tribunal Act 1975*, a person in relation to whom a declaration under regulation 7, 10

or 10C is made may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary, under subregulation 11 (1), to revoke the declaration.

Notes to the *Airports (Ownership — Interests in Shares) Regulations 1996*

Note 1

The *Airports (Ownership — Interests in Shares) Regulations 1996* (in force under the *Airports Act 1996*) as shown in this compilation comprise Statutory Rules 1996 No. 341 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
1996 No. 341	24 Dec 1996	24 Dec 1996	
2001 No. 92	17 May 2001	17 May 2001	—
2001 No. 347	21 Dec 2001	21 Dec 2001	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	rs. 2001 No. 92
Note to r. 2	ad. 2001 No. 92
R. 6	rs. 2001 No. 92
R. 7	am. 2001 No. 92
R. 9	am. 2001 No. 92
R. 10	am. 2001 No. 92
Note to r. 10 (3)	am. 2001 No. 92
R. 10AA	ad. 2001 No. 347
Part 3A (rr. 10A–10C)	ad. 2001 No. 92
Rr. 10A–10C	ad. 2001 No. 92
R. 11	am. 2001 No. 92
R. 12	rs. 2001 No. 92