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Statutory Rules 1996 No. 1

341/

Airports (Ownership—Interests in Shares) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Airports Act 1996*.

Dated 1 1996.

20 December/

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WILLIAM DEANE/
Governor-General

By His Excellency's Command,

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JOHN SHARP/
Minister for Transport and Regional Development

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Airports (Ownership—Interests in Shares) Regulations.

[Note: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

Object

2. 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.

Interpretation

3. (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, within 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.

Who is a holder of a beneficial interest

4. (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

Purpose

5. 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.

Prescribed interest in a share—foreign-owned investment funds

6. 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 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; and
- (b) the person is a person prescribed under subregulation 7 (1).

Prescribed interest holder—foreign-owned investment funds

7. (1) For paragraph 9 (1) (c) of the Schedule to the Act, there is prescribed a person to whom paragraph 6 (a) applies, 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, give a copy of the declaration to the applicant; and
 - (iii) publish 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

Purpose

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

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

9. 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; and
- (d) the person is a person prescribed under subregulation 10 (1).

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

10. (1) For paragraph 9 (1) (c) of the Schedule to the Act, there is prescribed a person to whom paragraphs 9 (a), (b) and (c) apply, 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, give a copy of the declaration to the applicant; and
 - (iii) publish 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.

PART 4—REVOCATION OF DECLARATIONS AND REVIEW OF DECISIONS

Revocation of a declaration

11. (1) The Secretary may revoke a declaration made under subregulation 7 (4) or 10 (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) or 10 (6), (7) or (8), 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
- (b) 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.

Review of decisions

12. Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under subregulation 7 (4), 10 (4) or 11 (1).

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

1996. 24 December