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Airports (Ownership — Interests in Shares) Amendment Regulations 2002 (No. 1)¹

Statutory Rules 2002 No. /²

82

I, PETER JOHN HOLLINGWORTH, 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 - 2 MAY 2002 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

WILSON TUCKEY
Minister for Regional Services, Territories and
Local Government

		Page
Contents		
	1 Name of Regulations	2
	2 Commencement	2
	3 Amendment of <i>Airports (Ownership — Interests in Shares) Regulations 1996</i>	2
Schedule 1	Amendments	3
Schedule 2	Further amendments	13

1 Name of Regulations

These Regulations are the *Airports (Ownership — Interests in Shares) Amendment Regulations 2002 (No. /)*. /

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Airports (Ownership — Interests in Shares) Regulations 1996*

- (1) Schedule 1 amends the *Airports (Ownership — Interests in Shares) Regulations 1996*.
- (2) Schedule 2 amends those Regulations as amended by Schedule 1.

Schedule 1 Amendments

(subregulation 3 (1))

[1] **Subregulation 3 (1), definition of *investment fund*, paragraph (b)**

substitute

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

[2] **Part 2, heading**

substitute

Part 2 Foreign ownership

[3] **Regulation 5, heading**

substitute

5 **Purpose of Part 2**

[4] **Regulation 5**

omit

This Part

insert

For paragraph 9 (1) (c) of the Schedule to the Act, this Part

2002, /

*Airports (Ownership — Interests in Shares) Amendment
Regulations 2002 (No. /)*

3

82
1

[5] After regulation 5

insert

5A Double holding companies

- (1) This regulation applies if:
 - (a) a foreign person has a stake in a company (*holding company 2*); and
 - (b) holding company 2 has 100% of all types of direct control interests in another company (*holding company 1*); and
 - (c) holding company 1 has 100% of all types of direct control interests in an airport-operator company; and
 - (d) holding company 1 and holding company 2 are both incorporated in Australia, and both have a share capital; and
 - (e) holding company 2 is operated solely for the purpose of holding direct control interests in holding company 1 and at least 1 airport-operator company; and
 - (f) holding company 1 is operated solely for the purpose of holding direct control interests in 1 or more airport-operator companies.
- (2) An interest in a share that results in the foreign person having a stake in holding company 2:
 - (a) is a prescribed interest only for the purpose of determining whether:
 - (i) holding company 1, holding company 2 or the airport-operator company mentioned in paragraph (1) (c) is a foreign person; or
 - (ii) any of those companies is an associate of a foreign person; and
 - (b) is to be disregarded only after it has been counted for subclause 12 (5) of the Schedule to the Act to determine the size and type of stake that the foreign person holds in the airport-operator company.
- (3) The foreign person mentioned in paragraph (1) (a) is a prescribed person.

5B Indirect interest

- (1) A person's interest in a share is a prescribed interest if the interest exists solely because the person is a shareholder in a company that is not:
 - (a) a foreign person within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*; or
 - (b) an airport lessee company; or
 - (c) a holding company mentioned in clause 14 of the Schedule to the Act; or
 - (d) a holding company to which regulation 5A applies.
- (2) The first person mentioned in subregulation (1) is a prescribed person.

5C Australian associate of a foreign person — no action in concert, etc

- (1) An interest in a share is a prescribed interest if, in connection with that interest or any interest held by the interest-holder in an airport-operator company:
 - (a) the interest-holder, although being an associate of a foreign person:
 - (i) is not directly or indirectly controlled by the foreign person; and
 - (ii) is not accustomed, or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the foreign person; and
 - (iii) is not an associate of the foreign person, within the meaning of subclause 5 (2) of the Schedule to the Act; and
 - (b) the foreign person does not have any direct control interest in the share.
- (2) The interest-holder mentioned in subregulation (1) is a prescribed person if the interest-holder is not a foreign person.

5D Australian associate of a foreign person — avoidance of double counting

- (1) This regulation applies to an interest in a share held by a person, who, although an associate of persons in a group to which subclause 11 (3) of the Schedule to the Act applies, is not a person in the group.
- (2) The interest is a prescribed interest if, after being counted once for the ownership provisions in determining the total of the stakes of a particular type that the group holds in an airport-operator company, the interest would, without this regulation, be counted again for that purpose.
- (3) The person mentioned in subregulation (1) is a prescribed person if the person is not a foreign person.

[6] Regulation 6

omit

For paragraph 9 (1) (c) of the Schedule to the Act, a person's

insert

A person's

[7] Subregulation 7 (1)

omit

For paragraph 9 (1) (c) of the Schedule to the Act, a person

insert

A person

[8] After subregulation 7 (3)

insert

- (3A) For subregulation (3), a person is not taken to be a foreign person if:
 - (a) the person holds a beneficial interest in the investment fund; and

- (b) the person is the trustee of another investment fund; and
- (c) the beneficial interest exists solely because the person is the trustee of the other investment fund; and
- (d) the other 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.

[9] After Part 2

insert

Part 2A Agents

7A Purpose of Part 2A

For paragraph 9 (1) (c) of the Schedule to the Act, this Part prescribes kinds of interest in shares that must be disregarded for Part 3 of the Act and the Schedule to the Act.

7B Agents

- (1) A person's interest in a share is a prescribed interest if the interest exists solely because of an action taken by the person in the person's capacity as depositary or custodian for, or nominee of, another person.
- (2) The first person mentioned in subregulation (1) is a prescribed person if the person does not:
 - (a) hold a beneficial interest in the share; or
 - (b) have authority, by proxy or any other arrangement with the holder of the beneficial interest, to exercise in a discretionary way the voting rights attaching to the share.

[10] Part 3, heading

substitute

Part 3 Airline ownership

[11] Regulation 8

substitute

8 Purpose of Part 3

For paragraph 9 (1) (c) of the Schedule to the Act, 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.

[12] Regulation 9

omit

For paragraph 9 (1) (c) of the Schedule to the Act, a person's

insert

A person's

[13] Subregulation 10 (1)

omit

For paragraph 9 (1) (c) of the Schedule to the Act, a person

insert

A person

[14] Subregulation 10AA (1)

omit

For paragraph 9 (1) (c) of the Schedule to the Act, a person's

insert

A person's

[15] **Subregulation 10AA (2)**

substitute

- (2) The person is a prescribed person.

[16] **After regulation 10AA**

insert in Part 3

10AAA Associate — no action in concert, etc

- (1) An interest in a share is a prescribed interest if, after being counted to determine the direct control interests held by a person (the *primary interest holder*) in an airport-operator company, the interest would, without this regulation, also be counted to determine the size and type of stake held by an irrelevant associate.
- (2) For subregulation (1), a person is an *irrelevant associate* in relation to an interest in a share (a *relevant share*) held by the primary interest holder that results in the primary interest holder having a direct control interest in an airport-operator company if:
- (a) the person is not a related entity of the primary interest holder; and
 - (b) the person does not hold any direct control interest in the airport-operator company arising from any relevant shares; and
 - (c) the person is not an associate of the primary interest holder because of paragraph 5 (1) (i) or (j), or subclause 5 (2), of the Schedule to the Act.
- (3) For subregulations (2) and (3), an entity (the *first entity*) is a *related entity* of another entity (the *second entity*) if:
- (a) the second entity controls the first entity; or
 - (b) the first entity controls the second entity; or
 - (c) the first entity and the second entity are controlled by the same person.

- (4) For subregulation (3), a person controls an entity if:
 - (a) for an entity that is a company, the person:
 - (i) controls the entity within the meaning of section 50AA of the *Corporations Act 2001*; or
 - (ii) has a direct control interest of at least 15% in the company; or
 - (b) in any other case — the person controls the entity, within the meaning of section 50AA of the *Corporations Act 2001*.
- (5) The primary interest holder is a prescribed person.
- (6) For this regulation:
entity has the meaning given by section 64A of the *Corporations Act 2001*.

[17] **Part 3A, heading**
substitute

Part 3A Cross-ownership

[18] **Regulation 10A, heading**
substitute

10A Purpose of Part 3A

[19] **Regulation 10A**
omit

This Part

insert

For paragraph 9 (1) (c) of the Schedule to the Act, this Part

[20] **After regulation 10A**

insert

10AB Associate — no action in concert, etc

- (1) An interest is a prescribed interest if, after being counted to determine the direct control interests held by a person (the **primary interest holder**) in an airport-operator company, the interest would, without this regulation, also be counted to determine the size and type of stake held by an irrelevant associate.
- (2) For subregulation (1), a person is an **irrelevant associate** in relation to an interest in a share (a **relevant share**) held by the primary interest holder that results in the primary interest holder having a direct control interest in an airport-operator company if:
 - (a) the person is not a related entity of the primary interest holder; and
 - (b) the person does not hold any direct control interest in the airport-operator company arising from any relevant shares; and
 - (c) the person is not an associate of the primary interest holder because of paragraph 5 (1) (i) or (j), or subclause 5 (2), of the Schedule to the Act; and
 - (d) the primary interest holder and the person are each not an airport entity.
- (3) For paragraph (2) (d), an **airport entity** is a person who:
 - (a) owns, leases, controls or operates an airport; or
 - (b) is a related entity of a person mentioned in paragraph (a).
- (4) For subregulations (2) and (3), an entity (the **first entity**) is a **related entity** of another entity (the **second entity**) if:
 - (a) the second entity controls the first entity; or
 - (b) the first entity controls the second entity; or
 - (c) both the first entity and the second entity are controlled by the same person.

-
- (5) For subregulation (4), a person controls an entity if:
- (a) in the case of an entity that is a company, the person:
 - (i) controls the entity within the meaning of section 50AA of the *Corporations Act 2001*; or
 - (ii) has a relevant direct control interest in the company; or
 - (b) in any other case — the person controls the entity, within the meaning of section 50AA of the *Corporations Act 2001*.
- (6) For this regulation, a **relevant direct control interest** is:
- (a) in determining whether the primary interest holder and the person are related entities for paragraph (2) (a) — at least 15%; or
 - (b) in determining whether a person is a related entity of a person mentioned in paragraph (3) (a) — at least 50%.
- (7) The primary interest holder is a prescribed person.
- (8) In this regulation:
entity has the meaning given by section 64A of the *Corporations Act 2001*.

[21] Regulation 10B

omit

For the purposes of paragraph 9 (1) (c) of the Schedule to the Act, an interest

insert

An interest

[22] Regulation 10C

omit

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

insert

A person

Schedule 2 Further amendments

(subregulation 3 (2))

[1] Parts renumbering

A Part of these Regulations mentioned in column 1 of the following table is renumbered by omitting the existing number and inserting instead the new Part number specified for that Part in column 2 of the table.

Existing Part number	New Part number
2A	3
3	4
3A	5
4	6

[2] Regulations renumbering

Each regulation in these Regulations is renumbered by omitting the existing regulation number and inserting instead the new regulation number specified for that regulation in column 2 of the following table.

Existing regulation number	New regulation number
1	1.01
2	1.02
3	1.03
4	1.04
5	2.01
5A	2.02
5B	2.03
5C	2.04
5D	2.05

Existing regulation number	New regulation number
6	2.06
7	2.07
7A	3.01
7B	3.02
8	4.01
9	4.02
10	4.03
10AA	4.04
10AAA	4.05
10A	5.01
10AB	5.02
10B	5.03
10C	5.04
11	6.01
12	6.02

[3] References to Parts

Each reference, in a heading or provision of these Regulations, to a Part number is amended by omitting the number referred to and inserting instead the new Part number inserted for that Part by item 1 of this Schedule.

[4] References to regulations

Each reference, in a provision of these Regulations, to a regulation number is amended by omitting the number referred to and inserting instead the new regulation number inserted for that regulation by item 2 of this Schedule.

Notes

1. These Regulations amend Statutory Rules 1996 No. 341, as amended by 2001 Nos. 92 and 347.
2. Notified in the *Commonwealth of Australia Gazette* on / 2002. 3 May