

For the attention of Air Carrier Operating Licence Applicants/Holders

Ownership and Control Requirements- Article 4 (f) of Regulation (EC) No 1008/2008

The ownership and control requirements of Article 4 (f) require that an undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that-

"Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party."

The decision as to whether any applicant does or does not comply with Article 4 (f) rests with the licensing authority of the Member State concerned. The tests of ownership and effective control are separate and both have to be met to achieve compliance.

Article 2(9) of Regulation (EC) No 1008/2008 defines '**effective control**' as follows:

"Effective control means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:

- (a) the right to use all or part of the assets of an undertaking;*
- (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking."*

'**Ownership**' is not defined in the Regulation. However, in Commission Decision of 19th July 1995 on a procedure relating to the application of Council Regulation (EEC) No 2407/92 (Swissair/Sabena), the Commission referred to the concept of **ownership** of an undertaking "*which is essentially based on the notion of equity capital. Holders of such capital normally have the right to participate in decisions affecting the management of the undertaking as well as to share in the residual profits or, in the event of liquidation, in the residual assets of the undertaking after all other obligations have been met...If capital does not confer upon its holders any of the two above mentioned rights to an appreciable extent, it must generally be disregarded in determining the ownership situation of an undertaking.*"

The ownership and control requirements of Regulation (EC) No 1008/2008 are assessed by the Commission on a case-by-case basis. All licensed air carriers are requested on a regular basis to demonstrate that they are in compliance with these requirements. The majority ownership requirement is complied with if **50% plus one share** of the capital of an air carrier is in EU hands at all times. It is important to note that this is a general rule and there

may be different situations that arise whereby the Commission would have to assess the ownership requirement in more detail before being satisfied that an air carrier is in compliance with the Regulation.

The Commission will also look in detail at companies who have a controlling shareholding in an air carrier licensed by it and these companies must be able to satisfy the requirements of Article 4 (f).

When judging ownership, the beneficial owner or beneficiary of shares held by **nominee/trust companies** will also require to be provided to the Commission. If the nominee/trust company is a pension or investment fund, it can sometimes be assumed that the shareholders are going to be based in the country where the shares were sold. However, every case will be different and will need to be examined in detail by the Commission.

With regard to **publicly quoted companies**, the Commission acknowledges the difficulty involved here as the true beneficial owners of the shares can often be several stages removed from the investment in the airline. However, air carriers licensed by the Commission **must** ensure that there is sufficient information available for the Commission to be satisfied that they are in compliance with Article 4 (f). They should also make every effort to keep track of shares being purchased and sold so as to ensure that the majority of the shares remain in EU hands at all times. Publicly quoted companies will also have to be assessed by the Commission on a case-by-case basis. The Commission may require a company to provide additional information as requested in order to demonstrate that ownership and control requirements are met.

Failure to provide details of the beneficial owners of shares may affect the validity of an Air Carrier Operating Licence and may result in a decision by the Commission to regard the nationality of any owners not verified as EU to be non-EU.

**Commission for Aviation Regulation
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