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## **GROUPS AND RELATED PARTIES**

### **1 Introduction**

- 1.1 This document sets out the CAA's approach to Licence holders that are part of a group or related to other companies.

### **2 Assessment of Groups**

- 2.1 Where a Licence holder is part of a group of companies or a group of related companies, as defined below, the CAA's standard policy is to carry out its financial assessment on the consolidated financial position.

#### **Group Companies**

These include parent undertakings, subsidiary undertakings, joint ventures and associated undertakings. The term 'associate' is defined in both the Companies Act and FRS9.

#### **Related Parties**

The CAA considers 'related parties' to be those that have links with a Licence holder through common shareholders, directors or partners, or where there are significant levels of inter-company trading, or financial links. Financial links include inter-company loans and cross guarantees.

- 2.2 In the above circumstances, all companies must have the same financial year-end date. The CAA requires audited consolidated accounts, except where a Licence holder is part of a group of related companies, in which case individual audited accounts plus pro-forma consolidated accounts may be acceptable.
- 2.3 When considering whether a consolidated assessment is required, the CAA will have regard to a range of factors, including voting rights and/or where significant influence is exercised.
- 2.4 When carrying out the Free Asset Test, the CAA bases the free asset calculation on the consolidated balance sheet and uses the projected turnover of the whole group as the basis for risk turnover.
- 2.5 The consolidated group must meet the CAA's financial criteria for holding a Licence, but in some cases, the CAA may additionally require a Licence holder to be adequately funded in its own right.

### **3 Ring-Fenced Arrangements**

- 3.1 In exceptional circumstances, the CAA may assess a Licence holder on a ring-fenced basis, provided that the ring-fenced entity is able to meet the criteria for financial and structural separation as well as the CAA's financial criteria for holding a Licence.
- 3.2 Where there are a number of Licence holders in a group, they must all be included in the ring-fence. In some cases, the ring-fence may also include non-Licence holding companies.

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3.3 In exceptional cases where structural separation cannot be achieved, the CAA may be prepared to allow a partially ring-fenced arrangement with full financial separation. In order to compensate for the higher risk, the CAA is likely to require both an unlimited guarantee from the ultimate holding company and bonding for the Licence holder.

3.4 Because of the complexity of ring-fence arrangements, each case is considered on an individual basis and a summary of the CAA's standard requirements is at Appendix 1.

## **4 Guarantees**

### **Consolidated Groups**

4.1 In cases where the CAA carries out its financial assessment on a consolidated group position, the CAA relies on the financial strength of the group and needs to be satisfied that the group would support the Licence holder.

4.2 Where a Licence holder is a subsidiary undertaking in a group, the CAA requires an unlimited guarantee from the ultimate holding company and, where a Licence holder itself is the ultimate holding company, the CAA may require unlimited guarantees from the other operating companies within the group.

4.3 Where a consolidated group is made up of related parties, the CAA may require unlimited guarantees in favour of the Licence holder from the related companies.

### **Ring-fences**

4.4 Where the CAA carries out its financial assessment on a ring-fenced basis, the CAA may require unlimited guarantees from companies outside the ring-fence in favour of the Licence holder.

## **Appendix 1**

### **Ring-fences**

#### **Financial Separation**

In order to be satisfied that a ring-fenced entity has financial separation, the CAA needs to ensure that it has control of its own cash and that no money or support is given by the ring-fenced entity to other group or related companies. The CAA requires an undertaking from a director that the ring-fenced entity will:

- give no guarantees, loans or letters of support to any group or related companies;
- maintain its own bank account and ensure that its cash is not managed centrally with other group or related companies;
- trade with group or related companies on a normal commercial basis, with balances settled at least monthly; and,
- have its own merchant agreement with a credit card company.

An example of the undertaking required is at Appendix 2. Each year, the Licence holder's auditor is required to confirm that the terms of the undertaking provided by the director were adhered to during the previous financial year.

The CAA makes a more in-depth assessment of financial independence where the potential impact of failure of a Licence holder is high (i.e. where the annual licensable revenue limit for the Public Sales category is £5 million or more) or where there is a higher likelihood of failure. In these cases, the CAA needs to be satisfied that the ring-fenced entity not only has control of its own cash but also that it is not restricted from raising additional cash to support its business and that companies outside the ring-fence do not have access to its assets. The CAA may wish to review arrangements entered into by the ring-fenced entity such as, shareholder agreements and credit facilities, and be satisfied that:

- no person or body outside the ring-fenced entity has access to the ring-fenced cash;
- there is no cash pooling scheme or right of set-off between the banking arrangements of the ring-fenced entity and other group or related companies that would enable funds in the bank accounts of the ring-fenced entity to be used by other companies;
- the ring-fenced entity is not included within any central group treasury function or group cross guarantee;
- funds are not passed from the ring-fenced entity to persons or bodies outside the ring-fence without the CAA's permission;
- dividends are not paid by the ring-fenced entity to other group or related companies without the CAA's permission. (The CAA may require a dividend undertaking, an example of which is at Appendix 3);
- arrangements such as banking facilities do not restrict the ring-fenced entity from raising further cash, for example, by selling its assets or pledging them as security for debt (as long as the CAA's financial criteria continue to be met);
- the assets of the ring-fenced entity are not pledged to support borrowing of any person or body outside the ring-fence;
- there are no unfair or preferential trading terms between the ring-fenced entity and other group or related companies.

The CAA may also need to be satisfied that other group or related companies do not enter into agreements that have an impact on the autonomy of the ring-fenced entity. The CAA may therefore wish to review an arrangement proposed to inject additional finance into either the Licence holder, the ring-fenced entity or the group and be satisfied that it does not:

- restrict management of the ring-fenced entity from disposing of assets if it is in the interest of the ring-fenced entity to do so or, in order for the ring-fenced entity to meet the CAA's financial criteria;
- have any clauses regarding dividend up-streaming unless there is reference to dividends being up-streamed subject to the terms of the dividend undertaking provided to the CAA;
- allow covenant testing during a period of the year when the Air Travel Trust's exposure as a result of Licence holder failure would be at its highest;
- restrict the ring-fenced entity from using its assets as security for any future financial indebtedness;
- restrict other group or related companies or any third party from lending to the ring-fenced entity;
- have restrictions on the change of control or management or re-organisation of the group.

### **Structural Separation**

The CAA requires copies of lease agreements and other contracts in order to reach a decision on whether the ring-fenced entity is structurally separate and could continue to operate in the event of failure of the companies outside the ring-fence. The CAA looks at whether the ring-fenced entity:

- has its own lease agreement or has ownership of its own property and other fixed assets;
- shares any administrative functions (e.g. computer networks) with any other group companies;
- has its own directly employed staff and management;
- has its own separate trading contracts with key suppliers;
- has its own utility billing arrangements.

An undertaking to this effect is required from a director, an example of which is at Appendix 2.

## **Appendix 2**

### **Example Ring-Fence Undertaking**

[ON LICENCE HOLDER'S HEADED PAPER]

Civil Aviation Authority  
Third Floor, CAA House  
45-59 Kingsway  
London WC2B 6TE

[date]

Dear [name]

Following your request for an undertaking from [name of company], I am pleased to provide the following:

- i) I undertake that no guarantees, loans or letters of support will be given by [name of company] to any group or related companies;
- ii) I undertake that [name of company] will maintain its own separate bank account(s) and that its cash will not be managed centrally with other group or related companies;
- iii) I undertake that all trading by [name of company] with group or related companies will be transacted on a normal commercial basis, with balances settled at least monthly; and
- iv) I undertake that [name of company] has its own merchant agreement with a credit card company;
- v) I undertake that [name of company] does not share premises with any other group or related companies;
- vi) I undertake that [name of company] does not share any administrative functions (e.g. computer networks) with any group or related companies;
- vii) I undertake that [name of company] has its own directly employed staff and management; and
- viii) I undertake that [name of company] has its own separate trading contracts with suppliers.

Nothing in this undertaking is intended to confer on any person any right to enforce any term of this undertaking which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

Yours sincerely

[Authorised signatory of Licence Holder]

**Appendix 3**

**Example Dividend Undertaking**

THIS UNDERTAKING is made the                    day of                    by

- (1) (COMPANY NAME) LIMITED of [REGISTERED ADDRESS] (Company No: [            ]; incorporated on [Date])  
(hereinafter called "the Company") of the first part; and
- (2) The CIVIL AVIATION AUTHORITY of CAA House, 45-59 Kingsway, London WC2B 6TE  
(hereinafter called "the CAA") of the second part

WHEREAS:-

- 1. The CAA may refuse an application for a Licence or may revoke a Licence in exercise of its powers under Regulations 6(2)(b) and 7(3)(b) of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, as amended, after complying with the procedure prescribed in Regulation 9 of the Regulations, if it is not satisfied at its absolute discretion that the resources of any person to whom it grants an Air Travel Organiser's Licence and the financial arrangements made by that person are and remain adequate for discharging his actual and potential obligations in respect of the activities in which he is or may be expected to be engaged;
- 2. The [Licence holder's name(s)] has applied to the CAA for (delete as applicable) [an Air Travel Organiser's Licence] or [a variation to its Air Travel Organiser's Licence]; and
- 3. The CAA has indicated that it cannot be satisfied in the context of the aforesaid Regulations 6(2)(b) and 7(3)(b) unless inter alia the Company gives the following undertaking to the CAA.

NOW THEREFORE the Company hereby undertakes to the CAA that whilst [Licence holder's name(s)] holds an Air Travel Organiser's Licence it will not make any dividend payments unless:-

- (a) the Company has given notice in writing to the CAA of its intention to make dividend payments; and
- (b) the CAA has given its written consent to the payment of dividends, which consent the CAA may in its discretion either grant unconditionally or grant subject to such conditions as it may think fit or refuse.

THIS UNDERTAKING shall not be discharged or released or varied by any arrangement whatsoever and howsoever made without the prior written consent of the CAA.

THIS UNDERTAKING shall continue and remain in force notwithstanding any changes in the name, style or constitution of the Company.

THIS UNDERTAKING shall be governed by and construed in accordance with the laws of England and Wales.

The parties to THIS UNDERTAKING agree to submit to the jurisdiction of the Courts of England and Wales.

IN WITNESS WHEREOF the Company has executed this document as a deed the day and year first before written.

Executed as a deed by (COMPANY NAME) Limited acting by a Director and its Secretary or by two Directors:

.....  
Director

.....  
Director/ Secretary