



# Airports Act 1986

## 1986 CHAPTER 31

### PART I

#### TRANSFER OF UNDERTAKING OF BRITISH AIRPORTS AUTHORITY

##### *Preliminary*

#### **1 Power to direct reorganisation of BAA's undertaking prior to appointed day**

- (1) If the Secretary of State so directs at any time before the day appointed under section 2(1), the BAA shall, before the end of such period as the Secretary of State may specify in his direction, submit to the Secretary of State for his approval written proposals for the carrying on of any of the activities of the BAA by such companies as may be nominated by it in the proposals.
- (2) Any company so nominated shall be a company limited by shares and registered under the Companies Act 1985 ; and any proposals submitted to the Secretary of State under this section shall include a copy of the memorandum and articles of association of each of the companies so nominated.
- (3) The Secretary of State may approve any such proposals either without modifications or with such modifications as, after consulting the BAA, he thinks fit; and where the Secretary of State approves them with modifications the BAA shall, before such date as the Secretary of State may, in giving his approval, specify—
  - (a) secure that such alterations are made to the memorandum and articles of association of any nominated company, or
  - (b) form such company or companies to carry on any of the activities of the BAA, as may be necessary to give effect to those modifications.
- (4) Any company so formed shall be a company limited by shares and registered under the Companies Act 1985.
- (5) Together with the proposals submitted to the Secretary of State under this section the BAA shall submit to the Secretary of State for his approval a scheme providing, in

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the case of each of the nominated companies, for the transfer to that company of any property, rights or liabilities of the BAA relevant to the carrying on of any activities which the BAA has power to carry on and which are within the scope of the objects of that company.

- (6) A scheme under this section shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify, and the Secretary of State may approve any such scheme either without modifications or with such modifications as, after consulting the BAA, he thinks fit.
- (7) Any such modifications may, in particular, provide for property, rights or liabilities of the BAA to be transferred to any company required to be formed in pursuance of subsection (3)(b).
- (8) On the coming into force of a scheme under this section the property, rights and liabilities affected by the scheme shall, subject to section 75(3), be transferred and vest in accordance with the scheme.
- (9) If such a scheme has not come into force before the day appointed under section 2(1), any direction, proposals, scheme or approval previously given or made under this section shall cease to have effect.

*Dissolution of BAA and vesting of its property etc. in a successor company*

## **2 Dissolution of BAA and vesting of its property etc. in a successor company**

- (1) On such day as the Secretary of State may by order appoint—
  - (a) the BAA shall cease to exist; and
  - (b) (subject to section 3) all the property, rights and liabilities to which the BAA was entitled or subject immediately before that day shall become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by the Secretary of State;
 and references in this Act to the appointed day or to the successor company are references to the day so appointed or to the company so nominated respectively.
- (2) The Secretary of State may, after consulting the BAA, by order nominate for the purposes of this section any company formed and registered under the Companies Act 1985; but on the appointed day the company in question must be a company limited by shares which is wholly owned by the Crown.
- (3) References in this Act to property, rights and liabilities of the BAA are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the BAA.
- (4) In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted at the appropriate place—
 

“Director of the successor company (within the meaning of the Airports Act 1986) being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown”;

 and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

- (5) An order under this section appointing a day under subsection (1) or nominating any company for the purposes of this section may be varied or revoked by a subsequent order at any time before any property, rights or liabilities vest in any company by virtue of this section.

### **3 Cancellation of liabilities of BAA to the Secretary of State**

- (1) Subject to subsections (2) and (3), any liability of the BAA to the Secretary of State—
- (a) in respect of the BAA's commencing capital debt, or
  - (b) in respect of loans made, or having effect as if made, under section 6 of the 1975 Act (Government loans to BAA),
- shall be extinguished immediately before the appointed day ; and the assets of the National Loans Fund shall be reduced accordingly.
- (2) Subsection (1)(a) shall not operate to extinguish any liability of the BAA under section 4 of the 1975 Act (commencing capital debt of the BAA)—
- (a) to repay any part of the principal of its commencing capital debt which falls due for repayment before the appointed day, or
  - (b) to pay interest on its commencing capital debt in respect of a period falling before that day.
- (3) Subsection (1)(b) shall not operate to extinguish any liability of the BAA under section 6 of the 1975 Act—
- (a) to repay any part of the principal of any such loan as is referred to in subsection (1)(b) which falls due for repayment before the appointed day, or
  - (b) to pay interest on any such loan in respect of a period falling before that day.
- (4) References in this section to the BAA's commencing capital debt are references to the debt referred to in section 4(1) of the 1975 Act.

### **4 Initial Government holding in the successor company**

- (1) As a consequence of the vesting in the successor company by virtue of section 2 of property, rights and liabilities of the BAA, the successor company shall issue Such securities of the company as the Secretary of State may from time to time direct—
- (a) to the Treasury or the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Secretary of State may direct.
- (4) Shares issued in pursuance of this section—
- (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the Companies Act 1985 as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.

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- (5) The Secretary of State may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

## **5 Government investment in securities of the successor company**

- (1) Subject to section 7(5), the Treasury or, with the consent of the Treasury, the Secretary of State may at any time, acquire—
  - (a) securities of the successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State may not dispose of any securities or rights acquired by him under this section without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

## **6 Exercise of" functions through nominees**

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of section 4 or 5, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State ; and—
  - (a) securities of the successor company may be issued under section 4 to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee, and
  - (b) any such nominee appointed for the purposes of section 5 may acquire securities or rights under that section,in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.
- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

## **7 Target investment limit for Government shareholding**

- (1) As soon after the date when the successor company ceases to be wholly owned by the Crown as he considers expedient, and in any case not later than six months after that date, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in the successor company by virtue of any provision of this Part by the Treasury and their nominees and by the Secretary of State and his nominees (" the Government shareholding ").

- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (" the ordinary voting rights").
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit in place of the one previously in force under this section ; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of the Treasury and of the Secretary of State so to exercise—
  - (a) their powers under section 5 and any power to dispose of any shares held by virtue of any provision of this Part, and
  - (b) their power to give directions to their respective nominees,as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5), the Treasury or the Secretary of State may take up, or direct any of their respective nominees to take up, any rights for the time being available to them or him, or to that nominee, as an existing holder of shares or other securities of the successor company ; but if, as a result, the proportion of the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit, it shall be the duty of the Treasury or (as the case may be) the Secretary of State to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

## **8 Financial structure of the successor company**

- (1) If the Secretary of State so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum (not exceeding the accumulated realised profits of the BAA) as may be specified in the direction shall be carried by the successor company to a reserve (" the statutory reserve ").
- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of section 264(3) (d) of the Companies Act 1985; but, for the purpose of determining under that section whether the successor company may make a distribution at any time, any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of section 264(3) (c) as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company, the value of any asset and the amount of any liability of the BAA vesting in the successor company on the appointed day shall be taken to be the value or (as the case may be) the amount

assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by the successor company under this Act for the period from the end of that dealt with in the last annual statement of accounts published by the BAA down to the appointed day.

- (5) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by the BAA (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included from time to time in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the BAA had been realised and retained by the successor company.

- (6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the Companies Act 1985 (including group accounts).

## **9 Temporary restrictions on successor company's borrowings etc.**

- (1) If articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may during any period be borrowed or raised by the successor company and its subsidiaries, taken as a whole, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1), and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
- shall be disregarded.

### *Supplementary*

## **10 Statements in connection with flotation**

- (1) This section shall apply where—
- (a) an offer for sale to the public of any securities of the successor company is made by or on behalf of the Crown;
  - (b) any invitation or advertisement is issued (whether or not in documentary form) by or on behalf of the Crown in connection with the offer; and
  - (c) that invitation or advertisement does not contain all the listing particulars.
- (2) None of the persons mentioned in subsection (3) shall incur any civil liability by reason of the invitation or advertisement, or any omission from it, if—

- (a) the contents of the invitation or advertisement were submitted to the Council of The Stock Exchange ;
  - (b) the Council did not object to the contents of the invitation or advertisement; and
  - (c) the invitation or advertisement and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider the offer.
- (3) The persons referred to in subsection (2) are—
- (a) the Crown;
  - (b) any person acting on behalf of the Crown in connection with the offer;
  - (c) the maker of any statement contained in the invitation or advertisement;
  - (d) any person responsible for the preparation of, or of any part of, the listing particulars.
- (4) The reference in subsection (2) to a person mentioned in subsection (3) incurring civil liability shall include a reference to any other person being entitled as against the person so mentioned to be granted any civil remedy or to rescind or repudiate any agreement.
- (5) In this section " the listing particulars", in relation to the offer, means such particulars as, by virtue of any provision of any enactment other than this section or of any subordinate legislation, have been approved by the Council of The Stock Exchange for the purposes of the admission of the securities to which the offer relates to the Official List of The Stock Exchange.

## **11 Application of Trustee Investments Act 1961 in relation to investment in the successor company**

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the appointed day falls (" the first investment year ") or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in any year preceding the first investment year which is included in the relevant five years; and
  - (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) "the relevant five years" means the five years immediately preceding the year in which the investment in question is made or proposed to be made.