



THE BROADCASTING REGULATIONS 1977, AMENDMENT NO. 7

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 5th day of August 1985

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Broadcasting Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

1. Title and commencement
2. New Part V substituted

PART V—RESTRICTIONS ON OWNERSHIP OF WARRANTS

- 17A. Application
- 17B. Interpretation
18. "Prescribed interest" defined
19. Shareholding interests
- 19A. "Independent news company" defined
20. General restrictions on interests in sound-radio warrants and sound-radio programme warrants
21. Restrictions on directorships of companies holding sound-radio warrants and sound-radio programme warrants

- 21A. Restriction on overseas ownership of television warrants and television programme warrants
- 21B. Restrictions on ownership by news media companies of television warrants and television programme warrants
- 21C. Power of Tribunal to prescribe conditions ensuring independence of independent news company
22. Verification of interests
23. Information on shareholding
24. Requirements of articles of association
25. Tribunal may require declarations as to beneficial ownership
26. Compliance with regulations to be condition of warrant

3. Revocation

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Broadcasting Regulations 1976, Amendment No. 7, and shall be read together with and deemed part of the Broadcasting Regulations 1977* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. New Part V substituted—The principal regulations are hereby amended by revoking Part V (as substituted by regulation 3 of the Broadcasting Regulations 1977, Amendment No. 6), and substituting the following Part:

“PART V—RESTRICTIONS ON OWNERSHIP OF WARRANTS

“17A. **Application**—This Part of these regulations applies to—

- “(a) Every sound-radio warrant held in respect of a private broadcasting station; and
- “(b) Every sound-radio programme warrant; and
- “(c) Every television warrant held in respect of a private broadcasting station; and
- “(d) Every television programme warrant.

“17B. **Interpretation**—In this Part of these regulations, unless the context otherwise requires,—

“ ‘Holding company’ has the meaning given to that term by section 158 of the Companies Act 1955:

“ ‘Independent news company’ has the meaning given to that term by regulation 19A of these regulations:

“ ‘News media company’ means—

“(a) Any company that publishes a newspaper:

“(b) Any company that holds a sound-radio warrant or sound-radio programme warrant:

“(c) Any company which, or natural person who, is entitled, in relation to any company referred to in paragraph (a) or paragraph (b) of this definition, to exercise or control the exercise of voting power equalling or exceeding 20 percent of the total voting powers exercisable by all members of that company:

“(d) Any company that is related to any company referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

“(e) Any company which, or natural person who, is under the control of a company referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of this definition:

“(f) Any company which, or natural person who, has control over any company referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of this definition:

“ ‘Overseas person’ has the meaning given to that term by section 2 (1) of the Overseas Investment Act 1973:

*S.R. 1977/11

Amendment No. 1: S.R. 1977/236

Amendment No. 2: S.R. 1977/287

Amendment No. 3: (Revoked by S.R. 1980/120)

Amendment No. 4: (Revoked by S.R. 1981/295)

Amendment No. 5: S.R. 1981/295

Amendment No. 6: S.R. 1983/36

“ ‘Prescribed interest’ has the meaning given to that term by regulation 18 of these regulations:

“ ‘Subsidiary’ has the meaning given to that term by section 158 of the Companies Act 1955.

“(2) For the purposes of this Part of these regulations, 2 companies are related if—

“(a) One of the companies is a subsidiary of the other; or

“(b) There is another company to which each of the companies is related by virtue of paragraph (a) of this subclause.

“18. **‘Prescribed interest’ defined**—For the purposes of this Part of these regulations, a person has a prescribed interest in a warrant to which this Part of these regulations applies if that person is—

“(a) The holder of the warrant; or

“(b) Entitled to exercise or control the exercise of voting power exceeding 15 percent of the total voting powers exercisable by all members of the company holding the warrant; or

“(c) In a position to exercise control of—

“(i) The operations conducted under or by virtue of the warrant; or

“(ii) In the case of a sound-radio warrant held in respect of a private broadcasting station, the management of the private broadcasting station in respect of which the warrant is in force; or

“(iii) In the case of a television warrant held in respect of a private broadcasting station, the management of the private broadcasting station in respect of which the warrant is in force; or

“(iv) In the case of a sound-radio programme warrant or a television programme warrant, the management of the programmes broadcast under the authority of the warrant; or

“(v) The selection or provision of programmes to be broadcast under the authority of the warrant, other than programmes provided under a network arrangement approved by the Tribunal; or

“(d) A person having a shareholding interest or interests, as defined by regulation 19 of these regulations, which, when aggregated, exceeds 15 percent of the total voting powers exercisable by all members of the company holding the warrant.

“19. **Shareholding interests**—(1) For the purposes of these regulations a person has a shareholding interest in a company if that person is beneficially entitled to, or is beneficially entitled to an interest in, any shares in the company (whether or not the whole or any part of the legal ownership of the shares is vested in the person).

“(2) The amount of the shareholding interest of any person is the amount of the nominal value of the shares, whether the shares are fully paid or not.

“(3) A person who is beneficially entitled to, or is one of the persons beneficially entitled to, any shares shall be deemed (but not to the exclusion of any other person) to be in a position to exercise control of the voting rights in respect of those shares.

“(4) For the purposes of these regulations (other than regulation 21A (4)), where any person has a shareholding interest in a company that has a shareholding interest in another company, that person shall be deemed to

have a shareholding interest in that other company (in addition to any other shareholding interests but not to the exclusion of any other person) to the following extent:

“(a) Where the shareholding interest of the person exceeds 15 percent of the total voting power of the first-mentioned company, to the full extent of the shareholding interest of that company in the other company:

“(b) Where the shareholding interest of the person exceeds 5 percent but does not exceed 15 percent of the total voting power of the first-mentioned company, to the extent of such proportion of the shareholding interest of the first-mentioned company in the other company as the shareholding interest of the person bears to the total voting power of the first-mentioned company:

“Provided that if the shareholding interest of the person in the other company, as determined by this subclause, is 5 percent or less, such shareholding interest shall not be aggregated pursuant to this regulation.

“(5) For the purposes of regulation 21A (4) of these regulations, where any overseas person has a shareholding interest in a company that has a shareholding interest in another company, that overseas person shall be deemed to have a shareholding interest in that other company (in addition to any other shareholding interests but not to the exclusion of any other person) to the following extent:

“(a) Where the shareholding interest of the overseas person exceeds 5 percent of the total voting power of the first-mentioned company, to the full extent of the shareholding interest of that company in the other company:

“(b) Where the shareholding interest of the overseas person does not exceed 5 percent of the total voting power of the first-mentioned company, to the extent of such proportion of the shareholding interest of the first-mentioned company in the other company as the shareholding interest of the overseas person bears to the total voting power of the first-mentioned company.

“(6) Subclauses (4) and (5) of this regulation shall each extend and apply to all shareholding interests of a person whether in a single company or in a number of companies, and whether at one remove or through a series of companies (whether subsidiary companies or not) to the intent that the total shareholding interests of a person shall be the aggregate of all that person's shareholding interests as defined by this regulation, direct or indirect.

“(7) Notwithstanding the foregoing provisions of this regulation, a company, within the meaning of the Life Insurance Act 1908, which at the commencement of these regulations is carrying on in New Zealand the business of life insurance (in this subclause referred to as the insurance company) shall not, while it continues to carry on such business in New Zealand, be deemed for the purposes of these regulations (other than regulation 21A (4)) to have a shareholding interest in a company holding a warrant to which this Part of these regulations applies in relation to any share in that company acquired by the insurance company (whether before or after the commencement of these regulations) out of funds held by the insurance company in New Zealand.

“19A. **‘Independent news company’ defined**—(1) In this Part of these regulations, ‘independent news company’ means, subject to subclauses (2) to (8) of this regulation, a company that is authorised by a television

programme warrant to broadcast from private broadcasting stations a news programme covering national news, international news, and current affairs.

“(2) A company is not an independent news company for the purposes of this Part of these regulations if the Corporation has a shareholding interest in that company.

“(3) A company is not an independent news company for the purposes of this Part of these regulations if a news media company is entitled to exercise or control the exercise of voting power exceeding 30 percent of the total voting powers exercisable by all members of that company.

“(4) A company is not an independent news company for the purposes of this Part of these regulations if a news media company has, in that company, a shareholding interest or interests, as defined by regulation 19 of these regulations (as modified by subclause (8) of this regulation), which, when aggregated with all other shareholding interests that any other news media company or any other news media companies have in that company, exceed 30 percent of the total voting powers exercisable by all members of that company.

“(5) A company is not an independent news company for the purposes of this Part of these regulations if, without the consent of the Tribunal, persons who hold office as directors of a news media company or of news media companies constitute a majority of the directors of that company.

“(6) A company is not an independent news company for the purposes of this Part of these regulations if, without the consent of the Tribunal, any person who holds office as a director of that company also holds office as a director of a news media company.

“(7) A company is not an independent news company for the purposes of this Part of these regulations if the holder of a television warrant in respect of a private broadcasting station has, in that company, a shareholding interest or interests, as defined by regulation 19 (as modified by subclause (8) of this regulation), which, when aggregated with all other shareholding interests that any other holder of a television warrant in respect of a private broadcasting station in the same region or any other holders of television warrants in respect of private broadcasting stations in the same region have in that company, exceeds 30 percent of the total voting powers exercisable by all members of that company who are holders of television warrants in respect of private broadcasting stations.

“(8) For the purposes of subclauses (4) and (7) of this regulation, regulation 19 of these regulations shall apply as if, for the expression ‘15 percent’, there were substituted the expression ‘30 percent’.

“20. General restrictions on interests in sound-radio warrants and sound-radio programme warrants—(1) This regulation applies to—

“(a) Every sound-radio warrant held in respect of a private broadcasting station; and

“(b) Every sound-radio programme warrant.

“(2) Except as provided in subclause (3) of this regulation, and subject to subclause (4) of this regulation, no person shall have a prescribed interest in more than 2 warrants to which this regulation applies.

“(3) A person may, with the consent of the Tribunal, have a prescribed interest in 5, but not more than 5, warrants to which this regulation applies.

“(4) Notwithstanding subclauses (2) and (3) of this regulation, no person shall have a prescribed interest—

“(a) In more than one sound-radio warrant in respect of a commercial frequency modulation private broadcasting station serving substantially the same area as another commercial frequency modulation private broadcasting station; or

“(b) In more than one sound-radio warrant in respect of a commercial amplitude modulation private broadcasting station serving substantially the same area as another commercial amplitude modulation private broadcasting station,—

without the consent of the Tribunal, which consent shall be given only in special circumstances.

“21. **Restrictions on directorships of companies holding sound-radio warrants and sound-radio programme warrants**—(1) This regulation applies to—

“(a) Every sound-radio warrant held in respect of a private broadcasting station; and

“(b) Every sound-radio programme warrant.

“(2) Except with the approval of the Tribunal, no person shall act either—

“(a) As a director of a company that has a prescribed interest in more than 2 warrants to which this regulation applies; or

“(b) As a director of 2 or more companies that have interests in warrants to which this regulation applies, being interests which, if aggregated and held by one of those companies, would be such as to give that company a prescribed interest in more than 2 warrants to which this regulation applies.

“(3) Where any person other than a body corporate has a prescribed interest in a warrant to which this regulation applies, that person shall be deemed for the purpose of this regulation to be a director of the company holding the warrant, whether or not that person is in fact a director of that company.

“(4) Where a person (other than a body corporate) has a prescribed interest in at least one warrant (being a television warrant in respect of a private broadcasting station or a television programme warrant) or acts as a director of a company that has a prescribed interest in any such warrant, that person shall be deemed for the purposes of this regulation to be a director of a company that has a prescribed interest in a warrant to which this regulation applies.

“21A. **Restriction on overseas ownership of television warrants and television programme warrants**—(1) No overseas person shall be a holder of—

“(a) A television warrant in respect of a private broadcasting station; or

“(b) A television programme warrant.

“(2) No overseas person shall, either alone or in association with any other person, be in a position to exercise control of—

“(a) The operations conducted under or by virtue of—

“(i) A television warrant in respect of a private broadcasting station; or

“(ii) A television programme warrant; or

“(b) In the case of a television warrant held in respect of a private broadcasting station, the management of the private broadcasting station in respect of which the warrant is in force; or

“(c) In the case of a television programme warrant, the management of the programmes broadcast under the authority of the warrant; or

“(d) In the case of a television warrant held in respect of a private broadcasting station or in the case of a television programme warrant, the selection or provision of programmes to be broadcast under the authority of the warrant.

“(3) No overseas person shall be entitled to exercise or control the exercise of voting power exceeding 5 percent of the total voting powers exercisable by all members of a company that holds—

“(a) A television warrant in respect of a private broadcasting station; or

“(b) A television programme warrant; or

“(c) Both.

“(4) No overseas person shall have, in any company that holds a television warrant in respect of a private broadcasting station or a television programme warrant, a shareholding interest or interests, as defined by regulation 19 of these regulations, which, when aggregated with all other shareholding interests that any other overseas person or overseas persons have in that company, exceeds 5 percent of the total voting powers exercisable by all members of that company.

“21B. Restrictions on ownership by news media companies of television warrants and television programme warrants—(1) No news media company shall be entitled to exercise or control the exercise of voting power exceeding 30 percent of the total voting powers exercisable by all members of a company that holds—

“(a) A television warrant in respect of a private broadcasting station; or

“(b) A television programme warrant; or

“(c) Both.

“(2) No news media company shall have, in any company that holds a television warrant in respect of a private broadcasting station or a television programme warrant, a shareholding interest or interests, as defined by regulation 19 of these regulations (as modified by subclause (3) of this regulation), which, when aggregated with all other shareholding interests that any other news media company or news media companies have in that company, exceeds 30 percent of the total voting powers exercisable by all members of that company.

“(3) For the purposes of subclause (2) of this regulation, regulation 19 of these regulations shall apply as if, for the expression ‘15 percent’, there were substituted the expression ‘30 percent’.

“21C. Power of Tribunal to prescribe conditions ensuring independence of independent news company—(1) Where the Tribunal makes it a condition of a television warrant granted in respect of a private broadcasting station that services a region or part of a region that the holder of the warrant make adequate provision for the broadcasting from that television station by an independent news company of a news programme covering national news, international news, and current affairs, the Tribunal may prescribe, as conditions of that television warrant, conditions that shall ensure—

“(a) By requiring the holder of that television warrant to have the same shareholding interest in the independent news company as every other holder of a television warrant in respect of a private broadcasting station which has a shareholding interest in the independent news company; or

“(b) By requiring the holder of that television warrant to have a shareholding interest in the independent news company which is determined by the application of an appropriate formula based on the size of the station’s audience or on the amount of the station’s advertising revenue; or

“(c) By such other requirement as the Tribunal considers appropriate,—that the independent news company is not dominated by holders of television warrants in respect of private broadcasting stations in any one region.

“22. **Verification of interests**—The Tribunal may at any time by notice in writing require the holder of a warrant to which this Part of these regulations applies—

- “(a) To supply to the Tribunal particulars of the names and addresses of all persons having a prescribed interest in the warrant; and
- “(b) To supply to the Tribunal particulars of the names and addresses of all persons who have a shareholding interest in the warrant; and
- “(c) To specify which of the persons having a shareholding interest in the warrant are overseas persons; and
- “(d) To verify by statutory declaration all particulars and information supplied pursuant to paragraph (a) or paragraph (b) or paragraph (c) of this regulation, which declaration shall be made by a responsible officer of the company.

“23. **Information on shareholding**—(1) Every holder of a warrant to which this Part of these regulations applies shall, in accordance with this regulation, supply to the Tribunal the following information:

- “(a) Any change in the directors or other responsible officers of the company holding the warrant:
- “(b) Any change in the shareholding of the company whereby any person acquires more than 5 percent of the equity share capital of the company:
- “(c) The name and address of any person acquiring a prescribed interest in the warrant:
- “(d) Where the company is the holder of a television warrant in respect of a private broadcasting station or the holder of a television programme warrant, the name and address of any overseas person acquiring shares in the company.

“(2) The information to be supplied pursuant to subclause (1) of this regulation shall be given to the Tribunal not later than 14 days after the date of the change in directors or other responsible officers, or the date of registration of the transfer of shares, or the date when a responsible officer of the company becomes aware of the acquisition of a prescribed interest in the warrant, as the case may require.

“(3) For the purposes of subclause (1) (b) of this regulation, the term ‘equity share capital’ has the same meaning as in section 158 (5) of the Companies Act 1955.

“24. **Requirements of articles of association**—(1) A warrant to which this Part of these regulations applies shall not be issued until the articles of association of the applicant company have been approved by the Tribunal, which may require all or any of the following provisions to be included therein:

- “(a) Provisions under which a person is not eligible to become, or to continue to be, the holder of shares in the company where, by reason of his holding those shares, he would contravene regulation 20 or regulation 21A or regulation 21B of these regulations:

- “(b) Provisions under which the company may secure the disposal of shares held by a person to the extent necessary to prevent the continuance of a contravention of regulation 20 or regulation 21A or regulation 21B of these regulations, or the disposal of shares held by a person who refuses or fails to furnish a statutory declaration when required under the provisions referred to in paragraph (d) of this subclause:
- “(c) Provisions under which a person seeking to become the holder of shares in the company is required to present to the company a statutory declaration made by him or, where the person is a company, made by a responsible officer thereof—
- “(i) Stating whether the shares will be held by the person beneficially and, if not, who will have beneficial interests in the shares; and
- “(ii) Stating whether the person, or any person who will have a beneficial interest in the shares, has a prescribed interest in a warrant for a station held by any other company, and giving particulars of any such prescribed interest; and
- “(iii) Stating, where the company is the holder of a television warrant in respect of a private broadcasting station or the holder of a television programme warrant, whether the person, or any person who will have a beneficial interest in the shares, is an overseas person:
- “(d) Provisions under which a person holding shares in the company may be required by the company from time to time to furnish to the company statutory declarations concerning matters relevant to his eligibility to continue to be the holder of those shares, having regard to the provisions referred to in paragraph (a) of this subclause:
- “(e) Provisions requiring that every shareholder entitled to vote under the provisions of the articles shall be entitled in respect of those shares on which no call is in arrear—
- “(i) On a show of hands, to one vote:
- “(ii) On a poll, to one vote for each unit of capital reduced to a common denominator:
- “(f) A provision to the effect that no alteration in the articles of association shall be made without the approval in writing of the Tribunal, other than an alteration to give effect to this regulation.
- “(2) Any warrant to which this Part of these regulations applies may be conditional on the applicant company making such other amendments to its articles of association as the Tribunal may direct in order to comply with the intention of these regulations.
- “(3) Every warrant to which this Part of these regulations applies shall be subject to a condition that the company and the directors and other responsible officers of the company, will take all reasonable steps to enforce such of the provisions of the articles as are required to be included under subclause (1) of this regulation.

“25. Tribunal may require declarations as to beneficial ownership— Where a person is the holder of shares in a company holding a warrant to which this Part of these regulations applies or in any other company, and it appears to the Tribunal that, by virtue of that shareholding, that person or some other person has a shareholding interest in a company holding a warrant to which this Part of these regulations applies, the

Tribunal may, by notice in writing served on that person, require that person to furnish to the Tribunal, in the manner and within the time specified in the notice, a statutory declaration made by that person or, if that person is a company, by a responsible officer of the company, stating—

- “(a) Whether that person is the beneficial owner of the shares, and, if not, who is the beneficial owner of the shares; and
- “(b) Where the company is the holder of a television programme warrant in respect of a private broadcasting station or the holder of a television programme warrant, whether the beneficial owner of the shares is an overseas person.

“26. **Compliance with regulations to be condition of warrant**—It shall be a condition of every warrant to which this Part of these regulations applies that the provisions of regulations 20 to 23 and 25 of these regulations, and of all lawful requirements of the Tribunal thereunder, shall be complied with.”

3. Revocation—Regulation 3 of the Broadcasting Regulations 1977, Amendment No. 6 is hereby consequentially revoked.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Broadcasting Regulations 1977.

Regulation 2 revokes Part V of the principal regulations, and substitutes a new Part. The Part limits the number of broadcasting warrants in which a person may have a prescribed interest and imposes other restrictions in respect of the ownership of broadcasting warrants. The scope of the Part has been widened to implement the policy of the Government in relation to private television broadcasting, which policy is set out in the direction (dated 15 November 1984) given to the Broadcasting Tribunal. That direction is published in the *New Zealand Gazette* of 15 November 1984 at pages 4945 to 4947.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 8 August 1985.

These regulations are administered in the Broadcasting Corporation of New Zealand.