



## **On approval of the Rules for limiting foreign participation (control) in an airline created in the form of a joint-stock company**

### *Unofficial translation*

Order of the Acting Minister of Industry and Infrastructural Development of the Republic of Kazakhstan dated February 28, 2020 no. 100. Registered with the Ministry of Justice of the Republic of Kazakhstan on March 4, 2020 no. 20088

#### Unofficial translation

In accordance with subclause 13-1) of clause 1 of article 14 of the Law of the Republic of Kazakhstan dated July 15, 2010 "On Use of Air Space of the Republic of Kazakhstan and Aviation Activity" I HEREBY ORDER:

1. To approve the attached Rules for limiting foreign participation (control) in an airline created in the form of a joint-stock company.

2. Civil Aviation Committee of the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan, in accordance with the procedure established by law, shall ensure:

1) state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) placement of this order on the Internet resource of the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan;

3. Control over execution of this order shall be entrusted to the supervising Vice-Minister of Industry and Infrastructural Development of the Republic of Kazakhstan.

4. This order shall come into force upon expiry of ten calendar days after the date of its first official publication.

*Acting Minister of Industry and Infrastructural  
Development of the Republic of Kazakhstan*

*K. Uskenbayev*

Approved by the order  
of the Minister of Industry and  
Infrastructural Development of  
the Republic of Kazakhstan  
dated February 28, 2020 no. 100

## **Rules for limiting foreign participation (control) in an airline created in the form of a joint-stock company**

### **Chapter 1. General Provisions**

1. These Rules for limiting foreign participation (control) in an airline created in the form of a joint-stock company (hereinafter referred to as the Rules) have been developed in

accordance with subclause 13-1) of clause 1 of article 14 of the Law of the Republic of Kazakhstan dated July 15, 2010 "On Use of Air Space of the Republic of Kazakhstan and Aviation Activity" (hereinafter referred to as the Law) and establish the procedure for limiting foreign participation (control) in an airline, created in the form of a joint stock company.

2. the following basic concepts are used in these Rules:

1) an airline – a legal entity who has a certification of air operator of civil aerial vehicles;

2) airline derivatives– airline derivatives, issued in accordance with the legislation of the Republic of Kazakhstan or a foreign state, the basic asset of which are the airline's shares;

3) violating shareholder – a shareholder who has violated the limitations established in clause 3 of these Rules, or a shareholder who is under the effective control of the person who has violated the limitations, established in clause 3 of these Rules;

4) efficient control – an opportunity to determine the decisions of a legal entity or a foreign organization which is not a legal entity, arising in the presence of one of the following conditions:

direct and (or) indirect ownership, use and (or) disposal of more than fifty percent of the outstanding (excluding preferred and redeemed by a legal entity) shares, participatory interests, shares or other forms of equity participation in a legal entity or foreign organization that is not a legal entity;

present opportunity to elect directly or indirectly at least a half of the composition of the governing body or executive body of the legal entity or a foreign organization that is not a legal entity;

present opportunity for one person to determine independently or jointly with one or several persons, directly or indirectly, the decisions of a legal entity or a foreign organization that is not a legal entity, based on a legislative act, court decision, by virtue of a contract ( supporting documents) or otherwise in cases, stipulated by clause 17 of these Rules.

5) a foreign entity – a foreign legal entity, foreign organization that is not a legal entity, foreigner and (or) stateless person.

## **Chapter 2. Procedure for limiting foreign participation (control) in an airline created in the form of a joint-stock company**

3. A foreign entity may not, independently or in aggregate with other foreign entities:

1) directly and (or) indirectly to own, use and (or) dispose the shares of an airline and (or) airline's derivatives in the amount exceeding forty-nine and more per cent of the total amount of outstanding (excluding repurchased ones by the airline itself) of shares of the mentioned airline;

2) to carry out efficient control in relation of the airline.

4. An airline shareholder discloses information to the airline about himself, as well as about the entities exercising efficient control in relation to him, to the ultimate owners exercising efficient control.

If the shareholder of the airline is a legal entity or a foreign organization that is not a legal entity, which is directly and (or) indirectly owned, used and (or) disposed of by several entities who are not affiliated with each other, each of which does not exercise efficient control over such shareholder, such shareholder additionally discloses to the airline information about all cases in which the Republic of Kazakhstan or a citizen of the Republic of Kazakhstan directly and (or) indirectly owns, uses and (or) disposes of shares, participatory interests, shares or other forms of such shareholder.

The procedure, terms and other conditions of disclosing by the shareholders of information, specified in this clause, shall be determined in the airline charter.

5. The airline shall maintain a quarterly record of entities, information of which shall be subject to disclosure by the shareholders of such airline in accordance with clause 4 of these Rules.

6. An airline shareholder who has failed partially or completely to provide the airline with information in accordance with the requirements of clause 4 of these Rules, shall:

1) not be taken into account when determining the quorum of the general meeting of the airline shareholders;

2) not participate in voting and (or) discussion of issues, considered at the general meeting of the airline shareholders.

7. If the information provided by a shareholder of the airline is unreliable in accordance with the requirements of clause 4 of these Rules, revealed after the general meeting of shareholders of the airline made the decision:

1) in the event if the majority of voting rights (excluding the voting shares of the shareholder who provided false information) voted for such decision, the decision of the general meeting of shareholders is considered adopted without taking into account the votes of the specified shareholder, subject to the requirements for the presence of a quorum, in which the decision is considered adopted by the general meeting of shareholders of the airline, established by the Law of the Republic of Kazakhstan dated May 13, 2003 "On Joint Stock Companies";

2) if the vote of the shareholder who provided inaccurate information was decisive, this circumstance is the basis for invalidating the relevant decision of the general meeting of shareholders at the request of the airline or other interested parties in the manner established by the legislation of the Republic of Kazakhstan.

8. The airline does not repurchase shares with the consent of the shareholder at the initiative of the airline, if such redemption would lead to a violation of the restrictions established in clause 3 of these Rules.

9. In the event of the violation of limitations, established in clause 3 of these Rules, the violating shareholder shall:

- 1) not vote with his shares in the airline until the violation is completely eliminated;
- 2) not receive dividends on the airline's shares, until the violation is completely eliminated ;
- 3) eliminate the committed violation within ten working days from the date of receipt of the relevant request from the board of directors of the airline by reducing the shares held by him in the airline to a level below the restrictions established in clause 3 of these Rules.

10. The Board of Directors of the airline determines the violating shareholder and sends him a requirement on elimination of the violation of limitations, established in clause 3 of these Rules, in accordance with the procedure, determined by clauses 11-16 of these Rules and the charter of the airline.

11. Not later than the working day following the day of determination of the violating shareholder, the Board of Directors of the airlineshall send a written notification to the violating shareholder (hereinafter referred to as the written notification), in which it informs:

- 1) on the fact of violation of the limitations established in clause 3 of these Rules;
- 2) on the need to perform the obligation established by subclause 3) of clause 9 of these Rules;
- 3) on the amount of shares of the airline, in which the violating shareholder must reduce his participation in the share capital of the airline, and the period during which this must be done;
- 4) on other information, which is related, according to the opinion of the Board of Directors of the airline, to the violation of limitations, established in clause 3 of these Rules.

12. The method of sending a written notification to the violating shareholder is determined by the charter of the airline. It is allowed to send a written notification by email.

13. The Board of Directors of the airline determines the violating shareholder based on a comprehensive, complete and objective analysis of all circumstances known (available) to the Board of Directors of the airline in relation to each violation of the limitations established in clause 3 of these Rules.

14. The Board of Directors of the airline recognizes a shareholder of the airline as a violating shareholder in the following cases:

- 1) an airline shareholder or a person exercising efficient control with respect to such a shareholder is a party to a transaction that resulted in a violation of the limitations set forth in clause 3 of these Rules;
- 2) an airline shareholder or a person exercising efficient control in relation to such a shareholder, is a party to a court (arbitration) decision, as a result of which a violation of the limitations established in clause 3 of these Rules took place;

3) if the airline carried out repurchase of the outstanding shares in accordance with article 27 of the Law of the Republic of Kazakhstan dated May 13, 2003 "On Joint Stock Companies" and this led to violation of limitations, established in clause 3 of these Rules;

4) in other cases when actions (inaction) of an airline shareholder or a person exercising efficient control with respect to such a shareholder, lead to violation of limitations, established in clause 3 of these Rules.

15. If the violation of limitations, established in clause 3 of these Rules, was committed on the date as of which several events occurred, each of which can individually be recognized as an event as a result of which the specified violation was committed, then upon acceptance decisions on determining the violating shareholder, the airline's board of directors takes into account the chronological order of occurrence of these events.

If a chronological determination of the violating shareholder is not possible, the Board of Directors of the airline shall apply other criteria for determining the violating shareholder, which the Board of Directors of the airline considers reasonable and enforceable.

16. The charter of the airline may provide for additional cases of determining by the Board of Directors of the airline of the violating shareholder, not contradicting the legislation of the Republic of Kazakhstan.

17. The presence of the ability of one person, independently or jointly with one or more persons, to determine the decisions of a legal entity or a foreign organization that is not a legal entity, in addition to the cases established in the notice to article 74-1 of the Law, arises in the following cases:

financing by one person (independently or jointly with one or more persons) of a legal entity or a foreign organization that is not a legal entity, subject to the following conditions:

the top executives and (or) shareholders (founders, participants) of the financed legal entity or foreign organization that is not a legal entity are employees of the financier (s);

the amount of financing received exceeds the equity capital of the financed legal entity or foreign organization that is not a legal entity.

18. if the airline shares are in the nominee holding, the provisions of these Rules shall apply in relation of the owner of such shares, who is the client of the nominal shareholder.