
Aviation Ruling

Franchise AOC arrangements

Effective Date: This ruling is effective from 1 March 2006.

Catchwords: AOC
Franchised AOC
AOC holder's organisation
Act s.28BE

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Issue

- 1 From time to time, issues arise about the use of Franchise AOC arrangements under which an AOC holder allows another person (who does not hold an AOC) to use the privileges of that AOC. This ruling states CASA's position on the use of Franchised AOCs.

Background

- 2 The Act creates a regime for the issue and regulation of AOCs. Section 28 of the Act authorises CASA to issue AOCs to natural or legal persons.
- 3 A Franchise AOC arrangement may arise where an AOC holder (**A**) and another person (**B**) enter into an arrangement under which **B** uses's **A's** AOC to conduct commercial operations and does not hold a separate AOC. Franchised AOCs may reflect one or more of the following characteristics:
 - 3.1 **B** advertises to the public in its name (not **A's** name) that it will conduct commercial aviation operations. The advertisements may refer to an association with **A**;
 - 3.2 **B** hires the staff engaged in carrying out the operations, organises maintenance and controls all financial dealings including contracts for the flying activities covered by the Franchised AOC;
 - 3.3 **B's** operations are not supervised by **A's** Chief Pilot;
 - 3.4 usually **B** would pay a franchise fee to **A**, although a Franchise AOC arrangement may not involvement payment of a fee;
 - 3.5 **B's** operating systems are not integrated into company **A's** approved systems and have not been reviewed by CASA for the purpose of the issue or regulation of the Franchised AOC.
- 4 Persons using company **B's** services, including passengers, are unlikely to be aware that CASA does not regulate **B** or its operating systems.

Ruling

- 5 It is CASA's view that the scheme of the Act and CARs intend that the activities authorised by an AOC are carried out 'within the organisation of the AOC holder.
- 6 Among other requirements in the Act, CASA requires that to comply with the Act all AOC operations must be conducted:
 - 6.1 in accordance with the systems of an AOC holder;

- 6.2 under the oversight and management of the key personnel of that AOC holder; and
- 6.3 using the facilities and documentation of that AOC holder.
- 7 The AOC holder at all times remains responsible for the actions of another person conducting operations under the AOC.
- 8 It is possible that operations to be conducted by **B** under a Franchised AOC will not be carried out within **A's** organisation and, accordingly, will not be authorised by **A's** AOC (ie, the AOC that has been franchised to **B**). Further, unless those operations are authorised under another AOC, the operation may not be authorised by any AOC.
- 9 It is therefore CASA's view that a Franchise AOC arrangement could result in the serious consequences that a person in the position of **B** breaches s.27(1) of the CAA by conducting operations for CAR 206 purposes without an AOC (see section 27(9) of the Act) ; and
- 10 Additionally, if **A**, as an AOC holder, enters into a Franchise AOC arrangement that does not comply with the requirements of this ruling, CASA will view such action on the part of **A** to be highly relevant as to whether **A** complies with its obligations under section 28BE of the Act to ensure that every activity covered by the AOC, and everything done in connection with such an activity, is done with a reasonable degree of care and diligence.

Definitions

- 11 In this ruling:
- "**A**" means a hypothetical natural or legal person who holds an AOC and enters into an arm's length contractual arrangement with **B**, by which **A** intends to allow **B** to use the privileges of **A's** AOC, resulting in the creation of a Franchised AOC;
- "**Act**" means the *Civil Aviation Act 1988*;
- "**AOC**" means an air operator's certificate issued under section 27 of the Act;
- "**B**" means a hypothetical natural or legal person who enters into an arm's length contractual arrangement with **A**, by which **B** intends to exercise the privileges of **A's** AOC, resulting in the creation of a Franchised AOC;
- "**CAR**" means the *Civil Aviation Regulations 1988*;
- "**Franchised AOC**" is an AOC where some or all of the operations authorised by the AOC are conducted by a legal entity (eg "**B**") other than the AOC holder (eg "**A**"), in accordance with an arm's length contractual arrangement between **A** and **B**. A Franchised AOC arrangement may, but does not necessarily, include any or all of the circumstances described in paragraph 3.

[Signed Bruce Byron]

Bruce Byron
Director of Aviation Safety
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