

1969/218



THE PRIVATE BROADCASTING STATIONS (OWNERSHIP)
REGULATIONS 1969

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 20th day of October
1969

Present:

THE RIGHT HON. KEITH HOLYOAKE, C.H., PRESIDING IN COUNCIL

PURSUANT to the Broadcasting Authority Act 1968, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Private Broadcasting Stations (Ownership) Regulations 1969.

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

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Broadcasting Authority Act 1968:

“Company” includes any body corporate, whether incorporated before or after the commencement of these regulations:

“Control”, in relation to a company, means the power of a person to secure, whether by means of the holding of shares or the possession or control of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other instrument regulating that or any other company, or otherwise, that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person; and, without limiting the generality of the foregoing provisions of this definition, includes control as a result of or by means of trusts, agreements, arrangements, understandings, and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights:

“Director” includes any person occupying the position of a director or member of a board or committee of management of a company, by whatever name called:

“Medium-frequency” means within that band of frequencies extending from 525 to 1605 kilohertz:

“Person” includes any body corporate:

“Responsible officer” includes a director, manager, secretary, or other person accepting responsibility for the daily administration of a company:

“Share”, in relation to a company, means any share or stock in the capital of the company which carries with it the right to attend and vote at general meetings of the company; and includes any notes or assurances of the company that carry such a right:

“Warrant” means a warrant for the time being in force under the Act in respect of a private broadcasting station.

(2) Except as otherwise provided in subclause (1) of this regulation, and unless the context otherwise requires, expressions defined in the Act have, in these regulations, the meanings so defined.

3. “Prescribed interest” defined—For the purposes of these regulations, a person has a prescribed interest in a warrant if he 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) The management of the private broadcasting station in respect of which the warrant is in force; or

(iii) The selection or provision of the programmes to be broadcast by that station; or

(d) A person having a shareholding interest or interests, as defined by regulation 4 hereof, which, when aggregated, exceeds 15 percent of the total voting powers exercisable by all members of the company holding the warrant.

4. Shareholding interests—(1) For the purposes of these regulations, a person has a shareholding interest in a company if he 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) 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) Subclause (4) of this regulation shall 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 within the meaning of the Companies Act 1955 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.

(6) 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 to have a shareholding interest in a company holding a warrant 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.

5. Restrictions on interests in warrants—No person shall have a prescribed interest in more than one warrant for a medium-frequency private broadcasting station in New Zealand.

6. Restrictions on directorships—(1) Except with the approval of the Authority, no person shall act as a director of more than two companies having a prescribed interest in more than two warrants for medium-frequency private broadcasting stations in New Zealand.

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

7. Verification of interests—(1) No warrant shall be granted by the Authority in contravention of these regulations.

(2) The Authority shall require any successful applicant for a warrant, before the issue of the warrant, to supply particulars of the names and addresses of all persons having a prescribed interest in the warrant, and full particulars of that interest, and the names and addresses of all persons having a shareholding interest in the applicant company, and to verify all such particulars by statutory declaration made by a responsible officer of the applicant company.

(3) The Authority may at any time by notice in writing require the holder of a warrant to supply to the Authority particulars of the names and addresses of all persons having a prescribed interest in the warrant, and full particulars of that interest, and the names and addresses of all persons having a shareholding interest in the company holding the warrant, and to verify all such particulars by statutory declaration made by a responsible officer of the company.

8. Information on shareholding—(1) Every holder of a warrant shall in accordance with this regulation supply to the Authority 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.

(2) The information to be supplied pursuant to subclause (1) of this regulation shall be given to the Authority 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 paragraph (b) of subclause (1) of this regulation, the term "equity share capital" has the same meaning as in section 158 (5) of the Companies Act 1955.

9. Requirements of articles of association—(1) A warrant shall not be issued until the articles of association of the applicant company have been approved by the Authority, 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 5 hereof;
- (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 5 hereof, 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:

- (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 arrears—
 - (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 Authority, other than an alteration to give effect to this regulation.

(2) Any warrant may be conditional on the applicant company making such other amendments to its articles of association as the Authority may direct in order to comply with the intention of these regulations.

(3) Every warrant 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.

10. Authority may require declarations as to beneficial ownership—Where a person is the holder of shares in a company holding a warrant or in any other company and it appears to the Authority that, by virtue of that shareholding, that person or some other person has a shareholding interest in a company holding a warrant, the Authority may, by notice in writing served on that person, require him to furnish to the Authority, in the manner and within the time specified in the notice, a statutory declaration made by him or, if that person is a company, by a responsible officer of the company, stating whether that person is the beneficial owner of the shares, and, if not, who is the beneficial owner of the shares.

11. Compliance with regulations to be a condition of warrant—It shall be a condition of every warrant that the provisions of regulations 5 to 8 and 10 of these regulations, and of all lawful requirements of the Authority thereunder, shall be complied with.

12. Notices—(1) Any notice required or authorised by these regulations to be served or given shall be delivered to the person concerned, and may be delivered personally or posted by registered letter addressed to that person at its registered office in the case of a company or at his last known abode or place of business in New Zealand in the case of an individual.

(2) A notice so posted shall be deemed to have been served at the time it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

P. J. BROOKS,
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 relate to the ownership and control of medium-frequency private broadcasting stations under the Broadcasting Authority Act 1968. The main effect of the regulations is that no person (which term includes a body corporate) may have a "prescribed interest" (as defined in the regulations) in more than one warrant for a medium-frequency station.

Regulation 2 defines terms used in the regulations.

Regulation 3 defines a "prescribed interest" for the purposes of the regulations. A person has a prescribed interest if he is—

- (a) The holder of the warrant; or
- (b) Entitled to exercise or control more than 15 percent of the total voting power exercisable by all members of the company holding the warrant; or
- (c) In a position to exercise control of the operations or management or programmes of the station.

Regulation 4 defines a shareholding interest as being beneficial entitlement to shares or an interest in shares. A person beneficially entitled to shares is deemed to be in a position to exercise control of voting rights. Subclauses (4) and (5) deal with indirect interests through shareholding in one or more of a series of companies.

Regulation 5 provides that no person may have a prescribed interest in more than one warrant for a medium-frequency private broadcasting station.

Regulation 6 provides that, except with the approval of the Authority, no person shall act as a director of more than two companies having a prescribed interest in more than two such warrants. For this purpose, an individual having a prescribed interest in a warrant is deemed to be a director of the company holding the warrant.

Regulation 7 empowers the Authority to require successful applicants for warrants, and also warrant holders, to supply particulars of persons holding prescribed interests and shareholding interests.

Regulation 8 requires every warrant holder to supply information concerning changes in directors or other responsible officers, changes in shareholding whereby any person acquires more than 5 percent of the company's equity share capital, and the names and addresses of persons acquiring prescribed interests.

Regulation 9 provides that a warrant shall not be issued until the articles of association of the applicant company have been approved by the Authority, which may require the inclusion in the articles of certain provisions aimed at preventing a contravention of the regulations. The warrant may be made conditional on the company making such other amendments as the Authority may direct in order to comply with the intention of the regulations. Every warrant is subject to a condition that the company and its directors and other responsible officers will take all reasonable steps to enforce provisions required under subclause (1).

Regulation 10 empowers the Authority to require a shareholder to supply to the Authority a statutory declaration as to beneficial ownership.

Regulation 11 makes it a condition of a warrant that regulations 5 to 8 and 10, and any lawful requirements of the Authority thereunder, are complied with.

Regulation 12 deals with the service of notices under the regulations.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 October 1969.

These regulations are administered in the New Zealand Broadcasting Authority.