

Departmental

# Companies Act (Hawaiian Airlines, Inc) Exemption Notice 2016

Pursuant to section 207L of the Companies Act 1993, the Registrar of Companies gives the following notice (to which is appended a statement of reasons of the Registrar).

## Notice

**1. Title**—This notice is the Companies Act (Hawaiian Airlines, Inc) Exemption Notice 2016.

**2. Commencement**—This notice comes into force on the date of its notification in the *New Zealand Gazette*.

**3. Expiry**—This notice expires on the close of **31 July 2021**.

**4. Application**—An exemption granted by this notice applies to the following accounting periods of an exempt overseas company:

- a. an accounting period of the exempt overseas company that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if:
  - i. in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 201 of the Act, the exemption is granted before those documents are required to be delivered for registration under that section; or
  - ii. in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed; and
- b. subsequent accounting periods.

However, an exemption granted by this notice does not apply to accounting periods where the following thresholds are not met:

- a. the revenue of the exempt overseas company accounts for at least 95% of the parent company's revenue;
- b. the expenses of the exempt overseas company accounts for at least 95% of the parent company's expenses; and
- c. the exempt overseas company accounts for at least 90% of the total assets and liabilities in the parent company's balance sheet.

**5. Interpretation**—In this notice, unless the context otherwise requires:

**Act** means the Companies Act 1993;

**exempt overseas company** means Hawaiian Airlines, Inc;

**parent company** means Hawaiian Holdings, Inc;

**specified financial statements**, in relation to the exempt overseas company, means the consolidated financial statements that are required to be prepared in respect of the parent

company in accordance with the laws of the United States of America; and

**US GAAP** means generally accepted accounting principles in the United States of America.

**6. Exemptions for directors of the exempt overseas company**—Every director of the exempt overseas company is exempted from the following provisions in respect of the exempt overseas company:

- a. section 201 of the Act, except to the extent that this section requires financial statements to be prepared for the exempt overseas company's New Zealand business in accordance with section 204 of the Act; and
- b. section 207E of the Act to the extent that it requires copies of the financial statements of the exempt overseas company to be delivered to the Registrar for registration.

**7. Conditions**—The exemptions in clause 6 are subject to the conditions that:

- a. the specified financial statements comply with US GAAP;
- b. the specified financial statements are audited by a qualified auditor in accordance with the relevant standards relating to auditing or assurance that are in force in the United States of America; and
- c. the directors of the exempt overseas company ensure that, within 20 working days after the specified financial statements are required to be signed, the following documents are delivered to the Registrar of Companies for registration:
  - a copy of the specified financial statements together with a copy of the auditor's report on those statements; and
  - a memorandum signed by the directors of the exempt overseas company setting out:
    - A. that the specified financial statements are the consolidated financial statements required to be prepared in respect of the parent company in accordance with the laws of the United States of America and are not the financial statements of the exempt overseas company;
    - B. the reasons for the specified financial statements being provided instead of financial statements for the exempt overseas company;
    - C. the extent to which the revenue, expenses, assets and liabilities of the parent company are represented by the exempt overseas company; and
    - D. a statement that the accounts of the exempt overseas company and the parent company are sufficiently similar such that the exempt overseas company's financial position can be determined from the parent company's financial statements.

Dated at Wellington this 4th day of February 2016.

ROB RENDLE, Deputy Registrar of Companies.

### ***Statement of reasons***

This notice, which comes into force on the date of its notification in the *New Zealand Gazette* and expires on 31 July 2021, exempts the directors of Hawaiian Airlines, Inc, a company incorporated in the United States of America, from certain provisions of the Companies Act 1993 ("Act").

The effect of the exemption is to exempt Hawaiian Airlines, Inc ("company") from the requirement under the Act to prepare stand-alone financial statements. In place of these financial statements

the company is required to prepare and deliver for registration the audited consolidated group financial statements its parent company, Hawaiian Holdings, Inc, is required to prepare under the law in the United States of America.

However, the exemption only applies where the following conditions are met:

- a. the company's revenue accounts for at least 95% of its parent company's revenue;
- b. the company's expenses accounts for at least 95% of its parent company's expenses; and
- c. the company accounts for at least 90% of the total assets and liabilities in its parent company's balance sheet.

If those conditions are not met, the exemption will not apply and the company will be required to prepare and file stand-alone financial statements.

The principal differences in financial statements provided in reliance on the exemption are:

- a. the directors of the company will not prepare and file stand-alone financial statements for the company;
- b. the directors of the company will register audited consolidated financial statements for Hawaiian Holdings, Inc and its subsidiaries;
- c. the consolidated financial statements will comply with generally accepted accounting practice in the United States of America (rather than generally accepted accounting practice in New Zealand); and
- d. the consolidated financial statements will be audited in accordance with auditing and assurance standards in force in the United States of America (rather than the applicable auditing and assurance standards in force in New Zealand).

The Registrar considers that it is appropriate to grant the exemption because:

- the Registrar has had regard to the financial reporting requirements that must be complied with by the company in its home jurisdiction under which it is not required to prepare stand-alone financial statements;
- the company will still be required to file:
  - audited consolidated group financial statements for Hawaiian Holdings, Inc, prepared in accordance with generally accepted accounting practice in the United States of America; and
  - if the New Zealand business is a large company, financial statements for the company's New Zealand business that comply with generally accepted accounting practice in New Zealand;
- the consolidated group financial statements prepared for Hawaiian Holdings, Inc contain all the relevant information for the company required under section 201 of the Act;
- the consolidated financial statements for Hawaiian Holdings, Inc provide sufficient information to avoid any detriment to members of the public who have dealings with the company; and
- the exemption addresses the particular difficulties experienced by the company and is not broader than what is reasonably necessary to address these difficulties.

This notice is administered by the Registrar of Companies.

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Notice Number

**2016-go582**

Issue Number

**10**

View PDF



**Principal Edition, 4 February 2016**

PDF (32 KB)

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