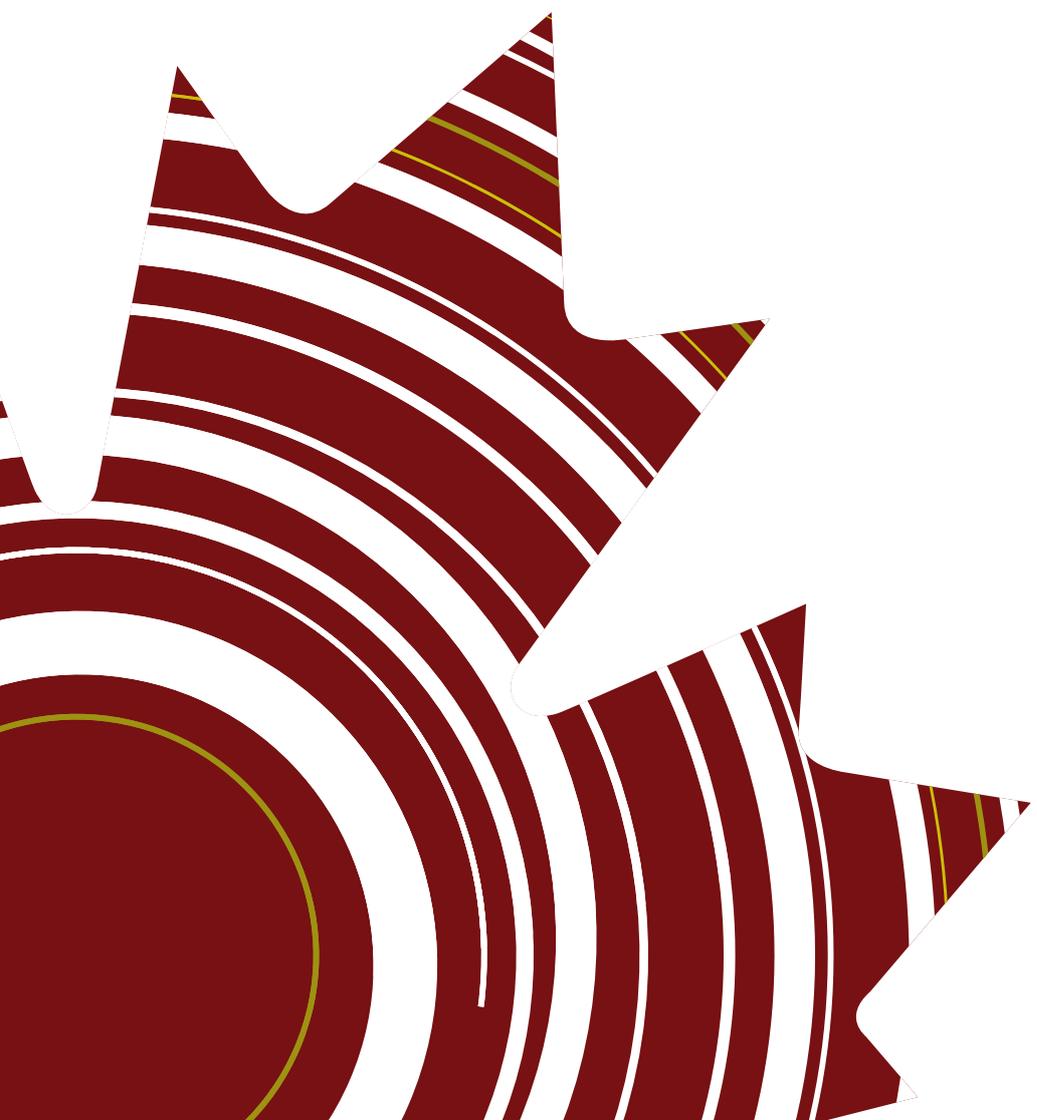




Office
des transports
du Canada

Canadian
Transportation
Agency

Application Process for Canadian Ownership Determinations for Air Transportation



Canada 

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Introduction

Anyone wishing to obtain or maintain an air service licence must meet legal requirements related to Canadian ownership. These requirements are set out in the [Canada Transportation Act](#) (Act) and the Canadian Transportation Agency (Agency) is responsible for determining whether a licence applicant or licence-holder meets the requirements.

This document explains the process for applying to the Agency for a Canadian ownership determination. It sets out:

- The different air services that have Canadian ownership requirements;
- Who should apply for a Canadian ownership determination; and
- The steps in the application process.

Detailed information on the Canadian ownership requirement is provided in the [Guide to Canadian Ownership and Control in Fact](#)

This document is intended to support the Act, which is the definitive source for licence applicants and licence holders regarding the Canadian ownership requirement. Using this document and the examples it provides is not mandatory and nothing in this document supersedes the Act.

Applicability of the Canadian requirement

Domestic Air Service

The Act requires that air carriers operating or proposing to operate a domestic air service be Canadian unless they obtain an exemption from the Minister of Transport under section 62 of the Act (see note on [Ministerial exemption from Canadian requirement](#) below).

Scheduled International Air Service

All air carriers operating or proposing to operate a scheduled international air service must be Canadian. However, a non-Canadian is eligible to hold a licence

for a scheduled international air service if, among other items, the non-Canadian has been designated by a foreign government or its agent to operate under the terms agreed to by that government and the Government of Canada.

Non-Scheduled International Air Service

All air carriers operating or proposing to operate a non-scheduled international air service must be Canadian. However, a non-Canadian is eligible to hold a licence for a non-scheduled international air service when the non-Canadian holds a document issued by the government of the non-Canadian's state or an agent of that government that provides for services that are equivalent to the non-scheduled international licence for which the non-Canadian is applying.

Note: Ministerial Exemption from Canadian Requirement

A non-Canadian may seek an exemption from the requirement to be Canadian from the Minister of Transport. This avenue is only for a domestic licence and is subject to the provisions of section 62 of the Act. Such applicants should contact Transport Canada for more information, as the Agency has no involvement in this process.

Statutory Requirement to Maintain Canadian Status

Canadian ownership is a market entry requirement and an ongoing requirement for holding an air service licence. It must be complied with at all times for as long as the air carrier holds the licence (see subparagraph 61(a)(i) of the Act for domestic air service carriers, and subparagraph 73(1(a)(i) for international air service carriers).

Licensees are required to notify the Agency in writing without delay if any change occurs that affects, or is likely to affect, their status as a Canadian (see paragraph 82(c) of the Act). Such changes include:

- listing of shares or financial instruments on Canadian or foreign stock exchanges;
- issuing or transferring shares or units to non-Canadians;

- amending shareholder agreements to grant foreign shareholders additional rights; and
- entering into financing or aircraft acquisition agreements with minority foreign shareholders.

The Agency conducts ongoing monitoring and compliance activities that can result in a review of a licensee's Canadian ownership status. If the Agency determines that a licensee no longer meets the Canadian ownership requirement, it must suspend or cancel the licence.

When is a CTA Canadian Ownership Determination Required?

Canadian ownership determinations are made when:

- an application for a licence is filed; or
- an existing licensee requests a determination as to whether they will remain Canadian before entering into a business transaction with a non-Canadian (see section on [Transactions that may affect Canadian status](#)).

New Air Service Licence Applicants

If you are a new applicant, you will be prompted to respond to a number of questions within the [licence application form](#) to demonstrate that you meet the Canadian ownership requirements. The Agency will use this information to determine whether you meet the requirements, and may request further information from you, if necessary. Before completing the licence application, consult the [Licence and Charter Permits guidance materials](#).

Existing Licensees

If you are an existing licence holder, you may have to obtain a Canadian ownership determination if you are engaged in any of the activities listed below.

Requesting Additional Licences

Existing licensees may apply for additional licences. This can include adding:

- a non-scheduled international licence;
- scheduled international licences to additional countries; or
- licences for other aircraft sizes.

You will be asked to attest that you continue to meet the Canadian ownership requirements when applying for an additional licence. You will not generally be asked to submit additional supporting information to demonstrate Canadian ownership unless there has been a change that could impact your Canadian status.

Transactions that May Affect Canadian Status

If you are an existing licensee contemplating a transaction that could potentially alter your Canadian status, you must request an advance Canadian status determination. Transactions that might alter your Canadian status could include:

- investment by a non-Canadian;
- an arrangement or joint venture with a foreign carrier (see note, below); or
- any other business proposal involving the active participation of a non-Canadian.

You should apply for a Canadian status determination from the Agency before completing the relevant transaction. This is called an "advance Canadian status determination." It enables the Agency to assess the likely effect of the proposed transaction on your Canadian status, which will allow you to make changes to the transaction, if necessary, to ensure your continued compliance with the ownership requirements. If you proceed with your transaction without obtaining an advance Canadian status determination, you run the risk of failing to meet the Canadian ownership requirements, which can result in licence suspension and/or cancellation.

The Agency will only review a proposed transaction when preparations for that transaction have advanced to the final stages and draft agreements are in place and awaiting execution. All relevant facts and documents must be disclosed to the Agency.

A [step-by-step outline](#) of the determination process is provided in this guide.

Determinations are rendered as quickly as possible. The turnaround time for the Agency to review a transaction and make a determination will vary based on the complexity of the transaction and the completeness of the information provided.

When you make a request for an advance determination, it is important that you file all key documentation with the Agency. The Canadian Ownership Determination Application Form to be requested by email lists the documentation that must be provided. Your completed Canadian Ownership Determination Application form, together with the required documentation, should be submitted electronically by e-mail (preferred) or fax as outlined in the application form.

Note: Arrangements (Joint Ventures) with Foreign Air Carriers

Licensed Canadian air carriers may enter into arrangements or joint ventures with foreign air carriers, as authorized by the Minister of Transport in consultation with the Commissioner of Competition.

When a Canadian licensee enters into an arrangement with one or more foreign air carriers, it is the Canadian licensee's responsibility to ensure that such an arrangement does not result in the foreign air carrier "controlling in fact" the Canadian licensee. Authorization from the Minister of Transport for an arrangement does not change the Canadian ownership requirements for air service licences, as defined in subsection 55(1).

For additional information regarding joint ventures, please contact:

National Air Services Policy Directorate
Air Policy Group
Transport Canada

Place de Ville, Tower C
Ottawa, Ontario
K1A 0N5

Telephone: 613-993-7284 or 1-800-305-2059
Fax: 613-991-6445
Website: www.tc.gc.ca
Email: TC.natair-aernat.TC@tc.gc.ca

Application Process

When seeking a Canadian ownership determination, new air service licence applicants and existing licence-holders should do the following:

1. Ensure they have read the [Guide to Canadian Ownership](#) and [Control in Fact](#).
2. Complete the application form and send it to the Agency.
3. Include all listed information required to demonstrate fulfillment of the Canadian status requirement.
4. (Optional but encouraged) File any additional information and documentation in support of their Canadian status in order to reduce the application processing time.

Nature of the Determination Process

The applicant must satisfy the Agency that it meets the Canadian ownership requirements.

In most cases, the determination process is an uncontested process, which means there is no opportunity given to third parties to challenge the application.

Oral Hearings

Applicants for a Canadian ownership determination may request an oral hearing. Oral hearings can provide the applicant with an opportunity to provide

information to address any questions or concerns the Agency may have. They also provide the applicant with the opportunity to provide additional information and seek immediate feedback from the Agency.

The Agency will consider the applicant's request for an oral hearing and advise the applicant in writing of its decision. If the request is granted, information will be provided about the oral hearing process and next steps.

The Agency may also direct an applicant to attend an oral hearing about their application.

All oral hearings will be held at a date and location determined by the Agency. These may also be held by way of video conference. Applicants are solely responsible for their own travel and transportation expenses.

All submissions made, whether by way of an oral hearing or in writing, will form part of the Agency's record.

Step by Step Outline of the Determination Process

Roles and Responsibilities

Members

Determinations are made by a panel of Members who are assigned by the Agency's Chair.

Applicant

The applicant is either an existing air service licensee or a person who wishes to obtain a licence. Applicants may be represented by legal counsel if they wish, but only the applicant can make the request for a Canadian status determination. Third parties cannot apply on their behalf.

Agency Staff

Applicants will work with Agency staff, who are responsible for reviewing applications involving Canadian ownership and control in fact, and who will be the applicant's primary point of contact. Agency staff support the Members by providing them with an analysis of applications. Information provided by Agency staff to applicants in the course of their review of the Canadian status of an applicant is not binding upon the Agency.

Third parties

While third parties may provide information they may have in relation to any application brought before the Agency, the Agency has the sole discretion to determine the extent of their participation in the determination process.

Steps in the Process

Step One – Filing of the Application Form

Existing licence holders applying for an advance Canadian status determination must complete the [Canadian Ownership Determination Application Form](#) and follow the filing instructions set out in that form.

New air service licence applicants must complete and submit the air service [licence application form](#), which includes questions about Canadian status, and submit the form along with all documentation listed in it. For more information, see the [Canadian Air Carrier Licence Application Guide](#).

Step Two – Agency Staff Review of Application

Agency staff will acknowledge receipt of the application and work with the applicant until the determination is made. Usually within the first week, staff will look over the application, and if any required information or documentation is missing, will advise the applicant. Once all necessary information has been received from the applicant, staff will provide their advice about the application to the Members.

Step Three – Agency Response to Application

If the Members find that more information is needed, a letter will be sent to the applicant. The Agency staff review process will restart once the applicant provides the information requested.

If the Members' preliminary conclusion is that the applicant would not be Canadian, the applicant will be notified by way of a letter with reasons. The letter will give the applicant an opportunity to respond by providing new information that:

- supports the applicant's claim that they are Canadian, or
- shows the applicant is making changes to its business proposal in order to address the Agency's concerns.

Once the applicant provides the new information, the Agency staff's review process will resume.

When the Members arrive at a final conclusion, the applicant will receive a written determination. The determination will be either positive (the applicant meets the Canadian ownership requirement) or negative (the applicant does not meet the requirement). The application process then concludes.

Applicants who receive a negative determination can file a new application if they have new information and/or a revised proposal that they wish to present for consideration.

Review and appeal

The Agency may review, rescind or vary any of its decisions or determinations if there has been a change in the relevant facts or circumstances subsequent to its issuance. Such changes can be brought to the attention of the Agency by any party.

In addition, a party to a decision or determination made by the Agency may appeal the determination to the Federal Court of Appeal, with leave from the court, on a question of law or jurisdiction.

Finally, the Governor in Council may, at any time, vary or rescind any Agency decision or determination, either on petition of a party or an interested person, or on its own motion.

For more information

All questions should be directed to the Agency c/o the [Financial Evaluation Division](#).

Publication information

Available in multiple formats.

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