

SUBSIDIARY LEGISLATION 499.37**RIGHT OF WAY FOR UTILITIES AND SERVICES
(FEES) REGULATIONS**

1st October, 2004

LEGAL NOTICE 94 of 2005, as amended by Legal Notices 45 of 2006 and 424 of 2007; and Act XV of 2009.

1. The title of these regulations is the Right of Way for Utilities and Services (Fees) Regulations. Title.

2. In these regulations, unless the context otherwise requires: Interpretation.
Amended by:
L.N. 45 of 2006;
XV. 2009.49.

"apparatus" means any equipment and other infrastructure and includes any structure intended for the lodging therein, or the placing thereon, any apparatus or for gaining access to any apparatus;

"the Authority" means the Authority for Transport in Malta established under the Authority for Transport in Malta Act;

Cap. 499.

"locality" shall have the same meaning assigned to it by the Local Government Act;

Cap. 363.

"national operator" means any person or undertaking, other than the Authority, who has in place any apparatus in, on or over roads in a minimum of fifty different localities within Malta;

"operator" means any person or undertaking, apart from the Authority, who is the owner of apparatus which is installed in, on or over any road;

"quarter" means any period of three months ending on the 31st March, the 30th June, the 30th September or the 31st December;

"relevant year" means any year during which fees are to be paid to the Authority;

"right of way" means the non-exclusive right to place or retain any apparatus in, on or over a road and to inspect, maintain, adjust, repair, alter or renew the said apparatus or remove it and execute for such purposes any works required for, or incidental to, such works;

"road" has the meaning assigned to it by the Authority for Transport in Malta Act.

Cap. 499.

3. (1) Any national operator that enjoys a right of way shall pay to the Authority, or to any person or body of persons to whom the Authority may delegate in writing specific functions, an annual fee for such right equivalent to 0.4% of the operator's total gross revenues, provided that the said fee shall not be less than two hundred and seventy-nine thousand and five hundred euros (279,500). Payment of annual fee.
Amended by:
L.N. 45 of 2006;
L.N. 424 of 2007.

(2) For the purposes of determining the fee as aforesaid, every operator that has a right of way shall submit to the Authority, or to any person or body of persons to whom the Authority may delegate

in writing specific functions, by no later than the 30th November of the previous year, a statement of projected revenues for the relevant year.

(3) An operator who does not qualify as a national operator shall pay to the Authority, or to any person or body of persons to whom the Authority may delegate in writing specific functions, an annual fee calculated at the rates published from time to time by the Authority by means of a notice in the Gazette.

(4) (a) The fees for rights of way shall be payable to the Authority, or to any person or body of persons to whom the Authority may delegate in writing specific functions, in equal quarterly instalments on the first day of every quarter during which an operator enjoys the right of way:

Provided that the Authority shall reconcile fees paid on the basis of projected revenues, with the fees that should have been paid based upon actual revenues. For this purpose, each operator shall submit to the Authority, or to any person or body of persons to whom the Authority may delegate in writing specific functions, within a maximum of twelve months after the 31st December of the relevant year, an audited statement of actual quarterly revenues as represented in the operator's financial statement and -

- (i) where the amount paid by an operator is less than the amount payable by reference to the statement of actual revenues, the operator concerned shall, within such time as may be specified by the Authority in a request in writing, pay to the Authority, or to any person or body of persons to whom the Authority may delegate in writing specific functions, the balance of fees so payable;
 - (ii) where the amount paid by an operator is more than the amount payable by reference to the actual statement of turnover, the Authority shall, as soon as may be after the receipt of the audited statements referred to above, repay to the operator concerned the excess amount so paid.
- (b) If an operator fails to pay any sum due as laid down in this regulation, interest at the rate of eight per cent per annum shall accrue on such sum from the date on which such sum falls due.

(5) The first quarterly payment of the right of way fee shall be paid on the last day of the first quarter during which these regulations have come into force.

(6) Any payment made to the Authority in accordance with these regulations shall be without prejudice to any requirement for development or other permission or for any other authorisation required by law, including any permit for trenching operations and any other permit or licence from any Government department,

authority, corporation or agency, and to any consent that may be required by law from third parties.

(7) Any fees levied by the Authority in accordance with these regulations shall be on account of the Government.
