

**BUSINESS PROMOTION ACT
(CAP. 325)**

State Aid Monitoring Regulations, 2004

IN exercise of the powers conferred upon him by article 58A of the Business Promotion Act, the Prime Minister and Minister of Finance, has made the following regulations:-

Citation and
commencement.

1. The title of these regulations is the State Aid Monitoring Regulations, 2004 and shall come into force on 1st May, 2004.

Interpretation.

2. In these regulations, unless the context otherwise requires:

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“Act” means the Business Promotion Act;

“Aid”, “aid scheme”, “existing aid”, “individual aid”, “new aid” and “unlawful aid” shall have the same meaning assigned to them by Article 1 of the Council Regulation;

“Board” means the State Aid Monitoring Board established under article 57 of the Act;

“the Commission” means the Commission of the European Union as established in the EC Treaty as subsequently amended;

“the Council” means the Council of the European Union as established in the EC Treaty as subsequently amended;

“Council Regulation” means Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and any subsequent amendments thereto;

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“European Union” shall have the same meaning assigned to it by article 2 of the European Union Act;

“non-notified aid” means any aid granted without being notified in accordance with regulation 5;

“notified aid” means any aid notified in accordance with regulation 5;

“provider of aid” includes the Government, its Ministries and departments, entities falling under such Ministries and departments, as well as local councils that, directly or indirectly, grant or plan to grant aid, as well as any other bodies authorized by the State to grant aid.

3. (1) Any aid granted by the State or through State resources, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

Conditions for the granting of aid.

(2) The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences.

(3) The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of the State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission:

Provided that such aid that is compatible with the principles and practices referred to in article 58 (1)(b) of the Act may also be granted.

Rights of the Board.

4. (1) In exercise of its powers and functions under the Act, the Board shall have the right of access to all relevant information, and may seek the clarifications and explanations that it may deem necessary for its deliberations and conclusions.

(2) Where the Board considers that the information received from the provider of aid is not sufficient, it shall request all necessary additional information.

(3) The Board may invite any interested party to make submissions regarding an aid under examination.

Notification of new aid.

5. (1) The provider of new aid shall notify the Board with all proposals for any such aid.

(2) The provider of new aid shall furnish the Board with all the necessary information required by the said Board to issue its opinion.

(3) The notification shall be made on a return in the form in accordance with Schedule I of these regulations.

Examination procedure.

6. (1) The Board shall examine the proposed aid and shall, within forty working days from receipt of all information requested by it, issue to the provider of aid and to any pertinent party, a preliminary opinion regarding the notified aid. The provider of aid as well as any party, may, within ten working days of receipt of the preliminary opinion, make further submissions.

(2) (a) Where the Board, after the receipt of further submissions or after the lapse of time of such submissions, is of the opinion that the notified aid is compatible with these regulations, it shall issue its final opinion.

(b) The Board shall also notify the Commission of the proposed aid and provide all the necessary information on such aid in order to enable it to take a decision.

(3) (a) Where the Board, after such receipt or such lapse of time for further submissions, is of the opinion that the notified aid may not be compatible with these regulations, it shall request the provider of the proposed aid to make all the necessary additional detailed submissions concerning the said aid.

(b) The Board shall, on receiving all the necessary information, issue its final opinion within forty working days from receipt of last submissions and communicate its conclusions in writing to the provider of the proposed aid:

Provided that, where the provider of such aid, within one month, expressly so requests, the Board shall also notify the Commission of the proposed aid.

7. Where the Board becomes aware of non-notified aid, it shall start examining such aid without delay. Non-notified aid.

8. The Board may, after giving the provider of non-notified aid the opportunity to make its submissions, require the said provider to suspend such aid until the Board issues its opinion. Suspension of non-notified aid.

9. Unlawful aid shall be recovered by the provider of aid in line with article 14 of the Council Regulation. Recovery of unlawful aid.

10. Where the provider of aid fails to comply with the opinion of the Board, or with any provision of these regulations, the Board shall refer the matter to the Minister responsible for the provider of such aid. Non-compliance.

11. The provider of aid shall, not later than the first three months of each calendar year, supply the Board, on a prescribed form, with details of any aid granted during the immediately preceding year. Returns required by the Board.

SCHEDULE I**Regulation 5(3)****Notification of Aid**

Summary Information on Aid	
Information requested	<i>Explanatory remarks</i>
Name of Beneficiary of Aid.	<i>The name of the recipient or undertaking receiving the aid.</i>
Title of aid or aid scheme.	<i>The name of the aid or aid scheme - a precise indication of the rules and conditions of application should be given.</i>
Legal basis.	<i>The precise legal reference for the aid.</i>
Annual aid planned to be granted to the undertaking. In the case of existing aid, the annual aid granted.	<i>Amounts in local currency - the annual overall amount for all aid instruments.</i>
Maximum aid intensity.	<i>The maximum aid amount to be granted.</i>
Date of implementation.	<i>The date from which the aid will be/has been granted.</i>
Duration and termination of the aid or aid scheme.	<i>The duration and the date (year and month) until when the aid will be granted.</i>
Objective of aid.	<i>The objectives for which the aid will be/has been granted.</i>