L.N. 94 of 2005

UTILITIES AND SERVICES (REGULATION OF CERTAIN WORKS) ACT (CAP. 81)

MALTA TRANSPORT AUTHORITY ACT (CAP. 332)

Right of Way for Utilities and Services (Fees) Regulations, 2005

IN exercise of the powers conferred by article 11 of the Utilities and Services (Regulation of Certain Works) Act, and by article 32 of the Malta Transport Authority Act, the Minister for Urban Development and Roads has, after consultation with the Malta Transport Authority, made the following regulations:-

Title and commencement.

1. (1) The title of these regulations is the Right of Way for Utilities and Services (Fees) Regulations, 2005.

(2) These regulations shall be deemed to have come into force on the 1st October, 2004.

Interpretation.

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

"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 Malta Transport Authority established under the Malta Transport Authority Act;

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

Cap. 363.

"operator" means a person authorized to provide electronic communications services under the Electronic Communications (Regulation) Act and who has in place any apparatus in, on or over roads in a minimum of fifty different localities within Malta;

Cap. 399.

"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 Malta Transport Authority Act.

Payment of annual fee.

3. (1) Any 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 one hundred and twenty thousand Maltese liri.

(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) (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 12 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.

(4) 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.

(5) 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.

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

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 12ċ – *Price 12c*