L.N. 133 of 2004

COMMISSIONERS FOR JUSTICE ACT (CAP. 291)

Local Tribunals (Delivery of Summons) Regulations, 2004

BY virtue of the powers conferred by articles 6 and 13 of the Commissioners for Justice Act, the Minister for Justice and Home Affairs has made the following regulations:

Title.

1. The title of these regulations is the Local Tribunals (Delivery of Summons) Regulations, 2004.

Definitions.

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

'household' includes, any person who at the time of delivery of summons, lives, even though temporarily, at the particular last registered address or postal address;

'judicial act' means any act made in writing in terms of the provisions of the Commissioner for Justice Act or regulations made under the provisions of the same Act and includes summons and subpoenas;

'last registered address' means:

(i) in relation to a person appearing on the last issued Electoral Register, the address shown for such person; and in relation to persons not appearing on the last issued Electoral Register, on the address shown for such persons on the last Electoral Register where his name is shown;

(ii) in relation to a body corporate having distinct legal personality,

(a) the address of the registered office shown on the registration of that body corporate with any state body or authority in Malta with which it is obliged, under any law, to be registered in order to function; or

(b) if there is no obligation to register, the address of the main office given on the voluntary registration by such body corporate with any state body or authority.

'local wardens' means any person duly licensed in accordance with article 14 of the Private Guards and Local Wardens Act; Cap. 389.

'officer' means local wardens, officers of the Post Office, Police Officers, and any other body or persons entrusted with the service of judicial acts by virtue of the Commissioners for Justice Act or any other regulations made under the provisions of this same Act, or any other law;

'officers of the Post Office' means post-officers duly employed in the business of the Post Office,

'place of work' means any place where the person works, whether as employer, employee or service provider, whether full-time or part-time, whether for any remunerative consideration or otherwise on a voluntary basis;

'place of business' means the business address from where a main business is conducted, and this includes but is not limited to, the address or addresses from where the administration and/or the management and/or the main dealings of the business are conducted;

'postal address' means:

(i) in relation to a natural person, the address where the person usually receives his mail, or to such other place that may have been indicated by the person to the officers of the Post Office, and

(ii) in relation to a body corporate having distinct legal personality, the last registered address;

'service' means any service whether such service is given on a permanent basis or whether it is given on a temporary basis;

'statement' means the declaration made by the officer charged with the notification of judicial acts, which declaration must be drawn up on the certificate of notification by the officer charged with the notification, which certificate must be completed in the form prescribed in Schedule 1 to these regulations.

'summons' means an order in writing issued in accordance with sub-articles (3) and (4) of article 5 of the Commissioners for Justice Act;

'subpoena' means a witness summons whereby a person is called upon to give evidence before a Local Tribunal, and such subpoena shall contain an order to appear at a stated place and time for the purpose of giving evidence before the Local Tribunal.

Service.

3. (1) Notification of a summons shall be effected by the delivery of the summons:

(a) at any place in Malta or Gozo personally to the person on whom the summons is to be served, or

(b) by leaving such summons at the postal address or last registered address of such person, or

(c) by leaving such summons at the place of business or place of work of such person:

Provided that notification in terms of subparagraph (b) shall only be valid if the summons is left with some member of his family or household, or with a person giving him a service in that household:

Provided also that notification in terms of subparagraph (c) shall only be valid if the summons is left with some person in his service or employment, or his attorney, or person authorised to receive his mail:

(Provided further that it shall not be lawful to leave such summons with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service, and that a person shall be presumed to be able to give evidence unless the contrary is proven.

(2) No objection may be raised on the ground of irregularity of the notification for any of the reasons stated in the above provisos if it results that the summons has actually reached the person to be served therewith or if the person appears before the Tribunal.

Notification to juridical person.

4. In the case of a body having a distinct legal personality, notification on such body shall be effected by leaving the summons-

(a) at its place of business, or postal address or last registered address with any of the persons vested with the legal or judicial representation thereof, or with any company secretary, or with any other person authorised in writing by such body to receive such summons, or with any person in its service or employment; or

(b) with any of the persons vested with the legal or judicial representation thereof, with any company secretary or with any other person authorised in writing by such body to receive such summons in the manner provided for in regulation 3 above.

Persons on board vessels, etc.

5. In the case of persons on board ships, other vessels or aircrafts, or members of the crew having no place of residence in Malta, notification may be effected by delivering such summons to the master or captain of the ship, vessel or aircraft or to any other person acting in their behalf or, in the absence of such persons, on the agent of the ship or other vessel, as the case may be, or in the absence of such persons and agent, on curators appointed by the court in terms of article 929 of the Code of Organization and Civil Procedure. Cap. 12.

Refusal to accept notification.

6. Where a person to whom a judicial act is addressed, or a person who is obliged to accept notification on behalf of the person to whom the judicial act is addressed, refuses to receive it personally from an officer charged with the notification of the judicial act, such officer shall leave the judicial act as near as reasonably possible to the person who refuses to accept the judicial act and the person to whom the judicial act is addressed shall be deemed regularly notified on the day and time of the refusal of notification.

When notification cannot be effected.

7. (1) (a) In the event that with the second attempt to notify the person, notification of the judicial act cannot be effected in terms of regulations 3 and 4 above, the officer charged with the notification shall leave the summons at the last registered address or affix it to the door of that last registered address:

Provided that the officer may not leave the summons at the last registered address or affix it to the door of that last registered address unless the second attempt has been carried out the next following day or after the lapse of any longer period.

(b) Moreover abstracts of the judicial acts shall be published once in the Government Gazette or one daily newspaper, which abstracts shall contain the name and surname of the offender, the identity card number of the offender, the respective Local Tribunal where the sitting is going to be held, the sitting date and time, and the regulation breached.

(c) However, if the last registered address is not known, it shall suffice and a person shall be deemed to be notified, if abstracts of the judicial act are published in accordance with paragraph (b) hereof.

(2) The officer who effects notification in terms of regulation 7(1)(a) and (b) shall draw up a certificate of service in terms of regulation 12.

(3) Copies of the abstracts published as required by the proviso to regulation 7(1)(b) above shall be exhibited before the Local Tribunal by the Prosecuting Officer and such fact shall be noted down in the Local Tribunal proceedings.

(4) Notification effected in terms of sub-regulation (1) hereof shall, in all cases, be deemed to have been made three days following the publication.

Persons present in Malta.

8. Regulation 7 shall also apply when notification has not been effected and it appears to the officer charged with the notification that one of the persons mentioned in regulation 4 above is present in Malta.

Notification of subpoenas.

9. (1) Notification of subpoenas shall be carried out in accordance with 3 to 5 above and regulation 10 hereunder:

Provided that if a person to whom a subpoena is addressed, or a person who is obliged to accept notification on behalf of the person to whom the subpoena is addressed, refuses to receive it personally from an officer charged with the notification of the summons, such officer shall leave the subpoena as near as reasonably possible to the person who refuses to accept the subpoena and such person may be found guilty of contempt.

(2) The officer charged with the notification shall fill in the certificate of notification in accordance with regulation 12 hereunder.

Service to be effected by Local Wardens.

10. For the purpose of these regulations, service of all the judicial acts filed or issued by the Local Council or Local Tribunal shall be carried out by Local Wardens, and, or by officers of the Post Office, and, or by Police Officers, and, or any other body or persons entrusted with such service by virtue of the Commissioners for Justice Act as contained under Schedule 1 of these regulations or any other regulations made under the provisions of this same Act, or any other law:

Provided that precautionary and executive warrants shall only be served or executed by officers of the courts and by Police Officers.

Times of notification.

11. Notification of judicial acts shall be executed between seven o'clock in the morning and seven o'clock in the evening, between Monday and Saturday both days inclusive, excluding public holidays.

Nevertheless where the urgency of the case does not admit of any delay the Commissioner may order the notification to be made at any other time or day.

Authorised server.

12. (1) The Minister may appoint an authorised server for the purpose of carrying out duties in or connected with the delivery of summons and, or other judicial acts, which duties shall be carried out in accordance with the conditions listed in the authorisation appointing the authorised server therewith.

(2) The Minister shall verify that the person who is to be appointed as an authorised server and any person who is employed with the authorised server and who has the effective control of the services to be provided by the person who is to be appointed as the authorised server:

(a) has not been convicted in Malta or elsewhere of any crime of wilful homicide or of wilful grievous bodily harm or any crime against property aggravated by an amount exceeding one thousand liri or by violence or any crime against public trust or any other serious crime; or

(b) has not been declared bankrupt or his financial position is precarious or otherwise renders the applicant unsuitable; or

(c) has not been discharged from the Police or armed forces or the prison services because of any offence or other misbehaviour; or

(d) is not a public officer other than one who belongs to a grade or category as may be prescribed by the Minister, or a member of the Police, or armed forces, or the prison services; or

(e) has not been convicted in Malta or elsewhere of a crime against the person or against property and the application is made within five years from the commission of the crime.

(3) No person shall operate, act or offer his services as an authorised server, unless such person is authorised in accordance with the provisions of these regulations. Nor may such person employ, engage or permit the use of the service of a server unless such service is provided

by a qualified server. For the purpose of these regulations, a server shall mean an individual whose services are rendered in the provision of authorised server services.

(4) It shall not be lawful to employ, engage or permit the use of the service of a server unless the server is operating through the authorised server duly authorised in accordance with these regulations.

Certificate of service.

13. The officer charged with the notification of the summons shall, draw up a certificate of notification stating the name and surname of the person on whom service was effected and, if the summons was not served directly on the person on whom service was to be effected, the name and the surname of the person to whom the summons was delivered. The officer shall also note down the place where the summons was served, date and time when the summons was served:

Provided that if the person refuses to accept the summons in terms of regulation 4 above the officer shall, also note down the fact together with the circumstances of such refusal, on the certificate of notification:

Provided that, if notification is effected in terms of regulation 7(1)(b) it shall be sufficient if the officer, on the certificate of notification, states and confirms the place, day and time he attempted notification:

Provided also that if the judicial act is delivered, in respect of a person at one of the places referred to in regulation 3(b) above and, in respect of a body corporate or incorporate at one of the places referred to in regulation 4(a) or (b) above, the person to whom the summons was delivered refuses to identify himself, and the officer charged with the service is satisfied that the person who refuses to receive and/or identify himself is of age and of sound mind, it shall be sufficient if, on the certificate of notification, the officer notes down the facts of the case, the date and time when notification was effected and the place where notification was effected. Nevertheless, for the purpose of this regulation, delivery in terms of regulation 4(b) shall be limited to the procedure stipulated in regulation 3(b).

The officer charged with the notification of the summons may also, on the certificate of notification, note down any other relevant remarks.

Officer charged with service.

14. The officer charged with the service shall draw up the certificate of notification using the form prescribed in Schedule 1.

Certificate deemed proof of own contents.

15. The certificate of notification shall be deemed to be proof of its own contents unless otherwise proven by any party in the proceedings and such proof provided by the contending party appears justified *prima facie* to the adjudicator of the Tribunal or of the Court.

These regulations not inconsistent with other laws.

16. Nothing contained in these regulations shall be construed to be inconsistent with the provisions of the Commissioners for Justice Act or the Criminal Code.

Repeal of L.N. 66 of 1995.

17. The Commissioners for Justice (Service by Post) Rules, 1995 are hereby being repealed.

SCHEDULE 1

QUDDIEM

Data: 05/Feb/2004 Seduta Mosta 17/Mar/2004 16.30 Kontrav Nru:901-98177-9 Nru 9434 Tahrika 2

Innotifika lil: Mario Farrugia, Fredlin, 151 Triq Ħamri, Naxxar.

MQASSMA
Isem u Kunjom tar-riċevitur Data u Ħin Post fejn Tqassmet (jekk differenti milli jidher fuq)

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Firma ta' l-Uffiċjal_____ Data _____

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IRRIFJUTATA
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Rimarki Oħra _____

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