L.N. 103 of 2002

FINANCIAL ADMINISTRATION AND AUDIT ACT

(CAP. 174)

BUSINESS PROMOTION ACT
(CAP. 325)

State Aid Monitoring Regulations, 2002.

IN exercise of the powers conferred upon him by sub-article (1) of article 4 of the Financial Administration and Audit Act, the Minister of Finance, and in exercise of the powers conferred upon him by article 59 of the Business Promotion Act, the Minister for Economic Services, have made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the State Aid Monitoring Regulations, 2002.

(2) Regulation 9(2), regulation 10 and regulation 12, shall come into force on such date as the Minister of Finance and the Minister for Economic Services may by notice in the Gazette establish and different dates may be so established for each of the said regulations.

Interpretation.

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

Cap. 325.

"Act' means the Business Promotion Act;

"Board" means the State Aid Monitoring Board established under Article 57 of the Act;

"existing State aid" means all State aid whether individual aid or aid under a scheme which existed prior to the entry into force of these regulations and was put into effect before, and is still applicable after the entry into force of these regulations, and in the case of aid under a scheme, includes such aid which may be due after such entry into force under a scheme put into effect before such entry into force;

"Gazette" means the Government Gazette;

"interested party" means any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the recipient of the State aid, competing undertakings and trade associations;

"new State aid" means all State aid, that is to say, aid schemes and individual aid granted or intended to be granted after the coming into force of these regulations and which is not existing aid, and includes any existing State aid modified after such coming into force;

"non-notified State aid" means any State aid granted without being notified in accordance with regulation 5 after these regulations have come into force, or any new State aid granted prior to the issue of the Board's opinion;

"provider of State 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 State aid, as well as any other bodies authorized by the State to grant State aid;

"recipient of State aid" means any individual or undertaking carrying an economic activity granted State aid;

"State aid" includes any individual State aid whether under a scheme or otherwise, as well as State aid schemes granted or operated by the provider of State aid, in any form whatsoever, which, directly or indirectly, results in an economic advantage or benefit which would not have been received by the recipient of such aid under normal market conditions;

"State aid scheme" means any scheme according to which, on the happening of a predetermined occurrence, and without further implementing measures to bring the scheme into effect, individual State aid awards may be made or benefits may be granted to undertakings as defined in such scheme, as well as any scheme under which individual aid or benefits may be granted to undertakings belonging to such class or category as defined in the scheme, irrespective of the happening of any particular occurrence or of the existence of any specific project.

Conditions for the granting of state aid.

3. State aid that distorts or threatens to distort competition within the relevant market, by favouring certain undertakings or the production of certain goods or the provision of certain services shall be prohibited:

Provided that it shall not be prohibited to grant such State aid in the following cases:

(a) where aid, having a social character, is granted to individual consumers without discrimination regarding the type of product;

(b) where aid is aimed at covering losses caused by natural disasters or exceptional occurrences:

Provided further that such State 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 State 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 state aid.

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

(2) The provider of new State aid shall furnish the Board with all the necessary information required by the 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 State aid and shall, within sixty days from receipt of all information requested by it, issue to the provider of State aid or any interested party a preliminary opinion regarding the notified aid. The provider of State aid as well as any interested party may, within thirty days of receipt of the preliminary opinion, make further submissions.

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

(3) 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 State aid to make all the necessary additional detailed submissions concerning the said aid.

(4) The Board shall, on receiving all the necessary information, issue its final opinion within sixty days from receipt of last submissions and communicate its conclusion in writing to the provider of State aid and any interested party.

Standstill clause.

7. State aid notifiable pursuant to regulation 5 shall not be put into effect before the Board has issued its final opinion regarding such aid pursuant to regulation 6(4) or where the Board has issued a negative opinion.

Non-notified aid.

8. (1) Where the Board becomes aware of non-notified State aid, it shall start examining such aid without delay.

(2) Non-notified State aid shall be examined by the Board in accordance with the procedure established in regulation 6.

Suspension of non-notified state ais.

9. (1) The Board may, after giving the provider of State aid the opportunity to make its submissions, require the said provider State to suspend the non-notified State aid until the Board issues its opinion.

Suspension and provisional recovery of non-notified state aid.

(2) The Board may, after giving the provider of State aid the opportunity to make submissions, require the provider of State recovery of aid to suspend and provisionally recover the non-notified State aid until the Board issues its opinion, if the following criteria are fulfilled:

(a) there is no doubt about the aid character of the measure concerned; and

(b) there is an urgency to act; and

(c) there is a serious risk of substantial and irreparable damage to competing undertakings.

Recovery of non-notified state aid.

10. (1) Where the Board has indicated in its opinion that non-notified State aid is not compatible with regulation 3, the provider of State aid shall take all the necessary measures to recover such aid from the recipient.

(2) Such State aid, together with interest thereon, shall be recovered in accordance with regulations prescribed by the Minister responsible for finance.

Examination of existing state aid.

11. (1) Within three months from entry into force of these regulations the provider of State aid shall submit to the Board all details of any existing State aid on a return in the form in accordance with Schedule I of these regulations.

(2) Where the Board, following the information received, cannot, due to insufficient information give its opinion regarding the existing State aid, it shall request the provider of such State aid to make within a reasonable time all the necessary additional detailed submissions concerning the said aid:

Provided that submissions received regarding any of the existing State aid listed in Schedule II of these regulations shall not be subject to examination by the Board for the purpose of regulation 12 and regulation 14.

(3) The Board shall examine the information received regarding the existing State aid and shall within sixty days from receipt of these submissions issue its opinion regarding the compatibility of such State aid with regulation 3.

Board's opinion regarding existing state aid.

12. (1) Where the Board finds that the existing State aid is incompatible with regulation 3, it shall in its opinion:

(a) indicate, where necessary, that modifications be made; or

(b) require that the existing State aid be discontinued.

(2) Where the Board is of the opinion that the existing State aid should be modified, such State aid shall, where the Board deems it necessary, be temporarily suspended until the necessary modifications are made.

(3) Where the Board is of the opinion that the existing State aid should be discontinued, the provider of such State aid shall, on receipt of the Board's opinion, take all the necessary measures to discontinue the granting of the existing State aid.

Non-compliance.

13. Where the provider of State aid fails to comply with the opinion of the Board, the latter shall refer the matter to the Minister responsible for the provider of such State aid.

Publication of conclusions of Board's opinion.

14. The conclusions of the Board concerning its opinion on State aid shall be published in the Gazette.

Returns required by the Board.

15. The provider of State aid shall, not later than three months after the end of each calendar year, supply the Board, on a prescribed form, with details of any State aid granted during the immediately preceding year.

SCHEDULE I

Regulation 5(3) and regulation 11(1).

Notification of State Aid

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

SCHEDULE II

Regulation 11(2).

Existing State Aid not subject to regulation 12.

1. Agriculture and fisheries sectors,
2. Aid granted up to 31st October, 2000 under both the Business Promotion Act (CAP 325), formerly Industrial Development Act, and the Malta Freeport Act (CAP 334),
3. Shipbuilding and ship repair: Malta Drydocks Corporation and Malta Shipbuilding Company Limited,
4. Tourism: Tour Operator Support Scheme,
5. Transport sector,
6. Utilities: Enemalta Corporation and Water Services Corporation,
7. Government guarantees.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – 3, Pjazza Kastilja – *Published by the Department of Information – 3, Castille Place*
Mitbugh fl-Istamperija tal-Gvern – *Printed at the Government Printing Press*
Prezz 16c – *Price 16c*