L.N. 66 of 2003

CIVIL AVIATION ACT
(CAP. 232)

The Airport (Groundhandling Services) Regulations, 2003

IN exercise of the powers conferred by article 3 of the Civil Aviation Act, the Minister responsible for Transport and Communications has made the following regulations:-

Citation and commencement.

1. (1) The title of these Regulations is the Airport (Groundhandling Services) Regulations, 2003.

(2) The provisions of regulations 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 20 shall come into force on the 25th March 2003.

Interpretation.

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

"airport" means any area of land especially adapted for the landing, taking off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

"airport user" means any natural or legal person, responsible for the carriage of passengers, mail and, or freight by air, from or to the airport in question;

"airside services" means the following categories of groundhandling services:

(a) baggage handling;

(b) freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft;

(c) fuel and oil handling;

(d) ramp handling;

"Board" means the Groundhandling Services Appeals Board established under regulation 16;

"Committee" means the Airport Users' Committee established under regulation 5;

"Director" means the Director of Civil Aviation and, to the extent of the authority given, any person authorised in that behalf by the Director;

"groundhandling" means the services provided to airport users at the airport as described in the Schedule;

"managing body of the airport" means a body that has as its objective the administration and management of the airport infrastructure, and the co-ordination and control of the activities of the different operations present in the airport;

"Minister" means the Minister responsible for civil aviation, and includes, to the extent of the authority given, any officer authorised by him, in writing, to act in that behalf for any of the purposes of these regulations;

"self-handling" means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition airport users shall not, among themselves, be deemed to be third parties where -

(a) one holds a majority shareholding in the other; or

(b) a single body has a majority holding in each;

"supplier of groundhandling services" means any natural or legal person supplying third parties with one or more categories of groundhandling services.

Separation of accounts.

3. (1) Where the managing body of an airport, the airport user or the supplier of groundhandling services provides groundhandling services, they must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities in accordance with current commercial practice.

(2) A person who fails without reasonable excuse to comply with the requirements of subregulation (1) shall be guilty of an offence.

(3) The managing body of the airport shall not cause or permit its groundhandling activities to be subsidised from the revenue it derives from its role as airport authority.

Independent examiner.

4. (1) In any case where, pursuant to regulation 3, the managing body of the airport, an airport user, or a supplier of

groundhandling services is required to separate its accounts, the Director shall appoint in relation to that managing body, airport user or supplier a person to undertake the duties of independent examiner described in this regulation.

(2) The Director may by notice in writing on the independent examiner and on the person in relation to whom he has been appointed to examine, revoke an appointment made by him pursuant to subregulation (1).

(3) The independent examiner shall check that the required separation of accounts is carried out.

(4) The independent examiner appointed in relation to the managing body of the airport shall also check whether there are or have been any financial flows between the activity of the managing body as airport authority and its groundhandling activity.

(5) Within a period of fifteen months after his date of appointment and at least once a year thereafter, the independent examiner shall prepare a written statement containing the results of the checks he has carried out pursuant to subregulation (3) and, where he has been appointed in relation to the managing body of the airport, subregulation (4).

(6) The independent examiner shall send a copy of the statement prepared by him pursuant to subregulation (5) to the Director.

(7) The independent examiner shall be entitled to receive from the person in relation to whom he has been appointed a sum equal to any expense reasonably incurred by him in undertaking his duties of the independent examiner described in this regulation.

Airport Users' Committee.

5. (1) There shall be set up by the managing body of the airport a committee of representatives of airport users or organisations representing airport users, to be called the Airport Users' Committee, hereinafter referred to as "the Committee". The representatives shall be appointed by the Director and the statute and rules of procedure of the Committee shall be approved by the Director.

(2) All airport users shall have the right to be on this Committee or, if they so wish, be represented on it by an organisation appointed to that effect.

(3) The Committee shall meet at least once a year with the managing body of the airport and the persons providing

groundhandling services at the airport to consult on the application of the provisions of these regulations. Such consultation shall cover, *inter alia*, the organisation of the provision of those groundhandling services supplied at the airport.

Groundhandling for third parties.

6. (1) The managing body of the airport shall ensure free access by suppliers of groundhandling services established in Malta to the market for the provision of groundhandling services to third parties:

Provided that not more than two suppliers are authorised to provide each category of airside services and at least one of the authorised suppliers may not be directly or indirectly controlled by:

- the managing body of the airport,

- any airport user who has carried more than 25% of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,

- a body controlling or controlled directly or indirectly by the managing body or any such user:

Provided further that the managing body of the airport, either directly or indirectly, may also provide airside services in addition to the other two authorised suppliers.

(2) The suppliers of groundhandling services mentioned in subregulation (1), shall have at least fifty-one percent shareholding held by Maltese nationals unless the Government of Malta directly or indirectly holds any shares therein.

Self-handling.

7. (1) An airport user shall have the right to self-handle in respect of groundhandling services except those defined under airside services. In relation to one or more airside services, the Director may, at his discretion or upon the application of the managing body of the airport, reserve the right to self handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

(2) The selection of the self-handling airport users made by the managing body of the airport on the basis of subregulation (1) shall be valid for not more than seven years.

Selection of suppliers.

8. (1) The managing body of the airport shall use a selection procedure for suppliers authorised to provide groundhandling services to third parties:

Provided that the managing body -

(a) does not provide similar groundhandling services; and

(b) has no direct or indirect control over any undertaking which provides such services; and

(c) has no involvement in any such undertaking.

(2) The managing body of the airport shall choose a supplier of groundhandling services after consulting the Committee and on the basis of the following principles:

(a) any standard conditions or technical specifications which are to be met by suppliers of groundhandling services shall be established after consultation with the Committee;

(b) the selection criteria must be relevant, objective, transparent and non-discriminatory;

(c) an invitation to tender shall be published in the media to which any interested supplier of groundhandling services may reply.

(3) A supplier of groundhandling services shall provide such services for a maximum of seven years after being selected. If such a supplier of groundhandling services ceases his activity before the end of the period for which he has been selected, he shall be replaced on the basis of the same selection procedure mentioned in subregulation (2).

(4) In the event that the managing body of the airport decides to itself provide groundhandling services:

(a) it may do so without being subject to the selection procedures in subregulation (2). This shall also apply to the supplier of groundhandling services which is controlled directly or indirectly by the managing body of the airport;

(b) the Director shall carry out the selection procedure in subregulation (2) after consulting the Committee and the managing body of the airport.

(5) The managing body of the airport shall inform the Committee and the Director of decisions taken under this regulation.

9. The managing body of the airport shall ensure that: Access to installations.

(a) the suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities;

(b) any conditions on such access that may be imposed by the managing body of the airport shall be relevant, objective, transparent and non-discriminatory;

(c) space available for groundhandling at the airport is divided among the various suppliers of groundhandling services and self-handling airport users, to the extent necessary for the exercise of their rights and to allow effective and fair competition on the basis of relevant, objective, transparent and non-discriminatory rules and criteria;

(d) any fee charged for such access is determined according to relevant, objective, transparent and non-discriminatory criteria.

Approval of the Director

10. (1) The Director may require that the groundhandling activity of a supplier of groundhandling services or a self-handling user obtain his approval. When granting such approval the Director shall take into account the financial fitness and sufficient insurance cover, the security and safety of installation, of aircraft, of equipment and of persons, as well as the protection and compliance with the relevant industrial legislation.

(2) In applying the criteria in subregulation (1) the following principles shall be applied:

(a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;

(b) they must relate to the intended objective;

(c) they may not, in practice, reduce market access freedom to self-handle to a level below that provided in these regulations.

(3) The criteria referred to in subregulation (1) should be made public and the supplier of groundhandling services or self-handling airport user shall be informed in advance of the procedure for obtaining approval.

(4) The Director may withhold or withdraw an approval issued by him to the supplier of groundhandling services or self-handling airport user if they do not meet, for reasons of their own doing, the

criteria set out in subregulation (1). When withholding or withdrawing an approval, the Director shall communicate the grounds for such action to the supplier or user concerned and to the managing body of the airport.

Furnishing of information, etc., to the Director.

11. (1) The Director may by notice in writing served on any person require him to furnish to the Director, in such form and at such time as may be specified in the notice, information of such descriptions as may be so specified which relates to the accounts of any person to whom the requirements of regulation 3 apply.

(2) Any person who fails without reasonable excuse to comply with the requirements of a notice served upon him under subregulation (1) shall be guilty of an offence.

(3) Any person who, in purported compliance with the requirements of any such notice, knowingly or recklessly furnishes information which is false in a material manner shall be guilty of an offence.

Restriction on disclosure of information.

12. (1) Subject to subregulation (2), no information with respect to any particular business which has been obtained under or by virtue of regulation 11 shall, so long as the business continues to be carried on, be disclosed without the consent of the person for the time being carrying it on.

(2) Subregulation (1) does not apply to any disclosure of information, which is made -

(a) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings;

(b) for the purpose of any civil proceedings brought under or by virtue of these regulations.

Prohibition of suppliers and airport users.

13. (1) Where, on an application made to him by the managing body of an airport, the Director is satisfied that a supplier of groundhandling services or an airport user has failed to comply with a rule imposed upon him to ensure the proper functioning of the airport, and that rule -

(a) is applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users; and

(b) does not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in these regulations,

the Director may decide to prohibit, for such period as he thinks fit, the supplier or user from supplying groundhandling services or, as the case may be, self-handling.

(2) A decision made pursuant to subregulation (1) may apply to one or more categories of groundhandling services.

(3) A supplier of groundhandling services or an airport user in relation to whom a decision has been made pursuant to subregulation (1) shall not supply groundhandling services or, as the case may be, self-handle in contravention of that decision.

(4) In this regulation "rule" includes an obligation contained in a law or in a regulation.

Centralised infrastructures.

14. (1) On an application from the managing body of an airport, the Director may decide to reserve for the managing body of the airport or for another person the management of the centralised infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow for division or duplication, such as baggage sorting, de-icing, water purification and fuel distribution and storage systems.

(2) Where the management of a centralised infrastructure has been reserved by the Director pursuant to subregulation (1), a supplier of groundhandling services or a self-handling airport user at that airport shall not use any apparatus, equipment, system or other thing for the supply of the groundhandling services concerned as an alternative to that centralised infrastructure.

(3) The person for whom the management of a centralised infrastructure has been reserved pursuant to subregulation (1) shall ensure that the management of that infrastructure is transparent, objective and non-discriminatory and, in particular, that it does not hinder the access of suppliers of groundhandling services or self-handling airport users within the limits provided for in these regulations.

(4) On his own proposal or on an application made to him by -

(a) the managing body of the airport concerned,

(b) the person for whom the management of the centralised infrastructures in question has been reserved, where that person is not the managing body of the airport concerned,

(c) a supplier of groundhandling services, or

(d) an airport user,

the Director may vary from time to time or revoke a decision made pursuant to subregulation (1).

Reciprocity.

15. (1) Where it appears to the Minister that another country, with respect to access to the groundhandling or self-handling market -

(a) does not, *de jure* or *de facto*, grant suppliers of groundhandling services and self-handling airport users from Malta treatment comparable to that granted by Malta to suppliers of groundhandling services and self-handling airport users from that country; or

(b) grants suppliers of groundhandling services and self-handling airport users from that country or from other countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from Malta,

the Minister may wholly or partially suspend the obligations arising from these regulations in respect of suppliers of groundhandling services and airport users from that country.

Groundhandling Services Appeals Board.

16. (1) There shall be a Groundhandling Services Appeals Board, consisting of three members, of whom one, who shall be the chairperson, shall be a person who has practised as an advocate for not less than seven years.

(2) The members of the Board shall be appointed by the Minister for a period indicated in their letter of appointment and may be so appointed for further periods as the Minister may deem appropriate.

(3) A member of the Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with article 734 of the Code of Organisation and Civil Procedure. In any such case the Minister shall appoint a person, having the qualifications of the member challenged or abstaining, to sit as a member of the Board in substitution of the said member.

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(4) The Minister shall also designate a person to serve as Secretary to the Board and such person shall serve in such capacity in accordance with ethical standards which form part of public service values.

Appeals.

17. (1) An appeal shall lie to the Groundhandling Services

Appeals Board against any decision or authorisation given under regulations 7, 8, 9, 10 and 13.

(2) The right to appeal shall be competent to any person aggrieved by the decision or authorisation.

(3) An appeal to the Board may be filed on any of the following grounds:

(a) that a material error as to the facts has been made;

(b) that there was a material procedural error;

(c) that an error of law has been made;

(d) that there was some material illegality, including unreasonableness or lack of proportionality.

(4) The Board shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of commercial or security confidentiality, the names of the persons involved and any other information.

(5) In determining an appeal under this regulation the Board may -

(a) dismiss the appeal; or

(b) annul the decision or authorisation,

and where the Board annuls the decision or authorisation it may refer the matter to the managing body of the airport or the Director, as the case may be, with a direction to reconsider it and reach a decision or authorisation consistent with the findings of the Board.

(6) The effect of a decision or authorisation to which an appeal relates shall not, except where the Board or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

Powers and procedure of the Board.

18. (1) The Board shall be competent to hear and decide any appeal made to it in accordance with the provisions of these regulations and, subject to regulation 19, the decisions of the Board shall be final and binding.

(2) For the exercise of its functions, the Board may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer

the oath. The Board may also appoint experts to advise the Board on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Board shall have the same powers as are competent to the First Hall, Civil Court, according to law.

(4) The Board shall regulate its own procedure.

Appeal to the Court of Appeal.

19. (1) Any party to an appeal to the Board who feels aggrieved by a decision of the Board may, on a question of law, appeal to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that Court within thirty days from the date on which that decision has been notified to him.

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(2) The fees contained in Schedule A to the Code of Organisation and Civil Procedure shall apply to the filing of judicial acts in connection with appeals under this regulation.

(3) The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court governing appeals to the Court of Appeal under this regulation.

Penalties.

20. (1) A person who commits an offence under regulation 3(2) and regulation 11(2) shall be liable, on conviction, to a fine (*multa*) not exceeding one thousand liri.

(2) A person who commits an offence under regulation 11(3) and regulation 13(3) shall be liable, on conviction, to a fine (*multa*) not exceeding one thousand liri or to imprisonment for a term not exceeding six months or both such fine and imprisonment.

SCHEDULE

(Regulation 2)

LIST OF GROUNDHANDLING SERVICES

1. Ground administration and supervision comprise:

1.1 representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;

1.2 load control, messaging and telecommunications;

1.3 handling, storage and administration of unit load devices;

1.4 any other supervision services before, during or after the flight and any other administrative service requested by the airport user.

2. Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.

3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

4. Freight and mail handling comprises:

4.1 for freight: physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

4.2 for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

5. Ramp handling comprises:

5.1 marshalling the aircraft on the ground at arrival and departure, unless provided by the air traffic service;

5.2 assistance to aircraft parking and provision of suitable devices, unless provided by the air traffic service;

5.3 communication between the aircraft and the air-side supplier of services, unless provided by the air traffic service;

5.4 the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and terminal, and baggage transport between the aircraft and the terminal;

5.5 the provision and operation of appropriate units for engine starting;

5.6 the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;

5.7 the transport, loading on to and unloading from the aircraft of food and beverages.

6. Aircraft services comprise:

6.1 the external and internal cleaning of the aircraft, and the toilet and water services;

6.2 the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;

6.3 the re-arrangement of the cabin with suitable cabin equipment, the storage of this equipment.

7. Fuel and oil handling comprises:

7.1 the organisation and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;

7.2 the replenishing of oil and other fluids.

8. Aircraft maintenance comprises:

8.1 routine services performed before flight;

8.2 non-routine services requested by the airport user;

8.3 the provision and administration of spare parts and suitable equipment;

8.4 the request for or reservation of a suitable parking and/or hangar space.

9. Flight operations and crew administration comprise:

9.1 preparation of the flight at the departure airport or at any other point;

9.2 in-flight assistance, including re-dispatching if needed;

9.3 post-flight activities;

9.4 crew administration.

10. Surface transport comprises:

10.1 the organisation and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;

10.2 any special transport requested by the airport user.

11. Catering services comprise:

11.1 liaison with suppliers and administrative management;

11.2 storage of food and beverages and of the equipment needed for their preparation;

11.3 cleaning of this equipment;

11.4 preparation and delivery of equipment as well as of bar and food supplies.