L.N. 299 of 2001

CIVIL AVIATION ACT
(CAP. 232)

Airport Economic Regulations, 2001

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:-

1. (1) The title of these regulations is the Airport Economic Regulations, 2001. Title and commencement.

(2) These regulations shall come into force on such date or dates as the Minister responsible for Transport and Communications may, by notice in the Gazette, appoint.

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

"aerodrome" shall have the same meaning as that assigned to it by article 2 of the Air Navigation Order; S.L.232.05

"agreed service levels" means minimum levels of service which the Airport operator is required to provide to users of the airport;

"air carrier" shall have the same meaning assigned to it in the Allocation of Slots at Airport Regulations, 2001;

"airport" shall have the same meaning as that assigned to it by article 2 of the Airports and Civil Aviation (Security) Act; Cap. 405.

"airport charges" means charges payable in respect of one or more of the following:

- landing and taking off of aircraft, (landing charges)

- use of aircraft parking areas and aprons (parking charges);

- charges which a passenger has to pay directly or indirectly to the Airport operator for the use of the air terminal at the time of arrival and departure;

- charges which a passenger has to pay directly or indirectly to the Airport operator for aviation security services in respect of personnel security screening and the security screening of the passenger`s hand and hold baggage;

"airport facility charges" means all those charges, not being airport charges;

"Airport operator", in relation to an airport and, or, an aerodrome, means the person for the time being having the management of that airport and, or, aerodrome;

"Minister" means the Minister responsible for Civil Aviation;

"rate of inflation" means the rate of inflation as determined by the Government of Malta and indicated as such in the Government Gazette.

Airport Charges Regulatory Board.

3. (1) The determination, review, regulation and, where necessary, the imposition of airport charges shall be the sole responsibility of the body established by this regulation.

(2) (a) There shall be established a board, to be known as the Airport Charges Regulatory Board, hereinafter referreed to as "the Board".

(b) The Board shall be chaired by a person of recognised standing and experience in the economic regulation of airports, and who shall be jointly appointed by the Minister and the Airport operator.

(c) The Chairman, who shall have a casting vote in the case of an equality of votes, shall hold office for a period not exceeding three years, which may be renewed for a further period or further periods of three years each.

(d) The Board shall be composed also of the following members:

(i) three representatives of the Airport operator;

(ii) a representative of the Department of Civil Aviation;

(iii) a representative of the largest carrier, as measured by number of passengers embarked and disembarked at Malta in the previous twelve months; and

(iv) a representative of air carriers, other than that referred to in sub-paragraph (iii), operating to and from Malta.

(3) (a) The Board shall be deemed to be composed

notwithstanding that one or more of the above representatives are not nominated.

(b) The quorum for meetings of the Board shall be of four individuals and the Chairman.

(4) (a) Airport charges for the period to ending on the 31st March, 2007, may be increased on the 1st April of each year by no more than the rate of inflation in the preceding calendar year minus 0.5% (hereinafter referred to as "the formula"). Thereafter airport charges are to be permitted to increase or required to decrease on the 1st April of every fifth year and shall remain in place for the following five year period by a percentage amount equal to the previous period's rate of inflation as adjusted in accordance with paragraph (b).

(b) Every five years, the Board shall set a percentage which must be added to or deducted from the rate of inflation each year to calculate the maximum increase or minimum decrease by which airport charges must be changed for the following five year period. In determining the percentage, the Board must have regard to the criteria established in regulation 4.

(c) Every five years, the Board may also, in consultation with the Airport operator, amend, remove or add agreed service levels which will apply during the next review period.

(5) The Airport operator may at any time request the Board to review and, if necessary, alter the formula by which airport charges are set if unexpected economic circumstances warrant such a review. In carrying out this review, the Board shall have regard to the considerations set out in regulation 4.

(6) In addition to airport charges determined by the formula, the Airport operator shall be entitled to recover from users, whether through increases in airport charges or otherwise, the increase in costs or loss of revenue resulting from exceptional or unforeseeable events including, but not limited to, discriminatory changes in taxation or similar levies, Government measures which impose additional costs in respect of aviation security or the protection of the environment.

Functions of the Board.

4. (1) The Board shall, in the execution of its functions, seek to promote the following:

(a) the interests of airport users, and the Maltese economy; and

(b) the efficient, economic and profitable operation of

the airport and the aerodrome;

(2) In considering the interests of users and of the Maltese economy, the Board shall seek to balance the application of the following principles:

(a) charges shall be reasonably related to costs, including depreciation and a return on capital employed;

(b) the Airport operator is to be encouraged to invest in airport facilities to meet demand;

(c) charges should be comparable to those levied at other airports which serve areas competing with Malta as a tourist destination;

(d) the achievement of service standards applicable internationally in the industry.

(3) In considering the need to promote the efficient and profitable operation of the airport, the Board shall seek to balance the application of the following principles:

(a) allow the Airport operator to benefit from any increase in aviation and non-aviation revenues and improvements in efficiency by permitting the Airport operator to enjoy above-average returns on capital employed by reference to the industry;

(b) allow the Airport operator experience below-average returns on capital employed that may result in the course of normal commercial operations of an airport while ensuring that the Airport operator has the minimum financial means to provide users with a safe and reliable service:

For the purpose of this paragraph, the Board shall normally permit levels of return on capital, taking into account aviation and non-aviation revenues earned and the value of related assets located at the airport and aerodrome, within a range of one-half to one and a half times of the risk adjusted return on capital for the industry;

(c) any activities not existing on the entry into force of these regulations, including but not limited to, retail outlets, shall not be included in the calculations reckoned pursuant to those stipulated in paragraph (b). The Airport operator's revenues, costs and assets associated with such activities will not be included in the calculations of the Airport operator's

return on capital employed.

Review. **5.** The Airport operator and the Board shall agree the detailed process for conducting each review, including a timetable for completion of the review, which will -

(a) enable careful consideration of the criteria specified in regulation 4;

(b) permit users and the Airport operator to prepare for the effects of the conclusions of any review; and

(c) limit the impact on the resources of the Airport operator.

Costs. **6.** In conducting its review, the Board will be permitted to charge the Airport operator its reasonable costs, including the costs of retaining appropriate consultants and experts necessary to carry out its functions in a proper manner.

Airport facility charges. **7.** Airport facility charges shall be determined by the Airport operator.

Investigation. **8.** (1) Upon receiving a complaint, or if the Minister has reasonable grounds for suspecting that the Board is failing to comply, or has failed to comply, with these regulations, the Minister may, within one month from the receipt of the complaint or from the date on which the airport charges have been determined, conduct an investigation in terms of subregulations (2) and (3).

(2) The investigation shall be conducted in an independent and transparent fashion with the assistance of individuals of recognized standing in the economic regulation of airports.

(3) The investigation shall be concluded by a reasoned written report.

(4) The recommendations contained in the above-mentioned report shall be accepted or rejected by the Minister who will then determine the appropriate course of action.

Offences. **9.** (1) Any person who fails to provide the Board with the relevant information requested within the time specified in a written notice shall be guilty of an offence.

(2) Any person who knowingly provides false information to the Board shall be guilty of an offence.

Penalties. **10.** (1) A person who commits an offence under regulation

9(1) shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri, and, in the case of a second or subsequent conviction, to a fine (*multa*) not exceeding one thousand liri.

(2) A person who commits an offence under regulation 9(2) 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 to both such fine and imprisonment.