VERŻJONI ELETTRONIKA

L.N. 385 of 2015

AUTHORITY FOR TRANSPORT IN MALTA ACT (CAP. 499)

Licensing of Railway Undertakings Regulations, 2015

IN exercise of the powers conferred by article 43 of the Authority for Transport in Malta Act, the Minister for Transport and Infrastructure, after consultation with the Authority for Transport in Malta, has made the following regulations:-

Citation, purpose and commencement.

1. (1) The title of these regulations is the Licensing of Railway Undertakings Regulations, 2015.

(2) These regulations implement the provisions of Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast).

(3) These regulations shall come into force on such date as the Minister may by notice in the Gazette establish, and different dates may be so established for different provisions of these regulations.

Scope and applicability.

2. (1) These regulations concern the criteria applicable to the issuing, renewal, amendment, suspension and revocation of licences required for the provision of rail transport services by railway undertakings which are or will be established in the European Union.

(2) The following are excluded from the scope of these regulations:

(a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;

(b) undertakings which only operate urban or suburban rail passenger services;

(c) undertakings which only operate regional rail freight services;

(d) undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations;

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(e) undertakings the business of which is limited to providing shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels.

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

"Act" means the Authority for Transport in Malta Act; Cap. 449.

"Authority" means the Authority for Transport in Malta established by the Act;

"licence" means an authorization issued by the Authority to an undertaking, by which its capacity to provide rail transport services as a railway undertaking is recognized. That capacity may be limited to the provision of specific types of services;

"Minister" means the Minister responsible for transport, and includes any person authorised by such Minister in that behalf;

"railway undertaking" means any public or private undertaking licensed according to these regulations, the principal business of which is to provide services for the transport of goods and, or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;

"regional services" means transport services operated to meet the transport needs of a region;

"urban and suburban services" means transport services whose principal purpose is to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas.

4. (1) A railway undertaking shall be entitled to apply for a licence in Malta if it is established in Malta. Licences.

(2) No railway undertaking shall be permitted to provide rail transport services covered by these regulations unless it has been granted the appropriate licence for the services to be provided.

(3) The Authority shall only issue a licence or extend the validity thereof if it is satisfied that the requirements of these regulations are fully complied with.

(4) A licence issued by the Authority in Malta shall be valid throughout the European Union:

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Provided that such licence shall not in itself entitle the holder to access the European Union's railway infrastructure.

Processing of applications.

5. (1) All procedures for the issuing, renewal, amendment, suspension, or revocation of licences shall be applied by the Authority in a transparent, public, and non-discriminatory manner in accordance with the Act and these regulations.

(2) A fee, the sum of which shall from time to time be established by the Minister in consultation with the Authority, shall be payable on every application for the issuing, renewal, or amendment of a licence.

(3) The Authority may approve or refuse an application for the issuing or renewal of or amendment to a licence provided that:

(a) on approving an application, the Authority may incorporate specific provisions governing the suspension or revocation of the licence in the licence itself; and

(b) on refusing an application, the Authority shall state the reasons for such refusal in clear and unequivocal terms.

(4) The Authority shall determine an application within a reasonable time not exceeding three months from the date of its receipt. Such time shall remain suspended until all the relevant information, notably the particulars referred to in the Schedule, is submitted.

(5) Decisions taken by the Authority shall be communicated to the railway undertaking without delay.

Validity.

6. A licence shall remain valid for as long as the railway undertaking remains in conformity with these regulations unless it is otherwise suspended or revoked.

Review.

7. Every licence issued by the Authority shall be subject to review every five years.

Requirements.

8. (1) The Authority shall not issue a licence unless it is satisfied that the applicant railway undertaking meets the requirements of good repute, financial fitness, and professional competence in terms of regulations 9 to 11, both inclusive, and that it is also covered by a valid and sufficient insurance policy in terms of regulation 12.

(2) Each applicant railway undertaking shall provide all relevant information required by the Authority in order to ascertain

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the applicant's conformity with these regulations.

Good repute.

9. The requirement of good repute shall be satisfied when the applicant railway undertaking and the persons in charge of its management provide the Authority with satisfactory evidence that:

(a) they have not been convicted of serious criminal offences including offences of a commercial nature;

(b) they have not been declared bankrupt and bankruptcy or similar proceedings have not been initiated against them;

(c) they have not been convicted of serious offences set out in specific legislation applicable to transport;

(d) they have not been convicted of serious or repeated failure to fulfil social or labour law obligations, including obligations under occupational safety and health legislation, and customs law obligations in case of a company seeking to operate cross-border freight transport subject to customs procedures.

Financial fitness.

10. (1) The requirement of financial fitness shall be satisfied when the applicant railway undertaking provides the Authority with satisfactory evidence that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months.

(2) For the purposes of sub-regulation (1), each applicant shall give at least the particulars listed in the Schedule.

Professional competence.

11. The requirement of professional competence shall be satisfied when the applicant railway undertaking provides the Authority with satisfactory evidence that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations which the railway undertaking may perform in terms of the licence granted to it by the Authority.

Insurance policy.

12. (1) A railway undertaking shall not be granted a licence unless it is adequately insured in accordance with national and international law.

(2) The insurance shall provide coverage for liabilities that may arise in the event of accidents, in particular in respect of passengers, luggage, freight, mail, and third parties.

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Duty to supervise, review, approve, suspend, revoke.

13. (1) If there is serious doubt whether a railway undertaking licensed by the Authority is in compliance with the requirements of these regulations, and in particular with those of regulation 8, the Authority may, at any time, check whether that railway undertaking is in fact in compliance with these regulations.

For the purposes of this regulation, the Authority may demand the submission of all documents, evidence or other proof it may require in order to ascertain that the railway undertaking is in conformity with these regulations.

The Authority shall also be entitled to access a railway undertaking's books, databases and premises in so far as such access is necessarily required for this purpose.

(2) Where the Authority is satisfied that a licensed railway undertaking can no longer meet the requirements of these regulations, and in particular those of regulation 8, it shall suspend or revoke the licence with immediate effect.

(3) Where the Authority is satisfied that there is serious doubt regarding compliance with the requirements laid down in these regulations on the part of a railway undertaking which has been licensed by a licensing authority in another Member State, it shall inform the latter authority without delay.

Temporary licence in case of non-compliance with requirement of financial fitness.

(4) Notwithstanding the provisions of sub-regulation (2), where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the Authority may grant a temporary licence pending the reorganization of the railway undertaking, provided that safety is not jeopardized.

A temporary licence shall not, however, be valid for more than six months after its date of issue.

For the purposes of this regulation, the Authority may require the assistance of other Member States' licensing authorities and of infrastructure managers responsible for railway infrastructure in terms of the Directive of the European Parliament and of the Council of 21 November 2012 in order to ensure that the provision of a temporary licence does not jeopardize railway safety.

(5) Where a railway undertaking has ceased operations for a period of six months or has not started operations six months after the grant of a licence, the Authority shall suspend the licence or require that the licence be resubmitted for approval:

Provided that railway undertakings may apply to the

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Authority for an extension of the period established in this sub-regulation. In this regard, the Authority shall only uphold such request if it is satisfied that such extension is necessary, regard being had to the specific nature of the services to be provided by the railway undertaking.

(6) In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the Authority may require that the licence be resubmitted for approval.

The railway undertaking in question may continue operations, unless the Authority decides that safety is jeopardized; in that event, the reasons for such a decision shall be given.

For the purposes of this regulation, the Authority may require the assistance of other Member States' licensing authorities and of infrastructure managers responsible for railway infrastructure in terms of the Directive of the European Parliament and of the Council of 21 November 2012 in order to ascertain whether allowing the railway undertaking to continue operations following the change affecting its legal situation may jeopardize railway safety.

(7) Where a railway undertaking intends to significantly change or extend its activities, its licence shall be resubmitted to the Authority for review.

(8) The Authority shall not permit a railway undertaking against which bankruptcy or similar proceedings are commenced to retain its licence unless it is convinced that there is realistic prospect of satisfactory financial restructuring within a reasonable period of time.

14. Upon issuing, renewing, amending, suspending, or revoking a licence, the Authority shall immediately inform the European Railway Agency accordingly in order that the European Railway Agency may inform the licensing authorities of other Member States forthwith. Duty to inform.

15. All decisions taken by the Authority under these regulations shall be subject to review by the Administrative Review Tribunal established by article 5 of the Administrative Justice Act. Right of appeal. Cap. 490.

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SCHEDULE

1. Financial fitness shall be verified by means of an undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. Detailed particulars must be provided, in particular on the following aspects:

(a) available funds, including the bank balance, pledged overdraft provisions and loans;

(b) funds and assets available as security;

(c) working capital;

(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;

(e) charges on an undertaking's assets;

(f) taxes and social security contributions.

2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.

3. The Authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor.

These documents must include information concerning the matters referred to in paragraph 1.

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