VERŻJONI ELETTRONIKA

L.N. 160 of 2017

SPORTS ACT
(CAP. 455)

Commercialisation of Sports Facilities Regulations, 2017

IN exercise of the powers conferred by article 6(1)(e), (s) and (t) and 53 of the Sports Act, the Minister of Education and Employment, after consultation with SportMalta, has made the following regulations:-

Citation,scope and coming into force.

1. (1) The title of these regulations is the Commercialisation of Sports Facilities Regulations, 2017.

(2) The purpose of these regulations is to establish the criteria on the basis of which a sports organisation may be granted the right to carry out commercial activity within a sports facility.

(3) These regulations shall be deemed to have come into force on 1st January, 2017.

Definitions.

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

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"Act" means the Sports Act;

"Appeals Panel" means the Commercial Sports Facilities Appeals Panel established under regulation 3;

"applicant" means the sports organisation applying with the Commission for permission to carry out commercial activity within a sports facility;

"club" means a sports organisation registered as a sports person with SportMalta and being also a member of a sports person registered with SportMalta as a national association or federation;

"commercial area" means the designated area of the sports facility which shall be used exclusively for the commercial activity according to these regulations;

"commercial activity" means any type of commercial activity according to law, excluding the operation of nightclubs, gambling shops, hotels and residential units, except hostels, and any other commercial activity which the Commission deems not fit to be found within a sports facility;

"Commission" means the Commercial Sports Facilities

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Commission established under regulation 3;

"floorspace" means the total area of the built structure deriving from the computed aggregate of all floors within the structure, measured from the external face of the development's walls (or in the case of party walls measured up to half the width of such walls), including all internal and usable external spaces, such as balconies, terraces and gardens;

"footprint" means the total area delineated by the perimeter of a site and shall be taken to include all outer spaces, which area is measured from the external face of the walls (or in the case of party walls measured up to half the width of such walls);

"SportMalta" means the body established in accordance with article 4 of the Act;

"sports area" means the designated area of the sports facility which shall be used exclusively for the practice of the sporting discipline for which the sports organisation is registered with SportMalta;

"sports facility" means an immovable property, falling under the definition of sports facility under Part IV of the Act, which immovable property has been transferred by title of temporary emphytheusis for a period of forty-nine years to a sports organisation;

"sports organisation" means a national association, national federation, football club or aquatic sports club, registered as a sports person in the Register of Sports Persons according to Part VII of the Act;

"Technical Committee" means a committee which is made up of a perit, an accountant, an advocate and two other persons. All members of the committee shall have experience in sports administration;

"Undesirable Person" means a person who:

(a) has been convicted of a crime, wherever committed:

(i) against the safety of the Government in terms of articles fifty-five, fifty-six, fifty-seven, fifty-eight and fifty-nine, of the Criminal Code, Cap.9.

(ii) against public safety in terms of articles 311, 312, 313, 314, 315, 316 and 317of the Criminal Code, or Cap.9.

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(iii) specified in the Schedule to the Extradition Act, and liable to a term of imprisonment of more than three years;

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(iv) against the Prevention of Money Laundering Act;

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(v) in violation of the articles 307, 308, 309, 310, 311, 312, 313, 314, 315of the Companies Act, or in violation of article 191 of the Criminal Code;

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(vi) against Sub-Titles IVA and B of Title IX of Part II of Book First of the Criminal Code;

(vii) against the laws or by the courts of another country with respect to the crimes substantially equivalent to those specified in sub-paragraphs (i), (iv) and (v).

(b) is the subject of sanctions or restrictions issued by the United Nations, the European Union or other international governmental body of which Malta is a member and which are adopted or applied by the Government in terms of the National Interest (Enabling Powers) Act, and, or other applicable law, and this for such time as such sanctions remain in force;

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(c) is the subject of an international arrest warrant or of a European Arrest Warrant or is otherwise wanted by INTERPOL or by another equivalent trans-national police organisation, and this for such time as he so remains;

(d) is insolvent or bankrupt and unable to pay his debts as they fall due;

(e) being a legal entity, the director, the administrator or other officer or the controlling shareholder of which is:

(i) an Undesirable Person, or

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(ii) in case of a director or officer, disqualified to be a director of a company in terms of the Companies Act or of a similar law of a jurisdiction of which the director or officer is a national or a resident and this for as long as such person remains so disqualified.

Establishment of the Commission and the Appeals Panel.

3. (1) There is hereby established a Commission to be known as the Commercial Sports Facilities Commission which shall consist of a Chairperson and a minimum of three and a maximum of five other members nominated by the Minister from amongst persons with expertise in the field of sport administration in Malta.

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(2) One of the members of the Commission referred to in sub-regulation (1) shall be nominated by the Lands Authority.

(3) The Commission shall have the following functions:

(a) supervising the correct implementation of these regulations;

(b) evaluating, approving or rejecting applications made under these regulations;

(c) monitoring the performance of the commercial activities being carried out by sports organizations within sports facilities; and

(d) ensuring that the objectives of these regulations are being achieved.

(4) There is also hereby established an Appeals Panel to be known as the Commercial Sports Appeals Panel.

(5) The Appeals Panel shall consists of a Chairperson who shall be a retired Judge or a retired Magistrate or person who has practised the profession of Advocate for at least twelve years and a minimum of three and a maximum of five other members.

(6) (a) The Chairperson of the Appeals Panel shall be appointed by the Minister responsible for Sport;

(b) The members of the Appeals Panel shall be appointed by the Minister responsible for Sport from amongst persons with expertise in sport administration in Malta.

(7) The Appeals Panel shall hear and decide appeals made by sports organizations from the refusal of applications by the Commission.

Application for Commercialisation of a Sports Facility.

4. (1) A sports organisation shall apply to the Commission in order to be able to carry out commercial activity in a sports facility. A sports organisation may carry out commercial activity solely upon being granted a permit by the Commission, following the submission of an application under sub-regulation (2).

(2) The application for the commercialisation of a sports facility shall, on pain of nullity, contain the following:

(a) the name, registration number as a sports person and official address of the applicant;

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(b) a list of all committee members of the sports organisation, with clear indication as to the responsibility held by each committee member;

(c) a signed declaration as to who are the legal representatives of the sports organisation;

(d) a detailed written explanation of the type of commercial activity proposed to be carried out within the sports facility by the applicant;

(e) a business plan that explains in detail the expense estimated in order to start the commercial activity within the sports facility, how such estimated expense will be financed, plans for the repayment of the expenses, the estimated revenue that will be generated by the commercial activity and an detailed explanation on how the sports organisation will benefit, from a sporting perspective, from the commercial activity;

(f) a plan made by a *Perit* that identifies the area of the sports facility that shall be used as the 'sports area' and the 'commercial area', with a declaration on what will be the number of square metres which shall be used as the 'sports area' and the 'commercial area' respectively, that contains all necessary designs and plans on how the sports facility is going to be structured, including both commercial and sports areas. The proposed 'sports area' shall never be less in size than the area which is currently being used exclusively for the practice of the sporting discipline for which the sports organisation is registered with SportMalta;

(g) a signed declaration on the estimated time for the completion of any infrastructural works that are to be carried out in the sports facility prior to the start of the commercial activity;

(h) a certified true copy of any contract made with a third-party operator according to regulation 7;

(i) all documents proving that all physical persons forming part of the committee of the sports organisation and all physical persons being the members, directors, shareholders and; or ultimate beneficial owners of any third-party operator, which can be both a physical person or a legal person, that has entered into a development and management agreement with the sports organisation according to regulation 7 fulfil the criteria set out in sub-regulation 7(4);

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(j) a sworn declaration made by the legal representatives of the sports organisation confirming that the application is being made by the sports organisation according to these regulations and that the sports organisation is aware of and understands all its rights and obligations according to these regulations.

Appointment and duties of the Technical Committee.

(2) Upon receipt of an application by a sports organisation the Commission shall, forward a copy of such application and all attached documents to SportMalta and to the Lands Authority, and check and confirm that the application is complete and appoint a Technical Committee, which shall have the following duties:

(a) to evaluate the application and carry out all the necessary work to assess whether the estimates, plans and designs presented should lead to the infrastructural, financial and sporting growth of the sports organisation and to verify that time-frames proposed are realistic;

(b) to provide advice to the applicant on any amendments to be made to the application for the purpose of improving it;

(c) to request the Lands Authority to determine the established market value of the land over which the sports facility is built and determine the ground-rent and prospective rates to be paid over the commercial area according to regulation 6;

(d) to evaluate whether the sports organisation, or a proposed third-party operator, are financially capable to start the commercial activity and whether they are financially viable to manage and sustain a prolonged commercial operation;

(e) to present a final report to the Commission at the end of the evaluation process containing detailed reasons as to whether the Commission should accept or refuse the application and setting out all the conditions under which the sports facility is to be commercialised.

(4) A Technical Committee shall be formed every time the Commission receives an application by a sports organisation. When an application is presented by a national association or federation the Technical Committee shall be appointed by the Commission, whereas when an application is presented by a club, the Commission shall instruct the national association or federation in which such club is a member to appoint two persons to the Technical Committee, whereas

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the Commission shall appoint an advocate, *perit* and an accountant to the Technical Committee.

Decision of the Commission.

(5) Upon receipt of the final report from the Technical Committee, the Commission shall, if it is convinced that the commercial activity proposed by the sports organisation in the application will lead to the infrastructural, financial and sporting growth of the sports organisation, issue a certificate to the sports organisation granting it permission to commercialise the sports facility according to the conditions set out in the final report:

Provided that the Commission shall not be bound to abide by the conclusions of the Technical Committee against its own conviction, and may reject in whole or in part any recommendation of the Technical Committee:

Provided further that in its decision the Commission may impose any condition it feels appropriate on any third-party operator participating in the project of the sports organisation.

Appeal.

(6) Should the Commission, after receiving the final report from the Technical Committee, refuse the application, then the sports organisation shall have the right to appeal the decision of the Commission, to the Appeals Panel within seven (7) days from the notification of the reasoned decision for refusal of the application by the Commission to the sports organisation.

(7) When in receipt of an appeal from a decision of the Commission by a sports organisation, the Appeals Panel shall convene one hearing, not later than thirty (30) days from the receipt of the appeal, in order to hear the appellant sports organisation and the Commission.

(8) The Appeals Panel shall notify its motivated decision on the appeal to the parties within fifteen (15) days of the last hearing of the appeal.

(9) The decision of the Appeals Panel shall be final and binding.

(10) The Commission shall notify SportMalta of all permissions granted by the Commission, in the first instance, or the Appeals Panel, following an appeal, and shall forward all documents to SportMalta.

New contract of temporary emphytheusis.

5. (1) Upon being notified by the Commission that permission has been granted to a sports organisation for the commercialisation of a sports facility, and the documents related to

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the case are received, SportMalta and the sports organisation shall draw up a public deed for the concession of the same sports facility to the sports organisation.

(2) The said public deed shall, apart from the formalities prescribed by law for all public deeds, shall, include the following:

(a) the new term for the temporary emphytheusis which shall never exceed sixty-five (65) years from the date of the original deed;

(b) a declaration as to the total footprint in square metres of the sports facility;

(c) a declaration as to the current market value of the land over which the sports facility is built and the prospective rates to be paid on the floorspace of the commercialised area;

(d) a declaration stating that the designated sports area shall be used exclusively for the practise of the sporting discipline for which the sports organisation is registered with SportMalta, whereas the designated commercial area shall be used exclusively for the operation of the commercial activity within the sports facility;

(e) a declaration as to the precise footprint in square metres of the minimum designated sports area and the maximum designated commercial area;

(f) the establishment of any terms of payment to be made by the sports organisation for the designated sports area and for the designated commercial area;

(g) a declaration as to the identity of the third-party operator which has been approved by the Commission to develop and, or manage the commercial activity in the sports facility, with the relevant contract presented with the application to the Commission being attached to the public deed;

(h) any recommendation that the Technical Committee has made in its final report;

(i) an attached site-plan which clearly indicates which part of the sports facility shall be used as the sports area and which part shall be used as the commercial area;

(j) a declaration stating that the sports organisation, and the third-party operator, if any, recognise and are bound by

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these regulations and shall forward all necessary documentation requested by SportMalta for monitoring purposes, and be liable to the sanctions prescribed by regulation 9 should it, or the third-party operator be in breach of contract or of these regulations.

(3) Any public deed concluded for the purposes of these regulations shall include a condition to the effect that the conditions stipulated in these regulations shall form an integral part of and shall bind the parties to the public deed.

(4) Any modification to the public deed which the national association or federation or a club would wish to introduce to the said public deed shall obtain the approval of the Commission prior to that modification taking place.

Valuation of the land.

6. (1) The established value of the land over which the sports facility is built, and the rates payable on the floorspace of the commercial area, shall be determined by the Lands Authority, which shall take into account the value of the contribution to the increase in value of the land made by infrastructural improvements carried out by the sports organisation over the years during which it had administered the sports facility.

Ground-rents and rates payable.

(2) The annual ground-rent over the footprint and the rates to be paid on the designated floorspace of the commercial area shall be set at fifty percent of the annual ground-rent and rates established according to sub-regulation (1) above.

(3) The annual ground-rent to be paid on the designated sports area shall be equivalent to five percent of the annual ground-rent established according to sub-regulation (1).

(4) Payment of the annual ground-rent by the sports organisation for the sports facility shall start being due upon the publication of the public deed according to regulation 5:

Provided that the rates payable on the floorspace of the commercial area shall start being paid as from the first day in which the operation of the commercial activity starts:

Provided further that if the commercial activity does not start within five years from the publication of the public deed according to regulation 5 the authorised commercialisation of the sport facility shall lapse the public deed in respect thereof shall be rescinded at the request of SportMalta.

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(5) Should the commercial activity approved by the Commission require infrastructural works for the start of the operation of that commercial activity, then all necessary development permits according to law are to be obtained by the sports organisation prior to the carrying out of such infrastructural works. Development permits.

7. (1) A sports organisation applying for permission to carry out commercial activity under these regulations, may enter into a contract with a third-party operator for the development and; or the management of the commercial activity within the sports facility. Third-party operators.

(2) A third-party operator that enters into a contract with a sports organisation under these regulations, shall be solely responsible for the commercial area and the commercial activity within the sports facility for the duration of the agreement with the sports organisation.

(3) The third-party operator shall be:

(a) a legal person established by the sports organisation to develop and manage the commercial activity which is wholly owned by the sports organisation; or

(b) a legal person established jointly by the sports organisation and another legal person which is not a sports organisation; or

(c) a legal person which is not a sports organisation and has no connection to the sports organisation other than its contractual relationship therewith in respect of the commercial activity.

(4) A third-party operator shall not be recognised by the Commission unless the contract between the sports organisation and the third-party operator according to this regulation is filed with the application according to sub-regulation 4(2)(i).

(5) The sports organisation shall carry out all necessary steps and collect all necessary documentation to prove to the Commission that the owners, members, directors and/or ultimate beneficial owners of the third-party operator are not undesirable persons and that an appropriate level of due diligence has been carried out in relation thereto.

(6) A contract of between a sports organisation and a third-party operator for the development and, or the management of the commercial activity within the sports facility, according to sub-regulation (1), shall contain the following minimum requirements:

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(a) the name and address of the legal person that will be the third-party operator;

(b) the names, addresses and details of all the physical persons forming part of the third-party operator, being owners, members, directors and. or ultimate beneficial owners of the third-party operator;

(c) the term of the contract which shall never exceed the term of the emphytheusis granted to the sports organisation;

(d) a clear explanation as to what shall be the role of the third-party operator in the development and management of the commercial activity within the sports facility;

(e) if the third-party operator is to carry out any infrastructural works, how these are going to be funded and how it will deal with the financial risks involved;

(f) if the third-party operator is to manage the operation of the commercial activity, how this operation is going to be run and how it will deal with the financial risks involved;

(g) an explanation as to how the sports organisation will benefit from the contract with the third-party operator from an infrastructural, financial and sporting perspective;

(h) a declaration as to any amount of money that will be paid by the third-party operator to the sports organisation party for the concession of the development and management of the commercial area and the commercial activity within the sports facility, how payments are to be effected, and what steps are to be taken should the third-party operator not effect such payments on time;

(i) a declaration by the third-party operator that it is accepting responsibility for:

(i) any sanction for non-compliance with these regulations or with the terms imposed by the Commission;

(ii) the suspension or closing down of the commercial activity for non-compliance with these regulations;

(j) an explanation as to what will happen should the third-party operator be in breach of the contract due to the

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abandonment of the development and, or management of the commercial activity within the sports facility or due to the third-party operator ceasing to exist;

(k) A declaration by the third-party operator that it is accepting joint and several liability with the sports organisation for all obligations over the commercial area which the sports organisation has with SportMalta.

(7) The sports organisation may enter into a contract on the commercial area in the sports facility only with one third-party operator at a time and with the express approval of the Commission. No party may invoke any disposition of such contract against the government or other public authorities:

Provided that the third-party operator may enter into an agreement with another third-party operator who is not a sports organisation and has no connection to the sports organisation, for the development and, or management of any part of the commercial area:

Provided further that the other third-party may not enter into further agreements with other third-parties for the development and, or management of that part of the commercial area:

Provided further that if a contract, which contract had been approved by the Commission, is terminated, the sports organisation may enter into a new contract with another third-party operator only after obtaining approval from the Commission, and such agreement contains the minimum requirements set-out in sub-regulation (5) and is filed with the Commission.

(8) When the contract between the sports organisation and the third-party operator is terminated, for any reason, the commercial area shall revert to the sports organisation. The sports organisation shall have the right to close down the commercial area if it reaches an agreement with the Commission that the sports organisation is not in a position to continue the operation of the commercial activity within the sports facility.

8. The development and the management of the commercial activity may be financed directly by the sports organisation, by the third-party operator or by any financial institution which is licensed to provide such funds: Financing.

Provided that neither the sports organisation, nor the third-party operator may burden the sports facility with any form of pledge, antichresis, privilege or hypothec servitude or other burden of a similar nature.

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Monitoring and enforcement.

9. (1) At the end of every calendar year, the sports organisation, or the third-party operator, being the party that is managing the commercial area, shall send to the Commission a report, called the 'Annual Report', containing the following:

(a) audited financial statements on the financial performance of the commercial area, and the financial benefit received by the sports organisation, in the current year;

(b) a budget with clear estimates as to expected financial targets, revenues and costs, and expected financial benefit to be received by the sports organisation, in the following year;

(c) an administrative report signed by all members of the sports organisation detailing the enhancement of the sports area in the past year through funds received from the commercial area. Such enhancement need not be only in the infrastructure of the sports facility but also may include upgrades in the level of sports technical staff.

(2) Upon receipt of the Annual Report the Commission shall forward a copy of such report to SportMalta and to the Lands Authority.

(3) Both SportMalta or the Commission may at any time during the year request interim reports on the financial or infrastructural performance of the sports facility in respect of any time during the year whenever they feel that targets established with the sports organisation or the third-party operator at the beginning of the year are not being reached.

(4) Should the sports organisation, or the third-party operator, not submit the Annual Report by the end of January following the end of the year when the report was due then the sports organisation, or the third-party operator, shall pay an administrative penalty of ten thousand euro (€10,000):

Provided that if the sports organisation, or the third-party operator, does not submit the Annual Report by the end of the following February, then SportMalta, may suspend the permission to carry out commercial activity granted to the sports organisation in its sports facility granted by the Commission according to regulation 4.

(5) When it is established that the sports organisation, or the third-party operator, managing the commercial area, is:

(a) engaging in any criminal activity within the

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commercial area; or is tolerating such activity; or

(b) engaging in any commercial activity for which the Commission had not granted permission according to regulation 4; or

(c) declared bankrupt; or

(d) in breach of any regulation of these regulations, or of any condition made by the Commission when permission to carry out commercial activity was granted according to regulation 4; or

(e) repeatedly not paying the ground-rent on the sports facility or the rates payable due on the commercial area on time, then SportMalta may suspend the permission to carry out commercial activity granted to the sports organisation in its sports facility granted by the Commission according to regulation 4.

(6) Whenever SportMalta suspends the permission to carry out commercial activity granted to a sports organisation in its sports facility according to sub-regulations (4) or (5) above, SportMalta shall immediately notify the Commission and the Lands Authority of such decision.

(7) Whenever the Commission receives notification under sub-regulation (5) it shall investigate the matter, and within fifteen (15) days take a decision, in writing, on whether to lift the suspension, prolong the suspension until conditions for the lifting of the suspension made by the Commission to the sports organisation or the third-party operator, as the case may be, are met, or withdraw definitively the permission to carry out commercial activity within the sports facility granted to the sports organisation under regulation 4.

(8) Decisions taken by the Commission to prolong a suspension, or withdraw permission definitively may be appealed by the sports organisation or third-party operator, as the case may be, within seven (7) days from the decision of the Commission, by written appeal to the Appeals Panel.

(9) The Appeals Panel shall take a decision on such an appeal within sixty (60) days from notification of the appeal to all parties. The decision of the Appeals Panel shall be final and binding.

(10) Any suspension of the permission to carry out commercial

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activity decided upon by SportMalta or the Commission under this regulation may be lifted by the body that has taken the decision to issue the suspension, whenever it is satisfied that the sports organisation or the third-party operator, as the case may be, has cured its default.

Withholding of funds.

10. (1) SportMalta has the authority to withhold partially, or in whole, funding or other non-financial support to national associations and any other sporting bodies over which it has authority that do not endorse and comply with these regulations.

Compliance with regulations.

11. (1) All information provided by the sports organisation to the Commission under these regulations shall be maintained in strict confidence at all times subject only to the legal obligations of the Commission

(2) The Commission shall publish annually, a general statistical report of its activities during the previous calendar year by April of the following year with a copy provided to SportMalta and the Lands Authority.

(3) The Commission may collect, store, process or disclose personal information relating to any person where necessary and appropriate to conduct its activities under these regulations, according to the Data Protection Act.

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Issuing of commentaries and guidelines.

12. The Commission may from time to time issue commentaries implementing procedures and guideline.

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