Verżjoni Elettronika

L.N. 46 of 2023

AUTHORITY FOR TRANSPORT IN MALTA ACT (CAP. 499)

Airport (Groundhandling Services) (Amendment) Regulations, 2023

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

Citation.

1. The title of these regulations is the Airport (Groundhandling Services) (Amendment) Regulations, 2023 and they shall be read and construed as one with the Airport (Groundhandling Services) Regulations, hereinafter referred to as the "principal regulations".

S.L. 499.25.

Amends regulation 2 of the principal regulations.

2. Regulation 2 of the principal regulations shall be amended by the following:

(a) the definition of "airside services" thereof shall be substituted by the following new definition:

""airside services" means the categories of ground handling services listed in items 3, 4, 5 and 7 of the Schedule";

(b) the definition "Council Directive" thereof shall be substituted by the following new definition:

""Council Directive" means Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;";

(c) immediately after the definition "Director" thereof there shall be added the following new definition:

""general aviation operations" means those operations specified in item 12 of the Schedule;";

(d) immediately after the definition "groundhandling" thereof there shall be added the following new definition:

"locally-based aircraft" means an aircraft listed on the

Verżjoni Elettronika

Malta Aircraft Register that undertakes movements that originate and terminate in Malta and is permanently located in Malta between inbound and outbound movements;";

(e) immediately after the definition "Minister" thereof there shall be added the following new definitions:

""MTOW" means the certified maximum take-off weight of an aircraft expressed in kilograms as declared on the certificate of airworthiness;

"non-scheduled air service" means any flight not listed in the timetable of an airline including flights performed pursuant to a charter contract with one (1) or more charterers with the intention of covering the entire capacity of the aircraft, not being a general aviation operation as defined in these regulations;

"scheduled air service" means a series of flights possessing the following characteristics:

(a) on each flight seats and, or capacity to transport cargo and, or mail are available for individual purchase by the public directly from the air carrier or from the authorised agents;

(b) it is operated to serve traffic between the same two (2) or more airports either:

(i) according to a published timetable, or

(ii) with flights so regular or frequent that they constitute a recognisable systematic series;";

(f) in the definition "self-handling" thereof the words "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;" shall be substituted by the words "means a situation in which an airport user directly provides to aircraft under its Air Operator’s Certificate one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services;".

Verżjoni Elettronika

3. Regulation 6 of the principal regulations shall be substituted by the following new regulation: Substitutes regulation 6 of the principal regulations.

"Groundhandling for third parties.

6. (1) The managing body of the airport shall ensure free access to suppliers of groundhandling services established throughout the European Union to the market for the provision of groundhandling services to third parties in accordance with the Council Directive:

Provided that two (2) suppliers shall be authorised to provide each category of airside services, and without prejudice to such authorisation, not more than three (3) other suppliers shall be authorised to solely provide the general aviation operations consisting in groundhandling services listed in item 12 of the Schedule, and provided further that at least one (1) of the authorised suppliers of each category of airside services may not be directly or indirectly controlled by:

(a) the managing body of the airport;

(b) any airport user who has carried more than twenty-five percent (25%) of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected; or

(c) 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 each category of airside services and the general aviation operations, in addition to the other authorised suppliers:

Provided further that a supplier of groundhandling services may outsource certain services to subcontracted suppliers that have been approved by the managing body of the airport to be considered as an authorised subcontracted supplier in accordance with sub-regulation 8A(6).

Verżjoni Elettronika

(2) Notwithstanding the first proviso to sub-regulation (1), with regards to services provided to general aviation operations, the number of suppliers authorised to provide the groundhandling services listed in item 12 of the Schedule to these regulations may, upon determination of the Minister in consultation with the managing body of the airport and the Committee, be increased to a maximum of six (6) suppliers when the next applicable selection procedure in terms of regulation 8A shall be undertaken. Such additional suppliers shall be selected during the same selection procedure established for the purposes of selecting the other general aviation operations suppliers.

(3) The selection of the third-party handling service providers made by the managing body of the airport on the basis of sub-regulations (1) and (2) shall be valid for not more than:

(a) seven (7) years, in the case of suppliers authorised to provide airside services to airport users engaging in scheduled air services and non-scheduled air services;

(b) five (5) years, in the case of suppliers authorised to provide services listed in item 12 of the Schedule to airport users engaging in general aviation operations.".

Substitutes regulation 7 of the principal regulations.

4. Regulation 7 of the principal regulations shall be substituted by the following new regulation:

"Self-handling.

7. (1) In relation to one (1) or more groundhandling services listed in items 3, 4 and 5 of the Schedule, the Director in consultations with the managing body of the airport may reserve the right to self-handle aircraft to no more than two (2) airport users, who are not directly or indirectly providers of groundhandling services listed in the Schedule to aircraft of a maximum take-off weight (MTOW) exceeding fifty thousand kilograms (50,000 kg) and a maximum seat capacity exceeding nineteen (19) seats:

Provided that an airport user so authorised to provide self-handling services shall:

(a) be chosen on the basis of relevant, objective, transparent and non-discriminatory criteria;

Verżjoni Elettronika

(b) comply with any conditions and standards set by the managing body of the airport;

(c) not be permitted to outsource any of the services listed in the Schedule;

(d) such aircraft are registered under their own Air Operating Certificate:

Provided that upon the application of the managing body of the airport to the Director, the Director may, at his discretion, authorise the number of providers of self-handling services as established under this sub-regulation (1) to be increased to a maximum number of three (3) suppliers.

(2) The selection of the self-handling airport users made by the managing body of the airport on the basis of sub-regulation (1) shall be valid for not more than seven (7) years.

(3) An airport user who:

(a) operates a locally-based aircraft intended for general aviation operations;

(b) is not either directly or indirectly a provider of groundhandling services to airport users engaging in scheduled air services and non-scheduled air services,

shall have the right to self-handle in respect of general aviation operations consisting of groundhandling services mentioned in item 12 of the Schedule:

Provided that an airport user who satisfies the criteria in sub-regulation 3(a) and 3(b) shall comply with any conditions and standards set by the managing body of the airport:

Provided further that an airport user who satisfies the criteria in sub-regulation 3(a) and 3(b) shall request from and be duly authorised by the managing body of the airport to perform self-handling services, and shall not be permitted to outsource any of the general aviation operations consisting of the groundhandling services listed in item 12 of the Schedule.

(4) The selection of the self-handling airport users made by the managing body of the airport on the basis of sub-regulation (3) shall be valid for not more than five (5) years.

Verżjoni Elettronika

Substitutes regulation 8 of the principal regulations.

5. Regulation 8 of the principal regulations shall be substituted by the following new regulation:

"Authorised suppliers.

8. (1) The total number of authorised suppliers providing groundhandling services listed in items 3, 4, 5 and 12 of the Schedule, including those for scheduled air services, non-scheduled air services and general aviation operations and self-handling services shall not collectively amount to more than eight (8).

(2) The limitation to the total number of authorised suppliers providing groundhandling services as provided for in sub-regulation (1) shall be established in the following order:

(a) suppliers for scheduled air services and non-scheduled air services;

(b) suppliers for general aviation operations;

(c) self-handlers:

Provided that there shall be no limitation to the number of authorised suppliers providing self-handling services in accordance with sub-regulation 7(3).

Adds a new regulation 8A to the principal regulations.

6. Immediately after regulation 8 of the principal regulations there shall be added the following new regulation:

"Selection of suppliers.

8A. (1) The managing body of the airport shall use a selection procedure to provide airside services and the ground handling services specified in item 12 of the Schedule:

Provided that the managing body of the airport:

(a) does not provide similar groundhandling services;

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

(c) has no involvement in any undertaking which provides such services.

(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:

Verżjoni Elettronika

(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 shall 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 uninterrupted services for the periods established under sub-regulation 6(3) 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 provided for in sub-regulation (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 provided for in sub-regulation 8(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 sub-regulation (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.

Verżjoni Elettronika

(6) Where an authorised supplier decides to outsource certain services that are not airside services or general aviation operations consisting of groundhandling services under item 12 of the Schedule to other specialized suppliers, the former shall apply with the managing body of the airport to authorise an outsourced supplier to be considered as an authorised subcontracted supplier subject to any conditions and standards set by the managing body of the airport for the provision of the particular groundhandling service which are equivalent to those set in sub-regulation (2)(a). The provisions of regulations 10 to 20 shall also apply *mutatis mutandis* to the authorised outsourced supplier.

(7) The managing body of the airport or the Director, as the case may be in terms of this regulation, shall, following the entry into force of the Airport (Groundhandling Services) (Amendment) Regulations, 2023, implement the selection procedure for general aviation operations consisting of the ground handling services specified in item 12 of the Schedule not earlier than the seventh anniversary from the date on which the selection procedure issued prior to the entry into force of the said Airport (Groundhandling Services) (Amendment) Regulations, 2023 was concluded.".

L.N. 46 of 2023

L.N. 46 of 2023

Amends regulation 10 of the principal regulations.

7. In sub-regulation (1) thereof, the words "a supplier of groundhandling services or a self-handling user obtain" shall be substituted by the words "any provider of groundhandling services obtains".

Amends regulation 13 of the principal regulations.

8. Immediately after sub-regulation (4) of regulation 13 of the principal regulations there shall be added the following new sub-regulation (5):

"(5) Pursuant to a decision made in accordance with sub-regulation (1), the Director may decide to prohibit any supplier of outsourced services authorised to provide groundhandling services in accordance with regulation 8A (6) from providing the groundhandling services in accordance with sub-regulation (1).".

Amends regulation 15 of the principal regulations.

9. Immediately after sub-regulation (1) of regulation 15 of the principal regulations there shall be added the following new sub-regulation (2):

"(2) The Director shall notify the European Commission of any withdrawal or suspensions of rights or obligations

Verżjoni Elettronika

provided for under these regulations.".

Amends the Schedule to the principal regulations.

10. In the Schedule to the principal regulations, immediately after item 11.4 there shall be added the following new item 12:

"12. General aviation operations:

The provision of groundhandling operations listed in items 3, 4 and 5 of this Schedule which shall be limited to civil aviation operations, executed for remuneration or hire, private use, or for State, military or humanitarian missions, utilising an aircraft with a maximum take-off weight (MTOW) not exceeding fifty thousand kilograms (50,000 kg) and having a maximum seat capacity of nineteen (19) seats.".

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