



Modalities of Payment for Authorisations under the Postal Services Act (Cap. 254 of the Laws of Malta)

Consultation on proposed amendment to the Directive

MCA/C/21-4469

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1. Introduction

In 2005 the Malta Communications Authority (MCA) issued a Directive No.1 of 2005 entitled the “Directive on the Modalities of Payment for Authorisations under Postal Act” (the ‘Directive’). This Directive was in 2017 amended by Directive No. 1 of 2017 entitled “Amendments to the Modalities of Payment for Authorisations under the Postal Services Act”. The overall purpose of the Directive is to regulate the manner in which fees established under the First Schedule of the Postal Services (General) Regulations (SL 254.01 of the Laws of Malta) are charged.

2. Proposed amendment to the Directive

An amendment is being proposed to article 8 of the Directive whereby if an authorised postal services operator within the prescribed timeframes stated in that article, fails to provide the required information then the MCA may proceed to act on the basis of information provided in the previous year.

In taking forward this process the MCA is therefore issuing this consultation whereby, as per the attached Annex, the current Directive is being reproduced, together with the proposed amendment in red and underlined.

3. Consultation Framework

The MCA invites comments from interested parties regarding this Consultation incorporating the proposed new directive. The consultation period will run until 12:00pm on **4th January 2022**.

Comments are to be addressed for the attention of:

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Directive on the Modalities of Payment for Authorisations under the Postal Services Act.

Directive No.1 of 2005 as amended by Directive No. 1 of 2017 entitled 'Amendments to the Modalities of Payment for Authorisations under the Postal Services Act.

The Malta Communications Authority, in accordance with its powers given under article 4 of the Malta Communications Authority Act, has made the following Directive.

Part I

PURPOSE AND DEFINITIONS

Title

Cap. 254

1. The title of this directive is the Directive on the Modalities of Payment for Authorisations under the Postal Services Act (Cap. 254 of the Laws of Malta).

Purpose

S.L. 254.01

2. The purpose for this Directive is to regulate the manner in which the fees established in the First Schedule to the Postal Services (General) Regulations, are paid to the Malta Communications Authority and to ensure compliance with regulations 46 and 47 of the aforesaid Regulations.

Interpretation

3.1. The provisions of article 2 of the Postal Services Act and regulation 2 of the Postal Services (General) Regulations shall apply to this Directive.

3.2. In this Directive unless the context otherwise requires:

"the Act" means the Postal Services Act;

"the Authority" means the Malta Communications Authority;

“quarter” means any period of three months ending on the 31st March, 30th June, 30th September, and 31st December of any year;

“the Regulations” means the Postal Services (General) Regulations;

“relevant year” means any year during which fees are to be paid to the Authority;

“total gross revenues” means the total gross turnover from postal services within the scope of the universal services.

Part II

Fees To Be Paid on An Annual Basis Under Paragraphs (A) and (B) of The First Schedule To The Regulations

Fees established in paragraphs (a) and (b) of the First Schedule to the Regulations

4.1.1. Deleted

4.1 The fees established in paragraphs (a) and (b) of the First Schedule to the Regulations shall be payable to the Authority on the first day of every year during which an authorised provider is authorised to provide such postal services. A prorated proportion of the fee due for the first year, or part thereof, or which the authorised provider is authorised to provide postal services, shall be paid to the Authority immediately upon notification of the intention to provide services in accordance with article 8 of the Act and regulations 46 or 47 of the Regulations:

Provided that any fees due under paragraph (a) of the First Schedule shall be payable to the Authority in quarterly instalments on the first day of every quarter during which an authorised provider is authorised to provide postal services.

Such fees due for the first three quarters during which an authorised provider is authorised to provide postal services shall be paid on the first day of the third quarter following the grant of a licence in accordance with article 8 of the Act and regulation 46 of the Regulations.

4.2. The Authority, at the request of an authorised provider or of its own initiative, may determine that fees are to be paid on the commencement of commercial activities

by the authorised provider concerned where it results to the satisfaction of the Authority that the authorised provider concerned is unable to effectively commence such commercial activities due to circumstances beyond the control of the said authorised provider, and which circumstances the Authority considers justify that such fees be paid on the commencement of such commercial activities:

Provided that in doing so the Authority may impose any such conditions as it may consider appropriate, including but not limited to the imposition of a timeframe as to the length of the period in relation to which the Authority under this proviso requires the authorised provider concerned to pay such fees on the commencement of commercial activities. The Authority shall in deciding whether or not to grant to an authorised provider the faculty of paying on commencement of its commercial activities, act in a transparent and non-discriminatory manner and shall issue a public communication stating the reasons for its decision.

5. Deleted by Directive No. 1 of 2017

Part III

6. Deleted by Directive No. 1 of 2017

Part IV

7. Deleted by Directive No.1 of 2017

Part V

PROVISIONAL PAYMENTS, VERIFICATION AND ADJUSTMENTS

Statement of projected revenues

8. For the purpose of calculating variable fees to be determined on the basis of total gross revenues, each authorised provider holding an individual licence shall submit to the Authority, by not later than the 30th September of the previous year, a statement of projected revenues for the relevant year:

Provided that the first statement of projected revenues for the relevant year or part thereof, to be submitted by an authorised provider following the grant of an individual licence, shall be submitted by not later than the first quarter in which such licence is granted:

Provided further that the Authority shall have the right to revise such projections should these appear to be unreasonable. Prior to making such revisions, the Authority shall grant to the relevant authorised provider an opportunity to comment on its proposed decision and course of action:

Provided further if an authorised provider fails to provide any information required in accordance with this article by not later than the stated timeframes as established in this article, then the Authority may proceed on the basis of the information submitted by the provider concerned for the previous year.

Reconciliation with actual revenues

9. The Authority shall reconcile fees paid on the basis of projected revenues, against the fees, which should have been paid, on the basis of actual revenues. For this purpose, each relevant authorised provider shall submit to the Authority, within a maximum period of twelve (12) months after the 31st December of the relevant year, an audited statement of actual quarterly revenues as represented in the authorised provider's financial statements.

Undercharging and overcharging

10.1. Where the amount paid by an authorised provider is less than the amount payable by reference to the statement of actual revenues, the authorised provider concerned shall, within such time as may be specified by the Authority in a request in writing, pay to the Authority the balance of the fees so payable.

10.2. Where the amount paid by an authorised provider is more than the amount payable by reference to the actual statement of turnover, the Authority shall, as soon as may be after the receipt of the audited statement referred to in article 9 of this Directive reimburse to the authorised provider concerned the excess amount so paid by way of a credit note against fees payable.



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