

Directive No. 1 of 2005

Directive of 2005 on 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

Cap. 254

1. The title of this directive is the Directive of 2005 on the Modalities of Payment for Authorisations under the Postal Services Act (Cap. 254 of the Laws of Malta).

Purpose

L.N. 328 of 2005

2. The purpose for this Directive is to regulate the manner in which the fees established in the Schedule to the Postal Services (General) Regulations, 2005 are paid to the Malta Communications Authority and to ensure compliance with regulations 45(3), 46(3) and 47(5) of the aforesaid Regulations.

3.1. The provisions of article 2 of the Postal Services Act and regulation 2 of the Postal Services (General) Regulations, 2005 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, 2005;

“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) TO C) OF THE SCHEDULE TO THE REGULATIONS

4. Fixed fees established in paragraphs a) to c) of the Schedule to the Regulations:

4.1.1. The fixed fees established in paragraph a) of the Schedule to the Regulations shall be payable to the Authority in equal quarterly instalments on the first day of every quarter during which an authorised provider is authorised to provide such postal services.

Provided that a pro-rated proportion of the fixed fee due for the first quarter, or part thereof, for 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 45 of the Regulations;

4.1.2. The fixed fees established in paragraphs b) and c) of the 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.

Provided that a pro-rated proportion of the fixed fee due for the first year, or part thereof, for 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 and 47 of the Regulations;

4.2. The Authority, at the request of an authorised provider or of its own initiative, may determine that fixed 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 concerned authorised provider 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. Variable fees established in paragraphs a) and b) of the Schedule to the Regulations:

5.1. The variable fees based on total gross revenues shall be payable to the Authority in equal quarterly instalments on the first day of every quarter during which an authorised provider is authorised to provide postal services:

Provided that the 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 granting of a licence in accordance with article 8 of the Act and regulations 45 and 46 of the Regulations.

Part III

TRANSITIONAL PROVISIONS

6. Any provider which on the date of coming into force of the Regulations, held any authorisation under the Act, or provided postal services requiring such authorisation, shall by no later than the 12th December 2005 pay to the Authority on a pro-rated basis any unpaid fees, whether fixed or variable, established under the Act, as follows:

6.1. Fixed fees established in paragraphs a) to c) of the Schedule to the Regulations;

6.2. Variable fees established in paragraphs a) to b) of the Schedule to the Regulations, which amounts shall be calculated with reference to the most up-to-date information provided to the Authority;

Provided that for this purpose, the Authority shall issue a statement to each authorised provider listing all outstanding pro-rated fees and the pro-rated amounts due.

Part IV

COMPENSATION IN RESPECT OF LICENCE FEES PAID IN ADVANCE

7. The Authority shall, in relation to the above fees under Parts II and III of this Directive, make appropriate pro-rated reimbursements in respect of any licence fees however so described already paid by undertakings enjoying, prior to the coming into force on the Regulations, an authorisation under the Act.

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 November 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.

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.