

SUBSIDIARY LEGISLATION 499.19**AIRPORT ECONOMIC REGULATIONS**

1st October, 2002

LEGAL NOTICE 299 of 2001, as amended by Legal Notices 448 of 2004, 194 and 411 of 2007, and 132 of 2011.

1. The title of these regulations is the Airport Economic Regulations. Title.

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

"aerodrome" shall have the same meaning as that assigned to it by article 2 of the Air Navigation Order;

Interpretation.
Amended by:
L.N. 448 of 2004;
L.N. 132 of 2011.
S.L.499.09

"air carrier" shall have the same meaning assigned to it in the Allocation of Slots at Airport Regulations;

S.L.499.20

"airport" means any land area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations needed to assist commercial air services;

"airport charge" means a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport managing body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight;

"airport facility charges" means all those charges, not being airport charges;

"airport managing body" means a body that has as its objective the administration and management of the airport infrastructure, and the co-ordination and control of the activities of the different operations present in the airport;

"Airport operator" means the airport managing body;

"airport user" means any natural or legal person responsible for the carriage of passengers, mail and, or freight by air to or from the airport concerned;

"AUC" means the Airport Users Committee which is set up at the airport representing airport users;

"the Authority" means the Authority for Transport in Malta established by article 5 of the Authority for Transport in Malta Act;

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"the Directive" means Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges;

"Minister" means the Minister responsible for Civil Aviation.

Airport Charges
Regulatory Board.
Amended by:
L.N. 448 of 2004;
L.N. 194 of 2007.
Substituted by:
L.N. 132 of 2011.

3. (1) The determination, review and regulation of airport charges as well as the quality of service provided shall be the responsibility of the board established by this regulation.

(2) (a) There shall be established a board, to be known as the Airport Charges Regulatory Board, hereinafter referred to as "the Board", which shall meet once a year, unless agreed otherwise in the latest meeting of the Board.

(b) The Board shall be chaired by a person of recognised standing and experience in economics, who shall be appointed by the Minister.

(c) The Chairman shall hold office for a period not exceeding three years, which may be renewed for a further period or periods of three years each.

(d) The Board shall, apart from the Chairman, be composed also of the following members:

(i) one representative from the Civil Aviation Directorate within the Authority for Transport in Malta;

(ii) one representative of the AUC;

(iii) one representative of the Airport operator.

(e) The members and the Chairman of the Board shall each have one vote. The Chairman shall have a casting vote in the case of an equality of votes.

(3) The quorum for meetings of the Board shall be of two members and the Chairman.

(4) (a) The Airport operator shall be entitled to propose an adjustment in the level of airport charges, or a modification of the system or structure of airport charges in accordance with this sub-regulation.

(b) The Airport operator shall communicate its proposal, together with the reasons for the proposed changes, to the AUC, for consultation, at least four months before the proposals are expected to enter into force, unless there are exceptional circumstances which need to be justified to airport users.

(c) Prior to each consultation with the AUC, the Airport operator shall provide the AUC with information on the components serving as a basis for determining the system or the level of all airport charges, which information shall include:

(i) a list of the various services and infrastructure provided in return for the airport charge levied;

(ii) the methodology used for setting airport charges;

(iii) the overall cost structure with regard to the facilities and services which airport charges relate to;

(iv) the revenue of the different charges and the total cost of the services covered by them;

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- (v) any financing from public authorities of the facilities and services which airport charges relate to;
 - (vi) forecasts of the situation at the airport as regards the charges, traffic growth and proposed investments;
 - (vii) the actual use of airport infrastructure and equipment over a given period;
 - (viii) the predicted outcome of any major proposed investments in terms of their effects on airport capacity; and
 - (ix) plans for new infrastructure projects before these plans are finalised.
- (d) Prior to each consultation with the Airport operator, the AUC shall provide to the Airport operator the following information in respect of each airport user:
- (i) forecasts as regards traffic;
 - (ii) forecasts as to the composition and envisaged use of their fleet;
 - (iii) each airport user's development projects at the airport concerned;
 - (iv) each airport user's requirements at the airport concerned.
- (e) The information provided in terms of this sub-regulation shall be considered as confidential and economically sensitive and shall be handled accordingly. Any applicable stock exchange legislation shall be complied with.
- (5) After communicating its proposals to the AUC, the Airport operator shall submit its proposals to the Board, taking into account, insofar as is reasonably possible, any views put forward by the AUC.
- (6) (a) As part of the consultation process, the Airport operator and the AUC may enter into negotiations with a view to concluding a service level agreement.
- (b) Any such service level agreement shall determine the level of the service to be provided by the Airport operator which takes into account the actual system or the level of airport charges and the level of service to which airport users are entitled in return for airport charges.
- (7) In determining, reviewing, regulating or investigating an increase in the level of airport charges or the modification of the system or structure of airport charges, in terms of sub-regulation (5), the Board shall have access to necessary information from the Airport operator, the AUC and any other parties concerned.
- (8) The Board shall issue its decision not later than three months of the proposal being submitted to it by the Airport operator.

(9) In addition to airport charges, the Airport operator shall be entitled to recover from airport users, whether through increases in airport charges or otherwise, the increase in costs or loss of revenue resulting from exceptional or unforeseeable events including, but not limited to, discriminatory changes in taxation or similar levies, Government measures which impose additional costs in respect of aviation security or the protection of the environment.

Functions of the Board.

4. (1) The Board shall, in the execution of its functions, seek to promote the following:

- (a) the interests of airport users, and the Maltese economy; and
- (b) the efficient, economic and profitable operation of the airport and the aerodrome.

(2) In considering the interests of users and of the Maltese economy, the Board shall seek to balance the application of the following principles:

- (a) charges shall be reasonably related to costs, including depreciation and a return on capital employed;
- (b) the Airport operator is to be encouraged to invest in airport facilities to meet demand;
- (c) charges should be comparable to those levied at other airports which serve areas competing with Malta as a tourist destination;
- (d) the achievement of service standards applicable internationally in the industry.

(3) In considering the need to promote the efficient and profitable operation of the airport, the Board shall seek to balance the application of the following principles:

- (a) allow the Airport operator to benefit from any increase in aviation and non-aviation revenues and improvements in efficiency by permitting the Airport operator to enjoy above-average returns on capital employed by reference to the industry;
- (b) allow the Airport operator experience below-average returns on capital employed that may result in the course of normal commercial operations of an airport while ensuring that the Airport operator has the minimum financial means to provide users with a safe and reliable service:

For the purpose of this paragraph, the Board shall normally permit levels of return on capital, taking into account aviation and non-aviation revenues earned and the value of related assets located at the airport and aerodrome, within a range of one-half to one and a half times of the risk adjusted return on capital for the industry;

- (c) any activities not existing on the entry into force of these regulations, including but not limited to, retail outlets, shall not be included in the calculations

reckoned pursuant to those stipulated in paragraph (b). The Airport operator's revenues, costs and assets associated with such activities will not be included in the calculations of the Airport operator's return on capital employed.

5. The Airport operator and the Board shall agree the detailed process for conducting each review, including a timetable for completion of the review, which will - Review.

- (a) enable careful consideration of the criteria specified in regulation 4;
- (b) permit users and the Airport operator to prepare for the effects of the conclusions of any review; and
- (c) limit the impact on the resources of the Airport operator.

6. In conducting its review, the Board will be permitted to charge the Airport operator its reasonable costs, including the costs of retaining appropriate consultants and experts necessary to carry out its functions in a proper manner. Costs.

7. Airport facility charges shall be determined by the Airport operator. Airport facility charges.

8. (1) Upon receiving a complaint, or if the Minister has reasonable grounds for suspecting that the Board is failing to comply, or has failed to comply, with these regulations, the Minister may, within one month from the receipt of the complaint or from the date on which the airport charges have been determined, conduct an investigation in terms of subregulations (2) and (3). Investigation.

(2) The investigation shall be conducted in an independent and transparent fashion with the assistance of individuals of recognized standing in the economic regulation of airports.

(3) The investigation shall be concluded by a reasoned written report.

(4) The recommendations contained in the above-mentioned report shall be accepted or rejected by the Minister who will then determine the appropriate course of action.

9. The Authority shall ensure the correct application of the measures taken to comply with the Directive and that the procedure, conditions and criteria applied by it shall be relevant, objective, non-discriminatory and transparent. Authority for Transport in Malta to ensure correct application of measures.
Added by:
L.N. 132 of 2011.

10. In the event of disagreement between the members of the Board over a decision on airport charges, every member may seek the intervention of the Authority which shall examine the justifications for the modification of the system or the level of airport charges. Cases of disagreement.
Added by:
L.N. 132 of 2011.

Review of airport charges.
Added by:
L.N. 132 of 2011.

11. (1) A modification of the system or the level of airport charges decided upon by the Board shall not, if brought before the Authority, take effect until the Authority has examined the matter.

(2) The Authority shall, within four weeks of the matter being brought before it, take an interim decision on the entry into force of the modification of airport charges, unless the final decision can be taken within the same deadline.

(3) Without prejudice to sub-regulation (2), the Authority shall issue a final decision as soon as possible, and in any case within four months of the matter being brought before it. This period may be extended by two months in exceptional and duly justified cases.

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(4) The decisions of the Authority shall, subject to review in accordance with the provisions of article 469A of the Code of Organization and Civil Procedure, be binding on the Airport operator and airport users.

(5) The Authority shall publish an annual report concerning its activities.

Levying of charge on Airport operator and AUC.
Added by:
L.N. 132 of 2011.

12. When determining or regulating airport charges or undertaking any review or investigation into the justification for any increase in the level of airport charges or the modification of the system or structure of airport charges, the Board or the Authority shall be permitted to levy a charge on the Airport operator and the AUC to cover its reasonable costs, including the costs of engaging appropriate consultants and experts as may be necessary to carry out its functions in a proper manner.

Offences.
Substituted by:
L.N. 132 of 2011.

13. (1) Any person who fails to provide the Airport Charges Regulatory Board or the Authority with the relevant information requested within a reasonable time specified in a written notice shall be guilty of an offence.

(2) Any person who knowingly provides false information to the Board or the Authority shall be guilty of an offence.

Penalties.
Amended by:
L.N. 411 of 2007.
Substituted by:
L.N. 132 of 2011.

14. (1) A person who commits an offence under regulation 13(1) shall be liable, on conviction, to a fine (*multa*) not exceeding two thousand five hundred euro (€2,500), and in case of a second or subsequent conviction, to a fine (*multa*) not exceeding five thousand euro (€5,000).

(2) A person who commits an offence under regulation 13(2) shall be liable, on conviction, to a fine (*multa*) not exceeding ten thousand euro (€10,000) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.