

SERVICE ACTIVITIES LICENCES

Construction Industry Licensing Regulations S.L. 623.09

Licensed Contractors shall be in possession of the Licence Certificate at all times. Regulation 18(1) of Construction Industry Licensing Regulations S.L. 623.09 specifies that *‘a Licence Certificate shall be issued in favour of the licensee and it shall include the details of the licence and any conditions imposed by the Authority, where applicable’*. To this end, relevant Economic Operators are required to apply for the said Licence making sure to satisfy/possess the technical requirements as stipulated in Part III (including Schedule II: Criteria for each Service Activity) of S.L. 623.09.

Pursuant to Regulation 15(3) of S.L. 623. 09, *‘an entity which submits an application for a license, may appoint and authorise a competent person to act on its behalf with respect to the fulfilment of the criteria and obligations set out in these regulations and to act as the entity’s licensed administrator¹’*.

In line with Regulation 13(1) of S.L. 623.09, the Building and Construction Authority shall publish on the Government Gazette and on its website the time period/s upon which it shall commence to receive and accept applications for the said licence.

Licenses issued under the Construction Industry Licensing Regulations S.L. 623.09 shall remain valid for two (2) years from the Licence Certificate issue date. Thereafter, in accordance with Regulation 20(1) of S.L. 623.09, Contractors shall renew the licence for any of the Service Activities every two (2) years.

Applicability of Licence and Transitory Period

Regulation 3 of the Construction Industry Licensing Regulations S.L. 623.09 states:

‘(1) No person or entity may assume the exercise of any of the service activities stipulated in Schedule I unless such person or entity has, by no later than the 1st of January 2025, acquired a valid licence for the exercise of that service activity.

(2) Any natural person, who upon the coming into force of these regulations has already assumed, or intends to assume, the exercise of any of the service activities listed in Schedule I and to whom the provisions of the Act apply, shall submit an application for a licence with respect to that service activity by not later than 31st October 2023.

¹ A Licensed Administrator means the competent person engaged by the entity or as a director of the entity, who on its behalf administers the licence issued by the Authority.

(3) Any entity which upon the coming into force of these regulations has already assumed, or intends to assume, the exercise of any of the service activities listed in Schedule I, and to which the provisions of the Act apply, shall submit an application for a licence with respect to that service activity by not later than 31st October 2023.

(4) Without prejudice to the provisions of sub-regulation (1), any person or entity having submitted an application as laid down sub-regulation (2) or (3), shall not pending the determination of that application, be withheld from continuing in the exercise of any of the service activities listed in Schedule I and to which the application for licence relates, if the application is deemed to have been submitted in a complete and valid prescribed form by the applicable time-frame, and unless the Authority directs otherwise when in its opinion the circumstances so require:

Provided that during the period pending the determination of an application, the applicant² shall be responsible to fulfill the obligations referred to in regulations 5:

Provided further that when the applicant contravenes any provision of the Act or any regulations made thereunder during the period pending the determination of the application, apart from being subject to enforcement procedures in terms of the Act, the Authority³ may consider the applicant's contravention as a ground for refusal of his application and consequently withhold the applicant from the exercise of the service activity to which the application relates.

(5) Notwithstanding the provisions of the preceding sub-regulations, any person or entity applying for a licence from the 1st November 2023 until the 31st May 2024 may continue in the exercise of the service activity to which the licence relates during the period pending the determination of the application if:

(a) the application is deemed to have been submitted in a complete and valid form by the time-frame specified in this sub-regulation; and

(b) the Committee⁴, within sixty (60) days from the submission of a valid application, issues a provisional clearance⁵ that authorises the exercise of that service activity⁶:

² Applicant means an entity or a natural person who submits an application to obtain a licence in accordance with these regulations.

³ Authority means the Building and Construction Authority as established by the Building and Construction Authority Act.

⁴ Committee means the Construction Industry Licensing Committee established in Part II of S.L. 623.09.

⁵ Provisional Clearance means a clearance issued by the Authority with respect to applications for licence submitted from the 1st November 2023 until the 31st May 2024, which clearance shall temporarily authorise the applicant to exercise any of the service activities in respect of which the application relates pending the determination of the application.

⁶ Reference shall also be made to Regulation 16 (Licensing decisions by the Committee) and Regulation 17 (Notice to grant a Licence) of SL. 623. 09.

Provided that at any time during the period pending the determination of the application⁷, the Authority may revoke the applicant's provisional clearance and withhold him from the exercise of the service activity to which the application relates wherever the Authority considers that the circumstances so require:

Provided further that when the applicant contravenes any provision of the Act or any regulations made thereunder during the period pending the determination of the application, apart from being subject to enforcement procedures in accordance with the Act, the Authority may consider the applicant's contravention as a ground for withdrawal of the provisional clearance and, or the application, and consequently withhold the applicant from the exercise of the service activity to which the application relates.

(6) Any person or entity⁸ who fails to apply for a licence in terms of sub-regulations (2), (3) or (5), as applicable, may not assume the exercise or continue to exercise any of the service activities listed in Schedule I without first having acquired a valid licence issued in terms of these regulations'.

Suspension and Revocation of Licence

Notwithstanding any other sanction for which Applicants, Licensed Contractors or Licensed Administrators may be liable to under the Construction Industry Licensing Regulations S.L. 623.09, the Building and Construction Authority Act or any other law, the Building and Construction Authority Board may revoke or temporarily suspend any licence or clearance previously issued⁹.

Regulation 25(1) of S.L. 623.09 specifies that such an action takes place '*for failure to comply with any licence conditions or with any requirements stipulated in the Act or any regulations made thereunder*'. The Building and Construction Authority Board, subject to any additional conditions deemed necessary, may re-issue a suspended licence if the breach or failure is rectified in accordance with S.L. 623.09.

⁷ Regulation 16(3) of S.L. 623.09 specifies that the Construction Industry Licensing Committee 'may approve or reject an application, and may also impose any conditions which it deems appropriate to be included in the licence'. Regulation 19 of S.L. 623.09 describes the procedure when the Committee intends/decides to refuse a licence application.

⁸ Regulation 5(2) of S.L. 623.09 states that 'For the purposes of these regulations, a person or entity assuming the exercise of any of the service activities listed in Schedule I, refers to any person or entity actually executing works relative to any of the service activities under their responsibility, or a person or entity who in any manner employs, engages or entrusts workers to execute works relative to any of the service activities under that person's or that entity's responsibility.'

⁹ Regulation 25(4) of S.L. 623.09 states that 'The Court of Magistrates as a Court of Criminal Judicature may upon conviction of a licensee and, without prejudice to the powers of the Authority in terms of the preceding sub-regulations, suspend any licensed contractor from the exercise of the trade for any period of time and, for this purpose, may also order the Authority to revoke a licence issued under these regulations or refuse its renewal'.

In line with Regulation 25(7) of S.L. 623.09, in the case of suspension or revocation of a license or refusal, *'the Authority may at its discretion decide to reinstate the contractor if the contractor, upon the submission of a fresh application, provides sufficient proof and assurance that he has taken the necessary measures to rectify any occurrence or breach which resulted in the revocation of the licence'*.