



**MALTA RESOURCES AUTHORITY**

**Decision Notice 02/2012/ED**

**Decision of the 27<sup>th</sup> August 2012 issued in virtue of the Malta Resources Authority Act (Cap.423 of the Laws of Malta), the Petroleum for the Inland Fuel Market (Retail) Regulations (S.L. 423.37) and the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (S.L. 423.30) to Mr Francis Schembri 599257 (M) with regard to the application for the transfer of an authorisation to operate a petroleum filling station.**

Whereas the Authority has received an application from **Mr Francis Schembri** (I.D. No. **599257 (M)**) hereinafter 'the applicant' for the issue of an authorisation to operate a petroleum filling station under the Petroleum for the Inland Fuel Market (Retail) Regulations (S.L. 423.37).

Whereas the applicant has submitted a police conduct certificate issued by the Criminal Records Office of the Malta Police as required in terms of the application for the transfer of an authorisation to operate a petroleum filling station.

Whereas the police conduct certificate shows that the applicant was accused and found guilty for committing offences which are voluntary criminal offences liable to a punishment of imprisonment for at least one year, namely, article 218 (1) (a) (b) of the Criminal Code - (Cap. 9 of the Laws of Malta), Article 6 (1)(2)(3) of Act 27/2000 of the Occupational Health and Safety Authority Act (Cap. 424 of the Laws of Malta), Regulation 10 (1) of LN 36/03 and, or regulation 3 of LN 91/2000, Regulation 7 (1)(2) of LN 91/2000, Regulation 4(1) and 4(3) (a),(b) of LN 91/2000.

Whereas the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (S.L. 423.30), in Regulation 5 (1) (b) provide that the Authority may refuse an application if the applicant has committed a voluntary criminal offence liable to a punishment for at least one year.

Whereas the 'Guidelines in relation to the application of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (S.L. 423.30)' approved by the Board of the Malta Resources Authority are applicable to the application under review.

The Malta Resources Authority has taken note of the application and of the aforementioned considerations and has made its review and considerations on the matter.

Therefore, also for the reasons stated in Section II of this Decision, the Malta Resources Authority hereby determines as follows:

Paragraph 3. of the "Guidelines in relation to the application of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (L.N. 195 of 2008)" apply to the matter in hand. The said paragraph states that:

"3. In the case of an applicant or Authorised Provider who has been found guilty of a criminal offence liable to a punishment of imprisonment of at least one year, then the Authority shall withdraw, suspend or refuse Authorisation. The withdrawal, suspension or refusal of the Authorisation shall only become effective once the judgment has become *res judicata*."

In view of the above, the Authority determines that the transfer of the authorisation No. PRS 62 to the applicant Mr Francis Schembri 599257 (M) shall be refused.

Paragraph 6. of the "Guidelines in relation to the application of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (L.N. 195 of 2008)" also apply to the matter in hand.

The said paragraph states that:

"6. Any withdrawal, suspension and or refusal by the Authority will be reviewed if requested by the applicant and/ or authorized Provider after the lapse of five calendar years after completion of prison sentence and/or payment of the fine."

## **Section II**

When making this decision under regulation 5 (1) of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 the Authority has take into account of:

- (a) the seriousness of, and circumstances surrounding the offence or the contravention;
- (b) the explanation offered by Mr. Schembri;
- (c) the relevance of the offence to the proposed role in the case of the application for the authorisation being applied for;
- (d) the passage of time since the offence was committed and evidence of the individual's rehabilitation;
- (e) any evidence of actual harm or detriment to other authorised providers or consumers;



(f) evidence pointing to risks to authorised providers and consumers from dealings with the applicant or the authorised provider.

An explanation offered by the convicted person/applicant was received as per regulation 5 (2)(b) of S.L. 423.30, which the Authority is bound to consider in its decision. The Authority is also obliged by law to take into account the seriousness of, and circumstances surrounding the offences, the relevance of the offences to the proposed role, and the passage of time since the offence was committed and evidence of the individual's rehabilitation (regulation 5 (2)(a) (c) and (d) of S.L. 423.30).

In regard to (a) above, the Authority considers that the seriousness of the offences and the circumstances related to them as described in the criminal conduct certificate provided by the applicant, merit the necessary caution when issuing an authorisation to an applicant who will carry out an activity that requires adequate diligence due to safety considerations both as regards the operator's own employees as well as that of consumers in general. Thus the offences in question are deemed to be relevant to the proposed role in the case of the application for the authorisation being applied for.

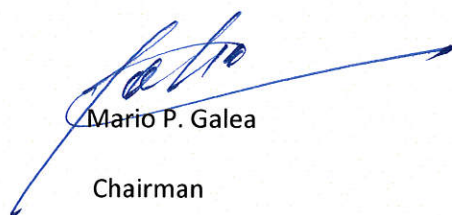
The Authority has considered the applicant's explanation. The applicant's explanation has been taken into account in the Authority's decision. The Authority does not consider that the applicant's explanations are sufficient to justify the risk posed to employees and consumers in view of the applicant's past criminal conduct. The criminal conduct of the applicant is deemed to be itself evidence pointing to risks to other authorised providers and consumers from dealings with the applicant, though no actual evidence is present of actual harm or detriment to other

authorised providers or consumers. Nonetheless the Authority deems that it should adopt a prudent stance in regard to the applicant in question. The passage of time since the offences were committed is deemed to be insufficient to justify a change in the approach being adopted. Furthermore, no evidence of the applicant's rehabilitation has been submitted to the Authority.

In terms of regulation 13 (2) of the Petroleum for the Inland (Retail) Fuel Market Regulations, 2010 (S.L. 423.37), under which the authorisation in question has been issued, in taking a decision in respect of the grant, issue, amendment or renewal or any other matter pertaining to an authorisation issued under those regulations, the Authority may *inter alia* take account of the following:

- “(b) the capability of the applicant to ensure safety conditions, in the context of the authorisation being applied for;
- (c) private and professional integrity of the applicant;
- (d) protection of the health and safety of employees;”

The Authority has also considered this regulation in its decision, in view of the violation of health and safety laws for which the applicant in question has been found guilty of, and of the finding of guilt with regard to grievous bodily harm under article 218 of the Criminal Code.



Mario P. Galea

Chairman

Malta Resources Authority