

Based on the article 6, par. 5 and article 18, par. 4 of the Railway Law ("Narodne Novine" no. 123/03 and 30/04) the Minister of Sea, Tourism, Transport and Development issues the

## **ORDINANCE**

### **ON CONDITIONS AND THE WAY OF ISSUING A LICENCE FOR PERFORMING THE SERVICES OF THE RAILWAY TRANSPORT AND A LICENCE FOR THE MANAGEMENT OF THE RAILWAY INFRASTRUCTURE**

#### **SCOPE OF APPLICATION**

##### **Article 1**

This Rule Book prescribes the procedure of issuing, extending of validity and the revocation of the licence for performing the services in the railway transport, and the conditions to be met by a domestic legal person registered for performing the services of public carriage in the railway transport ( hereinafter: a railway carrier), as well as the conditions for issuing a licence for performing an activity of the management of the railway infrastructure to be met by a legal person authorized by the owner of the railway infrastructure (hereinafter: the Administrator of the Infrastructure).

##### **Article 2**

The licence for performing railway transport, as well as the licence for the management of the railway infrastructure is issued by the ministry competent for the railway transport (hereinafter: the Ministry) in an administrative procedure on the occasion of a written application of a railway carrier respectively the Administrator of the Infrastructure.

#### **CONDITIONS FOR ISSUING A LICENCE**

##### **Article 3**

The conditions to be met by a railway carrier for obtaining the licence for performing the services in the railway transport are as follows:

1. to be seated in the Republic of Croatia;
2. to be registered for performing railway transport (with or without the traction of trains or only the trains traction) for the services for which the licence is asked;
3. that no bankruptcy procedure has been instituted against him or no bankruptcy is in progress;
4. that a member of his Management is not finally sentenced to imprisonment at the duration of one or more years for the criminal act in business transactions, criminal act against the public security of people and property and the safety of the traffic, the violations of the rights to labour and from labour;
5. to be financially able for orderly fulfilling the operational liabilities;
6. to be professionally enabled to perform the activity;
7. to possess corresponding rolling stock and other technical equipment;
8. to be able to compensate possible damage based on a responsibility created during the carrying out his activity, and that he can offer guarantees for damage coverage in the line with the law and other regulations.

The railway carrier which would perform international transport of the goods to be the subject of customs procedures must, besides the conditions from the paragraph 1 of this article, fulfil the condition not to have been finally sentenced for an offence of avoiding a customs control and non-payment of a customs duty, and other fees to be paid during the customs procedure.

#### Article 4

The Administrator of the Infrastructure must, for issuing a licence for the management of the railway infrastructure, fulfil the conditions prescribed in the article 3, par. 1, items 1, 3, 4 and 5 of this Rule Book.

### PROCEDURE OF ESTABLISHING THE FULFILMENT OF THE CONDITIONS FOR ISSUING A LICENCE

#### Article 5

The application for issuing a licence, a railway carrier is obliged to mention the following:

1. full name of the firm and the seat of the railway carrier,
2. data on the type of a service which he intends to perform,
3. railway network or a part of the railway network on which he intends to perform carriage services,
4. method in which the service of trains traction is intended to be performed,
5. description and type of railway vehicles by means of which the carriers intend to use for the asked services,
5. description of the measures by means of which the railway carrier would secure necessary safety and the quality of the asked service,
6. data on organizational structure and professional ability of the employees to be directly responsible for performing, security and the quality of the asked service,
7. data on meeting the business-financial conditions for performing the services,
8. data on the way of cover the responsibility for the damage to arise concerning the performing of the activity to be the subject-matter of the licence (insurance and the means and assets at the disposal as a warranty for the payment of a damage compensation),
9. name and seat of a possible authorized person.

#### Article 6

In the request for issuing a licence for performing the activity of the management of the railway infrastructure, the Infrastructure Administrator is obliged to state the following:

1. full name of the firm and seat of the Administrator of the Infrastructure,
2. railway network or a part of the network at which he intends to organize the activity of the management of the infrastructure,
3. information on the way in which the railway transport is intended to be organized and regulated, and the access and use of the railway infrastructure is provided for the railway carriers, and the public transport as well as the transport for the own needs will be organized,

4. method of maintenance and modernization of the railway infrastructure and its protection,

5. data on organizational structure and professional ability of the employees who will perform the jobs of the traffic regulation at the railway infrastructure, and the employees responsible for railway infrastructure maintenance jobs,

6. data on the organization of a control system of the traffic safety and the quality of the system, as well as the responsible persons.

#### Article 7

In evidence of fulfilled conditions from the article 3, par. 1 of this Rule Book, a railway carrier is obliged to enclose the following documents with the application for issuing a licence for performing the services in the railway transport:

- item 1 and 2 – excerpt from the Register of Companies with the Commercial Court,

- item 3 – confirmation of a competent court,

- item 4 – excerpt of the criminal records or a confirmation of corresponding judicial or administrative bodies for a responsible person,

- item 8 – confirmation or a statement of an insurance company or some other document stating and proving the way and ability to pay a claim for damages arisen as a consequence of performing the activities to be the subject-matter of this licence.

In evidence of the fulfilled conditions from the article 3, par. 2 of this Rule Book, the railway carrier is obliged, with the application for issuing a permit, to enclose an excerpt form criminal records or a confirmation of corresponding judicial or administrative bodies.

#### Article 8

(1) Condition of financial capability from the article 3, item 5, is proved by a railway carrier by:

a) an operative plan from which the following can be seen:

– that at any moment, he can meet his real and potential liabilities, which are evaluated on the base of realistic assumptions, for the period of two years counting from the beginning of performing the activity;

– that he can settle his fixed and variable costs arising from performing the activities foreseen by the operative plan;

b) balance sheet projection, including profit and loss account for the next two years;

c) proprietary structure data.

#### Article 9

The railway carrier proves the fulfilled conditions from the article 3, item 6 by:

1. schematic presentation of organizational structure of jobs referring directly to performing the services to be the subject-matter of asked licence and a reliable operative control and inspection of particular operations, as well as the responsible persons in that process;

2. statement on professional ability and mastered skills of the employed for performing those jobs.

## Article 10

The railway carrier proves to fulfil the conditions from the article 3, item 7, by means of the documents from which it can be seen that the railway vehicles (transport and traction ones) meet the conditions of the railway transport safety regulations, and other international regulations for the construction and maintenance of the railway vehicles.

The maintenance of railway vehicles, in conformity with the rules from the par. 1 of this article, and the method of the control and inspection of the proper working condition of a vehicle, will be proved by the railway carrier by means of a document on internal organization of a part of the firm in charge of the construction and maintenance of railway vehicles, respectively by means of a statement on the foreseen method of maintenance and control of the proper working condition of vehicles.

## Article 11

The Administrator of the Infrastructure will prove the fulfilled conditions from the article 3, par. 2 of this Rule Book by means of the following documents:

- item 1 – excerpt from the register of companies of the commercial court
- item 3 – confirmation by a competent court
- item 4 – excerpt from criminal records or a confirmation by corresponding judicial or administrative bodies for a responsible person.

The condition from article 3, par. 1, item 5 of this Rule Book, referring to the fulfilling of the conditions of financial capability to perform the activity of the management of the railway infrastructure, the Administrator of the Infrastructure proves in the way prescribed by the article 8 of this Rule Book.

## PROCEDURE OF ISSUING, EXTENDING AND REVOKING A LICENCE

### Article 12

The Railway Carrier, or the Administrator of the Infrastructure, who prove to fulfil the conditions prescribed by the article 3, respectively by the article 4 of this Rule Book, will be issued, by the Ministry competent for the railway transport, the licence for performing the services of railway carriage to be the subject-matter of the application, respectively for performing the activity of the management of the railway infrastructure, within the period of 30 days from the date of submitting an orderly application.

In case of an incomplete application, the Ministry may order the applicants to supplement the applications within a suitable time.

If the applicants fail to perform the asked amendment of the application within a period defined in the par. 2 of this article, the Ministry will reject the application by its decision.

Against the decision of the Ministry, an administrative suit may be initiated before the competent court.

### Article 13.

The licence for performing the services in railway carriage, respectively the licence for the management of the railway infrastructure is issued for the period of 5

years, with the possibility of extension.

The licence is issued to a legal person to the name of which it is made out and it is not transferable to some other carrier, respectively the Administrator of the Infrastructure.

Exceptionally, a licence may be issued for a longer period than 5 year, but not for more than 20 years, if it is estimated that the economic effects of investment, dependent on the volume and rate of investments, will not be able to realize within the time of 5 years.

With submitting an application for the extension of a licence, with respect to the par. 1 of this article, the applicant must prove to fulfil the conditions prescribed by the provisions of the articles 3 and 4 of this Rule Book.

#### Article 14

During the whole period of a licence validity, a railway carrier, respectively the Administrator of the Infrastructure, must fulfil the conditions prescribed by the article 3, respectively 4 of this Rule Book.

The Ministry performs a control and inspection of the fulfilling of the conditions from the licence.

Railway carriers, respectively the Administrator of the Infrastructure, are obliged, at the request of the Ministry, to enable the checking and review of the documents on the fulfilling of the conditions from the licence.

#### Article 15

If the Ministry, during performed control, finds out that the railway carrier, respectively Administrator of Infrastructure, to which a permit has been issued, does not fulfil the condition from the article 3, par. 1, item 5 of this Rule Book, and which refer to its financial capability to fulfil the liabilities during the operations, the Ministry will order it, under condition that the safety of the railway traffic is not endangered, to remove the faults during the period not longer than 6 months from the date of being informed on their existence.

#### Article 16

The railway carrier, respectively Administrator of the Infrastructure to whom a licence has been issued, is obliged to start performing the activity for which the same was issued within 6 months from the date of issuing.

The railway carrier, or the Infrastructure Administrator, is obliged to inform the Ministry on the date of the start of performing the activity.

If the railway carrier stops to perform the activity of railway transport from any reason whatsoever, that interruption cannot last longer than six months.

Exceptionally, the Ministry can permit the railway carrier, at his request, when the arisen circumstances and the specificity of the services of the public transport performed by the carrier request it, to interrupt the performing of the activity for more than 6 months, what will be the subject-matter of especial decision.

## Article 17

The licence for performing the activity is revoked from the railway carrier, respectively from the Administrator of the Infrastructure, in the following cases:

1. if established that railway carrier, respectively the Administrator of the Infrastructure, does not fulfil any of the conditions from the article 3, par. 1 of this Rule Book, except for the conditions from the article 3, par. 1, item 5;
2. if the railway carrier, respectively the Administrator of the Infrastructure does not remove the faults with respect to fulfilling of the conditions of the financial capability in the line of the provision of the article 3, par. 1, item 5 within a defined time from the article 15 of this Rule Book;
3. if the railway carrier, respectively the Administrator of the Infrastructure, fails to start performing the services within the time limit from the article 16 of this Rule Book.

Besides the cases of revoking the licence from the paragraph 1 of this article, the licence for performing the services in railway transport will be revoked also from that railway carrier which stops performing the services of the railway transport for more than 6 months, and with it, has not a decision of the Ministry for the extension of that period.

An administrative suit can be initiated against the decision of the Ministry on revoking the licence before a competent court.

## Article 18

The railway carrier, respectively Administrator of the Infrastructure, the licence of which has been revoked, can again submit an application for issuing of a licence.

## Article 19

If some status changes arise with the railway carrier, respectively the Administrator of the Infrastructure, during the validity of the licence, or the circumstances change or the facts significant for performing the activity for which the licence has been issued, the railway carrier, respectively the Administrator of the Infrastructure, is obliged to inform the Ministry on it, and report on arisen changes within 30 days from their appearing

After the receipt of the notification from the par. 1 of this article, the Ministry makes a decision, dependent on the scope of the arisen change, whether there is a need to submit a new application for issuing the licence.

If the Ministry finds that the issuing of a new licence is necessary, it can permit the railway carrier, respectively the Administrator of the Infrastructure, to continue performing the activity to the degree to which its earlier licence permitted, until the issuing of a new licence.

## Article 20

The licence for performing services in the railway transport does not give the right to the railway carrier to access to the railway infrastructure without the possession of the decision on safety and the granted route by the Administrator of the Infrastructure.

## RECOGNITION OF FOREIGN LICENCES

### Article 21

At the territory of the Republic of Croatia, the licences for performing the services in the railway transport issued by the bodies competent for issuing the licences of other countries are recognized, subject to the existence of the international agreement on mutual licence recognition between the Republic of Croatia and the State whose body issued the licence.

In case of a doubt that the railway carrier who has a licence of a competent body of another country fails to fulfil the conditions for performing the activity for which the licence has been obtained, the Ministry is obliged to inform so, without hesitation, the competent body of the State to have issued the licence.

The body of the State which issued the licence is obliged, within 30 days from the date of the information on the non-fulfilled conditions from the paragraph 2 of this article, inform the Ministry on the undertaken measures and on the period of removing the fault.

### Article 22

The Ministry keep records on the issued carriage licences.

## CONCLUDING PROVISIONS

### Article 23

This Rule Book comes into force on the eighth day from the day of publishing in "Narodne Novine", and it will be applied with the day of the start of the application of the Railway Law "Narodne Novine" no. 123/03 and 30/04.

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Class: 011-01/05-02/96  
File No.: 530-08-05-1  
Zagreb, 13 October 2005

MINISTER OF  
SEA, TOURISM, TRANSPORT  
AND DEVELOPMENT

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