

CRR-G-51-A

Guidance to the Railway Undertaking Licensing
Application Process.

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1. Introduction

The Commission for Railway Regulation is the designated regulatory body for the purposes of SI 249 2015 and Directive 2012/24/EU.

As the regulatory body one of the Commission's functions relates to the Licensing of Railway Undertakings.

This document outlines the Licence application process for a Railway Undertaking under SI 249 2015.

An applicant for a licence is required to comply with the licencing requirements of SI 249 2015, Directive 2012/24/EU and Regulations 2015/171/EU.

2. General Requirements

A railway undertaking is entitled to apply for a licence in the Member State in which it is established.

A licence shall not be issued where the licencing requirements are not complied with.

A railway undertaking shall not be permitted to provide rail transport services unless it has been granted the appropriate licence.

3. Application Process

Applications for a railway undertaking licence should be sent to:

Head of Administration,
Commission for Railway Regulation,
Temple House,
Temple Road,
Blackrock,
Dublin.

Each railway undertaking which applies for a licence must demonstrate and provide relevant information to the CRR that it is at any time able to meet the requirements relating to good repute, financial fitness, professional competence and cover for civil liability.

4. Stage 1

The CRR will at Stage 1 of the application process ensure that all applications submitted have the following documentation/information included:

- Covering letter.
- Appropriate written proof that the RU is established in the state.
- An affidavit for the purpose of good repute.
- Details of financial fitness.
- Appropriate written proof that the RU meets the requirements relating to professional competence.
- Appropriate written proof that the RU maintains adequate liability insurance cover.

- Appropriate written proof that the RU where intending to operate international goods services complies with the customs and tax regulations of any member state in which it proposes to operate services.
- Application fee.

Where information relating to any of these requirements has not been provided by the applicant then this will be advised to the applicant and the assessment of the application paused pending the receipt of material relating to the requirement.

Where there is material relevant to all the requirements this will be confirmed but this does not indicate that the requirement is met and the CRR may request further submissions to determine compliance with any requirement.

5. Stage 2

The material received will be assessed and attention is drawn to aspects of the assessment and what is required.

Covering letter

The covering letter for the application must include details of the railway undertaking making the application and list the material that is included in the application and that supports compliance with the requirements for railway undertaking licencing.

Appropriate written proof that the RU is established in the state

Evidence of establishment such as that from the Companies Registration Office.

An affidavit for the purpose of good repute

For the purposes of the requirements for good repute, the railway undertaking must furnish the CRR with a declaration, sworn by an officer of the railway undertaking, confirming that neither the railway undertaking nor any person in charge of its management has been convicted of a criminal offence including offences of a commercial nature or offences applicable to transport under the laws of the State or under the laws of a foreign state, for which the penalty upon conviction was at least one, or both, of the following punishments, or their equivalent under the law of a foreign state (i) a sentence of imprisonment exceeding 3 years, or (ii) a fine exceeding €10,000.

Neither the railway undertaking nor any person in charge of its management—

- (i) has been declared bankrupt,
- (ii) has made (whether as an individual or otherwise and whether under the control of a court or otherwise) a composition or arrangement with creditors,
- (iii) has been in charge of the management of a company or cooperative which has been wound up by a court or which has committed any act of insolvency, or
- (iv) in the case of an undertaking that is an individual or a partnership, the individual or any partner in the partnership has not been declared bankrupt or has not made (whether as an individual or as a partner in a partnership and whether under the control of a court or otherwise) a composition or arrangement with creditors.

Neither the railway undertaking nor any person in charge of its management has been convicted of serious or repeated failure, under the laws of the State or under the laws of a foreign state, to fulfil social or labour law obligations, including obligations under occupational health and safety legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures.

In determining whether a railway undertaking is of good repute the licensing authority shall also have regard to all relevant evidence, including any information in its possession as to the previous conduct of any officer of the undertaking if that conduct appears to it to relate to the railway undertakings fitness to hold a licence.

For the purposes of this Regulation, a person shall be considered—

(a) to be in charge of the management of a railway undertaking if that person is a director, manager, secretary or other officer of the undertaking or purports to act in such capacity, and (b) to have been in charge of the management of a company or cooperative if that person was a director, manager, secretary or other officer of the company or cooperative or purported to act in such capacity.

Details of financial fitness

In relation to financial fitness the railway undertaking must demonstrate that it will be able to meet its actual and potential obligations for a period of 12 months. Verification of financial fitness can be demonstrated through annual accounts and/or balance sheet.

The information to be provided by undertakings applying for a licence in accordance with Regulation 37 must cover the following aspects:

- (a) available funds, including the bank balance, pledged overdraft provisions and loans;
- (b) funds and assets available as security;
- (c) working capital;
- (d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;
- (e) charges on an undertaking's assets;
- (f) taxes and social security contributions.

Appropriate written proof that the RU meets the requirements relating to professional competence

The requirement relating to professional competence will be met when a railway undertaking applying for a licence can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operation to be specified in the licence.

Appropriate written proof that the RU maintains adequate liability insurance cover.

A railway undertaking shall be adequately insured to cover the civil liabilities or have adequate guarantees under market conditions for cover of its liabilities in the event of accident, particularly in respect of passengers, luggage, freight, mail and third parties. The application must confirm the level of cover and provide evidence of this cover.

Appropriate written proof that the RU where intending to operate international goods services complies with the customs and tax regulations of any member state in which it proposes to operate services

Confirmation should be provided where such services are to be provided and if in such case the evidence of compliance submitted.

Application fee

The application fee will be advised at the time of application and is to be paid prior to the completion of the licencing process.

Where any of these requirements are not deemed to be adequately addressed during the stage 2 assessment the CRR will advise the applicant that additional information is required to enable the completion of the assessment of the application.

The CRR decision in respect of an application for the issue of a licence shall be made not later than three months from the date of receipt, by the CRR, of all relevant information from the railway undertaking.

The CRR may make any enquiries it sees fit to verify any information or particulars provided in the application.

6. Issuing of a licence

The CRR after considering an application and where it is satisfied that the undertaking will at all times during the operation of the licence meet the requirements to be of good repute, financial fitness, professional competence and cover for civil liability issue a licence to the undertaking.

The licence will be issued in the prescribed format.

A licence may:

- Limit the services that may be provided,
- Contain specific conditions,
- Require the undertaking to have its licence reviewed at least every 5 years.
- Incorporate licence specific conditions governing the suspension or revocation of the licence.

On the issuing of a licence to a railway undertaking the CRR will inform the European Railway Agency of the fact.

7. Representations and Appeals

Where the CRR proposes to refuse an application for a licence the railway undertaking will be notified. On notification the railway undertaking can within 21 days make written representation to the CRR to review the proposal. Any such representation will be considered by the CRR.

Where the CRR proposes to refuse an application for a licence the railway undertaking will be notified. On notification the railway undertaking can within 21 days appeal against the decision to the High Court.

8. Railway Licences Register.

The CRR maintains a register of licences issued, amended, suspended or revoked. This register is open to inspection by any person during normal office hours subject to a written application and payment of the associated fee. A certified copy of an entry in the railway licences register is available for a fee.