

دائرة النقل
DEPARTMENT OF TRANSPORT



Maritime Sector

**Transport Regulations (Port Tariff, Complaint,
Dispute Resolution and Planning)**

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Transport
Regulations (Port
Tariff, Complaint,
Dispute Resolution
and Planning)

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DEFINITIONS

Chairman	Means the Chairman of the Department
Company	Means Abu Dhabi Ports Company, established by Emiri Decree No. 6 of 2006
Department	Means the Abu Dhabi Department of Transport established by the Emiri Law No. 4 of 2006 as amended from time to time
Person	Includes a partnership, an association and a body corporate
Port	Means a port designated in Schedule (1) (Schedule of Ports) in the Regulations
Regulations	Means these Transport (Port Tariff) Regulations 2010 as amended from time to time

PORT TARIFF

ARTICLE TPT 01/10 STATEMENT OF PURPOSE AND SCOPE OF APPLICATION

1. Statement of Purpose: Pursuant to Article (2) of Law No. (4) of 2006, the Department has been entrusted with overseeing the commercial seaports sector of the Emirate of Abu Dhabi currently managed by the Company. The Department's mandate includes to issue regulations and give instructions to the Company with regard to charges (tariffs) imposed by it for port services pursuant to Article 4(4) of Decree No. (6) of 2006 and these Regulations give effect to this mandate. In regulating the Company's charges, it is the Department's intention to apply these Regulations in a manner that recognises the commercial autonomy of the Company and to exercise its regulatory responsibilities only where required to prevent anti-competitive behaviour and abuses of monopoly power.
2. Scope of Application: These Regulations shall be interpreted in conformity with the Laws and Decrees of the Emirate of Abu Dhabi and any applicable Federal law, in conformity with the Constitution of the UAE.

ARTICLE TPT 02/10 INTENT OF THE REGULATIONS

It is the intent of these Regulations to:

- 1.1 Specify a procedure for the regulation of the Company's tariffs.
- 1.2 Determine objective criteria on the basis of which it will be assessed whether the Company's tariff are to be regulated.
- 1.3 Provide a clear procedure for the exchange of information between the Department and the Company regarding the amendment and approval of tariffs.
- 1.4 Determine specific time limits for regulatory decisions and approvals to limit the impact of such decisions and approvals on the Company's day-to-day operations.
- 1.5 Facilitate a speedy resolution of disagreements through negotiation between the Department and the Company.
- 1.6 Provide for independent mediation or enquiries where the Department and the Company are unable to resolve a disagreement through direct negotiation.

ARTICLE TPT 03/10 PROCEDURE FOR REVIEW OF BASIC TARIFF

1. The Company shall notify the Department in writing of a proposed amendment of its basic tariff at least 60 working days prior to the intended introduction of such amendment.
2. The notification contemplated in sub-regulation (1) of this Article shall:
 - 2.1 Provide details of the proposed amendment and be fully motivated.
 - 2.2 Specify the consultations which the Company has conducted regarding the proposed amendment, if any, and the outcome of such consultations.

ARTICLE TPT 04/10 ACKNOWLEDGEMENT OF RECEIPT OF PROPOSED TARIFF AMENDMENT

1. The Department shall acknowledge receipt in writing of the Company's notification within 10 working days from the date of submission thereof, and indicate in its acknowledgement:
 - 1.1 Whether it requires a clarification from the Company with regard to any aspect of the proposed amendment.
 - 1.2 Whether it objects to the proposed amendment on one or more of the following grounds:
 - (i) The Company's tariff unjustifiably discriminates between customers in respect of similar services or facilities provided to or made available to such customers by the Company.
 - (ii) The Company's tariff does not cover its long run marginal cost of providing a service or operating a facility.
 - (iii) The Company's tariff is artificially high when compared to its costs in supplying a service or operating a facility.
2. The proposed tariff amendment shall be deemed to be approved in the event that the Department has not requested a clarification or indicated an objection to the proposed amendment within the time period contemplated in sub-regulation (1) of this Article.
3. The approved tariff shall be published for public notice in any appropriate manner as the Department sees fit.

ARTICLE TPT 05/10 PROCEDURE FOR OBTAINING CLARIFICATION

1. The Department shall, in the event that it has given notice of its intention to seek a clarification of a tariff amendment, provide the Company with a written request for further information within 10 working days after it has acknowledged receipt of the Company's notification. The Company shall respond to such request in writing within 10 working days.
2. The Department may, in the written request contemplated in sub-regulation (1), direct that the proposed tariff amendment shall not enter into force until the Department has provided written confirmation that it is satisfied with the clarification provided.
3. In the event that the Department is satisfied with the Company's clarification, it shall inform the Company without delay. The proposed amendment shall be deemed to be approved in the event that the Department does not respond to the clarification within 10 working days after the receipt thereof.
4. If the Department is not satisfied with the Company's clarification, it shall inform the Company that it objects to the proposed tariff in the manner contemplated in Article TPT06/10.

ARTICLE TPT 06/10 PROCEDURE FOR OBJECTING TO TARIFF

1. In the event that the Department objects to a proposed tariff in terms of sub-regulation (1.2) of Article TPT04/10, it shall provide the Company with statement of reasons within 10 working days after having communicated its intention to object to the Company.
2. The Company may, within 10 working days after having received the Department's statement of reasons, provide the Department with a written response. The Department shall consider the Company's statement of reasons and shall inform the company within 10 working days whether it intends to pursue its objection or not. In the event that the Department withdraws its objection, the proposed tariff shall be deemed to be approved.
3. If the Department maintains its objection, the proposed tariff shall not enter into force and the Chairman may:
 - 3.1 Direct that a mediation procedure be followed.
 - 3.2 Proceed to convene a panel to conduct an inquiry, in terms of Complaint Procedure and Dispute Resolution Regulations.

ARTICLE TPT 07/10 SPECIAL TARIFFS

1. The Company may enter into an agreement to grant a special tariff at variance to the basic tariff.
2. The Company shall notify the Department in writing within 10 working days of any agreement to grant a special tariff at variance to the basic tariff.
3. A special tariff shall remain valid unless any inquiry has determined a different tariff as contemplated in Article TPCDR08/10.
4. The Department may request the Company for clarification of the agreement to grant a special tariff and the justification for granting a special tariff within 10 working days after having received the notification, and the Company must respond to the Department's request for clarification within 10 working days.
5. In the event that the Department requests a clarification or indicates that it has an objection, the grounds for objection as determined in sub-regulation (6) and the procedures determined in Article TPT06/10 and TPT07/10 shall apply.
6. The Department may object at any time to the special tariff on the grounds that it:
 - 6.1 Demonstrates anti-competitive behaviour.
 - 6.2 Abuses the Company's monopoly position.
 - 6.3 Is not compliant or consistent with Government policy or the public interest.

7. If the Company, at the time of the notification referred to in sub-regulation (2) of this Article, states that the information contained in the notification or any document accompanying the notification is confidential or of a commercially sensitive nature, the Department may not disclose such information or the contents of the document to any person.
8. Sub-regulation (7) of this Article does not prevent the Department from disclosing information or the contents of a document to:
 - 8.1 Any officer employed by the Department and delegated by the Chairman.
 - 8.2 A consultant engaged by the Department provided such consultant has signed a non-disclosure agreement.
 - 8.3 A mediator or a member of a panel appointed to conduct an inquiry in terms of the Transport (Port Complaint and Dispute Resolution) Regulations.
 - 8.4 The Executive Council of Abu Dhabi.
9. If the Department is of the opinion that the disclosure of confidential or commercially sensitive information would assist in achieving the objectives of these or any other regulations, the Department may apply in writing to the Company for permission to make such disclosure setting out detailed reasons why the Department wishes to make the disclosure. The Company shall not unreasonably refuse such permission, but if the Company persists in such refusal, the matter shall be referred to the Chairman who shall take a final decision in consultation with the chairman of the Company.

PORT COMPLAINT AND DISPUTE RESOLUTION

ARTICLE TPCDR 01/10 STATEMENT OF PURPOSE AND SCOPE OF APPLICATION

1. Statement of Purpose: Pursuant to Article (2) of Law No. (4) of 2006, the Department has been entrusted with overseeing the commercial seaports sector of the Emirate of Abu Dhabi currently managed by the Company and to issues rules and take decisions to guarantee the functioning of the ports sector. In considering the efficient functioning of the ports sector, the Department is aware of the natural tendency in the ports sector towards the formation of monopolies and therefore deems it necessary to provide a complaint and dispute resolution framework which safeguards port users against anti-competitive behaviour.
2. Scope of Application: These regulations shall be interpreted in conformity with the Laws and Decrees of the Emirate of Abu Dhabi and any applicable Federal law, in conformity with the Constitution of the UAE.

ARTICLE TPCDR 02/10 INTENT OF THE REGULATIONS

1. It is the intent of these Regulations to:
 - 1.1 Specify a procedure whereby port users may lodge complaints regarding anti-competitive conduct.
 - 1.2 Encourage the resolution of complaints between the Company and its customers by way of commercial negotiations.
 - 1.3 Provide for independent non-binding mediation in the event that a complaint is not resolved through negotiation.
 - 1.4 Provide for an independent public inquiry in the event that a complaint is not resolved through mediation.
 - 1.5 Provide for a procedure whereby a party may appeal against a decision of an inquiry or a rejection of a complaint by the Department.

ARTICLE TPCDR 03/10 PROCEDURE TO BE FOLLOWED UPON RECEIPT OF A COMPLAINT

1. The Department shall inform the Company in writing within 10 working days that it is in receipt of a complaint on one or more of the following grounds and invite the Company to provide the Department with comments within 10 working days:
 - 1.1 The Company does not grant access to port services and facilities in a non-discriminatory, fair and transparent manner.
 - 1.2 The Company engages in practices that unduly restrain competition or are likely to have adverse effects on trade or economic development.
 - 1.3 The Company's tariff unjustifiably discriminates between customers in respect of similar services or facilities provided to or made available to such customers by the Company.
 - 1.4 The Company's tariff does not cover its long run marginal cost of providing a service or operating a facility.
 - 1.5 The Company's tariff is artificially high when compared to its costs in supplying a service or operating a facility.
 - 1.6 The Company does not comply with the government's maritime policy or a policy directive issued by the Chairman.



2. The Department shall consider the complaint and the comments, if any, received from the Company and may:
 - 2.1 Reject the complaint if, in the Department's opinion:
 - (i) The subject matter of the complaint is trivial, misconceived, vexatious, or lacking in substance.
 - (ii) The matter can be resolved through direct negotiations between the Company and the complainant.
 - 2.2 Allow the complaint and advise the Chairman whether or not the matter should be dealt with by way of mediation or inquiry.
3. If the Department:
 - 3.1 Rejects the complaint on the grounds specified in sub-regulation (2.1) of this Article, it shall forthwith provide the complainant and the Company with a written statement of reasons.
 - 3.2 Believes that the matter can be resolved through direct negotiations between the Company and the complainant, it may direct the parties to enter into negotiations to resolve the matter.
4. If the Department has rejected a complaint on the grounds specified in sub-regulation (2.1) (ii) of this Article, the complainant may, after having undertaken negotiations in good faith with the Company to resolve a complaint without reaching a settlement, resubmit the complaint to the Department. The Department shall consider a complaint that has been resubmitted and if it is the Department's opinion that there are grounds for the complaint, the provisions of sub-regulation (2.2) of this Article shall apply.

ARTICLE TPCDR 04/10 RESOLUTION OF COMPLAINT THROUGH MEDIATION

1. If the Chairman directs that:
 - 1.1 A complaint.
 - 1.2 The Department's objection to a proposed tariff, shall be resolved through mediation, the Department shall provide the Company and the complainant (if applicable) with at least 10 working days notice that a conference of the parties shall be called to explore the possibility of resolving a complaint or an objection by agreement.
2. If the mediation proceedings relate to a complaint, the Department or a mediator appointed by the Department shall preside at such conference.
3. If the mediation proceedings relate to an objection by the Department against a proposed tariff, the Department and the Company shall jointly agree on the appointment of a suitably qualified person to conduct the mediation proceedings.
4. The mediation proceedings shall continue for as long as the mediator has reasonable grounds to believe that a negotiated outcome can be achieved. The mediation shall follow the principles of natural justice. The proceedings shall be held in private, but the parties shall be entitled to be represented by a person or persons of their choice.
5. If:
 - 5.1 The complaint or objection is resolved through agreement, the mediator shall record the outcome in writing and submit a report to the parties and the Chairman.
 - 5.2 The complaint or objection is not resolved through agreement after the mediator has made every reasonable effort to achieve a negotiated solution to the matter, the mediator shall report the outcome to the Chairman and may recommend to the Chairman that the matter be referred for an inquiry.

ARTICLE TPCDR 05/10 NOTICE TO BE GIVEN OF INQUIRY

1. The Department shall upon direction of the Chairman publish notice of an inquiry in a manner to be specified by the Chairman.
2. The notice must specify:
 - 2.1 The purpose of the inquiry.
 - 2.2 The period during which the inquiry is to be held.
 - 2.3 The period within which, and the form in which, members of the public may make submissions, including details of public hearings, if any.
 - 2.4 The matters that the Department would like submissions to deal with.

ARTICLE TPCDR 06/10 CONDUCT OF INQUIRY

1. The Chairman may, acting upon the advice of the Department, appoint one or more competent and independent persons to a panel to conduct an inquiry into a complaint. The Chairman may appoint one of the members to chair the panel, if applicable.
2. In conducting an inquiry, a panel may obtain information with regard to any matter in such manner as it considers appropriate if no rules of practice or evidence are prescribed by the Chairman.
3. The panel may receive written submissions or statements.
4. The panel:
 - 4.1 Must hold at least one public hearing, unless the Chairman directs the panel to treat the inquiry in a confidential manner acting upon a request of any party.
 - 4.2 Has discretion as to whether any person may appear before the panel in person or be represented by another person.
5. The panel may determine that a hearing or a part of a hearing be held in private if it is satisfied that:
 - 5.1 It would be in the public interest.
 - 5.2 The evidence is of a confidential or commercially sensitive nature.
6. In conducting an inquiry the panel may:
 - 6.1 Consult with any person that it considers appropriate.
 - 6.2 Hold public seminars and conduct workshops.
 - 6.3 Establish working groups and task forces.



ARTICLE TPCDR 07/10 POWERS OF PANEL

1. A panel may serve upon any person a summons to:
 - 1.1 Provide specified information.
 - 1.2 Produce specified documents.
 - 1.3 Appear before the panel to give evidence.
2. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information to the panel in connection with an inquiry conducted in terms of these regulations, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

ARTICLE TPCDR 08/10 REPORT TO THE CHAIRMAN

1. The panel shall submit a copy of its final report on an inquiry to the Chairman.
2. Where an inquiry was conducted into a complaint, the report shall:
 - 2.1 Make a finding whether or not the complaint has been substantiated accompanied by a full statement of reasons.
 - 2.2 If the complaint is substantiated, make an appropriate order directing the Company to remove the grounds for the complaint.
 - 2.3 Make an appropriate order with regard to the payment of damages and costs.
3. Where an inquiry was conducted into a tariff, the report shall:
 - 3.1 Make a finding whether or not the Department's objection or a complaint against a tariff is substantiated.
 - 3.2 In the event that the objection is substantiated, determine a tariff or tariff range.
 - 3.3 In the event that the objection is not substantiated, approve the tariff.
4. If, in the opinion of the panel, a final report will contain confidential or commercially sensitive information, the panel must divide the report into:
 - 4.1 A document containing the confidential or commercially sensitive information.
 - 4.2 Another document containing the rest of the report.
5. The Department shall publish the report, or an appropriate summary thereof in any appropriate manner as the Department sees fit.

ARTICLE TPCDR 09/10 APPEALS

1. An appeal may be lodged in writing with the Chairman:
 - 1.1 Against a decision of a panel.
 - 1.2 Against a decision of the Department to reject a complaint, within 10 working days after the publication of a panel's report or receipt of the notice rejecting the complaint as the case may be.
2. The Chairman may review the appeal in the manner he deems fit.

PORT PLANNING

ARTICLE TPP 01/10 STATEMENT OF PURPOSE AND SCOPE OF APPLICATION

1. Statement of Purpose: Pursuant to Article (2) of Law No. (4) of 2006, the Department has been entrusted with overseeing the commercial seaports sector of the Emirate of Abu Dhabi currently managed by the Company. The Department's mandate includes approving studies for planning, development and upgrading of the ports of the Emirate managed by the Company pursuant to Article 4(6) of Decree No. (6) of 2006.
2. Scope of Application: These regulations shall be interpreted in conformity with the Laws and Decrees of the Emirate of Abu Dhabi and any applicable Federal law, in conformity with the Constitution of the UAE.

ARTICLE TPP 02/10 INTENT OF THE REGULATIONS

1. It is the intent of these Regulations to:
 - 1.1 Establish a planning approach that encourages the integration of transport modes in the Emirate.
 - 1.2 Co-ordinate port planning with developments in other sectors of the economy and to integrate such plans in wider strategies for economic development, land use and protection of the environment.
 - 1.3 Establish an efficient procedure for speedy and effective interaction between the Department and the Company in the development and approval of port plans.
 - 1.4 Affirm the Company's primary responsibility for physical planning, construction and operation of port infrastructure.

ARTICLE TPP 03/10 MONITORING

1. The Department shall monitor, in coordination with other government authorities, the master plans for the commercial ports of the Emirate of Abu Dhabi to:
 - 1.1 Ensure consistency between such plans and government's overall transport strategy, especially the effective integration of transport modes.
 - 1.2 Assess the impact of port developments on the demand for transport and logistical services and infrastructure.
 - 1.3 Ensure that port master plans are aligned with government's overall strategies for land use and the protection of the environment.
2. To this end, the Company shall regularly inform the Department on progress with the development of its master plan or plans by providing the Department with such information as it requires to undertake the monitoring referred to in sub-regulation (1) of this Article.

ARTICLE TPP 04/10 APPROVAL OF PLANS

1. Upon completion of its master plan, or at any time prior to its completion as directed by the Department in writing, the Company shall submit a plan for port development or upgrading to the Department for review and approval pursuant to Article 4(6) of Amiri Decree No. (6) of 2006.
2. To facilitate the consideration of its plans, the Company shall inform the Department of any substantial variation to its master plan previously submitted to and approved by the Department.

ARTICLE TPP 5/10 PREVAILING LANGUAGE

These Regulations are issued in both the Arabic and English language. In case of conflict between the two language versions, the Arabic version shall always prevail.

ERRATA

This section is intended to provide for revisions related to errors and/or clarifications to the text contained in these Regulations.