

Act on Fairway Dues
(1122/2005, amendments up to 787/2008 included)

Chapter 1 – **General provisions**

Section 1 – *Scope of application*

- (1) As provided in this Act, fairway dues are payable to the Government for ships engaged in merchant shipping in Finnish waters.
- (2) This Act does not apply to ships that:
 - 1) are used solely in inland navigation;
 - 2) on their way between foreign ports sail through Finnish territorial waters without calling at Finnish ports;
 - 3) arrive in and depart from Finland via the Saimaa Canal without calling at Finnish coastal ports;
 - 4) have a net tonnage of less than 300 and are cruise ships defined in section 2, paragraph 3, or cargo ships defined in section 2, paragraph 4; or
 - 5) have a net tonnage of less than 600 and are passenger ships defined in section 2, paragraph 1.

Section 2 – *Definitions*

For the purposes of this Act:

- 1) *passenger ship* means a ship that may carry at least 120 passengers but is not a cruise ship or a high-speed craft;
- 2) *high-speed craft* means a high-speed craft referred to in Chapter X of the Annex to the International Convention for the Safety of Life at Sea, 1974 (Finnish Treaty Series 11/1981);
- 3) *cruise ship* means a ship that may carry more than 12 passengers, is engaged in cruise traffic and, when calling in Finland, does not load or unload cargo, except for the fuel and provisions necessary for the ship's own needs; cruise traffic means sea voyages in which a ship that is not in scheduled liner service calls, in addition to a Finnish port, at no fewer than two foreign ports during the same voyage;
- 4) *cargo ship* means ships other than those defined in paragraphs 1-3;
- 4a) *integrated tug and barge combination* means a rigidly connected composite unit of a vessel without propulsion machinery of its own and an associated pushing vessel with propulsion machinery, when the design and integration system is such that the combination is capable of operating as a single ship; (1267/2007)
- 5) *net tonnage* means the net tonnage specified in the ship's tonnage certificate determined by the formula in Annex I of the International Convention on Tonnage Measurement of Ships, 1969 (Finnish Treaty Series 31/1982);
- 6) *merchant shipping* means operations carried out by a ship for commercial purposes, such as transport of cargo and passengers, towing, icebreaking, catching fish, etc. or search and rescue and assistance;
- 7) *shipowner* means the owner or the charterer of the ship or any other organization or person who has assumed the responsibility for operation of the ship;
- 8) *ice class* means the ice classes IA Super, IA, IB, IC, II and III defined in the Act on the Ice Classes of Ships and Icebreaker Assistance (1121/2005);
- 9) *deadweight* means the deadweight defined in Chapter II-2(3) of the International Convention for the Safety of Life at Sea, 1974 (Finnish Treaty Series 11/1981).

Section 3 – *Competent authorities*

- (1) The Finnish Customs is responsible for charging fairway dues and for supervising the charging process. The National Board of Customs is responsible for the allocation of authority and duties in the Finnish Customs.
- (2) Notwithstanding secrecy provisions, the Finnish Maritime Administration shall provide the customs authorities with the information, details, statements and other material necessary in the application of this Act. The Finnish Maritime Administration shall also provide the customs authorities with other executive assistance, when necessary.

Section 4 – *Party liable to pay (750/2008)*

- (1) The shipowner is liable for paying the fairway dues. If a shipowner domiciled in a Member State of the European Union or the European Economic Area has a representative approved by the customs authorities and domiciled in a Member State of the European Union or the European Economic Area, the shipowner and his representative are jointly and severally liable for paying the fairway dues.
- (2) A shipowner domiciled outside the European Union or the European Economic Area must have a representative domiciled in the European Union or the European Economic Area who has been approved by the customs authorities. In that case the shipowner and his representative are also jointly and severally liable for paying the fairway dues.

Chapter 2 – **Charging principles**

Section 5 – *Fairway dues*

- (1) The fairway dues are payable when the ship arrives in Finland from a foreign port or in a Finnish port from another Finnish port.
- (2) If, during the same voyage, the ship unloads the cargo it has carried from a foreign port or leaves the passengers it has carried from a foreign port at more than one Finnish port or takes cargo or passengers destined for a foreign port from more than one Finnish port, the fairway dues are only payable once.
- (3) If, during the same voyage and between loading cargo in Finland, the ship calls at a foreign port to take additional cargo for loading or stowing reasons, the fairway dues are only payable once.
- (4) No fairway dues are payable for ships that, for compelling reasons and solely for the purpose of receiving orders pertaining to the continuation of their voyage, for repairs on the ship, for assessing the need for repairs or for bunkering, call at Finnish ports without taking or leaving cargo or passengers.

Section 6 – *Unit price for fairway dues (787/2008)*

- (1) The unit price for fairway dues payable for a cargo ship and a passenger ship is determined in accordance with the ship's ice class, as follows:

| Ice class | Cargo ship Unit price (EUR) | Passenger ship Unit price (EUR) |
|-----------|-----------------------------------|---------------------------------------|
| IA Super | 1.166 | 0.785 |
| IA | 2.182 | 1.547 |
| IB, IC | 4.403 | 2.666 |
| II, III | 6.318 | 4.455 |

- (2) The unit price for a cruise ship is EUR 0.954, for a high-speed craft EUR 5.756 and for a vessel without propulsion machinery of its own EUR 3.172.

Section 7 – *Amount of fairway dues*

- (1) The fairway dues payable for a cargo ship and a passenger ship are calculated by multiplying the ship's net tonnage by the unit price for fairway dues laid down in section 6(1). However, if a cargo ship has a net tonnage of more than 25,000, the net tonnage in excess of this amount is multiplied by a figure that is half the unit price laid down in section 6(1). The net tonnage of an integrated tug and barge combination is the combined net tonnage of the two vessels. (1267/2007)
- (2) The fairway dues payable for a cruise ship and a high-speed craft are calculated by multiplying the ship's net tonnage by the unit price laid down in section 6(2).

Section 8 – *Maximum fairway dues for one call (787/2008)*

The fairway dues may not exceed EUR 98,400. However, for a passenger ship, the fairway dues may not exceed EUR 29,620, and for a cruise ship, they may not exceed EUR 40,640.

Section 9 – *Certifying the ship's net tonnage*

If the ship has no tonnage certificate, the tonnage specified in the tonnage certificate does not correspond to the actual tonnage of the ship or the ship is, under the tonnage measurement regulations in force, not authorized to use the net tonnage specified in the tonnage certificate, the Finnish Maritime Administration shall certify the ship's net tonnage used for determining the fairway dues in accordance with the tonnage measurement regulations in force.

Chapter 3 – **Waiver of payment and reduced fairway dues**

Section 10 – *Maximum amount of fairway dues payable for one year and additional dues*

- (1) When, for a passenger ship or a high-speed craft, fairway dues have been paid 30 times, and, for a cargo ship, 10 times, the ship's fairway dues shall be waived for the rest of the calendar year in question. The number of fairway dues to be paid for an integrated tug and barge combination is calculated on the basis of the port calls of the pushing vessel. (1267/2007)
- (2) If the circumstances affecting the amount of the fairway dues change during the calendar year so that there is an increase in the fairway dues laid down in section 7, additional dues must be paid for the ship. In that case, the fairway dues payable for the calendar year are equivalent to the 30 highest fairway dues payable for a passenger ship and a high-speed craft for a calendar year and the 10 highest fairway dues payable for a cargo ship.

Section 11 – *Reducing fairway dues on the basis of the loading capacity utilization rate*

- (1) The fairway dues for a cargo ship are reduced by 75 per cent if the ship's loading capacity utilization rate is 15 per cent or less, and by 50 per cent if the loading capacity utilization rate is more than 15 per cent but not higher than 30 per cent.
- (2) The loading capacity utilization rate is calculated by comparing the figure showing the combined total of cargo imported to and exported from Finland, as indicated in metric tonnes with a figure that is 90 per cent of the ship's deadweight.

Section 12 – *Reducing fairway dues on other grounds*

- (1) The fairway dues for a cargo ship are reduced by 50 per cent if, in connection with a voyage to the Saimaa Canal, the ship carries cargo from a foreign port to a Finnish coastal port or if, in connection with a voyage to the Saimaa Canal, the ship takes cargo destined for a foreign port from a Finnish coastal port.
- (2) The fairway dues for a cargo ship are reduced by 75 per cent if the ship carries cargo from a foreign port that because of compelling reasons connected with the ship's large size must be transported by other ships from the port of arrival to another Finnish port.
- (3) The fairway dues for a cargo ship collecting transit goods exported from a Finnish port are reduced by 50 per cent, if the whole cargo of the ship is transit cargo.

Chapter 4 – **Notification for payment and charging and collecting fairway dues**

Section 13 – *Notification for payment*

- (1) The party liable to pay shall provide the customs authorities with a notification for the purpose of charging fairway dues. The notification shall contain the information necessary for charging the dues.

- (2) When the ship arrives in Finland from a foreign port, the notification shall be submitted to the customs office granting the ship's inward clearance.
- (3) For a ship in domestic trade, the notification shall be submitted to the customs office in the operating area where the ship's port of arrival is located.
- (4) The notification may also be submitted in electronic form or in another form suitable for data processing. The National Board of Customs may issue more detailed regulations on the contents and form of the notification for payment and the notification procedure.

Section 14 – *Payment of fairway dues*

Unless otherwise provided in this Act, provisions in the Customs Act (1466/1994) on the payment of customs duties apply to the payment of fairway dues.

Section 15 – *Paying fairway dues in advance*

The fairway dues referred to in section 10(1) above may be paid in advance as a lump sum.

Section 16 – *Charging estimated fairway dues*

- (1) If the party liable to pay has failed to submit the notification for payment referred to in section 13 or the notification is incomplete, the customs authorities shall, by imposing a threat of charging estimated fairway dues, request the party liable to pay to submit a notification for payment or complete an incomplete notification within a specified time.
- (2) If, despite the request, no notification for payment has been submitted or it is not possible to collect the fairway dues even on the basis of the completed notification, the charging shall be based on an estimate. In that case, the grounds for the estimate shall be mentioned in the payment decision.
- (3) Before the charging of estimated fairway dues, the party liable to pay shall be given an opportunity to be heard.

Section 17 – *Payment increase*

- (1) The fairway dues may be increased:
 - 1) by a maximum of 30 per cent, if the party liable to pay has submitted the information necessary for charging the fairway dues in an incomplete or incorrect form or neglected its notification obligation in full or in part; or
 - 2) by a maximum of 50 per cent, if the party liable to pay has, deliberately or through gross negligence, submitted an incomplete, misleading or false notification or other incomplete, misleading or false information or documents for charging fairway dues, failed to submit information for charging fairway dues or otherwise neglected the obligation to provide information and the procedure is likely to have resulted in a situation where not all of the fairway dues payable by the party liable to pay have been charged.

- (2) If, in light of the benefits that may have been obtained thereby and other material circumstances, the action referred to in subsection 1(2) must be considered aggravated, the fairway dues shall be increased by at least 50 per cent and not more than 100 per cent.

Section 18 – *Penalty charge*

- (1) If in a situation referred to in section 17(1) the fairway dues are not charged or if the amount of fairway dues is small and no payment increase has been ordered, a penalty charge of at least EUR 10 and not more than EUR 2,500 may be collected.
- (2) Reprehensibility and frequency of the action and other comparable factors shall be taken into account when the penalty charge is determined.

Chapter 5 - **Adjustment for the benefit of the payee and retrospective charges**

Section 19 – *Adjustment for the benefit of the payee*

- (1) If, through no fault of the party liable to pay, there has been a failure to charge the fairway dues in full or in part because of a calculation error or a comparable error or because the customs authorities have not examined all aspects of the matter or the refunded amount is too high, the customs authorities shall rectify their decision unless the matter is pending for some other reason or has been settled by a decision on appeal.
- (2) The rectification shall be made within a year of the beginning of the calendar year following the calendar year during which the fairway dues or the refund were ordered to be paid or should, on the basis of the notification by the party liable to pay, have been ordered to be paid.

Section 20 – *Retrospective charges*

- (1) If there has been a failure to charge the fairway dues in full or in part because the party liable to pay has, in full or in part, neglected its notification obligation or submitted an incomplete, misleading or false notification or other incomplete, misleading or false information or documents for charging fairway dues, or if, for the same reason, the refunded amount is too high the customs authorities shall order that the party liable to pay pays the fairway dues not charged.
- (2) Retrospective charging must be carried out within three years of the beginning of the calendar year following the calendar year during which the fairway dues or the refund were ordered to be paid or should have been ordered to be paid.
- (3) If the shipowner's representative domiciled in a member State of the European Union or the European Economic Area who has been approved by the customs authorities did not know and could not have known that the notification, documents or other information submitted for charging fairway dues are incomplete, misleading or false, the retrospective charging for such shipowner's representative must be carried out within eighteen months of the occurrence of the claim. (750/2008)

Section 21 – *Right of the party liable to pay to be heard*

The party liable to pay must be given an opportunity to be heard before an adjustment for the benefit of the payee and before a retrospective charging of the fairway dues.

Chapter 6 – **Instruments of legal protection**

Section 22 – *Preliminary ruling*

- (1) The National Board of Customs may, on application, issue a preliminary ruling concerning the application of the provisions on fairway dues if the matter is of special importance for the applicant. No preliminary ruling shall, however, be issued on a ship's ice class or net tonnage or on the amount of the fairway dues.
- (2) The application shall specify the matter referred to for a preliminary ruling and give the details necessary for issuing a ruling on the matter.
- (3) The preliminary ruling is issued for a specific period. A preliminary ruling that has become legally valid shall, as requested by the applicant, be observed as a binding decision as laid down in the preliminary ruling.
- (4) Matters concerning preliminary rulings shall be considered urgently.

Section 23 – *Reduction and postponement of dues*

- (1) If, under the circumstances, collecting fairway dues in their entirety would be manifestly unreasonable, the National Board of Customs may, on application, reduce the fairway dues, the payment increase or the penalty interest paid or to be paid, or the interest to be paid because of the postponement or cancel it altogether.
- (2) If, under the circumstances, collecting fairway dues in their entirety would be manifestly unreasonable, the National Board of Customs may, on application, grant a postponement of the payment of fairway dues. The postponement is granted on condition that collateral equal to the postponed amount is given for the payment of the postponed amount. The postponement may, however, be granted without requesting collateral if the sum payable is small or the postponement period is short. Interest is charged on fairway dues for the payment of which postponement has been granted; for the six-month period preceding each calendar year the interest is equal to the reference rate referred to in section 12 of the Interest Act (633/1982) plus seven percentage points, the total being at least EUR 3. However, for particularly weighty considerations of reasonability the postponement may be granted interest-free.

Section 24 – *Adjustment for the benefit of the party liable to pay*

- (1) If, on the basis of a claim for rectification or an appeal or otherwise, the customs authorities determine that the amount charged as fairway dues is too high or that the refunded amount is too low, it shall rectify its decision unless the matter has been settled by a decision on appeal.

- (2) The rectification may be made within three years of the beginning of the calendar year following the ordering of the payment of the fairway dues or the refund or it may also be made at a later date on the basis of a written request made during the period in question.

Section 25 – *Appeal procedure*

- (1) An appeal against a decision on fairway dues or refund of fairway dues or another decision issued by the customs authorities under this Act may be made to the Helsinki Administrative Court. However, no appeal may be made against a decision by which it has been decided not to issue a preliminary ruling. When an appeal is made on behalf of the Government, the right of appeal against a Customs District decision rests with the customs attorney in the Customs District and the right of appeal against a National Board of Customs decision rests with the customs attorney in the National Board of Customs. The appeal shall be in writing and the petition of appeal shall be submitted during the appeal period to the authorities against whose decision the appeal is made.
- (2) The appeal period is three years from the beginning of the calendar year following the ordering of the payment of the fairway dues or the refund; however, it is always at least 60 days from the receipt of the decision. For appeals against decisions other than those concerning the charging of fairway dues, the appeal period is 30 days from the receipt of the decision. The appeal period for the customs attorney is 30 days from the decision.
- (3) An appeal against a decision issued by the Finnish Maritime Administration under section 9 may be made in the manner laid down in the Administrative Judicial Procedure Act (586/1996).

Section 26 – *Appeal to the Supreme Administrative Court*

- (1) An appeal against an Administrative Court decision may be made to the Supreme Administrative Court if the Supreme Administrative Court grants leave of appeal. Leave of appeal may be granted for the following reasons:
 - 1) in cases that are similar in terms of the application of the Act or for reasons of unified legal practice it is important to bring the matter to the Supreme Administrative Court for consideration;
 - 2) bringing the case to the Supreme Administrative Court for consideration is of special importance because of a manifest error in the matter; or
 - 3) there are weighty financial or other reasons for granting leave of appeal.
- (2) The appeal must be made within 60 days of the receipt of the Supreme Administrative Court decision. The petition of appeal must be submitted to the Supreme Administrative Court or the Helsinki Administrative Court during the appeal period. When an appeal is made on behalf of the Government, the right of appeal rests with the customs attorney in the National Board of Customs.
- (3) Unless otherwise provided in this Act, provisions on appeal in the Administrative Judicial Procedure Act shall otherwise apply.

Section 27 – *Paying the fairway dues despite appeal*

The fairway dues must be paid in the specified time despite the appeal.

Section 28 – *Interest payable on the refunded amount*

- (1) If fairway dues are refunded as a result of a payment rectification or an appeal, interest is payable on the refunded amount. The interest is calculated as annual interest that, for the six-month period preceding each calendar year, is equal to the reference rate referred to in section 12 of the Interest Act less two percentage points. The interest is calculated from the payment date.
- (2) No interest is payable on refunds smaller than EUR 17. The interest paid on the refund is not taxable income in income taxation.

Chapter 7 – **Miscellaneous provisions**

Section 29 – *Other provisions applied in the collection of fairway dues*

- (1) Unless otherwise provided in this Act, provisions in the Act on Surtax and Penalty Interest (1556/1995) apply to consequences of default concerning the payment of fairway dues. Applicable provisions laid down in and under the Tax Collection Act (609/2005) apply to the collection, recovery and refunding of fairway dues.
- (2) Unless otherwise provided in this Act, provisions in the Act on the Recovery of Taxes and Fees by Recovery Proceedings (367/1961) and the Act on the Securing of the Recovery of Taxes and Fees (395/1973) apply to the collection of fairway dues by recovery proceedings and the securing of the recovery.

Section 30 – *The smallest chargeable amount*

The smallest chargeable amount of fairway dues is EUR 10.

Section 31 – *Obligation to provide information*

The party liable to pay must, on request, provide the customs authorities with the information and documents necessary for the collection, supervision and verification of fairway dues.

Section 32 - *Payment evasion*

If a circumstance or a measure has been given a legal form that is not in accordance with the actual nature or purpose of the matter, the procedure observed in the charging of fairway dues must be in accordance with the correct form.

Section 33 – *Electronic provision of information*

The decision of the customs authorities may also be communicated in electronic form by using the address for electronic business given by the party liable to pay. In that case and unless proven otherwise, the decision is considered to have been received by the party liable to pay on the day the electronic message was sent.

Section 34 – *Penal provision*

The punishment for tax fraud, aggravated tax fraud and petty tax fraud is laid down in Chapter 29, section 1-3 of the Penal Code (39/1889).

Section 35 – *Entry into force*

- (1) This Act enters into force on 1 January 2006.
- (2) This Act repeals the Act on Fairway Dues (708/2002) of 16 August 2002 and the Government Decree on Fairway Dues (719/2002) of 22 August 2002.
- (3) Measures necessary for the implementation of this Act may be undertaken before its entry into force.

Section 36 – *Transitional provisions*

- (1) Provisions that were in force at the entry into force of this Act shall apply to fairway dues based on the grounds that have arisen before the entry into force of this Act.
- (2) Finnish Maritime Administration regulations issued under section 12(3) of the repealed Act on Fairway Dues and the list approved by the Finnish Maritime Administration shall remain in force unless other provisions on them are issued under the Act on the Ice Classes of Ships and Icebreaker Assistance.

Acts 750/2008 and 787/2008 enter into force on 1 January 2009.