

# EXEMPTION APPLICATION PROCEDURE

## 1. Introduction

In accordance with Section 5 of the Competition Act 2010 (“the Act”) relief of liability under this provision can be granted independently by the MyCC in the following manner to an otherwise a breach of the Act:

- (a) Individual exemption under section 6 of the Act; or
- (b) Block exemption under section 8 of the Act.

This procedure is published for the purpose of assisting those who wish to apply any of the exemptions as the aforementioned.

## 2. Individual Exemption

**2.1.** Enterprises can apply to the MyCC for an individual exemption with respect to a particular agreement from the Chapter 1 Prohibition which may be granted by the MyCC subject to conditions, obligations and for a limited duration.

**2.2.** An individual exemption can be cancelled or varied if there is a material change of circumstances or there is a breach or non-compliance of an imposed condition.

**2.3.** An individual exemption can be obtained by applying to the MyCC on the prescribed form and after payment of the prescribed fee.

## 3. Block Exemption

**3.1.** The MyCC may grant a block exemption to a particular category of agreements. For example, this could be a distribution agreement in a particular industry. The advantage of a block exemption is that similar agreements can be examined at the same time which will allow the MyCC to provide a better overall assessment of the anti-competitive impact and an assessment of the claimed benefits and will also relieve enterprises of having to submit separate applications.

**3.2.** As with an individual exemption, a block exemption can be cancelled or varied if there is a material change of circumstances or there is a breach or non-compliance of an imposed condition.

**3.3.** A block exemption can be obtained by applying to the MyCC on the prescribed form and after payment of the prescribed fee.

**3.4.** Before granting a block exemption, the MyCC shall publish details of the proposed block exemption and give at least thirty days from the date of publication to allow submissions to be made by members of the public. The MyCC shall also give due consideration to any submission made.

**3.5.** The applicant may wish to conduct a self-assessment exercise in ascertaining whether its application is necessary. Anyone who is in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

#### **4. Submission of Form E1**

**4.1.** Applications for an exemption must be made by submitting Form E1 to the MyCC. Form E1 requires the applicant to provide the MyCC with the following information:

##### **4.1.1. Information about applicant**

The applicant is to provide full name, registered office address and principal place of business (if different), telephone and fax numbers. The applicant shall state the registration number of the enterprise as an incorporated body, partnership or sole proprietor or other unincorporated body trading under a business name. The applicant shall also provide certified true copies of the Memorandum of Association, Article of Association as well as Form 49 of the Companies Act 1965.

If the applicant is an association, the applicant is to provide a certified true copy of the certificate of registration issued by the Registrar of Societies as well as any other information which are relevant as mentioned above.

##### **4.1.2. Information on parties to the agreement**

The applicant is to state the full names, registered office addresses and principal places of business (if different) of all the parties to the agreement, their telephone numbers and fax numbers. The applicant shall also provide certified true copies of the Memorandum of Association, Article of Association, Form 49 of the Companies Act 1965 as well as any other proof of business registration of the parties, if available.

If the applicant is an association, the applicant is to provide a certified true copy of the certificate of

registration issued by the Registrar of Societies as well as any other information which are relevant as mentioned above.

#### **4.1.3. Information on the agreement**

The applicant is to provide a brief description of the agreement which is the subject matter of the application. If the application is in relation to a written agreement, the applicant is required to enclose a copy of the agreement with this application form. If the application is not in writing, the applicant is required to provide the details of the agreement.

The applicant is also required to identify the provision(s) deemed restrictive and highlight the same for the MyCC's attention.

The applicant is also required to indicate whether the agreement in issue:

- a. is entered into but not implemented;
- b. is entered into and implemented; or
- c. has yet to be entered into.

If an agreement has been implemented, the applicant should provide details of its implementation.

#### **4.1.4. Information on the market**

The applicant is to define the relevant market in question.

The applicant is also required to provide a list of players in the said relevant market.

#### **4.1.5. Information on market share/turnover/products**

The applicant is to provide the market share as well as the turnover in the last business year of each party to the agreement indicating the proportion of the market share and the turnover figure which is attributable to the relevant product or geographic market. All parties subject to this application is required to submit its most recent annual report and audited accounts.

#### **4.1.6. Other relevant information**

The applicant is to provide other relevant information and evidence which shall support the application and in particular fulfils the requirement provided under section 5(a) to (d) of the Act.

The applicant is also required to indicate by way of appendices and tagging such relevant information and evidence that the applicant is relying on in support of their submission to section 5(a) to (d).

The applicant should also provide details of any studies or researches or documents which have been produced to assess the feasibility of operation of the agreement and the likely benefits that could arise directly from the agreement.

**4.2.** Three (3) copies of the completed Form E1 and the relevant supporting documents, as well as a soft copy of Form E1 in Microsoft Word format are to be submitted to the MyCC. The relevant supporting documents accompanying Form E1 must also be in a format which allows for cutting and pasting of text. Additional copies of these documents shall also be made available to the MyCC upon request.

**4.3.** The applicant may get its lawyers to file the application on its behalf, subject to an authorisation in writing by the applicant in Form E1. However, a declaration for all the information given in Form E1 must be signed by the applicant or by the joint representative (where one has been appointed).

**4.4.** An application for exemption is deemed as having been made only after all the requirements in connection with the filing of Form E1 are met. An application for exemption shall also be accompanied with the prescribed application fees.

**4.5.** In the event where an application for exemption is not substantive or incomplete or inaccurate, the applicant will be duly notified by the MyCC. In the notification to the applicant, the MyCC will specify a time frame for the applicant to respond with the required documents and information. If the applicant fails to respond with the required documents and information within the time frame specified, the application will be deemed as having been withdrawn and the application fee shall be forfeited.

## **5. Incomplete application forms**

**5.1.** The MyCC may refuse to accept an application if such application is incomplete, it is not accompanied by the supporting documents, if it is not substantially in the prescribed form, if it is not accompanied by the prescribed fee or if it does not comply with any requirements under the Act.

## **6. Waiver of application fees**

**6.1.** Any application for a waiver of the application fee shall not be entertained by the MyCC. The acknowledgment of receipt of an application by the MyCC does not in any way indicate that the application is complete or accurate.

## **7. Extension of time**

**7.1.** In the case where an extension of time is necessary, a written request shall be made by the applicant to the MyCC outlining the justifications why such an extension of time should be granted. The MyCC will thereafter send a notification to the applicant on the decision made by the MyCC. The period of such extension, if granted will be determined on a case by case basis.

**7.2.** In some cases, it may be possible for the MyCC to dispense with obligation to submit any particular information furnished in Form E1 where the MyCC considers such information is unnecessary for examining the agreement or consideration of the conduct in question.

**7.3.** The MyCC may also require the applicant to provide additional information, including information on the definition of relevant market which shall form the basis of the analysis of this application and other relevant supporting documents to enable the MyCC to make its decision. In such a case, the MyCC will specify a time frame for the applicant to respond with further documents and information required. If the applicant fails to respond within the time frame specified, the MyCC may with its discretion decide not to consider the said application.

**7.4.** The applicant is required to take all reasonable steps to notify all other parties to the agreement that an application for exemption has been made to the MyCC. The written notification to these parties must be given within seven (7) working days from the date on which the application is lodged with the MyCC. In the event the applicant is unable to do so, despite the exercise of due diligence, the MyCC may require the applicant to publish a notice in the newspapers as it may specify.

## **8. Confidential Information**

**8.1.** Any confidential information in Form E1 or in any supporting documents must be clearly identified by the applicant. The MyCC also requires the applicant to provide a non-confidential version of Form E1 and its supporting documents, with confidential information removed and square brackets containing the word “CONFIDENTIAL” be replaced instead. A separate annex should accompany the non-confidential version of each Form E1 and the relevant supporting documents, identifying the confidential information and providing justifications as to why the information should be treated as confidential. A non-confidential version and the accompanying documents should not be filed if the applicant is of the view that the relevant Form E1 and supporting documents can be posted on the MyCC’s website in its entirety.

**8.2.** The Act defines confidential information as “trade, business or industrial information that belongs to any person that has economic value and is not generally available to or known by others”.

**8.3.** Section 21 of the Act imposes a general duty on the MyCC to preserve confidentiality although there may be a number of exceptions to this duty. For example where disclosure is necessary for the performance or powers of the MyCC.

## **9. OTHER RELATED MATTERS**

**9.1.** The applicant must conclude Form E1 with a declaration and confirmation that all information given in Form E1 as well all information given in the supporting documents are correct to the best of his knowledge. Such declaration must be signed by or on behalf of the applicant. Unsigned applications are invalid.

**9.2.** Any material changes in the information contained in Form E1 and its supporting documents which may occur after the application has been made should be notified to the MyCC immediately.

**9.3.** The applicant should note that the Act provides that any person who fails to disclose or omits to give any relevant information or evidence or documents, or provides any relevant information or evidence or document that he knows or has reasons to believe is false or misleading, in response to a direction issued by the MyCC, commits an offence.

**9.4.** The time taken by the MyCC to issue its decision will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time. Nevertheless, the MyCC shall endeavor to provide the applicant with the status of the exemption application within 6 months from the date of the application filed with the MyCC.

## **10. Notifications for Guidance**

The MyCC shall not entertain any application for guidance or approval of any anti-competitive agreements other than exemption applications.