

**L.N. 37 of 2008**

**MALTA FILM COMMISSION ACT  
(CAP. 478)**

**Financial Incentives for the Audiovisual Industry Regulations,  
2008**

IN exercise of the powers conferred by articles 26(1) and 33 of the Malta Film Commission Act, the Minister for Investment, Industry and Information Technology, after consultation with the Prime Minister and the Minister of Finance, has made the following regulations-

Citation and  
commencement.

**1. (1)** The title of these regulations is the Financial Incentives for the Audiovisual Industry Regulations, 2008.

(2) These regulations shall be deemed to have come into force on the 1st of December, 2007.

Interpretation.

**2. (1)** In these regulations, unless the context otherwise requires –

“the Act” means the Malta Film Commission Act;

“certificate of provisional approval” means the certificate issued in terms of regulation 7 of these regulations, in the form set out in the First Schedule to these regulations;

“the Commission” means the Malta Film Commission;

“the Commissioner” means the Film Commissioner;

“completion” means the termination of filming activity in Malta of an audiovisual production and “completed” shall be construed accordingly;

“co-production” means a qualifying production which is the subject of a co-production agreement between two or more coproducers;

“cultural product” means an audiovisual production in respect of which the Commissioner has established that the content of the audiovisual production is cultural according to the criteria set out in the Second Schedule to these regulations;

“eligible expenditure” means the items of expenditure incurred by the qualifying company in relation to the qualifying production that are eligible for the purposes of calculation of the amount to be granted as a financial incentive in accordance with regulation 5 of these regulations;

“EU member state” means a member state of the European Union as defined in the European Union Act;

Cap. 460.

“final approval” means the approval granted in terms of regulation 8 of these regulations;

“the financial incentive” means the financial benefit provided for in regulation 5 of these regulations;

“Guidelines” means the guidelines that may be issued by the Commissioner from time to time;

“difficult and low-budget productions” means audiovisual productions with a total budget not exceeding EUR100,000 (or other currency equivalent) and which would have little if any prospect of commercial success because of their experimental nature or because they represent a high level of creative risk; and which meet the requirements set out in regulation 3 of these regulations;

“the Minister” means the Minister responsible for the film Industry;

“principal photography” means the filming of major or significant components of an audiovisual production which involves lead actors;

“qualifying company” means a qualifying company as defined in article 25 of the Act and which meets the conditions established by regulation 4 of these regulations;

“qualifying production” means a qualifying production as defined in article 25 of the Act and which meets the conditions established by regulation 3 of these regulations;

“State Aid Monitoring Board” means the State Aid Monitoring Board constituted under article 57 of the Business Promotion Act;

Cap.325.

“undertaking” means an entity carrying out an economic activity.

Definition of  
qualifying  
production.

(2) Words and expressions which are also used in the Act shall, in these regulations, have the same meanings as in the Act.

**3.** (1) An audiovisual production shall be considered a “qualifying production” for the purposes of these regulations if the audiovisual work–

(a) is a cultural product produced wholly or partially in Malta on a commercial basis with a view to profit; and

(b) is produced wholly or principally for exhibition to the public in cinemas or through television broadcasting; and

(c) makes a valid contribution to the expression of creativity and culture through the development of production capability skills in the media of film and television; and

(d) is based on a format approved by the Commissioner.

(2) The criteria set out in sub-regulation (1) of this regulation shall be applied without prejudice to the conditions established in article 25 of the Act and the Schedule to the Act, and in accordance with the Second Schedule to these regulations and the Guidelines.

Qualifying  
companies.

**4.** (1) The qualifying company shall be the entity responsible for all activities involved in making a qualifying production and having access to full financial information for the total production worldwide, which can be made available to the Commissioner upon the latter’s Request;

Provided that there shall be only one qualifying company with respect to a given qualifying production.

(2) Where the qualifying production is a co-production, the co-producers shall appoint one of the co-producers amongst them to act as the qualifying company in respect of the qualifying production for the purposes of these regulations and the appointed co-producer shall be deemed to be the entity responsible for all activities involved in making the qualifying production.

Provided that:

(a) the financial incentive granted shall be apportioned between the co-producers as agreed between them, or in the absence of any agreement to that effect, in proportion to their share in the overall budget of the qualifying production; and

(b) the co-producers shall be jointly and severally liable for their obligations under the Act and these regulations.

5. (1) A rebate of up to twenty two percent of eligible expenditure may be given as a cash grant, which shall be exempt for the purposes of the Income Tax Act, to qualifying companies upon completion of a qualifying production, in accordance with these regulations and the Guidelines:

Financial incentives  
for audiovisual  
productions.  
Cap. 123

Provided that the said eligible expenditure shall not constitute an eligible expense for State aid under any other legislation in Malta:

Provided further that the total State aid from which a qualifying production may benefit under this regulation or any other source shall not exceed the ceiling provided for in the Guidelines.

(2) The eligible expenditure qualifying for the financial incentive shall be established by the Commissioner in accordance with the Guidelines, provided that the eligible expenditure shall not exceed eighty percent of the overall budget of the qualifying production, and provided further that in the case of a co-production which involves a co-producer established in Malta and which is approved by the Commissioner as a co-production under the Act, the eligible expenditure incurred by that co-producer shall not exceed eighty percent of the part of the qualifying production's budget contributed by the co-producer established in Malta.

(3) The level of the financial incentive shall be determined by the Commission in accordance with article 26 of the Act, the provisions of these regulations and the Guidelines.

(4) The Minister, in agreement with the Minister responsible for culture and with notification to the Minister responsible for finance, may from time to time publish a call for applications aimed at difficult and low-budget productions for the purposes of granting cash rebates in respect of such productions subject to the terms and conditions set out in these regulations, and the Guidelines, and as may be further specified in the call for applications. Notwithstanding sub-regulation (1) hereof, such rebates for difficult and low-budget productions may amount to a cash grant of up to thirty two percent of eligible expenditure, and shall be exempted from the provisions of the provisos with subregulation (1) of this regulation.

(5) The aggregate amount of financial incentives that may be granted under these regulations in a given financial year in terms of the

the Constitution shall not exceed the amount specifically appropriated in Government's financial estimates for that particular financial year.

Application for  
provisional  
approval

6. (1) The application for the financial incentive shall be submitted to the Commissioner by the qualifying company or its local branch or agent in accordance with the Guidelines.

(2) The application mentioned in sub-regulation (1) of this regulation shall be submitted together with such documentation and information as may be required by the Commissioner, and shall include the documents and information listed in the Guidelines.

(3) Subject to the provisions of regulation 10 of these regulations, the application must be submitted at least thirty days before commencement of the principal photography in Malta or in any other EU Member State for which a benefit is being sought under these regulations.

Provisional  
approval by the  
Commission.

7. (1) Following the receipt of the application made in accordance with regulation 6 of these regulations, the Commissioner shall make a recommendation in writing to the Commission regarding the level of the financial incentive to be granted to the qualifying company, stating that the production is a cultural product and meets the requirements of a qualifying production, and shall forward to the Commission any documentation or information furnished by the applicant as the Commission may require:

Provided that where the Commissioner finds that the application is not made by or on behalf of an entity that is a qualifying company and, or in respect of a qualifying production, it shall inform the applicant that the application is rejected and the Commissioner shall not make such recommendation.

(2) Following the Commission's determination of the level of the financial incentive to be granted to the qualifying company, which shall not exceed the amount recommended in terms of sub-regulation (1) of this regulation, the Commissioner shall issue a certificate of provisional approval, in the form set out in the First Schedule to these regulations, to the qualifying company which shall state the percentage of expenditure rebated to the production concerned and the conditions that must be met in order to obtain the final approval under regulation 8 of these regulations.

Final approval by  
the Commission

8. (1) Upon completion of the qualifying production in respect of which a certificate of provisional approval was issued in accordance with regulation 7 of these regulations, and no later than six months after completion thereof, the qualifying company or its local branch or agent shall

submit an application for final approval to the Commissioner in accordance with the Guidelines.

(2) The application mentioned in sub-regulation (1) of this regulation shall be submitted together with such documentation and information as may be required by the Commissioner, and shall include the documents and information listed in the Guidelines.

(3) Following the receipt of the application made in accordance with sub-regulations (1) and (2) of this regulation, the Commissioner shall make a recommendation in writing to the Commission regarding the amount of the financial incentive to be granted to the qualifying company and shall forward to the Commission any documentation or information furnished by the applicant as the Commission may require.

(4) The Commission shall inform the Commissioner in writing of its decision on the amount of the financial incentive to be granted to the qualifying company:

Provided that the amount of the financial incentive determined by the Commission shall not exceed the amount recommended by the Commissioner in terms of sub-regulation (3) of this regulation.

(5) The Commissioner shall make the necessary arrangements for the implementation of the Commission's decision on the amount of the financial incentive to be granted to the qualifying company.

**9.** (1) Where after submission of the application for provisional Approval in terms of regulation 7 of these regulations, the final overall budget of the qualifying production, to be indicated in the application for final approval in terms of regulation 8 of these regulations, is expected to differ significantly from the estimated overall budget indicated in the application for provisional approval, a new application for provisional approval shall be submitted:

Significant budget changes.

Provided that there shall be deemed to be a significant difference where the final overall budget to be indicated in the application for final approval exceeds or goes below the estimated overall budget indicated in the application for provisional approval by more than ten percent.

(2) New applications for provisional approval in terms of sub-regulation (1) of this regulation, shall be submitted and determined Significant budget changes.

in accordance with regulations 6 and 7 of these regulations, which shall apply *mutatis mutandis*:

Provided that sub-regulation (3) of regulation 6 shall not apply to the submission of such new applications.

(3) If no new application is submitted as required by subregulation (1) of this regulation and the Commissioner finds that the final overall budget of the qualifying production, as indicated in the application for final approval in terms of regulation 8 of these regulations, differs significantly from the estimated overall budget indicated in the application for provisional approval, the amount of the incentive to be granted to the qualifying company shall be determined by reference to the estimated overall budget indicated in the application for provisional approval or the final overall budget indicated in the application for final approval, whichever is the lowest.

Time of initiation of production.

**10.** These regulations shall apply to audiovisual productions in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations before 31 December 2009.

Reporting requirements.

**11.** The qualifying company or its local branch or agent shall provide the Commissioner with any information and documentation which he may request for the exercise of his functions and those of the Commission for the purposes of these regulations, either on the initiative of the qualifying company or of its local branch or that of the agent himself, or upon the request of the Commissioner:

Provided that the Commissioner may specify the on-going reporting requirements of the qualifying company or of its local branch or that of its agent in the Guidelines.

Confidentiality.

**12.** Any information furnished by the qualifying company or its local branch or agent shall at all times be treated as confidential and shall be used solely by either the Commission or the Commissioner, or both, for the purpose of carrying out their respective functions for the purposes of these regulations:

Provided that the information furnished by the qualifying company or by its local branch or agent may be disclosed if and to the extent required by or pursuant to any enactment, including but not limited to fiscal legislation, or with the permission in writing of the legal or natural person providing such information.

**13.** (1) The qualifying company, including its local branch or agent, if any, shall ensure compliance with the conditions and requirements set out in the certificate of provisional approval and in the Guidelines.

Obligations of the  
qualifying  
company.

(2) If the qualifying company or its local branch or agent, if any, fails to meet any of the conditions and requirements as referred to in subregulation (1) of this regulation, the Commissioner may withdraw its provisional or final approval for the grant of the financial incentive. If the qualifying company or its local branch or agent has already received the financial incentive and the Commissioner establishes that the conditions and requirements as referred to in subregulation (1) of this regulation have not been complied with, it shall refund to the Commissioner the amount of the financial incentive received upon the Commissioner's request.

**14.** Where the financial incentive has been provided in terms of these regulations to an undertaking, the Commissioner may –

Examination of  
records.

(a) from time to time make or cause to be made such examination of books, accounts, documents, premises and all other things and matters of that undertaking, its local branch or agency, as the case may be, as may be necessary to ensure that the provisions of these regulations, and the conditions and requirements set out in the certificate of provisional approval and in the Guidelines are complied with; and

(b) request such financial statements from the undertaking, its local branch or agency, as the case may be and as may be required.

**15.** The Commissioner shall keep, for a minimum of five years, a database of all the financial incentives provided to, or claimed by, undertakings in terms of these regulations in order to enable it to –

Database of  
assistance required.

(a) verify whether the provisions of the Act and of these regulations have been complied with; and

(b) provide the State Aid Monitoring Board with such information as it may require.

**16.** The Financial Incentives for the Audiovisual Industry Regulations, 2006 are hereby repealed.

Repeals L.N. 65 of  
2006.

## FIRST SCHEDULE

### (Regulation 7)

#### Certificate of Provisional Approval

Under Part V of the Malta Film Commission Act (Cap. 478) and in accordance with the Financial Incentives for the Audiovisual Industry Regulations, 2008 and the Guidelines established by the Commissioner; and

In respect of the application received by the Film Commissioner on the [date] by [name of qualifying company];

The Commissioner hereby certifies that in relation to [name of the production applying for the cash rebate], the said audiovisual production is regarded as a qualifying production for the purposes of the said Part V of the Malta Film Commission Act, and shall be granted a cash rebate equivalent to [percentage to be rebated to the production] of the total qualifying expenditure, currently estimated at [total amount of qualifying expenditure], subject to the following conditions:

1. This certificate is issued strictly on the basis of the information supplied by the qualifying company in the course of the application process.

2. Any change of substance in the information originally supplied to the Commissioner that may arise as the project progresses must be notified in writing to the Commissioner in advance of the proposed change being effected, or as soon as the change comes to notice.

3. Failure to notify the Commissioner accordingly will be regarded as a breach of the conditions of this certificate.

4. Where differences in the final overall budget exceed or fall below the estimated overall budget indicated in the application for provisional approval by more than ten percent, the incentive will be granted on the overall qualifying expenditure indicated in this certificate or on the final overall budget indicated in the application for final approval, whichever is the lowest.

#### Final Application

5. On completion of the qualifying production, the qualifying company is to submit the following documents to the Commissioner:

(a) an immediate written notification that the filming activity in Malta of the audiovisual production for which a benefit is being sought is completed;

(b) full details of the qualifying company and of any beneficiary of the cash rebate;

(c) accounts detailing the amounts spent on each individual element of the project for which a benefit is being sought, including expenditure on the direct employment of Maltese and EU#EEA nationals and on eligible goods and services;

(d) the accounts must include “top sheet” production expenditure summaries covering the pertinent expenditure for which a benefit is being sought and the entire production expenditure on the film;

(e) a detailed analysis of relevant labour costs (including gross full-time and part-time wages, withheld tax, Social Security contributions and monies paid to employees employed directly on a contract of service);

(f) all accounts are to be presented net of Value Added Tax;

(g) a receipt from the pertinent fiscal authorities showing that the amounts due were already paid to such authorities.

6. Following the submission of a final application, the qualifying company is to grant access to representatives of the Commissioner to audit the accounts pertaining to the audiovisual production for which a benefit is being sought. Any auditing exercise shall be conducted in agreement with the qualifying company.

7. The qualifying company is to provide to the satisfaction of the Commissioner details of the eligible expenditure, including invoices and receipts of the pertinent qualifying production.

8. The Commissioner is to provide the qualifying company the cash rebate no later than five months from the date of the Commission’s final approval.

### **Obligations**

9. The qualifying company shall ensure that the filming activity and all other activities taking place in Malta are conducted in accordance with the Laws of Malta.

10. The qualifying company is to include the credits in the language of the film production “Produced with the support of the financial incentives provided by the Government of Malta” and “Filmed on location in Malta” as the case may be< these credits are to be located in a prominent position in the closing credits, immediately after the cast and crew credits.

11. The qualifying company is to ensure that the recruitment of personnel inMalta, including recruitment of extra talent, is conducted fairly and without prejudice.

B 820

12. Prior to the commencement of filming in Malta, the qualifying company is to provide the Commissioner with the names of at least three Maltese trainees to be engaged with the production.

13. Following completion of the audiovisual production, the qualifying company is to provide the Commissioner with stills from the film and behind-the-scenes footage to be used by the Commissioner for its international marketing and promotional purposes when showcasing Malta as a film location.

14. The qualifying company is to provide the Commissioner with three copies of the film on DVD PAL format.

## SECOND SCHEDULE

(Regulation 3)

### Criteria for the determination of the cultural content of an audiovisual production

A minimum of:

- (i) 40 points in aggregate; and
- (ii) 15 points under Section A below; and
- (ii) 10 points in each of the Sections B and C below,

is required for an audiovisual production to meet the requirements set out in regulation 3(1)(a) of these regulations.

Difficult and low-budget productions will be granted the maximum number of points under Section B(i) if the qualifying company submits proof, to the Commissioner's satisfaction, that the qualifying production is the subject of an agreement to screen the production in at least one theatre outside Malta in an EU Member State.

#### SECTION A: Cultural Content

	Max Points	Total Obtained
1. Productions featuring a Maltese, European or Mediterranean Story (factual or fiction)	4	
2. Productions featuring a Maltese, European or Mediterranean setting (factual or fiction)	8	
3. Storyline or underlying material is based on literary material	2	
4. Storyline or underlying material is a part of or derived from Maltese, European or Mediterranean culture and/or heritage	4	
5. Productions featuring Maltese or European characters	2	
6. Storyline or underlying material deals with contemporary or historical Maltese, European or Mediterranean issues of political, religious and/or social relevance	3	
7. Storyline or underlying material contains reference to a contemporary or historical personality (eg: Alexander the Great) or to a fictional character in cultural history (eg: Zeus)	2	
8. Storyline or underlying material contains reference to a universally significant and relevant event – fictional or factual.	2	
9. Use of Malta's diverse architectural, archeological and natural heritage to reflect the European and Mediterranean cultural context	3	
10. Productions featuring at least one European language	3	
11. Use of Maltese language in the dialogue of the production in		

a manner which contributes to the development of the storyline	2	
12. Use of Malta's cultural subjects and landmarks that allow for them to feature in the setting of the production.	2	
13. Productions with compelling dramaturgical script requirements that cannot logistically, creatively or technically be satisfied in any other EU member state	3	
	<b>40 (max)</b>	
<i>Total obtained for Section A (Cultural Content):</i>		Out of max 40

### SECTION B: Creative Contribution

Productions with guaranteed, proven or intended theatrical or television distribution in at least three EU Member States	Points	Total obtained
<b>(Tick appropriate box)</b>		
3-4 EU Member States	6	
5-7 EU Member States	8	
8-10 EU Member States	10	
11-13 EU Member States	12	
14-16 EU Member States	14	
17-19 EU Member States	16	
20-22 EU Member States	18	
24 or more EU Member States	20	
	<b>20 (max)</b>	
<b><i>SUB -TOTAL:</i></b>		

(ii) Creative and technical contributors (crew) from Malta or the EEA (nationality) in the following areas at HOD or assistant level where applicable:	Points	Total obtained
- Director	1	
- Scriptwriter	1	
- Producer / co-producer	1	
- Composer	1	
- Director of photography	1	
- Editor	1	
- Costume designer	1	
- Production designer	1	
- Make-up artist	1	
- Art director	1	
- Set decorator	1	
- Line producer / Unit production manager	1	

	:	<b>12(max)</b>	
<b><i>SUB TOTAL:</i></b>			
<b><i>Total obtained for Section B (Creative Contribution):</i></b>			out of max 32

**SECTION C: Use of Malta's Cultural Resources**

	<b>Max Points</b>	<b>Total obtained</b>	
(i) Productions with preparation and pre-production in Malta	<b>6</b>		
(ii) Productions with location or studio shooting in Malta	<b>14</b>		
(iii) Productions with post-production in Malta	<b>8</b>		
	<b>28 (max)</b>		
<b><i>Total obtained for Section C (Use of Malta's Cultural Resources):</i></b>			out of max 28

**L.N. 50 of 2010**

**MALTA FILM COMMISSION ACT  
(CAP. 478)**

**Financial Incentives for the Audiovisual Industry  
(Amendment) Regulations, 2010**

IN exercise of the powers conferred by articles 26(1) and 33 of the Malta Film Commission Act, the Minister for Finance, the Economy and Investment, has made the following regulations:

Title.

**1.** The title of these regulations is the Financial Incentives for the Audiovisual Industry (Amendment) Regulations, 2010 and they shall be read and construed as one with the Financial Incentives for the Audiovisual Industry Regulations, 2008, hereinafter referred to as "the principal regulations".

L.N. 37 of 2008.

Amends  
regulation 10 of  
the principal  
regulations.

**2.** In regulation 10 of the principal regulations, the words "31 December 2009" shall be substituted by the words "31<sup>st</sup> December 2012".

---