



MALTA**FILM**COMMISSION

Guidelines for the Certification of Audiovisual Productions

by

Malta Film Commission

Issued by the Film Commissioner
in terms of the
Financial Incentives for the Audiovisual Industry Regulations 2008

Guidelines for the Certification of Audiovisual Productions by the Malta Film Commission

The following guidelines are issued by the Film Commissioner in accordance with Financial Incentives for the Audiovisual Industry Regulations, 2008 (L.N. 37 of 2008) (hereinafter the “Regulations”).

This document has been designed to assist individuals or organisations applying for the cash rebates available under the above-mentioned Regulations. The document also maps out the process followed by the Malta Film Commission in determining the percentage to be granted to a qualifying production.

Applicants interested in obtaining further information about these incentives or any related topic may contact the Malta Film Commission as follows:

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Criteria regarding the content of a qualifying production

Upon receiving an application under the Regulations, the Film Commissioner will determine whether the applicant and the audiovisual production in respect of which the application is made, satisfy the qualification criteria established by the Malta Film Commission Act, the Regulations and these Guidelines.

Cultural Content

1. Without prejudice to conditions established in Article 25 of the Malta Film Commission Act and regulation 3 of the Financial Incentives for the Audiovisual Industry Regulations, only audiovisual productions abiding by the criteria set out in the Second Schedule to the Regulations shall be considered a “qualifying production”.

In addition to the requirement that an audiovisual production has to pass the “cultural test” as described above (regulation 3(1)(a) and Second Schedule of the Regulations), the audiovisual production concerned must satisfy the criteria set out in regulation 3(1)(b) to (d) of the Regulations for “qualifying productions”.

Format

2. Pursuant to regulation 3(1)(d) of the Regulations the audiovisual production must be based on a format approved by the Commissioner. Only the following types of audiovisual productions shall be considered a “qualifying production” and be eligible for the financial incentives:
 - a) **Feature film** (including those shot direct-to-video) where the film is a film commonly screened as the main attraction in commercial cinemas; no less than 60 minutes, or in the case of a large format (IMAX) film no less than 45 minutes;
 - b) **Television film** being a drama (i.e. a composition which tells a story through the development of theme and plot, by means of dialogue and action and the portrayal of characters, settings, and life situations) of a like nature to a feature film capable of exhibition on television where the television movie is no less than one commercial television hour in length, or in the case of a programme predominantly utilising cell, stop motion and/or computer animation not less than one half commercial television hour; and is shot and processed to commercial release standards, for cinema exhibition or international telecast;

Or **Television series or mini-series** being an episodic television drama, including animation, which is either an extended but self-contained drama made for television wherein the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure (similar to that of a novel) which features a major continuous plot enhanced by minor plots and there is the expectation of an ending that

resolves the major plot tensions and is arranged into consecutive episodes for screening purposes; or an anthology of drama works for television where the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure within each episode (similar to that of a novel or a short story) but there is no continuity of plot between episodes (although there may be host elements common to each episode) and is made to be broadcast under one generic title; and is shot and processed to commercial release standards, for international telecast.

- c) **Animation** (whether computer generated or otherwise, but excluding computer games); or
- d) **Creative documentary**, where the project is based on an original theme which contains a certain "timeless" element so that there is no loss of interest when the event with which it may be linked has passed and contains significant original filming and does not merely report information.

3. The following in particular are not eligible for the financial incentives:

- i. any public or special performances(s) staged for filming or otherwise;
- ii. any sporting event;
- iii. games or competitions;
- iv. current affairs or talk shows;
- v. demonstration programmes for tasks, hobbies or projects;
- vi. review, magazine-style, or lifestyle programmes;
- vii. unscripted or "reality"- type programmes;
- viii. advertising programmes or advertisements;
- ix. pornographic or sexually explicit content.

Application for provision approval

- 4. The Application for Provisional Approval under the Malta Film Commission Act forms part of these Guidelines.
- 5. Applications for provisional approval must be made on the application form that is available from the Malta Film Commission. The application shall also include the following separate documents:
 - a synopsis of the project or a script
 - a schedule of filming
 - a top sheet of the overall production budget
 - a detailed, itemised estimate of the pertinent production's expenditure for which a benefit is being sought.

The applicant shall declare in the application for provisional approval whether or not, at the time of the application for provisional approval:

- (i) the qualifying company intends to avail itself of, or has availed itself of any of the incentives or benefits under the Business Promotion Act or any subsidiary legislation made thereunder; and,
- (ii) the qualifying company has received confirmation or has applied for confirmation from the competent authority that it is a qualifying company in terms of the Business Promotion Act or any subsidiary legislation made thereunder.

The applicant shall notify the Commissioner if and when any of the circumstances mentioned above occur or change after submission of the application for provisional approval. Furthermore, the applicant shall confirm or update the abovementioned declaration in the application for Final Approval.

- 6. Applications for certification must be made at least 30 working days before planned commencement of the production's principal photography. The Malta Film Commission will normally complete assessment of application within twenty working days (excluding any period during which the Malta Film Commission is awaiting additional information requested under paragraph 7 below).
- 7. In case the Film Commissioner requests additional information in respect of an application, processing of the application will not be progressed by the Malta Film Commission until the relevant information has been received.

Level of Aid and Intensity

- 8. The financial incentive shall not exceed a maximum rebate of twenty two percent of the eligible expenditure of a qualifying production.
- 9. (1) In determining the level of rebate the Commissioner shall take into account all possible State subsidies, including aid provided by other EU Member States, in order to ensure that State aid does not go beyond fifty percent of the total production budget.

(2) The Commissioner will verify that the said threshold is not exceeded both at the stage of receiving the application for funding and prior to making a recommendation to the Commission on the amount of financial incentive to be granted.
- 10. (1) The limits referred to in paragraphs 8 and 9 above do not apply in the case of difficult and low budget films.

(2) A difficult film means one which would have little if any prospect of commercial success because of its experimental nature or because it represents a high level of creative risk

(3) A low budget film means a feature film with a total production budget of not more than EUR100,000 (or foreign currency equivalent).

The level and intensity of financial incentives that may be granted to difficult and low budget films and the terms and conditions for the grant thereof, shall be established in the call for applications published in accordance with regulation 5(4) of the Regulations.

Eligible and Non-Eligible Expenditure

11. The financial incentive shall be calculated on the basis of the eligible expenditure, which may amount to maximum 80% of the production budget. Furthermore, 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.

The following expenses may be eligible for the cash rebate if they are incurred in Malta by the qualifying company and are directly related to the qualifying production:

- a. **Accommodation in Malta** - Expenditure on hotel accommodation and rental of real estate for foreign cast and crew.
- b. **Air travel** – Relevant flight expenditure for air freight and air travel between Malta and any airport within the EU/EEA, as well as expenses (including all airport taxes, such as departure tax, passenger service charges, security charges and similar expenses) incurred at Malta International Airport in respect of such air travel.

- c. **Animals**

Provided that such expenditure shall not exceed 6% of the total eligible expenditure

- d. **Audio Rentals**

- e. **Catering and craft services** - Provided on location in Malta that is directly related to the qualifying production.

Provided that expenditure in relation to such services shall not exceed 15% of the total eligible expenditure.

- f. **Construction and adaptation of ships and other vessels** - Whether self propelled or not, including barges, pontoons and similar crafts

Provided that such the expenditure shall not exceed 15% of the total eligible expenditure.

- g. **Contingency** (*subject to expenditure*)
- h. **Diving services**
- i. **Electricity**
- j. **Entertainment** - Organised by the qualifying company for cast and crew
- k. **Generators**
- l. **Grip rental**

Provided that such expenditure shall not exceed 15% of the total eligible expenditure.

- m. **Ground transport and facility vehicle services** – rental of chauffer driven cars, self-drive vehicles, facility vehicles, trucks, cranes, mobile homes and picture vehicles in Malta.
- n. **Labour costs** – Expenditure on employees, directly engaged with the production company on a full-time basis, part-time basis or with a contract of service, who are nationals of an EU/EEA Member State and are employed/posted in Malta in accordance with the laws of Malta.

Provided that eligible expenditure for ‘above the line’ direct employment (such as directors, producers and cast members) and for employment of heads of department in the ‘below the line category’ shall be limited to €50,000.

For the purposes of these Guidelines:

- ‘Above-the-line’ labour includes salaries for producers, director, cast and stunts, including their travel and living expenses as well as miscellaneous ancillary associated costs.
- ‘Below-the-line’ labour refers to labour directly engaged on a production during its shooting in Malta except those included in the above-the-line labour and expenses.
- All Heads of Department are excluded in eligible below-the-line labour.
- On qualifying productions with overall budgets of over €25 million, chief assistants to keys and heads of department are also not to be considered eligible. The Commissioner shall determine the eligibility of crew positions accordingly.

- o. **Laundry and cleaning services** - procured in Malta.
- p. **Location fees** – Fees and courtesy payments that are directly related to the qualifying production which are paid to location owners, local councils, non-governmental organisations or other individuals or entities in Malta.

Provided that such fees and payments shall not exceed €500 (or equivalent) per day per individual or entity
- q. **Malta heritage, archeological and environmental monitoring services**
- r. **Per diems** - Daily subsistence given to foreign cast and crew working in Malta, subject to a maximum of €70 per person per day.
- s. **Production service company fees**
- t. **Professional services procured in Malta** (including insurance and/or bank charges).
- u. **Rental of marine vehicles**
- v. **Rental of mobile toilets**
- w. **Rental of office furniture and office set-up costs**
- x. **Rental of planes/helicopters**

Provided that such expenditure shall not exceed 6% of the total eligible expenditure.
- y. **Rental of production offices, warehouse space, workshop facilities, storage space and stages procured in Malta.**
- z. **Rental of props used in Malta from recognized suppliers.**

Any supplier of props for audiovisual productions established in Malta or any other EU/EEA Member State or whose main activities or operations are carried out in Malta or any other EU/EEA Member State shall be deemed to be a recognised supplier.
- aa. **Rental of water tanks and MFS facilities**
- bb. **Repairs & restorations**
- cc. **Scaffolding**
- dd. **Security services**

ee. ***Set Dressing***

ff. ***SFX services, crew and equipment***

Provided that such expenditure shall not exceed 6% of the total eligible expenditure.

gg. ***Shipping*** – Relevant shipping expenses in relation to maritime transport or sea travel between Malta and any port within the EU/EEA, and ferry services between the Maltese islands.

hh. ***Telecommunications*** – Expenditure on fixed telephony, mobile telephony, internet, email and fax services incurred in Malta (including rental of walkie talkies).

ii. ***VFX services, crew and equipment***

Provided that such expenditure shall not exceed 6% of the total eligible expenditure.

jj. ***Wardrobe rentals***

Provided that expenditure in relation to wardrobe rentals shall not exceed 15% of the total eligible expenditure.

kk. ***Miscellaneous services procured in Malta (other than those listed above) that are directly related to the qualifying production.***

Provided that expenditure in relation to miscellaneous services shall not exceed 6% of the total eligible expenditure.

12. The following items are not eligible for the financial incentive:

a. *Fuel Expenses*

b. *All materials and supplies purchased or otherwise procured in Malta or an EU/EEA Member State or any third country other than those listed under paragraph 11 above.*

13. All items have to be presented net of Value Added Tax. When applying for the financial incentives the applicant should also provide the Malta Film Commission with estimates of their expenditure on non-eligible items.

14. The same criteria for eligible and non-eligible expenditure shall apply in respect of cash rebates granted to difficult and low budget films unless otherwise provided in the relevant call for applications.

Certification Process

15. The Malta Film Commission shall determine the percentages that are rebated to qualifying production.
16. The amount of the financial incentive will be determined on the basis of:
 - a. the funds available (with reference to the amount specifically appropriated in the Government's financial estimates for a particular financial year);
 - b. the ranking of the qualifying production in the cultural test based on the criteria set out in Section A (Cultural content) and Section B (Creative contribution) of the Second Schedule to the Regulations, as indicated in the tables below.

Qualifying productions (other than difficult and low budget productions):

POINTS OBTAINED IN CULTURAL TEST	PERCENTAGE OF REBATE
40 – 45	15%
46 – 50	16%
51 – 55	17%
56 – 60	18%
61 – 65	19%
66 – 72	20%
	+2% 'bonus' if Malta features as Malta

Difficult and low budget productions:

POINTS OBTAINED IN CULTURAL TEST	PERCENTAGE OF REBATE
40 – 45	18%
46 – 50	21%
51 – 55	24%
56 – 60	26%
61 – 65	28%
66 – 72	30%
	+2% 'bonus' if Malta features as Malta

17. Until a decision on the percentage is communicated, the Malta Film Commission reserves the right to request further information or clarification on any aspect of the application.

Certificate of Provisional Approval

18. Scheduled with the Regulations is a sample certificate, which details the general conditions normally attached to such certificates. In addition to these conditions, each certificate might contain certain specific additional conditions particular to an individual applying production.
19. The certificate is issued on the basis of the information supplied during the application process. Any material or content change in the information supplied to the Malta Film Commission, and on which the issue of the certificate was based, that may arise as the project progresses must be notified and agreed to by the Film Commissioner. Failure to have obtained such agreement will be regarded as a material breach of the conditions of the certificate.

Application for Final Approval

20. The application for final approval under the Malta Film Commission Act forms part of these Guidelines.
21. Applications for final approval must be made on the application form that is available from the Malta Film Commission. The application for Final Approval shall also include all the documents requested by the Malta Film Commission in the Certificate of Provisional Approval.
22. The final approval will be granted upon review of the final application, including the audited accounts and a detailed analysis of the pertinent production expenditure. The cash rebate is forwarded to a qualifying production no later than 5 months from the date of the filing of the duly completed final application (including all required supporting documentation).
23. In case the Film Commissioner requests additional information in respect of an application, processing of the application will not be progressed by the Malta Film Commission until the relevant information has been received.

Significant Budget Changes

24. Where following submission of the application for provisional approval the budget of a production differs by over 10% or less than 5% of the original estimations, an application for provisional approval would have to be re-submitted to the Malta Film Commission.
25. When re-applying for the cash rebate the applicant must also include all the documents requested by the Malta Film Commission in the Certificate of Provisional Approval, including a top sheet of the overall expenditure of the project and itemised details of the relevant spend for which a benefit is being sought.

26. The Malta Film Commission will normally complete assessment of this application within twenty working days (excluding any period during which the Malta Film Commission is awaiting additional information requested under paragraph 27 below).
27. In case the Film Commissioner requests additional information in respect of an application, processing of the application will not be progressed by the Malta Film Commission until the relevant information has been received.
28. If no application is re-submitted and the Commissioner finds that the final overall budget of the qualifying production 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.

Post-Certification Process

29. A qualifying company that has received a final approval must supply the Malta Film Commission with a compliance report on the conditions of the rebate, including the Malta Film Commission's inclusion in the film's credits, as well as any supporting documentation that may be requested by the Film Commissioner, within a period of four months after the conclusion of production.
30. Three copies of the film are to be submitted on DVD PAL format to the Malta Film Commission within four months of completion of the production.