

**PART A OF THE CINEMA STUDY  
REPLIES TO THE LEGAL QUESTIONNAIRE FOR MALTA**

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up Reply</b>
<b>Date:</b>	<b>20 December 2006</b>

(...)

Attached kindly find our replies to the additional questions posed from your end together with the amended questionnaires.

(...)

<b>Attachments to e-mail of 20 December 2006</b>
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- Report on State Aid to Film Ind. and Territorialisation Requirements Part (A).doc (page 2-4)
- Report on State Aid to Film Ind. and Territorialisation Requirements Scheme (1).doc (page 5-23)
- Report on State Aid to Film Ind. and Territorialisation Requirements Scheme (2).doc (page 24-34)
- Report on State Aid to Film Ind. and Territorialisation Requirements Scheme (3).doc (page 35-47)
- Replies to Additional Questions 20122006.doc (page 48-49)

## **PART A**

### **GENERAL QUESTIONS**

#### **OVERVIEW**

A.1 Country / region: Malta

A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works<sup>1</sup> of at least € 1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):

In Malta, there are three funding schemes relating to audiovisual works, namely:

1. The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta).
2. Incentives under the Business Promotion Regulations (Legal Notice 135 of 2001 as subsequently amended) issued under the Business Promotion Act, 1988 (Chapter 325 of the Laws of Malta).
3. The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta). This scheme grants incentives in relation to certain items of expenditure (e.g. construction of industrial buildings, acquisition of plant and machinery, acquisition of intellectual property rights etc.) incurred in a project which in the opinion of the Film Commissioner contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta.

In terms of the Financial Estimates for 2006 issued by the Ministry of Finance, the estimated expenditure on Film Industry Incentives for 2006 was calculated at Lm1,500,000.

#### **COPRODUCTION AGREEMENTS**

A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision:

1. Memorandum of Understanding Between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup>

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<sup>1</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

September, 1997 and which entered into effect on the latter date. We have been informed by the Film Commissioner that he is the authority in charge of the administration and supervision of this Memorandum of Understanding.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

2. The European Convention on Cinematographic Co-production, signed by Malta on the 17<sup>th</sup> September 2001 and which entered into force on the 1<sup>st</sup> January 2002. We have been informed by the Film Commissioner that he is the authority in charge of the administration and supervision of this Convention.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

## **NATIONALITY CERTIFICATION PROCEDURES**

- A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:<sup>2</sup>

No details of such formal procedure are set out in the legislation.

## **EXPECTED DEVELOPMENTS**

- A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision

No such developments have been reported.

- A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,<sup>3</sup> and indicate the name and address of the administration of these funding schemes:<sup>4</sup>

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<sup>2</sup> E.g. the French “Procédure d’agrément”.

<sup>3</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

<sup>4</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), were published in the Government Gazette on the 21<sup>st</sup> March 2006. These Regulations have not yet come into force, but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008. The Film Commissioner is in charge of the administration of this scheme.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), were published in the Government Gazette on the 21<sup>st</sup> March 2006 and came into force on the latter date. This scheme applies in respect of qualifying expenditure incurred on or after the 1<sup>st</sup> January, 2005.

The Film Commissioner is in charge of the administration of this scheme.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

## **REFERENCES TO LOCAL STUDIES**

A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

Jeanine Rizzo, An Analysis of the Law Relating to the Film Industry, University of Malta, Faculty of Laws, LL.D. thesis, June 2006. This is not a specialised study and gives more of an overview of the incentives available to the audiovisual industry.

**PART B**

**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: Malta
- B.2 Name of the funding scheme: Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006).
- B.3 Name and address of the funding scheme's administration and supervisory authority: The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Malta Film Commission Act (Chapter 478 of the Laws of Malta), which came into force on the 15<sup>th</sup> July 2005 and the Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 which were published in the Government Gazette on the 21<sup>st</sup> March 2006. The latter Regulations have not yet come into force but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008.

The corresponding titles in Maltese are the "Att dwar il-Kummissjoni Ċinematografika ta' Malta (Kapitolu 478)" and the "Regolamenti ta' l-2006 dwar Incentivi Finanzjarji g'Jall-Industrija Awdjovisiva (Avvi\ Legal 65 ta' l-2006)".

There were no amendments to the aforementioned Act and Regulations between 2001 and 2005.

Copies in the Maltese and English languages of the Malta Film Commission Act and the Financial Incentives for the Audiovisual Industry Regulations, 2006, are being attached.

## **TERRITORIAL CONDITIONS<sup>5</sup>**

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

The Malta Film Commission Act, 2005 under Article 25 defines a qualifying company as “any natural or legal person which carries on, or intends to carry on in Malta, a trade or business which consists in the production of film...” The Maltese version reads “*"kumpannija kwalifikanti" tfisser persuna naturali jew [uridika li twettaq, jew g]andha l-intenzjoni li twettaq [o Malta, kummer` li jikkonsisti fil-produzzjoni ta' film....."*

The Malta Film Commission Act, 2005 in Article 25 defines a qualifying production as “an audiovisual production satisfying the criteria and conditions as laid down in the Schedule or as prescribed by the Minister and that is certified as a qualifying production in accordance with article 26”. The Maltese version reads “*"produzzjoni kwalifikanti" tfisser produzzjoni awdjovisiva li tissodisfa l-kriterji u l-kondizzjonijiet mni\\lla fl-lskeda jew kif stabbiliti mill-Ministru, u li tkun `ertifikata b]ala produzzjoni kwalifikanti skond l-artikolu 26".*

The Schedule to the Malta Film Commission Act, 2005 provides that: “An audiovisual production shall be deemed to be a “qualifying production” as mentioned in article 25 of this Act if it satisfies the following conditions:

1. the audiovisual work concerned is produced wholly or partially in Malta on a commercial basis with a view to profit; and

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<sup>5</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

2. the audiovisual work concerned is produced wholly or principally for exhibition to the public in cinemas or through television broadcasting; and

3. the audiovisual work concerned is:

a. a feature film;

b. a television drama;

c. an animation (whether computer generated or otherwise, but excluding computer games); or

d. a 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:

Provided that an audiovisual work shall not be deemed to be a "qualifying production" if the audiovisual work concerned comprises or is substantially based on:

(i) any public or special performances 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".

The Maltese version reads "Produzzjoni awdjovisiva titqies b]ala "produzzjoni kwalifikanti" kif imsemmi fl-artikolu 25 jekk tissodisfa l-kondizzjonijiet li [ejjin:

1. ix-xog]ol awdjovisiv kon`ernat ikun prodott kompletament jew parzjalment f'Malta fuq ba`i kummer`jali bi skop li jintg]amel profit; u

2. ix-xog]ol awdjovisiv kon`ernat ikun prodott kompletament jew parzjalment g]all-esibizzjoni lill-pubbliku [ewwa swali ta`-`inema jew permezz ta' xandir televi]v; u

3. ix-xog]ol awdjovisiv kon`ernat ikun:

a. *feature film*;

b. drama televisiv;

c. animazzjoni (generat bil-*computer* jew b'xi mod iehor, imma bl' esklużjoni ta' loghob tal-*computer*); jew

d. dokumentarju kreattiv, fejn il-pro[ett ikun ibba`at fuq tema ori[inali li jkun fih element ta' nuqqas ta' rabta maz-`mien fis-sens li ma jkun hemm ebda telf ta' interess meta l-avveniment li mieg]u t-tema tkun marbuta tg]addi u d-dokumentazzjoni ikun fiha kontenut sinifikanti ta' ffilmjar ori[inali li ma jkunx limitat g]ar-rappurta[[ ta' informazzjoni:

l\da x-xog]ol awdjovisiv ma jitqiesx b]ala "produzzjoni kwalifikanti" jekk ix-xog]ol awdjovisiv kon`ernat ikun jinkludi jew ikun sostanzjalment ibba`at fuq:

- (i) wirjiet pubbli`i jew spe`jali mag]mulin bi skop li ji[u ffilmjati jew g]al xi skop ie]or;
- (ii) attivitajiet sportivi;
- (iii) log]ob jew kompetizzjonijiet;
- (iv) [raj]iet kurrenti jew *talk shows*;
- (v) programmi li juru ]idmiet, passatempi jew pro]etti;
- (vi) programmi ta' re`ensjoni, programmi fi stil ta' rivista jew programmi dwar *lifestyle*;
- (vii) programmi bla *script* jew tax-xorta *reality*;
- (viii) programmi ta' riklami jew riklami;
- (ix) kontenut pornografiku jew espli`iti sesswalment”.

The Malta Film Commission Act, 2005 provides for various forms of assistance which may be granted by the Film Commissioner which include territorialisation requirements:

“**27.** (1) Subject to prior approval of the Commission on a project basis, the Commissioner may invest in, or make a loan or a grant to defray in whole or in part the cost of a qualifying production wholly or partly made in Malta.

(2) The making of an investment, loan or grant under this article shall be subject to such terms and conditions as the Commissioner may think appropriate and expedient, including terms and conditions relating to the repayment to the Commissioner of any moneys paid by it and payment of interest on any such money.

**28.** (1) Subject to prior approval of the Commission on a project basis, the Commissioner may guarantee the due repayment of the principal of any moneys borrowed in respect of a qualifying production wholly or partly made in Malta or by a qualifying company or the repayment of interest on such moneys, or both the repayment of the principal and the payment of such interest, and may provide other financial guarantees in respect of a qualifying production.

(2) A guarantee under this article shall be in such form and manner and on such terms and conditions as may be specified in a scheme governing the giving of such guarantees prescribed by the Minister, in concurrence with the Minister responsible for finance.

(3) Moneys required by the Commissioner to meet sums which may become payable by the Commissioner under a guarantee shall be paid out of the Commissioner’s revenue or the sums paid by Government in accordance with article 13.

**31.** (1) The aggregate amount of any investment, grant or loan provided by the Commissioner under articles 27 and 29, together with the aggregate amount of principal and interest which the Commissioner may at any time be liable to repay on the basis of any guarantee under article 28, together with the amount of principal and interest, if any, which the Commissioner has previously paid on the basis of any guarantees and which has not been repaid to the Commissioner, shall not exceed such sum as may be prescribed by the Minister, in consultation with the Minister responsible for finance”.

The Maltese version of Articles 27, 28 and 31 of the Malta Film Commission Act, 2005 reads as follows:

**27.** (1) Abba`i ta' approvazzjoni bil-quddiem tal-Kummissjoni dwar kull pro]ett, il-Kummissarju jista' jinvesti fi, jew jag]ti self jew g]otja biex itaffi kompletament jew



parzjalment l-ispila ta' produzzjoni kwalifikanti magmula kompletament jew parzjalment f'Malta.

(2) Investiment, self jew ghotja magmula ta't dan l-artikolu huma so[etti g]all-pattijiet u l-kondizzjonijiet li l-Kummissarju jikkunsidra adatti u espedjenti, u jinkludu pattijiet u kondizzjonijiet relatati mal-]las lura lill-Kummissarju ta' kull flejjes im]allsa minnu u l-pagament ta' l-img]ax fuq somom b]al dawk.

**28.** (1) Abba'i ta' approvazzjoni bil-quddiem tal-Kummissjoni dwar kull pro[ett, il-Kummissarju jista' jigarantixxi il-]las ta' l-ammont prin`ipali tal-flejjes mislufa rigward produzzjoni kwalifikanti magmula kompletament jew parzjalment [ewwa Malta jew minn kumpanija kwalifikanti jew il-]las ta' mg]ax fuq tali somom, jew il-]las ta' l-ammont prin`ipali u l-pagament ta' tali mg]ax, u jista' jipprovdi garanziji finanzjari o]ra fir-rigward ta' produzzjoni kwalifikanti.

(2) Garanzija mog]tija ta't dan l-artikolu g]andu jkollha dik il-forma u manjiera u dawk il-pattijiet u kondizzjonijiet kif ikun spe`ifikat fi skema preskritta mill-Ministru li tirregola l-g]oti ta' tali garanziji, bi ftehim mal-Ministru responsabbli g]all-finanzi.

(3) Flejjes li l-Kummissarju jkollu b]onn biex i]allas somom li jistg]u jsiru dovuti minnu skond xi garanzija jridu jigu m]allsin mid-d]ul tieg]u jew mis-somom im]allsa mill-Gvern skond l-artikolu 13.

**31.** L-ammont komplessiv ta' kull investiment, ghotja jew self provduta mill-Kummissarju ta't l-artikoli 27 u 29, flimkien ma l-ammont komplessiv ta' l-ammont prin`ipali u kull mg]ax li l-Kummissarju jkollu f'kull ]in i]allas abba'i ta' garanzija mog]tija ta't l-artikolu 28, flimkien ma' l-ammont prin`ipali u kull mg]ax, jekk ikun hemm, li l-Kummissarju jkun ]allas abba'i ta' garanziji u li ma [iex im]allas lura lilu, ma g]andux je`edi s-somma li tigi stabbilita mill-Ministru bi ftehim mal-Ministru responsabbli g]all-finanzi”.

The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006) lay down that “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.....
- c) makes a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television.....”

The Maltese version reads “Produzzjoni awdjovisiva ti]i kunsidrata b]ala “produzzjoni kwalifikanti” g]all-finijiet ta' dawn ir-regolamenti jekk ix-xog]ol awdjovisiv -

- (a) ikun prodott kulturali mag]mul kompletament jew in parti [ewwa Malta fuq ba]i kummer`jali bil-g]an li jsiru profitti; u.....
- (c) ikun jag]mel kontribut validu lejn l-espressjoni ta' kreativita` u kultura [ewwa Malta permezz ta' l-i]vilupp ta' snajja ta' kapa`ita` produttiva fil-medja ta' films u t-televi]joni.....”

Moreover, Legal Notice 65 of 2006 in the Second Schedule, under Eligibility Criteria, lays down that “Audiovisual productions spending less than Lm 35,000 in Malta are not eligible for the financial incentives”. The Maltese version reads “Produzzjonijiet awdjovisivi fejn l-infiq ikun inqas minn Lm 35,000 [ewwa Malta mhumie x elijibbli g]jall-incentivi finanzjarji”.

Furthermore, paragraph 8 of the Second Schedule lays down that: “The following expenses incurred by a qualifying production, are eligible for the cash rebate:

- a) Local Labour – Expenditure on Maltese employees directly engaged with the production company on a full-time basis, part-time basis or with a contract of service;
- b) Accommodation – Expenditure on hotel accommodation and rental of real estate for foreign cast and crew working in Malta;
- c) Per diems – Daily subsistence given to foreign cast and crew working in Malta. The eligible subsistence is limited to Lm30 per person per day. All subsistence must be given to the local crew in Maltese currency. Any bank deposits made to non-Maltese bank accounts are not eligible for the cash rebate;
- d) Catering and craft services – Expenditure on food supplied only by a Maltese Company;.....
- g) Air Travel – Only flights operated by Air Malta are eligible for the rebate. Any commissions paid to non-Maltese agents do not qualify for the rebate. Expenses at Malta International Airport also qualify for the rebate;
- h) Shipping – All shipping expenses paid to a Maltese-owned shipping company are eligible for the rebate. When using international shipping services, the commission paid to local shipping agents would be eligible. All local handling is eligible;.....
- m) Rental of equipment from Maltese suppliers;
- n) Rental of props from Maltese suppliers....”

The Maltese version reads:

8. L-infiq li ġej li jkunu dahlu fih produzzjonijiet kwalifikanti huwa elijibbli ghar-rifużjoni ta' flus:

- a) *Haddiema Lokali* – Infiq fuq impjegati Maltin ingaġġati direttament mal-kumpannija kwalifikanti fuq bażi *full time*, bażi *part time* jew b'kuntratt ta' servizz;
- b) *Allogg* – Infiq fuq allogġ f'*hotels* u kiri ta' bini ghal-*cast* barrani u ekwipaġġ li jahdem f'Malta
- c) *Hlas per diem* – Sussistenza ta' kuljum mogħtija lil *cast* barrani u ekwipaġġ li jahdem f'Malta. Is-sussistenza elijibbli hija limitata għall-Lm30 ghal kull persuna kuljum. Kull sussistenza għandha tkun mogħtija lill-ekwipaġġ lokali f'munita ta' Malta. Kull depożitu bankarju magħmula favur kontijiet bankarji mhux Maltin m'huwix elijibbli ghar-rifużjoni ta' flus.
- d) *Servizzi ta' forniment u tas-sengħa* – Infiq fuq ikel fornit biss minn kumpannija Maltija

[....]

g) *Trasport bl-ajru* – Hu t-titjir magħmul biss permezz ta' l-Air Malta li huwa eliġibbli għar-rifużjoni. Kummissjonijiet mħallsa lill-aġenti barranin ma jikkwalifikawx għar-rifużjoni. L-ispizi fl-Ajruport Internazzjonali ta' Malta jikkwalifikaw ukoll għar-rifużjoni.

h) *Bastimenti* – L-infiq fuq affarijiet marittimi mħallas lill-kumpannija marittima Maltija huwa eliġibbli għar-rifużjoni. Fl-użu ta' servizzi marittimi internazzjonali, il-kummissjoni mħallsa lill-kunsilli lokali, organizzazzjonijiet mhux governattivi jew individwi jew entitajiet oħra huma eliġibbli għar-rifużjoni.

[....]

m) Kiri ta' ekwipaġġjament mingħand fornituri Maltin

n) Kiri ta' riffieda mingħand fornituri Maltin

[....]

Moreover, the specimen certificate of provisional approval in the First Schedule of Legal Notice 65 of 2006, in paragraph 12 requires the names of at least 3 Maltese trainees to be engaged with the production.

The English version reads:

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.

The Maltese version reads:

12. Qabel il-bidu ta' l-ffilmjar ġewwa Malta, il-kumpannija kwalifikanti għandha ttiprovdi lill-Kummissarju bl-ismijiet ta' almenu tleġ *trainees* Maltin li jkunu ser jiġu ingaġġati mal-produzzjoni.

Regulation 5(1) of Legal Notice 65 of 2006, provides that “A rebate of up to 20% of eligible expenditure shall be given as a cash grant to qualifying companies upon completion of a qualifying production in Malta, in accordance with these regulations and Guidelines. The cash grant shall be exempt for the purposes of the Income Tax Act”. The Maltese version reads “Rifużjoni sa g]oxrin fil-mija ta' l-infiq eliġibbli g]andu jkun mog]ti b]ala g]otja ta' flus lill kumpanniji kwalifikanti mat-tlestija ta' produzzjoni kwalifikanti [ewwa Malta, skond dawn ir-regolamenti u l-Linji gwida. L-g]otja ta' flus likwidi g]andha tkun e\enti g]al finijiet ta' l-Att dwar it-Taxxa ta' *Income*”.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

An application for the financial incentives must be submitted by the qualifying company to the Film Commissioner together with all the relevant documentation and information. This must be done at least thirty days before the commencement of the principal photography (i.e. the filming of major or significant components of an audiovisual production which involves lead actors) in Malta. An application for provisional approval shall in particular include a top sheet of the overall production budget and a detailed itemised estimate of the production's expenditure in Malta. The Film Commissioner will then make a recommendation in writing to the Film Commission regarding the level of the rebate to be granted to the qualifying company, and will forward any documentation or information furnished by the applicant to the Film Commission. In the event that the Film Commissioner finds that the application is not made by or on behalf of an entity that is a qualifying company, the Film Commissioner will reject the application and shall not make such a recommendation.

Upon the Film Commission determining the level of rebate to be granted to the qualifying company, which shall not exceed the amount recommended by the Film Commissioner, the latter shall issue a certificate of provisional approval which shall state the percentage of expenditure to be rebated to the production concerned and the conditions that must be met in order to obtain the final approval.

Upon completion of the qualifying production, and not later than 6 months after completion thereof, the qualifying company or its local branch or agent shall submit an application for final approval together with all the relevant information and documentation, to the Film Commissioner. The Film Commissioner will then make a recommendation in writing to the Film Commission regarding the amount of the incentive to be granted to the qualifying company. The Film Commission of its part, will then inform the Film Commissioner in writing of its decision on the amount of the incentive to be granted to the qualifying company, which shall not exceed the amount recommended by the Film Commissioner following the receipt by the latter of an application for final approval. The Film Commissioner shall thereafter make the necessary arrangements for the implementation of the Film Commission's decision.

The final approval will be granted upon a review of the final application, including the audited accounts and a detailed analysis of the Maltese production expenditure.

Appendix I to the Second Schedule of Legal Notice 65 of 2006, includes a Score Sheet in terms of which the percentages that are rebated to qualifying productions are determined.

Audiovisual productions spending less than Lm 35,000 in Malta are not eligible for the financial incentives.

A rebate of up to 20% of eligible expenditure shall be given as a cash grant to qualifying companies, upon completion of a qualifying production in Malta. The cash grant shall be exempt for the purposes of the Income Tax Act.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with*

*respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005):*

The Malta Film Commission Act, 2005 and Legal Notice 65 of 2006 do not provide any specific details on the interpretation and implementation of the territorialisation requirements relating to this scheme in the context of the co-production agreements listed under answer A.3.

Furthermore, Regulation 4 of Legal Notice 65 of 2006 provides that: “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”.

It must also be pointed out that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Moreover, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned”. Article 4 (2) then further provides that “The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention”.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005):*

The following guidelines are issued by the Film Commissioner in accordance with the Financial Incentives for the Audiovisual Industry Regulations, 2006 and are to be found in the Second Schedule of the said Regulations:

#### **“Eligibility Criteria**

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 2006 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.

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

- i. any public or special performance(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.
3. Audiovisual productions spending less than Lm35,000 in Malta are not eligible for the financial incentives.

### **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 production's expenditure in Malta.

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 point 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.

### **Eligible and Non-Eligible Expenditure**

8. The following expenses incurred by a qualifying production are eligible for the cash rebate:
- a) *Local Labour* - Expenditure on Maltese employees directly engaged with the

production company on a full-time basis, part-time basis or with a contract of service;

- b) *Accommodation* - Expenditure on hotel accommodation and rental of real estate for foreign cast and crew working in Malta;
- c) *Per diems* - Daily subsistence given to foreign cast and crew working in Malta. The eligible subsistence is limited to Lm30 per person per day. All subsistence must be given to the local crew in Maltese currency. Any bank deposits made to non-Maltese bank accounts are not eligible for the cash rebate.
- d) *Catering and craft services* - Expenditure on food supplied only by a Maltese company.
- e) *Telecommunications*- Expenditure on fixed telephony, mobile telephony, internet, email and fax services.
- f) *Ground Transport Services* - rental of chauffer driven cars, self-drive vehicles, facility vehicles, trucks, cranes and mobile homes.
- g) *Air Travel* - Only flights operated by Air Malta are eligible for the rebate. Any commissions paid to non-Maltese agents do not qualify for the rebate. Expenses at Malta International Airport also qualify for the rebate.
- h) *Shipping* - All shipping expenses paid to a Maltese-owned shipping company are eligible for the rebate. When using international shipping services, the commission paid to local shipping agents would be eligible. All local handling is eligible.
- i) *Location fees* - All fees paid to location owners and courtesy payments given to local councils, non-governmental organisations or other individuals or entities are eligible for the rebate.
- j) *Laundry and cleaning services*
- k) *Professional services*
- l) *Rental of production offices, warehouse space, facilities and stages*
- m) *Rental of equipment from Maltese suppliers*
- n) *Rental of props from Maltese suppliers*
- o) *Miscellaneous services* (To be approved by the Malta Film Commission)

9. The following items are non-eligible for the cash rebate:

- a) *Fuel expenses*
- b) *All materials and supplies purchased in Malta*



10. 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.

### **Certification Process**

11. Appendix I consists of a score sheet drawn up by the Malta Film Commission by means of which the percentages that are rebated to qualifying production are determined.
12. 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.
13. 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.
14. 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**

15. The application for final approval under the Malta Film Commission Act forms part of these Guidelines.
16. 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.
17. The final approval will be granted upon review of the final application, including the audited accounts and a detailed analysis of the Maltese production expenditure. The cash rebate is forwarded to a qualifying production no later than five months from the date of the filing of the final application.
18. 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**

19. 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.

20. 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 Malta spend.
21. 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 22 below).
22. 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.
23. 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**

24. 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.
25. 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”.

### **Implicit or *de facto* territorial conditions**

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

Yes

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005):

A number of possible instances could be found in the list of Eligible Expenditure in paragraph 8 of the Guidelines in the Second Schedule of Legal Notice 65 of 2006 and in Appendix I to the said Schedule.

Furthermore, Article 29 of the Malta Film Commission Act, 2005 provides that:

“29. (1) Subject to prior approval of the Commission, the Commissioner may, subject to such terms and conditions as he thinks appropriate and expedient, make grants to be used to defray in whole or in part the cost of providing training for persons in all aspects of the production of film.

(2) Subject to prior approval of the Commission, the Commissioner may provide moneys, subject to such terms as he thinks appropriate and expedient, for activities, events and initiatives in accordance with his functions as specified in article 6”.

The Maltese version of Article 29 of the Malta Film Commission Act, 2005 reads:

“29. (1) Abba`li ta' approvazzjoni bil-quddiem tal-Kummissjoni, il-Kummissarju jista', bla `sara g`all-pattijiet u l-kondizzjonijiet li jikkunsidra b`ala adatti u espedjenti, jag`mel g`otjiet biex itaffu kompletament jew parzjalment l-ispila tat-ta`rig g`all-persuni f`kull aspekk ta' produzzjoni ta' film.

(2) Abba`li ta' approvazzjoni bil-quddiem tal-Kummissjoni, il-Kummissarju jista' jipprovdi flejjes, bla `sara g`all-pattijiet u kondizzjonijiet li jikkunsidra adatti u espedjenti, g`all-attivitajiet, avvenimenti u inizjattivi skond il-funzjonijiet kif spe`ifikati fl-artikolu 6”.

## **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The Constitution of Malta in Chapter II, Article 8, provides that “The State shall promote the development of culture and scientific and technical research”.

The Maltese version of Article 8 of the Constitution of Malta reads “L-Istat ghandu jgib `il quddiem l-izvilupp tal-kultura u tat-tfittix xjentifiku u tekniku”.

The Constitution of Malta in Chapter II, Article 21, proceeds to stipulate that “The provisions of this Chapter (i.e. Chapter II) shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”.

The Maltese version of Article 21 of the Constitution of Malta reads: “Id-disposizzjonijiet ta’ dan il-Kapitolu ma jkunux esegwibbli f’xi qorti, izda l-principji li hemm fihom huma b’dan kollu fundamentali għall-igvernar tal-pajjiz u jkun l-iskop ta’ l-Istat li japplika dawn il-principji fl-għemil ta’ ligijiet”.

The Cultural Heritage Act (Chapter 445 of the laws of Malta) in Part II, Article 2, defines cultural heritage as: “...movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value”.

The Maltese version of Article 2 of the Cultural Heritage Act, defining cultural heritage, reads: “ "patrimonju kulturali" tfisser o[[etti mobbli jew immobbli ta' importanza artistika, arkitettonika, storika, arkeolojika, etnografika, paleontolojika u [eologika u tinkludi informazzjoni jew data relattivi g]all-patrimonju kulturali li jappartjeni lil Malta jew lil xi pajjiz ie]or. Dan jinkludi wkoll siti jew depo]iti arkeolo[i`i, paleontolo[i`i jew [eolo[i`i, paesa[[, gruppi ta' bini, kif ukoll kollezzjonijiet xjentifi`i, kollezzjonijiet ta' o[[etti artisti`i, manuskritti, kotba, materjal ippubblikat, arkivji, materjal awdjo-vi]iv u riproduzzjonijiet ta' xi wa]da minn dawn hawn qabel imsemmija, jew kollezzjonijiet ta' valur storiku, kif ukoll assi kulturali intan]ibbli li jinkludi l-arti, it-tradizzjonijiet, id-drawwa u l-jiliet li jintu]aw fl-arti dimostrattiva, fl-arti applikata u fl-arti[j]janat u assi intan]ibbli o]ra li g]andhom valur storiku, artistiku jew etnografiku”.

The Cultural Heritage Act in Part II, Article 4(2), provides that “Every citizen of Malta as well as every person present in Malta shall have the duty of protecting the cultural heritage as well as the right to benefit from this cultural heritage through learning and enjoyment. The cultural heritage is an asset of irreplaceable spiritual, cultural, social and economic value, and its protection and promotion are indispensable for a balanced and complete life”.

The Maltese version of Article 4(2) in Part II of the Cultural Heritage Act provides that: “Kull `ittadin ta' Malta kif ukoll kull min ikun pre]enti f'Malta g]andu jkollu d-dmir li jiprote]i l-patrimonju kulturali kif ukoll id-dritt li jibbenefika minn dan il-patrimonju kulturali permezz tat-tag]lim u tat-tgawdija. Il-patrimonju kulturali huwa assi ta' valur spiritwali, kulturali, so`jali u ekonomiku li ma jstax ji]i mibdul, u l-protezzjoni u l-promozzjoni tieg]u huma indispensabbli g]al ]ajja bilan`jata u kompluta”.

Furthermore, Part II, Article 6, of the Cultural Heritage Act stipulates that “the protection, promotion and accessibility of the cultural heritage shall be given very high priority in deciding public policy in all fields of activity in Malta”.

The Maltese version of Article 6 in Part II of the Cultural Heritage Act reads: “Il-protezzjoni u l-promozzjoni tal-patrimonju kulturali u l-a`essibilita` g]alih g]andhom jing]ataw prjorita` g]olja ]afna meta tkun qed ti]i de`la xi tkun il-politika pubblika f`kull qasam ta` attivita` f`Malta”.

Article 4(1) of the Cultural Heritage Act provides that “The provisions of the following subarticles of this article and of the other articles of this Part (i.e. Part II) shall not be enforceable in any court of law, however the principles therein contained are fundamental to the protection of the cultural heritage and it shall be the aim of the State to apply the same and to be guided thereby”.

The Maltese version of Article 4(1) of the Cultural Heritage Act reads “Id-disposizzjonijiet tas-subartikoli li [ejjin ta` dan l-artikolu u ta` l-artikoli l-o]ra ta` din it-Taqsima m`g]andhomx ikunu esegwibbli f`xi qorti tal-[ustizzja, madankollu l-prin`ipji li jinsabu fiha huma fundamentali g]all-protezzjoni tal-patrimonju kulturali u tkun il-mira ta` l-Istat li japplikhom u li jiggwida ru]ju bihom”.

Furthermore, in terms of Article 4(1) of the Malta Film Commission Act (Chapter 478 of the Laws of Malta), the functions of the Malta Film Commission include amongst others to:

“[....]

- (e) advocate the educational importance of film and the role it plays in fostering citizenship, creativity and innovation, as well as to encourage and promote, for the benefit of the Maltese audiovisual industry, the study and appreciation of films and filmmaking and to support initiatives to promote media literacy and developing the links between literacy and film;
- (f) support the development of opportunities for access to cinema history and heritage and the use of film history in understanding identity, representation, culture and creativity; [....]”.

The Maltese version of the aforementioned paragraphs in Article 4(1) of the Malta Film Commission Act read:

“[....]

- (e) tippromwovi l-importanza edukattiva tal-film u r-rwol tieg]u fit-tis]i] ta`-`ittadinanza, kreativita` u innovazzjoni, kif ukoll biex tinkora[[ixxi u tippromwovi, g]all-benefi`ju ta` l-industrija awdjovisiva Maltija, l-istudju u l-apprezzament ta` films u tal-produzzjoni ta` films u tkun ta` sostenn g]al inizjattivi li jippromwovu l-litteri`mu fil-media u ti`viluppa relazzjonijiet bejn litteri`mu u film;
- (f) tkun ta` sostenn g]all-i`vilupp ta` opportunitajiet g]al a`ess g]all-istorja ta`-`inema u patrimonju kulturali u l-u`u ta` l-istorja tal-film fil-ftehim ta` l-identita`, ir-rappre`entazzjoni, il-kultura u l-kreattivita`;

[....]”

Article 3(2) of the Malta Film Commission Act further attests to the role of the Malta Film Commission in supporting and promoting culture through its functions within the audiovisual

and film servicing industry in Malta in that it provides that “One of the members of the Commission shall be appointed upon nomination by the Minister responsible for culture”. The Maltese version reads “Wiejed mill-membri tal-Kummissjoni g]andu ji]i ma]tur wara li jkun [ie nominat mill-Ministru responsabli g]all-kultura”.

In terms of Article 3(1) of Legal Notice 65 of 2006, an audiovisual production shall be considered to be a “qualifying production” 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 .... and (c) makes a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television; and....”. The Maltese version reads “Produzzjoni awdjovisiva ti]i kunsidrata b]ala “produzzjoni kwalfikanti”....jekk ix-xog]ol awdjovisiv - (a) ikun prodott kulturali mag]mul kompletament jew in parti [ewwa Malta fuq ba]i kummer`jali bil-g]an li jsiru profitti; u ....u (c) ikun jag]mel kontribut validu lejn l-espressjoni ta’ kreativit`a u kultura [ewwa Malta permezz ta’ l-izvilupp ta’ snajja ta’ kapa`it`a produttiva fil-medja ta’ films u t-televi]joni; u....”

Moreover, Article 7(1) of Legal Notice 65 of 2006 states that: “....the Commissioner shall make a recommendation in writing to the Commission regarding the level of the rebate 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.” The Maltese version reads “....il-Kummissarju g]andu jag]mel rakkomandazzjoni bil-miktub lill-Kummissjoni rigward il-livell ta’rifu]joni mog]ti lil kumpannija kwalifikanti, fejn jiddikjara li l-produzzjoni hija prodott kwalifikanti li tissodisfa r-rekwi]iti ta’ produzzjoni kwalifikanti, u g]andu jg]addi lill-Kummissjoni kull dokumentazzjoni jew informazzjoni fornita mill-applikanti skond kif tirrikjedi l-Kummissjoni”.

As already stated, Legal Notice 65 of 2006 has not yet come into force but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008.

## **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>6</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Regulation 3(1) of Legal Notice 65 of 2006 provides that “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

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<sup>6</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- (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 in Malta 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 in accordance with the Guidelines established by the Commissioner”.

Reference should also be made to Paragraphs 1,2, 3, 8, 9 and 11 of the Guidelines in the Second Schedule of Legal Notice 65 of 2006 (reproduced in reply to question B.9) as well as Appendix I to the said Schedule.

### **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

The Film Commissioner  
Malta Film Commission  
The Trade Centre  
San Gwann SGN 09  
Malta

Tel: +356 21 497 970  
Fax: +356 21 499 568  
Email: info@mfc.com.mt

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
Ellul Mifsud & DeBono  
46/2, South Street,  
Valletta, VLT 11  
Malta

Tel: +356 21 233 005  
Fax: +356 21 237 277  
Email: pmifsud@emd.com.mt

Date of the data collection and processing: 21<sup>st</sup> September 2006

**PART B**

**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: Malta
- B.2 Name of the funding scheme: Business Promotion Regulations (Legal Notice 135 of 2001).
- B.3 Name and address of the funding scheme's administration and supervisory authority: Malta Enterprise, Enterprise Centre, San Gwann, SGN 09, Malta.
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Business Promotion Act (Chapter 325 of the Laws of Malta), which entered into force on the 5<sup>th</sup> July 1988 and the Business Promotion Regulations (Legal Notice 135 of 2001), which came into force on 1<sup>st</sup> November, 2000.



The corresponding titles in Maltese are the “Att dwar il-Promozzjoni ta’ Negozji (Kapitolu 325)” and the Regolamenti dwar il-Promozzjoni tan-Negozju (Avvi\ Legali 135 ta’ l-2001) ”.

There were amendments to both the Business Promotion Act (Chapter 325 of the Laws of Malta) and the Business Promotion Regulations (Legal Notice 135 of 2001) during the period from 2001 to 2005.

Copies in the Maltese and English languages of the Business Promotion Act and the Business Promotion Regulations as applicable in 2005, are being attached.

## **TERRITORIAL CONDITIONS<sup>7</sup>**

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

The Business Promotion Act (Chapter 325 of the Laws of Malta) in Article 2 (1) defines a "qualifying company" as “a company which carries on, or intends to carry on in Malta, a trade or business consisting solely of any of the activities referred to in Article 3(1)(a) to (k)”. The Maltese version reads “ "kumpannija kwalifikanti" tfisser kumpannija li tmexxi jew tkun bi jsiebha tmexxi f'Malta, xi kummer` jew negozju li jkun jikkonsisti unikament f'xi wa]da mill-attivita]iet imsemmija fl-artikolu 3(1)(a) sa (k)”.

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<sup>7</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

Articles 3 (1) and 3 (1)(k) of the Business Promotion Act, provide that: “....the incentives and benefits contemplated by or under this Act shall be due to and obtained by any enterprise which carries on or intends to carry on, in Malta, a trade or business which consists solely of ..... (k) the production of feature films, television, films, advertising programmes or commercials, and documentaries.” The Maltese version reads “.... l-in`entivi u l-benefi`ji ma]subin bi jew ta]t dan l-Att g]andhom ikunu dovuti lil u miksuba minn intrapri`a li tmexxi jew tkun bi ]siebha tmexxi, f`Malta, kummer` jew negozju li jkun jikkonsisti biss fi -.... (k) il-produzzjoni ta' films prin`ipali, films u programmi televi`vivi, produzzjonijiet ta' reklamar jew riklami, u dokumentarji”.

Moreover, in the proviso to Article 3 (1) of the Business Promotion Act, it is stated that: “Provided that where any provision is made by or under this Act for an incentive or benefit to be obtained by a qualifying company, any such incentive or benefit shall be due and obtained only by a company which carries on or intends to carry on in Malta such trade or business.” The Maltese version reads “\da meta jsir xi provvediment minn jew ta]t dan l-Att g]al in`entiva jew benefi`ju li g]andhom jinkisbu minn kumpannija kwalifikanti, kull tali in`entiva jew benefi`ju g]andhom ikunu dovuti u jinkisbu biss minn kumpannija li tmexxi jew tkun bi ]siebha tmexxi, f`Malta, dak il-kummer` jew negozju”.

The Business Promotion Act in Article 3 (5) further provides that: “A trade or business contemplated in sub-article (1) shall be a trade or business actually and physically carried on or carried out in Malta.....”. The Maltese version reads “Negozju jew kummer` ma]sub fis-subartikolu (1) g]andu jkun negozju jew kummer` li attwalment u fi`likament jitmexxa jew ji]i e`ercitat f`Malta....”.

In terms of the second proviso of Regulation 2 (1) of the Business Promotion Regulations, it is required that the activity in relation to which the expenditure was incurred “....is carried out in Malta” for the expenditure to qualify as “qualifying expenditure”. The Maltese version reads “.... sakemm dik l-attività titmexxa f`Malta”.

It is to be noted that “qualifying expenditure” refers to expenditure of a capital nature as defined in Article 2 (1) of the Business Promotion Regulations. One of the options available under the Regulations is for the Investment Tax Credits to be calculated as a percentage of “qualifying expenditure”. On the other hand, Regulation 5 (3) of the Regulations provides that a “company may claim an investment tax credit by reference to the wage costs pertaining to the jobs created, in Malta, as a result of an investment project the expenditure on which constitutes qualifying expenditure”. The Maltese version of Regulation 5 (3) reads “Kumpannija tista' titlob kreditu ta' taxxa fuq l-investment b`riferenza g]all-ispejje\ tal-pagi li g]andhom x`jaqsmu mal-postijiet tax-xog]ol ma]luqa, f`Malta, b]ala ri`ultat ta' pro]ett ta' investment li l-ispri`a g]alih tikkostitwixxi spri`a kwalifikanti”.

Under Regulation 3 (11) which defines micro, small and medium-sized enterprises, an “enterprise” means “....an enterprise which carries on a trade or business in Malta”. The Maltese version reads “.... intrapri`a li tmexxi kummer` jew negozju f`Malta”.

Furthermore, Regulation 4 (1) of the Regulations provides for reduced rates of income tax on profits derived by a company “from its trade or business carried out in Malta....”, whilst Regulation 4 (3) reiterates this by stating that a company shall qualify for the reduced rates of income tax, “....if its trade or business, in Malta, consists solely of one or more of the following qualifying activities....(i) the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and

documentaries”. The Maltese version of Regulation 4 (1) reads "il-profitti li tali kumpannija tagħmel mill-kummer` jew negozju tagħha li tmexxi f'Malta...", whilst the Maltese version of Regulation 4 (3) reads "...jekk il-kummer` jew negozju tagħha f'Malta jikkonsisti biss f'xi waġda jew iktar minn dawn l-attivitajiet kwalifikanti...(i) il-produzzjoni ta' produzzjonijiet awdjovi\ivi li jikkonsistu f' *feature films*, films g'at-televi\joni, programmi ta' reklamar jew reklami u dokumentarji."

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

In terms of Regulation 4 (1) of the Business Promotion Regulations, where a company satisfies the conditions set out in the said Regulation, the profits derived by such company from its trade or business carried out in Malta shall be subject to income tax at the rate of:

- (i) 5% for the first 7 years of assessment;
- (ii) 10% for the next 6 years of assessment; and
- (iii) 15% for the following 5 years of assessment.

In terms of Regulation 4 (3), a company would qualify for the aforementioned reduced rates of income tax "if its trade or business, in Malta, consists solely of one or more of the following qualifying activities:.... (i) the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and documentaries".

A company wishing to avail itself of the reduced rates of income tax shall submit an application to Malta Enterprise for the latter to determine whether the company is eligible to qualify for the said reduced rates of income tax. Malta Enterprise shall consider the activities of the company to determine whether they fall within Regulation 4 (3) and fall outside the scope of Regulation 4 (4) which provides for those instances where a company would not qualify for the reduced rates of income tax. Malta Enterprise may request such information and explanations as it deems fit and may visit the premises of the company. Upon being satisfied that these requirements have been met, Malta Enterprise shall provide the company with a certificate indicating the accounting period from which the company satisfies these requirements, and the company's entitlement to the reduced rates of income tax shall be conditional on the production by the company of this certificate. A copy of any such certificate shall be forwarded by Malta Enterprise to the Commissioner of Inland Revenue.

The certificate referred to above shall constitute *prima facie*, and not conclusive, evidence that the company qualifies for the reduced rates of income tax. In fact, Malta Enterprise shall communicate its decision as to whether a company satisfies the aforementioned requirements within 60 days from the receipt of all information requested by it for the purpose of making its determination. Malta Enterprise may as and when it deems fit, request information and explanations from a company furnished with the aforementioned certificate and may also visit the premises of such a company in order to determine whether the company is still eligible to qualify for the reduced rates of income tax.

Moreover, for a company to benefit from the reduced rates of income tax it must, together with the submission of its income tax return for every year of assessment in respect of which it claims the reduced rate of income tax, submit:

(a) a declaration, signed by all the directors of the company or by the company secretary where such declaration is approved by the board of directors of the company, confirming that throughout the relevant accounting period the company's trade or business consisted solely of the activities referred to in Regulation 4 (3) and that the company is not disqualified under Regulation 4 (4) from benefiting from the reduced rates of income tax.

(b) a declaration, signed by the auditor of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in paragraph (a) above is correct.

In addition, it is to be noted that with effect from year of assessment 2004, the profits which shall be taxed at the reduced rates of tax in accordance with Regulation 4 of the Business Promotion Regulations shall not, in any relevant year of assessment exceed the amount determined in accordance with Regulation 43 of the said Regulations.

Moreover, in terms of Regulation 43 (6) of the Regulations and without prejudice to a company's rights with respect to any period confirmed by Malta Enterprise during which the reduced rates of income tax shall be applicable, the last year of assessment in respect of which the reduced rates of income tax under Regulation 4 shall be applicable, shall be year of assessment 2009.

A company which qualifies for the reduced rates of income tax, shall also be entitled to an investment tax credit with respect to an investment project, calculated at the higher of:

- (a) up to 50% of the qualifying expenditure incurred by such company; or
- (b) up to 50% of the wage costs incurred during the first 24 month period, pertaining to the jobs created, in Malta, as a result of an investment project the expenditure on which constitutes qualifying expenditure. Provided such jobs are kept for at least 5 years and the employment is not in replacement of another individual.

In the case of small and medium sized enterprises, the percentages referred to in (a) and (b) above shall be increased to up to 65%.

Regulation 5 (10) of the Business Promotion Regulations provides that a company wishing to claim an investment tax credit for a year of assessment based on job creation, shall submit details of its investment project and of the individuals employed as a result of that investment project to Malta Enterprise for its approval and shall, for each year comprised in the employment qualifying period laid down in Regulation 5 (9) of the Business Promotion Regulations, submit further details relating to the said investment project consisting of further amounts invested, termination of employees previously indicated as having been employed and new employees distinguishing between employees in respect of whom new jobs have been created and employees employed in replacement of employees whose employment has been terminated as well as the wage costs in respect of which a credit is to be claimed in terms of this Regulation for that year of assessment.

Malta Enterprise, on being satisfied with the submissions made by the company and within 60 days from the receipt of all relevant information it may request, shall issue a certificate setting out the investment tax credits to which the company is entitled.

A company entitled to an investment tax credit in respect of a year of assessment shall be entitled to deduct from the amount of income tax which is due on its chargeable income for that year of assessment derived from the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and documentaries, the amount of the investment tax credit. Any investment tax credits which are not fully absorbed by the company's taxation liability for a particular year will be carried forward for set-off against its own tax liability in subsequent years of assessment. Furthermore any amount of investment tax credit not set-off with the company's tax liability for any year of assessment, shall be increased by 7% per annum, before being carried forward for set-off in subsequent years.

Regulation 20 of the Regulations requires a company claiming a benefit provided for under the Business Promotion Act or the Business Promotion Regulations, including those referred to above, to furnish Malta Enterprise with a copy of every income tax return, audited financial statements, TIFD (Tax Index of Financial Data) documents and any other information or documents concerning its chargeable income derived from its trade or business for any year of assessment in which it claims a benefit, within 3 months from the earlier of:

- (i) the last date on which it is obliged to file such returns and documents with the Department of Inland Revenue; or
- (ii) the date on which it filed its such returns and documents with the Department of Inland Revenue.

Similarly, where a company submits any further returns, adjustments or any other information relating to the aforementioned returns or documents, it shall also furnish Malta Enterprise with a copy thereof within 3 months of it having provided the Department of Inland Revenue with such further returns, adjustments or other information.

Moreover, where a benefit has been provided in terms of the Business Promotion Act or the Business Promotion Regulations to a company or enterprise, Malta Enterprise may in terms of Regulation 26 of the Regulations, from time to time, examine books, documents, premises and other things and matters of such company or enterprise, so as to ensure that the assistance is being applied for the purpose for which it had been granted. Malta Enterprise could also request that any financial statements required from the company or the enterprise, be submitted quarterly or at shorter intervals at the discretion of Malta Enterprise.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Business Promotion Act and the Business Promotion Regulations do not provide any specific details on the interpretation and implementation of the territorialisation requirements

relating to this scheme in the context of the co-production agreements listed under answer A.3.

Yet it must be pointed out that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup> September 1997, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Furthermore, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned”. Article 4 (2) then further provides that “The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention”.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

No relevant case law and guidelines have been identified.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

No

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

N/A

## **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The Constitution of Malta in Chapter II, Article 8, provides that “The State shall promote the development of culture and scientific and technical research”.

The Maltese version of Article 8 of the Constitution of Malta reads “L-Istat ghandu jgib 'il quddiem l-izvilupp tal-kultura u tat-tfittix xjentifiku u tekniku”.

The Constitution of Malta in Chapter II, Article 21, proceeds to stipulate that “The provisions of this Chapter (i.e. Chapter II) shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”.

The Maltese version of Article 21 of the Constitution of Malta reads: “Id-disposizzjonijiet ta’ dan il-Kapitolu ma jkunux esegwibbli f’xi qorti, izda l-principji li hemm fihom huma b’dan kollu fundamentali ghall-iggvernar tal-pajjiz u jkun l-iskop ta’ l-Istat li japplika dawn il-principji fl-ghemil ta’ ligijiet”.

The Cultural Heritage Act (Chapter 445 of the laws of Malta) in Part II, Article 2, defines cultural heritage as: “...movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value”.

The Maltese version of Article 2 of the Cultural Heritage Act, defining cultural heritage, reads: “ "patrimonju kulturali" tfisser o[[etti mobbli jew immobbli ta' importanza artistika, arkitettonika, storika, arkeolojika, etnografika, paleontolojika u [eologika u tinkludi informazzjoni jew data relattivi g]all-patrimonju kulturali li jappartjeni lil Malta jew lil xi pajji\ ie]or. Dan jinkludi wkoll siti jew depo\iti arkeolo[i`i, paleontolo[i`i jew [eolo[i`i, paesa[[, gruppi ta' bini, kif ukoll kollezzjonijiet xjentifi`i, kollezzjonijiet ta' o[[etti artisti`i, manuskritti, kotba, materjal ippubblikat, arkivji, materjal awdjo-vi\iv u riproduzzjonijiet ta' xi wa]da minn dawn hawn qabel imsemmija, jew kollezzjonijiet ta'

valur storiku, kif ukoll assi kulturali intan[ibbli li jinkludi l-arti, it-tradizzjonijiet, id-drawwa u l-]iliet li jintu\aw fl-arti dimostrattiva, fl-arti applikata u fl-arti[[janat u assi intan[ibbli o]ra li g]andhom valur storiku, artistiku jew etnografiku”.

The Cultural Heritage Act in Part II, Article 4(2), provides that “Every citizen of Malta as well as every person present in Malta shall have the duty of protecting the cultural heritage as well as the right to benefit from this cultural heritage through learning and enjoyment. The cultural heritage is an asset of irreplaceable spiritual, cultural, social and economic value, and its protection and promotion are indispensable for a balanced and complete life”.

The Maltese version of Article 4(2) in Part II of the Cultural Heritage Act provides that: “Kull `ittadin ta’ Malta kif ukoll kull min ikun pre\enti f’Malta g]andu jkollu d-dmir li jiprote[i l-patrimonju kulturali kif ukoll id-dritt li jibbenefika minn dan il-patrimonju kulturali permezz tat-tag]lim u tat-tgawdija. Il-patrimonju kulturali huwa assi ta’ valur spiritwali, kulturali, so`jali u ekonomiku li ma jistax ji[i mibdul, u l-protezzjoni u l-promozzjoni tieg]u huma indispensabbli g]al [ajja bilan`jata u kompluta”.

Furthermore, Part II, Article 6, of the Cultural Heritage Act stipulates that “the protection, promotion and accessibility of the cultural heritage shall be given very high priority in deciding public policy in all fields of activity in Malta”.

The Maltese version of Article 6 in Part II of the Cultural Heritage Act reads: “Il-protezzjoni u l-promozzjoni tal-patrimonju kulturali u l-a`essibilita` g]alih g]andhom jing]ataw prjorita` g]olja [afna meta tkun qed ti[i de`\a xi tkun il-politika pubblika f’kull qasam ta’ attivita` f’Malta”.

Article 4(1) of the Cultural Heritage Act provides that “The provisions of the following subarticles of this article and of the other articles of this Part (i.e. Part II) shall not be enforceable in any court of law, however the principles therein contained are fundamental to the protection of the cultural heritage and it shall be the aim of the State to apply the same and to be guided thereby”.

The Maltese version of Article 4(1) of the Cultural Heritage Act reads “Id-disposizzjonijiet tas-subartikoli li [ejjin ta’ dan l-artikolu u ta’ l-artikoli l-o]ra ta’ din it-Taqsima m’g]andhomx ikunu esegwibbli f’xi qorti tal-[ustizzja, madankollu l-prin`ipji li jinsabu fiha huma fundamentali g]all-protezzjoni tal-patrimonju kulturali u tkun il-mira ta’ l-Istat li japplikhom u li jiggwida ru]u bihom”.

Furthermore, in terms of Article 4(1) of the Malta Film Commission Act (Chapter 478 of the Laws of Malta), the functions of the Malta Film Commission include amongst others to:

“[....]

- (e) advocate the educational importance of film and the role it plays in fostering citizenship, creativity and innovation, as well as to encourage and promote, for the benefit of the Maltese audiovisual industry, the study and appreciation of films and filmmaking and to support initiatives to promote media literacy and developing the links between literacy and film;
- (f) support the development of opportunities for access to cinema history and heritage and the use of film history in understanding identity, representation, culture and creativity;



[....]”.

The Maltese version of the aforementioned paragraphs in Article 4(1) of the Malta Film Commission Act read:

“[....]

(e) tippromwovi l-importanza edukattiva tal-film u r-rwol tiegħu fit-tisjii ta' -ittadinanza, kreattività u innovazzjoni, kif ukoll biex tinkora [[ixxi u tippromwovi, g]all-benefi`ju ta' l-industrija awdjovisiva Maltija, l-istudju u l-apprezzament ta' films u tal-produzzjoni ta' films u tkun ta' sostenn g]al inizjattivi li jippromwovu l-litteri`mu fil-media u ti`viluppa relazzjonijiet bejn litteri`mu u film;

(f) tkun ta' sostenn g]all-i`vilupp ta' opportunitajiet g]al a`ess g]all-istorja ta' -`inema u patrimonju kulturali u l-u`u ta' l-istorja tal-film fil-ftehim ta' l-identità, ir-rappre`entazzjoni, il-kultura u l-kreattività;

[....]”

Article 3(2) of the Malta Film Commission Act further attests to the role of the Malta Film Commission in supporting and promoting culture through its functions within the audiovisual and film servicing industry in Malta in that it provides that “One of the members of the Commission shall be appointed upon nomination by the Minister responsible for culture”. The Maltese version reads “Wiejed mill-membri tal-Kummissjoni g]andu ji`i ma]tur wara li jkun [ie nominat mill-Ministru responsabli g]all-kultura”.

However, kindly note that no such provisions as are indicated in question B.12 have been identified in the Business Promotion Regulations (Legal Notice 135 of 2001).

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>8</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The criteria for eligibility have already been detailed in our replies to questions B.6 and B.7.

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<sup>8</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Malta Enterprise  
Enterprise Centre  
Industrial Estate  
San Gwann SGN 09  
Malta

Tel: +356 25420000  
Fax: +356 25423401  
Email: [info@maltaenterprise.com](mailto:info@maltaenterprise.com)

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
Ellul Mifsud & DeBono  
46/2, South Street,  
Valletta, VLT 11  
Malta

Tel: +356 21 233 005  
Fax: +356 21 237 277  
Email: [pmifsud@emd.com.mt](mailto:pmifsud@emd.com.mt)

Date of the data collection and processing: 21<sup>st</sup> September 2006.

**PART B**

**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: Malta
- B.2 Name of the funding scheme: Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006).
- B.3 Name and address of the funding scheme's administration and supervisory authority: The Film Commissioner, Malta Film Commission, The Trade Centre, Industrial Estate, San Gwann, SGN 09, Malta.
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Malta Film Commission Act (Chapter 478 of the Laws of Malta), which came into force on the 15<sup>th</sup> July 2005 and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 which latter Regulations came into force on the 21<sup>st</sup> March 2006 and which are applicable to qualifying expenditure incurred on or after the 1<sup>st</sup> January, 2005.

The corresponding titles in Maltese are the “Att dwar il-Kummissjoni Ċinematografika ta’ Malta (Kapitolu 478)” and the “Regolamenti ta’ l-2006 dwar Kreditu ta’ Taxxa (Infrastruttura Awdjovisiva) (Avvi\ Legalì 66 ta’ l-2006) ”.

There were no amendments to both the Malta Film Commission Act (Chapter 478 of the Laws of Malta) and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006) during the period from 2001 to 2005.

Copies in the Maltese and English languages of the Malta Film Commission Act and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006, are being attached.

## **TERRITORIAL CONDITIONS<sup>9</sup>**

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Legal Notice 66 of 2006, in Regulation 2 provides that a “ “qualifying project” means a project in which qualifying expenditure is incurred and which, in the opinion of the Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta”. The Maltese version reads “ “pro[ett kwalifikanti] t[fi]sser pro[ett] li fih jintefaq n[fi]eq kwalifikanti u li, fl-opinjoni tal-Kummissarju, jikkontribwixxi g[all]-i[vilupp], titjib jew tkabbir ta’ l-infrastuttura awdjovisiva f’Malta”.

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<sup>9</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

Regulation 2 of Legal Notice 66 of 2006 also provides that “ “eligible company” means a company established or having a place of business in Malta whose business consists solely or mainly of activities that form part of the film servicing industry”. The Maltese version reads “ “kumpannija eli[i]bbli” tfisser kumpannija li tkun imwaqqfa jew li jkollha post tan-negozju f’Malta u li n-negozju tag]ha jkun jikkonsisti biss jew prin`ipalment f’attivitajiet li jag]mlu parti mill-industrija tal-*film servicing*”.

Furthermore, Regulation 4(3) of Legal Notice 66 of 2006 provides that: “When the Commissioner is satisfied that a company that has made an application under this regulation is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta, he may certify it as a qualifying company for the purposes of these regulations.” The Maltese version reads “Meta l-Kummissarju jkun sodisfatt li kumpannija li tkun g]amlet applikazzjoni ta]t dan ir-regolament tkun kumpannija eli[i]bbli u li l-attivitajiet tag]ha jkunu kondun`enti g]all-i`vilupp u t-tkabbir ta’ l-industrija awdjovisiva f’Malta, huwa jista’ ji``ertifika b]ala kumpannija kwalifikanti g]all-fini ta’ dawn ir-regolamenti”.

In addition, in terms of Regulation 2 of Legal Notice 66 of 2006, “ “qualifying expenditure” means expenditure which has been incurred on or after the 1st January, 2005 for:

(a) the acquisition, construction, development or improvement of any industrial building or structure, including a warehouse, and including related labour costs which are capitalised as part of the cost of any such acquisition, construction, development or improvement;

(b) the acquisition of plant and machinery, excluding –

- (i) motor vehicles, except for such specialized motor vehicles as may be approved by the Commissioner;
- (ii) works of art and antiques;
- (iii) any assets whose use is wholly or mainly of a decorative nature; and
- (iv) any assets whose cost is related to their intrinsic value rather than to their specific usefulness for a qualifying investment;

(c) the acquisition of intellectual property rights from third parties under open market conditions the cost of which is amortizable”.

The Maltese version of the definition of “qualifying expenditure” in Regulation 2 of Legal Notice 66 of 2006 reads “ “nfieq kwalifikanti” tfisser sp`iva li tkun intefqet fl-1 ta’ Jannar 2005 jew wara –

(a) g]all-akkwist, bini, `vilupp jew titjib ta’ bini jew struttura industrijali, mag]dud ma]zen, u inklu`i spejje` ta’xog]ol relatat li ji[u kapitali`ati b]ala parti mill-isp`iva ta’ dak l-akkwist, bini, `vilupp jew titjib;

(b) l-akkwist ta’ impjant u makkinarju, esklu`i –

- (i) vetturi bil-mutur, ]lief g]al dawk il-vetturi spe`jali`ati skond ma jista’ japprova l-Kummissarju;
- (ii) xog]lijiet ta’ arti u antikitajiet;
- (iii) dawk l-o[[etti li l-u`u tag]hom huwa kollu kemm hu jew fil-bi``a l-kbira tieg]u ta’ ti`jin;

(iv) dawk l-o[[etti li l-prezz tag]hom g]andu x'jaqsam mal-valur intrinsiku iktar milli ma' l-utilità spe`ifika tag]hom g]al pro[ett kwalifikanti;

(c) l-akkwist ta' drittijiet ta' proprjetà intellettuali ming]and terzi persuni ta]t kundizzjonijiet tas-suq miftu] meta l-prezz tag]hom ikun jista' jinqata' fuq firxa ta' \mien”.

Moreover, in terms of Regulation 2 an “ “approved project” means a project approved in accordance with regulation 7, as subject to any conditions that may be applicable in terms of regulation 7(2)”. The Maltese version reads “ “pro[ett approvat” tfisser pro[ett approvat skond ir-regolament 7, b'dawk il-kundizzjonijiet li jistg]u jkunu jg]oddu g]alih skond ir-regolament 7(2)”.

Furthermore, Regulation 11 (1) of Legal Notice 66 of 2006 provides that “Expenditure shall constitute allowable expenditure if and to the extent that it meets all the following conditions:

- a) it is qualifying expenditure actually incurred by a qualifying company in carrying out an approved project and is not reimbursed to or otherwise recoverable by it....”

The Maltese version of Regulation 11 (1) reads “L-infieq ikun nfieq permissibbli jekk u sa fejn jitwettqu l-kundizzjonijiet kollha li [ejjin:

- (a) ikun nfieq kwalifikanti li [ie tassew minfuq mill-kumpannija fit-twettiq ta' pro[ett approvat u li la jkun t]allas lura lilha u l-anqas ma jkollu jin[abar lura minnha....”

Regulation 3 (1) of Legal Notice 66 of 2006 then provides that “When a qualifying company incurs allowable expenditure in carrying out an approved project and where the employment condition referred to in regulation 12 and the other relevant conditions laid down in these regulations are satisfied, it shall be entitled to a tax credit in accordance with and subject to the provisions of these regulations”. The Maltese version reads “Meta kumpannija tag]mel nfieq permissibbli fit-twettiq ta' pro[ett approvat u meta jse]]u l-kundizzjonijiet dwar l-impjieg imsemmija fir-regolament 12 u l-kundizzjonijiet l-o]ra rilevanti me]tiega b'dawn ir-regolamenti, hija jkollha jedd g]al kreditu ta' taxxa skond id-disposizzjonijiet ta' dawn ir-regolamenti u bla ]sara g]alihom”.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

An eligible company may apply to the Film Commissioner to be certified as a qualifying company by completing such application and providing such documents and certifications as required by the Film Commissioner. Upon being satisfied that the company that applied is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta, the Film Commissioner may issue a certificate certifying it as a qualifying company. The certificate shall indicate the date from which and the period for which such certificate shall be valid.

When a qualifying company carries out or intends to carry out a qualifying project it may apply to the Film Commissioner for the approval of that project.

The application must be made in the prescribed form and:

- (a) provide such particulars of the applicant as are necessary to determine whether it qualifies or not as a small or medium sized enterprise;
- (b) describe the project and its purpose and state the expected date of its commencement and its expected duration;
- (c) provide details of the investment that the company plans to make for the realisation of the project, including a description of each item of qualifying expenditure that the applicant intends to incur, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights;
- (d) state the number of additional employees that it plans to employ during the project period;
- (e) authorise the Film Commissioner and his officers to access any premises or works as the Film Commissioner may consider necessary in order to ascertain any matter relevant to the approval of the application and further authorise the Film Commissioner to disclose to the Commissioner of Inland Revenue any information and to pass on to him originals or copies of any documents and records that may have been obtained in connection with the application;
- (f) contain such other information, breakdowns and details, and be accompanied by such documents and certifications as the Film Commissioner may require;
- (g) be made by not later than three months prior to the company's tax return date for the year of assessment that immediately follows the first year in which the company incurs the expenditure to which the application refers.

When the Film Commissioner is satisfied that an application complying with the requirements of these Regulations has been filed by an eligible company, and that the project to which the application refers is a *bona fide* qualifying project, he may recommend to the Malta Film Commission that the project be approved.

In making such a recommendation, the Film Commissioner shall state the extent to which, in his opinion, the investment that the applicant plans to make towards the project represents qualifying expenditure and is necessary and reasonable in the light of the purpose for which it is planned to be incurred.

The Film Commissioner, however, shall not recommend the approval of a project:

- (a) that requires for its realisation a period of more than five years;
- (b) if the application for its approval is made after the 31<sup>st</sup> December, 2008.

Once the Malta Film Commission receives a recommendation from the Film Commissioner it may approve the project and proceed to make a determination and issue a letter of approval. However, such approval may be subject to such conditions as the Malta Film Commission may deem appropriate.

When the Malta Film Commission approves a project it shall determine the maximum qualifying expenditure for each item of expenditure and the total amount so determined shall not exceed the amount recommended by the Film Commissioner.

The letter of approval issued by the Film Commissioner in respect of every approved project shall provide for:

- (a) the particulars of the applicant;
- (b) a description of the project, with such conditions subject to which the approval was granted;
- (c) the maximum qualifying expenditure for each item of expenditure;
- (d) the maximum aggregate State aid intensity to which the applicant is entitled;
- (e) the earliest date by which the project must commence and the latest date by which it must be completed;
- (f) the shortest period for which the investment must be retained;
- (g) such other particulars as the Film Commissioner may consider appropriate.

The Film Commissioner shall issue the said letter of approval by not later than the company's relative tax return date and shall deliver the letter of approval to the applicant and a copy thereof to the Commissioner of Inland Revenue.

Upon the completion of the approved project and not later than sixty days therefrom, the company shall deliver to the Film Commissioner a certificate drawn up by a person who is recognised by the Film Commissioner as competent for this purpose, showing:

- (a) the date of completion of the project;
- (b) the amount of allowable expenditure actually incurred, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights;

A copy of such certificate must also be delivered to the Commissioner of Inland Revenue within the aforementioned time limit. The Commissioner of Inland Revenue may, after receiving a copy of such certificate, request an independent opinion from the Film Commissioner or any other competent technical person regarding the contents thereof.

The tax credit due to a qualifying company in respect of allowable expenditure shall be allowable for the year of assessment immediately following that in which the expenditure is incurred or in which the employment condition is first satisfied, whichever is the later, and shall be equal to:

- (a) 25% of expenditure in relation to the acquisition, construction, development or improvement of any industrial building or structure, including a warehouse, and including related labour costs which are capitalised as part of the cost of any such acquisition, construction, development or improvement;
- (b) 40% of any other allowable expenditure.

Notwithstanding the above, the tax credit due to a qualifying company in respect of an approved project shall not exceed, in the aggregate:

- (a) in the case of a small or medium sized enterprise as defined under the Business Promotion Regulations (Legal Notice 135 of 2001) , 50% of the total cost of the project in question; and
- (b) in the case of any other qualifying company, 40% net grant equivalent of the total cost of the project in question.

However, where the company in question has benefited from any State aid in respect of expenditure incurred in the carrying out of the project, other than as provided for in these Regulations, the threshold referred to in paragraph (a) or (b) above as the case may be, shall be reduced by the value of that aid.



The tax credit shall be availed of by way of a deduction from the tax chargeable on gains or profits derived from the activities in respect of which the investment to which the approved project refers is made, and shall not be allowable as a deduction from tax chargeable on gains or profits from any other source; and any amount of tax credit due for a year of assessment that is not so absorbed in that year may be carried forward and deducted from the tax chargeable in subsequent years on income from the said activities. Yet, any part of the tax credit that is not availed of up to the year of assessment 2013 shall not be carried forward and the right to a credit in respect thereof will lapse.

Where, for a year of assessment, a company qualifies for a tax credit under the Business Promotion Act and also under the provisions of these Regulations, it shall avail itself of the tax credit under the Business Promotion Act before any set-off is made in respect of the tax credit due under these Regulations. A tax credit due in accordance with these Regulations shall not give rise to a right for any refund.

In the event that a qualifying company that has availed itself of the tax credit under these Regulations, does not satisfy the employment condition as stipulated in terms of Regulation 12 of the Regulations (by the relative qualifying company employing at least 4 additional employees during the project period or within 3 years from the termination thereof), it shall forfeit the right to the tax credit and the tax credit in question shall be reversed or recalculated, as the case may be.

The tax credit shall also be reversed or recalculated where the investment represented by allowable expenditure or part thereof is not retained within the company for at least 3 years after the termination of the project period.

Where there is a reversal or recalculation of a tax credit, this shall give rise to an obligation of the company to pay an amount of tax, in addition to any other tax liability, equivalent to the amount represented by the reversal or recalculation.

The following further conditions must also be fulfilled for eligibility to the tax credit under these Regulations:

- (a) no other benefits are being claimed or may subsequently be claimed by a person on the same activity or project under any other legislation granting fiscal incentive schemes;
- (b) all tax liabilities including amounts due in respect of FSS tax as well as social security contributions due up to the time of the application, except for any tax still in dispute, must have been settled or are being settled in accordance with a formal agreement drawn up with the Commissioner of Inland Revenue.

No tax credit shall be due to a company under these Regulations for a year of assessment, unless it is claimed in the appropriate section of a tax return submitted by electronic means by not later than the relative tax return date.

A company to whom a letter of approval in respect of an approved project has been issued, shall submit to the Film Commissioner by not later than 2 months after the relative tax return date, a copy of the tax return for the year of assessment for which the tax credit may be claimed and for each subsequent year of assessment for which the said benefit remains available to it, independently of whether the tax credit is utilized or not.

When the Film Commissioner issues a letter of approval to a company in respect of an approved project, he may, from time to time, make such reviews of books and documents, hold on-site inspections on the premises of that company and make such other monitoring as he may consider necessary for the purpose of the Regulations and for any matter relevant to an approved application.

The Film Commissioner shall keep a database of all assistance provided to, or claimed by, a company under these Regulations for 10 years from the date on which the last individual assistance was granted, in order to enable him to –

- (a) verify whether the provisions of these Regulations have been complied with;
- (b) provide the State Aid Monitoring Board with such information as it may require; and
- (c) inform the Commissioner of Inland Revenue whether the credits claimed in terms of these Regulations have been properly calculated.

The Commissioner of Inland Revenue may make such enquiries and verifications as he deems fit in accordance with the provisions of the Income Tax Act and the Income Tax Management Act, and shall, after consulting the Film Commissioner, have the right not to allow a benefit under these Regulations if any default is committed by the applicant in respect of any provision of those Acts or the Social Security Act or any subsidiary legislation issued thereunder.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Malta Film Commission Act, 2005 and Legal Notice 66 of 2006 do not provide any specific details on the interpretation and implementation of the territorialisation requirements relating to this scheme, in the context of the co-production agreements listed under answer A.3.

It must be pointed out however that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup> September 1997, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Moreover, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned”. Article 4 (2) then further provides that “The benefits shall be granted to each co-producer by the Party in which the co-producer

is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention”.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

No relevant case law and guidelines have been identified.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

Yes

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

There may be scope for territorial conditions to be applied implicitly or *de facto*, since in terms of Regulation 2 of the Regulations a “qualifying project” is defined as “a project in which qualifying expenditure is incurred and which, in the opinion of the Film Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta”. Similarly, Article 4(3) of the Regulations provides that the Film Commissioner may certify a company as a qualifying company for the purposes of these Regulations, upon being satisfied that the company making the application is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta.

### **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit

territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The Constitution of Malta in Chapter II, Article 8, provides that “The State shall promote the development of culture and scientific and technical research”.

The Maltese version of Article 8 of the Constitution of Malta reads “L-Istat ghandu jgib 'il quddiem l-izvilupp tal-kultura u tat-tfittix xjentifiku u tekniku”.

The Constitution of Malta in Chapter II, Article 21, proceeds to stipulate that “The provisions of this Chapter (i.e. Chapter II) shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”.

The Maltese version of Article 21 of the Constitution of Malta reads: “Id-disposizzjonijiet ta' dan il-Kapitolu ma jkunux esegwibbli f'xi qorti, izda l-principji li hemm fihom huma b'dan kollu fundamentali ghall-iggvernar tal-pajjiz u jkun l-iskop ta' l-Istat li japplika dawn il-principji fl-ghemil ta' ligijiet”.

The Cultural Heritage Act (Chapter 445 of the laws of Malta) in Part II, Article 2, defines cultural heritage as: “...movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value”.

The Maltese version of Article 2 of the Cultural Heritage Act, defining cultural heritage, reads: “ "patrimonju kulturali" tfisser o[[etti mobbli jew immobbli ta' importanza artistika, arkitettonika, storika, arkeolojika, etnografika, paleontolojika u [eologika u tinkludi informazzjoni jew data relattivi g]all-patrimonju kulturali li jappartjeni lil Malta jew lil xi pajji\ ie]or. Dan jinkludi wkoll siti jew depo\iti arkeolo[i]i, paleontolo[i]i jew [eolo[i]i, paesa[[, gruppi ta' bini, kif ukoll kollezzjonijiet xjentifi`i, kollezzjonijiet ta' o[[etti artisti`i, manuskritti, kotba, materjal ippubblikat, arkivji, materjal awdjo-vi\iv u riproduzzjonijiet ta' xi wa]da minn dawn hawn qabel imsemmija, jew kollezzjonijiet ta' valur storiku, kif ukoll assi kulturali intan[ibbli li jinkludi l-arti, it-tradizzjonijiet, id-drawwa u l-]iliet li jintu\aw fl-arti dimostrattiva, fl-arti applikata u flarti[[janat u assi intan[ibbli o]ra li g]andhom valur storiku, artistiku jew etnografiku”.

The Cultural Heritage Act in Part II, Article 4(2), provides that “Every citizen of Malta as well as every person present in Malta shall have the duty of protecting the cultural heritage as well as the right to benefit from this cultural heritage through learning and enjoyment. The cultural heritage is an asset of irreplaceable spiritual, cultural, social and economic value, and its protection and promotion are indispensable for a balanced and complete life”.

The Maltese version of Article 4(2) in Part II of the Cultural Heritage Act provides that: “Kull `ittadin ta' Malta kif ukoll kull min ikun pre\enti f'Malta g]andu jkollu d-dmir li jiprotef[i l-patrimonju kulturali kif ukoll id-dritt li jibbenefika minn dan il-patrimonju kulturali

permezz tat-tagħlim u tat-tgawdija. Il-patrimonju kulturali huwa assi ta' valur spiritwali, kulturali, soġjali u ekonomiku li ma jistax jiġi mibdul, u l-protezzjoni u l-promozzjoni tiegħu huma indispensabbli għal jajja bilanġata u kompluta”.

Furthermore, Part II, Article 6, of the Cultural Heritage Act stipulates that “the protection, promotion and accessibility of the cultural heritage shall be given very high priority in deciding public policy in all fields of activity in Malta”.

The Maltese version of Article 6 in Part II of the Cultural Heritage Act reads: “Il-protezzjoni u l-promozzjoni tal-patrimonju kulturali u l-aġessibilità għalih għandhom jingħataw prijorità għolja jafna meta tkun qed tiġi deċiżjoni xi tkun il-politika pubblika f’kull qasam ta’ attività f’Malta”.

Article 4(1) of the Cultural Heritage Act provides that “The provisions of the following subarticles of this article and of the other articles of this Part (i.e. Part II) shall not be enforceable in any court of law, however the principles therein contained are fundamental to the protection of the cultural heritage and it shall be the aim of the State to apply the same and to be guided thereby”.

The Maltese version of Article 4(1) of the Cultural Heritage Act reads “Id-disposizzjonijiet tas-subartikoli li [ejjin ta’ dan l-artikolu u ta’ l-artikoli l-oħra ta’ din it-Taqsima m’għandhom] ikunu esegwibbli f’xi qorti tal-ustizzja, madankollu l-prinċipji li jinsabu fiha huma fundamentali għall-protezzjoni tal-patrimonju kulturali u tkun il-mira ta’ l-Istat li japplikhom u li jgħawd ruġu bihom”.

Furthermore, in terms of Article 4(1) of the Malta Film Commission Act (Chapter 478 of the Laws of Malta), the functions of the Malta Film Commission include amongst others to:

“[....]

- (e) advocate the educational importance of film and the role it plays in fostering citizenship, creativity and innovation, as well as to encourage and promote, for the benefit of the Maltese audiovisual industry, the study and appreciation of films and filmmaking and to support initiatives to promote media literacy and developing the links between literacy and film;
- (f) support the development of opportunities for access to cinema history and heritage and the use of film history in understanding identity, representation, culture and creativity; [....]”.

The Maltese version of the aforementioned paragraphs in Article 4(1) of the Malta Film Commission Act read:

“[....]

- (e) tippromwovi l-importanza edukattiva tal-film u r-rwol tiegħu fit-tisjii ta’ l-ittadinanza, kreatività u innovazzjoni, kif ukoll biex tinkora[[ixxi u tippromwovi, għall-benefiċċju ta’ l-industrija awdjovisiva Maltija, l-istudju u l-apprezzament ta’ films u tal-produzzjoni ta’ films u tkun ta’ sostenn għal inizzjattivi li jippromwovu l-litteri`mu fil-media u ti`viluppa relazzjonijiet bejn litteri`mu u film;

(f) tkun ta' sostenn g]all-ivvilupp ta' opportunitajiet g]al a`ess g]all-istorja ta`-`inema u patrimonju kulturali u l-u\ u ta' l-istorja tal-film fil-ftehim ta' l-identità, ir-rappre`entazzjoni, il-kultura u l-kreattività;

[...]"

Article 3(2) of the Malta Film Commission Act further attests to the role of the Malta Film Commission in supporting and promoting culture through its functions within the audiovisual and film servicing industry in Malta in that it provides that "One of the members of the Commission shall be appointed upon nomination by the Minister responsible for culture". The Maltese version reads "Wie]ed mill-membri tal-Kummissjoni g]andu ji]i ma]tur wara li jkun [ie nominat mill-Ministru responsabli g]all-kultura".

However, kindly note that no such provisions as are indicated in question B.12 have been identified in the Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006).

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>10</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

This scheme does distribute aid selectively as in terms of Regulation 2 of the Regulations a "qualifying project" is defined as "a project in which qualifying expenditure is incurred and which, in the opinion of the Film Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta". Likewise, Article 4(3) of the Regulations provides that the Film Commissioner may certify a company as a qualifying company for the purposes of these Regulations, upon being satisfied that the company making the application is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta.

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<sup>10</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

The Film Commissioner  
Malta Film Commission  
The Trade Centre  
Industrial Estate  
San Gwann SGN 09  
Malta

Tel: +356 21 497 970  
Fax: +356 21 499 568  
Email: info@mfc.com.mt

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
Ellul Mifsud & DeBono  
46/2, South Street,  
Valletta, VLT 11  
Malta

Tel: +356 21 233 005  
Fax: +356 21 237 277  
Email: pmifsud@emd.com.mt

Date of the data collection and processing: 21<sup>st</sup> September 2006

**Replies to Additional Questions in your email of the 2<sup>nd</sup> December 2006**

1) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialisation contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

International conventions such as the European Convention on Cinematographic Co-Production, prevail over our internal law.

2) At B. 12: Please quote and summarize all rules of law, including constitutional and legal ones, that articulate cultural objectives and/or justifications and that may directly or indirectly apply to State aid granted to the independent film and television sector.

We have made amendments to our replies to question B.12 in all 3 schemes to address this question 2.

3) At B. 13: Please quote and summarize the criteria and procedures applied to grant selective aid where applicable to the Maltese funding schemes (e.g. in other jurisdictions, selective State aid granting mechanisms typically require that film projects are assessed by independent experts with respect to their artistic quality and the track record of their producers and directors. It is very important for our study to be precisely informed about these selective State aid granting criteria and procedures since, in many cases, they are arguably used to practice implicit territorialisation under cover of artistic quality considerations.

Kindly refer to our replies to the questions posed below.

**Replies to Additional Questions in your email of the 18<sup>th</sup> December 2006**

I checked our Malta file, and I understand that we did not receive your replies for the scheme as follows:

- Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta).

Based on your replies to part A of our questionnaire, I understand that Malta has three funding schemes. Please send us your replies to part B of our questionnaire for this third fund.

We had sent the replies to the Questions in Part B of the Questionnaire relating to the Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65



of 2006) way back in our email to you of the 16<sup>th</sup> October 2006. These replies were in the same document as Part A to the Questionnaire and in fact followed the said Part A.

Is my understanding correct that the following funding schemes grant State aid (i.e. tax incentives) on a purely "automatic" basis, i.e. there is no selection of film project or other object of State funding that take place based on qualitative criteria (so-called "selective aid") as contemplated by question B.13?:

We think that this is not the case. In fact, kindly refer to our replies to questions B.7 and B. 13 to the Questionnaire relating to the Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006).

Furthermore, kindly note that as advised in our email to you of the 20<sup>th</sup> November 2006, Legal Notice 268 of 2006, which was published in the Government Gazette on the 7<sup>th</sup> November 2006, brought into force the Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006) with effect from the 1<sup>st</sup> January 2006. I had in my said email to you of the 20<sup>th</sup> November 2006 also attached a copy of Legal Notice 268 of 2006 in both Maltese and English, for your reference.

- Incentives under the Business Promotion Regulations (Legal Notice 135 of 2001 as subsequently amended) issued under the Business Promotion Act, 1988 (Chapter 325 of the Laws of Malta).

- The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta). This scheme grants incentives in relation to certain items of expenditure (e.g. construction of industrial buildings, acquisition of plant and machinery, acquisition of intellectual property rights etc.) incurred in a project which in the opinion of the Film Commissioner contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta.

If not, please inform us about the selective criteria applied.

In a nutshell yes, but a number of further conditions as specified in our replies to the questions in Part B of the relevant Questionnaire must also be satisfied.

If the Financial Incentives for the Audiovisual Industry Regulations Funding Scheme grants State aid on a selective basis, please inform us about the selective aid granting criteria and procedures (B.13).

Kindly refer to our previous reply to the question relating to question B.13 of the Questionnaire in respect of this scheme.

On a final note, we have made very slight amendments to our replies to the Questionnaires, mainly by using letters particular to the Maltese alphabet for Maltese text.

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up Questions</b>
<b>Date:</b>	<b>18 December 2006</b>

(...)

I checked our Malta file, and I understand that we did not receive your replies for the scheme as follows:

- Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta).

Based on your replies to part A of our questionnaire, I understand that Malta has three funding schemes. Please send us send your replies to part B of our questionnaire for this third fund.

Is my understanding correct that the following funding schemes grant State aid (i.e. tax incentives) on a purely "automatic" basis, i.e. there is no selection of film project or other object of State funding that take place based on qualitative criteria (so-called "selective aid") as contemplated by question B.13?:

- Incentives under the Business Promotion Regulations (Legal Notice 135 of 2001 as subsequently amended) issued under the Business Promotion Act, 1988 (Chapter 325 of the Laws of Malta).

- The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta). This scheme grants incentives in relation to certain items of expenditure (e.g. construction of industrial buildings, acquisition of plant and machinery, acquisition of intellectual property rights etc.) incurred in a project which in the opinion of the Film Commissioner contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta.

If not, please inform us about the selective criteria applied.

If the Financial Incentives for the Audiovisual Industry Regulations Funding Scheme grants State aid on a selective basis, please inform us about the selective aid granting criteria and procedures (B.13).

(...)

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up Reply</b>
<b>Date:</b>	<b>14 December 2006</b>

(...)

We (...) cannot understand what you are after exactly in relation to question 3 (re Question B 13 of Questionnaire). We believe that our replies to B13 were clear but should you require anything in particular we would appreciate more specific details.

(...)

<b>Member State:</b>	<b>Malta</b>
<b>Re:</b>	<b>Follow-Up Questions</b>
<b>Date:</b>	<b>02 December 2006</b>

(...)

1) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialisation contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

2) At B. 12: Please quote and summarize all rules of law, including constitutional and legal ones, that articulate cultural objectives and/or justifications and that may directly or indirectly apply to State aid granted to the independent film and television sector.

3) At B. 13: Please quote and summarize the criteria and procedures applied to grant selective aid where applicable to the Maltese funding schemes (e.g. in other jurisdictions, selective State aid granting mechanisms typically require that film projects are assessed by independent experts with respect to their artistic quality and the track record of their producers and directors. It is very important for our study to be precisely informed about these selective State aid granting criteria and procedures since, in many cases, they are arguably used to practice implicit territorialisation under cover of artistic quality considerations.

(...)

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up Question</b>
<b>Date:</b>	<b>22 November 2006</b>

(...)

1) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

(...)

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up</b>
<b>Date:</b>	<b>20 November 2006</b>

(...)

Just a short note to inform you that Legal Notice 268 of 2006, which was published in the Government Gazette on the 7<sup>th</sup> November 2006, brought into force the Financial Incentives for the Audiovisual Industry Regulations, 2006 with effect from the 1<sup>st</sup> January 2006.

LN 268 of 2006 is being attached for your reference.

(...)

<b>Attachment to email of 20 November 2006</b>
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- Legal Notice 268.pdf (the attachment is to be found in the regulations-document)

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Follow-Up Question</b>
<b>Date:</b>	<b>19 October 2006</b>

(...)

With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

(...)

<b>Member State:</b>	<b>MALTA</b>
<b>Re:</b>	<b>Replies</b>
<b>Date:</b>	<b>16 October 2006</b>

(...)

Attached kindly find captioned document and relevant laws.

Should you require any clarification do not hesitate to contact me.

(...)

<b>Attachments to emails of 16 October 2006</b>
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**Email 1, 20:50**

- Report on State Aid to Film Ind. and Territorialisation Requirements (1).doc (page 57-76)
- Malta Film Commission Act (Chap 478).pdf
- A.L. 65 ta' l-2006.pdf
- Att dwar il-Kummissjoni Cinematografika ta' Malta (Kap 478).pdf
- L.N. 65 of 2006.pdf

**Email 2, 20:52**

- Report on State Aid to Film Ind. and Territorialisation Requirements (2).doc (page 77-84)
- L.N. 135 of 2001.pdf
- A.L. 135 ta' l-2001.pdf
- Att dwar il-Promozzjoni ta' Negozji.pdf
- Business Promotion Act.pdf

**Email 3, 20:54**

- Report on State Aid to Film Ind. and Territorialisation Requirements (3).doc (page 85-94)
- Malta Film Commission Act (Chap 478).pdf
- A.L. 66 of 2006 (Maltese & English).pdf
- Att dwar il-Kummissjoni Cinematografika ta' Malta (Kap 478).pdf



## **PART A**

### **GENERAL QUESTIONS**

#### **OVERVIEW**

A.1 Country / region: Malta

A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works<sup>11</sup> of at least € 1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):

In Malta, there are three funding schemes relating to audiovisual works, namely:

3. The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta).
4. Incentives under the Business Promotion Regulations (Legal Notice 135 of 2001 as subsequently amended) issued under the Business Promotion Act, 1988 (Chapter 325 of the Laws of Malta).
3. The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 (Chapter 478 of the Laws of Malta). This scheme grants incentives in relation to certain items of expenditure (e.g. construction of industrial buildings, acquisition of plant and machinery, acquisition of intellectual property rights etc.) incurred in a project which in the opinion of the Film Commissioner contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta.

In terms of the Financial Estimates for 2006 issued by the Ministry of Finance, the estimated expenditure on Film Industry Incentives for 2006 was calculated at Lm1,500,000.

#### **COPRODUCTION AGREEMENTS**

A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision:

3. Memorandum of Understanding Between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup> September, 1997 and which entered into effect on the latter date. We have been

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<sup>11</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

informed by the Film Commissioner that he is the authority in charge of the administration and supervision of this Memorandum of Understanding.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

4. The European Convention on Cinematographic Co-production, signed by Malta on the 17<sup>th</sup> September 2001 and which entered into force on the 1<sup>st</sup> January 2002. We have been informed by the Film Commissioner that he is the authority in charge of the administration and supervision of this Convention.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

## **NATIONALITY CERTIFICATION PROCEDURES**

- A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:<sup>12</sup>

No details of such formal procedure are set out in the legislation.

## **EXPECTED DEVELOPMENTS**

- A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision

No such developments have been reported.

- A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,<sup>13</sup> and indicate the name and address of the administration of these funding schemes:<sup>14</sup>

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<sup>12</sup> E.g. the French “Procédure d’agrément”.

<sup>13</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

<sup>14</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), were published in the Government Gazette on the 21<sup>st</sup> March 2006. These Regulations have not yet come into force, but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008. The Film Commissioner is in charge of the administration of this scheme.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), were published in the Government Gazette on the 21<sup>st</sup> March 2006 and came into force on the latter date. This scheme applies in respect of qualifying expenditure incurred on or after the 1<sup>st</sup> January, 2005.

The Film Commissioner is in charge of the administration of this scheme.

The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.

## **REFERENCES TO LOCAL STUDIES**

A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

Jeanine Rizzo, An Analysis of the Law Relating to the Film Industry, University of Malta, Faculty of Laws, LL.D. thesis, June 2006. This is not a specialised study and gives more of an overview of the incentives available to the audiovisual industry.

## **PART B**

### **FUND SPECIFIC QUESTIONS**

#### **IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: Malta
- B.2 Name of the funding scheme: Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006).
- B.3 Name and address of the funding scheme's administration and supervisory authority: The Film Commissioner, Malta Film Commission, The Trade Centre, San Gwann, SGN 09, Malta.
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Malta Film Commission Act (Chapter 478 of the Laws of Malta), which came into force on the 15<sup>th</sup> July 2005 and the Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), issued under the Malta Film Commission Act, 2005 which were published in the Government Gazette on the 21<sup>st</sup> March 2006. The latter Regulations have not yet come into force but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008.

The corresponding titles in Maltese are the “Att dwar il-Kummissjoni Cinematografika ta’ Malta (Kapitolu 478)” and the “Regolamenti ta’ l-2006 dwar Incentivi Finanzjarji għall-Industrija Awdjovisiva (Avviz Legali 65 ta’ l-2006)”.

There were no amendments to the aforementioned Act and Regulations between 2001 and 2005.

Copies in the Maltese and English languages of the Malta Film Commission Act and the Financial Incentives for the Audiovisual Industry Regulations, 2006, are being attached.

## TERRITORIAL CONDITIONS<sup>15</sup>

### Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

The Malta Film Commission Act, 2005 under Article 25 defines a qualifying company as “any natural or legal person which carries on, or intends to carry on in Malta, a trade or business which consists in the production of film...” The Maltese version reads “*"kumpannija kwalifikanti" tfisser persuna naturali jew guridika li twettaq, jew ghandha l-intenzjoni li twettaq go Malta, kummerc li jikkonsisti fil-produzzjoni ta' film....."*

The Malta Film Commission Act, 2005 in Article 25 defines a qualifying production as “an audiovisual production satisfying the criteria and conditions as laid down in the Schedule or as prescribed by the Minister and that is certified as a qualifying production in accordance with article 26”. The Maltese version reads “*"produzzjoni kwalifikanti" tfisser produzzjoni awdjovisiva li tissodisfa l-kriterji u l-kondizzjonijiet mnizzla fl-Iskeda jew kif stabbiliti mill-Ministru, u li tkun certifikata bhala produzzjoni kwalifikanti skond l-artikolu 26*”.

The Schedule to the Malta Film Commission Act, 2005 provides that: “An audiovisual production shall be deemed to be a “qualifying production” as mentioned in article 25 of this Act if it satisfies the following conditions:

1. the audiovisual work concerned is produced wholly or partially in Malta on a commercial basis with a view to profit; and

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<sup>15</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

2. the audiovisual work concerned is produced wholly or principally for exhibition to the public in cinemas or through television broadcasting; and

3. the audiovisual work concerned is:

a. a feature film;

b. a television drama;

c. an animation (whether computer generated or otherwise, but excluding computer games); or

d. a 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:

Provided that an audiovisual work shall not be deemed to be a "qualifying production" if the audiovisual work concerned comprises or is substantially based on:

(i) any public or special performances 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".

The Maltese version reads "Produzzjoni awdjovisiva titqies bhala "produzzjoni kwalifikanti" kif imsemmi fl-artikolu 25 jekk tissodisfa l-kondizzjonijiet li gejjin:

1. ix-xoghol awdjovisiv koncernat ikun prodott kompletament jew parzjalment f'Malta fuq bazi kummercjali bi skop li jintghamel profitt; u

2. ix-xoghol awdjovisiv koncernat ikun prodott kompletament jew parzjalment ghall-esibizzjoni lill-pubbliku gewwa swali tac-cinema jew permezz ta' xandir televiziv; u

3. ix-xoghol awdjovisiv koncernat ikun:

a. *feature film*;

b. drama televisiv;

c. animazzjoni (generat bil-*computer* jew b'xi mod iehor, imma bl' esklużjoni ta' loghob tal-*computer*); jew

d. dokumentarju kreattiv, fejn il-progett ikun ibbazat fuq tema originali li jkun fih element ta' nuqqas ta' rabta maz-zmien fis-sens li ma jkun hemm ebda telf ta' interess meta l-avveniment li mieghu t-tema tkun marbuta tghaddi u d-dokumentazzjoni ikun fiha kontenut sinifikanti ta' ffilmyar originali li ma jkunx limitat ghar-rappurtagg ta' informazzjoni:

Izda x-xoghol awdjovisiv ma jitqiesx bhala "produzzjoni kwalifikanti" jekk ix-xoghol awdjovisiv koncernat ikun jinkludi jew ikun sostanzjalment ibbazat fuq:

- (i) wirjiet pubblici jew specjali maghmulin bi skop li jigu ffilmjati jew ghal xi skop iehor;
- (ii) attivitajiet sportivi;
- (iii) loghob jew kompetizzjonijiet;
- (iv) grajjiet kurrenti jew *talk shows*;
- (v) programmi li juru hidmiet, passatempj jew progetti;
- (vi) programmi ta' recensjoni, programmi fi stil ta' rivista jew programmi dwar *lifestyle*;
- (vii) programmi bla *script* jew tax-xorta *reality*;
- (viii) programmi ta' riklami jew riklami;
- (ix) kontenut pornografiku jew espliciti sesswalment”.

The Malta Film Commission Act, 2005 provides for various forms of assistance which may be granted by the Film Commissioner which include territorialisation requirements:

“**27.** (1) Subject to prior approval of the Commission on a project basis, the Commissioner may invest in, or make a loan or a grant to defray in whole or in part the cost of a qualifying production wholly or partly made in Malta.

(2) The making of an investment, loan or grant under this article shall be subject to such terms and conditions as the Commissioner may think appropriate and expedient, including terms and conditions relating to the repayment to the Commissioner of any moneys paid by it and payment of interest on any such money.

**28.** (1) Subject to prior approval of the Commission on a project basis, the Commissioner may guarantee the due repayment of the principal of any moneys borrowed in respect of a qualifying production wholly or partly made in Malta or by a qualifying company or the repayment of interest on such moneys, or both the repayment of the principal and the payment of such interest, and may provide other financial guarantees in respect of a qualifying production.

(2) A guarantee under this article shall be in such form and manner and on such terms and conditions as may be specified in a scheme governing the giving of such guarantees prescribed by the Minister, in concurrence with the Minister responsible for finance.

(3) Moneys required by the Commissioner to meet sums which may become payable by the Commissioner under a guarantee shall be paid out of the Commissioner's revenue or the sums paid by Government in accordance with article 13.

**31.** (1) The aggregate amount of any investment, grant or loan provided by the Commissioner under articles 27 and 29, together with the aggregate amount of principal and interest which the Commissioner may at any time be liable to repay on the basis of any guarantee under article 28, together with the amount of principal and interest, if any, which the Commissioner has previously paid on the basis of any guarantees and which has not been repaid to the Commissioner, shall not exceed such sum as may be prescribed by the Minister, in consultation with the Minister responsible for finance”.

The Maltese version of Articles 27, 28 and 31 of the Malta Film Commission Act, 2005 reads as follows:

**27.** (1) Abbazi ta' approvazzjoni bil-quddiem tal-Kummissjoni dwar kull progett, il-Kummissarju jista' jinvesti fi, jew jaghti self jew ghotja biex itaffi kompletament jew

parzjalment l-ispiza ta' produzzjoni kwalifikanti maghmula kompletament jew parzjalment f'Malta.

(2) Investiment, self jew ghotja maghmula taht dan l-artikolu huma soggetti ghall-pattijiet u l-kondizzjonijiet li l-Kummissarju jikkunsidra adatti u espedjenti, u jinkludu pattijiet u kondizzjonijiet relatati mal-hlas lura lill-Kummissarju ta' kull flejjes imhallsa minnu u l-pagament ta' l-imghax fuq somom bhal dawk.

**28.** (1) Abbazi ta' approvazzjoni bil-quddiem tal-Kummissjoni dwar kull progett, il-Kummissarju jista' jigarantixxi il-hlas ta' l-ammont principali tal-flejjes mislufa rigward produzzjoni kwalifikanti maghmula kompletament jew parzjalment gewwa Malta jew minn kumpanija kwalifikanti jew il-hlas ta' mghax fuq tali somom, jew il-hlas ta' l-ammont principali u l-pagament ta' tali mghax, u jista' jipprovdi garanziji finanzjari ohra fir-rigward ta' produzzjoni kwalifikanti.

(2) Garanzija moghtija taht dan l-artikolu ghandu jkollha dik il-forma u manjiera u dawk il-pattijiet u kondizzjonijiet kif ikun specifikat fi skema preskritta mill-Ministru li tirregola l-ghoti ta' tali garanziji, bi ftehim mal-Ministru responsabbli ghall-finanzi.

(3) Flejjes li l-Kummissarju jkollu bzonn biex ihallas somom li jistghu jsiru dovuti minnu skond xi garanzija jridu jigu mhallsin mid-dhul tieghu jew mis-somom imhallsa mill-Gvern skond l-artikolu 13.

**31.** L-ammont komplessiv ta' kull investiment, ghotja jew self provduta mill-Kummissarju taht l-artikoli 27 u 29, flimkien ma l-ammont kumplessiv ta' l-ammont principali u kull mghax li l-Kummissarju jkollu f'kull hin ihallas abbazi ta' garanzija moghtija taht l-artikolu 28, flimkien ma' l-ammont principali u kull mghax, jekk ikun hemm, li l-Kummissarju jkun hallas abbazi ta' garanziji u li ma giex imhallas lura lilu, ma ghandux jeccedi s-somma li tigi stabbilita mill-Ministru bi ftehim mal-Ministru responsabbli ghall-finanzi”.

The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006) lay down that “An Audiovisual production shall be considered a ‘qualifying production’ for the purposes of these regulations if the audiovisual work:

- e) is a cultural product produced wholly or partially in Malta on a commercial basis with a view to profit; and.....
- c) makes a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television.....”

The Maltese version reads “Produzzjoni awdjovisiva tigi kunsidrata bhala “produzzjoni kwalifikanti” ghall-finijiet ta' dawn ir-regolamenti jekk ix-xoghol awdjovisiv -

- (a) ikun prodott kulturali maghmul kompletament jew in parti gewwa Malta fuq bazi kummercjali bil-ghan li jsiru profitti; u.....
- (c) ikun jaghmel kontribut validu lejn l-espressjoni ta' kreativita' u kultura gewwa Malta permezz ta' l-izvilupp ta' snajja ta' kapacita' produttiva fil-medja ta' films u t-televizjoni.....”



Moreover, Legal Notice 65 of 2006 in the Second Schedule, under Eligibility Criteria, lays down that “Audiovisual productions spending less than Lm 35,000 in Malta are not eligible for the financial incentives”. The Maltese version reads “Produzzjonijiet awdjovisivi fejn l-infiq ikun inqas minn Lm 35,000 gewwa Malta mhumiex eligibbli ghall-incentivi finanzjarji”.

Furthermore, paragraph 8 of the Second Schedule lays down that: “The following expenses incurred by a qualifying production, are eligible for the cash rebate:

- a) Local Labour – Expenditure on Maltese employees directly engaged with the production company on a full-time basis, part-time basis or with a contract of service;
- f) Accommodation – Expenditure on hotel accommodation and rental of real estate for foreign cast and crew working in Malta;
- g) Per diems – Daily subsistence given to foreign cast and crew working in Malta. The eligible subsistence is limited to Lm30 per person per day. All subsistence must be given to the local crew in Maltese currency. Any bank deposits made to non-Maltese bank accounts are not eligible for the cash rebate;
- h) Catering and craft services – Expenditure on food supplied only by a Maltese Company;.....
- i) Air Travel – Only flights operated by Air Malta are eligible for the rebate. Any commissions paid to non-Maltese agents do not qualify for the rebate. Expenses at Malta International Airport also qualify for the rebate;
- j) Shipping – All shipping expenses paid to a Maltese-owned shipping company are eligible for the rebate. When using international shipping services, the commission paid to local shipping agents would be eligible. All local handling is eligible;.....
- o) Rental of equipment from Maltese suppliers;
- p) Rental of props from Maltese suppliers....”

The Maltese version reads:

8. L-infiq li ġej li jkunu dahlu fih produzzjonijiet kwalifikanti huwa eligibbli ghar-rifużjoni ta' flus:
- a) *Haddiema Lokali* – Infiq fuq impjegati Maltin ingaġġati direttament mal-kumpannija kwalifikanti fuq bażi *full time*, bażi *part time* jew b'kuntratt ta' servizz;
  - b) *Allogg* – Infiq fuq allogg f'*hotels* u kiri ta' bini ghal-*cast* barrani u ekwipaġġ li jahdem f'Malta
  - c) *Hlas per diem* – Sussistenza ta' kuljum mogħtija lil *cast* barrani u ekwipaġġ li jahdem f'Malta. Is-sussistenza eligibbli hija limitata għall-Lm30 ghal kull persuna kuljum. Kull sussistenza għandha tkun mogħtija lill-ekwipaġġ lokali f'munita ta' Malta. Kull depożitu bankarju magħmula favur kontijiet bankarji mhux Maltin m'huwiex eligibbli ghar-rifużjoni ta' flus.
  - d) *Servizzi ta' forniment u tas-sengħa* – Infiq fuq ikel fornit biss minn kumpannija Maltija

- g) *Trasport bl-ajru* – Hu t-titjir magħmul biss permezz ta' l-Air Malta li huwa eligibbli għar-rifużjoni. Kummissjonijiet mhallsa lill-aġenti barranin ma jikkwalifikawx għar-rifużjoni. L-ispizi fl-Ajruport Internazzjonali ta' Malta jikkwalifikaw ukoll għar-rifużjoni.
- h) *Bastimenti* – L-infiq fuq affarijiet marittimi mhallas lill-kumpannija marittima Maltija huwa eligibbli għar-rifużjoni. Fl-użu ta' servizzi marittimi internazzjonali, il-kummissjoni mhallsa lill-kunsilli lokali, organizzazzjonijiet mhux governattivi jew individwi jew entitajiet ohra huma eligibbli għar-rifużjoni.
- m) Kiri ta' ekwipaġġjament mingħand fornituri Maltin
- n) Kiri ta' riffieda mingħand fornituri Maltin

Moreover, the specimen certificate of provisional approval in the First Schedule of Legal Notice 65 of 2006, in paragraph 12 requires the names of at least 3 Maltese trainees to be engaged with the production.

The English version reads:

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.

The Maltese version reads:

12. Qabel il-bidu ta' l-ffilmjar ġewwa Malta, il-kumpannija kwalifikanti għandha ttipprovdi lill-Kummissarju bl-ismijiet ta' almenu tlett *trainees* Maltin li jkunu ser jiġu ingaġġati mal-produzzjoni.

Regulation 5(1) of Legal Notice 65 of 2006, provides that “A rebate of up to 20% of eligible expenditure shall be given as a cash grant to qualifying companies upon completion of a qualifying production in Malta, in accordance with these regulations and Guidelines. The cash grant shall be exempt for the purposes of the Income Tax Act”. The Maltese version reads “Rifużjoni sa ghoxrin fil-mija ta’ l-infiq eligibbli għandu jkun mogħti bhala għotja ta’ flus lil kumpanniji kwalifikanti mat-tlestija ta’ produzzjoni kwalifikanti ġewwa Malta, skond dawn ir-regolamenti u l-Linji gwida. L-ghotja ta’ flus likwidi għandha tkun ezenti għal finijiet ta’ l-Att dwar it-Taxxa ta’ *Income*”.

- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

An application for the financial incentives must be submitted by the qualifying company to the Film Commissioner together with all the relevant documentation and information. This must be done at least thirty days before the commencement of the principal photography (i.e.

the filming of major or significant components of an audiovisual production which involves lead actors) in Malta. An application for provisional approval shall in particular include a top sheet of the overall production budget and a detailed itemised estimate of the production's expenditure in Malta. The Film Commissioner will then make a recommendation in writing to the Film Commission regarding the level of the rebate to be granted to the qualifying company, and will forward any documentation or information furnished by the applicant to the Film Commission. In the event that the Film Commissioner finds that the application is not made by or on behalf of an entity that is a qualifying company, the Film Commissioner will reject the application and shall not make such a recommendation.

Upon the Film Commission determining the level of rebate to be granted to the qualifying company, which shall not exceed the amount recommended by the Film Commissioner, the latter shall issue a certificate of provisional approval which shall state the percentage of expenditure to be rebated to the production concerned and the conditions that must be met in order to obtain the final approval.

Upon completion of the qualifying production, and not later than 6 months after completion thereof, the qualifying company or its local branch or agent shall submit an application for final approval together with all the relevant information and documentation, to the Film Commissioner. The Film Commissioner will then make a recommendation in writing to the Film Commission regarding the amount of the incentive to be granted to the qualifying company. The Film Commission of its part, will then inform the Film Commissioner in writing of its decision on the amount of the incentive to be granted to the qualifying company, which shall not exceed the amount recommended by the Film Commissioner following the receipt by the latter of an application for final approval. The Film Commissioner shall thereafter make the necessary arrangements for the implementation of the Film Commission's decision.

The final approval will be granted upon a review of the final application, including the audited accounts and a detailed analysis of the Maltese production expenditure.

Appendix I to the Second Schedule of Legal Notice 65 of 2006, includes a Score Sheet in terms of which the percentages that are rebated to qualifying productions are determined.

Audiovisual productions spending less than Lm 35,000 in Malta are not eligible for the financial incentives.

A rebate of up to 20% of eligible expenditure shall be given as a cash grant to qualifying companies, upon completion of a qualifying production in Malta. The cash grant shall be exempt for the purposes of the Income Tax Act.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Malta Film Commission Act, 2005 and Legal Notice 65 of 2006 do not provide any specific details on the interpretation and implementation of the territorialisation requirements

relating to this scheme in the context of the co-production agreements listed under answer A.3.

Furthermore, Regulation 4 of Legal Notice 65 of 2006 provides that: “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”.

It must also be pointed out that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Moreover, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned”. Article 4 (2) then further provides that “The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention”.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The following guidelines are issued by the Film Commissioner in accordance with the Financial Incentives for the Audiovisual Industry Regulations, 2006 and are to be found in the Second Schedule of the said Regulations:

#### “Eligibility Criteria

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 2006 the following types of audiovisual productions shall be considered a "qualifying production" and be eligible for the financial incentives:
  - c) **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;

- d) **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.

- e) **Animation** (whether computer generated or otherwise, but excluding computer games); or
- f) **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.

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

- i. any public or special performance(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.

3. Audiovisual productions spending less than Lm35,000 in Malta are not eligible for the financial incentives.

## **Application for provision approval**

6. The Application for Provisional Approval under the Malta Film Commission Act forms part of these Guidelines.
7. 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 production's expenditure in Malta.

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.

8. 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 point 7 below).
9. 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.

## **Eligible and Non-Eligible Expenditure**

8. The following expenses incurred by a qualifying production are eligible for the cash rebate:
  - h) *Local Labour* - Expenditure on Maltese employees directly engaged with the production company on a full-time basis, part-time basis or with a contract of service;
  - i) *Accommodation* - Expenditure on hotel accommodation and rental of real estate for foreign cast and crew working in Malta;

- j) *Per diems* - Daily subsistence given to foreign cast and crew working in Malta. The eligible subsistence is limited to Lm30 per person per day. All subsistence must be given to the local crew in Maltese currency. Any bank deposits made to non-Maltese bank accounts are not eligible for the cash rebate.
- k) *Catering and craft services* - Expenditure on food supplied only by a Maltese company.
- l) *Telecommunications*- Expenditure on fixed telephony, mobile telephony, internet, email and fax services.
- m) *Ground Transport Services* - rental of chauffer driven cars, self-drive vehicles, facility vehicles, trucks, cranes and mobile homes.
- n) *Air Travel* - Only flights operated by Air Malta are eligible for the rebate. Any commissions paid to non-Maltese agents do not qualify for the rebate. Expenses at Malta International Airport also qualify for the rebate.
- h) *Shipping* - All shipping expenses paid to a Maltese-owned shipping company are eligible for the rebate. When using international shipping services, the commission paid to local shipping agents would be eligible. All local handling is eligible.
  - i) *Location fees* - All fees paid to location owners and courtesy payments given to local councils, non-governmental organisations or other individuals or entities are eligible for the rebate.
  - j) *Laundry and cleaning services*
  - k) *Professional services*
  - l) *Rental of production offices, warehouse space, facilities and stages*
  - m) *Rental of equipment from Maltese suppliers*
  - n) *Rental of props from Maltese suppliers*
  - o) *Miscellaneous services* (To be approved by the Malta Film Commission)

9. The following items are non-eligible for the cash rebate:

- a) *Fuel expenses*
- b) *All materials and supplies purchased in Malta*

10. 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.

## **Certification Process**

11. Appendix I consists of a score sheet drawn up by the Malta Film Commission by means of which the percentages that are rebated to qualifying production are determined.
12. 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.
15. 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.
16. 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**

19. The application for final approval under the Malta Film Commission Act forms part of these Guidelines.
20. 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.
21. The final approval will be granted upon review of the final application, including the audited accounts and a detailed analysis of the Maltese production expenditure. The cash rebate is forwarded to a qualifying production no later than five months from the date of the filing of the final application.
22. 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**

21. 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.
22. 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 Malta spend.

23. 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 22 below).
24. 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.
23. 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**

26. 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.
27. 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”.

### **Implicit or *de facto* territorial conditions**

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

Yes

If yes,

- B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

A number of possible instances could be found in the list of Eligible Expenditure in paragraph 8 of the Guidelines in the Second Schedule of Legal Notice 65 of 2006 and in Appendix I to the said Schedule.

Furthermore, Article 29 of the Malta Film Commission Act, 2005 provides that:

“29. (1) Subject to prior approval of the Commission, the Commissioner may, subject to such terms and conditions as he thinks appropriate and expedient, make grants to be used to defray in whole or in part the cost of providing training for persons in all aspects of the production of film.

(2) Subject to prior approval of the Commission, the Commissioner may provide moneys, subject to such terms as he thinks appropriate and expedient, for activities, events and initiatives in accordance with his functions as specified in article 6”.

The Maltese version of Article 29 of the Malta Film Commission Act, 2005 reads:

“29. (1) Abbazi ta’ approvazzjoni bil-quddiem tal-Kummissjoni, il-Kummissarju jista’, bla hsara ghall-pattijiet u l-kondizzjonijiet li jikkunsidra bhala adatti u espedjenti, jaghmel ghotjiet biex itaffu kompletament jew parzjalment l-ispiza tat-tahrig ghall-persuni f’kull aspekk ta’ produzzjoni ta’ film.

(2) Abbazi ta’ approvazzjoni bil-quddiem tal-Kummissjoni, il-Kummissarju jista’ jipprovdi flejjes, bla hsara ghall-pattijiet u kondizzjonijiet li jikkunsidra adatti u espedjenti, ghall-attivitajiet, avvenimenti u inizjattivi skond il-funzjonijiet kif specificati fl-artikolu 6”.

## **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

In terms of Article 3(1) of Legal Notice 65 of 2006, an audiovisual production shall be considered to be a “qualifying production” if the audiovisual work is *inter alia* “...a cultural product produced wholly or partially in Malta on a commercial basis with a view to profit and “makes a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television...”. The Maltese version reads “Produzzjoni awdjovisiva tigi kunsidrata bhala “produzzjoni kwalfikanti”.... jekk ix-xoghol awdjovisiv - (a) ikun prodott kulturali maghmul kompletament jew in parti gewwa Malta fuq bazi kummercjali bil-ghan li jsiru profitti; u ....(c) ikun jaghmel kontribut validu lejn l-espressjoni ta’ kreatività u kultura gewwa Malta permezz ta’ l-izvilupp ta’ snajja ta’ kapacità produttiva fil-medja ta’ films u t-televizjoni....”

Moreover, Article 7 of Legal Notice 65 of 2006 states that: "...the Commissioner shall make a recommendation in writing to the Commission regarding the level of the rebate 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." The Maltese version reads "...il-Kummissarju ghandu jaghmel rakkomandazzjoni bil-miktub lill-Kummissjoni rigward il-livell ta'rifuzjoni moghti lil kumpannija kwalifikanti, fejn jiddikjara li l-produzzjoni hija prodott kwalifikanti li tissodisfa r-rekwiziti ta' produzzjoni kwalifikanti, u ghandu jghaddi lill-Kummissjoni kull dokumentazzjoni jew informazzjoni fornita mill-applikanti skond kif tirrikjedi l-Kummissjoni".

As already stated, Legal Notice 65 of 2006 has not yet come into force but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1<sup>st</sup> June, 2005 and [in respect of which an application for provisional approval is made in accordance with regulation 6 of these regulations] before 31<sup>st</sup> December, 2008.

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>16</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Regulation 3(1) of Legal Notice 65 of 2006 provides that "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 in Malta 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 in accordance with the Guidelines established by the Commissioner".

Reference should also be made to Paragraphs 1,2, 3, 8, 9 and 11 of the Guidelines in the Second Schedule of Legal Notice 65 of 2006 (reproduced in reply to question B.9) as well as Appendix I to the said Schedule.

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<sup>16</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

The Film Commissioner  
Malta Film Commission  
The Trade Centre  
San Gwann SGN 09  
Malta

Tel: +356 21 497 970  
Fax: +356 21 499 568  
Email: info@mfc.com.mt

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
Ellul Mifsud & DeBono  
46/2, South Street,  
Valletta, VLT 11  
Malta

Tel: +356 21 233 005  
Fax: +356 21 237 277  
Email: pmifsud@emd.com.mt

Date of the data collection and processing: 21<sup>st</sup> September 2006

**PART B**

**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: Malta
- B. Name of the funding scheme: Business Promotion Regulations (Legal Notice 135 of 2001).
- B.3 Name and address of the funding scheme’s administration and supervisory authority: Malta Enterprise, Enterprise Centre, San Gwann, SGN 09, Malta.
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Business Promotion Act (Chapter 325 of the Laws of Malta), which entered into force on the 5<sup>th</sup> July 1988 and the Business Promotion Regulations (Legal Notice 135 of 2001), which came into force on 1<sup>st</sup> November, 2000.

The corresponding titles in Maltese are the “Att dwar il-Promozzjoni ta’ Negozji (Kapitolu 325)” and the Regolamenti dwar il-Promozzjoni tan-Negozju (Avviz Legali 135 ta’ l-2001) ”.

There were amendments to both the Business Promotion Act (Chapter 325 of the Laws of Malta) and the Business Promotion Regulations (Legal Notice 135 of 2001) during the period from 2001 to 2005.

Copies in the Maltese and English languages of the Business Promotion Act and the Business Promotion Regulations as applicable in 2005, are being attached.

## **TERRITORIAL CONDITIONS<sup>17</sup>**

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

The Business Promotion Act (Chapter 325 of the Laws of Malta) in Article 2 (1) defines a "qualifying company" as "a company which carries on, or intends to carry on in Malta, a trade or business consisting solely of any of the activities referred to in Article 3(1)(a) to (k)". The Maltese version reads " "kumpannija kwalifikanti" tfisser kumpannija li tmexxi jew tkun bi hsiebha tmexxi f'Malta, xi kummerc jew negozju li jkun jikkonsisti unikament f'xi wahda mill-attivitatjiet imsemmija fl-artikolu 3(1)(a) sa (k)".

Articles 3 (1) and 3 (1)(k) of the Business Promotion Act, provide that: "...the incentives and benefits contemplated by or under this Act shall be due to and obtained by any enterprise which carries on or intends to carry on, in Malta, a trade or business which consists solely of ..... (k) the production of feature films, television, films, advertising programmes or commercials, and documentaries." The Maltese version reads "... l-incentivi u l-beneficji mahsubin bi jew taht dan l-Att ghandhom ikunu dovuti lil u miksuba minn intrapriza li tmexxi jew tkun bi hsiebha tmexxi, f'Malta, kummerc jew negozju li jkun jikkonsisti biss fi -.... (k) il-produzzjoni ta' films principali, films u programmi televizivi, produzzjonijiet ta' reklamar jew riklami, u dokumentarji".

Moreover, in the proviso to Article 3 (1) of the Business Promotion Act, it is stated that: "Provided that where any provision is made by or under this Act for an incentive or benefit to be obtained by a qualifying company, any such incentive or benefit shall be due and obtained

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<sup>17</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

only by a company which carries on or intends to carry on in Malta such trade or business.” The Maltese version reads “Izda meta jsir xi provvediment minn jew taht dan l-Att ghal incentiva jew beneficju li ghandhom jinkisbu minn kumpannija kwalifikanti, kull tali incentiva jew beneficju ghandhom ikunu dovuti u jinkisbu biss minn kumpannija li tmexxi jew tkun bi hsiebha tmexxi, f’Malta, dak il-kummerc jew negozju”.

The Business Promotion Act in Article 3 (5) further provides that: “A trade or business contemplated in sub-article (1) shall be a trade or business actually and physically carried on or carried out in Malta.....”. The Maltese version reads “Negozju jew kummerc mahsub fis-subartikolu (1) ghandu jkun negozju jew kummerc li attwalment u fizikament jitmexxa jew jigi ezercitat f’Malta....”.

In terms of the second proviso of Regulation 2 (1) of the Business Promotion Regulations, it is required that the activity in relation to which the expenditure was incurred “.....is carried out in Malta” for the expenditure to qualify as “qualifying expenditure”. The Maltese version reads “.... sakemm dik l-attività titmexxa f’Malta”.

It is to be noted that “qualifying expenditure” refers to expenditure of a capital nature as defined in Article 2 (1) of the Business Promotion Regulations. One of the options available under the Regulations is for the Investment Tax Credits to be calculated as a percentage of “qualifying expenditure”. On the other hand, Regulation 5 (3) of the Regulations provides that a “company may claim an investment tax credit by reference to the wage costs pertaining to the jobs created, in Malta, as a result of an investment project the expenditure on which constitutes qualifying expenditure”. The Maltese version of Regulation 5 (3) reads “Kumpannija tista’ titlob kreditu ta’ taxxa fuq l-investiment b’riferenza ghall-ispejjez tal-pagi li ghandhom x’jaqsmu mal-postijiet tax-xoghol mahluqa, f’Malta, bhala rizultat ta’ progett ta’ investiment li l-ispiza ghalih tikkostitwixxi spiza kwalifikanti”.

Under Regulation 3 (11) which defines micro, small and medium-sized enterprises, an “enterprise” means “....an enterprise which carries on a trade or business in Malta”. The Maltese version reads “.... intrapriza li tmexxi kummerc jew negozju f’Malta”

Furthermore, Regulation 4 (1) of the Regulations provides for reduced rates of income tax on profits derived by a company “from its trade or business carried out in Malta....”, whilst Regulation 4 (3) reiterates this by stating that a company shall qualify for the reduced rates of income tax, “....if its trade or business, in Malta, consists solely of one or more of the following qualifying activities....(i) the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and documentaries”. The Maltese version of Regulation 4 (1) reads “il-profitti li tali kumpannija taghmel mill-kummerc jew negozju taghha li tmexxi f’Malta...”, whilst the Maltese version of Regulation 4 (3) reads “....jekk il-kummerc jew negozju taghha f’Malta jikkonsisti biss f’xi wahda jew iktar minn dawn l-attivitajiet kwalifikanti....(i) il-produzzjoni ta’ produzzjonijiet awdjo vizivi li jikkonsistu f’*feature films*, films ghat-televizjoni, programmi ta’ reklamar jew reklami u dokumentarji.”

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

In terms of Regulation 4 (1) of the Business Promotion Regulations, where a company satisfies the conditions set out in the said Regulation, the profits derived by such company from its trade or business carried out in Malta shall be subject to income tax at the rate of:

- (iv) 5% for the first 7 years of assessment;
- (v) 10% for the next 6 years of assessment; and
- (vi) 15% for the following 5 years of assessment.

In terms of Regulation 4 (3), a company would qualify for the aforementioned reduced rates of income tax “if its trade or business, in Malta, consists solely of one or more of the following qualifying activities:.... (i) the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and documentaries”.

A company wishing to avail itself of the reduced rates of income tax shall submit an application to Malta Enterprise for the latter to determine whether the company is eligible to qualify for the said reduced rates of income tax. Malta Enterprise shall consider the activities of the company to determine whether they fall within Regulation 4 (3) and fall outside the scope of Regulation 4 (4) which provides for those instances where a company would not qualify for the reduced rates of income tax. Malta Enterprise may request such information and explanations as it deems fit and may visit the premises of the company. Upon being satisfied that these requirements have been met, Malta Enterprise shall provide the company with a certificate indicating the accounting period from which the company satisfies these requirements, and the company’s entitlement to the reduced rates of income tax shall be conditional on the production by the company of this certificate. A copy of any such certificate shall be forwarded by Malta Enterprise to the Commissioner of Inland Revenue.

The certificate referred to above shall constitute *prima facie*, and not conclusive, evidence that the company qualifies for the reduced rates of income tax. In fact, Malta Enterprise shall communicate its decision as to whether a company satisfies the aforementioned requirements within 60 days from the receipt of all information requested by it for the purpose of making its determination. Malta Enterprise may as and when it deems fit, request information and explanations from a company furnished with the aforementioned certificate and may also visit the premises of such a company in order to determine whether the company is still eligible to qualify for the reduced rates of income tax.

Moreover, for a company to benefit from the reduced rates of income tax it must, together with the submission of its income tax return for every year of assessment in respect of which it claims the reduced rate of income tax, submit:

(a) a declaration, signed by all the directors of the company or by the company secretary where such declaration is approved by the board of directors of the company, confirming that throughout the relevant accounting period the company’s trade or business consisted solely of the activities referred to in Regulation 4 (3) and that the company is not disqualified under Regulation 4 (4) from benefiting from the reduced rates of income tax.

(b) a declaration, signed by the auditor of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in paragraph (a) above is correct.



In addition, it is to be noted that with effect from year of assessment 2004, the profits which shall be taxed at the reduced rates of tax in accordance with Regulation 4 of the Business Promotion Regulations shall not, in any relevant year of assessment exceed the amount determined in accordance with Regulation 43 of the said Regulations.

Moreover, in terms of Regulation 43 (6) of the Regulations and without prejudice to a company's rights with respect to any period confirmed by Malta Enterprise during which the reduced rates of income tax shall be applicable, the last year of assessment in respect of which the reduced rates of income tax under Regulation 4 shall be applicable, shall be year of assessment 2009.

A company which qualifies for the reduced rates of income tax, shall also be entitled to an investment tax credit with respect to an investment project, calculated at the higher of:

- (c) up to 50% of the qualifying expenditure incurred by such company; or
- (d) up to 50% of the wage costs incurred during the first 24 month period, pertaining to the jobs created, in Malta, as a result of an investment project the expenditure on which constitutes qualifying expenditure. Provided such jobs are kept for at least 5 years and the employment is not in replacement of another individual.

In the case of small and medium sized enterprises, the percentages referred to in (a) and (b) above shall be increased to up to 65%.

Regulation 5 (10) of the Business Promotion Regulations provides that a company wishing to claim an investment tax credit for a year of assessment based on job creation, shall submit details of its investment project and of the individuals employed as a result of that investment project to Malta Enterprise for its approval and shall, for each year comprised in the employment qualifying period laid down in Regulation 5 (9) of the Business Promotion Regulations, submit further details relating to the said investment project consisting of further amounts invested, termination of employees previously indicated as having been employed and new employees distinguishing between employees in respect of whom new jobs have been created and employees employed in replacement of employees whose employment has been terminated as well as the wage costs in respect of which a credit is to be claimed in terms of this Regulation for that year of assessment.

Malta Enterprise, on being satisfied with the submissions made by the company and within 60 days from the receipt of all relevant information it may request, shall issue a certificate setting out the investment tax credits to which the company is entitled.

A company entitled to an investment tax credit in respect of a year of assessment shall be entitled to deduct from the amount of income tax which is due on its chargeable income for that year of assessment derived from the production of audio visual productions consisting of feature films, television films, advertising programmes or advertisements, and documentaries, the amount of the investment tax credit. Any investment tax credits which are not fully absorbed by the company's taxation liability for a particular year will be carried forward for set-off against its own tax liability in subsequent years of assessment. Furthermore any amount of investment tax credit not set-off with the company's tax liability for any year of assessment, shall be increased by 7% per annum, before being carried forward for set-off in subsequent years.

Regulation 20 of the Regulations requires a company claiming a benefit provided for under the Business Promotion Act or the Business Promotion Regulations, including those referred to above, to furnish Malta Enterprise with a copy of every income tax return, audited financial statements, TIFD (Tax Index of Financial Data) documents and any other information or documents concerning its chargeable income derived from its trade or business for any year of assessment in which it claims a benefit, within 3 months from the earlier of:

- (iii) the last date on which it is obliged to file such returns and documents with the Department of Inland Revenue; or
- (iv) the date on which it filed its such returns and documents with the Department of Inland Revenue.

Similarly, where a company submits any further returns, adjustments or any other information relating to the aforementioned returns or documents, it shall also furnish Malta Enterprise with a copy thereof within 3 months of it having provided the Department of Inland Revenue with such further returns, adjustments or other information.

Moreover, where a benefit has been provided in terms of the Business Promotion Act or the Business Promotion Regulations to a company or enterprise, Malta Enterprise may in terms of Regulation 26 of the Regulations, from time to time, examine books, documents, premises and other things and matters of such company or enterprise, so as to ensure that the assistance is being applied for the purpose for which it had been granted. Malta Enterprise could also request that any financial statements required from the company or the enterprise, be submitted quarterly or at shorter intervals at the discretion of Malta Enterprise.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Business Promotion Act and the Business Promotion Regulations do not provide any specific details on the interpretation and implementation of the territorialisation requirements relating to this scheme in the context of the co-production agreements listed under answer A.3.

Yet it must be pointed out that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup> September 1997, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Furthermore, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this

Convention participating in the co-production concerned". Article 4 (2) then further provides that "The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention".

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

No relevant case law and guidelines have been identified.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

No

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

N/A

### **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

No such provisions have been identified under this particular scheme.

## **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>18</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The criteria for eligibility have already been detailed in our replies to questions B.6 and B.7.

## **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Malta Enterprise  
Enterprise Centre  
Industrial Estate  
San Gwann SGN 09  
Malta

Tel: +356 25420000  
Fax: +356 25423401  
Email: info@maltaenterprise.com

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
Ellul Mifsud & DeBono  
46/2, South Street,  
Valletta, VLT 11  
Malta

Tel: +356 21 233 005  
Fax: +356 21 237 277  
Email: pmifsud@emd.com.mt

Date of the data collection and processing: 21<sup>st</sup> September 2006.

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<sup>18</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

**PART B**

**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: Malta

B. Name of the funding scheme: Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006).

B.3 Name and address of the funding scheme's administration and supervisory authority: The Film Commissioner, Malta Film Commission, The Trade Centre, Industrial Estate, San Gwann, SGN 09, Malta.

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The Malta Film Commission Act (Chapter 478 of the Laws of Malta), which came into force on the 15<sup>th</sup> July 2005 and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), issued under the Malta Film Commission Act, 2005 which latter Regulations came into force on the 21<sup>st</sup> March 2006 and which are applicable to qualifying expenditure incurred on or after the 1<sup>st</sup> January, 2005.

The corresponding titles in Maltese are the “Att dwar il-Kummissjoni Cinematografika ta’ Malta (Kapitolu 478)” and the “Regolamenti ta’ l-2006 dwar Kreditu ta’ Taxxa (Infrastruttura Awdjovisiva) (Avviz Legali 66 ta’ l-2006)”.

There were no amendments to both the Malta Film Commission Act (Chapter 478 of the Laws of Malta) and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006) during the period from 2001 to 2005.

Copies in the Maltese and English languages of the Malta Film Commission Act and the Tax Credit (Audiovisual Infrastructure) Regulations, 2006, are being attached.

## **TERRITORIAL CONDITIONS<sup>19</sup>**

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes / No

Yes

If yes,

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Legal Notice 66 of 2006, in Regulation 2 provides that a “ “qualifying project” means a project in which qualifying expenditure is incurred and which, in the opinion of the Film Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta”. The Maltese version reads “ “progett kwalifikanti” tfisser progett li fih jintefaq nfieq kwalifikanti u li, fl-opinjoni tal-Kummissarju, jikkontribwixxi għall-izvilupp, titjib jew tkabbir ta’ l-infrastuttura awdjovisiva f’Malta”.

Regulation 2 of Legal Notice 66 of 2006 also provides that “ “eligible company” means a company established or having a place of business in Malta whose business consists solely or mainly of activities that form part of the film servicing industry”. The Maltese version reads “ “kumpannija eligibbli” tfisser kumpannija li tkun imwaqqfa jew li jkollha post tan-negozju f’Malta u li n-negozju tagħha jkun jikkonsisti biss jew prinċipalment f’attivitajiet li jagħmlu parti mill-industrija tal-*film servicing*”.

Furthermore, Regulation 4(3) of Legal Notice 66 of 2006 provides that: “When the Commissioner is satisfied that a company that has made an application under this regulation is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta, he may certify it as a qualifying company for the purposes of these regulations.” The Maltese version reads “Meta l-Kummissarju jkun sodisfatt li kumpannija li tkun għamlet applikazzjoni taht dan ir-regolament tkun kumpannija eligibbli u li l-attivitajiet tagħha jkunu konducenti għall-izvilupp u t-tkabbir ta’ l-industrija awdjovisiva

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<sup>19</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

f'Malta, huwa jista' jiccertifikaha bhala kumpannija kwalifikanti ghall-fini ta' dawn ir-regolamenti”.

In addition, in terms of Regulation 2 of Legal Notice 66 of 2006, “ “qualifying expenditure” means expenditure which has been incurred on or after the 1st January, 2005 for:

(a) the acquisition, construction, development or improvement of any industrial building or structure, including a warehouse, and including related labour costs which are capitalised as part of the cost of any such acquisition, construction, development or improvement;

(b) the acquisition of plant and machinery, excluding –

(i) motor vehicles, except for such specialized motor vehicles as may be approved by the Commissioner;

(ii) works of art and antiques;

(iii) any assets whose use is wholly or mainly of a decorative nature; and

(iv) any assets whose cost is related to their intrinsic value rather than to their specific usefulness for a qualifying investment;

(c) the acquisition of intellectual property rights from third parties under open market conditions the cost of which is amortizable”.

The Maltese version of the definition of “qualifying expenditure” in Regulation 2 of Legal Notice 66 of 2006 reads “ “nfiq kwalifikanti” tfisser spiza li tkun intefqet fl-1 ta' Jannar 2005 jew wara –

(a) ghall-akkwist, bini, zvilupp jew titjib ta' bini jew struttura industrijali, maghdud mahzen, u inkluzi spejjez ta'xoghol relatat li jigu kapitalizzati bhala parti mill-ispiza ta' dak l-akkwist, bini, zvilupp jew titjib;

(b) l-akkwist ta' impjant u makkinarju, eskluzi –

(i) vetturi bil-mutur, hlief ghal dawk il-vetturi speċjalizzati skond ma jista' japprova l-Kummissarju;

(ii) xoghlijiet ta' arti u antikitajiet;

(iii) dawk l-oggetti li l-uzu taghhom huwa kollu kemm hu jew fil-bicca l-kbira tieghu ta' tizjin;

(iv) dawk l-oggetti li l-prezz taghhom ghandu x'jaqsam mal-valur intrinsiku iktar milli ma' l-utilità specifika taghhom ghal proġett kwalifikanti;

(c) l-akkwist ta' drittijiet ta' proprjetà intellettuali minghand terzi persuni taht kundizzjonijiet tas-suq miftuh meta l-prezz taghhom ikun jista' jinqata' fuq firxa ta' zmien”.

Moreover, in terms of Regulation 2 an “ “approved project” means a project approved in accordance with regulation 7, as subject to any conditions that may be applicable in terms of regulation 7(2)”. The Maltese version reads “ “proġett approvat” tfisser proġett approvat skond ir-regolament 7, b'dawk il- kundizzjonijiet li jistghu jkunu jghoddu ghalih skond ir-regolament 7(2)”.

Furthermore, Regulation 11 (1) of Legal Notice 66 of 2006 provides that “Expenditure shall constitute allowable expenditure if and to the extent that it meets all the following conditions:

- b) it is qualifying expenditure actually incurred by a qualifying company in carrying out an approved project and is not reimbursed to or otherwise recoverable by it....”

The Maltese version of Regulation 11 (1) reads “L-infieq ikun nfieq permissibbli jekk u sa fejn jitwettqu l-kundizzjonijiet kollha li gejjin:

- (a) ikun nfieq kwalifikanti li gie tassew minfuq mill-kumpannija fit-twettiq ta’ progett approvat u li la jkun thallas lura lilha u l-anqas ma jkollu jingabar lura minnha....”

Regulation 3 (1) of Legal Notice 66 of 2006 then provides that “When a qualifying company incurs allowable expenditure in carrying out an approved project and where the employment condition referred to in regulation 12 and the other relevant conditions laid down in these regulations are satisfied, it shall be entitled to a tax credit in accordance with and subject to the provisions of these regulations”. The Maltese version reads “Meta kumpannija taghmel nfieq permissibbli fit-twettiq ta’ progett approvat u meta jsehhu l-kundizzjonijiet dwar l-impjieg imsemmija fir-regolament 12 u l-kundizzjonijiet l-oħra rilevanti mehtiega b’ dawn ir-regolamenti, hija jkollha jedd għal kreditu ta’ taxxa skond id-disposizzjonijiet ta’ dawn ir-regolamenti u bla hsara għalihom”.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

An eligible company may apply to the Film Commissioner to be certified as a qualifying company by completing such application and providing such documents and certifications as required by the Film Commissioner. Upon being satisfied that the company that applied is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta, the Film Commissioner may issue a certificate certifying it as a qualifying company. The certificate shall indicate the date from which and the period for which such certificate shall be valid.

When a qualifying company carries out or intends to carry out a qualifying project it may apply to the Film Commissioner for the approval of that project.

The application must be made in the prescribed form and:

- (a) provide such particulars of the applicant as are necessary to determine whether it qualifies or not as a small or medium sized enterprise;
- (b) describe the project and its purpose and state the expected date of its commencement and its expected duration;
- (c) provide details of the investment that the company plans to make for the realisation of the project, including a description of each item of qualifying expenditure that the applicant intends to incur, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights;
- (d) state the number of additional employees that it plans to employ during the project period;
- (e) authorise the Film Commissioner and his officers to access any premises or works as the Film Commissioner may consider necessary in order to ascertain any matter relevant to the



approval of the application and further authorise the Film Commissioner to disclose to the Commissioner of Inland Revenue any information and to pass on to him originals or copies of any documents and records that may have been obtained in connection with the application;

(f) contain such other information, breakdowns and details, and be accompanied by such documents and certifications as the Film Commissioner may require;

(g) be made by not later than three months prior to the company's tax return date for the year of assessment that immediately follows the first year in which the company incurs the expenditure to which the application refers.

When the Film Commissioner is satisfied that an application complying with the requirements of these Regulations has been filed by an eligible company, and that the project to which the application refers is a *bona fide* qualifying project, he may recommend to the Malta Film Commission that the project be approved.

In making such a recommendation, the Film Commissioner shall state the extent to which, in his opinion, the investment that the applicant plans to make towards the project represents qualifying expenditure and is necessary and reasonable in the light of the purpose for which it is planned to be incurred.

The Film Commissioner, however, shall not recommend the approval of a project:

- (a) that requires for its realisation a period of more than five years;
- (b) if the application for its approval is made after the 31<sup>st</sup> December, 2008.

Once the Malta Film Commission receives a recommendation from the Film Commissioner it may approve the project and proceed to make a determination and issue a letter of approval. However, such approval may be subject to such conditions as the Malta Film Commission may deem appropriate.

When the Malta Film Commission approves a project it shall determine the maximum qualifying expenditure for each item of expenditure and the total amount so determined shall not exceed the amount recommended by the Film Commissioner.

The letter of approval issued by the Film Commissioner in respect of every approved project shall provide for:

- (a) the particulars of the applicant;
- (b) a description of the project, with such conditions subject to which the approval was granted;
- (c) the maximum qualifying expenditure for each item of expenditure;
- (d) the maximum aggregate State aid intensity to which the applicant is entitled;
- (e) the earliest date by which the project must commence and the latest date by which it must be completed;
- (f) the shortest period for which the investment must be retained;
- (g) such other particulars as the Film Commissioner may consider appropriate.

The Film Commissioner shall issue the said letter of approval by not later than the company's relative tax return date and shall deliver the letter of approval to the applicant and a copy thereof to the Commissioner of Inland Revenue.

Upon the completion of the approved project and not later than sixty days therefrom, the company shall deliver to the Film Commissioner a certificate drawn up by a person who is recognised by the Film Commissioner as competent for this purpose, showing:

- (a) the date of completion of the project;
- (b) the amount of allowable expenditure actually incurred, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights;

A copy of such certificate must also be delivered to the Commissioner of Inland Revenue within the aforementioned time limit. The Commissioner of Inland Revenue may, after receiving a copy of such certificate, request an independent opinion from the Film Commissioner or any other competent technical person regarding the contents thereof.

The tax credit due to a qualifying company in respect of allowable expenditure shall be allowable for the year of assessment immediately following that in which the expenditure is incurred or in which the employment condition is first satisfied, whichever is the later, and shall be equal to:

- (a) 25% of expenditure in relation to the acquisition, construction, development or improvement of any industrial building or structure, including a warehouse, and including related labour costs which are capitalised as part of the cost of any such acquisition, construction, development or improvement;
- (b) 40% of any other allowable expenditure.

Notwithstanding the above, the tax credit due to a qualifying company in respect of an approved project shall not exceed, in the aggregate:

- (a) in the case of a small or medium sized enterprise as defined under the Business Promotion Regulations (Legal Notice 135 of 2001) , 50% of the total cost of the project in question; and
- (b) in the case of any other qualifying company, 40% net grant equivalent of the total cost of the project in question.

However, where the company in question has benefited from any State aid in respect of expenditure incurred in the carrying out of the project, other than as provided for in these Regulations, the threshold referred to in paragraph (a) or (b) above as the case may be, shall be reduced by the value of that aid.

The tax credit shall be availed of by way of a deduction from the tax chargeable on gains or profits derived from the activities in respect of which the investment to which the approved project refers is made, and shall not be allowable as a deduction from tax chargeable on gains or profits from any other source; and any amount of tax credit due for a year of assessment that is not so absorbed in that year may be carried forward and deducted from the tax chargeable in subsequent years on income from the said activities. Yet, any part of the tax credit that is not availed of up to the year of assessment 2013 shall not be carried forward and the right to a credit in respect thereof will lapse.

Where, for a year of assessment, a company qualifies for a tax credit under the Business Promotion Act and also under the provisions of these Regulations, it shall avail itself of the tax credit under the Business Promotion Act before any set-off is made in respect of the tax credit due under these Regulations. A tax credit due in accordance with these Regulations shall not give rise to a right for any refund.

In the event that a qualifying company that has availed itself of the tax credit under these Regulations, does not satisfy the employment condition as stipulated in terms of Regulation 12 of the Regulations (by the relative qualifying company employing at least 4 additional employees during the project period or within 3 years from the termination thereof), it shall forfeit the right to the tax credit and the tax credit in question shall be reversed or recalculated, as the case may be.

The tax credit shall also be reversed or recalculated where the investment represented by allowable expenditure or part thereof is not retained within the company for at least 3 years after the termination of the project period.

Where there is a reversal or recalculation of a tax credit, this shall give rise to an obligation of the company to pay an amount of tax, in addition to any other tax liability, equivalent to the amount represented by the reversal or recalculation.

The following further conditions must also be fulfilled for eligibility to the tax credit under these Regulations:

(a) no other benefits are being claimed or may subsequently be claimed by a person on the same activity or project under any other legislation granting fiscal incentive schemes;

(b) all tax liabilities including amounts due in respect of FSS tax as well as social security contributions due up to the time of the application, except for any tax still in dispute, must have been settled or are being settled in accordance with a formal agreement drawn up with the Commissioner of Inland Revenue.

No tax credit shall be due to a company under these Regulations for a year of assessment, unless it is claimed in the appropriate section of a tax return submitted by electronic means by not later than the relative tax return date.

A company to whom a letter of approval in respect of an approved project has been issued, shall submit to the Film Commissioner by not later than 2 months after the relative tax return date, a copy of the tax return for the year of assessment for which the tax credit may be claimed and for each subsequent year of assessment for which the said benefit remains available to it, independently of whether the tax credit is utilized or not.

When the Film Commissioner issues a letter of approval to a company in respect of an approved project, he may, from time to time, make such reviews of books and documents, hold on-site inspections on the premises of that company and make such other monitoring as he may consider necessary for the purpose of the Regulations and for any matter relevant to an approved application.

The Film Commissioner shall keep a database of all assistance provided to, or claimed by, a company under these Regulations for 10 years from the date on which the last individual assistance was granted, in order to enable him to –

(a) verify whether the provisions of these Regulations have been complied with;

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

(c) inform the Commissioner of Inland Revenue whether the credits claimed in terms of these Regulations have been properly calculated.

The Commissioner of Inland Revenue may make such enquiries and verifications as he deems fit in accordance with the provisions of the Income Tax Act and the Income Tax Management Act, and shall, after consulting the Film Commissioner, have the right not to allow a benefit under these Regulations if any default is committed by the applicant in respect of any provision of those Acts or the Social Security Act or any subsidiary legislation issued thereunder.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Malta Film Commission Act, 2005 and Legal Notice 66 of 2006 do not provide any specific details on the interpretation and implementation of the territorialisation requirements relating to this scheme, in the context of the co-production agreements listed under answer A.3.

It must be pointed out however that the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations, signed on the 23<sup>rd</sup> September 1997, in Article 1 (4) provides that “Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them”.

Moreover, the European Convention On Cinematographic Co-Production in Article 4 (1) provides that “European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned”. Article 4 (2) then further provides that “The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention”.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

No relevant case law and guidelines have been identified.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes/No

Yes

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

There may be scope for territorial conditions to be applied implicitly or *de facto*, since in terms of Regulation 2 of the Regulations a “qualifying project” is defined as a project in which qualifying expenditure is incurred and which, in the opinion of the Film Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta. Similarly, Article 4(3) of the Regulations provides that the Film Commissioner may certify a qualifying company for the purposes of these Regulations upon being satisfied that the company making the application is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta.

### **CULTURAL CLAUSES**

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

No such provisions have been identified under this particular scheme.

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>20</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

This scheme does distribute aid selectively as in terms of Regulation 2 of the Regulations a “qualifying project” is defined as a project in which qualifying expenditure is incurred and which, in the opinion of the Film Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta. Likewise, Article 4(3) of the Regulations provides that the Film Commissioner may certify a qualifying company for the purposes of these Regulations upon being satisfied that the company making the application is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta.

#### **CONTACT DETAILS**

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

The Film Commissioner  
Malta Film Commission  
The Trade Centre  
Industrial Estate  
San Gwann SGN 09  
Malta

Tel: +356 21 497 970  
Fax: +356 21 499 568  
Email: info@mfc.com.mt

Name of the lawyer and law firm in charge of the data collection:

Dr. Pierre Mifsud  
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Valletta, VLT 11  
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Email: pmifsud@emd.com.mt

Date of the data collection and processing: 21<sup>st</sup> September 2006

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<sup>20</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.