

L.N. 69 of 2008

**MALTA ENTERPRISE ACT
(CAP. 463)**

**Assistance to Small and Medium-Sized Undertakings
Regulations, 2008**

IN exercise of the powers conferred upon him by article 5 of the Malta Enterprise Act, hereinafter referred to as “the Act”, the Prime Minister and Minister of Finance and the Minister for Investment, Industry and Information Technology have made the following regulations:

1. (1) The title of these regulations is Assistance to Small and Medium-Sized Undertakings Regulations, 2008. Title and commencement.

(2) These regulations shall come into force on the 1st January, 2008.

2. In these regulations, unless the context otherwise requires : Interpretation.

“the Act” means the Malta Enterprise Act;

“the Corporation” means Malta Enterprise established under the Malta Enterprise Act;

“Guidelines” means such guidelines as may be published by the Corporation from time to time in terms of the Act;

“intangible assets” means the transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;

“organisational innovation” means the implementation of a new organisational method in the business practices, workplace organisation or external relations of an undertaking;”

“large undertaking”, “medium-sized undertaking”, “small undertaking” and “micro undertaking” shall have the meaning attributed to them by Commission Recommendation 2003/361/EC as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003;

“process innovation” means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment and, or software);

“qualifying expenditure” means that expenditure that may qualify for assistance in terms of these regulations and in accordance with the Guidelines;

“start-up undertaking” means an undertaking which has been in operation for a period of less than five years;

“tangible assets” means fixed physical assets in relation to the creation of an undertaking, or extension of an existing undertaking, or engagement in activity involving fundamental product or production process change;

“technological product innovation” means the implementation or commercialisation of a product with improved performance characteristics such as to deliver objectively new or improved services to the consumer;

“undertaking” means any individual or body of persons, whether registered or not and whether having distinct personality or not, who or which carries on a qualifying activity and includes any association or other body of persons which promotes or supports the goals or objectives of such undertakings.

Qualifying
activities.

3 (1) A qualifying activity in terms of these regulations shall be an economic activity carried on or intended to be carried out by an undertaking in Malta which consists solely of –

(a) (i) the production, manufacture, improvement, assembly, preservation, processing of any goods, materials, commodities, equipment, plant machinery;

(ii) the rendering of any industrial services analogous to the activities mentioned in para (i) hereof; or

(iii) the repair, overhaul or maintenance of pleasure crafts, yachts not having more than thirty berths, aircraft, engines or equipment incorporated or used in such vessels or aircraft;

(b) I.C.T. developmental activities, software development, IT enabled business services including call centres and IT business solutions as may be prescribed in the Guidelines, but excluding telecommunications service providers;

(c) research and development, and innovative start-up projects as may be prescribed in the Guidelines;

(d) eco-innovations, waste treatment and environmental solutions as may be prescribed in the Guidelines;

(e) biotechnology, comprising the production or development of intellectual property or goods or the rendering of services resulting from, or related to, the study, research, discovery, application, modification or development of living organisms or materials derived from them;

(f) the provision of facilities directly required in the development and production of feature film, television programmes or commercials as may be prescribed in the Guidelines;

(g) the provision of science and technology private tertiary education as may be prescribed in the Guidelines;

(h) the provision of private health-care services through the setting up of new projects carrying out an investment of not less than 2.5 million Euros in medical equipment, excluding land or buildings:

Provided that an undertaking carrying out the activities set out in this subregulation shall only qualify for the benefits provided by these regulations if the project is approved by the Corporation, and, in giving its approval, the Corporation may impose such conditions as it deems fit;

Provided further that an undertaking shall not qualify for any of the benefits provided by these regulations if –

(a) the undertaking sells by retail and, for this purpose, an undertaking shall be deemed not to sell by retail if its sales of goods or services are made to –

(i) a person who carries on a trade and the goods or services so sold to such person are either resold by such person or are used by such person for the purpose of his trade; or

(ii) a person, other than an individual, who uses those goods or services for the purpose of trade carried on by such person;

(iii) a person through e-commerce activities resulting in online transactions effected through a secure payment system;

(b) the undertaking's trade or business includes any one of the following activities:

(i) dividing, sorting, packaging, mixing without changing the character of the good, drying, labelling, or other similar processes or any combination of such processes to goods which are acquired in bulk merely to prepare those goods for sale or distribution, excluding goods in respect of which the said company carries on any other activity referred to in sub regulation (1)(a)(i);

(ii) the assembly of any goods where –

(1) the final assembled good is clearly recognisable from the individual components or parts from which it is assembled without regard being had to any exterior casing of the good; and

(2) the components and parts from which the good is assembled are such that the good is nearly complete and the assembly work and the supervision of such assembly work only require the employment of almost exclusively unskilled workers, such that the assembly operation is of a spurious nature when considered in the light of manufacturing activities;

(iii) without prejudice to subregulation (1)(a)(i), the repair, maintenance, preservation, improvement, reconditioning, refurbishing or restoration of any good or any combination of such activities where such activities do not impose on such goods a change in their character;

(iv) without prejudice to subregulation (1)(a)(ii), the installation, commissioning or assembly of goods on site, where the said goods have not been manufactured by the undertaking which is installing, commissioning or assembling the goods on site:

Provided that the provisions of this paragraph shall not be applicable to an undertaking which carries on only any one or more of the activities set out in subregulation (1)(b) to (h).

(c) the trade or business of an undertaking includes the preparation or production of “food in the course of catering” including -

(i) meals or snacks including -

(1) hot and cold dishes including antipasto and dessert;

(2) sandwiches, toast, potato chips, sausage rolls, pizza, *pastizzi*, *qassatat* and similar snacks;

(3) biscuits, cakes, confectionery and similar items but excluding those sealed in a package by the manufacturer and supplied in that original sealed package, and those items which individually weigh 500 grams or more;

(4) food supplied in restaurants, cafeterias, canteens, bars and other similar establishments;

(5) food prepared or produced for parties, functions, weddings and similar events;

(6) food prepared or produced for consumption by persons pertaining to a particular location or organisation, including patients in hospitals or homes, residents of hotels or guest houses, workers in a particular workplace and the preparation or production of food in similar circumstances.

(ii) milk, milkshake, tea, coffee and chocolate supplied in liquid form, excluding milk and milkshake supplied by the manufacturer thereof in bottles and containers for distribution to retail outlets but including any form of drink which is merely produced by adding liquid to powder or substance and where such drink is produced in order that it may be served in a bar, restaurant, canteen, cafeteria or other establishment or place to individuals for consumption.

(2) A small or medium-sized undertaking not carrying on a qualifying activity in terms of sub regulation (1) of this regulation may still qualify for assistance in terms of these regulations if it carries out activities or projects that lead to process, product or service innovations.

(3) A start-up undertaking not intending to carry out a qualifying activity in terms of subregulation (1) may still qualify for assistance in terms of these regulations if it intends to carry out activities or projects that lead to process, product or service innovations.

Assistance for the development of a new business by a small or medium sized start-up undertaking.

4. Where the Corporation is satisfied that a small or medium-sized start-up undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires assistance for the development of a new business, the Corporation may provide such an undertaking with a cash grant for the acquisition of tangible or intangible assets or for the procurement of services. This assistance shall not exceed 45% of the qualifying expenditure in tangible and intangible assets or 50% of the qualifying expenditure for the acquisition of the services.

Assistance to small sized start-up undertakings.

5. Where the Corporation is satisfied that a small sized start-up undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta requires assistance with respect to:

(a) legal, advisory, consultancy and administrative costs directly related to the setting-up of the undertaking;

(b) payment of interests on external finance required in the acquisition of tangible or intangible assets;

(c) energy and water costs;

(d) depreciation of tangible or intangible assets;

(e) payments for leasing or renting of production facilities and equipment; or

(f) wage costs including compulsory national insurance payments.

the Corporation may provide such an undertaking with a cash grant that shall not exceed 35% of the qualifying expenditure incurred in the first three years after the creation of the enterprise and 25% of the qualifying expenditure in the two years thereafter.

Assistance for innovation..

6. Where the Corporation is satisfied that a small or medium-sized undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires assistance to carry out technological, product or service innovation, process innovation or organisational innovation, the Corporation may provide such an undertaking with a cash grant that shall not exceed 45% of the qualifying expenditure in tangible and intangible assets or 50% of the qualifying expenditure of the services.

7. Where the Corporation is satisfied that a small or medium-sized undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires the assistance of experts in a particular field, the Corporation may provide such an undertaking with a cash grant that shall not exceed 50% of the qualifying expenditure of the services of such experts:

Assistance of experts.

Provided that such cash grant shall not be given in respect of services which are of a continuous nature or are provided periodically and relate to the undertaking's usual operating expenditure such as routine consultancy services or advertising.

8. Where the Corporation is satisfied that a small or medium-sized undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires the assistance to participate in fairs and exhibitions, the Corporation may give such an undertaking a cash grant which shall not exceed 50% of the qualifying expenditure for renting, setting up and running the stand:

Assistance to participate in fairs and exhibitions.

Provided that such cash grant may only be provided in respect of the first participation of an undertaking in a particular fair or exhibition.

9. Where the Corporation is satisfied that a small or medium-sized undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires assistance in the preparation and submission of proposals for participation in projects funded through initiatives promoted by the European Union such as the Seventh Research Framework Programme (FP7) or the Competitiveness and Innovation Framework Programme (CIP), the Corporation may provide a cash grant not exceeding 65% of the qualifying expenditure related to personnel and other services required for the preparation and submission of the proposal.

Assistance in the preparation and submission of proposals for participation in projects funded by the FP7 or CIP.

10. Where the Corporation is satisfied that a small or medium-sized start-up undertaking carrying on or intending to carry out a qualifying activity that may contribute to the economic development of Malta, requires assistance in developing and enhancing its business activities through the use of ICT and e-business, or through the development of ICT products or services, the Corporation may provide a cash grant not exceeding 45% of the qualifying expenditure in tangible and intangible assets and not exceeding 50% for the qualifying expenditure for the acquisition of services related to the ICT and e-business project.

Assistance for the use of ICT and e-business.

Further condition.

11. A small or medium-sized undertaking to be eligible for any of the benefits under these regulations, shall not claim or may not subsequently claim any other benefits with respect to the same costs under any other legislation such that the total aid would result in an aid intensity exceeding that fixed by these regulations.