CHAPTER 478

MALTA FILM COMMISSION ACT

To make provision for the promotion, development and support of the audiovisual industry, including the film servicing industry, in Malta, and for the establishment of the Malta Film Commission and of the Film Commissioner, to determine their respective functions and powers and to provide for matters ancillary or incidental thereto.

15th July, 2005

ACT VII of 2005, as amended by Legal Notice 427 of 2007; Act X of 2013; Legal Notice 46 of 2015 and 68 of 2019.

PART I

PRELIMINARY

Short title.

1. The short title of this Act is the Malta Film Commission Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

"audiovisual industry" means natural and legal persons carrying on activities in relation to the development, production, distribution and promotion of audiovisual works;

"audiovisual production" means the development and production of an audiovisual work;

"audiovisual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

the "Commissioner" means the Film Commissioner appointed under article 5(1) and includes any officer or employee of the Commissioner authorised by him in that behalf;

the "Commission" means the Malta Film Commission established by article 3;

"co-producer" means a cinematographic production company or producer bound by a co-production contract;

"co-production contract" means a co-production agreement between a co-producer established in Malta and one or more co-producers established abroad in accordance with any bilateral, multilateral or international treaty, convention or agreement to which Malta is a party, but shall not include a co-production agreement between two or more co-producers established in Malta;

"film" includes a photographic film or a recording on magnetic tape or on any other material or medium, digital or otherwise, from which a series of images, with or without associated sounds, may be produced and which is intended for international distribution and exhibition;

"film servicing industry" means all natural and legal persons

whose principal purpose of business is to provide facilities and, or equipment to the audiovisual industry or such other purpose as may be prescribed by the Minister;

"financial year" means any period of twelve months ending on the 31st December of each year or such other date as may be determined by the Minister:

Provided that the first financial year of the Commissioner shall commence on the coming into force of this Act and shall end on the 31st day of December of the next following year;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution;

"the Minister" means the Minister responsible for the film industry or any other Minister designated by the Prime Minister by notice in the Gazette;

"prescribed" means prescribed by regulations made by the Minister under the provisions of this Act;

"public officer", in relation to Part III of this Act, has the same meaning as is assigned to it by article 124 of the Constitution.

PART II

ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE MALTA FILM COMMISSION

Establishment and composition of the Malta Film Commission. *Amended by: X. 2013.9.*

3. (1) There shall be a Malta Film Commission, appointed by the Minister, to act as an advisory body to the Minister on an audiovisual policy for the promotion, development and support of the audiovisual and film servicing industry, to determine the level of fiscal and other benefits in accordance with the provisions of Part V of this Act, and to assist the Commissioner in the exercise of his functions.

(2) The Commission shall be composed of not more than five members, appointed by the Minister, one of whom shall be appointed as Chairman. The members shall be appointed from amongst persons who are knowledgeable in matters relating to audiovisual or film productions, the services, marketing or financial sectors, public service procedures or in other areas related to the audiovisual or film servicing industries. One of the members of the Commission shall be appointed upon nomination by the Minister responsible for culture.

(3) The Minister shall appoint the Film Commissioner as one of the members of the Commission, but the Film Commissioner may not be appointed as Chairman of the Commission.

(4) The members of the Commission shall be appointed for a term of three years, but shall be eligible for re-appointment on the expiration of their term of office. Any member may, before the expiration of his term of office, resign by letter addressed to the Minister.

(5) A person shall not be qualified to hold office as a member of the Commission if he -

(*a*) is a Minister or a Parliamentary Secretary, or

(*b*) is a Judge or Magistrate, or

(*c*) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Commission:

Provided that the Minister may waive the disqualification of a person under paragraph (*c*) if such person declares the interest and such declaration and waiver are published in the Gazette.

(6) Subject to the provisions of this article, the office of a member of the Commission shall become vacant -

(*a*) at the expiration of his term of office, or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(7) A member of the Commission may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing his or her duties as a member.

(8) If a member resigns or if the office of a member of the Commission is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed to be a temporary member of the Commission. Any person so appointed shall, subject to the provisions of subarticles (6) and (7) cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(9) Any member of the Commission who has any direct or indirect interest in any contract or decision made or proposed to be made by the Commissioner or in any decision of the Commission in terms of article 4(1)(*j*), not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Commission after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the Commission, and the member having an interest as aforesaid shall withdraw from any meetings at which such contract or decision is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

(10) The members of the Commission shall receive such remuneration as the Minister may decide.

Functions of the Commission.

4. (1) The Commission shall not be an executive body and it shall not have any executive functions except for the function provided for in paragraph (*j*). The functions of the Commission shall be to:

(*a*) advise the Minister on policy matters relating to the promotion, development and support of the audiovisual and film servicing industry including, but

not limited to, the introduction of fiscal, tax and other incentives;

(*b*) advise the Minister on how best to structure and integrate local resources, at both Government and Local Council levels, in order to facilitate the promotion of Malta as a location, ensuring that competitiveness and minimal bureaucracy are essential elements to be achieved;

(*c*) advise the Minister on the signing of any bilateral, multilateral or international treaty, convention or agreement that may encourage local participation in audiovisual productions and lead to further international collaboration in the audiovisual industry;

(*d*) advise the Minister in the development of a comprehensive skills training strategy which is flexible and responsive to industrial and technological change in collaboration with the audiovisual industry and other interested parties;

(*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;

(*g*) encourage excellence and innovation particularly through the use of new digital technologies;

(*h*) generally promote Malta as a destination for the shooting of audiovisual works and for the setting up of audiovisual and film servicing enterprises;

(*i*) recommend to the Commissioner the adoption of measures aimed at ensuring that approved policies and initiatives are translated into concrete action plans;

(*j*) to determine the level of fiscal and other benefits in accordance with the provisions of Part V of this Act;

(*k*) generally assist the Commissioner in the exercise of his functions;

(*l*) to carry out any function as may from time to time be assigned to it by the Minister.

(2) The Minister may, from time to time, as he may deem appropriate, give in writing and publish such directives as regards the policies and plans of the Government to be adopted and followed by the Commission, and the Commission shall, as soon as practicable, adopt and follow such directives.

Malta Film Commissioner.

5. (1) There shall be a Film Commissioner who shall be appointed by the Minister.

(2) The Commissioner shall hold office for a term of three years, but shall be eligible for re-appointment on the expiration of his term of office.

(3) A person shall not be qualified to hold office as Commissioner if he -

(*a*) is a Minister, Parliamentary Secretary or a Member of the House of Representatives, or

(*b*) is a Judge or Magistrate, or

(*c*) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as Commissioner:

Provided that the Minister may waive the disqualification of a person under paragraph (*c*) if such person declares the interest and such declaration and waiver are published in the Gazette.

(4) Subject to the provisions of this article, the office of the Commissioner shall become vacant -

(*a*) at the expiration of his term of office, or

(*b*) if any circumstances arise that, if he were not a Commissioner, would cause him to be disqualified for appointment as such.

(5) If the Commissioner resigns or if his office is otherwise vacant or if the Commissioner is for any reason unable to perform the functions of his office the Minister shall appoint a person who is qualified to be appointed as a temporary Commissioner, if such person is qualified to be a Commissioner. Any person so appointed shall cease to be such a Commissioner when a Commissioner is appointed to fill the vacancy or, as the case may be, when the Commissioner who was unable to perform the functions of his office resumes those functions or, in the case of a temporary purpose, the temporary Commissioner has performed the function assigned to him.

(6) The Commissioner may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing his or her duties as a Commissioner.

(7) The Commissioner shall receive such remuneration as the Minister may decide.

Functions of the Commissioner.

6. (1) It shall be the function of the Commissioner to adopt and implement measures for the development, support and promotion of the audiovisual industry in Malta, and, in general, to implement Malta's audiovisual policy.

(2) Without prejudice to the generality of the provisions of subarticle (1) and to any other functions attributed to the Commissioner by this Act, the Commissioner shall in particular have the function -

(*a*) to assist and encourage by any means he considers appropriate, the production of films in Malta and the set up of industries for the production of films in Malta;

(*b*) to market the locations, facilities, skills, talent and expertise available in Malta in order to attract inward investment in the form of international audiovisual productions shooting in Malta;

(*c*) to analyse, assess and certify the eligibility of projects and, or beneficiaries for tax or other incentives provided by the Government of Malta according to the criteria established by or under this Act or any other enactment and to make recommendations to the Commission for the determination of the level of fiscal and other benefits in accordance with the provisions of Part V of this Act;

(*d*) to make recommendations to the Commission for advances, loans, grants or awards of money to any natural or legal person in connection with audiovisual works according to criteria established by or under this Act or any other enactment;

(*e*) to encourage and promote cohesion within the local audiovisual industry, in particular:

(i) to encourage and promote the exchange of information amongst persons engaged in the film industry,

(ii) to encourage and promote the efficient use of available resources within the Maltese film servicing industry, and

(iii) to co-operate with other interested or affected bodies and organisations in order to encourage and promote employment in the Maltese audiovisual industry and the productivity of that industry;

(*f*) to approve co-productions between a co-producer established in Malta and one or more co-producers established abroad in accordance with any bilateral, multilateral or international treaty, convention or agreement to which Malta is a party and to issue any relevant certificate which grants "nationality" to such co-productions;

(*g*) to participate and promote participation in international collaborative projects and to enter into agreements with similar foreign and international bodies;

(*h*) to represent Malta and its audiovisual industry on international film bodies and events;

(*i*) to coordinate the effort to combat copyright abuse in the film industry, including but not limited to film piracy on the Internet or other electronic networks, or

on physical media;

(*j*) to deal, negotiate and enter into agreements of permanent or temporary nature or establish codes of conduct with any public body, public authority, government department, public corporation, local council, or private entity or person on any matters pertaining to the audiovisual industry;

(*k*) to advise the Minister on any matter connected with the Commission's functions under and for the purposes of this Act;

(*l*) to carry out such other functions as may from time to time be assigned to him by the Minister.

(3) The Commissioner may, if he so deems appropriate -

(*a*) monitor, keep under review and evaluate operations, activities and matters in relation to the audiovisual or film servicing industry;

(*b*) carry out studies, research and investigations relating to any matter regarding the audiovisual industry;

(*c*) provide information and issue guidelines, to the public and relevant entities, regarding film, the audiovisual industry, the film servicing industry and audiovisual policy in general;

(*d*) acquire, sell or otherwise dispose of or lease land, plant, machinery and equipment, and other property, and to otherwise make available property for use by other persons;

(*e*) manage land, and to develop land, and to carry out works on land, and to maintain works or assist in their maintenance;

(*f*) provide advisory or other services or facilities in relation to any of his functions, or to assist in their provision; and

(*g*) generally, do all such things as may be incidental or conducive for the proper discharge of his functions under this Act.

Conduct of the affairs of the Commission and the Commissioner.

7. The Minister may make, vary or revoke regulations for the proper conduct of the business of the Commission and the Commissioner. Subject to the provisions of such regulations and of this Act, the Commission and the Commissioner may regulate their own procedures.

Legal personality and representation of the Commissioner.

8. (1) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Act or any regulations made there under, of entering into contracts, of acquiring, holding and disposing of any property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

(2) Any document purporting to be an instrument made or issued by the Commissioner and signed by him shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made by the Commissioner.

(3) Judicial acts and actions by means of which a decision or anything done by the Commission is impugned or contested shall be filed against the Commissioner.

PART III

OFFICERS AND EMPLOYEES OF THE COMMISSIONER

Staff appointments.

9. Subject to the provisions of the Constitution and of any other enactment applicable thereto, and without prejudice to the other provisions of this Act or any regulations made thereunder, the Commissioner shall appoint such officers and other employees as may from time to time be necessary for the due and efficient discharge of the functions of the Commissioner. The terms and conditions of employment shall be established by the Commissioner following the approval of the Minister.

Detailing of public officers for duty in the Commission.

10. (1) The Prime Minister may, at the request of the Commissioner, from time to time direct that any public officer shall be detailed for duty with the Commissioner in such capacity and with effect from such date as may be specified in the direction.

(2) The period during which a direction as referred to in subarticle (1) shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or a different date is specified in the direction, end on the happening of any of the following events, that is to say:

(*a*) the acceptance by such officer of an offer of transfer to the service of, and permanent employment with the Commissioner made pursuant to article 12; or

(*b*) the revocation by the Prime Minister of any direction made by him under this article in relation to such officer.

(3) Where a direction as referred to in subarticle (1) is revoked by the Prime Minister in relation to any officer, the Prime Minister may, by further direction, detail such officer for duty with the Commissioner in such capacity and with effect from such date as may be specified in the further direction and the provisions of subarticle (2) shall thereupon apply to the period of duration of such further direction in relation to such officer.

Status of public officers detailed for duty with the Commissioner.

11. (1) Where a public officer is detailed for duty with the Commissioner under any of the provisions of article 10, such officer shall, during the time in which such direction has effect in relation to him or her, be under the administrative authority and control of the Commissioner but shall for other intents and purposes remain and be considered and treated as a public officer.

(2) Without prejudice to the generality of the provisions of subarticle (1), an officer detailed for duty as aforesaid -

(*a*) shall not during the time in respect of which he or she is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him or her at the date on which he or she is so detailed for duty; or

(ii) be so employed that his or her remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him or her at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for service with the Commissioner; and

(*b*) shall be entitled to have his or her duty with the Commissioner considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows' and Orphans' Pensions Act and of any other right or privilege to which he or she would be entitled, and liable to any liability to which he or she would be liable, but for the fact of his or her being detailed for duty with the Commissioner.

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(3) Where an application is made as provided in subarticle (2)(*a*)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Commissioner.

(4) The Commissioner shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Commissioner as aforesaid during the period in which he is so detailed.

Offer of permanent employment with the Commissioner to public officers detailed for duty with the Commissioner.

12. (1) The Commissioner may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Commissioner under the provisions of article 10 permanent employment with the Commissioner at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(3) Every public officer who accepts permanent employment with the Commissioner offered to him under the provisions of subarticle (1) shall, for all purposes other than those of the Pensions Ordinance and the Widows' and Orphans' Pensions Act, and saving the provisions of subarticle (6), cease to be in service

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with Government and shall enter into service with the Commissioner on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, insofar as applicable to him, service with the Commissioner shall be deemed to be service with the Government within the meanings thereof respectively.

(4) Any officer as referred to in subarticle (3) who, immediately before accepting permanent employment with the Commissioner was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be entitled to benefit under the said Act as if his or her service with the Commissioner were service with the Government.

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(5) The Commissioner shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted permanent employment with the Commissioner as aforesaid during the period commencing on the date of such officer's acceptance.

(6) (*a*) For the purposes of the Pensions Ordinance the pensionable emoluments of such public officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post and incremental level at which the officer retires from the Commissioner.

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(*b*) The classification referred to in paragraph (*a*) shall be carried out by a board composed of a chairperson appointed by the Minister responsible for finance and two other members, one appointed by the Minister responsible centrally for personnel policies in the public service and one appointed by the Commissioner. The classification shall be subject to the final approval of the Minister responsible for finance.

(*c*) The classification shall take place within three months of any adjustment of salaries of employees in Government service and, or of employees of the Commissioner.

(*d*) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

(*e*) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he or she would have been entitled prior to such classification.

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PART IV

FINANCIAL PROVISIONS

Commissioner to meet expenditure out of revenue.

13. (1) Without prejudice to the following provisions of this article, the Commissioner shall so conduct his affairs that the expenditure required for the proper performance of his functions shall, as far as practicable, be met out of the Commissioner's revenue.

(2) For purpose mentioned in subarticle (1), the Commissioner shall levy all fees, rates and other payments as prescribed by or under this Act or any other law.

(3) The Commissioner shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet any of its expenditure that cannot be covered by its revenue.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Commissioner to the formation of reserve funds to be used for the purposes of the Commissioner. Without prejudice to the generality of the powers given to the Minister by this subarticle, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with subarticle (2) or any such excess as aforesaid.

(5) Any funds of the Commissioner not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

Advances from Government.

14. The Minister responsible for finance may, after consultation with the Minister, make advances to the Commissioner of such sums as he may agree to be required by the Commissioner for carrying out any of his functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Allocation of funds to entities operating in the audiovisual sector.

15. (1) The Commissioner may also receive from Government out of the Consolidated Fund such sums as may be required for the allocation of funds in terms of articles 27 and 29.

(2) Without prejudice to any other provision of this Act, the Minister may give to the Commissioner directives as to the application of those sums as referred to in subarticle (1).

Commissioner may borrow or raise capital.
Amended by: L.N. 427 of 2007.

16. (1) For the purpose of carrying out any of its functions under this Act, the Commissioner may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and

conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The Commissioner may also, from time to time, borrow, by way of overdraft or otherwise, such sums as he may require for carrying out his functions under this Act:

Provided that for any amount in excess of one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67), there shall be required the approval of the Minister in writing.

Borrowing from Government.

17. (1) The Minister responsible for finance may, for any requirements of the Commissioner of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(2) Notice of any loans, liabilities or advances made or incurred under the subarticle (1) shall be given to the House of Representatives as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in subarticle (1), or for the purpose of providing the Commissioner with working capital, the Minister responsible for finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to the Commissioner out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.

(4) The proceeds of any loan raised for the purposes of making advances to the Commissioner, and any other moneys to be advanced to the Commissioner under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Malta Film Commission Loan Fund".

(5) Sums received by the Accountant General from the Commissioner in respect of advances made to the Commissioner under subarticle (3) shall be paid, as respects of amounts received by way of repayment into the Treasury Clearance Fund, and as respects of amounts received by way of interest into the Consolidated Fund.

Estimates of the Commissioner.

18. (1) The Commissioner shall, by the end of September of each year or such other month as the Minister may prescribe, submit to the Minister, a business plan for the following three financial years together with an estimated capital and recurrent expenditure and income for the following year:

Provided that the estimates for the first financial year of the Commissioner shall be prepared and adopted within such time as the Minister may by notice in writing to the Commissioner specify.

(2) In the preparation of the estimates referred to in subarticle (1) the Commissioner shall take account of any funds and other moneys that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this

Act or an appropriation Act or any other law. The Commissioner shall prepare the said estimates so as to ensure that the total revenues of the Commissioner are at least sufficient to meet all sums properly chargeable to the Commissioner's revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall include the estimates for the Commission.

(4) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Minister and or the Minister responsible for finance may direct.

(5) A copy of the estimates shall, upon their adoption by the Commissioner, be sent forthwith by the Commissioner to the Minister and to the Minister responsible for finance.

(6) The Minister shall at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Commissioner approve the same with or without amendment, after consultation with the Minister responsible for finance.

Expenditure to be according to approved estimates.

19. (1) No expenditure shall be made or incurred by the Commissioner unless it has been approved by the Minister as provided in article 18.

(2) Except for funds generated by the Commissioner or received from non-State sources, the Commissioner shall remain within the parameters of capital and recurrent expenditure allocated to him by the Minister as authorised by the Minister responsible for finance.

(3) Notwithstanding the provisions of subarticles (1) and (2) -

(*a*) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the Minister, whichever is the earlier date, the Commissioner may make or incur expenditure for carrying on his functions under this Act not exceeding in the aggregate one-half of the amount approved by the Minister for the preceding financial year;

(*b*) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or sub-head of the estimates;

(*c*) in respect of the first financial year, the Commissioner may make or incur expenditure not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;

(*d*) if in respect of any financial year it is found that the amount approved by the Minister is not sufficient or a need has arisen for expenditure for a purpose not

provided for in the estimates, the Commissioner may adopt supplementary estimates for approval by the Minister, and in any such case the provisions of this Act applicable to the estimates shall apply to the supplementary estimates *mutatis mutandis*.

Publication of approved estimates.

20. All estimates and supplementary estimates of the Commissioner approved by the Minister shall, as soon as practicable, be laid on the Table of the House Representatives.

Accounts and audit.

21. (1) The Commissioner shall cause to be kept proper accounts and other records concerning its operations and transactions, and shall cause to be prepared a statement of accounts on a quarterly basis and another in respect of each financial year.

(2) The accounts of the Commissioner shall be audited by an auditor or auditors to be appointed by the Commissioner and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the Commissioner to be audited or examined by the Auditor General who shall for such purpose have power to carry out such physical checking and any other certifications as he may deem necessary.

(3) After the end of each financial year, the Commissioner shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Commissioner.

(4) The Minister shall, as soon as practicable, cause a copy of every such statement and report to be laid on the Table of the House of Representatives.

Contracts of supply, works or services.
S.L. 601.03

22. The Commissioner shall follow procurement procedures as regulated by the Public Procurement Regulations, or any amendment thereto.

Annual reports.

23. The Commissioner shall, not later than six weeks after the end of each financial year, send to the Minister a copy of its audited statements of accounts, a copy of the report made by the auditor or auditors about the statements or on the accounts of the Commissioner, together with a report dealing generally with the activities of the Commissioner during that financial year and containing such information relating to the proceedings and policy of the Commissioner. The Minister shall cause a copy of every such report to be laid on the Table of the House of Representatives and to be presented to the Minister responsible for finance and to the Auditor General as soon as practicable.

Value Added Tax Act.
Cap. 406.

24. The Commissioner shall be deemed to be a public authority for the purposes of the Value Added Tax Act.

PART V

INCENTIVE SCHEMES AND FINANCIAL SUPPORT

Definitions.

25. In this Part V of the Act, unless the context otherwise requires -

"qualifying production" means 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;

"qualifying company" means 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, or such other natural or legal persons as may be prescribed by the Minister and who are certified as a qualifying company in accordance with article 26.

Certification of qualifying companies and, or productions and determination of the level of benefits.

26. (1) The Minister may, after consultation with the Minister responsible for finance, by regulations prescribe:

(*a*) the criteria and procedure for the certification of qualifying companies and qualifying productions;

(*b*) measures granting fiscal and other benefits to qualifying companies and qualifying productions; and

(*c*) the criteria and other measures to regulate the provision, by the Commissioner, of assistance, guarantees and grants under articles 27, 28 and 29.

(2) The Commission shall be responsible to determine the amount of aid to be given to any qualifying production or qualifying company, such determination to be made after the Commission has received the recommendation in writing of the Commissioner:

Provided that the Commission may adopt guidelines for the determination of the level and, or the amount of fiscal or other benefits.

(3) The Commissioner shall be responsible for making recommendations to the Commission regarding the amount of aid to be given to any qualifying production or qualifying company and, following the determination of the Commission, for the certification of persons as qualifying companies and of productions as qualifying productions for the purposes of fiscal and other benefits as may be provided for by or under this Act or by or under any other enactment.

(4) Where regulations are prescribed in accordance with subarticle (1), the powers and functions of the Commission and the Commissioner under this article shall be exercised in accordance with, and subject to, the provisions of any such regulations.

Assistance by the Commissioner.

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.

Guarantees by the Commissioner.

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.

Grants by the Commissioner for training and other activities.

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.

Contravention of term or condition of investment, loan, grant or guarantee.

30. Where a term or condition subject to which an investment, grant, loan or guarantee is made or given by the Commissioner under this Part of the Act is contravened by the person to whom or on whose behalf the investment, grant, loan or guarantee is made or given, any amount owed to the Commissioner in respect of the investment, grant loan or guarantee, together with the interest payable on it, as the case may be, shall be deemed to be a debt payable forthwith to the Commissioner and may be recovered by the Commissioner as a contractual debt in any court having jurisdiction:

Provided that this article shall apply if the Commissioner requests repayment of the whole or part of the amount and that the amount owed to the Commissioner shall be deemed to be a debt payable forthwith and recoverable by the Commissioner to the extent of such request.

Maximum amounts of investments, loans, grants etc., by the Commissioner.

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.

PART VI

MISCELLANEOUS

Persons deemed public officers.

32. The Commissioner, the members of the Commission and all officers and employees of the Commissioner shall be deemed to be public officers within the meaning of the Criminal Code.

Cap. 9.

Power to make regulations.

33. (1) The Minister may make regulations generally to give effect to the provisions of this Act and, in particular, but without prejudice to the generality of the foregoing:

(*a*) to provide for any matter which is required or authorised by the Act to be prescribed;

(*b*) to establish the administrative and organisational procedures to be followed by the Commission and the Commissioner;

(*c*) to establish schemes for the purpose of funding or subsidising programmes, initiatives and events concerning the audiovisual or film-servicing industry;

(*d*) to deal with any matter related to officers and employees of the Commissioner;

(*e*) to deal with any matter related to the expenditure and income of the Commissioner, the Commissioner's estimates and accounts, and their verification.

(2) The Minister may also by regulation amend the Schedule.

Substituted by: L.N. 46 of 2015; L.N. 68 of 2019.

Schedule
(Article 25)

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 partially or wholly carried out in Malta; and

2. Processed to commercial release standards, for international distribution for cinema and international telecast (including *video on demand* and *subscription video on demand* platforms); and

3. Makes a valid contribution to the expression of creativity and culture through the development of production capability skills in the audiovisual sector. This shall be verified against a predetermined list of cultural criteria established by the film commissioner; and

4. The audiovisual work concerned is categorised as:

(a) feature film;

(b) television production (including film, series or mini-series and pilots);

(c) creative documentary, which is a project 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;

(d) reality programmes (scripted/unscripted), that may be live or recorded which directly or indirectly promotes the Maltese Islands and its culture abroad;

(e) game shows or competitions, that may be live or recorded which directly or indirectly promotes the Maltese Islands and its culture abroad:

Provided that audiovisual works may involve animation or visual effects (whether computer generated or otherwise; even if not physically shot in Malta) or be linked to cross-media, trans-media or virtual reality:

Provided further 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 performance(s) staged for filming or otherwise;

(ii) any sporting event;

(iii) current affairs or talk shows;

(iv) demonstration programmes for tasks, hobbies or projects;

(v) review, magazine-style, or lifestyle programmes;

(vi) advertising programmes or advertisements;

(vii) pornographic content;

(viii) computer games.