



national film and video foundation  
— SOUTH AFRICA —

## **NATIONAL FILM AND VIDEO FOUNDATION**

### **GUIDANCE NOTES ON OFFICIAL CO-PRODUCTIONS**

**SEPTEMBER 2009**

**SOUTH AFRICA- YOUR PREFERRED CO-PRODUCTION PARTNER**

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## **GLOSSARY OF TERMS**

**“Co-production”** is a general term that covers a variety of production arrangements between two or more production companies undertaking a television or film or other video project.

**“Co-production treaty”** is an agreement entered into by two separate governments in the field of audiovisual works. The effect of this agreement is that a film or television program, which is approved as an official co-production is regarded as a national production of each of the co-producing countries, and is therefore eligible to apply for any benefits or programs of assistance available in either country.

**“Third party producer” means** any country not party to the co-production agreement between two signing countries.

**“Third country participant”** means any person participating in the co-production, who is not a citizen or permanent resident of the two signing countries.

**“South African citizen”** means any person who is classified as a South African citizen in terms of the South African Citizenship Act No. 88 of 1995.

**“Permanent resident”** means any person classified as such by the Immigration Amendment Act 19 of 2004.

**“Finance only participation”** means a co-production where one of the party's contribution is only financial without making any creative and technical contributions.

**“Competent Authority”** means an organization or body responsible for certifying official co-productions. The National Film and Video Foundation is the competent authority in South Africa.

**“Twinning”** means a submission of two or more projects under the same treaty bundled as one.

## **1. Introduction**

South Africa has entered into a number of international bilateral co-production treaties to encourage collaboration between South African producers and co-producers from signatory countries. One of the objectives behind co-production treaty agreements is to promote cultural and economic exchanges between signatory countries.

A film made under a co-production treaty agreement may be regarded as a national film in the co-producing countries, provided that it complies with the treaty requirements. Once a film is certified and recognised as a national film by the respective competent authorities, the film's producers may access financial benefits and incentives available in their country for such films. Projects made under treaty arrangements also enable co-producers to raise finance for their projects as well as access to the other co-producer's market. The co-production guidance notes have been developed to provide an overall framework on the objectives, various treaty requirements and the application process.

## **2. Application of the Guidance notes**

The guidance notes apply to films starting principal photography/ key animation on or after 1 September 2009 and applying for co-production status under the official treaties that South Africa is party to. Applicants are encouraged to contact the Policy and Research Department at the NFVF for any queries related to the application process or contents of the guidance notes.

## **3. Competent authority**

Each country party to a co-production treaty must assign a competent authority to administer the certification process. The NFVF is responsible for the primary administration of the process and plays the role of the competent authority for co-productions in South Africa. The NFVF processes all applications and grants an advance ruling. The advance ruling is a certificate that acknowledges that a project complies with the requirements of the treaty based on the supporting documentation submitted. This certificate is issued prior to the commencement of principal photography.

Once the film has been completed, the producer must apply to the NFVF for a final ruling. The producer must at this stage submit all supporting documentation including documents requested in the advance ruling. Once the assessment is completed, the NFVF makes a recommendation to the Department of Arts and Culture ("DAC") to grant a final ruling.

#### **4. South African Bilateral Agreements**

South Africa has signed the following co-production treaties:

- 4.1 South Africa/Canada
- 4.2 South Africa /Italy
- 4.3 South Africa/Germany
- 4.4 South Africa/United Kingdom

#### **5. Legal deposit**

Applicants for a final ruling are required to comply fully with obligations in terms of the Legal Deposit Act 54 of 1997. The National Film, Video and Sound Archives ("NFVSA") is the place of legal deposit for the purposes of the Act. Applicants are encouraged to contact the NFVSA regarding acceptable formats and material that should be deposited.

## **6. Treaty requirements**

Producers are advised to familiarise themselves with the contents of the entire treaty applicable to their application. The requirements in this section are only a summary and meant to provide an easy reference and not a substitute to the actual agreements.

### **6.1 The South African producer**

Each treaty sets out participants who are eligible under the various co-production treaties. All treaties that South Africa has signed require South African producers to be citizens or permanent residents of South Africa. The SA/ Italy, SA/Germany and SA/UK agreements allow participation from nationals of the Southern African Development Co-operation (SADC) and African Union regions. Participation by non-residents may only be allowed in exceptional circumstances and an agreement by both competent authorities to approve such an exception.

### **6.2 Financial contribution**

Each treaty sets out the minimum and maximum percentages of financial contribution for the co-producers. As a general principle, each producer's financial contribution must reasonably match the creative participation in the film. The various financial participation requirements as set out in the treaties are summarised as follows:

SA/Germany	20% - 80%
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SA/Canada	20% - 80%
SA/Italy	20% - 80%
SA/UK	20% - 80 %: All co-producers including a third party co-producer is required to contribute at least 20% of the total budget of the film. A 10 % financial contribution may be acceptable as an exception and subject to the joint agreement of the competent authorities.

### **6.2.1 Finance only co-productions**

The SA/UK, SA/Germany and SA/Italy agreements are the only co-production treaties, which make provision for finance only collaborations, however they are all subject to agreement between the NFVF and respective competent authorities.

### **6.3 Creative contribution**

As a general principle, co-producers are required to make a creative contribution to the making of the film which is reasonably proportional to their financial contribution. Creative contribution to a film includes a number of elements such as content, location shooting etcetera. The sections below outline some of the treaty requirements and where applicable specific treaty requirements will be referred to.

#### **6.3.1 Location Filming**

Location filming must be done in the co-producing countries or in some instances in the country of the major financial contributing co-producer (for example the SA/UK Agreement). Location filming in a non participating country may be authorised if the script so requires and subject to the permission of the

competent authorities. Technicians from the co-producing countries must take part in the filming if filming takes place in a non participating country.

The SA/Canada Agreement requires live action and animation works to be carried out in SA or Canada including location filming (interior or exterior). Location filming in a non participating country may be authorised by the competent authorities if the script requires, provided that South African and Canadian technicians take part. Laboratory work must be carried out in South Africa or Canada except if it is technically impossible to do so, subject to approval of competent authorities.

The SA/UK Agreement requires co-production films to be made (including studio and post production) in the UK and/or South Africa or in the country of a third party co-producer.

### **6.3.2 Soundtrack and subtitling**

The original soundtrack and subtitling of the film must reflect languages as stated in the treaties. A departure from the treaty language requirements may be permitted where the script requires. Producers must refer to the applicable treaties for the applicable languages in respect of the soundtrack and subtitling of the film. The Producer's may use one of the official South African languages which are:

- English
- Afrikaans
- IsiXhosa
- IsiZulu
- Setswana
- Sesotho
- Tshivenda

- IsiNdebele
- Xitsonga
- SePedi
- IsiSwati

### **6.3.3 Credits and identification of co-production films**

The treaties set out credit and the wording of identification of co-production films. Producers must adhere to these requirements as contained in the applicable treaty. However the NFVF requires that all official co-productions be classified as such and state all the countries recognised by the treaty the application has been made under.

## **6.4 Personnel**

Generally, non-citizens and non-permanent residents are not allowed to participate in the co-production. The various treaties do allow for a few exceptions. Treaties do allow for non-citizens and non-permanent residents' participation in exceptional circumstances and subject to the approval of the relevant competent authorities. Producers must refer to the relevant treaty if such an exception may be used. Producers are also advised to put in a written request to the NFVF before submitting their application, where they intend using third country participants who fall outside the treaty provisions. The NFVF as a general rule will only allow a maximum of three (3), third country participants in both the key creative and leading roles unless the production is of such nature that specialist expertise outside the party countries is not available. The general rule is subject to the approval of the other country's competent authority.

### **6.4.1 Third party participation**

In principle, third party or third country participation is recognised in film co-production agreements. SA/Germany has a minority contribution of not less than 10% and a majority of 70% of the total cost of the film in the case of multilateral co-productions.

## **7. Application process**

- 7.1 The application for an advance and final ruling must be made by the South African co-producer. If a company is making the application, the company carrying out the co-production must have audio visual as its primary business, be registered and based in the Republic of South Africa. Applicants should always read the contents of the entire treaty that is applicable to their co-production before lodging an application for an advance ruling with the NFVF.
- 7.2 Applications for an advance ruling must be made **at least 30 days** before the start of principal photography/ key animation. However, producers are encouraged to submit their applications earlier than the stipulated time to allow a process of thorough engagement.
- 7.3 The NFVF may request an applicant to provide documentary evidence and/or additional information to support their applications where necessary. Producers are advised to submit completed forms and relevant supporting documentation. Missing information and /or incomplete application forms may cause delay in the processing of the application.
- 7.4 Applications must be made in the prescribed forms for advance ruling and final ruling and application forms are available online ([www.nfvf.co.za](http://www.nfvf.co.za)). The prescribed application form must be completed and submitted to the NFVF in the following format:

- All documentation must be in English;
- Two copies of the application on Lever-Arch files with an Index sheet and paginated;
- Two copies of any additional documentation that will be required from the application.

## **7.5 Application Appeal Process**

In line with the provisions of the Promotion of Administration Justice Act No. 3 of 2000, applicants who are dissatisfied with the outcome of their applications are entitled to written reasons. Applicants are advised to follow the following procedure to appeal the outcome of an unsuccessful application;

- The applicant must notify the NFVF Manager: Special Projects of their intention to appeal to the NFVF Co-production Committee;<sup>1</sup>
- Once the letter of appeal is received, the applicant will be notified of a date to meet with the NFVF Co-production Committee;
- The applicant will be given an opportunity to advance reasons why the application should be successful;
- The NFVF Co-production Committee will make its decision based on the documentation as submitted by the applicant;
- If the applicant is not satisfied with the decision of the NFVF Co-Production Committee, s/he may approach the NFVF Co-production Review Committee as a last resort within the NFVF appeal process.<sup>2</sup>

Applicants are advised to follow the process as prescribed as no appeals will be considered if the procedure is not followed as set out in this section.

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<sup>1</sup> The NFVF Co-Production Committee is comprised of the NFVF Manager: Special Projects, the Head of Policy and Research, Legal and Policy Officer and the Chief Financial Officer.

<sup>2</sup> The NFVF Co-production Review Committee consists of the NFVF Co-production Committee and the Chief Executive Officer of the NFVF.

## **8. Application for an advance ruling**

Applicants for a preliminary approval of a co-production must submit the following documentation:

- Completed application form;
- Signed copy of the Co-production agreement. A draft agreement may suffice at this stage, but a fully signed copy of the agreement is required before the completion of the film;
- Signed copy of an Assignment of title and full Chain of Title or a full Chain of Title Report. An Option agreement may suffice for an advanced ruling of a co-production project or in a case where there are many writers/owners a summary report with the cover pages (front pieces) and signature pages of the relevant agreements, and a full Chain of Title report where relevant;
- One copy of the full script. A synopsis and/or treatment may suffice at this stage, but before completion of the film we must have the full script;
- A Production schedule for the entire shoot is required, regardless of the countries where filming is taking place.
- Full budget and not just the top sheet. This is also required in addition to the budget detailed in the form;
- Contracts with primary cast and crew;
- Incorporation documents or registration certificate of the South African production company;
- Company's organisational chart, list of the main shareholders, shareholders agreement, company's financial statement for all directly connected companies (documents required once per calendar year);

- Resumes of scriptwriter(s),director(s) and producer(s);
- Legible photocopy of passports or other identification documents providing proof of citizenship and residency for all key personnel and all key cast and crew
- Contract(s) with South African and foreign scriptwriter(s);
- Contract(s) with South African and foreign director(s);
- Contract(s) with South African or foreign music composer(s);
- Contract(s) with performer(s) of third country party(ies), if applicable;
- Budget Summary (in Rand) including both the South African and foreign shares;
- Detailed budget (in Rand) indicating cost breakdown by country including third-party expenses by a co-producer, if applicable;
- Itemised financial structure (in Rand) for the South African co-producer indicating sources of financing;
- Itemised financial structure (in Rand) for the foreign co-producer indicating sources of financing;
- Temporary credit list identifying participants with their nationalities;
- Detailed production schedule giving the dates and locations of shooting for each phase of the co-production;
- Scenario (last version);
- Subcontracting agreement in the case of animation.

## **9. Application for a final ruling**

9.1 The NFVF will require the following documents for an advance ruling application;

- Completed application form;
- Documents required in the Advanced ruling letter (if any);

- Audited production cost report, prepared by a certified accountant independent of the production company;
- Final financial structure (in Rand) accompanied by all of the South African co-producer's related contracts;
- Final itemised breakdown of costs by country (in the relevant currencies);
- Final cost report (in Rand) approved by the foreign co-producer;
- Complete list of head and tail credits giving the nationality of each participant. The list must be approved and signed by the co-producer. In the case of a series, the South African co-producer must provide a signed and approved the list of credits for the first and last episodes, as well as a list of any credits that differ in other episodes;
- DVD (copies of the entire series in the case of a television series).
- Applicants are required to make an application for a Final Ruling within 12 months after completion of the production audit of the project to the NFVF.

9.2 The NFVF requires applicants to provide the Foundation with a master copy of the completed film in one of the following formats:

- Beta SP;
- Digibeta; or
- DV Cam.

9.3 Please note that the NFVF will under no circumstances entertain any projects applying for a final ruling, which have not received an advance ruling.

## **10. Validity of an Advance Ruling**

- 10.1 Projects have six months in order to start principal photography/ key animation; failure to begin production during the stipulated time will result in the lapse of the ruling.
- 10.2 Should the production fail to meet the deadline, then the producer is advised to reapply for a new ruling in order to proceed with the production.

## **11. Ineligible Applications**

The following applications are not legible for consideration:

Applications submitted by a company or concerning a production that does not meet the eligibility requirements set out in these guidelines or in the relevant co-production agreements.

Films which are classified in terms of schedules 1, 2, 6, 7 and 10(1) of the Film and Publications Act 65 of 1996.

## **13. Precedent**

The NFVF considers each application in the relevant context and on its own merits and no aspect of the approval of this project should be seen as setting a precedent for any future applications.

## **14. The South African Film and Television Production Incentive**

The NFVF encourages producers to familiarise themselves with the application deadline of the South African Film and Television Production Incentive administered by the Department of Trade and Industry. It is the producer's responsibility to submit applications on time if they are also applying for the DTI rebate.