



New Zealand Treaty Series 2011, No. 10
Ministry of Foreign Affairs and Trade

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING
CO-PRODUCTION OF FILMS

Wellington, 11 September 2011
[Entered into force for New Zealand 20 October 2011]

Presented to the House of Representatives

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING THE
CO-PRODUCTION OF FILMS

Preamble

The Government of New Zealand and the Government of the Republic of South Africa (hereinafter jointly referred to as “the Parties” and separately as a “Party”);

SEEKING to enhance cooperation between their two countries in the area of film;

DESIROUS of expanding and facilitating the co-production of films which may be conducive to the film industries of both countries and to the development of their cultural and economic exchanges; and

CONVINCED that these exchanges will contribute to the enhancement of relations between the two countries;

HEREBY AGREE as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement unless the context otherwise indicates—

“Competent Authority” means the authority designated as such in Article 2 by each Party;

“co-producer” means one or more New Zealand or South African Nationals involved in the making of a co-production film;

“co-production film” means a film made by one or more Nationals of one Party in cooperation with one or more Nationals of the other Party under a project approved jointly by the Competent Authorities, and includes a film to which Article 6 applies;

“film” means an aggregate of images, or of images and sounds, embodied in any material, and includes television and video recordings, animations and digital format productions;

“National” means:

- (a) in the case of the Republic of South Africa,
 - (i) a citizen of South Africa; or
 - (ii) a permanent resident of South Africa; and
- (b) in the case of New Zealand,
 - (i) a citizen of New Zealand; or
 - (ii) a permanent resident of New Zealand; and

“third country co-producer” means any individual from another country with which New Zealand or the Republic of South Africa maintains a film and audiovisual agreement as referred to under Article 6.

Article 2

COMPETENT AUTHORITIES

- (1) Each Party shall designate a Competent Authority for the purposes of implementing this Agreement. The Competent Authorities responsible for the implementation of this Agreement shall be—
 - (a) in the case of New Zealand, the New Zealand Film Commission; and
 - (b) in the case of the Republic of South Africa, The National Film and Video Foundation.
- (2) Either Party may change their designated Competent Authority by giving written notice to the other Party through the diplomatic channel.
- (3) The Competent Authorities may examine the implementation of this Agreement and consult with each other to resolve difficulties arising out of its application.

Article 3

RECOGNITION AS A NATIONAL FILM AND ENTITLEMENT TO BENEFITS

- (1) A co-production film shall be fully entitled to all the benefits which are or may be accorded to national films by each of the Parties under the domestic law in force in their respective countries.
- (2) Any benefits which may be granted by either Party in relation to a co-production film shall accrue to the co-producer who is permitted to claim those benefits in accordance with the domestic law in force in the country of that Party, and subject to any other relevant international obligations.

Article 4

APPROVAL OF PROJECTS

- (1) Co-production films shall require joint approval of the Competent Authorities prior to the commencement of shooting.
- (2) Approvals shall be in writing and shall specify the conditions upon which approval is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself.
- (3) In considering proposals for the making of a co-production film, the Competent Authorities, acting jointly and with due regard for their respective policies and guidelines, shall apply the rules set out in the Annex to this Agreement.

Article 5
CONTRIBUTIONS

- (1) For each co-production film—
 - (a) the performing, technical, craft and creative participation of the co-producers; and
 - (b) production expenditure in each of the co-producer's countries,shall be in reasonable proportion to their respective financial contributions to the co-production film.
- (2) Both the financial contribution, and the performing, technical, craft and creative participation of each co-producer shall account for at least 20% (twenty per cent) of the total effort in making the co-production film.
- (3) Notwithstanding the contribution rules set out in sub-Articles (1) and (2), the Competent Authorities may, in exceptional cases, jointly approve co-production projects where—
 - (a) the contribution of one of the co-producers is limited to the provision of finance only, in which case approvals shall be limited to projects where the proposed finance-only contribution is no greater than 50% (fifty per cent) of the total costs of the film; or
 - (b) the Competent Authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

Article 6
THIRD COUNTRY CO-PRODUCTIONS

- (1) Where either of the Parties maintains a film co-production agreement with a third country, the Competent Authorities may approve a project for a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third country.
- (2) Approvals under this Article shall be limited to proposals in which the contribution of the third country co-producer is no greater than the lesser of the individual contributions of the New Zealand and South African co-producers.

Article 7
PARTICIPATION

- (1) Persons participating in a co-production film shall be Nationals of South Africa and of New Zealand and, where there is a third co-producer, nationals of the third co-producer's country.
- (2) Subject to the approval of the Competent Authorities—
 - (a) where the script or financing dictates, restricted numbers of performers from other countries may be engaged;

- (b) in exceptional circumstances, restricted numbers of technical personnel from other countries may be engaged.

Article 8

MAKING UP TO FIRST-RELEASE PRINT

- (1) Co-production films shall be made and processed up to the manufacture of the first release print in New Zealand and/or in South Africa and/or, where there is a third co-producer, in that third co-producer's country.
- (2) At least 90% (ninety per cent) of the footage included in a co-production film shall be specially shot or created for the film unless otherwise approved by the Competent Authorities.

Article 9

LOCATION FILMING

- (1) The Competent Authorities may approve location filming in a country other than those of the participating co-producers.
- (2) Notwithstanding Article 7, where location filming is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

Article 10

SOUNDTRACK

- (1) The original soundtrack of each co-production film shall be made in one of the official languages of either New Zealand or South Africa, or in any combination of those permitted languages.
- (2) Narration, dubbing or subtitling in any other commonly used language or dialect of New Zealand or South Africa shall be permitted.
- (3) Post-release print dubbing into any other language may be carried out in third countries.
- (4) The soundtrack may contain sections of dialogue in any language in so far as required by the script.

Article 11***ACKNOWLEDGMENTS AND CREDITS***

A co-production film and the promotional material associated with it shall include either a credit title indicating that the film is an “Official South Africa – New Zealand Co-Production” or an “Official New Zealand – South Africa Co-Production” or, where relevant, a credit which reflects the participation of South Africa, New Zealand and the country of a third co-producer.

Article 12***IMMIGRATION FACILITATION***

Subject to meeting the normal immigration requirements of the domestic law in force in their countries, each of the Parties shall permit the Nationals of the other country, and nationals of the country of any third co-producer approved under Article 6, to enter and remain in South Africa or New Zealand, as the case may be, for the purpose of making or promoting a co-production film.

Article 13***IMPORT OF EQUIPMENT***

Each of the Parties shall provide, in accordance with the domestic law in force in their respective countries, temporary admission of cinematographic and technical equipment for the making of co-production films with import duties and taxes suspended, upon the giving of a security or undertaking for payment of duty and taxes until the goods are exported.

Article 14***TAXATION***

Notwithstanding any other provision of this Agreement, for the purposes of taxation the domestic law in force in each of the two countries shall apply subject to the provisions of the Agreement between the Government of New Zealand and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 2002.

Article 15***MIXED COMMISSION***

- (1) A Mixed Commission shall be established by the Parties composed of representatives of the Parties, including the Competent Authorities and industry representatives.
- (2) The role of the Mixed Commission shall be to supervise and review the operation of this Agreement and to make any proposals considered necessary to improve the effectiveness of this Agreement.

- (3) The Mixed Commission shall be convened, whether by meeting or otherwise, at the request of either of the Parties within six (6) months of such a request.

Article 16

STATUS OF ANNEX

- (1) The Annex to this Agreement constitutes an implementing arrangement in respect of this Agreement and shall be read in conjunction with the provisions of this Agreement.
- (2) Any modifications to the Annex shall be jointly determined by the Competent Authorities following consultations with the Mixed Commission. No modification to the Annex shall conflict with the provisions of this Agreement.
- (3) Modifications to the Annex shall be confirmed by the Competent Authorities in writing and shall take effect on the date they specify.

Article 17

ENTRY INTO FORCE

This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

Article 18

AMENDMENT

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

Article 19

SETTLEMENT OF DISPUTE

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiations between the Parties.

Article 20

DURATION AND TERMINATION

- (1) This Agreement shall remain in force for a period of three (3) years, whereafter it shall be automatically renewed for further periods of three (3) years.
- (2) This Agreement may be terminated at the conclusion of a three (3) year period by either Party giving six (6) months' written notice in advance through the diplomatic channel of its intention to terminate this Agreement.

- (3) The termination of this Agreement by either Party shall not affect any co-production film approved by the Competent Authorities in terms of this Agreement. Unless otherwise agreed by the Parties in writing, such a co-production film shall continue until its completion.

IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic.

Done at Wellington on this 11th day of September, 2011.

For the Government of New Zealand:

**For the Government of the Republic
of South Africa:**

[Signatures not reproduced]

ANNEX***IMPLEMENTING ARRANGEMENT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING THE CO-PRODUCTION OF FILMS***

- (1) The approval process under Article 4 of the Agreement will comprise two stages: provisional approval upon application, and final approval upon completion of the film and prior to distribution.
- (2) There will be a contract between the co-producers governing the making of a co-production film which will—
 - (a) provide that a co-producer may not assign or dispose of benefits referred to in Article 3 except to or for the benefit of a National of that co-producer's country;
 - (b) assign, as between the co-producers, ownership of all intellectual property rights arising from the making of the co-production film; and
 - (c) set out the arrangements between the co-producers regarding the exercise of rights of access to and use of copyright works created in the making of the co-production film;
 - (d) set out the financial liability of each Co-producer for costs incurred—
 - (i) in preparing a co-production project which is refused approval as a co-production film by the Competent Authorities;
 - (ii) in making a film which has been given such approval and fails to comply with the conditions of such approval;
 - (iii) in making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - (e) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the co-production film including those from export markets;
 - (f) specify dates by which the respective contributions of the co-producers to the production of the film shall have been completed;
 - (g) specify whether the co-production film shall be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers; and
 - (h) specify any other conditions of approval that the Competent Authorities jointly decide.