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AGREEMENT

ON AUDIO-VISUAL CO-PRODUCTIONS BETWEEN THE GOVERNMENT OF
NEW ZEALAND AND THE GOVERNMENT OF INDIA

New Delhi, 28 June 2011
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Presented to the House of Representatives

AGREEMENT ON AUDIO-VISUAL CO-PRODUCTIONS BETWEEN
THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA

The Government of New Zealand and the Government of the Republic of India (the "Parties")

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

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;

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

HAVE AGREED as follows: -

Article 1

DEFINITIONS

1. "Competent Authorities" shall mean the authorities designated as such in the Annex by each Party.
2. "Co-producer" means one or more New Zealand nationals or one or more nationals of India involved in the making of co-production films, or, in relation to Article 5 (Third Country Co-Productions), nationals of a third country.
3. "Nationals" means:
 - (a) for India, citizens of India; and
 - (b) for New Zealand
 - (i) citizens of New Zealand; or
 - (ii) permanent residents of New Zealand.
4. "Film" means an aggregate of images, or of images and sounds, embodied in any material, irrespective of length, including animation and documentary productions, produced in any format, for exploitation in theatres, on television, videocassette, videodisc, CD-ROM, DVD or by any other form of distribution.
5. "Co-production film" means an audio visual film made by one or more co-producers of one Party in co-operation with one or more co-producers of the other Party under a project approved by the Competent Authorities under Article 3 (Conditions for Obtaining Approval of Co-production Status), and includes a film to which Article 5 (Third Country Co-Productions) applies.

Article 2

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 their respective national laws.
2. Any benefits which may be granted within 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 legislation of that Party, subject to any other relevant international obligations.

Article 3

CONDITIONS FOR OBTAINING APPROVAL OF CO-PRODUCTION STATUS

1. Co-production films shall require, prior to the commencement of shooting, approval by both the Competent Authorities. Approvals shall be given after consultations between the Competent Authorities to discuss the merits of the particular co-production. Approvals shall be in writing and shall specify the terms and conditions upon which approval is granted.
2. In considering proposals for the making of a co-production film, both the Competent Authorities shall consult and, with due regard to their respective policies and guidelines, apply the rules set out in the Annex to this Agreement.
3. None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is necessary in the making of the co-production film itself.
4. The Parties are not responsible or liable for the credentials of either of the co-producers.

Article 4

CONTRIBUTIONS

1. Both the financial contribution, and the performing, technical, craft and creative contribution of each co-producer shall account for at least 20% (twenty per cent) of the total effort in making the co-production film and no more than 80% (eighty per cent) of the total effort in making the co-production film.
2. Notwithstanding the contribution rules set out in paragraph 1 of this Article, and in accordance with the conditions for obtaining approval in Article 3, in exceptional cases the Competent Authorities of both countries may approve co-production projects where:
 - (a) the contribution by one co-producer is limited to the provision of finance only, in which case approvals shall be limited to projects where the proposed finance-only contribution is at least 20% (twenty per cent) but no greater than 80% (eighty per cent) of the total budget of the Co-production project; or
 - (b) the Competent Authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

Article 5***THIRD COUNTRY CO-PRODUCTIONS***

1. Where either India or New Zealand maintains with a third country a film co-production agreement, 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 contributions of the New Zealand and India co-producers.

Article 6***PARTICIPANTS***

1. Persons participating in a co-production film shall be nationals of India or 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 script or cost 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 7***FILM PROCESSING, LABORATORY WORK, NEGATIVES AND LANGUAGES***

1. The processing of film including the laboratory work, digital intermediate, visual and special effects work shall be done in either India or New Zealand. In exceptional circumstances, Competent Authorities of both countries may authorise such work to be done in a country not participating in the film co-production.
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.
3. The original soundtrack of each co-production film shall be made in Hindi or any other Indian language or dialect or in any official language of New Zealand, or in any combination of those permitted languages.
4. Dubbing of the post-release prints into any other language can be carried out in any third country, if required.
5. The soundtrack may contain sections of dialogue in any language in so far as is required by the script.

Article 8*LOCATION SHOOTING*

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out either in India or in New Zealand.
2. The Competent Authorities may approve location shooting in a country other than those of the participating co-producers if the script or action so requires and if technicians from India and New Zealand take part in the shooting.
3. Notwithstanding Article 6, where location shooting is approved in accordance with the present Article, citizens of the country in which location shooting 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 9*ACKNOWLEDGEMENTS 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 Indian – New Zealand Co-production" or an "Official New Zealand – Indian Co-production" or, where relevant, a credit which reflects the participation of the Republic of India, New Zealand and the country of a third co-producer.

Article 10*TEMPORARY ENTRY INTO THE COUNTRY*

For approved co-productions, each Party shall permit, in accordance with the domestic law in force in its country, entry into and temporary residence in its territory for nationals of the other Party, and nationals of any third party co-producer approved under Article 5 (Third Country Co-Productions), directly employed in the making or promotion of an approved co-production.

Article 11*IMPORT OF EQUIPMENT*

Each of the Parties shall provide, in accordance with their respective legislation, temporary admission, free of import duties and taxes, of technical equipment for the making of co-production films.

Article 12*TAXATION*

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

Article 13*PERMISSION FOR PUBLIC EXHIBITION*

1. Any public exhibition of a co-production film will be in accordance with the relevant Party's domestic laws.
2. The approval of Co-production status under this Agreement will not mean a commitment to permit public exhibition of the co-production film.

Article 14*BALANCED CONTRIBUTION*

1. While recognizing that the contributions of each co-producer in respect of an individual co-production film may not be balanced, the Parties shall attempt to ensure that an overall balance in the contributions of each Party, with regard to both the artistic and technical personnel, including the cast, and with regard to the financial investment and facilities (studios, laboratories, and postproduction), is maintained over the duration of this Agreement.
2. The Joint Commission, established under Article 15, shall, as part of its role, carry out a review to see whether this balance has been maintained and, if this is not the case, shall take measures, which it considers necessary in order to re-establish such a balance.

Article 15*JOINT COMMISSION*

1. There shall be a Joint Commission composed of representatives of the Parties, including the Competent Authorities and industry representatives.
2. The role of the Joint Commission shall be to supervise and review the operation of this Agreement and to make any proposals considered necessary to improve the effect of this Agreement.
3. The Joint Commission shall be convened, whether by meeting or otherwise, at the request of either of the Parties within six 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. Subject to paragraph 2 of Article 18, any modifications to the Annex shall be agreed by both the Competent Authorities, following consultations with the Joint Commission. No modifications to the Annex shall be in conflict with the provisions of this Agreement.

3. Modifications to the Annex shall be confirmed by both the Competent Authorities in writing and shall take effect on the date they specify.

Article 17

ENTRY INTO FORCE

Each of the Parties shall notify the other in writing through the diplomatic channel of the completion of any procedure required by its constitutional law for giving effect to this Agreement. This Agreement shall enter into force on the date of such notification which is later in point of time.

Article 18

AMENDMENT

1. Subject to paragraph 2 of this Article, this Agreement may be amended by written agreement between the two Parties through an exchange of diplomatic notes. Amendments shall take effect on the date specified in the notes.
2. Either Party may by diplomatic note notify the other of a change in its Competent Authority. The change shall take effect on the date specified in the notes.

Article 19

SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled consensually through consultation and negotiation and shall not be referred for resolution to any national or international tribunal or a third party.

IN WITNESS WHEREOF the undersigned representatives of the Parties being duly authorised to do so, have signed this Agreement.

DONE AT New Delhi, this 28th day of June, 2011, in two originals, each in the English and Hindi languages, both texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For and on behalf of the Government of
New Zealand:

For and on behalf of the Government of the
Republic of India:

[Signatures not reproduced]

ANNEX

*APPLICATIONS FOR APPROVAL OF CO-PRODUCTION STATUS UNDER
THE AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF THE REPUBLIC OF INDIA ON AUDIO-VISUAL
CO-PRODUCTIONS*

1. The Competent Authorities for this Agreement between the Government of New Zealand and the Government of the Republic of India on Audio-Visual Co-Productions are the Ministry of Information and Broadcasting in the Republic of India and the New Zealand Film Commission (NZFC) in New Zealand.
2. The approval process under Article 3 of the Agreement will comprise two stages: Provisional Approval upon application and Final Approval upon completion of the film and prior to distribution.
3. Applications for Provisional Approval under Article 3 of the Agreement will be made simultaneously to both Competent Authorities at least sixty (60) days before shooting begins. The Competent Authorities will consult on whether to approve or decline an application within forty (40) days of the submission of the complete documentation as described in paragraph 4 below.
4. The following documentation/information (in English) needs to be submitted in support of an application:
 - (a) The final script and synopsis;
 - (b) The title of the co-production;
 - (c) The name of the author of the script, or that of the adaptor if it is drawn from a literary source; necessary permission for adapting the literary work into a film from the author/legal heirs may be attached;
 - (d) The name of the director (a substitution clause is permitted to provide for his/her replacement if necessary);
 - (e) The financing plan;
 - (f) A list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;
 - (g) The detailed budget identifying the expenses to be incurred by each country;
 - (h) Documentary proof of having legally acquired the rights to produce and exploit the co-production and that the copyright for the co-production has been legally acquired;
 - (i) A copy of the co-production contract signed by the two co-producers, that will:

- (i) 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;
 - (ii) assign, as between the co-producers, ownership of all intellectual property rights arising from the making of the co-production film;
 - (iii) 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;
 - (iv) set out the financial liability of each co-producer for costs incurred:
 - in preparing a co-production project which is refused approval as a co-production film by the Competent Authorities;
 - in making a film which has been given such approval and fails to comply with the conditions of such approval;
 - in making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - (v) 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;
 - (vi) specify dates by which the respective contributions of the co-producers to the production of the film will have been completed;
 - (vii) specify whether the co-production film will be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers;
 - (viii) set out arrangements for the sharing of revenues, markets, media or a combination of these;
 - (ix) detail the respective shares of the co-producers in any over or under expenditure; and
 - (x) specify any other conditions of approval that the Competent Authorities jointly decide.
5. The majority co-producer will normally be responsible for arranging entry of co-production films in international festivals. Films produced on the basis of equal contributions will be entered as a film of the country of which the director is a national, and if this is not possible then the film will be submitted as a film of the country of which the lead actor is a national, subject to the agreement of both Competent Authorities.
6. Two negatives, or at least one intermediate negative and one duplicate negative, will be made of all co-produced films. Each co-producer will be entitled to make a further duplicate or prints there from. Each co-producer will also be entitled to use the original

negative in accordance with the conditions decided upon between the co-producers themselves.

7. The sharing of expenses and revenues will be as mutually decided by the co producers.
8. Where a co-production is exported to a country that has quota regulations, it will be included in the quota of the Party:
 - (a) which is the majority co-producer;
 - (b) that has the best opportunity of arranging for its export, if the respective contributions of the co-producers are equal;
 - (c) of which the director is a national, if any difficulties arise with the application of sub-paragraphs (a) and (b) hereof.
9. Notwithstanding paragraph 8, in the event that one of the co-producing countries enjoys unrestricted entry of its films into a country that has quota regulations, a co-production undertaken under this Agreement will be as entitled as any other national production of the above-mentioned co-producing country to unrestricted entry into the importing country if that above-mentioned co-producing country so agrees.