

Documents tabled on 12 March 2008:

National Interest Analysis [2008] ATNIA10

with attachment on consultation

**Agreement between the Government of Australia and the
Government of the Republic of Singapore concerning the co-production of films
(Sydney, 7 September 2007)
[2007] ATNIF 24**

**NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY
SUMMARY PAGE**

**Agreement between the Government of Australia and the
Government of the Republic of Singapore concerning the co-production of films
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Nature and timing of proposed treaty action

1. Australia signed the *Agreement between the Government of Australia and the Government of the Republic of Singapore* ('the Agreement') on 7 September 2007. Article 17 of the Agreement provides that the Agreement shall enter into force once the parties have notified each other through diplomatic channels that their domestic requirements have been completed. The Agreement shall enter into force on the latter date of these two notifications.
2. It is proposed that Australia provide such notification to Singapore via diplomatic channels as soon as practicable following tabling of the treaty in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Overview and national interest summary

3. The purpose of the proposed Agreement is to stimulate industry, employment, technical development and cultural exchange by facilitating film co-productions between Australia and Singapore. The Agreement provides a framework within which the authorities of each country may co-operate to approve the making of films including feature films, television, animations and digital format productions.
4. Asia is an increasingly important region for the global film and television industry. This Agreement will open up new markets for Australian film and enable a creative and technical interchange between film personnel. It also has the potential to increase the output of high quality productions through the sharing of equity investment.
5. Under the Agreement, a project approved as an official co-production will be regarded as a national production of both Australia and Singapore, and will therefore be eligible to apply for any benefits or programs of assistance available in either country. The co-production will also be treated as 'local content' in each country for the purposes of audiovisual regulation.
6. The treaty action will further strengthen bilateral relations between Australia and Singapore by building upon existing media company partnerships which have already resulted in the production of a number of successful film and television projects. The Agreement will facilitate media companies from both countries pooling their resources and talents for film co-productions, and create a larger distribution network for quality exportable media content in the domestic markets of both countries, as well as the international market.

Reasons for Australia to take the proposed treaty action

7. This Agreement will form part of Australia's International Co-production Program, the principal purpose of which is to foster cultural and industry development and cultural exchange between co-operating countries. In this environment, co-production agreements are individually negotiated with the aim of sustaining and developing Australian creative resources and production.

8. The objective of the proposed Agreement with Singapore is to facilitate co-productions which:

- increase the output of high quality productions by sharing equity investment with Singapore;
- open up new markets in Singapore and the broader Asian region for Australian film and digital format productions;
- share the risk (and cost) of film production;
- establish links with Singaporean production and distribution interests;
- facilitate interchange between Australian and Singaporean film makers, particularly those in the principal creative positions;
- create employment opportunities for Australian industry personnel; and
- strengthen existing diplomatic ties between Australia and Singapore.

9. Australia-Singapore co-productions will gain financial benefits under the Agreement. In Australia, the main benefits available for co-productions will be their eligibility to be treated as films with a significant Australian content that can therefore access the Australian Screen Production Incentive – Producer Offset under the *Income Tax Assessment Act 1997*, and eligibility to qualify as 'Australian program content' for the purposes of the Australian Content Standard for commercial television broadcasting. Official co-productions will also be able to access direct film agency funding through the Australian Film Commission and the Film Finance Corporation Australia. Similarly, in Singapore an official co-production will be considered a Singaporean production for the purposes of official financial support and audiovisual regulation.

10. The Government of Singapore is actively developing the local creative digital content industry and has positioned Singapore as a global media hub with access to the broader Asian market. Singapore's investment in film and digital content production grew from US\$3.7 million in 2002 to US\$5.1 million in 2006, and the number of cinemas in Singapore has increased by 15 percent since 2002. The Agreement with Singapore will provide Australian film makers with increased access to the Singaporean and rapidly growing Asian markets. And since the scope of the Agreement covers the production of film, television, video recordings, animations and other digital format projects, Australian producers will be able to collaborate with the full range of potential co-production partners in Singapore.

11. The Agreement is defined by the notion of reciprocity, a principle applied to ensure that over time there is an over-arching balance of financial and creative participation by both countries, and that the Agreement is of comparable benefit to both countries. The Agreement will help to ensure that an overall balance is achieved between the parties in relation to their respective contributions including production costs, studio and laboratory usage, and the

employment of nationals of both parties in major performing, craft and technical positions related to film co-productions under the Agreement.

12. Existing partnerships between Australian and Singaporean media companies have resulted in the production of a number of successful film and television projects, such as the feature film *The Home Song Stories*, and the animation series *Milly Molly* and *Master Raindrop*. The proposed Agreement will build on these commercial and collaborative links and provide the impetus to develop high quality projects that may not otherwise have been undertaken. There is significant industry interest in the Agreement from both Australia and Singapore, and a number of potential co-production projects, including animations and other digital format productions, await its finalisation.

Obligations

13. Pursuant to Article 3.1, proposals for the making of co-production films must be submitted to the competent authorities of each party (as designated under Article 2) for approval. Article 3.3 obliges the competent authorities to consider the approval of proposed co-productions according to their own policies and guidelines, and to consult with each other to ensure that individual projects qualify under the terms of the Agreement. Where such approval is withheld by one of the competent authorities, Article 3.4 requires that the project not be approved as a co-production under the Agreement. Article 3.5 ensures that neither party is bound to grant a licence for the exhibition or broadcast of a completed co-production.

14. Article 4 obliges the competent authorities to ensure that the required financial and creative contributions for each co-production project have been met, and to monitor the overall balance of these contributions over each three year period of the Agreement. Where the approval of a project as a co-production will affect this overall balance, Article 4.4 allows either competent authority to withhold such approval.

15. Once approved as a co-production between Australia and Singapore, Article 5 requires that each co-production is entitled to all the benefits that are or may be accorded in Australia or Singapore to national films. In respect of each co-production, these benefits accrue to:

- Australian co-producers and Singaporean co-producers (Articles 3.2 and 5.2); and
- producers from countries with which Australia or Singapore has a similar treaty and who are co-production partners ('the third country co-producer') in the particular project (Articles 5.3 and 6).

16. Articles 7 to 11 specify the procedural requirements for making co-production projects including the approval by the competent authorities (under prescribed circumstances) of location filming in (Article 9), and the participation of a restricted number of personnel from (Article 7), countries other than those of the participating co-producers.

17. Articles 12 and 13 oblige Australia, subject to its laws, to facilitate the import and export, free of duties and taxes, of cinematographic and technical equipment for the making of co-productions, and to permit Singaporean nationals or nationals of the country of any third co-producer to enter and remain in Australia for the purpose of making or exploiting a co-production. Singapore is under the same obligations in corresponding circumstances.

18. Article 14 obliges both parties to apply their respective laws for the purposes of taxation, subject to the provisions of any tax convention between Australia and Singapore.

19. The Annex, which forms an implementing arrangement (non-legally binding) to be read in conjunction with the Agreement (Article 15), names the competent authorities of each party, specifies the approval process, and sets out the detail of the contractual arrangements between co-producers necessary for the making of co-productions.

Implementation

20. No new legislative measures are required to implement the obligations under the Agreement.

21. The *Income Tax Assessment Act 1997* allows official co-productions access to tax incentives (the Producer Offset), and the *Migration Act 1958* and regulations allow for entry into Australia of co-production teams as envisaged by the Agreement.

22. For goods the subject of a ‘relevant intergovernmental agreement’, the *Customs Act 1901* provides for their delivery into home consumption without the need for a formal Customs entry, or the payment of otherwise applicable duty, provided that a security or undertaking is established. Corresponding provisions in *A New Tax System (Goods and Services Tax) Act 1999* extend these arrangements to the otherwise applicable tax. Once in force, this Agreement will constitute a ‘relevant intergovernmental agreement’ for the purposes of the Customs and Tax Acts. Consequently, no change is required in these Acts to allow for the temporary admission and subsequent export, free of duty and tax, of cinematographic and technical equipment for the making of a co-production as required by Article 13 of the Agreement.

23. The Agreement confirms that both countries can apply their domestic tax laws, subject to the terms of any tax convention in force between Australia and Singapore which impacts on either country’s taxing rights. The current tax convention between Australia and the Republic of Singapore is the *Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* which was signed in Canberra on 11 February 1969 – [1969] ATS 14, as amended by the *Amending Protocol* signed in Canberra on 16 October 1989 – [1990] ATS 3. The tax convention applies to Australian and Singaporean income tax and includes rules which limit taxing rights over various types of income, as well as rules for reducing any double taxation where both countries exercise their right to tax.

24. The Agreement will be administered by the Australian Film Commission on behalf of the Australian Government as part of Australia’s International Co-production Program.

25. There will be no change to the existing roles of the Commonwealth and States/Territories as a result of implementing the treaty action.

Costs

26. While there will be some costs associated with the administration of the proposed Agreement, these costs will be absorbed by the Australian Film Commission.

27. Direct agency funding of Australia-Singapore co-productions through the Australian Film Commission and/or the Film Finance Corporation Australia will be provided from existing funds. Co-productions funded through the Producer Offset under Division 376 of the *Income Tax Assessment Act 1997* will be a cost in terms of revenue foregone.

Regulation Impact Statement

28. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

29. Article 16.1 obliges the competent authorities to supervise and review the Agreement, and to advise the parties of any required modifications, while Article 16.2 specifies that amendments can be made with the agreement of both parties through an exchange of notes. Any amendment to the Agreement would be subject to Australia's domestic treaty approval process.

30. The Annex to the Agreement does not create legally binding obligations and any modifications to it will be jointly determined by the competent authorities and confirmed in writing. Any such modifications shall conform to the provisions of the Agreement (Article 15).

Withdrawal or denunciation

31. Article 18 specifies that the Agreement shall remain in force initially for three years from the date of its entry into force, and unless either party gives written notice through diplomatic channels to terminate the Agreement six months before the end of the three years, the Agreement will be automatically renewed for successive three year periods. If written notice to terminate is given by either party six months before the end of any three year period, the Agreement will terminate at the end of those three years. Termination by Australia would also be subject to our domestic treaty approval process.

32. In the event of termination, the Agreement shall continue as if in force in respect of any co-production approved by the competent authorities, but not yet completed prior to the termination.

Contact details

Film Incentives and International Section
Film and Creative Industries Branch
Department of the Environment, Water, Heritage and the Arts.

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CONSULTATION

1. Negotiation of the *Agreement between the Government of Australia and the Government of the Republic of Singapore* ('the Agreement') commenced in May 2006 with the then Department of Communications, Information Technology and the Arts (DCITA) taking the lead role in close consultation with the Australian Film Commission (AFC) and the Department of Foreign Affairs and Trade (DFAT) throughout the negotiation process. The Agreement text was also provided to the Attorney-General's Department (AGD) for legal clearance at key points in the drafting process. Any clauses in the text relating to other portfolios were cleared by the relevant line agencies as required, and although clarification was sought on some points, no substantial concerns were raised, and all agencies were supportive of the Agreement.

2. Approval for Australia to sign the Agreement in September 2007 was received from all the then Australian Government Ministers whose portfolio responsibilities were covered by the Agreement – the Minister for the Arts and Sport, the Minister for Foreign Affairs, the Attorney-General, the Minister for Trade, the Minister for Immigration and Citizenship, the Minister for Justice and Customs, and the Treasurer. The then Prime Minister was informed of the finalisation of the text of the Agreement as part of this Ministerial approval process. Following the 2007 Federal Election the Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, wrote to the Prime Minister advising that the previous Government had signed the Agreement with the Government of the Republic of Singapore and that the domestic treaty approval process was underway.

3. The Trade and Co-production Forum (TCF) – an industry consultative group convened by the then DCITA (now the Department of the Environment, Water, Heritage and the Arts) – was consulted at all stages of the negotiations to ensure that the Agreement was in line with current industry practice and would provide potential benefits to the Australian industry. The TCF comprises representatives of the peak film and digital content industry bodies including:

- Australian Guild of Screen Composers;
- Australian Directors Guild;
- Australian Writers Guild;
- Media, Entertainment and Arts Alliance;
- Screen Producers Association of Australia;
- Ausfilm;
- Australian Interactive Media Industry Association;
- Games Developers Association of Australia;
- Interactive Entertainment Association of Australia;
- Motion Picture Distributors Association of Australia;
- Independent Cinemas Association of Australia; and
- Australian Cinema Exhibitors Coalition.

4. These industry bodies are national organisations that consult widely across all States and Territories. Information about the development of co-production agreements is also regularly updated, and comments invited, in the AFC's public documents.

5. The development of the Agreement text was based on a template which resulted in a smooth and non-controversial negotiation process. The TCF members were supportive of Singapore's request that the scope of the Agreement be as broad as possible, hence the definition of 'film' included in the Agreement covers film, television, video recordings, animations and digital format productions. The AFC also agreed to Singapore's suggestion that the Agreement allow for the participation, under exceptional circumstances, of a restricted number of technical personnel from countries other than Australia and Singapore in the making of a co-production film, as outlined in Article 7.2(b).

6. The Agreement does not contain an article regarding 'working conditions' to specifically ensure that the working conditions in each of the countries of the participating co-producers are comparable. The preference of the Media, Entertainment and Arts Alliance would have been for the inclusion of such an article, however Singapore did not agree, noting that the difference in production costs/working conditions between Singapore and Australia is negligible. It was agreed that Article 3.3 would provide sufficient flexibility for either competent authority to grant or refuse a film official co-production status on the basis of their respective policies and guidelines.

7. State and Territory Governments have been advised of the proposed Agreement through the Standing Committee on Treaties' (SCOT) Schedule of Treaty Action. The Agreement has been on the list of treaties under negotiation, consideration or review by the Australian Government since February 2006. No objections or concerns were raised by the State or Territory Governments as a result of this notification.