

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
CONCERNING THE CO-PRODUCTION OF FILMS

Sydney, 7 September 2007

Not yet in force
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AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE REPUBLIC OF SINGAPORE CONCERNING THE CO-
PRODUCTION OF FILMS

The Government of Australia and the Government of the Republic of Singapore (herein after referred to individually as “a Party” and collectively as “the Parties”)

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;

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

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

- (a) “competent authority” means the authority designated as such by each Party;
- (b) “co-producer” means one or more Australian nationals or one or more Singaporean nationals involved in the making of a co-production film, or one or more third country nationals if any third co-producer is approved pursuant to Article 6;
- (c) “co-production film” means a film made by one or more co-producers of a Party in cooperation with one or more co-producers of the other Party, approved by the competent authorities of both the Parties;

(d) “film” means an aggregate of images, or of images and sounds, embodied in any material and includes, but is not limited to, television and video recordings, animations and digital format productions, but does not include an item which is outside the scope of the laws and regulations of either Party which govern the provision of benefits under the international agreements relating to the co-production of films;

(e) “legal entities” means one or more entity/entities duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporations, trusts, partnerships, joint ventures, sole proprietorships or associations;

(f) “nationals” means:

- (i) for Singapore, citizens or permanent residents of Singapore; and
- (ii) for Australia, citizens or permanent residents of Australia.

Article 2

Competent Authority

Each Party shall designate a competent authority for the purposes of this Agreement. A change in the designated competent authority may be made by a Party giving notice of the change to the other Party through diplomatic channels.

Article 3

Approval of Co-production Films

1. Proposals for the making of a co-production film shall be submitted to the competent authority of each Party. The competent authorities may, subject to this Agreement, approve proposals submitted to them for the making of a co-production film. Approvals granted by the competent authorities shall be in writing and shall specify the conditions upon which the approval is granted.

2. When approving a film as a co-production film, the competent authorities shall ensure that:

(a) none of the co-producers shall be linked, directly or indirectly, through legal entities with common management, ownership or control, save to the extent that it is pursuant to the making of the co-production film itself;

(b) the Australian co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled, if that producer were the only producer, in order for the production to be eligible as an Australian film;

(c) the Singapore co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled, if that producer were the only producer, in order for the production to be eligible as a Singapore film.

3. The competent authorities shall consult with each other to enable them to ensure that a film conforms with the provisions of this Agreement. Each competent authority, in deciding whether to grant or refuse an application, shall apply its own policies and guidelines.

4. When approving a film as a co-production film, each competent authority may stipulate conditions of approval framed in order to achieve the general aims and objects of this Agreement. In the event of a disagreement between the competent authorities about the giving of such an approval or the inclusion of such a condition the film concerned shall not be approved under this Agreement.

5. The approval of a proposal to make a co-production film shall not bind the relevant authorities of either Party to grant a licence for the exhibition or broadcast of the completed co-production film.

Article 4
Contributions and Balance

1. For each co-production film, the contributions in terms of:
 - (a) the performing, technical, and craft contribution (being the creative contribution) 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.

2. In any event, each co-producer shall contribute not less than twenty percent (20%) of both the total financial and the total creative contribution for the co-production film.

3. An overriding aim of the Agreement, monitored by the competent authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

- (a) the contribution to the production costs of all co-production films;
- (b) the usage of studios and laboratories;
- (c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; and
- (d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast;

over each period of three years commencing on the date that this Agreement enters into force.

4. Either competent authority may withhold approval of a film as a co-production film on the basis that the overriding aim of overall balance referred to in paragraph 3 of this Article would be prejudiced by such approval.

Article 5

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 subsidies, tax incentives, or other financial 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 existing measures of that Party.

3. Such subsidies, tax incentives or other financial benefits may not be assigned or disposed of except, where it is permitted by law of the relevant Party and, where applicable, is approved by its respective national agency, to or for the benefit of a national of that co-producer's country, or in the case of a third country co-production approved under Article 6, any individual that falls within the relevant scope of the film or audiovisual agreement or arrangement of less than treaty status referred to in that Article.

Article 6

Third Country Co-Productions

1. Where a Party maintains with a third country a film or audio-visual co-production agreement, or arrangement of less-than-treaty status, the competent authorities may approve a film that is to be made in conjunction with a co-producer from that third country (hereinafter referred to as "third co-producer") as a co-production film under this Agreement provided that there is a co-producer from each Party.

2. Both the financial and creative contributions of a third co-producer shall, consistent with paragraph 2 of Article 4, account for at least twenty percent (20%) of the total financial and total creative contribution for the co-production film.

3. A third co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production agreement, or arrangement of less-than-treaty status, in force between that third country and a Party.

Article 7

Participation

1. Persons participating in a co-production film shall be nationals of either Party and in the case of a third country co-production as provided under Article 6, nationals of the third country as defined in the film or audiovisual agreement or arrangement of less than treaty status that a Party maintains with the third country.

2. Notwithstanding paragraph 1 of this Article, the competent authorities may approve:

(a) where the script or financing dictates, the participation of restricted numbers of performers from other countries; and

(b) in exceptional circumstances, the participation of restricted numbers of technical personnel from other countries where technical expertise does not exist in the co-producers' countries.

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 Australia and/or Singapore and/or, where there is a third co-producer, in that third co-producer's country.

2. The majority of this work shall normally be carried out in the country of the co-producer which has the major financial contribution.

3. The competent authorities may jointly approve an exception to the requirements of paragraph 1 of this Article if, and only to the extent that, compliance with those requirements is technically impossible.

4. At least 90% (ninety per cent) of the footage included in a co-production film shall be specially shot or created for the co-production film unless otherwise approved by the competent authorities.

Article 9

Location Filming

1. The co-producers shall apply to the respective competent authorities for approval in the event that the location filming is intended to take place in a country other than those of the participating co-producers. 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. Unless otherwise mutually consented by the competent authorities, the original soundtrack of each co-production film shall be made in one of the official languages, including any commonly used dialect of either Party, or where there is a third co-producer, in one of the official languages, including any commonly used dialect, of that third country, or in any combination of those languages.

2. The original soundtrack of each co-production film shall be made in Australia and/or Singapore and/or where there is a third co-producer, in that third country.
3. Narration, dubbing or subtitling shall be permitted in any other commonly used language or dialect of either Party, or where there is a third co-producer, in a commonly used language or dialect of that third country.
4. Narration, dubbing and subtitling of each co-production film shall take place in Australia and/or Singapore and/or where there is a third co-producer, in that third country.
5. Post release print dubbing into any other language may be carried out in a country other than co-producers' countries.
6. The soundtrack may contain sections of dialogue in any language in so far as is required by the script.
7. Unless otherwise approved by the competent authorities, any music specially composed for a co-production film shall be composed by nationals of the Parties or, in the case of a third country co-production approved under Article 6, any individual that falls within the relevant scope of the film or audiovisual agreement or arrangement of less than treaty status referred to in that Article.

Article 11

Acknowledgements, Credits

A co-production film and the advertising and promotional material associated with it shall include either a credit title indicating that the co-production film is an "Official Singapore - Australia Co-Production" or an "Official Australia – Singapore Co-Production" or, where relevant, a credit which reflects the participation of Singapore, Australia and the country of a third co-producer, according to the origin of the majority co-producer or in accordance with an agreement between co-producers. In the event of equal financial contribution of the co-producers, the credit title shall be

according to the country of which the director is a national; or in accordance with an agreement between co-producers.

Article 12

Immigration Facilitation

Each Party shall permit the nationals of the other Party, and in the case of a third country co-production approved under Article 6, any individual that falls within the relevant scope of the film or audiovisual agreement or arrangement of less than treaty status referred to therein, to travel to, enter and remain in its territory for the purpose of making or exploiting a co-production film, subject to the requirement that individuals comply with its laws, regulations and procedures relating to entry into or temporary stay in its territory.

Article 13

Import of Equipment

Each Party shall provide, in accordance with its respective laws, temporary admission of cinematographic and technical equipment for the making of co-production films free of import duties and taxes. The equipment may be exported by the importer free of duties and taxes in accordance with the respective Party's laws.

Article 14

Taxation

Notwithstanding any other provision of this Agreement, for the purposes of taxation the laws in force in each Party shall apply subject to the provisions of any tax convention between the Parties.

Article 15
Status of Annex

1. The Annex to this Agreement shall constitute an implementing arrangement in respect of this Agreement and shall be read in conjunction with the provisions of this Agreement. The Annex reflects the understandings of the Parties and does not create legally binding obligations.
2. Any modifications to the Annex shall be jointly determined by the competent authorities. Modifications to the Annex shall be in conformity 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 specified by the competent authorities.

Article 16
Amendment

1. The competent authorities of both Parties shall supervise and review the working of this Agreement and make any proposals considered necessary for any modification of this Agreement.
2. The Parties may amend this Agreement by agreement. Any such amendment shall come into effect when confirmed by an exchange of notes.

Article 17
Entry into Force

The Agreement shall enter into force once the Parties have notified each other through diplomatic channels that their respective domestic requirements for entry into force have been completed. The Agreement shall enter into force on the latter date of these two notifications.

Article 18
Duration and Termination

1. This Agreement shall continue in force for a period of three years from the date it enters into force and thereafter automatically be renewed for further periods of three years.
2. Either Party may terminate this Agreement at the conclusion of a three year period by giving six months' prior notice in writing through diplomatic channels.
3. Notwithstanding such termination, this Agreement shall continue as if in force in respect of any co-production film approved by the competent authorities which is yet to be completed at termination until such co-production film is completed.

IN WITNESS WHEREOF, the undersigned, being duly authorised by the Parties, have signed this Agreement.

Done in duplicate at Sydney this seventh day of September 2007.

**For the Government of
Australia**

Hon. George Brandis
Minister for the Arts and Sport

**For the Government of the
Republic of Singapore**

Hon. George Yong-Boon Yeo
Minister for Foreign Affairs

ANNEX

1. This Annex constitutes an implementing arrangement in respect of the Agreement between the Government of the Republic of Singapore and the Government of Australia concerning the Co-Production of Films (“the Agreement”) and will be read in conjunction with the provisions of the Agreement. This Annex reflects the understandings of the Parties to the Agreement and does not create legally binding obligations.

2. This Annex will come into effect when the Agreement enters into force and will be terminated when the Agreement is terminated.

3. The competent authorities for the Agreement are the Media Development Authority of Singapore (MDA) in Singapore and the Australian Film Commission (AFC) in Australia.

4. The approval process under Article 3 of the Agreement will comprise two stages:

(a) Provisional Approval upon application, and

(b) Final Approval upon completion of the co-production film and prior to its distribution.

5. After obtaining provisional approval from the competent authorities to make a co-production film, the co-producers will enter into a contract before the commencement of production 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 5 of the Agreement.

- b) set out, as between the co-producers, the arrangements regarding:
 - i) the ownership of all intellectual property rights arising from the making of the co-production film; and
 - ii) the exercise of rights of access to and use of copyright works created in the making of the co-production film;

- c) set out the financial liability of each co-producer for costs incurred:
 - i) in preparing a film which is refused approval as a co-production film by the competent authorities;
 - ii) in making a co-production film which has been given such approval and fails to comply with the conditions of such approval; and
 - iii) in making a co-production film which has been given such approval, permission for whose public exhibition is withheld in any of the countries of the co-producers.

- d) 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;

- e) specify the dates by which the respective contributions of the co-producers to the production of the co-production film will have been completed; and

- f) specify any other conditions imposed jointly by the competent authorities when granting provisional approval.