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Film Co-production Agreement

between the Government of the United Kingdom of Great
Britain and Northern Ireland and the Government of the
Republic of South Africa

London, 24 May 2006

[The Agreement entered into force on 11 May 2007]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2007*

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**FILM CO-PRODUCTION AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa (“the Parties”):

Considering that there is potential for the film industries of each country to work together on account of shared or complementary characteristics that include the structure of each film industry, the film culture of each country and the extent of the availability in each country of film-making facilities, a suitably skilled workforce and locations for filming;

Recognising that development of such potential will be to the mutual advantage of each Party, in particular in respect of the growth and competitiveness of their film industries and the enhancement of their film cultures;

Noting the benefits available in each country to films with national film status;

Desiring to encourage the making of films that reflect, enhance and convey the diversity of culture and heritage in both countries;

Acknowledging the benefits that would flow from the making of such films and from an increase in public availability of distinctive and successful co-produced films; and

Noting that each Party expects from this Agreement a contribution by way of film-making or cultural benefits, with the intention of creating an overall balance in film-making contribution benefiting each country and in the cultural benefits to each country.

Have agreed as follows:

ARTICLE 1

Definitions

(1) In this Agreement:

“Agreement” means this agreement, including the Annex which forms an integral part of this Agreement;

“Approved Co-production” means a co-produced film which has Approved Co-Production status in accordance with Article 3;

“Co-producer” means any individual, partnership, body corporate or unincorporated association who is a co-producer of a film;

“Competent Authority” means:

- (a) in relation to the UK, the Department for Culture, Media and Sport;
- (b) in relation to South Africa, the Department of Arts and Culture;

or another government department or other body as may be nominated by a Party in writing to the other Party;

“EEA State” means a State (other than the United Kingdom) which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

“Film” includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture, and which is expected to be exhibited to the paying public at the cinema;

“Non-party Co-producer” means a co-producer who is not a Party Co-producer or a Third Party Co-producer;

“Party Co-producer” means a UK Co-producer or a South African Co-producer;

“Production Cost”, in relation to a co-production, means expenditure incurred for the purposes of making the film;

“South African Co-producer” means a co-producer who is established in South Africa;

“SADC State” means a State (other than South Africa) which is a Contracting Party to the Treaty of the Southern African Development Community signed at Windhoek on 17th August 1992 (as it has effect from time to time);

“Third Party Co-producer” means a co-producer who is established in another State with which the UK or South Africa has also entered into a co-production agreement;

“UK Co-producer” means a co-producer who is established in England, Wales, Scotland or Northern Ireland.

(2) References to film-making contribution benefiting the UK or South Africa include, in particular, the expenditure in that country on goods and services which directly results from the co-production and the use made of film-making facilities or filming locations in that country.

(3) For the purposes of this Agreement the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

ARTICLE 2

Competent Authorities

(1) The Competent Authorities shall make the decisions on applications for the grant of Approved Co-production status by any one or more co-producers of a film.

(2) In determining an application made to it, a Competent Authority shall assess the application against the requirements which are set out in this Agreement and are applied in accordance with guidance published by the Competent Authority under this Article.

(3) Each Competent Authority may from time to time publish guidance consisting of such information and advice as it considers appropriate with respect to:

- (a) how applications are to be made to the Competent Authority, and
- (b) the operation of this Agreement.

(4) Such guidance shall, in particular, set out:

- (a) how the Competent Authority proposes to make decisions on applications for the grant of Approved Co-production status, and
- (b) factors it will take into account when exercising any discretion conferred on it by this Agreement.

(5) The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

ARTICLE 3

Grant of Approved Co-production status

(1) A co-produced film which meets the requirements set out in this Agreement may be granted Approved Co-production status.

(2) Approved Co-production status shall be granted only if:

- (a) an application in respect of a film is made to each of the Competent Authorities in accordance with procedures established under Article 2, and
 - (b) both Competent Authorities agree to approve the application in accordance with this Article.
- (3) Approval of an application in respect of a film shall be given in two stages:
 - (a) provisional approval, and
 - (b) final approval.
- (4) Provisional or final approval shall be given:
 - (a) only if the requirements set out in Article 4 are met, and
 - (b) subject to such conditions as the Competent Authorities (acting jointly) consider appropriate.
- (5) For the purposes of eligibility for the benefits referred to Article 9, a film shall be treated as having Approved Co-production status only if:
 - (a) the Competent Authorities have agreed to give the film final approval under this Article, and
 - (b) that approval has not been withdrawn.
- (6) For all other purposes:
 - (a) references to the grant of Approved Co-production status are to the giving of either final approval or provisional approval under this Article, and
 - (b) a film shall be treated as having Approved Co-production status if either stage of approval has been given and that approval has not been withdrawn.
- (7) If at any stage the Competent Authorities do not agree to approve an application in respect of a film, Approved Co-production status shall be refused.
- (8) Nothing in this Agreement binds the relevant authorities in the UK or South Africa to permit the public exhibition of a film which has been granted Approved Co-production status.

ARTICLE 4

Requirements for Approved Co-production status

- (1) A film may be granted Approved Co-production status only if each Competent Authority is satisfied that:
- (a) subject to paragraph (3) of this Article, the general requirements set out in the Annex to this Agreement are (or are expected to be) met in relation to the co-production, and
 - (b) the film delivers (or is expected to deliver) appropriate cultural benefits to the country for which it is the Competent Authority, and
 - (c) any temporary additional requirements that are imposed under Article 6 in relation to the grant of Approved Co-production status by that Competent Authority are (or are expected to be) met.
- (2) The cultural benefits referred to in paragraph (1)(b) of this Article shall be assessed by each Competent Authority in accordance with the guidance published under Article 2(3).
- (3) In the event of an inconsistency between:
- (a) on the one hand, any of the provisions of the Annex to this Agreement, and
 - (b) on the other, any temporary additional requirements imposed under Article 6,

the Competent Authorities shall apply the temporary additional requirement.

ARTICLE 5

Balance in film-making and cultural contributions benefiting each Party

- (1) In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure an approximate overall balance in:
- (a) the film-making contribution benefiting the UK and the film-making contribution benefiting South Africa, and
 - (b) the cultural benefits to the UK and the cultural benefits to South Africa.
- (2) Each Party shall assess the state of balance between the Parties and shall report that assessment to the other annually in writing.

(3) Each Party shall consult the other on the general approach it proposes to take in relation to balance and, in particular, on the methods it will adopt when collating and measuring statistical data and on the approach it will take in measuring whether or not a state of balance exists.

(4) In order to assess the state of balance between the Parties, each Party shall collate and analyse statistical data about successful applications for the grant of Approved Co-production status and shall report to the other annually in writing on the current state of balance.

(5) In making an assessment of the state of balance, each Party shall take account of the total number of Approved Co-productions during the three year period immediately before any date on which an assessment of the state of balance is made (subject to the period this Agreement has been in force and excluding co-productions given approval in reliance on Section 2 of the Annex to this Agreement).

ARTICLE 6

Consequences of imbalance

(1) If a Party considers that there is (or is a risk of) imbalance in film-making contributions or cultural benefits, it shall consult the other.

(2) If, after 6 months of consultations, the Parties are unable to agree on appropriate measures to restore balance, the Party in deficit shall be entitled to take, without the agreement of the other Party, such measures as it considers necessary.

(3) Measures imposed by a Party under this Article may include the imposition of temporary additional requirements that must be met before its Competent Authority can agree to the grant of Approved Co-production status.

(4) Temporary additional requirements shall apply only in respect of applications which are:

- (a) for the Competent Authorities to give provisional approval for Approved Co-production status under Article 3, and
- (b) made after the requirement comes into effect in accordance with paragraph (5) of this Article.

(5) No temporary additional requirement may take effect before the Party imposing it:

- (a) has notified the other Party in writing of the requirement, and
- (b) has published:

- (i) a statement of the requirement, and
- (ii) any changes to the guidance issued in accordance with Article 2 which may be required to give effect to it.

ARTICLE 7

Withdrawal of Approved Co-production status

(1) Approval for a film which has Approved Co-production status may be withdrawn if, at any time, it appears to either Competent Authority that:

- (a) false or misleading information has been provided in connection with an application for the approval,
- (b) any of the conditions imposed under Article 3(4)(b) by the Competent Authorities have not been complied with,
- (c) any of the requirements set out in Article 4(1)(a) or (b) are not met, or
- (d) any of the requirements specified in paragraph (2) of this Article are not met.

(2) The requirements specified in this paragraph are any temporary additional requirements imposed under Article 6:

- (a) which applied to the film when provisional approval for Approved Co-production status under Article 3 was given, and
- (b) which continue to have effect when the status is withdrawn under this Article.

ARTICLE 8

Benefits for Co-productions with either final approval or provisional approval

(1) This Article applies in relation to any film which has Approved Co-production status.

(2) Each Party shall permit, in accordance with their respective legislation, including for the UK relevant European Community legislation, temporary import and export, free of import or export duties and taxes, of any equipment necessary for the production of an Approved Co-production.

(3) Each Party shall permit any person employed in the making or promotion of an Approved Co-production to enter and remain in the UK and South Africa, as the case may be, during the making or promotion of the film, subject to the requirement that they comply with the legislation relating to entry, residence and employment.

ARTICLE 9

Additional benefits available only to Co-productions with final approval

(1) This Article applies only in relation to a film in respect of which the Competent Authorities have agreed to give final approval for Approved Co-production status under Article 3.

(2) Each Party shall treat a film falling within paragraph (1) of this Article as a national film for the purposes of any benefits afforded in that country to national films.

(3) The benefits referred to in paragraph (2) of this Article include, in particular:

- (a) eligibility for any benefits in fiscal treatment (subject to the film satisfying the criteria that national films must meet for such benefits and subject to paragraphs (4) and (5) of this Article),
- (b) the lifting of any quota restrictions that would otherwise apply to the import, distribution or exhibition of the film, and
- (c) access to any special import arrangements, agreed between a Party and another country which operates import quota restrictions, for the import of national films of that Party.

(4) Any benefits in fiscal treatment available in the United Kingdom may only be accorded to a UK Co-producer.

(5) Any benefits in fiscal treatment available in South Africa may only be accorded to a South African Co-producer.

(6) The question of which Party may claim credit for an Approved Co-production as a national film at an International Film Festival shall be determined:

- (a) by reference to whichever is the greater of either:
 - (i) the total financial contributions made by the UK Co-producer or Co-producers (taken together), or

- (ii) the total financial contributions made by the South African Co-producer or Co-producers (taken together), or
- (b) if the respective total financial contributions are equal, by reference to whichever of the UK or South Africa the director of the film is most closely associated with.

ARTICLE 10

Entry into force

- (1) This Agreement shall enter into force as soon as the Parties have notified each other of the completion of their respective constitutional procedures.
- (2) Either Party may terminate this Agreement at any time by giving at least 6 months' written notice to the other Party.
- (3) The Agreement shall cease to have effect on the expiry of the period of notice given under paragraph (2) of this Article.

ARTICLE 11

Films in production before and after entry into force

- (1) A film shall be eligible for the grant of Approved Co-production status even if production commenced before this Agreement entered into force, but only if:
 - (a) the first day of principal photography of the film is on or after 1st April 2006, and
 - (b) production of the film is completed after the date on which the Agreement enters into force.
- (2) An Approved Co-production shall continue to be eligible to receive any benefits available under this Agreement on or after the date on which the Agreement ceases to have effect, but only if:
 - (a) before that date, the Competent Authorities have given the film provisional approval for Approved Co-production status under Article 3,
 - (b) its principal photography commenced before that date, and
 - (c) production of the film is completed before the end of the period of twelve months commencing with that date.

ARTICLE 12

Review and amendment

- (1) The Parties shall keep the Agreement under review and, where they consider it appropriate to do so, may recommend that changes be made.
- (2) The Parties shall report to the other annually in writing on the operation of the Agreement.
- (3) The Parties may, at any time through an exchange of notes, make amendments to the Agreement.
- (4) Any such amendment shall enter into force as soon as the Parties have notified each other of the completion of their respective constitutional procedures.
- (5) The Competent Authorities shall resolve any disputes about the operation and interpretation of this Agreement by negotiation and consultation.

ARTICLE 13

International obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including in relation to the United Kingdom obligations arising from European Community law.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this twenty-fourth day of May 2006 in the English language.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

TESSA JOWELL

For the Government of the Republic of
South Africa:

PALLO JORDAN

**APPROVED CO-PRODUCTION STATUS:
GENERAL REQUIREMENTS**

SECTION 1

Co-productions which have no finance-only contributions

Co-producers

1. The co-producers shall include at least one UK Co-producer and at least one South African Co-producer.
2. Unless the Competent Authorities agree otherwise, the maximum number of co-producers for a film shall be four.
3. Unless the Competent Authorities agree otherwise, no co-producer may be linked to another co-producer by common ownership, management or control (except to the extent that such link is inherent in the making of the co-production).
4. Unless the Competent Authorities agree otherwise, each co-producer shall have offices and staff in the country in which the co-producer is established.
5. Unless the Competent Authorities agree otherwise, each co-producer shall:
 - (a) continue to play an active role throughout the time the co-production is being made (including production planning and decision-making), and
 - (b) assume responsibility for carrying through practical and financial arrangements for the making of the film.
6. Each co-producer shall also meet the following requirements:
 - (a) each co-producer must directly negotiate, contract and pay for rights, goods and services, and
 - (b) the co-producers must have entered into a binding contract, the terms of which reflect their respective responsibilities for the co-production.
7. Unless the Competent Authorities agree otherwise:
 - (a) the co-producers named in the original application shall not be replaced, and
 - (b) no co-producers may be added to those named in the original application (or previously agreed to under this paragraph).

8. Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall meet all the requirements of this Annex.

Financial contributions

9. In the case of a co-production where the co-producers are all Party Co-producers, each of the following:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together);
- (b) the total financial contributions of the South African Co-producer or Co-producers (taken together);

shall not be less than 20% and not more than 80% of the total production cost.

10. Subject to paragraph 11, in the case of a co-production where the co-producers are not all Party Co-producers:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
- (b) the total financial contributions of the South African Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
- (c) the total financial contributions of the Third Party Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
- (d) the total financial contributions of each Non-party Co-producer shall not be less than 10% and not more than 20% of the total production cost.

11. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to reduce the lower limit for the purposes of paragraph 10(a), (b) or (c), but subject to a new minimum limit of 10%.

Film-making contributions

12. The film-making contribution benefiting a country shall be broadly in proportion to the financial contribution of the Party Co-producer (or Co-producers) established in that country.

13. Unless the Competent Authorities agree otherwise, no more than 20% of the total production cost may be used to source goods and services from a country other than:

- (a) the United Kingdom,
- (b) South Africa,
- (c) an EEA State,
- (d) a SADC State, or
- (e) where there is a Third Party Co-producer, the State in which that Co-producer is established.

Rights, revenues, receipts etc

14. The rights, revenues and prizes arising in connection with the co-production shall be shared between the Party Co-Producer (or Co-producers) in a manner that reflects their respective financial contributions.

Film content

15. Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specially shot for that film.

16. The film shall not advocate violence, be of a blatantly pornographic nature or openly offend human dignity.

Language of the film

17. Versions of the film shall be made as follows:

- (a) the original version must be made in English or a recognised regional or minority language of the United Kingdom, or in an official language of South Africa or an official language of a State in which a co-producer is established,
- (b) a sub-titled or dubbed version must be produced in English (if the original version is not already in that language), and
- (c) a sub-titled or dubbed version must be produced in an official language of South Africa (if the original version is not already in one of those languages).

18. But nothing in paragraph 17 of this Annex prevents:

- (a) the film containing passages of dialogue in other languages if the story requires it, or
- (b) production of subsequent versions of the film in other languages.

Screen and publicity credits

19. The film shall be credited on screen and in publicity either:
- (a) as a UK/South Africa co-production, or
 - (b) where a co-production has one or more Third Party Co-producers or Non-party Co-producers, as a UK/South Africa/Third Party/Non-party co-production.

Where the film is made

20. Unless the Competent Authorities agree otherwise:
- (a) all work on the co-production prior to completion shall be carried out in the countries in which the Party Co-Producers or Third Party Co-producers are established, and
 - (b) the majority of the work on the co-production shall be carried out in the country in which the Party Co-Producer or Third Party Co-producer making the greatest financial contribution is established.
21. For the avoidance of doubt, the reference in paragraph 20 of this Annex to work on a co-production prior to completion includes studio and post-production work.

Personnel

22. Unless the Competent Authorities agree otherwise, individuals participating in the making of the film shall be nationals of, or ordinarily resident in:
- (a) the United Kingdom,
 - (b) South Africa,
 - (c) an EEA State,
 - (d) a SADC State, or
 - (e) where there is a Third Party Co-producer, the State in which that co-producer is established.

Conditions of work

23. The conditions of working for those taking part in the making of a co-production in each of the countries of the participating co-producers shall be broadly comparable and, in relation to each country, consistent with the standards generally prevailing in that country.

24. Conditions of work (including location shooting) in a country other than that of a co-producer, shall not be significantly less favourable than the standards required by paragraph 23 of this Annex.

Co-production contract

25. The co-production contracts between the co-producers shall:

- (a) be expressed to be subject to the approval of the Competent Authorities and state that amendments to the contract must be submitted for approval by the Competent Authorities before the co-production is finished;
- (b) set out the steps to be taken where a co-producer fails to fulfil its commitments under the contract;
- (c) specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;
- (d) make arrangements for any unpaid balance of the contributions of each co-producer to be paid within a period of sixty days from the date of completion of the film;
- (e) make provision for any overage or underage, which results from the total budgeted costs being exceeded or under-spent, to be divided in such a way as not to cause the project to fall outside the terms of this Agreement or the terms of the provisional approval given by the Competent Authorities;
- (f) set out clearly the financial liabilities of each co-producer for the costs that are incurred:
 - (i) in preparing a project which is refused final approval or provisional approval for Approved Co-production status under Article 3,
 - (ii) in the event that a relevant authority prohibits the exhibition in either country of a film which has Approved Co-production status, or
 - (iii) in the event that a relevant authority prohibits the export of the film to a third country;
- (g) make provision about the respective copyright entitlements of the co-producers;
- (h) make provision for the distribution of the rights and revenues arising in connection with the co-production;

- (i) set out the arrangements regarding the division between the co-producers of territories and/or the receipts from the exploitation of the film, including those from export markets;
- (j) provide that the original protection and reproduction material from the production ("the material") and the first completed version ("the master") are to be deposited in a place mutually agreed by the co-producers; and
- (k) provide:
 - (i) that each co-producer is to have free access to the material and the master in accordance with the conditions agreed upon between the co-producers,
 - (ii) either that each of the co-producers is to have joint ownership of the material and the master or that each co-producer is to be the owner of a copy of the material and the master, and
 - (iii) that a sufficient number of copies of the material and the master are to be made for all the co-producers without restriction on the number of copies made by each co-producer.

SECTION 2

Co-productions with finance-only contributions

26. For the purposes of Article 4(1)(a), a co-production which does not (and is not expected to) meet the requirement of paragraph 12 of Section 1 of this Annex may nevertheless be treated by the Competent Authorities as meeting the requirements set out in this Annex if:

- (a) all the other requirements of Section 1 of this Annex, and
- (b) the following six conditions,

are (or are expected to be) met.

27. The first condition is that the Competent Authorities have, in respect of each one year period, agreed to and published a limit applying to the number of co-productions relying on this Section of this Annex which may be granted provisional Approved Co-production status over that period.

28. The second condition is that the co-production includes one or more minority contributions from one or more co-producers which are limited to finance only.

29. The third condition is that:
- (a) in the case of a co-production where the co-producers are all Party Co-producers, the finance-only contribution from the co-producers (taken together) must be not less than 20% and not more than 25% of the total production cost;
 - (b) in any other case, the finance-only contribution from the co-producers (taken together) must be not less than 10% and not more than 25% of the total production cost.
30. The fourth condition is that the co-production has a majority Party Co-producer who makes a film-making contribution.
31. The fifth condition is that the grant of Approved Co-production status to the co-production would not cause the limit referred to in paragraph 27 of this Annex to be exceeded.
32. The sixth condition is that the grant of Approved Co-production status to the co-production does not (other than temporarily) aggravate a state of imbalance between the Parties with regard to:
- (a) the aggregate film-making contributions in connection with co-productions which have Approved Co-production status in reliance on this Section of this Annex, and
 - (b) the number of such co-productions which are UK majority co-productions and South African majority co-productions.



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