

Entertainment Law

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Telefilm Canada Revises International Coproduction Guidelines

Canada is a party to over 50 bilateral audiovisual coproduction treaties with countries around the world. The competent authority in Canada for audiovisual treaty coproduction is the Minister of Canadian Heritage (the “Minister”). Telefilm Canada (“Telefilm”) is a federal cultural agency which acts on behalf of the Minister as the administrative authority which administers Canada’s international coproduction treaties and certifies eligible treaty coproductions.

On November 29, 2010, Telefilm issued revised [International Coproduction Guidelines](#) (the “Guidelines”). The revised Guidelines replace the former international coproduction guidelines (the “Former Guidelines”) which Telefilm last updated on July 24, 2008. They provide Canadian coproducers with the information they require to apply for the certification of an international coproduction. In addition to revising the Guidelines, Telefilm updated the following related documents:

- [Frequently asked questions](#)
- [Application forms](#)
- [Affidavits](#)
- [Useful tools](#)

Three particularly noteworthy changes in the revised Guidelines are: (a) greater flexibility in third-party country personnel participation; (b) relaxing the eligibility criteria for projects originating from third-party countries; and (c) removing the 10% investment cap for third-party countries.

A. Greater flexibility in third-party country personnel participation

The revised Guidelines provide for greater flexibility in third-party country personnel participation. Under the Former Guidelines, the participation of personnel from a third-party country, such as performers, was only permitted in very particular circumstances and was subject to Telefilm’s approval. However, the new Guidelines have taken a more liberal approach. In addition to the same specific circumstances set out in the Former Guidelines which permitted the involvement of third-party country personnel, the Guidelines now also provide that approval for third-party country personnel participation “may be granted to applicants who can demonstrate to the satisfaction of both Telefilm and the coproducing country’s administrative authority that additional third-party country personnel participation is indispensable to the scenario, financing or commercial success of the project.”

B. Projects originating from third-party countries

Under the Former Guidelines, the “acquisition of rights pertaining to works originally conceived for purposes other than audiovisual production is allowed, regardless of country of origin...However, if the work was conceived for an audiovisual medium, it must come from one of the coproducing countries.” The revised Guidelines have once again taken a more flexible approach by establishing that a project previously conceived from a third-party country may now be eligible for certification if the coproducers can demonstrate that they have meaningfully developed and scripted the project since acquiring the underlying property.

C. Removal of 10% investment cap for third-party countries

The new Guidelines have also lifted the 10% investment cap for third-party countries. Under the Former Guidelines, “[t]hird-party country investors may claim no more than 10% of the Canadian share of net revenues generated outside of Canada by a certified coproduction.” In terms of what percentage of the profits can be provided to a third-party country investor, in its updated FAQ section Telefilm addresses this issue as follows:

My project is financed by a third-party country investor to the amount of 60% of

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the total production budget. How much of the profit may I give him?

The participation of third-party country investors is allowed. However, the portion of profit of the Canadian producer (after recovery of production costs) must at least be equivalent to the highest of the following amounts: either the minimum treaty participation, or the Canadian portion of the coproduction.

If you would like further information about Telefilm's revised International Coproduction Guidelines or have any questions with respect to the foregoing, please do

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