

Entertainment

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U.K. Releases New Co-Production Guidelines

On November 4, 2003 the U.K. Government launched a review of international film co-production treaties. The mandate for the review is to ensure that the U.K. is realizing cultural and economic benefits from the co-production system. The Department for Culture, Media and Sport (the "DCMS") and the U.K. Film Council will jointly carry out the review by examining the effectiveness of existing treaties and exploring the potential for new ones. The announcement of the review coincides with the release by the DCMS of the updated Guidelines on Film Co-Production (the "Guidelines"), available on the DCMS website at www.culture.gov.uk.

According to the DCMS, the revised Guidelines are an attempt to reduce alleged abuse of the treaty co-production system by co-producers who make minimal contributions to the U.K., but reap the advantages associated with co-production such as tax breaks. A film that is produced under the terms of a co-production treaty is considered national content in the country of each participating co-producer and may therefore be eligible for benefits and subsidies from each region. The U.K. is a particularly attractive region for film co-productions because of the financial savings that can result from a sale-and-leaseback arrangement. However, a production can only be structured as a sale-and-leaseback arrangement if it receives certification from the DCMS. The new Guidelines articulate the revised criteria international co-productions must meet to receive such certification.

Among the changes to the Guidelines is an increase in the minimum expenditure requirement for Canada/U.K. feature film co-productions. The Guidelines provide that a minimum of 40% of the film budget in any bilateral Canada/U.K. feature film co-production must be spent in the U.K. This is a significant increase over the existing 20% minimum spend requirement and is intended to create more jobs in the U.K. film industry. The minimum 20% spend requirement does, however, remain in place for television co-productions.

The expenditure requirement increase applies only to (what the DCMS refers to as) "film-making contributions", as opposed to financial and creative contributions which remain at 20%. For tripartite co-productions, the minimum film-making expenditure is reduced to 35%, and where there is a fourth co-producer, the requirement is 30%. The Guidelines further specify that a co-producer's "film-making contribution" is measured in part by reference to the percentage of the production budget spent on substantive film-making facilities in the U.K. and on U.K. personnel. The DCMS will not consider costs such as financing, licensing, marketing and insurance expenditures when it assesses the U.K. film-making contribution.

The decision to modify the minimum spending requirement for Canada/U.K. feature film co-productions was made following discussions between the DCMS and representatives of the Canadian film

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industry including Telefilm Canada, the Canadian Film and Television Production Association (the "CFTPA"), the Department of Canadian Heritage and the Canadian High Commission in London. The expenditure increase will be introduced on a temporary basis (subject to a bilateral review in early 2005), and will apply to feature film projects seeking advanced rulings from both Telefilm Canada and the DCMS on or after January 5, 2004. Feature films which commence principal photography prior to August 31, 2004 will not be subject to the increase, provided applications are received by the deadline and the production continues to comply with the minimum expenditure requirements.

Exceptions to the minimum 40% U.K. expenditure requirement may be granted where the DCMS is satisfied that the nature of the production itself prevents the minimum from being spent in the U.K., or where the production provides outstanding cultural and/or artistic benefits to both the U.K. and Canada. The CFTPA has issued an advisory to its members regarding the DCMS announcement.

Other noteworthy changes under the new Guidelines include:

- new format and deadline for applications (provisional applications must be submitted to the DCMS four weeks before principal photography begins);
- stricter requirements for auditor's reports;
- special provisions for deferred and contingent payments;
- qualification of animated films under any co-production treaty and under the European

Convention on Cinematographic Co-production;

- inclusion of travel and accommodation expenses in the budget of the country where the service is provided or the expense was incurred; and
- rejection of applications where more than 30% of the production budget is spent on third country involvement.

If you have any questions or need further information on the updated U.K. Film Co-Production Guidelines please contact the following members of the Goodmans Entertainment Group:

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