Hong Kong – Canada Film and TV Co-Production:

Partnering with Hong Kong and China; Accessing Canadian Incentives and "Co-Producing" with Canadians

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Goodmans LLP

- Offices in Toronto, Vancouver, Hong Kong
- Over 190 Lawyers
- 20 Lawyers practising in our Entertainment and Media departments
Hong Kong and Canada Memorandum of Understanding

- a Memorandum of Understanding was signed February 16, 2001 which replaced the original Memorandum of Understanding signed June 19, 1991 (the "MOU")

- the minimum participation for each country is 20% and any departure from this ratio needs to be approved by the competent authorities of both countries

- recently the Department of Canadian Heritage and the Special Administrative Region of Hong Kong agreed to temporarily suspend the MOU

- according to Canada Revenue Agency ("CRA"), projects co-produced under the MOU may not be eligible for the Tax Credits

- the MOU has been suspended until CRA gives a final opinion with regards to the eligibility of the Tax Credits and will ultimately need to be replaced by a treaty between Canada and Hong Kong
China and Canada Co-production Treaty

• the agreement between the Government of Canada and the Government of the People's Republic of China on Co-Productions of Films (the "Treaty") came into force on February 23, 1987

• the Treaty was designed "to promote cultural and economic co-operation between Canada and China and to stimulate efforts in film co-production between the two countries…”

• the minimum financial participation is 15% for each country
China and Canada Co-production Treaty (continued)

• 35 Chinese production companies may co-produce feature film with foreign partners

• projects with companies not listed will not be granted official co-production status under the Treaty

• for television co-production projects, Chinese producers should contact the State Administration of Radio, Film & Television to obtain approval to co-produce television projects with foreign partners prior to beginning production

• for a complete copy of the Treaty, please see the Telefilm website at www.telefilm.gc.ca
Co-Production Statistics with Hong Kong & China

• in 2001 - 2002, both China and Hong Kong were part of the top 5 treaty co-production countries supported by the Canadian Television Fund

  • 5 projects were done between China and Canada (35 hours)

  • 2 projects were done between Hong Kong and Canada (19.5 hours)
Co-Production Statistics with Hong Kong & China (continued)

• in 2003, according to the CFTPA, Hong Kong had become one of Canada's top ten overall co-production partners

• China and Canada co-production volumes were as follows:
  • in 2001, total production budgets for bi-partite co-productions between Canada and China were $40,906,450 and tri-partite co-productions between Canada, China and France were $13,489,594 and between Canada, China, and Singapore were $1,072,651
  • in 2002, total production budgets for bi-partite co-productions between Canada and China were $38,347,314
  • in 2003 total production budgets for bi-partite co-productions between Canada and China were $5,143,311
Co-Production Statistics with Hong Kong & China (continued)

- Prior to the suspension of the MOU, Hong Kong and Canada co-production volumes were as follows:
  
  - in 2001, total production budgets for bi-partite co-productions between Canada and Hong Kong were $10,848,171 and tri-partite co-productions between Canada, Hong Kong & France were $5,915,128
  
  - in 2002, total production budgets for tri-partite co-productions between Canada, Hong Kong & UK were $10,201,300
  
  - in 2003 - total production budgets for bi-partite co-productions between Canada and Hong Kong were $21,750,000 and tri-partite co-productions between Canada, Hong Kong and the United Kingdom were $21,016,515
Types of Canadian Production Incentives

• Refundable Tax Credits
  • Canadian-Content
  • Production Services

• Canadian Radio-Television and Telecommunications Commission ("CRTC") Canadian-Content
  • garner higher license fees

• Direct Federal Funding
  • e.g. Canada Feature Film Fund
  • e.g. Canadian Television Fund

• Private Sector Assistance
  • e.g. The Harold Greenberg Fund
  • e.g. Rogers Telefund
Four Forms of Production in Canada

• Canadian owned and controlled
• International treaty co-productions
• CRTC co-ventures
• Foreign-controlled
Canadian Owned and Controlled Productions

Benefits Available:

- Canadian-Content Tax Credits
- Canadian Broadcast Sale
- Direct Government and Private Assistance
Canadian Content Tax Credits
What Are They?

• Administered by the Canadian Audio-Visual Certification Office (“CAVCO”) and the Canada Customs and Revenue Agency (“CCRA”)

• Refundable tax credit equal to 25% of eligible labour expenditures
  • Eligible labour expenditures may not exceed 60% of total cost of production
  • Therefore, credit can provide producers with up to 15% of total cost

• In addition, the provinces of Ontario, Quebec and British Columbia also offer refundable Canadian-content tax credits
Canadian Content Tax Credits
Certain Key Requirements:

• For Canadian tax purposes, the production must qualify as a “Canadian film or video production” as certified by CAVCO

• Production company must be “Canadian-controlled” in law and in fact as determined under the Investment Canada Act

• The individual credit as producer of the production must be a citizen or permanent resident of Canada

• The production company must own copyright for a minimum period of 25 years

• The production must be distributed in Canada by a “Canadian-controlled” company
Canadian Content Tax Credits
Live Action Points Test

• To be eligible for credit, production must earn a minimum of six points based on key personnel qualifying as “Canadian”:

- Director 2 points
- Screenwriter 2 points
- Highest Paid Actor 1 point
- Second Highest Paid Actor 1 point
- Art Director 1 point
- Director of Photography 1 point
- Music Composer 1 point
- Picture Editor 1 point
Canadian Content Tax Credits
Live Action Points Test

In addition…

• Producer must be Canadian

• Either director or screenwriter must be Canadian

• Either highest paid or second highest paid actor must be Canadian
Canadian Content Tax Credits
Live Action Points Test

Who is “Canadian”? 

• Canadian citizen
• Permanent resident
• Corporation that is “Canadian-controlled” in law and in fact as determined under the Investment Canada Act
Canadian Content Tax Credits
Animation Points Test

To be eligible for credit, production must earn a minimum of six points based on key personnel qualifying as “Canadian”:

- Director 1 point
- Screenwriter and Storyboard Supervisor 1 point
- Highest or Second Highest Paid Lead Voice 1 point
- Design Supervisor 1 point
- Camera Operator 1 point
- Music Composer 1 point
- Picture Editor 1 point
- Layout and Background (performed in Canada) 1 point
- Key Animation (performed in Canada) 1 point
- Assistant Animation and In-betweening (performed in Canada) 1 point
Canadian Content Tax Credits
Animation Points Test

In addition…

• Producer must be Canadian
• Either director or screenwriter and storyboard supervisor must be Canadian
• Lead voice must be Canadian
• Key animation must be done in Canada
Canadian Content Tax Credits
75% Expenditure Tests

• 75% of remuneration for all costs paid or payable for services provided in respect of producing (other than post-production work) must be paid to, or in respect of services provided by Canadians

• 75% of all costs incurred for processing, post-production and final preparation of the production must be incurred in respect of services provided in Canada
Canadian Content Tax Credits
Producer Control Guidelines:

• Canadian producer must have control over the financial and creative elements of the production
• Restrictions on granting of screen credits to non-Canadians
• Foreign executive producers must swear and file CAVCO affidavits
• Indicators of non-Canadian control include:
  • Takeover rights (but security documents are okay)
  • Evidence that 75% or more of total budget is financed by a single non-Canadian entity
  • Non-Canadian has distribution rights in both USA and an economically significant portion of the world (outside North America)
International Treaty Co-productions
What Are They?

• Canada is party to 56 treaties in effect in 54 countries (excluding the United States)

• Treaties administered by competent government authorities in treaty countries (e.g. Telefilm in Canada, DCMS in England)

• U.S. producers may take indirect advantage
International Treaty Co-productions

Benefits:

• International treaty co-productions are eligible for:
  • Canadian-Content Tax Credits (tax credit prorated based on Canadian producer’s interest in production)
  • CRTC Canadian Broadcast Sale
  • Direct government financing
  • Foreign financing (e.g. UK sale lease-back)
International Treaty Co-productions
Certain Key Requirements:

• Non-Canadian producer must be located in treaty country
• Canadian producer must be Canadian-owned and controlled
• Creative and technical personnel must meet residency/citizenship requirements of treaty countries
• Limited participation by personnel from third party countries
International Treaty Co-productions
Certain Key Requirements:

- Minimum financing contribution is generally 20% of total production costs (40% for U.K. co-productions)
- Copyright in production must be owned by co-producers in proportion to their financial contributions
- U.S. broadcaster/distributor may not own copyright in production, but may distribute production outside of co-producers’ territories
CRTC Co-Ventures
What Are They?

• Co-venture between non-Canadian (including American) and Canadian producers

• Qualify as “Canadian content” for purposes of CRTC broadcast sale

• Qualify for production services tax credits, but not Canadian-content tax credits
CRTC Co-Ventures
Benefits:

• Easier to sell in Canada

• Garner higher broadcast license fees

• Non-Canadian producers can be openly involved in the production process
CRTC Co-Ventures
Certain Key Requirements:

• Canadian producer must have equal measure of decision-making responsibility over all creative elements

• Canadian producer must retain 50% financial participation and a 50% share of the profits

• Foreign co-producer can own 100% of copyright
CRTC Co-Ventures
Certain Key Requirements:

• In the case of a US/Canadian co-venture:
  • production must obtain at least six CRTC “creative points”
  • 75% expenditure tests must be met

• The bar is lower for non-US/Canadian co-productions:
  • production must obtain at least five CRTC “creative points”
  • 50% expenditure tests must be met
Production Services Tax Credits
What Are They?

• Refundable tax credit to encourage foreign producers to film in Canada

• Based on cost of qualifying Canadian labour expenditures for services rendered by Canadian in Canada (“eligible labour costs”)

• Administered by CAVCO and CCRA
Production Services Tax Credits Benefits:

- U.S. producer can have complete control over the production and its exploitation
- Federal tax credit equal to 16% of eligible labour costs
- Provincial tax credit equal to 11% of eligible labour costs if production produced in Ontario, Quebec or British Columbia
- Higher provincial tax credits if production is produced in lesser-populated provinces of Canada (i.e. Nova Scotia (30% of eligible labour costs), Saskatchewan (35% of eligible labour costs), Alberta (20% of total production costs), Manitoba (35% of eligible labour costs))
Other Incentives:

• Additional provincial tax credits:
  • Regional and training bonuses

• Tax shelters
  • Eliminated by the Federal government in 2001