



India No.2 (2008)

Film Co-Production Agreement

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

New Delhi, 5 December 2005

[The Agreement is not in force]

Annex to the Agreement signed New Delhi, 12 May 2008

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 2008*

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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 INDIA**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India (“hereinafter called 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 their increased public availability; and

Noting on the basis of mutual cooperation, the Agreement is intended to produce benefits for both parties.

Have agreed as follows:

ARTICLE 1

Definitions

(1) In this Agreement:

“Approved Co-production” means a co-produced film which has Approved Co-Production status in accordance with Article 2;

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

“Competent Authority” means a government department or other body as shall be nominated by the respective Party in each country to make decisions on applications for the grant of Approved Co-production status;

“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 for which there is an expectation for theatrical release and public exhibition.

“Indian Co-producer” means a co-producer who is established and/or incorporated in India; and

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

(2) References to film-making contribution benefiting the UK or India 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) Subject to Article 2(2) the Annex forms an integral part of this Agreement. Any reference to this Agreement includes the Annex.

ARTICLE 2

Approved co-production status

(1) The Competent Authorities may grant approved co-production status to a film which provides appropriate film-making and cultural benefits to the UK and India; and meets the requirements set out in this Agreement.

(2) The Parties shall jointly arrive at, through a subsequent exchange of notes, a mutually agreed Annex to this Agreement. The Annex shall include requirements as to:

- (a) the appropriate film-making and cultural benefits to the UK and India;
- (b) the nature of co-producers;
- (c) the minimum and maximum financial contributions of co-producers;
- (d) film making contributions of co-producers;
- (e) content, language, credits, locations and personnel; and
- (f) any other matters that the Parties consider desirable.

- (3) The Annex shall also include rules of procedures on:
 - (a) the granting of approvals of an application for Approved Co-production status;
 - (b) the withdrawal of Approved Co-production status;
 - (c) any other matters that the Parties consider desirable.
- (4) The Annex shall include provision as to the criteria for measuring mutual benefits.
- (5) The Annex shall enter into force as soon as the Parties have notified each other of the completion of their respective legal and constitutional procedures.
- (6) In determining an application made to it, a Competent Authority shall apply these requirements in accordance with guidance published by the Competent Authority under this Article.
- (7) 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 and interpretation of this Agreement.
- (8) 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.
- (9) Nothing in this Agreement binds the relevant authorities in the UK or India to permit the public exhibition of a film, which has been granted Approved Co-production status.

ARTICLE 3

Benefits

- (1) This Article applies in relation to any film which has Approved Co-production status under this Agreement.
- (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 India, 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.

(4) 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.

(5) 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 Indian 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 India the director of the film is most closely associated with.

ARTICLE 4

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 no more than 18 months before the date on which the Agreement enters into force, 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 requisite approval for Approved Co-production status under Article 2.

- (b) its principal photography commenced before the date on which the Agreement ceases to have effect, and
- (c) production of the film is completed before the end of the period of twelve months commencing with the date on which the Agreement ceases to have effect.

ARTICLE 5

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 current state of the Agreement.
- (3) The Parties may, at any time through an exchange of mutually agreed 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 legal and constitutional procedures.

ARTICLE 6

International obligations

- (1) 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.

ARTICLE 7

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 legal and constitutional procedures.
- (2) Either Party may terminate this Agreement at any time by giving at least 6 months' prior 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.

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

Done in duplicate at New Delhi this Fifth Day of December 2005 in the English and the Hindi languages, both texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

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

For the Government of the Republic
of India:

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ANNEX

Section 1: Interpretation

1. In this Annex:
 - “Competent Authority” means, in relation to India, the Ministry of Information and Broadcasting; and, in relation to the United Kingdom, the Department for Culture, Media and Sport;
 - “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);
 - “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 an Indian Co-producer;
 - “Production Cost”, in relation to a co-production, means expenditure incurred for the purposes of making the film; and
 - “Third Party Co-producer” means a co-producer who is established in another State with which the UK or India has also entered into a co-production agreement.
2. 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.
3. A reference to an Article in this Annex is a reference to an Article of the Agreement. A reference to a paragraph or a Section in this Annex is a reference to a paragraph or a Section of the Annex.

Section 2: Appropriate film-making and cultural benefits

4. For the purposes of the Agreement, a film provides appropriate film-making and cultural benefits to the UK and India only if each Competent Authority is satisfied that:
 - a. the general requirements set out in Section 6 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.

5. The cultural benefits referred to in paragraph 4(b) shall be assessed by each Competent Authority in accordance with the guidance that may be published by each Competent Authority under Article 2(6).

Section 3: Approval

6. The Competent Authorities shall make decisions on applications for the grant of Approved Co-production status by any one or more co-producers of a film.
7. Approved Co-production status shall be granted under Article 2(1) only if:
 - a. an application in respect of a film is made to each of the Competent Authorities in accordance with the guidance published under Article 2(6).
 - b. both Competent Authorities agree to approve the application in accordance with paragraphs 8 to 13.
8. Approval shall be given:
 - a. only if the film provides appropriate film-making and cultural benefits to the UK and India, and
 - b. subject to such conditions as the Competent Authorities (acting jointly) consider appropriate.
9. For the purposes of eligibility for any benefits in fiscal treatment available in the UK and India, a film shall be treated as having Approved Co-production status only if:
 - a. the film is completed,
 - b. the Competent Authorities have agreed to give the film approval, and
 - c. that approval has not been withdrawn under Section 4.
10. For all other purposes a film shall be treated as having Approved Co-production status if approval has been given and that approval has not been withdrawn.
11. 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.
12. The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

Section 4: Withdrawal of Approved Co-production status

13. 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 paragraph 8(b) by the Competent Authorities have not been complied with,
- c. the film does not provide appropriate film-making and cultural benefits to the UK and India.

Section 5: Balance and temporary additional requirements

14. In connection with the making of films which have Approved Co-production status under the Agreement, the Parties shall maintain a general balance of the film-making contributions benefiting the UK and India.
15. If a Party considers that there is (or is a risk of) imbalance in film-making contributions the Parties may agree to take such measures as they consider necessary to restore balance.

Section 6: Approved Co-production status: General Requirements

Co-productions which have no finance-only contributions

Co-producers

16. The co-producers shall include at least one UK Co-producer and at least one Indian Co-producer.
17. Unless the Competent Authorities agree otherwise, the maximum number of co-producers for a film shall be four.
18. 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).
19. Unless the Competent Authorities agree otherwise, each co-producer shall have offices and staff in the country in which the co-producer is established.
20. 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.
21. 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.
22. 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).
23. Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall meet all the requirements of paragraphs 18 to 22.
24. Notwithstanding anything contained in the Agreement, neither the Parties nor the Competent Authorities make any representation, warranty or endorsement in relation to any co-producer and they shall in no way be liable in any manner whatsoever for any loss, damage or expense resulting from the making of any co-production.

Financial contributions

25. 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 (including payments in kind) of the UK Co-producer or Co-producers (taken together);
 - b. the total financial contributions (including payments in kind) of the Indian Co-producer or Co-producers (taken together);
- shall not be less than 20% and not more than 80% of the total production cost.
26. Subject to paragraph 27, 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 Indian 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.
27. 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 26(a), (b) or (c), but subject to a new minimum limit of 10%.

Film-making contributions

28. Unless the Competent Authorities agree otherwise, the film-making contribution benefiting a country shall be approximately in proportion to the financial contribution (including payments in kind) of the Party Co-producer (or Co-producers) established in that country.
29. 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 or an EEA State,
 - b. India, or
 - c. where there is a Third Party Co-producer, the State in which that Co-producer is established.

Rights, revenues, receipts etc

30. The rights, revenues and prizes arising in connection with the co-production shall be shared between the Party Co-Producers in a manner that shall be agreed between the Party Co-producers.

Film content

31. Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specially shot for that film.
32. The film shall not advocate violence, be of a blatantly pornographic nature or openly offend human dignity.

Language of the film

33. 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 UK, or any language or dialect of India 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 any language or dialect of India (if the original version is not already in that language).
34. But nothing in paragraph 33 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

35. The film shall be credited on screen and in publicity either:
- a. as an Indian/UK co-production or a UK/India co-production, or
 - b. where a co-production has one or more Third Party Co-producers or Non-Party Co-producers, as a UK/India/third party/non-party co-production.

Where the film is made

36. Unless the Competent Authorities agree otherwise:
- a. all work on the co-production prior to completion (including studio and post-production work) shall be carried out in the countries in which the Party Co-producers or Third Party Co-producers are established, and
 - b. the Party Co-producers and any Third Party Co-producer shall jointly decide the proportion of work on the co-production that shall be carried out in India, the UK or the country in which any Third Party Co-producer is established.

Personnel

37. 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 or an EEA State,
 - b. India, or
 - c. where there is a Third Party Co-producer, the State in which that Co-producer is established.

Conditions of work

38. 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.

39. 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 38.

Co-production contract

40. The co-production contracts between the co-producers shall:
- a. specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;
 - b. set out the steps to be taken where a co-producer fails to fulfil its commitments under the contract;
 - c. make provision for any overage or underspend, 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;
 - d. 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 2,
 - 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;
 - e. make provision about the respective copyright entitlements of the co-producers;
 - f. make provision for the distribution of the rights and revenues arising in connection with the co-production;
 - g. 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;
 - h. 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
 - i. 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;
- j. and any other provision that the Competent Authorities consider desirable.

Co-productions with finance-only contributions

- 41. For the purposes of paragraph 4(a), a co-production which does not (and is not expected to) meet the requirement of paragraph 28 may nevertheless be treated by the Competent Authorities as meeting the requirements set out in this Part if:
 - a. all the other requirements of paragraphs 16 to 40, and
 - b. the following three conditions,are (or are expected to be) met.
- 42. The first condition is that the co-production includes one or more minority contributions from one or more co-producers which are limited to finance only.
- 43. The second 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.
- 44. The third condition is that the co-production has a majority Party Co-producer who makes a film-making contribution.

Section 7: Dispute Resolution

- 45. Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled consensually through consultation and negotiation.



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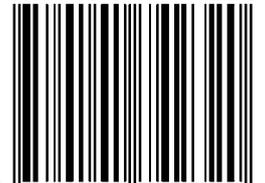
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