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## GUIDELINES ON FILM CO-PRODUCTION

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## 1. INTRODUCTION

- 1.1 The UK Government has entered into a number of international treaties intended to encourage UK film producers to work with producers from other countries on joint projects. DCMS is the UK “competent authority” which administers these treaties, and receives applications to qualify film productions as an official co-production.
- 1.2 These guidelines explain the qualifying and application procedure. They are not a substitute for the relevant treaty and should be read in conjunction with the relevant treaty. They replace the previous DCMS guidance on co-production. It is, for the most part, a statement of existing practice.
- 1.3 There are, however, changes in respect of:
  - the film-making contribution in relation to co-production with Canada, Denmark, France, Iceland and Italy (paragraphs 3.28-3.30);
  - the termination of the UK-Italy treaty (paragraph 4.15);
  - Frequently Asked Questions have been added (para 8.1 and following).
- 1.4 Co-producers should note in particular the DCMS approach to decision-making. DCMS will enforce the rules of all treaties rigorously. Where DCMS believes an application fails to meet the requirements of a treaty, the applicant will be informed that we are minded to reject the application, and given the opportunity to make the case for an exception, or amend the structure of the production. DCMS will then make a final decision, and will not engage in negotiation.
- 1.5 DCMS will consult the UK Film Council for advice on specific technical issues to help it come to decisions on applications. The UK Film Council

is particularly interested in encouraging film co-production, and will advise co-producers on their co-productions. The Northern Ireland Film Commission, Scottish Screen and Sgrin Media Agency for Wales can also provide advice on filming.

- 1.6 To contact the DCMS Film Certification Section send an email to: [filmcertification@culture.gov.uk](mailto:filmcertification@culture.gov.uk) Co-producers should seek independent advice on how to structure their co-production.

## 2 CO-PRODUCTION TREATIES

- 2.1 The UK Government has agreed 7 bilateral treaties, pursuant to which films may be made as “official co-productions”. The UK has agreed such treaties with: Australia; Canada; France; Germany; Italy; New Zealand and Norway.
- 2.2 Guidelines governing these bilateral treaties follow in chapter 3, with specific points covered in chapter 4.
- 2.3 The UK has also ratified the European Convention on Cinematographic Co-Production. This treaty is intended to encourage multi-lateral film co-productions between 3 or more signatory countries, but also allows for bilateral co-productions where no bi-lateral treaty exists.
- 2.4 The following countries have also ratified the Convention: Austria; Azerbaijan; Bulgaria; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Iceland; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; the Netherlands; Poland; Portugal; Romania; Russia; Serbia and Montenegro; Slovakia; Slovenia; Spain; Sweden; Switzerland; and the Former Yugoslav Republic of Macedonia.
- 2.5 Guidelines on the Convention follow in chapter 5.

2.6 Applicants should also read the relevant treaty, including the Explanatory Report in relation to the Convention, to ensure they comply with all requirements.

2.7 A production which qualifies under any of the above treaties may be eligible for the benefits available to national films in both the UK and the other co-producing countries concerned.<sup>1</sup> However, a certificate from DCMS does not, in itself, guarantee tax relief in the UK. HM Revenue & Customs can undertake its own enquiries to assess eligibility for the tax relief.

### **3 GUIDELINES FOR ALL BILATERAL TREATIES**

3.1 All the bilateral treaties contain the same broad requirements:

- two or more co-producers, each representing a co-producing country, are required to pool their finance and film-making resources;
- co-productions should be made for the most part using film-making facilities and personnel from countries which are party to the treaty.

3.2 A co-production is usually made in accordance with the requirements of one treaty. Co-producers may use two treaties together to link co-producers from more than two countries which are signatories to those treaties, although the requirements of both treaties must be met. The number of co-producers that can be involved in a multi-lateral co-production is limited by the requirement that each co-producer should contribute a minimum financial and film-making contribution.

#### **The UK co-producer under a bilateral treaty**

3.3 The UK co-producer must be either:

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<sup>1</sup> In the UK, a film intended for theatrical release in a commercial cinema and which qualifies under either the bilateral treaties or the European Convention on Cinematographic Co-production, may be entitled to fiscal benefits on application to HM Revenue & Customs. Further details of such benefits are available on HMRC's website – 'Business Income Manual' ref BIM 56,000

- a person ordinarily resident in the UK or another EU/EEA member state; or
  - a company, registered (with Companies House) in the UK, or in another EU/EEA member state, and whose central management and control of business is exercised in the UK or another EU/EEA member state.
- 3.4 DCMS considers that a UK co-producer based in the UK meets the general aims of the treaties in this regard. There should be no common management and control of the different co-producers. DCMS requires that co-producers should be involved throughout all stages of the co-production, including planning and decision-making. DCMS expects the UK co-producer to have a track record in film or television production. In exceptional cases DCMS may accept a first time producer as the UK co-producer, provided it can show it has adequate support throughout the making of the film from an experienced producer or executive producer established in the UK.
- 3.5 DCMS expects the UK co-producer to receive rights and revenues from a co-production commensurate with his financial contribution to the co-production.
- 3.6 DCMS will allow the UK co-producer to be a 'special purpose company', and set up specifically for the making of the co-production, but the above rules apply.

### **Financial contributions**

- 3.7 Each co-producer is required to contribute a share of the finance required for the co-production. Each treaty sets a minimum and maximum

financial contribution. DCMS expects the financial contribution of the UK co-producer to be channelled through the bank account of the UK co-producer, and the cost of the UK film-making contribution should be deducted from that bank account.

- 3.8 Co-producers should normally have separate sources of finance. In some cases, one co-producer may provide finance to another co-producer. Where co-producers share a common source of finance from a third party, and this is paid into a single production account, the finance must be apportioned to the co-producers in accordance with the co-producers' contract. The financial contributions must meet the requirements of minimum and maximum contributions in the treaty concerned.
- 3.9 National benefits may only be counted as part of the financial contribution of the co-producer in whose country they are available.
- 3.10 Bank loans to a production should be counted as a financial contribution of the co-producer responsible for repaying those loans. This is the case even when the repayment of the loan is contingent on revenues from the future exploitation of the film. When co-producers are jointly responsible for loan repayment and share revenues in a specified proportion, that proportion should be used to allocate the loan to the co-producers as part of their financial contributions.
- 3.11 "Equity" is solely defined as finance in the form of a cash investment in a production. Loans, and the provision of services in exchange for a recoupment position, should not be referred to as equity.
- 3.12 Where payment from production funds to a recipient is reinvested back into the same production, DCMS must be notified in the application form. Such funding must only be counted in the finance plan on the occasion of its first receipt. Subsequent reinvestment of the money into the production must not be counted as additional finance.

- 3.13 DCMS requires that deferred payments should only be included in finance plans where such payments are guaranteed at a future date. The inclusion of such payments has no bearing on their eligibility for tax relief in the UK (see HM Revenue & Customs 'Business Income Manual' ref BIM 56,000). Contingent payments (ie payments dependent on the level of revenues/profits achieved) must not be included in finance plans. The DCMS application form shows how to treat these payments.
- 3.14 The treaties with France and Italy allow co-producers to contribute 'finance only' to a co-production where the co-producer is not in a position to make the required film-making contribution. See relevant sections in chapter 4.

#### **Film-making contribution**

- 3.15 Applicants should check the requirements in chapter 4, and in the treaty itself, regarding respective film-making contributions. They should also check paragraphs 3.28-3.30.
- 3.16 Co-productions should be made for the most part in the co-producing countries. The major part of the film-making work should normally be carried out in the country of the co-producer making the major financial contribution. The proportion of the production budget to be spent on film-making facilities and personnel of each co-producing country should be in reasonable proportion to the financial contribution of that country's co-producer.
- 3.17 DCMS measures the film-making contribution of the UK co-producer in part by reference to the percentage of the production budget spent on substantive film-making facilities in the UK and on UK personnel, such as locations, studios, goods, services, cast and crew. DCMS expects the UK film-making contribution – facilities and personnel - to be engaged in key aspects of the film-making process. A contribution which is focussed on minor aspects of the film-making process, and involves only a handful of UK personnel, is likely to be rejected.

- 3.18 DCMS expects the budget of a film to contain the actual costs of the production, and be directly related to the production. For example, DCMS does not expect costs relating to other films to be included in a film budget. A cost containing a 'profit element' is only acceptable where the cost is directly related to services provided and there is a genuine arms length relationship between the producer of the film and those providing the service.
- 3.19 DCMS expects costs to be reasonable remuneration for services or facilities provided to the production. Where DCMS identifies unusually high costs we will ask for additional evidence that they are the actual costs incurred and directly related to the production. For example, where DCMS is concerned that producer fees are unusually high, we will require evidence that the payment has been made and the producer services have been provided in relation to those payments. If the evidence is not available or not convincing DCMS may disregard the entire cost of that service or facility provided in assessing the application, or substitute a lower cost figure which would appear to be reasonable in respect of the service provided. In such cases, DCMS will remove that cost from the budget figure printed on the Certificate of British Nature of a Film. Where the cost to be disregarded is material to the question of whether a film qualifies or not, DCMS will reject the application entirely.
- 3.20 Where fees to all producers on a film (including executive producer fees & overheads of producer/executive producer) are in excess of 10% of the production expenditure of the film, then DCMS will automatically ask for additional evidence that they are the actual costs incurred and directly related to the production. For this calculation, production expenditure is the sum of parts A+B+C+D in the DCMS application form, less fees to all producers.
- 3.21 DCMS expects business overheads to be included in the budget of a film only where they are directly related to the film production concerned. Where work on one film is undertaken in an office handling a number of

films, then the cost attributed to one film should be clearly identified. Where a flat 'business overhead' fee is attributed to a film budget, and DCMS is concerned at the size of the fee, DCMS will ask for additional evidence that they are the actual costs and directly related to the production. If the evidence is not available or not convincing DCMS may disregard the entire cost in assessing the application, or substitute a lower cost figure which would appear to be reasonable. In such cases, DCMS will remove that cost from the budget figure printed on the Certificate of British Nature of a Film.

3.22 The above approach to unusually high costs is for the purpose of the DCMS analysis of the co-production application. It does not prevent those providing services and facilities from charging whatever costs they choose to the production.

3.23 DCMS will consider the following costs - and others listed in the DCMS application form – of minor relevance when it assesses the UK's film-making contribution:

- acquisition/licensing costs (eg rights to pre-existing material);
- business overheads;
- marketing costs;
- trade association fees;
- delivery costs;
- financing costs;
- insurance and completion bond.

3.24 The cost of film-making activity should be allocated in the budget to the country from which the facility is physically sourced, ie the cost of a studio facility in the UK should be included in the UK spend, regardless of which co-producer pays for it. Also, invoicing the cost through a company in another country does not change the allocation of that film-making contribution from where the facility was sourced.

- 3.25 Accommodation expenses, including *per diem* expenses, should be included in the budget of the country where the service is provided or the expense was incurred. The cost of a flight should be included as a cost of the country you fly to, and the cost of the return flight should be included as a cost of the country you return to.
- 3.26 DCMS requires that deferred payments should only be included in the summary of expenditure where such payments are guaranteed at a future date. The inclusion of such payments has no bearing on their eligibility for tax relief in the UK. The DCMS application form shows how to treat: contingent payments; facilities for equity deals; and fees re-invested back into the same production. None of these may be included in the summary of expenditure.
- 3.27 Production activity (eg filming) on the Isle of Man and the Channel Islands does not count as part of the UK film-making contribution, and should be counted as third country spend, except as specifically stated in paragraph 3.38.

#### **Imbalance in co-production relations**

- 3.28 DCMS has identified a significant and ongoing imbalance in co-production relations under the following treaties –

UK/Canada

UK/France

UK/Italy

European Convention on Cinematographic Co-production in relation to -  
Italy

Denmark

Iceland

- 3.29 The above treaties require that there be a balance in the respective contributions of each co-producing country to co-productions over a

period of time. Consequently, with regard to the film-making contribution on a bilateral co-production, UK co-producers are required to ensure at least 40% spend on UK film-making facilities and personnel. In these circumstances, any UK co-producer who plans to spend less than 40% on UK film-making facilities and personnel can expect their application to be refused. Where there is a third co-producer, UK co-producers will be required to ensure at least 35% spend on UK film-making facilities and personnel. Where there is a fourth or more co-producers UK co-producers will be required to ensure at least 30% spend on UK film-making facilities and personnel. Where there is location filming in a third country and/or spend on personnel from third countries, under any of the above scenarios the film-making contributions from the co-producing countries should be reduced pro rata, ie in proportion with their film-making contribution, but UK co-producers will be required to ensure at least 30% spend on UK film-making facilities and personnel, even when there are three or more co-producers.

3.30 i) The above requirement applies as follows:

- to applications involving the UK/Canada treaty submitted on or after 5 January 2004 and starting principal photography before 1<sup>st</sup> April 2006; and
- to applications in the other categories submitted on or after 1<sup>st</sup> July 2004 and starting principal photography before 1<sup>st</sup> April 2006.
- Exceptions to the 40/35/30% contributions in the above paragraph may be granted where DCMS is satisfied that the nature of the production itself prevents the minimums being spent in the UK, and the production provides outstanding cultural and/or artistic benefits to both the UK and the other country(s) concerned.

ii) The above requirement will not affect applications starting principal photography on or after 1<sup>st</sup> April 2006 which will be assessed on the basis of the current minimum financial and film-making contribution.

iii) Television co-productions, where allowed under any of the above treaties, remain unaffected by the above requirement. The UK co-producer can contribute the minimum financial and film-making contribution specified in the treaty.

### **Personnel under a bilateral treaty**

- 3.31 It is important to read chapter 4, and the treaty itself, for specific advice on personnel.
- 3.32 Personnel working on a film fall into one of four categories for the purpose of measuring film-making contributions:
- UK personnel;
  - personnel from the other co-producing country;
  - EU/EEA personnel from outside the co-producing countries;
  - personnel from other countries.
- 3.33 To qualify as UK personnel, and fill any role on a production, the persons should be:
- nationals of the UK who are resident in the UK or a third country. However, DCMS believes that the use of a significant number of UK nationals who are ordinarily resident in third countries, and counted as part of the UK contribution, is not within the treaty's general aim of benefiting the film-making industry in the UK, and would jeopardise qualification. DCMS expects nationals of the UK who are ordinarily resident in another co-producing country to be counted as part of the film-making contribution of their country of residence; and

- anyone who is ordinarily resident in the UK. This includes nationals of other EU/EEA countries and nationals from other countries where they are ordinarily resident in the UK.
- 3.34 EU/EEA nationals or residents from outside the co-producing countries can take part in any role on a film - artistic/creative, performing and technical. However, they should be counted as a separate category ("other EU/EEA personnel"), rather than part of the contribution of the UK, unless ordinarily resident in the UK. The number of EU/EEA nationals or residents from outside the co-producing countries should not be so many that they cause the film-making contribution of the UK co-producer to fall out of reasonable proportion with his financial contribution.
- 3.35 Personnel who are nationals of other countries (non-co-producing and non-EU/EEA countries), and who are not ordinarily resident in the UK, the EU/EEA or another co-producing country, can only take part in roles specifically allowed for by the treaty being used, and should be counted as another separate category ("third country personnel").
- 3.36 Subject to the proviso in paragraph 3.33 which expects a significant use of UK residents, the following persons qualify as UK personnel:
- British citizens, British Overseas citizens, British Dependent Territories citizens, British Nationals (Overseas), British subjects and British protected persons.
  - Commonwealth citizens under the German and Norway treaties (they count as third country personnel under the other treaties).
  - nationals of the Isle of Man and Channel Islands.
- 3.37 DCMS may ask co-producers to provide evidence that personnel qualify as UK personnel for the purpose of measuring the UK film-making contribution. Auditors can be expected to request evidence from the co-producers of the nationality and country of residence of all personnel.

### Third country involvement under a bilateral treaty

- 3.38 Co-productions should be made in the co-producing countries party to the treaty concerned. Any other countries, including non-co-producing countries within the EU/EEA, are known as 'third countries'. (N.B. "other EU/EEA personnel" are treated differently and should be counted as a separate category from "third country personnel" as explained in paragraphs 3.34 and 3.35).
- 3.39 Location filming in a third country is permitted where necessary for the purpose of making the film. However, this exception should not be assumed by producers. It is subject to the approval of both competent authorities acting jointly. Filming on location should not involve the construction of sets. The use of personnel from a location country is also permitted, but only on the basis that they are essential for the location work to be undertaken. (N.B. This restriction does not apply to EU/EEA personnel from non-co-producing countries, who can take part in any role on a film).
- 3.40 Personnel who are nationals of other countries (non-co-producing, non-EU/EEA, non-location filming), and who are not ordinarily resident in the UK, the EU/EEA or another co-producing country, can only take part in roles specifically allowed for by the treaty being used.
- 3.41 Where there is spend on third country goods and personnel, and on EU/EEA personnel from non-co-producing countries, DCMS expects the spend on co-producing countries to be reduced *pro-rata*, ie in proportion with the financial contribution of each co-producer. The UK co-producer should ensure the spend on UK film-making does not fall below the minimum required by the treaty concerned.
- 3.42 Animation films can qualify under any co-production treaty. However, the treaties do not allow work on animation films in third countries (any non co-producing countries) e.g. to reduce costs, and DCMS does not permit this under any bilateral treaty.

3.43 DCMS will refuse an application where more than 30% of the production budget (excluding spend on EU/EEA personnel from non-co-producing countries) is spent on third country involvement.

#### 4 INDIVIDUAL BILATERAL TREATIES

##### Germany

4.1 **Making of co-production:** co-production films shall be made, processed and dubbed in the United Kingdom and/or Germany. There is no provision for a co-producer from a third country. Dubbing into languages other than English and German may be carried out in the country of the language concerned. The competent authorities shall approve location filming in a country other than the countries of the participating co-producers when such shooting is essential to the script.

4.2 **Nationality of participants:** individuals taking part in the making of a co-production shall be nationals or residents of Britain, Germany or another Member State. Also, see paragraph 3.36. Leading artistes and directors from other countries may be approved by competent authorities. Where competent authorities have approved location filming in a country other than the country of a participating co-producer, nationals or residents of that country may be employed as crowd artists or as additional employees whose services are necessary for the location work to be undertaken.

4.3 **Contribution of co-producers:** the artistic, technical and craft contributions of the German and British co-producers shall be in reasonable proportion to their financial participation. The share of the co-producer with the minority financial participation shall amount to at least 30% of the costs of producing the film, although DCMS would not object where the German competent authority allows the German co-producer to contribute less than 30%, but not less than 20%.

- 4.4 The UK intends to end the bilateral co-production treaty with Germany by 31 December 2006. Thereafter UK-Germany co-productions would be assessed under the European Convention.

## France

- 4.5 **Making of co-production:** co-production films shall be made, processed, dubbed and sound recorded in the United Kingdom and/or France and/or the country of any third co-producer. Dubbing into languages other than English and French may be carried out in the country concerned. The majority of the work of making (studio and location shooting), processing, dubbing and sound-recording shall normally be carried out in the country of the co-producer which has made the major financial participation. The competent authorities can approve location filming in a third country.
- 4.6 **Nationality of participants:** individuals taking part in the making of a co-production film shall be nationals or residents of the United Kingdom, France, another Member State, or citizens of the country of any third co-producer. As an exception, nationals or residents of other countries may take part as leading artists or principal directors subject to the approval of the competent authorities. Where competent authorities have approved location filming in a third country, nationals or residents of that country may be employed as crowd artists or as additional employees supernumerary to the normal categories of employment, subject to the approval of the competent authorities acting jointly. Nationals of the co-producing countries should count towards the film-making contribution of the country in which they are ordinarily resident.
- 4.7 **Contribution of co-producers:** a co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, France and any third co-producer. The France co-

producer and any third co-producer shall be required to make an effective technical and creative contribution which shall generally be in proportion to their financial contribution. See paragraphs 3.28-3.30 with regard to the film-making contribution of the UK co-producer.

- 4.8 **'Financial only' contribution:** the participation of a minority co-producer may be financial only, provided: the minority co-producer is not in a position to make the required artistic and technical contribution; the minority co-producer's financial participation shall not be less than 20% nor above 30% of the production cost; and the co-production contracts include provisions on the distribution of earnings.

#### **Australia**

- 4.9 **Making of co-production:** co-production films shall be made and processed up to the creation of the first release print in the UK, Australia or the country of a third co-producer. The majority of this work shall normally be carried out in the country of the co-producer which has made the major financial participation. Competent authorities can approve location filming in a country other than the countries of the participating co-producers.
- 4.10 **Nationality of participants:** individuals participating in the making of co-production films shall be nationals or residents of Australia, the UK, another Member State, or citizens of the country of a third co-producer. In exceptional circumstances, where script or financing dictates, performers from other countries may be engaged. Where competent authorities have approved location filming in a country other than the country of a participating co-producer, citizens of that country may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.
- 4.11 **Contribution of co-producers:** the performing, technical and craft contribution of each co-producer to a co-production film shall be in reasonable proportion to each co-producer's financial participation. In

any event, each co-producer shall have a financial and creative contribution of not less than 30% of the total financial and creative contribution for the co-production film.

## **Canada**

- 4.12 **Making of co-production:** co-production films shall be made, processed, post synchronised and mixed up to the creation of the first release print in the United Kingdom and/or Canada and/or country of any third co-producer. The majority of the work of making a co-production film, including studio and location shooting, processing and dubbing on the sound track, shall, subject to any departure from this rule which is approved by the competent authorities, be carried out in the country of the co-producer which has made the major financial participation. The competent authorities can approve location filming in a country other than the countries of the participating co-producers.
- 4.13 **Nationality of participants:** individuals taking part in the making of a co-production film shall be nationals or residents of the United Kingdom, Canada, another Member State, or citizens of the country of a third co-producer. As an exception, nationals or residents of other countries may take part as leading performers in leading roles subject to the approval of the competent authorities. Where competent authorities have approved location filming in a country other than the country of a participating co-producer, nationals or residents of that country may be employed as additional employees whose services are necessary for the location work to be undertaken. The participation of nationals or residents of the United Kingdom, Canada, another Member State, or citizens of the country of a third co-producer, shall be in reasonable proportion to each co-producer's financial participation. Nationals of the co-producing countries should count towards the film-making contribution of the co-producing country in which they are ordinarily resident.
- 4.14 **Contribution of co-producers:** a co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this

applies to the UK, Canadian and third co-producer. The Canadian co-producer and any third co-producer shall be required to make an effective technical and creative contribution which shall generally be in proportion to their financial contribution. See paragraphs 3.28-3.30 with regard to the film-making contribution of the UK co-producer on cinema films.

## Italy

- 4.15 The UK-Italy treaty was terminated on 2 May 2006. Films using this treaty will be unaffected if they both:
- a) have already received provisional approval before this date but are completed after this date, *and*
  - b) meet the requirements to receive final approval as an official co-production.
- Any provisional applications received on or after 3 May 2006 for UK-Italy co-productions must be assessed under the European Convention.
  - Any provisional applications under the UK-Italy treaty that did not have provisional approval by 2<sup>nd</sup> May 2006 must be treated as applications for approval under the European Convention instead.
- 4.16 **Making of co-production:** co-production films shall be made, processed and dubbed up to the creation of the first release print in the countries of the participating co-producers. Co-productions should be recorded in English, Gaelic, Welsh, Italian, another language indigenous to Italy or the country of the third co-producer, and passages of dialogue in other languages if this is required by the script. Post-release print dubbing into other languages may be carried out in third countries. The majority of the work of making the co-production, including studio and location shooting, post-production including processing and pre-release print dubbing, shall be carried out in the country of the majority co-producer, subject to any departure from this rule agreed by the competent authorities. The work should be divided equally in the event of equal financial contributions, subject to any departure from this rule agreed by the competent authorities. The competent authorities may approve

location filming in a country other than the countries of the participating co-producers.

- 4.17 **Nationality of participants:** individuals participating in the making of co-production films shall be nationals or residents of UK, Italy, another member state, or nationals or residents from the country of a third co-producer. In exceptional circumstances where script or financing dictates, the competent authorities may jointly approve principal directors or performers from other countries. Where location filming has been approved nationals or residents of that country may be employed where their services are necessary for the location work to be undertaken.
- 4.18 **Contribution of co-producers:** a co-producer's financial contribution to a bi-lateral co-production film shall be at least 20% of the total budget, or 10% in a multi-lateral co-production. The Italy co-producer and any third co-producer shall be required to make an effective technical and creative contribution which shall generally be in proportion to their financial contribution. See paragraphs 3.28-3.30 with regard to the film-making contribution of the UK co-producer.
- 4.19 **'Financial only' contribution:** the participation of a minority co-producer may be financial only provided: the minority co-producer is not in a position to make a non-financial contribution; the co-production will promote European cinematography; in the case of a bilateral co-production, the minority co-producers contribute between 20-25% of total production cost (but competent authorities may lower this to 10% in case of higher budget films); and in the case of multilateral co-productions, the minority co-producers contribute between 10-25% of total production cost, and the contribution of third co-producer does not exceed that of the UK or Italian co-producers making both a financial and non-financial contribution.

## **New Zealand**

- 4.20 **Making of co-production:** co-production films shall be made, processed and dubbed, up to the creation of the first release print, in the countries of the participating co-producers. Post-release print dubbing into languages other than Maori, English, Gaelic, and Welsh may be carried out in third countries and all versions of the film may contain passages of dialogue in other languages if required by the script. The majority of the work of making the co-production, including studio and location shooting, post-production including processing and pre-release print dubbing, shall be carried out in the country of the majority co-producer, subject to any departure from this rule agreed by the competent authorities. The competent authorities may jointly approve location filming in countries other than those participating in the co-production.
- 4.21 **Nationality of participants:** individuals participating in the making of co-productions shall be nationals or residents of UK or New Zealand, another member state, or citizens of the country of a third co-producer. In exceptional circumstances where script or financing dictates, the competent authorities may jointly approve performers from other countries. Where location filming has been approved, nationals or residents of that country may be employed where their services are necessary for the location work to be undertaken.
- 4.22 **Contribution of co-producers:** the performing, technical and craft contribution of each co-producer should be in reasonable proportion to each of the co-producers' financial contributions. Each co-producer shall have a financial and creative contribution of not less than 20% of the total financial and creative contribution for the co-production film, subject to any departure from this rule agreed by the competent authorities.

#### **Norway**

- 4.23 **Making of co-production:** co-production films shall be made, processed and completed in the countries of the participating co-producers. There is no provision for a co-producer from a third country. Dubbing into

languages other than English and Norwegian may be carried out in third countries and all versions of the film may contain passages of dialogue in other languages if required by the script. The majority of the work of preparation, making (including studio and location shooting), processing and completion shall normally be carried out in the country of the majority co-producer, subject to any departure from this rule agreed by the competent authorities. The competent authorities may jointly approve location filming in countries other than those participating in the co-production.

4.24 **Nationality of participants:** individuals participating in the making of co-productions shall be nationals or residents of UK, Norway, or another member state. Also, see paragraph 3.36. In exceptional circumstances, nationals or residents of third countries may take part as leading performers in leading roles, subject to the approval of the competent authorities. Where location filming has been approved, nationals or residents of that country may be employed as crowd artistes or as additional employees whose services are necessary for the location work to be undertaken.

4.25 **Contribution of co-producers:** the share of costs borne by the co-producer from one country shall not be less than 20%. The performing, technical and craft contributions of the British and Norwegian co-producers to a co-production film shall be in reasonable proportion to their financial participation.

4.26 The UK intends to end the bilateral co-production treaty with Norway by 24 May 2007.

## 5 GUIDELINES ON THE EUROPEAN CONVENTION

5.1 The European Convention on Cinematographic Co-production is intended to encourage co-produced films with a European identity which involve:

- three or more co-producers established in three or more countries which are party to the Convention;
- three or more co-producers in three or more countries which are party to the Convention, and one or more co-producers which are not established in such parties. The total contribution of the co-producers not established in parties to the Convention should not exceed 30% of the total cost of the production;
- two co-producers established in two countries which are party to the Convention where no bilateral treaty exists between those parties.

### **The UK Co-producer under the European Convention**

- 5.2 The UK co-producer should be a producer or a production company established in the UK, eg with an office and staff in the UK. In the case of a company, DCMS expects the UK co-producer to be registered with Companies House, managed and controlled in the UK and have Directors meetings taking place in the UK. Companies existing in name only ('letterbox' companies) do not qualify as a co-producer.
- 5.3 DCMS expects the UK co-producer to have a track record in film or television production. In exceptional cases DCMS may accept a first time producer as the UK co-producer provided it can show it has adequate support throughout the making of the film from an experienced producer or executive producer established in the UK.
- 5.4 DCMS expects the UK co-producer to receive rights and revenues from a co-production commensurate with his financial contribution to the co-production.
- 5.5 DCMS will allow the UK co-producer to be a 'special purpose company' set up specifically for the making of the co-production, but the above rules apply.
- 5.6 In addition to meeting the requirements of the Convention, in multi-lateral co-productions where any of the co-producers are from countries

which are party to a bi-lateral co-production treaty, the provisions of the bi-lateral co-production treaty should also be applied so far as they are consistent with the Convention. Where any conflict arises, the Convention takes precedence, and accordingly its provisions must be applied on those specific points of inconsistency. Provisions in bilateral treaties which go beyond the Convention still apply.

### **Financial contributions under the European Convention**

- 5.7 Each co-producer is required to contribute a share of the finance required for the co-production. In the case of a multi-lateral co-production this may not be less than 10% or more than 70%. Where the Convention is used for a bi-lateral co-production this may not be less than 20% or more than 80%.
- 5.8 See paragraphs 3.7 to 3.13 for guidelines on financial contributions.
- 5.9 Competent authorities may allow one or more minority co-producers to make solely financial contributions to a co-production, particularly where there is a need to maintain an artistic coherence or a particular cultural identity. In such cases, the financial only co-producer is not expected to participate in the making of the film. There is no requirement for filming to take place in the country represented by the financial only co-producer and there is no requirement for production spend on facilities and personnel from that country, although the other co-producers may obtain services from that country if they wish to. However, before exercising its discretion DCMS requires strong evidence that a UK co-producer contemplating a finance-only contribution is not in a position to make the corresponding film-making contribution. Approval of the involvement of a financial only co-producer is also dependent on there being a broad balance over time in the financial and film-making contributions of the countries involved in the co-production. Also, contracts should provide for the sharing of income between all the co-producers.

## **Film-making contribution under the European Convention**

- 5.10 The Convention expects each co-producing country to make an effective technical and artistic contribution to the film. DCMS expects the film-making contribution of the UK co-producer to be in proportion with his financial contribution.
- 5.11 See paragraphs 3.16 to 3.27 for guidelines on the film-making contribution. In relation to co-productions involving Denmark, Iceland and Italy see paragraphs 3.28-3.30.
- 5.12 Appendix II of the Convention awards points to key roles where they are held by European personnel. Points are also awarded for a European studio or location shooting, and for post-production. A co-production, both bi-lateral and multilateral, needs to gain at least 15 out of 19 points to qualify as a co-production under the Convention. Competent authorities may grant co-production status to a film with less than 15 points if they consider that the work nonetheless reflects a European identity and meets the general aims of the Convention. See paragraph 6.16 for guidelines on the DCMS approach to decision-making where the 15-19 points rule is not met.

## **Personnel under the European Convention**

- 5.13 See paragraphs 3.32 to 3.37 for general guidelines on personnel under the Convention. (NB. DCMS has, in the past, required artistic personnel to be, for the most part, nationals of the co-producing countries involved in a co-production. Not including residents with nationals was inconsistent with our rules relating to the bi-lateral co-production treaties. The bi-lateral treaties state that personnel must be either nationals or residents of the co-producing countries. DCMS no longer requires artistic personnel to be, for the most part, nationals of the co-producing countries, but rather nationals and/or residents of the co-producing countries.)

- 5.14 Personnel who are nationals of other countries (non-co-producing and non-EU/EEA countries), and who are not ordinarily resident in the UK or another co-producing country, can take part. They should be counted as third country personnel. However, producers need to meet the 15 point minimum (see paragraphs 5.12 and 6.16) and meet the requirement at paragraph 5.10 in relation to the film-making contribution, and the requirement at paragraph 5.15 below.
- 5.15 The technical and craft team cannot include non EU/EEA nationals from non-co-producing countries, unless: DCMS accepts that the script requires their use; or they are legally established/ordinarily resident in a co-producing country in which latter case they can be counted as part of that country's contribution. Despite the rules of the Convention, DCMS may allow nationals from non-co-producing countries outside the EU/EEA to be part of the technical and craft team in exceptional circumstances and where the co-production otherwise satisfies the general aims of the Convention, and the other competent authority(s) also approve an exception.
- 5.16 Subject to the last sentence above, DCMS expects technical and craft personnel to qualify as personnel (nationals and/or ordinarily resident) from co-producing countries – especially Line Producer, Accountant, Production Manager, Director of Photography, Camera Operator, First Assistant Director, Second Assistant Director, Sound Recordist, Editor, Production Designer, Set Decorator, Art Director, Costume Designer, Principal Make-up, Principal Hair, Continuity, Stills Photographer, Visual Effects Producer, Special Effects Supervisor, Stunt Co-ordinator, Gaffer, Key Grip, Best Boy. This is not an exhaustive list. This applies even when filming on location in a third country.
- 5.17 Subject to the proviso in paragraph 3.33 which expects a significant use of UK residents, the following persons qualify as UK personnel:

- British citizens, British Overseas citizens, British Dependent Territories citizens, British Nationals (Overseas), British subjects and British protected persons.
  - nationals of the Isle of Man and Channel Islands.
- 5.18 Commonwealth citizens should be counted as personnel from a third country.
- 5.19 DCMS may ask co-producers to provide evidence that personnel qualify as UK personnel for the purpose of measuring the British film-making contribution. Auditors can be expected to request evidence from the co-producers of the nationality and country of residence of all cast and crew.

#### **Third country involvement under the European Convention**

- 5.20 The Convention permits the involvement of co-producers from countries which are not parties to the Convention provided that the total contribution of such co-producers does not exceed 30% of the total cost of the production. This limit includes the cost of location filming in a third country and of personnel from third countries (N.B. EU/EEA personnel from non-co-producing countries are treated as a separate category and excluded from this restriction). Filming on location should not involve the construction of sets.
- 5.21 Where there is spend on third country goods, services and personnel, and on EU/EEA personnel from non-co-producing countries, DCMS expects the spend on co-producing countries to be reduced *pro-rata*, ie in proportion with the financial contribution of each co-producer. The UK co-producer should ensure the spend on UK film-making does not fall below the minimum required by the Convention.
- 5.22 Animation films can qualify under the Convention. However, the Convention does not allow the use of animators and animation staff who are not EU/EEA nationals or not from a co-producing country, and therefore DCMS does not permit this under the Convention.

## **6 THE APPROVAL PROCESS**

- 6.1 DCMS decides jointly with the other relevant competent authority(s) if an application conforms with the provisions of a treaty.
- 6.2 Where DCMS believes an application fails to meet the requirements of a treaty, the applicant will be informed that we are minded to reject the application, and given the opportunity to comment or amend the structure of the production. DCMS will then make a final decision, and will not engage in negotiation.
- 6.3 Applicants should not assume that DCMS will exercise its discretion on the basis of previous decisions. Each production is different. DCMS assesses each application on its own merits.
- 6.4 The submission of a final application requires a statutory declaration. DCMS will refuse or withdraw co-production status where false or misleading information is supplied as part of an application, and will work with HM Revenue & Customs and Excise, the Crown Prosecution Service and the police on prosecutions, as appropriate.
- 6.5 There is a two-stage application process, outlined below.

### **Provisional application**

- 6.6 A provisional application must be submitted by each co-producer to the relevant competent authority within the time-limit prescribed in the treaty. DCMS expects to receive applications 6-8 weeks before the start of principal photography. Any application which arrives later than 4 weeks (28 days) before the start of principal photography can expect to be rejected.

- 6.7 If the application is substantially incomplete it will be rejected. If it is partially incomplete DCMS will notify the applicant and the outstanding information will need to be supplied before the 4 week deadline. If there are omissions in the application which hide a failure to meet treaty rules, for example a failure to mention some excluded personnel, the application will be rejected.
- 6.8 If DCMS is satisfied with the content of an application and accepts that the filming plans conform with the requirements of the treaty in question it will inform the applicant. DCMS does not issue a “provisional certificate”.
- 6.9 Any significant changes to the use of film-making facilities or the involvement of personnel from that anticipated in the provisional application are liable to result in final approval being denied to a project. If such changes are deemed necessary and can be proved to be unavoidable, they must be notified to DCMS and the other relevant competent authority(s) as soon as possible. Failure to so advise DCMS will result in the withdrawal of provisional approval or the withholding of final approval.

### **Final application**

- 6.10 This is submitted after completion of the film when it is ready for public exhibition. The application at this stage, accompanied by a production cost statement from an auditor, confirms whether the co-production has been made in accordance with the filming plans approved by the competent authorities at the provisional approval stage. If this is the case, DCMS issues a Certificate of British Nature of a Film.

### **Auditor's report**

- 6.11 The UK Co-producer must obtain an auditor's report from an auditor independent of the co-producers to accompany the final application. Auditors who are unsure of appropriate format for their report should

consult DCMS. A firm of auditors' which provides to an applicant: production accounting functions; or advice or services on the structure of their co-production, or on any issues concerning their applications, would not be considered by DCMS to be an independent auditor. Auditors can undertake preparatory work for their audit, and give guidance on general accounting principles. The auditor's report must not be completed before the film is finished, and must include:

- the total production cost;
- confirmation that the amount and provenance of financial contributions as reported by the applicant is correct and meets the minimum requirements of the relevant treaty. This requires confirmation of the identity of all parties providing finance to the co-producer; the types of finance provided; the amounts in each case; the date by which the finance has been or will be provided to the production; and what the financiers are entitled to in return for their finance;
- the spend on film-making contributions, ie spend on facilities and personnel of each of the co-producing countries, and labour cost spend on EU/EEA personnel from outside the co-producing countries, and spend on goods, services and personnel from third countries;
- deferred payments which are guaranteed;
- non-cash arrangements (eg contingent payments; facilities for equity deals; fees re-invested back into the same production); and
- a schedule of any estimated costs; and
- a schedule of non-estimated accruals.

6.12 DCMS expects auditors to examine copies of passports and other evidence of nationality and country of residence, contracts, bank

statements, profit and loss accounts, invoices and vouchers, and any other relevant documents. Where DCMS repeatedly receives information from an auditor which is not clear or is inaccurate, DCMS will notify UK co-producers that reports from that auditor will no longer be acceptable.

- 6.13 DCMS will undertake any checks it considers necessary to confirm that it has received the correct and complete information it needs to make a decision on an application. Applicants should ensure that they answer all questions from DCMS accurately and fully to avoid their application being rejected.

#### **DCMS decision-making under the bi-lateral treaties**

- 6.14 DCMS will approve a co-production which meets all the requirements of a treaty. Where a co-production requires DCMS to exercise a discretion (which a treaty specifically provides for), in order to qualify, for example in relation to the use of third country personnel, DCMS will usually exercise any discretions where at least 40% of the production budget is to be spent on UK film-making facilities and personnel – making no exceptions for third country costs or the costs of other EU/EEA personnel. If UK spend is anticipated to be under 30% DCMS is unlikely to exercise its discretion to derogate from treaty requirements. For example, DCMS is unlikely to agree to the use of third country personnel where only 29% of the budget is to be spent on UK facilities and personnel.
- 6.15 DCMS will not break the fundamental rules of treaties. For example, the Convention requires both an artistic and technical contribution from each co-producing country, and the absence of either would cause an application to fail. DCMS will consider minor breaches of rules where applying the rule rigorously would be inconsistent with the realities of film-making and would be legalistic and counterproductive to the aims of the treaty. Also, minor breaches will only be considered where DCMS is entirely satisfied with the level of the UK film-making contribution.

#### **DCMS decision-making under the European Convention**

6.16 A co-production needs to obtain at least 15 out of 19 points as defined in appendix II of the Convention. See paragraph 5.12. Competent authorities may nevertheless grant co-production status to a film with less than 15 points, if they consider that the work nonetheless reflects a European identity and the project satisfies the general aims of the Convention. DCMS will take a number of factors into account when assessing European identity:

- DCMS expects co-productions to be filmed in Europe, with a story of European nature, and using European nationals.
- DCMS will consider the film-making contribution. Where at least 40% of the production budget is to be spent on the UK film-making facilities and personnel – making no exceptions for third country costs or other EU/EEA nationals - DCMS will accept that the film-making contribution supports the case for a European identity.
- Co-productions should comply with the requirements of paragraphs 5.15, 5.16 and 5.20, which DCMS will apply strictly.

## 7 RECORD OF CHANGES TO DCMS CO-PRODUCTION GUIDELINES

Previously announced changes are recorded below.

Changes with effect for applications for 'provisional' approval received by DCMS on or after 5 January 2004:

- deferred and contingent payments
- travel and accommodation expenses
- the treatment of EU/EEA personnel when assessing the film-making contribution
- animation work
- spend outside the co-producing countries
- minimum film-making contribution in UK/Canada co-production
- the treatment, under the European Convention, of nationals from other countries where they are ordinarily resident in the UK
- the format of the application. Also, the application must arrive in DCMS at least 4 weeks before principal photography. Late or incomplete applications will be rejected
- eligibility of auditors, and auditor's reports
- DCMS decision-making

Changes with effect for applications for 'provisional' approval received by DCMS on or after 1 July 2004:

- the film-making contribution in relation to co-production with Denmark, France, Iceland and Italy (paragraphs 3.28-3.30)

Changes with effect for applications for 'provisional' approval received by DCMS on or after 1 January 2005:

- financial contribution
- production expenditure on a film
- invoicing

## **8 FREQUENTLY ASKED QUESTIONS**

### **8.1 When will the new co-production treaties come into force?**

Keep an eye on our website for current information.

### **8.2 Will I still have to apply for provisional and final co-production status after April 2006 when using the new treaties?**

Yes, the procedures for co-production applications are entirely unchanged.

### **8.3 Will the 'Cultural Test' apply to Co-productions, if so when?**

We are awaiting a formal response from the European Commission on the State aid applications for both lottery grants and the new tax relief, both of which depend on films passing the cultural test. We anticipate, however, that the Commission will not require films made under the Convention to pass the cultural test in addition to the terms of the Convention itself. We are in the process of renegotiating all existing bilateral treaties and will ensure that they will contain new conditions equivalent to the cultural test wherever necessary.

### **8.4 Will the 'Cultural Test' apply to the European Convention on Cinematographic Co-production?**

We are awaiting a formal response from the European Commission on the State aid applications for both lottery grants and the new tax relief, both of which depend on films passing the cultural test. We anticipate, however, that the Commission will not require films made under the Convention to pass the cultural test in addition to the terms of the Convention itself.

### **8.5 Will the 'Cultural Test' apply to the new co-production treaties?**

We are awaiting a formal response from the European Commission on the State aid applications for both lottery grants and the new tax relief, both of which depend on films passing the cultural test. We anticipate, however, that the Commission will not require films made under the Convention to pass the cultural test in addition to the terms of the Convention itself. We are in the process of negotiating new bilateral treaties and will ensure that they will contain new conditions equivalent to the cultural test wherever necessary.