

Treaty Series No. 9 (1992)

Protocol

**between the Government of
the United Kingdom of Great Britain and Northern Ireland
and the Government of Canada**

**Amending the Films Co-production Agreement,
done at London on 12 September 1975 as amended
on 9 July 1985**

Done at Ottawa on 5 July 1991

[The Protocol entered into force on 27 September 1991]

*Presented To Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1992*

LONDON: HMSO

PROTOCOL
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF CANADA
AMENDING THE FILMS CO-PRODUCTION AGREEMENT,
DONE AT LONDON ON 12 SEPTEMBER 1975
AS AMENDED ON 9 JULY 1985

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada,

Desiring to amend the Films Co-production Agreement between the United Kingdom of Great Britain and Northern Ireland and Canada, done at London on 12 September 1975,¹ as amended on 9 July 1985,² (hereinafter referred to as the "Agreement");

Desiring to amend Articles 1 and 2 of the Agreement to allow for third party participation in film co-production and for twinned productions to be considered as official co-productions;

Desiring to amend Article 6 of the Agreement to increase the period of time for the convening of a meeting of the Mixed Commission from one month to six months;

Desiring to amend the Annex to the Agreement by modifying paragraph 5 to reduce the minimum financial participation from thirty per cent to twenty per cent;

Desiring to have the agreement reflect current definitions and legislative requirements in both their territories, including recent European Community Directives affecting the United Kingdom;

Have agreed as follows:

ARTICLE I

Article 1 of the Agreement shall be amended to read as follows:

"For the purposes of this Agreement:

- (1) "film" means a work which is, or is treated as, a film both for the purposes of the relevant legislation in the United Kingdom and for the purposes of the relevant Canadian legislation, rules and regulations in force and effect in Canada;
- (2) "co-production film" means a film made in accordance with the terms of an approval given under Article 3 of this Agreement by the competent authorities of each Contracting party acting jointly; and in the case of a twinned co-production film means both films;

¹ Treaty Series No. 8 (1976). Cmnd. 6380

² Treaty Series No. 50 (1986). Cmnd. 9887

- (3) (a) a “two-party co-production film” means a film which has been co-produced by a United Kingdom co-producer in conjunction with a Canadian co-producer;
- (b) a “three-party co-production film” means a film which has been co-produced by a United Kingdom co-producer in conjunction with a Canadian co-producer and a third producer;
- (b) “twinned co-production films” means two films, which together satisfy the following criteria:
 - (i) the production costs of both films have been borne jointly; and
 - (ii) in the case of one of the films the United Kingdom co-producer has predominantly exercised creative control and, in the case of the other film, the Canadian co-producer has predominantly exercised creative control;
- (4) “United Kingdom co-producer” means:
 - (a) one or more persons concerned in the production of a co-production film who fulfil all the conditions relating to status which would be required to be fulfilled, if such co-producer were the only maker, in order to satisfy the provisions of paragraph 4(2)(a) of Schedule 1 to the Films Act of 1985, as amended from time to time; and
 - (b) in relation to a twinned film, one or more persons concerned in the production, with a Canadian producer, of two films;
- (5) “Canadian co-producer” means:
 - (a) a Canadian national or resident concerned in the production of a co-production film with a good technical organisation, sound financial support and a recognised professional standing;
 - (b) in relation to a twinned film, a Canadian national or resident concerned in the production, with a United Kingdom producer, of two films;
- (6) “third co-producer” means an individual who is a national of or resident in, or a company or partnership which is formed under the laws of or resident in, a Member State or a Commonwealth country other than the parties to this Agreement or a country which has in force a co-production treaty with either of those parties and who:
 - (a) in the case of a producer from a country with which either the United Kingdom or Canada has a co-production treaty, complies with the terms relating to status of that co-production treaty; or
 - (b) in the case of a producer from other Member States and other Commonwealth countries, complies with the national requirements of his country relating to status;
- (7) “competent authorities” means the authorities designated by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada respectively;

(8) “Member State” means any country that, for the time being is a Member State of the European Economic Community;

(9) “nationals” means:

(a) in relation to the United Kingdom of Great Britain and Northern Ireland: British Citizens, British Subjects, British Overseas Citizens, British Dependent Territories Citizens, British Nationals Overseas and British Protected Persons;

(b) in relation to Canada: Canadian citizens;

(10) “person” means an individual, company or partnership;

(11) “residents” means:

(a) in relation to the United Kingdom of Great Britain and Northern Ireland or to another Member State: individuals who are ordinarily resident in the United Kingdom, or in that Member State;

(b) in relation to Canada: individuals who are permanent residents of Canada;

(c) in relation to any other country: individuals who are ordinarily resident in that country.”

ARTICLE II

Article 2 of the Agreement shall be amended to read as follows:

“The Contracting Parties shall ensure that a co-production film receives in the United Kingdom and Canada respectively the full enjoyment of all benefits which are at the relevant time accorded to national films in that country.”

ARTICLE III

Article 3 of the Agreement shall be amended to read as follows:

“(1) Approval may be given to the following types of co-production film:

(a) a two-party co-production;

(b) a three-party co-production;

(c) both (but not one only) films of a twinned co-production;

(2) for the purpose of this Agreement, in approving projects for co-production films, the competent authorities, acting jointly, shall apply for the rules set out in the Annex, which forms an integral part of this Agreement;

(3) the rules in Part 1 of the Annex shall be applied to two-party co-productions and three-party co-productions, and the rules in Part II to twinned co-production films.”

ARTICLE IV

Article 4 of the Agreement shall be amended to read as follows:

“Each of the Contracting Parties shall provide, in accordance with their respective legislation and regulations including, for the United Kingdom, relevant European Community legislation, temporary admission, free of import duties and taxes, of cinematographic equipment necessary for the making of co-production films.”

ARTICLE V

Article 5 of the Agreement shall be amended to read as follows:

“Each of the Contracting Parties shall permit the nationals or residents of the other Contracting Party and nationals or residents of a Member State and citizens of the country of any third co-producer to enter and remain in the United Kingdom, or Canada, as the case may be, for the purpose of making or exploiting a co-production film, subject only to the requirement that they comply with the laws and regulations relating to entry and residence.”

ARTICLE VI

Article 6 of the Agreement shall be amended to read as follows:

“There shall be a Mixed Commission composed of representatives of the Contracting Parties to supervise and review the working of the Agreement and, where necessary, to make proposals to the Contracting Parties for its modification. The Mixed Commission shall meet within six months of a request being made by either Contracting Party. Its meeting shall be held alternatively in the United Kingdom and Canada.”

ARTICLE VII

A new Article 7 shall be inserted as follows:

“The provisions of the present Agreement are without prejudice to the international obligations of the Contracting Parties, including, in relation to the United Kingdom, obligations devolving from European Community law.”

ARTICLE VIII

The existing Article 7, dealing with entry into force of the Agreement, shall be renumbered as Article VIII.

ARTICLE IX

The existing Article 8, dealing with termination of the Agreement, shall be renumbered as Article IX and be amended as follows: for the words “three months”, which appear twice in the text of the Article, shall be substituted the words “at least six months”.

ARTICLE X

The Annex to the Agreement shall be amended to read as follows:

“ PART I TWO-PARTY AND THREE-PARTY CO-PRODUCTION FILMS

(1) The competent authorities shall consult to enable them to ensure that a project conforms with the provisions of this Agreement. When approving a project for a co-production film, they may stipulate conditions of approval framed in order to achieve the general aims and objects of this Agreement.

(2) A co-production film shall be made within the terms of approval prescribed by the competent authorities. Only the United Kingdom co-producer shall be entitled under Article 2 to the benefits accorded to national films in the United Kingdom and only the Canadian co-producer shall be entitled under Article 2 to the benefits accorded to national films in Canada.

(3) The competent authorities shall satisfy themselves that conditions of work in the making of co-production films under this Agreement in the United Kingdom or Canada are in broad terms comparable. Conditions of work in the making of co-production films, including location shooting in a third country, shall be not less favourable than those under such broad terms.

(4) A co-producer of a film from one country shall not be linked by common management, or control with any co-producer of that film from any other country, save to the extent that it is inherent in the making of the co-production film itself. In exceptional circumstances, departures from this rule may be approved by the competent authorities.

(5) (a) A co-producer's financial contribution to the co-production film shall be at least 20 per cent (20%) of the total budget;

(b) both the United Kingdom and 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;

(c) the contributions of two or more co-producers from any one country shall be aggregated for this purpose.

(6) (a) Co-production films shall be made, processed, post synchronized and mixed up to the creation of the first release print in the United Kingdom and/or Canada, and/or, where there is a third co-producer, in his country. All versions of the film may contain passages of dialogue in languages other than English and French if this is required by the script. The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers;

(b) 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 contribution. The contributions of two or more co-producers from any one country shall be aggregated for this purpose.

- (7) (a) Individuals taking part in the making of a co-production film shall be nationals or residents of the United Kingdom, Canada, a Member State, or, where there is a third co-producer, citizens of his country. As an exception, nationals or residents of other countries may take part as leading performers in leading roles in a co-production film subject to the approval of the competent authorities;
- (b) where the competent authorities have, under the provisions of paragraph 6(a) of this Annex, approved location filming in a country other than that of the participating co-producers, nationals or residents of that country may be employed as additional employees whose services are necessary for the location work to be undertaken.
- (8) In the making of a co-production film, the participation of nationals or residents of the United Kingdom, Canada, other Member States, and of citizens of the country of any third co-producer, shall be in reasonable proportion to the financial contributions of the United Kingdom, the Canadian and third co-producer respectively. The contributions of two or more co-producers from any one country shall be aggregated for this purpose.
- (9) Any music specially composed for a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be composed, directed and performed by nationals or residents of the United Kingdom, Canada, another member State or, where there is a third co-producer, citizens of his country.
- (10) At least ninety per cent (90%) of the photographs included in a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot for that film.
- (11) The contracts between the co-producers shall:
- (a) provide that a sufficient number of copies of the final protection and reproduction material used in the production be made for all the co-producers. Each co-producer shall be the owner of a copy of the protection and reproduction material and shall be entitled to use it to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with the conditions agreed upon between the co-producers;
- (b) make provision regarding the respective copyright entitlements of the co-producers;
- (c) set out the financial liability of each co-producer for the costs incurred:
- (i) in preparing a project which is refused conditional approval as a co-production film by the competent authorities;
- (ii) in making a film which has been given such conditional approval and fails to comply with the conditions of such approval; or
- (iii) in making an approved co-production film, in respect of which permission for public exhibition is withheld in either the United Kingdom, Canada or

the country of the third co-producer;

- (d) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the film, including those from export markets;
- (e) specify the dates by which their respective contributions to the production of that film shall have been completed.

(12) Each co-production film shall include either a separate credit title indicating that the film is either a “United Kingdom-Canada” co-production, or a “Canada-United Kingdom” co-production, or where relevant, a credit which reflects the participation of the United Kingdom, Canada and the country of the third co-producer.

(13) Films made in accordance with an approved co-production project but completed after the termination of this Agreement shall be entitled to all the benefits conferred by Article 2 of this Agreement.

(14) Over each consecutive period of three years commencing on the date on which this Agreement enters into force, it shall be the intention of the Contracting Parties to achieve an overall balance as regards the contribution of each country to the production costs of all co-production films made under this Agreement, and as regards the usage of studios and laboratories; as regards the employment of all creative, craft and technical personnel, the balance shall be measured on a *per capita* basis.

(15) The approval of a project for a co-production film by the competent authorities shall not bind the authorities in either country to permit the public exhibition of the resulting film.

(16) Payments and financial transfers in connection with co-production films made under this Agreement shall be effected within the framework of existing agreements and regulations.

(17) The provisions of this Annex may from time to time be amended by the competent authorities, after consultations with the Mixed Commission, and any such provisions shall take effect as so amended when the required legal procedures have been completed.

PART II TWINNED CO-PRODUCTION FILM

(18) Paragraphs 1, 2, 4, 10, 11, 12, 13, 14, 15, 16 and 17 of Part I of the Annex shall apply.

(19) One film of a twinned co-production must satisfy all the conditions for it to be a British film under paragraphs 4(2) (b) and (c) of Schedule 1 to the Films Act 1985 as amended from time to time; and one film of a twinned co-production must satisfy all the conditions for it to be Canadian in accordance with the regulations either under the Income Tax Act (Canada) or pursuant to the authority of the Canadian Radio-Television and Telecommunications Commission (CRTC).

(20) The total production costs of each film must be approximately equal and there shall be an overall balance in the respective financial contributions made by the United Kingdom and Canadian co-producers. The contributions of two or more co-producers from one country shall be aggregated for this purpose.

(21) Twinned co-production films:

- (a) must belong to the same programme category and be of approximately similar length;
- (b) must belong to one of the following categories: performing arts, fiction, documentary or animated programmes; and
- (c) must be in production either simultaneously or consecutively, provided, in the latter case, that no more than six months shall elapse between the completion of the first twinned co-production and the commencement of the second such co-production.”

ARTICLE XI

Each of the Contracting Parties shall notify the other of the completion of any procedure required by its constitutional law for giving effect to this Protocol, which shall enter into force on the date of the latter of these notifications.¹

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

Done in duplicate at Ottawa this 5th day of July 1991 in the English and French languages, both texts being equally authoritative.

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

For the Government of Canada:

BRIAN FALL

PERRIN BEATTY

¹

The Protocol entered into force on 27 September 1991.