



TREATY SERIES 2013
N° 13

**Agreement between the Government of Ireland and the
Government of the Republic of South Africa Concerning the Co-
production of Films**

Done at Cannes on 20 May 2012

Notifications of the completion of the procedures necessary for the entry into force of this
Agreement exchanged on 17 September 2012 and 27 September 2012

Entered into force on 27 September 2012

Presented to Dáil Éireann by the Minister for Foreign Affairs and Trade

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING THE CO-PRODUCTION OF FILMS

Preamble

The Government of Ireland and the Government of the Republic of South Africa (jointly referred to as “the Parties” and separately as a “Party”);

Seeking to enhance cooperation between their two countries in the area of film;

Desirous of expanding and facilitating the co-production of films which may be conducive to the film industries of both countries and to the development of their cultural and economic exchanges;

Convinced that these exchanges will contribute to the enhancement of relations between the two countries;

HEREBY AGREE as follows:

Article 1 *Definitions*

For the purposes of this Agreement unless the context indicates otherwise:

“Competent Authority” means the authority designated as such in the Annex by each Party.

“co-producer” means one or more nationals of the Republic of South Africa or one or more nationals of Ireland involved in the making of a co-production film, or, in relation to Article 6 third country co-productions, nationals of the third country;

“co-production film” means a film made by one or more nationals of one Party in cooperation with one or more nationals of the other Party under a project approved jointly by the Competent Authorities, and includes a film to which Article 6 applies;

“film” means an aggregate of images, or of images and sounds, embodied in any material, and includes television and video recordings, animations and digital format productions;

“third party co-producer “ means any individual from another country 4 with which Ireland or the Republic of South Africa maintain a film and audiovisual co-production agreement as referred to under Article 6 (Third Country Co-productions);

“Nationals” mean:

- (a) In the case of Ireland,
 - (i) Irish residents;
 - (ii) citizens of Ireland;

- (iii) nationals of a Member State of the European Union; or
 - (iv) nationals of another Contracting State to the Agreement of 2 May 1992 regarding the European Economic Area (“the EEA Agreement”);
- (b) in the case of the Republic of South Africa,
 - (i) citizens of the Republic of South Africa; or
 - (ii) permanent residents of the Republic of South Africa.

Article 2

Objectives

The objectives of this Agreement shall be to ensure that an overall balance is achieved as regards:

- (a) the contribution of the nationals of each Party to the production costs of all films;
- (b) the usage of studios, post production facilities and laboratories of the two Parties;
- (c) the employment of nationals of the two Parties as creative, craft and technical personnel; and
- (d) the participation of nationals of the two Parties in each of the major creative, craft and technical categories and, in particular, that of the writer, director and lead cast.

Article 3

Recognition as a National Film and Entitlement to Benefits

(1) A co-production film shall be fully entitled to all the benefits which are or may be accorded to national films by each of the Parties under the domestic laws in force in their respective countries.

(2) Any benefits which may be granted by either Party in relation to a co-production film shall accrue to the co-producer who shall be permitted to claim those benefits in accordance with the domestic laws in force in the country of that Party, subject to any other relevant international obligations.

(3) Such subsidies, tax incentives or other financial benefits may not be assigned or disposed of except to or for the benefit of a legal entity or national of that co-producer’s country, or in the case of a third country co-production under Article 6 (Third Country Co-Productions), any individual or legal entity that falls within the relevant scope of the film or audiovisual agreement referred to in that Article.

(4) A film made in accordance with an approval by the Competent Authorities under this Agreement but completed after the termination of this Agreement shall be treated as a co-

production film and its co-producers shall accordingly be entitled to all the benefits of this Agreement.

Article 4 Approval of Projects

(1) Co-production films shall require joint approval of the Competent Authorities prior to the commencement of shooting. Approvals shall be in writing and shall specify the conditions upon which it is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself.

(2) In considering proposals for the making of a co-production film, the Competent Authorities, acting jointly and with due regard for their respective policies and guidelines, shall apply the rules set out in the Annex to this Agreement.

Article 5 Contributions

(1) For each co-production film:

- (a) the performing, technical, craft and creative participation of the co-producers; and
- (b) production expenditure in each of the co-producer's countries shall be in reasonable proportion to their respective financial contributions.

(2) Both the financial contribution, and the performing, technical, craft and creative participation of each co-producer shall account for at least 20% (twenty per cent) of the total effort in making the co-production film.

(3) Notwithstanding the contribution rules set out in sub-Article (1) and (2) of this Article, the Competent Authorities may, in exceptional cases jointly approve co-production projects where-

- (a) the contribution of one of the co-producers is limited to the provision of finance only, in which case approvals shall be limited to projects where the proposed finance-only contribution is no greater than 50% (fifty per cent) of the total costs of the film; and
- (b) the Competent Authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

Article 6 Third Country Co-Productions

(1) Where either of the Parties maintains a film co-production agreement with a third country, the Competent Authorities may approve a project for a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third country.

(2) Any third co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production agreement in force between that co-producer's country and either Ireland or the Republic of South Africa.

Article 7 Participation

(1) Persons participating in a co-production film shall be nationals of Ireland and of the Republic of South Africa and, where there is a third co-producer, nationals of the third co-producer's country.

(2) Subject to the approval of the Competent Authorities, where the script, creative concerns or financing dictates, restricted numbers of performers and/or technical personnel from other countries may be engaged.

Article 8 Making up to First-Release Print

(1) Co-production films shall be made and processed up to the manufacture of the first release print or digital master in the Republic of South Africa and/or in Ireland and/or, where there is a third co-producer, in that third co-producer's country.

(2) At least 90% (ninety per cent) of the footage included in a co-production film shall be specially shot or created for the film unless otherwise approved by the Competent Authorities.

Article 9 Location Filming

(1) The Competent Authorities may approve location filming in a country other than those of the participating co-producers.

(2) Notwithstanding Article 7, where location filming is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

Article 10 Soundtrack

(1) The original soundtrack of each co-production film shall be made in one of the official languages of either the Republic of South Africa or Ireland, or in any combination of those permitted languages.

(2) Narration, dubbing or subtitling in any commonly used language or dialect of the Republic of South Africa or Ireland shall be permitted.

(3) Post-release print dubbing into any other language may be carried out in third countries.

(4) The soundtrack may contain sections of dialogue in any language as required by the script.

Article 11
Acknowledgments and Credits

A co-production film and the promotional material associated with it shall include either a credit title indicating that the film is an “Official Ireland – Republic of South Africa Co-Production” or an “Official Republic of South Africa – Ireland Co-Production” or, where relevant, a credit which reflects the participation of Ireland, Republic of South Africa and the country of a third co-producer.

Article 12
Immigration Facilitation

Subject to meeting normal immigration requirements in force in the countries of the Parties, each of the Parties shall permit the nationals of the other country, and nationals of the country of any third co-producer approved under Article 6, to enter and remain in Ireland or the Republic of South Africa, as the case may be, for the purpose of making or promoting a co-production film.

Article 13
Import of Equipment

Each of the Parties shall provide, in accordance with the relevant domestic laws in force in their countries, temporary admission of cinematographic and technical equipment for the making of co-production films, subject to provision of security, until the equipment is exported.

Article 14
Taxation

Notwithstanding any other provision of this Agreement, for the purposes of taxation the domestic laws in force in each of the two countries shall apply subject to the provisions of the Convention between the Government of Ireland and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains done at Pretoria on 7 October, 1997.

Article 15
International Obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including Ireland’s obligations devolving from European Community Law.

Article 16
Mixed Commission

(1) There shall be a Mixed Commission composed of representatives of the Parties, including the Competent Authorities and where appropriate, industry representatives.

(2) The role of the Mixed Commission shall be to supervise and review the operation of this Agreement and to make any proposals considered necessary to improve the effective implementation of the Agreement.

(3) The Mixed Commission may be convened at the request of either of the Parties for the purposes of dispute resolution including any perceived imbalance between the Parties.

(4) The Mixed Commission shall be convened, whether by meeting or otherwise, at the request of either of the Parties within six months of such a request.

Article 17
Status of Annex

The Annex to this Agreement constitutes an implementing arrangement in respect of this Agreement and shall be read in conjunction with the provisions of this Agreement.

Article 18
Entry into Force

This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

Article 19
Amendment

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

Article 20
Settlement of Dispute

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiations between the Parties.

Article 21
Duration and Termination

1. This Agreement shall remain in force for a period of three (3) years whereafter it shall automatically be renewed for further periods of three (3) years. Either Party may terminate the Agreement at the conclusion of a three-year period by giving six (6) months' notice in writing through the diplomatic channel.

2. The termination of this Agreement by either Party shall not affect any co-production film approved by the Competent Authorities in terms of this Agreement, unless otherwise agreed by the Parties in writing, such co-production film shall continue until completed.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic.

DONE at Cannes this 20th day of May 2012.

FOR THE GOVERNMENT
OF IRELAND

FOR THE GOVERNMENT
OF THE REPUBLIC OF
SOUTH AFRICA

Jimmy Deenihan

Paul Mashatile

ANNEX

IMPLEMENTING ARRANGEMENT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING THE CO-PRODUCTION OF FILMS

1. The Competent Authorities for the Agreement between the Government of Ireland and the Government of the Republic of South Africa concerning the implementation of Co-Production of Films are the Irish Film Board in Ireland and the National Film and Video Foundation (NFVF) in the Republic of South Africa.
2. The approval process (in terms of Article 3 of the Agreement) will comprise two stages: Provisional Approval upon application, and final approval upon completion of the film and prior to distribution.
3. There shall be a contract between the co-producers governing the making of a co-production film which will:
 - (a) provide that a co-producer may not assign or dispose of benefits referred to in Article 3 except to or for the benefit of a national of that co-producer's country;
 - (b)
 - (i) assign, as between the co-producers, ownership of all intellectual property rights arising from the making of the co-production film; and
 - (ii) set out the arrangements between the co-producers regarding the exercise of rights of access to and use of copyright works created in the making of the co-production film;
 - (c) set out the financial liability of each co-producer for costs incurred:
 - in preparing a co-production project which is refused approval as a co-production film by the Competent Authorities;
 - in making a film which has been given such approval and fails to comply with the conditions of such approval;
 - in making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - (d) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the co-production film including those from export markets;
 - (e) specify dates by which the respective contributions of the co-producers to the production of the film shall have been completed;
 - (f) specify whether the co-production film shall be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers; and

- (g) specify any other conditions of approval that the Competent Authorities jointly agree.

4. It is the intention of the Competent Authorities to ensure that strict balance is maintained over time. Where issues of exceptional circumstances arise, the authorities will review previous activity in determining whether overall balance is being achieved prior to making a determination.