

Le Roux Film Production International

CO-PRODUCTIONS – EXECUTIVE SUMMARY

September 2014

The purpose of this document is to provide a high-level overview of official Treaty Co-Productions in South Africa. The areas covered are as follows:

- Introduction
- NFVF evaluation criteria
- The application process
- Summary of SA Co-Productions

Introduction

South Africa has official Co-Production Treaties in place with the United Kingdom, Ireland, Germany, France, Italy, Canada, Australia and New Zealand.

The treaties vary from country to country, but certain key criteria are pervasive:

The minimum financial contribution of each Co-Producer must be 20% of the film's total cost.

The Co-Producer's artistic / technical contribution, as well the Co-Producer's rights in the project, should be in proportion to its financial contribution.

No personnel other than nationals from the Co-production countries may participate without dispensation from the authorities.

It is permissible to introduce a Co-Producer from a country that has an existing treaty with one of the other Co-Producers.

It is permissible for one of the Co-Producers to provide a finance-only contribution, subject to certain restrictions.

The project must be credited as an official Co-Production and the individual Co-Producers should be credited as such.

The impact of official Co-Production certification is that the project becomes a national film of both countries and is entitled to the fiscal benefits available to such national films in each country.

Applications to NFVF must be made at least 30 days before shooting commences.

Please refer to Annexure A for a break-down / comparison of some of the Treaties.

It is important to note the SA/UK and SA/France Treaties specifically exclude non-theatrical projects, whereas the SA/Germany, SA/Italy, SA/Canada and SA/Australia Treaties allow all formats (e.g. TV, home video).

With respect to the SA/UK Treaty, we are currently lobbying for this Treaty to be amended to include all formats, in light of the forthcoming changes in UK tax relief legislation for certain television projects.

Moonlighting has to date produced seventeen official Co-Productions, utilizing the UK, Germany, Canada and France Co-Production treaties. Our partners include BBC, Company Television, Universal Germany, Working Title Television, Warner Bros Germany, Wall To Wall, Powercorp, Muse, Mascaret, Swift, EuropaCorp, H&V Entertainment, Optimum, Nutopia and Le Bureau. Moonlighting's "Skin" and "Skoonheid" were the first official South African co-productions with UK and France respectively.

NFVF evaluation criteria

The competent authority that assesses Co-Productions in South Africa is the National Film and Video Foundation ("NFVF"). When evaluating projects, the NFVF focuses on the following key areas:

1. The financial and legal structure;
2. The creative and technical contribution of South African nationals on the project; and
3. The level of non-treaty elements (i.e. involvement of personnel who are not nationals of either treaty countries).

NOTE:

The NFVF will soon change the basis for evaluating Co-Productions. It is expected that a Points System will be introduced, whereby a project will not be eligible for Co-Production status should it fail to achieve a minimum level of points. NFVF is currently consulting with the industry and we expect this Points System to be implemented within the next 6 months. In the interim period, projects are being evaluated under the existing framework.

1. The financial and legal structure

The key objective is to ensure that the financial structure (i.e. how the budget is financed between the Co-Producers) and the legal structure (i.e. how the rights in the project are dealt with under the Chain of Title, the Co-Production Agreement, and the Financing / Distribution agreements) comply with the requirements of the underlying Treaty.

Moonlighting has several tried-and-tested structures that have been successfully utilized under the Canada, UK, France and Germany Treaties.

2. The creative and technical contribution

This is a key area for the NFVF evaluation, and the NFVF places a lot of emphasis on whether there is a sufficient level of South African involvement at key levels.

The NFVF evaluates this by assessing the following groups:

TECHNICIANS

Main group

1. Director
2. Writer
3. DOP
4. Production Designer
5. Editor
6. Composer

Second group

1. Art Director
2. Post coordinator
3. Special effects / stunts coordinator
4. 1st AD
5. 2nd AD
6. 2nd Unit director / DOP

Third group

1. HOD's in all remaining departments.

CAST

1. Lead Cast
2. Supporting Cast

It is important that South Africans are represented at all levels above (and in proportion to the South African Co-Producer's % financial contribution), however NFVF may accept low SA representation in one area if this is compensated by strong SA representation in another area.

3. Non-treaty elements

The use of non-treaty personnel must be approved up-front. NFVF generally accepts three non-treaty participants however this is evaluated on a project-by-project basis and with regard to the motivating factors for each specific project.

The application process

The steps for application and certification are as follows:

1. Submit the application for Advance Ruling to the competent authorities.

This is done at the preliminary stage and must be submitted at least 30-days before the start of shoot.

The application contains the following key areas:

- a. The Co-Production Agreement (can be in draft form).
- b. The Financing and Distribution agreement (can be in draft form).
- c. The agreements evidencing chain of title (can be in draft form).
- d. The Budget and Schedule.
- e. The Finance Plan (which must indicate what % of the budget is being raised by each Co-Producer).
- f. The spend by country (whereby the minimum % of any Co-Producer may not be less than 20%).
- g. The intended technical / creative participation i.e. which roles will be performed by South Africans, Treaty, or “non-Treaty” citizens. The NFVF may request documentary evidence of nationality (i.e. copies of passports).
- h. A temporary credit list. The authorities require evidence that the project will contain the required Co-Production credits, such as:
 - i. The project is credited as “an official SA / [] Co-Production”.
 - ii. The Co-Production companies as well as the individual Co-Producers are credited.
 - iii. The copyright notice reflects the names of the Co-Production companies.

Provided NFVF is satisfied that the project complies with the Treaty, NFVF will issue an Advance Ruling of Co-Production certification. Please note the following:

- a. It is difficult to gauge the timeframe for receiving the Advance Ruling, as it is subject to specific issues that NFVF may identify.
- b. The Advance Ruling is only a provisional document and the project is only awarded official Co-Production certification on the submission of the application for Final Ruling, which takes place once the project is fully complete.
- c. Given the above, and particularly since the evaluation process of the authorities is both judgmental and discretionary, we recommend that the Advance Ruling application be submitted as early as possible in order to avoid the circumstance where the production is in full swing but the co-production status (and therefore the underlying financing) is not yet confirmed.

2. Submit the application for Final Ruling

This is done at the end of the project process, when the project is complete and the SA final costs are audited. Much of the information as provided at the Advance Ruling stage is re-submitted to the NFVF, this time based on actual as opposed to budgeted information.

Conclusion

The Co-Production structure needs to be carefully planned and strategized from the outset, in order to ensure that the underlying financial / legal structures as well as the artistic / technical roles are in accordance with the relevant Treaty. Please do not hesitate to contact the writer should you have any queries or should you require additional information.

Juan le Roux
CEO
+27 81 4784990
juan@juanleroux.co.za