

Annex
to
Agreement
between
the Government of the Republic of India
and
the Government of United Kingdom of Great
Britain and Northern Ireland
on
Film Co-Productions

ANNEX

Rules of Procedure

Section 1: Interpretation

1. In this Annex:

"Competent Authority" means, in relation to India, the Ministry of Information and Broadcasting; and, in relation to the United Kingdom, the Department for Culture, Media and Sport;

"EEA State" means a State (other than the United Kingdom) which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

"Non-party Co-producer" means a co-producer who is not a Party Co-producer or a Third Party Co-producer;

"Party Co-producer" means a UK Co-producer or an Indian Co-producer;

"Production Cost", in relation to a co-production, means expenditure incurred for the purposes of making the film; and

"Third Party Co-producer" means a co-producer who is established in another State with which the UK or India has also entered into a co-production agreement.

2. For the purposes of this Agreement the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.
3. A reference to an Article in this Annex is a reference to an Article of the Agreement. A reference to a paragraph or a Section in this Annex is a reference to a paragraph or a Section of the Annex.

Section 2: Appropriate film-making and cultural benefits

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

- a. the general requirements set out in Section 6 are (or are expected to be) met in relation to the co-production, and
 - b. the film delivers (or is expected to deliver) appropriate cultural benefits to the country for which it is the Competent Authority.
5. The cultural benefits referred to in paragraph 4(b) shall be assessed by each Competent Authority in accordance with the guidance that may be published by each Competent Authority under Article 2(6).

Section 3: Approval

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

10. For all other purposes a film shall be treated as having Approved Co-production status if approval has been given and that approval has not been withdrawn.
11. If at any stage the Competent Authorities do not agree to approve an application in respect of a film, Approved Co-production status shall be refused.
12. The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

Section 4: Withdrawal of Approved Co-production status

13. Approval for a film which has Approved Co-production status may be withdrawn if, at any time, it appears to either Competent Authority that:
 - a. false or misleading information has been provided in connection with an application for the approval,
 - b. any of the conditions imposed under paragraph 8(b) by the Competent Authorities have not been complied with,
 - c. the film does not provide appropriate film-making and cultural benefits to the UK and India.

Section 5: Balance and temporary additional requirements

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

Section 6: Approved Co-production status: General Requirements

Co-productions which have no finance-only contributions

Co-producers

16. The co-producers shall include at least one UK Co-producer and at least one Indian Co-producer.
17. Unless the Competent Authorities agree otherwise, the maximum number of co-producers for a film shall be four.
18. Unless the Competent Authorities agree otherwise, no co-producer may be linked to another co-producer by common ownership, management or control (except to the extent that such link is inherent in the making of the co-production).
19. Unless the Competent Authorities agree otherwise, each co-producer shall have offices and staff in the country in which the co-producer is established.
20. Unless the Competent Authorities agree otherwise, each co-producer shall:
 - a. continue to play an active role throughout the time the co-production is being made (including production planning and decision-making), and
 - b. assume responsibility for carrying through practical and financial arrangements for the making of the film.
21. Each co-producer shall also meet the following requirements:
 - a. each co-producer must directly negotiate, contract and pay for rights, goods and services, and
 - b. the co-producers must have entered into a binding contract, the terms of which reflect their respective responsibilities for the co-production.
22. Unless the Competent Authorities agree otherwise:
 - a. the co-producers named in the original application shall not be replaced, and

- b. no co-producers may be added to those named in the original application (or previously agreed to under this paragraph).
23. Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall meet all the requirements of paragraphs 18 to 22.
24. Notwithstanding anything contained in the Agreement, neither the Parties nor the Competent Authorities make any representation, warranty or endorsement in relation to any co-producer and they shall in no way be liable in any manner whatsoever for any loss, damage or expense resulting from the making of any co-production.

Financial contributions

25. In the case of a co-production where the co-producers are all Party Co-producers, each of the following:
- a. the total financial contributions (including payments in kind) of the UK Co-producer or Co-producers (taken together);
 - b. the total financial contributions (including payments in kind) of the Indian Co-producer or Co-producers (taken together);
- shall not be less than 20% and not more than 80% of the total production cost.
26. Subject to paragraph 27, in the case of a co-production where the co-producers are not all Party Co-producers:
- a. the total financial contributions of the UK Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
 - b. the total financial contributions of the Indian Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
 - c. the total financial contributions of the Third Party Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 60% of the total production cost;
 - d. the total financial contributions of each Non-party Co-producer shall not be less than 10% and not more than 20% of the total production cost.

27. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to reduce the lower limit for the purposes of paragraph 26(a), (b) or (c), but subject to a new minimum limit of 10%.

Film-making contributions

28. Unless the Competent Authorities agree otherwise, the film-making contribution benefiting a country shall be approximately in proportion to the financial contribution (including payments in kind) of the Party Co-producer (or Co-producers) established in that country.
29. Unless the Competent Authorities agree otherwise, no more than 20% of the total production cost may be used to source goods and services from a country other than:
- a. the United Kingdom or an EEA State,
 - b. India, or
 - c. where there is a Third Party Co-producer, the State in which that Co-producer is established.

Rights, revenues, receipts etc

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

Film content

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

Language of the film

33. Versions of the film shall be made as follows:
- a. the original version must be made in English or a recognised regional or minority language of the UK, or any language or

dialect of India or an official language of a state in which a co-producer is established,

- b. a sub-titled or dubbed version must be produced in English (if the original version is not already in that language), and
- c. a sub-titled or dubbed version must be produced in any language or dialect of India (if the original version is not already in that language).

34. But nothing in paragraph 33 prevents:

- a. the film containing passages of dialogue in other languages if the story requires it, or
- b. production of subsequent versions of the film in other languages.

Screen and publicity credits

35. The film shall be credited on screen and in publicity either:

- a. as an Indian/UK co-production or a UK/India co-production, or
- b. where a co-production has one or more Third Party Co-producers or Non-Party Co-producers, as a UK/India/third party/non-party co-production.

Where the film is made

36. Unless the Competent Authorities agree otherwise:

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

Personnel

37. Unless the Competent Authorities agree otherwise, individuals participating in the making of the film shall be nationals of, or ordinarily resident in:
- a. the United Kingdom or an EEA State,
 - b. India, or
 - c. where there is a Third Party Co-producer, the State in which that Co-producer is established.

Conditions of work

38. The conditions of working for those taking part in the making of a co-production in each of the countries of the participating co-producers shall be broadly comparable and, in relation to each country, consistent with the standards generally prevailing in that country.
39. Conditions of work (including location shooting) in a country other than that of a co-producer, shall not be significantly less favourable than the standards required by paragraph 38.

Co-production contract

40. The co-production contracts between the co-producers shall:
- a. specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;
 - b. set out the steps to be taken where a co-producer fails to fulfil its commitments under the contract;
 - c. make provision for any overage or underspend, which results from the total budgeted costs being exceeded or under-spent, to be divided in such a way as not to cause the project to fall outside the terms of this Agreement or the terms of the provisional approval given by the Competent Authorities;
 - d. set out clearly the financial liabilities of each co-producer for the costs that are incurred:
 - i. in preparing a project which is refused final approval or provisional approval for Approved Co-production status under Article 2,

- ii. in the event that a relevant authority prohibits the exhibition in either country of a film which has Approved Co-production status, or
- iii. in the event that a relevant authority prohibits the export of the film to a third country;
- e. make provision about the respective copyright entitlements of the co-producers;
- f. make provision for the distribution of the rights and revenues arising in connection with the co-production;
- g. set out the arrangements regarding the division between the co-producers of territories and/or the receipts from the exploitation of the film, including those from export markets;
- h. provide that the original protection and reproduction material from the production ("the material") and the first completed version ("the master") are to be deposited in a place mutually agreed by the co-producers; and
- i. provide:
 - i. that each co-producer is to have free access to the material and the master in accordance with the conditions agreed upon between the co-producers,
 - ii. either that each of the co-producers is to have joint ownership of the material and the master or that each co-producer is to be the owner of a copy of the material and the master, and
 - iii. that a sufficient number of copies of the material and the master are to be made for all the co-producers without restriction on the number of copies made by each co-producer;
- j. and any other provision that the Competent Authorities consider desirable.

Co-productions with finance-only contributions

- 41. For the purposes of paragraph 4(a), a co-production which does not (and is not expected to) meet the requirement of paragraph 28 may nevertheless be treated by the Competent Authorities as meeting the requirements set out in this Part if:
 - a. all the other requirements of paragraphs 16 to 40, and