

Co-Production Treaty India & UK
FILM CO-PRODUCTION AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF INDIA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India (“the Parties”):

Considering that there is potential for the film industries of each country to work together on account of shared or complementary characteristics that include the structure of each film industry, the film culture of each country and the extent of the availability in each country of film-making facilities, a suitably skilled workforce and locations for filming;

Recognising that development of such potential will be to the mutual advantage of each Party, in particular in respect of the growth and competitiveness of their film industries and the enhancement of their film cultures;

Noting the benefits available in each country to films with national film status;

Desiring to encourage the making of films that reflect, enhance and convey the diversity of culture and heritage in both countries;

Acknowledging the benefits that would flow from the making of such films and from an increase in public availability of distinctive and successful co-produced films; and

Noting that each Party expects from this Agreement a contribution by way of economic or cultural benefits, with the intention of creating an overall balance in film-making contribution benefiting each country based on the total number of co-produced films that are approved over a period under this Agreement;

Have agreed as follows:

ARTICLE 1

Definition

In this Agreement:

“Agreement” means this agreement, including the Annexes to this Agreement;

“Approved Co-production” means a co-produced film which has Approved Co-Production status in accordance with Article 3;

“Co-Producer” means any individual, partnership, body corporate or unincorporated association who is a co-producer of a film;

“Competent Authority” means a government department or other body nominated in accordance with Article 2;

“EEA State” means a State (other than the United Kingdom or India which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

“Film” includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture, and which is expected to be shown in theatrical cinemas;

“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 solely for the purposes of making the film;

“Indian Co-producer” means a co-producer who is established in India;

“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;

“UK Co-producer” means a co-producer who is established in England, Wales, Scotland or Northern Ireland.

Reference to film-making contributing benefiting the UK or India include, in particular, the expenditure in that country on goods and services which directly results from the co-production and the use made of film-making facilities or filming locations in that country.

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.

ARTICLE 2

Competent Authorities

Each Party shall, by notice in writing to the other Party, nominate a Competent Authority to make decisions on applications for the grant of Approved Co-production status by any one or more co-producers of a film.

In determining an application made to it, a Competent Authority shall assess the application against the requirements, which are set out in this Agreement and are applied in accordance with guidance published by the Competent Authority under this Article.

Each Competent Authority may from time to time publish guidance consisting of such information and advice as it considers appropriate with respect to:

how applications are to be made to the Competent Authority, and

the operation and interpretation of this Agreement.

Such guidance shall, in particular set out:

how the Competent Authority proposes to make decisions on applications for the grant of Approved Co-production status, and

factors it will take into account when exercising any discretion conferred on it by this Agreement.

The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

ARTICLE 3

Grant of Approved Co-production status

A co-produced film which meets the requirements set out in this Agreement may be granted Approved Co-production status.

Approved Co-production status shall be granted only if:

an application in respect of a film is made to each of the Competent Authorities in accordance with procedures established under Article 2, and

both Competent Authorities agree to approve the application in accordance with this Article.

Approval of an application in respect of a film shall be given in two stages:

provisional approval, and

final approval.

Provisional or final approval shall be given:

only if the requirements set out in Article 4 are met, and

subject to such conditions as the Competent Authorities (acting jointly) consider appropriate.

For the purposes of eligibility for the benefits referred to Article 9, a film shall be treated as having Approved Co-production status only if:

the Competent Authorities have agreed to give the film final approval under this Article, and

that approval has not been withdrawn.

For all other purposes:

references to the grant of Approved Co-production status are to the giving of either final approval or provisional approval under this Article, and

a film shall be treated as having Approved Co-production status if either stage of approval has been given and that approval has not been withdrawn.

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.

Nothing in this Agreement binds the relevant authorities in the UK or India to permit the public exhibition of a film which has been granted Approved Co-production status.

ARTICLE 4

Requirements for Approved Co-production status

A film may be granted Approved Co-production status only if each Competent Authority is satisfied that:

subject to paragraph (3) of this Article, the general requirements set out in Annex 1 to this Agreement are (or are expected to be) met in relation to the co-production;

the film delivers (or is expected to deliver) adequate economic or cultural benefits to the country for which it is the Competent Authority, and

any temporary additional requirements that are imposed under Article 6 in relation to the grant of Approved Co-production status by that Competent Authority are (or are expected to be) met.

The economic or cultural benefits referred to in paragraph (1)(b) of this Article shall be assessed by each Competent Authority in accordance with Annex 2 to this Agreement.

In the event of an inconsistency between:

on the one hand, any of the provisions of an Annex to this Agreement, and

on the other, any temporary additional requirements imposed under Article 6, the Competent Authorities shall apply the temporary additional requirement.

ARTICLE 5

Balance in film-making contribution benefiting each Party

In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure an approximate overall balance in:

the film-making contribution benefiting the UK, and

the film-making contribution benefiting India.

Each Party shall consult the other on general approach it proposes to take in relation to balance and, in particular, on the methods it will adopt when collating and measuring statistical data and on the approach it will take in measuring whether or not a state of balance exists.

In order to assess the state of balance between the Parties, each Party shall collate and analyse statistical data about successful applications for the grant of Approved Co-production status and shall report to the other annually in writing on the current state of balance.

In making an assessment of the state of balance, each Party:

shall take account of the total number of Approved Co-productions over each relevant period specified in paragraph (5) of this Article (excluding co-productions given approval in reliance on section 2 of Annex 1 to this Agreement), and

shall have regard to (among other things) the extent to which those co-productions reflect its own culture or are otherwise beneficial to it.

The relevant periods are as follows:

the first period is the period of one year commencing with the date on which this Agreement enters into force,

the second period is the period of two years commencing with that date,

the third period is the period of three years commencing with that date, and

the fourth and subsequent periods are to be determined as the period of three years immediately preceding any date on which an assessment of the state of balance is made.

ARTICLE 6

Consequences of imbalance

If a Party considers that there is (or is a risk of) imbalance, it shall consult the other.

If, after 6 months of consultations, the Parties are unable to agree on appropriate measures to restore balance, the Party in deficit shall be entitled to take, without the agreement of the other Party, such measures, as it considers necessary.

Measures imposed by a Party under this Article may include the imposition of temporary additional requirements that must be met before its Competent Authority can agree to the grant of Approved Co-production status.

Temporary additional requirements shall apply only in respect of applications, which are:

for the Competent Authorities to give provisional approval for Approved Co-production status under Article 3, and

made after the requirement comes into effect in accordance with paragraph (5) of this Article.

No temporary additional requirement may take effect before the Party imposing it:

has notified the other Party in writing of the requirement, and

has published:

a statement of the requirement, and

any changes to the guidance issued in accordance with Article 2, which may be required to give effect to it.

ARTICLE 7

Withdrawal of Approved Co-production status

Approval for a film which has Approved Co-production status may be withdrawn if, at any time, it appears to either Competent Authority that:

false or misleading information has been provided in connection with an application for the approval,

any of the conditions imposed under Article 3(4)(b) by the Competent Authorities have not been complied with,

any of the requirements set out in Article 4(1)(a) or (b) are not met, or

any of the requirements specified in paragraph (2) of this Article are not met.

The requirements specified in this paragraph are any temporary additional requirements imposed under Article 6:

which applied to the film when provisional approval for Approved Co-production status under Article 3 was given, and

which continue to have effect when the status is withdrawn under this Article.

ARTICLE 8

Benefits for Co-productions with either final approval or provisional approval

This Article applies in relation any film, which has Approved Co-production status.

To the extent permitted by international law, the Parties shall allow for the temporary import and export, free of import duties and taxes, of any equipment necessary for the production of an Approved Co-production.

Subject to any overriding legal requirements relating to entry, residence and employment, each Party shall allow any person employed in the making or promotion of an Approved Co-production to enter and remain in the country throughout the making or promotion of the film.

ARTICLE 9

Additional benefits available only to Co-productions with final approval

This Article applies only in relation to a film in respect of which the Competent Authorities have agreed to give final approval for Approved Co-production status under Article 3.

Each Party shall treat a film falling within paragraph (1) of this Article as a national film for the purposes of any benefits afforded in that country to national films.

The benefits referred to in paragraph (2) of this Article include, in particular: eligibility for any benefits in fiscal treatment (subject to the film satisfying the criteria that national films must meet for such benefits and subject to paragraphs (4) and (5) of this Article),

the lifting of any quota restrictions that would otherwise apply to the import, distribution or exhibition of the film, and

access to any special import arrangements, agreed between a Party and another country, which operates import quota restrictions, for the import of national films of that Party.

Any benefits in fiscal treatment available in the United Kingdom may only be accorded to a UK Co-producer.

Any benefits in fiscal treatment available in India may only be accorded to an Indian Co-producer.

The question of which Party may claim credit for an Approved Co-production as a national film at an International Film Festival shall be determined:

by reference to whichever is the greater of either:

the total financial contributions made by the UK Co-producer or Co-producers (taken together), or

the total financial contributions made by the Indian Co-producer or Co-producers (taken together); or

if the respective total financial contributions are equal, by reference to whichever of the UK or India the director of the film is not closely associated with.

ARTICLE 10

Entry into Force

This Agreement shall enter into force as soon as the Parties have notified each other of the completion of their respective constitutional procedures.

Either Party may terminate this Agreement at any time by giving at least 6 months written notice to the other Party.

The Agreement shall cease to have effect on the expiry of the period of notice given under paragraph (2) of this Article.

ARTICLE 11

Films in production before and after entry into force

A film shall be eligible for the grant of Approved Co-production status even if production commenced before this Agreement entered into force, but only if:

the principal photography of the film commenced no more than 18 months before the date on which the Agreement enters into force, and

production of the film is completed after that date.

An Approved Co-production shall continue to be eligible to receive any benefits available under this Agreement on or after the date on which the Agreement ceases to have effect, but only if:

before that date, the Competent Authorities have given the film provisional approval for Approved Co-production status under Article 3,

its principal photography commenced before that date, and

production of the film is completed before the end of the period of twelve months commencing with that date.

ARTICLE 12

Amendments to Articles

The Articles of this Agreement may be amended at any time by agreement between the Parties.

Any such amendment shall enter into force as soon as the Parties have notified each other of the completion of their respective constitutional procedures.

ARTICLE 13

Reviews of the Annexes

The Competent Authorities shall keep the Annexes to this Agreement under review and, where they consider it appropriate to do so, may recommend that changes be made.

The Parties may, at any time, make amendments to either of the Annexes to this Agreement.

An amendment to an Annex which is made under this Article shall come into force when confirmed by an exchange of notes.

ARTICLE 14

International obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including, in relation to the United Kingdom, obligations arising from European Community Law.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at this day of, 200..., in the English and Hindi languages, both texts being equally authoritative.

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

ANNEX 1
APPROVED CO-PRODUCTION STATUS:
GENERAL REQUIREMENTS

Section 1

Co-productions, which have no finance-only contributions

[Co-producers]

The co-producers shall include at least one UK Co-producer and at least one Indian Co-producer.

Unless the Competent Authorities agree otherwise, the maximum number of co-producers for a film shall be four

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).

Unless the Competent Authorities agree otherwise, each co-producer shall :

demonstrate a good track record in film-production, and

have offices and staff in the country in which he is established.

Each co-producer shall:

continue to play an active role throughout the time the co-production is being made (including production planning and decision-making), and

assume responsibility for carrying through practical and financial arrangements for the making of the film.

Each co-producer shall also meet the following requirements:

each co-producer must directly negotiate, contract and pay for rights, goods and services, and

the co-producers must have entered into a binding contract, the terms of which reflect their responsibilities for the co-production.

Unless the Competent Authorities agree otherwise: the co-producers named in the original application shall not be replaced, and

no co-producers may be added to those named in the original application (or previously agreed to under this paragraph).

Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall not meet all the requirements of this Annex.

Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall not meet all the requirements of this Annex.

[Financial Contributions]

Subject to paragraph 10, in the case of a co-production where the co-producers are all Party Co-producers, each of the following:

the total financial contributions of the UK Co-producer or Co-producers (taken together) ;

the total financial contributions of the Indian Co-producer or Co-producers (taken together)

shall not be less than 30% and not more than 70% of the total production cost.

In considering an application for the grant of Approved co-production status, the Competent Authorities may agree to different limits for the purposes of paragraph 9, but subject to new minimum and maximum limits of 20% and 80% respectively.

Subject to paragraph 12, in the case of a co-production where the co-producers are not all Party Co-producers:

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;

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;

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;

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;

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 11(a), (b) or (c), but subject to a new minimum limit of 10%.

[Film-making contributions]

The film-making contribution benefiting a country shall be broadly in proportion to the financial contribution of the Party Co-producer (or Co-producers) established in that country.

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:

The United Kingdom,

India,

an EEA State, or

where there is a Third Party Co-producer, the State in which that Co-producer is established.

[Rights, revenues, receipts, etc]

The rights, revenues and prizes arising in connection with the co-production shall be shared between the Party Co-Producer (or Co-producers) in a manner that reflects their respective financial contributions.

[Film Content]

Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specially shot for that film.

The films shall not advocate violence, be of a blatantly pornographic nature or openly offend human dignity.

[Language of the film]

Versions of the film shall be made as follows:

the original version must be made in a language of a cultural community of the UK, India or a state in which a co-producer is established.

a sub-titled or dubbed version must be produced in either English or in another language of a cultural community of the UK (if the original version is not already in one of those languages), and

a sub-titled or dubbed version must be produced in one of the official languages of India (if the original version is not already in that language).

But nothing in paragraph 18 of this Annex prevents:

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

[Screen and publicity credits]

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

as a UK/India co-production, or

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

[Where the film is made]

Unless the Competent Authorities agree otherwise:

all work on the co-production prior to completion shall be carried out in the countries in which the Party Co-Producers or Third Party Co-Producers are established, and

the majority of the work on the co-production shall be carried out in the country in which the Party Co-Producer or Third-Party Co-Producer making the greatest financial contribution is established.

For the avoidance of doubt, the reference in paragraph 21 of this Annex to work on a co-production prior to completion includes studio and post-production work.

[Personnel]

Unless the Competent Authorities agree otherwise, individuals participating in the making of the film shall be nationals of, or ordinarily resident in:

the United Kingdom, India

An EEA State, or

Where there is a Third Party Co-producer, the State in which that Co-producer is established.

[Conditions of work]

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.

Conditions of work (including location shooting) in a country other than that of a co-producer, shall not be significantly less favorable than the standards required by paragraph 24 of this Annex.

[Co-production contract]

The co-production contracts between the co-producers shall:

be expressed to be subject to the approval of the Competent Authorities and state that amendments to the contract must be submitted for approval by the Competent Authorities before the co-production is finished;

set out the steps to be taken where a co-producer fails to fulfill its commitments under the contract;

specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;

make arrangements for any unpaid balance of the contributions of each co-producer to be paid within a period of sixty days from the date of completion of the film;

make provision for any overage or underage, 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;

set out clearly the financial liabilities of each co-producer for the costs that are incurred:

in preparing a project which is refused final approval or provisional approval for Approved Co-production status under Article 3,

in the event that a relevant authority prohibits the exhibition in either country of a film which has Approved Co-production status, or

in the event that a relevant authority prohibits the export of the film to a third country;

make provision about the respective copyright entitlements of the co-producers;

make provision for the distribution of the rights and revenues arising in connection with the co-production;

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;

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

provide:

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;

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

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.

Section 2

Co-productions with finance-only contributions

For the purposes of Article 4(1)(a), a co-production which does not (and is not expected to) meet one or more of the requirements of paragraphs 9 to 12 of Section 1 of this Annex may nevertheless be treated by the Competent Authorities as meeting the requirements set out in this Annex if:

all the other requirements of Section 1 of this Annex, and

the following eight conditions,

are (or are expected to be) met.

The first condition is that the Competent Authorities have, in respect of each one-year period, agreed to and published a limit applying to the number of co-productions relying

on this Section of this Annex, which may be granted provisional Approved Co-production status over that period.

The second condition is that the co-production includes one or more minority contributions from one or more co-producers, which are limited to finance only.

The third condition is that:

in the case of a co-production where the co-producers are all Party Co-producers, the finance-only contribution from the co-producers (taken together) must not be less than 20% and not more than 25% of the total production cost;

in any other case, the finance-only contribution from the co-producers (taken together) must not be less than 10% and not more than 5% of the total production cost.

The fourth condition is that the co-production has a majority Party Co-producer who makes a film-making contribution.

The fifth condition is that unless the Competent Authorities agree otherwise, no co-producer other than the majority co-producer may make a film-making contribution.

The sixth condition is that the co-production helps to promote a cultural identity of the country of the majority Party Co-producer.

The seventh condition is that the grant of Approved Co-production status to the co-production does not (other than temporarily) aggravate a state of imbalance between the Parties with regard to:

the aggregate film-making contributions in connection with co-productions which have Approved Co-production status in reliance on this Section of this Annex; and

the number of such co-productions, which are UK majority co-productions and Indian majority co-productions.

ANNEX 2

APPROVED CO-PRODUCTION STATUS: ECONOMIC AND CULTURAL AFFAIRS

This Annex applies for the purposes of any assessment by a Competent Authority under Article 4(1)(b) as to whether a particular film delivers adequate economic or cultural benefits to the country for which it is the Competent Authority.

The Competent Authority shall have regard to economic factors only in relation to any film where:

the film-making contribution benefiting the country for which it is the Competent Authority exceeds 30% of the total production cost, and

the Competent Authority is satisfied that the co-production meets the requirements set out in Annex 1 to this Agreement without the Competent Authorities having to exercise any discretion conferred on them by that Annex.

Where Paragraph 2 of this Annex does not apply, the Competent Authority shall assess both economic and cultural factors together.

In determining whether the film delivers adequate cultural benefits, the Competent Authority shall take into account at least the following factors:

whether the film tells a story that is likely to appeal to and engage audiences in the country for which it is the Competent Authority;

whether the film is likely to reflect or enhance cultural diversity in that country;

whether the film is likely to get theatrical release in that country which is likely to be sufficient to help it reach a range and scale of audiences appropriate to the nature of the film;

whether the completed film is likely to be of a standard of quality or innovation capable of winning international recognition;

whether the international relationships established for the purposes of the co-production are likely to strengthen film culture in that country;

whether the co-production arrangements (including the talent mix, filming locations, facilities, goods and services) fulfill the creative vision of the project.