

Agreement
Between
the Government of
the Republic of South Africa
and
the Government of
the Federal Republic of Germany
on
Audio Visual
Co - productions

PREAMBLE

The Government of the Republic of South Africa and the Government of the Federal Republic of Germany (hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

CONSIDERING that Article 2 par. 2 (e) of the Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Germany regarding cultural cooperation, dated March 10, 1998, provides for the Parties to implement appropriate measures, and within the scope of their respective abilities, to provide each other with assistance, particularly with regard to cooperating in the field of cinematography, as well as visits by delegations and individual specialists in the field of cinematography;

CONSIDERING that audio-visual co-productions can significantly contribute to the development of the film industry and to an intensification of the economic and cultural exchange between the two countries;

RESOLVED to stimulate economic and cultural co-operation between the Republic of South Africa and the Federal Republic of Germany;

DESIRING to create conditions for good relations in the audio-visual area, particularly for the co-production of films and TV and video productions;

MINDFUL of the fact that the quality of co-productions can help to expand the production and distribution of TV and video productions of both countries;

HAVE AGREED as follows:

Article 1

Definition of "audio-visual co-production"

For the purpose of this Agreement, an "audiovisual co-production" is a project irrespective of length, including animation and documentary productions, produced in any format, for exploitation in theatres, on television, videocassette, videodisc, CD-ROM, DVD or by any other form of distribution. New forms of audiovisual production and distribution will be included in this Agreement.

Article 2

Competent authorities

- (1) The competent authorities responsible for the implementation of this Agreement shall be:
 - (a) on behalf of the Federal Republic of Germany, the Federal Office of Economics and Export Control (BAFA); and
 - (b) on behalf of the Republic of South Africa, the National Film and Video Foundation (NFVF).
- (2) Co-productions falling within the scope of this Agreement shall be subject to the approval of the competent authorities.
- (3) The Parties shall inform each other if the competent authorities are replaced by others.
- (4) The competent authorities shall inform each other regarding the application of this Agreement, in order to resolve possible difficulties arising from the interpretation of its provisions. If

necessary, they shall also propose changes in the joint interest of both countries with a view to promoting co-operation in the context of this Agreement.

- (5) The competent authorities shall inform each other regularly about approval, denial, amendment and revocation of co-production status. Before it denies an application for co-production status, the competent authority shall consult with its counterpart of the other Party.

Article 3

Approval as national films

- (1) Films which are produced within the framework of this Agreement shall be deemed national films.
- (2) These films shall be entitled to claim all state support benefits available to the film and video industries and the privileges granted by the provisions in force in the respective countries.

Article 4

Conditions for obtaining approval of co-production status

- (1) The co-producers of a film shall have their principal office or a branch office in the territory of one of the Parties. None of the co-producers shall be linked by common management, ownership or control.

- (2) The contribution of the co-producers of the two countries may vary between 20% (twenty per cent) and 80% (eighty per cent) of the film's total cost.
- (3) The artistic and technical contribution of each co-producer shall be in reasonable proportion to his or her financial investment.
- (4) Technical and artistic personnel are those persons who, in accordance with the domestic law in force in their own country, are recognized as makers of audio-visual productions in particular screenwriters, directors, composers, editors, directors of photography, art directors, actors and sound technicians. The contribution of each of these persons shall be evaluated individually.
- (5) As a rule, the contribution includes at least one leading actor, one supporting actor and/or one qualified technical staff person, in addition to the one person as referred to in sub-article (4), provided that two qualified technical staff persons may substitute for one leading actor.
- (6) In order to qualify for the benefits of co-production, the co-producers shall provide evidence that they have good technical organization, recognized professional standing and qualifications and the necessary financial resources to bring the production to a successful conclusion.
- (7) The company carrying out the co-production shall provide evidence that the primary business of that company is audio visual (film, television and video) production.

Article 5

Participants

The persons participating in the production of a film shall fulfill the following requirements:

1. As regards the Federal Republic of Germany, they shall be -
 - a) Germans within the meaning of the Basic Law;
 - b) persons who are rooted in the German culture and have their legal residence in the territory of the Federal Republic of Germany;
 - c) nationals of a member state of the European Union; or
 - d) nationals of another party to the Agreement on the European Economic Area (EEA) of 2 May 1992;

2. As regards the Republic of South Africa, they shall be -
 - a) Nationals of the Republic of South Africa;
 - b) nationals of member states of the African Union including the Southern African Development Community (SADC) region, or
 - c) permanent residents of the Republic of South Africa.

3. Participants in the co-production as defined in sub paragraphs (1) and (2) must at all times throughout the production retain their national status, and may not acquire or lose such status at any point during the course of production activity.

4. Should the film so require, the participation of professionals who are not citizens of one of the co-producing countries may be

permitted, but only in exceptional circumstances, and subject to agreement between the competent authorities of both Parties.

Article 6

Distribution of films

The Parties affirm their willingness to support the distribution of co – produced films of the other Party in their territory by all available measures.

Article 7

Film Negatives and Languages

- (1) Two negatives, or at least one negative and one duplicate negative, shall be made of all co-produced films. Each co-producer shall be entitled to make a further duplicate or prints therefrom. Each co-producer shall also be entitled to use the original negative in accordance with the conditions agreed upon between the co-producers themselves.
- (2) The original soundtrack of each co-production film shall be made in one of the official languages of either of the Republic of South Africa or of the Federal Republic of Germany, or in any combination of those permitted languages. Dialogue in other languages may be included in the co - production as the script requires.
- (3) The dubbing or subtitling into one of the official languages of either the Federal Republic of Germany or of the Republic of South Africa

shall be carried out respectively in the Federal Republic of Germany or in another Member State of the European Union or in another Contracting State of the Agreement on the European Economic Area, or in the Republic of South Africa and in another Member State of the African Union including the Southern African Development Community (SADC). Any departure from this principle must be approved by the competent authorities.

Article 8

Entry in International Festivals

- (1) The majority co-producer shall normally enter co-produced films in international festivals.
- (2) Films produced on the basis of equal contributions shall be entered as a film of the country of which the director is a national; provided that the director is not from a country contemplated in Article 5(4), in which case the film shall be submitted as a film of the country of which the lead actor is a national, subject to the agreement of the competent authorities.

Article 9

Minority and majority contribution in the case of multilateral co-productions

In the case of multilateral co-productions, the minority contribution may not be less than 10% (ten per cent) and the majority contribution may not exceed 70% (seventy per cent) of the total cost of the film.

Article 10

Contributions of the producers

- (1) Notwithstanding the provisions of this Agreement and in the interest of bilateral co-productions, even those films which are produced in one of the two countries and where the minority contribution is limited to financial investment, may be granted co-production status according to the co-production agreement. In such a case, the minority contribution may not be less than 20% (twenty per cent) of the final total cost of the film.
- (2) The granting of co-production status to each individual production of this kind shall be subject to the prior approval by the competent authorities.

Article 11

Twinning Arrangements

- (1) For the present, productions produced under a twinning arrangement may with the approval of the competent authorities, be considered as co-productions and receive the same benefits. Notwithstanding the provisions of Article 5, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a financial contribution alone, without necessarily excluding all artistic or technical contribution.
- (2) In order to be approved by the competent authorities, these productions must meet the following conditions:

- (a) There shall be reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefiting from twinning.
- (b) The twinned productions must be distributed under comparable conditions in the Republic of South Africa and in the Federal Republic of Germany.
- (c) Twinned productions may be produced either simultaneously or consecutively, on the understanding that, in the latter case, the time period between the completion for the first production and the start of the second does not exceed one (1) year.

Article 12

Balanced contribution

- (1) A general balance should be maintained with regard both to the artistic and technical personnel, including the cast, and with regard to the financial investment and facilities (studios, laboratories, and postproduction).
- (2) The Joint Commission, established in terms of article 14 of this Agreement, shall carry out a review to see whether this balance has been maintained and, if this is not the case, shall take measures which it considers necessary in order to re-establish such a balance.

ARTICLE 13

Credits

A co - production film and the promotional materials associated with it shall include either a credit title indicating that the film is "an official German - South African co - production" or "an official South African - German co - production" or where relevant a credit which reflects the participation of the Republic of South Africa, the Federal Republic of Germany and the country of the third co - producer.

ARTICLE 14

Joint Commission

- (1) The Parties shall establish a Joint Commission composed of at least two (2) representatives of each Party, two (2) representatives of the competent authority in both countries, and two (2) representatives of the film and video industry of both countries, to monitor and facilitate the implementation of this Agreement and to recommend any changes if necessary.
- (2) As a rule, the Joint Commission shall meet every two years, alternating between the two countries. On request of one Party, in particular if this Agreement faces severe difficulties, the Joint Commission may be convened for an extraordinary meeting.
- (3) The Joint Commission shall determine whether the numerical and percentage balance of the co-productions have been achieved,

and if not, shall decide what measures are necessary in order to correct any imbalance.

- (4) The Joint Commission shall submit to the competent authorities for approval, the necessary amendments in order to resolve any difficulties arising from the application of this Agreement as well as to improve it, in the best interest of the Parties.

ARTICLE 15

Temporary Entry into the country

For approved co-productions, each Party shall facilitate, in accordance with the domestic law in force in its country:

- (a) entry into and temporary residence in its territory for technical and artistic personnel of the other Party;
- (b) the import into and export from its territory of technical and other filmmaking equipment and materials by producers of the other Party.

Article 16

Television and Video co-productions

The provisions of this Agreement on film co-productions shall apply accordingly to Television and video co-productions.

ARTICLE 17

Amendment

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

ARTICLE 18

Entry into Force, Duration and Termination

- (1)** This Agreement shall enter into force on the date on which the Government of the Federal Republic of Germany is notified in writing through the diplomatic channel by the Government of the Republic of South Africa of its compliance with the constitutional requirements necessary for such entry into force. The date of entry into force shall be the day on which such notification is received.
- (2)** This Agreement including the annex, which forms an integral part of this agreement, shall remain in force for an unlimited period of time, unless terminated in terms of sub article (3).
- (3)** Either Party may terminate this Agreement by giving six months' written notice in advance of such intention to the other Party through the diplomatic channel.
- (4)** Termination of this Agreement shall have no effect on the completion of co-productions approved prior to its termination.

ARTICLE 19

Settlement of Disputes

- (1) Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation and negotiation between them.

- (2) Immediately following the entry into force of this agreement, the party in whose territory the Agreement is signed, shall carry out its registration with the secretariat of the United Nations under Article 102 of the Charter of the United Nations. The other Party shall be advised of this registration and provided with a registration number assigned to this Agreement by the United Nations, as soon as the registration is confirmed by the secretariat of the United Nations.

In witness thereof the undersigned being duly authorized thereto by the respective Governments have signed and sealed this Agreement in two originals in the German and English languages, all texts being equally authentic.

DONE at Cape Town on this day _____ of _____
2004

FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY

**ANNEXURE TO AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY ON AUDIO VISUAL CO –
PRODUCTIONS**

**RULES OF PROCEDURE FOR APPLICATIONS FOR APPROVAL OF CO-
PRODUCTION STATUS UNDER THIS AGREEMENT**

- 1.** Applications for qualification of a film for co-production benefits under this Agreement for any co-production must be made simultaneously to both competent authorities at least thirty (30) days before shooting begins.
- 2.** The competent authority of the country of which the majority co-producer is a national shall communicate its proposal to the other competent authority within twenty (20) days of the submission of the complete documentation as described in paragraph 4 below.
- 3.** The competent authority of the country of which the minority co-producer is a national shall thereupon communicate its decision within a reasonable time, which period shall not be longer than thirty (30) calendar days.
- 4.** Documentation submitted in support of an application shall consist of the following items, drafted in German in the case of Germany and in English or any other official language of South Africa in the case of South Africa:
 - 4.1** The final script and synopsis;
 - 4.2** documentary proof of having legally acquired the rights to produce and exploit the co-production and that the copyright for the co-production has been legally acquired;
 - 4.3** a copy of the co-production contract signed by the two co-producers. The contract shall include -
 - (a)** the title of the co-production;
 - (b)** the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
 - (c)** the name of the director (a substitution clause is permitted to provide for his/her replacement if necessary);
 - (d)** the budget;
 - (e)** the financing plan;
 - (f)** a clause establishing the sharing of revenues, markets, media or a combination of these;

- (g) a clause detailing the respective shares of the co-producers in any over or under expenditure, which shares shall in principle be proportional to their respective contributions, although the minority co-producer's share in any over expenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article 3 of the Agreement is respected;
 - (h) a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a license to permit public exhibition of the co-production;
 - (i) a clause prescribing the measures to be taken where -
 - i. after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;
 - ii. the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - iii. either one or the other Party fails to fulfill its commitments;
 - (j) the period when shooting is to begin;
 - (k) a clause stipulating that the majority co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks"; and
 - (l) a clause providing for the sharing of the ownership of copyright on a basis that it is proportionate to the respective contributions of the co-producers.
- 4.4 the distribution contract, where it has already been signed, or a draft if it has yet to be concluded;
- 4.5 a list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;
- 4.6 the production schedule;
- 4.7 the detailed budget identifying the expenses to be incurred by each country; and
- 4.8 all contracts and other relevant financial documentation for all participants in the financial structure.

- 5.** The competent authorities can demand any further documents and all other additional information deemed necessary.
- 6.** In principle, the final shooting script (including the dialogue) should be submitted to the competent authorities prior to the commencement of shooting.
- 7.** Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the competent authorities before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent authorities.
- 8.** The competent authorities will keep each other informed of their respective decisions.