

AGREEMENT ON

FILM CO-PRODUCTIONS

BETWEEN THE GOVERNMENT OF THE

REPUBLIC OF SOUTH AFRICA AND THE

GOVERNMENT OF THE ITALIAN REPUBLIC

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC, hereinafter jointly referred to as the "Parties";

ACKNOWLEDGING the ongoing development in their bilateral cultural relations and also cognizant of the existing Agreements between the Parties;

CONSIDERING that the film, television, video and new media industries of their respective countries could benefit from co-productions that, by their technical quality and artistic and entertainment value, would enhance the reputation and contribute to the economic expansion of the film, television, video and new media production and distribution industries of Italy and South Africa;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Definitions

- (1) 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 or by any other form of distribution. New forms of audiovisual production and distribution will be included in this Agreement.

ARTICLE 2

National Film

- (1) Every co-production produced under this Agreement shall be considered to be a national film by both Parties. Such films shall by right be entitled to the benefits resulting from the provisions in force or from those which may be decreed by each Party. These benefits shall accrue solely to the producer of the Party that grants them.
- (2) Films to be co-produced by the Parties must be approved after consultation between the competent authorities of both Parties.

ARTICLE 3

Competent Authorities

- (1) The competent authorities responsible for the implementation of this agreement shall:
 - in the case of the Republic of South Africa: the Department of Arts and Culture.
 - and
 - in the case of the Italian Republic: the Ministry of the properties and the cultural activities, General Management of the Cinema

ARTICLE 4

Co-production

- (1) 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.

ARTICLE 5

Filming

- (1) If the scenario or the subject of the film so requires, location shooting, exterior or interior, in a country not participating in the co-production may be authorized.
- (2) The producers, scriptwriters, directors and professionals of co-productions, as well as technicians participating in the production, must be nationals of the Italian Republic or the Republic of South Africa, or nationals of member States of the European Union or member states of the African Union including Southern African Development Community region (SADC) or permanent residents of The Republic of South Africa.
- (3) 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.
- (4) Foreign professionals who are normally resident and or employed in the Republic of South Africa or Italian Republic or may, in exceptional circumstances take part in co-production as residents of one or the other of the said countries.

ARTICLE 6

Contributions of the Producers

- (1) The respective contributions of the producers of the two countries may vary from twenty (20) to eighty (80) per cent for each film. In principle, the minority co-producer shall be required to make an effective technical and creative contribution.
- (2) Departures from the provisions of sub-article (1) may be made jointly by the competent authorities of both Parties, according to the domestic law of the Parties.

ARTICLE 7

Production Standards

- (1) The Parties shall look favourably upon co-productions meeting international standards by South Africa, Italy and any country to which South Africa and or Italy is bound by an official co-production agreement.
- (2) The conditions of acceptance for such films shall be determined in each case by both Parties. No minority contribution to such films shall be less than twenty (20) per cent of the budget. The creative and technical contributions shall conform to this percentage.

ARTICLE 8

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. Moreover, each co-producer shall be entitled to use the original negative in accordance with the conditions agreed upon between the co-producers themselves.

- (2) Two versions shall be made of any co-produced film and such versions shall be respectively in English and Italian.

ARTICLE 9

Temporary Entry into the country

- (1) The Parties shall facilitate the temporary entry into and the re-export of any film equipment necessary for the production of films under this Agreement, subject to the domestic law in force in their countries. Each Party shall permit the creative and technical staff of the other Party to enter and reside in its territory, without any restriction, for the purpose of participating in the production of these films.

ARTICLE 10

Payment of Contribution

- (1) The minority co-producer shall pay any balance outstanding on his contribution to the majority co-producer within sixty (60) days following delivery of all the materials required for the production of the version of the film in the language of the minority country.
- (2) Failure to meet this requirement shall result in the loss of the benefits of the co-production.

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 respective 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 Italian Republic;
 - (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

Sharing of Markets

- (1) Contract clauses providing for the sharing of markets and receipts between co-producers shall be approved by the

competent authorities of the Parties. Such distribution shall in principle be based on the percentage of the respective contribution of the co-producers to the production of each film.

- (2) Where a co-production contract provides for the pooling of markets, the receipts from each national market shall be paid into the pool only after the national investments have been received.
- (3) Premiums and financial benefits provided for in Article 2 of the Agreement shall not be pooled.
- (4) The transfers of funds resulting from the application of this Agreement shall be made in accordance with the domestic law in force in this field in both countries.

ARTICLE 13

Contracts between Co-producers

- (1) Contracts between co-producers shall clearly stipulate the financial liabilities in respect of the appointment of:
 - a) preliminary expenditures on the preparation of a project;
 - b) expenditures on a project that has been approved by the competent authorities of the Parties but which, in its final form, does not meet the conditions governing such approval;
 - c) expenditures on a film co-produced under this Agreement but the showing of which is not permitted in either of the two countries concerned.

ARTICLE 14**Approval of a co-production proposal**

- (1) Approval of a proposal for the co-production of a film by the competent authorities of both Parties is in no way binding upon them in respect of the granting of permission to show the film thus produced.

ARTICLE 15**Exporting of film**

- (1) If a co-produced film is exported to a country that has quota regulations: it shall normally be included in the quota of the Party of the majority co-producer;
- (2) If the respective contributions of the co-producers are equal the co-produced film shall be included in the quota of the Party that has the best opportunity of arranging for its exhibition;
- (3) If any difficulties arise the co-produced film shall be included in the quota of the Party of which the director of the film is a national;

ARTICLE 16**Identification of Co-production films**

- (1) All co-produced films shall be identified as Italian-South African or South African-Italian co-productions.
- (2) Such identification shall appear in a separate credit title, in all commercial advertising, whenever co-produced films are shown at artistic or cultural events and at international festivals.

ARTICLE 17

Entry in International Festivals

- (1) Co-produced films shall normally be entered in international festivals by the Party of the majority co-producer.
- (2) Films produced on the basis of equal contributions shall be entered by the Party of which the director is a national.

ARTICLE 18

Rules of Procedure and Application for Qualification

- (1) The competent authorities of both Parties shall jointly establish the rules of procedure for co-productions, taking into account the domestic laws regulating the film industry in the Republic of South Africa and the domestic laws in the Italian Republic.
- (2) Applications for qualification of a film for co-production benefits shall be filed, with the required supporting documents, in each case at least thirty (30) days before the commencement of shooting or key animation, in accordance with the Rules of Procedure which are attached to this Agreement.
- (3) In principle, the competent authorities of the Parties shall notify each other of their decisions regarding any such applications for co-production as soon as possible, but not necessarily within the aforementioned limit of thirty days.

ARTICLE 19**Mixed Commission**

- (1) During the term of this Agreement a Mixed Commission, consisting of officials of both Parties and experts including: directors and producers of both countries, shall meet every two years alternately, in the two countries. However, it may be convened for extraordinary sessions at the request of one or both competent authorities, particularly in the case of major amendments to the domestic law governing the film, television and video industries in, or where the application of this Agreement presents serious difficulties.
- (2) The Mixed Commission shall determine whether the numerical and percentage balance of the co-productions has been achieved and, if not, shall determine the measures deemed necessary to establish such a balance.
- (3) The Mixed Commission shall submit to the competent authorities of the two Parties, 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 interests of the Parties.

ARTICLE 20**Import Restrictions**

- (1) No restrictions shall be placed on the import, distribution and exhibition of Italian film, television and video productions in the Republic of South Africa or that of South African film, television and video productions in the Italian Republic other than those contained in the domestic law in force in each of the two countries, including, in the case of the Italian

Republic, the obligations deriving from the norms of the European Union.

- (2) In addition, the parties reiterate their determination to favour, by all possible means, the distribution in their respective countries of productions of the other Party.

ARTICLE 21

Entry into Force

- (1) This Agreement shall enter into force on the date of receipt of the second of two notifications with which each of the contracting Parties shall notify the other of the completion of any domestic procedure for giving effect to this Agreement, and shall be valid for a period of five years.
- (2) It may be renewed for like periods by tacit agreement failing notice of termination in writing given by one of the contracting Parties at least six months prior to its expiry.
- (3) Co-productions which have been approved by the competent authorities and which are in progress at the time of notice of termination of this Agreement by either Party, shall continue to benefit fully until completion from the provisions of this Agreement. After expiry or termination of this Agreement, its terms shall continue to apply to the division of revenues from completed co-productions.

ARTICLE 22

Amendment

- (1) This Agreement may be amended by mutual consent of the Parties through an exchange of notes, which will come into

force with same procedures, as provided for by the basic Agreement, through the diplomatic channel.

ARTICLE 23

Dispute Resolution

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Agreement in two originals in English and Italian.

DONE at onin the English and Italian languages, all the texts being equally authentic.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA**

**FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC**

ANNEX**RULES OF PROCEDURE**

Applications for qualification of a film for co-production benefits must be filed, in principle simultaneously, to the competent administrations no less than thirty days prior to the commencement of shooting of the film.

Applications must be accompanied by the following documents in the Italian language for the Italian Republic and in the English language for the Republic of South Africa.

- I. a detailed treatment;
- II. a document providing proof that the copyright of the film adaptation has been legally acquired or failing this a valid option;
- III. the co-production contract, subject to the approval of the competent administrations of the two countries.

This document must include:

1. the title of the film;
2. the name of the writer or of the person responsible for adapting the subject if it is drawn from a literary source;
3. the name of the director (a safety clause is permitted for his replacement, if necessary);
4. the amount of the budget;
5. the amount of the financial contributions of the co-producers;
6. the sharing of the receipts and markets;
7. the undertaking between the co-producers concerning their participation in any costs which exceed the budget or in the

benefits from any savings in the production cost, proportionate to their respective participation. The participation in over-expenditure may be limited to 30% of the budget of the film;

8. a clause in the contract must provide that the admission of the film to the benefits of the agreement does not bind the competent authorities to permit the public exhibition of the film. Under the circumstances, therefore, there must be a clause setting out the conditions of a financial settlement between the co-producers:
 - a) if the competent authorities of either country refuse the application following examination of the complete file;
 - b) if the competent authorities do not permit exhibition of the film in either country or in third countries;
 - c) if the financial contributions have not been made according to the terms of Article 10 of the Agreement.
9. a clause aiming at establishing measures to be implemented if one of the co-producers does not entirely fulfill his commitments;
10. a clause which requires the majority of co-producer to take out an insurance policy covering all production risks;
11. the approximate starting date of shooting;
- IV. the plan for financing the film;
- V. the list of the technical and artistic equipment and personnel, and, for the personnel, stating their nationalities, including the roles to be played by the performers;
- VI. the production schedule.

The competent authorities of the two countries shall be entitled to demand any further documents and all other additional information deemed necessary.

In principle, the final shooting script (including the dialogue) should be submitted to the competent authorities prior to the commencement of shooting.

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 of both countries before the film is finished.

The replacement of a co-producer may be allowed only in exceptional cases and for reasons declared valid by the competent authorities.

The competent authorities will keep each other informed of their decisions, enclosing one copy of the file.