British Film Certification Co-production Guidance Notes

Department for Digital, Culture Media & Sport

Version: January 2018

Please check on the BFI website that you are using the most up-to-date version of the guidance:

These guidance notes are applicable to projects applying for British Certification as official co-productions for Films, High-end television programmes (HETV), Animation television programmes and Children's television programmes under the following:

UK/Australia Film Co-production Agreement
UK/Brazil Film Co-production Agreement
UK/Canada Film Co-production Agreement
UK/China Film Co-production Agreement
UK/France Film Co-production Agreement
UK/India Film Co-production Agreement
UK/Israel Film Co-production Agreement
UK/Jamaica Film Co-production Agreement
UK/Morocco Film Co-production Agreement
UK/New Zealand Film Co-production Agreement
UK/Occupied Palestinian Territories Film Co-production Agreement
UK/South Africa Film Co-production Agreement
The European Convention on Cinematographic Co-production

Collectively known through these guidance notes as the co-production agreements (but also sometimes known as treaties). The UK Government currently has twelve active bi-lateral film co-production agreements with Australia, Brazil, Canada, China, France, India, Israel, Jamaica, Morocco, New Zealand, the Occupied Palestinian Territories and South Africa. The aim of these co-production agreements is to encourage cross cultural collaboration between film makers and where applicable television programme makers from both countries. The UK has also ratified the European Convention on Cinematographic Co-production. This is designed to encourage multi-lateral co-productions between three or more signatory countries, and to allow for bi-lateral co-productions between signatory countries where no bi-lateral agreement exists.

These guidance notes are published pursuant to the co-production agreements signed by the UK Government, in order to provide information and advice about how applications are to be made for British Certification (also known as approved co-production status). They must be read in conjunction with the relevant co-production agreement. They are not, nor are they meant to be, a comprehensive description of the co-production agreements.

The Australian, Brazilian, Canadian, Israel, New Zealand, Occupied Palestinian Territories and South Africa treaties also allow television co-production. There is also a separate Television co-production treaty between the UK and China.

For further details on co-productions or to arrange a meeting particular project please contact the Certification Unit via email at certifications@bfi.org.uk or telephone the Head of Certification , Anna Mansi on 0207 173 3214.

Index

Introduction 3
Skills Investment Fund 3
Voluntary deposit 4
Applications for a British project 5
Who can apply? 5
How to apply? 5
Provisional approval/Interim certification 5
Final approval/Final certification 7
Decision making and discretions 7
Information sharing 7
Co-production agreements 9
Archive footage 10
Main requirements of the UK's bi-lateral agreements 11
The UK co-producer 11
Party and non-party co-producers 11
Applying as a multi-lateral co-production 15
Common management, control or ownership 16
Financial contributions 17
Creative contributions (expenditure on film making facilities, goods and personnel) 20
Rights, revenues and receipts 21
Language of the project 21
Screen and publicity credits 22
Where the project is made 22
Personnel 24
Conditions of work 27
Co-production contract 27
Cultural balance (for bi-lateral agreements only) 28
Main requirements of the European Convention 30
UK co-producers 30
Party and non-party co-producers under the European Convention 30
Financial contributions 30
Creative contributions 31
Where the project is made 31
Personnel 31
Rights & co-production contract 32
Screen and publicity credits 32
Qualifying as an European Cinematographic work 33
Accountant's report for final certification 34
Statutory declaration for interim and final certification 36
Annex A: Member states 37
Annex B: List of countries currently signed up to the European Convention 38
Annex C: Accountant's report template 39

Introduction

1. *The British Film Institute (BFI) is responsible for assessing applications for British Certification. A British Film, High-end television programme (HETV), Animation television programmes or Children's television programme Certificate can be obtained under either:*

    a. *The Cultural test or;*
    b. *The European Convention on Cinematographic Co-production or;*
    c. *One of the UK's official bi-lateral co-production agreements.*

2. *These guidance notes relate to obtaining a certificate under the European Convention or one of the UK's bi-lateral co-production agreements.*

3. *The decision whether to grant a project approved co-production status is made jointly with the competent authority of each signatory country to the bi-lateral co-production agreements or the participating co-producing countries under the European Convention (as applicable). A competent authority is the relevant government department or body nominated by that country's government to make decisions on applications for approved co-production status. The Department for Culture, Media & Sport (DCMS) is the UK's competent authority.*

4. *The Secretary of State for DCMS is responsible for making the decision as to whether to grant approval and issue a British Certificate, on the recommendation of the BFI Certification Unit.*

5. *Obtaining a British Certificate is a condition of making a claim to HM Revenue & Customs (HMRC) for tax relief. Tax relief is available under the Finance Act 2006 for projects which commenced principal photography on or after 1 January 2007 (or under transitional regulation to projects which started principal photography before 1 January 2007 but were not completed by that date).*

These guidance notes only relate to whether a project is made in accordance with a co-production agreement and accordingly is considered British. It is not relevant to the other criteria for tax relief in the Finance Act 2006. Those criteria are administered by HMRC which has issued separate guidance at
http://www.hmrc.gov.uk/manuals/fpcmanual/index.htm

Skills Investment Fund

6. *The Skills Investment Fund (SIF) is a joint film and television industry/Government initiative to fund training to develop skills and talent to help ensure the UK industry's long-term future. All projects which are partly or wholly shot in the UK, and intended for theatrical (film) or broadcast (TV) release, are asked to make a contribution to the SIF. Contributions are mandatory for those in receipt of UK public or lottery funding. The fund is actively supported by DCMS, Producers Alliance for Cinema and Television and the Motion Picture Association and is carried out in consultation with industry.*

Guidance on how to calculate and pay the SIF contribution is available from Skillset, the National Training Organisation for Broadcast, Film, Video and Multimedia.

Further information is available at: http://www.skillset.org/film/sif/

Voluntary deposit

7. *The UK is committed to supporting its national and regional archives, in order to protect, preserve and make moving image material accessible to all. Further information is available at this link:*

   http://www.bfi.org.uk/about-bfi/policy-strategy/bfi-national-archive-collections-policy

   Co-producers are encouraged to deposit one or more of the following with the BFI:

   - *A delivery print on 35mm format;*
   - *A digi-beta or Digital Video copy;*
   - *One copy of the post-production script;*
   - *One full set of stills where available;*
   - *Two release posters;*
   - *One set of publicity materials.*

It is not compulsory for producers to deposit material at a UK archive, and compliance (or non compliance) will not affect the certification process.

Greening Film

8. *As the lead body for film in the UK the BFI embraces best practice and takes seriously its responsibility to co-ordinate a UK-wide sustainability strategy for all parts of the film sector in the UK. This includes adopting BS 8909, the new British Standard for sustainability that was announced in 2011, and actively encourage other film organisations to do the same. A coordinated approach to sustainability using BS 8909, alongside recommended carbon calculators such as Albert, reduce carbon outputs, lead to greater efficiencies and long-term cost savings so that budgets can be used to better support the film industry. We encourage all filmmakers to visit the Greening Film website www.greeningfilm.com to see what ways their projects might benefit from a sustainable approach to filmmaking.*

Applications for British certification

Who can apply?

9. *Applications should be made at both the provisional and final stage. The provisional application must be received no less than 4 weeks before the start of principal photography. Applications should be made by the UK co-producer. Applicants should note that whilst the agreements allow the UK co-producer to be an individual, body corporate or unincorporated association, the UK film and television tax relief rules provide that only a co-producer which is a Film or Television Production Company is eligible for tax relief.*

   A Film Production Company (or FPC) must:

   (a) be a limited liability company within the charge of UK Corporation tax. Individuals, partnerships and limited liability partnerships are excluded. The requirement that the co-producer makes an effective creative, technical and artistic contribution means that 'finance only' co-producers cannot access film tax relief;

   (b) be an actual co-producer of the film; and

   (c) make an effective creative, technical and artistic contribution to the film.

   HMRC requires that there can be only one Film Production Company per film. If there is more than one UK co-producer meeting this description, then the company most directly engaged in these activities is the Film Production Company.

   The same criteria apply for television co-productions, where the guidance refers to the FPC this will also apply to the Animation Production Company (APC), Television Production Company (TPC) and Children's Television Production Company (CTPC).

10. *Where an individual, partnership, limited liability partnership or unincorporated association wishes to apply for a British Certificate they should first contact the BFI for further information.*

How to apply?

11. *An online application form for provisional or final approval under the co-production agreements is available on the BFI website at:*

    http://www.bfi.org.uk/film-industry/british-certification-tax-relief/co-production

12. *Supporting documents should be attached to the online application. PARTS 9 to 15 must be completed and are required to be attached to the online application form alongside all other supporting documents.*

    If the file is too large it can be e-mailed to: certifications@bfi.org.uk. Any other supporting documents can be sent to the following address:

Certification Unit
British Film Institute
21 Stephen Street
London
W1T 1LN

13. *Applicants should read the relevant co-production agreement in conjunction with these guidance notes when completing an application form. If UK Film, HETV, Animation television programme or Children's television programme tax relief is being sought, applicants should also check Chapter 3 of Part 3 of the Finance Act 2006 at http://www.legislation.gov.uk/ukpga/2006/25/contents to ensure that their project meets all the requirements. The BFI Certification Unit will answer any queries about the co-production application process and the requirements of the co-production agreement and can meet applicants to discuss their projects. There is no charge for processing applications or for issuing a certificate.*

14. *Once submitted online a hard copy of the completed application form (including PARTS 9 to 15, see the online application form for details) needs to be accompanied by a statutory declaration confirming the truth of the information provided and should be sent to the BFI at the address above.*

15. *Amendments may be made by crossing out any error and initialing the change before the statutory declaration is made. Where information is not available at the time of application, please enter "to be confirmed".*

16. *The BFI will normally issue certificates (as approved by the Secretary of State for Culture, Media & Sport) within 28 days of the receipt of a fully completed application. BFI cannot guarantee that certificates will be issued by a particular date. Delays may occur where application forms are not properly completed or where it is necessary to seek further information. Where applicants are aware of a deadline by which a certificate will be required, they should submit their application in sufficient time and attach details of such deadline. The BFI accepts no liability for any missed deadlines. The BFI expects to receive applications for interim approval at least four weeks before the start of principal photography.*

17. *Applicants may be asked to provide supporting evidence or arrange for the film or television programme to be seen by the BFI.*

18. *Where the BFI believes an application fails to meet the requirements of the applicable co-production agreement, the applicant will be informed that the application may be rejected, and will be offered an opportunity to make representations before a final decision in made. Rights of appeal are set out in paragraph 9 of Schedule 1 to the Films Act 1985. No aspect of the approval of any previous application should be taken to be a precedent. Each application is considered on its own merits.*

19. *The decision whether to grant a film or television programme approved co-production status is made jointly with the competent authority of the co-producing party country or countries.*

Provisional approval/Interim certification

20. The BFI expects to receive applications for provisional approval at least four weeks before the start of principal photography. Provisional approval will be granted and an interim certificate issued if the BFI and DCMS are satisfied that the project meets the terms of the agreement based on the proposals set out in the application.

21. The interim certificate will be valid for three years, beginning on the date specified on the certificate.

22. If, after submitting the application, the co-producers want to make significant changes to the use of facilities or personnel that could affect their qualification status they should consult the relevant competent authorities in advance to ensure continued compliance with the co-production agreement. UK co-producers should do this by contacting the BFI's Certification Unit. Failure to do so may mean final approval will be denied.

Final approval/Final certification

23. Final approval will only be granted and a final British Co-production Certificate will only be issued once the project is completed. Applications for a final certificate should therefore not be submitted prior to completion of a project. A project is completed when it is first in a form in which it can reasonably be regarded as ready for presentation to the general public (actual release of the film or broadcast of the television programme is not essential). This will normally be when it is ready to be delivered to a distributor (film) or broadcaster (Television), even if, exceptionally, it is later sent back to the producer for changes.

24. Final certification is essential before a final claim is made to HMRC on completion of the project.

Decision making and discretions

25. In order to be granted provisional or final approved co-production status (British Certification), the project must meet all the requirements of the applicable co-production agreement. Where a co-production application depends on the applicable competent authorities exercising discretion to relax a particular requirement of that co-production agreement, the UK co-producer applicant must make a case to the BFI in advance. This case might, for example, include script reasons for the requirement in the case of a lead actor from a non-participating, third country (e.g. a USA actor) or a third country location shoot (e.g. shooting in a desert in a third country where the script requires a desert).

Information sharing

26. Information provided by applicants as part of the application process will not normally be disclosed to third parties. However, information may be shared between DCMS, the BFI and HMRC. In particular, the British Film Institute will use

information for the purposes of preparing statistical information about the BFI in its advisory role to DCMS as the Government's strategic agency on film.

Please see http://www.bfi.org.uk/education-research/film-industry-statistics-research for further details.

27. *The Freedom of Information Act 2000 gives members of the public the right to receive information held by the BFI, subject to a number of exemptions. This includes information held in relation to applications received by the British Film Institute. If you choose to apply to the BFI for British Certification you should be aware that the information you supply, either in whole or in part, may be disclosed under the Act.*

28. *HMRC may also disclose to BFI and DCMS information received for the purpose of obtaining the Creative Sector tax reliefs. For example, if HMRC consider that information they receive is inconsistent with the basis on which certification was issued or the information provided by the applicant to the BFI or DCMS. If DCMS considers that this information constitutes evidence that a project which has previously been certified as British ought not to have been certified; the certificate will be revoked. Such a project would no longer be eligible for the relevant creative sector reliefs.*

Co-production agreements

General information

29. *It is a condition of obtaining UK tax relief that a film is intended for theatrical release and a HETV, children's television or animation programme is intended for broadcast release. Certificates will not be issued to TV productions which do not meet the HETV, children's television or animation programme definitions but will receive a letter of interim or final approval.*

30. *Television co-productions may only be considered under the Australian, Brazilian, Canadian, Israel, New Zealand, Occupied Palestinian Territories and South African co-production agreements. There is also a separate Television co-production treaty between the UK and China.*

31. *Series: In the event that the applicant is submitting an application for a series of films or programmes, either the whole series can be treated as a single film or separate applications need to be made for each part of the series. A series of films or programmes should be treated as separate applications, unless the following 3 conditions are all met:*

- *the film or programme forms a series with not more than 26 parts;*
- *the combined running time is not more than 26 hours; and*
- *the series constitutes a self-contained work or is a series of documentaries with a common theme.*

32. *Finance only co-productions: The China (Film and Television), France, Jamaica, India, Israel, Morocco, Occupied Palestinian Territories and South Africa co-production agreements allow for a minority co-producer to contribute 'finance only' to a co-production where that co-producer is not in a position to make the required film/programme-making contribution. The European Convention allows a minority co-producer to contribute 'finance only' to a co-production to help promote a European identity.*

Approval of a finance only contribution is subject to the approval of the UK and other applicable competent authorities, and a decision will be taken in the context of the overall balance of 'finance only' projects between such countries against the total number of co-production projects.

Agreement	*Minimum financial only contribution*	*Maximum financial only contribution*	*Annual limit*
European Convention	*10%*	*25%*	*Not applicable*
UK/China	*10%*	*25%*	*TBC*
UK/France	*20%*	*30%*	*Not applicable*
UK/India	*10%*	*25%*	*TBC*
UK/Israel	*10%*	*25%*	*3*
UK/Jamaica	*10%*	*25%*	*3*
UK/Morocco	*10%*	*25%*	*TBC*
UK/Occupied Palestinian Territories	*10%*	*25%*	*TBC*
UK/South Africa	*10%*	*25%*	*3*

Archive footage

33. *Except in the case of documentaries, no more than 10% of the running time of the project may include visual images and/or pictures (not sound) derived from:*

    (a) a film/programme which has already been certified as British (including co-productions);

    (b) a film/programme not made by the production company or other co-producer named in the application.

There is discretion to allow more than 10% archive footage to be included in documentary projects. This discretion will only be applied if it is considered appropriate for more than 10% of that project to comprise of archive footage in the light of its subject matter.

The 10% rule is invoked if the FPC, TPC, APC or CTPC completes another production company's or producers unfinished project.

Main requirements of the UK's bi-lateral agreements

This section is not applicable for films applying under the European Convention on Cinematographic Co-production.

The UK Co-producer

34. ***The UK co-producer (the FPC) should be registered with Companies House in the United Kingdom (England, Wales, Scotland or Northern Ireland).***

35. ***The UK co-producer's business should be managed and controlled in the UK and its board meetings take place in the UK. Companies that appear to exist as little more than in name only ("letterbox" companies) should not expect to qualify as a co-producer.***

36. ***The co-production agreements allow for more than one UK co-producer. Where there is no intention to claim UK film tax relief, more than one UK co-producer may make a joint application to the BFI. Where there is an intention to claim UK film tax relief, the FPC for the film, needs to be the UK co-producer that is most directly engaged in the making of the film (see paragraph 9 above).***

    Under the India, Israel, Jamaica, Morocco, Occupied Palestinian Territories and South Africa agreements, unless the competent authorities agree otherwise, the maximum number of co-producers should be four.

Party and non-party co-producers

37. ***The co-production agreements (excluding the European Convention) allow for both bi-lateral and multi-lateral co-productions. Bi-lateral co-productions are where all the co-producers are from the applicable co-production countries whereas multi-lateral involves those parties plus what is termed a Third-party Co-producer or (in some cases) a Non-party Co-producer or both.***

38. ***Co-producers under these co-production agreements (excluding the European Convention) can therefore fall into one of three categories:***

    - ***a 'Party Co-producer' (that is a co-producer established in the UK or in the country participating in the applicable co-production agreement – the 'Treaty Party State')***
    - ***a 'Third-party Co-producer' (that is a co-producer established in another country/state with which either the UK or the Treaty Party State has entered into a separate co-production agreement or treaty)***
    - ***a 'Non-party Co-producer' (that is a co-producer established in a state which does not have any agreement or treaty with either the UK or the Treaty Party State).***

39. *Generally[1], each co-producer from any of the above categories must contribute a share of the finance and make an effective creative, technical and artistic contribution to the project, in proportion to its financial investment.*

40. *Only the Brazil, Canada, China (Film and Television), India, Israel, Jamaica, Morocco, Occupied Palestinian Territories and South Africa co-production agreements (and the European Convention) allow for participation by non-party Co-producers:*

- *Under the Canada agreement, the Non-party Co-producer must be established in a Commonwealth or EU State and participation is subject to the general requirements of the Treaty;*

- *Under the Brazil, China (Film and Television), India, Israel, Jamaica, Morocco, Occupied Palestinian Territories and South Africa co-production agreements, the participation of the Non-party Co-producer is subject to the following restrictions:*

  a) *Any Non-party Co-producer can contribute a minimum of 10% and no more than 20% finance and no more than 20% of the creative, technical and artistic contribution to the film; and*

  b) *The project can be made in the country of any of the party or Third-party co-producers, and up to 20% in the country of the Non-party Co-producer. Except where discretion is granted by both applicable competent authorities, personnel should come from the country of the Party or Third-party Co-producers.*

41. *In summary, the co-production agreements allow for participation by co-producers as follows:*

Treaty	*Party*	*Third-party*	*Non-party*
UK/Australia	*UK* *Australia*	*Brazil* *Canada* *China* *France* *India* *Israel* *Jamaica* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention + Australia's partners*	*Not allowed*
UK/Brazil	*UK* *Brazil*	*Australia* *Canada* *China*	*Any State (which is not a Third-party state), subject to the*

[1] The exceptions to this rule are that the India, Israel, Jamaica, France and the Occupied Palestinian Territories and South Africa Agreements allow for finance only co-producers. In addition, under the India, Jamaica and South Africa Agreements, there is no requirement for the financial contribution of Third-Party or Non-Party Co-Producers to be in proportion to their film/programme-making contribution.

		India *Israel* *Jamaica* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention + Brazil's partners*	*restrictions set out in paragraph 39 of this guidance.*
UK/Canada	*UK* *Canada*	*Australia* *Brazil* *China* *France* *India* *Israel* *Jamaica* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention +Canada's partners*	*Commonwealth State* *EU State*
UK/China	*UK* *China*	*Australia* *Brazil* *Canada* *India* *Israel* *Jamaica* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention + China's partners*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
UK/France	*UK* *France*	*Australia* *Brazil* *Canada* *China* *India* *Israel* *Jamaica* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention +France's partners*	*Not allowed*
UK/India	*UK* *India*	*Australia* *Brazil* *Canada* *China* *France* *Israel* *Jamaica* *Morocco* *New Zealand*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*

		Occupied Palestinian Territories *South Africa* *European Convention* *+India's partners*	
UK/Israel	*UK* *Israel*	*Australia* *Brazil* *Canada* *China* *France* *Jamaica* *Morocco* *New Zealand* *OccupiedPalestinian Territories* *South Africa* *European Convention* *+ Israel's partners*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
UK/Jamaica	*UK* *Jamaica*	*Australia* *Brazil* *Canada* *China* *France* *India* *Israel* *Morocco* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention* *+Jamaica's partners*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
UK/Morocco	*UK* *Morocco*	*Australia* *Brazil* *Canada* *China* *France* *India* *Israel* *New Zealand* *Occupied Palestinian Territories* *South Africa* *European Convention* *+Morocco's partners*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
UK/New Zealand	*UK* *New Zealand*	*Australia* *Brazil* *Canada* *China* *France* *India* *Israel* *Jamaica* *Occupied Palestinian Territories* *South Africa* *European Convention* *+New Zealand's partners*	*Not allowed*
UK/Palestine	*UK*	*Australia*	*Any State (which is*

	Palestine	*Brazil* *Canada* *China* *France* *Israel* *Jamaica* *New Zealand* *South Africa* *European Convention* *+ the Occupied Palestinian Territories* *partners*	*not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
UK/South Africa	*UK* *South Africa*	*Australia* *Brazil* *Canada* *China* *France* *India* *Israel* *Jamaica* *New Zealand* *Occupied Palestinian Territories* *European Convention* *+South Africa's partners*	*Any State (which is not a Third-party state), subject to the restrictions set out in paragraph 39 of this guidance.*
European Convention	*UK* *Other signatories (see Annex B)*	*n/a*	*Any State subject to the restrictions set out in paragraph 2 (b) of the Convention.*

Applying as a multi-lateral co-production

42.For the project to qualify in the countries of the Party Co-producers:

- ***Either the UK or the Treaty Party State must have entered into an agreement or treaty with the country of the Third-party Co-producer, and, generally, such Third-party Co-producer must meet the requirements for status as a co-producer under that agreement[2]. In addition, the Brazil, Canada, China (Film and Television), India, Israel, Jamaica, Morocco, Occupied Palestinian Territories and South Africa co-production agreements permit Non-party Co-producers to take part in multi-lateral co-productions. In these cases, the Non-party Co-producer is generally required to be established in its relevant country.***

[2] The Canada, New Zealand and Australia co-production agreements all require the Third-Party Co-producer to meet the status requirements in their third-party agreement or treaty. The China, India, Israel, Jamaica, Morocco, Occupied Palestinian Territories and South Africa co-production agreements require the Third-Party Co-Producer to meet all the requirements of the Annexes to the applicable India, Jamaica and South Africa co-production agreement (subject to the Competent Authorities' discretion referred to therein). The France co-production agreement provides for the competent authorities to approve co-production status for multi-lateral projects on a case-by-case basis.

- *The project must meet the requirements of the co-production agreement between the UK and Treaty Party State.*
- *Applications must still be made to the applicable competent authorities of the co-production agreement.*

43. *For the project to qualify in the countries of the Party Co-producers <u>and</u> the Third-party Co-producers:*

    - *Either the UK or the Treaty Party State must have entered into an agreement or treaty with the country of the Third-party Co-producer;*
    - *The project must meet the requirements of such agreement or treaty AND of the applicable co-production agreement between the UK and the Treaty Party State and applications should be made to the competent authorities in all three participating countries.*

<u>Common management, control or ownership</u>

44. *The French agreement does not allow common management or control of the different co-producers (whether a company, partnership or unincorporated association).*

    The Australia, Brazil, Canada, China and New Zealand agreements do not allow common management, control or ownership of the different co-producers.

    The Israel, Morocco and Occupied Palestinian Territories treaties do not allow common management, control or ownership. In exceptional circumstances departures from this rule may be approved by the competent authorities.

    Under the India, Jamaica and the South Africa agreements the competent authorities may jointly agree to allow common management or control of co-producers.

Financial contributions

45. *Each co-producer is required to contribute a share of the finance needed to make the film/programme. Each co-production agreement sets a minimum and maximum financial contribution, and the country of the co-producer(s) making the largest financial contribution is deemed to be the majority country for that film/programme. The required percentages are set out below (references to third co-producer mean to a Third-party Co-producer).*

UK/Australia	*Each co-producer's financial contribution to the co-production film shall be at least 30% of the total budget, and this applies to the UK, Australia and any third co-producer.*
UK/Brazil	*Each party co-producer's financial contribution to the co-production film shall be at least 20% and no more than 80% of the total budget, and this applies to the UK, Brazil and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for UK, Brazil or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/China	*The following applies to both the film and television treaties. Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, China and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for UK, China or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/Canada	*Each co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, Canada and any third co-producer.*
UK/France	*Each co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, France and any third co-producer.*
UK/India	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, India and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for UK, Indian or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/Israel	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, Israel and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for the UK, Israel or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party Co-*

	producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.
UK/Jamaica	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, Jamaica and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for the UK, Jamaica or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party Co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/Morocco	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, Morocco and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for the UK, Morocco or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party Co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/New Zealand	*Unless the competent authorities agree otherwise each co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, New Zealand and any third co-producer.*
UK/Occupied Palestinian Territories	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, Palestine and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for the UK, Occupied Palestinian Territories or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party Co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*
UK/South Africa	*Each party co-producer's financial contribution to the co-production film shall be at least 20% of the total budget, and this applies to the UK, South Africa and any third co-producer. In exceptional circumstances the competent authorities may jointly agree to a lower limit of 10% for UK, South African or Third-party co-producers.* *Unless the competent authorities agree otherwise, each non-party co-producer's financial contribution shall be at least 10% and not more than 20% of the total production cost.*

46. *For this purpose the financial contributions of all UK co-producers, where there is more than one, are aggregated. The same applies to the contributions from the Treaty Party State co-producer (or to any Third-party or Non-party Co-producers respectively).*

Financial contributions may include:

- *Private Investment (equity funding).*
- *Cash purchase of shares in the project.*

- *Bank loans. To be counted as a financial contribution of the co-producer responsible for repaying those loans. When co-producers are jointly responsible for loan repayment and share revenues in a specified proportion, that proportion should be used to allocate the loan to the co-producers as part of their financial contributions.*

- *National benefits such as public funding and tax relief. To be counted only as part of the financial contribution of the co-producer in whose country they are available.*

- *Deferred payments provided that payment is guaranteed to be made within four months of the completion of the project. The source of finance that guarantees the payment should be listed in the finance plan.*

- *Payment in kind. Under the UK India treaty, payments in kind may be counted as part of the financial contribution of the co-producer whose nationality reflects that of the goods or services being provided in kind, subject to the discretion of the competent authorities.*

Financial contributions may not include:

- *Reinvestments. Payment from the production to a recipient which is reinvested back into the same production.*
- *Shares in proceeds from exploitation of a project.*
- *Creditors (unpaid suppliers)*
- *Deferred funding where payment is not guaranteed to be made within four months of completion of the project.*

47. *Subject to the rules regarding common management, ownership and control, co-producers may share a common source of finance from a third party.*

48. *Subject to the rules regarding common management, ownership and control of the co-producers' business, one co-producer may provide finance to another co-producer.*

Creative contributions (expenditure on film making facilities, goods and personnel)

All references to film-making also apply to programme-making for television co-production.

49. *Co-producers are expected to make an effective technical and creative (film-making) contribution in proportion to their financial contribution.*

50. *The film-making contribution of each co-producing country is measured by an expenditure test on goods, services, facilities, locations and personnel from that country and which directly contribute to the making of the co-production, and an overall assessment of the use of personnel and goods and locations and facilities from that country.*

For the purposes of the assessment under the co-production agreements (which is not an assessment of allowable amounts for tax purposes) the film-making contribution of each country includes:

- *expenditure on film-making facilities and locations in that country;*
- *expenditure on film-making goods sourced in that country. Accommodation expenses, including reasonable per diem expenses, should be included in the spend of the country where the goods/services are provided. The cost of a flight should be included as a cost of the country you fly to, and the cost of the return flight should be included as a cost of the country you return to;*
- *expenditure on personnel from that country (whether working in that country or elsewhere), see definition of UK personnel paragraph 63.*

The following costs are not included in the film-making contribution of a co-producing country:

- *acquisition/licensing costs (e.g. rights to pre-existing material);*
- *business overheads;*
- *marketing costs;*
- *trade association fees;*
- *delivery costs;*
- *financing costs;*
- *insurance and completion bond;*
- *contingent payments; or*

- *fees re-invested back into the same production.*

51. *Where the information provided by the applicant is incomplete or unsatisfactory, the entire cost of an item may be disregarded by the BFI from the assessment of the application, or a lower cost figure which would appear to be reasonable in respect of the service provided may be substituted by the BFI.*

Rights, revenues and receipts

52. *Generally, the rights, revenues and prizes arising in connection with the co-production shall be shared between the participating co-producers in a manner that reflects their respective financial contributions.*

53. *The India agreement allows the party co-producers to share rights, revenues and prizes arising in connection with the co-production in a manner that shall be agreed between them.*

54. *The France agreement requires that the division of receipts is approved by the competent authorities.*

Language of the film/programme

55. *Under the co-production agreements, the original sound recording of the project is expected to be made in at least one of the languages of the co-producing countries.*

56. *Under the UK/Brazil co-production agreement the film must be made in either*
(a) the original version must be made in an official language or a recognised regional or minority language of either Party;
Or
(b) if the original version is not in the English language, a subtitled or dubbed version must be produced in English; and
Or
(c) if the original version is not in the Portuguese language, a subtitled or dubbed version must be produced in Portuguese.

57. *Under the UK/China (film and television) co-production agreement the film must be made in either*
(a) the original version must be made in an official language or a recognised regional or minority language of either Party;
Or
(b) if the original version is not in the English language, a subtitled or dubbed version must be produced in English; and
Or
(c) if the original version is not in the Chinese language, a subtitled or dubbed version must be produced in Chinese.

58. *Under the UK/Morocco co-production agreement the original version of the film must be made in the Arabic language or in any Moroccan dialect or in the English language or a recognised regional of the United Kingdom or a language of a State in which a co-producer is established. Subtitled or dubbed versions must be in Arabic*

or English as appropriate if the original version is in the other party country's language.

59. *Under the UK/South-Africa co-production agreement the original or subtitled version of the film/programme must be made in one of:*

    a) English, Scottish-Gaelic, Welsh, Irish, Scots, Ulster-Scots or Cornish

    and

    b) Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa or isiZulu

Screen and publicity credits

60. *Under the co-production agreements, projects must be credited as a UK/Treaty Party State Co-production. The normal expectation is that screen credits should not give the impression that a project is a co-production of any country other than the official co-producing countries.*

Where the project is made

61. *Unless the applicable competent authorities agree otherwise, all the work on the co-production prior to completion shall be carried out in the countries of the Party Co-producers or Third-party/Non-party Co-producer (if allowed). Unless the applicable competent authorities agree otherwise, the majority of this work shall be carried out in the country of the co-producer which has made the major financial participation.*

62. *Each co-production agreement has different rules on where a project can be made and applicants should take account of the following:*

UK/Australia	*Co-production projects shall be made (including studio and location shooting), and processed up to the creation of the first release print in the UK, Australia or the country of a third co-producer.*
UK/Brazil	*Unless the Competent Authorities agree otherwise:* *(a) all work on the co-production prior to completion shall be carried out in the UK or Brazil, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and* *(b) the majority of the work on the co-production shall be carried out in the State or region in which the Party Co-Producer or Third-Party Co-producer making the greatest financial contribution is established;* *but nothing in this Agreement shall prevent co-production work in a third country or region if the script or the circumstances require it, and the Competent Authorities agree.*
UK/Canada	*Co-production projects shall be made (including studio and location shooting), processed, post synchronised and mixed up to the creation of the first release print in the UK and/or Canada and/or country of any third co-producer.*
UK/China	*The following applies to the film and television treaties. Unless the*

	Competent Authorities agree otherwise: *(a) all work on the co-production prior to completion shall be carried out in the UK or China, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and* *(b) the majority of the work on the co-production shall be carried out in the State or region in which the Party Co-Producer or Third-Party Co-producer making the greatest financial contribution is established;* *but nothing in this Agreement shall prevent co-production work in a third country or region if the script or the circumstances require it, and the Competent Authorities agree.*
UK/France	*Co-production films shall be made (including studio and location shooting), processed, dubbed and sound recorded in the UK and/or France. Dubbing into languages other than English and French may be carried out in the country concerned. Such work may also be carried out in the country of any third co-producer.*
UK/India	*Co-production films shall be made (including studio and post production) in the UK and/or India and/or country of any Third-party co-producer.*
UK/Israel	*(a) all work on the co-production prior to completion shall be carried out in the UK or Israel, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and* *(b) the majority of the work on the co-production shall be carried out in the State or region in which the Party Co-Producer or Third-Party Co-producer making the greatest financial contribution is established;* *but nothing in this Agreement shall prevent co-production work in a third country or region if the script or the circumstances require it, and the Competent Authorities agree.*
UK/Jamaica	*Co-production films shall be made (including studio and post production) in the UK and/or Jamaica and/or country of any Third-party co-producer.*
UK/Morocco	*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. (including studio and post-production)*
UK/New Zealand	*Co-production films shall be made, processed and dubbed up to the creation of the first release print, in the countries of the participating co-producers. Post-release print dubbing into languages other than Maori, English, Gaelic, and Welsh may be carried out in third countries and all versions of the film may contain passages of dialogue in other languages if required by the script.*
UK/Occupied Palestinian Territories	*(a) all work on the co-production prior to completion shall be carried out in the UK, the Occupied Palestinian Territories, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and* *(b) the majority of the work on the co-production shall be carried out in the UK, the Occupied Palestinian Territories or third country, depending on where the Party Co-producer or Third-Party making the greatest financial contribution is established;*

	but nothing in this Agreement shall prevent co-production work taking place outside the UK, the Occupied Palestinian Territories, or a country in which a Third-Party Co-producer is established if the script or the circumstances require it, and the Competent Authorities agree.
UK/South Africa	*Co-production projects shall be made (including studio and post production) in the UK and/or South Africa and/or country of any Third-party co-producer.*

63. *The competent authorities may permit location filming, in a third country (not to be confused with a country where a Third-party Co-producer or Non-party Co-producer is established) where necessary for the purpose of making the project. The competent authorities may permit this as an exception to the normal rule where for example, the script requires scenes to be shot in such country because of geographical features or because of the requirements of the story. However, such filming on location in a third country should not involve the construction of sets. Such third country spend should not be more than 20% or 30% of the budget depending on the co-production treaty being utilised. If the applicable competent authorities have agreed that location filming may take place in a third country, some personnel from that country may be allowed to work on the project, but not in key crew grades (see paragraphs 63 to 67).*

Personnel

64. *Unless the applicable competent authorities agree otherwise, all the work on the co-production prior to completion shall be carried out by nationals or residents of the Party Co-producers or Third-party Co-producer or the European Union or European Economic Area (or of the SADC states under the South Africa agreement or of the CSME states under the Jamaican agreement). Personnel working on a film fall into one of four categories for the purpose of measuring film-making contributions:*

(i) UK personnel:

- *Any person ordinarily resident in the UK. Further details on residency can be found on HM Revenues and Customs website:*

  http://www.hmrc.gov.uk/manuals/cbtmanual/cbtm10020.htm

- *British citizens, British Overseas citizens, British Dependent Territories citizens, British Nationals (Overseas), British subjects and British protected persons, regardless of where they are resident. Further details and definitions can be found on the Home Office Website: http://www.ukba.homeoffice.gov.uk/britishcitizenship/aboutcitizenship/*

(ii) Personnel from the other co-producing country(ies);

- *Under the South African agreement this includes a SADC state;*
- *Under the Jamaican agreement this includes a CSME state;*
- *Under the Australia agreement this includes New Zealand citizens;*
- *Under the New Zealand agreement this includes Australian citizens.*

(iii) EU/EEA personnel from outside the co-producing countries;

(iv) Personnel from other countries. The competent authorities may permit the use of other personnel, as set out in the table below, where necessary for the purpose of making the film. This would be as an exception to the normal rule, for example for script or financing reasons and subject to an advance request to the applicable competent authorities for the exercise of their discretion.

UK/Australia	*Nationals or residents of other countries may be engaged as performers.*
UK/Brazil	*The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 of the Annex of the UK/Brazil co-production agreement to participate in the making of a film without regard to nationality or residency, or other grounds.*
UK/Canada	*Nationals or residents of other countries may take part as leading performers in leading roles.*
UK/China	*The following applies to the film and television treaties. The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 of the Annex of the UK/China co-production agreement to participate in the making of a film without regard to nationality or residency, or other grounds.*
UK/France	*Nationals or residents of other countries may take part as leading artists or principal directors.*
UK/India	*Nationals or residents of other countries may be engaged as performers or personnel in all grades.*
UK/Israel	*Nationals or residents of other countries may be engaged as performers or personnel in all grades*
UK/Jamaica	*Nationals or residents of other countries may be engaged as performers or personnel in all grades.*
UK/Morocco	*Nationals or residents of other countries may be engaged as performers or personnel in all grades.*
UK/New Zealand	*Nationals or residents of other countries may be engaged as performers.*
UK/Occupied Palestinian Territories	*Nationals or residents of other countries may be engaged as performers or personnel in all grades*
UK/South Africa	*Nationals or residents of other countries may be engaged as performers or personnel in all grades.*

65. Where the nationals of one co-producing country are ordinarily resident in another co-producing country, residency takes precedence.

66. Co-producers will be asked to provide details of the nationality and country of residence of all personnel.

67. If the applicable competent authorities have agreed that location filming may take place in a third country (see paragraph 62), some personnel from that country may be allowed to work on the film. The UK will exercise this discretion as set out in the table below, and on the basis that the third country personnel are essential for the location work to be undertaken and that their participation is not in key grades set out at paragraph 67.

UK/Australia	*Citizens of the third country may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.*
UK/Brazil	*The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 of the Annex of the UK/Brazil co-production agreement to participate in the making of a film without regard to nationality or residency, or other grounds.*
UK/Canada	*Nationals or residents of the third country may be employed as additional employees whose services are necessary for the location work to be undertaken.*
UK/China	*The following applies to the film and television treaties. The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 of the Annex of the UK/China co-production agreement to participate in the making of a film without regard to nationality or residency, or other grounds.*
UK/France	*Nationals or residents of the third country may be employed as crowd artists or as additional employees to the normal categories of employment.*
UK/India	*Nationals or residents of the third country may be employed.*
UK/Israel	*Nationals or residents of the third country may be employed.*
UK/Jamaica	*Nationals or residents of the third country may be employed*
UK/Morocco	*Nationals or residents of the third country may be employed*
UK/New Zealand	*Nationals or residents of the third country may be employed where their services are necessary for the location work to be undertaken.*
UK/Occupied Palestinian Territories	*Nationals or residents of the third country may be employed.*
UK/South Africa	*Nationals or residents of the third country may be employed.*

68. *In all circumstances the following personnel must be from the co-producing countries or the EU/EEA:*

Line Producer; Production Manager; Production Accountant; Director; First Assistant Director; Second Assistant Director; Production Designer; Art Director; Special Effects Supervisor; Visual Effects Supervisor; Editor; Hair and Make-up Supervisor; Costume Designer; Director of Photography; Camera Operator; Sound Recordist; Boom Operator; Key Grip, Best Boy (Grip) Gaffer; Best Boy (Electrical); Film Editor; Stunt Co-ordinator.

Conditions of work

69. Information about working abroad is available from BECTU (Broadcasting Entertainment Cinematograph and Theatre Union) at this link:

www.bectu.org.uk

Co-production contract

70. The official co-producers must enter into a contract. Ideally the fully signed contract should be submitted to the BFI, with the application for provisional co-production status. If only a draft contract is available at the time then that should be submitted with the application form, and the fully executed document must be submitted as soon as it is available.

The following table summarises what the various agreements require to be included in the contract between the co-producers.

Provisions applicable to all co-production agreements	*Set out the financial liability of each co-producer for costs incurred:* • *In preparing a project which is refused provisional or final approval* • *In making an approved co-production project, where permission for public exhibition is withheld by any of the countries of the co-producers or third co-producer.*
Additional provisions applicable to co-production agreements with Australia, New Zealand and Canada	*Provide that a sufficient number of copies of the final protection and reproduction material used in the production be made for all the co-producers.* *Each co-producer shall be the owner of a copy of the protection and reproduction material and shall be entitled to make the necessary reproductions.* *Each co-producer shall have access to the original production material in accordance with the conditions agreed upon between the co-producers.* *Set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the project, including the arrangements for the export markets.* *Specify the date by which all the contributions to the project shall have been completed.* *Further, for Canada only: Provide for the respective copyright entitlements of the co-producers.*
Additional provisions applicable to co-production agreements with India, Israel, Jamaica, Morocco, Palestine and South Africa	*The contract must be expressed to be subject to the approval of Competent Authorities and that amendments to the contract must be submitted to the Competent Authorities for approval before the co-production is completed.* *Set out the steps to be followed where a co-producer fails to fulfil commitments under the contract.* *Make arrangements for any unpaid balance of the contributions of each co-producer to be paid within sixty days of the date of completion of the project.* *Make provision for any overage or under spend resulting from the total budgeted*

	costs being exceeded or under-spent, to be divided so as to provide for the terms of the agreement to be adhered to or within the limits of the approval of the competent authorities. *Make provision for 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.* *Make provision for the division between the co-producers of territories and/or the receipts from the exploitation of the project, including those from export markets.* *Provide that the original protection and reproduction material from the production and the first completed version are to be deposited in a place mutually agreed by the co-producers. Furthermore:* • *Each producer is to have free access to the material and master subject to the conditions agreed upon between the co-producers.* • *Specify that either each of the co-producers is to have joint ownership of the material and the master or that each co-producer is to own a copy of the material and the master, and* • *That a sufficient number of copies of the material and the master be made for all the co-producers without restriction on the number of copies made by each co producer.*
Additional provisions applicable to the co-production agreement with <u>France</u>	*Provide that each project shall have two negatives or at least one negative and one duplicate negative.* *Provide that each co-producer shall be the proprietor of a negative or duplicate negative and shall have the right to use it to take a duplicate negative or prints, subject to conditions in the contract.* *Provide for the division between the co-producers of the receipts from the exploitation of the project, including those from export markets (subject to the approval of the competent authorities).*

<u>Cultural balance (for bi-lateral agreements only)</u>

71. *<u>Please note there is no requirement in these Co-production agreements to pass a cultural test</u>, however the UK would like to assess each project to determine whether there is an overall balance in cultural benefits delivered by each co-production agreement, in terms of overall balance rather than by reference to individual projects. Information regarding the following subjects will be collated and assessed by the UK BFI but only for the purpose of assessing overall cultural balance over a number of projects over a number of years:*

Where the project is set

a. *A film/programme is set in a country if the story takes place there. It does not matter where the film/programme is actually shot. For this purpose a film/programme will be considered to be set in a country if it is set in any place which is now part of that country. A film/programme that is set in a fictionalised version of a country will be considered to be set in that country. This will be measured by counting the number of pages in the script which are set in the UK and the co-producing party country.*

Nationality of principal characters

b. A character is a British character if he or she is a British citizen or a person resident in the UK. Similarly, a character is, for example, a French character if he or she is a French citizen or a person resident in France. British character also includes any character who, at the time the film/programme was set, was a British subject anywhere in the world. The three principal characters will be determined by taking account of centrality and prominence of the character in the story. Where not immediately apparent, the BFI will ask the applicant to identify the three principal characters and make the case for a character's centrality and prominence in the story.

Subject matter of the project

c. The subject matter is British, for example, if the project is about a British fictional character or a non-fictional event relevant to the UK even if it is not set in the UK; or the subject matter is French for example if the project is about a French fictional character or a non-fictional event relevant to France.

The underlying material on which the project is based

d. The underlying material will be British or French for example depending on if the author of the underlying material e.g. book, short story, game, original screenplay or article is a British or French citizen or resident.

and/or;

If the subject matter is British, for example if the project is about a British non-fictional character or story.

The original dialogue of the project

e. The original dialogue is recorded in the English language or in a recognised regional or minority language.

The UK has six indigenous minority languages under the Council of Europe Charter for Minority or Regional Languages (Scottish-Gaelic, Welsh, Irish, Scots, Ulster-Scots and Cornish).

Main requirements of the European Convention

UK co-producers

72. The UK co-producer should be registered with Companies House in the United Kingdom (England, Wales, Scotland or Northern Ireland).

73. The UK Co-producer's business should be managed and controlled in the UK and its board meetings take place in the UK. Co-producers should have a track record in production.

74. The Convention allows for more than one UK Co-producer. Where there is no intention to claim UK film tax relief, more than one UK Co-producer may make a joint application. Where there is an intention to claim UK film tax relief, the FPC for the film, and therefore the applicant for certification, will be the UK Co-producer that is most directly engaged in the making of the film.

75. The Convention does not allow television co-productions.

Party and non-party co-producers under the European Convention

76. The European Convention allows for bi-lateral and multi-lateral co-productions. Bi-lateral co-productions are where there are only two co-producers from countries which are signatory to the Convention whereas multi-lateral involve three or more co-producers from countries which are signatory to the Convention.

77. There are 2 types of co-producers under the Convention:

- *A Party Co-producer (established in a country which is signatory to the Convention – a Party co-producing country);*
- *A Non-party Co-producer (established in a country which is not a signatory to the Convention – a Non-party co-producing country). If a co-producer wishes to include a Non-party Co-producer in a co-production where there are only 2 Party Co-producers, prior agreement from the British Film Institute should be sought.*

78. Each of these co-producers must contribute a share of the finance and make an effective creative, technical and artistic contribution to the film, in proportion to its financial investment. A Non-party Co-producer can contribute no more than 30% finance.

Financial contributions

79. Each co-producer is required to contribute a share of the finance needed to make the co-production. The minimum and maximum financial contributions, as required by the Convention, are set out in the table below. The country of the co-producer(s)

making the largest financial contribution is deemed to be the majority country for that film. The contributions of all Non-party Co-producers are aggregated for this purpose.

	Minimum	*Maximum*
Multi-Laterals	*10%*	*70%*
Bi-Laterals	*20%*	*80%*
Non-party	*10%*	*30%*

80. Please see paragraphs 45-47 for further details about how financial contributions are assessed.

Film-making contributions

81. The contribution of each co-producer must include effective technical and artistic participation in the co-production; and in principle the film-making contribution of each co-producing country (cast, production crew and facilities) must be proportional to the financial contribution of that country's co-producer(s).

82. Please see paragraphs 48-50 for further details about how film-making contributions are assessed.

Where the film is made

83. Filming may be carried out in any country, subject to the requisite amount of points in Appendix II of the European Convention and the requirement for the co-producers' financial contributions to be proportionate to their film-making contributions. Up to 30% of the total budget may be spent in relation to filming outside of the co-producing countries (including spend on personnel from that country). Post-production should not be undertaken outside the co-producing countries without prior permission of the competent authorities and specific justification will be required.

Personnel

84. All the technical and craft work on the co-production prior to completion should be carried out by nationals and/or residents of the co-producing countries (including Party and Non-party co-producing countries) and/or nationals or residents of an EEA State; however, the applicable competent authorities may permit the use of other technical and craft personnel provided that it is justified by the demands of the screenplay. Where location filming is taking place in a country which is not a co-producing country then nationals of that country will be allowed in technical and craft grades but only on the basis that the location filming is required by the screenplay and their participation is not in key grades. Please see paragraph 64.

85. *There is no restriction on writers, directors, composers and performers subject to the requisite amount of points in Appendix II of the European Convention and the requirement for the co-producers' financial contributions to be proportionate to their film-making contributions.*

Rights & co-production contract

86. *The co-production contract must include provisions guaranteeing each co-producer joint ownership of the original picture and sound negative; providing that the negative must be kept in a place mutually agreed by the co-producers; guaranteeing them free access to it; and guaranteeing each co-producer the right to an inter-negative.*

Screen and publicity credits

87. *Co-productions must be credited as 'a UK/Co-producing countries co-production'. The names of these countries must appear in the credit titles, in all publicity and promotional material. The normal expectation is that screen credits should not give the impression that a film is a co-production of any country other than the official co-producing countries.*

Qualifying as an European cinematographic work

88. *The co-production must meet the definition of a European Cinematographic Work as set out in Appendix II of the Convention. A co-production must be awarded at least 15 out of a possible 19 points to qualify. Points are available as set out below:*

European Elements	*Points Available*
Creative Group	
Director	*3*
Scriptwriter	*3*
Composer	*1*
Total Creative Group	*7*
Performing Group (determined by no of days worked)	
First Role	*3*
Second Role	*2*
Third Role	*1*
Total Performing Group	*6*
Technical Craft Group	
Cameraman- (interpreted as Director of Photography)	*1*
Sound Recordist	*1*
Editor (interpreted as Film/picture Editor)	*1*
Art Director (interpreted as Production Designer)	*1*
Studio or shooting location	*1*
Post-production location	*1*
Total Technical Craft Group	*6*
Total	*19*

89. *Points for scriptwriter can be shared according to the nationality of the creator of the original idea, adaptor, scenario-writer and dialogue-writer.*

90. *The applicable competent authorities may grant co-production status to a film with less than 15 points, if they consider that the work nonetheless reflects a European identity. The UK will take the following factors into account when assessing European identity:*

- *The demands of the screenplay; for example does it tell a European story?*
- *Whether the co-production is filmed in Europe, using European nationals*

Accountant's report for final certification

(See Annex C for accountant's report template)

91. *Applicants who are applying for television co-productions but are not claiming film, high-end television, animation programme or children's television programme tax relief, and who meet HMRC's definition of a small business[3] are not required to submit an accountant's report for final certification. Such applicants may of course still wish to do so to ensure the veracity of their application.*

92. *Applicants are required to include with the application for final approval a report to the Secretary of State prepared by:*

    f. *An accountant who is a member of a body of accountants recognised under Section 1212 of the Companies Act 2006:*

    The Institute of Chartered Accountants in England and Wales,
    The Institute of Chartered Accountants in Scotland,
    The Association of Chartered Certified Accountants, or
    The Institute of Chartered Accountants in Ireland.

    or

    g. *A person recognised under section 34 of that Act to be appointed as Auditor of a Company.*

93. *The person preparing the report, in either case, must not be and must not have been at any time while the project was being made in partnership with, nor in the employment of the FPC, TPC, APC or CTPC (or any of the co-producers) and must not have been at any time while the project was being made: (i) an officer or servant of that company, or, if that company is a member of a group of companies, of any other company in that group; or (ii) in partnership with, or in the employment of, any such officer or servant.*

94. *The person preparing the report must not have a conflict of interest at any time while the project was being made with the applicant. This includes (and is not limited to) the following examples:*

- *Acting as the production accountant;*
- *Advising on raising or providing film/programme finance;*
- *Fees for client and recurring work must not account for more than 15% of gross practice income;*
- *Having a mutual business interest with a client or their officers or employees;*
- *Provision of other services such as significant valuations or acting for the client in adversarial situations.*

[3] Para 382: http://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1"

95. However, that person may undertake the following activities:

- *Engagement as auditor to the FPC, TPC, APC or CTPC;*
- *Reporting accountant on the co-production;*
- *Preparing and signing comfort letters;*
- *Advice re a European Certificate of British Nationality;*
- *Preparation of statutory company accounts.*

96. The report must verify:

- *The total production cost;*
- *Confirmation that the amount and provenance of financial contributions as reported by the applicant is correct and meets the minimum requirements of the agreement. This requires confirmation of: the identity of all parties providing finance to the co-producer; the types of finance provided; the amounts in each case; the date by which the finance has been or will be provided to the production; and what the financiers are entitled to in return for their finance;*
- *The spend on creative-making contributions, i.e. spend on goods and services of: each of the co-producing countries; and third countries; and the labour of other EU/EEA personnel;*
- *Deferred payments which are guaranteed;*
- *Non-cash arrangements (e.g. contingent payments; fees re-invested back into the same production; etc.).*

97. Producers should expect auditors to request copies of passports and other evidence of nationality and country of residence, contracts, bank statements, profit and loss accounts, invoices and vouchers, and any other relevant documents. Where information is repeatedly received from an auditor which is not clear or is inaccurate, the British Film Institute will notify UK co-producers that reports from that auditor will no longer be acceptable.

98. The British Film Institute will undertake any checks it considers necessary to confirm that it has received the correct and complete information needed to make a decision on an application. Applicants should ensure that they answer all questions accurately and fully to avoid their application being rejected.

The report should not be dated before the date of the application, as it is a report on the application. The original signed accountant's report on the accountant's own letter-headed paper should be submitted with the final application.

The report is not required for applications for provisional approval.

Statutory declaration for interim/final certification

99. The applicant is required to make a statutory declaration as to the truth of the particulars given in the application. (The independent auditor's report does not need to be covered by a statutory declaration).

100. This statutory declaration may be made either before a practicing solicitor, general notary, justice of the peace or other officer authorised by law to administer a statutory declaration under the Statutory Declaration Act 1835. He/she should be independent of the production and of anyone with a financial or similar interest in the project including any law firm involved in the making of the project. It is an offence knowingly and willingly to make a materially false statement in a statutory declaration.

101. A person making a false statutory declaration may be prosecuted and is liable on conviction to imprisonment for a maximum of two years (where conviction follows a trial on indictment), or a fine or both.

102. If the applicant seeks to make the statutory declaration whilst outside the UK, only the British Consul, British Embassy and the British High Commission is authorised to administer a statutory declaration for this purpose.

103. Where any additional sheets are submitted as an addendum to the application:

(a) mention of the addendum should be made in the appropriate place on the application form;

(b) each page of any addendum should be signed by the same person making the application, and signed and stamped by the person (e.g. solicitor) administering the statutory declaration to show that the addendum formed part of the application when the statutory declaration was made.

104. Once the statutory declaration has been made the application form cannot be altered without making another statutory declaration to cover the amendments. Where an applicant is concerned that the form has been completed incorrectly, he should seek independent legal advice or submit the form to the British Film Institute in draft before the statutory declaration is made. Supporting information such as the long format budget, chain of title, shooting script, synopsis and treatment do not need to be signed or stamped.

105. A statutory declaration is required for both interim and final certification.

106. DCMS will refuse or withdraw the certificate where false or misleading information is supplied as part of an application, and will co-operate with HMRC, the Crown Prosecution Service and the police on prosecutions, as appropriate.

Annex A: Member states

The European Union (EU) contains the following States:

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

The European Economic Area (EEA) contains, in addition to the States of the EU, the following three States from the European Free Trade Area (EFTA):

Iceland
Liechtenstein
Norway

For more information on EFTA and the EEA, see this website:
http://www.fco.gov.uk/en/

Annex B: List of countries currently signed up to the European Convention

Albania	*01/01/2010*
Armenia	*01/04/2005*
Austria	*01/01/1995*
Azerbaijan	*01/07/2000*
Belgium	*01/12/2004*
Bosnia and Herzegovina	*01/07/2009*
Bulgaria	*01/08/2004*
Croatia	*01/12/2004*
Cyprus	*01/03/2001*
Czech Republic	*01/06/1997*
Denmark	*01/04/1994*
Estonia	*01/09/1997*
Finland	*01/09/1995*
France	*01/03/2002*
Georgia	*01/02/2003*
Germany	*01/07/1995*
Greece	*01/10/2002*
Hungary	*01/02/1997*
Iceland	*01/09/1997*
Ireland	*01/08/2000*
Italy	*01/06/1997*
Latvia	*01/04/1994*
Lithuania	*01/10/1999*
Luxembourg	*01/10/1996*
Macedonia	*01/10/2003*
Malta	*01/01/2002*
Moldova	*01/01/2012*
Montenegro	*06/06/2006*
Netherlands	*01/07/1995*
Norway	*01/11/2009*
Poland	*01/04/2003*
Portugal	*01/04/1997*
Romania	*01/07/2002*
Russia	*01/07/1994*
Serbia	*01/10/2004*
Slovakia	*01/05/1995*
Slovenia	*01/03/2004*
Spain	*01/02/1997*
Sweden	*01/04/1994*
Switzerland	*01/04/1994*
Turkey	*01/07/2005*
Ukraine	*01/12/2009*
United Kingdom	*01/04/1994*

As per the Council of Europe website (agreement number 147): http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=147&CM=&DF=&CL=ENG.

Annex C: Accountant's report

ACCOUNTANT'S REPORT TO THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT ON THE PRODUCTION OF THE PROJECT "[TITLE]" BY PRODUCTION COMPANY "XXXXXXXXXXX" UNDER THE XXXX/XXXX CO-PRODUCTION TREATY.

I/We confirm that this report has been prepared by a person who is eligible for appointment as a company auditor under section 1212 of the Companies Act 2006 and who is not and was not at any time while the project was being made: in partnership with the applicant or any officer or servant of the applicant; in the employment of the applicant or any officer or servant of the applicant; or an officer or servant of the applicant or, if the applicant is a member of a group of companies, of any other company in that group.

The applicant is responsible for the preparation of the application. It is my/our responsibility to independently verify the particulars in the application set out below and to independently state our opinion about [TITLE] based on my/our examination and to report those matters to the Secretary of State.

I/We have examined the application dated [XX/XX/XX], together with the supporting documentation and the books of the applicant so far as they relate to the making of this project. My/our assessment includes examination, on a test basis, of evidence relevant to the amounts and information in the application and supporting documents. I/We planned and prepared this assessment so as to obtain all the information and explanations which I/we consider necessary in order to provide us with sufficient evidence to give reasonable assurance that the information contained in the application and supporting documents are free from material misstatement, whether caused by fraud or other irregularity or error.

On the basis of such examination, I/we report in my/our opinion:

- The total production cost as stated in the application amounts to £XXXXXXXXX
- The amount and provenance of the financial contributions as reported in Part 9 of the application form are correct and meet the minimum requirements of the treaty.
- The spend on film-making contributions, i.e. spend on goods and services of: each of the co-producing countries; third countries and the labour of other EU/EEA personnel are as reported in Part 10 of the application form.
- Deferred payments which are guaranteed are as reported in Part 9 of the application form.
- Non cash budgeted arrangements (e.g. contingent payments; fees re-invested back into the same production) are as reported in Part 9 of the application form.

On the basis of such examination, it is my/our opinion that finance and film-making contributions meet the minimum requirements of the treaty.

Signed [name of individual]

On behalf of [name of firm]

Date