

# **Indo-Poland Audio-visual Co-Production Agreement**

## **AGREEMENT**

### **BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON AUDIOVISUAL CO-PRODUCTION**

THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND hereinafter referred to as the "Parties":

CONSIDERING it desirable to establish a legal framework for relations regarding audiovisual co-production, especially the production of films for the cinema and television, as well as films intended solely for dissemination on analogue or digital data carriers;

AWARE that a high quality of co-production may encourage the development of enterprises and institutions which produce, distribute and disseminate films and enhance cultural and economic exchange between both States;

CONVINCED that such exchange shall strengthen relations between both States;

HAVE AGREED AS FOLLOWS:

#### **Article 1**

1. For the purpose of this Agreement:

- 1) The term "Co-production" means a set of actions taken by co-producers from both States that result in production of a film, regardless of genre or length, with or without sounds, including fiction, animation and documentary productions, made in any format, and intended for distribution in any manner, especially cinema screening as its primary field of use;
- 2) The term "Co-producer" means a person who is a citizen of the Republic of Poland or the Republic of India, or a legal entity based in the territory of either State who is authorised to enter into co-production contracts with a view to organising, carrying out and co-financing film production;



2. Each co-production undertaken under this Agreement, after it has fulfilled all the conditions herein, must gain approval from the following Competent Authorities:
  - 1) In the Republic of India – the Ministry of Information and Broadcasting
  - 2) In the Republic of Poland – the Minister of Culture and National Heritage,
- 3) Each co-production undertaken under this Agreement shall be in accordance with the law in force in the Republic of Poland and in the Republic of India.
- 4) Unless otherwise provided for under the laws in force in the Republic of Poland and the Republic of India, each co-production undertaken under this Agreement shall be regarded as a domestic production in each State-Party in order to obtain all present and future benefits conferred upon domestic productions in these two States. Nevertheless, such benefits shall be due only to co-producers from the State which confers these benefits.

## Article 2

The Co-producers in either of the two States shall satisfy themselves about each other's capability, including their professional knowledge, organisational capability, financial backing and professional reputation.

## Article 3

1. The financial contribution of each co-producer shall be between twenty (20) percent and eighty (80) percent of the co-production budget.
2. The co-producers from each State should make a tangible creative and technical contribution to a co-production in proportion to their share in its budget, encompassing the total engagement of film makers, actors, technical-production personnel, laboratories and facilities. In justified cases, the Competent Authorities may approve a co-production which does not satisfy all of these requirements.



#### Article 4

1. Producers, directors, screenwriters and actors, as well as technicians and remaining staff engaged in the co-production, must hold Polish or Indian citizenship or have their place of abode or permanent residence in one of these States, in accordance with the domestic law of each State.
2. In exceptional circumstances, where the co-production requires so, participation of professionals who do not fulfil the conditions set out in paragraph 1 may be permitted. This shall require approval by the Competent Authorities of both the States.

#### Article 5

1. The Competent Authorities may approve a co-production involving, apart from Polish and Indian co-producers, co-producers from third countries which are parties to an audiovisual co-production agreement with at least one of these States (multilateral co-production).
2. The minimum contribution by a co-producer in a multilateral co-production should be ten percent (10%) of the co-production's budget. Article 3 paragraph 2 of this Agreement shall apply as appropriate.

#### Article 6

1. Filming and animation work, including the storyboard, layout, key animation and in between as well as sound recording, should be carried out in the Republic of Poland or the Republic of India.
2. The filming of scenes in the open air or indoors may be performed in a third country if the screenplay or plot requires it and if Polish and Indian technicians are involved in this work.
3. Laboratory processing shall be carried out in the Republic of Poland or the Republic of India, unless this is not possible for technical reasons. In such a case, the Competent Authorities may permit the laboratory processing to be carried out in a third country.



## Article 7

1. The original soundtrack of each co-production shall be recorded in Polish, English or any one of the languages or dialects of India (languages of the Parties). Dubbed soundtracks in any of these languages may be recorded in the Republic of Poland or in the Republic of India. A film may be made in more than one language of the Parties version. Dialogues may also be recorded in other languages if the screenplay requires this.
2. Each language version of each co-production (dubbing or subtitles) shall be produced in the Republic of Poland and in the Republic of India, as appropriate. Any departures from this rule must be approved by the Competent Authorities.

## Article 8

1. Each co-production shall be made in at least two copies of good picture quality, of equal legal validity, and in two international sound copies, on media which permit independent distribution in the Republic of Poland and the Republic of India.
2. The original negatives, as well as the final version of back-up copies and master copy, shall be stored in the country of the majority co-producer or in another place agreed upon between the co-producers. Regardless of the place of storage, each co-producer should have guaranteed access to these materials at any time, so that he may make essential reproductions under terms and conditions agreed upon between the co-producers.
3. At least two back-up copies of medium and high-budget co-productions shall be made. If the co-producers so agree, only one back-up copy and one copy of the materials for reproduction may be made in the case of co-productions deemed to be low budget co-productions by the Competent Authorities.



## Article 9

In accordance with the laws in force in their States, the Parties shall:

- 1) facilitate producers, screenwriters, directors, technicians, actors and other personnel specified in each co-production contract to enter and briefly stay in their country,
- 2) facilitate that the film equipment and tapes required for co-production to be brought into and taken out of the country.

## Article 10

No provision of this Agreement shall imply that the approval of co-production or the granting of any associated benefits by the Competent Authorities signifies an obligation by any of the Governments to grant a license, concession, permit or similar decision to co-producers or any other persons for the dissemination of a co-production. Neither shall any such provision imply that these Authorities consider a co-production justified or bear any responsibility for it.

## Article 11

1. If a co-production is exported to a third country which has quota restrictions, the co-production shall be included in the quota of the majority co-producing State.
2. If there is no majority co-producing State, the co-production shall be included in the quota of that State-Party which, in the joint opinion of the co-producers, has better chances of exporting the film. In the absence of agreement between the co-producers, the co-production shall be included in the quota of the country of which the director is a citizen.
3. If one of the State-Parties enjoys an unlimited right to export its films to a third country which applies a maximum quota of such imports, the co-production, like any other domestic production of the State-



Party, shall be the subject of unlimited exports to that third country, with the approval of that State's Competent Authorities.

#### Article 12

1. Each co-production destined for presentation shall be endorsed with the caption "A Polish-Indian Co-production" or "An Indian-Polish Co-production", depending on the majority co-producer's State of origin. In the absence of such a co-producer, the co-production shall be endorsed in accordance with the terms of the co-production contract.
2. The caption referred to in paragraph 1 shall be accommodated in the opening credits and in all advertising and promotional materials, especially whenever such a co-production is presented.

#### Article 13

1. Unless otherwise agreed upon by the co-producers, if a co-production is to be presented at an international film festival, it shall be submitted by the majority co-producer's State or, in the absence thereof, by the State of which the film director is a citizen.
2. Prizes, grants and other distinctions granted for the co-production shall be divided between the co-producers in accordance with the terms of the co-production contract and the laws in force in both States.
3. All non-pecuniary awards granted for the co-production, especially any honorary distinctions and statuary conferred by a third country or by an organization from a third country, shall be kept by the entity specified in the co-production contract or, in the absence thereof, by the majority co-producer.

#### Article 14

The producers governing the application of this Agreement, taking into account the law in force in the Republic of Poland and in the Republic of India, are set forth in an Appendix to this Agreement and thus form an integral part thereof.



#### Article 15

The Parties shall impose no restrictions on the import, distribution and dissemination of Polish and Indian films to be shown in the cinema or on television, or destined solely for distribution on analogue or digital data carriers, to the extent permitted under the laws of the Republic of Poland and in the Republic of India.

#### Article 16

1. Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled consensually through consultation and negotiation and shall not be referred for resolution to any national or international tribunal or a third party.
2. To facilitate the application of this Agreement, the Parties or Competent Authorities may appoint a Joint Commission which will normally meet every two years, alternately in the Republic of Poland and in the Republic of India. The Commission may also be convened for an extraordinary meeting at the motion of the Competent Authorities or one or both Parties, especially in the event of significant changes to the legislation of any of the States-Parties which could affect the implementation of this Agreement, or in the event of major difficulties with its implementation.

#### Article 17

This Agreement may be amended by the mutual consent of the Parties through the exchange of notes between the Parties through diplomatic channel. The change shall take effect on the date specified in the note.

#### Article 18

1. This Agreement shall be subject to approval in accordance with the laws of each Party, which shall be stated through an exchange of the notes. The Agreement shall enter into force within sixty (60) days of reception of the second of the notes.





2. This Agreement shall remain in force for a period of 5 (five) years from the date of its entry into force, and then shall be automatically renewed for successive periods of 5 (five) years, unless written notice is otherwise given for termination by either party to the other party at least 6 (six) months before the expiry of the relevant period.

3. Any co-productions approved by the Competent Authorities and being realized at the moment of termination of this Agreement by either party shall continue to be bound by the terms thereof until they are completed. If this Agreement expires or is terminated, its provisions will be applied to the division of revenues from completed co-productions.

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

Done at Warsaw on 4<sup>th</sup> July 2012 in two original, each of them in Polish, Hindi and English, all texts being equally authentic. In the case of divergence in their interpretation, the English text shall prevail.

  
For the GOVERNMENT  
OF THE REPUBLIC OF INDIA

  
For the GOVERNMENT  
OF THE REPUBLIC OF POLAND

## APPENDIX

### PROCEDURES

#### General Provisions

Applications for any benefits under this Agreement in aid of any co-production must be submitted simultaneously to the Competent Authorities at least sixty (60) days before filming begins. The Competent Authorities of the State of which the majority co-producer or another co-producer indicated by the co-producers is a citizen shall convey their decision to the Competent Authorities of the other State within thirty (30) days of the submission of the complete documentation listed below. Again within thirty (30) days, the Competent Authorities of the other State shall convey their decision to the Competent Authorities of the first State and to the co-producer appointed by the co-producers.

Applications should be supported by the following documents, drawn up in Polish and English in the case of the Republic of Poland and in English and one of the languages of India in the case of the Republic of India:

1. Final version of the screenplay,
2. Evidence of the lawful acquisition of the copyright necessary to a given co-production,
3. A signed copy of a co-production contract concluded between co-producers, which should contain:
  - a) The title of the co-production,
  - b) The name of the author of the screenplay or of the person who adapted the screenplay, if it is based on literary sources,
  - c) The name of the director,
  - d) A synopsis,
  - e) A budget plan,
  - f) A financial plan, stating the financial input of the co-producers,
  - g) A clause defining the division of revenues and markets,
  - h) A clause setting forth a share in the copyright in proportion to the input of individual co-producers,
  - i) A clause describing what to do if the budget is exceeded,
  - j) A clause describing the measures to be taken if one of the co-producers does not discharge its obligations,
  - k) A clause setting forth the rules governing financial settlements if any co-producer fails to provide the financial contribution agreed upon in the co-production contract,



- l) A clause confirming that the acceptance of a co-production does not imply any production will be distributed in the States-Parties,
  - m) A clause obligating the majority co-producer to take out an insurance policy providing cover at least against "all production risks" and "all production risks connected with original materials."
  - n) The date on which filming commences.
- 4. The distribution agreement, if such an agreement has already been concluded,
  - 5. A list of the filmmakers, actors and technicians, indicating their citizenships and, in the case of actors, the names of their characters,
  - 6. A production schedule,
  - 7. A detailed budget, showing the expenditures to be incurred by the co-producers in each State.

#### IMPORTANT PROVISIONS FOR INDIAN PARTY

In addition, an application addressed to the Indian Ministry of Information and Broadcasting (MIB) should be accompanied by four copies of the screenplay and film synopsis, together with a payment mandate for US\$ 225 payable to Ministry of Information & Broadcasting.

If the film is to be shot wholly or partly in the Republic of India, the co-producers must provide the Indian Embassy in the Republic of Poland and Ministry of Information & Broadcasting with the following information:

- 1. Details of any non-Indian members of the film crew: names, passport numbers and expiry dates, country which issued the passport, nationality, permanent and temporary address.
- 2. An accurate description of the shooting locations and the film crew's travel plans.
- 3. A description of the cinematographic equipment and quantity of film to be brought in to the Republic of India temporarily.



Within three weeks of receipt of the required set of documents, the Ministry of Information & Broadcasting will send the appropriate filming permit to all co-producers and the Competent Authorities in the other State. A longer period for issuing the filming permit may be required if filming is to take place in Jammu and Kashmir, north-eastern States and some border zones.

Permission to film in the Republic of India may be dependent upon the following conditions:

1. Permission from a person or his legal heir who is to be portrayed in the film; a copy of the permission should be attached to the screenplay,
2. If it is necessary to obtain assistance from the Ministry of Defence, Ministry of Education, etc. separate agreements may have to be concluded with these Ministries. Requests for such assistance may be submitted via the Ministry of Information & Broadcasting,
3. Each film for whose production the assistance of the Armed Forces has been obtained must be presented to the Ministry of Defence in order to obtain permission for its distribution.
4. In particular cases, a film may have to be presented to a representative of the Government of the Republic of India or to the Indian Embassy in the Republic of Poland before it can be shown anywhere in the world. Also in particular cases, a liaison officer may be assigned to a film crew - at the expense of the Government of the Republic of India.

## CONCLUDING PROVISIONS

The Competent Authorities may ask for any additional documents or information which they consider essential in order to consider an application for a co-production.

The final screenplay (with script) should be presented to the Competent Authorities prior to the start of filming.

Amendments, including a change of co-producer, may be made to the original co-production contract. However, any amendments must be submitted to the Competent Authorities for approval before the co-production is completed. A change of co-producer is permissible only in exceptional circumstances, and for reasons considered by the Competent Authorities to be satisfactory. The Competent Authorities shall inform each other of the decisions they have reached.

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