



TREATY SERIES 2009
Nº 2

**Agreement between the Government of Ireland and the
Government of New Zealand Concerning the Co-production
of Films and Annex**

Done at Wellington on 29 October 2007

Notifications of the completion of procedures required by constitutional
law for giving effect to this Agreement both exchanged on 23 January
2008

Entered in to force on 23 January 2008

Presented to Dáil Éireann by the Minister for Foreign Affairs

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF NEW ZEALAND CONCERNING THE CO- PRODUCTION OF FILMS AND ANNEX

The Government of Ireland and the Government of New Zealand (hereinafter referred to as “the Parties”)

Seeking to enhance cooperation between their two countries in the area of film;

Desirous of expanding and facilitating the co-production of films which may be conducive to the film industries of both countries and to the development of their cultural and economic exchanges;

Convinced that these exchanges will contribute to the enhancement of relations between the two countries;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement

1. “competent authority” means the authority designated as such in the Annex by each Party.
2. “co-producer” means one or more New Zealand nationals or one or more nationals of Ireland involved in the making of a co-production film, or, in relation to Article 5 third country co-productions, nationals of the third country.
3. “co-production film” means a film made by one or more nationals of one Party in cooperation with one or more nationals of the other Party under a project approved jointly by the competent authorities, and includes a film to which Article 5 applies.
4. “film” means an aggregate of images, or of images and sounds, embodied in any material, and includes television and video recordings, animations and digital format productions.
5. “nationals” means:
 - (a) as regards Ireland,
 - Irish residents;
 - citizens of Ireland;
 - nationals of a Member State of the European Union: or
 - nationals of another Contracting State to the Agreement of 2 May 1992 regarding the European Economic Area (‘the EEA Agreement’);

(b) as regards New Zealand,

- citizens of New Zealand; or
- permanent residents of New Zealand,

Article 2 *Overriding Aim*

An overriding aim of this agreement shall be to ensure that an overall balance is achieved with regard to:

- (a) the contribution of the nationals of each Party to the production costs of the approved films;
- (b) the usage of studios and laboratories of the two Parties;
- (c) the employment of nationals of the two Parties as creative, craft and technical personnel; and
- (d) the participation of nationals of the two Parties in each of the major creative, craft and technical categories and , in particular, that of the writer, director and lead cast.

The overall balance shall be across all the films jointly approved under the Agreement, and shall also be proportionate to the overall level of financial contributions of the nationals of each Party.

Article 3 *Recognition as a National Film and Entitlement to Benefits*

1. A co-production film shall be fully entitled to all the benefits which are or may be accorded to national films by each of the Parties under their respective national laws.
2. Any benefits which may be granted within either Party in relation to a co-production film shall accrue to the co-producer who is permitted to claim those benefits in accordance with the legislation of that Party, subject to any other relevant international obligations.

Article 4 *Approval of Projects*

1. Co-production films shall require, prior to the commencement of shooting, joint approval of the competent authorities. Approvals shall be in writing and shall specify the conditions upon which approval is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself.
2. In considering proposals for the making of a co-production film, competent authorities, acting jointly and with due regard for their respective policies and guidelines, shall apply the rules set out in the Annex to this Agreement.

Article 5

Contributions

1. For each co-production film:

- (a) the performing, technical, craft and creative participation of the co-producers;
and
- (b) production expenditure in each of the co-producer's countries

shall be in reasonable proportion to their respective financial contributions.

2. Both the financial contribution, and the performing, technical, craft and creative participation of each co-producer shall account for at least 20% (twenty per cent) of the total effort in making the co-production film.

3. Notwithstanding the contribution rules set out in paragraphs 1 and 2 of this Article, in exceptional cases, competent authorities may jointly approve co-production projects where:

- (a) the contribution of one of the co-producers is limited to the provision of finance only, in which case approvals shall be limited to projects where the proposed finance-only contribution is no greater than 50% (fifty per cent) of the total costs of the film; and
- (b) the competent authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

Article 6

Third Country Co-Productions

1. Where either Ireland or New Zealand maintains with a third country a film co-production agreement, the competent authorities may approve a project for a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third country.

2. Approvals under this Article shall be limited to proposals in which the contribution of the third country co-producer is no greater than the lesser of the individual contributions of the New Zealand and Irish co-producers.

Article 7

Participation

1. Persons participating in a co-production film shall be nationals of Ireland and of New Zealand and, where there is a third co-producer, nationals of the third co-producers country.

2. Subject to the approval of the competent authorities:

(a) where script or financing dictates, restricted numbers of performers from other countries may be engaged;

(b) in exceptional circumstances, restricted numbers of technical personnel from other countries may be engaged.

Article 8

Making up to First-Release Print

1. Co-production films shall be made and processed up to the manufacture of the first release print in New Zealand and/or in Ireland and/or, where there is a third co-producer, in that third co-producer's country.

2. At least 90% (ninety per cent) of the footage included in a co-production film shall be specially shot or created for the film unless otherwise approved by the competent authorities.

Article 9

Location Filming

1. Competent authorities may approve location filming in a country other than those of the participating co-producers.

2. Notwithstanding Article 7, where location filming is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

Article 10

Soundtrack

1. The original soundtrack of each co-production film shall be made in one of the official languages of either New Zealand or Ireland, or in any combination of those permitted languages.

2. Narration, dubbing or subtitling in any commonly used language or dialect of New Zealand or Ireland shall be permitted.

3. Post-release print dubbing into any other language may be carried out in third countries.

4. The soundtrack may contain sections of dialogue in any language in so far as is required by the script.

Article 11

Acknowledgments, Credits

A co-production film and the promotional material associated with it shall include either a credit title indicating that the film is an "Official Ireland - New Zealand Co-Production" or an "Official New Zealand - Ireland Co-Production" or, where relevant a credit which reflects the participation of Ireland, New Zealand and the country of a third co-producer.

Article 12
Immigration Facilitation

Subject to normal immigration requirements, each of the Parties shall permit the nationals of the other country and nationals of the country of any third co-producer approved under Article 6, to enter and remain in Ireland or New Zealand, as the case may be, for the purpose making or promoting a co-production film,

Article 13
Import of Equipment

Each of the Parties shall provide, in accordance with their respective legislation, temporary admission, free of import duties and taxes, of technical equipment for the making of co- production films.

Article 14
Taxation

Notwithstanding any other provision of this Agreement, for the purposes of taxation the laws in force in each of the two countries shall apply subject to the provisions of the *Convention between the Government of New Zealand and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains*, done in Dublin on 19 September 1986.

Article 15
International Obligations

The provisions of this Agreement are without prejudice to the international obligations of the contracting parties, including in relation to Ireland, obligations devolving from European Community Law.

Article 16
Mixed Commission

1. There shall be a Mixed Commission composed of representatives of the Parties, including the competent authorities and industry representatives.
2. The role of the Mixed Commission shall be to supervise and review the operation of this Agreement and to make any proposals considered necessary to improve the effect of the Agreement, including regarding the overall balance between the Parties.
3. The Mixed Commission may be convened at the request of either of the Parties for the purposes of dispute resolution including any perceived imbalance between the Parties.
4. The Mixed Commission shall be convened, whether by meeting or otherwise, within six months of such a request.

Article 17
Status of Annex

1. The Annex to this Agreement constitutes an implementing arrangement in respect of this Agreement and shall be read in conjunction with the provisions of this Agreement.
2. Subject to paragraph 3 of this Article, any modifications to the Annex shall be jointly agreed by the competent authorities following consultations with the Mixed Commission. No modification to the Annex shall conflict with the provisions of this Agreement.
3. Modifications to the Annex shall be confirmed by the competent authorities in writing and shall take effect on the date they specify.

Article 18
Entry into Force

Each of the Parties shall notify the other in writing through the diplomatic channel of the completion of any procedure required by its constitutional law for giving effect to this Agreement. This Agreement shall enter into force on the date of the later of such notifications.

Article 19
Amendment

1. Subject to paragraph 2 of this Article, this Agreement may be amended by written agreement between the two Parties through an exchange of diplomatic notes. Amendments shall take effect on the date specified in the notes.
2. Either Party may by diplomatic note notify the other of a change in its competent authority. The change shall take effect on the date specified in the notes.

Article 20
Duration and Termination

1. The term of this Agreement shall be for a period of three years from the date it enters into force and thereafter automatically renewed for further periods of three years. Either Party may terminate the Agreement at the conclusion of a three-year period by giving six months' notice in writing through the diplomatic channel.
2. Notwithstanding paragraph 1 of this Article, this Agreement shall continue as if in force in respect of any co-production film approved by the competent authorities and yet to be completed prior to termination.

Done at Wellington this 29 day of October 2007

Mary Hanafin
For the Government of Ireland

Helen Clarke
For the Government of New Zealand

ANNEX

IMPLEMENTING ARRANGEMENT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF NEW ZEALAND CONCERNING THE CO-PRODUCTION OF FILMS

1. The competent authorities for the Agreement between the Government of Ireland and the Government of New Zealand concerning the Co-Production of Films are An Bord Scannán na h Éireann the Irish Film Board in Ireland and the New Zealand Film Commission in New Zealand.
2. The approval process under Article 4 of the Agreement will comprise two stages: Provisional Approval upon application, and Final Approval upon completion of the film and prior to distribution.
3. There will be a contract between the co-producers governing the making of a co-production film which will:
 - a) provide that a co-producer may not assign or dispose of benefits referred to in Article 3 except to, or for the benefit of , a national of that co-producer's country;
 - b)
 - i) assign, as between the co-producers, ownership of all intellectual property right arising from the making of the co-production film; and
 - ii) set out the arrangements between the co-producers regarding the exercise of rights of access to and use of copyright works created in the making of the co-production film;
 - c) set out the liability of each co-producer for costs incurred;
 - in preparing a co-production project which is refused approval as a co-production film by the competent authorities;
 - in making a film which has been given such approval and fails to comply with the conditions of such approval;
 - in making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - d) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the co-production film including those from export markets:
 - e) specify dates by which the respective contributions of the co-producers to the production of the film shall have been completed;
 - f) specify whether the co-production film shall be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers; and

g) specify any other conditions of approval that the competent authorities jointly agree.