

Agreement

Between the

Government of the

Republic of India

And

The Government of the

Federative Republic of Brazil

On

Audio Visual

Co - Productions

The Government of the Republic of India and the Government of the Federative Republic of Brazil (hereinafter referred to as “the Contracting Parties”)

Seeking to enhance co-operation between their two countries in the audio-visual area;

Desirous of expanding and facilitating the co-production of audio-visual works, which may be conducive to the development of the film and audio-visual industries of both countries and to the expansion of cultural and economic exchanges between them;

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. “Audiovisual Co-production” means an audiovisual work jointly invested in and produced by one or more Brazilian co-producers and one or more Indian co-producers under a project approved by both Competent Authorities.

2. “Audiovisual Work” means any record of a sequence of related images, irrespective of length, which is intended to be made visible as a moving image through the use of devices, regardless of the medium of initial or subsequent fixation, and for which there is an expectation for public exhibition. It

includes films and video recordings, animation and documentary productions for exploitation in theatres, on television, DVD or by any other form of distribution. New forms of audiovisual production shall be included in the present agreement by exchange of Notes between the Contracting Parties.

3. “Co-producer” shall be:

(a) as regards the Republic of India:

- (i) nationals/citizens of the Republic of India;
- (ii) permanent residents of India; and
- (iii) entities which are established and/or incorporated in India.

(b) as regards the Federative Republic of Brazil:

- (i) nationals/citizens of the Federative Republic of Brazil;
- (ii) permanent residents of Brazil; and
- (iii) entities which are established and/or incorporated in Brazil.

4. “Competent Authority” means:

- (a) on behalf of the Federative Republic of Brazil, the Ministry of Culture;
and
- (b) on behalf of the Republic of India, the Ministry of Information and Broadcasting.

Article 2

Benefits

1. An Audiovisual Co-production shall be treated as a national Audiovisual Work by both Contracting Parties and, therefore, shall be fully entitled to all the benefits which are or may be accorded to national audiovisual works by each of the Contracting Parties under their respective national laws.

2. Any benefits available in Brazil may only be accorded to a Brazilian Co-producer.
3. Any benefits available in India may only be accorded to an Indian Co-producer.
4. The sharing of expenses and revenues shall be as mutually decided by the Co-producers.

Article 3

Approval of Projects

1. Audiovisual Co-productions shall require, prior to the commencement of shooting, approval of both the Competent Authorities.
2. Approvals are granted under their respective national laws, shall be in writing and shall specify the conditions upon which the approval is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that such links are inherent in the making of the Audiovisual Co-production itself.
3. In considering proposals for the making of an Audiovisual Co-production, both Competent Authorities shall apply the rules and principles set out in this Agreement as well as in its Annex, with due regard for their respective policies and guidelines.

Article 4

Contributions

1. For each Audiovisual Co-production:
 - (a) the performing, technical, craft and creative participation of the Co-producers; and
 - (b) the production expenditure of the Co-producer in the Republic of India or in the Federative Republic of Brazil

shall be in reasonable proportion to their respective financial contributions and as mutually decided by both the Co-producers.

2. Both the financial contribution, and the managerial, performing, technical, craft and creative participation of each Co-producer shall account for at least 20% (twenty per cent) of the total budget of the Audiovisual Co-production.

3. Notwithstanding the contribution and participation rules set out in paragraphs 1 and 2 of this Article, in exceptional cases both Competent Authorities may approve Audiovisual Co-productions where:

- (a) the contribution by one Co-producer is limited to the provision of finance only, in which case the proposed finance-only contribution shall be 20% (twenty per cent) or more of the total budget of the Audiovisual Co-production; or
- (b) despite falling outside the contribution rules, the Competent Authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

4. Subject to the specific conditions and limits laid down in laws and regulations in force in the Contracting Parties, in the case of multilateral co-productions the minority contribution may not be less than 10% (ten per cent), and the majority contribution may not exceed 70% (seventy per cent) of the total cost of the Audiovisual Work.

Article 5

Third Country Co-Productions

1. Where either the Republic of India or the Federative Republic of Brazil maintains with a third country an Audiovisual Co-production agreement, the Competent Authorities may approve a project for an Audiovisual Co-production

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 Brazilian and Indian Co-producers.

Article 6

Participants

1. The screenwriters, the director, actors and other artistic and technical personnel participating in an Audiovisual Co-production shall be:

- (a) as regards the Republic of India,
 - (i) nationals/citizens of Republic of India; and
 - (ii) permanent residents of India.
- (b) as regards the Federative Republic of Brazil,
 - (i) nationals/citizens of the Federative Republic of Brazil; and
 - (ii) permanent residents of Brazil.
- (c) in cases in which there is a third co-producer,
 - (i) nationals/citizens of the third co-producer's country; and
 - (ii) permanent residents of the third co-producer's country.

2. Participants in an Audiovisual Co-production as defined in this Article must at all times throughout the production retain their national status, and may not acquire or lose such status at any point during the course of production activity.

3. In exceptional cases, both Competent Authorities may approve Audiovisual Works

- (a) where script or financing dictate the engagement of performers from other countries; and

- (b) where artistic or financing reasons dictate the engagement of technical personnel from other countries.

Article 7

Negatives, First-Release Print and Languages

1. At least one negative and one duplicate negative shall be made of all Audiovisual Co-productions. Each Co-producer shall be entitled to make a further duplicate or prints there from. Each Co-producer shall also be entitled to use the original negative in accordance with the conditions agreed upon between the Co-producers themselves. The storage of the original negative shall be as mutually decided by the Co-producers.
2. Audiovisual Co-productions shall be made and processed up to the manufacture of the first release print in the Republic of India or in the Federative Republic of Brazil or, when there is a third co-producer, in that third co-producer's country.
3. The original soundtrack of each Audiovisual Co-production shall be made in Hindi, or any other Indian language or dialect, or in English or Portuguese, or in any combination of those permitted languages. Dialogue in other languages may be included in the Audiovisual Co-production, as the script requires.
4. The dubbing or subtitling into one of the permitted languages of the Republic of India or into Portuguese shall be carried out in the Republic of India or in the Federative Republic of Brazil. Any departure from this principle must be approved by the Competent Authorities.

Article 8
International Festivals

1. The majority Co-producer shall normally enter Audiovisual Co-productions in international festivals.
2. Audiovisual works produced on the basis of equal contributions shall be entered as an Audiovisual Work of the country which the director is from.

Article 9
Location Shooting

1. The Competent Authorities may approve location shooting in a country other than those of the participating co-producers.
2. Notwithstanding Article 6, where location shooting is approved in accordance with the present Article, citizens of the country in which location shooting 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
Credits

An Audiovisual Co-production shall include a title, in the initial credits, indicating that the Audiovisual Work is an “Official Indian – Brazilian Co-Production” or an “Official Brazilian – Indian Co-Production”. The promotional material associated with the audiovisual work shall likewise include a credit reflecting the participation of the Republic of India, the Federative Republic of Brazil and, when relevant, the country of a third co-producer.

Article 11
Temporary Entry into the Country

1. For approved Audiovisual Co-productions, each Contracting Party shall facilitate, in accordance with the domestic law in force in its country:

- (a) entry into and temporary residence in its territory for technical and artistic personnel of the other Contracting Party;
- (b) the import into and export from its territory of technical and other film making equipment and materials by producers of the other Contracting Party; and
- (c) the transfer of funds destined for payments related to the audio-visual co-productions.

2. These dispositions also apply to third parties, approved under Article 5 of the present agreement.

Article 12
Joint Commission

1. A Joint Commission shall be established comprising representatives of the Competent Authorities from both Contracting Parties.

2. The role of the Joint Commission shall be to evaluate the implementation and operation of this Agreement and to make any proposals considered necessary to improve the effect of the Agreement.

3. The Joint Commission shall be convened, whether by meeting or otherwise, at the request of either of the Contracting Parties within six months of such a request.

Article 13
Entry into Force

1. This Agreement shall enter into force on the date of the second notification between the Contracting Parties, through diplomatic channels, conveying that the requirements for the entry into force of this Agreement have been satisfied.
2. This Agreement including the Annex, which forms an integral part of this Agreement, shall remain in force for an unlimited period of time, unless terminated in terms of paragraph 3 of this Article.
3. Either Contracting Party may terminate this Agreement by giving six months` written notice in advance of such intention to the other Contracting Party through the diplomatic channel.
4. Termination of this Agreement shall have no effect on the completion of Audiovisual Co-productions approved prior to its termination.

Article 14
Permission for Public Exhibition

1. Permission for public exhibition will be in accordance with local laws in both India and Brazil.
2. The approval of Co-production status under this Agreement will not mean a commitment to permit public exhibition of the Audiovisual Co-production.

Article 15
Amendment

1. This Agreement may be amended by mutual consent of the Contracting Parties through the exchange of notes between the Contracting Parties through diplomatic channel.

Article 16
Dispute Resolution

Any dispute between the Contracting Parties arising out of the interpretation or implementation of this Agreement shall be settled consensually through consultation and negotiation only.

DONE at New Delhi, on the 4th of June, 2007, in two originals in Hindi, Portuguese, and English, each version being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of
India

For the Government of the Federative
Republic of Brazil

Annexure
to
Agreement
between
the Government of the Republic of India
and
the Government of the Federative Republic of Brazil
on
Audio Visual Co-Productions

(Rules of procedure
for applications for approval of co-production status under this
agreement)

ANNEX

1. Applications for qualification of an Audiovisual Work for co-production benefits under this Agreement must be made simultaneously to both Competent Authorities at least 60 (sixty) days before shooting begins.

2. The Competent Authority of one of the Contracting Parties shall communicate their decision to the other Competent Authority within thirty (30) days of the submission of the complete documentation.

3. The approval process under Article 3 of this Agreement shall comprise of approval prior to commencement of shooting of the Audiovisual Work.

4. Documentation submitted in support of an application shall consist of the following items, drafted in English in the case of India and in Portuguese in the case of Brazil:

4.1 The final script and synopsis.

4.2 Documentary proof of having legally acquired the copyright to produce and exploit the Audiovisual Work.

4.3 A copy of the co-production contract signed by the Co-producers. The contract shall include:

a) the title of the co-production;

b) the name of the original script writer or that of the adaptor if it is drawn from a literary source; necessary permission for adapting the literary work into a film from the author/legal heirs shall be attached;

- c) the name of the director (a substitution clause is permitted to provide for his/her replacement if necessary);
- d) the budget, identifying the expenses to be incurred by each Co-producer;
- e) the financing plan;
- f) a clause establishing the sharing of revenues, markets, media or a combination of these;
- g) a clause detailing the respective shares of the co-producers in any over expenditure; the minority co-producer's share may be limited to a lower percentage or to a fixed amount, provided that the minimum proportion permitted under Article 4 of the Agreement is respected;
- h) a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in India will grant a license to permit public exhibition of the Audiovisual Work;
- i) a clause prescribing the measures to be taken where:
 - (i) after full consideration of the case, the Competent Authorities in either country refuse to grant the benefits applied for;
 - (ii) either one or the other Contracting Party fails to fulfil its commitments.
- j) the period when shooting is to begin;
- k) a clause stating that the majority Co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks"; and
- l) a clause providing for the sharing of the ownership of copyright on a basis that it is proportionate to the respective contributions of the Co-producers.

- 4.4 The distribution contract, if it has already been signed, or a draft if it has yet to be concluded.
- 4.5 A list of the creative and technical personnel indicating their nationalities.
- 4.6 The production schedule.
- 4.7 Final shooting script.

5. The Competent Authorities can demand any further documents and all other additional information deemed necessary.

6. Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the Competent Authorities before the Audiovisual Co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to the Competent Authorities.
