

FILM CO-PRODUCTION AGREEMENT BETWEEN THE
GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

The Government of New Zealand and the Government of the People's Republic of China ("the Contracting Parties");

CONSIDERING that the film industries of their two countries will benefit from closer mutual co-operation in the production of films;

SEEKING to build on and expand the liberalisation of trade in services between the Parties under the *Free Trade Agreement Between the Government of the People's Republic of China and the Government of New Zealand* signed in Beijing on 7 April 2008 and to enhance cooperation between their two countries in the area of film;

RECALLING the *Arrangement of Cooperation between the State Administration of Radio, Film and Television of the People's Republic of China and the Ministry for Culture and Heritage of New Zealand* signed in Wellington on 15 August 2005;

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

1.1 For the purposes of this Agreement:

- (a) "Co-producer" means one or more nationals of China or one or more nationals of New Zealand involved in the making of a co-production film, or, in relation non-party co-productions under Article 6, includes co-producers from a non-party.
- (b) " Co-production Film" is a film made by one or more Chinese producers ("the Chinese co-producer") in conjunction with one or more New Zealand producers ("the New Zealand co-producer") through joint investment and copyright, and includes a film to which Article 6 applies. A Co-production Film has a minimum creative and financial contribution from each co-producer, as set out in the Annex.
- (c) "film" means an aggregate of images, or of images and sounds, embodied in any material, including but not limited to animations and digital films, and which is expected to be shown in theatrical cinemas. "Film" also includes a film of a like nature to a feature film made for television ("telemovies").
- (d) "nationals" means:
 - (i) in relation to China, citizens of China;
 - (ii) in relation to New Zealand, New Zealand citizens.
- (e) "residents" means:
 - (i) in relation to China, persons who are not citizens of China but are permanent residents of China;

(ii) in relation to New Zealand, persons who are not New Zealand citizens but are permanent residents of New Zealand.

(f) "competent authorities" means the authorities respectively designated as such by the Government of the People's Republic of China and the Government of New Zealand.

ARTICLE 2

Recognition as a National Film and Entitlement to Benefits

- 2.1 A Co-production Film shall be entitled to the full enjoyment of all the benefits which are or may be accorded in China and New Zealand respectively to national films subject to the laws in force from time to time in each country.

ARTICLE 3

Competent Authorities

- 3.1 The competent authority of each Contracting Party shall be set out in the Annex to this Agreement. Notwithstanding Article 13, if a Contracting Party wishes to designate another authority as its competent authority, that Contracting Party may notify the other Contracting Party in writing through diplomatic channels of such changes.

ARTICLE 4

Approval of Projects

- 4.1 Co-production Films must receive joint provisional approval from the competent authorities before they are put into production. It is the

responsibility of the co-producers to provide any documentation required by the competent authorities to enable the competent authorities to complete their provisional approval processes.

- 4.2 Co-production Films must be made in accordance with the terms of the provisional approval which has been given by the competent authorities.
- 4.3 Upon completion of production, it is the responsibility of the co-producers to submit to the competent authorities the completed Co-production Film (and any documentation required by the competent authorities) to enable the competent authorities to complete their final approval processes before the Co-production Film receives the benefits of final approval, pursuant to Article 2.1.
- 4.4 In determining both provisional and final approval, the competent authorities shall apply the Annex to this Agreement to Co-production Films.
- 4.5 The competent authorities shall consult with each other to enable them to determine whether a project conforms with the provisions of this Agreement. Each competent authority, in deciding whether to grant or refuse provisional or final approval, shall apply its own policies and guidelines.
- 4.6 When approving a Co-production Film, each competent authority may stipulate conditions of approval framed in order to achieve the general aims and objects of this Agreement. In the event of a disagreement between the competent authorities about the giving of such an approval or the inclusion of such a condition, the project concerned shall not be approved under this Agreement.
- 4.7 In relation to China, a Co-production Film will be recognised as having completed the provisional approval process once the Chinese competent authority has granted it "Project Establishment" status. A Co-production Film will be recognised as having completed the final approval process once the Chinese competent authority has granted it the "Film Public Screening Permit".

- 4.8 In relation to New Zealand, a Co-production Film will be recognised as having completed the provisional approval process once the New Zealand competent authority provides written notification to the New Zealand co-producer that provisional approval has been granted. A Co-production Film will be recognised as having completed the final approval process once the New Zealand competent authority provides written notification to the New Zealand co-producer that final approval has been granted.

ARTICLE 5

Requirements on Co-Production companies/individuals

- 5.1 Production companies involved in a Co-production Film must be registered in accordance with the laws and regulations of the relevant Contracting Party. In addition, individual producers, production companies and studios must obtain any permit which is required by the competent authorities.
- 5.2 Co-production Films must be undertaken by film producers whose technical and financial capacity and professional experience satisfies the requirements of the competent authorities' approval processes.

ARTICLE 6

Co-Productions with Non-Parties

- 6.1 Where either China or New Zealand maintains a film co-production treaty with a non-party, the competent authorities may jointly approve a project for a Co-production Film under this Agreement that is to be made in conjunction with a third co-producer from that non-party.

- 6.2 Approvals under this Article shall be limited to proposals in which the contribution of the third co-producer from a non-party is no greater than the lesser of the individual contributions of the Chinese and New Zealand co-producers.

ARTICLE 7

Application for Co-Production Status

- 7.1 The Chinese co-producer is responsible for applying for co-production status in China and doing all that is necessary to ensure the Co-production Film complies with the requirements of both the Chinese competent authority and the Chinese handling organization for granting co-production status.
- 7.2 The New Zealand co-producer is responsible for applying for co-production status in New Zealand and doing all that is necessary to ensure the Co-production Film complies with the requirements of the New Zealand competent authority for granting co-production status.
- 7.3 Any third co-producer shall fulfil all conditions relating to co-production status which would be required to be fulfilled to produce a film under the terms of the film co-production treaty in force between that co-producer's territory and either China or New Zealand.

ARTICLE 8

Import of Equipment

- 8.1 Each of the Contracting Parties shall provide, in accordance with their respective legislation, temporary admission, free of import duties and taxes, of cinematographic equipment for the making of Co-production Films.

ARTICLE 9
Immigration Facilitation

- 9.1 Each of the Contracting Parties shall permit the nationals and residents of the other country and citizens of the territory of any third co-producer to enter and remain in China or New Zealand as the case may be, for the purpose of making or exploiting a Co-production Film, subject to the requirement that they comply with the relevant laws relating to entry and stay.

ARTICLE 10
Respect for laws and cultural practices

- 10.1 The production crews from both Contracting Parties shall respect the constitution, laws and regulations, ethnic cultures, religious beliefs and local customs and conventions of the country where location shooting takes place.

ARTICLE 11
Permission to exhibit publicly

- 11.1 The approval of a Co-production Film by the competent authorities shall not bind the relevant authorities in either Contracting Party to permit the public exhibition of the resulting film in their country.

ARTICLE 12
International Film Festivals

- 12.1 If both co-producers approve, either one may send a Co-production Film to international film festivals provided that the competent authorities have been informed of this intention 30 days before the event starts.

ARTICLE 13
Status of Annex

- 13.1 The Annex to this Agreement constitutes an implementing arrangement and is an integral part of the Agreement.
- 13.2 Subject to Article 3.1, any modifications to the Annex shall be jointly agreed by the competent authorities. No modification to the Annex shall conflict with the provisions of this Agreement.
- 13.3 Modifications to the Annex shall be confirmed by the competent authorities in writing and shall take effect on the date specified in such confirmation.

ARTICLE 14
Review

- 14.1 On the request of a Contracting Party, the Contracting Parties shall enter into negotiations to include other forms of co-productions as set out in the *Arrangement of Cooperation between the State Administration of Radio, Film and Television of the People's Republic of China and the Ministry for Culture and Heritage of New Zealand* signed in Wellington on 15 August 2005 within the scope of this Agreement or a related agreement.

ARTICLE 15

Amendment

- 15.1 The competent authorities of both Contracting Parties shall supervise and review the working of this Agreement, strive to resolve any difficulties in its implementation, and make any proposals considered necessary for any modification of this Agreement.
- 15.2 The Contracting Parties may amend this Agreement by mutual consent.

ARTICLE 16

Entry into Force

- 16.1 The Agreement shall enter into force once the Contracting Parties have notified each other that their respective domestic requirements for entry into force have been completed. The Agreement shall enter into force on the latter date of these two notifications.

ARTICLE 17

International Obligations

- 17.1 The provisions of this Agreement are without prejudice to the international obligations of the Contracting Parties.

ARTICLE 18
Duration and Termination

- 18.1 This agreement shall remain in force for a period of three years.
- 18.2 Either Contracting Party may terminate this Agreement by giving six months' written notice to the other Contracting Party.
- 18.3 If no written notice is given by either Contracting Party six months before the expiration date, at the end of that period the Agreement shall be automatically extended for a further period of three years, and shall thereafter be renewable for similar periods accordingly.
- 18.4 A film made in accordance with an approval by the competent authorities under this Agreement but completed after the termination of this Agreement shall be treated as a co-production film and its co-producers shall accordingly be entitled to all the benefits of this agreement.

This Agreement is done at _____, on _____, in the English and Chinese languages, both versions being equally authentic.

**For the Government of New Zealand: For the Government of the People's
Republic of China:**

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ANNEX

**IMPLEMENTING ARRANGEMENT TO THE FILM CO-PRODUCTION AGREEMENT
BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA**

A. Competent Authorities

The competent authorities under the *Film Co-Production Agreement between the Government of the People's Republic of China and the Government of New Zealand* ("the Agreement") are as follows:

- (1) The Chinese competent authority is the Film Bureau under the State Administration of Radio, Film and Television.

The Chinese competent authority designates the China Film Co-production Corporation as the Chinese handling organization through which co-production films are assessed for co-production status.

- (2) The New Zealand competent authority is the New Zealand Film Commission.

B. Rules Applying to Co-Production Films

The following rules of this Annex apply to Co-production Films under the Agreement:

- (1) The contract or contracts governing the making of the Co-production Films will provide that a co-producer may assign or dispose of the benefits referred to in Article 2 of the Agreement only to a natural or a legal person who is a national or resident of or established in that co-producer's country.

(2) The competent authorities will satisfy themselves that conditions of work in the making of Co-production Films under the Agreement in each of the countries of the participating co-producers are in broad terms comparable and that in the event that location shooting of the film takes place in a country other than that of a co-producer, conditions will be, in broad terms, no less favourable.

(3) None of the co-producers will 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.

(4) Co-production Films will be made and processed up to the creation of the first release print in China or New Zealand, and when there is a third co-producer, in that co-producer's territory. Re-voicing of co-production films may be carried out in China or New Zealand, and when there is a third co-producer, in that co-producer's territory.

The majority of this work will normally be carried out in the country of the co-producer which has the major financial participation but the competent authorities will have the power to mutually approve other arrangements. The competent authorities will also have the power to mutually approve location filming in a country other than the countries of the participating co-producers.

(5) Individuals participating in the making of Co-production Films will be nationals or residents of China or New Zealand, or, where there is a third co-producer, citizens of that co-producer's territory.

In exceptional circumstances, where script or financing dictates, performers from other countries may be engaged. The engagement of such performers will be restricted in accordance with the regulations of the Contracting Parties.

Where the competent authorities have approved location filming in a country other than that of the participating co-producers, citizens of that 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.

- (6) The performing, technical and craft contribution (being the "creative" contribution) and the financial contribution of each co-producer will be agreed by the co-producers, provided that the performing, technical and craft contribution of each co-producer to a Co-production Film will be in reasonable proportion to each of the co-producer's financial participation. When assessing the financial contribution of each co-producer, the competent authorities may mutually approve "in kind" contribution (including, but not limited to, the provision of studio facilities) as part of the financial contribution.
- (7) In any event, each co-producer will have a financial and creative contribution of not less than twenty per cent (20%) of the total financial and creative contribution for the Co-production Film, and not more than eighty per cent (80%) of the total.
- (8) Any music specially composed for a Co-production Film will, subject to any departure from this rule which is approved by the competent authorities, be composed by nationals or residents of China, New Zealand or, where there is a third co-producer, by citizens of that co-producer's territory.
- (9) At least ninety per cent (90%) of the footage included in a Coproduction Film will, subject to any departure from this rule which is mutually approved by the competent authorities, be specially shot for that film.

(10) The contracts between the co-producers will:

- (a) 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 will be the owner of a copy of the protection and reproduction material and will be entitled to use it to make the necessary reproductions. Moreover, each co-producer will have access to the original production material in accordance with the conditions agreed upon between the co-producers;
- (b) set out the financial liability of each co-producer for costs incurred:
 - (i) in preparing a project which is refused conditional approval as Co-production Film by the competent authorities;
 - (ii) in making a film which has been given such conditional approval and fails to comply with the conditions of such approval; or
 - iii) in making an approved Co-production Film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
- (c) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the film, including those from export markets;
- (d) specify the dates by which their respective contributions to the production of that film will have been completed.

(11) Each Co-production Film will include either a separate credit title indicating that the film is either a "Chinese-New Zealand co-production" or a "New

Zealand-Chinese co-production", or where relevant, a credit which reflects the participation of China, New Zealand and the territory of the third co-producer.

(12) Over each period of three years commencing on the date that this Agreement enters into force, an overriding aim of the Agreement, monitored by the competent authorities, will be to ensure that an overall balance is achieved as regards:

- (a) the contribution of each country to the production costs of all Co-production Films;
- (b) the usage of studios and laboratories;
- (c) the employment of all performing, craft and technical personnel;
and
- (d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast.