

**AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF MALAYSIA
ON
FILM CO-PRODUCTION**

THE GOVERNMENT OF AUSTRALIA as represented by the Department of Communications and the Arts **AND THE GOVERNMENT OF MALAYSIA** as represented by the Ministry of Communications and Multimedia (hereinafter referred to singularly as the "Party" and collectively as "the Parties"),

SEEKING to enhance co-operation between their two countries in the area of film;

DESIROUS of expanding and facilitating the co-production of films which may be beneficial to the film industries of both countries;

DESIROUS that the film industries of the two countries share the risk and cost of productions, whilst increasing the output of high quality productions;

SEEKING to facilitate the cultural, creative and economic exchanges between the two countries; and

CONVINCED that these exchanges shall contribute to the enhancement of relations between the two countries;

HAVE AGREED as follows:

ARTICLE I
DEFINITIONS

- (a) "film" means any aggregate of images, or of images and sounds, embodied in any material; but does not include an item which is outside the scope of the laws and regulations of either Party which govern the provision of benefits under international agreements relating to the co-production of films;
- (b) "film co-production" means a film made by one or more co-producers of a Party with one or more co-producers of the other Party (or in the case of a third country co-production, with a third country co-producer) and approved by the competent authorities;
- (c) "benefits" means all those financial and other incentives which may be offered to film co-productions by the Parties under paragraph 1 of Article VII;
- (d) "competent authority" means the authority designated as such by each Party;
- (e) "co-producer" means one or more Australian or Malaysian nationals involved in the making of a film co-production, or in the case of a third country co-production under Article VI (Third Country Co-Productions), any individual that falls within the relevant scope of the film co-production agreement or other arrangement referred to in that Article;
- (f) "legal entity" means any entity duly constituted or otherwise organised under the applicable domestic law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporations, trusts, partnerships, joint ventures, sole proprietorships or associations;

- (g) "measures" means any measure by a Party, whether in the form of a law, regulation, rule procedure, decision, administrative action, or any other form;
- (h) "nationals" means in respect of:
 - (i) Australia, citizens or permanent residents of Australia; and
 - (ii) Malaysia, citizens or persons who have the right of permanent residence in the territory of Malaysia in accordance with its laws, regulations and policies.
- (i) "protection and reproduction material" means materials derived from the original film materials for the purpose of protecting the final version of the film; and materials used for making copies of the film for the purpose of distribution and exhibition of the film.

ARTICLE II COMPETENT AUTHORITIES

1. Each Party shall designate a competent authority responsible for the implementation of this Agreement. Either Party may change their designated competent authority by giving notice of the change to the other Party through diplomatic channels. The change in the competent authority shall take effect twenty-eight (28) days after the notice has been received.
2. The competent authorities for this Agreement are PERBADANAN KEMAJUAN FILEM NASIONAL MALAYSIA (a statutory body under the purview of Ministry of Communications And Multimedia and commonly known as FINAS) IN MALAYSIA and SCREEN AUSTRALIA IN AUSTRALIA.

3. The competent authorities may examine the implementation of this Agreement and consult with each other to resolve any difficulties arising out of its application.

ARTICLE III

APPROVAL OF CO-PRODUCTIONS

1. Prior to the commencement of the making of a film co-production, co-producers shall apply to their respective competent authorities for provisional approval.
2. The approval process shall comprise two stages:
 - (a) Provisional Approval following application by the co-producers in accordance with paragraph 1; and
 - (b) Final Approval upon completion of the film co-production.
3. In approving film under this Agreement, the competent authorities shall apply the provisions of this Agreement.
4. When approving a film as a co-production, each competent authority may stipulate additional conditions of approval, consistent with this Agreement, framed in order to ensure that:
 - (a) minimum financial and creative contributions are met;
 - (b) the creative contribution is in reasonable proportion to the financial contribution of each co-producer; and
 - (c) an overall balance is achieved in accordance with paragraph 1 of Article XVIII (Balance).

5. The competent authorities may, subject to this Agreement, approve an application under this Agreement. Any approval granted by the competent authorities shall be in writing and shall specify the conditions upon which it is granted.
6. In the event that approval by both the competent authorities is not granted, the film concerned shall not be approved under this Agreement.
7. The approval of a film as a film co-production by the competent authorities shall not bind the relevant authorities of either Party to permit the public exhibition of the resulting film.

ARTICLE IV CO-PRODUCER STATUS

When approving a film as a co-production, the competent authorities shall ensure that:

- (a) none of the co-producers shall be linked to one another, either directly or indirectly, by common management, ownership or control, save to the extent that such common management is for the purposes of the making of the film co-production itself;
- (b) the Australian co-producer shall fulfil all conditions relating to status which would be required to be fulfilled, if that producer were the only producer, in order for the production to be eligible as an Australian film under Australian laws; and
- (c) the Malaysian co-producer shall fulfil all conditions relating to status which would be required to be fulfilled, if that producer were the only producer, in order for the production to be eligible as a Malaysian film under Malaysian laws.

ARTICLE V
CO-PRODUCER CONTRACTS

In approving a film, the competent authorities shall ensure that the contracts between the co-producers:

- (a) provide that a co-producer may only assign or dispose of the benefits referred to in Article VII (Entitlement to Benefits) of the Agreement in accordance with that Article;
- (b) 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 use it to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with the conditions mutually determined between the co-producers;
- (c) set out the arrangements regarding the division between the co-producers of the receipts from exploitation of the film including those from export markets;
- (d) set out the financial liability of each co-producer for costs incurred in the following situations where:
 - (i) a film is refused provisional approval as a film co-production by the competent authorities;
 - (ii) a film which has been given such provisional approval fails to comply with the conditions of such approval;
 - (iii) permission for the public exhibition of an approved film co-production is withheld in any of the countries of the co-producers; or

- (iv) where permission for the export/distribution of an approved film co-production to a third country is withheld;
- (e) set out in accordance with Article XXI (Protection of Intellectual Property Rights) as between the co-producers the ownership regarding intellectual property rights and the rights of access to and use of copyright works arising from the making of the film co-production;
- (f) specify the dates by which the co-producers' respective contributions to the production of the film co-production shall be completed; and
- (g) specify any other conditions that may be imposed jointly by the competent authorities when granting the provisional approval.

ARTICLE VI
THIRD COUNTRY CO-PRODUCTIONS

1. Where a film is made between co-producers of a Party and a third country under another film co-production agreement or other arrangement, the competent authorities may jointly approve, such film as a co-production under this Agreement, provided that there is a co-producer from each Party.
2. Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production agreement or other arrangement, in force between that co-producer's country and a Party.

ARTICLE VII
ENTITLEMENT TO BENEFITS

1. A film co-production shall be entitled to the full enjoyment of all the benefits which are or may be accorded to national film in Australia and Malaysia under their respective domestic laws.
2. Any subsidies, tax incentives, or other financial incentives which may be granted by either Party in relation to a film co-production shall accrue to the co-producer who is permitted to claim those benefits in accordance with the existing measures of that Party.
3. Such subsidies, tax incentives or other financial benefits may not be assigned or disposed of except to or for:
 - (a) the benefit of a legal entity or national of that co-producer's country;
or
 - (b) in the case of a third country co-production under Article VI (Third Country Co-Production), any individual or legal entity that falls within the relevant scope of the film co-production agreement or other arrangement referred to in that Article,

and any such assignment shall take place only where it is permitted by the law of the relevant Party and, where applicable, it is approved by its respective national agency.

ARTICLE VIII
IMMIGRATION FACILITATION

Subject to their legislation and regulations in force from time to time, the Parties shall facilitate the entry into and temporary stay in their respective territories of the creative and technical personnel and the performers engaged by the co-producer of the other Party, or in the case of a third country co-production under Article VI (Third Country Co-Productions), individuals that fall within the relevant scope of the film agreement or other arrangement referred to in that Article, for the purpose of producing the film.

ARTICLE IX
IMPORT OF EQUIPMENT

Subject to their legislation and regulations in force from time to time, the Parties shall permit the temporary entry and re-export of any equipment necessary for the purpose of producing the film co-production, free of import duties and taxes.

ARTICLE X
CONTRIBUTIONS

1. The total contribution for the film co-production shall comprise both financial and creative contributions. Each co-producer shall contribute not less than twenty per cent (20%) of the total financial and creative contributions.

2. The performing, technical and craft contribution (being the “creative” contribution) of each co-producer to a film co-production shall be in reasonable proportion to that co-producer's financial contribution.

ARTICLE XI
LOCATION FILMING

The competent authorities shall have the power to approve an application for location filming by the co-producers in a country other than the countries of the participating co-producers.

ARTICLE XII
PARTICIPATION

1. Subject to the remaining paragraphs of this Article, individuals participating in the making of a film co-production shall be nationals of either Party or in the case of a third country co-production under Article VI (Third Country Co-Productions), individuals that fall within the relevant scope of the film co-production agreement or other arrangement referred to in that Article.

2. Performers who are citizens or permanent residents of countries other than the participating co-production countries may be engaged in the film co-production:
 - (a) where the competent authorities are satisfied that there are exceptional circumstances; or

 - (b) where script or financing of a film co-production dictates their participation.

3. Where the competent authorities have approved location filming in a country other than that of the participating co-production countries in accordance with this Article, citizens or permanent residents of that country may be employed where reasonably necessary in minor roles, or as crowd artists, or may perform other services necessary for the location work to be undertaken.

4. The competent authorities may approve the participation of restricted numbers of technical personnel who are citizens or permanent residents of countries other than the co-production countries where the competent authorities are satisfied that the relevant technical expertise is not available in the co-producers' countries at the time the relevant film co-production is to be made.
5. A screenwriter who is a citizen or a permanent resident of a country other than the participating co-production countries who makes a minor contribution to the screenplay of a film co-production and who does not receive a writer's credit shall not be considered to have participated in the making of the film co-production within the meaning of paragraph 1.

ARTICLE XIII
SOUNDTRACK AND FOOTAGE

1. Unless otherwise mutually decided by the competent authorities, the original soundtrack of each film co-production shall be made in the official language or any commonly used languages, of either Party, or where there is a third country co-producer, in one of the official languages, or any commonly used languages, of that third country, or in any combination of those languages.
2. The original soundtrack of each film co-production shall be made in Australia and/or Malaysia and/or, where there is a third country co-producer, in that third country.
3. Unless otherwise mutually decided by the competent authorities of each Party, narration, dubbing or subtitling shall be permitted in any other agreed commonly used language or official language of either Party, or where there is a third country co-producer, in the official language or a commonly used language of that third country.

4. Narration, dubbing and subtitling of each film co-production shall take place in Australia and/or Malaysia and/or where there is a third country co-producer, in that third country.
5. Post release print dubbing into any other language may be carried out in a country other than the co-producers' countries.
6. The soundtrack may contain sections of dialogue in any language in so far as this is required by the script.
7. Unless otherwise approved by the competent authorities, any music specially composed for a film co-production shall be composed by nationals of a Party, or in the case of a third country co-production under Article VI (Third Country Co-Productions), any individual that falls within the relevant scope of the film agreement or other arrangement referred to in that Article.
8. At least ninety per cent (90%) of the footage included in a film co-production shall, unless otherwise approved by the competent authorities, be specially shot for that film.

ARTICLE XIV

MAKING UP TO FIRST-RELEASE PRINT OR DIGITAL EQUIVALENT

1. A film co-production shall be made and processed up to the manufacture of the first release print or digital equivalent in Australia and/or Malaysia and/or, where there is a third country co-producer, in that co-producer's country. The majority of this work shall normally be carried out in the country of the co-producer which has made the major financial contribution. In the event that the financial contributions of the co-producers are equal, the location of the majority of the work shall be determined by agreement of the co-producers and approved by the competent authorities.

2. Re-voicing of film co-productions may be carried out in a Party country and/or, where there is a third co-producer, in that co-producer's country.

ARTICLE XV WORKING CONDITIONS

The competent authorities shall satisfy themselves that conditions of work in the making of a film co-production under this Agreement in each of the countries of the participating co-producers are generally 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 shall be, generally, no less favourable.

ARTICLE XVI ACKNOWLEDGEMENTS AND CREDITS

The competent authorities shall ensure that each film co-production includes:

- (a) a credit indicating that the film is either an "Australian-Malaysia co-production" or a "Malaysia–Australian co-production", or
- (b) where relevant, a credit which reflects the participation of Australia, Malaysia and the country of the third country co-producer.

ARTICLE XVII TAXATION

Notwithstanding any other provision of this Agreement other than Article VII (Entitlement to Benefits), for the purposes of taxation the domestic laws in force in each Party shall apply subject to the provisions of any tax treaty between the Parties.

ARTICLE XVIII
BALANCE

1. An overriding aim of this Agreement, as monitored by the competent authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

- (a) the contribution of each co-producer to the production costs of all film co-productions;
- (b) the usage of studios and laboratories;
- (c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; 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,

over each period of three (3) years commencing on the date that this Agreement enters into force.

2. Either competent authority may withhold approval of a film as a film co-production on the basis that the overriding aim of overall balance referred to in paragraph 1 of this Article would be prejudiced by such approval, provided that approval may not be withheld on this ground where a film has received provisional approval under paragraph 1 of Article III (Approval of Co-Productions).

ARTICLE XIX
REVISION, MODIFICATION AND AMENDMENT

1. This Agreement may be revised, modified or amended by mutual agreement of the Parties. Any such revision, modification or amendment shall be made in writing.
2. A revision, modification or amendment agreed to by the Parties shall enter into force once the Parties have notified each other that their respective domestic requirements for entry into force of the revision, modification or amendment have been completed. The revision, modification or amendment shall enter into force on the latter date of these two notifications.
3. Any revision, modification or amendment shall not prejudice the rights and obligations of either Party arising from this Agreement, up to the date of such revision, modification or amendment.

ARTICLE XX
SETTLEMENT OF DISPUTES

Any difference or dispute between the Parties concerning the interpretation and/or implementation and/or application of any of the provisions of this Agreement shall be settled amicably through mutual consultation and/or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

ARTICLE XXI
PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. The protection of intellectual property rights shall be enforced in conformity with the respective national laws, rules and regulations of the Parties and the respective international legal obligations of each Party.

2. The use of the name, logo and/or official emblem of any of the Parties on any film publication, promotion, advertising and/or screening is prohibited without the prior written approval of either Party.
3. Notwithstanding anything in paragraph 1 above, the intellectual property rights and the rights of access to and the use of copyright works in respect of the filming and/or production of a film, carried out-
 - (a) jointly by the Parties or through the joint activity effort of the Parties, shall be jointly owned by the Parties in accordance with the terms to be mutually agreed upon; and
 - (b) solely and separately by the Party or through the sole and separate effort of the Party, shall be solely owned by the Party concerned.

ARTICLE XXII CONFIDENTIALITY

1. Other than regarding information in the public domain, each Party shall undertake to observe the confidentiality and secrecy of documents, information and other data received or supplied to the other Party during the period of the implementation of this Agreement or any other agreements made pursuant to this Agreement.
2. Each Party shall ensure that the processing, treatment, recording, distribution and transmission of any documents, information and other data under this Agreement shall be consistent with international law as well as the domestic laws of Malaysia and Australia respectively.
3. Both Parties agree that the provisions of this Article shall continue to be binding between the Parties notwithstanding the termination of this Agreement.

ARTICLE XXIII

SUSPENSION

1. Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Agreement which suspension shall take effect immediately after notification has been given to the other Party through diplomatic channels.
2. During the suspension period, both Parties shall continue to perform its obligations under the Agreement which is not affected by the reason for the suspension.
3. In the event a suspension under this Article continues for a period exceeding three (3) months, the Parties shall then discuss whether to mutually terminate the Agreement or to extend the suspension for a further period to be agreed upon. If the conditions for which suspension had been invoked by a Party cannot be alleviated upon the expiry of the extended period, the Parties shall then mutually terminate the Agreement.

ARTICLE XXIV

ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date on which written notifications have been received by both Parties, through diplomatic channels, that their respective domestic requirements for the entry into force of this Agreement have been finalised.
2. Subject to paragraph 3 of this Article, this Agreement shall remain in force for a period of three (3) years from the date of its entry into force and shall thereafter be renewed automatically for further successive periods of three (3) years.

3. Either Party may terminate this Agreement at the conclusion of a three (3) year period by giving six (6) months prior notice in writing through diplomatic channels.
4. Notwithstanding such termination, this Agreement shall continue as if in force in respect of any film co-production approved by the competent authorities which is yet to be completed at termination until such film co-production is completed.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at on this..... day of in the year

**FOR THE GOVERNMENT OF
MALAYSIA**

**FOR THE GOVERNMENT OF
AUSTRALIA**

.....
Minister of Foreign Affairs

.....
**Minister for Foreign Affairs
and Minister for Women**