

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

FILM CO-PRODUCTION AGREEMENT BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

(Beijing, 27 August 2007)

Not yet in force

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

The Government of Australia 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; and

CONSIDERING that films capable of enhancing the prestige of the film industries and of the two countries should benefit from the provisions of this Agreement;

ENCOURAGING filmmakers to contact the relevant government authorities, in accordance with the relevant rules and procedures of those government authorities, to discuss collaborative productions between the Chinese and Australian film industries made outside this Agreement;

HAVE AGREED as follows:-

ARTICLE 1

1.1 For the purposes of this Agreement:

- (a) a "Joint Investing and Copyright Co-production Film" is a film made by one or more Australian producers ("the Australian co-producer") in conjunction with one or more Chinese producers ("the Chinese co-producer").

A Joint Investing and Copyright Co-production Film also includes a film made by an Australian co-producer and a Chinese co-producer in conjunction with a producer of another country with which Australia or China has signed a co-production Treaty ("third co-producer").

A Joint Investing and Copyright Co-production Film has a minimum creative and financial contribution from each co-producer, as set out in the Annex.

- (b) "film" means an aggregate of images, or of images and sound, embodied in any material, irrespective of length or format, including but not limited to feature films, animation and documentaries, produced either on film, video tape or videodisc, 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").

(2) "nationals" means:

- (a) in relation to Australia, Australian citizens;

(b) in relation to China, citizens of China.

(3) "residents" means:

- (a) in relation to Australia, persons who are not Australian citizens but are permanent residents;
- (b) in relation to China, persons who are not citizens of China but are permanent residents of China

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

ARTICLE 2

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

ARTICLE 3

3.1 The Chinese competent authority is the Film Bureau under the State Administration of Radio, Film and Television; and the Australian competent authority is the Australian Film Commission. However, if a Contracting Party wish 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.

3.2 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.

ARTICLE 4

4.1 Joint Investing and Copyright Co-production Films must receive 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 Joint Investing and Copyright 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 Joint Investing and Copyright Co-production Film (and any documentation required by the competent authorities) to enable the competent authorities to complete

their final approval processes before the Joint Investing and Copyright 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 rules set out in the Annex to Joint Investing and Copyright Co-production Films. The Annex forms an integral part of this Agreement.

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 Joint Investing and Copyright 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 Australia, a Joint Investing and Copyright Co-production Film will be recognised as having completed the provisional approval process once the Australian competent authority provides written notification to the Australian co-producer that provisional approval has been granted. A Joint Investing and Copyright Co-production Film will be recognised as having completed the final approval process once the Australian competent authority provides written notification to the Australian co-producer that final approval has been granted.

4.8 In relation to China, a Joint Investing and Copyright 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 Joint Investing and Copyright 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”.

ARTICLE 5

5.1 Production companies involved in a Joint Investing and Copyright 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 Joint Investing and Copyright 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

6.1 The Australian co-producer is responsible for applying for co-production status in Australia and doing all that is necessary to ensure the Joint Investing and Copyright Co-production Film complies with the requirements of the Australian competent authority for granting co-production status.

6.2 The Chinese co-producer is responsible for applying for co-production status in China and doing all that is necessary to ensure the Joint Investing and Copyright Co-production Film complies with the requirements of both the Chinese competent authority and the Chinese handling organization for granting co-production status.

6.3 Any third country co-producer shall fulfill all conditions relating to co-production status which would be required to be fulfilled to produce a film under the terms of the co-production treaty in force between that co-producer's country and either Australia or China.

ARTICLE 7

7.1 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 Joint Investing and Copyright Co-production Films.

ARTICLE 8

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

ARTICLE 9

9.1 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 10

10.1 The approval of a Joint Investing and Copyright Co-production Film by the competent authorities shall not bind the relevant authorities in either country to permit the public exhibition of the resulting film in their country.

ARTICLE 11

11.1 If both co-producers approve, either one may send a Joint Investing and Copyright Co-production Film to international film festivals provided that the competent authorities have been informed of this intention 30 days before the event starts. Delegations may include representatives from both countries and each side will pay the expenses of its own representatives.

ARTICLE 12

12.1 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.

12.2 The Contracting Parties may amend this Agreement by mutual consent in accordance with the Contracting Parties' own domestic procedures for amending Treaties.

ARTICLE 13

13.1 The Agreement shall enter into force once the Contracting Parties have notified each other through an exchange of third person notes 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 14

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

ARTICLE 15

15.1 This Agreement shall remain in force initially for a period of three years from the date of its entry into force. Either Contracting Party wishing to terminate it shall give written notice to terminate to the other six months before the end of that period and the Agreement shall then terminate at the end of the three years.

15.2 If no such notice is given the Agreement shall automatically remain in force for successive periods each of three years, unless written notice to terminate is given by either Contracting Party at least six months before the end of any period of three years, in which case it shall terminate at the end of that period.

15.3 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 signed at Beijing on 27 August 2007, in the English and Chinese languages, both versions being equally authentic.

**For the Government of
Australia:**

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

.....
HE Dr Geoff Raby
Ambassador

.....
Tong Gang
Director-General, Film Bureau
State Administration for Radio, Film
and Television

ANNEX

The following rules of this Annex, being rules (1) to (12) inclusive apply to Joint Investing and Copyright Co-production Films.

- (1) The contract or contracts governing the making of the Joint Investing and Copyright Co-production Films shall provide that a co-producer may assign or dispose of the benefits referred to in Article 2 of this Agreement above 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 shall satisfy themselves that conditions of work in the making of Joint Investing and Copyright Co-production Films under this 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 shall be, in broad terms, no less favourable.
- (3) 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 Joint Investing and Copyright Co-production Film itself.
- (4) Joint Investing and Copyright Co-production Films shall be made and processed up to the creation of the first release print in Australia and/or China and/or, where there is a third co-producer, that producer's country (and re-voicing may be carried out in Australia and/or China and/or, where there is a third 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 the major financial participation but the competent authorities shall have the power to mutually approve other arrangements. The competent authorities shall 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 Joint Investing and Copyright Co-production Films shall be nationals or residents of Australia or China, or, where there is a third co-producer, citizens of that co-producer's country.

In exceptional circumstances, where script or financing dictates, performers from other countries may be engaged. The engagement of such performers shall 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 shall be agreed by the co-producers, provided that the performing, technical and craft contribution of each co-producer to a Joint Investing and Copyright Co-production Film shall 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 shall have a financial and creative contribution of not less than twenty per cent (20%) of the total financial and creative contribution for the Joint Investing and Copyright Co-production Film, and not more than eighty per cent (80%) of the total.
- (8) Any music specially composed for a Joint Investing and Copyright Co-production Film shall, subject to any departure from this rule which is approved by the competent authorities, be composed by nationals or residents of Australia, China or, where there is a third co-producer, by citizens of that co-producer's country.
- (9) At least ninety per cent (90%) of the footage included in a Joint Investing and Copyright Co-production Film shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot for that film.
- (10) The contracts between the co-producers shall:
 - (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 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 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 a Joint Investing and Copyright 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 Joint Investing and Copyright 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 shall have been completed.
- (11) Each Joint Investing and Copyright Co-production Film shall include either a separate credit title indicating that the film is either an "Australian-Chinese co-production" or a "Chinese-Australian co-production", or where relevant, a credit which reflects the participation of Australia, China and the country 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, shall be to ensure that an overall balance is achieved as regards:
- (a) the contribution of each country to the production costs of all Joint Investing and Copyright 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.

If one of the competent authorities considers that there is an imbalance (or that there is the risk of an imbalance), it will consult with the other. The competent authorities will work together to implement measures to restore the balance.