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Film Co-Production Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the People's Republic of China

Beijing, 23 April 2014

[The Agreement entered into force on 16 February 2015]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2015*

Cm 9111



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**FILM CO-PRODUCTION AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA**

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter the UK) and the Government of the People's Republic of China (hereinafter China) (hereinafter the Parties):

Considering that there is potential for the film industries of each country to work together on account of shared or complementary characteristics that include the structure of each film industry, the film culture of each country and film-making facilities, a suitably skilled workforce and locations for filming;

Recognising that development of such potential will be to the mutual advantage of each Party, in particular in respect of the growth and competitiveness of their film industries and the enhancement of their film cultures;

Noting the benefits available in each country to films with domestic film status;

Desiring to encourage the making of films that reflect, enhance and convey the diversity of culture and heritage in both countries;

Acknowledging the benefits that would flow from the making of such films and from an increase in public availability of distinctive and successful co-produced films;

Noting that on the basis of mutual cooperation, the Agreement is intended to produce benefits for both parties; and

Noting that this Agreement would contribute to the development of film-making and to the enrichment of the cultural landscape of their countries, while preserving an overall balance with regard to the contribution of each of them in co-produced films and to the benefits obtained by the two countries from this cooperation and its cultural impact;

Have agreed as follows:

ARTICLE 1

Definitions

(1) In this Agreement:

"Agreement" means this Agreement, including the Annex which forms an integral part of this Agreement; and any reference to "an Article" means an Article in this Agreement unless otherwise stated;

"Approved Co-production" means a co-produced film which has Approved Co-Production status in accordance with Article 3;"Competent Authority" means a government department or other body designated in accordance with Article 2;

"Domestic film" means, in respect of the UK, a film that is British;

"EEA State" means a State (other than the UK) which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

"Film" includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture, and for which there is an expectation for theatrical release and public exhibition;

"Co-producer" means any body corporate or unincorporated association who is a co-producer of a film;

"Party Co-producer" means a UK Co-producer or a Chinese Co-producer;

"UK Co-producer" means a co-producer who is established in England, Wales, Scotland or Northern Ireland;

"Chinese Co-producer" means a co-producer who is established in China;

"Third Party Co-producer" means a co-producer who is established outside of the UK or China and who would be eligible to participate as a co-producer of a film with China or the UK under a separate co-production agreement with either China or the UK;

"Non-Party Co-producer" means a co-producer who is not a Party Co-producer or a Third Party Co-producer;

"Production Cost", in relation to a co-production, means expenditure incurred for the purposes of making the film.

(2) References to film-making contribution benefiting the UK or China include the expenditure in that country on goods and services which directly results from the co-production and the use made of film-making facilities or filming locations in that country.

(3) For the purposes of this Agreement the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready to be distributed or broadcast for presentation to the general public.

ARTICLE 2

Competent Authorities

(1) Each Party shall nominate a Competent Authority to make decisions on applications for the grant of Approved Co-production status by any one or more co-producers of a film. The *State Administration of Press, Publication, Radio, Film and Television* is the Competent Authority of China, and the Department for Culture, Media and Sport for the UK. Each Party shall, by notice in writing to the other Party, inform of any change to the nominated Competent Authority.

(2) In determining an application made to it, a Competent Authority shall assess the application against the requirements which are set out in this Agreement and which are applied in accordance with guidance published by the Competent Authority under this Article.

(3) Each Competent Authority may from time to time publish guidance consisting of such information and advice as it considers appropriate with respect to:

- (a) how applications are to be made to the Competent Authority, and
- (b) the operation and interpretation of this Agreement.

(4) Such guidance shall set out:

- (a) how the Competent Authority proposes to make decisions on applications for the grant of Approved Co-production status, and
- (b) factors it will take into account when exercising any discretion conferred on it by this Agreement.

(5) The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

ARTICLE 3

Grant of Approved Co-production Status

(1) A co-produced film which meets the requirements set out in this Agreement may be granted Approved Co-production status and recognised as such in accordance with this Article.

- (2) Approved Co-production status shall be granted only if:
 - (a) an application in respect of a film is made to each of the Competent Authorities in accordance with procedures established under Article 2, and
 - (b) both Competent Authorities agree to approve the application in accordance with this Article.
- (3) Approval of an application in respect of a film shall be given in two stages:
 - (a) provisional approval, and
 - (b) final approval.
- (4) Provisional or final approval shall be given:
 - (a) only if the requirements set out in Article 4 are met, and
 - (b) subject to such conditions as the Competent Authorities (acting jointly) consider appropriate.
- (5) For the purposes of eligibility for the benefits referred to in Article 9, a film shall be treated as having Approved Co-production status only if:
 - (a) the Competent Authorities have agreed to give the film final approval under this Article, and
 - (b) that approval has not been withdrawn.
- (6) For all other purposes:
 - (a) references to the grant of Approved Co-production status are to the giving of either final approval or provisional approval under this Article, and
 - (b) a film shall be treated as having Approved Co-production status if either stage of approval has been given and that approval has not been withdrawn.
- (7) If at any stage the Competent Authorities do not agree to approve an application in respect of a film, Approved Co-production status shall be refused.
- (8) Nothing in this Agreement binds the relevant authorities in the UK or China to permit the public exhibition of a film which has been granted Approved Co-production status.

- (9) A co-produced film shall be recognised:
- (a) in relation to the UK, as having provisional or final Approved Co-production Status (as applicable) once the UK Competent Authority has provided written notification to the UK co-producer that that approval has been granted;
 - (b) in relation to China:
 - (i) as having provisional Approved Co-production Status once the Chinese Competent Authority has granted it a Co-production Film Project Establishment Notice; and
 - (ii) as having final Approved Co-production Status once the Chinese Competent Authority has granted it a Film Public Screening Permit.

ARTICLE 4

Requirements for Approved Co-production status

- (1) A film may be granted Approved Co-production status in accordance with Article 3 only if each Competent Authority is satisfied that:
- (a) subject to paragraph (2) of this Article, the general requirements set out in the Annex to this Agreement are (or are expected to be) met in relation to the co-production, and
 - (b) any temporary additional requirements that are imposed under Article 6 by that Competent Authority are (or are expected to be) met.
- (2) In the event of an inconsistency between:
- (a) on the one hand, any of the provisions of the Annex to this Agreement, and
 - (b) on the other, any temporary additional requirements imposed under Article 6,

the Competent Authorities shall apply the temporary additional requirement.

ARTICLE 5

Balance in Film-Making and Cultural Contributions Benefiting each Party

- (1) In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure an overall balance in:
 - (a) the film-making contribution benefiting China and the film-making contribution benefiting the UK and;
 - (b) the cultural benefits to China and the cultural benefits to the UK.
- (2) Each Party shall assess the state of balance between them and inform the other Party accordingly.
- (3) The Parties shall consult each other on the approach to be taken and methodology to be used in measuring whether or not a state of balance exists.
- (4) In making an assessment of the state of balance, the Parties shall take account of the total number of Approved Co-productions during the three year period immediately before the date on which any assessment of the state of balance is made (subject to the period this Agreement has been in force).

ARTICLE 6

Balance and Temporary Additional Requirements

- (1) In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure a general balance of the film-making contributions benefiting China and the UK.
- (2) If a Party considers that there is (or is a risk of) imbalance in film-making contributions or cultural benefits, it may consult the other Party.
- (3) The Parties may jointly agree to take such measures (including temporary additional requirements) as they consider necessary to restore balance.
- (4) Subject to paragraph (5) of this Article, a Party may decide upon temporary additional requirements that must be met before the grant of Approved Co-production status can be given.

(5) Temporary additional requirements shall only apply with respect to applications for provisional approval of Approved Co-production status under Article 3, and any such requirements shall not take effect without –

- (a) formal written notification to the other Party to this Agreement, (including a statement of the reasons for imposing such temporary additional requirements),
- (b) prior consultation with the other Party to this Agreement held subsequent to the notification referred to in subparagraph (a) above, and
- (c) appropriate revisions being made to the guidance published in accordance with Article 2(3).

ARTICLE 7

Withdrawal of Approved Co-production Status

Approval for a film which has Approved Co-production status may be withdrawn if, at any time, it appears to either Competent Authority that:

- (a) false or misleading information has been provided in connection with an application for the approval,
- (b) any of the conditions imposed under Article 3(4)(b) by the Competent Authorities have not been complied with,
- (c) any of the requirements set out in Article 4(1)(a) are not met, or
- (d) any of the temporary additional requirements specified in Article 6 are not met.

ARTICLE 8

Benefits for Co-productions with Either Final Approval or Provisional Approval

(1) This Article applies in relation to any film which has Approved Co-production status.

(2) Each Party shall permit, where possible and in accordance with their respective legislation, including, for the UK, relevant European Union legislation, temporary import and export, free of import or export duties and taxes, of any equipment necessary for the production of an Approved Co-production.

(3) Each Party shall permit any person employed in the making or promotion of an Approved Co-production to enter and remain in the UK and China, as the case may be, during the making or promotion of the film, subject to the requirement that they comply with the legislation relating to entry, residence and employment.

ARTICLE 9

Additional Benefits Available only to Co-productions with Final Approval

(1) This Article applies only in relation to a film in respect of which the Competent Authorities have recognised as having final approval for Approved Co-production status under Article 3.

(2) Each Party shall treat, in its country, a film falling within paragraph (1) of this Article as a domestic film for the purposes of any benefits afforded in that country to domestic films.

(3) The benefits referred to in paragraph (2) of this Article include, in particular:

- (a) eligibility for any benefits in fiscal treatment (subject to the film satisfying the criteria that domestic films must meet for such benefits),
- (b) the lifting of any quota restrictions that would otherwise apply to the import, distribution or exhibition of the film, and
- (c) access to any special import arrangements, agreed between a Party and a third country which operates import quota restrictions, for the import of domestic films of that Party.

(4) Unless otherwise agreed by the Parties, where an award or prize requires the film to be considered as a domestic film of only one country, this shall be determined:

- (a) by reference to whichever is the greater of either:
 - (i) the total financial contributions made by the UK Co-producer or Co-producers (taken together), or
 - (ii) the total financial contributions made by the Chinese Co-producer or Co-producers (taken together); or
- (b) if the respective total financial contributions are equal, by reference to the director.

ARTICLE 10

Entry into Force

- (1) This Agreement shall enter into force on the date when the Parties have notified each other, in writing through the diplomatic channel, of the completion of their respective constitutional procedures.
- (2) Either Party may terminate this Agreement, at any time, by giving at least six months' written notice to the other Party, through the diplomatic channel.

ARTICLE 11

Films in Production before and after Entry into Force

- (1) A film shall be eligible for the grant of Approved Co-production status even if production commenced before this Agreement entered into force, but only if:
 - (a) the first day of principal photography of the film is on or after the date of signature of this Agreement; and
 - (b) production of the film is completed after the date on which the Agreement enters into force.
- (2) An Approved Co-production shall continue to be eligible to receive any benefits available under this Agreement on or after the date on which the Agreement ceases to have effect, but only if:
 - (a) before that date, the Competent Authorities have given the film provisional approval for Approved Co-production status under Article 3,
 - (b) its principal photography commenced before that date, and
 - (c) production of the film is completed before the end of the period of twelve months commencing with that date.

ARTICLE 12

Amendment and Review

- (1) The Parties shall keep the Agreement under review and, where they consider it appropriate to do so, may agree that amendments be made.
- (2) The Parties may, at any time through an exchange of notes, make amendments to the Agreement.

(3) Any such amendments shall enter into force on the date when the Parties have notified each other, in writing, through the diplomatic channel, of the completion of their respective constitutional procedures.

(4) The Competent Authorities shall endeavour to resolve any disputes about the operation and interpretation of this Agreement by negotiation and consultation.

ARTICLE 13

International Obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including, in relation to the UK, obligations arising from European Union law.

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

DONE in duplicate at Beijing on twenty-third of April 2014 in the English and Chinese languages, both texts being equally authoritative.

**For the Government of
the United Kingdom of Great
Britain and Northern Ireland:**

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

EDWARD VAIZEY

TONG GANG

ANNEX

APPROVED CO-PRODUCTION STATUS: GENERAL REQUIREMENTS

Section 1

Co-producers

1. The co-producers shall include at least one UK Co-producer and at least one Chinese Co-producer.
2. A co-producer of a film from one country shall not be linked by common management, ownership or control with any co-producer of that film from another country, save to the extent that such a link is inherent in the making of the co-production film itself.
3. Unless the Competent Authorities agree otherwise, each co-producer shall have offices and staff in the country in which the co-producer is established.
4. Unless the Competent Authorities agree otherwise, each co-producer shall:
 - (a) continue to play an active role throughout the time the co-production is being made (including production planning and decision-making), and
 - (b) assume responsibility for carrying through practical and financial arrangements for the making of the film.
5. Each co-producer shall also meet the following requirements:
 - (a) each co-producer must directly negotiate, contract and pay for rights, goods and services, and
 - (b) the co-producers must have entered into a binding contract, the terms of which reflect their respective responsibilities for the co-production.
6. Unless the Competent Authorities agree otherwise:
 - (a) the co-producers named in the original application shall not be replaced, and
 - (b) no co-producers may be added to those named in the original application (or previously agreed to under this paragraph).
7. Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall meet all the requirements of this Annex.

Financial contributions

8. Subject to paragraph 10 of this Annex, in the case of a co-production where the co-producers are all Party Co-producers, each of the following:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together);
- (b) the total financial contributions of the Chinese Co-producer or Co-producers (taken together);

shall not be less than 20% and not more than 80% of the total production cost.

9. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to different limits for the purposes of paragraph 8 of this Annex, but subject to new minimum and maximum limits of 10% and 90%, respectively.

10. Subject to paragraph 12 of this Annex, in the case of a co-production where the co-producers are not all Party Co-producers:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (b) the total financial contributions of the Chinese Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (c) the total financial contributions of the Third Party Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (d) the total financial contributions of each Non-Party Co-producer shall not be less than 10% and not more than 20% of the total production cost, unless otherwise agreed upon by the Parties.

11. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to reduce the lower limit for the purposes of paragraph 10(a), (b) or (c) of this Annex, but subject to a new minimum limit of 10%.

Film-making contributions

12. The film-making contribution benefiting a country shall be broadly in proportion to the financial contribution of the Party Co-producer (or Co-producers) established in that country.

13. Unless the Competent Authorities agree otherwise, no more than 20% of the total production cost may be used to source goods and services from outside of:

- (a) the UK,
- (b) China,
- (c) an EEA State, or
- (d) where there is a Third or Non Party Co-producer, the State or region in which that Co-producer is established.

Rights, revenues, receipts etc

14. The rights, revenues and prizes arising in connection with the co-production shall be shared between the Party Co-Producers in a manner that reflects their respective financial contributions.

Film content

15. Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specially shot for that film.

16. The film shall not advocate violence, be of a blatantly pornographic nature or openly offend human dignity.

Language of the film

17. Versions of the film shall be made as follows:

- (a) the original version must be made in an official language or a recognised regional or minority language of either Party;
- (b) if the original version is not in the English language, a subtitled or dubbed version must be produced in English; and
- (c) if the original version is not in the Chinese language, a subtitled or dubbed version must be produced in Chinese.

18. Nothing in paragraph 17 of this Annex prevents:
- (a) the film containing passages of dialogue in other languages if the story requires it, or
 - (b) production of subsequent versions of the film in other languages.

Screen and publicity credits

19. The film shall be credited on screen and in publicity either:
- (a) as a UK/Chinese co-production, or
 - (b) where a co-production has one or more Third Party Co-producers or Non-Party Co-producers, as a UK/China/Third Party/Non-Party co-production.

Where the film is made

20. Unless the Competent Authorities agree otherwise:
- (a) all work on the co-production prior to completion shall be carried out in the UK or China, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and
 - (b) the majority of the work on the co-production shall be carried out in the State or region in which the Party Co-Producer or Third-Party Co-producer making the greatest financial contribution is established;

but nothing in this Agreement shall prevent co-production work in a third country or region if the script or the circumstances require it, and the Competent Authorities agree.

21. For the avoidance of doubt, the reference in paragraph 20 of this Annex to work on a co-production prior to completion includes studio and post-production work.

Personnel

22. Subject to paragraph 23 of this Annex, individuals participating in the making of the film shall be nationals of, or ordinarily resident in:

- (a) the UK,
- (b) China,
- (c) an EEA State, or
- (d) where there is a Third or Non Party Co-producer, the State or region in which that co-producer is established.

23. The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 of this Annex to participate in the making of a film without regard to nationality or residency, or other grounds.

Conditions of work

24. The conditions of working for those taking part in the making of a co-production in each of the countries of the participating co-producers shall be broadly comparable and, in relation to each country, consistent with the standards generally prevailing in that country.

25. Conditions of work (including location shooting) in a country or region other than that of a co-producer, shall not be significantly less favourable than the standards required by paragraph 24 of this Annex.

Co-production contract

26. The co-production contract between the co-producers shall be submitted to the Competent Authorities, and the contract must:

- (a) set out the steps to be taken where a co-producer fails to fulfil its commitments under the contract;
- (b) specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;
- (c) make arrangements for any unpaid balance of the contributions of each co-producer to be paid within a period of sixty days from the date of completion of the film;

- (d) make provision for any overage or underage, which results from the total budgeted costs being exceeded or under-spent, to be divided in such a way as not to cause the project to fall outside the terms of this Agreement or the terms of the provisional approval given by the Competent Authorities;
- (e) set out clearly the financial liabilities of each co-producer for the costs that are incurred:
 - (i) in preparing a project which is refused final approval or provisional approval for Approved Co-production status under Article 3,
 - (ii) in the event that a relevant authority prohibits the exhibition in either country of a film which has Approved Co-production status, or
 - (iii) in the event that a relevant authority prohibits the export of the film to a third country or region;
- (f) make provision for the respective copyright entitlements of the co-producers;
- (g) make provision for the distribution of the rights and revenues arising in connection with the co-production;
- (h) set out the arrangements regarding the division between the co-producers of territories and/or the receipts from the exploitation of the film, including those from export markets;
- (i) provide that the original protection and reproduction material from the production ("the material") and the first completed version ("the master") are to be deposited in a place mutually agreed by the co-producers;
- (j) provide:
 - (i) that each co-producer is to have free access to the material and the master in accordance with the conditions agreed upon between the co-producers;
 - (ii) either that each of the co-producers is to have joint ownership of the material and the master or that each co-producer is to be the owner of a copy of the material and the master; and
 - (iii) that a sufficient number of copies of the material and the master are to be made for all the co-producers without restriction on the number of copies made by each co-producer;

- (k) state that amendments to the contract that affect Approved Co-production status must be submitted for approval to the Competent Authorities before the co-production is finished; and
- (l) be in compliance with any other requirements that the national legislations of each co-producing country might have in relation to the content of co-production contracts.

Section 2

Co-productions with finance-only contributions

27. For the purposes of Article 4(1)(a), a co-production which does not (and is not expected to) meet the requirement of paragraph 13 of this Annex may nevertheless be treated by the Competent Authorities as meeting the requirements set out in this Annex if:

- (a) all the other requirements of Section 1 of this Annex, and
- (b) the following four conditions, are (or are expected to be) met.

28. The first condition is that the co-production includes one or more minority contributions from one or more co-producers which are limited to finance only.

29. The second condition is that:

- (a) in the case of a co-production where the co-producers are all Party Co-producers, the finance-only contribution from the co-producers (taken together) must be not less than 20% and not more than 25% of the total production cost;
- (b) in any other case, the finance-only contribution from the co-producers (taken together) must be not less than 10% and not more than 25% of the total production cost.

30. The third condition is that the co-production has a majority Party Co-producer who makes a film-making contribution.

31. The fourth condition is that the grant of Approved Co-production status to the co-production does not (other than temporarily) aggravate a state of imbalance between the Parties with regard to:

- (a) the aggregate film-making contributions in connection with co-productions which have Approved Co-production status in reliance on this Section of this Annex; and
- (b) the number of such co-productions which are UK majority co-productions and Chinese majority co-productions.

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