

The Agreement was
previously published as
New Zealand No. 1 (1993)
Cm 2193

NEW ZEALAND



Treaty Series No. 39 (1994)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of New Zealand

concerning the Co-Production of Films

Wellington, 14 April 1993

[The Agreement entered into force on 14 September 1993]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 1994*

LONDON : HMSO
£2.00 net

Cm 2638

**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF NEW ZEALAND
CONCERNING THE CO-PRODUCTION OF FILMS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

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;

Have agreed as follows:

ARTICLE I

For the purposes of this Agreement:

- (1) (a) a "co-production film" shall be a film made in accordance with the terms of an approval given by the competent authorities jointly
 - (i) by one or more United Kingdom producers ("the United Kingdom co-producer") in conjunction with one or more New Zealand producers ("the New Zealand co-producer"); or
 - (ii) by a United Kingdom co-producer and a New Zealand co-producer in conjunction with one or more producers from a country with which the Government of the United Kingdom, the Government of New Zealand or the New Zealand Film Commission has signed a co-production Agreement ("third co-producer"); or
 - (iii) by a United Kingdom co-producer and a New Zealand co-producer in conjunction with one or more third co-producers;
 - (b) "twinned co-production films" means
 - (i) two films which together satisfy the following criteria:
 - (a) the production costs of both films have been borne jointly; and
 - (b) in the case of one of the films, the United Kingdom co-producer has predominantly exercised creative control and, in the case of the other film, the New Zealand co-producer has predominantly exercised creative control; or
 - (ii) subject to the approval of both competent authorities, three or more films made by United Kingdom and New Zealand co-producers with one or more third co-producers with each of which either or both Contracting Parties under this Agreement or the New Zealand Film Commission have co-production Agreements and where:
 - (a) the production costs of all films have been borne by all co-producers; and
 - (b) in the case of one of the films, the United Kingdom co-producer has predominantly exercised creative control and, in the case of another of the films, the New Zealand co-producer has predominantly exercised creative control;
 - (c) "film" means a photographic film, or a recording on magnetic tape or on any other material, from which a series of images, with or without associated sounds, may be produced; except that this term does not include an item which is not a film for the purposes of the Films Act 1985 of the United Kingdom (as amended from time to time) or which is not within the scope of any similar legislation which is for the time being in force in the United Kingdom or New Zealand and which governs the provision of benefits under international agreements relating to the co-production of films;
- (2) "nationals" means:
 - (a) in relation to the United Kingdom of Great Britain and Northern Ireland, British Citizens, British Overseas Citizens, British Dependent Territory Citizens, British National Overseas, British Subjects and British Protected Persons;
 - (b) in relation to New Zealand, New Zealand Citizens;

- (3) " residents " means:
- (a) in relation to the United Kingdom or another Member State, persons ordinarily resident in the United Kingdom or in that Member State;
 - (b) in relation to New Zealand, persons who are entitled in accordance with New Zealand law from time to time in force to be in New Zealand indefinitely;
- (4) " Member State " means any country that is for the time being a Member State of the European Community;
- (5) " competent authorities " means the authorities in the United Kingdom designated by the Government of the United Kingdom and the New Zealand Film Commission and any other authorities in New Zealand designated by the Government of New Zealand.

ARTICLE 2

A co-production film shall be entitled to the full enjoyment of all the benefits which are or may be accorded in the United Kingdom and New Zealand respectively to national films subject to the laws in force from time to time in that country.

ARTICLE 3

In approving films made under this Agreement, the competent authorities, acting jointly, shall apply the rules set out in the Annex, which forms an integral part of this Agreement.

ARTICLE 4

Each of the Contracting Parties shall provide, in accordance with their respective legislation, including, for the United Kingdom, relevant European Community legislation, temporary admission, free of import duties and taxes, of cinematographic equipment for the making of co-production films.

ARTICLE 5

Each of the Contracting Parties shall permit the nationals and residents of the other country, nationals and residents of a Member State and citizens of the country of any third co-producer to enter and remain in the United Kingdom or New Zealand as the case may be, for the purpose of making or promoting a co-production film, subject to the requirement that they comply with the laws relating to entry and residence.

ARTICLE 6

Notwithstanding any other provision in this Agreement, for the purposes of taxation, the legislation and regulations in force in each of the two countries shall apply, subject to the provisions of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which entered into force on 16 March 1984¹.

ARTICLE 7

There shall be a Mixed Commission composed of representatives of the Contracting Parties, which shall include the competent authorities and industry representatives, to supervise and review the working of this Agreement and to make any proposals considered necessary for any modification of this Agreement. Representatives from the United Kingdom and New Zealand shall be approximately equal in number. The Commission shall meet within six months of a request to meet being made by either Contracting Party.

¹ Treaty Series No. 48 (1984) Cmnd. 9264.

ARTICLE 8

Each of the Contracting Parties shall notify the other in writing through the diplomatic channel of the completion of any procedure required by its constitutional law for giving effect to this Agreement. The Agreement shall enter into force on the date of the later of these notifications¹.

ARTICLE 9

The provisions of this Agreement are without prejudice to the international obligations of the Contracting Parties, including, in relation to the United Kingdom, obligations devolving from European Community law.

ARTICLE 10

The Agreement shall not apply to Tokelau.

ARTICLE 11

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. 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.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Wellington this 14th day of April 1993.

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

For the Government of New Zealand

IAIN C. ORR

D. GRAHAM

¹ The Agreement entered into force on 14 September 1993.

ANNEX

PART I

Two Party Productions and Co-Productions with three or more Co-Producers

- (1) The competent authorities shall consult to enable them to ensure that a project conforms with the provisions of this Agreement. When approving a project for a co-production film, they may stipulate conditions of approval framed in order to achieve the general aims and objects of this Agreement.
- (2) A co-production film shall be made within the terms of approval prescribed by the competent authorities. Only the United Kingdom co-producer shall be entitled under Article 2 to the benefits accorded to national films in the United Kingdom and only the New Zealand co-producer shall be entitled under Article 2 to the benefits accorded to national films in New Zealand.
- (3) The competent authorities shall satisfy themselves that conditions of work in the making of co-production films under this Agreement in the United Kingdom or New Zealand are consistent with the standards prevailing in each country. Conditions of work in the making of co-production films, including location shooting in a third country, shall not be less favourable than those under such standards.
- (4)
 - (a) The United Kingdom co-producer shall fulfil all conditions relating to status which are required in order to satisfy the provisions of paragraph 4(2)(a) of Schedule 1 to the Films Act 1985 as amended from time to time;
 - (b) the New Zealand co-producer shall fulfil all the 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 New Zealand film;
 - (c) any third co-producer participating under the terms of Article 1(1)(a) shall fulfil all the conditions relating to 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 the United Kingdom or New Zealand or the New Zealand Film Commission;
 - (d) 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 co-production film itself.
- (5)
 - (a) Co-production films shall be made, processed and dubbed up to the creation of the first release print in the United Kingdom and/or New Zealand, and/or, where there is one or more third co-producers, in the countries of the third co-producers. The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers. Post-release print dubbing into languages other than Maori, English, Gaelic and Welsh may be carried out in third countries and all versions of the film may contain passages of dialogue in other languages if this is required by the script;
 - (b) the majority of the work of making a co-production film including studio and location shooting, processing and pre-release print dubbing shall, subject to any departure from this rule which is approved by the competent authorities, be carried out in the country of the co-producer which has made the major financial contribution. The contributions of two or more co-producers from any one country shall be aggregated for this purpose.
- (6)
 - (a) Individuals participating in the making of co-production films shall be nationals or residents of the United Kingdom, another Member State, New Zealand 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 and, subject to the approval of the competent authorities, performers from the participating co-production countries shall be engaged in the production;
 - (b) where the competent authorities have, under the provisions of Paragraph 5(a) of this Annex, approved location filming in a country other than that of the participating co-producers, nationals or residents of that country may be employed where their services are necessary for the location work to be undertaken.

- (7) The performing, technical and craft contribution of each co-producer to a co-production film shall be in reasonable proportion to each of the co-producers' financial participation.
- (8) Subject to any departure from this rule approved by the competent authorities, 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 co-production film.
- (9) Any music specially composed for a 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 the United Kingdom, or another Member State, New Zealand or, where there is a third co-producer, by citizens of that co-producer's country.
- (10) At least ninety per cent (90%) of the footage included in a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot for that film.
- (11) 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 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 shall have been completed.
- (12) Each co-production film shall include either a separate credit title indicating that the film is either a "United Kingdom–New Zealand co-production" or a "New Zealand–United Kingdom co-production", or where relevant, a credit which reflects the participation of the United Kingdom, New Zealand and the countries of the third co-producers.
- (13) 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.
- (14) It is the intention of the Contracting Parties to achieve an overall balance between the United Kingdom and New Zealand during the term of this Agreement with respect to financial participation, as well as to creative staff, technicians, performers and technical resources (studios and laboratories).
- (15) Either competent authority may withhold approval of a project as a co-production film on the basis that the overriding aim of overall balance referred to in rule (14) would be prejudiced by such approval.
- (16) The approval of a project for a 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.

(17) The provisions of this Annex may from time to time be amended by the mutual consent in writing of the competent authorities, after consultation with the Mixed Commission, provided that those amendments do not conflict with Articles 1 to 11 inclusive of the Agreement.

PART II

Twinned Co-Production Film

(18) Rules 1, 2, 4, 10, 11, 12, 13, 14, 15, 16 and 17 of this Annex shall apply.

(19) One film of a twinned co-production must satisfy all the conditions for it to be a British film under paragraphs 4(2)(b) and (c) of Schedule 1 to the Films Act 1985 as amended from time to time; and one film of a twinned co-production must satisfy all the conditions for it to be a New Zealand film in accordance with Section 18 subsection (2) of the New Zealand Film Commission Act 1978 as amended from time to time.

(20) Where there is a third or fourth twinned co-production film each film must satisfy the conditions necessary for it to be a national film in the country of its producer.

(21) The total production costs of each film must be approximately equal and there shall be an overall balance in the respective financial contributions made by the United Kingdom and New Zealand co-producers and any producer from a third country. The contributions of two or more co-producers from one country shall be aggregated for this purpose.

(22) Twinned co-production films:

- (a) must belong to the same programme category and be of approximately similar length;
- (b) must belong to one of the following categories: performing arts, fiction, documentary or animated programmes; and
- (c) must be in production either simultaneously or consecutively, provided, in the latter case, that no more than six months shall elapse between the completion of the first twinned co-production and the commencement of the second co-production.

