

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION OF THE PEOPLE'S REPUBLIC OF CHINA
ON FILM AND TELEVISION CO-PRODUCTION**

done at Hong Kong, on February 16, 2001

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**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC
OF CHINA (hereinafter referred to as the "Participants");**

CONSIDERING that it is desirable to establish a framework for audiovisual relations and particularly for film, television and video co-productions;

CONSCIOUS that quality co-productions can contribute to the further expansion of the film, television and video production and distribution industries of both Participants as well as to the development of their cultural and economic exchanges;

CONVINCED that these exchanges will contribute to the enhancement of relations between the Participants;

HAVE REACHED THE FOLLOWING UNDERSTANDING:

1. (a) For the purpose of this Memorandum, a "co-production" is a project, irrespective of length, including animation and documentary productions, produced either on film, videotape or videodisc, or in any other format hitherto unknown, for exploitation in theatres, on television, videocassette, videodisc or by any other form of distribution, whether now known or to become known.

(b) For the purpose of this Memorandum, "Hong Kong" means "the Hong Kong Special Administrative Region of the People's Republic of China".

(c) Co-productions undertaken under the present Memorandum will be approved by the following competent authorities:

In Canada: the Minister of Canadian Heritage; and

In Hong Kong: the Secretary for Information Technology and Broadcasting.

(d) Every co-production proposed under this Memorandum will be produced and distributed in accordance with the law of each Participant.

(e) Every co-production produced under this Memorandum will be treated as a Hong Kong or Canadian production for all purposes by each Participant. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film and video industries or those that may hereafter be decreed by each Participant. However, these benefits are to accrue solely to the producer of the Participant which grants them.

2. The benefits of this Memorandum apply only to co-productions undertaken by producers who have good technical organization, sound financial backing and recognized professional standing.

3. (a) The proportion of the respective contributions of the co-producers of the two Participants may vary from twenty (20%) to eighty per cent (80%) of the budget for each co-production. Departure from this ratio needs to be approved by the competent authorities of both Participants.

(b) Each co-producer will be required to make an effective technical and creative contribution. In principle, this contribution should be in proportion to his investment and should comprise the participation of a combination of creative personnel, technicians, performers (in either leading or supporting roles or both) and facilities. Departures from this principle need to be approved by the competent authorities of both Participants.

4. (a) Except as provided in paragraph (e) below, the producers, writers and directors of co-productions, as well as the technicians, performers and other production personnel participating in such co-productions, will be Canadian citizens, or permanent residents of Canada or Hong Kong permanent residents.

(b) The term "Canadian citizen" has the same meaning as in the Citizenship Act of Canada, as it may be amended from time to time.

(c) The term "permanent resident of Canada" has the same meaning as in the Immigration Act 1976 of Canada, as it may be amended from time to time.

(d) The term "Hong Kong permanent resident" has the same meaning as in the Immigration Ordinance (Cap. 115) of Hong Kong as it may be amended from time to time.

(e) Should the co-production so require, the participation of performers other than those provided for in paragraph (a) above may be permitted, subject to the approval of the competent authorities of both Participants.

5. (a) Location shooting, exterior or interior, in the territory of a third party not participating in the co-production may be authorized by the competent authorities of both Participants if the script or the action so requires and if technicians from Canada and Hong Kong take part in the shooting.

(b) Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording will, in principle, be carried out alternately in Canada and Hong Kong.

(c) The laboratory work will be done in either Canada or Hong Kong unless it is technically impossible to do so, in which case the laboratory work in a third party not participating in the co-production may be authorized by the competent authorities of both Participants.

6. (a) The competent authorities of both Participants will also look favourably upon co-productions undertaken by producers of Canada, Hong Kong and any third party to which Canada or Hong Kong is linked by an official co-production agreement or memorandum of understanding.

(b) The proportion of any minority contribution in such co-production is not to be less than twenty per cent (20%). Departure from this percentage needs to be approved by the competent authorities of both Participants.

(c) Each minority co-producer in such co-production should make an effective technical and creative contribution.

(d) Except as otherwise expressly provided, the provisions of this Memorandum will apply to any such co-production submitted to the competent authorities of both Participants.

7. (a) The original sound track of each co-production will be made in either English, French or Chinese. Shooting in any two, or in all, of these languages is permitted. Dialogue in other languages may be included in the co-production as the script requires.

(b) The dubbing or subtitling of each co-production into French and English, or into Chinese will be carried out respectively in Canada or Hong Kong. Any departure from this principle needs to be approved by the competent authorities of both Participants.

8. (a) Except as provided in paragraph (b) below, two copies of the final protection and reproduction materials used in the production will be made for all co-productions. Each co-producer will be the owner of one copy of the protection and reproduction materials and may use it, in accordance with the terms and conditions concluded by the co-producers, to make the necessary reproductions. Each co-producer will have access to the original production material in accordance with such terms and conditions.

(b) At the request of both co-producers and subject to the approval of the competent authorities of both Participants, only one copy of the final protection and reproduction material need be made for those productions which are qualified as low budget productions by the competent authorities. In such cases, the material will be kept in the territory of the majority co-producer. The minority co-producer will have access to the material at all times to make the necessary reproductions, in accordance with the terms and conditions concluded by the co-producers.

9. Subject to their law, the Participants will:

- (i) facilitate the entry into and temporary residence in their respective territories of the creative and technical personnel and the performers engaged by the co-producer of the other Participant for the purpose of the co-production; and
- (ii) facilitate the temporary entry and re-export of any equipment necessary for the purpose of the co-production.

10. Notwithstanding any other provision in this Memorandum, for taxation purposes the law of Canada and Hong Kong will apply.

11. The sharing of revenues by the co-producers will, in principle, be proportional to their respective contributions to the production financing. This sharing may consist of a proportionate sharing of revenues, a sharing of markets, a sharing of media or a combination of these formulae. The overall formula for establishing the sharing of revenues may also take into account the difference in the size of the markets of the Participants and is, in any case, subject to approval by the competent authorities of both Participants.

12. Approval of a co-production proposal by the competent authorities of both Participants does not constitute a commitment to either or both of the co-producers that governmental authorities will grant a licence to show the co-production.

13. (a) Except as provided in paragraph (b) below, where a co-production is exported to a third party which has quota regulations, it will be included in the quota of the Participant:

- (i) of the majority co-producer; or
- (ii) which has the better opportunity of arranging for its export, if the respective contributions of the co-producers are equal; or
- (iii) if subparagraphs (i) or (ii) above are difficult to apply, of which the director is a citizen or permanent resident.

(b) Notwithstanding paragraph (a) above, if one of the Participants enjoys unrestricted entry of its films into a third party which has quota regulations, a co-production undertaken under this Memorandum will be given the same right as any other production of that Participant to unrestricted entry into the third party.

14. (a) A co-production when shown will be identified as a "Canada-Hong Kong Co-production" or "Hong Kong-Canada Co-production" according to the origin of the majority co-producer or in accordance with an understanding between the co-producers.

(b) Such identification will appear in the credits, in all commercial advertising and promotional material and, whenever this co-production is shown, will be given equal treatment by each Participant.

15. In the event of presentation at international film festivals, and unless the co-producers consider otherwise, a co-production will be entered by the Participant of the majority co-producer or, in the event of equal financial participation of the co-producers, by the Participant of which the director is a national or a permanent resident.

16. The competent authorities of both Participants will jointly adopt the rules of procedure for co-productions taking into account the law in force in Canada and Hong Kong. These rules of procedure are set out in the Annex to this Memorandum.

17. (a) No restrictions will be placed on the import, distribution and exhibition of Hong Kong film, television and video productions in Canada or that of Canadian film, television and video productions in Hong Kong other than those provided in the law in force in each of the two Participants.

(b) Dubbing or subtitling may be carried and in Canada and/or Hong Kong and/or, where there is a third co-producer, in that co-producer's territory. The majority of this work should normally be carried out in the territory of the co-producer which has the major financial participation. Dubbing or subtitling into French is to be carried out in

Canada.

18. (a) During the term of this Memorandum, an overall balance will be aimed for with respect to financial participation as well as creative personnel, technicians, performers, and facilities (studio and laboratory), taking into account the respective characteristics of each Participant.

(b) The competent authorities of both Participants will examine the terms of implementation of this Memorandum as necessary in order to resolve any difficulties arising from its application. They will, as needed, recommend possible amendments with a view to developing film and video cooperation in the best interests of both Participants.

(c) A Joint Commission composed of representatives of the Participants will be established to look after the implementation of this Memorandum. The Joint Commission will examine whether the overall balance referred to in paragraph (a) above has been achieved and, if it has not, will determine the measures necessary to establish such a balance. In principle, a meeting of the Joint Commission will take place biennially and it will meet alternately in Canada and Hong Kong. However, the Joint Commission may be convened for extraordinary sessions at the request of one or both competent authorities, particularly in the case of major amendments to the law governing the film, television and video industries in either Participant, or where the application of this Memorandum presents serious difficulties. The Joint Commission will meet within six (6) months following its convocation by one of the Participants.

19. (a) This Memorandum will come into operation on the date of signature, and will remain in operation unless either Participant gives written notice of termination six (6) months before the proposed date of termination.

(b) Co-productions which have been approved by the competent authorities and which are in progress at the time of notice of termination of this Memorandum by either Participant, will continue to benefit fully from the provisions of this Memorandum until completion. Any unfulfilled duties arising from the operation of this Memorandum will be fulfilled in accordance with the provisions of this Memorandum and as though the Memorandum, for those purposes, were still effective. After the expiry or termination of this Memorandum, its terms will continue to apply to the division of revenues from completed co-productions.

20. (a) This Memorandum of Understanding replaces the Memorandum of Understanding between the Government of Canada and the Government of Hong Kong on Film and Television Co-Production signed at Hong Kong, on June 19, 1991 (the 1991 MOU).

(b) This MOU does not affect the status of co-productions approved in

accordance with the 1991 MOU which co-productions will proceed in accordance with the terms of the 1991 MOU as if the 1991 MOU were still in effect and had not been amended.

SIGNED in duplicate at Hong Kong, this 16th day of February, 2001, in the French, English and Chinese languages, all versions being equally valid.

The Honourable Pierre Pettigrew

Ms. Carrie Yau, Secretary for
Information

International Trade Minister

Technology and Broadcasting of Hong Kong

GOVERNMENT OF CANADA

**THE GOVERNMENT OF THE
HONG KONG
SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA**

ANNEX

RULES OF PROCEDURE

1. Applications for benefits under this Memorandum for any co-production should be made simultaneously to the competent authorities of both Participants at least sixty (60) days before shooting begins. The competent authority of the Participant which provides the majority co-producer will communicate its proposal to the competent authority of the other Participant within twenty (20) days of the submission of the complete documentation described below. The competent authority of the Participant which provides the minority co-producer will thereupon communicate its decision within twenty (20) days.

2. Documentation submitted in support of an application will consist of the following items, drafted in English or French in the case of Canada and in English or Chinese in the case of Hong Kong:

- (a) the final script;
- (b) documentary proof that the copyright for the co-production has been legally acquired;
- (c) a copy of the co-production contract signed by the two co-producers.

The co-production contract will include:

- (i) the title of the co-production;
- (ii) the name of the author of the script, or the adapter if it is drawn from a literary source;
- (iii) the name of the director (a substitution clause is permitted to provide for his replacement if necessary);
- (iv) the budget;
- (v) the financing plan;
- (vi) a clause establishing the sharing of revenues, markets, media or a combination of these;

- (vii) a clause detailing the respective shares of the co-producers in any overexpenditure or underexpenditure, which shares should in principle be proportional to their respective contributions, although the minority co-producer's share in any overexpenditure may be limited to a lower percentage or to a fixed amount provided that the minimum proportion permitted under Section 6 of the Memorandum is respected;
- (viii) a clause recognizing that admission to benefits under this Memorandum does not constitute a commitment that the government authorities of either Participant will grant a licence to permit public exhibition of the co-production;
- (ix) a clause prescribing the measures to be taken where:
 - (a) after full consideration of the case the competent authorities of either Participant refuse to grant the benefits applied for;
 - (b) the competent authorities prohibit the exhibition of the co-production in either Participant or its export to a third party;
 - (c) either Participant fails to carry out its duties;
- (x) the period when shooting is to begin;
- (xi) a clause requiring the majority co-producer to take out an insurance policy covering at least "all production risks" and "all original material production risks";
- (xii) a clause providing for the sharing of the ownership of copyright on a basis which is proportional to the respective contributions of the co-producers.
- (d) the distribution contract, where this has already been signed;
- (e) a list of the creative and technical personnel indicating their nationality or place of permanent residence and, in the case of performers, the roles they are to play;
- (f) the production schedule;
- (g) the detailed budget identifying the expenses to be incurred by each Participant; and

(h) the synopsis.

3. The competent authorities of each Participant may require such further documents and information as it deems necessary.
4. In principle, the final shooting script (including the dialogue) should be submitted to the competent authorities prior to the commencement of shooting.
5. Amendments, including the replacement of a co-producer, may be made in the original contract, but these will be submitted for approval by the competent authorities of both Participants before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent authorities.
6. The competent authorities of both Participants will keep each other informed of their decisions.