



SOUTH AFRICAN CULTURAL OBSERVATORY

Review of Film Co-Production Treaties

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Department of Arts and Culture

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Nelson Mandela University

In Partnership with:

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SECTION ONE: INTRODUCTION TO THE STUDY

1.1 INTRODUCTION

The following report presents a review and analysis of the most significant co-production treaties that South Africa has entered into with other countries for the purposes of updating the agreements. The introductory section provides the background to the study, as well as its purpose and objectives. The section closes with an overview of the process to be followed in undertaking the analysis and the structure of the report.

1.2 BACKGROUND

Film co-production agreements are generally treaty-level documents setting out two governments' desire to facilitate cooperation between their respective film and television industries and to assist those industries to grow. The idea of cultural exchange is also central to the agreements.

When two or more international producers come together to make a film, a signed co-production treaty provides them with the opportunities to access the resources required to produce projects that can be internationally competitive. Film projects can be international in terms of storytelling and budget ranges, as they pull together both financial and human resources from the two partnering countries. In addition, films can reach wider audiences, as their stories are able to travel further afield, as well as enjoying the status of national products of both signatory territories. While conventional co-production partnerships between producers may confer some of the same benefits of international involvement, co-production treaties between governments allow for greater benefits to long-term employment creation and domestic industry development.

Film co-production agreements operate by allowing approved film and television projects to gain the status of "official co-productions". This status entitles a co-production film or television project to qualify for the same benefits as are accorded to national films and television programmes in each of the co-producers' countries. Such benefits may extend to funding schemes or incentives. It is also common for the agreements to include provision for three-way and multiparty co-productions to cater for cases where the countries entering into the agreement have existing treaties with a third or more countries. Agreements may also allow for film projects to be facilitated through such measures as expedited temporary immigration processes and importation of equipment within existing regulations.

1.3 THE CASE OF SOUTH AFRICA:

According to a co-production report conducted in 2014, most countries have signed co-production treaties with others that share similar visions. In the case of South Africa, 115 film projects had been produced through co-production treaties with nine other countries by 2017, the oldest having been signed in 1997 and the most recent in 2015. Countries with which South Africa has entered into agreements include the United Kingdom, France, Australia, Ireland, Italy, Canada, Germany and New Zealand.

Despite the advantages of the national co-production programme, the 2014 study showed that over the preceding 3 years, South Africa had recorded a continuous decline in the number of co-production projects completed in each year. In 2011, a total 16 projects were completed, but the activity declined by more than half in the succeeding years. For 2014, a total of 7 projects were recorded, one less than in 2013 and 5 less compared to 2012. It is preferable that such declines should be avoided, and that the co-production framework performs at an optimum level, as the advantages of international co-production appear to offer developmental potential to South Africa that the local industry would struggle to achieve alone.

1.3.1. Incentives

Industry stakeholders have argued that, in order to encourage local productions, co-productions with foreign companies and foreign productions filmed in South Africa, government support is necessary. An early subsidy system, introduced in 1956, was based on tax rebates to encourage local productions for mainly white audiences under apartheid. Thereafter, South Africa built a skilled technical and crew base, as well as audio-visual facilities. This acted as a base for the revitalization of the industry under a new subsidy scheme introduced in 1997, following the establishment of the National Film and Video Foundation (NFVF 2000).

One of the major concerns which has been raised over the years is lack of funding. The South African Film Industry Economic Baseline Study Report (2013) highlights past abuses of the Section 24F Film Allowance and poor investor track record as the reasons for this. It is further stated that in the 1980's, many individuals and entities invested in film with the sole objective of using the Section 24F Film Allowance as a tax deduction. Many of these films were not commercially viable and were never released, which resulted in many investors losing large sums of money. The second contributing factor that many investors lost significant amounts of capital from investing in films with no real commercial prospects. The result has been poor investor returns and an unwillingness to reinvest in any future film projects.

In 2004 the South African Department of Trade and Industry (the dti) introduced the “Film and Television Production Rebate Programme”, with the main aim being to attract large budget foreign films to facilitate foreign capital inflow and skills transfer. Although the programme was judged to be a success (NFVF 2010), it was amended in 2008 to include support for the local film and television industry (The South African Film and Television Production and Co-production incentive) as well as foreign films (Foreign Film and Television Production incentive) (the dti 2008a; 2008b).

Foreign productions have no requirements relating to South African ownership (including copyright) or artistic inputs. However, if they wish to apply for the dti subsidy, they still need to comply with certain broad-based black economic empowerment rules (further explained below). As such, foreign productions would typically employ a South African film company to “service” the production, which would include advising them on requirements for subsidy eligibility, sourcing local services, applying for the subsidy, and providing the necessary information to the dti (the dti, 2012). For co-productions, South Africans must be the majority shareholders, and at least one South African must play an active role in the production (the dti, 2011).

The South African Film Industry Economic Baseline Study Report (2013) indicates the dti Film Incentive pays out between 25 percent to 35 percent on Qualifying South African Expenditure (“QSAPE”) for films that meet the definition of a local production / co-production as well as 20 percent of QSAPE for films that meet the definition of “foreign”. The report describes QSAPE as a production budget spent by the applicant on services, intellectual property and goods provided by South African companies / individuals on films. In 2012, A post-production incentive was introduced to provide an additional 2.5 percent and upwards on QSAPE.

The dti incentives have been of great benefit in attracting larger budget foreign films and co-productions. The payments for South African productions and co-productions rose steadily (in real terms) over the study period from 2009 to 2011 but experienced a sharp decline in 2010 payments to foreign productions (Industry Report, 2009).

The Industrial Financing Division 2018/19 Annual Incentive Performance Report highlights another funding opportunity available known as the Service Investment Cluster. This is aimed at encouraging increased investment and job creation in the services sector. It further contains two incentives, namely the Global Business Services (GPS) incentive - formally known as Business Process Services (BPS) – and the Film and Television Production incentive, which incorporates the Foreign Film and Television Production and Post-Production incentive, South African Film and Television Production and Co-Production incentive, and South African Emerging Black Filmmakers incentive.

1.4 PURPOSE AND OBJECTIVES OF THE STUDY

It is almost five years since the last treaty was signed between South Africa and another country, with the first being 22 years old in 2019. Given factors such as rapid development of technology in the audio-visual industry, the era of multimedia convergence, the introduction of wide-ranging distribution platforms, changes in methods of creating content and engaging in the co-production space, It is necessary that the current agreements must be reviewed in terms of both their performance and the adequacy of their provisions.

The objectives of the current study are:

- To analyse and review four of the existing treaties. These will be the agreements under which there has been the most activity to date;
- To review the most recent international co-production treaties and agreements in other territories;
- To identify gaps in the texts, the changes is the international audiovisual industry;
- To consolidate the value of co-production projects to date;
- To provide a report and recommendations on suitable text, in the light of the aforementioned industry changes and foreign examples.

1.5 PROCESS AND STRUCTURE OF THE REPORT

The body of the study begins in Section 2 by examining four recent international examples of co-production treaties. Certain key factors influencing the context of international agreements are discussed, following which each international agreement is briefly examined and their backgrounds and salient features are highlighted. It may be noted that one of these agreements is an update of a long-existing multiparty agreement, which is currently in the process of being ratified by the countries involved. A primary reason for including this example is that the update has been prompted by considerations similar to those of the current project.

Following the review of recent international examples, the enquiry will turn to the four most active of the treaties to which South Africa is a signatory. Each of these is dealt with in a separate section, from Section 4 to Section 6. In each case, a brief description is provided of each agreement, including its performance in terms of project value and the number of productions that have been delivered under its provisions. Thereafter, standard features and clauses are examined from the viewpoint of consistency of their wording with the recent examples.

Following this, any unique features or clauses of each agreement are discussed. Notable deficiencies in the agreement are then related and amendments are recommended where applicable. Each section closes with a summary of the main points noted in respect of each agreement dealt with.

Following examination of the four leading South African treaties, the report closes with a summary and conclusion.

SECTION TWO: RECENT INTERNATIONAL CO-PRODUCTION AGREEMENTS

2.1. INTRODUCTION

This section examines four international co-production agreements of the 2016 to 2019 period. Two of the cases discussed, the Portugal and Israel treaty, signed in 2016, and the Council of Europe Convention on Cinematographic Co-Production, circulated from 2017 onwards, illustrate that several years can pass between signature of an agreement and ratification. However, significant steps towards the finalisation of the agreements dealt with below were announced in the 2018/ 2019 timeframe.

Before turning to the agreements, the section begins with an examination of factors that may play a role in the framing of international co-production treaties.

2.2. NOTABLE INFLUENCING FACTORS

Aside from the time required to finalise international co-production treaties, the agreements can be long-lived. South Africa's longest-standing co-production treaty is with Canada, dating from 1997, however Canada has 57 such agreements with other countries, many dating from the 1980s (Telefilm Canada, 2012). As a result, the text of agreements needs to take into account their potential longevity, as well as accommodate a need for periodic updating.

In addition, accounts of projects undertaken under co-production treaties suggest that long-standing agreements do not necessarily lead to many or any productions. As an example, Chan and Hurst (2019) point out that by 2019 only one production had resulted from a United Kingdom-China co-production agreement of 2015. The film, *The Special Couple*, released in June 2019, was aimed at the Chinese market and the British partner found that its primary role had been limited to local liaison work and sharing of contacts. The film was furthermore made in Mandarin, with no English version planned for release. From the Chinese perspective, unexpectedly high costs of production had been encountered due to filming in the UK. Neither the British nor Chinese producers indicated that they would be seeking opportunities under the agreement again. Similarly, the animated China-New Zealand film, *Mosley*, scheduled for release in October 2019, was the first co-production under a treaty between the two countries that has been in place since 2010 (New Zealand Film Commission, 2016; Trumbore, 2019).

These factors suggest that agreements should consider factors that may enhance their utility to potential co-producers and encourage the seeking of collaborative opportunities.

According to Follows (2019), several factors influence the decision to collaborate with film makers of another country. These include:

- Shared language.
- Shared culture.
- Common approach to film making.
- The logistics of transferring and transporting funds, people and equipment across borders.
- Availability of tax breaks or other benefits.
- Availability of locations, services and people in each country.

In addition to the factors mentioned above, Blázquez, et al. (2018) state that different policy interests can result in differences in industry stature and procedural arrangements between countries. Such differences may find expression in the terms of treaty agreements. Blázquez, et al. further note that some countries, such as France, have a more formal and structured approach than those with smaller industries, such as the Nordic countries, which tend to be more flexible.

2.3. OVERVIEW OF AGREEMENTS

Four co-production agreements are discussed below. A brief background is provided in each case, following which significant and common terms of agreement are examined.

2.3.1. Agreement between the Government of the French Republic and the Government of The Kingdom of Denmark Related to Cinematographic Coproduction

A 2018 co-production agreement between France and Denmark is discussed below. The background to the agreement is provided, followed by an overview of its notable clauses.

2.3.1.1. Background to the agreement

A new agreement for co-production was entered into between France and Denmark in 2018 to replace a previous agreement dating from 1975. The preamble to the new agreement recognises a need between the parties 'to update the legal framework of their film co-operation' and Article 13 states that the new agreement abrogates and replaces the 1975 predecessor.

2.3.1.2. Notable Features and Clauses

The following notable clauses and provisions are found in the agreement:

a) Definition Clause

The body of the agreement opens with a definition section in Article 1. Terms defined are “cinematic work”, “film co-production”, “co-producer” and “competent authority”.

b) Standard terms of co-production treaties: recognition as national works and qualification for industry benefits

Article 2 contains terms that are standard to co-production agreements and represent their principal benefits. Film works produced under the agreement are considered national works of both countries (paragraph 1) and enjoy full access to the benefits available to the film industries of both countries (paragraph 2). The full lists of benefits offered must be made available by each country to the other. This also applies if changes are made to the benefits for national productions by either country. Paragraph 3 contains a further common but notable provision, namely that the benefits which a co-production receives are acquired through the co-producer from the country that provides the benefits. This ties the support for a co-production to a particular producer. Paragraph 5 specifies the process of applying for admission of a film project to co-production status, details of which are contained in an annexure. This was found to be a further common feature among the treaties reviewed.

Article 2 further provides for joint decision-making on the status of a film as a co-production by the two countries. The parties are obliged to furnish each other with information on decisions taken on co-production applications received, including approval, rejection, modification or withdrawal. In addition, there must be prior consultation before an application is rejected and, once approvals are granted, they cannot be withdrawn except by joint decision of the parties (paragraphs 7 to 9).

c) Qualifications of applicants and requirements of staff and production locations

Article 3 of the agreement establishes the qualifications and eligibility for co-producers, artistic and technical staff, and filming locations. Co-producers are required to have a sound technical and financial organisation at their disposal and to have ‘significant professional experience’ (paragraph 1).

Since Denmark and France form part of several multinational agreements, the range of persons that are eligible to work on productions is wide. According to paragraphs 2 and 3, these include:

- French and Danish nationals and those of other states of the European Union or European Economic Area,
- Nationals of states that are parties to the European Convention on Cross-Border Television or the European Convention on Film Production of the Council of Europe, or of third states with which the European Union holds agreements for the audiovisual sector.
- Citizens of other states that hold French or Danish residence cards, or those of any European Union member country, or of states subject to agreement on the European Economic Area, and any person otherwise treated as a French or Danish national for purposes of the agreement.
- Other artistic or technical collaborators allowed by the competent authorities under the agreement.

Article 3 further requires that studio work for productions must be undertaken in either of the two participating countries, while filming of natural locations in other countries may be jointly authorised by both parties if the work requires it. Specific use of the word “exceptionally” in paragraph 5 indicates that shooting in natural settings is also generally required to be undertaken in either of the two countries. Paragraph 6 notes that these requirements are applied in accordance with the European Commission’s Communication on State Aid for Film and Other Audiovisual Works of 2013.

d) Maximum and Minimum contributions of co-producers

Article 4 contains further provisions which apply widely in co-production agreements, namely that the contributions of the co-producing parties may vary from 20 to 80 percent (paragraph 1). This effectively implies a minimum contribution of 20 percent participation by a national from one of the countries for the agreement to apply. Paragraph 2 allows the authorities of the two countries to jointly agree to a minimum 10 percent contribution in specific cases. This concession also commonly appears in more recent treaties. The artistic and technical contributions are required to be aligned to the financial contributions, although exceptions may again be jointly agreed to between the authorities.

e) Ownership of works

Articles 5 specifies that each co-producer is a co-owner of a film work, while the general duty of the two governments to facilitate production of a co-produced film on their respective territories is imposed by Article 6. This requires each authority to enable the import and export of necessary material and movement and residence of technical and artistic staff.

f) Balance in contributions of signatory states and maintenance mechanism

The key question of balance between the overall contributions of the two governments is dealt with by Article 7. The mechanism by which this is to be achieved is through an examination of the respective contributions every two years by a Joint Commission of the parties (Paragraphs 1 and 2). The commission is established under Article 11 of the agreement. The balance must be established between technical, artistic and financial contributions. According to paragraph 3, a summary must be made of all support and funding provided by each authority. If the Joint Commission then finds that the contributions differ, it must determine a suitable method to restore the balance and implement measures to achieve this (paragraph 4). Article 8 contains a further provision common in such agreements, namely that publicity and titles in a work must indicate that it is a Franco-Danish or Danish French co-production.

g) Division of revenue between co-producers

Under Article 9, division of revenue is left to the decision of the co-producers, subject to the laws of their respective territories.

h) Participation by other states with co-production agreements

Article 10 provides for admission of co-producers from other territories with which either France or Denmark has a co-production agreement. These may be permitted on a case by case basis, although paragraph 2 requires that the majority co-producer must be established in either France or Denmark if the two countries' co-production agreement is to apply.

i) Implementation structure: Establishment of Joint Commission and Dispute Resolution Mechanism

As noted above, Article 11 provides for a Joint Commission to facilitate implementation of the agreement, including maintenance of the balance between the contributions of the parties.

The article specifies that the commission must consist of an equal number of representatives of both parties and experts appointed by them. The commission is required to meet every two years, with the meeting venue alternating between the two countries (paragraph 2). The commission may also meet at the request of either party outside of the two-year intervals, with changes in cinematographic legislation and imbalances in contributions mentioned as events which may require this.

Article 12 provides for resolutions of disputes between the two countries on the interpretation or application of the agreement. These must be settled out of court through direct consultations and negotiations.

j) Communication, Commencement, Variation, Termination and relationship to European Union laws

Article 14 provides for communication between the parties and commencement, variation and termination of the agreement. Communication takes place through diplomatic notification, with commencement taking place 30 days after the last such notification that all procedures necessary for entry into the agreement have been completed. Amendments must take place in writing and by agreement transmitted through diplomatic channels, while termination takes effect six months after written notification from one party to the other. However, the rights and obligations of the parties remain in effect in respect of projects already undertaken. Paragraph 4 of the agreement indicates that it is subject to the framework of the European Union, and any regulations of the Union therefore take precedence over the agreement.

k) Requirements for co-production applications

The Annexure to the agreement sets out the requirements for a co-production to fall within the ambit of the agreement. A file must be submitted to one of the authorities with the following contents:

- A copy of the contracts verifying that copyrights have been secured,
- Final version of the script
- Details of the technical and artistic contributions of the co-producers
- A detailed work plan for the film project
- Detailed estimates and funding plan
- Signed co-production contract.

The government of the minority partner in the co-production may only approve the production once this has been done by the competent authority of the majority partner.

2.3.2. Film and Audiovisual Co-Production Agreement between the Kingdom of Morocco and the Portuguese Republic

A co-production agreement was signed between Morocco and Portugal on 5 December 2017. The background and salient clauses of the agreement are discussed below.

2.3.2.1. Background to the agreement

As reported by Vieira (2019), the agreement is a two-year accord extending to cinematic works of any genre and duration, as well as to television productions with exclusion of soap operas. The relevant authorities further undertook to maximise the developmental potential of film productions through job creation, internships, and offering of seminars to improve the technical abilities of the staff that may be involved in projects.

The agreement notably includes active measures to promote distribution and exports of works, with specific undertakings being the holding of film weeks in each country to promote productions from the other territory. Professionals involved in the works are further required to have a presence at these events.

According to the preamble, the goals of the agreement are to:

- Develop and expand co-operation between the two countries' cinematographic establishments.
- Promote and facilitate the co-production of works that may serve the development of their film and audiovisual production industries.
- Increase cultural and commercial exchange between the parties.
- Contribute to the strengthening of relations between the two countries.

2.3.2.2. Notable Features and Clauses

Key provisions of the Morocco-Portugal agreement are reviewed below.

a) Definitions

The term "work" is defined in Article 1 and notably includes productions for television and other audiovisual services.

b) Standard terms of co-production treaties: recognition as national works and qualification for industry benefits

The standard terms of a co-production agreement are included in Article 1. These are:

- That works resulting from co-production and admitted for purposes of the agreement are regarded as national works of both countries,
- That they are entitled to resulting from provisions that exist or may be enacted in either country
- That the benefits are acquired through the co-producer from the country that grants them.

Article 2 specifies that co-productions must receive approval from the competent authorities of both countries through consent between them.

c) Qualifications of applicants and admissible productions

As in the case of the France-Denmark agreement, co-producers are required by Article 3 to have a good technical and financial organization (“good” is not further defined), as well as professional experience. An addition is that their organization and experience must be recognized by their national authority.

Works covered are specified to be those of all kinds and durations, and specific genres are mentioned as examples. These are independent productions, documentaries, works of fiction, animation, unitary works and series. However, works of fiction such as “telenovelas” (soap operas) are not permitted to benefit from the agreement. The term “Telenovela” is not defined.

d) Specification and ownership of physical form

While the Denmark-France agreement only specified that co-producers would co-own the completed work, Article 4 of the Morocco-Portugal agreement is more specific as to what must be owned. All works are required to have a copy of the visual representation and each co-producer must have one of these, as well as a copy of the soundtrack.

The clause mentions several forms which copies might take (negative, countertype, internegative or interpositive), and notably includes “a copy on any current or future digital medium”.

e) Maximum and Minimum contributions of co-producers

Article 5 provides similarly to the France-Denmark agreement regarding minimum and maximum contributions. The maximum difference in proportional contributions is 80:20, but the minimum can be reduced to 10 percent if the competent authorities in both countries agree to this.

The article further requires artistic and technical participation and specifies that participation should generally be proportional to the investment contributions.

f) Requirements of staff and production locations

The Morocco-Portugal agreement is stricter than that of Denmark and France regarding personnel that may work on productions. According to Clause 6, directors, artists and technicians must hold Portuguese or Moroccan nationality or hold resident status in either country. “On an exceptional basis”, persons who are not nationals or resident in either country can be accepted where dictated by constraints on the production or Portugal’s compliance with European Union laws.

A further difference in the Morocco – Portugal agreement is that it is silent on studio-based work but is express in requiring exterior filming to take place on the national territory of either one or both countries. This can be taken to imply that studio work must be carried out within the territories of the signatories. The clause does however allow for agreement between the two competent authorities to allow filming in other territories if the scenario of a production or multi-party co-operation requires this.

g) Division of revenue between co-producers

The question of division of revenue is far more prescriptive in the Morocco-Portugal agreement than in the Denmark-France example, which left the matter largely to the co-producers. In the Moroccan case, Article 7 requires that the distribution of revenues must be proportional to the contributions of the co-producers. Provision is further made for revenue sharing or geographic sharing, but in the latter case the difference in volume between the two markets assigned to each party must be taken into account.

h) Exporting of a work

Article 8 provides for a principle that the co-producer that contributed the majority to a film project has the right to export it, however where a contribution of less than 20 percent has been allowed, as provided for in Article 5, export will be carried out by the co-producer having the same nationality as the director. The co-producers are permitted to alter this exception by agreement between them.

Where export destinations apply quotas upon foreign films, a co-production will be entered under the quota of the country which has the best prospects of achieving exports, but in case of difficulties being encountered, the work will fall under the quota of the country of which the director is national.

i) Crediting of works and international presentation

As for the France-Denmark agreement, Article 9 requires that works of film under the Morocco-Portugal agreement must be credited in publicity and titles with the words “Morocco-Portugal co-production” or “Portugal-Morocco co-production”. The agreement further specifies that presentation at international events must be carried out by the majority-producer’s country, except where entries are accepted by country, in which case the film must be presented according to the country of the director.

Article 9 further contains a reservation that approval of a co-production by either of the signatory governments does not bind either party to the licencing of a production for public presentation.

j) Balance in contributions of signatory states and maintenance mechanism

Article 10 contains the provision for balance between the signatory parties. This is required to apply in both artistic content and application of technical means.

k) Participation by other states with co-production agreements

According to Article 11, the signatories undertake to encourage (literal translation: “give sympathetic consideration to”) co-productions of international standard from the two countries, as well as those with producers from countries of which one or the other signatory has a co-production agreement.

The article further provides that conditions for approval are considered on a case-by-case basis, according to the requirements listed in the Annexure (i.e. the matters stated in the application for admission as a co-production 1.

l) Undertakings regarding facilitative support services

Article 12 in the Morocco-Portugal agreement is an equivalent to Article 6 in the Denmark-France Treaty, and contains the undertaking that all facilities will be granted for the movement and residence of collaborating artistic and technical staff, as well as for import and export of equipment for the production. The Morocco agreement further provides examples of the type of equipment intended, i.e. film, costumes, advertising material.

m) Undertaking regarding exchange of information

Article 13 contains a requirement for both parties to share information on co-productions, exchanges of works and generally on all details having a bearing on relations between the countries in the fields of film and independent productions falling within the ambit of the agreement.

n) Implementation structure: Establishment of Joint Commission and Dispute Resolution Mechanism

A mixed film and audiovisual commission, equivalent to the joint commission under the Denmark-France agreement is established under Article 14. The terms by which the commission functions are essentially the same, although the Morocco agreement does not specify equality in representation and the commission is normally expected to meet once per year, rather than every two years. Provision is similarly made for additional meetings where necessary to address legislative or regulatory changes in either country.

The functions of the commission are also described in greater detail in the Morocco agreement.

These are:

- To consider the conditions of application of the treaty
- To resolve difficulties that may arise
- To study changes that may assist to advance co-operation between the two countries.

o) Retention of revenue divisions in the event of cancellation of the agreement

Although Article 20 binds the signatories to uphold all existing commitments in the event of cancellation of the treaty, Article 15 refers specifically to the division of revenues from co-productions. According to the clause, these are not affected by cancellations and the provisions of Article 7 on the division must be adhered to.

p) Mutual undertakings for promotion of skills development

As noted in paragraph 2.3.2.1 (“Background to the Agreement”), both parties undertake to support skills development to raise the level of cinema in both countries through internships, seminars and workshops to develop industry professionals. This undertaking is contained in Article 16. The conditions and modalities by which this is to be achieved are left to be decided by later agreement between the parties.

q) Commitment to Promote and Disseminate works

Article 17 binds the signatories to make efforts to promote and disseminate works. The mechanisms to achieve this are:

- Use of a common calendar of events
- Commitment to holding of film weeks featuring the works of the other country.

In addition to the requirement that leading professionals must be present at the events, the clause further specifies that costs of transporting the relevant personnel and freight for copies of the works will be borne by the country sending them, whereas costs of their stay will be borne by the host country.

r) Dispute Resolution

Article 18 requires that any dispute concerning interpretation, application or implementation of the agreement must be settled by negotiation through diplomatic channels.

s) Variation

Article 19 allows amendment in writing and by mutual agreement.

t) Commencement

Terms of commencement are couched in similar terms to the Denmark-France agreement in Article 20 of the Morocco agreement, with the agreement to take effect 30 days after the last notification that ratification procedures have been met.

Unlike the Denmark agreement, the Morocco agreement is set for two years, but is subject to tacit renewal for further two year periods, unless cancelled by either party. This must take place through diplomatic channels at least three months before the renewal deadline. Activities taken before this date remain valid and subject to the same terms of co-operation.

u) Requirements for co-production applications

According to the requirements listed in the Annexure for admission as a co-production, the applicants are both required to submit a file to their respective authorities with the following contents:

- Document on transfer of copyrights
- Detailed script
- Co-production contract between producers
- Detailed estimates and funding plan
- List of technical and artistic elements
- Work plan for the project.

The file must be submitted at least one month before filming commences. The competent authority of the country that will provide the minority financial contribution may not approve the application until notice has been received from the authority of the country with the majority contribution.

2.3.3. Agreement on film co-production between the Government of the State of Israel and the Government of the Portuguese Republic

A co-production agreement was signed between Portugal and Israel in November 2016, however the commencement of the agreement was announced in 2019. The terms of agreement are noticeably more comprehensive than the previous examples and, despite the common involvement of Portugal, has greater similarity to the Denmark-France agreement than to the Morocco-Portugal agreement.

The background to the agreement and major clauses are discussed below.

2.3.3.1. Background to the agreement

According to the Portuguese Cinema and Audio-Visual Institute (ICA), the objectives of the agreement are:

- To develop film production
- To encourage development of cultural and technological ties between Portugal and Israel
- To benefit the film industries of the two countries, and
- To contribute to their economic growth in film, television, video and new media production and distribution industries (ICA, 2019).

In addition to the objectives noted above, the Preamble further notes mutual decision by the parties to establish a framework for encouraging all audio-visual output as prompting the agreement. Mention is further made that the treaty follows from an existing cultural agreement between the two countries, dating from 1992.

The agreement is intended to remain in force for a period of five years but is automatically extendable for additional periods of five years each.

2.3.3.2. Notable Features and Clauses

Key provisions of the Morocco-Portugal agreement are reviewed below.

a) Definitions

The definition section in Article 1 is notably detailed compared to that of the Denmark-France and Morocco-Portugal agreements. Terms defined include “Co-production” and “co-production film”, “Israeli co-producer” and “Portuguese co-producer”, and “Competent Authorities”. In regard to the meaning of “co-production” and “co-production film”, the term includes works in any format for distribution through any type of venue or medium, including videocassette, CD-ROM, and any future forms of production and distribution.

b) Standard terms of co-production treaties: recognition as national works and qualification for industry benefits

Article 2 is phrased in effectively the same language as the previous examples, requiring joint approval of co-productions to qualify under the agreement and conferring national film status upon the works approved. A further common provision is that they receive the same benefits as films under domestic legislation, but the benefits accrue to the co-producer from the country that provides them.

A minor variation not appearing in the other examples is a stipulation that failure by the producer from a signatory party to comply with the conditions under which that party has approved a co-production may result in revocation of co-production status and resulting rights and benefits by that party.

c) Qualifications of applicants and admissible productions

The wording of Article 3 places an obligation on the co-producers to provide evidence of a suitable technical organisation, adequate financial support, recognised professional standing and qualifications to realise the project (Paragraph 1). Approval cannot be received where producers are linked by common management and control, except where the association exists only for the purposes of the co-production itself (Paragraph 2).

d) Requirements of staff and production locations

Article 4 contains similar terms to those of the Denmark-France and Morocco-Portugal agreements regarding production locations and sites but is more specifically worded as to activities that must be undertaken in the signatory countries. The Israel agreement requires filming, processing, dubbing and subtitling up to the first print release to be undertaken in either of the participant countries, or in a country with which either has a co-production agreement. Exceptions are again allowed on the authority of the signatory countries on the grounds of script requirements or unavailability of suitable technical services (paragraph 1).

Article 4 further requires producers, writers, directors, technical specialists and performers to be citizens or permanent residents of the signatories (Paragraph 2), however exceptions may again be allowed by agreement of both authorities (Paragraph 3).

An unusual addition to the agreement is a stipulation that a language may be added to the co-production other than those required by the legislation of the parties, if required by the script (Paragraph 4).

e) Maximum and Minimum contributions of co-producers

The common 80:20 maximum and minimum contribution requirement is applied to the agreement under Article 5, as are technical and creative inputs proportional to investment values (Paragraph 1). Exceptions are again allowed for contribution ratios up to 90:10 by agreement between the signatory parties. The clause expressly reflects that the contribution includes the work of authors, performers, technical staff and processing facilities.

A further feature not found in the Denmark-France and Morocco agreements is that the agreement recognises that co-producers from a particular country may be comprised of several companies. The agreement stipulates that in such cases the contribution of any one producer must not be less than 5 percent of the total budget of the film (paragraph 2). This requirement is extended to co-producers from third countries that are authorised by the signatory parties to participate. Third country co-producers must also contribute at least 10 percent to the production to qualify (Paragraph 3).

f) Encouragement of co-productions

Similar to the Morocco-Portugal agreement, Article 6 of the Israel-Portugal agreement includes an undertaking by the parties to encourage co-productions of international standards (Paragraph 1). An extension of this undertaking to co-productions between one of the countries and third nations is not included.

Approvals are specified to be subject to conditions jointly agreed between the parties on a case-by-case basis (Paragraph 2).

g) Intellectual Property and ownership of physical form

Article 7 of the agreement places an obligation on the participants to secure licences for use of intellectual property not owned by them and to allocate rights of ownership and licencing in their co-production contract (Paragraphs 1 and 2).

The article further stipulates that the co-producers must have free access to co-production materials and must be able to make copies thereof, however this does not include the right to use or assign intellectual property rights, which is to be determined by the terms of their agreement (Paragraph 3). Co-owners are in addition joint owners of the physical copy of the original negative or a film or other media containing the master form of the work (Paragraph 4). Paragraph 5 further specifies that, in the case where the original form is a film negative, the film must be developed as a laboratory agreed to by the parties and be deposited on an agreed name (Paragraph 5).

h) Undertakings regarding facilitative support

Article 8 contains in wording similar to the other international examples the obligation on the signatory parties to facilitate entry and re-export of equipment needed for production, and to make all possible efforts to ensure that personnel involved in the production are permitted to reside on their territory while a co-produced work is in progress.

i) Approval for co-production not a guarantee of authorisation for presentation or distribution

Article 9 of the Israel-Portugal agreement contains a provision equivalent to that of the same article in the Morocco agreement i.e. that approval as a co-production does not bind either party to licence the film for display or distribution in its territory.

j) Export of films and allocation of quotas

Article 10 of the agreement contains a disposition regarding import quotas that differs from that of the Morocco agreement. A general principle that rights of export rest with the majority contributor is not expressly mentioned, but the rule is established that, where third-country quotas apply against both countries, the production will be counted under the quota of the country of the majority producer (Paragraph 1). Paragraph 3 however allows for the competent authorities to agree on alternative arrangements where quotas apply against one or both countries.

If a quota applies to only one country the film will be counted as a production of the party that is not subject to the quota (Paragraph 2).

Paragraph 4 confirms the application of the general principle to marketing and export matters that co-produced films must be accorded the same status and treatment as domestic films of the parties.

k) Crediting of works and international presentation

Article 11 contains the common requirement that films must be credited as co-productions of the two countries in titles, advertising and public presentations.

l) Compliance with national legislation and international agreements, agreed procedures and deviations

Article 12 requires the competent authorities to act in accordance with their national laws and to abide by international agreements. The Annexure is further incorporated by the clause as the agreed Rules of Procedure for co-producers. The authorities may however jointly authorise co-producers to follow ad hoc rules which they approve.

m) Implementation structure: Establishment of Joint Commission, duties and management of balance.

A difference that may be noted regarding the implementation structure for the Israel agreement is that the establishment of a Joint Commission is not required. The authorities may create such a structure, in which case representation must be equal (Paragraph 1). Under Paragraph 3, members are to be agreed upon between the parties through diplomatic channels. No usual period for meeting is set, with parties being required to meet “when necessary”. As in the Denmark-France and Morocco-Portugal agreements, meeting venues alternate between the signatory countries.

Roles for the commission are specified in Paragraph 2. These are:

- Review of the implementation of the agreement’
- Monitoring of an overall balance in co-production. If an imbalance is found, the commission must determine means to rectify this. Factors to be considered in determining the balance are:
 - The number and percentages of co-productions
 - Total amount of investment

- Proportion of artistic and Technical contributions
- Recommendation of means to improve co-operation in film co-production between the two countries
- Recommendation of amendments to the agreement.

n) Variation, Dispute Resolution, Commencement, Termination and Savings

Articles 14 to 16 provide similarly to the Morocco agreement on variation, dispute resolution, commencement, termination and upholding of obligations taken prior to termination. In a variation from the Morocco agreement, the Israel-Portugal agreement is subject to five-year automatic renewals. Disputes are briefly stated to require resolution through diplomatic channels.

o) Requirements for co-production applications (“Rules of Procedure”)

The Annexure lists the procedure for applying for admission as a co-production and is notably more detailed than either the Demark-France or Morocco-Portugal agreements in this area. The key requirements are as follows:

- Applications must be filed concurrently from both countries at least 60 days prior to the start of filming or key animation.
- Each authority must inform the other of its decision within 30 days of the submission date. Unlike the Denmark or Morocco agreements, there is no stipulation that the country of the majority co-producer must be the first to approve the application.
- Applications may be filed in the official language of the co-producer’s country or in English.
- The following documentary information must be provided:
 - Proof of licence arrangements for intellectual property, including copyright and neighbouring rights, which are described as moral rights, performers’ rights, phonographic rights and broadcasters rights.
 - Clearance for public performance, distribution, broadcast, transmission via internet or other means, and sale or rental of physical or electronic copies in the co-producers’ home countries and other countries.
 - Clearance for copyright and neighbouring rights with respect to literary, dramatic, musical or artistic work which has been adapted for purposes of the co-production.

- Signed co-production contract, which remains subject to approval by the authorities. The contract must provide for the following:
 - Title or provisional title of the work
 - Name of the writer or person responsible for film adaptation
 - Name of the Director. A clause may be inserted to allow for replacement
 - Synopsis of the work
 - Budget
 - Financing Plan
 - Amount of contributions to be made by the co-producers
 - Financial undertaking in respect of apportionment of expenditures for development, elaboration, production and post-production up to the answer print (i.e. the first version printed to film with colour and synchronized sound).
 - Plan for distribution of revenue and profits, including through sharing or pooling of markets,
 - Responsibility of producers for costs which exceed the budget and participation in savings made on the production
 - Allocation of intellectual property rights, including through ownership and licencing,
 - A clause recognising that approval of a film for co-production does not bind a country to licence the screening of the film
 - Agreement on financial settlement between the parties if either one or both competent authorities decline to permit the screening of the work in their countries or in other countries
 - Provisions for breach of the co-production contract
 - Clause requiring the major co-producer to secure insurance against all production risks
 - Date for commencement of shooting
 - List of required technical, artistic or other equipment and personnel required, including their nationalities and roles of performers.
 - Production Schedule
 - Agreement on distribution, if already concluded
 - Manner of participation in international festivals

- Other provisions as may be required by authorities.

The annexure further provides that the co-producers may be required to furnish additional documentation or information if required by the authorities to process the application or to monitor the co-production or execution of the co-production agreement. Variations in the agreement, replacement of a co-producer and participation of a third-country producer are also stated to be subject to the approval of the authorities.

2.3.4. Revised Council of Europe Convention on Cinematographic Co-Production

The revised Council of Europe Convention on Cinematographic Co-production was adopted in June 2016. Unlike the examples reviewed above, it is a multiparty agreement with possible bilateral application in some cases. However, the agreement is included in the review since it is a recent document that currently remains open for signature and the reasons for its revision bear similarities to the rationale for the initiative by the South African Cultural Observatory to update the country's co-production treaties. The background to the Convention and its major clauses are discussed below.

2.3.4.1. Background to the agreement

As noted in a description of the Convention by the Council of Europe (Council of Europe, 2019), the 2016 document serves to update a previous Convention of the Council, dating from 1992. The original agreement was intended to provide a platform for the formation and structuring of co-productions. Although the Council considered the 1992 Convention to be successful, it found that the landscape of European film production had changed significantly by 2016. Contributing factors included new technology, changes in techniques of production, distribution and exhibition, evolution in public funding structures, increased use of fiscal incentives for film-making, and greater interest among many smaller European countries in growing the international activities of their film sectors. The agreement was further required to accommodate an increased volume of co-productions with partners from other global regions. As for the 1992 version, the revised Convention aims to provide a common legal basis for multilateral and bilateral cinematographic relations of the participant countries but aims to add greater flexibility in the establishing co-production structures and appropriate reflection of changes in technology and industry practice. A further notable change from the 1992 Convention is that that the new version is open for participation by non-European countries. In this regard, it may be noted that, despite pending withdrawal from the European Union, the United Kingdom is a signatory to the new Convention, having ratified the agreement in February 2019 (McNab, 2019).

2.3.4.2. Notable Features and Clauses

The Convention is divided into three chapters encompassing 24 Articles. Main points dealt with by the provisions are considered below in the order that they are presented in the document.

a) Chapter I - General Provisions

Introductory and general provisions are contained the following articles:

i. Article 1 - Purpose of the Convention

The purpose of the Convention is stated to be encouragement of the development of international film co-production in accordance with the provisions of the agreement.

ii. Article 2 - Scope

The Convention is stated as governing relations between the signatories in the field of multilateral co-productions originating in their combined territory. While applying to co-productions with at least three European co-producers from three different territories, including those that include co-producers from other territories, the agreement also applies to bilateral productions between signatories where no co-production arrangement already exists.

Where outside producers are included, their contribution may not exceed 30 percent of the total cost of production. In addition, the Convention only applies to a work that meets the definition of an "officially co-produced cinematographic work" in Article 3, as discussed below.

iii. Article 3 - Definitions

The terms "cinematographic work", "co-producers", "officially co-produced cinematographic work" or "the film", and "multilateral co-production" are defined. Works qualifying may be of any length and on any medium, including fiction films, cartoons (the term is used instead of "animation" in the definition) and documentaries, but must be for presentation in theaters. "Officially co-produced cinematographic works" are those that meet the conditions of Annexure II to the agreement. The Annexure features scoring tables to determine whether each category (fiction, animation and documentaries) qualifies as sufficiently representative of the signatory countries.

The competent authorities are however permitted to allow projects with lower scores in each case. “Multilateral co-productions” are those with three co-producers from different territories, as noted in regard to Article 2.

b) Chapter II - Rules applicable to co-productions

The general rules applicable to co-productions echo those of the bilateral examples reviewed above. In the Convention, they appear as discussed below.

i. Article 4 - Assimilation to national films

Article 4 contains the provision that multilateral co-productions within the Convention automatically enjoy the advantages of national films under the laws and regulations of the signatory countries. As in the bilateral examples, benefits are accorded to the co-producer from the country by which they are conferred.

ii. Article 5 - Procedures for admission to the co-production regime

As for the bilateral examples, application and approval procedures are contained in an Annexure to the agreement. Approvals also require consultation between the competent authorities of the countries in which the co-producers are established. Similar to the Denmark-France bilateral agreement, approvals are irrevocable once given, except in cases where initial artistic, financial or technical commitments are not fulfilled.

Contracting States to the Convention are required to designate the competent authorities that will be responsible for fulfilment of their undertakings. This must be done at the time of signature of the Convention or when depositing the instrument of ratification. The designation may be changed at any later stage.

A further distinctive provision of the Convention is a dignity and human rights exclusion, which applies against projects which openly violate human dignity, are of a pornographic nature, or advocate discrimination, hatred or violence.

Article 5 further contains the standard requirement that co-producers must be deemed to have adequate technical and financial organization and sufficient professional qualifications to undertake co-productions.

iii. Article 6 - Proportions of the contributions of the co-producers

For multilateral productions, the lowest participation permitted is 5 percent and the largest contribution may not exceed 80 percent of total production cost. However, if the participation by a co-producer will be less than 20 percent or the contribution is purely financial, the country of the co-producer concerned is permitted to reduce or refuse access to national production support schemes. In cases where the Convention applies as a bilateral agreement, the minimum contribution is 10 percent (this is a general allowance and not an exceptional case under the Convention), but an authority may again reduce or refuse access to industry support provisions if the contribution of its contributing co-producer will be less than 20 percent or is purely financial.

iv. Article 7 - Rights of co-producers in cinematographic work

Article 7 requires that co-production contracts must contain the following clauses to assert and protect the rights of co-producers:

- A guarantee that each co-owner will hold co-ownership of the tangible and intangible property rights in the film. This differs from the Israel-Portugal agreement where intellectual property rights are treated as divisible from the physical form.
- A provision that the master of the film (i.e. the first version completed) will be deposited in a place chosen by mutual agreement by the coproducers and that free access to it will be guaranteed.
- A guarantee of right to access by each co-producer to the material and the master of the film in order to be able to reproduce copies from it.

v. Article 8 - Technical and artistic participation

Article 8 is a standard requirement that the contribution of co-producers must include effective technical and artistic participation, which must be proportional to their investment. Provision of creative personnel, technicians, artists, performers and services of technical industries are named as areas of technical and creative contribution.

The article further contains the common requirement that film crew members must be nationals of the co-producing partner States, and post-production must be carried out in those States. This is however made subject to international obligations and the requirements of the film's scenario.

vi. Article 9 - Financial co-productions

Article 9 provides exclusions and interpretations of Article 8. Co-productions are permitted to include one or more minority stakes that are limited to financial contributions in accordance with the co-production contract, provided that:

- Each national share is not less than 10 percent and not greater than 25 percent of the cost of production;
- The production has a majority co-producer who makes an effective technical and artistic contribution and fulfills the conditions required for the granting of nationality to the work in his country;
- The production continues to contribute to the promotion of cultural diversity and intercultural dialogue; and
- The purely financial contributions are subject to co-production contracts containing provisions relating to the distribution of revenue.

Purely financial contributors are to be authorised by the competent authorities of the participating countries on a case by case basis, taking into account, among other factors, the requirement for balance between the countries under the agreement.

vii. Article 10 - General balance of trade

Article 10 contains the common requirement of a general equilibrium in cinematographic exchanges between the signatory countries. This again applies to both the financial value of its investments and artistic and technical participation of its industry. The mechanism to maintain the balance is that a country which finds that a deficit has emerged in its co-production relationships with particular other signatories may make the granting of its consent to co-productions conditional on agreement to future projects that will restore the balance.

viii. Article 11 - Entry and stay

Article 11 contains the standard requirement for signatory countries to facilitate entry, temporary residence and work permitting of production staff from co-producers' countries, as well as for support in securing authority for temporary import and re-export of production material, equipment and works for distribution.

ix. Article 12 - Mention of the co-producing countries

Article 12 contains the further common provision that works resulting from a co-production must make mention of the co-producing countries in credits, advertising and promotional material, and during their presentation.

x. Article 13 - Export

In the event that a targeted export market has quota limits on imported productions, a work will be added to the quota of the country which has the majority participation. Where there is equal participation among co-producers, the work will count under the quota of the country having the best export possibilities in the country of importation, and where a charge to a quota is not possible, the work will be added to the quota of the director's country.

xi. Article 14 - Languages

The article provides for a competent authority to require the co-producing partner from that country to produce a version of the work in one of the languages of the country.

xii. Article 15 - Festivals

Co-produced works are required to be presented at international festivals by the country where the majority co-producer is established. Where there has been equal financial participation by co-producers, the film is presented under the country that supported its producer. Co-producers are however permitted to arrange otherwise.

c) Chapter III - Final Provisions

The Final Provisions chapter deals with aspects such as transitional arrangements, responsibility for administration of the agreement, updating of the agreement, communication between parties and commencement, variation and termination.

As a multiparty convention, these features have less relevance to the amendment of the South African co-production treaties, however several noteworthy provisions do appear. These are briefly reviewed below.

i. Article 16 - Effects of the Convention

The 2016 version of the Convention replaces the agreement of 1992 for signatories to the new agreement, however the 1992 agreement continues to apply between signatories and countries that have not yet ratified the new agreement.

ii. Article 17 - Follow-up to the Convention and amendments to Annexes I and II

Article 17 confers some of the functions of a Joint Commission contemplated in the bilateral examples to the Management Board of the European Support Fund for the Co-production and Dissemination of Creative Cinematographic and Audiovisual Works "Eurimages". These functions include monitoring of the Convention. Parties to the Convention that are not members of "Eurimages" may be represented on the Board of Directors of the organisation when carrying out tasks conferred by the Convention.

To promote the effective application of the Convention, the Board of Directors of "Eurimages" may make proposals to facilitate exchange of experiences and good practices between the Parties, deliver opinions on the application and implementation of the Convention and make specific recommendations to the signatory parties on the agreement.

In addition, to update the provisions of the Annexes so that they remain aligned to current practices in the film industry, amendments may be proposed by any party, or by the Committee of Ministers of the Council of Europe, or by the Steering Committee of "Eurimages". Responsibility for circulating proposals lies with the Secretary General of the Council. After consulting the Parties, the Committee of Ministers may adopt an amendment according to the Council's processes. Unlike the bilateral agreements, an amendment enters force after one year from the date that the amendment is communicated to the Parties.

iii. Article 18 - Signature, ratification, acceptance, approval

Article 18 provides for the process of ratification. The Convention is open for signature by member States of the Council of Europe and other States that are parties to the European Cultural Convention.

Adoption of the Convention takes place by either signature without reservation or signature subject to ratification. Instruments of ratification are to be deposited with the Secretary General of the Council of Europe.

iv. Article 19 - Entry into force

According to Article 19, the Convention enters into force three months after the date on which three States, including at least two member states of the Council of Europe, have consented to the Convention. For later signatories, the Convention comes into effect three months after the date of signature or deposit of the instrument of ratification, acceptance or approval.

v. Article 20 - Accession of non-member States

Article 20 provides that the Committee of Ministers of the Council of Europe may, after consulting with the representatives of the signatory countries, invite any non-member State of the Council of Europe and the European Union to join the Convention once it has come into effect. Acceptance of other signatories is decided upon by the majority of Committee members, as determined by the Statute of the Council of Europe, and by unanimous decision of the representatives of the Contracting States entitled to sit on the Committee of Ministers. An invited non-member State signifies its acceptance of accession to the Convention by depositing an instrument of accession with the Secretary General of the Council of Europe. The Convention is then subject to a period of three months before entering into effect.

vi. Article 21 - Territorial clause

Signatory States to the Convention are permitted by Clause 21 to specify the territory or territories to which the Convention will apply. Other territories may be added at a later date through a declaration to this effect to the Secretary General of the Council of Europe.

vii. Article 22 - Reservations

Signatories are permitted to exclude by declaration the bilateral application of the Convention and to alter the thresholds for maximum and minimum contributions in the event of purely financial contributions to co-productions. Provision is further made for signatory countries to later withdraw their reservations.

viii. Article 23 - Denunciation

Any signatory country may withdraw from the Convention at any time through a notification to the Secretary General of the Council of Europe. The withdrawal takes effect six months after the notification is received.

ix. Article 24 - Notifications

The Secretary General of the Council of Europe is required by Article 24 to notify the member states of the Council of Europe, the European Union and any State which has acceded to the Convention or has been invited to do so of:

- Any new signature to the Convention;
- The deposit of any instrument of ratification, acceptance, approval or accession;
- Any date of entry into force of the Convention
- Any reservation and withdrawal of reservation;
- Any declaration of a Competent Authority by a signatory;
- Any notification of withdrawal from the Convention;
- Any other act, notification or communication relating to this Convention.

x. Annex I - Application procedure

Producers established in the signatory countries must submit an application for admission as a co-production containing the parts mentioned below. These must be dispatched “in good time”, a period not otherwise defined, before the start of the main shooting or the main event. Applications must further be provided to the relevant competent authorities in sufficient number to be communicated to the authorities of the other signatory countries at least one month before the start of shooting. The elements required are:

- A statement of the status of rights;
- A synopsis of the film;
- A provisional list of technical and artistic contributions of the countries concerned;
- Estimate of the budget and a provisional financing plan;
- A provisional work plan;
- A co-production contract or a simplified agreement ("deal memo") between the co-producers. The agreement must include clauses providing for the allocation of revenue or territories between co-producers.

Admission to the definitive co-production scheme is only granted once the film has been completed and after examination by the national authorities of the final production documents. These are:

- A complete chain of rights;
- Definitive film scenario;
- Final list of technical and artistic contributions of each country concerned;
- Final cost statement;
- Definitive financing plan;
- Co-production contract between the co-producers, including clauses providing for the allocation of revenue or territories between co-producers.

National authorities may further request any other documents required for the assessment of the application, in accordance with their national legislation. The competent national authorities shall communicate to one another the files thus constituted as soon as they are deposited. The authority of a signatory representing a minority financial interest in a film project may only approve the application after the opinion of the country having the majority financial participation has been received.

The application and other documents are to be submitted in the language of the competent authorities to which they are subject.

xi. Appendix II - Definition of a Qualifying Cinematographic Work

Appendix II contains tables for scoring of co-productions for qualification under the Convention. The table below applies to fiction films, which must achieve at least 16 out of 21 points for elements provided by a country that is a party to the Convention. Animated and documentary works require different scores but operate similarly.

Table 1: Scoring Table for Fiction Films - Council of Europe Convention on Cinematic Co-production

Elements from Parties to the Convention	Evaluation Points
Director	4
Scriptwriter	3
Composer	1
Premier role	3
Second role	2
Third role	1
Head of Department - Shooting-	1
Head of Department - HIS	1
Department Head - image editing	1
Head of department - sets and costumes	1
Studio or filming location	1
Location of visual effects or computer generated imagery (CGI)	1
Place of Postproduction	1
	21

Source: Council of Europe, 2016

2.4. SUMMARY

The review of the international agreements, and specifically consideration of differences between them, suggests that potential treaty partners may have specific concerns or constraints that require agreements to be uniquely tailored. Differences between examples included use of more specific language in some agreements for items which were captured more simply in others. Other areas where differences were detectable were possibly aimed at protection of local co-producers or national investment resources from exploitation. The need to accommodate legislation for cultural and national language protection and wider commitments under international agreements further appeared as factors that contributed to differences.

The next section examines the most active South Africa treaties against the features and clauses of the international examples.

SECTION THREE: SOUTH AFRICAN CO-PRODUCTION AGREEMENT WITH CANADA

3.1. INTRODUCTION

This section examines the treaty agreement between South Africa and Canada. The Agreement is South Africa's oldest among co-production treaties, having been concluded in 1997, and remained the country's only such agreement until 2003.

3.2. VALUE AND VOLUMES OF CO-PRODUCTIONS

As of March 2017, 27 co-productions had been undertaken under the agreement.

3.3. STANDARD FEATURES AND CLAUSES

Standard features of the agreement include:

- A definition section. "Audio-visual co-production" and "competent authorities", referring to the two institutions that must approve co-productions.
- Paragraph 4 of Article II, contains the standard recognition of co-productions as national works and extends to them the benefits of film industry incentives.
- Paragraph 1 of Article II sets requirements for co-producers to have technical organisation, sound financial backing and "recognised professional standing". Qualifications are not stated to be required, as in international examples, but this appears a valid approach as potential local film-makers may be self-taught or have gained their skills through practical mentoring.
- Article III contains the requirement of a maximum difference in contributions of 80 percent to 20 percent and that technical and creative contributions should be made in proportion to investments. No provision is made for lesser purely financial contributions or for allowance that contributions down to 10 percent may be permitted by the authorities. Such additions do not appear to add value to the South African case.
- Article IV contains the standard provision that technicians, performers and production staff should be Canadian or South African citizens or permanent residents, with allowance for exceptions on the authority of the parties.

- Article V refers to shooting locations and where work on the production must be undertaken. The provision is more lenient than international examples in allowing interior shooting to take place in third countries. Conditions for third-country shooting are in line with international examples. An exception is further allowed for laboratory work that cannot be carried out in either country, which is also found in the bilateral examples.
- Article VI contains a common clause requiring parties to favourably consider co-productions of the two countries and any other country to which either is linked by other co-production agreements. Paragraph 2 sets the minimum contribution in any multiparty production at 20 percent and effective technical and artistic contributions by parties are required under paragraph 3. As noted in paragraph 2.3.3.2(e) (“Maximum and Minimum contributions of co-producers”), agreements such as that between Morocco and Portugal have set more detailed minimum contribution requirements, but the value these additions offer in the South African context is not clear.
- Article VII makes provision for the language of productions and is in line with international cases where different languages are used by the parties. The requirement that dubbing and subtitling must be carried out in either of the two countries party to the agreement similarly features in the Israel-Portugal Agreement.
- Paragraph 1 of Article IX makes standard provision for each co-producer to receive a copy of the “protection and reproduction materials”. This phrase is not used in the other examples studied and the meaning is not defined, but the term “reproduction materials” and the context of the provision make clear that all materials need to make copies of the original are intended. The wording therefore appears sufficient.
- Article X contains in standard terms the obligation for the parties to facilitate entry and temporary residence of personnel for purposes of the production, as well as to permit import and export of necessary equipment.
- Paragraph 1 of Article XI requires that revenues should be shared in proportion to co-producers’ financial contributions but is subject to approval of the authorities. Provisions in regard to revenue sharing varied in the examples examined, with Denmark and France leaving this entirely to the discretion of the parties, and Israel-Portugal and the European Convention requiring this to be indicated in the co-production contract. However, the provision in the Canada-South Africa agreement is in line with the general rule of the Morocco-Portugal agreement.

That agreement added provision for choices between sharing revenues or allocating markets, which may be less relevant in the light of Canada's locational and cultural advantages in accessing significant markets.

- Article XII contains the common stipulation that approval of a co-production does not imply that authorities will licence the production for public presentation.
- Paragraph 1 of Article XIII contains provision for export of films subject to quotas of third countries. The terms are in line with Article 13 of the European Convention.
- Paragraph 2 of Article XIII provides for cases where one party is subject to a quota and the other has free access. In this case, the work will be regarded as that of the party not subject to the quota. Such a provision is also found in the Israel-Portugal agreement, although the South African agreement adds a requirement that the destination country must agree to this.
- Article XIV establishes the standard requirement that works must be identified as "Canada-South Africa" or "South Africa-Canada" co-productions in advertising, credits and presentation. The order in which countries are named is dependent on the either the majority producer, nationality of the director or agreement between the parties.
- Article XV provides specifically for presentation at international festivals and determines that a film will be entered under the country of the majority co-producer or the country of the director in the event of equal participation. In the case of the European agreement, a film is presented under the name of the country that provided support to its representative co-producer. While this approach is more equitable from the point of view of giving due recognition, retention of the existing terms is suggested to be more encouraging of long-term partner-nation support for co-productions.
- Article XVI serves to incorporate the Annexure to the agreement as setting the procedure for approving co-production projects. This approach was followed in all the examples examined.
- Article XVII contains the provisions regarding balance between the overall contributions of the two countries under the agreement. The terms are almost the same as those of the more recent Denmark-France agreement, although with the following differences:
 - Addition of a requirement to meet within 6 months of the convocation of the commission by one of the parties.
 - Omission of a requirement for balanced representation on the Commission.

- Article XIX deals with commencement, period of validity, withdrawal from the agreement, fulfilment of obligations in event of withdrawal, including upholding of provisions in respect of sharing of revenues, and termination of the agreement. While language applied in paragraph one regarding commencement and termination differs from the international examples, the effect appears the same. In particular, the Canada-South Africa agreement does not refer to the last notice to be received confirming compliance with ratification procedures for commencement, and makes use of 6 months written notice for termination, rather than termination at a point after written notice of withdrawal has been received.
- The Annexure contains the procedure for applying for admission of a co-production and is substantially similar to the requirements of the Israel-Portugal agreement. Concurrent application to both authorities is required, although the period prior to commencement of shooting is shorter, at 30 days as opposed to 60. The country of the majority co-producer must then submit the complete proposal to the other authority within 20 days of its submission. The country of the minority producer must then communicate its decision within a further 20 days. The Israel-Portugal agreement contained the most comprehensive list of requirements and the similar Canada-South Africa version does not appear to require modifications or additions.

3.4. UNIQUE FEATURES AND CLAUSES

Features found in the agreement that are not common or found in the international examples or other South African agreements are:

- Paragraph 3 of Article I, which captures in one clause the requirement that all co-productions must adhere to legislation and regulations in force in Canada and South Africa. This requirement is normally repeated throughout other agreements but appears to allow economy in the wording of the agreement. No amendment is suggested.
- Paragraph 2 of Article II takes into account that producers may be at a developmental stage and requires that their productions should be favourably considered provided that adequate financing has been arranged. This appears to be a feature that took into account the need to develop film crews and personnel that would be new to the industry. This situation continues and the provision is therefore not recommended for amendment.
- In regard to permissible shooting locations, a stipulation is that South Africa or Canadian personnel must take part in third country location shooting. This does not appear in the international agreements studied but does not appear to require adjustment.

- Paragraph 2 of Article XI appears a unique feature and necessary inclusion by South Africa relating to expatriation of revenues. This provides for and draws partner countries' attention to exchange control on the movement of funds.
- A further notable addition to the list of requirements in the Annexure is a restriction on the minority co-producer's share to a lower percentage or fixed amount. This addition may be of assistance to prevent exposure of developmental film-makers to indebtedness in the event that co-production projects encounter difficulties. Retention of this difference is therefore recommended.

3.5. NOTABLE DEFICIENCIES AND RECOMMENDED AMENDMENTS

The following deficiencies and areas for possible amendment appear from the agreement:

- In Article 1 (Definition section), the definition of "audio-visual co-production" refers to formats such as videotape and videodisc, which are largely obsolete, as well as to "any other format hitherto unknown". To address this, either the adoption of the definition applied in the European Convention is recommended, as this is applicable to many potential co-production partners and is a recent document, or an addition should be made that includes digital forms of media.
- In Article 1 (Definition section), the "competent authority" is identified as the Minister of Arts, Culture, Science and Technology. An amendment is recommended to refer to the current equivalent position, the Minister of Arts and Culture. It may further be noted that competent authorities in the examples examined were in many cases dedicated film institutes, rather than government office-bearers.
- Regarding the requirement of maximum and minimum contributions and proportionality between a country's artistic/ technical participation and level of investment, it is suggested that in the case of Canada, co-production benefits should be allowed in specific cases when there is little or no such proportionality. This is due to Canada's favourable position as a potential investor in film productions and South Africa's strong technical capabilities to deliver film productions, coupled with the country's developmental and inclusivity needs. A high proportion of Canadian financial investment with any demonstrable value-adding artistic or technical contribution by that country should therefore still allow a film to be regarded as a co-production of both countries.

- Article VIII includes provision for twinning arrangements between productions. No such provision appears in the other recent treaties studied, but the provision may offer specific benefits under South Africa-Canada relations. Assessment of the actual and potential future value added by twinning arrangements is required before removal of the article can be considered.
- Paragraph 2 of Article IX contains an exception not found elsewhere, by which independent films are only obliged to be made in one copy of the final material, although a minority producer is to have access to this. The provision may have sought to control costs in the context of 1997 but may be less relevant in the era of digital editing, which would serve to simplify production of a second or more copies. Consultation with the National Film and Video Foundation on the continued value of this provision is recommended, with a view to deletion or adjustment.
- In regard to the precedence of countries in identifying works as national co-productions, referred to in Article XIV, the Canada agreement is not specific on when the majority producer's country, director's country or agreement takes priority. The Morocco-Portugal agreement is specific that the majority contributor's country takes precedence, except where entries are accepted by country, in which case the director's country takes precedence. It is suggested that this addition should be made to Article XIV, with this arrangement being applicable in the absence of any agreement to the contrary between the co-producers.
- Article XVII introduces a feature that differs from the foreign examples by including an undertaking that no restrictions will be placed by either party on the films, video or television productions of the other, other than those contained in the legislation of those countries. The purpose for which this provision was included is unclear, since the reference to legislation and regulations imply that it is not a blanket undertaking to accept all works that emanate from the partner's country. It rather appears as an undertaking not to discriminate against the other party's film products and may therefore be superfluous. It is suggested that the reasons for inclusion of the provision require further examination to determine whether deletion is appropriate.
- An addition to Article XVIII is recommended to require equal representation on the Joint Commission by the parties.

3.4. SUMMARY

Despite the longevity of the Canada-South Africa agreement, few major alterations appear to be necessary to establish alignment with more recent examples. Additions to account for new means of processing, storing and presenting works do however appear to be necessary in some provisions, as outlined above.

SECTION FOUR: SOUTH AFRICAN CO-PRODUCTION AGREEMENT WITH GERMANY

4.1. INTRODUCTION

The following section seeks to review some of the features which are found in the treaty agreements between the Republic of South Africa and the Federal Republic of Germany. The Agreement has been active since 2004.

4.2. VALUE AND VOLUMES OF CO-PRODUCTIONS

As of March 2017, 54 co-productions had been undertaken under the agreement.

4.3. STANDARD FEATURES AND CLAUSES

When compared to international treaties and the other South African agreements, a common feature found in the agreement with Germany is the reference to “competent authorities” as the responsible bodies.

4.4. UNIQUE FEATURES AND CLAUSES

Features found in the agreement that are not found in the other South African agreements are:

- Provision for entry of co-productions into international festivals, and
- Provision for commencement, duration and termination.

These features distinguish this agreement.

4.5. NOTABLE DEFICIENCIES AND RECOMMENDED AMENDMENTS

Some of the international treaties consulted, such as the agreement between the Kingdom of Morocco and the Portuguese Republic, have included and listed some of the benefits to be granted to co-productions. The agreement between South Africa and Germany has not itemised such benefits.

The second notable deficiency is that the agreement makes no reference to where exterior shooting is to take place. The Morocco-Portugal and Denmark-France treaties either directly stipulate or necessarily imply that film work is to take place in the territories of the two countries unless it is justified to film elsewhere.

Another notable difference is found in Article 3, where the agreement does not speak to the two stages of an application, as are mentioned in other treaties.

4.6. SUMMARY

Although the Germany-South Africa agreement has been active since 2004, there are features which are not found compared to other treaties signed two years later. A general recommendation is to amend the agreement to address inconsistencies with more recent agreements with other countries.

To avoid inconsistencies between the terms of agreements, adoption of a standard layout from which amendments can be made is proposed.

SECTION FIVE: SOUTH AFRICAN CO-PRODUCTION AGREEMENT WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

5.1. INTRODUCTION

This section sets out to discuss the treaty agreement between the Government of the Republic of South Africa and the Government of the United Kingdom of Great Britain and Northern Ireland. The agreement has been in effect since 2004.

5.2. VALUE AND VOLUMES OF CO-PRODUCTIONS

As at March 2017, 23 co-productions had been completed under the provisions of the agreement.

5.3. STANDARD FEATURES AND CLAUSES

The agreement contains all standard features and clauses which are found in other treaties, both with South Africa and between other countries.

5.4. UNIQUE FEATURES AND CLAUSES

The agreement contains a definition section, a feature which is not applied in all the agreements reviewed. The agreement further includes a section which highlights the conditions of the work, as well as components which are to be included in co-production contracts.

5.5. NOTABLE DEFICIENCIES AND RECOMMENDED AMENDMENTS

Article two does not speak to the procedure to be followed if the competent authority of a signatory country is replaced by another body. This procedure is included in other treaties, where the competent authorities are required to inform their counterparts of such a substitution.

It is suggested that a standard layout be employed in order to foster consistency between agreements, with the matter of substitution of bodies being included in the common template.

5.6. SUMMARY

The agreement between South Africa and the United Kingdom offers unique features which can be adopted for other agreements and may serve as a standard outline for agreements. This stems from the

fact that it is well detailed and does not appear to lack sections and provisions when compared to the international examples.

SECTION SIX: SOUTH AFRICAN CO-PRODUCTION AGREEMENT WITH FRANCE

6.1. INTRODUCTION

In this section, the treaty agreement for film co-production between South Africa and France is examined. The agreement is the most recent of the active agreements, having been concluded in 2010. According to its Preamble, the agreement follows from a 2004 Co-operation Agreement on Cinema.

6.2. VALUE AND VOLUMES OF CO-PRODUCTIONS

Four co-productions had been completed in terms of the agreement as of March 2017.

6.3. STANDARD FEATURES AND CLAUSES

Standard features of co-production agreements contained in the France-South Africa agreement are the following:

- A definition section. Terms defines are “film”, “co-production film”, and “third party producer”. The term film is in line with the European Council definition, utilising the categories of fiction, animation and documentaries, and requiring that their first showing must be in cinemas to exclude productions for television.
- Article 2 identifies the competent authorities for the agreement. In this case, the representative body is the Film and Video Foundation for South Africa.
- Article 3 contains the common requirement that individuals participating in co-productions must be citizens or permanent residents of France or South Africa. This is however stated as requiring that participants must be “nationals” or permanent residents of South Africa or France. Nationals are then defined for each country. This approach is presumably followed since the French representation includes citizens of the European Union and a European Economic Area. The effect is however the same as the recent international examples reviewed.
- Article 4 contains the standard provision that films co-produced in compliance with the agreement will be regarded as national works of both countries and entitled to all benefits accorded to such works under the domestic laws of the parties.

- The requirement (also appearing in the Denmark-France agreement) that parties must provide lists of such benefits and communicate changes appears in paragraph 2 of the Article. Paragraph 3 contains the provision that benefits are directed through the co-producer permitted to claim them under the law of his/ her country.
- Article 5 contains several provisions appearing similarly in the recent agreements. These are:
 - The requirement that co-productions require joint approval of the competent authorities prior to commencement of filming, that this must be in writing and may be subject to conditions agreed between the parties.
 - That parties must exchange information on approvals, rejections, and changes in and withdrawals of applications.
 - That approval once given cannot be withdrawn without consent of both parties (Paragraph 2).
 - That approval of a co-production does not bind them to authorise distribution of the film (Paragraph 4). Notably, only “distribution” is included, while “public presentation” or “showing” are not specifically mentioned. Distribution may however be interpreted as necessarily implying these actions.
- Paragraph (c) of Article 6 contains the requirement, also found in other agreements, that co-producers may not be linked by common management, ownership or control, except for purposes of the production.
- Article 7 provides for third parties from other countries in co-productions. The terms are essentially the same as other examples, although wording is simplified. The authorities may approve a co-production if either country has a co-production agreement with the country of the third-party (paragraph 1), the third party must otherwise fulfill all obligations of that agreement (paragraph 2), and conditions of approval are determined by the parties on a case by case basis (paragraph 3).
- Article 8 contains the terms regarding personnel who may participate in productions. Notably, the agreement only allows for “nationals” to contribute to productions. However, nationals of European Union countries and of European Economic Area states are specifically included, as well as those of third-party countries in co-productions. The wording does not currently include foreign nationals of either party with resident status, although most of the agreements reviewed stipulate this inclusion.

- Article 9 contains the standard allowances for co-producers to contribute between 20 and 80 percent to the costs of a production. Unlike most other examples, no allowance is made for a lower contribution. The Article further provides in paragraph 2 for the technical and artistic contribution to be proportional to financial contributions, with allowance for exceptions.
- Paragraphs 1 and 3 of Article 10 contains a provision similar to the France-Denmark agreement that location shooting may take place in a third country if the script or action of the film so requires, however studio shooting must take place in the territory of one of the parties.
- Article 13 contains the provision for crediting of a film as an “Official Republic of South Africa – French Republic” or “Official French Republic – Republic of South Africa” co-production. Allowance is also made for crediting of a third country and for the reference to the co-production at film festivals. Notably, no formula is provided for which country is to be given precedence in the credits.
- Article 16 provides for ownership of the work. The co-producers are to jointly hold both the tangible and intangible rights to the work and must be held in the joint names of the parties at a laboratory chosen by mutual agreement. These provisions are substantially the same as those of Article 7 of the Revised Council of Europe Convention on Cinematographic Co-Production, where a term to this effect must be contained in the agreement between the parties.
- Article 18 provides for the establishment of a joint commission for the purposes of overseeing the implementation of the agreement, recommending amendments and maintaining the balance between contributions. Terms are largely as for other agreements. The commission is to consist of representatives of the authorities and experts in related fields (paragraph 1). The agreement does not require equality between the number of members. Meetings are to be held every two years, with the venue alternating between the parties (Paragraph 2). In addition, meetings must be held within six months of a request by one of the parties to address changes in domestic law or other obstacles arising. Such obstacles are specified to include imbalances in contributions. The agreement provides details of the contributions for which balance must be achieved. These are:
 - Production costs
 - Usage of studios and laboratories
 - Employment of performers, creative staff and technical staff, measured numerically, and
 - Participation in major roles in creative, technical and performance areas, including writer, director and lead cast members.

- Articles 20, 21 and 22 deal with amendment, settlement of disputes, duration of the agreement and termination. Amendments are to take place by mutual consent of the parties communicated through exchange of notes via diplomatic channels and disputes are to be settled via consultation or negotiation. In regard to termination, the agreement was to have a two-year duration, but this was made subject to automatic renewal. A party intending to withdraw from the agreement must deliver three months' advance written notice to the other party through diplomatic channels.
- Article 23 provides for commencement and determines that the agreement takes effect on the last day on which a party notifies the other that all constitutional requirements for ratification have been met. Notification is again to be in writing and directed via diplomatic channels. According to paragraph 2 of Article 22 ("Duration and Termination"), termination was to have no effect on completed co-productions approved prior to termination or on the rights and duties of the co-producers.
- The Annexure contains the procedure for applying for admission of a co-production. Most requirements are similar to other examples examined, although wording used differs. These include the following:
 - Use of a two-stage approval system, provisional upon application and final upon completion.
 - Documentation must include:
 - Documentation confirming purchase of copyright for commercial exploitation of the work
 - Synopsis, including theme and contents
 - List of technical and artistic contributions from each country
 - Work plan stating periods and locations on a weekly basis for studio and outdoor shooting
 - Budget and financing plan
 - Production schedule
 - Co-production contract
 - All documentation required by the authorities to assess the technical and financial contributions to be made.
 - The contract between the co-producers must include the following terms:
 - Provision that a co-producer may not assign or dispose of the benefits of national film support measures to a person other than a national of that producer's country,

- An assignment of intellectual property rights arising from the film
- Provision for exercise of rights and access to copyrighted works created by the making of the film
- Provision for financial liability between the parties if approval as a co-production is declined, if an approved co-production fails to comply with conditions of approval, or if permission for exhibition of a co-production is withheld by either signatory country.
- Arrangement regarding division of receipts from a co-production between the producers, including those from export markets,
- Determination of dates by which contributions of the co-producers will be completed,
- Determination as to whether the co-production will be presented at film festivals as a national film of the co-producer delivering the larger contribution (the agreement uses the term “majority co-producer”), or as a national film of all co-producers.
- Inclusion of any other conditions of approval that the authorities have jointly agreed to.

6.4. UNIQUE FEATURES AND CLAUSES

The following are the distinctive provisions contained in the France-South Africa agreement:

- Paragraph (a) of Article 5 requires that co-productions must be approved by both authorities no later than four months after their cinematic release. This clause will require adjustment if the range of work covered by the agreement are expanded beyond those for presentation in theatres.
- Paragraphs (a) and (b) of Article 6 relate to the obligations of the co-producers to fulfil obligations required to qualify as a South African and a French production respectively. However, more precise wording is used to capture the obligation of the South African co-producer, who must fulfil all conditions which “would be required to be fulfilled, if that producer were the only producer ...”. The French counterpart is only required to “fulfil all conditions ... required to be fulfilled in order for the production to qualify as a French film”. The reasons for the difference in wording are not apparent from the agreement.
- Alongside the provision for filming to take place in a third country where a film requires, Article 10 permits in paragraph 2 that citizens of that country may participate in small roles, as crowd artists or as providers of services necessary for shooting on location.

- Article 11, dealing with the soundtrack, requires the soundtrack of a production to be in any official language of either party, or in a combination of such languages. Narration, dubbing or subtitling in any commonly used language or dialect is however permitted. A further unique provision, contained in paragraph 3, is that post-print dubbing may be carried out in any country without restriction. Not all of the agreements reviewed make provision for dubbing and subtitling, but those that consider these services either require them to be carried out by one of the parties or by another country under a co-production agreement with one of them.
- Article 12 introduces an element of local content in the footage used and processing of a film. Paragraph 1 requires the making and processing of a film up to the first release print to be carried out in one of or both signatory countries, while paragraph 2 requires that at least 90 percent of the footage used must be original for the film. Provision is however made for the competent authorities to allow exclusions.
- Article 14 provides for the facilitation of immigration but uses markedly simple terminology that differs from other examples. Subject to normal immigration laws, each country undertakes to permit the nationals working on co-productions to enter and remain in the country of production for the purposes of making or promoting a film. The extension to presence for purposes of promotion is unique to the agreement.
- Article 15 is similarly a common provision with distinctively simple wording. The provision relates to import of equipment and requires parties to temporarily admit cinematographic and other technical equipment for the purpose of film making. A further unusual provision is that the undertaking is made subject to provision of security by the importing party.
- Article 17 caters extensively for training and co-operation between the parties. The following provisions are made:
 - Paragraph 1 stipulates that parties are to be concerned with training for jobs in the film industry. They are to consult each other on both the initial training and continued development of film professionals and to encourage agreements between schools or bodies providing training or further development with a view to “movement” of their students. “Movement” is not defined but presumably refers to career progression.
 - Paragraph 2 requires parties to examine ways of encouraging reciprocal distribution and promotion of the films of each country. Notably, this obligation is not limited in its scope to co-productions.

- Paragraph 3 places emphasis on promotion of cultural diversity through reciprocal film making, education programmes and participation in film festivals.
- Paragraph 4 requires parties to examine ways to encourage exchange of skills, with artists and technicians being specifically mentioned as candidates for such programmes.
- Paragraph 5 relates to a commitment to develop co-operation between film libraries and archives.
- In addition to providing additional detail on the role and administration of the joint commission between the parties, paragraph 4 of Article 18 prescribes that in the event of a failure to hold a meeting to restore balance between the parties, the competent authorities must abide by the principle of reciprocity in approving co-productions.
- Article 19 is a simple standalone clause specifying that the Annexes form part of the agreement. No reference is made to their contents.
- Annexes 2 and 3 contain respectively the list of all support to productions offered by the parties and a list of all countries with which the parties then held co-production agreements.

6.5. NOTABLE DEFICIENCIES AND RECOMMENDED AMENDMENTS

The following are possible and notable deficiencies arising from the review of the agreement.

- The definition of “film” is restricted to works whose first showing is in cinemas. A question is whether the parties strictly intend feature production to be covered by their agreement or whether films for broadcast via internet subscription channels should be included. Fenessey (2017) notes that smaller independent films have been particular beneficiaries of this outlet for their works e.g. Netflix, while higher budget traditional cinema works may become increasingly difficult to finance.
- Article 3 states that participants in productions must be “nationals” or permanent residents of the republic of South Africa “and” the French Republic. For clarification, it is suggested that “or” be substituted for “and” in this sentence.
- Paragraphs 3 and 5 of Article 5 of the agreement appear to contain a duplication in content. This relates to the requirement that withdrawal of admission as a co-production must be agreed to by both parties.

- Article 5 contains (in paragraph 2) a stipulation that approval of a co-production must not be related to the film rating system of either party. Reasons for this system are not apparent from the document. It is suggested that the NFVF should be consulted as to whether this provision has value or should be omitted.
- Article 22 (“Duration and Termination”) provides that termination does not affect “completed co-productions” approved prior to a signatory’s withdrawal, however no provision is made for productions already in progress. It is recommended that paragraph 2 should be amended to remove “completed” from the wording. The effect will be that co-productions already approved and under way will fall within the agreement.
- In Annex 2, the only measures of the dti mentioned are the South African Film and Television Production Incentive and the Export Marketing Investment Assistance Scheme (EMIA). Those not shown are:
 - The Foreign Film and Television Production and Post-Production Incentive;
 - South African Film and Television Production Incentive;
 - The South African Emerging Black Filmmakers Incentive. While directed towards beneficiaries among from a specific demographic, this measure may still have relevance to cases where a foreign investor is willing to support a project led by a black film maker or consortium.

Investment by the NFVF and IDC are further measures shown in Annex 2, with the tax incentive available from SARS for film productions also mentioned.

6.6. SUMMARY

As in the case of the other South African agreements, the France-South Africa agreement has strong similarities to the more recent examples reviewed and few alterations appear necessary by these standards. Some provisions did however appear which may be extraneous to the agreement. The policy question on the precise works that the parties wish to be covered also appears to require resolution before the agreement can be appropriately amended. In particular, the position on films made for purposes of transmission via internet requires clarification.

In addition, the value of separate agreements for film and television may be questionable for South Africa, where the film and television industries are closely interconnected. The separation may also be losing relevance for France due to pending market changes, despite the country’s long-standing cinema tradition.

Goodfellow (2019) notes that French producers are facing a high demand for content while broadcasters are having to adapt to a market shift towards Streaming Video on Demand (SVoD). They are achieving this through measures such as investment in productions aimed at the online market, use of co-productions – notably with Germany and Italy – to raise larger budgets, and signing of two-year exclusivity agreements with producers to strengthen broadcasters’ hands in negotiating with multinational streaming services. Exclusivity agreements have not previously been possible for broadcasters under French law.

It may be noted in regard to the prospect of a single agreement for film and television productions that the “Competent Authority” for France in the current agreement, the Centre National du Cinéma et de l’image Animée (CNC), holds responsibility for the promotion of both film and television. The organisation is furthermore a sponsor of TV France International, the body dedicated to sales of French television programmes and facilitation of international co-productions for broadcast (TV France International, 2019).

5. SECTION SEVEN: SUMMARY AND CONCLUSION

Although the most active South African co-production treaties have been in effect for an extended period, a review of comparable international examples suggests that such agreements tend to be standard in their terms and have remained largely unchanged. Changes appear to be required predominantly in identification of the relevant authorities and in additions to definitions to cater for new methods of recording, processing, storing and presenting filmed material.

Although not relating to the utility of agreements as effective instruments to underpin intergovernmental co-operation, a feature that may be suggested for consideration is the adaption of the scoring matrices in Annexure II of the Council of Europe Convention on Cinematographic Co-production. These would appear to allow the national authorities supporting film industry development to compare the projected developmental and localisation value of different co-productions and to set targets and monitor performance for greater inclusion at the most relevant areas of production

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ANNEXURE: FEATURES OF HIGHEST PERFORMING CO-PRODUCTION AGREEMENTS

	CANADA	GERMANY	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	FRANCE
Value and volume of co-production	27	54	23	4
Unique features and clauses	<ul style="list-style-type: none"> • Paragraph 3 of Article I, • Paragraph 2 of Article II • Paragraph 2 of Article XI 	<ul style="list-style-type: none"> • Provision for entry of co-productions into international festivals • Provision for commencement, duration and termination. 	<ul style="list-style-type: none"> • Definition section • Conditions of the work • components which are to be included in co-production contracts 	<ul style="list-style-type: none"> a) Paragraph (a) of Article 5 b) Paragraphs (c) and 5 of Article 5 c) Paragraphs (a) and (b) of Article 6 d) Article 10
Deficiencies	<ul style="list-style-type: none"> • In Article 1 (Definition section) • Article VIII 	<ul style="list-style-type: none"> • Article 3 	<ul style="list-style-type: none"> • Article 2 	<ul style="list-style-type: none"> a) Definition of “film” is restricted b) Article 3 c) Article 5 d) Article 22
Recommendations	<ul style="list-style-type: none"> • Consultation with the National Film and Video Foundation 	<ul style="list-style-type: none"> • Itemised benefits • Include two stages of an application 	<ul style="list-style-type: none"> • Standard layout to foster consistency 	<ul style="list-style-type: none"> a) NFVF should be consulted b) Paragraph 2 should be amended

