

ANNEX 7-B
AUDIOVISUAL CO-PRODUCTION

ARTICLE 1: COMPETENT AUTHORITIES

1. Each Party shall designate a competent authority for the purpose of implementing this Annex. Either Party may change its appointed competent authority by giving notice to the other Party through diplomatic channels. The change in competent authority shall take effect 28 days after the notice has been received.
2. The competent authorities may examine the implementation of this Annex and consult with each other to resolve any difficulties arising out of its application.

ARTICLE 2: APPROVAL OF AUDIOVISUAL CO-PRODUCTIONS

1. Provisional approval from the competent authorities should be received before the commencement of the making of an audiovisual co-production work, subject to each Party's relevant domestic regulatory or policy arrangements. It is the responsibility of the co-producer or co-producers to provide any documentation required by the competent authorities to enable the competent authorities to complete their provisional approval processes.
2. In granting provisional approval to an audiovisual work as an audiovisual co-production, each competent authority may stipulate conditions of approval, framed in order to achieve the general aims and objects of this Annex.
3. Upon completion of production, it is the responsibility of the co-producers to submit to the competent authorities the completed audiovisual work and any documentation required by the competent authorities to enable the competent authorities to complete their approval process.
4. In granting provisional or final approval to audiovisual works under this Annex, the competent authorities, in consultation, shall apply the provisions of this Annex, and recognise the arrangements made in the *Memorandum of Understanding on the Implementation of the Annex on Audiovisual Co-Production*.
5. In the event that approval by both the competent authorities is not granted, the audiovisual work concerned shall not be considered to be approved for the purposes of this Annex.
6. An audiovisual work will be recognised as having completed the provisional or final approval process, as applicable, once the competent authority provides written notification to the co-producer that the approval has been granted and specifies the conditions upon which the approval is granted.

7. The approval of an audiovisual work as an audiovisual co-production by the competent authorities shall not bind the relevant authorities of either Party to permit the public exhibition of the resulting audiovisual co-production.

ARTICLE 3: CO-PRODUCER STATUS

The competent authorities shall ensure that:

- (a) the Australian co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as an Australian audiovisual work under Australian legislation;
- (b) the Korean co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as a Korean audiovisual work under Korean legislation; and
- (c) none of the co-producers are linked by common management, ownership or control, save to the extent that it is inherent in the making of the audiovisual co-production itself.

ARTICLE 4: THIRD COUNTRY CO-PRODUCTIONS

1. Where either Party maintains with a third country an audiovisual co-production agreement, or arrangement of less-than-treaty status, the competent authorities may jointly approve an audiovisual work as an audiovisual co-production under this Annex that is to be made in conjunction with a co-producer from that third country.

2. Both the financial and creative contributions of a third country co-producer shall account for not less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

3. Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce an audiovisual work under the terms of the co-production agreement, or arrangement of less-than-treaty status, in force between that co-producer's country and either Party.

ARTICLE 5: ENTITLEMENT TO BENEFITS

1. An audiovisual co-production shall be entitled to:

- (a) the full enjoyment of all the benefits which are accorded to national audiovisual works of either Party; and
- (b) any benefits which may be granted to national audiovisual works of either Party, subject to that Party's laws as in force from time to time.

2. Any subsidies, tax incentives, or other financial incentives which may be granted by either Party in relation to an audiovisual co-production shall accrue to the co-producer who is permitted to claim those benefits in accordance with the existing measures of that Party.

3. Such subsidies, tax incentives or other financial benefits shall not be assigned or disposed of except to or for the benefit of an enterprise or national of that Party, or in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual or enterprise that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article.

4. An audiovisual work made in accordance with an approval by the competent authorities under this Annex but completed after the termination of this Annex shall be treated as an audiovisual co-production and its co-producers shall accordingly be entitled to all the benefits of this Annex.

ARTICLE 6: IMPORT OF EQUIPMENT

Each Party shall provide, in accordance with its respective laws, regulations and procedures, temporary admission of cinematographic and technical equipment for the making of audiovisual co-productions free of import duties and taxes. The equipment may be exported by the importer free of duties and taxes, in accordance with the respective Party's laws, regulations and procedures.

ARTICLE 7: IMMIGRATION FACILITATION

Each Party shall permit nationals of the other Party, and in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article, to travel to, enter and remain in its territory for the purpose of making or exploiting an audiovisual co-production, subject to the requirement that such individuals comply with the laws, regulations and procedures relating to entry into and temporary stay in its territory.

ARTICLE 8: CONTRIBUTIONS

1. Each co-producer shall have a financial contribution of not less than 20 per cent of the total financial contribution for an audiovisual co-production other than animation works intended for broadcast use. With respect to broadcast animation works, this contribution shall not be less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.
2. The performing, technical and craft contribution (being the "creative" contribution) of each co-producer to an audiovisual co-production shall be in reasonable proportion to each co-producer's financial contribution.

ARTICLE 9: LOCATION FILMING

The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.

ARTICLE 10: PARTICIPATION

1. Subject to the provisions of Article 10.2 to 10.5 of this Annex, individuals participating in the making of audiovisual co-productions shall be co-producers.
2. Performers who are citizens or permanent residents of countries other than the participating co-production countries may be engaged in the audiovisual co-production:
 - (a) where the competent authorities are satisfied that there are exceptional circumstances;
 - (b) where script or financing of the audiovisual co-production dictates their participation; or
 - (c) in the case of approved location filming in a country other than that of the participating co-production countries, in minor roles where this is reasonably necessary.
3. Where the competent authorities have approved location filming in a country other than that of the participating co-production countries in accordance with Article 9, citizens or permanent residents of that country may be employed as crowd artists or to perform other services necessary for the location work to be undertaken.
4. The competent authorities may approve the participation of restricted numbers of technical personnel who are citizens or permanent residents of countries other than the participating co-production countries where the competent authorities are satisfied

that the relevant technical expertise is not available in the co-producers' countries at the time the audiovisual co-production is made.

5. Unless otherwise approved by the competent authorities, screenwriters involved in the making of audiovisual co-productions shall be nationals of either Party.

ARTICLE 11: FOOTAGE

At least 90 per cent of the footage included in an audiovisual co-production shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot or otherwise created for that audiovisual work.

ARTICLE 12: MAKING UP TO FIRST-RELEASE PRINT

The competent authorities shall ensure that audiovisual co-productions are made and processed up to the creation of the first-release print or digital equivalent in the territory of the Parties or, where there is a third country co-producer, that co-producer's country.

ARTICLE 13: ACKNOWLEDGMENTS AND CREDITS

The competent authorities shall ensure that each audiovisual co-production includes either a separate credit title indicating that the audiovisual work is either an "Australian-Korean co-production" or a "Korean-Australian co-production", or where relevant, a credit which reflects the participation of the Parties and the country of the third country co-producer.

ARTICLE 14: TAXATION

Notwithstanding any other provision of this Annex other than Article 6, for the purposes of taxation the laws in force in each Party shall apply subject to the provisions of any tax treaty between the Parties.

ARTICLE 15: BALANCE

1. An overriding aim of the Annex, as monitored by the competent authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

- (a) the contribution to the production costs of all audiovisual co-productions;
- (b) the use of studios and laboratories;

- (c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; and
- (d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast, over each period of three years commencing on the date that this Annex enters into force.

2. Either competent authority may withhold approval of an audiovisual work as an audiovisual co-production on the basis that the overriding aim of overall balance referred to in paragraph 1 would be prejudiced by such approval.

ARTICLE 16: INSTITUTIONAL MECHANISM

Each Party may request the establishment of an *ad hoc* Committee to discuss any matter related to the implementation of this Annex by delivering a written request to the competent authority of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from appropriate ministries and agencies of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.

ARTICLE 17: DISPUTE SETTLEMENT

1. A Party may request consultations with the other Party regarding any matter arising under this Annex by delivering a written request to the competent authority of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the competent authority of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If the consultations under paragraph 1 fail to resolve the matter within 60 days after the date of receipt of a request for consultations, either Party may request good offices, conciliation, mediation or non-binding arbitration. The *ad hoc* Committee shall decide the processes for resolution of the matter.

3. Chapter 20 (Dispute Settlement) of the FTA between Australia and Korea shall not apply to any matter or dispute arising under this Annex.

ARTICLE 18: IMPLEMENTING ARRANGEMENTS

1. The Parties acknowledge the *Memorandum of Understanding Implementing the Annex on Audiovisual Co-Production* (“the Memorandum of Understanding”)

2. The Parties recognise that the responsibilities and arrangements established under the Memorandum of Understanding will apply in order to assist the implementation of this Annex.

ARTICLE 19: REVIEW

1. The Parties recognise the evolving nature of the audiovisual sector, in particular the role of technology.

2. The competent authorities shall review the operation of this Annex as required and make any proposals considered necessary for any modification thereof.

ARTICLE 20: SCOPE AND INTERPRETATION OF THE ANNEX

1. To the extent of any inconsistency between this Annex and any other provision in the Agreement, this Annex shall prevail to the extent of the inconsistency.

2. Nothing in this Annex shall be used to construe any other provision in the Agreement. No provision elsewhere in the Agreement shall be used to construe any provision in this Annex.

3. For greater certainty, nothing in Section B of Chapter 1 (Initial Provisions and Definitions), Articles 7.2, 7.3, 7.4 and 7.13 of Chapter 7 (Cross-Border Trade in Services), Chapter 10 (Movement of Natural Persons), Chapter 11 (Investment), Chapter 19 (Transparency), Chapter 20 (Dispute Settlement), Chapter 21 (Institutional Provisions), and Chapter 22 (General Provisions and Exceptions) of this Agreement shall apply to this Annex.

ARTICLE 21: DURATION AND TERMINATION

1. Nothing in Article 23.4 (Termination) of this Agreement shall apply to this Annex.

2. This Annex shall remain in force initially for a period of up to three years from the date of entry into force of the Agreement. Either Party may terminate this Annex by providing written notice to terminate to the other Party 180 days before the end of that period. The Annex shall then terminate at the end of the three years.

3. If neither Party terminates this Annex under paragraph 2, it shall automatically remain in force for successive periods, each of three years, unless written notice to terminate is given by either Party at least 180 days before the end of any period of three years, in which case it shall terminate at the end of that period.

4. This Annex is separable, and its termination shall not affect the continued operation of the Agreement. Termination of this Annex shall be governed only by this Article.

ARTICLE 22: DEFINITIONS

For the purpose of this Annex:

audiovisual co-production means an audiovisual work including films, animations, broadcasting programmes and digital format productions made by one or more co-producers of one Party in cooperation with one or more co-producers of the other Party (or in the case of a third country co-production, with a third country co-producer) which is approved by the competent authorities of each Party, in consultation;

audiovisual work means any aggregate of images or of images and sounds, embodied in any material in accordance with each Party's laws and regulations;

benefits means all those financial and other incentives which may be offered to audiovisual co-productions by each Party from time to time under Article 5.1 of this Annex;

competent authority means the authority or authorities designated as such by each Party;

co-producer means one or more nationals or enterprises of a Party that are involved or seeking to be involved in the making of an audiovisual co-production, or in the case of a third country co-production under Article 4 of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article;

days means calendar days;

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation;

existing means in effect on the date of entry into force of this Agreement;

measure includes any law, regulation, procedure, requirement, or practice;

national means:

- (a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* or a permanent resident as defined in accordance with the *Migration Regulations 1994*; and
- (b) for Korea, a Korean national within the meaning of the *Nationality Act*; and

protection and reproduction material means those materials derived from the original audiovisual work materials for the purpose of protecting the final version of the audiovisual work, and those materials used for making copies of the audiovisual work for the purpose of distribution and exhibition of the audiovisual work.