



sport, arts & culture

Department:
Sport, Arts and Culture
REPUBLIC OF SOUTH AFRICA

SUBMISSION

THE MINISTER

REQUEST TO TABLE INTERNATIONAL AGREEMENT ON CINEMATOGRAPHIC AND AUDIO-VISUAL CO-PRODUCTION IN THE TWO HOUSES OF PARLIAMENT

INTRODUCTION

1. The Department of Sport, Arts and Culture has signed an agreement concerning the Cinematographic and Audio-Visual Co-production with the French Republic and according to the South African Constitution this agreement is supposed to be tabled in Parliament for information purposes.
2. The aim of this submission is to request that the office of the Minister table the agreement in the National Assembly and the National Council of Provinces.

DISCUSSION

3. According to section 231(3) of the constitution of South Africa, Act No. 108 of 1996, International agreements that are signed between the Republic of South Africa and other countries bind the country and therefore they should be tabled in the National Assembly and the National Council of Provinces in Parliament.
4. It is requested that the Parliamentary Officer table the enclosed Agreement on Cinematographic and Audio-visual Co-production in Parliament (**TAG A**).



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5. The Agreement between the Government of the Republic of South Africa and the Government of the French Republic on Cinematographic and Audio-visual Co-production was signed on 21 May 2022.

RECOMMENDATION

- 6. It is recommended that the Minister:
 - 6.1 takes note of the content of the submission ;
 - 6.2 approves that the agreement be tabled in the National Assembly and the National Council of Provinces for information purposes.

ACTING DIRECTOR-GENERAL

DATE:

Content noted.

Supported / not supported

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.....

.....



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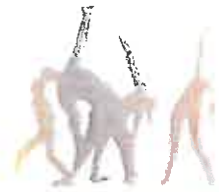
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DEPUTY MINISTER

DATE: 2023/02/07

DECISION:

5. It is recommended that the Minister:

5.1 takes note of the content of the submission.

Noted

5.2 approves that the agreement be tabled in the National Assembly and the National Council of Provinces for information purposes.

Approved /~~not approved~~

Further discussion ~~required~~ / not required

Suggested date for discussion: _____

MINISTER

DATE: 2023/02/10



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A



AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

AND

**THE GOVERNMENT OF THE FRENCH
REPUBLIC**

**ON CINEMATOGRAPHIC AND AUDIO-VISUAL
CO-PRODUCTION**

PREAMBLE

The Government of the Republic of South Africa and the Government of the French Republic (hereinafter jointly referred to as the "Parties" and separately as a "Party");

CONSIDERING the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, agreed to in Paris on 20 October 2005, to which the Republic of South Africa and the French Republic are Parties;

CONSIDERING the Agreement between the Government of the Republic of South Africa and the Government of the French Republic concerning the Co-production of Film, signed in Cannes on 16 May 2010;

CONSIDERING the joint intention of the Parties to increase co-operation in the cinematographic and audio-visual field between the Republic of South Africa and the French Republic, and to promote their common cinematographic and audio-visual heritage; and

RECOGNISING the need to update the legal framework for their cinematographic and audio-visual co-operation, taking into account the rules of the cinematographic and audio-visual industry in force in the Republic of South Africa and the French Republic.

HAVE AGREED as follows:

ARTICLE 1
DEFINITIONS

For the purpose of this Agreement:

"Agreement" means this Agreement entered into between the Government of the Republic of South Africa and the Government of the French Republic on cinematographic and audio-visual co-production;

"cinematographic work" means works consisting of aggregate sequences of images, with or without sound, of any length and on any media whatsoever (fiction, animation, documentaries) in accordance with the legislative and statutory provisions of each Party and the first broadcast of which, on the territory of each Party, takes place in cinemas;

"audio-visual work" mean works, other than cinematographic work, consisting of aggregate sequences of images, with or without sound, of any duration and on any media, including fiction, animation, and documentaries in accordance with the legislative and statutory provisions of each of the Parties;

"cinematographic or audio-visual co-production" means the joint production of a cinematographic or audio-visual work by several co-producers established in different territories; and

"co-producer" means a cinematographic or audio-visual production company established in the Republic of South Africa or the French Republic, and such production company that effectively operates via experienced and long-term facility in either Party and whose registered office is located in the State of that Party, in another European Union Member State or in a State that is a party to the Agreement on the European Economic Area.

ARTICLE 2
COMPETENT AUTHORITIES

The competent authorities responsible for the implementation of this Agreement shall be:

- (a) for the Government of the Republic of South Africa, the National Film and Video Foundation (NFVF); and
- (b) for the Government of the French Republic, the Centre national du cinéma et de l'image animée (CNC).

ARTICLE 3
CO-PRODUCTION STATUS

- (1) Any cinematographic or audio-visual works co-produced under this Agreement shall be considered to be national cinematographic or audio-visual works in the territories of both Parties in accordance with the legislative and statutory provisions in force in the State of each of the Parties.
- (2) This Agreement shall apply in accordance with the legislative and statutory provisions of each of the Parties and their respective international commitments.
- (3) Any cinematographic or audio-visual co-production works produced pursuant to this Agreement shall have automatic access to the advantages resulting from the legislative and statutory provisions relating to the cinematographic and audio-visual industry in the State of each of the Parties.
- (4) The competent authority for each Party shall provide the competent authority for the other Party with a list of the texts relating to these advantages.
- (5) The competent authority for each Party agrees to communicate to the competent authority for the other Party any amendments to the provisions relating to these advantages within a reasonable time.

- (6) The advantages referred to in this Article shall be acquired only by the co-producer established in the State of the Party granting them.
- (7) To be admissible under this Agreement, a cinematographic or audio-visual work must be co-produced by producers of both Parties.
- (8) Applications for admission to co-production status must follow the procedures provided for this purpose by each of the Parties and comply with the conditions set out in the Appendix to this Agreement.
- (9) Co-production status to a cinematographic or audio-visual work produced under this Agreement shall be granted by the competent authorities for the Parties by mutual agreement.
- (10) The competent authorities for the Parties shall consult and provide each other with any information relating to the granting, rejection, modification or withdrawal of co-production status.
- (11) Before rejecting an application for admission to co-production status, the competent authorities for the Parties must consult each other.
- (12) Where the competent authorities for the Parties have issued co-production status to a cinematographic or audio-visual work, this status may not subsequently be withdrawn unless a joint decision in that regard is made by the competent authorities.

ARTICLE 4
REQUIREMENTS FOR PRODUCERS

- (1) In order to be entitled to benefit from this Agreement, cinematographic or audio-visual works must be produced by co-producers with good technical and financial organisation and professional experience.
- (2) Individuals participating in the production of a cinematographic or audio-visual work must be nationals or permanent residents of either the Republic of South Africa or the French Republic.
- (3) In the case of the Republic of South Africa, "national or permanent resident" refers to:
 - (a) a South African citizen; or
 - (b) a permanent resident of the Republic of South Africa.
- (4) In the case of the French Republic, "national or permanent resident" refers to:
 - (a) a national of the French Republic;
 - (b) a permanent resident of the French Republic; or
 - (c) a national or a permanent resident of a Member State of the European Union or a European Economic Area Member State.
- (5) In exceptional circumstances, the competent authorities for the Parties may jointly admit the participation of artistic and technical employees who do not fulfil the conditions of nationality or residence as contemplated in sub-Articles (2), (3) and (4).
- (6) Studio shots must be taken in the countries of the co-producers.

- (7) In exceptional circumstances, the competent authorities for the Parties may jointly agree that images shot in natural settings may be taken within a State that is not party to this Agreement if the screenplay of the cinematographic or audio-visual work so requires.
- (8) Sub-Articles (6) and (7) of this Article apply in compliance with the European Union rules on State aid law applicable in the field of cinema and audio-visual, in particular set out in the Communication from the Commission on State aid for films and other audio-visual works (2013/C 332/01) published in the Official Journal of the European Union on 15 November 2013.

ARTICLE 5

FINANCIAL CONTRIBUTIONS

- (1) The proportion of the respective financial contributions of the co-producers of each Party, for the co-production of a cinematographic or audio-visual work, may vary from twenty (20) percent to eighty (80) percent of the total co-production budget.
- (2) The competent authorities for the Parties may, in exceptional circumstances, and after agreement between them, accept that the amount of the financial contribution referred to in sub-Article (1) may vary from ten (10) percent to ninety (90) percent of the total budget for co-production, for cinematographic works only.
- (3) The competent authorities for the Parties shall ensure that the technical and artistic participation of the co-producer of each Party is proportional to its financial contribution, and in exceptional circumstances, derogations may be accepted jointly by the competent authorities for the Parties.

ARTICLE 6
OWNERSHIP

In order for a cinematographic or audio-visual work to be entitled to benefit from this Agreement, each one of its co-producers must be a co-owner of that work.

ARTICLE 7
MOVEMENT OF PERSONS AND GOODS

- (1) The Parties shall, in accordance with their respective national laws and regulations and their respective international commitments, facilitate the import and export of any equipment required for the production of the cinematographic or audio-visual works under this Agreement.
- (2) Each Party shall endeavour, in accordance with the aforementioned laws and regulations, to facilitate the movement and residence in its country, of the artistic and technical staff involved in working on the cinematographic or audio-visual co-production.

ARTICLE 8
ASSESSMENT

- (1) Every two (2) years, the competent authorities for both Parties shall examine whether the contributions of each Party to the co-production works are balanced.
- (2) The balance referred to in sub-Article (1) must be achieved with regard not only to artistic and technical contributions but also to financial contributions. This balance shall be assessed by the Joint Committee provided for in Article 11.
- (3) For purposes of checking whether the balance has been achieved, the competent authorities shall draw up a summary of all the means of support and funding.
- (4) In the event of any imbalance, the Joint Committee shall examine the means needed to restore the balance and shall take any measures it deems necessary for this purpose.

ARTICLE 9
CREDITS

Any credits, trailers, publications and advertising material for a cinematographic or audio-visual work must indicate the South African and French or the French and South African co-production.

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ARTICLE 10
CO-PRODUCTION WITH OTHER COUNTRIES

- (1) The competent authorities for the Parties may, by mutual agreement, accept that the cinematographic or audio-visual works covered by this Agreement may be co-produced with one or more producers from a State with which either Party has signed a cinematographic or audio-visual co-production agreement.
- (2) If the co-production involves one or more co-producers established in a State that is not party to this Agreement, the majority co-producers of the cinematographic or audio-visual work must be established in the State of either of the Parties.
- (3) The competent authorities shall examine the admission of the cinematographic or audio-visual works described in sub-Article (1) on a case-by-case basis.

ARTICLE 11
JOINT COMMITTEE

- (1) In order to facilitate the application of this Agreement, a Joint Committee shall be established, consisting of an equal number of representatives of the competent authorities on the one hand and experts designated by each Party on the other hand.
- (2) The Joint Committee shall meet in principle every two (2) years, alternately in the Republic of South Africa and in the French Republic.
- (3) The Joint Committee may also be convened at the request of either of the competent authorities, in particular in the event of a change in legislative and statutory provisions concerning the cinematographic or audio-visual industry, or in the event that the implementation of this Agreement encounters particularly serious difficulties in respect of its application, or in the event of an imbalance as referred to in Article 8.

ARTICLE 12
SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation, implementation or application of this Agreement shall be settled amicably through or by direct consultation or negotiations between the Parties.

ARTICLE 13**ENTRY INTO FORCE, AMENDMENTS, DURATION AND TERMINATION**

- (1) This Agreement shall enter into force thirty days after the date of receipt of the last notification transmitted through the diplomatic channel by which the Parties inform each other of the completion of their internal procedures necessary for the implementation of this Agreement.
- (2) This Agreement may be amended at any time, in writing, by mutual agreement between the Parties transmitted through diplomatic channels. This amendment shall enter into force on the date set by the Parties and shall form an integral part of this Agreement.
- (3) This Agreement shall remain in force indefinitely, unless terminated in terms of sub-Article (4).
- (4) This Agreement may be terminated by either Party at any time by giving six (6) months written notice in advance through the diplomatic channel of its intention to terminate it.
- (5) Termination of this Agreement shall not affect the rights and obligations of the Parties in connection with the projects undertaken under this Agreement, unless otherwise decided by the Parties.

**ARTICLE 14
REPLACEMENT**

This Agreement repeals the Agreement between the Government of the Republic of South Africa and the Government of the French Republic concerning the Co-production of Films, signed in Cannes on 16 May 2010.

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

DONE at CANNES on this 21st day of MAY 2022, in two originals in the English and French languages, both texts being equally authentic.



**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**
MR NATHI MHEHETHWA
HONOURABLE MINISTER OF
SPORT, ARTS AND CULTURE



**FOR THE GOVERNMENT OF
THE FRENCH REPUBLIC**

MR Dominique Boutonnat
Président
Centre national du cinéma et de
l'image animée

B



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Mr AN Masondo
Chairperson of the National Council of Provinces
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000

Tel: 021 403 2321
Fax: 021 461 9640

Dear Chairperson

TABLING OF INTERNATIONAL AGREEMENT IN PARLIAMENT IN TERMS OF SECTION 231(3) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

In terms of Section 231 (3) of the Constitution of the Republic of South Africa: "An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time".

In order to comply with Section 231 (3) of the Constitution of the Republic of South Africa, 1996, I hereby present to you the Agreement between the Government of the Republic of South Africa and the Government of the French Republic on Cinematographic and Audiovisual Co-production, signed on the 21st May 2022, as reflected in the Annexure hereto and request that the International Agreement be tabled in the National Council of Provinces (See Annexure).

The electronic version of the International Agreement will be delivered to the office of Clerk of the Papers prior to tabling as per parliamentary requirements.

Yours sincerely

MR E.N. MTHETHWA, MP
MINISTER OF SPORT, ARTS AND CULTURE
DATE: 2023 | 02 | 10



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Ms Nosiviwe Mapisa-Nqakula, MP
Speaker of the National Assembly
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000

Fax: 021 461 9462

Dear Madam Speaker

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Yours sincerely

**MR E.N. MTHETHWA, MP
MINISTER OF SPORT, ARTS AND CULTURE
DATE: 2023/02/10.**









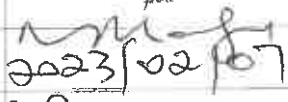
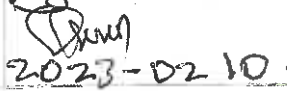


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SUBMISSION

OFFICE OF THE MINISTER
 07 FEB 2023
 DEPARTMENT OF SPORT, ARTS
 AND CULTURE

ROUTE FORM SUBMISSION TO THE MINISTER

PROGRAMME		FILE NO.	
SUBJECT REQUEST TO TABLE INTERNATIONAL AGREEMENT ON CINEMATOGRAPHIC AND AUDIO-VISUAL CO-PRODUCTION IN THE TWO HOUSES OF PARLIAMENT			
SURNAME AND INITIALS	ABBREVIATED DESIGNATION	SIGNATURE AND DATE	SEE COMMENTS
MS T MAKHAMBENI	ASD/IR	Signed by: BONGI TOSCA MAKHAMBENI Signed at: 2023-01-23 13:02:40 +02:00 Reason: I approve this document 	
MS T SEGOATI	DD/IR	Signed at: 2023-01-23 13:46:00 +02:00 Reason: I approve this document 	
MR J MOGASHOA	D/IR	Signed by: John Machelo Mogashoa Signed at: 2023-01-23 13:25:10 +02:00 Reason: I approve this document 	
MS T KHOSA	CD/IR	Signed by: Thabane Khosa Signed at: 2023-01-29 20:00:40 +02:00 Reason: I approve this document 	
MR M TSHIKWATAMBA	DDG	Signed by: Mordumbe Mankisa Tshikwatamba Signed at: 2023-02-01 08:08:18 +02:00 Reason: I approve this document 	
MR V NDIMA	Acting DG	Signed by: Gert Moolenaar-MD Signed at: 2023-02-01 11:47:18 +02:00 Reason: I approve this document 	
MS N MAFU	DM		
MR N MTHETHWA	MINISTER		



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