

ANNEX III

AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND NEW ZEALAND CONCERNING AUDIO-VISUAL CO-PRODUCTION

The Government of the Republic of Korea and the Government of New Zealand (hereinafter referred to as “the Parties”):

Seeking to enhance co-operation between their two countries in the area of audio-visual work;

Expanding on the *Agreement between the Government of the Republic of Korea and the Government of New Zealand Concerning the Co-Production of Films*;

Desirous of expanding and facilitating the co-production of audio-visual works which may be conducive to the audio-visual industries of both countries and to the development of their cultural and economic exchanges; and

Convinced that these exchanges will contribute to the enhancement of relations between the Parties;

Have agreed as follows:

Article 1: Definitions

For the purposes of this Annex:

audio-visual co-production means an audio-visual work made by one or more co-producers of a Party in co-operation with one or more co-producers of the other Party under a project approved jointly by the competent authorities, and includes an audio-visual work to which Article 5 applies;

audio-visual work means an aggregate of images, or of images and sounds, embodied in any material, and includes films, television and video recordings, animations, and digital format productions;

competent authority means the authority designated as such in this Appendix by each Party;

co-producer means one or more Korean nationals or audio-visual production companies or one or more New Zealand nationals or audio-visual production companies that are involved in the making of an audio-visual co-production, or in the case of a non-Party co-production under Article 5, co-producers from the non-Party;

nationals means:

- (a) for Korea, Korean nationals within the meaning of the *Nationality Act*, or its successor legislation, or persons who have established permanent residence in Korea; and

- (b) for New Zealand, citizens of New Zealand, or permanent residents of New Zealand; and

2008 Agreement means the *Agreement between the Government of the Republic of Korea and the Government of New Zealand Concerning the Co-Production of Films*, done at Wellington on 29 September 2008.

Article 2: Recognition as a National Audio-Visual Work and Entitlement to Benefits

1. An audio-visual co-production made in accordance with this Annex shall be fully entitled to all the benefits which are or may be accorded to national audio-visual works by each of the Parties under their respective domestic laws and regulations in force currently or in the future.
2. The competent authority of each Party shall provide to the competent authority of the other Party, on request, a copy of the domestic laws and regulations to which paragraph 1 refers, and of the details regarding benefits to which paragraph 1 refers.
3. Any benefits which may be granted within either Party in relation to an audio-visual co-production shall accrue to the co-producer who is permitted to claim those benefits in accordance with the relevant measures of that Party, subject to any other relevant international obligations.

Article 3: Approval of Projects

1. In order to be approved as an audio-visual co-production under this Annex, the audio-visual co-production shall require joint approval from the competent authorities. Approvals shall be in writing and shall specify the conditions upon which approval is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that is inherent in the making of the audio-visual co-production itself.
2. The approval process shall comprise approval upon application and prior to the commencement of shooting, and review upon completion of the audio-visual co-production and prior to distribution.
3. The application for such approval shall comply with the relevant requirements of this Annex, including those set forth in the Appendix. In considering an application, the competent authorities may have due regard to their respective policies and guidelines, to the extent these are consistent with this Annex and the Appendix.
4. The competent authorities of the Parties shall, to the extent possible under domestic laws and regulations, exchange all information concerning the approval, rejection, change or withdrawal of any application for approval of an audio-visual co-production.

Article 4: Contributions

1. For each audio-visual co-production:

- (a) the performing, technical, craft and creative participation of the co-producers;
and
- (b) the production expenditure in each of the co-producer's countries,

shall be in reasonable proportion to their respective financial contributions.

2. The proportion of the respective financial contributions of the co-producers of the audio-visual work shall be decided by arrangement between the co-producers. With respect to co-production other than broadcasting programmes (including animation for broadcasting purposes), this contribution shall be between 20 to 80 percent of the final production costs of the audio-visual work. With respect to broadcasting programmes, this contribution shall not be less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

Article 5: Non-Party Co-Productions

1. Where either Party maintains with a non-Party an audio-visual co-production agreement, the competent authorities may jointly approve an audio-visual work as an audio-visual co-production under this Annex that is to be made in conjunction with a co-producer from that non-Party.

2. Approvals under this Article shall be limited to proposals in which the contribution of the non-Party co-producer is no greater than the lesser of the individual contributions of Korean and New Zealand co-producers. In addition, both the financial and creative contributions of a non-Party co-producer shall account for not less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

3. Any non-Party co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce an audio-visual work under the terms of the co-production agreement in force between the non-Party and either Party.

Article 6: Participation

1. Persons participating in an audio-visual co-production shall be co-producers of Korea and of New Zealand, or from a non-Party where there is a non-Party co-producer under Article 5.

2. Subject to the approval of the competent authorities:

- (a) where script or financing dictates, restricted numbers of performers from other countries may be engaged; and

- (b) in exceptional circumstances, restricted numbers of technical personnel from other countries may be engaged.

Article 7: Production

1. Except as otherwise provided in this Annex, audio-visual co-productions shall be shot and post-produced in Korea or in New Zealand or, where there is a non-Party co-producer under Article 5, in the territory of that non-Party.
2. At least 90 percent of the footage included in an audio-visual co-production shall be specially shot or created for the audio-visual work unless otherwise approved by the competent authorities.

Article 8: Location Filming

1. The competent authorities may approve location filming in places, countries or locations other than those of the participating co-producers.
2. Notwithstanding Article 6, where location filming is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

Article 9: Language

1. Each audio-visual co-production shall be made in one of the official languages of either Korea or New Zealand or, where there is a non-Party co-producer, in the official language of a non-Party under Article 5, or in any combination of those permitted languages.
2. Narration, dubbing or subtitling in any other commonly used language or dialect of the co-producers' territories shall be permitted.
3. Post-release print dubbing into any other language may be carried out in territories other than those of the participating co-producers.
4. Each audio-visual co-production may contain sections of dialogue in any language in so far as is required by the script.

Article 10: Acknowledgments and Credits

An audio-visual co-production and the promotional material associated with it shall include either a credit title indicating that the audio-visual work is an "Official Republic of Korea –

New Zealand Co-Production” or an “Official New Zealand – Republic of Korea Co-Production” or, where relevant, a credit which reflects the participation of Korea, New Zealand and any non-Party co-producer under Article 5.

Article 11: Entry Facilitation

In accordance with the laws and regulations of each Party, each of the Parties shall permit nationals of the other Party, or persons from any non-Party approved under Article 5, to enter and remain in Korea or New Zealand, as the case may be, for the purposes of making or promoting an audio-visual co-production.

Article 12: Import of Equipment

Each of the Parties shall provide, in accordance with their respective legislation, temporary admission, free of import duties and taxes, of technical equipment for the making of audio-visual co-productions.

Article 13: Distribution

The Parties shall endeavour to promote the global distribution of audio-visual co-productions in order to enhance the competitiveness of the audio-visual works in the global market.

Article 14: Technical Co-operation

The Parties shall endeavour to promote inclusive technical co-operation activities in audio-visual works and related areas such as computer graphics, virtual reality and digital cinema technologies.

Article 15: 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 16: 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 of 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 19 (Dispute Settlement) shall not apply to any matter or dispute arising under this Annex.

Article 17: Status of the Annex and the Appendix

1. This Annex is an integral part of this Agreement. However, Chapters 8 (Cross-Border Trade in Services), 10 (Investment), 19 (Dispute Settlement) and 20 (General Provisions and Exceptions) shall not apply to this Annex.

2. In the event of any inconsistency between this Annex and any other provision in this Agreement, this Annex shall prevail to the extent of the inconsistency. Nothing in this Annex shall be used to construe any other provision in this Agreement. No provision elsewhere in this Agreement shall be used to construe any provision in this Annex.

3. The Appendix to this Annex constitutes an implementing arrangement in respect of this Annex and shall be read in conjunction with the provisions of this Annex.

4. Subject to Article 19.2 of this Annex, any modifications to the Appendix shall be jointly decided by the competent authorities following consultations with the *ad hoc* Committee. No modification to the Appendix shall conflict with the provisions of this Annex.

5. Modifications to the Appendix shall be confirmed by the competent authorities in writing and shall take effect on the date specified.

Article 18: Entry into Force of the Annex and Termination of the 2008 Agreement

1. This Annex shall enter into force on the date of entry into force of this Agreement.

2. The 2008 Agreement shall terminate on the date of entry into force of this Annex.

3. In accordance with Article 19 of the 2008 Agreement and notwithstanding paragraph 2, the 2008 Agreement shall continue as if in force in respect of any co-production film approved by the competent authorities under the 2008 Agreement and yet to be completed prior to its termination.

Article 19: Amendment

1. Subject to paragraph 2, this Annex may be amended by written agreement between the Parties through an exchange of diplomatic notes. Amendments shall enter into force on the date specified in the notes.
2. Either Party may by diplomatic note notify the other Party of a change in its competent authority. The change shall take effect on the date specified in the note.

Article 20: Duration and Termination

1. The term of this Annex shall be for a period of three years from the date it enters into force and it shall thereafter be automatically renewed for further periods of three years. Either Party may terminate this Annex by giving notice in writing through diplomatic channels six months before the expiry of the relevant three-year period, in which case this Annex shall terminate at the conclusion of that three-year period.
2. Notwithstanding paragraph 1, this Annex shall continue as if in force in respect of any audio-visual co-production approved by the competent authorities and yet to be completed prior to termination.

Appendix III-1

Implementing Arrangement to Annex III

1. The competent authorities for the Agreement between the Republic of Korea and New Zealand concerning Audio-Visual Co-Production are:

- (a) for Korea, the Korean Film Council for audio-visual works, which are intended to be shown in cinemas, and the Korea Communications Commission for broadcasting programmes; and
- (b) for New Zealand, the New Zealand Film Commission.

2. In order to benefit from the provisions of the Annex, the co-producers will, before shooting commences, submit an application for co-production status and attach the documents listed below:

- (a) a copy of the documentation concerning the ownership of the copyright for the commercial exploitation of the work;
- (b) a synopsis including concrete information on the theme and contents of the work;
- (c) a list of the technical and artistic contributions from each of the countries involved;
- (d) a work plan stating the periods and locations of principal photography on a weekly basis for studio and outdoor shooting;
- (e) a budget including a detailed financing plan;
- (f) a production schedule;
- (g) the co-production contract made between the producers, which will specify details of the technical and artistic contributions, financial contributions, as well as the sharing of markets and profits amongst the co-producers, and any other relevant matters; and
- (h) all the documentation that the competent authorities require to conduct the technical and financial evaluation of the project.