

Film Development Fund Scheme for Financing Film Production ("Fund Scheme")

Guide to Application ("Guide")

1. Purpose and Definitions

- 1.1 This Guide is issued to provide information on the application for Government Finance under the Fund Scheme ("Application"). It shall not in any circumstances affect or limit the interpretation of any Transaction Documents. Applicants' attention is drawn to the Government Disclaimers in Section III of the Application Form.
- 1.2 In this Guide, unless the context otherwise requires, terms defined and expressions used in this Guide shall bear the meanings set out in the Application Form.
- 1.3 In this Guide, the following terms and expressions shall have the meanings set out below:
- (a) "Ancillary Documents" means all documents (other than the Transaction Documents) that are to be delivered to the Government pursuant to the terms of the Transaction Documents;
 - (b) "Transaction Documents" means the Transaction Documents to which the Government is a party;
 - (c) "Master Materials" means all takes, masters, negatives, positives, video, sound and other materials and/or recordings created for the production of the Film Project, whether incorporated into the Film Project or not;
 - (d) "ProdCo" means the new company defined in paragraph 16.1.1; and
 - (e) "Production Materials" means any costumes, props, equipment, goods, materials, software and other tangible or intangible assets or properties acquired, produced, hired or leased for the production of the Film Project.
- 1.4 The Rules of Interpretation set out in paragraph 2 of the Schedule of Definitions of the Application Form shall apply to this Guide.

2. Background

- 2.1 The Film Development Fund ("FDF") was first established in 1999 with the primary aim of financing projects conducive to the long-term development of the local film industry, including specific training of film personnel, promotion of local films in the Mainland and overseas, and promotion of film literacy in the community. In July 2007, the Government injected HK\$300 million into the FDF, and expanded its scope to partly finance small-to-medium budget film productions.
- 2.2 The FDF is administered by the Secretariat of the Hong Kong Film Development Council ("HKFDC"). The Government will decide in its absolute discretion whether to approve the applications and disburse funds after having considered the recommendations of the HKFDC. As the FDF aims to assist in the sustainable development of the Hong Kong film industry, Applications which have more production components (including post-production works) carried out in Hong Kong will be favourably considered.
- 2.3 This Guide is applicable to application for Government Finance under the Fund Scheme. Applicants for FDF other than under the Fund Scheme should refer to the other relevant guide which can be obtained from the Secretariat of the HKFDC ("Secretariat") at the address set out in paragraph 19.

3. Objectives of the Fund Scheme

- 3.1 The Fund Scheme aims to provide limited finance for small-to-medium budget film productions with the objectives of encouraging more commercial investment in film productions, creating a larger mass of film activity, more employment opportunities, and assisting the Hong Kong film industry to revitalize and develop further.

4. Eligibility Criteria

- 4.1 Unless the Secretariat recommends to the Government that an exception be granted (see paragraph 11), an Application must satisfy all requirements set out in paragraph 4 (“Eligibility Criteria”) in order to be eligible for consideration by the HKFDC and the Government.
- 4.2 The Applicant
- 4.2.1 The Applicant must be a film production company formed and registered under the Companies Ordinance (Cap.32). Among the Applicant, the Film Producer and the Film Director, one (1) category or a total of two (2) categories must have produced a total of at least two (2) Released Films immediately preceding the date of the Application.
- 4.2.2 An Applicant may only receive Government Finance for up to two (2) Approved Film Projects at any one time. For this purpose:
- (a) if the Applicant is currently involved in any capacity or by any style or description in two (2) or more Approved Film Projects which are under production under this Fund Scheme (other than the Film Project), its Application will not be considered;
 - (b) if the Film Producer of the Film Project is currently involved directly or indirectly in any capacity or by any style or description in two (2) or more Approved Film Projects which are under production under this Fund Scheme (other than the Film Project), any Application involving this Film Producer will not be considered; and
 - (c) if the Film Director of the Film Project is currently involved directly or indirectly in any capacity or by any style or description in one (1) or more Approved Film Project which is under production under this Fund Scheme (other than the Film Project), any Application involving this Film Director will not be considered.
- 4.2.3 The Applicant must not have obtained or applied for other financial support (whether in the form of equity or loan financing, grant or sponsorship or any other form) from the Government for the Film Project.
- 4.3 The Film Project
- 4.3.1 The Proposed Film must be a drama feature film produced for commercial theatrical exhibition at least in Hong Kong and, for this purpose, an Applicant must submit with its Application Form a certified true copy of the full film script of the Proposed Film showing that it will be produced as such.
- 4.3.2 The production budget of the Film Project must not exceed HK\$15 million.
- 4.3.3 The Film Project must be shown to be commercially viable. A Film Project will be regarded as commercially viable if an Applicant submits with its Application documentary evidence proving that it has secured third-party financing for the Film Project to the satisfaction of the Government.
- 4.3.4 In any three (3) of the five (5) categories of Main Film Crew and Cast (namely, Film Producer, Film Director, Scriptwriter, Leading Actor, and Leading Actress), at least one (1) person employed in each such category must be a permanent resident in Hong Kong.
- 4.3.5 The Film Project must be potentially capable of qualifying for a certificate for public exhibition in Hong Kong under the Film Censorship Ordinance (Cap.392).
- 4.3.6 The script of the Proposed Film must have been registered with the Federation of Hong Kong Filmmakers.
- 4.3.7. Principal photography of any part of the Proposed Film shall not be commenced prior to the Applicant being notified in writing of the result of the Application by the Government.
- 4.4 Application Form
- 4.4.1 The Applicant must duly complete and sign the Application Form. It must also submit to the

Government the Application Form together with all information and supporting documents that are required to be provided in accordance with the Application Form and this Guide. Applicant's attention is drawn to Note 2 of the Application Form.

5. Amount of Government's Contribution

- 5.1 In general, where an Application is successful, the Fund Scheme will contribute up to 35% of the production budget of the Film Project, i.e. a maximum of HK\$5.25 million per Film Project. Under very special circumstances and after considering the recommendation of the Fund Vetting Committee set up under the HKFDC, the Government may consider increasing its contribution for a successful Application up to 40% of the production budget of the Film Project, i.e. a maximum of HK\$6 million.

6. Application Date

- 6.1 The Fund Scheme is open for application throughout the year.

7. Application Procedures

- 7.1 An Applicant must complete the Application Form for "Film Development Fund Scheme for Financing Film Production" (Form FDF-1 (12.2011 version)) which can be obtained from the Secretariat, or from the homepage of the HKFDC website at www.fdc.gov.hk.
- 7.2 The Application Form is provided in Chinese and English versions. An Applicant may complete either the Chinese or English version for submission.
- 7.3 No application fee is payable.
- 7.4 All monetary figures shall be in Hong Kong currency.
- 7.5 An Applicant shall submit ten (10) copies of the duly completed Application Form, together with all information and supporting documents required by the Application Form and this Guide to the Government c/o the Head of Create Hong Kong at:

**40/F, Revenue Tower,
5 Gloucester Road,
Wan Chai, Hong Kong.**

8. Information

- 8.1 After an Application is submitted, an Applicant must obtain via the Secretariat the Government's prior written approval for any changes to information and supporting documents required by the Application Form (including title of the Proposed Film, Proposed Budget, Main Film Crew and Cast, etc) and this Guide.
- 8.2 An Applicant shall also provide the Government or the Secretariat, with all clarification, information and documents requested by the Government or the Secretariat from time to time for processing its Application.

9. Withdrawals

- 9.1 An Applicant may write to the Government via the Secretariat to withdraw an Application before the PFA is signed between the Government, ProdCo and (where the Government so requires) the Applicant.

10. Acknowledgement

- 10.1 Acknowledgement will be sent to an Applicant within ten (10) days after the receipt by the Government of the Application Form which is duly completed and submitted in accordance with this Guide together with all information and supporting documents required by the Application Form and the Guide.

11. Assessment

- 11.1 The Government will pass all Application Forms together with all information and supporting

documents submitted with them to the Secretariat.

- 11.2 The Secretariat will conduct preliminary screening of an Application to ascertain whether it meets all Eligibility Criteria. Unless an exception referred to below is granted by the Government, an Applicant will be informed as soon as possible if its Application is considered not eligible.
- 11.3 If an Application does not meet all Eligibility Criteria, the Secretariat shall refer the Application to the HKFDC which may, in its absolute discretion, recommend to the Government that exception to the Eligibility Criteria (whether or not in whole or in part and whether subject to qualifications or otherwise) be granted for that Application. An exception may be granted if, the Government, having considered the HKFDC's recommendations and in its absolute discretion, considers that an exception will achieve one of the objectives of the HKFDC.
- 11.4 If the Secretariat is satisfied that an Application meets all Eligibility Criteria or if the Government has granted an exception for that Application, the Secretariat shall submit the Application to the HKFDC for evaluation and assessment. The HKFDC will submit its evaluation and recommendation to the Government.
- 11.5 In making an evaluation or assessment, the HKFDC will be assisted by the Fund Vetting Committee set up under the HKFDC and experts drawn from a Panel of Examiners who are professionals with experience in film production, financing, distribution, etc. They will assess the commercial feasibility of the Film Project based on the information, the Production Budget and the Estimated Net Income of the Film Project as submitted by the Applicant.
- 11.6 After receipt of the HKFDC's recommendations, the Government will consider, in its absolute discretion, whether or not to approve an Application, taking into account the recommendations of the HKFDC.

12. Notification of Decision

- 12.1 After the Government has taken a decision on an Application, the Secretariat will notify the Applicant in writing whether the Government approves its Application. If an Application is rejected by the Government, the Applicant will be informed of the reason(s) for the decision. The decision is final and absolute, and there is no appeal process open to the Applicants.

13. Return of Materials

- 13.1 The Application Form and all information and supporting documents submitted by an Applicant will be retained by the Government and the Secretariat for record and audit purposes and will not be returned to the Applicant. Applicants should make copies of these documents for their own record.

14. Re-submission

- 14.1 If an Application is rejected ("Rejected Application"), the Applicant may not re-submit an Application for the Film Project of the Rejected Application unless significant and substantial changes have been made to that Film Project, or the Applicant is able to produce new information and supporting documents which show that the reasons for the rejection of the Rejected Application no longer apply. Re-submitted Application must be made in a newly completed Application Form ("New Application Form"). The Applicant must ensure that all supporting materials submitted with the New Application Form clearly show the changes that have been made to the Film Project. The Applicant must also submit with the New Application Form full written explanation of the respective changes. All provisions in the Guide will apply to the new Application as they apply to the Rejected Application.

15. Offer Letter and Savings

- 15.1 If an Application is successful, an offer letter will be sent to the successful Applicant ("Offer Letter"). The Offer Letter will set out the amount of Government Finance to be offered and the general terms and conditions of the proposed grant of Government Finance.
- 15.2 The successful Applicant will be required to sign and return the Offer Letter to the Government within the period specified therein ("Offer Period") if it accepts the proposed grant of Government Finance on the general terms and conditions set out in the Offer Letter. The Government may at any time before the Government's receipt of the Offer Letter duly signed by the successful Applicant withdraw the proposed grant of Government Finance. The Government shall be deemed to have withdrawn the offer to make the proposed grant of Government Finance to a successful Applicant if

it does not receive the Offer Letter duly signed by the successful Applicant on the expiry of the Offer Period.

- 15.3 After an Application has been approved, any application for increase in the amount of Government Finance will not be considered.
- 15.4 Once the Offer Letter is duly signed by the Applicant and received by the Government, subject to the satisfaction of the conditions set out in the Offer Letter, the Government will prepare the Transaction Documents for execution by the Government, ProdCo and other relevant parties (including, where the Government so requires, the successful Applicant).
- 15.5 Nothing in this Guide shall constitute a contract. No binding agreement will be made between the Government and a successful Applicant or ProdCo unless and until the Transaction Documents are duly executed by all parties thereto. Further, no binding agreement shall at any time be made between the Applicant or ProdCo and the HKFDC or the Secretariat.

16. Conditions of Offer

16.1 Incorporation of ProdCo

- 16.1.1 The successful Applicant will within such time limit as prescribed by the Government in the Offer Letter incorporate or procure the incorporation of a new company in Hong Kong ("ProdCo") who will be the recipient of the Government Finance. Upon compliance with the conditions set out in the Offer Letter, ProdCo is required to enter into the Transaction Documents and undertake the production and Completion of the Film Project in accordance with the provisions of the Transaction Documents;
- 16.1.2 The shareholders and company directors of ProdCo must be approved by the Government. The Government may require the proposed shareholders and company directors of ProdCo to submit to the Government statutory declarations in the form set out in "APPENDIX E" of the Application Form (in the case of an individual) and in the form set out in "APPENDIX F" of the Application Form (in the case of a corporation).
- 16.1.3 Unless the Government otherwise approves, the successful Applicant shall immediately following the incorporation of ProdCo assign to and vest in ProdCo all its rights and benefits (including the Relevant IPRs and other Intellectual Property Rights) in the Film Project and shall do all other acts and things as are necessary to ensure that ProdCo will be able to produce and complete the Film Project and to comply with the provisions of the Transaction Documents.

16.2 Transaction Documents

- 16.2.1 The Transaction Documents will be prepared and approved by the Government. The Transaction Documents will contain the complete terms and conditions of the grant of Government Finance, including the matters referred to in this Guide, expanded and modified as necessary. They will also clearly set out the relationship between ProdCo, the Government, other financiers, and (where applicable) the successful Applicant, and their respective obligations and liabilities, and that the Government's liability to finance the production and Completion of a Film Project will be limited to the amount of Government Finance specified in the PFA and other relevant Transaction Documents.
- 16.2.2 ProdCo and (where the Government so requires) the successful Applicant shall comply with all the terms and conditions of all Transaction Documents.
- 16.2.3 The terms and conditions of each set of Transaction Documents will vary according to the specific arrangements made with the individual successful Applicant, the new company incorporated by it pursuant to paragraph 16.1.1 and the relevant financiers, distributors and other parties participating in the relevant Film Project.

16.3 Disbursement of Government Finance

- 16.3.1 The Government will only disburse Government Finance to ProdCo after the Transaction Documents have been duly executed by all parties. Government Finance will be disbursed to ProdCo by instalments on the satisfactory performance of appropriate milestones, and strictly in accordance with the terms and conditions of the PFA and other Transaction

Documents.

16.4 Cost Recoupment and Profit Sharing

- 16.4.1 Once Government Finance is advanced by the Government, the Government will require cost recoupment and profit sharing on all monies derived from the distribution, exhibition and exploitation of the Film Project and any secondary and/or ancillary rights therein ("Gross Revenues") commensurate with the Government's share of contribution in relation to other financiers on a pari passu, pro rata basis. The details will be prescribed in the PFA, as well as other agreements which the Government may sign with other third-party financier(s) of the Film Project.
- 16.4.2 The PFA will also specify that the Government will be entitled to the Gross Revenues through a share of ProdCo's right, title and interest (including Intellectual Property Rights) (whether vested, future or contingent) in and to:
- (a) the Film Project and its underlying, ancillary and secondary rights materials (including the characters, images, story, plots, dialogues, script, music, sound effects and all other things and materials relating to the Film Project acquired or to be acquired by the ProdCo in respect thereof); and
 - (b) the Production Materials, the Master Materials, the Delivery Materials and all marketing materials relating to the Film Project and all other things and materials acquired or to be acquired by the ProdCo in respect thereof.
- 16.4.3 The Government's right to cost recoupment and profit sharing and its interest in the performance by ProdCo of the Film Project will be protected for example by a first charge over all the property of ProdCo and other provisions which the Government considers appropriate for these purposes.

16.5 Accounting

- 16.5.1 For effective monitoring, ProdCo is required to set up separate Production Account and Collection Account.
- 16.5.2 The Production Account shall be a trust account established for payments of expenses incurred for the implementation of the Film Project. All sums in the Production Account shall only be expended in accordance with the Production Budget of the Film Project approved by the Government.
- 16.5.3 The Collection Account is a trust account to be established by the Collection Agent of the Film Project. All Gross Revenues due to be paid to ProdCo, the Sales Agent and/or the Collection Agent of the Film Project shall be paid into the Collection Account.
- 16.5.4 Government Finance and all sums paid by the other financiers of the Film Project shall be paid into the Production Account.

16.6 Approvals and Documentation

- 16.6.1 Each Applicant is required to provide the Government with a certified true copy of each agreement signed with other parties in relation to the Film Project, in accordance with the requirements set out in the Application Form.
- 16.6.2 A successful Applicant and ProdCo shall obtain the Government's prior written approval of a list of matters relating to the production and Completion of the Film Project, including the following:
- (a) financing and co-financing arrangements (including the Production Budget of the Film Project, co-financier, finance plan, sales estimates, cash-flow schedule);
 - (b) sales and distribution agents and the relevant agreements;
 - (c) insurance policies; and
 - (d) collection agreement.

A complete list of the matters will be set out in the PFA.

16.7 Credit

16.7.1 ProdCo shall display the logo of the FDF in the main title credit, the end credit, and all billing block materials of the Proposed Film, and meet the credit requirements as stipulated in the PFA. In addition, the Government will require a block of credits for such additional persons up to such number as may be designated by the Government in the end credit. The format and design of the credits will be determined by the Government.

16.7.2 The Government will also have the absolute right to approve all other credits of the Film Project.

16.8 Rights Granted

16.8.1 The Government and the HKFDC shall be entitled to use the Delivery Materials, free of charge, for publicity and internal purposes and to deposit any of the Delivery Materials at Create Hong Kong's archive.

16.9 Cessation of Provision of Government Finance

16.9.1 The Government may terminate the PFA and immediately cease to provide any further Government Finance if any Event of Default has occurred and is incapable of being remedied or if ProdCo or (if applicable) the successful Applicant fails to remedy the Event of Default within the time limits specified in the PFA.

16.9.2 The "Events of Default" will be set out in the PFA. These include breach of the terms and conditions of the PFA by, and insolvency of, ProdCo, failure to satisfy the conditions precedent to provision of Government Finance, failure to complete the production of the Film Project by the specified date, failure to obtain a certificate for public exhibition in Hong Kong under the Film Censorship Ordinance (Cap. 392), etc.

16.9.3 Upon termination of the PFA for an Event of Default, if the Government abandons the production of the Film Project, ProdCo shall return to the Government the full amount of Government Finance disbursed to ProdCo. To the extent required by the Government, ProdCo and (if applicable) the successful Applicant shall assign to the Government all its rights, title and interest (including Intellectual Property Rights) in and to the Film Project and all its underlying, ancillary and secondary rights materials, and the Production Materials, the Master Materials, the Delivery Materials and all marketing materials relating to the Film Project. ProdCo and (if applicable) the successful Applicant shall also deliver to the Government all other records, documents and materials required under the PFA.

17. Report and Audited Account

17.1 The successful Applicant and ProdCo shall submit to the Government, among other things, information as the Government reasonably requires in relation to the Film Project, including written costs reports, monthly reports on the production of the Film Project (including post-production reports), an outline timetable for the shooting of the Proposed Film and the production schedule for the Film Project.

17.2 The successful Applicant and ProdCo shall keep complete and accurate books and records of all income, expenditure and liabilities in respect of the Film Project in accordance with the Companies Ordinance (Cap.32) and generally accepted accounting principles. The Government and any officer authorized by the Government may at any time inspect and make copies of such books and records.

17.3 The successful Applicant and ProdCo shall submit to the Government within three (3) months after the Completion of the Film Project, the final audited cost statement of the Film Project which is duly certified as accurate by an auditor approved by the Government.

18. Handling of Information

18.1 The Authority (which for the purpose of paragraph 18 means all or any of the Government and the HKFDC (including the Secretariat)) is committed to ensuring that all personal data submitted under an Application is handled in accordance with the relevant provisions of the Personal Data (Privacy) Ordinance (Cap 486) ("PDPO"). Personal data provided in relation to an Application may be used by the Authority and disclosed among them for the following purposes:

- (a) the processing and authentication of Applications;
- (b) payment of Government Finance and any refund thereof;
- (c) the daily operation of the Fund Scheme;
- (d) conducting credit checks;
- (e) monitoring the performance of the Transaction Documents and the Ancillary Documents;
- (f) determining the amount of Gross Revenues payable to the Government and collection of such sums from ProdCo;
- (g) meeting the requirements to make disclosure under the requirements of any law;
- (h) statistics and research; and
- (i) any purposes relating to any of the above.

18.2 Personal data provided in an Application will be kept in confidence. They may however be disclosed by the Authority to any of the following parties for the purposes set out in paragraph 18.1:

- (a) any person (including the agent, the contractor or the third party service provider of the Government) who is involved in the Fund Scheme;
- (b) subject to (c), any other person under a duty of confidentiality to the Authority;
- (c) in relation to the names of the Company Directors of the successful Applicant and ProdCo, the name of the Film Project, the names of the Film Producer and the Film Director, and the names of the other Film Crew and Cast of the Film Project, the public; and
- (d) any person to whom the Authority is under an obligation to make disclosure under the requirements of any law.

18.3 According to Section 2.3.3 of the Code of Practice on the Identity Card Number and Other Personal Identifiers issued by the Privacy Commissioner for Personal Data, the Authority will obtain the identity card number of the Applicant in order to verify the identity of the identity card holder.

18.4 According to Sections 18 and 22 and Principle 6 of Schedule 1 of PDPO, the individuals whose personal data are provided in an Application has a right of access and correction with respect to the personal data provided including the right to obtain a copy of the personal data provided in the Application.

18.5 The person to whom access to data or correction of data or for information of the policies and practices and kinds of data held is to be addressed as follows:

Senior Executive Officer (Administration)
 Administration Section
 Create Hong Kong
 Communications and Technology Branch
 Commerce and Economic Development Bureau
 40/F, Revenue Tower
 5 Gloucester Road
 Wan Chai, Hong Kong

A fee will be charged in accordance with the PDPO for providing access to or correcting any data and for providing the information.

19. Enquiries

19.1 Enquiries regarding the Fund Scheme can be addressed to the Secretariat at:

Address	:	Hong Kong Film Development Council Secretariat 40/F, Revenue Tower 5 Gloucester Road Wan Chai, Hong Kong
Telephone No.	:	2594 5846
Email Address	:	<u>info@fdc.gov.hk</u>
Homepage	:	<u>www.fdc.gov.hk</u>

Hong Kong Film Development Council Secretariat
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