

THE FILM INDUSTRY IN CYPRUS: A BLOOMING SECTOR

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/ Foreword

The film industry constitutes a complex and ever-flourishing sector in the global economy. The industry's operation occupies multifaceted stages, engages a selection of distinct stakeholders and experts and presents plenty opportunities for all parties who choose to get involved. Committed to boosting this highly promising sector, the government of the Republic of Cyprus introduced a package of incentives, encouraging international producers to choose Cyprus as their next film destination. Specifically, production companies that opt to film in Cyprus will be able to choose

between cash rebate or tax credit and can also benefit from tax discounts on investments made on equipment and infrastructure, and VAT returns on expenditures within scope. This presentation addresses the importance of film schemes for every jurisdiction and analyses the incentives offered under the Cyprus Film Scheme. Next, it discusses the way the film industry operates and provides an insight into the multitier process of film production. Lastly, the legal aspect of the film industry and lawyers' supportive and facilitative role is appreciated in relation to each stage of film production.

/ A. The Cyprus Film Scheme

The importance of Cyprus Film Scheme

The Cyprus Film Scheme was drafted in 2017 in accordance with the Regulation 651/2014 of the European Commission. The said Regulation aims to promote European culture and to provide investment aid for small and medium-sized enterprises (SMEs). That said, the scheme goes beyond tax incentives for production.



Jurisdictions that offer production incentives gain positive by-products such as job creation, infrastructure, and SME development, as well as increased revenue and tourism. The film production contributes to the overall local economy by spending large amounts either directly, such as renting hotel rooms for the crew, or indirectly, by attracting film enthusiasts from all over the world. On the other hand, as the entertainment industry grows rapidly, producers are continuously exploring cheaper destinations for film production. Ever since Canada introduced the world's first film tax incentive in 1995, a vast number of countries offer production incentives.¹

The Cyprus Film Scheme offers a package

of incentives to encourage investments in the film sector in Cyprus. These incentives include Cash Rebate, Tax Credits, Tax Allowances for investment on equipment and infrastructure, and VAT return on eligible expenditure.

The application process:

The Scheme describes the person entitled to apply. Pursuant to the Scheme, the applicant must be a legal person registered in Cyprus or another EU Member State, provided that it carries on business in Cyprus through a branch or office. In addition, the applicant must carry the special purpose recognition initials AVC (Audio Visual Company) after their name and the application shall be strictly restricted to one and only audiovisual production, with an exception for certain group productions of documentary or TV series. Furthermore, in order to be eligible, an applicant must have, among others, a financial plan of the project, proof of funds up to 70% of the budget, the scenario of the project and CVs of the casting, director, producer etc.

The Cyprus Film Commission, also known as “The Committee”, consists of the Ministry of Finance, Ministry of Education and Culture, Invest Cyprus and Deputy Ministry of Tourism. The Committee, chaired by Invest Cyprus, is the responsible body for the examination of applications. More specifically, the Committee begins by assessing the producers’ proposal for aid based on the economic and cultural benefits for Cyprus. Then, it makes recommendations on the amount of the eligible expenditure which satisfies the pre-requisites with respect to the incentives.

¹Global Film Production Incentives A White Paper By Olsberg SPI, June 2019, <https://www.o-spi.co.uk/wp-content/uploads/2019/06/Olsberg-SPI-Global-Incentives-White-Paper-Financial-2019-06-04.pdf>



Lastly, the Committee makes recommendation about cash returns.

The Scheme also provides an exhaustive list of forms of audiovisual films, which are compliant with the Scheme. The forms of films which fall under the Scheme are the following:

- a. Feature Films – Long Films: Including those direct-to-video shot, where the project is a film commonly screened as the main attraction for the public in commercial cinemas with a duration of at least 60 minutes or, in the case of a large format (IMAX) film, of at least 45 minutes.
- b. Television films (drama).
- c. Television series or mini-series.
- d. Digital and/or analogue animation.
- e. Creative Documentary.
- g. Reality Programs which directly or indirectly promote the Republic of Cyprus and its culture.

All of the above can be accepted for online streaming Production.

It is worth noting that any public performances, sport events, television game shows (other than reality programmes), current affairs or talk shows, educational programmes and lifestyle programmes are not eligible under the Scheme.

The incentives

In this section, we go through each of the incentives and their pre-requisites for successful application. In the application form, the Applicant must specify the aid for which it is applying for. With respect to the cash rebate or the tax credit (see below), the applicant must select one or the other to include in the application, given that they cannot apply for both.

Cash Rebate

The *cash rebate* incentive allows a company to claim a refund of the eligible expenditure made in Cyprus. In order for this aid to be granted, the application must be filed by the applicant and the maximum aid shall represent up to thirty five percent (35%) of all above and below the line of eligible expenditure made in Cyprus (see below). The Scheme also specifies the minimum expenditure that must be made in Cyprus as follows: €200,000 in the case of feature films (long films), €100,000 for television drama series or self-contained drama films, €50,000 for documentaries for television or cinema broadcast and €30,000 for other television programmes (or the equivalent in any other freely convertible currency). It should be noted that in any case of minimum spending in Cyprus, the above amounts should not exceed fifty percent (50%) of the total production budget.

As of December 2020, the annual available sum for the *cash rebate* shall not exceed €25.000.000.

Moreover, for a production to be eligible for aid, the applicant must satisfy certain criteria, which will ensure that the aid promotes, among other, the Cypriot and/or European and/or world culture. These are referred in the Scheme as “the proposed cultural criteria” and are currently under review in an effort to expand the list of criteria. Once the criteria are met, the respective sum shall be payable upon completion of the filming and once an audit of the eligible expenditure has been completed and filed with the Committee and a Final Approval Certificate is issued. The sum shall be released within 90 business days following the date of issuance of the Final Approval Certificate.

Tax Credit

As an alternative to the cash rebate, the applicant may apply for a reduction of applicable corporate tax (remember that cash rebate and tax credit aids are mutually exclusive). As with the cash rebate, the tax credit aid may also represent up to thirty five percent (35%) of the eligible expenditure made in Cyprus, and the same minimum expenditure requirements also apply. Likewise, for a successful application, the applicant must satisfy the proposed cultural criteria which are currently under review.

In addition, the Scheme provides that the sum of the tax credit against the taxable income shall not exceed fifty percent (50%) of the applicants’ taxable income for the tax year within which the production is made. However, the tax credit, to the extent that it is not granted due to the above percentage restriction, shall be carried forward and be given within the next five (5) years, subject to the above percentage restriction. It is also



worth mentioning that the tax credit is not transferable to a third person. In the case of voluntary or involuntary liquidation or dissolution of the Applicant, the tax credit automatically ceases to have any value on the assets of the legal entity to which it has been granted.

Tax Allowance - Investment in Cultural Infrastructure and Equipment

Tax allowance aid aims to promote investing in infrastructure and equipment in Cyprus. As per the Scheme, every applicant who invests in the film production infrastructure and technological equipment, such as film studios, audiovisual processing premises, filming equipment etc, shall be entitled to have the sum of its investment deducted from its taxable income. Although, it is required that the investment in equipment must remain in Cyprus for a period of at least five (5) years for the application to succeed. However, the aid cannot exceed twenty percent (20%) of Eligible Expenditure in the case of small enterprises and ten percent (10%) in the case of medium-sized enterprises.

For the purposes of tax allowance, the Eligible Infrastructure and Equipment Expenditure must consist of investment in tangible and/or intangible assets or the acquisition of assets belonging to a business establishment.



The Scheme provides an exhaustive list of investments and acquisitions, which aims to encourage productions to utilise existing equipment while creating new business establishments in Cyprus.²

Another objective of the Scheme through this tax incentive is the creation of employment opportunities. As per the Scheme, the employment positions that are directly created as a result of the above investments must satisfy three prerequisites. Firstly, they must be created within three years from the completion of investment. Secondly, there must be a clear increase in the number of employees in the particular business establishment, and thirdly, the jobs must be preserved for a minimum period of three years from the date when the vacancy was filled for the first time.

VAT Return on expenditure for third countries

Value Added Tax rates in the Republic of Cyprus are 19%, 9% and 5% on all products and services provided within the Republic of Cyprus and 19% and 5%, on all taxable imports. The applicant is entitled to VAT refund in relation to any expenditure, as every natural or legal person in a Member State of the EU. In this respect, the Competent Authority shall study the promoting of Interstate Agreements for mutual VAT refund with

the following countries: Russia, China, India, Ukraine, Canada, Australia, Japan, New Zealand, Thailand, Egypt and the United Arab Emirates. With respect to the United States of America, where no VAT is applied but only Sales Tax that is non-refundable, the Competent Authority may examine the introduction of relevant measures.

VAT refunds arise within 6 months with respect to the legal person who carries out the foreign filming production in Cyprus from the end of the last deadline for submitting the VAT declaration for the specific VAT period during which the expenditure occurred or from the date on which the application for VAT return is filed.

Eligible Expenditure

For the expenses to be eligible under the Scheme, the expenditure must have incurred locally by the applicant. The latter must provide invoices which shall fall into one of the categories in the following list of eligible expenditure:³

- Accommodation in Cyprus.
- Air Travel (Incoming and outgoing flights of cast and crew).
- Catering - Food in Cyprus.
- Equipment and Grip Rental (from Cyprus).
- Acquisition of Props.
- Acquisition of land and buildings.
- Construction and restoration/interior design.
- Transport and transport service vehicles.
- Insurance and accounting services.
- Daily subsistence given to cast and crew (per diems).
- Fees for location use license.
- Postproduction Services (sound and image).
- Compensation of Cast and Crew.
- Dispatch and Transfer costs.
- Value Added Tax.

²Cyprus Film Scheme, June 2020, Chapter 2, <http://film.investcyprus.org.cy/static/files/Cyprus%20Film%20Scheme.pdf>

³Cyprus Film Scheme, June 2020, Appendix 2, <http://film.investcyprus.org.cy/static/files/Cyprus%20Film%20Scheme.pdf>



/ How Does The Industry Work

Filmmaking is part of a complex industry involving an array of distinct and multifaceted stages, including the initial conception of the idea for a film, screenwriting, casting, shooting, editing and distribution. Since filmmaking may involve transactions in many places around the world, a range of economic, social, political and geographical issues become significant. The variety of technological equipment, distinct skills and know-hows also become central, since import of technologies and expertise is an imperative part of filmmaking. It is, therefore, vital to appreciate and fully apprehend the way the industry operates. The stages of filmmaking can be divided as such: Development, Pre-production, Production, Post-Production and Distribution.

Development Stage

The first stage of filmmaking is developmental, it involves the creation of ideas for the film,

writing the screenplay, discussing a business structure and securing financing. Each year film studios discuss potential areas they wish to explore as films. During this process they choose trending topics from real life examples and create a yearly agenda which may include remakes, sequels to older films as well as new films. Next, the screenwriter writes a screenplay over a period of time.

Once the film idea and screenplay are settled, the first undertaking of film production is to create a legal entity for the film, the Development company. The purpose of using a business entity is to anticipate the control, financing, liability and tax related to the production of the film.⁴

Pre-production

In pre-production, every aspect and step of the film is planned and coordinated, and an overall vision of the film is created.

⁴Lawyers for the Creative arts. "Legal Issues in Film Production." 2006 LCA FILM AND LAW SEMINAR, 2006, law-arts.org/pdf/Legal_Issues_in_Film_Production.pdf.



A Production company is set up, usually as an LLC (limited liability company) which owns or licenses all of the Intellectual Property associated with the film. Among others, this embraces the rights to use the screenplay, the rights to the actor's performances and licenses for the music used. This is crucial, as at the distribution stage, the distributing company will examine the necessary paperwork to ensure that all IP rights are licensed. Additionally, a potential copyright infringement could lead to backtracking, bad publicity or even litigation. Next, a production budget is drawn up, envisioning all the expenditures for the film. At this point, insurance is procured for any accidents that may occur during production. Pre-production also involves location, crew and cast scouting, which are aligned with the demands of the script and determined by the budget of the film.

Production

During the Production phase, the actual footage of the film is shot. Constant vigilance is needed to ensure planning ahead of schedule and staying within budget. More crew is recruited, including assistant directors, image and sound technicians, makeup, styling

and lighting specialists. This is important as the importation of niche skills, know-how and equipment becomes necessary. Hence, employees' visas, accommodation and logistics need to be arranged succinctly, while all relevant contracts and licenses need to be drawn up. This presents challenges and communication and synchronisation between all parties involved is key.

Post-production

This is the stage where the footage review, the assemblage of the film and the editing is done, including sound, computer graphics and visual effects as well as colour grading. Again, up to date, technology and expertise is needed, so importation of equipment and hiring of post-production experts is undertaken.

Distribution

The distribution process involves all aspects of making a film available to the public, including the marketing strategy and the media outlets. The distribution agreements can vary greatly in nature and all aspects of the film industry must be considered when securing a distribution license. While major US studios have their own distribution companies, smaller and independent producers have to sell their films to different distributors. International distributions ensure that films are made available to more than 90 territories. By contrast, local distribution involves a distribution license to exploit a film in a particular country. Usually, the distributor pays the producer a fee for the film, depending on its commercial potential. Additionally, royalties are paid to the producer based on the film's profit. The distribution of films can be tricky from a legal point of view and attorneys may help negotiate and review the distribution agreements to delineate the rights and particular expectations for all the parties involved.



/ The Legal Aspect Of The Industry: Legal Challenges and Tasks

The film industry addresses multiple legal questions and tasks. It becomes imperative to fully apprehend the subtle intricacies in the way the industry operates, in order to provide any meaningful legal guidance and support throughout the process of film production.

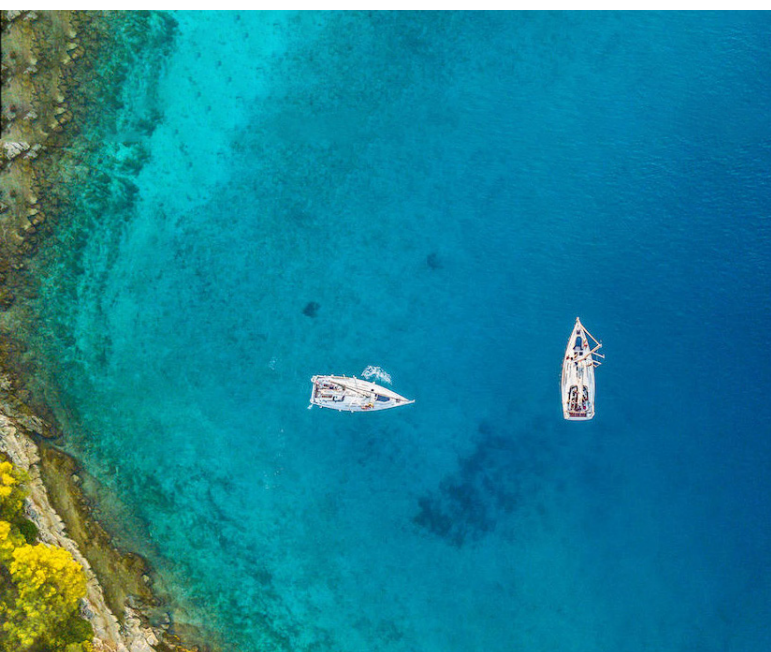
Formation and Financing

At the Pre-production phase, the first task is to set up the development and production companies as an LLC or corporation and prepare the necessary financing documents that enables the lawful collection of funding. By operating as a corporation or LLC, personal liability for the company's operation is limited, the distribution of profits becomes more flexible and obtaining investors is easier. Joint Ventures are also common due to the enormous number of

tasks during the pre-production process. By creating a Joint Venture, producers chose to split the responsibilities and also avoid potential fallouts. It is often that during the collaborative process of filmmaking, producers disagree both as to the financial goals and the artistic vision of the film. To avoid deadlocks and conflict, it is crucial that contracts that delineate the responsibilities, rights expectations and distribution of profits are drafted and signed.

Copyright and IP

An additional legal challenge is acquiring the rights to create the film, by for example securing the rights to a book, screenplay and music. Safeguarding IP rights and avoiding copyright infringement is crucial among the creative industry.



Infringement of one's artistic work may lead to expensive litigation and extreme backlash, so the production company must secure licenses to all the intellectual property associated with the film. This includes, among others, the rights to use the script, the rights to the actor's performances, licenses for all music. For music, a synchronisation license must be purchased. For adaptations of novels or short stories, the picture rights must be negotiated with the author. Similarly, when purchasing a screenplay, producers should also necessitate the signing of a waiver to the right of *droit morale* (moral rights) which limits the changes that the producer may make to the script. Freelancers and independent contractors will usually own copyright in their work, unless otherwise stipulated in contract, so releases and waivers must be signed accordingly.

Unions and Employees

Employment agreements and other labour related issues is yet another substantial legal area in the film industry. Perhaps more than in several other sectors, the

filmmaking business comprises many unions and organisations, advocating certain contractual terms for actors and stunts that delineate rights and responsibilities of the film crew. In particular, contracts stipulate rates, hours, breaks, safety, whether the production can hire non-union labour, and many other issues, depending on what kind of signatory agreement the producer signs. Some employees must also have liability insurance. Stuntmen, for example, work under highly dangerous conditions, and must be well-insured to avoid costly litigation.

Contracts

At the production stage, it is instrumental to accurately draft and negotiate the various production agreements required. The accuracy of such contracts is crucial to secure the film's distribution and ensure specific monetary remedies for all parties involved in order to avoid potential disturbances, backtracking or costly litigation proceedings. When it comes to hiring equipment, film production companies are liable for any damages to equipment or props. Therefore, contracts must be signed with the rental companies to ensure that property is returned to them at an acceptable condition, addressing and regulating insurance claims process. Furthermore, due to the intricacies involved in the distribution process and the distribution agreements per se, a familiarity with the creative industry is of utmost importance. Distributor's rights and responsibilities, as well as profit sharing, should all be well regulated in advance, in line always the respective target markets and goals of each production.



/ Conclusion

The Republic of Cyprus offers a unique scheme of incentives that appreciates the multidimensional aspects of film production and provides a factual encouragement to producers wishing to film in Cyprus. The Scheme envisages an array of grants and incentives including tax discounts, cash rebates and VAT returns that producers

can choose from, ensuring a degree of flexibility. Due to the plethora of complexities and the multi-layered process of film production, it is imperative for anyone interested in the creative industry to comprehend the entirety of the tasks involved so as to provide meaningful guidance.

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