

## **Film Production Financing Scheme (Relaxation Plan) ("Relaxation Plan")**

### **Guide to Application ("Guide")**

#### **1. Purpose and Definitions**

- 1.1 This Guide is issued to provide information on the application for the government finance for the implementation, Production, Completion, Delivery, Distribution, Exhibition and Exploitation of a feature-length narrative film ("**Government Finance**") under the Relaxation Plan ("**Application**") under the Film Development Fund ("**FDF**"). 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, all capitalised terms and expressions used in this Guide shall bear the meanings set out in the Application Form.
- 1.3 The Rules of Interpretation set out in the Application Form shall apply to this Guide.

#### **2. Background**

- 2.1 The FDF was first set up by the Government of the Hong Kong Special Administrative Region ("**Government**") in 1999 to support projects conducive to the long-term development of the local film industry. The Government has since 2005 injected a total of \$1.54 billion into the FDF.
- 2.2 Film Production Financing Scheme ("Financing Scheme") was introduced under FDF in 2007 to provide Government Finance to small- and medium-budgeted film productions.
- 2.3 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.
- 2.4 In view of the COVID-19, which has brought exceptional challenges to the Hong Kong film industry, the Government has decided to launch a time-limited Relaxation Plan under Financing Scheme to provide immediate relief to the Industry.
- 2.5 The Relaxation Plan is a modified version of the Financing Scheme. The major modifications are made to the following-
- (i) only apply to feature-length narrative films (animation not included) (paragraph 4.3.1);
  - (ii) expenditures of the implementation, Production, Completion and Delivery of the Film Project and Proposed Film (paragraph 4.3.6 below);
  - (iii) Government Finance (paragraph 5.1 below);
  - (iv) ceiling of production costs of the Approved Film Project (paragraph 5.5 below);
  - (v) application period (paragraph 6 below); and
  - (vi) profit sharing arrangement (paragraph 16.5 below).
- 2.6 The Relaxation Plan does not supersede the Financing Scheme. The Financing Scheme will remain open for application.
- 2.7 This Guide is applicable to applications for Government Finance under the Relaxation Plan. Applicants for schemes under FDF other than under Relaxation Plan should refer to the relevant guide which can be obtained from the Secretariat of the HKFDC ("**Secretariat**") at the address set out in paragraph 21.

#### **3. Objectives of the Relaxation Plan under Financing Scheme**

The Financing Scheme aims to provide Government Finance for small- and medium-budgeted film productions with the objectives of encouraging more commercial investment in film productions, creating more employment opportunities, and assisting the Hong Kong film industry to revitalise and develop further. Relaxation Plan further achieves the above objectives and help the Hong Kong film industry to tide over the most difficult phase arising from COVID-19.

#### **4. Eligibility Criteria**

4.1 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 which is (i) a Hong Kong company formed and registered under the Companies Ordinance (Cap. 622) or the predecessor Ordinance (as defined in section 2 of Cap. 622); or (ii) a registered non-Hong Kong company (as defined in section 2 of Cap. 622). The Applicant, the Producer and/or the Film Director must have produced at least two (2) Released Films immediately preceding the date of the Application and provide the details thereof in Field 8.2 of Section I of the Application Form.

4.2.2 An Application will not be considered if any of the following conditions occurs:

- (a) The Applicant, its Associate or its Associated Person has successfully obtained funding support under Relaxation Plan for two (2) or more other film projects which are currently under implementation, Production, Completion and/or Delivery.
- (b) The leading film financier(s) of this Application, its/their Associate(s) or its/their Associated Person(s) is/are also the leading film financier(s) of two (2) or more other film projects which are currently under implementation, Production, Completion and/or Delivery under the Relaxation Plan as at the date of the Application being lodged. A leading film financier means a film financier (other than the Government) will hold the majority share of film financier(s)’ investment(s) (other than Government Finance) of the Film Project.
- (c) The Producer of the Film Project is currently taking the role of producer in two (2) or more other film projects under the Relaxation Plan as at the date of the Application being lodged.
- (d) The Film Director of the Film Project is currently taking the role of film director in one (1) or more other film project under the Relaxation Plan as at the date of the Application being lodged.
- (e) The Applicant has entered into any sale agreement with any sales agent and distributor(s) as at the date of the Application being lodged.

For avoidance of doubt, a film project receiving funding support under the Financing Scheme or any other funding scheme under the FDF will not be counted in determining the Applicant’s eligibility, that is, the relevant person/party specified above may still apply for the Relaxation Plan even if the relevant person/party has obtained funding support from the Financing Scheme or any other funding scheme under the FDF in another film project.

4.2.3 The Applicant and any film financier of the Film Project 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 implementation, Production, Completion and/or Delivery of the Film Project.

4.2.4 If any part(s) of the Film Project has/have already obtained or applied for other financial supports (whether in the form of equity or loan financing, grant or sponsorship or any other form) from the Government or other third party(ies), the Applicant must inform the Government upon the submission of the Application. The

Government would consider if the Film Project is still eligible for applying Government Finance under the Relaxation Plan.

#### 4.3 The Film Project

- 4.3.1 The Proposed Film must be a narrative feature-length film (animation not included) Produced, Completed and Delivered for commercial theatrical exhibition at least in Hong Kong and, for this purpose, an Applicant must submit with its Application Form together with a certified true copy of the full film screenplay 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\$25 million and the length of the Proposed Film must be eighty (80) minutes or above.
- 4.3.3 The Proposed Film must be shown to be commercially viable and beneficial to the development of Hong Kong film industry. In this regard, the Applicant has to submit with its Application documentary evidence proving that it has secured non-Government financing which equals to the difference between the production budget of the Film Project and the amount of the Government Finance proposed to be sought by the Applicant as set out in the Application Form (e.g. financing agreement or letter of intent duly signed by all the parties concerned (including the Applicant)) for the Film Project to the satisfaction of the Government.
- 4.3.4 All Film Director(s) of the Film Project must be permanent resident(s) in Hong Kong.
- 4.3.5 There must be at least two (2) persons employed in the following four (4) categories being permanent residents in Hong Kong:
  - (a) Leading Actor;
  - (b) Leading Actress;
  - (c) Supporting Actor; and
  - (d) Supporting Actress.
- 4.3.6 80% or more of the expenditures of for the implementation, Production, Completion and Delivery of the Film Project must be expended in Hong Kong.
- 4.3.7 The Applicant must sign "Authorization to Disclose Confidential Information" attached in Appendix C of the Application Form to the Government for the disclosure of its Application including but not limited to its Application Form; the Logline, Synopsis and Screenplay of the Proposed Film; and required documents to the relevant parties for the purpose of the assessment of the Application. These relevant parties include without limitation the panel of examiners who are professionals with experience in film production, financing, distribution ("Examiners"), the Fund Vetting Committee set up under the HKFDC ("FVC"), HKFDC, the Secretariat and other representatives of the Government involved in the assessment process.
- 4.3.8 It is not permissible for the same film project to receive financial support from the Government in more than one of the five (5) schemes under the Film Development Fund, namely, (i) the Financing Scheme, (ii) this Relaxation Plan, (iii) the First Feature Film Initiative ("FFFI"), (iv) the Directors' Succession Scheme ("DSS") and (v) Film Production Grant Scheme ("Grant Scheme") (now defunct). To be eligible for an application under the Relaxation Plan, the Film Project must not have previously received or successfully applied for financial support from any of the said five (5) schemes. For the avoidance of doubt -
  - (a) where the Applicant has applied for financial support under the Relaxation Plan in respect of the Film Project but the application is not successful or is withdrawn, the Applicant may reapply under the Relaxation Plan in respect of the Film Project;
  - (b) where the Applicant has applied for financial support under the Financing Scheme, the FFFI, the DSS or the Grant Scheme in respect of the Film Project, it may withdraw such application and apply under the Relaxation Plan instead;

and

- (c) after submitting the Application under the Relaxation Plan, the Applicant must not participate in the Financing Scheme, the FFFI, the DSS or any other government funding/financial support for the implementation, Production, Completion and Delivery of the Film Project unless the Applicant has notified the Government in writing to withdraw such Application for the Relaxation Plan.

4.3.9 No Principal Photography of any part of the Proposed Film shall be commenced prior to the date of the Government's written acknowledgement of receipt of the Application. The Government shall under no circumstances be responsible for any costs or expenses which the Applicant has or may have incurred in relation to its Application or in connection with the Proposed Film regardless of whether or not the Application is/will be approved.

4.3.10 No sales agreement with any sales agent and distributor(s) shall be engaged prior to the notification by the Government of the result of the Application.

4.3.11 For the avoidance of doubt, the Principal Photography of the Proposed Film must be commenced within three (3) months after the execution date of the Transaction Documents.

#### 4.4 Application Form

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 required documents that are required to be provided in accordance with and to substantiate whatever is claimed by the Applicant in the Application Form and this Guide. Applicant's attention is drawn to "Checklist of Documents to be submitted by an Applicant" of the Application Form.

### 5. Amount of Government Finance

5.1 Under the Relaxation Plan, the Government Finance will be fixed at 40% of the approved production budget or HK\$9 million, whichever is less, per Approved Film Project as Government Finance in accordance with the terms and conditions of this Guide, the Application Form, offer letter described in paragraph 15 ("Offer Letter") and Transaction Documents. For the avoidance of doubt, the actual amount of the Government Finance will depend on the actual production costs of the Approved Film Project as stated in an audited statement approved by the Government.

5.2 The successful Applicant has the obligation to secure non-Government financial support which equals to the difference between the Approved Production Budget of the Approved Film Project and the amount of the Government Finance. The successful Applicant will be solely responsible for any shortfall or deficit arising from or relating to the implementation, Production, Completion and Delivery of the Approved Film Project and Proposed Film and the Government will not be responsible for such in any event.

5.3 If the successful Applicant receives any cash sponsorships for the implementation, Production, Completion and/or Delivery of the Approved Film Project and Proposed Film, it shall notify the Government, as soon as practicable together with or after the submission of an Application, and in any event, before its submission of the production costs of the Approved Film Project through the audited statement to the Government, on which item(s) in the production budget such cash sponsorships will be spent.

5.4 The Government reserves the right to terminate any of the Transaction Documents if the Approved Film Project is at any time found to be failing to meet any of the requirements set out in paragraph 4 of this Guide.

5.5 The Government reserves the right to terminate all or any of the Transaction Documents if the production costs of the Approved Film Project as stated in an audited statement exceed \$25 million as the Approved Film Project has fallen outside the scope of the Relaxation Plan in such circumstance.

## **6. Application Date**

The Relaxation Plan is open for application from 15 July 2020 to 14 July 2022.

## **7. Application Procedures**

- 7.1 An Applicant must complete the Application Form for “Film Production Financing Scheme” (Relaxation Plan) (FDF-FSRP Form (December 2021 version)) which can be obtained from the Secretariat, or from the homepage of the HKFDC website at [www.fdc.gov.hk](http://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 Other than submitting one (1) full copy of the duly completed Application Form, together with all information and required 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**), an Applicant must sign “Authorization to Disclose Confidential Information” attached in Appendix C of the Application Form and agree to grant a reproduction right to the Government and the Secretariat to disclose and to make copies of its Application including but not limited to its Application Form; the Logline, Synopsis and Screenplay of the Proposed Film; and required documents to the relevant parties for the purpose of the assessment of the Application. These relevant parties include without limitation Examiners, FVC, HKFDC, the Secretariat and other representatives of the Government involved in the assessment process.

## **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 required documents required by the Application Form (including title of the Proposed Film, Production Budget, Main Film Crew and Cast, Sales/Distribution information etc.) and this Guide by using the prescribed “Film Financing Production Scheme - Change Request” form attached to the acknowledgement letter issued by the Government.
- 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**

An Applicant may write to the Government via the Secretariat to withdraw an Application before the Transaction Documents are signed among the Government, the successful Applicant, ProdCo and the other relevant parties.

## **10. Acknowledgement**

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 with all required information and required documents in accordance with this Guide and the Application Form.

## **11. Assessment**

- 11.1 All Applications received will be passed to the Secretariat, who will conduct preliminary screening of an Application to ascertain whether it meets all Eligibility Criteria. An Application will not be considered for assessment if the Secretariat is in the opinion that the Application does not meet any or all of the Eligibility Criteria. The Secretariat having confirmed that an Application has fulfilled all of the Eligibility Criteria will pass the same for assessment by HKFDC, FVC and Examiners.

- 11.2 HKFDC, FVC and Examiners shall respectively conduct assessment of the Film Project referred by the Secretariat and assess the commercial feasibility of the Film Project based on the information including without limitation to the “creativity and quality of the film screenplay”, “production budget”, “estimated net income” and the “local film production elements and talent nurturing” of the Film Project as submitted by the Applicant. Upon such evaluation, they shall respectively make recommendations to the Government for consideration. Upon consideration of the recommendations from HKFDC, FVC and Examiners, the Government shall determine, at its absolute discretion, whether to approve or to reject an Application, such decision shall be final and absolute.

## **12. Notification of Decision**

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 the Application is approved, Offer Letter will be issued to the successful Applicant. If an Application is rejected, the Applicant will be informed of the reason(s) for the decision through a letter of rejection. The decision is final and absolute, and there is no appeal process open to the Applicant.

## **13. Return of Materials**

The Application Form and all information and required 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**

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 required 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 and the Application Form will apply to the new Application.

## **15. Offer Letter and Savings**

- 15.1 The Offer Letter issued pursuant to paragraph 12 will set out the amount of Government Finance to be offered and the general terms and conditions of the proposed amount 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 amount 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 amount of Government Finance. The Government shall be deemed to have withdrawn the offer to make the proposed amount 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 successful 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, the successful Applicant and other relevant parties within four (4) months from the issue date of the Offer Letter. Notwithstanding any signing and returning of the Offer Letter by the successful Applicant, the Government is under no obligation and shall not be held liable to pay any of the Government Finance or financial support in any form or be legally liable to the successful Applicant or any other party in any respect unless and until the Transaction Documents are duly executed by the Government and all parties thereto.

- 15.5 Nothing in this Guide shall constitute a contract. No binding agreement will be made between the Government and a successful Applicant or any other party unless and until the Transaction Documents are duly executed by the Government and all parties thereto.

## **16. Conditions of Offer**

### **16.1 Transfer all Rights, Titles and Interests of Approved Film Project**

After the acceptance of the Government's offer, the successful Applicant shall assign all rights (including Intellectual Property Rights), titles and interests of the Approved Film Project to all film financiers (including the Government) of the Approved Film Project.

### **16.2 Incorporation of ProdCo**

16.2.1 The successful Applicant shall 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 shall undertake the implementation, Production, Completion and Delivery of the Approved Film Project and the Proposed Film in accordance with the provisions of the Transaction Documents; and

16.2.2 The shareholder(s) and company director(s) of ProdCo must be approved by the Government. The Government shall require the proposed shareholder(s) and company director(s) of ProdCo to submit to the Government statutory declaration(s) in the form set out in "APPENDIX D-1" of the Application Form (in the case of an individual) and in the form set out in "APPENDIX D-2" of the Application Form (in the case of a corporation).

### **16.3 Transaction Documents**

16.3.1 The Transaction Documents, which upon execution shall be legally binding on the all parties thereto, will be prepared and approved by the Government. The Transaction Documents will contain the complete terms and conditions 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, all film financiers (including the Government), and their respective obligations and liabilities, and that the Government's liability to finance the implementation, Production, Completion and Delivery of an Approved Film Project and Proposed Film will be limited to the amount of Government Finance specified in the PFA and other relevant Transaction Documents.

16.3.2 The terms and conditions of each set of Transaction Documents will vary according to the specific arrangements made with the individual successful Applicant, ProdCo incorporated by it pursuant to paragraph 16.2 and the relevant film financier(s), laboratory and other parties participating in the Approved Film Project.

16.3.3 Should there be any conflict or inconsistency between this Guide and the Transaction Documents, the latter shall prevail.

### **16.4 Disbursement of Government Finance**

The Government will disburse the Government Finance in accordance with the terms and conditions set out in the Transaction Documents.

### **16.5 Profit Sharing**

16.5.1 Once Government Finance is advanced by the Government, the Government will require profit sharing on all monies derived from the Distribution, Exhibition and Exploitation of the Completed Film therein ("Gross Revenues") in the following manner: commensurate with the Government's share of contribution in relation to other film financier(s) 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 Approved Film Project.

- Stage 1: Other film financier(s) of the Approved Film Project will firstly recoup 50% of its/their investment(s) for the production costs of the Approved Film Project.
- Stage 2: For the part of Gross Revenues exceeding 50% of other film financier(s)' investment(s) for the production costs of the Approved Film Project, Gross Revenues will be paid to the Government and other film financier(s) in accordance with their respective ratio of contribution.
- Stage 3: For the part of Revenues exceeding the production costs of the Approved Film Project, 50% of Gross Revenues will be paid to the Government and 50% of Gross Revenues will be paid to the other film financier(s) 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 Approved Film Project.

16.5.2 The PFA will also specify that the Government will be entitled to the Gross Revenues through a share of all rights (including Intellectual Property Rights), title and interests (whether vested, future or contingent) in and to:

- (a) the Approved Film Project and its underlying, ancillary and secondary rights materials (including the characters, images, story, plots, dialogues, screenplay, music, sound effects and all other things and materials relating to the Approved Film Project acquired or to be acquired by ProdCo in respect thereof); and
- (b) the Production Materials, the Master Materials, the Original Film Materials, the Delivery Materials and all marketing materials relating to the Approved Film Project, Proposed Film and all other things and materials acquired or to be acquired by ProdCo in respect thereof.

16.5.3 The Government's right to profit sharing and its interest in the performance by ProdCo of the Approved Film Project will be protected by a first charge over all tangible and intangible materials (including the Production Materials, Master Materials, Original Film Materials, Delivery Materials and all other promotional and marketing materials) of the Approved Film Project, Proposed Film and other provisions which the Government considers appropriate for these purposes.

## 16.6 Accounting

16.6.1 For effective monitoring, ProdCo is required to set up separate production account ("Production Account"), and collection account ("Collection Account").

16.6.2 The Production Account shall be a separate bank account established for payments of expenses incurred for the implementation, Production, Completion and Delivery of the Approved Film Project and Proposed Film. The Government Finance and all sums paid by the other film financier(s) of the Approved Film Project shall be paid into the Production Account. All sums in the Production Account shall only be expended in accordance with the terms and conditions of PFA including the Production Budget of the Approved Film Project approved by the Government.

16.6.3 The Collection Account shall be a separate bank account to be established by the collection agent. All Gross Revenues due to be paid to the sales agent, the collection agent, Government and other film financier(s) of the Completed Film shall be paid into the Collection Account.

## 16.7 Approvals and Documentation

16.7.1 Each Applicant is required to provide the Government with a certified true copy of each agreement and/or document signed with other parties in relation to the Film Project, in accordance with the requirements set out in the Application Form.

16.7.2 A successful Applicant and ProdCo shall obtain the Government's prior written approval of a list of matters relating to the implementation, Production, Completion,



Delivery, Distribution, Exhibition and Exploitation of the Approved Film Project, the Proposed Film and the Completed Film, including the following:

- (a) financing and co-financing arrangements (including the Production Budget of the Approved Film Project, other film financier(s), finance plan, sales estimates, cash-flow schedule);
- (b) sales and distribution agents and the relevant agreements; and
- (c) insurance policies.

A complete list of the matters will be set out in the Offer Letter and Transaction Documents.

#### 16.8 Inspection Visits

At any time and from time to time during the subsistence of the Transaction Documents, the Government and the Secretariat may conduct visits to inspect the implementation, Production, Completion and Delivery of an Approved Film Project and Proposed Film (e.g. the Pre-Production, Principal Photography and Post-Production in respect of the Approved Film Project). Where the Government makes such request as it may consider necessary at its sole discretion, ProdCo must make all necessary arrangements for the Government and the Secretariat to conduct the inspection visits.

#### 16.9 Final Cut

16.9.1 After the completion of the Post-Production of an Approved Film Project, ProdCo must arrange a screening of the Final Cut to the Government and the Secretariat for viewing and approval.

16.9.2 ProdCo shall carry out all changes of the Final Cut to the Government may require in order for the Approved Film Project to meet the requirements of the Office for Film, Newspaper and Article Administration ("OFNNA") and secure a certificate for public exhibition in Hong Kong under the Film Censorship Ordinance (Cap. 392) and/or comply with any warranty, representation or other contractual specification relating to the Approved Film Project and/or to confirm to any legal advice received by the Government.

#### 16.10 Credit

16.10.1 The logos of the Create Hong Kong and FDF should be displayed in the main title credit, the end credit, and all billing block materials of the Completed Film, and meet the credit requirements as stipulated in the Transaction Documents. 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 of the Completed Film. The format and design of the credits will be determined by the Government.

16.10.2 The Government will also have the absolute right to approve all other credits of the Approved Film Project and Completed Film.

#### 16.11 Rights Granted

The Government and the HKFDC shall have the right to use the Delivery Materials listed in Field 6.7 of "Film Project" in the Appendix A of the Application Form and Transaction Documents for publicity and internal purposes and to deposit any of the Delivery Materials at the Government's archive without further reference to or consent from any other film financier(s) or contracting parties.

#### 16.12 Cessation of Provision of Government Finance

16.12.1 The Government may terminate any of the Transaction Documents and immediately cease to provide any further Government Finance if any Event of Default has occurred and is incapable of being remedied or if the successful Applicant and/or ProdCo fail to remedy the Event of Default within the time limits specified in the Transaction Documents.

16.12.2 The “Events of Default” will be set out in the Transaction Documents. These include breach of the terms and conditions of the Transaction Documents by, and insolvency of, ProdCo, failure to satisfy the conditions precedent to provision of Government Finance, failure to complete the implementation, Production, Completion and Delivery of the Approved Film Project and Proposed Film by the specified date, and failure to obtain a certificate for public exhibition in Hong Kong under the Film Censorship Ordinance (Cap. 392), etc.

16.12.3 Upon termination of the Transaction Documents for an Event of Default, if the Government abandons the implementation, Production, Completion and Delivery of the Approved Film Project and Proposed Film, ProdCo shall return to the Government the full amount of Government Finance disbursed to ProdCo. To the extent required by the Government, the successful Applicant and ProdCo shall assign to the Government all its rights (including Intellectual Property Rights), titles and interests in and to the Approved Film Project and all its underlying, ancillary and secondary rights materials, and the Production Materials, the Master Materials, the Original Film Materials, the Delivery Materials and all marketing materials relating to the Approved Film Project. The successful Applicant and ProdCo shall also deliver to the Government all other records, documents and materials required under the Transaction Documents.

## **17. Submission of Cost Reports**

17.1 Unless the Government agrees otherwise, ProdCo shall provide the Government with such information as it reasonably requires in relation to the expenditures for the implementation, Production, Completion and Delivery of the Proposed Film and Approved Film Project including three (3) written cost reports in the following manner:

- (a) cost report in respect of Pre-Production within thirty (30) days after the completion date of Pre-Production;
- (b) cost report in respect of Principal Photography within thirty (30) days after the completion date of Principal Photography; and
- (c) cost report in respect of Post-Production within thirty (30) days after the completion date of the Post-Production.

17.2 ProdCo shall ensure that cost reports shall be in a format acceptable to the Government and shall contain a narrative showing movements since the last cost report, full explanations of any variances from the Approved Production Budget in each cost area, and finance and expenditure statements (including but not limited to donations and sponsorships statements). ProdCo shall submit the cost reports to the Government for approval.

17.3 ProdCo shall submit the schedule of implementation, Production, Completion and Delivery of the Proposed Film and Approved Film Project to the Government for approval, and shall adhere to the schedule approved by the Government and any revisions thereto as the Government may require or approve. Further, ProdCo shall submit to the Government the daily call sheets and daily reports during Principal Photography of the Proposed Film in the manner as requested by the Government.

## **18. Theatrical Release of the Film in Hong Kong**

ProdCo shall produce the Film in accordance with all applicable laws, ordinances and rules, and shall arrange Theatrical Release of the Film in Hong Kong within a period of 3 (three) years from the execution date of PFA.

## **19. Accounting Books and Records**

19.1 The successful Applicant and ProdCo shall submit to the Government, among other things, information as the Government reasonably requires in relation to the Approved Film Project, including written costs reports on the implementation, Production, Completion and Delivery of the Proposed Film and Approved Film Project for the purposes set out in paragraph 17.1, an outline timetable for the shooting of the Proposed Film and the production schedule for the Approved Film Project.

- 19.2 The successful Applicant and ProdCo shall keep complete and accurate books and records of all incomes, expenditures and liabilities in respect of the Approved Film Project in accordance with the Companies Ordinance (Cap.622) 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.
- 19.3 The successful Applicant and ProdCo shall submit to the Government within the given time from the commencement date of the marketing of the Completed Film, the final audited statement of the production costs of the Approved Film Project which is duly audited and certified as accurate by an auditor in accordance with the requirements as the Government may specify.

## **20. Handling of Information**

- 20.1 The Authority (which for the purpose of paragraph 20 means all or any of the Government and the HKFDC (including the Secretariat and the FVC)) 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 Relaxation Plan;
  - (d) conducting credit checks;
  - (e) monitoring the performance of the Transaction Documents and all documents delivered to the Government pursuant to the terms and conditions of the Transaction 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.
- 20.2 Personal data provided in an Application and the Transaction Documents 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 20.1:
- (a) any person (including the agent, the contractor or the third party service provider of the Government) who is involved in the Relaxation Plan;
  - (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, sales agent(s) / distributor(s), the title of the Film Project, the names of the Producer(s) and the Film Director(s) of the Film Project and Approved Film Project, and the names of the other Film Crew(s) and Cast(s) of the Film Project and Approved 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.
- 20.3 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 individual(s) of the Applicant in order to verify the identity of the identity card holder.
- 20.4 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.
- 20.5 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)  
Communications and Creative Industries Branch  
Commerce and Economic Development Bureau  
21/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, 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.

## **21. Enquiries**

Enquiries regarding the Relaxation Plan can be addressed to the Secretariat at:

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

## **22. Language**

The Chinese translation of this Guide is for reference only. In the event of any conflict or inconsistency between the English text and the Chinese translation of this Guide, the English text shall prevail.

**Hong Kong Film Development Council Secretariat  
December 2021**