

## Media Hotline

June 06, 2022

### GOVERNMENT INTRODUCES CASH INCENTIVES OF UP TO USD 2,60,000 FOR SHOOTING FOREIGN FILMS IN INDIA AND CO-PRODUCTIONS WITH FOREIGN COUNTRIES

The Ministry of Information and Broadcasting (MIB) has recently announced two schemes (“Schemes”) at the Cannes Film Festival, 2022. The Schemes have been introduced to incentivise global collaborations with India and attract investments from foreign film makers in India.<sup>1</sup>

These are:

- *Incentive for shooting of foreign films in India* : Under this scheme, an International Producer can claim a reimbursement of 30% of their Qualifying Production Expenditure up to INR 2 crore (USD 2,60,000). They can also claim an extra 5% bonus up to INR 50 lakh (USD 65,000) for employing more than 15% manpower from India.
- *Incentive for Audio-Visual Co-production with foreign countries* : Under this scheme , official Indian Co-Productions can claim up to 30% reimbursement of Qualifying Co-Production Expenditure up to INR 2 Crores (USD 2,60,000).

The Schemes will be executed through the Film Facilitation Office (“FFO”), which has been set up under the aegis of the National Film Development Corporation (“NFDC”) to promote global collaboration in filmmaking and facilitate film shootings by domestic and international filmmakers in India.<sup>2</sup>

The salient features of the two schemes are discussed below.

#### I. INCENTIVE FOR SHOOTING OF FOREIGN FILMS IN INDIA

This scheme has been introduced to offer cash incentives to an “International Producer” which is defined as the entity responsible principally for all activities involved in making the production in India. It is typical for different producers on a project to play different roles. For instance, a producer may be responsible only for financing while another is responsible for handling day to day creatives. In such cases, it will be interesting to see how the scheme will apply.

Under the scheme, an International Producer can claim a reimbursement of 30% of their Qualifying Production Expenditure (“QPE”) up to INR 2 crore (USD 2,60,000).<sup>3</sup> They can also claim an extra 5% bonus up to INR 50 lakh (USD 65,000) for employing more than 15% manpower from India.<sup>4</sup>

##### Which projects are eligible for the scheme?

As per the scheme, those projects which have been granted permission by the MIB, or Ministry of External Affairs (“MEA”) (for documentaries) after the 1<sup>st</sup> of April, 2022 are eligible to apply.<sup>5</sup>

Eligible productions may be:<sup>6</sup>

- Feature films/animation feature films: A minimum of 75 minutes in length
- Reality and commercial TV shows or series: no less than one broadcast half-hour in length, which is intended for initial commercial distribution in a medium other than cinema
- Web shows or series
- Post production services for projects shot inside or outside India
- Documentaries: A minimum run time of 30 minutes.

The scheme clarifies that a project will be deemed to be a series or a season if the episodes feature a common theme or themes and/or contain dramatic elements that form a narrative structure. Each series or season is only entitled to one reimbursement. It appears from the wording of the scheme that for different seasons, separate reimbursement can be claimed. This is a good incentive to shoot multiple seasons in India.

##### Who can apply?

The application under this scheme must be a line producer or a line production company (“Line Producer”) based in India, having a PAN number and a GST registration.<sup>7</sup>

The scheme provides that;

- The Line Producer must be responsible for making all arrangements for purchasing, hiring, and production related expenditure on behalf of the International Producer.<sup>8</sup> This requirement will have to be examined from a tax impact

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perspective.

- The International Producer will have to claim reimbursement through the Line Producer.<sup>9</sup> the Line Producer and the International Producer must enter into a legally binding contract outlining the reimbursement application process, and distribution of funds. A copy of the agreement is required to be furnished with the application.<sup>10</sup>

Therefore, all International Producers interested in taking advantage of the scheme would need to necessarily appoint a Line Producer in India to avail the benefits of this scheme

### Who is not eligible?

Commercial or music videos, sports events coverage, news and current affairs shows, magazine shows, infotainment, talk shows and lifestyle programming and productions with primary purpose of fund-raising or training/in-house corporate advertising or promotions are not eligible under the scheme.<sup>11</sup>

The scheme also provides other criteria for non-eligibility such as non-submission of a correctly audited financial statement of the production;<sup>12</sup> or if the production results in a negative impact on the natural resources of India or the environment.<sup>13</sup>

### QPE

QPE is defined as expenditure incurred by the applicant (on behalf of the International Producer or otherwise) wholly in respect of the applicable pre-production, production (incl. principal photography) and post-production, and attributable to the categories of goods and services sourced and/or provided in India. The language that that the expenditure incurred by the applicant could be on behalf of the International Producer "or otherwise" appears to mean that expenditures incurred by line producers which may be consequential and not a direct consequence of their obligations to the International Producer. The criteria for determining QPE is set out in the scheme.<sup>14</sup>

### Application and Disbursal

The scheme provides the application process for claiming reimbursements. The main steps are discussed below:

1. The Line Producer must then apply for an interim approval on behalf of the International Producer, at least 4 weeks before beginning production related activities in India.<sup>15</sup> The documents to be provided along with the application include script/storyboard/treatment of the production, permit for filming in India, certificate of incorporate of the International Producer,<sup>16</sup> shooting schedule, etc.<sup>17</sup>
2. The application will be evaluated by a Special Incentive Evaluation Committee ("SIEC")<sup>18</sup> post which an Interim Approval Certificate will be issued with a validity of 12 months.<sup>19</sup>
3. After obtaining the Interim Approval Certificate, the application for reimbursement has to be made via an online form on the FFO website – this must be done within 90 days of the completion of the project by the applicant.<sup>20</sup> The documents to be provided along with the application include undertaking from the International Producer with regard to the successful completion of the project in India as per the permission letter given by MIB , certificate of an auditor i.e., an item wise audited statement, certifying the production expenses incurred by the applicant in India.<sup>21</sup>
4. The application will again be evaluated by SIEC once all documents are provided by the Applicant to FFO. The audited statements will be verified by an auditor appointed by the FFO. The decision of the SIEC will be final and cannot be challenged in any court of Law. The FFO is required to process all applications within 60 days of receipt.
5. On successful evaluation and audit, 85% of the eligible incentives will be disbursed to the applicant's bank account.<sup>22</sup> For disbursement of the remaining 15%, a copy of the final credits that is to be released with the "Filmed in India" credit and the FFO logo in a prominent place must be submitted.<sup>23</sup>

### Other details

The scheme states that:

- Payment will be on first-come-first-serve basis.<sup>24</sup>
- Payment will be subject to availability of allocated annual budget.<sup>25</sup>
- Within the allocated budget for the financial year, the budget for "post-production only" projects will be capped at 25% of the total budget.<sup>26</sup>
- FFO must be given a credit in the end credits or end crawl on all prints of the work created in the form of "Filmed in India" credit and FFO logo as provided by FFO.
- The FFO has the right to inspect and audit all books of accounts and records of the applicant which pertain to the reimbursement through a qualified accountant.<sup>27</sup>
- FFO has the right to ask the International Producer to provide material such as testimonials from cast and crew members, behind the scenes footage, and other material as may be required to promote India as a filming destination.<sup>28</sup>

## **II. INCENTIVE FOR AUDIO-VISUAL CO-PRODUCTION WITH FOREIGN COUNTRIES**

This scheme incentivizes an "Official Indian Co-production" i.e. a production between India and one or more of the countries with whom India has entered into an official bi-lateral co-production treaty on Audio-Visual Co-production, and which production has been granted official 'Co-production Status' by the MIB.<sup>2</sup>

The list of countries with which India has official co-production treaties has been provided in Annexure I to Scheme II.<sup>30</sup>

Official Indian Co-Productions can claim up to 30% reimbursement of Qualifying Co-Production Expenditure ("QCE") up to Rs. 2 Crores (USD 2,60,000).<sup>31</sup> QCE includes expenditure on goods and services, facilities and personnel from India, which directly contribute to the project.<sup>32</sup>

#### Which projects are eligible to apply?

Projects that have been granted "Co-Production" status by the MIB can apply. Documentaries, though eligible for this scheme, have to apply for permission to film in India from MEA.<sup>33</sup> Only those projects which have been granted "Co-Production" status after the 1<sup>st</sup> of April, 2022 are eligible under this scheme.<sup>34</sup>

#### Who can apply?

The applicant must be an Indian co-producer, i.e. an individual, partnership, body corporate or unincorporated association established and/or incorporated in India.<sup>35</sup> The scheme provides that none of the co-producers can be linked to each other through common management, ownership, or control "except to the extent that such link is inherent in the making of the co-production".<sup>36</sup> The wording of the scheme with respect to the link being "inherent in the making of the co-production" is slightly unclear but the intent appears to be to exclude any links between co-producers created for the purpose of the project to be co-produced such as a joint venture agreement specifically entered into for the purpose of the co-production.

The scheme provides that each co-producer shall continue to play an active role throughout the period of production and assume responsibility for carrying through practical and financial arrangements for the project. The obligation for "each co-producer" to be actively involved may be onerous. Typically, co-productions are structured in a way that different co-productions have different contributions in the project.

The scheme also states that companies which exist only in name, also known as letterbox companies are not eligible for reimbursement.<sup>37</sup>

The co-producers must enter into a legally binding agreement with each other which reflect their roles, responsibilities, commitments, and liabilities.<sup>38</sup>

In case there is more than one Indian Co-Producer, parties must designate an "Indian Delegate Co-Producer" who will handle and coordinate operations and financing, and apply for the reimbursement.<sup>39</sup>

The scope of eligible production formats is to be governed by the relevant treaties.

#### Application and Disbursal

Applications to avail of this scheme may be made on the FFO website – where the required forms have been provided.

Application and disbursal is a three-stage process:

1. The production which has been granted "Co-Production" status by MIB needs to apply online with all the supporting documents at least 4 weeks before the start of principal photography within India. The documents to be provided along with the application include permit for filming in India, document showing grant of official co-production status in India and all partner countries, total itemized budget, etc..<sup>40</sup> After being evaluated by a SIEC, an Interim Approval Certificate will be issued with a validity of 12 months.<sup>41</sup>
2. After principal photography commences, an application can be filed for disbursal of an amount up to 50% of the eligible reimbursement. The SIEC, after evaluating the application, will then release the 1<sup>st</sup> disbursement.<sup>42</sup> The documents to be provided along with the application include certificate from an auditor, i.e. item wise audited statement, certifying production expenses in India.<sup>43</sup>
3. After the project is complete, an application may be made for final disbursement as per the process set out in the scheme within 90 days of completion.<sup>44</sup>

#### Other details

- The reimbursement is subject to the availability of funds allocated for the given financial year.
- Beneficiaries of this scheme must give credit to MIB and the FFO/NFDC in the end credits or end crawl on all prints of the work created.
- Documentaries have to give credit to MEA.<sup>45</sup>
- The FFO has the right to inspect and audit all books of accounts and records of the applicant which pertain to the reimbursement through a qualified accountant.<sup>46</sup>
- FFO has a right to publicize the filming of the project in India, and the applicant will have to assist the FFO in this regard, as required.<sup>47</sup> This includes providing sample footage from the project, rushed shots in India, and other material to the FFO or the NFDC for their marketing purposes.<sup>48</sup>

### **KEY TAKEAWAYS**

Filming in India will not only benefit the media and entertainment industry but can benefit allied industries like tourism, hospitality as well. New Zealand witnessed a spike in tourism post release of the Lord of the Rings movies.<sup>49</sup> Filming of foreign films within India may result in a similar impact.

What is important to note is that both Schemes contain caveats that reimbursement is subject to availability of funds.

Therefore, fund allocation and proper implementation of the Schemes is critical. While the Schemes are laudable, the government can also consider tax incentives like those offered by other countries such as UK, Ireland, Fiji, Canada and Mexico for filming within these countries.<sup>50</sup> Tax incentives are another way to attract foreign players into the country. Current tax provisions related to tax deduction at source (TDS), Goods and Services Tax (GST), etc. contain certain issues/grey areas with respect to foreign and Indian producers and members of cast and crew. Amending these provisions to bring in clarity will give further impetus to filming in India.

— **Aparna Gaur, Aarushi Jain & Gowree Gokhale**

*(We acknowledge and thank Chirag Basu, Student Symbiosis Law School, Pune for his assistance on this hotline.)*

You can direct your queries or comments to the authors

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<sup>1</sup> See <https://pib.gov.in/PressReleasePage.aspx?PRID=1826395>

<sup>2</sup> Section 1.1 of the Incentive for shooting of foreign films in India ("**Scheme I**")

<sup>3</sup> Section 1.2 of the Scheme I

<sup>4</sup> Ibid.

<sup>5</sup> Section 2.1 of the Scheme I

<sup>6</sup> Section 2.13 of the Scheme I

<sup>7</sup> Section 2.8 of the Scheme I

<sup>8</sup> Section 2.9 of the Scheme I

<sup>9</sup> Section 2.10 of the Scheme I

<sup>10</sup> Section 2.11 of the Scheme I

<sup>11</sup> Section 2.14 of the Scheme I

<sup>12</sup> Section 5.1 of the Scheme I

<sup>13</sup> Section 5.4 of the Scheme I

<sup>14</sup> Section 4 of the Scheme I

<sup>15</sup> Section 3.2.1 of the Scheme I

<sup>16</sup> The scheme provides that this document is required to be notarized by relevant Government Agency or Indian Embassy or Consulate

<sup>17</sup> Annex to the Scheme I

<sup>18</sup> The SIEC will constitute of three permanent members (Managing Director, NFDC; Head of FFO; Director Finance, NDFC) and three members appointed on assignment basis (a financial expert, an industry expert and representative from the panel of line producers/line production service companies enlisted with FFO provided on the website of FFO at

<https://www.ffo.gov.in/en/productions-directory/psc-line-producer>

<sup>19</sup> Section 3.2.5 of the Scheme I

<sup>20</sup> Section 3.4.2 of the Scheme I

<sup>21</sup> Annex to the Scheme I

<sup>22</sup> Section 3.5 of the Scheme I

<sup>23</sup> Section 3.6 of the Scheme I

<sup>24</sup> Section 3.5 of the Scheme I

<sup>25</sup> Section 1.7 of the Scheme I

<sup>26</sup> Section 1.8 of the Scheme I

<sup>27</sup> Section 6.4 of the Scheme I

<sup>28</sup> Section 6.8 of the Scheme I

<sup>29</sup> Section 1.4 of the **Incentive for Audio-Visual Co-production** with foreign countries ("**Scheme II**")

<sup>30</sup> The countries with whom treaties have been signed are: Bangladesh, Brazil, Canada, China, France, Germany, Italy, ,Israel, Korea, New Zealand, Poland, Spain, UK, Russia, Portugal (See Annex I to Scheme II).

<sup>31</sup> Sections 1.6 and 1.7 of the Scheme II

<sup>32</sup> Section 4 of the Scheme II

<sup>33</sup> Section 2.3 of the Scheme II

<sup>34</sup> Section 2.2 of the Scheme II

<sup>35</sup> Section 2.4 of the Scheme II

<sup>36</sup> Section 2.6 of the Scheme II

<sup>37</sup> Section 2.10 of the Scheme II

<sup>38</sup> Sections 2.7 and 2.8 of the Scheme II

<sup>39</sup> Section 2.9 of the Scheme II

<sup>40</sup> Annex 2 to the Scheme II

<sup>41</sup> Section 3.4 of the Scheme II

<sup>42</sup> Ibid.

<sup>43</sup> Annex 2 to the Scheme II

<sup>44</sup> Ibid.

<sup>45</sup> Section 6.1 of the Scheme II

<sup>46</sup> Section 6.6 of the Scheme II

<sup>47</sup> See '*Submission of Materials*' in Scheme II

<sup>48</sup> Ibid.

<sup>49</sup> <https://discovery.cathaypacific.com/middle-earth-film-tourism-changed-new-zealand/>

<sup>50</sup> See [https://investmentpolicy.unctad.org/investment-policy-monitor/measures/588/mexico-](https://investmentpolicy.unctad.org/investment-policy-monitor/measures/588/mexico-introduces-tax-incentives-for-foreign-film-production-)

[introduces-tax-incentives-for-foreign-film-production-;](https://investmentpolicy.unctad.org/investment-policy-monitor/measures/588/mexico-introduces-tax-incentives-for-foreign-film-production-)

<https://www.businessworld.in/article/Film-Incentives-Adopted-by-India-Other-Countries/17-02-2022-420852/>

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