

Using Co-Production Deals to Get Your Movie Made by Segun Aluko

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The life of a filmmaker is very interesting. In fact, the process of transforming that idea into a movie with lots of box office receipt, if the filmmaker is lucky, is far more interesting. While many processes towards getting the idea into a movie abound, co-production if properly structured can be a veritable process towards getting the movie made.

Co-production is basically the collaboration between two or more entities (in this case film producers) in the development, finance, production and in some cases distribution of a movie. Just in case you don't know, filmmaking is both an art and a business. This article will walk you through co-production as a tool to getting your movie made and the process and structure of a co-production deal itself.

Types of Co-Production Deals

Co-production can evolve in either of the following three forms (not mutually exclusive, since they may cumulatively occur):

1. Investment in return for equity in the film.
2. A creative collaboration on the production between or among the parties.
3. Investment in return for distribution rights (domestic or international, or both).

Distribution rights could be an outright acquisition by one of the parties, or the distributor playing a passive role in the creative process, or an ownership/profit share arrangement. Co-production may also be a pure collaborative effort between the parties involved or structured under a co-production treaty in order to get the necessary benefit under applicable treaty.

A co-production treaty is a bilateral agreement between two countries that provides the framework upon which film producers in member countries can collaborate on film projects. It provides access to the box office market of the country, access to grants, tax incentives, equity investment, and other financial benefits.

Benefits of Co-Production

- National treatment of the co-production movie in treaty countries.
- Access to the box office of the co-producer's country.
- Access to foreign grants, equity investment, and other funding.
- Tax incentives and rebates.
- Technical support, equipment, and training.
- Facilitation of import duties exemptions and entry of foreign crew.

Example: The China–France Co-Production Treaty of 2006. A film co-produced by a French filmmaker and a Chinese filmmaker will be treated as both Chinese and French, avoiding China's quota system limiting foreign films.

Key Steps in Structuring a Co-Production Deal

(i) Acquisition of Underlying Right

The co-production deal is premised on the ownership of the right and collaboration of parties involved. The producer must own or secure the rights to the story (book, screenplay, etc.).

(ii) Establish a Production Entity

Forming a corporation or LLC to hold copyright in the film provides tax and ownership benefits.

(iii) Divide Responsibilities and Entitlements

This covers rights, obligations, and entitlements of each party. Examples: who contributes screenplay, who handles financing, domestic/international distribution rights, credits, approval, and entitlements ("Waterfall" provision).

(iv) Secure Foreign Distribution Agreement

Foreign presale helps filmmakers raise financing and secure distribution. Distributors

commit to buying distribution rights in territories; filmmakers can then use these commitments to secure bank loans.

(v) Secure Production Financing

Includes equity investment, bank loans against presales, gap lending, mezzanine financing, and tax incentive financing.

(vi) Secure Creative Service Agreements, Completion Bond, and Escrow

Covers producer agreements, talent agreements, production insurance, and escrow of the production budget to ensure proper disbursement.

Conclusion:

Whichever form of co-production deal you choose, it is likely to follow this process: acquire rights, set up an entity, divide responsibilities, secure distribution, raise financing, and secure legal/insurance agreements. A properly structured co-production can give a filmmaker access to more resources, reduce risk, and increase the chances of completing and distributing the movie successfully.

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