

MOTION PICTURE REFORM IN HUNGARY

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The past year has marked a monumental reform in the motion picture industry and on the motion picture culture in Hungary by the adoption of Act II of 2004 on Motion Pictures (the "**Film Act**") which came into force on April 1, 2004. The Film Act not only creates a new legal basis on which producers, distributors and other participants in the Hungarian film industry are able to operate, but it also provides support in planning, preparing, producing and distributing films.

PURPOSES AND SCOPE OF THE FILM ACT

The stated purposes of the Film Act are to ensure wide-ranging access to the values of the Hungarian motion picture culture; to preserve and enhance the values of the Hungarian motion picture culture by supporting the creation of films and other related activities; to provide an appropriate legal background and to increase accessible financial resources for Hungarian film production; to create a support system that promotes and oversees the efficient use of resources that serve to develop the culture of films; and to establish a legal background that serves this purpose and is aligned with the regulations of the European Union.

The scope of the Film Act extends to cover the production, distribution and archiving of Hungarian films and films co-produced with Hungarian participation, and the distribution of films in Hungary. To achieve its stated objectives, the Film Act sets out the method for providing budgetary resources, and resources outside the budget, to support the Hungarian motion picture culture and industry. The sources

of support consist of direct state subsidies as allocated by the Motion Picture Public Foundation of Hungary (the "**Public Foundation**") according to the principles of the Film Act, and indirect support.

Subsidies may, in general, be granted for the purposes of the following activities of the film industry, including:

- film plan development;
- preparation of film production;
- film production and distribution;
- film copy renovation and archiving;
- research and training in the motion picture industry; and
- infrastructure development.

TYPES OF SUBSIDIES AVAILABLE

There are three types of *direct subsidies* available to the motion picture industry (apart from the indirect ones which are tax and investment benefits serving the achievement of the objectives of the motion picture industry, and which are regulated partially by other laws):

- (1) selective subsidies;
- (2) normative subsidies; and
- (3) structural subsidies.

These direct subsidies may be granted as refundable or non-refundable and only if an agreement has been concluded between the supporting body and the supported entity (the "**Support Agreement**"). If the supported objective is not achieved due to a breach of agreement by the supported entity, it may be required to repay the subsidy to the supporting

body. It should also be noted that no subsidies are available for activities aimed at the production, distribution or archiving of commercials.

(1) Selective Subsidies

A selective subsidy is granted to a film producer, film distributor or any other applicant under the Film Act based on the decision of the supporting body made on the basis of the application filed or by evaluating the individual request. A selective subsidy may be granted if the applicant carries out certain activities such as film plan development, preparation of film production, film production, film distribution, and film copy renovation and archiving. The granting of this type of subsidy is subject to the characteristics of the film (in particular script, budget, artistic value, the identity of the authors, producers, and actors of the film) or to the nature of other objectives to be supported.

Selective subsidies sought for the purpose of *producing films* may be disbursed only if the producer who has requested the subsidy has:

- (i) a production and budget plan having reached an appropriate level of completion required for starting production;
- (ii) coverage for the budget for producing the film calculated without the subsidy requested; and
- (iii) consent from the holders of copyright and neighbouring rights for film dramatisation and the distribution of the film, and/or agreements with respect thereof.

In addition to meeting the requirements of (i) and (ii) above, selective subsidies sought for the *production of co-production films with Hungarian participation* may be disbursed only if the Hungarian film producer has title of ownership to the first original negative or an original copy suitable for reproduction of the film and/or is entitled to make a copy thereof that is suitable for presentation. For co-production films with Hungarian participation, the condition defined in paragraph (iii) above has to be met in respect of one of the producers of the film.

(2) Normative Subsidies

A normative subsidy is granted to a film producer or film distributor if they meet the conditions specified in the Film Act or those which are announced by the supporting body. In this case, the applicant is entitled to the subsidies after it has passed through a formal application procedure.

Film producers are entitled to a normative subsidy at the time of producing their new films, if the reference (a previous) film produced by the producer - or directed by a director employed by the producer - reaches a certain number of cinema viewers or is invited to or nominated at or receives an award in a specified film festival. If the producer of the film that serves as the basis of normative subsidy (reference film) employs the director of the reference film for also producing its next film, the producer will be entitled to the entire normative subsidy, which must be spent on producing the new film. If the producer of the reference film does not employ the director of the reference film

for producing its new film, the producer of the reference film and the producer of the new film directed by that director will be entitled to the normative subsidy at a proportion of 50% each, which they must spend on producing their new films. Film producers may use a normative subsidy only once after each reference film for producing one film, except where the subsidy has not been used to produce such new film. In this case, the producer is entitled to the remaining amount at the time of producing any following film(s).

Film distributors are entitled to normative subsidies for the distribution of Hungarian films and co-production films with Hungarian participation and of films classified as "art", and for the operation of cinemas classified as "art". The classification of "art" film or cinema is granted by the National Film Office at the request of a producer or distributor.

(3) **Structural Subsidies**

A structural subsidy is granted by the supporting body to applicants with the purpose of fulfilling motion picture industry objectives throughout several years or each year in the same manner, provided that the applicant complies with the conditions specified by the supporting body throughout the entire duration of support.

RATES OF SUBSIDIES

The rate of direct subsidies available may be 80% of the production budget of the film for Hungarian films, and 80% of the share to be borne by the Hungarian film producer out of the budget of a co-production film with Hungarian participation. A subsidy may amount to 100% of

the production cost of the film, or the budget share to be borne by the Hungarian film producer, if the applicant confirms (to the satisfaction of the Public Foundation) that:

- (i) the funds required for producing the film supported cannot be provided otherwise;
- (ii) the subsidy is especially justified for the purposes of the Hungarian culture and language; and
- (iii) the production cost of the film, or share of the production cost to be borne by the Hungarian film producer, does not exceed the limit of the subsidy amount that may be granted for the production of one film.

A direct subsidy may also be granted to Hungarian films and co-production films with Hungarian participation as well as other films with Hungarian participation which include a minority financial contribution by the Hungarian film producer and may be deemed to be European co-productions based on an international agreement. The rate of direct subsidy granted to a film that contains the minority financial contribution of a Hungarian film producer and may be deemed to be a European co-production based on an international agreement is based on the proportion of Hungarian participation in the supported film, and may not exceed the maximum amount which may be granted for the Hungarian proportion of the total of the invested sum.

SUPPORTING BODIES

A supporting body is an organisational institution that provides support to motion picture industry objectives. The Film Act provides for the establishment of *three* main bodies serving these aims and supporting private entities and natural persons to plan, to produce, or to distribute films which are deemed worthy

of support. The bodies must act and allocate resources from the state budget pursuant to the general principles defined by the Film Act. These principles are the promotion of stability of the Hungarian motion picture industry, making the utilization of public funds more efficient and controllable by ensuring predictability, increasing the number of Hungarian films and films produced with Hungarian participation and making the production, and financing of films easier to plan.

(1) The Motion Picture Public Foundation of Hungary
(Magyar Mozgóképek Közalapítvány)

Powers and Tasks

The "**Public Foundation**" is the entity responsible for allocating subsidies and it determines the rules pertaining to the principles and conditions of application and support defined by the Film Act.

The tasks of the Public Foundation are in particular:

- (i) to operate the system for distributing state budget resources provided to it and revenue from other sources;
- (ii) to elaborate principles for applications, with particular regard to the equality of opportunities for applicants, the clarity, transparency and comparability of applications, and to the items listed below:
 - ensuring the continuous presence of the Hungarian film art and industry in the domestic and the European film market as well as markets outside Europe;
 - promoting the distribution of Hungarian and universal film culture in Hungary;
 - supporting the preservation and

- protection of films; and
- supporting training and scientific activities within the film industry; and

- (iii) to continuously monitor and control the completion of films and the achievement of other supported objectives starting from the granting of support.

The Public Foundation will publish (in the Official Cultural Gazette), by the end of February in each year, its plan for tender applications for the given year, determining the objectives of the motion picture industry it wishes to support during the given year together with the limit amounts for each tender, as well as the conditions for normative subsidies.

Composition

The Public Foundation was established by the government and by organizations of the motion picture industry. The executive body of the Public Foundation is the Board of Trustees, which manages the Public Foundation's assets with exclusive powers, and decides on the use of assets in accordance with and in the interest of the Public Foundation's purposes. The chairman and members of the Board of Trustees are appointed by the founders of the Public Foundation for a term of three (3) years and nominated by the founders and appointed by the Minister for National Cultural Heritage (the "**Minister**"), with the Government's approval.

(2) Motion Picture Co-ordination Council
(Mozgóképek Koordinációs Tanács)

Powers and Tasks

In order to co-ordinate the utilization of resources that serve to support the motion picture industry, the Minister has established the Motion Picture Co-ordination Council (the "**Co-ordination Council**") which is responsible for

the co-ordination of applications for subsidies and has certain other organizational and promotional tasks. The Co-ordination Council makes decisions in the form of agreements between its members and in the form of recommendations which have no binding force on third parties.

Its tasks are, *inter alia*, the:

- (i) co-ordination of applications for subsidies;
- (ii) preparation of an application calendar; and
- (iii) promoting the involvement of the motion picture industry in the international application system.

Composition

The Co-ordination Council is a consultation body convened by the Minister, to which several institutions and organizations are entitled to delegate representatives, including the Public Foundation, the National Radio and Television Board and the public television broadcasters.

(3) National Film Office *(Nemzeti Filmiroda)*

Powers and Tasks

Administrative tasks relating to the operation of the Co-ordination Council are performed by the Film Office. As a central administration agency, it also performs public administration tasks relating to the functioning of the motion picture industry, in the course of which it performs statutory, control and service provision activities.

The tasks of the Film Office are, *inter alia*, to:

- (i) classify films into the categories entitled Hungarian film, co-production film with

Hungarian participation, or film with other Hungarian participation;

- (ii) certify eligibility for using subsidies;
- (iii) register those entities that apply or have applied for subsidies;
- (iv) maintain records of organizations and films that require support under the Film Act, as well as of the films to be distributed;
- (v) classify films in accordance with the Film Act in order to protect minors;
- (vi) register all films for the preparation or production of which state subsidies have been used;
- (vii) provide legal assistance and advice to natural persons and organisations who contact the Film Office on issues related to film production; and
- (viii) comment on filming and other agreements related to film productions submitted to it.

Registration with the Film Office is a condition for being granted subsidies which may also only be utilized if the Film Office has issued a respective certificate. Any natural person who is a Hungarian citizen, any individual entrepreneur who is resident for the purposes of the Income Tax Act, any legal person or business company without legal personality having its registered office in Hungary may request to be registered if they wish to receive direct or indirect state subsidies.

Composition

The Film Office is established by the Minister and headed by a director who is appointed by the Minister.

APPLYING FOR SUBSIDIES

a) *Registration with the Film Office*

As noted above, in order to receive subsidies from the Public Foundation, applicants must first register with the Film Office which has the task of classifying the film into the categories of *Hungarian film, co-production film with Hungarian participation, or films with other Hungarian participation*. This registration procedure usually takes around 30 to 50 days. The classification obtained is based on the score achieved according to the provisions of the Film Act and is normally received within 7 days of the applicant's request.

b) *Application to the Public Foundation*

Once the Film Office's decision and certification is obtained with respect to the classification of the film, such decision, along with the application form for the subsidy, must be filed with the Public Foundation. The applicant may only apply for subsidies within the scope and framework of the tender applications published for the given year by the Public Foundation.

The rules for the respective tenders determine what documents must be submitted together with the application. The general conditions for the 2005 tenders contain detailed rules of the specific tender with respect to persons who are excluded from the tender, conditions to be fulfilled by the applicant, fees, notifications on the Public Foundation's decisions, and detailed rules concerning the agreement to be concluded with the Public Foundation. In order to successfully obtain a subsidy (and to execute the Support Agreement), the applicant has to be entitled, it has to submit complete documentation, and it has to obey the deadlines and pay the fees.

The application forms are available in

Hungarian only, and the application must contain, among others, a company data extract, balance sheet, the Film Office's confirmation that the applicant has been registered and the statement of account which confirms that the application fee has been paid. Certain declarations of the applicant have to be attached as well.

With respect to the Support Agreement (the agreement concluded between the Public Foundation and the supported entity), it should be noted that such agreement has to be concluded within twelve months from the decision of the Public Foundation on the granting of the subsidy. The Support Agreement has to contain a declaration of the applicant that it will show the Public Foundation as supporter of the film on advertising media or in the course of distributing or publishing the film.

As the Public Foundation agrees to grant support only with regards to certain aims and to cover only certain types of expenditures, the Support Agreement will naturally contain respective stipulations with regard to such issues. The Support Agreement will also cover issues like the disbursement and the instalment of the disbursement of the subsidies. If the applicant wishes to conclude a subcontracting agreement with a value in excess of HUF 1 million (EUR 4,000) in the course of utilizing the subsidy, it must notify the Public Foundation of same. The Public Foundation will also seek to incorporate the securities granted by the applicant for obtaining subsidies into the Support Agreement. The applicant, having received subsidies from the Public Foundation, is obliged to account for the use of such subsidies pursuant to the provisions on the administration of the subsidies.

Certain basic documents must also be filed with the Support Agreement, including:

- documents that provide information about the budgets of both the implementation of

the entire project and of the utilization of the disbursed subsidies;

- documents that are contained in the rules of the respective tenders; and
- certifications of the competent Hungarian State Tax Authority, of the municipality in which the company has its registered seat and of the Hungarian Customs and Finance Guard which certify that the applicant has no debts with such authorities.

c) *Fees*

The amount of fees charged for submitting an application depends on the amount of subsidies requested and currently varies between HUF 6,000 (EUR 24) + VAT (for a subsidy in the amount between HUF 501,000 and HUF 1,000,000) and HUF 240,000 (EUR 960) + VAT (for a subsidy in the amount between HUF 150,000,001 and HUF 200,000,000). For a subsidy up to HUF 500,000 no fees are charged at all.

CURRENT TENDERS FOR CO-PRODUCTION FILMS

The 2005 tender with respect to subsidies for co-production films is open until December 19, 2005, however production of the film must commence in 2005 and must be completed by May 31, 2006. The subsidies in this category are available to Hungarian film producers who are registered with the Film Office for film productions of at least 70 minutes. The maximum amount of subsidy that may be disbursed is HUF 60 million for a co-production with Hungarian participation, and HUF 30

million for other films with Hungarian participation.

A *co-production film with Hungarian participation* is defined as a co-production film in which Hungarian participation reaches at least 30 points based on the classification table set out in the Film Act (the "**Classification Table**") and the share of the film's budget to be borne by the Hungarian film producer reaches twenty (20) per cent., for bilateral co-productions, or ten (10) per cent., in the case of multilateral co-productions, unless otherwise provided by a bilateral or multilateral international agreement. "*Other films with Hungarian participation*" are films in which Hungarian participation reaches at least 15 points based on the Classification Table and are not deemed to be co-production films with Hungarian participation.

The current tender contains detailed conditions and rules for submitting the application, e.g. detailed list of documents that have to be attached to the application, the number of copies of such documents and the warranties which the applicant must give (e.g. ownership rights, etc). The timeframe for the Public Foundation to decide on submitted applications depends on the date at which the applicant submits his complete application. The Public Foundation will typically make a decision by the end of each quarter with respect to the granting of the subsidy if the applicant submits its application by the 15th day of the respective quarter.

For additional information on tenders, please visit the website of the Public Foundation at <http://www.mmka.hu> which is partially available in English.

The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters. Queries relating to this article should be addressed to the authors at:

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