

# Producer Recoupment

## Arrangements for Irish producers to share in revenues from films in which Bord Scannán na hÉireann / the Irish Film Board is an investor

### Preamble

For the purposes of its own discussions Bord Scannán na hÉireann / the Irish Film Board (BSÉ/IFB) introduced a definition that acts as a useful shorthand in analysing this issue, and it has been adopted in the course of discussions with stakeholders.

We assume the word ‘corridor’ to be familiar to producers as a means of describing an entitlement to revenues that runs alongside other parties’ entitlements, the width of a given corridor being the percentage of revenues to which the party in question is entitled.

The arrangements set out here comprise two distinct means by which producers are enabled to share in revenues from a film (or TV project) while BSÉ/IFB is still recouping its investment: first, by sharing in BSÉ/IFB’s own revenues, so that part of what would normally flow to BSÉ/IFB towards its own recoupment flows to the producer instead; second, by receiving a share of the film’s overall revenues in addition to and alongside revenues that are flowing to BSÉ/IFB and any other investors.

We refer to the first as an ‘internal corridor’ and to the second as an ‘external corridor’.

It will be clear that a general and binding agreement between BSÉ/IFB and producers can be concluded in relation to internal corridor arrangements, where other investors are unaffected by the share granted to producers. But this is not possible in relation to external corridor arrangements which will impact on other investors and will have to be agreed case by case.

BSÉ/IFB can however give general agreement to an external corridor arrangement where BSÉ/IFB is the only investor entitled to recoup (specific instances of this are dealt with below) and in certain other circumstances (also dealt with below) will be ready to use its best efforts to enable a producer to benefit from an external corridor.

Note: While we are aware of producers’ entitlements in other countries with regard to recoupment of their own investments, with the internal corridor arrangements described here in place it is highly unlikely that BSÉ/IFB will be prepared to support a producer’s claim to receive any revenues in a prior position to itself.

## Arrangements

A single approach is applied to all types of film, i.e. features, documentaries, animation and TV drama, and all types of production and co-production, resulting in one basic principle which obtains for all deals with BSÉ/IFB – albeit with variations in a small number of particular cases.

### Internal Corridor

- 1 The Irish producer of a film (or TV project) in which BSÉ/IFB invests is entitled to an internal corridor of 50%. In effect, half of the money invested by BSÉ/IFB is considered as money invested by the producer: up to the point of recoupment, returns on the investment are shared equally between BSÉ/IFB and the producer. BSÉ/IFB is deemed to have recouped when it has earned back half of its investment, the other half having been received by the producer.
- 2 The internal corridor will not apply to net profits. BSÉ/IFB's share of net profits will continue to be based on its entire investment, while the producer's share will be as traditionally agreed – 50% of 100% as a basic rule, or however the financing structure allows. For the avoidance of doubt, monies received by producers from internal corridors will not be on account of future profits.

### External Corridor

- 3 BSÉ/IFB will use its best efforts in relation to other investors to enable a producer to secure a *pro rata pari passu* position alongside recoupment of BSÉ/IFB's own investment for recoupment of:
  - (a) any cash investments made by the producer in the production, as examined and approved by BSÉ/IFB;
  - (b) any deferments of *bona fide* and reasonable (in the opinion of BSÉ/IFB) fees by producers, production company, director, screenwriters and other individuals directly involved in the film.
- 4 With the internal corridor proposals above in force, BSÉ/IFB will not as a general rule support a request that Section 481 monies or any award from the Broadcasting Commission of Ireland (BCI) be treated as 'producer's equity' and recouped via an external corridor. It will not, however, oppose such a request if recoupment of these occurs after BSÉ/IFB's own recoupment and before net profits, and if other investors agree. The request will not be agreed where BSÉ/IFB is the only investor other than the producer. BSÉ/IFB reserves the right to make recoupment by the producer of a BCI award conditional upon the broadcaster's licence fee being paid at a market rate and not as a nominal figure sufficient to trigger a BCI award.

## Variations

### 5 TV documentaries

BSÉ/IFB is selecting more feature documentaries for support, aiming to promote work that can reach an international and theatrical audience, but is still ready to support a few films on the 'old' 52-minute model in partnership with a broadcaster. In these cases, the existing arrangement whereby the producer benefits from a 30% external corridor alongside BSÉ/IFB will remain unchanged, with no additional internal corridor granted to the producer.

### 6 TV animation

The increasing health of this sector of activity appears to manifest itself in requests for BSÉ/IFB to provide finance that is more akin to cashflow than to equity investment: producers seem keen to be able to secure finance from BSÉ/IFB as a means of encouraging presales, and keeping production on track while presales are nailed down, but much less keen to grant BSÉ/IFB a share of the long-term or ancillary value of a project, i.e. profits, merchandising revenues, etc. Producers now have a choice, therefore, between accepting that BSÉ/IFB is an equity investor with the expectations that go with that, or alternatively availing of BSÉ/IFB finance on a banking basis.

Where BSÉ/IFB is the only party (other than the producer) providing finance that is not set against specific rights, BSÉ/IFB's money may EITHER:

- (i) be recouped as a typical equity investment from all audiovisual and ancillary revenues, with a 50% internal corridor granted to the producer, with an external corridor granted for recoupment of any producer's investments and deferrals, and with BSÉ/IFB entitled to a profit share (from all revenues) based on its investment; OR:
- (ii) be recouped as 'gap' finance in absolute first position from 100% of all net revenues from all sources, together with a premium of 20% but with no entitlement to a profit share; no internal corridor will be granted and any producer's investments and deferrals will be recouped after BSÉ/IFB has received both principal and premium.

### 7 Completion funding

This type of support is subject to increasingly rigorous assessment and not offered on a 'soft' financial basis. In principle any BSÉ/IFB investment will be provided as last-in-first-out money, to be recouped in absolute first position from 100% of all net revenues, with a 25% internal corridor granted to the producer. The aim here is to allow a producer some participation in revenues which can be made available to previous investors if necessary.

### 8 Catalyst Project

Special arrangements apply to the production of films under this scheme, reflecting the exigencies created for producers and all involved in the making of a film on an ultra-low budget, and the fact that BSÉ/IFB is providing the great majority of the recoupable finance. Effectively a 75% internal corridor will be granted so that, of all net revenues, 50% will be paid to producer, director and writer however they agree among themselves, 25% will be paid to cast and crew members as agreed with the producer, and 25% will flow to BSÉ/IFB (and Filmbase) towards recoupment of investment; profit shares will be on a similar basis.

#### 9 Regional Support

Recoupment of this type of funding will occur after recoupment of other BSÉ/IFB production funding and will not include an internal corridor for producers.

## Mechanism

The share of revenues due to producers under these arrangements will normally be paid – by the collection agent where one is appointed – directly to the producer's account or as the producer instructs. In exceptional cases, by agreement between BSÉ/IFB and the producer, BSÉ/IFB will collect the producer's share of revenues and pay it to the producer within 30 days of receipt by BSÉ/IFB.

## Effective Date

The Producer Recoupment arrangements set out above become effective on 1<sup>st</sup> July 2007. Films (and TV projects) where financing contracts with BSÉ/IFB were entered into before that date will not benefit from the arrangements.

BSÉ/IFB reserves the right to modify or suspend these arrangements (with due notice given to the industry) and in any event will review their operation and effects within two years of the date above.

**15/6/07**