

Canadian Content

Co-Ventures

Treaty Co-Production

	Canadian Content	Co-Ventures	Treaty Co-Production
Incentives Available	<p>Federal Canadian Content Tax Credits and Provincial Canadian Content or Services Tax Credits</p> <p>Enhanced Canadian Broadcast License Fees.</p> <p>Private and public discretionary funding</p>	<p>Federal Canadian Services Tax Credits and Provincial Services Tax Credits</p> <p>Enhanced Canadian Broadcast License Fees.</p>	<p>Federal Canadian Content Tax Credits and Provincial Canadian Content or Services Tax Credits</p> <p>Enhanced Canadian Broadcast License Fees.</p> <p>Private and public discretionary funding</p>
Approving Authorities	Canadian Audio Visual Certification Office (“CAVCO”)	Canadian Radio-Television and Telecommunications Commission (“CRTC”)	CAVCO, upon the recommendation of Telefilm Canada (“Telefilm”)
Development of the Production	The Canadian producer must develop the production.	No requirement that either of co-venturers has developed the production. However, one of them must own the underlying rights necessary to produce and exploit the production.	The co-producers must significantly develop the co-production. The co-producers must also own the rights necessary to produce and exploit the co-production.
Copyright Ownership	The Canadian producer must own 100% the copyright.	There is no requirement that the Canadian co-venturer own the copyright.	The copyright ownership in the production should be split among the co-producers in proportion to their relative financial contributions.
Financial Control	The Canadian producer must produce the project and have financial control.	<p>Canadian co-venturer must have a financial participation of at least 50% in the co-venture.</p> <p>Canadian co-venturer must have sole or co-signing authority over the production bank account and the payment of the Canadian elements.</p>	Each treaty sets out the minimum financial participation of the co-producers.
Creative Control	The Canadian producer must produce the project and have creative control.	Creative control must be shared equally between the Canadian co-venturer and the non-Canadian co-venturer.	Creative and technical participation must be in proportion to the financial contribution of each co-producer. For example, if the Canadian co-producer contributes 40% of the total budget, then 40% of the key creative and technical positions must be filled by Canadians.

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Spend Requirements

75% of all service costs (generally, below the line costs) must be paid to Canadians.

The following costs are excluded from the 75% calculation:

- costs determined by reference to the amount of income from the production;
- Remuneration for producer(s) and co-producer(s) (except for producer-related positions);
- Amounts paid to key creative personnel eligible for points;
- Post-production costs; and
- Amounts paid in respect of Accounting fees, legal fees, insurance and financing costs.

75% of all post production/lab costs must be paid for services provided in Canada by Canadians or Canadian companies.

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- Amounts paid to key creative personnel eligible for points;
- Post-production costs;
- Amounts paid in respect of Accounting fees, legal fees, insurance and financing costs;
- Indirect expenses; and
- Contingency cost.

75% of all post production/lab costs must be paid for services provided in Canada by Canadians or Canadian companies.

If the co-venture is with a country which is part of the Commonwealth, French-speaking or has a co-production treaty with Canada, the expenditure requirements are reduced to 50% for both services and post production work.

All financing received from Canadian individuals and companies must be used in priority for the Canadian expenditures.

Generally, the expenditures in each co-producing country should match the financial contribution of the applicable co-producer and they cannot be less than the minimums in the treaty.

Location shooting in a third country may be allowed if required for the script.

No studio shooting will be allowed in a third country, unless an exemption is obtained.

Exploitation Rights – Canada

The Canadian producer must retain all Canadian exploitation rights.

The Canadian producer is not required to retain all Canadian exploitation rights, however in practice, this is what happens in most cases.

The Canadian co-producer must retain all Canadian exploitation rights.

CAVCO Points Test

The production must achieve at least 6/10 points for Canadian personnel.

The production must achieve at least 6/10 points for Canadian personnel on the same basis as for a Canadian Content production, subject to the

There is no points test applicable to co-productions, however the general rule is that all personnel must either be from Canada or the co-producing country, subject to the

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Either the Director or the Screenwriter, and either one of the two lead performers must be Canadian citizens or permanent residents, but can reside outside of Canada.

No points will be allotted for a Canadian who shares the functions of a key creative position with a Non-Canadian.

For the lead performer, CAVCO looks at remuneration (including perks), credit and screen time in making this determination.

To obtain the points for the position of screenwriter, each individual involved in the preparation of the screenplay for the production must be Canadian. This means that all the individuals engaged in developing the screenplay from outline or treatment through drafts, polishes to the final shooting script must be Canadian.

exception below.

If the co-venture is with a country which is part of the Commonwealth, French-speaking or has a co-production treaty with Canada, the points test is reduced to 5 out of 10. Even in this case, the Director or the Screenwriter and at least one of the two lead performers must be Canadian.

following:

(i) if the co-production is with an EU member country, the citizens of any EU country may qualify;

(ii) 1 lead performer and 1 cameo performer may be from a third country in the case of a feature film. This number increases for television series over 7 episodes; and

(iii) additional exceptions, on a case by case basis, approved by Telefilm and the other co-production authority where the participation of the personnel is indispensable to the financing or commercial success of the project, subject to treaty provisions.

Telefilm also has an evaluation grid which measures creative and technical balance.

Producer Credits

All positions related to the producer function must be held by Canadians, unless an exemption for a foreign courtesy credit has been granted by CAVCO. Note that no exemption will be granted for the functions of producer, co-producer, line producer or production manager, as these positions must be held by Canadians

Producer credits are not limited to Canadian co-venturer. Producer credits should be balanced between Canadian and non-Canadian producers.

Only the Canadian and foreign co-producers may get producer credits.

Producer-related Credits

Non-Canadians granted a producer related screen credit (other than producer or co-producer, which is not allowed under any circumstances) are limited to being on set for a maximum of 25% of principal photography (other than for a lead performer, or an individual working in the story department, or a show-runner, which may be on set for

A non-Canadian producer can receive producer-related credits (i.e. executive producer, associate producer, supervising producer, production executive, supervising executive).

See below.

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	more than 25%).		
Courtesy Credits	<p>An exemption for a foreign courtesy credit for non-Canadians not providing services may be granted by CAVCO only where the functions do not interfere with the financial and creative authority of the Canadian producer, and relate to broadcast, distribution or financing, or the provision of services under the script supervision and control of the Canadian producer. An affidavit to this effect must be submitted.</p> <p>A Non-Canadian Show runner must submit a non-Canadian Show runner Affidavit (see attached) declaring that any work performed is done under the direction and control and with the full knowledge of the Canadian producer.</p>	No restriction on granting of courtesy credits.	<p>Third country persons may receive producer-related courtesy credits provided:</p> <p>(i) the total number of producer-related credits granted to third country persons does not exceed the number of similar credits granted to persons from the co-producing countries; and</p> <p>(ii) third country individuals receiving producer-related credits sign an affidavit stating that they were not on set for more than 25% of principal photography, they exercised no authority in respect of the co-production and they received no remuneration.</p>
Profit Participation	The Canadian producer must retain an acceptable share of revenues from the exploitation of the production outside of Canada (i.e. not less than 25% of net profits derived from the non-Canadian markets).	The Canadian co-venturer must receive at least 50% of the share of profits from the exploitation of the co-venture	Profits will be allocated in proportion to the financial contribution of the applicable co-producer.