

## 6 WAYS TO FINANCE A FEATURE FILM PROJECT

(in order of complexity of transaction, simplest first)

*Gordon P. Firemark, Esq.*

### 1. Rich Uncle Guido

- (a) Personal or family funds contributed on a non-recourse basis.
  - i. Gift, not an investment. Funds are contributed without any expectation of a return, profit, etc.
  - ii. Generally only applicable to calling-card, resume' and vanity projects

### 2. Single Active Investor

- (a) One (or very few) investors contribute under a relatively simple contract, with an expectation of a return on investment if the project is commercially successful.
- (b) Investor is essentially a Partner in the project and;
  - i. bears personal financial liability for debts, overages, etc.
  - ii. is entitled to actively participate in the management of the enterprise (meaningfully involved in the day-to-day operations)

### 3. Studio (In House)

- (a) Sell the project to a major or mini-major studio.
  - i. Studio takes control
  - ii. Studio finances the development, production, etc.
  - iii. Studio is the Owner/producer of the project.
  - iv. you, (the seller) are typically given money and credit, but your level of direct involvement will vary depending on your experience, bargaining power, etc.

### 4. Studio Production/Finance/Distribution Deal

- (a) Producer (you) funds acquisition of rights, development (rewrites, etc), and "packages" the project for sale to a studio.
- (b) Studio agrees to finance the production, with you as producer, subject to oversight from studio executives, etc.
- (c) Studio typically dictates most of the key elements, personnel, etc.
- (d) Studio has take-over rights if project goes over-budget, etc.
- (e) Studio controls the distribution of the project.
- (f) You receive credit, compensation and some degree of control up until you deliver the picture.

### 5. Negative Pick-Up

- (a) Producer (you) pre-sells the distribution rights to the Picture to one or more distributors.
- (b) These contracts (promises to pay for distribution rights upon delivery of completed film) are the collateral for bank loans to finance the production.
- (c) Bank lends *at a discount*. So, a \$1 Million commitment from distro might only support a \$900,000 loan. So, you need to oversell the budget in order to secure full financing.
- (d) Alternatively, it may be possible to obtain GAP INSURANCE to make up any shortfall if the project doesn't pay off its debt.

### 6. Equity/Investor Financing

- (a) Producer prepares a business plan for the film, offering investors the opportunity to buy

shares of the equity in the project.

- (b) Investors are purely “passive” (i.e., have no right to control or manage things)
- (c) Investors are protected from liability. The most they stand to lose if the film is a failure, or incurs other liability is the amount they've invested.
- (d) Passive investment structures are considered “Securities” under State and Federal law. Securities laws are designed to protect investors against fraud.
  - i. General Rule – Securities offerings must be registered with the SEC
  - ii. Exemptions exist for certain kinds of small, private offerings.

#### A. Factors

- “PRIVATE” offering – no advertising
- Amount of money sought (\$1M/\$5M)
- Number of Investors (can't approach more than 35 non -accredited)
- Wealth / Sophistication of Investors

#### B. Requirements

- Full Disclosure – A “Private Placement Memorandum” (often called a 'prospectus' or an 'offering circular' must be prepared.
- PPM is NOT the same as a business plan. The Business Plan is a component of the PPM.
- PPM must disclose all 'material facts' which might influence an investor's decision to participate. The Good, the Bad and the Ugly.

#### C. Components of PPM

- Highlights of Offering – price, percentage, etc.
- Risk Factors – the Bad and Ugly
- Blue Sky Notices (State law disclosures)
- Business Plan
  - Who, What, Where, When, Why
  - Financial Projections (careful disclaimers)
- Use of Offering proceeds (how will you spend the money?)
  - Budget is a good start
  - Operating expenses of the Company
- Terms of investment (details) – how will investors see profits, if any? (more disclaimers)

NOTE: Even when exempt from registration, the Anti Fraud requirements of the Securities Act mandate that all material facts be disclosed, and the PPM contain no false or *misleading* information. Violation can have serious repercussions, including fines, prison, etc. Even if the government doesn't go after you, an investor who's been 'taken' can cancel the investment contract and demand his/her money back, with interest, etc.