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## **Film Financing through Co-production Treaties - The Legal Implications.**

As South Africa becomes more attractive as an international filming destination greater financing options are also becoming available. An innovative option is that of structuring a film production as an 'Official South Africa Co-production' in terms of the various co-production treaties being concluded by South Africa, which are aimed at encouraging foreign film producers to work with producers from South Africa on joint projects. The benefits are that the film will qualify as an official production in each of the co-producing territories and therefore take advantage of incentives or benefits available in both countries.

Chris Christodoulou, partner of a local law firm Christodoulou Mavrikis & Comninos Inc which has a dedicated film and media law division says that South Africa has to date signed bilateral co-production treaties with Canada and Italy. It is in the process of finalising a further treaty with Germany and has Memorandums of Understanding with India, Sweden and France and will be entering into talks with Australia in the next few months. By becoming party to further treaties not only will South Africa gain favour worldwide as a film destination but local SA producers will have access to a larger amount of financing and distribution options available from the partnering territories.

An exciting new prospect in SA Christodoulou remarks, is the recently launched Department of Trade and Industry (DTI) film incentive, which will encourage further co-production films being made here. Under this incentive an eligible applicant will be rebated 15% for foreign productions or 25% for qualifying South African Productions including official co-productions for Qualifying South African Production Expenditure ('QSAPE') that the applicant has spent on film production in SA. Linking this incentive to other sources of finance available in SA will make SA a very attractive filming location and worldwide source of film finance.

The issue for producers is finding a balance between the benefits available in each territory and the cost of accessing those benefits locally as well as structuring the finance and production package. The legal documentation alone requires a multitude of contracts and lawyers from up to 3 co-producing countries to collaborate on both the legal and financial structure of each deal according to Christodoulou. Co-producing agreements, actor's agreements, financing agreements and production services agreements must be concluded with each co-producer. Further documentation has to then be submitted to each local competent authority, which includes strict adherence to the requirements of each official treaty. Issues such as minimum spend in and amount of finance raised in and from each territory as well as the tax implications need to be carefully dealt with. At each stage of the process full co-operation between co-producers and legal representatives in the financing process is vital. As each co-producer will be sourcing funding from different parties it is vital that all the funding comes together and closes at the same time, keeping in line with deadlines and contractual financing requirements.

In order to access funds out of non-treaty countries, such as the UK, South African producers can structure more complicated multi-lateral co-productions. Co-producers may use 2 treaties together to link co-producers from more than 2 countries which are signatory to those treaties ensuring that the requirements of both treaties are met. An example of this would be to structure a multi lateral co-production between SA / Italy / UK. SA has the treaty with Italy and Italy has a treaty in place with the UK. Furthermore under the UK / Italian treaty allowance is made for a minority producer to participate with a 'Financial Only' contribution whereby the participation of the minority co-producer may be financial only