



**the dtic**

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

## PROGRAMME GUIDELINES

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# Foreign Film and Television Production and Post-Production Incentive

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**Issued: September 2023**

*Film and Television Production Incentives Programme  
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## **1. Preamble**

- 1.1 The purpose of this document is to detail the guidelines for the Department of Trade, Industry and Competition's (**the dtic's**) Foreign Film and Television Production and Post-Production Incentive Programme.
- 1.2 The guidelines set out in this document are intended to enable enterprises to present their applications and claims to **the dtic** and provide a framework for **the dtic** to evaluate such applications and claims.
- 1.3 The granting of the incentive or approval of the application will only be for entities that meet the objectives of the incentive programme as set out by these guidelines. To qualify for the incentive, applicants have to receive an outcome from **the dtic**.
- 1.4 The guidelines may be amended from time to time, as deemed necessary by **the dtic**. These amendments will be published on **the dtic** website, and will be of immediate effect upon publication thereof.
- 1.5 Where the guidelines lend themselves to varying interpretations or do not deal with a specific subject matter, the interpretation of **the dtic** must be requested and such interpretation will be decisive and final; and may be published on **the dtic's** website.
- 1.6 The submission of an application by the prospective applicant does not give rise to an automatic approval but offers an opportunity for the assessment and for the applicant to receive an outcome from the department.
- 1.7 The approval of applications will be subject to the availability of funds, compliance with the incentive guidelines and relevant provisions of the Public Finance Management Act.
- 1.8 The approval of an incentive application does not give the Beneficiary any right to payment. An approval merely allows the Beneficiary to submit a claim form in accordance with the requirements and conditions of the incentive guidelines.

## **2. Services Delivered by the dtic**

- 2.1 No fees or charges are levied for the processing or evaluation of any Foreign Film and Television Production and Post-Production Incentive Programmes applications or claims.

- 2.2 Applicants are welcome to contact **the dtic** directly and the relevant officials will provide guidance on how to complete the application or claim forms.
- 2.3 It is the responsibility of the applicant to ensure that the application and the claim submitted to **the dtic** is accurate and complete.

### **3. Programme Description**

- 3.1 The Foreign Film and Television Production and Post-Production Incentive Programme is aimed at strengthening and promoting the country's film and television industry as well as contributing towards the creation of employment opportunities in South Africa.
- 3.2 The objectives of the Foreign Film and Television Production and Post-Production Incentive, are to attract foreign film and television productions and post-productions that will contribute towards employment creation, local procurement and enhance the international profile of the South African film and television industry while increasing the country's creative and technical skills base. The incentive is designed to address the historical imbalances in the sector and ensure diversity and inclusion at all levels of production including ownership and control.
- 3.3 The Foreign Film and Television Production and Post-Production Incentive is available to foreign-owned qualifying productions and post-productions as follows:
  - 3.3.1 The Qualifying South African Production Expenditure (QSAPE) should be at least R15 million<sup>1</sup> for shooting on location in South Africa; and
  - 3.3.2 The Qualifying South African Post-Production Expenditure (QSAPPE) should be at least R1.5 million for conducting post-production activities in South Africa.
- 3.4 The Foreign Film and Television Production and Post-Production Incentive provides an incentive of twenty-five percent (25%) of the Qualifying South African Production Expenditure (QSAPE).
  - 3.4.1 An additional incentive of five percent (5%) of QSAPE is provided for productions conducting post-production in South Africa and utilising the services of a Black-owned production company.
- 3.5 The incentive programme offers a reimbursable grant to the maximum of R25 million per qualifying project.

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<sup>1</sup> *There are separate programme guidelines for the film and television production incentive targeted at promoting locally owned productions and co-productions*

- 3.6 The Foreign Film and Television Production and Post-Production Incentive is effective from 1 September 2023.

### **Post-production**

- 3.7 The Foreign Film and Television Production and Post-Production Incentive provides an incentive of twenty percent (25%) of the Qualifying South African Post-Production Expenditure (QSAPPE) of at least R1.5 million.
- 3.7.1 An additional incentive of two-point-five percent (2.5%) of QSAPPE is provided for spending at least R10 million of the post-production budget in South Africa; or
- 3.7.2 An additional incentive of five percent (5%) of QSAPPE is provided for spending at least R15 million of the post-production budget in South Africa.

## **4. Mandatory Conditions**

- 4.1 The international studio or production company must utilise the services of a South African local production company.
- 4.1.1 The applicant must complete and submit an application prior to commencement of the project anywhere in the world. If a project commences prior to receiving an outcome from **the dtic**, the applicant would have done so at their own risk.
- 4.1.2 Use of multiple subsidiaries to be regarded as production companies is not allowed.
- 4.1.3 Where the project is not fully funded, the applicant must have secured at least eighty percent (80%) of the total production budget at application stage; supported by firm commitment such as concluded agreements and ring-fenced funds in the Special Purpose Corporate Vehicle (SPCV) Bank Account such applications must receive an outcome before commencing with principal photography.
- 4.1.4 The applicant must demonstrate in the financial plan how the full financial closure will be reached for the qualifying project within three (3) months following the grant awarding decision by **the dtic**.
- 4.1.5 Prior to commencing with principal photography the applicant must have secured 100% of the budget following the grant awarding decision by **the dtic** and such proof must be submitted.

- 4.2 The applicant must register a SPCV incorporated in the Republic of South Africa solely dedicated for the production and/or post-production activities of the film and television project to participate in this incentive programme. The SPCV must be wholly owned by the applicant.
  - 4.2.1 The registered SPCV must be a legal entity in terms of the Companies Act, 1973 (as amended) or the Companies Act, 2008 (as amended); the Close Corporations Act, 1984 (as amended) or the Co-operatives Act, 2005 (as amended). Non Profit Organisations and Non-Profit companies are not eligible for the incentive.
  - 4.2.2 The established SPCV must be responsible for all production and/or post-production activities in South Africa and in this regard must have full access to the financial information for the whole production and/or post-production.
  - 4.2.3 The registered SPCV must be utilized for one (1) production and/or post-production for either film, television drama, documentary series or digital content.
  - 4.2.4 The qualifying expenditure and payments made to the third party companies must be settled directly from the primary bank account of the established special purpose corporate vehicle.
  
- 4.3 The principal photography must not commence until an outcome is received from **the dtic**.
  - 4.3.1 The application for post-production must be received before commencement of the online post-production;
  - 4.3.2 The applicant is provided with an additional three (3) months to commence with principal photography from the confirmed commencement date as per application;
  - 4.3.3 The applicant must complete and submit the Confirmation of Principal Photography Form within three (3) working days after the first day of principal photography;
  - 4.3.4 The applicant's failure to adhere to these stipulated timeframes will automatically terminate the approval.
  - 4.3.5 For any changes related to the application, **the dtic** must be notified in writing.
  
- 4.4 Requirement for submission of production distribution agreement:
  - 4.4.1 The applicant must submit all agreements/commitments made with the distribution companies at application stage. These agreements/commitments must have no conditions and must be in line with accepted norms with regards to ownership of rights and exploitation of contents amongst others. The applicant must ensure that all information, contracts and any other underlying information is submitted along with the application for consideration.

- 4.4.2 The distribution agreement signed by the distributor must be submitted to **the dtic** at the time of submitting the claim(s). Failure to submit the valid distribution agreement will render the claim invalid.
- 4.5 The final claim by the production company and SPCV should be accompanied by audited financial statements. The final claim must be submitted to **the dtic** within twenty-four (24) months from receiving an approval decision from **the dtic**.
- 4.6 The applicant must credit the Department for its contribution to the production.
- 4.6.1 Productions are encouraged to include the prescribed logo and wording by **the dtic** in the opening credits for the supported production.
- 4.6.2 The applicant should provide a written confirmation that the Department with the prescribed logo and wording will be included in the production credits for its contribution to the production at application stage.
- 4.6.3 The Department reserves the right to be provided with a protected copy of the production for verification.
- 4.7 The applicant must comply with municipal by-laws regulating the affairs and the services the municipality provides in its area of jurisdiction; and other statutory regulations, where applicable.
- 4.7.1 The applicant must adhere to the minimum wage and legislative requirements governing the sector.
- 4.7.2 The production must not fall within schedules 6, 7 or 10 of the South African Films and Publications Act No 65 of 1996 (as amended) [www.fpb.org.za](http://www.fpb.org.za) and must submit the classification certificate with the final claim.
- 4.7.3 The production must be rated by the Film Publication Board before submitting the final claim to the Department.
- 4.7.4 The applicant must comply fully with its obligations in terms of The Legal Deposit Act, 1997 (Act No. 54 of 1997), where applicable.
- 4.7.5 The applicant must demonstrate that they adhere to an industry specific Code of Professional Standards that includes sexual harassment and health and safety protocols.
- 4.7.6 Failure from an applicant to meet these statutory regulations will deem the production not eligible to receive support from this incentive and as such approvals may be cancelled.

- 4.8 The applicant must procure with regards to the QSAPE a minimum of twenty percent (20%) of qualifying goods and services from entities which are fifty-one percent (51%) black-owned and managed by South African citizens and have been operating for at least one (1) year, as also defined in the B-BBEE Act.
- 4.8.1 A fifty-one percent (51%) black-owned and managed by South African citizens and have been operating for at least one (1) year is defined as:
- 4.8.1.1 An entity where black people hold 51% of the exercisable voting rights as determined by code series 100.
- 4.8.1.2 Black people hold at least 51% of the exercisable economic interests determined by code series 100.
- 4.8.1.2 Has earned all the points for net value under code series 100.
- 4.9 The production company including its holding company, subsidiaries, associates or connected parties can service no more than three (3) active projects before applying for an additional project unless they meet requirement 4.9.1.
- 4.9.1 The company will be allowed to apply for additional projects during the financial year provided that it procures with regards to QSAPE at least thirty percent (30%) of goods and services from entities which are sixty percent (60%) black-owned by South African citizens and have been operating for at least one (1) year.

## **5. Eligibility Criteria**

### **5.1 APPLICANT ELIGIBILITY REQUIREMENTS**

- 5.1.1 Compliance with Broad Based Black Economic Empowerment (B-BBEE)
- 5.1.1.1 The SPCV and Production company must be in compliance with the requirements for Broad Based Black Economic Empowerment (B-BBEE) in terms of the B-BBEE Codes of Good Practice (refer to <http://bee.thedtic.gov.za>);
- 5.1.1.2 The production company must achieve at least a level three (3) B-BBEE contributor status in terms of the B-BBEE Codes of Good Practice;
- 5.1.1.3 The SPCV must achieve at least a level four (4) B-BBEE contributor status in terms of the B-BBEE Codes of Good Practice; and
- 5.1.1.4 The SPCV and Production company must submit a valid B-BBEE Certificate of compliance or B-BBEE compliance scorecard and/or B-BBEE compliance audit report issued by an accredited verification agency or a B-BBEE compliance affidavit at application stage.

**5.1.2 The Broad Based Black Economic Empowerment (B-BBEE) compliance requirement for a Special Purpose Corporate Vehicle (SPCV) and Production company are as follows:**

5.1.2.1 A newly formed company incorporated as a Special Purpose Corporate Vehicles (SPCV) will of necessity in terms of our guidelines, at least, achieve a minimum level four (4) B-BBEE contributor status in terms of the B-BBEE Codes of Good Practice. A SPCV may submit an Exempted Micro Enterprise sworn affidavit at application stage because it might not have any significant trading history, for it to receive a B-BBEE certificate issued in terms of a QSE or Generic scorecard (whichever is applicable). The Production company as the actual applicant for the incentive must submit a valid B-BBEE certificate of compliance issued by an accredited verification agency at application stage.

5.1.2.2 For Production Companies, newly formed (start-up enterprises) or otherwise and SPCV's, a B-BBEE certificate issued in terms of a QSE scorecard is required. This is when tendering for any contract, or when seeking an economic activity (incentive grant) covered by Section 10 of the Act, with a value higher than R10 million but less than R50 million. In the event that the Production company and the SPCV are seeking an incentive greater than R10 million and are unable to provide a B-BBEE certificate issued in terms of either a QSE scorecard at application stage, due to Production company and / or the SPCV being an early stage start-up enterprise, the Production company and / or SPCV is to submit a sworn affidavit which will be considered for support. This is on condition that the applicable (QSE) certificate will be required at the first claim for both the Production company and the SPCV, in line with the Broad-Based Black Economic Empowerment Codes of Good Practice, issued in terms of Section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended. For avoidance of doubt: Submission of a sworn affidavit will be required at application stage but the relevant valid QSE certificate must be submitted at claim stage for the successful processing of the claim.

**5.2 PROJECT ELIGIBILITY REQUIREMENTS**

5.2.1 The Qualifying South African Production Expenditure (QSAPE) must be

5.2.1.1 A minimum of R15 million for all qualifying production formats;

5.2.1.3 At least fifty percent (50%) of the principal photography must be filmed in South Africa;

5.2.1.4 At least twenty-one (21) calendar days of the principal photography must be filmed in South Africa; and

5.2.1.5 For productions with a minimum QSAPE of R100 million, the fifty percent (50%) and twenty-one (21) calendar days requirements may be waived and such discretion will take into account the budgetary implications of the decision made.

5.3 The Qualifying South African Post-Production Expenditure (QSAPPE) must be at least R1.5 million for all qualifying post-production activities:

5.3.1 The post-production activities must be carried out in South Africa for at least fourteen (14) calendar days; and

5.3.2 The post-production minimum days' requirement is waived provided that a hundred percent (100%) of the post-production is conducted in South Africa.

#### **5.4 FORMAT ELIGIBILITY REQUIREMENTS**

5.4.1 The below-mentioned production formats are eligible for support:

<b>Feature film</b>	<b>Television drama series and mini-series</b>
<b>Tele-movies</b>	
<b>Documentary, documentary series and documentary feature</b>	

5.4.2 SPCV owned and/or controlled by South African broadcasters to service international deals.

5.4.3 For further information on the description and requirements for each of the above-mentioned qualifying formats, kindly visit the Department's website on [www.thedtic.gov.za](http://www.thedtic.gov.za), Financial Assistance, Film and Television Production Incentives, Annexure F under Applications Forms and Guidelines.

## **6. Non-Eligibility Criteria**

6.1 The following projects and applicants are not eligible for support:

6.1.1 Speculative projects;

6.1.2 Commissioned projects by a broadcaster. An applicant applying in partnership with a broadcast platform that has control to the extent that the overall content, exploitation and influence over the project is out of the hand of the applicant.

6.2 The following formats are not eligible for support:

<b>Reality television</b>	<b>News</b>
<b>Discussion programmes</b>	Advertising programmes or commercials
<b>Current affairs</b>	Video gaming
<b>Panel programmes</b>	Variety programmes
<b>Public and sport events</b>	Training and corporate videos
<b>Speculative projects</b>	Pilots
<b>Soapies</b>	Telenovelas
<b>Music videos</b>	Talk shows
<b>Adult content</b>	Content that promotes hate speech, incitement of violence, propaganda for war, child abuse and child pornography and bestiality
<b>Other<sup>2</sup></b>	Anything not film related

## 7. General Conditions

- 7.1 The applicant must present in detail the total production and/or post-production expenditure with each application submitted.
- 7.2 The incentivised expenditure directly related to the production and/or post-production activities should be incurred in South African Rand.
- 7.2.1 The expenditure incurred in a foreign currency must be accounted in South Africa Rand using the budgeted exchange rate on the audited financial statements.
- 7.2.2 The applicant must discharge all production and post-production costs through the primary bank of the SPCV.
- 7.2.3 Failure in adhering to this requirement, will result in a deduction of expenditure item(s) from the value of QSAPE or QSAPPE for the purpose of calculating the incentive amount during the claim period.
- 7.3 The expenditure amounts provided by the applicant in applications must be net of Value Added Tax (VAT).
- 7.4 The expenditure amounts charged between the applicant company and any connected parties for the provision of goods or services should be commercially reasonable
- 7.4.1 In instances where an applicant inflates costs, commercial rate will be counted for the purpose of calculating the incentive amount during the claim period.

<sup>2</sup> Refers to new and old non-eligible formats that are different in nature or distinct from the ones already mentioned in the list or known about by **the dtic**.

- 7.5 The expenditure item must have actually been incurred on the making of the specific production and/or post-production for which the application is made.
- 7.5.1 The applicant must have actually settled its liability at the time of claiming the incentive.
- 7.6 The purchase of goods for use in a film production and sells or disposes of those goods on the completion of the production is permissible, however only the net cost of those items can be claimed as TPE or QSAPE.
- 7.6.1 In instances where the applicant or an associated party retaining any goods purchased beyond the completion of the production, an independent valuation must be conducted and that valuation be deducted from the value of QSAPE for the purpose of calculating the incentive.
- 7.7 The applicant may receive any other South African incentive, training or internship funding specific to the supported project. Financial support from government must not be more fifty percent (50%) of the total production expenditure.
- 7.7.1 The incentive funding amount must be deducted from the gross QSAPE/QSAPPE before the calculation of the incentive;
- 7.7.2 The exception is applicable for SETA funding which may be received after the final application or payment of the incentive.

## 8. Qualifying and Non-Qualifying Costs

8.1 The following are qualifying post-production costs:

<b>Licence fees (Dolby, Music)</b>	<b>Editing suites</b>
<b>Artist fees</b>	Sound studios/mix
<b>Editorial and sound post-production</b>	Roto/VFX outsource work
<b>Post-production facilities and personnel</b>	Outsourced animation services
<b>Grading</b>	

8.2 The following are non-qualifying production and post-production costs:

<b>Financing expenditure</b>	<b>Advances</b>
<b>General business overheads</b>	Land and building
<b>Other associated party fees</b>	Costs of services embodied in goods
<b>Deferments, profit participation, residuals</b>	Depreciation
<b>Executive producer</b>	Pilot costs
<b>Publicity and marketing costs (Including EPK)</b>	Consultant fees

<b>Commission fees</b>	Entertainment costs
<b>Contingent fees exceeding prescribed threshold</b>	Withholding tax <sup>3</sup>
<b>Production activities grant-funded by other state organs<sup>4</sup></b>	Development costs, story rights
<b>Other<sup>5</sup></b>	SPCV incorporation fees

## 9. Incentive Calculations

9.1 The incentive is calculated at twenty-five percent (25%) of QSAPE for shooting on location in South Africa.

9.1.2 An additional incentive of five percent (5%) of QSAPE is provided for productions conducting post-production in South Africa and utilising the services of Black owned production company.

### POST-PRODUCTION

9.2 The incentive is calculated at twenty-five percent (25%) of QSAPPE for conducting post-production activities in South Africa.

9.2.1 An additional two-point-five percent (2.5%) of QSAPPE is provided for spending at least R10 million of post-production budget in South Africa;

9.2.2 An additional five percent (5%) is provided for spending at least R15 million of post-production budget in South Africa.

9.3 The incentive is capped at a maximum grant of R25 million per qualifying production and/or post production.

<sup>3</sup> *Withholding Tax on foreign entertainers, the fee paid to the foreign entertainer does not qualify as a "Qualifying South African production expenditure (QSAPE) and Qualifying South African Post-Production expenditure (QSAPPE)".*

<sup>4</sup> *Other grant-funding from state organs can be used to deduct non-qualifying expenditure at the discretion of the department, which might result in only the net amount being deducted*

<sup>5</sup> *Refers to non-qualifying production and post-production costs that are different in nature or distinct from the ones already mentioned in the list or known about by the dtic.*

## **10. Incentive Disbursement**

- 10.1 The incentive for production is disbursed on completion of production and the submission of the final DVD or similar media.
- 10.2 The incentive for post-production is disbursed on completion of post-production and submission of the final DVD or similar media.
- 10.3 **the dtic** will verify the completeness of the claim/expenditure before payment is made.

## **11. Monitoring and Evaluation**

- 11.1 All approved projects may be monitored to assess how Foreign Film and Television Production and Post-Production Incentive is contributing towards the strategic objectives of the grant and its intended outcomes.
- 11.2 The Department may conduct site visits to a project/entity at application stage, at any claim stage or any time after an application or claim has been submitted.
- 11.3 In addition to the site inspection, the Department may request project monitoring information at each claim stage and may require applicants to complete a project monitoring report.
- 11.4 The information in the claim form may be used for monitoring purposes.
- 11.5 In addition to the site inspection and project monitoring information, the Department may conduct evaluation studies, as and when required. Approved applicants are required to participate in these processes in order to inform how best to improve the effectiveness and efficiency of the incentive. These processes may occur up to three (3) years after the final claim and the company may be required to provide supporting documentation as verification of the information.

## **12. Application and Claim Process**

### **12.1 Application for Approval: Form A**

The following documents must accompany the form A:

- Summary and detailed budget in South African Rand;
- Financial plan, including letters of intent from investors;

- Funding and service agreement;
- Distribution/licence agreement signed by distributors;
- Provisional shooting schedule and Post-production schedule;
- Certificate of incorporation of the SPCV;
- Appointment of directors of the SPCV;
- Copies of Identifications of Shareholders and Directors;
- Incorporation documents including the memorandum of incorporation;
- Shareholders Certificate, Shareholders Agreement and Share Register officially signed (Trust deed and beneficiaries where applicable);
- B-BBEE assessment information pack where applicable to support B-BBEE certificate;
- Written confirmation that **the dtic** will be credited;
- Valid B-BBEE Certificate (level one to three) of Production company or affidavit; and
- Valid B-BBEE Certificate (level one to four) of compliance for SPCV or affidavit.

## 12.2 **Confirmation of commencement of principal photography: Form B**

The following documents must accompany form B:

- Day one of principal photography call sheet;
- Day one of principal photography progress report;
- Current photography schedule;
- Confirmation of original storyline;
- Production and Post-production schedule; and
- Confirmation of 100% Funding closed.

## 12.3 **Application for payment of the incentive: Form C**

The following documents must accompany form C:

- Audited summary and detailed expenditure report;
- Auditor's statement and Factual Finding Report signed by the Auditor;

- Bank Statement(s) reflecting all expenditure of the approved SPCV and crossed referenced to the General Ledger and any other expenditure reports;
- Original credit order instruction form;
- Stamped Letter from the bank confirming account information;
- Complete general ledger in electronic format;
- Certificate of incorporation of the SPCV;
- Incorporation documents including the memorandum of incorporation
- Full final cast and crew list (soft copy in excel format);
- Proof of South African citizenship status for individuals or contractors paid via an agency;
- Distribution/licence agreement signed by distributors;
- A DVD or similar media of the production to evidence its completion to a standard suitable for exhibition/theatrical release and verification of **the dtic** credits;
- Pin for verification of tax compliance;
- Final shooting schedule;
- Valid B-BBEE certificate of compliance or affidavit (level one to three) for Production company;
- Valid B-BBEE certificate of compliance or affidavit (level one to four) for SPCV; and
- At claim stage, the SPCV must submit a valid certificate of compliance (level one to four) or sworn affidavit. However, if the amount of the incentive approved is above R10 million, the SPCV will be required to provide a B-BBEE certificate issued in terms of a QSE scorecard, in line with the Broad-Based Black Economic Empowerment Codes of Good Practice, issued in terms of Section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003 (whichever is applicable). A valid B-BBEE certificate of compliance or sworn affidavit (level one to three) must be submitted by the Production company. However, if the amount of the incentive approved is above R10 million, the SPCV will be required to provide a B-BBEE certificate issued in terms of a QSE scorecard, in line with the Broad-Based Black Economic Empowerment Codes of Good Practice, issued in terms of Section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003 (whichever is applicable). No claims will be considered which do not meet the above stated requirements. It must be noted that the Production company and the SPCV are required to maintain the required level contributor status at application and claim stage irrespective of whether they are

required to submit a B-BBEE certificate issued in terms of a QSE or generic scorecard as alluded above as per the applicable programme guidelines.

### **13. General Conditions**

- 13.1 The Department must be notified in writing of any material changes related to the investment project and the changes must be approved by the Department prior to being effected.
- 13.2 The Department may, under certain market or production circumstances, adjust the requirements and conditions of the scheme or grant approval. Any such adjustments will be at the sole discretion of the Department. The decision of the Department in this regard will be final.
- 13.3 In order to evaluate the impact of the programme, the Department may require that for a period of two (2) years after completion of the claim period, the client complete and submit the project monitoring report annually. This requirement forms part of the terms and conditions subject to which the Foreign Film and Television Production and Post-Production grant is approved and paid out.
- 13.4 **the dtic** reserves the right to publish stories of successful candidates. The right to choose a successful candidate for publication will be at the sole discretion of **the dtic** and by applying for the incentive programme, the applicant provides his/her consent to such publication.
- 13.5 **the dtic** reserves the right to obtain independent quotations for any intervention proposed or claimed and to pay the lesser amount of the independent quote or the amount proposed or claimed. In this regard, **the dtic** may, where a certain type of intervention occurs regularly, set benchmarks or maximum amounts for such interventions, to ensure the fair and equitable treatment of all applicants.
- 13.6 Any relaxation of the requirements will not be allowed.

### **14. Additional Legal Conditions**

- 14.1 The following are inter alia considered a circumvention of Foreign Film and Television Production and Post-Production Guidelines and will lead to the rejection of an application or claim:
  - 14.1.1 Changing the business set-up, composition, structure or operations, processes or products in order to make the project qualify.

- 14.1.2 Manipulation of inter-company services and processes.
- 14.1.3 Any other action that, at the sole discretion of the Department, can be regarded as circumvention to allow the entity, which otherwise would not have qualified, to qualify for assistance under the Foreign Film and Television Production and Post-Production grant.

## **15. Decision Review Process**

- 15.1 Any dispute relating to a decision (including the rejection of an application and/or claim and/or cancellation of an approved project) by **the dtic** may be subjected to one internal appeal.
- 15.2 An appeal must be lodged within thirty (30) days of the date of issue as set out in the notification letter.
- 15.3 An applicant (hereinafter referred to as “the appellant) who is aggrieved by any decision taken by **the dtic** is limited to one (1) appeal in respect of that decision as the same matter may not be referred back for appeal unless the matter has been referred back for further information/investigation.
- 15.4 The appeal must be accompanied by a written explanation setting out the decision appealed against and the issues to be considered and any documentary evidence upon which the appeal is based.
- 15.5 Although there is no prescribed format for the submission for an appeal, the appeal must:
- 15.5.1 Be submitted in duplicate, if submitted physically.
  - 15.5.2 Attach a letter communicating the decision appealed against.
  - 15.5.3 If longer than 15 typed pages (excluding annexures), contain an executive summary of no more than two pages, be indexed and paginated.
  - 15.5.4 Be signed by and provide full details of the Appellant or his/her/its representative and, in the latter instance, include proof of mandate to lodge the appeal on behalf of the applicant.
- 15.6 An appeal must be lodged with the Director: Legal Services: Incentives Branch at the following email address: Appeals@thedtic.gov.za or hand delivered at:
- DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**  
**the dtic** Campus, 77 Meintjies Street  
Block A  
Sunnyside, Pretoria, 0002  
Attention: Director: Legal Services  
INCENTIVES BRANCH

- 15.7 Receipt of the appeal will be acknowledged in writing within five (5) working days of such receipt.
- 15.8 The outcome of the appeal will be communicated to the Appellant.

## **16. Criminal, Misleading, Dishonest and/or Irregular activities**

- 16.1 **the dtic** may, upon the committing of an actual offence or reasonable suspicion of the contravention of any applicable act or upon the initiation of an investigation or the initiation of litigation as a result of criminal, misleading, dishonest and/or irregular activities, suspend payments that may be due or become due to an applicant. In such event, **the dtic** shall not be liable for any damages occasioned by the suspension of such payments or interest, pending the finalisation of any forensic investigation and any criminal proceedings brought as a result of the investigation.
- 16.2 In the event that a forensic investigation was initiated, the findings of such forensic investigation which confirms such criminal, misleading, dishonest and/or irregular activities, shall be sufficient to allow **the dtic** to cease and cancel all payments and reclaim any payments already made, with interest.
- 16.3 **the dtic** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (PRECCA). Applicants are required to contact **the dtic** fraud hotline on 0800 701 701 in order to report any suspicious behaviour.
- 16.4 Responsibility rests on the applicant and/any other person that may benefit from the scheme to disclose everything that may have an influence on the adjudication of the application and/or claim. Failure to do so, may lead to termination or cancellation or suspension of the application/claim and the initiation of criminal prosecution and/or civil action.

## **17 Protection of Personal Information Act (POPIA)**

- 17.1 **the dtic** processes personal information as defined in the Protection of Personal Information Act, 2013 (Act No. 04 of 2013) in lieu of the business activities that it performs. The department uses this information to assess and evaluate applications/claims.
- 17.2 In the majority of instances personal information will be collected directly from the Applicant/Claimant/Recipient through application/claims forms and other means. **the dtic** may, however, also supplement information provided with information received from other

governmental bodies such as the SARS; or information provided by you through third parties such as National Treasury and the South African Police Service (SAPS).

17.3 **the dtic** may disclose personal information to other Government departments/entities or third parties in line with the purpose for which the information was collected.

17.4 Any person has the right of access to their personal information in the possession of **the dtic** and the right to request that **the dtic** correct any errors relating to the information that **the dtic** has on record.

17.5 Any person who is dissatisfied with the manner in which **the dtic** is processing his/her/its personal information is entitled to lodge a complaint with the Information Regulator, whose contact details are:

JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001

P.O Box 31533, Braamfontein, Johannesburg, 2017

Complaints email: [complaints.IR@justice.gov.za](mailto:complaints.IR@justice.gov.za)

17.6 **the dtic's** detailed Privacy Policy can be obtained at: <http://www.thedtic.gov.za/wp-content/uploads/Privacy-Policy.pdf>

## Appendix A: Glossary of terms and definitions

1.	<p><b>'Foreign Film and Television Production and Post-Production Incentive approval notification'</b>: The document from the Department to the applicant, setting out the terms and conditions of the Foreign Film and Television production and post-production incentive being offered to the applicant, which will by implication include the terms and conditions set out in these guidelines ('implied terms').</p>
2.	<p><b>'Applicant' or 'Entity'</b>: This refers to a business registered, as a legal entity is South Africa. The word 'entity' is used here to refer to an applying business, or one that has qualified for the incentive.</p>
3.	<p><b>'Active Project'</b>: Refers to the turnaround time from an applicant receiving provisional approval from the Department up until the production reached picture lock</p>
4.	<p><b>'Advances'</b>: All payments made by way of an advance on a payment in respect of deferrals, profit participation or residuals are excluded from QSAPE unless they are non-recoverable.</p>
5.	<p><b>'Attested Declaration'</b> The information provided in an application must be certified in an attested declaration by an authorised person from the applicant company, normally a director of the applicant company or the chief executive officer.</p>
6.	<p><b>'Independent external auditor' or 'accredited person'</b>: - (IA to verify)</p> <ul style="list-style-type: none"> <li>• In respect of a Company, this means the independent external auditor. –</li> <li>• In respect of a Close Corporation, this means practising members of the Commercial and Financial Accountants of South Africa (CFA-SA); practising members and Associate General Accountants (AGAs) of the South African Institute of Chartered Accountants (SAICA) and/or AGAs; and individuals or enterprises/practices registered as auditors with the Independent Regulatory Board for Auditors (IRBA).</li> </ul>
7.	<p><b>Black person(s)</b></p> <p>Black person(s) refers to Africans, Coloureds and Indians who are natural person(s) and:</p> <ul style="list-style-type: none"> <li>○ are citizens of the Republic of South Africa by birth or descent; or</li> <li>○ are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or</li> <li>○ became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, had it not been for the Apartheid policy, would have qualified for naturalisation before then.</li> </ul> <p>the definition of "black people" now includes South African Chinese people as per the Pretoria High Court ruling on 18 June 2008.</p>

8.	<p><b>Black production company</b> refers to a South African legal registered entity that is owned and controlled by Black South African person(s) as defined by the Broad-Based Black Economic Empowerment (B-BBEE) Act, meeting the following conditions:</p> <ul style="list-style-type: none"> <li>○ high levels of Black ownership and management (greater than 50%);</li> <li>○ dominant Black management control exercising control over the entity;</li> <li>○ generate majority of its income through providing service to the film and television sector;</li> </ul> <p>achieve at least Level two (2) B-BBEE contributor status in terms of the Codes of Good Practice October 2013 (as amended).</p>
9.	<p><b>“B-BBEE”</b> means Broad-Based Black Economic Empowerment; “</p>
10	<p><b>B-BBEE information assessment pack</b> refers to B-BBEE audit working paper file preceded by a lead paper on all the B-BBEE codes, calculations and scores, cross reference to relevant audit evidence in line with the government gazette on methodologies for verification of B-BBEE codes of good practice.</p>
11.	<p><b>“B-BBEE Controlled Company”</b> means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is at least 51% of the total such rights measured using the Flow Through Principle;</p>
12.	<p><b>B-BBEE Owned Company”</b> means a juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a right to Economic Interest that is at least 51% of the total such rights measured using the Flow Through Principle</p>
13.	<p><b>“B-BBEE Recognition Level”</b> means the percentage B-BBEE Recognition Levels as determined: This gazette is also available free online at <a href="http://www.gpwonline.co.za">www.gpwonline.co.za</a> 310 No. 42496 GOVERNMENT GAZETTE, 31 MAY 2019 Page 4 of 25</p> <p>(a) for Entities that are neither Qualifying Small Enterprises nor Exempted Micro Enterprises, using statement 000;</p> <p>(b) for Qualifying Small Enterprises, using Statement 000; and</p> <p>(c) for Exempted Micro-Enterprises, the applicable deemed B-BBEE Recognition under Statement 000;</p>
14.	<p><b>“51% Black Owned”</b> means an entity in which:</p> <p>(a) Black people hold at least 51% of the exercisable voting rights as determined under Code series 100;</p> <p>(b) black people hold at least 51% of the exercisable economic interest as determined under Code series 100; and</p> <p>(c) has earned all the points for Net Value under statement 100</p>
15.	<p><b>‘Completion date’</b> A film production is regarded as having been completed per the definition in section 24F of the Income Tax Act, 1962 (Act No. 58 of 1962) – in relation to a film, the date on which the cut master negative and conforming sound track of the film are</p>

	married to an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage.
16.	<p><b>'A protected copy (Complete DVD or similar media)'</b> of the film production, together with a full final credit listing and proof of distribution or exhibition arrangements for the production must be included in the application to verify that the production is ready for distribution or exhibition to the general public.</p> <p>The Department reserves the right to be supplied with a protected copy (DVD or similar media) of the entire production or alternatively to be invited to a filming of the production in its entirety following the production's release. The final copy of the production will be kept only for the purposes of the claim process.</p>
17.	If the <b>costs of certain services are embodied in</b> the cost of goods delivered to the applicant company and those services were predominantly (namely, greater than 50% of the cost) performed outside South Africa, then those services are not provided in South Africa for the purposes of determining QSAPE. This does not apply to imported goods, where the supplier has an established business with a history of supplying those particular goods, for example, Kodak stock.
18.	<p><b>Deferments, profit participation, residuals</b></p> <p>QSAPE does not include expenditure that is dependent on the film production's commercial performance and its earnings, as expenditure directly linked to the production's commercial performance cannot be quantified until after the production has been exhibited. Therefore, expenditure items specifically excluded from QSAPE include:</p> <ul style="list-style-type: none"> <li>○ Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors);</li> <li>○ Payments dependent on eventual profits made on the production; and</li> <li>○ Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.</li> </ul>
19.	<b>"Exempted Micro Enterprise (EME)"</b> means an Entity with an annual turnover of R 10 (ten) million or less
20.	<b>"Exercisable Voting Right"</b> means a voting right of a Participant that is not subject to any limit
21.	<b>'Executive producer (EP)'</b> is one of the top positions in the making of a commercial entertainment product. Depending on the medium, the executive producer may be concerned with <u>management accounting</u> or associated with legal issues (like <u>copyrights</u> or <u>royalties</u> ). In films, the executive producer generally contributes to the <u>film's budget</u> and their involvement depends on the project, with some simply securing funds and others being involved in the filmmaking process.
22.	<b>'Financing Expenditure':</b>

	Includes returns payable on amounts invested in the film production and expenditure connected with raising and servicing finance for the production, such as executive producer fees and interest payments.
23.	<b>'Full-time Equivalent Employment'</b> : This term refers to contract/seasonal/temporary employees. One full-time employee will be the equivalent to 1 920 hours worked per year.
24.	<b>'Further information as requested'</b> The Department reserves the right to require any further information deemed necessary to complete the rebate process. This information must be provided at the applicant's expense within 28 days of the Department's request, although the applicant may write to the Department requesting an extension of time.
25.	<b>'General business overheads'</b> , are excluded from QSAPE to the extent that they exceed the lesser of: <ul style="list-style-type: none"> <li>○ 2% of the total of the company's TPE on the film production; or</li> <li>○ R200 000.</li> </ul>
26.	<b>'Land and buildings'</b> Any acquisition of land or buildings or the erection of buildings of a substantial nature is excluded from QSAPE as this expenditure would not be considered reasonably attributable to the making of the film. Sets and props will not be classified as substantial in nature, however, any proceeds on the sale of sets and props or the deemed value of such, if retained by the applicant or related party after completion of the film, must be deducted from the value of QSAPE for the purpose of calculating the rebate.
27.	<b>'Large Generic Enterprises'</b> – means an entity with an annum turnover R50 million or more.
28.	<b>'Material changes'</b> : These are changes that, if known at application stage, could have affected approval of the project e.g. changes in business set-up, location, composition, structure of operations, story line/project synopsis as well as a change in the physical address/location of the approved project.
29.	<b>'Other connected party fees'</b> The fees of any other connected parties that appear both above the line and below the line (that is, writer, director or cast and crew member and equipment etc inclusive of all their travel, accommodation and living expenses), as defined in the Income Tax Act, are excluded from QSAPE to the extent that they exceed the lesser of: <ul style="list-style-type: none"> <li>○ 10% of the total of the company's TPE on the film production.</li> <li>○ the maximum of R3 million in total.</li> </ul>
30.	<b>'Other exclusions'</b> The following sundry items do not qualify as QSAPE:

	<ul style="list-style-type: none"> <li>○ Errors and Omission Insurance, which protects the copyright holders from litigation once the film is exhibited; and</li> </ul> <p>Any gifts, entertainment, publicity, marketing, wrap parties and gratuities.</p>
31.	<b>'Pick up shots'</b> A shot taken after principal photography has finished
32.	<b>'Pilots'</b> refers to <b>testing episodes</b> (can be a standalone) of a film or television production in the hope that it will get commissioned.  Once they have been produced, the pilots are presented to studio and network executives, and in some cases to test audiences.
33.	<b>'Post Production'</b> The editing stage of a production in which shots are joined together and the final touches are added to project, such as grading and sound correction.
34.	<b>'Pre-Production'</b> Is a process of preparation for actual physical production, which begins after a qualified production has received a provisional letter of financial commitment. Customarily includes but is not limited to activities such as location scouting, hiring of key crew members, and establishment of a dedicated production office.
35.	<b>'Principal Photography'</b> The phase of production during which the production is actually shot, as distinguished from preproduction and post-production. Principal photography days refer to the number of days shot by the principal unit with the director and lead actors usually present.
36.	<b>'Producer'</b> Producer means any individual who receives an on-screen-producer credit including but not limited to any of the following titles: producer, co-producer, line producer, executive producer, co-executive producer, associate producer, supervising producer, post-producer, or visual effects producer
37.	<b>'Production Budget'</b> Means the Budget used by the qualified SPCV and shall include ALL QSAPE above and below the lines including post-production, insurance and bond fees. Production Budget shall include wages, goods and services performed and incurred within South Africa. It does not include costs which are not directly associated with pre-production, production or post-production of the project, such as distribution prints and advertising, marketing, film festival participation, financing or distribution costs such as theatre rentals and DVD manufacturing.
38.	<b>'Production Company'</b> A <b>production company, production house, production studio,</b> or a <b>production team</b> is a business that provides the physical basis for works in the fields of <u>performing arts, new media art, film, television, radio, comics, interactive arts, video games, websites, music, and video.</u>  A production company is responsible for the development and filming of a specific production or media broadcast.
39.	<b>'Producer fees'</b>

	<p>South African producer fees, limited to two working producers and inclusive of all their travel accommodation and living expenses, are excluded from QSAPE to the extent that they exceed the lesser of:</p> <ul style="list-style-type: none"> <li>○ 10% of the total of the company's TPE on the film production; or</li> <li>○ R1 million in total.</li> </ul>
40.	Production schedules 6, 7 or 10
41.	<b>“Qualifying Small Enterprise (QSE)”</b> means an Entity that qualifies for measurement under the Qualifying Small Enterprise scorecard with a turnover of R10 million or more but less than R50 million;
42.	<b>‘Qualifying South African Production Expenditure (QSAPE)</b> Includes all expenditure attributed to production related goods and services delivered and provided in South Africa by a legal registered entity domiciled in South Africa.
43.	<b>‘Reimbursement’</b> Payment based on actual qualifying expenditure, in line with the definition of QSAPE.
44.	<b>‘Speculative Projects’</b> Work done with no defined goal for broadcast or distribution and is not commissioned.
45.	<b>‘Total Production Expenditure (TPE)’</b> Refers to the total expenditure incurred by the film or television production or reasonably attributable to the making of the film from story boarding to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public as defined in the Income Tax Act.