



the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

PROGRAMME GUIDELINES

South African Black Filmmakers Incentive

Issued: September 2023

*Film and Television Production Incentives Programme
Manager
Department of Trade, Industry and Competition
Private Bag X84; Pretoria, 0001
Call Centre: 086 184 3384*

***the dtic** Campus; 77 Meintjies Street,
Sunnyside; Pretoria, 0002
South Africa*

Contents

1.	Preamble	2
2.	Services Delivered by the dtic	2
3.	Programme Description	3
4.	Mandatory Conditions	4
5.	Eligibility Criteria	7
6.	Non-Eligibility Criteria	9
7.	Interaction of this Incentive with other sources of funding	10
8.	General Conditions	10
9.	Qualifying and Non-Qualifying Costs	11
10.	Incentive Calculations	12
11.	Incentive Disbursement	12
12.	Monitoring and Evaluation	13
13.	Application and Claim Process	14
14.	General Conditions	16
15.	Additional Legal Conditions	17
16.	Decision Review Process	17
17.	Criminal, Misleading, Dishonest and/or Irregular activities	18
18.	Protection of Personal Information Act (POPIA)	19
	Appendix A: Glossary of terms and definitions	20

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) South African Black Filmmakers Incentive.
- 1.2 The guidelines set out in this document are intended to enable enterprises to present their applications to **the dtic**, and provide a framework for **the dtic** to evaluate such applications.
- 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 South African Black Filmmakers Incentive applications or claims.
- 2.2 Applicants are welcome to contact **the dtic** directly and the relevant officials will provide guidance on how to complete application or claim forms.

- 2.3 It is the responsibility of the applicant to ensure that the application and claims submitted to **the dtic** is accurate and complete.

3. Programme Description

- 3.1 The South African Black Filmmakers Incentive is aimed at supporting the local film industry and contributing towards transformation and employment opportunities in South Africa.
- 3.2 The objectives of the South African Black Filmmakers incentive are to strengthen the competitiveness of the South African film and television industry, to develop black talent in the South African film and television industry whilst ensuring distribution of films into the market. 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. This is as per the Black Economic Empowerment (BEE) policy in order to facilitate broader participation in the economy by Black people.
- 3.3 The South African Black Filmmakers Incentive is available to qualifying South African black-owned productions with the total production budget of at least R500 000¹.
- 3.3.1 For documentaries, the Qualifying South African Production Expenditure (QSAPE) should be at least R500 000.
- 3.4 The South African Black Filmmakers Incentive provides an incentive of fifty percent (50%) of the Qualifying South African Production Expenditure (QSAPE).
- 3.5 The incentive programme offers a reimbursable grant to the maximum of R25 million per qualifying project.
- 3.6 The South African Black Filmmakers Incentive is effective from 1 September 2023.

¹ There is a separate guideline for the Foreign Film and Television Production and Post-Production Incentive targeted at attracting larger-budget international productions; South African Film and Television Production Incentive targeted at attracting South African production with a minimum QSAPE of R1.5 million as well as South African Co-Production Incentive targeted at attracting official co-productions.

4. Mandatory Conditions

- 4.1 The applicant must be a black South African production company.
 - 4.1.1 The Production company must have at least seventy-five percent (75%) Black South African citizens; of which the majority must play an active role in the production and be credited in that role;
 - 4.1.2 The use of multiple subsidiaries and connected companies to be regarded as production companies is not allowed;
 - 4.1.3 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;
 - 4.1.4 If the applicant chooses to commence with the project prior to receiving an outcome, the project must be fully funded. Should such projects receive an approval, the project will not be eligible for milestone payments;
 - 4.1.5 Where the project is not fully funded, the applicant must have secured at least ten percent (10%) 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 the principal photography;
 - 4.1.6 The applicant must provide **the dtic** with a financial plan and signed contract from financier(s);
 - 4.1.7 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**; and
 - 4.1.8 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 to the production of the film or 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 SPCV must have at least seventy-five percent (75%) South African Black citizens, of which majority must play an active role in the production and be credited in that role;
 - 4.2.3 The SPCV must be responsible for all production activities in South Africa and in this regard must have full access to the financial information for the entire production;

- 4.2.4 The SPCV must be utilized for one (1) production for either film, television drama, documentary series or digital content; and
- 4.2.5 The qualifying expenditure and payment made to third party companies must be disbursed directly from the primary bank account of the established SPVC.

- 4.3 The principal photography must not commence until an approval letter has been received from **the dtic**.
- 4.3.1 The approved applicant is provided with an additional three (3) months to commence with and complete the principal photography from the confirmed commencement date as per application;
- 4.3.2 The applicant must complete and submit the Confirmation of Principal Photography Form within three (3) working days after the first day of principal photography;
- 4.3.3 The applicant's failure to adhere to these stipulated timeframes will automatically terminate the approval; and
- 4.3.4 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.

- 4.5 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 The 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 to **the dtic** 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 dtic** should be included in all marketing material pertaining to the production; and
 - 4.6.4 **the dtic** reserves the right to be provided with a protected copy of the entire 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) and must submit the classification certificate with the final claim.
- 4.7.3 The applicant must comply fully with its obligations in terms of The Legal Deposit Act, 1997 (Act No. 54 of 1997), where applicable.
- 4.7.4 The production must be rated by the Film Publication Board before submitting the final claim **to the dtic.**
- 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 by 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 demonstrate that they fall within the Grading System on the department's website on www.thedtic.gov.za, Financial Assistance, under Film and Television Production Incentives.

- 4.9 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 BBBEE Act.
- 4.9.1 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:
 - 4.9.1.1 An entity where a black people hold 51% of the exercisable voting rights as determined by code series 100;
 - 4.9.1.2 Black people hold at least 51% of the exercisable economic interest as determined by code series 100.; and
 - 4.9.1.3 Has earned all the points for net value under code series 100.

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(ies) 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 SPCV and Production company(ies) must achieve at least a level two (2) B-BBEE contributor status in terms of the B-BBEE Codes of Good Practice; and
- 5.1.1.3 The SPCV and Production company(ies) must submit a valid B-BBEE certificate of compliance issued by an accredited verification agency 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 is 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 or an affidavit 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 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, and for incentive grant of R50 million or more it must submit a B-BBEE certificate issued in terms of a Generic scorecard using annualised data. 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 or Generic 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 or Generic) 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 or Generic 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 a minimum of R500 000 for all qualifying production formats and a minimum of R500 000 for documentaries:

5.2.1.1 At least eighty percent (80%) of the principal photography must be filmed in South Africa;

5.2.1.2 At least fourteen (14) calendar days of the principal photography must be filmed in South Africa; and

5.2.1.3 For productions with a minimum QSAPE of R50 million, the eighty percent (80%) and fourteen (14) calendar days requirements may be waived and such discretion will take into account the budgetary implications of the decision made.

5.2.2 Qualifying South African Black Filmmakers Productions must meet the following mandatory requirements:

5.2.2.1 The Qualifying South African Production Expenditure (QSAPE) must account at least seventy-five percent (75%) of the total production budget;

5.2.2.2 The majority of intellectual property must be owned by South African citizen(s); the copyright must be registered with Companies and Intellectual Property Commission (CIPC) and the certificate of registration must be provided at claim stage;

5.2.2.3 The Director must be a Black South African citizen who is credited for that role in the production;

5.2.2.4 The Producer and Line Producer must be a Black South African citizen who is credited for that role as defined in Appendix A;

5.2.2.5 The top writer and producer credits must include South African citizens either exclusive or shared collaboration credits;

5.2.2.6 The majority of the five (5) highest-paid performers must be South African citizens; and

5.2.2.7 The majority (51%) of heads of departments (HODs) and key personnel must be black South African citizens.

5.3 FORMAT ELIGIBILITY REQUIREMENTS

5.3.1 The following below-mentioned production formats are eligible for support:

Feature film	Documentary, documentary series and documentary feature
Tele-movies	
Television drama series and mini-series	

5.3.2 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, 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 under this incentive:

6.1.1 Speculative projects;

6.1.2 Bundling projects;

6.1.3 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; and

6.1.4 SPCV owned and controlled by South African and foreign broadcasters.

6.2 The following format are not eligible for support:

Reality television	News
Discussion programmes	Advertising programmes or commercials
Current affairs	Video gaming
Panel programmes	Variety programmes
Public and sport events	Training and corporate videos
Speculative projects	Pilots
Soapies	Telenovelas
Music videos	Talk shows

Adult content	Content that promotes hate speech, incitement of violence, propaganda for war, child abuse and child pornography and bestiality
Other ²	Anything not film related

7. Interaction of this Incentive with other sources of funding

- 7.1 Any other South African incentives, training or internship and National Lottery funding specific to this project may be claimed but must be deducted from the gross QSAPE before calculation of the incentive. An exception is applicable for SETA funds, which may be received after the final application or payment of the rebate.
- 7.2 A project that receives funding from any national, provincial and local government and its agencies is eligible to apply for the rebate.
- 7.3 A project of private investors that is eligible for tax benefits under section 12 (o) of the Income Tax Act No 58 of 1962 is eligible to apply for the rebate.
- 7.4 Total funding contribution from state institutions (National, Provincial, Local government, and state-funded agencies) including **the dtic**, may not exceed 80% of the budget of the project.
- 7.5 An applicant must supply information on the intended and actual source of funding to be used for the whole production.

8. General Conditions

- 8.1 The applicant must present in detail the total production expenditure with each application submitted.
- 8.2 The expenditure directly related to the production should be incurred in South African Rand.
- 8.2.1 The expenditure incurred in a foreign currency must be accounted for in South Africa Rand using the budgeted exchange rate on the audited or independently reviewed financial statements.
- 8.2.2 The applicant must settle all production costs through the primary bank account of the SPCV.

² 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**.

- 8.2.3 Failure in adhering to this requirement, will result in a deduction of expenditure item(s) from the value of QSAPE for the purpose of calculating the incentive amount during the claim period.
- 8.3 The expenditure amounts provided by the applicant in applications must be net of Value Added Tax (VAT).
- 8.4 The expenditure amounts charged between the applicant company and any connected parties for the provision of goods or services should be commercially reasonable.
 - 8.4.1 In instances where an applicant inflates costs, commercial rates will be counted for the purpose of calculating the incentive amount during the claim period.
- 8.5 The expenditure item must have actually been incurred on the making of the specific production for which the application is made.
 - 8.5.1 The applicant must have actually settled its liability at the time of claiming for the incentive.
- 8.6 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.
 - 8.6.1 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.
- 8.7 The expenditure incurred by the applicant to take-over and completes the production from another company(ies) is excluded from the grant amount calculations.
 - 8.7.1 The applicant must provide documentary evidence of this expenditure to verify before considered as qualifying production expenditure.

9. Qualifying and Non-Qualifying Costs

9.1 The following are qualifying post-production costs:

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

9.2 The costs for the purchase of key production equipment may qualify once-off under this incentive programme to a maximum cost-sharing incentive of R2 million.

9.3 The following are non-qualifying production costs:

Financing expenditure	Advances
General business overheads	Land and building
Other associated party fees	Costs of services embodied in goods
Deferments, profit participation, residuals	Depreciation
Executive producer	SPCV incorporation fees
Publicity and marketing costs	Consultant fees
Purchase of production and software equipment	Entertainment costs
Government grant funding	Withholding Tax ³
Pilot costs	Commission fees
Contingent fees exceeding prescribed threshold	Development costs, story rights
Other ⁴	

10. Incentive Calculations

10.1 The incentive is calculated at fifty percent (50%) of the Qualifying South African Production Expenditure (QSAPE).

10.2 The incentive is capped at a maximum grant of R25 million per qualifying project.

11. Incentive Disbursement

11.1 The incentive is disbursed either upon completion of production or in milestone payments.

11.2 The disbursement according to milestone payments will be implemented as follows:

% Payment	Milestones
20%	Start of principal photography

³ Withholding Tax on a foreign entertainer- the fee paid to foreign entertainer does not qualify as a "qualified South African production expenditure (QSAPE)".

⁴ Refers to non-qualifying production costs that are different in nature or distinct from the ones already mentioned in the list or known about by **the dtic**.

20%	Completion of principal photography
20%	Start of post-production
40%	Submission of final audit of the production expenditure

- 11.3 The disbursements will be made as per the approved milestones at application stage and will be based on actual expenditure incurred by the applicant. The applicant shall, with each milestone due in respect of this agreement, furnish **the dtic** with all vouchers, invoices, cost reports and other necessary proof of expenditure.
- 11.4 The disbursements will be subject to the applicant disbursing their approved secured cost-sharing production budget.
- 11.5 The disbursements are subject to satisfactory verification of expenditures incurred that are supported with authentic invoices and all the approved production expenditure settled through the primary bank account of the SPCV.
- 11.6 The stamped bank statements as support documentation must be submitted with each claim upon reaching approved milestones.
- 11.7 **the dtic** will verify the completeness of the claim/expenditure before payment is made.

12. Monitoring and Evaluation

- 12.1 All approved projects may be monitored to assess how South African Black Filmmakers incentive is contributing towards the strategic objectives of the grant and its intended outcomes.
- 12.2 The Department may conduct a site visits to a project/entity at application stage, at any claim stage or any time after an application or claim has been submitted.
- 12.3 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.
- 12.4 The information in the claim form may be used for monitoring purposes.
- 12.5 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.

13. Application and Claim Process

13.1 Application for provisional 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;
- Letter indicating proof of 10% secured;
- 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;
- Incorporation documents including the memorandum of incorporation; Copies of Identifications of Shareholders and Directors;
- 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 for the production;
- Valid B-BBEE Certificate (level one to three) of Production company or affidavit;
- Valid B-BBEE Certificate (level one to two) of compliance for SPCV or affidavit; and
- Trailblazer or short film.

13.2 Confirmation of commencement of principal photography: Form B

The following documents must accompany the form B:

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

- Confirmation of 100% Funding closed.

13.3 **Claim Form: Form C**

The following documents must accompany the form C:

- Signed Claim Form by the applicant and the auditor;
- Audited summary and detailed expenditure report;
- Auditor's statement and Factual Finding Report signed by the Auditor and applicant;
- Bank Statement(s) reflecting all expenditures of the approved SPCV and crossed referenced to the General Ledger and any other expenditure reports;
- Complete general ledger in electronic format;
- Full final cast and crew list (soft copy in excel format);
- Distribution agreement or licence agreement signed by distributors;
- Final shooting schedule;
- Classification Certificate from Film and Publication Board;
- Valid B-BBEE Certificate of compliance (level one to two) for the SPCV and Production company or affidavit; 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.
- Original credit order instruction form;

- Stamped Letter from the bank confirming account information;
- Proof of South African citizenship status for individuals or contractors paid via an agency;
- Copy of Legal Agreement(s) verifying Chain of Title for the purchase of South African copyright claimed as QSAPE;
- 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;
- Valid B-BBEE certificate of compliance or affidavit (level one to three) for Production company; and
- Valid B-BBEE certificate of compliance or affidavit (level one to four) for SPCV.

14. General Conditions

14.1 The Department must be notified in writing of any material changes related to the production and the changes must be approved by the Department prior to being effected.

14.2 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.

14.3 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 incentive is approved and paid out.

14.4 **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.

14.5 **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.

14.6 Any relaxation of the requirements will not be allowed.

15. Additional Legal Conditions

15.1 The following are inter alia considered a circumvention of the South African Film and Television Production Guidelines and will lead to the rejection of an application or claim:

15.1.1 Changing the business set-up, composition, structure or operations, processes or products in order to make the project qualify.

15.1.2 Manipulation of inter-company services and processes.

15.1.3 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.

16. Decision Review Process

16.1 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 an internal appeal.

16.2 An appeal must be lodged within thirty (30) days of the date of issue as set out in the notification letter.

16.3 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.

16.4 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.

16.5 Although there is no prescribed format for the submission of an appeal, the appeal must:

16.5.1 Be submitted in duplicate, if submitted physically.

16.5.2 Attach a letter communicating the decision appealed against.

16.5.3 If longer than 15 typed pages (excluding annexures), contain an executive summary of no more than two pages, be indexed and paginated.

- 16.5.4 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.
- 16.6 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
- 16.7 Receipt of the appeal will be acknowledged in writing within five (5) working days of such receipt.
- 16.8 The outcome of the appeal will be communicated to the Appellant.

17. Criminal, Misleading, Dishonest and/or Irregular activities

- 17.1 **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.
- 17.2 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.
- 17.3 **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 behavior.

17.4 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.

18 Protection of Personal Information Act (POPIA)

18.1 **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.

18.2 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).

18.3 **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.

18.4 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.

18.5 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

18.6 **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

Advances	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.
Applicant or Entity	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
Attested declaration	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.
Audited expenditure statement	All costs claimed as QSAPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is: <ul style="list-style-type: none"> o An auditor registered with SAICA or PAAB; o If the auditor has any connection to the applicant that connection should be declared; o the dtic reserves the right to appoint any other registered auditor to perform further checks at the dtic's own expense; o The statement should be in the format provided; o The auditor's statement is provided at the applicant's expense, with the name of the auditor and auditor's company or firm, qualifications and contact details to be provided in the relevant section of the application form; and Both the auditor and the applicant are to sign "the Declaration by the Auditor" form.
Black person(s)	Black person(s) refers to Africans, Coloureds and Indians who are natural person(s) and: <ul style="list-style-type: none"> o are citizens of the Republic of South Africa by birth or descent; or o 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 o 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. The definition of "black people" now includes South African Chinese people as per the Pretoria High Court ruling on 18 June 2008.
Black Filmmaker	Refers to an applicant that meets all of the following requirements: <ul style="list-style-type: none"> o Black Producer o Black Director o South African Citizen o At least sixty-five percent (75%) of the Production company is owned by black person or persons of South African nationality, o At least seventy-five (75%) of the SPCV is owned by a black person or persons of South African nationality who play an active role in the production,
Black service company	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: <ul style="list-style-type: none"> o high levels of Black ownership and management (greater than 50%); o dominant Black management control exercising control over the entity; o generate majority of its income through providing service to the film and television sector;

	achieves at least Level two (2) B-BBEE contributor status in terms of the Codes of Good Practice October 2013 (as amended).
B-BBEE	means Broad-Based Black Economic Empowerment
B-BBEE information assessment pack	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.
B-BBEE Controlled Company	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;
B-BBEE Owned Company	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
B-BBEE Recognition Level	means the percentage B-BBEE Recognition Levels as determined: This gazette is also available free online at www.gpwonline.co.za 310 No. 42496 GOVERNMENT GAZETTE, 31 MAY 2019 Page 4 of 25 (a) for Entities that are neither Qualifying Small Enterprises nor Exempted Micro Enterprises, using statement 000; (b) for Qualifying Small Enterprises, using Statement 000; and (c) for Exempted Micro-Enterprises, the applicable deemed B-BBEE Recognition under Statement 000;
51% Black Owned	means an entity in which: (a) Black people hold at least 51% of the exercisable voting rights as determined under Code series 100; (b) black people hold at least 51% of the exercisable economic interest as determined under Code series 100; and (c) has earned all the points for Net Value under statement 100
Completion date	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 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.
A protected copy/Complete DVD including the dtic credit	A protected copy/complete DVD or similar media 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. the dtic reserves the right to be supplied with a DVD of the entire film 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 application process.
Costs of services embodied in goods	If the cost of certain services are embodied in 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.
Deferments, profit participation, residuals	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:

	<ul style="list-style-type: none"> ○ Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors); ○ Payments dependent on eventual profits made on the production; and ○ Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.
Exempted Micro Enterprise (EME)	means an Entity with an annual turnover of R 10 (ten) million or less
Exercisable Voting Right	means a voting right of a Participant that is not subject to any limit
Executive producer (EP)	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 management accounting or associated with legal issues (like copyrights or royalties). In films, the executive producer generally contributes to the film's budget and their involvement depends on the project, with some simply securing funds and others being involved in the filmmaking process.
Financing expenditure	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.
Further information as requested	the dtic 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 dtic's request, although the applicant may write to the dtic requesting an extension of time.
General business overheads	General business overheads, are excluded from QSAPE to the extent that they exceed the lesser of: <ul style="list-style-type: none"> ○ 2% of the total of the company's TPE on the film production; or R200 000.
Independent external auditor or accredited person	<ul style="list-style-type: none"> • In respect of a Company, this means the independent external auditor. • 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).
Land and buildings	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.
Large Generic Enterprises	means an entity with an annum turnover R50 million or more.
Material changes	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.
Other connected party fees	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"> ○ 10% of the total of the company's TPE on the film production; or ○ The maximum of R3 million in total.
Other exclusions	<p>The following sundry items do not qualify as QSAPE:</p> <ul style="list-style-type: none"> ○ Errors and Omission Insurance, which protects the copyright holders from litigation once the film is exhibited; and ○ Any gifts, entertainment, publicity, marketing, wrap parties and gratuities.
Qualifying South African Production Expenditure (QSAPE)	<ul style="list-style-type: none"> ○ 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.
Pick Up Shot	A shot taken after principal photography has finished
Pilots	Pilots refers to testing episodes (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.
Post Production	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.
Pre-Production	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.
Principal Photography	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.
Producer	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.
Production Budget	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 preproduction, production or postproduction of the project, such as distribution prints and advertising, marketing, film festival participation, financing or distribution costs such as theatre rentals and DVD manufacturing.
Producer fees	<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"> ○ 10% of the total of the company's TPE on the film production; or ○ R1 million in total.
Provisional Letter	Provisional Letter is a document issued by the Department of Trade and Industry reserving an incentive amount to an applicant (SPCV) having a "qualified film (format)" based on an estimate of "Qualified South African Production Expenditure" or "Qualified South African Post-Production Expenditure"
Qualifying Small Enterprise (QSE)	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

Qualifying South African Production Expenditure (QSAPE)	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.
Reimbursement	Payment based on actual qualifying expenditure, in line with the definition of QSAPE.
Speculative project	Work done with no defined goal for broadcast or distribution and is not commissioned.
Total Production Expenditure(TPE)	Refers to the total expenditure incurred by the film or television production or reasonably attributable to the making of the film from pre-production 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.