

UK-China co-production treaty offers opportunities... and risk

This article was written by [Jonathan Berger](#) and [Alastair Lorimer](#) of Harbottle & Lewis and Kevin Guo of TransAsia Lawyers. It was first published by [ScreenDaily](#) on 16 March 2015.

The opportunities for UK film in China have been given a boost by the recent UK-China co-production treaty, but producers still face the risk that a film will not be approved, according to Jonathan Berger and Alastair Lorimer of law firm Harbottle & Lewis and Kevin Guo of TransAsia Lawyers.

Cinemas in China have been somewhat of a closed circuit thanks to a quota system permitting only 34 non-domestic titles to be shown on Chinese screens on a revenue sharing basis each year.

Cue the UK-China co-production treaty, [which has recently been ratified and is now in force](#).

This is intended to ease distribution and put more British films on China's big screens by circumventing the quota, with qualifying co-productions deemed "domestic" in both the UK and China. They will be eligible to access national incentives in both countries, as well as ticking the box for entry to some film festivals and awards ceremonies.

In the UK, this means eligibility to apply for the UK film tax credit and the BFI Film Fund, in the same way as for co-productions with the other 10 countries with which Britain has active bi-lateral co-production treaties.

With box office receipts growing at more than 30% per year for the past decade, reaching \$4.72bn (£3.19bn) last year, combined with China becoming a middle-income country, the benefits of gaining access to such a market are clearly appealing.

Simple qualifying criteria

Whilst there are some significant rules and creative hurdles, the good news for UK film producers is that, in the interests of stimulating productivity, the qualifying criteria are relatively simple.

The key requirements are that:

1. The film must involve co-producers based in both the UK and China.

2. The original version of the film must be in an official language or recognised regional or minority language of either the UK or China, and include English and/or Chinese subtitles if not in that language.
3. Each UK and Chinese co-producer shall:- play an active role throughout co-production, including production planning and decision-making;
 - assume responsibility for carrying through practical and financial arrangements for the making of the film;
 - directly negotiate, contract and pay for rights, goods and services; and
 - enter into a binding co-production agreement with the other co-producers setting out their respective responsibilities.
4. For productions where *all* the co-producers are from the UK or China, the UK and Chinese co-producers must **each** contribute 20% to 80% of the total production cost.
5. For productions where *not* all the co-producers are from the UK or China, the UK, Chinese and Third Party (being a party who would be eligible to participate in a co-production with the UK or China pursuant to another co-production treaty) co-producers must **each** contribute 30% to 70% of the total production cost, whereas any other co-producer may only contribute 10% to 20% of the total production cost.
6. In certain limited circumstances, provided that a co-production has a majority co-producer from either the UK or China who makes a film-making contribution, *finance only* co-producers may contribute as follows:
 - where *all* the co-producers are from the UK or China, the finance only contributions must be between 20% and 25% of the total production cost; and
 - where *not* all the co-producers are from the UK or China, the finance only contributions must be between 10% and 25% of the total production cost.

However, the treaty does contain a sweeper provision giving discretion to the Chinese State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), and the UK Department for Culture, Media and Sport, as Competent Authorities for the purposes of the treaty, when reviewing the eligibility of co-productions.

The extent to which SAPPRFT may exercise this discretion remains to be seen, but Chinese authorities are known to be especially cautious in protecting domestic industry and guarding against excessive influence from foreign cultures.

Chinese characteristics

One requirement SAPPRT may impose on qualifying co-productions, despite the liberalisation implicitly called for by the treaty, is the incorporation of ‘Chinese characteristics’, a requirement they currently enforce on all other foreign films wishing to be exempt from China’s foreign film import quota.

The definition of ‘Chinese characteristics’ includes the requirement for a minimum investment from China, usually not less than one-third of the total budget; a similar proportion of Chinese citizens in the main cast; and a requirement that the film be ‘conducive to the promotion of Chinese culture’.

This final standard, vaguely defined, is open to SAPPRT interpretation and as such may serve to stifle creativity whilst there is also no guarantee that SAPPRT will determine that the film’s Chinese content is adequate.

As the treaty has not yet been proven to allow UK/China co-productions to overcome such conservative tendencies, UK film producers still face the risk that a film will not be approved for the exemption, despite on the face of it complying with the treaty.

It will be interesting to see just how SAPPRT balances its policy objectives with the treaty obligations and consequently the extent of the creative and commercial fruits the treaty brings to bear.