

Money Makes the Camera Go Round: A Guide to Deals in Film Financing

Fiona Robertson - Senior Counsel, Head of Media - Digital & Data
- Dubai International Financial Centre

June - July 2017

A lot of filmmakers start their creative output by financing their own films – small budget short films, paid with credit cards and assisted by the provision of free services, friends as cast and borrowed equipment. It all contributes towards the growth of the filmmaker, but at some stage any filmmaker with ambition is going to want to expand beyond this into larger longer films, with multimillion-dollar budgets. So just how are such films financed? For those that dream of a life behind the camera, we take a look at the various ways in which a filmmaker can strike a film finance deal.

Pre Sales

The traditional method of financing films comes from pre-selling the distribution rights to the film to sales agents or distributors in certain key territories in advance of the production. This not only raises funds, but allows the filmmaker to promote the sales agent's or distributor's interest in the film, when negotiating for other forms of finance from third parties. Third party financiers are likely to be more interested in providing money to a film that has at least a chance of being released to cinema.

The filmmaker should always aim to seek an advance on the eventual returns from the film, which not only provides much-needed funding for the production of the film, but demonstrates the sales agent's or distributor's intention to actually take the film once it is complete. In the optimum pre-sales deal, the advance would be provided before pre-production, meaning that the money could be used to fund the production of the film. It is important to note that pre-sale advances are more likely to be paid to films with box office 'draws' in key cast or, in some cases, the director role. As one would expect, distributors will value an experienced and well-known director above a talented but unknown first time director.

In practical terms, the availability of distribution advances has significantly dropped in the digital age and is almost non-existent in the Middle East. However, obtaining a sales agent or distribution agreement at the earliest time possible is still desirable commercially. Such an agreement can significantly increase a filmmaker's chance of obtaining other forms of third-party finance. To ensure that the distribution agreement is going to be advantageous, despite the failure to procure an advance, the filmmaker should seek the inclusion of a minimum guarantee in relation to the revenue that the film will raise. This is clearly an advantageous commercial term for the filmmakers, as it provides the distributor with an incentive to maximise its efforts to distribute the film and to increase potential revenue. As return of their investment, finance will generally be the goal of any third party financier, they will view the inclusion of a minimum guarantee as indicative of the films potential for commercial success.

Government Funding and Rebates

Many governments across the globe provide incentives for filmmakers to undertake some or all of the production process within their borders. They view filmmaking as an excellent means of bringing in business but many also view it as culturally important to encourage filmmaking. Others also view it as part of their tourism development.

Whatever the reason, it is crucial that a filmmaker become familiar with the various incentives that could

be used to either finance the film directly (grants or investment), provide rebates against costs incurred in the country, or provide a tax benefit. These change regularly, and filmmakers should keep themselves up to date on new incentives and changes to older schemes. Remember that incentives can be provided by governments in smaller territories – some of the states within the USA have their own schemes. In a further article published in this edition, we have provided a summary of the current incentives applicable to filmmakers wishing to film in Abu Dhabi.

Film finance that is provided by any government entity usually involves long and complex agreements. These will include clauses which determine the way revenue will be applied (known as the ‘waterfall’ in film circles). Whilst the entire agreement is incredibly important and should be reviewed in detail, the waterfall is also an important part of the entire film deal and must properly reflect not only the government position as a financier, but must take into account all other parties that may have an investment position or a right to a deferred payment. Whilst taking the time to ensure this is correct might not take priority in the midst of planning for the production of a film, it is incredibly difficult, if not impossible, to re-negotiate these terms later. This may mean that the filmmaker themselves have to sacrifice their own share of the film revenue to fix any errors that become apparent at a later date.

Bank Gap Finance

Internationally, there are only a few banks that are interested in providing gap finance to filmmakers for film production; that is a small amount as a high interest loan, provided in order to complete the film. However, it is important to note that gap finance terms will always require payment first from the returns that come in from the film. They generally only finance a small percentage of the film budget – possibly the last 5-10%. They do also charge high interest in their investment. Therefore, approaching a bank for money for a film is generally only considered as a last option for a filmmaker, used when they have exhausted all other avenues and find that they are slightly short on the final total budget. On the positive side, once banks have been repaid their investment, they generally no longer have a stake in the film, leaving any subsequent returns for the filmmaker!

The Angel Investor

There is no doubt that many filmmakers dream of meeting a person with disposable funds and a desire for involvement in the creation of an independent film – the so-called ‘angel investor’. In reality, these people are hard to find, but from time to time high net -worth individuals do provide money for film production.

An angel investor will have their own reasons for being involved in the project and filmmakers should ensure that they clearly understand these goals from the outset. Some investors are seeking a tax break and so their main commercial goal will be to ensure that the film is produced in such a way (or in such a location) that guarantees that they can claim that tax break. Some investors will want to have copyright ownership in the film as part of their consideration for providing the finance but some may actually need to have copyright ownership in order to achieve their own financial goals. Filmmakers are generally uncomfortable with any deal that removes their ownership and control over the rights to their film, but this desire has to be balanced against the level of finance that is being provided by the investor; if an investor is prepared to provide a high percentage of the film’s budget, they are right to pursue (or negotiate?) some level of ownership. In this case, it is best to take advice about the establishment of a special company (known as an ‘SPV’) to own the film rights, with the filmmaker and investor both listed as shareholders in the SPV.

Conclusion

In securing finance for a film at any stage, it is important to remember that the financier is generally interested in the way in which the investment is going to provide a return to their portfolio. It is rare to find a finance source that is satisfied with the simple act of investing as a gesture of support for a filmmaker’s vision. On the other side, filmmakers are always determined to ensure that the concept and direction of the film are not compromised by the insertion of the wrong cast member, the incorrect soundtrack, or the

inappropriate design element. It is also important however, to ensure that the deal for finance does not end up compromising the filmmaker's control or vision. Deals must be carefully crafted and properly documented in order to ensure that the financier is aligned with the filmmaker's dream. The above represents only a small insight into some of the commercial and legal issues associated with film finance – filmmakers are strongly advised to carefully consider their options, reviewing the commercial deal points and reading the agreements from any finance source. Their own position as filmmaker and their own potential to earn any future revenue depends on it.

Al Tamimi & Company's Technology, Media & Telecommunications team advises both filmmakers and financiers on the commercial and legal issues associated with film production. For further information, please contact Fiona Robertson (f.robertson@tamimi.com).