



Film
Forever



The BFI Film Fund Joint Venture (JV) Scheme

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Sunshine on Leith

THE BFI FILM FUND JOINT VENTURE ('JV') SCHEME

The BFI is launching a scheme designed to encourage UK distributors and producers to form strategic partnerships from the initial stages of financing a film.

The Film Fund JV Scheme will initially run as a six-project pilot, and we are now seeking applications from producer/distributor teams.

Background

Despite renewed creative confidence and recent successes, the distribution landscape for UK independent films is as challenging as ever.

As release costs continue to rise, and the value of new and existing ancillary rights remain uncertain, distributors are looking to keep the risks of upfront investment to a minimum, while producers struggle to achieve viable prices for UK rights, and in some instances are unable to secure UK distribution until the film is completed.

Additionally, with the number of films being released in the UK continuing to rise, squeezing available slots in cinemas, producers should work strategically with distributors to ensure their projects hold the strongest appeal for the target audience.

What is it?

The JV Scheme allows a producer to invest part of a Lottery production award from the Film Fund as its contribution of up to 50% of the UK distribution minimum guarantee for the film in question.

In return for sharing the distribution risk, the distributor would allow a 50% share of its net revenues to be held in a Locked Box by the BFI for re-investment by the producer in their future filmmaking activity.

Following discussions with a task group of distributors and producers, we have drawn up standard JV terms, which are detailed in this document.

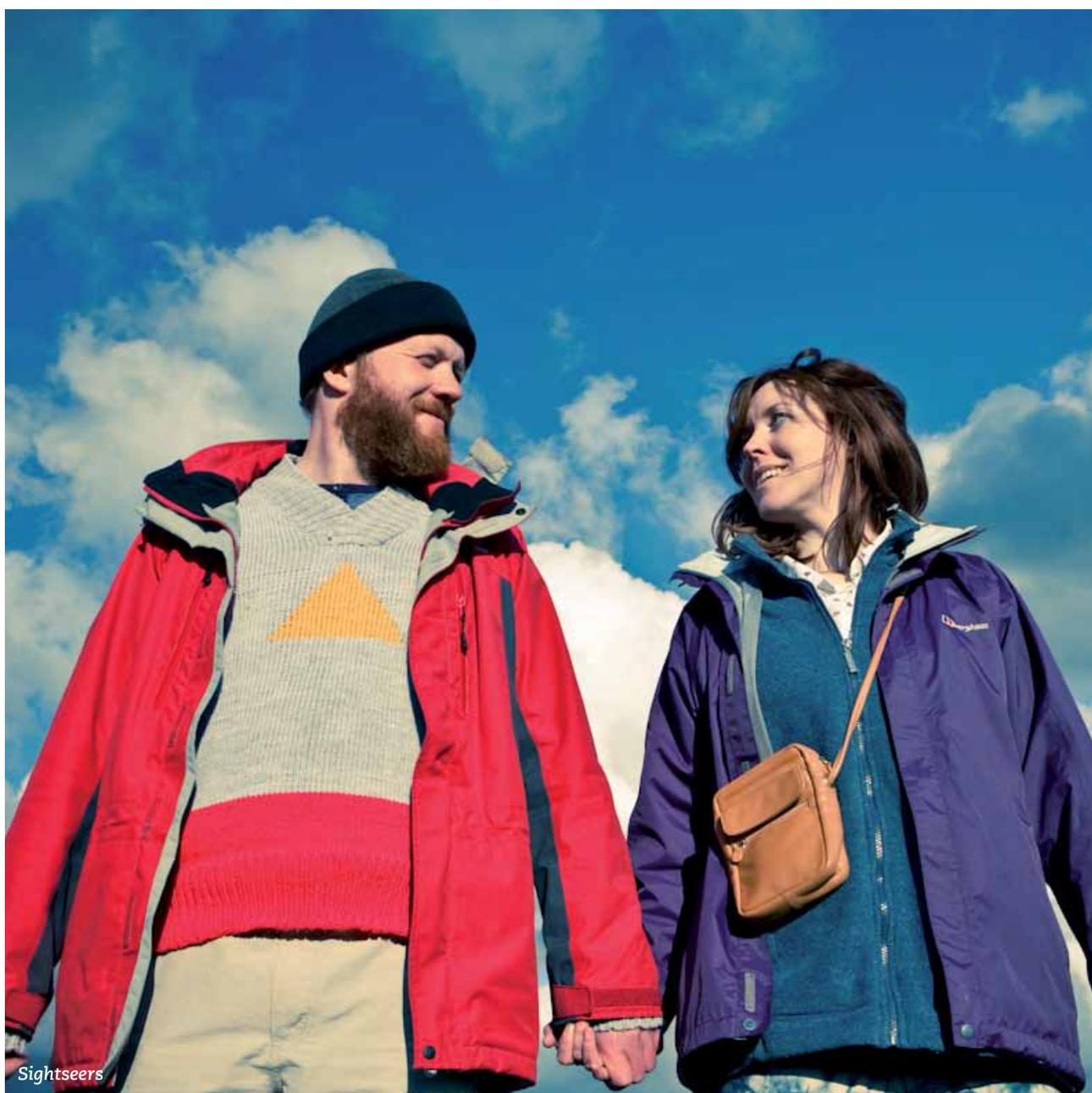


What are we looking for?

By running a pilot phase of the JV Scheme, we will be able to understand which types of projects will derive the most benefit from a JV arrangement.

To that end, we are looking to 'test' the model across a variety of film genres, budget levels and partnerships. Since the JV Scheme is structured as part of a Lottery production award by the Film Fund, our investment in bold, distinctive work remains a top priority.

Producers must have identified a distribution partner willing to enter a joint venture under the standard JV terms when applying for Lottery funding, but will apply for Lottery funding through the normal Film Fund application process.



How does the Film Fund JV Scheme operate?

1.1

When applying to the Film Fund for production funding the producer should indicate whether, if it is successful in being awarded a Lottery production award for their film, they would wish to have a portion of such award treated as a JV Scheme award. Any such JV Scheme award will be made to the producer on the basis that it will be treated as a contribution by the producer towards the overall minimum guarantee (MG) that is required by the distributor, who is acquiring the UK distribution rights in the film pursuant to a joint venture arrangement.

Ordinarily, the amount of the producer's JV contribution will match the amount of the distributor's portion of the overall MG, but this need not necessarily be the case. If the split is not 50/50 the recoupment position and fee shares will be adjusted to reflect the exact proportions contributed by each of the JV partners.

1.2

The terms upon which the distributor shall acquire the UK distribution rights from the licensor thereof in a JV Scheme film will be subject to the approval of the BFI. Such distribution terms shall be arms length, and on no more favourable terms to the distributor than distribution terms customarily agreed for non-JV Scheme films. The distribution terms agreed between the distributor and the licensor(s) for JV Scheme films will include video rights to be distributed by the distributor on a distribution fee basis, as opposed to a royalty to the licensor basis.

1.3

From the date that distributor's Gross Receipts are first received, and throughout the period that the initial film theatrical release costs (P&A), video costs, other media distribution costs ('Distribution Costs') and both the distributor's MG contribution and the JV producer's MG contribution are being recouped, a Distributor Base Fee (across all media licensed to the distributor for the

film) will be retained by the distributor as a contribution towards its overhead for distributing the film. At the point in which all such Distribution Costs and MG contributions have been fully recouped, the Distributor Base Fee will cease to be payable, and thereafter the full Distribution Fee(s) – specified in the UK Distribution Agreement for the film – shall be shared between the distributor and the JV producer on an ongoing 50/50 basis (or such other percentage shares as reflect the ratios in which the overall MG is contributed by the distributor and the JV producer). Any ongoing Distribution Costs in respect of the film will be first deducted 'off the top'.

1.4

The Distributor Base Fee will be 15% in respect of all rights licensed to the distributor for the film (calculated on distributor's Gross Receipts).

1.5

The Distribution Fee Margin (being the difference between the Distributor Base Fee and the full Distribution Fee(s) specified in the UK Distribution Agreement for the film) will be shared between the distributor and the JV producer on a 50/50 basis (or such other percentage shares as reflect the ratios in which the overall MG is contributed by the distributor and the JV producer) across all media licensed to the distributor for the film. At the point in which the Distributor Base Fee shall cease to be paid to the distributor, the full Distribution Fee(s) specified in the UK Distribution Agreement for the film shall, on an ongoing basis, be shared between the distributor and the JV producer on a 50/50 basis (or other split, as above).

The JV producer's share of the Distribution Fee Margin ('the Producer Distribution Fee Margin Share') will be paid by the distributor into a Locked Box to be held by the BFI. All revenues held in the Locked Box will be administered by the BFI, as referred to in paragraph 1.13. The Producer Distribution Fee Margin Share will be uncapped as regards the JV arrangement. A Producer Distribution Fee Margin Share shall be shared between the JV producer, the writer and the director of the film (in percentages to be agreed between themselves) and will

be made accessible for their respective future filmmaking activities. At the point in which the aggregate revenues paid into the Locked Box on a film from any and all sources (including BFI recycled development funding and/or BFI Producer Corridor and/or BFI Supplemental Producer Corridor and/or Producer Distribution Fee Margin Share and/or JV MG Contribution and/or Producer Equity Entitlement) shall equal the sum of £1,000,000, any ongoing Producer Distribution Fee Margin Share payable into the Locked Box in respect of such film will be shared 62.5% between the JV producer, the writer and the director and 37.5% to the BFI. Any such sums received by the BFI by way of a share of the Producer Distribution Fee Margin Share will be applied by the BFI in the first instance against recoupment of the Film Fund production award for said film.

1.6

At the point in which the distributor's and the producer's MG contributions start to be recouped they will recoup on a 50/50 pari passu basis (or such other percentage shares as reflect the ratios in which the overall MG is contributed by the distributor and

the producer). Revenues applied against recoupment of the producer MG contribution will be paid into a Locked Box to be held by the BFI. All revenues held in the Locked Box will be administered by the BFI as referred to in paragraph 1.13 below.

1.7

As regards the JV arrangement, there will be no interest levied on, or recouped by, the distributor on the Distribution Costs or the MG contributions.

1.8

In respect of each JV Scheme film, there will be two separate accountings as follows:

- (i) Accounting from the distributor to the film's licensor (and thus also to financiers) based on the contractual terms set out in the UK Distribution Agreement for the film.
- (ii) Accounting from the distributor to the JV producer based on the pre-agreed JV terms.

Illustrative examples of these two types of accountings are set out in the next section.



1.9

The point(s) at which the recoupment revenues to be applied against the producer's MG contribution and the Producer Distribution Fee Margin Share are to be paid into the Locked Box will be determined by reference to the status of recoupment of the Distribution Costs at any given point under the terms of the JV arrangement.

The JV accounting between the distributor and the JV producer in respect of the JV Scheme film will operate on the following basis:

- (i) Until recoupment of the initial Distribution Costs

All Distributor Gross Receipts shall be applied as follows:-

- (a) First to the distributor in payment of the Distributor Base Fee (at the applicable rate); and thereafter
- (b) The balance thereof shall be applied against recoupment of the Distribution Costs

- (ii) Following recoupment of the initial Distribution Costs and until recoupment of the MG contributions

All further Distributor Gross Receipts shall be applied as follows:

- (a) First to the distributor in payment of the Distributor Base Fee (at the applicable rate); and thereafter
- (b) The balance thereof shall be applied against recoupment of ongoing Distribution Costs (if any); and thereafter
- (c) On a 50/50 basis (or other split, as above) towards recoupment of the distributor MG contribution and the producer MG contribution. Revenues applied against recoupment of the producer MG contribution will be paid into the Locked Box

- (iii) Following recoupment of the MG contributions

All further Distributor Gross Receipts shall be applied on a 50/50 basis (or other split, as above) towards payment of the Distributor Fee Margin. Such Distribution Fee Margin shall be paid out as follows:

- (i) First, payment of the Distribution Fee Margin (being the difference between the Distributor Base Fee and the full Distribution Fee(s) specified in the UK Distribution Agreement for the film) shall be made, calculated on a retrospective basis from day one until the point at which the MG contributions shall be recouped in full, to both the distributor and the JV producer on an equal 50/50 basis; and
- (ii) Thereafter, payment of the Distribution Fee Margin (being the amount of the full Distribution Fee(s) specified in the UK Distribution Agreement for the film) shall be made, calculated on an ongoing basis from the point at which the MG contributions shall have been recouped in full, to both the distributor and the JV producer on an equal 50/50 basis.

All revenues applied by way of the Producer Distribution Fee Margin Share under sub-paragraphs (i) and (ii) above will be paid into the Locked Box.

1.10

No box office awards or bonuses will be payable by the distributor in respect of a JV film without the approval of both the distributor and the JV producer.

1.11

If, under the UK Distribution Agreement, the distributor acquires any territory or territories in addition to the UK and Eire, the distributor and the JV producer will agree in good faith a fair and reasonable allocation of the Distributor MG in relation to the UK and Eire territory and the JV arrangements – subject also to BFI approval.

1.12

All other terms set out in the UK Distribution Agreement, ie. Term Territory, cross-collateralisation, etc, will apply to the operation of the JV arrangement between the distributor and the JV producer.

1.13 Locked Box

- (i) All revenues paid into a Locked Box shall be held by the BFI and administered in accordance with the terms of a Producer Entitlement Agreement to be entered into between the BFI and the JV producer and the writer and director of the film in question. There are restrictions on how and when the Locked Box revenues can be accessed. These are set out in the Producer Entitlement Agreement.
- (ii) The aggregate amounts of the Locked Box revenues (excluding the Producer Distribution Fee Margin Share) which are available to be accessed by the producer, writer and director shall in no event exceed the amount of the BFI Producer Corridor percentage (ie. a blended rate of 37.5%) which would have been available to the producer of the film had the BFI

Lottery production award for the film in question been made to a non-JV Scheme film.

- (iii) At the point in which the producer is awarded a Film Fund production award for a JV film, the producer shall elect whether they want any BFI Producer Corridor entitlement thereon to be payable from either (a) revenues received against recoupment of the JV MG contribution (subject always to the 37.5% blended corridor rate); or (b) revenues received against recoupment of the equity contribution of the Film Fund production award (subject always to the 37.5% blended corridor rate). Notwithstanding the above, as an accommodation in order to help promote interest in the JV Scheme, the BFI will agree – for the duration of the JV Scheme pilot period – that, in the event that the producer elects to have its BFI Producer Corridor entitlement to be paid from revenues received against recoupment of the JV MG contribution, then 100% of such recoupment revenues (up to the full amount of the overall 37.5% blended corridor rate calculated on the entire Film Fund production award made



The Selfish Giant

for said film) may be retained in the Locked Box to be shared between the JV producer, the writer and the director in percentages to be agreed between them.

- (iv) The Locked Box revenues derived from a JV Scheme film shall be shared between the producer, the writer and the director of such film in percentages to be agreed between such parties, and in accordance with an overall revenue sharing agreement to be entered into between PACT, the Writers' Guild of Great Britain and Directors UK.
- (v) The Locked Box revenues will be available to the producer, writer and director only to spend on their respective future filmmaking activities. It should be noted that all shares of Locked Box revenues (with the exception of the Producer Distribution Fee Margin Share) paid to the producer, writer and director are repayable to the BFI from such parties' future entitlement to revenues derived from the film in question.

1.14 State Aid

It should be noted that the BFI's introduction and operation of the JV Scheme is subject to the BFI obtaining the requisite State Aid approvals from the European Commission.

1.15 Pilot Period

The financial terms and conditions in respect of the JV Scheme as set out herein shall apply for the duration of the BFI JV Scheme Pilot Period and shall be reviewed by BFI, Pact and IFDA thereafter.



Gone Too Far

Draft example – these figures are for illustrative purposes only

Joint Venture Statement

EXAMPLE FILM (assumes a £2.5M – £5M budget British film where the international value is unproven but the UK value is more certain)		Low £000	Medium £000	High £000
Gross Box Office		£200	£800	£2,000
Distributor Gross Receipts until Distributor Breakeven				
Theatrical		50.0	200.0	500.0
Non-theatrical		25.0	50.0	100.0
Home video/DVD		100.0	500.0	1,000.0
Other media (e.g. EST and VOD)		90.0	350.0	800.0
Television		150.0	450.0	270.6
		415.0	1,550.0	2,670.6
Distributor Base Fees				
Base Distributor Fee	15%	(62.3)	(232.5)	(400.6)
Less Distribution Costs				
P&A (theatrical costs)		(300.0)	(500.0)	(1,100.0)
Ancillary costs		(10.0)	(20.0)	(20.0)
DVD/Video costs (assume 40% of DVD gross receipts)		(40.0)	(200.0)	(400.0)
		2.8	597.5	750.0
Less Minimum Guarantee				
Producer MG Contribution	50%	(1.4)	(298.8)	(375.0)
Distributor MG Contribution	50%	(1.4)	(298.8)	(375.0)
Distributor Breakeven		0.0	0.0	0.0
Distributor Gross Receipts after Distributor Breakeven				
Television		0.0	0.0	779.4
		0.0	0.0	779.4
Less payments to licensor/participations				
Overages		0.0	0.0	(145.0)
Joint Producer/Distributor share		0.0	0.0	634.4
Split as follows:				
Producer share	50%	0.0	0.0	(317.2)
Distributor share	50%	0.0	0.0	(317.2)
		0.0	0.0	0.0

Producer Share				
Total available to producer in Locked Box		1.4	298.8	692.20
Less Producer Contribution to Minimum Guarantee		(375.0)	(375.0)	(375.0)
		(373.6)	(76.3)	317.2
Distributor Share				
Total Distributor Base Fee		62.3	232.5	400.6
Total available to Distributor		1.4	298.8	692.2
Less JV Producer Contribution to Minimum Guarantee		(375.0)	(375.0)	(375.0)
		(311.4)	156.3	717.8

Draft example – these figures are for illustrative purposes only

Licensors Statement

EXAMPLE FILM (assumes a £2.5M – £5M budget British film where the international value is unproven but the UK value is more certain)	Low £000	Medium £000	High £000
Gross Box Office	£200	£800	£2,000
Theatrical			
Theatrical gross receipts	50.0	200.0	500.0
Theatrical distribution fees 30%	(15.0)	(60.0)	(150.0)
P&A (theatrical costs)	(300.0)	(500.0)	(1,100.0)
Non-theatrical			
Ancillary Gross Receipts	25.0	50.0	100.0
Ancillary costs	(10.0)	(20.0)	(20.0)
Non-theatrical distribution fees 30%	(7.5)	(15.0)	(30.0)
Home video/DVD			
DVD/Video gross receipts	100.0	500.0	1,000.0
DVD/Distribution fees 30%	(30.0)	(150.0)	(300.0)
DVD/Video costs (assume 40% of gross receipts)	(40.0)	(200.0)	(400.0)
	30.0	150.0	300.0
Other media			
Electronic sell through (EST)/VOD gross receipts	90.0	350.0	800.0
EST/VOD distribution fees 30%	(27.0)	(105.0)	(240.0)
Television			
Television fees – pay and free	150.0	450.0	1,050.0
TV distribution fees 30%	(45.0)	(135.0)	(315.0)
Total licensors share before Minimum Guarantee	(59.5)	365.0	895.0
Minimum Guarantee	(750.0)	(750.0)	(750.0)
Overages to licensor / (deficit)	(809.5)	(385.0)	145.0

Without the JV			
Total distributor income before costs	415.0	1,550.0	3,450.0
Less P&A (theatrical costs)	(300.0)	(500.0)	(1,100.0)
Less Ancillary costs	(10.0)	(20.0)	(20.0)
Less DVD costs	(40.0)	(200.0)	(400.0)
Less Overages	0.0	0.0	(145.0)
Less Minimum Guarantee	(750.0)	(750.0)	(750.0)
	(685.0)	80.0	1,035.0
With the JV – please refer to JV Statement			
Distributor	(311.4)	156.3	717.8
JV Producer	(373.6)	(76.3)	317.2
	(685.0)	80.0	1,035.0

