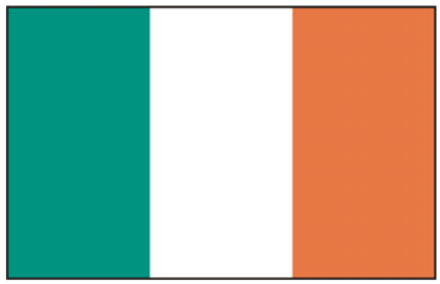
CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



IRELAND
SYNTHESIS SHEET

July 2007

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This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on www.eufilmstudy.eu

Acknowledgements

Legal Report by Germann Avocats

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A Overview of the legal situation in Ireland

1 Summary of main findings

Table A – Direct Territorialisation Requirements

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law			Expected New Funding Schemes containing "Objective Explicit" Territorialisation Requirements (A.6): Y/N
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	

Ireland	Section 481 Tax Relief Incentive for Investment in Film Production	24,400,000	Nat	N/A	N/A Spend in Ireland must equal the amount raised under “Section 481”. The tax relief is calculated at the top rate of the respective tax payable to the extent of 80% of the investment made by way of shares in film production companies. (2.2)	N/A	N	N/A	N/A	N
	The Irish Film Board (“IFB”) Development and Production Investment Loans	1,075,200 (2002) (The whole of IFB: 11,399,707 (2004)	Nat	N/A	N/A	N/A	N	N/A	N/A	

Table B – Indirect territorisalisation Requirements

Member State	Names of Funding Schemes	Indirect territorialization requirements located under "Formal Nationality Certification Procedures"			Indirect territorialization requirements located under selective aid criteria and procedures			Indirect territorialization based on any other provisions in the law that forces the producer to make local spending		
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
Ireland	Section 481 Tax Relief Incentive for Investment in Film Production	N	N/A	N/A	Y The criteria include *inter alia* the requirement to develop film industry (2.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A

	The Irish Film Board ("IFB") Development and Production Investment Loans	N	N/A	N/A	Y The criteria include *inter alia* the expenditures in Irish economy. Moreoveer film is to be made wholly or partly in Ireland (3.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (3.6)	N/A	N/A

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law[1]	Degree of the territorialisation[2]		
				Funding Scheme Level[3]	Funding body level	Member State Level[4]
Ireland	Section 481 Tax Relief Incentive for Investment in Film Production	24,400,000	Not quantified: spend in Ireland must equal the amount raised under "Section 481".	(0) not applicable	No data	96 % (N/A)
	The Irish Film Board ("IFB") Development and Production Investment Loans	1,075,200(2002) (The whole of IFB: 11,399,707 (2004)	no requirement	= 0	No data	

Table D – Co-Production Agreements

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Ireland	European Convention on Cinematographic Co-Production	2000	N
	Canada	1989	
	Australia	1998	

Ireland is currently a party to the European Convention on Cinematographic Co-production. In addition there are two bilateral agreements (see reply A.3 for Ireland).

In Ireland there are two funding schemes: the "Section 481 Tax Relief Incentive for Investment in Film Production" and the "*Bord Scannan na hEireann*"/ "The Irish Film Board ("IFB") Development and Production Investment Loans" (see reply A.2 for Ireland; see below Section B1).

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[1] Assessment based on replies from local lawyers (see synthesis sheet)

[2] High territorialisation: ratio "total amount subject to territorialisation"/"total budget available" >1
Moderate territorialisation: ratio "total amount subject to territorialisation"/"total budget available" =1 or <1
No territorialisation: total amount subject to territorialisation = 0
Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

[3] Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.
Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

[4] "total amount subject to territorialisation"/"total budget available"
Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

2 Synopsis of conventions on co-production agreements

Ireland is a party to the European Convention on Cinematographic Co-production, which came into force in 2000. The Irish Film Board ("IFB") is in charge of its administration and supervision.

There are also two bilateral agreements: the Agreement on Film and Video Relations between the Government of Canada and the Government of Ireland, which came into force in 1989, and the Film Co-Production Agreement between the Government of Ireland and the Government of Australia, which came into force in 1998. The IFB is in charge of their administration and supervision (see reply A.3 for Ireland).

3 Synopsis of formal nationality certification procedures

In Ireland there is a nationality certification procedure. The IFB is the authority responsible for assessing and certifying the nationality of an independent film or television production in Ireland on the basis of the "EC First Films Directive" (63/607/EC) (the "Directive"), which laid down uniform criteria for the recognition of the nationality of films from EC Member States (for further details see www.filmboard.ie/coproduction.php and reply A.4 for Ireland).

4 Synopsis of expected legal developments

No new co-production agreements are expected in Ireland as of 1 January 2007.

The Department of Arts, Sports and Tourism had planned to conclude bilateral co-production agreements with each of Germany and Luxembourg by the end of the first quarter of 2006. To date, however, no public statements have been made by the Department in this regard (see reply A.5 for Ireland).

No new funding schemes containing territorialisation requirements are expected to enter into force in Ireland as of 1 January 2007 (see reply A.6 for Ireland).

B The Irish funding schemes

1 Overview

In Ireland there are two funding schemes: the "Section 481 Tax Relief Incentive for Investment in Film Production" ("Section 481") and the "*Bord Scannan na hEireann*" –"The Irish Film Board ("IFB") Development and Production Investment Loans"

2 Analysis of the "Section 481 Tax Relief Incentive for Investment in Film Production" ("Section 481")

2.1 Description of the funding scheme

The "Section 481 Tax Relief Incentive for Investment in Film Production" is based on Section 481 of the Irish Taxes Consolidation Act 1997 most recently amended by "Section 35 of the Finance Act 2004" and "Section 18 of the Finance Act 2006", by the "Statutory Instrument N. 869 of 2004- Film Regulations 2004 (the "Regulations") of December 2004 and by the "Guidance Note for Film Producers and Promoters on the Certification of Qualifying Films under Section 481 – Tax Relief Incentive for Investment in Film" ("Guidance Notes") of December 2004.

There were significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. Previously the Section 481 legislation had required that a minimum of 75% of the work on the production of the film be carried out in the State. This Requirement was removed in 2004. Moreover, the definition of "qualifying film", that is necessary to apply for the tax relief, has been changed (see reply B.12 for Ireland for "Section 481"; see "Section 35 of the Finance Act 2004").

The "Section 481" administration and supervisory authorities are Office of the Revenue Commissioners, Direct Taxes: Business Incentives and the Department of Arts, Sport and Tourism. For contact information see reply B.14 for Ireland for "Section 481".

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme.

No minimum amount of production expenditures in Ireland is imposed on projects in order to qualify for “Section 481” (see reply B.5 for Ireland for “Section 481”). However, spend in Ireland must equal the amount raised under “Section 481”.
This scheme provides a tax relief which is available on both corporate and individual investments in film production. This relief is calculated at the top rate of the respective tax payable to the extent of 80% of the investment made by way of shares in film production companies. The “Section 481” provides an indirect net benefit to production undertakings related to a percentage of the film production budget.

2.2.2 Practice

There is no relevant judicial or administrative practice reported (see reply B.9 for Ireland for “Section 481”)

2.2.3 Discussion

The amount spent in Ireland on a given film production must at least equal the amount raised under the scheme for that production; i.e. if a producer raises 80% of the total budget of a film, the producer will have to spend this amount on Irish territory. Even if a minimum amount of local expenditures is not imposed, the mechanism which provides that spend in Ireland must equal the amount raised under Section 481 may arguably be qualified as an objective territorialisation requirement.

The Section 481 investment incentive scheme provides an indirect net benefit to production undertakings related to a percentage of the film production budget. Although the immediate recipients of the aid are the taxpayers who invest in shares of production companies, the ultimate beneficiaries of the scheme are the producers of certified films. The net benefit to the producer arises because the investor benefiting from tax relief is prepared to share the tax relief with the producer. The aim of the Section 481 incentive scheme is to stimulate private-sector investment in film and independent television production by providing some cushion against the inherent risks of investment in film production. The very aim of such mechanism is to promote and encourage the indigenous film industry and the development of a film industry in Ireland.

Since 1 January 2006, the maximum amount of funding that can be raised for a film or television programme pursuant to Section 481 is 80% (55% - 66% of the budget at 31 December 2005). However this is subject to a cap equal to the amount of “eligible spend” in Ireland. Eligible expenditure means spend on eligible goods, services and facilities and on eligible individuals. “Eligible goods, services and facilities” means goods, services and facilities where they are used or consumed in the State in the production of a qualifying film and they are provided within the State by a relevant person (as defined) directly or indirectly to a qualifying company. An "eligible individual" means an individual who is a citizen of Ireland or of another member state of the European communities or an individual domiciled, resident or ordinarily resident in the State or in another member state of the European communities (see reply B.11 for Ireland for "Section 481") .

2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the amount spent in Ireland on a given film production must at least equal the amount raised under the scheme for that production (see reply B.5 for Ireland for "Section 481").

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for Ireland for "Section 481").

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

However, the purpose of the funding scheme itself (to promote and encourage the indigenous film industry and the development of a film industry in Ireland) arguably implies indirect territorialisation (see below Sections 2.4 and 2.6)

2.4. Synopsis of State aid selective granting criteria and procedures

Section 481 provides tax relief for investments in "qualifying films".

A "qualifying film" is a film for which the Revenue Commissioners have issued a Certificate under Section 481 upon the authorisation of the Minister (see reply B.13 for Ireland for Section 481).

Pursuant to the "Guidance Note for Film Producers and Promoters on the Certification of Qualifying Films under Section 481 – Tax Relief Incentive for Investment in Film" ("Guidance Notes") the Minister, in considering whether to give the Revenue Commissioners an authorisation in relation to a film, will have regard to the categories of film eligible for certification, and to the contribution a film will make to either or both of the development of the film industry in the State and the promotion and expression of Irish culture. Accordingly, the Minister is to consider, *inter alia*, "the case made by the Promoter in relation to the contribution the project will make to, for example, the promotion and expression of Irish culture"; "examine the professional capability (creative and technical) of the promoters / producers and creative collaborators". Furthermore the Minister shall give special consideration to Irish language productions (for further details see reply B.13 for Ireland for "Section 481")**.**

The Revenue Commissioners may not issue a Certificate in respect of a film unless they have received authorisation from the Minister for Arts, Sport and Tourism.

The requirement to promote the Irish film economy arguably qualifies as indirect territorialisation that is not quantifiable.

2.5 Synopsis of the relation between territorialisation requirements and co-production agreements

Section 481 is administered completely separately from co-production agreements (see reply B.8 for Ireland for Section 481)**.**

Nevertheless, it must be recalled that because of Ireland's dualist approach to international agreements (Article 29.5 of the Irish Constitution), the State is bound by international agreements once they have been signed by the executive (e.g. relevant government minister) unless the agreement involves a charge on public funds. Where an agreement involves more than incidental expenditure by the State, the terms of the agreement must be approved by the *Dail*.

In relation to the incorporation of an international agreement into domestic law, the *Oireachtas* (National Parliament) can "authorise compliance" with the international agreement (e.g. give the relevant minister power to make regulations to comply with the agreement). However, what usually happens is that the *Oireachtas* will enact legislation to give effect to the obligations under the Agreement. Allied to this, there is a presumption of compatibility in relation to interpretation of such enacting legislation, which means that any conflict between the international agreement and the enacting legislation should be interpreted so that the latter is assumed to have been intended to comply with the agreement.

Therefore, in the event of any conflict as between an international co-production convention (to which Ireland is a party and to which it has given effect) and national law in respect of territorialisation requirements, the national legislation would be read in such a way as to comply with the International Convention.

2.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The aim of the scheme is to promote and encourage the indigenous film industry and the development of a film industry in the State and the promotion and expression of Irish culture.

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

3 Analysis of the "IFB Development and Production Investment Loans"

3.1 Description of the funding scheme

The IFB Development and Production Investment Loans scheme is based on the Irish Film Board Act 1980 ("IFB Act").

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study.

The authority in charge of the funding scheme administration and supervision is the Irish Film Board (IFB). The Minister for Arts, Culture and the *Gaeltacht* reconstituted the IFB in April 1993 under the Irish Film Board Act 1980. The IFB provides support by way of interest-free development and production loans which are repayable. For contact details see reply B.14 for Ireland for "DFF".

3.2 Synopsis of objective territorialisation requirements

3.2.1 Rules

The IFB does not contain any objective territorial conditions.

3.2.2 Practice

There is no relevant judicial or administrative practice reported

3.2.3 Discussion

N/A

3.2.4 Conclusions

No objective explicit territorialisation requirements apply to this funding scheme.

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial or administrative practice reported

3.3.2 Discussion

N/A

3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

Indirect territorialisation requirements are located under the State aid selective criteria and procedure and under the purpose clauses (see reply B.10 for Ireland for the IFB Development and Production Investment Loans; see Sections 5.4 and 5.6 below).

3.4 Synopsis of State aid selective granting criteria and procedures

In respect of the IFB production loans, the eligibility of the aided projects is ensured by the IFB which evaluates the Irish cultural value or the significance of Irish artistic/creative input of the qualifying film productions.

In particular, applications for Irish Film Board Production Loans are assessed on a number of criteria (see reply B.11 for Ireland for "IFB Development and Production Investment Loans"), including:

- creative strength of the project
- whether the project will create Irish employment at all levels
- spend in the Irish economy
- commercial potential

Second, the Irish authorities undertake that the cumulation of aid under the various schemes will not exceed 50% of the production budget of a project. Third, the Irish schemes do not contain special bonuses for specific film-making activities (see reply B.12 for Ireland for IFB Development and Production Investment Loans).

Furthermore, under the criteria for selective aid, the IFB shall consider "Irish cultural value or the significance of Irish artistic/creative input of the qualifying film productions" (see reply B.12 for Ireland for IFB Development and

Production Investment Loans). The particular "Irish interest" is also taken into account in determining the amount of the production loan.

This funding scheme contains indirect territorialisation requirements under selective aid criteria and procedures that are not quantified in the related law: the film is to be made wholly or partly in Ireland in order to be eligible; spend in the Irish economy, the creation of Irish employment (see reply B.12 for Ireland for IFB Development and Production Investment Loans).

3.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

3.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The eligibility of the aided projects is ensured by the IFB which evaluates the Irish cultural value or the significance of Irish artistic/creative input of the qualifying film productions (see reply B.12 for Ireland for IFB Development and Production Investment Loans).

The requirement of promoting the Irish film economy arguably qualifies as indirect territorialisation that is not quantifiable.

References:

None

Attachments:

- Replies to the legal questionnaire by Ruth Hunter, attorney at law, Matheson Ormsby Prentice Solicitors, Ireland
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- Regulations for Ireland