

MINISTERIAL ORDINANCE

Preamble

Law-Decree No 45/2018, of 19th June, authorised under the terms of Article 204 of Law No 114/2017, of 29th December (State Budget Law for 2018), created the Tourism and Cinema Support Fund and revoked, also in accordance with the authorisation provided for in the State Budget Law for 2018, namely in Article 220 contained therein, Article 59-F of the Tax Benefits Statute, as well as Law-Decree No 22/2017 of 22nd February and Article 92 (2) h) of the Corporate Income Tax Code, with the objective of replacing this tax regime with a more favourable incentive mechanism for cinematographic and audiovisual production , through a system of production expense reimbursement (cash rebate).

Accordingly, the Tourism and Cinema Support Fund includes an incentive for the production of cinematographic and audiovisual productions, as well as international filming in Portugal, which contribute to the international promotion of the country's image, in harmony with the objectives of cinematographic and audiovisual policy as a cultural activity, which, under the terms of Article 4 of the aforementioned law-decree, is regulated by joint ordinance of the members of the Government responsible for the areas of finance, culture and tourism.

In these circumstances, it is necessary to regulate the incentive programme for cinematographic and audiovisual productions and international filming in Portugal under the Fund.

In this sense, the present ordinance shall regulate the Incentive programme for cinematographic and audiovisual production within the framework of the Tourism and Cinema Support Fund, ensuring the respective compatibility with (EU) Regulation No 651/2014 of the European Commission, of 16th June 2014, which states certain categories of aid compatible with the internal market, pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union.

Therefore:

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The Government of Portugal, as authorized by the Ministers of Finance and Culture and by the Secretary of State for Tourism, in the use of the powers delegated to it by order no. 7543/2017, of August 18, published in the Diário da República, 2. Series N° 164 of August 25, 2017, and under the terms of Article 5 (2) of Law-Decree No 45/2018 of 19th June, the following:

Article 1

Object

1 – The present law-decree establishes the rules for the application of the incentive regime for cinematographic and audiovisual production, hereinafter referred to as the "Incentive", under the Tourism and Cinema Support Fund, hereinafter referred to as the Fund, established by Law-Decree No 45/2018 of 19th June.

2 – The Regulations for the Cinematographic and Audiovisual Production Incentive are hereby approved, annexed to this ordinance and form an integral part thereof.

Article 2

Competences

Instituto do Cinema e Audiovisual, I.P. - ICA, I.P. (Portuguese Film Institute) and Turismo de Portugal, I.P. (Tourism of Portugal) are responsible for ensuring that the procedures related to the analysis of cases, in accordance with this ordinance, as well as the national and international promotion of the Incentive are implemented.

Article 3

Brand

A brand may be used for the national and international promotion of the Incentive.

Article 4

Prospection and marketing

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- 1 - The Fund may finance prospecting trips for foreign producers, who are considering the possibility of filming in Portugal.
- 2 - The application for funding is submitted by means of a specific form, made available on the ICA, I.P. website, up to twenty business days before the planned trip.
- 3 - The costs of travel, accommodation and services are covered within the scope of prospecting filming locations and ascertaining the feasibility of production in Portugal.
- 4 - If the project is produced and the Production Incentive is applied, the aid given to the prospection shall be included in the final accounts of the project for the purpose of calculating the extent of the public aid.
- 5 - The Fund finances or co-finances activities to promote the Incentive, resources and companies and the national film industry, namely through participation in markets and other events.
- 6 - The activities referred to in the previous number are included in annual or multiannual promotion plans and in the Fund's activity plans, approved by the Fund's management, taking into consideration the Advisory Board's recommendations.
- 7 - In cases where a promotional activity in the context of a market or other event implies being present with an exhibit, whenever possible, it is organised in the form of a stand open to professionals, companies and national projects present in the market or event in question.
- 8 - Unless otherwise justified, the measures to aid prospection and promotion, as well as other expenses within this scope, which, by reason of their nature and objectives, are legally attributed to the Fund, shall not exceed 5% of the Incentive budget.

Article 5

Confidentiality

- 1- The intervening entities may not disclose information received which the candidates have identified as confidential at the time of their application submission, except for documents which must be publicly accessible, in accordance with the terms of Law No 26/2016 of 22nd August, and all other applicable provisions.

2- Notwithstanding the preceding paragraph, confidentiality shall include, among others, documents protected by copyright or related rights, as well as documents revealing secrets related to literary, artistic, industrial or scientific property, technical or commercial secrets, confidential aspects of projects and any other information whose content may be used to distort competition or impair the candidate's rights in the evaluation process or subsequently, in accordance with the terms of Law No 26/2016 of 22nd August, and the restrictions resulting from the Copyright and Related Rights Code and the Industrial Property Code, as well as other legislation applicable to the protection of intellectual property.

Article 6

Evaluation

Until 31st December 2022, the Fund's management promotes an evaluation of the operation and impact of the Incentive relative to its objectives, particularly with regard to the renewal of the Incentive.

Article 7

Transitional regime

Projects whose producers have requested provisional recognition for the purposes of the tax incentive for cinematographic and audiovisual production provided for in Law-Decree No 22/2017, of 22nd February, up to the date the present ordinance takes effect, are automatically transitioned to the scope of this Incentive in the following terms:

- a) Projects whose request for provisional recognition has been submitted but not yet granted by ICA, I.P. shall be assessed in accordance with the terms of this Ministerial Ordinance;
- b) Projects whose request for provisional recognition has been granted by ICA, I.P. shall automatically be admitted to the Incentive's benefit, provided for in the present ordinance, and the amounts of deduction, tax credit or reimbursement attributed to said projects shall be converted into financial aid under the Incentive, relative to eligible expenses incurred starting from 2018.

Article 8

Effective date

The present Ministerial Order shall enter into effect on the day following its publication.

ADDENDUM I

(to which Article 1 refers)

Regulation for the Cinematographic and Audiovisual Production Incentive through the
Tourism and Cinema Support Fund.

CHAPTER I

Scope

Article 1

Object

The present Regulation establishes the rules of the incentive programme for cinematographic and audiovisual production with international and cultural promotional relevance and international filming in Portugal, through the Tourism and Cinema Support Fund.

Article 2

Definitions

1 - For the purposes of the application of this Incentive, it is understood that:

- a) "Development" is the process of preparing the project prior to its entry into production, including writing and research, the acquisition of rights and/or authorisations, the identification of shooting locations and teams and technical and artistic resources , the preparation of the production budget and the financing plan, the search for partners, co-producers and funders, preparation of the production schedule, preparation of initial marketing and exploitation plans, graphic development, participation in international training activities intended for producers and authors, provided that the activities in question include demonstrably practical work focussing on projects of the participants included in the writing and development plan, participation in international forums for co-production and

- comparable events, testing or production of models or pilots, treatments with moving images, teasers, websites or other presentation and promotion media;
- b) “Initiative” is the decision of the producer to develop and produce the project, ensuring the legal capacity to do so, by obtaining the copyright or authorisations of the copyright holders required for such purposes;
 - c) "Foreign production" is that which is carried out without Portuguese co-production, with all financing of production and all intellectual property rights being reserved for legal entities without a registered office or non-residency in Portugal;
 - d) “Executive producer” is a legal person who produces an executive production, in other words, on behalf of a producer who has been duly authorised to produce a cinematographic or audiovisual project of his or her initiative, and, under a service contract concluded with him or her, is responsible for assembling the artistic and technical means for the execution of the project and for ensuring the management of operations leading to the execution of the project or parts thereof, in accordance with a previously agreed upon budget, without participating in the ownership of intellectual property rights of the project.

2 - The other terms used in this regulation, which are defined in Law No 55/2012, of 6th September, as amended by Law No 28/2014, of 19th May, or in Law-Decree No 25/2018, of 24th April, and the respective regulations shall be understood in the express interpretation of those documents, if this Regulation does not provide another understanding.

CHAPTER II

Beneficiary entities and eligible projects

Article 3

Beneficiary entities

1 – Legal persons, who are registered in the Registry of Cinematographic and Audiovisual Entities, provided for in Law No 55/2012 of 6th September and in Law-Decree No

25/2018, of 24th April, and whose corporate purpose is the following, may request access to the Incentive benefit:

- a) The activity of producing films intended to be screened in cinemas or to be broadcast on television or operated through on-demand audiovisual media services or other audiovisual media services, or
- b) The provision of technical services in the field of cinema and audiovisual production, including the rental of imaging, lighting and equipment, as well as post-production technical activities, including assembly, editing, dubbing, subtitling, retouching, graphic effects, computer effects, sound and computer images, as well as laboratory activities for film production and special laboratories for animation films and post-production sound activities.

2 - Instituto do Cinema e Audiovisual, I.P. - ICA, I.P. (Portuguese Film Institute) ensures a modality for the registration of non-resident European companies, without branches in Portugal in the Registry of Cinematographic and Audiovisual Entities, in order to enable the application for access to the Incentive benefit for legal persons with registered offices in another Member State of the European Union or in a State of the European Economic Area.

3 – In the cases referred to in the preceding number, before the start date of the eligible production expenses, the requesting entity must establish a company or branch with a taxable character in Portugal. Legal persons with a specific object and duration limited to production and management of one or more works ("vehicle companies") are eligible.

4 – In the case of co-production involving more than one producer established in Portugal, each co-producer shall submit an application for access to the Incentive, with respect to the eligible expenses it incurs.

Article 4

Requirements to be met by beneficiary entities

Companies that meet the following requirements may benefit from the Incentive:

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- a) Have regularly organised accounting, in accordance with accounting standardisation and other legal provisions in effect for the respective sector of activity;
- b) Not be in a state of insolvency, declared by a court sentence, in a stage of liquidation, dissolution or cessation of activity, subject to any preventive means of asset liquidation or in any analogous situation or which has pending proceedings, unless it has implemented an insolvency plan, in accordance with legislation in effect;
- c) Not be subject to a pending recovery injunction following a decision by the European Commission which has declared state aid received to be illegal and incompatible with the internal market;
- d) Have the tax obligations fulfilled, with respect to the tax administration and social security;
- e) Not be in default with regard to financial support granted by ICA, I.P., Turismo de Portugal, I.P., or by international programmes in which the State participates through ICA, I.P.;
- f) In the case of co-productions involving applicants who are entities subject to the investment obligations provided for in articles 14 to 17 of Law No 55/2012, of 6th September, or non-independent production companies affiliated or related to them, in accordance with the terms of Article 2, subparagraph ii) of paragraph r) of the aforementioned Law, these do not hold a majority interest in the co-production, nor in the whole of it, nor, in the case of international co-production, in the Portuguese part.
- g) Not be in breach of the obligations set forth in articles 14 to 17 of Law No 55/2012, of 6th September, whenever applicable.

Article 5

Requirements relative to the projects

1 – Projects produced wholly or partially in Portugal with international promotional relevance and cultural relevance, promoted by national or foreign producers, which may be carried out in co-production recognised by international treaties or in *de facto* co-production, or by means of a local executive producer or establishment of a company or branch with a tax character in Portugal are eligible. Legal persons with a specific purpose

and duration limited to the production and management of one or more projects ("vehicle companies") are admissible.

2 – It is considered that there is a *de facto* co-production when the project cannot benefit from official recognition under international treaties, but there is a contractual link between co-producers and the co-production contract protects, as rights of the parties, the co-ownership of the negative or master of the project and establishes the proportions of the shareholdings of each party and the system of allocation of exploitation rights and revenues, as well as the applicable law.

3 - The granting of the benefit depends on the realisation, in national territory, of eligible expenses, certified as definitive, for an amount not less than €500,000 per project, or €250,000 for documentaries or when production activities in Portugal do not include filming.

4 – Only projects which have international distribution, namely, a commercial premiere in a cinema and/or a DVD/BluRay edition and/or broadcast on television and/or commercialisation services in other audiovisual media services, namely Video on Demand services (VOD) in one of the following cases are admissible:

- a) At least three distribution territories, including at least one territory where Portuguese is not the official or national language;
- b) One or more distribution territories, totalling a population of 45 million or more, including at least one territory where Portuguese is not an official or national language.

5 - At the submission date of the application for access to the Incentive benefit, or, if this is not possible, until the start of production expenses in Portugal (excluding development or pre-production expenses), the applicant must prove the existence of financing covering 80% of the estimated eligible expenditure.

6 - Filming or main animation can only take place after delivery of the application for access to the Incentive benefit.

Article 6

Types of eligible projects

1 – The following project types and formats are eligible:

- a) Feature-length, fiction, documentary or animation cinematographic projects intended for initial exhibition in commercial cinemas;
- b) Audiovisual projects of independent production, in accordance with Article 2, paragraph j) of Law No 55/2012, of 6th September, for television broadcasting, of the following types:
 - i. Television films;
 - ii. Single television documentaries;
 - iii. Television specials;
 - iv. Television series (fiction, documentary or animation).
- c) works of fiction, animation or documentary, unitary or in the form of a series of episodes, intended for exploitation by means of on-demand audiovisual communication services or other electronic communications services;

2 - The independent production requirement provided for in paragraph b) of the preceding number and the limit of number of episodes provided for in paragraph t) of Article 2 of Law-Decree No 25/2018, of 24th April do not apply to projects of foreign initiative.

3 – For projects in the form of fiction series, the production cost per minute shall be equal to or greater than 2,000 Euros.

4 - Projects with the following characteristics are not eligible:

- a) Cinematographic or audiovisual projects with content or orientation of essentially a news nature or political, religious or other propaganda, as well as pornographic films or projects which, in abuse of freedom of expression, carry messages of racism, xenophobia, violence or political and religious intolerance, or other values and attitudes that are manifestly contrary to the fundamental rights and freedoms established in the Constitution of the Portuguese Republic and in international law, or which in any way intentionally promote such values or attitudes;
- b) Any type of project, relative to which there are no conditions for structural market failure and incentive effect, which authorise public aid, in accordance with applicable European Union legislation, in particular (EU) Regulation No 651/2014 of the European Commission, of 16th June 2014.

Article 7

Requirements relating to cultural content and promotion of national resources

1 - In order to ensure the objectives of the Incentive and the cultural nature of the projects in accordance with Article 54 of (EU) Regulation No 651/2014 of the European Commission, of 16th June 2014, which declares certain categories of aid compatible with the internal market, pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union, projects are assessed on the basis of their cultural characteristics and their contribution to the enhancement of cinematography, audiovisual and national resources, by means of a table of analysis and classification, annexed to this Regulation, of which it is an integral part.

2 – In order to be eligible, the project must achieve a minimum of 15 points, in the total of sections A, B and C, in the analysis and classification table, provided that:

- a) It obtains at least 10 points in the subtotal of sections A1 and A2, of which at least 5 points are obtained in section A2;
- b) It obtains at least 3 points in section A1, at least 4 points in section A2 and at least 4 points in the subtotal of sections B and C.

5 - In the case of foreign initiative projects, produced by resorting to an executive producer in Portugal or by co-production which cannot be officially recognised, eligibility is reached with a minimum of 10 points in the table, of which, at least 5 points must be obtained in the subtotal of sections A1 and A2.

6 - In the case of projects whose production activities in Portugal do not include filming, eligibility is reached with a minimum of 8 points in the table, of which at least 4 points must be obtained in the subtotal of sections A1 and A2.

CHAPTER III

Financial aid

Article 8

Aid rates, amounts and limits

1 The general rate applicable to expenses eligible for the determination of the incentive amount shall be 25%.

2 – The 30% rate applies to projects which, in addition to the score provided for in article 7, obtain:

- a) At least 20 points in the annexed table of analysis and classification, including at least 6 points in subsection A2.5 or at least 10 points in the subtotal of sections B and C;
- b) In the case of projects of foreign initiative produced by means of resorting to an executive producer in Portugal or by co-production which cannot be officially recognised, a minimum of 12 points in the table of analysis and classification annexed;
- c) In the case of projects whose production activities in Portugal do not include filming, at least 10 points in the analysis and classification table annexed.

3 – Regardless of the rate applied to each project under the terms of the preceding paragraphs, a rate of 30% is applied to the eligible expenditure incurred in low-density areas, according to the geographical area considered for the purposes of the National Programme of Territorial Cohesion and to the eligible expenditure on remuneration and expenses, such as subsistence allowances, social security contributions and insurance, of the members of the artistic and technical teams who are disabled.

4 - Incentives are granted up to the limit of the Fund's financial resources in each year, in the order which the applications for access to the Incentive benefit are received.

5 - The maximum amount of aid per project is, as a rule, € 4,000,000.00, whilst aid in a greater amount may be approved by means of a decision from the entity responsible for managing the Fund, once it has been assured that the aid in question does not jeopardise the capacity of the Fund in that financial year or in the years in which such a decision would have an impact, or the specific ability to ensure the incentive to different types of productions in that or those years.

6 – The incentive amounts to be allocated to projects that include entities that are not independent producers as beneficiaries may not total, in each calendar year, more than 15% of the total Incentive allocation in the same year.

7 – When the approved amounts reach 50% of the Incentive budget in each financial year, the Fund's management may suspend the automatic procedure provided for in paragraph 4 until the end of the financial year and allocate the remaining 50% to projects which, being eligible under the provisions of Article 7 and in the previous paragraphs of

the present article, demonstrate a greater impact on the international projection of Portugal as a destination.

8 - The international projection referred to in the preceding paragraph shall be verified, specifically, by:

- a) Geographical scope of diffusion of the projects, with diffusion in strategic markets for tourism being valued;
- b) Media presentation of the project in international media;
- c) Contribution of the project to the achievement of the objectives defined in the Strategy for Tourism 2027 (ET 2027).

9 – The Fund publicly discloses, through the website of ICA, I.P., the moment at which the provisions of paragraph 7 become applicable.

Article 9

Eligible expenses

1 – The expenses related to personnel and the acquisition of goods and services in Portugal are considered eligible, in the following terms:

- a) In the case of remuneration of personnel assigned to the project's production, as well as the fees attributed to service providers, they are eligible to the extent that they are taxed in Portugal;
- b) In the case of goods and services supplied by companies:
 - i. The company must have its registered office, effective management or permanent establishment in Portugal and be duly registered in the Commercial Registry;
 - ii. The company or permanent establishment providing the services must have at least one permanent employee in Portugal at the time the services are provided;
 - iii. The detailed invoice for the services provided is issued by the company established in Portugal or by the permanent establishment in Portugal;
 - iv. All billed services are provided in Portugal or the material used to provide the services is acquired in Portugal and the technical equipment necessary to provide the services is used in Portugal;

v. Mobile equipment, namely cameras, lighting, sound equipment, must be obtained, specifically, purchased, acquired under a leasing regime or rented in Portugal.

2 – The development expenses of a project carried out in national territory, in accordance with the terms of this article, in the twelve months preceding the submission of the application for access to the Incentive benefit are eligible provided that they are duly incorporated into the project budget and accounts in accordance with Article 54, No 8 of (EU) Commission Regulation No 651/2014 of 16th June 2014 and certified accordingly.

3 – Included among the expenses referred to in the previous number are those relating to copyright transmissions, provided they are indispensable for the project's production.

4 – Expenditures related to the following remunerations shall be eligible up to a limit of 35% of total expenditure in Portugal, subject to a sub-limit of 10% per item:

- a) Producers and production companies, including executive producers;
- b) Directors;
- c) Writers, authors of adaptations and authors of dialogues;
- d) Other authors, such as authors of pre-existing works and musical composers;
- e) The main actors.

5 – The remuneration of the producer as a legal person is attested by his or her inclusion in the accounts of the project or, in the case of foreign production, by means of an executive producer, through a receipt for payment of the remuneration in question by the foreign producer.

6 – In addition, production expenses related to production activities carried out in Portugal, but contracted with service providers established in other States of the European Union or the European Economic Area, are considered to be eligible expenses, up to a limit of 20% of eligible expenditure in Portugal.

7 - ICA, I.P. may adopt additional specifications for eligible expenditure in accordance with its Regulation on eligible expenditure and the presentation of accounts.

Article 10

Calculation basis

Notwithstanding the terms of Article 5, No 3, the maximum eligible expenditure considered for the purpose of calculating the incentive amount shall be 80% of the project's production cost or 100% when the terms of paragraph 6 of the previous article are applied.

Article 11

Accumulation and limits of public aid

1 - The sum of the Incentive obtained for the production of a project with other state aid granted for the same production may not exceed 50% of the respective production costs or 60% in the case of international co-productions.

2 – Derogations of the limits provided for in the previous paragraph are allowed, for projects considered difficult or low budget, in terms of Numbers 3 and 5 of Article 7 of Law-Decree No 25/2018, of 24th April .

3 - When an international co-production project benefits from public aid for production in different States, the determination of the applicable limits is made by ICA, I.P., together with the competent foreign entities.

CHAPTER IV

Procedure, execution, supervision

Article 12

Application for access to the Incentive benefit

1 - The application shall be submitted by electronic means, prior to the realisation of the eligible production expenses, notwithstanding the provisions of Article 8, No 2, by submitting the specific form available on the ICA, IP website, together with the documents referred to in number 4.

2 – If it is technically impossible to use the electronic route attributable to ICA, I.P., the form indicates the alternative means of filing the application.

3 - The form shall include the identification of the applicant and the other co-producers, if any, the technical identification and characterisation of the project, the dates and places of production, including post-production.

4 - The following documents must accompany the application:

a) Administrative documents:

- i. Declaration upon the honour of the applicant stating that he or she is not in any of the situations of exclusion provided for in Article 4;
- ii. Contracts for the transmission of copyright or authorisations from the copyright holders;
- iii. Contract with the director or directors;
- iv. Co-production contract or contracts, where applicable;
- v. Contract between the foreign producer and the local executive producer, if it is a foreign production;
- vi. Budget and estimate of expenditure allocation by producer, by territory and by item;
- vii. Identification, including the indication of nationality, the country of residence for tax purposes and, whenever possible, the estimated amount of fees or payments to be received, for the authors, producers, actors and technicians and for all professionals and companies to be hired in Portugal and whose participation has an impact on the project score in accordance with Article 6;
- viii. Project financing plan;
- ix. Contracts or decisions certifying the obtained and foreseen funding;
- x. Distribution or diffusion plan, and respective contracts if these exist;

b) Documents related to the content of the project:

- i. Screenplay;
- ii. Treatment in the case of documentaries;
- iii. Notes of intention or explanations from the director and/or producer;
- iv. Additional explanations, technical or artistic, relevant to the project assessment, if necessary.

5 – In foreign productions, the beneficiaries are exempt from presenting the documents referred to in sub-paragraphs ii) and iii) of paragraph a) of the preceding paragraph.

6- If any documents are missing or if further clarification is necessary, ICA, I.P. shall notify the applicant for a reply within a maximum period of 10 business days.

Article 13

Communications and notifications

1 - All communication between ICA, I.P. and the applicants, particularly with regard to notifications, shall be made to the electronic address indicated by them and included in the Registry of Cinematographic and Audiovisual Entities and other entities of ICA, I.P.

2 - Notices and communications, when made through electronic mail or other means of written and electronic transmission of data, shall be deemed to have been made on the dispatch date.

Article 14

Decision regarding the application for access to the Incentive benefit

1 - ICA, I.P. and Turismo de Portugal, I.P. evaluate and decide on the application for access to the Incentive benefit within twenty business days starting from the date the application was received, with an interruption of this period whenever documents or clarifications are requested.

2 – If the application is rejected, the applicant may submit a complaint addressed to ICA, I.P. within 10 business days.

3- ICA, I.P. and Turismo de Portugal, I.P. shall decide on the complaint within ten business days, this decision being final.

4 – The decision on access to the Incentive benefit refers to the foreseeable dates of realisation of the eligible expenses, as well as the estimated amount thereof, the estimated date of completion of the project and an estimate of the amount of Incentive to be awarded.

5 – The decision of ICA, I.P. and Turismo de Portugal, I.P. shall be communicated to the applicant by the end of the business day following that of the respective decision.

6 – In the communication provided for in the preceding paragraph, ICA, I.P. and Turismo de Portugal, I.P. may include indications or warnings that they consider relevant, related to critical factors of project execution that could condition the definitive determination of the Incentive.

7 - Within thirty business days after notification of the decision for access to the benefit, the Incentive agreement between ICA, I.P. Turismo de Portugal, I.P. and the beneficiary is celebrated, which contains, specifically, the rights and obligations of each party.

Article 15

Revision of the decision for access to the Incentive benefit

1- The applicant whose project has obtained a favourable decision of access to the Incentive benefit, in accordance with the terms of the previous article, is required to request from ICA, I.P., the revision of the initial decision whenever there are significant changes in the project or significant deviations in the implementation of the project compared to the information which had been provided in the initial application form and communicated in the documents sent and accepted in accordance with Article 12.

2 – Significant modifications of the project or significant deviations in its execution are considered to be changes related to critical factors for the determination of project eligibility and the incentive rate, namely:

- a) Changes in the co-production structure or contractual relationship with the local executive producer;
- b) Changes in identity, nationality or residence or tax residence and the nature or extent of the participation in the project by all the authors, actors and technicians or any personnel accounted for in the evaluation and classification of the project, according to the table attached to the present Regulation;
- c) Changes in the screenplay or production options or vicissitudes of the latter, namely with regard to filming and post-production locations and their durations and dates, or any other factors impacting the evaluation and score of the project's characteristics in terms of the table attached to the present Regulation;
- d) Budget changes in excess of 10% of the project's budget and any reductions in the estimate of eligible expenditure that could jeopardise the project's eligibility.

3 – The revision of the decision for access to the Incentive benefit is in accordance with the procedure and deadlines applicable under the terms of numbers 1 to 4 of the previous article and has no costs for the applicant.

Article 16

Definitive Determination of the Incentive

1 - The request for definitive determination of the Incentive is presented after, cumulatively:

- a) The completion of the project, in accordance with number 4 and the audit report and certification of accounts by a statutory auditor, in accordance with number 5;
- b) The demonstration of the distribution and/or marketing and/or commercialisation through audiovisual media services, in accordance with the plan presented with the application for access to the benefit and upon presentation of the contracts relating to the specific exploitation in each territory, with the mandate contracts with sales agents not being sufficient for this effect.

2 – In any case, the application for definitive clearance shall be submitted within a period not exceeding 24 months from the date of the first eligible production expenditure, or 36 months in the case of animation works, which may be extended to 36 months or 48 months at the request of the applicant.

3 – Failure to comply with the provisions of the preceding paragraph is grounds for non-compliance within the meaning of Article 21.

4 - For the purposes of paragraph a) of number 1, the project is deemed to be completed when the following is delivered to ICA, I.P:

- a) In the case of national projects or co-production:
 - i. Two copies of the definitive version of the work, as made available for cinema release, in the case of cinematographic works, or as made available for television broadcasting or marketing through other audiovisual services, subtitled in Portuguese if necessary, as long as they are suitable for the finality of preservation and viewing of the projects, one of which is destined for Cinemateca, IP,

respecting the technical specifications established in a joint regulation to be approved by ICA, IP, and Cinemateca, IP.

- ii. The accompanying materials intended for marketing and promotion activities, contained in the Ordinance approved by the member of Government responsible for the area of culture, for Cinemateca, I.P. ;
- iii. Film advertisement for use in the promotion and marketing of the work by ICA, I.P.;
- iv. Press kit, or synopsis for promotional purposes, with a maximum of 500 characters;
- v. Contract with the composer, in case of the existence of original music;
- vi. Producer's statement on how he or she acquired the rights necessary for the exhibition and marketing of the film, namely regarding the use of music and images;
- vii. Playlist (“*music cue sheet*”);
- viii. Registration of the project at ICA, I.P.;
- ix. Poster for the film;
- x. Distribution or marketing contracts in accordance with the plan presented with the application for access to the benefit, and for this purpose, the mandate contracts with sales agents are not sufficient.

b) In the case of foreign projects:

- i. Two copies on BluRay or, if this does not exist, on DVD, in lieu of the project support materials referred to in subparagraph (i) of paragraph a);
- ii. The elements referred to in subparagraphs (iii), (iv) and (ix) of the preceding paragraph;

5 - The audit report referred to in paragraph 1 shall include, in addition to the certification of project accounts, certification of the applicant's compliance with other requirements established in the present Regulation, and especially, verification of the conditions determining the project, in accordance with the terms of Article 7, No 2 and the calculation of incentive rates, in accordance with Article 8.

6 - ICA, I.P. and Turismo de Portugal, I.P. shall assess the final determination request within 20 business days of receiving the request, interrupting this period whenever documents are requested or clarifications are required.

7 - In case of rejection, the applicant may submit a complaint within ten business days, addressing it to ICA, I.P.

8 - ICA, I.P. and Turismo de Portugal, I.P. shall decide on the complaint within ten business days, this decision being final.

9 - The final determination of the Incentive certifies the general compliance and eligibility of expenses and includes the final determination of the applicable incentive rates and the amount of the respective Incentive.

10 – The decisions of ICA, I.P. and Turismo de Portugal, I.P. shall be communicated to the applicant by the end of the business day following that of the respective decision.

Article 17

Payments

1 – The Incentive is paid to the beneficiaries in various instalments, starting from the signing of the Incentive concession agreement, under the terms and schedule therein defined, by request of payment directed by ICA, I.P. to the management entity of the Fund and as follows:

- a) First instalment within 10 business days of signing the contract;
- b) Second or second and third instalments, depending on the duration of the project, between the filming or animation and post-production;
- c) Third or fourth instalment with the definitive determination of the Incentive.

2 - The amount of the last instalment provided for in the contract may not be less than 15% of the amount of the incentive estimated in the decision for access to the Incentive benefit.

3 – The payment of each instalment is made against demonstration of the execution of the expenses covered by the previous instalment, through the presentation of certification of the same by a certified accountant or by an auditor.

4 – Whenever interim certified accounts are submitted, ICA, I.P. has 15 business days from the date of delivery to validate the beneficiary's request for payment and send the

request for payment to the Fund's management, which shall make a payment to the beneficiary within 20 business days.

5 – Whenever there are several public financings, and these total, in the final financial structure of the project, a value higher than the maximum extent of applicable State aid, ICA, I.P. and Turismo de Portugal, I.P. shall make the necessary adjustment prior to the payment of the last aid instalment and/or require repayment of any sums overpaid if this is the last payment to the beneficiary of public aid related to the project.

Article 18

Obligations of the beneficiary

The beneficiaries are obliged to present the necessary documents, enable audits and provide all necessary clarifications regarding the execution of the project that ICA, I.P., Turismo de Portugal, I.P., or other competent authority or external entity indicated by the former, have requested.

Article 19

Mention of the Incentive

1 - The Incentive must be mentioned in the credits of beneficiary films and on print and online materials used to promote them.

2 – The decision for access to the Incentive benefit stipulates the terms in which the obligation established in the preceding paragraph is fulfilled by the beneficiary.

Article 20

False statements and responsibility

1 - Applicants and beneficiaries who have made false declarations are subject to civil and criminal liability, notwithstanding any others which may be added under the law.

2- The provision of false statements by the applicants and beneficiaries determines the impossibility of applying for the Incentive benefit for a period of five years.

3- The members of the supervisory bodies and statutory auditors are responsible in accordance with the terms of the law.

Article 21

Non-compliance and termination of contracts

Failure to comply with the obligations for which the beneficiary is responsible constitutes grounds for the unilateral termination of the agreement by ICA, I.P. and Turismo de Portugal, I.P. with the beneficiary being obliged to refund the entire amount of the Incentive received, in addition to a sum as a penalty clause, equivalent to a 6-month EURIBOR interest rate, with an added 3 percentage points, due since the release date of the Incentive.

ADDENDUM II

(to which Article 7 of the Regulation refers)

Cultural, cinematographic/audiovisual and promotional value assessment table for projects

SECTION A1		Maximum	Obtained
Content and cultural nature			
A1.1	The action takes place ¹ : Partly in Portugal (3 points) Partly in a European country ² or Portuguese-speaking country, or in co-producing countries, in the case of official co-productions under co-production treaties of which Portugal is a part, or in an undetermined or imaginary place (2 points)	3 points	
A1.2	More than half of the original dialogues are in Portuguese or in Creole languages with a Portuguese base ³ or in a language spoken in Europe	2 points	
A1.3	At least one of the main characters ⁴ is a national or resident in a Portuguese-speaking territory, or has a strong connection to the Portuguese culture or language, or to Portuguese, European or co-production cultures in the case of official co-productions under co-production treaties of which Portugal is a part.	1 point	
A1.4	The script is an adaptation of an original Portuguese, Portuguese language or European literary work or of a co-production country, in the case of official co-productions under co-production treaties of which Portugal is a part, (2 points) or a relevant universal literature work (1 point)	2 points	

1 At the stage of access to the Incentive benefit, it is assessed by the number of scenes/pages of the screenplay in which the action is recognised in the places in question; in the stage of definitive determination of the Incentive, by the number of minutes in which the action is recognised in the places in question.

2 The references to "Europe" and "European" in this table refer to the Member States of the European Union (EU) or the European Economic Area (EEA)

3 In animation projects, this requirement is fulfilled if the project has a final version which has been dubbed in the Portuguese language.

4 The "main" character is defined, in the stage of access to the Incentive benefit, by the number of scenes in which he or she enters, lines of speech and actions in the most recent version of the screenplay; in the definitive determination phase of the Incentive, by the greater of the following two values, provided that it is consistent with the main role status assigned in the technical and generic datasheets: a) number of scenes in which he or she enters, lines of speech and actions in the final version of the screenplay; b) number of minutes during which he or she is in the film. In case a) and b), the value ascertained must correspond to at least 40% of the total.

In the case of documentaries, the "character" may be a real person being portrayed or participating in the project.

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A1.5	The project has as its main theme the arts or one or more artists, of any artistic area and of any period;	1 point	
A1.6	The project essentially involves characters or historical events or events of historical relevance, of any age, or relevant mythical or fictional characters in universal cultural history	1 point	
A1.7	The project deals mainly with topics relevant to cultural or societal issues, such as current event, cultural, social or political issues	1 point	
A1.8	Animation project or intended for children or teenagers or documentary	1 point	
Section A1 Subtotal		Maximum: 12 points	
SECTION A2		Maximum	Obtained
Cultural and heritage promotion, artistic excellence and diversity			
A2.1	Importance of sites, aspects and emblematic characters ⁵ of the Portuguese territory and culture, identifiable as: <ul style="list-style-type: none"> • Clear presence in at least 20% of the duration of the project (3 points) • Clear presence in at least 10% of the duration of the project (2 points) • Clear presence in at least 2% of the duration of the project (1 point) 	3 points	
A2.2	International accolades of the director or scriptwriter (not cumulative): <p>Awarded more than once with distinctions of best film, best director or best script, relating to feature films, in the following events:</p> <ul style="list-style-type: none"> • Academy of Motion Arts and Sciences Awards (including Best Foreign Language Film); • European Film Academy Awards; • Golden Globes (Best Motion Picture, Best Director, Best Screenplay, Best Foreign Language Film, Best Animated Feature Film; TV: Best Drama Series, Best Comedy Series, Best Limited Series or Motion Picture made for Television); • Emmy Awards (Primetime Emmy's; International Emmy Awards: Arts Programming, Drama Series, Comedy, Documentary, TV Movie/Mini-Series, Children & Young People (except Factual and Non-Scripted); • Competitions of international film festivals: <ul style="list-style-type: none"> - Cannes (Palme d'Or, Grand Prize and Jury Prize); - Berlin (Golden Bear and Silver Bears); - Venice (Golden Lion, Silver Lion, Grand Prize of the Jury); - Locarno (Leopard of Gold, Leopard for Best Achievement, Special Prize of the Jury); - San Sebastian (Golden Shell and Silver Shell); - Rotterdam (Hivos Tiger Competition); - Sundance (Grand Jury Prize for Cinema of the World: Fiction; Jury Grand Prize for Cinema of the World: Documentary); 	3 points	

5 The places, aspects and characters that are identifiable by the public as symbols of the country and that contribute to its fame in the international collective imagination are considered emblematic. The sites can be natural or urban landscapes; the cities themselves or regions or other localities; buildings of any time and type (examples: Belém Tower, Lisbon or Oporto bridges), nature specificities (example: waves in Nazaré). The "aspects" include lifestyles and other characteristic realities (e.g., yellow electric cars in Lisbon, typical vessels or rituals of fishing fauna in certain regions, *fado*, multiculturalism and other characteristics of society); figures of the past or the present, from any area or field, with elevated international recognition.

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	<p>Toronto (Grosch People's Choice Awards; International Jury Awards); - IDFA Amsterdam (Best Documentary Feature Film and Special Jury Prize for Documentary Feature Film); - FID Marseille (Grand Prize of the International Competition); CPH: DOX (Dox: Award); Visions du Réel (International Competition - Long); - Annecy (Crystal and Audience Award for Best Feature Film) - FIPA-Biarritz (FIPA d'Or Series, Drama, Documentaries) (3 points)</p> <p>b) Awarded once with any of the distinctions indicated in the previous point or nominated more than once for the same (2 points)</p> <p>c) awarded at least once, for a feature film, for Best Film or Best Director or Best Script award, in an official competitive section of any FIAPF-listed festival in the five years prior to the request for recognition (1 point)</p> <p>International accolades of producers (not cumulative with points obtained through the directors or scriptwriters):</p> <p>According to paragraph (a), above (2 points)</p> <p>According to paragraph (b), above (1 point)</p>		
A2.3	Presence of music (original, recorded or reinterpreted) sung in Portuguese, or Portuguese-speaking composers, relative to the total duration of the musical component of the film's soundtrack.	1 point	
A2.4	The project is headed by a woman, produced predominantly by women or its production includes more than 40% of women among the elements mentioned in sections B1.3, B1.4 and B1.5 of section B1 of this table (1 point)	1 point	
A2.5	<p>International broadcasting</p> <p>Cinema premieres, television broadcasts or launch on on-demand audiovisual platforms or other electronic communications services:</p> <p>in a set of national markets totalling over 500 million inhabitants (8 points)</p> <ul style="list-style-type: none"> • in a set of national markets totalling more than 300 million inhabitants (6 points) • in a set of national markets totalling over 100 million inhabitants (4 points) 	8 points	
A2.6	<p>Co-production</p> <p>Co-production with official recognition, under international co-production treaties (2 points)</p> <p>Production of foreign initiative not subject to official recognition under international co-production treaties, but with a contractual co-production relationship with a Portuguese co-producer, provided that the co-production agreement with the Portuguese producer designates Portuguese law as the applicable law (1 point)</p>	2 points	
A2 SUBTOTAL		Maximum: 18 points	
SECTION A SUBTOTAL		Maximum: 30 points	

SECTION B Creative Cooperation		Maximum	Obtained
SECTION B1 – Key persons (creative and technical)			
B.1.	Participation of key creative and technical Portuguese staff or residents in Portugal or nationals or residents in an EU or EEA Member State:		
B1.1	Director	3 points	
B1.2	Producer (or executive producer, only in the case of foreign productions)	3 points	
B1.3	Scriptwriter, Adaptation Author, Dialogue Writer, Composer, Cinematographer, Animation Director	1-3 points	
B1.4	Art Director, Production Director, Author of the Characters (in Animation)	1-2 points	
B1.5	Costume Designer, Assembler, Head make-up artist, First Camera Operator, Sound Director, Head of Wardrobe, First Assistant Director, Head of Unit, Special Effects Supervisor, Author of Backgrounds (Animation), Lead Modeller, Director of research or expert/Principal consultant (for documentaries)	1-3 points	
B1.6	At least 1 actor/actress in lead role ⁶ In animation it applies to the voice At least 2 actors / actresses in secondary roles ⁷ In animation it applies to the voice	1 point	
B1 SUBTOTAL		Maximum: 15 points	
SECTION B2 – Other technical personnel			
B.2.	Participation of other members of the Portuguese artistic and technical teams or residents in Portugal or nationals or residents in a Member State of the EU or the EEA. Relative to the total number of artistic and technical personnel involved in production activities in Portugal, with the exception of those who generated points in section B1		

⁶ During access to the incentive benefit, this is assessed by the number of scenes in which he or she enters, lines of speech and actions in the most recent version of the screenplay; in the definitive determination phase of the Incentive, by the greater of the following two values, provided that it is consistent with the main role status assigned in the technical and generic datasheets: a) number of scenes in which he or she enters, lines of speech and actions in the final version of the screenplay; b) number of minutes during which he or she is in the film. In case a) and b), the value ascertained must correspond to at least 40% of the total.

In the case of documentaries, the "character" may be a real person participating in the work.

⁷ Secondary roles are those involving at least 4 filming sessions, duly verifiable in the documents and accounts and duly indicated in the technical and generic file of the film. In the case of animation, secondary roles are considered to be those which participate in at least 10% of the total time of the film and include dialogue.

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	and of the extras, these are Portuguese or residents in Portugal, or are nationals or residents in a Member State of the EU or the EEA:		
B2.1	At least 50% or a minimum of 40 people	5 points	
B2.2	From 20% to 49% or a minimum of 15 people	4 points	
B2.3	From 10% to 19% or a minimum of 8 people	2 points	
B2 SUBTOTAL		Maximum: 5 points	
SECTION B SUBTOTAL		Maximum: 20 points	

SECTION C			
Promotion of Local Resources		Maximum	Obtained
SECTION C1 – Filming in Portugal			
	Filming in locations or studios in Portugal		
C.1.	Percentage of days of filming in Portugal relative to the total number of days of filming: In the case of animation, the number of minutes of the finished animation (coloured on final scenes) produced in Portuguese studios.		
C1.1	At least 50% or a minimum of 20 days	5 points	
C1.2	From 20% to 49%	4 points	
C1.4	From 10% to 19%	2 points	
C1 SUBTOTAL		Maximum: 5 points	
SECTION C2 – Use of Technical Services in Portugal			
C.2.	Use of technical service providers, namely rental of camera, lighting, sound and machinery equipment, as well as special effects, visual effects, soundtrack recording, audio post-production and post-production in Portugal: services provided by entities established in Portugal, for all services provided during production in Portugal ⁸		
C2.1	At least 50%	5 points	

8 In cost or in time.

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C2.2	From 20% to 49%	4 points	
C2.4	From 10% to 19%	2 points	
C2 SUBTOTAL		Maximum: 5 points	
SECTION C SUBTOTAL		Maximum: 10 points	

TOTAL OF A + B + C (minimum required: 15 points)		Maximum: 60 points	
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