

# Equity Investment Program (EIP)

## Objective

To support Newfoundland and Labrador based production, NLFDC will provide production assistance in the form of Equity Investment to eligible producers for the financing of productions. For the purposes of these guidelines, "Equity Investment" means a financial contribution by the NLFDC which shall be repaid from earned revenue resulting from the production.

## Use of Funds

Equity Investment may be used to assist in the financing of costs that are normally associated with a film or video project and may include:

- script development;
- the optioning and purchasing of literary material;
- research for production and marketing;
- project related overhead and office expenses;
- travel;
- preparation of budget;
- pre-production;
- production;
- post-production;
- distribution and marketing.

## Who May Apply

Only incorporated Newfoundland and Labrador film and video production companies may apply. Individuals, non-incorporated groups or licensed broadcasters are not eligible. Corporations must demonstrate that their primary focus is on the development, production and distribution of film and video products and must be at least 51% owned by a resident or residents of Newfoundland and Labrador as described for individuals. For the purposes of these guidelines, a "Newfoundland and Labrador Resident" is a person who has maintained a principal residence in Newfoundland and Labrador for at least 12 consecutive months immediately prior to the date of application to a funding program. (Individuals who have worked outside the province during the year prior to application may be considered eligible applicants if they can demonstrate that their permanent place of residence is Newfoundland and Labrador.)

Five (5) categories of production are eligible for EIP financing.

- *Feature Films*

dramatic, documentary and animated programs intended for exhibition on the theatrical screen, television (including pay and pay-per-view), video or other mode of transmission.

- *TV Series*

dramatic, documentary, children's, variety, performing arts, animated, information, including pilot productions in these formats.

- *TV Mini-Series*

dramatic series of two to ten episodes with continuing plots and characters.

- *TV Specials*

single television programs that are dramatic, variety, performing arts, animated, informational, including pilot productions in these formats.

- *Non-theatrical*

individual programs or series whose primary exhibition will be in a non-theatrical, non-commercial setting such as schools, universities, libraries or exhibited on non-traditional modes of transmission.

### **Non-Eligible Productions**

- news, current events or public affairs programming;
- programs that include weather or market reports;
- talk shows;
- sports events or activities;
- gala presentation or awards shows;
- projects that solicit funds;
- pornography;
- advertising;
- projects produced primarily for industrial, corporate or institutional purposes;
- projects, other than documentaries, which substantially consist of stock footage.

### **Application Procedures**

The NLFDC will accept applications on an on-going basis with the NLFDC analysis of the applications commencing on the application deadline following the receipt of the application. Documents required for various phases are indicated on the application form.

COMPLETE and ACCURATE DOCUMENTATION is required for all applications. If the application is not complete when it is received, it will not be reviewed. Applicants may re-submit completed applications at a later date.

Applications received by NLFDC will not be returned irrespective of whether they receive support from the agency.

NLFDC has the right to refuse to consider an application which it considers is incomplete.

Before a production is evaluated by NLFDC for Equity Investment, it must be supported by:

**Television** - a letter of intent or written commitment for telecast on broadcast, specialty pay, pay-per-view television specifying the amount of license fees.

**Cinema / Video** - a commitment from a theatrical or video distributor or eligible broadcaster for release in Canada, and / or a distribution advance, equity investment or distribution guarantee from such a distributor

**Non-theatrical release** - supporting documentation showing sales potential and distribution arrangements.

**All projects must include a financial structure (in an acceptable format as outlined in the NLFDC's application form) projecting the sources of 100% of the required financing as well as a completed marketing plan developed in consultation with NLFDC.**

### **Application Process**

Applicants are advised to take into account the length of time involved in the process of obtaining, completing and filing the required documentation when scheduling their cash-flow projections. The time period will vary according to the circumstances surrounding each individual project.

The critical path that an applicant will follow is:

- consultation with NLFDC
- submission of an application form
- assessment of project
- notification of NLFDC decision

If NLFDC agrees to participate in the project, it will provide a conditional Letter of Commitment pending the fulfillment of the requirements specified in the letter.

In the event NLFDC declines to participate, the applicant will be notified in writing of the decision. Applications may be re-submitted subject to consultation with NLFDC.

### **Evaluation Process**

Applications will be assessed in the following manner:

- Following consultation with the Management Staff, completed applications are submitted to the NLFDC.
- The Management Staff analyze the business and creative aspects of the application, according to the NLFDC guidelines, policy and assessment requirements.
- This information is circulated to the Board of Directors.
- The Board of Directors make the final decision on all applications to the EIP.

Evaluation of a project includes consideration of the following:

- track record of the production company
- experience of individual producers and other senior managers
- experience of key creative personnel (e.g. Writer, Director, Director of Photography, Production Designer, etc.)
- proportion of personnel who are residents of Newfoundland and Labrador
- proportion of local corporate ownership and control (minimum being 51%)
- feasibility of production schedule

- feasibility of proposed financing structure
- accuracy and feasibility of proposed production budget
- feasibility of marketing and distribution commitments and/or plans
- potential for recoupment of investment and eventual profit
- economic benefit and job creation potential within Newfoundland and Labrador
- potential to leverage funds from sources other than the NLFDC
- potential to contribute to the development of local industries.

### **Financial Participation**

The NLFDC will normally provide a maximum of 20% contribution of the overall costs of the project. The schedule of payments will be based on the individual project needs and production schedule.

### **Repayment Terms**

EIP funding under this component will be provided in the form of Equity Investment and bearing no interest. Return on investment will normally be on a pro-rata and pari passu basis with other investors based on 100% of Production Revenues until the principal is repaid in full. Subsequently, the NLFDC will receive a perpetual share of Production Revenues at a rate equivalent to 1/2 its original pro-rata share percentage.

### **Terms and Conditions**

Funding may be provided with rights and conditions determined in accordance with a business plan and set forth in a Memorandum of Agreement between the NLFDC and the applicant. Normally, the NLFDC will require the following terms and conditions:

- continuing security interest for NLFDC in the project;
- in the event that the film or program is produced, it will have sufficient Canadian content according to Canadian Audio Visual Certification Office (CAVCO) standards;
- should the film or program be produced, the NLFDC will receive a pro-rata share of 100% of the Production Revenue, based on the percentage of the Corporation's investment in relation to other investors;
- terms of repayment will be set on a project-by-project basis which will be part of the Memorandum of Agreement. Normally, the NLFDC will negotiate terms for recoupment and profit participation that are no less favorable than any terms and conditions negotiated by any other equity investor;
- funding will be repaid in full on the optioning, sale or transfer of the project to any third party. The NLFDC will reserve the right to continue to participate in such a transferred property subject to its own review.

### **Applicant's Commitment**

The amount of investment required by an applicant will vary from project to project and will be dependent on client needs and the overall assessment made by the NLFDC.

The applicant's equity investment may be defined to include net equity in the production company, cash commitment, deferred salaries or fees, or any combination thereof. In cases where the equity investment is in the form of deferred salaries or fees, there must be sufficient cash flow to meet both the company's and the project's obligations. Deferrals in all categories should not exceed 30% of the total project financing structure.

### **Project Reports**

The NLFDC will require a report on the state of the project and proof of bona fide expenses of 100% of the production budget, within three months of the Corporation's final disbursement. As well, regular cost reports on the status of the project will be required.

### **Interprovincial Co-production**

Co-productions with other provinces may be considered if there is a qualified Newfoundland and Labrador producer (as previously defined) who is sharing in the financial and creative risks and rewards throughout the development, production, and distribution of the production. The Newfoundland and Labrador producer must, at minimum:

- be the applicant for EIP financing;
- receive shared credit as a Producer in the project;
- participate in any re-write / polish of the script undertaken after the NLFDC has provided a written expression of interest or commitment;
- control or share control of hiring, location selection and management of project expenditures in Newfoundland and Labrador;
- guarantee that the Newfoundland and Labrador producer's portion of the fees and corporate overhead should not be less than 25% of total combined producer's fees and overhead for the entire production.

The Newfoundland and Labrador co-producing company must retain an ownership position in the copyright of the project equal to the value it brings to the project, but cannot be less than 33% in the case of Canadian interprovincial co-production, or an amount commensurate to the financial value it brings to the project in the case of an interprovincial co-production.

NLFDC reserves the right to approve all financing and distribution arrangements in the project. NLFDC will deal primarily with the Newfoundland and Labrador producer with respect to the co-production.

### **International Co-production**

International co-productions must meet the conditions noted in section 1.13, with the following exceptions:

- the Newfoundland and Labrador co-producer must retain no less than a 20% ownership position in the copyright of the production;
- the Newfoundland and Labrador co-producer must satisfy relevant international co-production treaties determined by Canadian co-production authorities.

**Intra-provincial Co-production**

Production companies within the province who wish to co-produce must retain an ownership position in the copyright of the project to the financial value they bring to the project.