

Government film incentives

Poland

Introduction

Poland has a great cinematographic tradition. It is also known for its film school in Łódź, one of the oldest of its type. Over the years, Polish filmmakers have repeatedly set extraordinarily high standards in this branch of art. Today, the Polish film industry seems to be in full swing. Polish films are constantly screened at all major and prestige international film festivals. The latest Polish Oscar winner was Paweł Pawlikowski's "Ida", followed in 2018, by his next film "Cold War", a major contender for an Oscar. In 2019, Jan Komasa's "Corpus Christi" was nominated for an Oscar. Poland figures as co-producer in Steven Spielberg's Oscar-winning "Schindler's List" or Roman Polanski's "The Pianist". Furthermore, Poland offers modern facilities and film-making infrastructure along with versatile film-making crews that are widely recognized for their skills by foreign producers. The Polish landscape and architecture add to Poland's attraction as a location, viz. the backdrop to "Inland Empire" by David Lynch, "Bridge of Spies" by Steven Spielberg or "The Chronicles of Narnia: The Lion, the Witch and the Wardrobe" by Andrew Adamson, for example.

The Polish film support scheme

Polish legislators have passed two major legal acts for the film industry: Act on Cinematography of 2005¹ and Act on Financial Support of Audio-visual Production of 2018². The first of these establishes frameworks for financing of various motion picture projects to support mainly Polish films and Polish co-productions, with artistic value. It also sets up the Polish Film Institute (Polski Instytut Sztuki Filmowej, PISF) - a state cultural institution responsible for the development of Polish cinematography. Support under the Act on Cinematography is given in the form of subsidies, loans and suretyships. In 2020, PISF disbursed 97 650 000 PLN in support of film production projects.

The Act on Financial Support of Audio-visual Production introduced a cash rebate system to support Polish and international productions, where a certain amount of film budget must be spent in Poland. It consists of an indirect tax benefit mechanism based on reimbursement of 30% of Polish eligible costs. In its announcement for 2019, PISF disclosed it subsidised 30 audio-visual projects with over 57 000 000 PLN in total. The subsidised projects included: i) foreign productions, e.g.: Netflix's "The Woods", the German series "Słoborn" and "The turncoat", ii) international co-productions, e.g. Małgorzata Szumowska's "The Masseur" co-production with Germany, the adaptation of Dorota Małowska's novel "Other People" co-produced with Warner Brothers, iii) Polish film productions by directors of the calibre of Wojciech Smarzowski or Władysław Pasikowski. The budget allocated to support audiovisual productions in 2020 runs to EUR 50.2 million.



1 Act of 2005 on Cinematography of 2005, Dz.U. nr 132 poz. 1111

2 Act of 2018 on Financial Support of Audio-visual Production, Dz.U. 2019 poz. 50

The Act on Financial Support for Audiovisual Production

The support scheme

Support under the Act on Financial Support for Audiovisual Productions is available to Polish and international productions.

Support is available for audiovisual productions and services provided for foreign audiovisual productions and is granted in the form of reimbursement of production costs incurred in Poland in the amount of 30% of Polish eligible costs. Eligible costs, covered by cash rebate, are justified and necessary costs of audiovisual production such as costs related to preparations for production, production process, scenography, costumes, travel and accommodation, rights and licenses, costs associated with income taxes and social insurance contributions, preparation of special formats, etc. Eligible costs of production do not extend to VAT and costs of businesses of producers or co-producers not directly associated with production or providing services of audiovisual works.

The assets for support come out of the state budget and are disbursed throughout the year until they are depleted. PISF is the nominated authority to disburse these funds by way of contracts. The subsidies are to be paid out upon verification of the beneficiary's final report on work covered by the support.

Value of incentives

An entrepreneur is entitled to a support of up to 20 000 000 PLN per calendar year, while the limit for one audio-visual project is 15 000 000 PLN. At least 10% of the yearly cash rebate budget

is designed for animation projects. Polish eligible costs which are the basis for calculating the admissible financial support cannot exceed 80% of the total budget for the given audiovisual work.

Only one support per audiovisual work is admissible and it cannot be supplemented later on.

The maximum contribution of public aid together with the granted amount of cash rebate cannot exceed 50% of the total costs of the given audiovisual work. There are some exceptions. The maximum contribution of public aid together with the granted amount of cash rebate cannot exceed: i) 60% of all costs of an international audiovisual co-production where one of the producers or co-producers is from Poland and other producers or co-producers are from EU or EFTA Member States, ii) 70% of all costs of challenging audiovisual work production, it is with limited commercial value, produced for children up to 12 years old, iv) 70% of all costs of challenging audiovisual work production, it is with limited commercial value, promoting Polish heritage or cultural and at the same time its Polish eligible costs exceed double minimum eligible costs that entitle applying for a cash rebate.

Eligibility requirements

The cash rebate system is accessible for: i) feature films, ii) animated films, iii) documentary films, iv) TV series (feature, animated, documentary). Moreover, obtaining a support depends on the type of audiovisual work, its minimum runtime and its minimum Polish eligible costs: i) within the audiovisual work's budget in case of support for audiovisual production or ii) of service in case of support

for services provided for audiovisual productions. The requirements are as follows³:

- feature films: minimum runtime 70 minutes, Polish eligible costs must exceed 4 000 000 PLN (in 2020 – 3 000 000 PLN) of the budget or 1 000 000 PLN for services,
- documentary films: minimum runtime 40 minutes, Polish eligible costs must exceed 300 000 PLN of the budget or 300 000 PLN for services,
- animated film: minimum runtime 60 minutes, Polish eligible costs must exceed 1 000 000 PLN of the budget or 500 000 PLN for services,
- TV feature series: minimum runtime of each episode 40 minutes, the average Polish eligible costs must exceed 1 000 000 PLN of the budget for one episode or 1 000 000 PLN for services for one season,
- TV documentaries: minimum runtime in one season is 150 minutes, Polish eligible costs must exceed 1 000 000 PLN of the budget for one season or 300 000 PLN for services for one season,
- Animated TV series: minimum runtime of one season 50 minutes, minimum number of episodes – 10, Polish eligible costs must exceed 1 000 000 PLN of the budget for one season or 500 000 PLN for services for one season.

Support cannot be granted for: i) advertisements, ii) audiovisual work for scientific, teaching, advertisement, promotion, information and instruction purposes, iii) audiovisual work for churches and religious associations use and iv) audio-visual recordings of: musical, textual, and textual and musical works performances, political,

social, cultural, religious, business or sporting events or private life.

Support might be granted to a producer or co-producer of audio-visual work or services provider for an audiovisual production and that at the same time i) has its registered office in Poland, ii) meets eligibility criteria for state aid, iii) was a producer, co-producer or provided services for an audiovisual work which was distributed in cinemas, broadcasted publicly or screened at least once at an international film festival accredited by International Film Producers' Association or hires persons responsible for the management of that entrepreneur or responsible for audiovisual productions with such appropriate experience, iv) has concluded a contract for the co-production of an audiovisual work in Poland or an agreement for the provision of audiovisual production services in Poland before submitting an application for financial support.

Financial support might also be granted to a producer or co-producer of an audio-visual work, who is established in an EU or EFTA Member State under the following conditions: i) the entrepreneur has a branch of the company in Poland, ii) the audiovisual work is produced by this branch, iii) this branch meets the requirements established for Polish entrepreneurs as listed above.

Financial support might be granted to an audiovisual production services provider only when a producer or co-producer is not established in Poland.

At the moment of filing an application for financial support, at least 75% of the costs of the work to be covered by that support must be documented.

³ Regulation of the Ministry of Culture and National Heritage of 2019 on List of Eligible Costs, Parameters of Audiovisual Works and Documents Related to Granting Financial Support by PISF

The Act on Financial Support for Audiovisual Production excluded from financial support e.g. media services providers or those who disseminate programmes by satellite radio or television transmission. In addition, entrepreneurs cannot apply for support if, among others: i) they have been sentenced by final judgement for certain types of crimes specified in legal acts, in particular ones related to business activity, bribery and fiscal crimes; ii) they have arrears/defaults in public levy settlements, iii) they are subject to liquidation, insolvency or restructuring proceedings, iv) in the past 3 years before filing an application for a support, they did not submit a final report on their subsidised work.

Procedure

To obtain a cash rebate an application together with the required attachments must be submitted. This application must be submitted before the start of work covered by the subsidy but not earlier than 12 months before the start of work covered by the subsidy. One of the attachments to the application is a qualification test which verifies if the audiovisual work in question relates to Polish or European heritage, is located and produced in Poland, uses Polish film infrastructure and ensures the participation of Polish workers, co-workers and services providers for its audiovisual production.

PISF examines applications within 28 days in order of receipt till the exhaustion of funds for the given year. A contract between PISF and applicant should be concluded within 28 days of the date of notifying

an applicant on being granted financial support. On the request of an applicant, the term might be extended for no longer than 3 months. PISF transfers allocated funds to an escrow account, opened for that purpose by the beneficiary. PISF might rescind a funding contract if the contracted works are not initiated within 3 months of the specified commencement date.

While performing a supported project, the beneficiary might be audited by PISF. The PISF Director issues recommendations to eliminate irregularities or obliges beneficiaries to give explanations. Upon project completion, a beneficiary must submit a final report on the production. Upon positive verification of the report, PISF will release the funds on the escrow account.

A beneficiary may apply for certificates confirming its future fitness to receive a cash rebate before the end of the production process. Such a certificate is not obligatory and it does not guarantee a refund of eligible costs.

To apply for a certificate, the applicant must submit an estimate of support sought, the script and detailed information on the planned audio-visual production. Moreover, to attain a certificate, the beneficiary must achieve at least 51% in the qualification test. The certificate is valid for 4 years.

PISF keeps a register of all data regarding certificates of entitlement to apply for support in future, filed applications for support, actual levels of support received in given calendar years. The register is public.

Act on Cinematography

The support scheme

As a general rule, support may be granted under the Act on Cinematography for Polish films and Polish co-productions only. This Act defines a Polish film as one where the producer or co-producer is a Polish entity, domiciled in Poland and at least one of the following conditions is fulfilled:

- a screenwriter or author of the adopted work, a film director and at least one of the leading actors are Polish citizens and 100% of the production costs are sustained by the Polish producer; moreover, these funds, up to 80% of the film production costs, must be expended in Poland and film's master copy must be in Polish.
- a screenwriter or author of the adopted work or a film director or one of its leading actors is a Polish citizen and at least 20% of the production costs are sustained by the Polish co-producer when the film is a bilateral co-production and at least 10% when the film is a multilateral co-production; moreover these funds, up to 80% of the film production costs, must be expended in Poland and film's master copy must be in Polish.

The following purposes and activities may be subsidised under the Act on Cinematography: i) preparing film projects, ii) film production iii) film distribution, iv) film dissemination, v) promotion of the Polish film heritage.

PISF is the main subsidy body and provides the support in the framework of six operational programmes. PISF publishes an annual document called "Operation Programs". This publication establishes the level of support for each type of project and catalogues specified terms and conditions. Moreover, each kind of project is divided into smaller groups of priorities. Finally, specific sub-groups are distilled from these priorities. A budget is then set for each sub-group.

Support can be granted in the form of: i) a subsidy, ii) loan or iii) suretyship. Loans and suretyships are reserved only for film project preparations and film productions. All subsidies are granted on the basis of contracts.

If a project supported by a subsidy makes a profit, the beneficiary is obliged to refund the subsidy proportionally. A film production subsidy contract must specify the term in which profit is to be calculated. This term cannot be longer than 72 months from the end of the fiscal year, and for feature films, it shall be the year of its cinema premiere, while for documentary and animated films it is the end of the year of production. A beneficiary refunding a subsidy qualifies for priority treatment when applying for a new project subsidy and is entitled to be processed before fresh applicants.

Support in the form of loan is granted for up to 5 years and as an interest-free loan. The PISF Director may grant partial or total remission of a loan in justified cases.

A suretyship application must specify in detail the personal data of the party to the suretyship agreement and disclose detailed information about its activity.

Value of incentives

The amount of support under the Act on Cinematography cannot exceed: i) 50% of the film's budget or ii) 90% of the film's budget in the event of ambitious films of limited commercial potential, film debuts and low budget films. PISF devotes at least 60% of its disposable funds on film production. Support granted to film producers qualifies as its revenue. Rights relating to the degree of support that is given remain with the producer and revenues derived from these rights are settled with PISF in the form of a subsidy refund.



A film production support cannot exceed 50% of the film's budget in addition to the following caps⁴:

- 4 000 000 PLN – feature films – above 70 minutes
- 6 000 000 PLN – feature historic films
- above 70 minutes
- 500 000 PLN – documentary film
- 2 000 000 PLN – documentary film
– above 70 minutes
- 500 000 PLN – animation film
- 3 000 000 PLN – animation film which is displayed
in cinema – above 70 minutes

Support for a minority-interest (challenging) film production or low budget film cannot exceed 90% of the total film budget and at the same time:

- 50% of the above mentioned amounts in case of minority-interest (challenging) films
- 40% of the above mentioned amounts in case of low budget films.

In justified cases the PISF Director may grant a support in excess of the established limits but no higher than 50% of these amounts and without prejudice to the percentage limits. In case of international co-productions, the Director might grant a higher support although it cannot exceed 35% of the limit as specified in the foregoing sentence and subject to established percentage limits.

Financing film project preparations, film distributions and the dissemination and promotion of Polish films cannot exceed 50% of a total project budget.

The maximum project support cannot exceed 20 000 000 PLN and in justified cases 30 000 000 PLN. In the case of minority-interest (challenging) films and low budget films, the support cannot exceed 90% of the total project budget. If the promotion of Polish films has got a local dimension, a limited audience or low commercial potential, PISF can grant a support of up to 90% of a total project costs.

Eligibility requirements

The condition for obtaining a support for film projects preparation, film production or film distribution, is that this film must be designated for screening in cinemas (unless it cannot be screened in cinemas because of circumstances which are not culpable). An exception is made for documentary films and animated films of artistic value. In addition, the decision to grant a support is based on the following criteria: artistic value, the film's contribution to Polish culture, tradition and the Polish language, the enrichment of European cultural diversity, the anticipated effects of the project and the financial conditions of its realization. Moreover, the PISF's decision on granting support is based on its available funds and expected project funding revenues.

Support cannot be granted for audio-visual recordings of: i) musical, textual, and textual and musical works performances, ii) events related to politics, social, cultural, religious, business or sporting events, iii) private life, iv) productions made for internal use only for purposes of science, teaching, advertisement, promotion, information, instruction, v) productions made for internal use only for churches and religious associations.

⁴ Regulation of the Ministry of Culture of 2005 on Granting Financial Support by PISF to the Cinematography



Any Polish or EU/EFTA entity conducting business in film industry, can apply for a support. However, PISF recommends having a Polish co-producer on board in case of EU/EEA producers.

An entity cannot apply for a support if: i) it is a natural person sentenced by final judgement for the types of crimes specified in legal acts, in particular those relating to business activity, bribery and fiscal crimes; the same applies to management board members or partners in legal persons, ii) it is in arrears or default with statutory public levies, iii) is subject to liquidation, insolvency or restructuring proceedings, iv) in 3 years before filing a subsidy application it was guilty of a serious breach of contract with PISF.

Procedure

Support is provided on the basis of an application submitted to PISF. The document - Operational Programs – gives a detailed description of the application procedure and sets out all the terms and conditions for each type of project. The periods for submission of applications are for the most part specified. The decision on whether to accept or reject an application is made by the PISF Director within 90 days of the application's receipt. The director makes a decision on the basis of recommendations from experts as appointed by the Ministry of Culture and National Heritage. To ensure impartiality, the director cannot engage in any other activity related to cinematographic industry, nor can any of the experts be associated with the applicant. Subsidies are based on contracts concluded between PISF and the beneficiary.

The beneficiary is obliged to spend the granted support in accordance with its contracted purpose. PISF is obligated to audit compliance with the terms and conditions of the support, specifically project's revenue and costs, its progress and the rate at which the subsidy is utilised. PISF can rescind a contract if its purpose is subverted in terms of purpose or time schedules.

Regional funds

Public financing includes regional funds of various levels. Each fund sets its own terms and conditions for subsidising film projects. The main string attached to a support is that its beneficiary promotes the grant-giving region or city by his work product. Therefore specified percentages of subsidies must be utilised in the home territory of the funding institution. The local inhabitants of given localities do not have priority rights over outsiders to local funds. Furthermore, one project may receive subsidies from a variety of local funds if it fulfils set requirements. Usually, subsidy application submission 'windows' are open in a set period once a year.

The value and form of funding might be significantly different in each fund. Depending on the fund, financing might be given to one or many more projects annually. Most funds have a cap of 50% of total production costs for film project subsidies. Feature film subsidies usually fluctuate around the several hundred thousand zlotys mark. The Mazovia Film Fund (Mazowiecki i Warszawski Fundusz Filmowy) is one of the most important funds in Poland. It encompasses the Mazovia region with Warsaw where the greatest number of films are produced each year. Other major funds are the Krakow Regional Film Fund, the Łódź Film Fund and the Poznań Regional Film Fund.

International Agreements on Co-production

Council of Europe Convention on Cinematographic Co-production (revised)

The Council of Europe Convention on Cinematographic Co-production⁵ (Convention) came into force in Poland in 2019 and replaced the European Convention on Film Co-production of 1992⁶.

The revised Convention applies only to co-productions involving at least three co-producers, each of them having to be established in a different state that is party to the Convention. In such multilateral co-productions, the contribution of co-producers is set at 5% to 80% of the total production costs. Exceptionally, the Convention also applies to co-productions involving at least three co-producers from states that are parties to the Convention and one or more co-producers who are not established therein. However the contribution of foreign co-producers cannot exceed 30% of the total production costs. The Convention regulates bilateral co-production relations between parties thereto only in the absence of any agreement governing bilateral co-production relations between states. Contributions limits for bilateral co-productions, are set at 10% to 90% of total production costs. Furthermore the contribution of each co-producer must consist of effective technical and artistic contributions which must be proportional to their financial contribution.

The provisions of this Convention will apply only to co-producers who, one month before shooting commences at the latest, apply for provisional co-production status. In Poland, PISF is a competent body to grant that status.

Bilateral agreements on co-production

Poland is party to bilateral co-production agreements with France⁷, Canada⁸, Israel⁹, New Zealand¹⁰ and India¹¹. Under these agreements the co-producer's contribution cannot be less than 20% or more than 80% of total production costs. Under each bilateral agreement, the artistic and technical contribution must be proportional to the co-producer's total contribution to his project's budget. In agreements between Canada, India and Israel, there is no specification of "the first field of use" of a co-produced film. Whilst the cinemas are determined to be the first fields of use for all types of Polish-French co-productions, while the agreement with New Zealand covers co-productions of feature films. An application for bilateral co-production status under each bilateral agreement must be submitted to the Ministry of Culture and National Heritage (not the Polish Film Institute)

France is the only state which is also party to the Convention. Thus, the Convention does not apply to Polish-French co-productions. This agreement also provides for the contribution limit to be decreased down to 10% of the total production costs in justified cases.

⁵ Council of Europe Convention of 2017 on Cinematographic Co-Production (revised), Rotterdam, CETS No.220

⁶ European Convention of 1992 on Cinematographic Co-Production, Strasbourg, ETS No.147

⁷ Coproduction Treaty of 2012 between the Government of the Republic of Poland and the Government of the Republic of France

⁸ Coproduction Treaty of 1996 between the Government of the Republic of Poland and the Government of Canada

⁹ Coproduction Treaty of 2004 between the Government of the Republic of Poland and the Government of Israel

¹⁰ Coproduction Treaty of 2015 between the Government of the Republic of Poland and the Government of New Zealand

¹¹ Coproduction Treaty of 2012 between the Government of the Republic of Poland and the Government of the Republic of India

Related issues

Employment issues – Young employees

The Labor Code¹² defines an adolescent as a person of over 15 but under 18 years of age. It is legally allowed to employ such a person however an adolescent employee is obliged to continue his education till the age of 18. Therefore an employer must enable him to participate in classes or training in continuation of his education. These periods of education count towards working time, regardless of whether education is received during work hours or not. Furthermore, the work time of employees:

- i) under the age of 16 cannot exceed 6 hours a day,
- ii) over the age of 16 cannot exceed 8 hours – in a 24-hour period.

Any form of overtime or night work is prohibited for adolescents. Night time for the purposes of this prohibition runs from 10 pm to 6 am and rest periods for night shift workers must last at least 14 hours without interruptions. Moreover, an adolescent employee is entitled to a minimum uninterrupted rest period of 48 hours per week, including Sunday.

Children under the age of 16 might be allowed to perform work or other paid activities only in relation to cultural, artistic, sports or advertising activities. To do so the prior consent of the child's legal representative or guardian and the competent labor inspector is required. Firstly, the employee must obtain the written consent of the child's representative or guardian, the opinion of a psychologist, a medical certificate confirming the child's ability to perform the envisaged activities, and the opinion of the principal of the child's school.

Secondly, the employer must submit an application to the labor inspector. The labor inspector's consent must specify in particular the maximum daily work hours. During works on a film set, the child must remain under the care of its guardian or other duly authorized adult.



¹² Act of 1974 Labor Code, Dz. U. 1974 Nr 24 poz. 141

A child's performance in a film shall be considered to be an extraordinary activity which is why under the Family and Guardianship Code¹³, parents are obliged to decide jointly on such important matters. However, the issue might be resolved by the court of protection if they fail to reach an understanding.

Arbital Tribunal for the Audiovisual Industry

A specialist Arbital Tribunal for the Audiovisual Industry was established in 2011. It operates under the auspices of the Polish Producers' Alliance in Warsaw and brings together arbitrators who are PISF experts, academics, attorneys and legal advisors. The Tribunal examines cases related to the audiovisual industry, in particular those submitted by producers, co-producers, finance providers, distributors and broadcasters. The Tribunal may conduct its proceedings in Polish or English. The Tribunal's judgments are based on law applicable to the given relationship and which is respected all over the world.

Major institutions for the film industry

The Polish Film Institute, the Ministry of Culture and National Heritage, the National Broadcasting Council,

the National Film Archive – Audiovisual Institution, the European Film Commission Network (Film Commission Poland and Regional Film Commissions), the Association of Film Commissioners International, the European Film Academy, the Eurimages Fund, the Polish – German Fund, Creative Desk Poland, the Polish Filmmakers Association, the Polish Animation Producers, Directors Guild Poland, the Polish Producers Alliance, the Producers Guild of Poland, the Polish Documentary Directors Guild, the Polish Society of Cinematographers.

Coronavirus up-date

Poland resumed film sets but at the same time the Ministry of Culture and National Heritage provided Basic safety rules on the film set that include recommendations on operating during COVID-19 time. The recommendations and up-to-date information dedicated to film producers are available on **the Polish Film Institute's website**.

The government also runs a dedicated website for COVID-19 with relevant up-to-date information on the situation in Poland and general restrictions: <https://www.gov.pl/web/coronavirus>.

¹³ Act of 1964 Family and Guardianship Code, Dz.U. 1964 nr 9 poz. 59



Contacts



Karol Laskowski

D +48 22 242 51 27

karol.laskowski@dentons.com



Małgorzata Domalewska

+48 22 242 51 71

malgorzata.domalewska@dentons.com

ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

dentons.com

© 2020 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.