

# **REGULATIONS RELATING TO SUPPORT PROGRAMS**

## **TITLE I**

### **General Provisions**

#### **Article 1.**

##### **Object and scope of application**

1. These Regulations establish the standards relating to public tenders promoted by the ICA in fulfilment of the provisions of Decree Law no. 227/2006, of 15 November, and in respect of the following financial support programs:

1.1. Support programs for the creation of:

- a) Screenplay writing for fiction feature films;
- b) Development of cinematographic documentaries;
- c) Development of animation series and films.

1.2. Support programs for production:

- a) Fiction feature films;
- b) First fiction feature film works;
- c) Short fiction films;
- d) Cinematographic documentaries;
- e) Short animation films;
- f) Complementary;
- g) Minority Portuguese co-productions;
- h) Co-productions with Portuguese speaking countries;
- i) Automatic.

2. These Regulations also apply, with the necessary adaptations, to the following financial support programs:

a) Support programs for distribution, which covers the following sections:

- i) Distribution in Portugal of works supported by the ICA;
- ii) Distribution in Portugal of other national works and of non-national works of less divulged cinematographers;
- iii) Distribution of national works outside of Portugal.

- b) Support program for commercial exhibition;
- c) Support program for the realization of festivals in Portugal;
- d) Support program for promotion and participation in festivals and markets;
- e) Support program for non-commercial exhibition;
- f) Support program for training.

#### **Article 2**

##### **Decision and advertising of the launch of tenders and their conditions**

1. Every year, up to 31 October, through an advertisement published simultaneously in two general national newspapers of widespread circulation, as well as on its site on the Internet, the ICA announces the tenders to be launched for each financial support program to be attributed by the ICA in the following year.

2. The tender advertisement referred to in the previous line must obligatorily mention:

- a) The number of tenders to be launched for each section of the financial support programs;
- b) The conditions of access to the different support programs;
- c) The periods for the presentation of the applications;
- d) The amount available for each program, broken down by section of projects, as well as the maximum amounts of support per project.

#### **Article 3.**

##### **Accumulation of support**

1. No entity may be a beneficiary in more than one project per tender, except in the support programs for short fiction films, cinematographic documentaries and short animation films, in which each beneficiary may not obtain more than 30% of the amounts available in each program.

2. A single project may not accumulate support from more than one support program for production, with the exception of the automatic program referred to in article 23 of Decree Law no. 227/2006, of 15 November.

3. The award of support in connection with the financial support program for creation does not exclude access to the financial support programs for cinematographic production promoted by the ICA, nor does it grant them any advantage in terms of access thereto.

#### **Article 4.**

##### **Applicants**

Entities registered in the Register of Cinematographic and Audiovisual Companies kept by the ICA, as well as screenplay writers and film-makers, who are not required to be on the said register, may apply to the financial support programs granted in connection with these Regulations.

#### **Article 5.**

##### **Jury**

Notwithstanding situations of automatic support, where the lack of evaluation and selection stages of projects means that no jury is appointed, the applications admitted are analysed and evaluated by a Jury appointed by the ICA, within the terms of the Regulations of Appointment, Constitution and Operation of the Juries of the Tenders.

## **TITLE II**

### **Tender procedure**

#### **Article 6.**

##### **Stages of the procedure**

1. Tenders promoted by the ICA for the award of financial support have the following stages:

- a) Presentation and preparation of the applications;
- b) Admission of the applications;
- c) Evaluation and selection;
- d) Decision;
- e) Homologation;
- f) Contractualization.

2. Automatic support for production does not include the stage of evaluation and selection of the projects by the jury.

#### **Article 7.**

##### **Presentation and preparation of the applications**

1. The applications are presented within the period indicated in the Tender Call Notice, by electronic means, through the filling in of appropriate forms for each financial support program, available at the ICA's site on the Internet.

2. An application is considered to be presented and is the object of provisional registration of the application at the time when the applicant submits it electronically, after which time no further alterations are permitted to the applications.

3. Each applicant is attributed a password, generated electronically, with access to the information being reserved to the unit of tenders of the ICA and to the applicant him/herself.

4. All communication between the ICA and the applicants, specifically in terms of notifications, is made to the e-mail address in the Register or, when the applicant is not required to indicate this, to the e-mail address indicated by him/her.

#### **Article 8.**

##### **Admission of the applications**

1. Only applications which are received within the period are admitted to tender, with the forms duly and completely filled in and accompanied by the required documents. There is no such thing as a conditional admission due to errors in the preparation of the application.

2 Projects presented by individuals or collective persons who have not fulfilled their obligations before the ICA and associate entities, or which have outstanding debts

owing to the tax authorities, the Social Security or international programs in which the State participates through the ICA may not be admitted to tender.

3. Works or activities, the content or orientation of which is essentially advertising or political propaganda, as well as those which are classified as pornographic or offensive to people's dignity, may not benefit from the support allowed for in these Regulations.

4. Only projects relating to works of national independent production, in the sense of lines m) and o) of article 2 of Decree Law no. 227/2006, which have not begun the filming stage may be admitted to tender for financial support for creation and for production.

5. The condition of independent work is evaluated from production or coproduction contracts, as well as from contracts relating to distribution and to television broadcasting;

6. In each tender only one project per film-maker can be admitted, and if more than one application is presented, only the first, by order of reception, from the same film-maker which satisfies the requirements of admissibility will be admitted.

7. Applications from a film-maker who has not concluded the filming stage of a project previously supported by the ICA or associated entities, in a tender for works of the same support program, and provided that this is due to reasons attributable to him/her are not admitted.

8. In the case of short animation films, applications from a film-maker who has not concluded the animation work in a project previously supported by the ICA or associated entities, and provided that this is due to reasons attributable to him/her, are not admitted.

9. Applications for projects which have already been the object of decisions of investment from the Cinema and Audiovisual Investment Fund, as allowed for in articles 63 and following of Decree Law no. 227/2006, are not admitted.

10. Applicants may appeal to the ICA concerning any decision of non-admission within a period of five days, whereupon the ICA should reach a decision in the same amount of time.

11. Once appeals have been decided or the deadlines for their presentation have been reached, the ICA should make the list of applications admitted to tender public, by means of a notification posted in its head office and which should also be published on its site on the Internet and also notified to all applicants by e-mail.

#### **Article 9.**

##### **Evaluation and selection**

1. The jury of the tender is responsible for analyzing and evaluating the projects admitted to tender within the terms of the previous article, the evaluation being performed in a private session of the jury, with the application of the specific rules set out in the annexes to these Regulations which are applicable to the tender in question, and with the justification of the points awarded.

2. The projects should be ordered in decreasing order from the highest scoring project, resulting from the sum of the scores obtained for all the criteria established, with the final classification being the result of the sum of the scores obtained in each criterion.

3. When the jury of the tender considers that none of the applying projects has the necessary quality to benefit from the support of the ICA, it will prepare a justification report which will be appreciated and decided on by the ICA, taking into account the increase of the amount to be awarded in the following tender, referring to the same program.

4. Minutes will be drawn up of the decisions referred to in the previous lines, which should be signed by all the members of the jury and contain the proposed final classification as well as detailing the evaluations of each criterion.

#### **Article 10.**

##### **Audience of the interested parties**

1. After received the proposed classification as decided by the jury, the ICA will notify the applicants for them to pronounce themselves, within a period of 10 days, within the

terms and for the purposes of articles 100 and following of the Administrative Procedure Code.

2. The notification referred to in the previous line should be prepared with copies of the minutes drawn up as well as of the score cards prepared by the jury.

3. Whenever a jury is appointed, the replies produced by the applicants requesting a prior audience in connection with the tenders which are the object of these Regulations, are forwarded to the jury, which will have 5 days to pronounce on the merit thereof.

#### **Article 11.**

##### **Decision, homologation and contractualization**

1. The decision on the awarding of financial support, the respective amount and contractual conditions, is taken by the ICA and homologated by the member of the Government responsible for the area of Culture.

2. The final decision is published on the ICA's site on the Internet, in its head office and sent by e-mail to all the applicants.

3. The right to support lapses if the beneficiary does not sign a contract with the ICA within a period of 60 days, and no longer, as from the date of the notification of the award of the support.

4. The contract referred to in the previous line should use the wording attached to these Regulations.

5. Is not allowed to transfer support to another producer, except in exceptional cases in which, in order to ensure that the work is produced, the ICA authorizes the intervention of a different producer, with equal or greater technical capacity than that of the original producer and maintaining the deadlines initially contracted.

6. For the purpose of the provisions in the previous line, the ICA only considers exceptional situations which would provide sufficient reason to transfer the support, to be cases in which the beneficiary is in a situation of bankruptcy or other situation which would make it absolutely impossible for the producer to fulfil the obligations arising from the commitments assumed and, cumulatively, to assume new commitments before the ICA.

#### **Article 12.**

##### **Periods and extensions**

Notwithstanding the provisions in article 16 of these Regulations, contracts will be celebrated for the time necessary to conclude the project, respecting the deadlines set out in article 12 of Decree law no. 227/2006 and in the annexes to these Regulations.

### **TITLE III**

#### **Execution of the contract and obligations of the beneficiaries**

##### **Article 13.**

##### **Execution of the contract**

1. Beneficiaries of the support will be monitored and evaluated in respect of technical and financial components by the ICA or by whoever it appoints for this purpose.

2. Technical control of the execution of the activities supported is performed by means of reports which should be no less frequent than quarterly, to be presented to the ICA by the beneficiaries, and upon the request of the ICA these reports will be the object of reformulation, explanation or development.

3. The financial control of the execution of the activities supported is performed by means of reports which should be no less frequent than quarterly, to be presented to the ICA by the beneficiaries, accompanied by the documents which justify the expenses incurred.

##### **Article 14.**

##### **Obligations of the beneficiaries**

1. Corporate beneficiaries are obliged, besides the provisions in articles 7 and 12 of Decree law no. 227/2006, of 15 November, to:

- a) Open and maintain a bank account, through which the movements related with the receipts and the payments referring to the projects supported by the ICA will exclusively be made;
- b) For support over € 400,000 the beneficiaries should open a specific bank account for each project supported;
- c) To have organised accounting as defined in the Official Accounting Plan (POC);
- d) Prepare his/her specific accounts under the responsibility of a chartered accountant (TOC), or, when the support is greater than € 200,000, of a statutory auditor (ROC);
- e) Use a cost centre per project which allows the respective costs to be individualized in accordance with the items of the approved budget;
- f) In the case of common costs, to identify the allocation key to the cost centre;
- g) Record the account input number on the original copy of the documents, indicating the appointment of the support, the contract number and the corresponding amount;
- h) To prepare and send to the ICA by e-mail, every quarter, the list of all the expenses paid which should, obligatorily, show a description of the expense, the type of document, always specifying the document supporting the expense and the document justifying its payment, the amount of the document and the amount allocated to the project, the issue date, the identification or denomination of the supplier and respective tax identification number;
- i) To notify any relevant alteration of the information presented to tender within the maximum period of 30 days after its occurrence, specifically of the screenplay, replacement of the film-maker or producer. This notification should be made by e-mail by filling in the specific forms for each financial support program, available on the ICA's site on the Internet.

2. The acquisition of goods and services may only be justified with an invoice and receipt or fiscally accepted document of release.

#### **Article 15.**

##### **Payments and their suspension**

1. Support payments may only be made by the ICA to beneficiaries after the services of the ICA verify the fulfilment of all the legal and contractual obligations by the beneficiary.

2. The ICA will suspend payments related with support for a contracted project until rectification or the taking of a decision after an analysis of the situation, whenever any of the following situations are verified:

- a) Lack of or serious shortcomings in the accounting processes of the supported entity;
- b) Non-delivery of the technical and financial progress reports of the project;
- c) The failure to send information requested by the ICA within the given period, except where the latter accepts a justification which may be presented;
- d) Lack of a bank account within the terms set out in lines a) and b) of para. 1 of the previous article;
- e) Lack of transparency or precision of costs, verified in the audit control report;
- f) Verification of an unresolved situation before the ICA, even if it is in other projects, before the tax authorities and the Social Security, with the petitioner being obliged to repay the amounts received if the settlement agreement is denied;
- g) Non-fulfilment of the standards relating to information and advertising of the support of the ICA.

2. For the purpose of the resolution of the shortcomings detected, and the sending of the requested information, a period of time should be granted to the beneficiaries of no greater than 90 days, at the end of which the support will be revoked.

#### **Article 16.**

##### **Extension of the contractual periods**

1. Requests to extend the contractual deadlines may only be founded when based on the occurrence of new facts which were unforeseeable at the time of the celebration of the contract, which may only be presented up to the end of the period allowed for the

conclusion of the project, and which may in no case exceed the extension periods referred to in article 12 of Decree law no. 227/2006.

2. Within the maximum period of 10 days as from the date of reception of the request, the ICA will decide on the extension of the deadline.

#### **Article 17.**

##### **Cancellation of the support**

1. The ICA will cancel the support granted in the following situations:

- a) Non-fulfilment of the projects, within the approved terms;
- b) Non-communication, or non-acceptance by the ICA, of the alterations to the information which is decisive for the granting of support, specifically those mentioned in article 14 of Decree Law 227/2006;
- c) Subsequent verification, through monitoring or audit, of disrespect for the standards which regulate the granting of support;
- d) False declarations, specifically on the first day of filming;
- e) Non-resolution of shortcomings detected within the period set out in para. 2 of article 15;
- f) Refusal by the entities to submit to the control to which they are legally subject;
- g) Imprecise, incomplete and discordant declarations on the project which substantially affect the justification of the support received and receivable;
- h) Failure to present certificates of proof of up-to-date payments to the tax authorities and Social Security;
- i) Verification of a situation where in the entity is indebted to the Social Security, the tax authorities, the ICA or associated entities, calling into question the continuation of the project;
- j) Verification of any alteration of the project which might alter the status of independent work.

2. In the case of the cancellation of the decision due to the reasons referred to in lines d) and f) of para. 1, the beneficiary may not have access to new support from the ICA, within the following two years, as from the date of the cancellation decision referred to above.

#### **Article 18.**

##### **Repayment**

Notwithstanding the lodging of other civil, criminal or disciplinary procedures by the ICA, the cancellation of the support implies the repayment of the amounts unduly received, or received in excess, by the beneficiary, to which amounts interest will be added at the legal rate, counting from the receipt of each of the payments.

#### **TITLE IV**

##### **Final provisions**

#### **Article 19.**

##### **Periods**

The periods referred to in these Regulations are counted within the terms of article 72 of the Administrative Procedure Code.

#### **Article 20.**

##### **Acts of grace**

The use of acts of grace to refute any act practised during the procedure will have no suspensive effect.

#### **Article 21.**

##### **Doubts concerning interpretation and application**

Doubts concerning the interpretation and application of these Regulations will be resolved by the decision of the ICA.

#### **Article 22.**

##### **Standards of subsidiary application**

With regard to procedural aspects regulated herein, those established in the Administrative Procedure Code will be subsidiarily applied.