

## **Law 28/2014, of May 19**

First amendment to the Law 55/2012, of September 6th, establishing the principles of the State action within the framework for the promotion, development and protection of cinema and of the cinematographic and audiovisual activities, and to the Decree-Law 9/2013, of January 24th, which governs the settlement, collection, payment and audit of the fees specified in the Law 55/2012, of September 6.

### **Article 1**

#### **Subject**

This law proceeds to the first amendment to the Law 55/2012, of September 6th, establishing the principles of the State action within the framework for the promotion, development and protection of cinema and of the cinematographic and audiovisual activities, in order to adapt the financing model of incentive measures and of the granting of support for the development of the cinematographic art and of the audiovisual sector, and to Decree-Law 9/2013 of January 24, which governs the settlement, collection, payment and enforcement of the fees specified in the Law 55/2012, of September 6th.

### **Article 2**

Amendment to the Law 55/2012, of September 6th

Articles 2, 9, 10, 11, 12, 13, 14 and 17 of the Law 55/2012, of September 6th, are replaced by the following: (See updated version of the Law 55/2012, of September 6th, below).

### **Article 3**

Amendment to the Law 55/2012, of September 6th

Articles 10-A, 11-A and 12-A are added to the Law 55/2012, of September 6th, with the following wording (see updated version of the Law 55/2012, of September 6th, below).

### **Article 4**

Transitional provision

1 - The fee due by subscription television service operators specified in no. 2 of article 10, of the Law 55/2012, of September 6th, concerning the years 2014 to 2019, included, is of 1.75 euros per subscription of access to television services.

2 - In the year 2014, the amount to be transferred to ICA regarding the net profit of ICP-ANACOM, in accordance with article 12-A of the Law 55/2012, of September 6th, with the wording provided by this law, is equivalent to the total amount due, that year, by the subscription television service operators.

3 - In the years 2015 to 2019, the amount to be transferred to ICA regarding the net profit of ICP-ANACOM, in accordance with article 12-A of the Law 55/2012, of September 6th, with the wording provided by this law, is equivalent to the total amount due each year by the subscription television service operators, multiplied by an update factor equivalent to the accumulated variation of the consumer price index concerning 2014, calculated by the Instituto Nacional de Estadística, I.P. (National Statistics Institute).

## **Article 5**

Repeal norm

The following are repealed:

- a) No. 4 of article 10, no. 3 of article 17 and no. 3 of article 27, of the Law 55/2012, of September 6th;
- b) No. 4 of article 4 and articles 5, 6, 7, 8 and 9 of the Decree-Law 9/2013, of January 24th.

## **Article 6**

Entry into force and effect

- 1 - This law enters into force on the day following its publication, with effects from January 1st, 2014.
- 2 - The repeal of no. 3 of article 27, of the Law 55/2012, of September 6th, becomes effective on the date of entry into force of that law.

Approved on April 4th, 2014.

The President of the Assembly of the Republic, Maria da Assunção A. Esteves.

Enacted on May 8th, 2014.

So it be published.

The President of the Republic, Anibal Cavaco Silva.

Voted on May 12th, 2014.

The Prime Minister, Pedro Passos Coelho.

**Law 55/2012, of September 6th**

**Establishes the principles of the State action within the framework for the promotion, development and protection of cinema and of the cinematographic and audiovisual activities**

The Assembly of the Republic decrees, in accordance with paragraph c) of article 161 of the Constitution, the following:

**CHAPTER I**

**General provisions**

**Article 1**

**Subject**

This law aims to establish the principles of the State action within the framework for the promotion, development and protection of cinema and of the cinematographic and audiovisual activities

**(Amended - art. 2, L 28/2014, 19.05)**

## Article 2

### Definitions

For the enforcement of this law and of the acts which regulate it, it is considered: a) «Cinematographic and audiovisual activities», all processes and actions related to the creation, including the writing and development, the interpretation and performance, the direction, production, distribution, exhibition, broadcast and release to the public, by cable or without cable, and in any format, so that it can be accessed by anyone, from a location and at a time of their choice, namely through on-demand audiovisual services, of cinematographic and audiovisual works;

b) «Audiovisual commercial communication», the presentation of images, with or without sound, in order to promote, direct or indirectly, the products, services or image of a natural or legal person who performs an economic activity, by means of payment of retribution, including publicity, telemarketing, sponsorship and product placement;

c) «Distributor», a natural or legal person, with stable domicile, headquarters or establishment in

Portugal, with the activity of distributing cinematographic and audiovisual works;

d) «Videograms distributor», the legal person with stable headquarters or establishment in Portugal, with the main activity of distributing or editing and distributing videograms, also digitally and by any other process known or to be known;

#### **(New)**

e) «Non-commercial exhibition», the cinematographic exhibition at any type of theatres or venues, without charging the public for a ticket;

f) «Exhibitor», the legal person with stable headquarters or establishment in Portugal with the main activity of exhibiting cinematographic works at theatres, whichever the original materials may be;

g) «Audiovisual works», intellectual creations expressed by a set of combinations of words, music, sounds, written text and moving images, using any medium, which technical characteristics of the final production allow for television broadcasting;

h) «Cinematographic works», intellectual creations expressed by a set of combinations of words, music, sounds, written text and moving images, using any medium, which technical characteristics of the final production allow for their exhibition at movie theatres;

i) «Creative work», the cinematographic or audiovisual production based on structured elements of

creation, being considered as such feature and short fiction and animation films, documentaries, television films and series, and also didactic, musical, artistic and cultural programmes, when those are original creations, liable of initial copyright protection in Portugal;

j) «Independent production work», cinematographic and audiovisual work produced by an independent producer and which cumulatively satisfies the following requirements:

i) Ownership of all rights concerning the work produced by the independent producer, where, in case of co-productions between independent producers and other operators, namely television operators, on-demand audiovisual service operators or distributors, rights ownership is defined proportionally to the corresponding participation in the production's total budget;

ii) Work produced with creative autonomy and free form of development, namely concerning the choice of the studios, actors, means and distribution, where, in case of co-productions between independent producers and other operators, namely television operators, on-demand audiovisual service operators or distributors, decisions concerning the production are made by agreement, towards the technical and artistic quality of the work;

**(New)**

k) «European works»:

i) Works originating in Member States; ii) Works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of no. 3;

iii) Works co-produced under the scope of agreements concerning the audiovisual sector, including the cinema sector, entered into between the Union and third countries and which comply with the conditions established by each of those agreements;

l) «Works equivalent to European works», works which not being European as defined in the previous paragraph, are produced under bilateral co-production agreements entered into between member states and third countries, whenever the co-producers of the Union are responsible for the majority of the total production cost and it isn't controlled by one or more producers established outside the territory of the member states;

m) «National works», cinematographic and audiovisual works cumulatively satisfying the following requirements:

i) A minimum of 50% of the authors, namely the director, the screenplay writer, the dialogues writer and the soundtrack author, of Portuguese nationality or from any member state of the European Union or of the European Economic Area;

ii) Portuguese production or co-production, according to the international agreements which bind the Portuguese State, the bilateral cinematographic co-production agreements and the European Convention on Cinematographic Co-production and further applicable community legislation;

iii) A minimum of 75% of the technical teams of Portuguese nationality or from any member state of the European Union or of the European Economic Area;

iv) A minimum of 75% of the leading players and of the main and secondary roles played by Portuguese actors or national from any member state of the European Union or of the European Economic Area, except in cases when the plot doesn't allow it or in case of mostly international co-productions;

v) Have an original version in Portuguese language, except when otherwise imposed by the plot;

vi) In the case of animation works, production processes must be fully carried out in national territory, except when otherwise imposed by the co-production or the plot, even if the post-production is carried out at any member state of the European Union or of the European Economic Area;

n) «Distribution operator», the legal person responsible for the selection and aggregation of services of television programmes and their release to public in national territory;

o) «On-demand audiovisual service providers», the natural or legal person responsible for the selection and organisation of the contents of on-demand audiovisual services, as a catalogue, and for their release in national territory;

p) «Subscription television service operator», the legal person supplying, in national territory, access to services of television programmes, through any platform, terminal or technology, by means of a contractual obligation conditioned to a subscription or any other form of previous individual authorisation, entailing a payment by the end user for the provision of the service, be it provided individually or with an offer aggregated with other electronic communication services, whichever may be the equipment used to benefit from the services, and even if the global commercial offer leads to the interpretation that the television service is provided for free;

q) «Television operator», the legal person legally qualified for the activity of television broadcasting in national territory, responsible for the organisation of services of television programmes;

r) «Independent producer», legal person whose main activity consists of the production of cinematographic or audiovisual works, when cumulatively satisfying the following requirements:

i) Share capital not held, direct or indirectly, over 25% by a television operator or over 50% by several television operators;

**(New)**

ii) Limit of 90% total profit, in the last fiscal year or accumulated in the three last fiscal years, for a single television operator;

s) «On-demand audiovisual service or non-linear audiovisual service», offer to public in general of a catalogue of cinematographic and audiovisual works, programmes and of the attached text contents, namely subtitling and electronic programming guides, selected and organised under responsibility of an on-demand audiovisual service operator, for viewing by a user, by individual request and at a time of his choice, by means of electronic communications networks, as defined by the Law 5/2004, of February 10th, amended by the Decree-Law 176/2007, of May 8th, and the Decree-Law 258/2009, of September 25th, by the Law 46/2011, of June 24th, and amended and republished by the law 51/2011, of September 13th, not including in this concept:

i) Any form of private communication;

ii) Audiovisual contents produced by private users to be shared preferably under the scope of groups with common interests;

iii) Electronic versions of newspapers and magazines and supplementary audiovisual contents.

**(New):**

2 - The provisions of points ii) and iii) of paragraph k) in no. 1 are only applicable if the works originating from member states are not subject to discriminatory measures at the third countries in question.

3 - The works mentioned in points i) and ii) of paragraph k) in no. 1 are works that, mostly directed with the participation of authors and workers residing in one or more of the States concerned by those provisions, meet one of the three following conditions:

i) The direction being of one or more producers established in one or several of those States:

ii) The production being supervised and effectively controlled by of one or more producers established in one or several of those States;

iii) The contribution of the co-producers of those States for the total cost of the co-production constituting the majority and the co-production not being controlled by one or more producers established outside of those States.

## Article 3

### Principles and objectives

1 - Within the scope of the subjects regulated by this law, the State shall be guided by the following principles:

a) Support the creation, production, distribution, exhibition, broadcast and promotion of cinematographic and audiovisual works as instruments of expression of cultural diversity, statement of national identity, language promotion and improvement of the image of Portugal in the world, especially in what concerns the deepening of relationships with Portuguese speaking countries;

b) Protect and promote the cinematographic art and, in particular, new talents and first works;

c) Adopt support measures and programmes in order to foster the development of the entrepreneurial fabric and of the market of cinematographic and audiovisual works, respecting the principles of transparency and impartiality, competition, freedom of creation and expression and of cultural diversity;

d) Promote the interaction with the agents of the cinematographic and audiovisual sectors, of the media, of education and of telecommunications;

e) Promote a long term preservation of the cinematographic and audiovisual heritage, through measures that guarantee their preservation.

2 - Within the scope of the subjects regulated by this law, the State pursues the following objectives:

a) Incentivize the creation, production, distribution, exhibition, broadcast and editing of cinematographic and audiovisual works, namely through support and incentive measures;

b) Incentivize the quality, cultural diversity, artistic uniqueness and economic viability of the cinematographic and audiovisual works, particularly in the attribution of support, for their broad dissemination and enjoyment of their value by the creators;

c) Promote the defence of the copyrights of authors and producers of cinematographic and audiovisual works, as well as of the artists', interpreters' or performers' rights;

d) Promote the Portuguese language and culture;

e) Promote the interaction between the independent production sector and the sectors of exhibition, distribution, broadcast or release of cinematographic and audiovisual works;

- f) Incentivize international cooperation, by entering into bilateral reciprocity agreements and international conventions;
- g) Deepen the cooperation with Portuguese speaking countries;
- h) Contribute to the strengthening of the entrepreneurial fabric of the cinematographic and audiovisual sectors through the creation of incentives and other support measures, and particularly through the promotion of investment in national small and medium enterprises, for the creation of value and employment;
- i) Incentivize the exhibition, broadcast, promotion, dissemination and economic exploitation of the national cinematographic and audiovisual works;
- j) Contribute to the internationalization of the cinematographic and audiovisual works, and to the national and international acknowledgement of their creators, producers, interpreting artists and technical teams;
- k) Contribute to audience development, namely supporting movie festivals, film clubs, exhibition circuits at municipal theatres and cultural associations for the promotion of the cinematographic activity, and in particular promoting the school audience's literacy for cinema;
- l) Promote the preservation of the national cinematographic and audiovisual heritage, in Portugal, its improvement and the guarantee of its public enjoyment permanently;
- m) Promote measures that guarantee access to the cinematographic and audiovisual works by people with disability;
- n) Contribute to the development of the artistic education and vocational training in the cinema and audiovisual sectors.

3 - Within the scope of the subjects regulated by this law, the State is charged with:

- a) Annually define and publish the statement of support priorities for the cinema and audiovisual sector, based on a strategic investment vision for cinematographic and audiovisual activities, for financing needs and for the existing financial resources;
- b) Guarantee the implementation of the support policy for the cinema and audiovisual sector with accuracy and transparency;
- c) Guarantee the participation of the sector's creators and professionals, and of the companies dedicated to cinematographic and audiovisual activities, in the definition of priorities and implementation of the support measures;
- d) Promote and contribute to the enjoyment by the public of the works supported by the State.

4 - The State supports the European cinema, respecting the rules of international law in force, namely those established within the framework of the European Union (EU), of the European

Convention on Cinematographic Co-production, the Unesco Convention for Cultural Diversity and the international treaties concerning intellectual property.

5 - The support and measures foreseen in this law are articulated with the support and incentive systems stipulated in the rules of international and community law binding the Portuguese State.

#### Article 4

##### **Heritage preservation and access**

1 - The State guarantees the long term preservation and maintenance of the cinematographic and audiovisual heritage works either Portuguese or existing in Portugal, which are integral part of the country's cultural heritage.

2 - The State promotes public access to the works included in the national cinematographic and audiovisual heritage for the purpose of artistic, historical, scientific and educational research, respecting the rules of heritage preservation, safeguarding the lawful interests of copyright and attached rights owners, as well as of the holders of property or commercial rights.

3 - The State guarantees also the public exhibition and display, according to museum criteria, of the cinematographic and audiovisual works included or to be included in its heritage, complying with citizen's right to cultural enjoyment.

4 - The State promotes the deposit, preservation and restoration of the national cinematographic and audiovisual heritage, as well as of the most representative international film and audiovisual heritage.

5 - The State holds a collection which tries to include all national and similar films, as well as foreign films of acknowledged historical and artistic importance.

6 - The State promotes the museum component of the film and audiovisual heritage.

#### Article 5

##### **Legal deposit of cinematographic and audiovisual works**

The legal regime of the legal deposit «of the moving images», which includes, namely, the definition of the heritage status of those images, the mandatory nature of the legal deposit, the creation of conditions for the investment in the continuous preservation and maintenance and of restauration and also public access and consultation, is regulated in a separate decree.

## CHAPTER II

### Cinema and audiovisual

#### SECTION I

#### Support to cinematographic and audiovisual activities

##### Article 6

##### Support programmes

1 - Aiming to financially support the renewal of the cinematographic art and the acknowledgement of new creators, the State promotes a support programme for new talents and first works, in order to grant financial incentives to the writing, development, production, exhibition and distribution of national cinematographic works by authors of less than two cinematographic or audiovisual works.

2 - Aiming to financially support the creation of cinematographic works of recognized cultural value, the State promotes a cinema support programme, in order to grant financial incentives to the writing, development, production, co-production, exhibition and distribution of national cinematographic works.

3 - Aiming to financially support the reinforcement of the entrepreneurial fabric of the independent audiovisual production and to promote the broadcast and public enjoyment of the national audiovisual creative works, the State promotes a support programme for the audiovisual and multimedia, in order to grant financial incentives to the writing and development, production and purchase of rights of independent production national audiovisual creative works for broadcasting, transmission or making available.

4 - Aiming to support the activities of exhibition and distribution of cinematographic works, the State adopts financial incentive measures for their exhibition and distribution.

5 - Aiming to support the development of cinema audiences, the State adopts support measures for cinema exhibition at festivals and exhibition circuits at municipal theatres, film clubs and cultural associations that promote cinematographic activity.

6 - Aiming to promote the school audience film literacy, the State promotes an audience development programme at schools.

7 - Aiming to support the internationalization and export potential of the national cinematographic and audiovisual works, the State develops measures and partnerships in order to create entrepreneurial empowerment programmes, to support the international dissemination and promotion of the national works and promotion of the filming of national and foreign cinematographic and audiovisual works in national territory.

8 - The State also supports the awarding of prizes for the public acknowledgement of the works and professional of the cinema and audiovisual sectors.

9 - The support programmes foreseen by this law are legally approved multiannual plans, in accordance with article 25 of the Decree-Law 155/92, of July 28th, amended by the Decree-Law 275-A/93, of August 9<sup>th</sup>, and the Decree-Law 113/95, of May 25th, by the Law 10-B/96, of March 23rd, by the Decree-Law 190/96, of October 9th, by the Law 55-B/2004, of December 30th, and by the Decree-Law 29-A/2011, of April 1st.

## Article 7

### Financial support

1 - The financial support to be granted under the scope of the programmes established in this law are non-refundable, under terms to be established by a separate act regulating this law.

2 - The rules for granting support to cinematographic and audiovisual works are established by a separate act regulating this law, taking into account the following preconditions:

a) Guarantee of equal opportunity for all those interested;

b) Guarantee of respect for the principles of justice, impartiality, collaboration and participation in the grant application, selection and decision;

c) Stimulate the economic viability of the production budget, of the economic enjoyment of the works by their creators and of the viability of the works' promotion and dissemination plans;

d) Definition of the technical selection criteria as guarantee of transparency in the support granting procedures and their dissemination in the electronic page of the entity responsible for the support;

e) Public dissemination of the annual financing amounts, according to the approved statement of priorities and budget, which take into account the financing needs of the sector and are not allowed to exceed the existing financial resources;

f) Guarantee of support to first works and to works of recognized cultural and artistic value;

g) Consideration, in the multiannual programmes, of the sustained development of the cinematographic and audiovisual producers' activity, as well as of their diversity;

h) Incentive to the production of works which contribute to an increase of public interest, also by granting automatic support, based on box office results during the theatre exhibition period, on the exploitation results, on audiences or on any other element that allows for an assessment of the public preference for such works.

3 - As counterpart of the financial support foreseen in no. 1 and notwithstanding other counterparts that may be established or agreed upon, the entity responsible for granting the support holds the right to the non-commercial exhibition of the works, for the promotion and dissemination of the Portuguese cinema and national cultural identity, as well as under the scope of school audiences development programmes, safeguarding the lawful interests of those works' rights owners.

4 - The right to non-commercial exhibition foreseen in the previous number is given to the entity responsible for the granting of support in the two years after the first exhibition, broadcast or availability of the work, and its use must be preceded by consultation with the rights owners, which may oppose, based on duly substantiated objective reasons, showing the specific economic damage that the non-commercial exhibition may generate for the economic exploitation of the work, such entity having to issue a final decision on this topic.

5 - The non-commercial exhibition rights foreseen in nos. 3 and 4 are transferred, by the entity responsible for the granting of financial support, to the entity responsible for the preservation and safeguard of the national cinematographic heritage, five years after the first commercial exhibition of the work.

## Article 8

### **Beneficiaries**

1 - Authors, as defined in article 22 of the Copyright and Attached Rights Code, approved by the Decree-Law 63/85, of March 14th, and producers duly registered at the entity responsible for granting support may benefit from the financing and other types of support foreseen in this law.

2 - Only independent television producers may be beneficiaries of financial support for audiovisual production.

3 - Distributors and exhibitors, for the distribution and exhibition of less disseminated national works, European works and cinematographic works, may benefit from financial support under terms established by a separate act regulating this law.

## SECTION II

### Financing

#### Article 9

### Financing

**(Amended - art. 2, L 28/2014, 19.05)**

1 - The State guarantees the financing of the incentive measures and of the granting of support for the development of the cinematographic art and of the audiovisual sector, in accordance with this law and the acts which regulate it, by charging fees and establishing investment obligations.

**(New)**

2 - The financing mentioned in the previous number is also guaranteed through an amount to be transferred to the Instituto do Cinema e do Audiovisual, I.P. (ICA - Portuguese Film Institute), given the net result of each fiscal year of the ICP - National Communications Authority (ICP-ANACOM) to be paid to the State, under the terms of this law.

#### Article 10

### Fees

**(Amended - art. 2, L 28/2014, 19.05)**

1 - The commercial publicity exhibited at movie theatres, the audiovisual commercial communication disseminated or transmitted by television operators or, by any means,

transmitted by distribution operators, the commercial audiovisual communication included in on-demand audiovisual services, as well as the publicity included in electronic programming guides, whichever may be the exhibition, dissemination or transmission platform, is subject to a fee, called exhibition fee, to be paid by the advertiser, of 4% over the paid price.

**(New)**

2 - Subscription television service providers are subject to the payment of an annual fee of EUR 2 for each television service access subscription, to be paid by the operators.

3 - The fee foreseen in the previous number is liquidated and paid by each operator in the calendar year it concerns, and the corresponding annual amount is calculated based on the number of subscriptions existing in the previous calendar year, reached by applying the following formula:

$NS = SNST/4$  where:

NS is the number of subscriptions of each operator;

SNST is the sum of the number of subscriptions each quarter of the calendar year previous to the application of the fee.

4 - (Repealed)

**(Amended - art. 3, L 28/2014, 19.05)**

## Article 10-A

### **Audits and settlement review**

1 - After settlement and payment of the fee mentioned in nos. 2 and 3 of the previous article, it is the responsibility of ICP-ANACOM, at the request of ICA to audit the operators in order to verify the accuracy of the data used for the corresponding establishment and settlement, including the number of existing subscriptions and the internal control methodologies used for such establishment.

2 - Such audits will be performed in compliance with the rules of the general taxation law concerning the tax procedures, the general provisions of the Code of Tax Procedure and Proceedings and the standards of the Supplementary Rules of Procedure for Tax Auditing.

3 - For the purpose of the previous numbers and without prejudice to the inter-administrative collaboration with the ICA, ICP-ANACOM may resort to its own services or specially qualified

and authorised external consultants, namely certified public accountants or certified public accountancy firms, in order to obtain a statement of assurance of the audit.

4 - All people or entities involved in inspection measures are duly accredited by ICP-ANACOM.

5 - The operators are responsible for the expenses incurred by ICA or by ICP-ANACOM, for the conduction of audits whenever the mistakes or omissions verified are ascribable to them for wilful misconduct or gross negligence, up to the maximum amount of EUR 100.000, without prejudice to the administrative offence applicable.

6 - Having concluded the audits, and should there be mistakes or omissions ascribable to the operators in detriment of ICA it shall promote the additional settlement of the fees, compensatory interest and expenses that the previous number refers to.

7 - In case of additional settlement, the operators are notified by ICA by registered letter with acknowledgement of receipt to, within 30 days, proceed to the payment, otherwise leading to enforced collection.

8 - The grounds for additional settlement, the amount, the payment deadline and the warning as to the consequences for the lack of payment, as well as the indication of the means of defence and deadline to react against the notified act are included in the notification that the previous number refers to.

9 - Without prejudice to the provisions of the previous numbers, the revision of the fees settlement may be carried out at own request or at the request of the taxable person, under the terms of the general taxation law, and may entail the additional settlement or the return of the undue funding and the payment of indemnity or compensatory interest, whichever may apply.

**(Amended - art. 2, L 28/2014, 19.05)**

## Article 11

### Settlement

1 - The fee mentioned in no. 1 or article 10 is settled by the service providing companies, which are responsible for the delivery of the settled amounts.

2 - The amount of the fees mentioned in article 10 are not subject to any fiscal levy or copyrights, without prejudice to the inclusion of the taxable amounts corresponding to the exhibition fee, on what concerns the Value Added Tax (VAT) of the advertising service providers, in accordance with the terms established in paragraph a) of no. 5 of article 16 of the VAT Code.

3 - Without prejudice to the provisions of articles 11-A and 12, the settlement, charging and payment of the fees mentioned in article 10, as well as the corresponding audit, are defined by decree-law, being also applicable the provisions of the general taxation law and of the Code of Tax Procedure and Proceedings.

**(Amended - art. 3, L 28/2014, 19.05)**

#### Article 11-A

##### **Enforced collection**

1 - The enforced collection of the fees established by this law is carried out through tax execution procedure under the terms of the Code of Tax Procedure and Proceedings and of the general taxation law.

2 - For the purpose of the provision in the previous number, the tax execution is based on a certificate issued by the ICA with the value of an enforcement order, which includes the elements mentioned in article 163 of the Code of Tax Procedure and Proceedings.

**(Amended - art. 2, L 28/2014, 19.05)**

#### Article 12

##### **Infringements and fines**

1 - Violations of the provisions in this section and in the Decree-Law 9/2013, of January 24th, constitute an offence punishable under the terms of no. 4 of this article and of the General Taxation Infringement Regime.

2 - In all not specifically regulated by this law in terms of infringements, the provisions of the General Taxation Infringement Regime will be fully applied, namely as to the use of subsidiary law, responsibility, fine amounts and administrative offence proceedings.

3 - The competences given to the fiscal authorities under the terms of the General Taxation Infringement Regime, namely concerning the issuance of written notice, establishment, prosecution and decision and imposition of fines and accessory sanctions, except for the

implementation of fines, financial penalties and procedural costs, are considered to be under responsibility of the board of directors of ICA.

4 - The following acts are considered administrative offence:

- a) The delivery of the amounts calculated for the charging of the fees foreseen in article 10 past the deadline mentioned in article 3 of the Decree-Law 9/2013, of January 24th, but within the following 10 working days is punished with a fine of EUR 10 000 to EUR 44 891;
- b) The failure, total or partial, to deliver the amounts calculated for the charging of the fees until the last of the 10 days mentioned in the previous paragraph is punished with a fine equal to twice the amount in debt, in any case always in the minimum and maximum amounts of EUR 1 500 and EUR 44 891, respectively;
- c) Non-disclosure of the information mentioned in article 4 of the Decree-Law 9/2013, of January 24th, is punished with a fine of EUR 1 000 to EUR 2 500;
- d) Omissions and inaccuracies of the information mentioned in article 4 of the Decree-Law 9/2013, of January 24th, are punished with a fine of EUR 1.000 to EUR 5 000;
- e) Falsity of the information mentioned in article 4 of the Decree-Law 9/2013, of January 24th, is punished with a fine of EUR 10 000.

5 - Negligence is punishable, and the minimum and maximum amounts of the fines are reduced to half.

6 - The fines foreseen in this law revert:

- a) 60 % for the State;
- b) 40 % for ICA.

**(Amended - art. 3, L 28/2014, 19.05)**

#### Article 12-A

##### **Transfer on account of the net results of ICP-ANACOM**

1 - On account of the net results of ICP-ANACOM to revert to the state, an annual transfer is made to ICA of an amount equivalent to 75% of the total amount due by the subscription television services operators as a result of the implementation of the provisions in no. 2 of article 10, without prejudice to the provisions of the following number.

2 - As of 2021, each calendar year, the amount to be transferred under the terms of the previous number is multiplied by an update factor equivalent to the accumulated variation of the consumer price index concerning 2020, calculated by the Instituto Nacional de Estatística, I. P.

3 - The transfer that the previous numbers refer to is preceded by a decree of the members of Government responsible for the areas of finance and communications, establishing the exact amount to be transferred each year.

**(Amended - art. 2, L 28/2014, 19.05)**

### Article 13

#### **Earmarking of revenues**

1 - The revenues resulting from the charging of the fee foreseen in no. 1 of article 10 constitute:

- a) 3.2% revenue of Instituto do Cinema e do Audiovisual, I.P. (ICA - Portuguese Film Institute)
- b) 0,8 % revenue of Cinemateca Portuguesa - Museu do Cinema, I. P. (Cinemateca, I. P. - Portuguese Film Library - Cinema Museum).

2 - Proceeds from the charging of the fee foreseen in no. 2 of article 10 is ICA's exclusive revenue.

3 - The earmarking of ICA's revenue, after deduction of the operating costs and commitments undertaken with any partnerships or agreements entered into under the scope of its attributions, is allocated taking into account the following priorities, in accordance with the statement of priorities and with the annual budget:

- a) 80% for the support of cinematographic art;
- a) 20 % for the support of audiovisual production and multimedia.

4 - The percentage foreseen in paragraph b) of the previous number will be increased by 5% every calendar year up to the maximum limit of 30% after validation of the degree of financial implementation of the tenders of the support programme for the audiovisual and multimedia and of the number of viewers of the works supported, as defined in a separate act regulating this law.

**(New)**

5 - The amount resulting from the implementation of the provision in the previous article is ICA's exclusive revenue.

**(Amended - art. 2, L 28/2014, 19.05)**

#### Article 14

##### **Investment by television operators for the fostering and development of the cinematographic art and of the audiovisual sector**

1 - Without prejudice to other obligations foreseen by law, television operators that include in the programming of any of their services feature and short-film programmes, telefilms, cinematographic creation documentaries or creative documentaries for television and television series, including fiction and animation, participate in cinematographic and audiovisual production by means of annual investment obligations for the financing of writing works and for the development, production and co-production of national creative works, or purchasing rights for the broadcast, transmission and making available of national and European creative works, under the terms defined in the following numbers.

**(New)**

2 - The investment obligation foreseen in the previous number, applicable to private television operators, is equivalent to an amount corresponding to 0.75% of the annual revenue resulting from the audiovisual commercial communication of the television programmes services of the television operator considered in the previous number.

3 - The investment obligation foreseen in no. 1 applicable to the public television service operator, is equivalent to an amount corresponding to 8% of the annual revenues resulting from the audiovisual levy, created by the Law 30/2003, of August 22nd, amended by the Decree-Law 169-A/2005, of October 3rd, the Decree-Law 230/2007, of June 14th, and the Decree-Law 107/2010, of October 13th, excluded from the exclusive revenue for radio service.

4 - Compliance of the direct investment obligations foreseen in the previous numbers is carried out through direct investment in cinematographic works and in national independent

production creative audiovisual works, as provided for in no. 1 and implies the transmission of the work by the television operator, in any of its programmes services.

5 – It is responsibility of ICA in cooperation with ERC – Entidade Reguladora para a Comunicação Social (Communications Regulatory Authority), to verify the compliance of the direct investment obligations foreseen in the previous numbers, therefore the television operators are required to supply quarterly reports informing the name of the work, the identification of the independent producer and of other copyrights and attached rights holders, the time of its broadcast and the amount used for the categories foreseen in no. 1.

6 - The compliance of the direct investment obligations foreseen in the previous numbers, through the production or co-production of national cinematographic works by an amount not inferior to 50% of the total budget and their transmission by the television operator after being exhibited in the theatre, grants right to the accounting inclusion of the allocated amount by a 1.5 coefficient.

7 - Compliance of the direct investment obligations foreseen in the previous numbers, through the production or co-production by an amount not inferior to 50% of the total budget, of national audiovisual creative works, which are first works of the corresponding authors, and their transmission by the television operator, grants right to the accounting inclusion of the allocated amount by a 1.5 coefficient.

8 - The amounts foreseen in nos. 2 and 3 which, every calendar year, are not allocated to direct investment under the terms of no. 1 are delivered, by each television operator, to ICA on January of the following year, becoming this entity's exclusive revenue.

9 - Excluded from the investment obligations foreseen in this article are television operators whose programme services are exclusively composed of works of pornographic nature.

## Article 15

### **Investment by the distribution sector in cinematographic and audiovisual production**

1 - Distributors' participation in cinematographic and audiovisual production is guaranteed through the annual investment in national cinematographic works, by an amount to be defined annually, in a separate decree, and with a percentage no less than the equivalent of 3% of revenues resulting from the cinematographic works distribution activity of the previous year.

2 - Distributors' investment in cinematographic and audiovisual works' production may fall under the following categories:

a) Participation in the film financial package, as co-financier, without involvement in the production;

- b) Participation in the film's production, as co-producer;
- c) Advancements on production, as guarantee minima;
- d) Purchase of national cinematographic works distribution rights;
- e) Restauration and mastering of films of supported and other national works, as long as two copies are delivered to Cinemateca, I.P.

3 - Distribution investment in cinematographic and audiovisual production is equally guaranteed by the participation of videograms distributors, through the annual investment in the purchase of rights for videogram editing or distribution of national cinematographic works, by an amount no less than the equivalent of 1% of revenues resulting from the videograms distribution activity of the previous year, which may also be fulfilled through the categories foreseen in the previous number.

4 - The provisions of the previous numbers do not include the activities of rental or exchange of videograms.

5 - The distribution as videogram of national cinematographic works produced with State support is exempt from the payment of the authentication fee foreseen in a separate decree.

6 - The amounts foreseen in nos. 1 and 3 which, every calendar year, are not allocated to investment are delivered, by each distributor, to ICA on January of the following year, becoming this entity's exclusive revenue.

## Article 16

### **Investment by on-demand audiovisual service operators**

1 - On-demand audiovisual services operators' participation in cinematographic and audiovisual production is guaranteed through the annual investment in national cinematographic works, by an amount to be defined annually, in a separate decree, and with a percentage no less than the equivalent of 1 % of revenues resulting from the on-demand audiovisual services activities held.

2 - The investment foreseen in the previous number may fall under the following categories:

- a) Participation in the film financial package, as co-financier, without involvement in the production;
- b) Participation in the film's production, as co-producer;
- c) Advancements on production, as guarantee minima;
- d) Purchase of national cinematographic works distribution rights.

3 - On-demand audiovisual services operators' participation is also guaranteed through the creation, in their corresponding technological platforms, of an area dedicated to national works, where all supported works are made available, as well as other national production works, by request of the respective distributors or of the rights owners, for works' rental or sale, under conditions which grant their rights owners a percentage no less than 50% of the revenue obtained.

4 - The amounts foreseen in no. 1 which, every calendar year, are not allocated to investment are delivered, by each operator, to ICA on January of the following year, becoming this entity's exclusive revenue.

**(Amended - art. 2, L 28/2014, 19.05)**

## Article 17

### Investment by exhibitors

1 - Cinematographic exhibitors shall withhold 7.5% of the value of the retail selling price of theatre tickets.

2 - The withheld amount mentioned in the previous number is used as follows:

a) 5% to be used exclusively for the fostering of cinematographic exhibition and for the maintenance of the revenue generating theatre, constituting revenue managed by the exhibitor and with specific accounting act;

**(New)**

b) 2.5% which are revenue managed by the exhibitor with specific accounting act, intended to guarantee the exhibition of European or national cinematographic works, including the purchase of rights and any amounts owed by the exhibitor to the works' distributor, and for investment in digital exhibition equipment, for the rooms which don't have it, of which amount a minimum percentage of 25% must be applied to the exhibition of supported national works.

3 - REPEALED.

4 - The Exhibition of cinematographic works supported by ICA or of not-supported national works which are first works, grants right to the accounting inclusion of the allocated amount by a 1.5 coefficient.

5 - The percentage established in no. 1 cannot be taken into account for the calculation of revenues from films exhibition, without prejudice to the compliance of the levy obligations deriving from it.

6 - The withheld amounts mentioned in paragraph b) of no. 2 which are not allocated to the foreseen purposes, in the calendar year of said withholding or in the following one, are delivered, by each exhibitor, to ICA on January of the following year, becoming this entity's exclusive revenue.

### SECTION III

#### **On cinematographic and audiovisual distribution, exhibition and broadcast**

#### Article 18

##### **Access to the distribution, exhibition and broadcast markets**

1 - The State adopts support measures for the distribution, exhibition and promotion of cinematographic works in the national and international markets, namely through incentives to the exhibition of national cinematographic works, namely of the supported ones, or of European works at municipal theatres and for the creation of measures favouring the association between national producers and distributors.

2 - The granting of support takes into consideration the need for wide enjoyment of national cinematographic works by the public, especially in areas with less access to movie theatres, namely by fostering the exhibition circuits at municipal theatres, film clubs and cultural associations that promote the cinematographic activity, and applying measures which guarantee access to such works by disabled people.

3 - The State adopts support measures for cinematographic exhibitors with a prominent or regular programme of national and European cinematographic works, including feature films, documentaries, short films and animation cinema, and which develop their activity in alternative exhibition circuits.

4 - For the purpose of the previous number, exhibitions in alternative exhibition circuits are considered as those carried out outside the normal commercial operation circuit of cinema facilities, namely:

a) Sessions organised at municipal theatres;

b) Sessions organised by public entities, cultural associations, film clubs, schools and non-profit organizations;

c) Sessions organised within the scope of festivals;

d) Sessions carried out by authors or producers of the work at circuits of, at least, five exhibitions in five theatres from five different municipalities in the country.

5 - The State adopts measures which incentivate the collaboration between local authorities and cinematographic exhibitors, with the purpose of creating and recovering cinema facilities, especially at municipalities where there isn't a regular exhibition activity.

## Article 19

### **Distribution licence**

1 - The distribution, including the sale, rental and loan, of cinematographic works for commercial operation depends on the previous issuance of a licence and age classification.

2 - For the licence mentioned in the previous number, the distributor must pay a fee, which becomes revenue of the issuing entity.

3 - The works supported are exempt from the payment of the distribution and authentication fees.

4 - National films with initial exhibition at less than six theatres are exempt from the payment of the distribution fee.

5 - The calculation of the amount, the forms of settlement, the charging and the enforcement of the amounts to levy with the distribution fee are regulated in a separate decree.

## Article 20

### **Box office monitoring**

Box office monitoring is carried out by the box office management and monitoring system which allows for the collection and treatment of information concerning tickets issuance, and corresponding dissemination, under the terms legally allowed, in order to guarantee an effective control of revenues and information concerning the exhibition period of each film and the number of viewers, under the terms of the separate act which regulates it.

## Article 21

### **Competition**

In the field of competition in the cinematographic and audiovisual sector, it is responsibility of ICA and of the Inspeção-Geral das Atividades Culturais (IGAC - Inspectorate-General for Cultural Activities) to inform the Competition Regulatory Authority of the acts, agreements, or practices of which they became aware and which present indications of violation of competition law.

## CHAPTER III

### **On artistic education, vocational training and school audience literacy**

## Article 22

### **Artistic education and vocational training**

1 - The State grants support to vocational training and encourages the teaching of cinematographic and audiovisual arts in the educational system, in areas of specific projects, research and development (R&D), innovation in cinematographic production and broadcast and of copyright and attached rights, aiming to stimulate, deepen and diversify the continuous training of the cinema and audiovisual sectors' professionals.

2 - The support foreseen in the previous number is guaranteed through the signing of protocols between the incumbent organizations and the entities promoting education and vocational training in the fields of the creative and technical professions of the cinematographic and audiovisual sector.

3 - The State promotes the participation of public and private institutions and of the Portuguese professionals in international projects and partnerships in the training field of cinematographic and audiovisual arts.

## Article 23

### **School audience training**

The State promotes a cinema literacy programme for school audiences in order to disseminate cinematographic works of historical importance and, in particular, of feature films, short films, documentaries and animation films of national production.

## CHAPTER IV

### **Registration and enrolment**

#### SECTION I

#### **On the registration of cinematographic and audiovisual works**

##### Article 24

#### **Purpose of the registration**

The State organises the cinematographic and audiovisual works' registration, aiming at security in legal trading.

##### Article 25

#### **Subject of the registration**

1 - Cinematographic and audiovisual works are subject to registration, whichever their type, format, medium and duration may be, when produced, distributed or exhibited in national territory.

2 - The State promotes the registration of all works financially supported and produced since the entry into force of the Law 7/71, of December 7th, amended by the Decree-Law 279/85, of July 19th, and the Decree-Law 350/93, of October 7th, until the effective establishment of the registration.

3 - The registration rules to be observed are defined by a separate act regulating this law.

## SECTION II

### On the registration of cinematographic and audiovisual companies

#### Article 26

##### Registration of cinematographic and audiovisual companies

- 1 - The State guarantees a registration of the duly established cinematographic and audiovisual companies, for the attribution of support and compliance of the obligations foreseen by this law.
- 2 - The registration mentioned in the previous number is mandatory for all natural or legal persons with headquarters or establishment in the national territory whose commercial activity is the production, distribution and exhibition, as well as filming, dubbing and subtitling studios and laboratories and the equipment and technical resources companies.
- 3 - The legal regime of the registration is defined by a separate act regulating this law.

## CHAPTER V

### Final and transitional provisions

#### Article 27

##### Transitional norm

- 1 - The provisions in the Decree-Law 227/2006, of November 15th, remain in force until approval of the separate act regulating this law, in all that does not contradict the provisions of this law.
- 2 - Articles 23, 24, 25 and 26 of the Law 42/2004, of August 18th, and articles 63 to 82 of the Decree-Law 227/2006, of November 15th, remain in force until full settlement of the Cinema and Audiovisual Investment Fund, namely to support the compliance of the obligations foreseen in the multiannual investment contracts expiring until the entry into force of this law.
- 3 - REPEALED

4 - The percentage foreseen in no. 3 of article 14 will be of 5% in the event of the transfer of ownership of one of the public television service operator's channels, thus being ascribed to this operator the operation of only one access channel not conditioned to subscription of subscription television services.

#### Article 28

##### **Repeal norm**

The Law 42/2004, of August 18th, and all legal regulations which contradict the provisions of this law, are repealed.

#### Article 29

##### **Regulation**

The Government regulates this law within 60 days counting from the date of its entry into force.

#### Article 30

##### **Entry into force**

This law enters into force 30 days after the day of its publication, with the exception of articles 14, 15, 16 and 17, which enter into force on the 1st of January 2013.

Approved on July 25, 2012.

The President of the Assembly of the Republic, Maria da Assunção A. Esteves.

Enacted on August 24, 2012.

So it be published.

The President of the Republic, ANÍBAL CAVACO SILVA

Voted on August 28, 2012.

The Prime Minister, Pedro Passos Coelho.