LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065 Fax: 310-601-7110

www.LawAdvocateGroup.com

Doron F. Eghbali Entertainment Law

What Are Some Motion Picture Production Financing Mechanisms?

Thursday, December 30, 2010 by Doron F. Eghbali

Motion pictures rely on many financing methods to secure funds needed for production and distribution. These methods range from self-financed productions to negative pick-up financing, pre-sale financing and studio-funded deals. It is noteworthy each of these methods is different in nature and complexity. Let us analyze such financing methods in *some* detail.

1. SELF-FINANCED PRODUCTION

Self-financed production is when the producer obtains all of the production financing from private, more often non-industry sources.

- The producer may put up his own money or the money he has borrowed from friends and family through some efforts.
- The producer may form a limited partnership or most often limited liability company in which each limited partner or member invests some amount of money. More often, such limited partner or member provides a letter of credit or promissory note which becomes the basis of negotiation to acquire the rest of financing.
- The producer and investors own the motion picture which they can self-distribute, sell to a studio-distributor or license to distributors.

CAVEATS

This funding is invariably complicated and involves rather esoteric details with respect to bank notes, promissory notes, their due dates and any future distribution tied to such funding agreements.

2. NEGATIVE PICK-UP FINANCING

Negative pick-up financing refers to when a producer on the basis of the assembled package enters into an agreement with a studio distributor or other financial entity to sell the completed motion picture at a pre-determined sum established prior to the commencement of production. The producer receives some sort of corporate guaranty or letter of credit to take to the bank as a security for production loan.

CAVEAT

A case in 1997, emphasized the need for compliance with UCC rules for attachment and perfection of a security interest. Again, this is a rather rarefied aspect of financing need to be dealt with expertly and diligently.

3. PRESALE FINANCING

Presale financing is rather similar to negative pick up financing. In presale financing instead of selling the whole motion picture to one buyer, the producer divides the various exclusive rights in the motion picture and pre-sells them to multiple buyers.

EXAMPLE

For instance, a producer divides theatrical distribution rights to a motion picture based on territory and pre-sells them to different distributors in each territory while pre-selling the domestic pay TV rights to HBO or Showtime and pre-selling DVD rights to other home video companies.

4. STUDIO-FUNDED DEALS

studio-funded deals encompass some sort of collaboration between an independent and a studio to underwrite various projects. This arrangement is more often between a company capitalized to produce multiple projects in a year whose projects are distributed by some major studios.

STUDIO-FUNDED DEALS CATEGORIES

Despite the myriad categories or rather variations of studio-funded deals, such deals could be divided into three main categories:

1. HOUSEKEEPING DEALS

Under such deals, a studio will furnish office space and other business necessities, based on a pre-agreed budget, in exchange for obtaining the FIRST LOOK at all the projects made by such independent producer and having the RIGHT OF FIRST REFUSAL to acquire, fund or produce as a motion picture.

2. FIRST-LOOK DEALS

Such deals are rather distinguishable from housekeeping deal in a sense, a studio would not furnish office space or other business necessities to the independent producer. Instead, the studio and the independent producer would agree on a set fee for just having the FIRST LOOK at developed projects.

3. OUTPUT DEALS

Output deals are probably the most desirable and rarely implemented of studio-funded deals, since studios cede substantial authority to a production company. Often, in such deals, the funding studio furnishes the independent studio with some budget and leaves the independent company alone except some control over actual producing of projects. Nonetheless, the funding studio gives the green light for such projects, if they comply with some objective criteria. Hence, acquisition of output deals is hard and rarely seen.

IMPORTANT CAVEAT

This commentary just provided a very rudimentary overview of a rather esoteric complex area of entertainment law.

DORON EGHBALI *is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. He Primarily practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More Information, Please, Visit: HERE.*