

Film In Malaysia Incentive

GUIDELINES



FOREIGN PRODUCTION



PERBADANAN KEMAJUAN FILEM NASIONAL MALAYSIA
National Film Development Corporation Malaysia

Private and Confidential
2015 National Film Development Corporation Malaysia

Update March 2015

CONTENTS

List of acronyms and abbreviations	5
Introduction	6-7
Section 1: Overview of the Film In Malaysia Incentive	8
1.1 Application procedures	9
1.2 FIMI Overall Process	10
Section 2: Production activity in Malaysia	11
2.1 Eligibility and expenditure threshold	11
2.2 Eligible formats	12-13
2.3 Eligible genres for television series	13-14
2.4 Eligible applicant producer.....	14
2.5 Commencement, completion and timeframes	15
2.5.1 Timeframe requirements for television series	15
2.6 Malaysian crew and intern requirement	15-16
2.7 Required Documentation	16
2.8 Project / Content Guidelines	16
Section 3: Post-production activity in Malaysia	17
3.1 What are post production tasks?	17-18
3.2 Expenditure threshold	18
3.2.1 Expenditure statements	19
3.3 Eligible formats	19
3.4 Eligible applicants producers	19-20
3.4.1 Note for applicant producers who are also the service provider	21
3.5 Commencement, completion and timeframes	21
Section 4: Production Expenditure and Qualifying Malaysian Production Expenditure (QMPE).....	22
4.1 What is Qualifying Malaysian Production Expenditure (QMPE)?	22-23
4.1.1 What is a 'Service Provided in Malaysia'?	23
4.1.2 Apportionment of services provided	23-24
4.1.3 Malaysian development expenditure	24
4.1.4 Malaysian-held copyright acquisition	24
4.1.5 Malaysian-based insurance (other than forms of insurance which constitute financing) ...	24
4.1.6 Malaysian-based publicity and promotion expenditure	25

4.1.7	Additional audiovisual content	25
4.1.8	Legal expenses	25
4.1.9	Travel to Malaysia	25-26
4.1.10	Freighting an item to Malaysia	26
4.1.11	Travel and freight within Malaysia	26
4.1.12	Remuneration other than by salary	27
4.2	Costs which are NOT Qualifying Malaysian Production Expenditure (QMPE)	27
4.2.1	Expenditure while the applicant producer company is a foreign resident	27
4.2.2	Costs of services embodied in goods	27
4.2.3	Gratuities and entertainment expenses	27
4.2.4	Prizes and prize money	27
4.2.5	Financing (including forms of insurance which constitute financing)	28
4.2.6	Foreign development expenditure	28
4.2.7	Foreign-held copyright acquisition	28
4.2.8	Format Franchise Costs	28
4.2.9	Publicity and promotion expenditure	28
4.2.10	Distribution expenditure	28
4.2.11	Deferments and profit participation	29
4.2.12	Residuals	29
4.2.13	Advances	29
4.2.14	Acquisition of depreciating asset	29
4.2.15	Foreign pilot expenditure (only for a television series)	29
4.3	Minimum Work Week Rule for non-cast members	29
Section 5: Specific expenditure issues and FAQ.....		30
5.1	Arm's length expenditure	30-31
5.2	Currency exchange	31
5.3	Transfer pricing	31
5.4	Treatment of pilot episodes	32
Section 6: Provisional certification process		33
6.1	Application	33
6.2	Eligible Applicant Producers	33-34
6.3	Projected provisional expenditure statements	34
6.4	Approval of Provisional Certificate Application	34
6.5	The application for Provisional Certificate process chart	35

Section 7: Final certification process	36
7.1 Application	36-37
7.2 Supporting Documents for Final Certificate Application Form	37
7.3 Due Diligence by Independent External Auditors	37
7.4 Due Diligence by Independent Film Production Consultant(s)/Legal Auditors	37-38
7.5 Payment for Due Diligence	38
7.6 Consideration by the FIMI Approval Committee	38
7.7 Notification, statement of reasons and appeal of decision	38-39
7.8 Revocation of a certificate	39
7.9 Copy of the complete production	39
Section 8: General	40
8.1 Submitting your application	40
8.2 Attached documentation	40
8.3 Further information from the applicant producer	40
8.4 Statutory declaration	40-41
8.5 Malaysian Cultural, Social & Religious Sensitivity Declaration	41
8.6 Confidentiality	41
8.7 Liability	41
8.8 Further information and contacts	41-42
Checklist: prior to submitting your application	43

List of acronyms and abbreviations

CCM	The Companies Commission of Malaysia (<i>Suruhanjaya Syarikat Malaysia</i>).
Committee	The FIMI Approval Committee that convenes to approve FIMI applications for either a Provisional or Final Certificate.
FIMI	The Film in Malaysia Incentive is a 30% cash rebate of Qualifying Malaysian Production Expenditure (QMPE) for production and post-production activities in Malaysia where the QMPE must meet the criteria further elaborated upon in these Guidelines.
FIMO	The Film in Malaysia Office is the relevant division in FINAS established to process all FIMI applications. FINAS and FIMO may be used interchangeably in these guidelines and refers to the same organization (e.g. FINAS).
FINAS	The Malaysia Statutory film corporation known as National Film Development Corporation Malaysia, a statutory body incorporates under National Film Development Corporation Act 1981 (Act244).
Guidelines	Refers to the Film In Malaysia Incentive Guidelines that provide information about the eligibility criteria, Qualifying Malaysian Production Expenditure for production and post-production activities and, the application process for the Film In Malaysia Incentive. Please note that the Guidelines may, from time to time, be amended or supplemented at the discretion of FINAS.
IFPC	Independent Film Production Consultant.
IRB	The Inland Revenue Board of Malaysia (<i>Lembaga Hasil Dalam Negeri</i>).
KKMM	The Ministry of Communication, Multimedia of Malaysia (<i>Kementerian Komunikasi dan Multimedia Malaysia</i>).
Film/Project	is a project in relation to a film, television and other relevant qualifying production or post production activity conducted in Malaysia.
PUSPAL	The Central Agency for Application for Filming and Performance by Foreign Artistes (<i>Agensi Pusat Permohonan Penggambaran Filem Dan Persembahan Artis Luar Negara</i>).
QMPE	Qualifying Malaysian Production Expenditure which is expenditure incurred in Malaysia for the purposes of producing and making the Project, and is a subset of the production expenditure as further described and set out in Section 4 of these Guidelines.

Introduction

The Film in Malaysia Incentive, abbreviated as FIMI, is the Malaysian Government's incentive for film, television and other relevant qualifying production activity conducted in Malaysia.

These Guidelines have been prepared to assist applicant producers in their completion of the application forms for both provisional and final approval for FIMI, collectively referred to in these Guidelines as the "Application Form". In the case where any parts of these Guidelines are only relevant for either the Provisional Certificate application or Final Certificate application forms, then the relevant form shall be referred to as either the "Provisional Certificate Application Form" or the "Final Certificate Application Form", as the case may be.

These Guidelines are not a legal document. This means that:

- you are encouraged to seek professional advice when preparing relevant documents,
- you should consult the Film In Malaysia Incentive General Terms and Conditions ("Terms and Conditions"), which are available from www.filminmalaysia.com and,
- if there is any inconsistency between these Guidelines and the Terms and Conditions, the provisions in the Terms and Conditions prevail over that part of these Guidelines.

These Guidelines are intended to be of general information only and do not constitute advice with respect to any particular producer's circumstances. Applicant producers should therefore seek independent professional advice from qualified professionals, including accountants, auditors, tax advisers and/or lawyers in relation to all financial and legal matters discussed in these Guidelines and generally in relation to their Project.

FIMI is administered by the National Film Development Corporation of Malaysia (FINAS). Film In Malaysia Office (FIMO) is the relevant division in FINAS established to process all FIMI applications as well as to facilitate filming in Malaysia for domestic and foreign producers.

FIMO may decline to accept and/or reject an Application if it does not follow and/or comply with these Guidelines. These Guidelines are designed to be read in conjunction with the relevant Application Form. As the Guidelines and Application Form are subject to changes and updates, please ensure that you have the most current version of these documents by checking at www.filminmalaysia.com prior to submission of any Application.

Applicant producers should also contact FIMO early, before production commences, to discuss their Project and to explore details surrounding FIMI. Contact details for FIMO are listed in Section 8.8: Further information and contacts of these Guidelines.

In these Guidelines:

- **Section 1** provides an overview about the Film In Malaysia Incentive
- **Section 2** outlines the eligibility criteria for Production activity in Malaysia
- **Section 3** outlines the eligibility criteria for Post Production activity in Malaysia
- **Section 4** outlines the key concepts of Qualifying Malaysia Production Expenditure (QMPE)
- **Section 5** explains some specific expenditure issues related to calculating expenditure
- **Section 6** explains the application process for the Provisional Certificate
- **Section 7** explains the application process for the Final Certificate
- **Section 8** outlines other General items in the application process

SECTION 1: Overview of the Film In Malaysia Incentive

The Malaysian Government has incentives for content development specifically for film, television and other screen production. The Malaysian Government anticipates that this inaugural vehicle will encourage production works and increase skill sets that would be of international standard for the populace throughout the ecosystem of the creative content industry. This impetus is of crucial importance to the nation's economic, social and intellectual development. The Malaysia Government believes that this effort would be a landmark decision that would benefit, develop and further support the industry. FIMI will not only promote the creation of quality creative content, it will also make Malaysia a preferred destination and film production hub.

The Malaysian Government introduced FIMI to provide an additional financial incentive for the production of creative content within Malaysia and to support the Malaysian content production industry. FIMI is offered for production and post-production approved activities.

FIMI's objectives are to:

- Encourage Malaysia film producers to produce high quality creative content for both domestic and international markets.
- Attract foreign film producers to film in Malaysia and to establish Malaysia as a destination for international filming.
- Increase employment opportunities for local artists and crew who provide services throughout the ecosystem of the creative content industry.
- Increase opportunities for local film production companies, post-production centres, film equipment rental companies and studios or companies that provide goods and services to the creative content industry.
- Drive the creative content ecosystem and increase the economic contribution of the creative content industry and related industries.
- Develop Malaysia's reputation as an efficient and cost effective hub for the creative content industry.

FIMI is available for both Malaysian and foreign production activities. It can be applied in one of two streams:

- (a) FIMI for Production Activity (inclusive of a combination of production and post-production activities), or
- (b) FIMI for Post Production Activity.

1.1 Application Procedures

To be eligible for FIMI, an applicant producer must first obtain a Provisional Certificate of approval from FINAS by submitting a completed Provisional Certificate Application Form. The Provisional Certificate Application Form must be submitted 3 months prior to the commencement of the production. When a Project meets the requirements of the incentive, a Provisional Certificate will be issued by FINAS which qualifies the Project for the 30% cash rebate.

The Provisional Certificate indicates the Project complies with these Guidelines. All decisions of FINAS in the above regard are at the discretion of FINAS and all decisions arising there from are final.

The provisional approval will be valid for a specific period (between one to three years depending on the particular Project) from the date of the approval. If the milestones listed in the Provisional Certificate have not been reached, a new Provisional Certificate application form must be submitted to FINAS for approval.

Provisional approval will enable an applicant producer to apply for, but does not automatically guarantee the incentive. As part of the provisional approval process, the applicant producer agrees, inter alia, (among other things):

- (a) that the key details of the Project will not be changed significantly,
- (b) to comply fully and in a timely basis with the Terms and Conditions of FIMI,
- (c) without prejudice to the generality (b) above, to ensure that the Project milestones will be met fully and in a timely fashion and,
- (d) ensure that costs over-runs do not exceed 5% of the estimated QMPE stated in the Provisional Certificate. If the QMPE exceeds by more than 5%, the applicant producer will have to apply in writing to FIMO to seek approval for said increase.

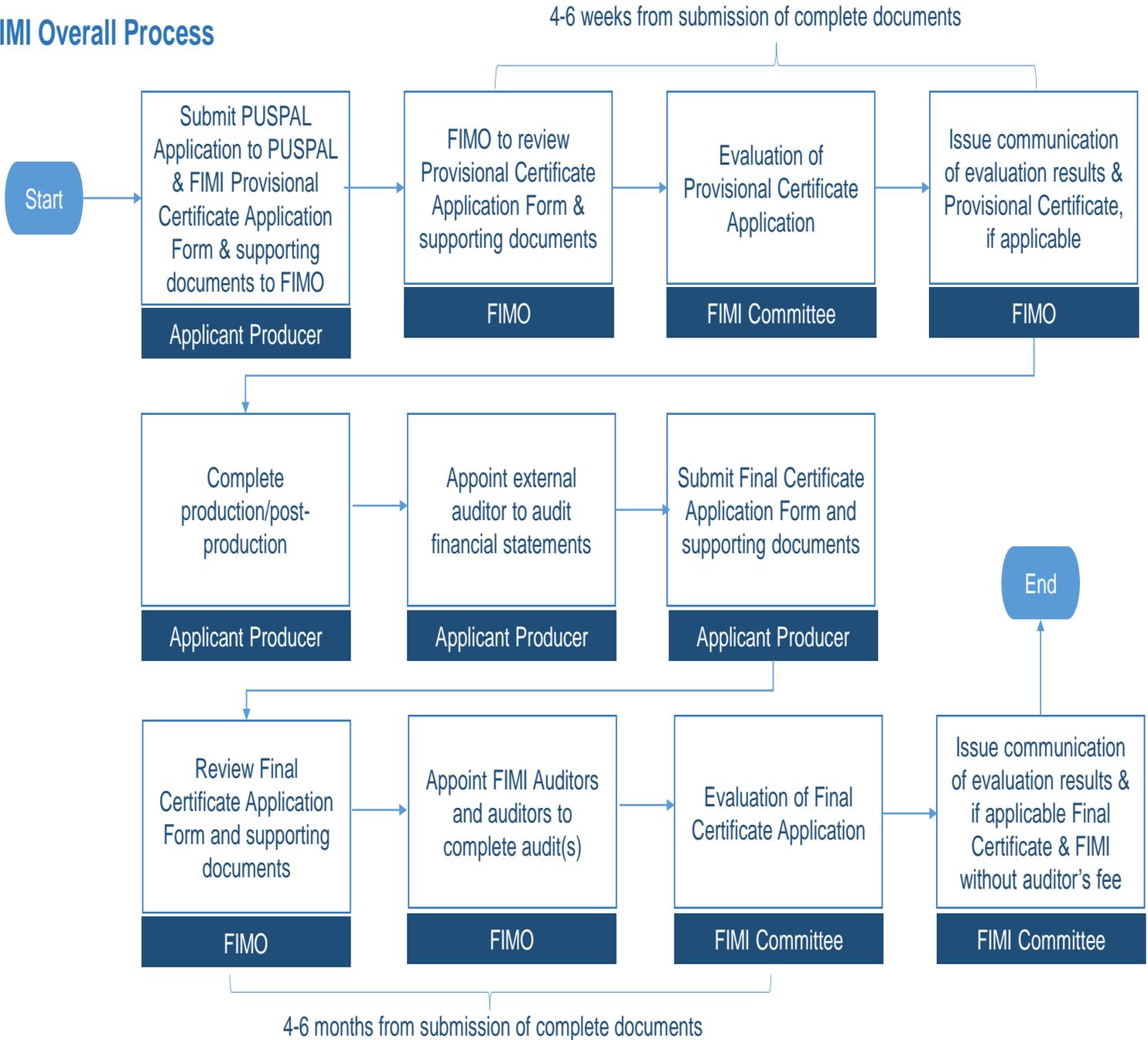
Changes to any creative and/or financial details of the Project may affect the applicant producer's compliance with the Provisional Certificate. Failure to fully comply with the terms of the Provisional Certificate and/or failure to obtain the approval of FIMO in relation to any proposed change may result in refusal of the Final Certificate. FIMO must be kept informed of any such proposed changes as soon as possible.

Once production is completed, the applicant producer must then apply for and obtain a Final Certificate of approval from FINAS by submitting a completed Final Certificate Application Form which shall include all supporting documents and audited receipts to FIMO. The relevant financial and production documentation will be audited by a member of FINAS' FIMI Audit Panel of which costs to undertake such auditing activities will be borne by the applicant producer. Audits may include financial audits and/or production audits by IFPCs and/or legal audits by legal consultants, where required.

The Final Certificate is the central requirement for entitlement to FIMI. As part of the process of assessing the Final Certificate Application, FIMO will formally determine a production's QMPE and record the QMPE amount in the Final Certificate.

1.2 FIMI Overall Process

FIMI Overall Process



SECTION 2: Production activity in Malaysia

Section 2 of these Guidelines sets out the six core eligibility criteria for receiving FIMI for Production Activity. In order to certify the Project for both Provisional and Final Certification, FINAS must be satisfied that the Project has met each of the following six criteria which are detailed below:

- The Project must meet the minimum expenditure threshold for expenses spent in Malaysia and fits within the defined categories of QMPE outlined in this Guideline.
- The Project must be an eligible format as set out in Section 2.2 below.
- The Project must be produced by an Eligible Producer as set out in Section 2.4 below.
- The Project must meet the commencement, completion, timeframes and Terms and Conditions as stipulated in these Guidelines and relevant documents as assessed by FIMO.
- The Project must have approval from PUSPAL for filming in Malaysia.
- The applicant producer will not be eligible for this incentive if any Production Company and/or a project that has already received or intends to solicit from the Malaysian Government grant.

2.1 Eligibility and expenditure threshold

To be eligible for FIMI for Production Activity, the Project must either:

- a) spend QMPE with a minimum of Ringgit Malaysia Five Million (MYR5,000,000.00) in aggregate for production work only; OR,
- b) spend a combined QMPE for production and post-production with a minimum of Ringgit Malaysia Five Million (MYR5,000,000.00). Only a single application is required. Guidelines in this section that are specific to production and Guidelines in Section 3 that are specific to post production continue to apply.

Please note that FIMI is based on expenditure incurred by the applicant producer and not by any other party. Production expenditure and QMPE is further outlined in Section 4: Production Expenditure and Qualifying Malaysian Production Expenditure.

Specific expenditure requirements for television series

In addition to the minimum expenditure threshold requirement above, there are specific expenditure requirements for a Project which consists of a television series (as defined below in Section 2.3: Eligible Genres for television series). To qualify for FIMI, a television series must also have an average of at least Ringgit Malaysia Three Hundred Eighty Five Thousand (**MYR385, 000.00**) of QMPE per hour. You must outline the duration of your series and the average QMPE per hour (Please note this refers to the actual length of the completed Project, rather than 'commercial hours' or 'broadcast hours' which may include, inter alia, time for advertisements and sponsored content) in your Application Form.

2.2 Eligible formats

The formats which are eligible for FIMI are:

- **Feature films, including theatrical documentary features, animated features and IMAX**
A feature film is intended to mean a Film of at least **60 minutes** in length that is screened as the main attraction in commercial cinemas. For large-format projects such as IMAX it is intended that the Film be at least **45 minutes** in length.
- **A single episode programme**
This is a stand-alone programme of at least **60 minutes** in length that is exhibited commercially in a medium other than cinema. This category includes telemovies or movies-of-the-week, films released direct to DVD or films released on the internet, video-on-demand or a mobile phone delivery platform. A single episode programme other than a documentary may be an animated film.
- **A single episode documentary**
A single episode documentary must be at least **22 minutes**. A documentary is defined as a programme that is a creative treatment of actuality other than news, current affairs, sports coverage, magazine, infotainment or light entertainment programme.
- **Commercials**
Commercials are defined as an advertising, promotion or publicity material presented through a media outlet such as television, cinema or on new media platforms which are produced and paid for by an organization that conveys a message typically to market a product or service.
- **A series or season**
A series or season of a series is a multiple-episode film that does not receive a cinema release but is exhibited commercially on another medium: e.g. straight to DVD or via the internet. A series or season of a series must be at least two episodes. Each episode must be at least **22 minutes**, with the exception of animation programmes which must be at least **15 minutes**. A series or season of a series may be an animated film or a documentary. Please note that the FIMI For Production Activity, will only be issued after completion of the entire series, with a minimum spend of at least Ringgit Malaysia Three Hundred Eighty Five Thousand (**MYR385, 000.00**) per episode, and to be completed within 18 months upon commencement of expenditure (see 2.5.1 Timeframe requirements for television series). Multiple season in one application is not allowed.
- **Short form animation**
A short-form animation is a programme of one episode or a collection of episodes, predominantly utilizing cell, stop motion, digital or other animation of not less than **11 minutes** in total duration. This means, for example, that a collection of six five-minute animated episodes (**half an hour/30 minutes**) would be regarded as a short-form animation because the total duration would exceed the duration range of **5 to 15 minutes**.
- **Game shows and Reality shows**
Game shows and reality shows are television shows in which members of the public or celebrities are filmed living their everyday lives or undertaking specific challenges as part of a contest or other situation where a prize is awarded. Television news and sports television are NOT classified as game shows or reality shows.

You must specify the format of your Project and provide a synopsis on your Application Form.

2.3 Eligible Genres for television series

A television series means a series such as a drama or comedy, a documentary, a game show or a reality series (see below).

For the purposes of FIMI, a television series must be made up of two or more episodes that:

1. are produced wholly or principally for public exhibition on television under a single title;
2. have common theme or themes; and
3. are intended for exhibition together in a national market or markets.

The first of these television series requirements applies to Projects for both free-to-air (broadcast network) and paid/subscription television (cable or satellite) so long as the television series is to be released under a single title.

The second and third of these requirements describe how a television series is defined for the purposes of FIMI. The television series requirements mean that there must be a common element that draws the episodes of the series into a cohesive whole and that the episodes must be released under a single title.

This is intended to include anthology series released under a single title, which are thematically linked, but where plot, setting and characters differ. For example, a television series could be eligible for FIMI if it is:

- A traditional drama series of two or more episodes where individual episodes contain differing plots but key elements of the show, for example the characters, locations or the occupation of the characters remain the same. The narrative structure may develop as the central concern across the duration of the series or individual episodic plots may be tied together by a secondary narrative stream involving key characters which continue throughout the series.
- A television series of two or more episodes where real people are asked to assume contemporary or historical roles in a manufactured setting and the results of this role play are filmed for a specified period. Each episode may include separate scenarios which the participants engage in, but over the length of the series common elements of theme (be they the historical setting or the people or character) will remain and a narrative will develop, be it imposed by producers or merely developed by documenting the relationships between the participants.

Finally, the episodes of the series must be intended to be exhibited together in a national market. This indicates that different series which were produced to be shown in different markets, cannot be grouped together or bundled to reach the minimum expenditure of Ringgit Malaysia Five Million (MYR5,000,000.00).

It is not intended that the term 'exhibited together' should unreasonably constrain broadcasting arrangements. However, you should be able to demonstrate that the series is part of a cohesive whole that is intended to be exhibited in a given market as a single title.

A documentary television series may, for example, satisfy the definition where similar lives or events are examined to develop an overall hypothesis. A reality television series may meet the requirements if:

- the depiction of actual events, people or situations is the sole or dominant purpose of the television series; and
- the television series depicts those events in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

Details of a television series format are required in the Application Form and must include a synopsis as well as a statement that the series is intended to be exhibited on television together in at least one national market.

2.4 Eligible Applicant Producer

To be eligible for FIMI, the applicant producer must fall into one of the following categories to qualify as an “Eligible Applicant Producer”:

- (1) A foreign production company who has appointed and commissioned a Malaysian production services company that: (1) is a private limited company duly incorporated under the Malaysian Companies Act 1965 and registered with CCM; and (2) has a valid and subsisting FINAS production license. The appointment must be evidenced by a stamped production services agreement or co-production agreement. Documentation evidencing the fulfillment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when FIMI is due to be paid or,
- (2) A private limited production services company incorporated by a foreign production company under the Malaysian Companies Act 1965 and registered with CCM (1) with a foreign shareholding and (2) has a valid and subsisting FINAS production license. Documentation evidencing the fulfillment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when FIMI is due to be paid.

Where several production companies are involved in making a Project, the company that is eligible to claim FIMI is the one that meets the above requirements. Although there may be a number of entities that make arrangements for, or carry out activities necessary for making a Project, only one company can be eligible for FIMI. FIMI will be granted to the company that is responsible for all of the aforementioned activities or Malaysian activities.

In practice this means that the applicant producer must be the company through which all transactions are channeled. For example, the expenditure incurred in contracting a company to engage actors (that is, its fees for that service, and the actors’ fees themselves) qualifies as production expenditure as long as the applicant production company is able to account for these costs in its audited expenditure statement.

Details of the registered name of the Malaysian production company, company registration number, registered address, and names and addresses of the company directors are to be provided in the Application Forms. The relevant documents verifying this information and confirming the legal status of the company and the company’s responsibility for the production of the Project must be submitted with the Application Forms together with the Memorandum and Articles of Association, Forms 9, 24, 44 and 49. Please refer to the checklist in Appendix A of this Guideline prior to submitting your application.

*Malaysian Television Broadcasters (including satellite TV, IPTV, etc) are **NOT ELIGIBLE** for this incentive. However, an independent film production company that is engaged for a particular production project by a television broadcaster will be eligible to apply for this incentive.

For information about taxation and the other obligations of companies commencing business in Malaysia, such as incorporating a Malaysian company or filing business activity statements and annual income tax returns, please consult CCM (www.ssm.com.my) or Inland Revenue Board of Malaysia (www.hasil.gov.my) websites.

2.5 Commencement, completion and timeframes

Upon completion of the Project, the applicant producer must provide an offline DVD copy of the raw production footage or other proof/evidence acceptable to FIMO within 30 days or such time period which has been approved by FINAS. The Final Certificate will not be issued if the applicant producer fails to comply.

Dates of commencement and completion of principal photography or of production of the visual image must be outlined in your Application Form.

2.5.1 Time frame requirements for television series

Qualifying television series must be completed within a given timeframe, as stated in the Provisional Certificate. The length of this timeframe depends on whether the series is predominantly an animation or alive action series.

You must indicate in your Application Forms whether your series is predominantly a digital or other animation, and the timeframe taken to produce it. The test of whether the series is predominantly an animated series is assessed on a case-by-case basis.

Further:

- If a television series is predominantly a digital animation or other animation, the entire production of the series must be completed within 36 months. This period commences at the moment production expenditure is incurred. This timeframe requirement does not include any production expenditure for a pilot for said television series.
- For a live action or other television series that is not predominantly an animation, principal photography for the series must be completed within a period of 18 months from the moment production expenditure is incurred. The timeframe excludes the principal photography of any pilot episode.

2.6 Malaysian crew and intern requirement

To qualify for FIMI, the applicant producer is required to fulfill two requirements regarding crew and interns:

- **Crew**
At least 30% of the production crew must be either Malaysian citizens or persons having Malaysian permanent residency status. Copies of the crews' identity cards, type of work and permanent residency certificates must be provided to FIMO. All Malaysian crew employed in the production should be registered with an authorized association for production crews.
- **Intern** (an additional requirement and separate from the 30% local crew requirement above).
There are a minimum number of understudy interns required. This is based on production size:
 - USD5 – 15 million: **3 interns**
 - USD15 – 45 million: **5 interns**

- USD45 million and above: **7 interns**

2.7 Required Documentation

Sufficient information must be included in the Application Form to enable FIMO to make an informed decision as to whether the Project and Application qualifies for FIMI. Please refer to Appendix A of this Guideline for the complete list of documentation required for both Provisional and Final Certification.

2.8 Project / Content Guidelines

The applicant producer shall ensure that the Project/contents:

- Does NOT contain issues deemed insulting, offensive and/or portraying Malaysia in a negative light.
- Does NOT insult, offend and affect the sensitivity of Islam and other religions in Malaysia.
- Does NOT threaten the security and harmony of Malaysia.

SECTION 3: Post-production activity in Malaysia

To be eligible for FIMI for Post-Production activity the project must either:

- a) spend a minimum of Ringgit Malaysia One Million Five Hundred Thousand (MYR1, 500,000.00) of QMPE for post-production activities only. Only QMPE that is incurred on or in relation to post-production counts towards either the expenditure threshold or the refunded amount OR,
- b) spend a combined minimum QMPE of Malaysia Ringgit Five Million (MYR5, 000,000.00) for a combination of production AND post-production activities. Only a single application is required. Guidelines in this section that are specific to production and guidelines in Section 3 that are specific to post-production continue to apply.

Applicant producers should note that costs attributable to post-production services provided outside Malaysia (for example work outsourced offshore) is not eligible as qualifying post-production expenditure. The post-production activities must be undertaken in Malaysia to be eligible as QMPE.

3.1 What are post production tasks?

FIMO defines post-production as:

- (a) the creation or manipulation of audio or visual elements (other than principal photography, pickups or the creation of physical elements such as sets, props or costumes) for the production; and
- (b) activities that are reasonably related to the activities mentioned in paragraph (a).

Activities that are necessarily related to post-production activities are also considered for the purposes of FIMI. This means that expenditure that is not strictly on post-production tasks, but is necessary to those tasks could also be qualifying post-production expenditure. This could cover, for example:

- airfares, salaries and per diems for visual effects or production staff sent to Malaysia to oversee or undertake post-production work
- salaries, equipment costs and hires, and facilities hire for use in a model or green-screen shoot
- costs such as actor's fees or per diems for working on Additional Dialogue Recording (ADR)
- freight of prints to and from film laboratories and

All claimed expenditure must be in relation to post-production work.

Activities as set out in the table below are examples of qualifying post-production expenditure.

<ul style="list-style-type: none"> • 2D compositing, including matte compositing • 2D to 3D conversion • 3D digital compositing, including composites involving live-action and blue/green screen, rig removal and rotoscoping • 3D scanning, including LIDAR • Acquisition or recording of elements • Animatronics • Archiving, by which is meant digital archiving of post-production elements, rather than the archiving of the final film • Atmospherics • Audio/sound mixing • Audio special effects • Additional Dialogue Recording (ADR) • Background, including, but not limited to plate acquisition • Colour correction and grading, including digital colour grading and digital intermediates (DI) • Computer generated imagery (CGI), including character animation and 3D CG modeling • Clearances (library and sound), where copyright is held by a Malaysian. • Digital and visual effects, including CG effects creation and animation, the acquisition of visual effects elements and digital lighting • Digital make-up fixes • Digital rig and wire removal and digital wire effects • Duplication (until delivery, but excluding distribution copies), including deliverables • Editing, including on-line and off-line • Encoding • Film laboratory services (production and post-production) 	<ul style="list-style-type: none"> • Film scanning, treatment and restoration, including digital film scanning and recording • Foley effects • Graphics • Green/blue screen photography • Idents • Match moving • Matte painting and photography, including digital matte creation and 2D matte painting • Models, miniatures and miniature photography • Motion capture • Motion control • Music and effects • Music composition and recording • Opticals • Pre-visualization • Rendering • Restoration • Soundtrack • Spot effects • Stills manipulation, including photogrammetry • Streaming and file transfer of elements and approval copies and footage • Telecine • Tests that are typically included in the process of visual effects and post-production • Titles and credits • Virtual studio/sets • Visual effects design, planning, supervision, management and integration into production • Voice post synching
---	--

Animation is generally considered a production activity, unless it is added during post-production to enhance or complement a live action shot. If you consider that as post-production, please contact FIMO to discuss the matter. FIMO reserves the right at any time, in its sole and absolute discretion, not to accept a task that FIMO believes, in its sole and absolute discretion, is not in its opinion considered as a post-production activity.

3.2 Expenditure threshold

An applicant producer must spend at least Ringgit Malaysia One Million Five Hundred Thousand (MYR1,500,000.00) of qualifying post-production expenditure on a Project which is in an eligible format (see list of eligible formats in Section 3.3: Eligible Formats of this Guideline).

3.2.1 Expenditure statements

Expenditure statements should contain the information necessary to enable FIMO to conduct verification of qualifying post-production expenditure.

The expenditure statements submitted should include:

- the service provider's full quote or gross bid (including budget breakdown/costs per shot)
- stamped copy of the production services agreement or contract
- a transaction log
- any approved change orders
- copies of invoices issued by the service provider, and
- a letter from a director of the Company (evidenced by the Form 49) or the equivalent of each post-production service provider stating their opinion personally that:
 - a) the expenditure incurred in carrying out the post production activities is attributable to goods and services provided in Malaysia, and
 - b) indicating the names (if any) of foreign non-cast personnel brought to Malaysia for periods of less than 2 cumulative weeks to provide post-production services on the film (or 7 cumulative days for documentary or commercials). Relevant documents evidencing such activities should also be provided.
- copies of all fully executed and stamped contracts with providers of services with a large value (for example, an individual post-production service provider) must be attached to the application. You should also be prepared to provide any other service contracts on request.

You must attach expenditure statements outlining all qualifying post-production expenditure to your Application Form.

3.3 Eligible formats

Eligible formats for FIMI are the same as those for production activity, stated in Section 2.2: Eligible Formats of this Guideline.

You must detail the Project's format on your Application Form. You must also outline the post-production work involved (for example – 187 visual effects shots of plane exploding, wire removal, editing and Additional Dialogue Recording).

3.4 Eligible Applicant Producers

To be eligible for FIMI, the Applicant Producer must fall into one of the following categories to qualify as an Eligible Applicant Producer.

- (1) A foreign production company who has appointed and commissioned a Malaysian production services company that: (1) is a private limited company duly incorporated under the Malaysian

Companies Act 1965 and registered with the CCM; and (2) has a valid and subsisting FINAS production license. The appointment must be evidenced by a stamped production services agreement or co-production agreement. Documentation evidencing the fulfillment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when the FIMI is due to be paid; or

- (2) A private limited production services company incorporated by a foreign production company under the Malaysian Companies Act 1965 and registered with the CCM; (1) with foreign shareholding and (2) has a valid and subsisting FINAS production license. Documentation evidencing the fulfillment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when the FIMI is due to be paid; or
- (3) The eligible production company is the sole company that is responsible for carrying-out, or making the arrangements for the carrying-out of, all the activities that were necessary for post-production in Malaysia. Depending on the Project, this could be for example:
 - a Malaysian company set up to manage or commission one or more Malaysian companies to provide post-production work for the production; or
 - the 'lead' Malaysian post-production company which either undertakes all the post-production work in Malaysia or subcontracts any Malaysian post-production that it does not undertake to other companies; or
 - a Malaysian production company or production services company.

Applicant producers should note that verifying documents (such as a post-production services agreement or contract, all of which must be stamped) must be provided to confirm applicant producer is the sole company that carried out, or made the arrangements for the carrying-out of, all the activities that were necessary for post-production in Malaysia.

Please note that the Application Form requires written confirmation from the Project's production company or commissioning studio (as the case may be) that the applicant producer is permitted to apply for FIMI.

Details of the registered name of the applicant producer company, company number, registered address, and names and addresses of the company directors are to be provided in the Application Form. The relevant documents verifying this information and confirming the legal status of the company and the company's responsibility for the production must be submitted with the Application Form together with the Memorandum & Articles of Association, Forms 9, 24, 44 and 49. Please refer to the checklist in Appendix A of this Guideline prior to submitting your application.

3.4.1 Note for applicant producers who are also the service provider

Please keep in mind that in cases where the applicant producer company is also the company that carries-out post-production work or subcontracts the post-production work to other service providers in Malaysia, only expenditure that is incurred by the applicant producer is eligible as QMPE.

This means that if the applicant producer has undertaken all the post-production work in Malaysia, only its direct costs may be eligible as QMPE. Please see Section 4: Production Expenditure and Qualifying Malaysian Production Expenditure for further information.

Applicant producers should contact FIMO early, ideally before post-production commences, if there are any questions concerning the implications of proposed arrangements for carrying-out post-production activities in Malaysia.

3.5 Commencement, completion and timeframes

FIMI will only be available for post-production work which commences in Malaysia on approval from PUSPAL. Please note that it is irrelevant when the Project commenced principal photography or when it commenced post-production work elsewhere.

The commencement date for a Project seeking to qualify for FIMI is the date on which qualifying post-production expenditure is incurred on, or in relation to, post-production. In your Final Certificate Application Form you must specify the dates on which post-production in Malaysia commenced and was completed.

SECTION 4: Production Expenditure and Qualifying Malaysian Production Expenditure (QMPE)

FIMI is expenditure-based. Both the key criteria for qualifying for FIMI and the basis for calculating the refund amounts are based on the amount spent by the applicant producer company on goods, services and land in Malaysia.

Expenditure incurred in Malaysia for the purposes of making the production and/or post-production of a Project will be considered as Qualifying Production Expenditure (QMPE). This is further explained in Section 4.1 and 4.2 of this Guideline.

In the event that actual QMPE incurred is more than 5% of the approved production costs indicated in the Provisional Certificate, then the applicant producer must obtain approval from FINAS for the cost over-run.

4.1 What is Qualifying Malaysian Production Expenditure (QMPE)?

QMPE has a dual role for the purposes of production and post-production activity. It:

- is the basis for determining whether the minimum expenditure threshold has been reached; and
- provides the basis of FIMI itself, as the amount of the rebate is 30% of QMPE.

QMPE is defined as the Applicant Producer's production expenditure on the Project that is incurred for, or is reasonable attributable to:

- goods and services provided in Malaysia; and/or
- the use of land located in Malaysia.

Salary for services rendered in Malaysia

Please note that the rebate is only claimable on the first Ringgit Malaysia Seven Million Five Hundred Thousand (MYR7.5 million) of any one person's salary (cast and/or crew) for services rendered in Malaysia.

The QMPE must be incurred after the date of PUSPAL's approval.

All costs claimed as QMPE must be presented in an audited expenditure statement and attached to the Application Form as detailed in Section 8 of these Guidelines.

The following expenditures or part thereof, may be regarded as QMPE and should be included in the applicant producer company's audited expenditure statement after you have read the more detailed explanations below:

- Malaysian development expenditure
- Malaysian-held copyright acquisition/licensing arrangements with Malaysian residents
- Insurance (other than forms of insurance which constitute financing)
- Publicity and promotion expenditure (other than those expenditures specifically excluded in these Guidelines)
- Additional audiovisual content

- Audit and legal expenses incurred in Malaysia
- Travel to Malaysia
- Freight of an item to Malaysia which is the transport of filming/project equipment only
- Travel freight within Malaysia
- Remuneration other than by salary

4.1.1 What is a ‘Service Provided in Malaysia’?

A service is provided in Malaysia if the service provider is located in Malaysia at the time when the service is provided. Any production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to, services performed outside Malaysia will be deemed non-QMPE. If any services are provided outside of Malaysia (for example where a cast member, director or producer returns to the US to work on or oversee post-production or a visual effects company subcontracts work offshore) only the proportion of expenditure attributable to the period during which the service provider was located in Malaysia is QMPE.

4.1.2 Apportionment of services provided

Apportionment calculations may be utilized where a service provider’s contract does not distinguish between the services provided in and outside Malaysia.

For example, if cast or crew member contracts specify a fixed fee for all services provided, the amount that could be claimed as QMPE will need to be based on the number of days the cast or crew member provided their services in Malaysia. To calculate the QMPE amount, contract fee should be divided by the total number of days worked to establish a daily rate, then multiplied by the number of days the service was provided in Malaysia.

When undertaking apportionment calculations, applicant producers should use the rate which reflects the services provided. For example, where the contract specifies an hourly, daily or weekly rate, and/or rates differ between rehearsal/pre-production, principal photography and post-production, then QMPE should be calculated using the appropriate rate for the time spent providing the service. If services are provided on a part time or on exclusive basis, the QMPE should be calculated on the hours worked using a standard 8-hour day.

In order to apportion costs based on the number of days, the day of arrival and/or departure from Malaysia is considered a day that services are provided in Malaysia as long as services are provided to the production during part of that day.

Productions undertaking work in Malaysia and other countries should maintain a travel spreadsheet to assist in verification of claimed expenditure, it would also be helpful for assessing the Minimum Work Week rule for non-cast members (please see Section 4.3 for further information). Where the provision of a service in Malaysia involves both a Malaysian-based company and a foreign subsidiary or parent company, please also see information of ‘transfer pricing’ in Section 5 of this Guideline.

Please note that where remuneration of a person is claimed as QMPE and the person in question undertakes work on the production both in and outside Malaysia, applicant producers must attach copies of fully executed contracts for such individuals to their application to verify that a reasonable

apportionment has been correctly calculated. If the contracts do not verify the level of services performed both in and outside Malaysia, applicants must attach documentation which clearly outlines how the apportionment was calculated. Where a cast or crew member's full fee is claimed as QMPE, applicant producers must be able to confirm that no services provided outside Malaysia are attributable to the fee.

4.1.3 Malaysian development expenditure

Expenditure on development (such as location surveys, storyboarding, scriptwriting, research, casting actors, developing a budget or developing a shooting schedule) that occurs within Malaysia is considered to be QMPE. Therefore, for example, expenditure on scouting locations in the state of Johor is QMPE, but expenditure on casting in Los Angeles is not.

Please note that legal costs that relate to writers' contracts or to copyright issues including "Chain of Title" are considered development expenditure and therefore qualify as QMPE where legal services are provided in Malaysia. Other legal costs incurred during development will generally not be QMPE.

4.1.4 Malaysian-held copyright acquisition

The acquisition of copyright or licensing of copyright in a pre-existing work for use in the production may be claimed as QMPE if the copyright of the pre-existing work is held by a Malaysian resident.

The costs of commissioning music or a score is not considered to be expenditure in acquiring pre-existing copyright. Such expenditure is treated as any other production expense. It may be production expenditure and, if the commission of the composition is undertaken in Malaysia, it may be QMPE. Where the purchase of licensing of Malaysian resident-held copyright is being claimed as QMPE you must attach the relevant legal agreement verifying the assignment of ownership or the licensing of copyright to your Application Form.

4.1.5 Malaysian-based insurance (other than forms of insurance which constitute financing)

Expenditure on insurance policies that are unrelated to financing and are reasonably required for the making of the Project is regarded as production expenditure and may be claimed as QMPE where the service is provided in Malaysia. Examples include insurance for props, sets, wardrobes, and miscellaneous equipment, and public liability insurance.

However, please note that FIMO has determined certain kinds of insurance such as extra expense, weather and negative film risk insurance, and completion guarantees and bonds are forms of financing. Accordingly, expenditure on them is not QMPE and such costs should not be identified as production expenditure.

In order to identify QMPE, please obtain a breakdown of your insurance policy from your insurer. If your insurer is unable to provide a breakdown of the policy, applicant producers may make a fair and reasonable apportionment. You should consult with FIMO prior to making this apportionment.

4.1.6 Malaysian-base publicity and promotion expenditure

Publicity and promotion expenditure may be counted as QMPE where it is incurred by the applicant producer company before completing the production, and copyright in the publicity material is held by a Malaysian resident (which includes a resident company).

Please note that expenditure for the production of additional audiovisual content for the production is also claimable as QMPE (see Section 4.1.7 of this Guideline).

Documents verifying the transfer of ownership of copyright or establishing that the copyrighted promotional material is held by a Malaysian resident must be attached to your Application Form.

4.1.7 Additional audiovisual content

Usually, QMPE can only be incurred in relation to producing the first copy of the Project (i.e. for a feature film, producing the theatrical release). However, expenditure incurred in Malaysia on producing audiovisual content for a subsequent release of the production may also be QMPE. This means, for example, that where additional footage is shot for a DVD release's special features expenditure on that footage is QMPE to the extent that such expenditure is incurred in Malaysia.

This provision also acts as an exception to the general exclusion on publicity and promotion expenditure from production expenditure (see Section 4.1.6 of this Guideline). For example, if a trailer to promote the film during production is shot in Malaysia and is intended to be released with the film in some form, expenditure on producing the trailer may be considered QMPE.

You must separately identify any expenditure on producing additional content, or estimate the amount of that expenditure if expenditure is not easily attributed, on your Application Form.

4.1.8 Legal expenses

Legal expenses incurred in respect of services performed by a law firm in Malaysia during the making of the production may be claimed as QMPE. Such services would need to be integral to production activity, for example, contracting cast and crew, music clearances, insurance and lease agreements.

Applicant producers should ensure that legal expenses that relate directly to Malaysian production activity is identified and invoiced separately. This will assist in the preparation of expenditure statements which claim only QMPE for the FIMI.

Legal expenses that are incurred during development can only be QMPE to the extent that they relate to writers' contracts or the registration and protection of intellectual property rights in Malaysia, including matters pertaining to the "Chain of Title" for the Project.

4.1.9 Travel to Malaysia

Travel costs that relate to production activity undertaken in Malaysia will be considered as QMPE where that travel relates to incoming journeys for personnel:

- whose remuneration qualifies as QMPE; and
- whose stay in Malaysia is necessary to undertake activities in relation to the making of the production.

Rebate applies on the following basis:

- 100% of a return airfare when flying on a Malaysian carrier; or
- 50% of a return airfare when flying on a non-Malaysian carrier

All travel booking has to be done in Malaysia or via a Malaysian travel agent counts as QMPE. Travel booking done overseas or on a foreign travel website will NOT count as “in-country spend” and therefore will NOT qualify for the incentive.

The rebate applies only once per person for each Project. The applicant producer company will need to maintain detailed records of this expenditure in the form of a spreadsheet. The spreadsheet should be maintained during production and submitted with the application.

In those circumstances where the production schedule requires personnel to travel into and out of Malaysia more than once during the making of the production, then only one of those incoming journeys may be claimed as QMPE, so long as the trip meets the criteria above.

Please note that claiming of incoming travel for non-cast members is subject to the ‘Minimum Work Week’ rule outlined in Section 4.3 of this Guideline.

All incoming travel costs for cast-members are QMPE where their remuneration is QMPE regardless of the length of their stay. Please note that any travel for non-production personnel claimed as QMPE is subject to the rules in ‘Remuneration other than by salary’ outlined in Section 4.1.12 of this Guideline.

You must separately identify on your Application Form any expenditure on travel to Malaysia that is claimed as QMPE. Further, you must list in your Final Application Form cast and crew who are not Malaysian citizens and who worked on the film in Malaysia and the capacity in which they worked on the production.

4.1.10 Freighting an item to Malaysia

Consistent with the treatment of travel costs, expenditure on freighting an item to and from Malaysia is QMPE on the following basis:

- 100% of a return freight when using a Malaysian freight forwarder; or
- 50% of a return freight when using a non-Malaysian freight forwarder

You must separately identify on your Application Form any expenditure on freight to Malaysia that is claimed as QMPE.

4.1.11 Travel and freight within Malaysia

All travel and freight costs within Malaysia necessary for the making of the production are QMPE. Please supply relevant documentation and ensure that all travel booking is done in Malaysia or via a Malaysian travel agent. Travel booking done overseas or on a foreign travel website will NOT count as “in country spend” and therefore will NOT qualify for the incentive.

4.1.12 Remuneration other than by salary

If personnel are remunerated other than by a salary (including the provision of airfares for partners) that would not otherwise be QMPE, the value of the remuneration is QMPE only if the remuneration is contractually required and is apportioned for the time the person in question provides services in Malaysia. If any personnel are remunerated other than by salary, you must provide copies of the fully executed contract(s) in question with your Application Form. FINAS will deduct any such claims from QMPE where contracts are not provided.

4.2 Costs which are NOT Qualifying Malaysian Production Expenditure (QMPE)

The following expenditures are specifically excluded from QMPE:

- Expenditure while the applicant producer company is a foreign resident
- Costs of services embodied in goods
- Gratuities and entertainment expenses
- Non-cast members' stay in Malaysia for less than the minimum workweek (see Section 4.3 of this Guideline for the Minimum Work Week rule)

4.2.1 Expenditure while the applicant producer company is a foreign resident

Any expenditure made by the applicant producer company at a time when the applicant producer company is a foreign resident or when the company does not have both a permanent establishment in Malaysia and not incorporated under the Malaysian Companies Act 1965 is not QMPE. For further information on residency, please contact CCM.

4.2.2 Costs of services embodied in goods

If services are embodied in the cost of goods that are delivered to the applicant producer company and those services were performed outside Malaysia, those services are not seen as being provided in Malaysia for the purposes of determining QMPE. For example, the cost of animation or special effects work undertaken outside of Malaysia is not QMPE. If a company contracts the delivery of animation or visual effects work undertaken outside Malaysia as stock or computer media in Malaysia the cost of that contract would not qualify as QMPE. The animation or effects work would have to be carried out in Malaysia for the work to be considered QMPE.

Please note that the costs of services embodied in goods that are carried out in Malaysia as part of making the production will qualify as QMPE. Only those services that are not performed in Malaysia are excluded.

4.2.3 Gratuities and entertainment expenses

Gratuities and entertainment expenses are not QMPE.

4.2.4 Prizes and prize money

Prizes and prize money for contestants on eligible television programmes/series does not qualify as QMPE.

4.2.5 Financing (including forms of insurance which constitute financing)

As financing of a production is not considered to be the making of the production, expenditure made on financing is to be excluded from QMPE. Financing expenditure specifically includes returns payable on amounts invested, and expenditure connected with raising and servicing finance, such as interest payments. Further, certain kinds of insurance are considered forms of financing. Accordingly, expenditure on them should be excluded from QMPE. Examples of these types of insurance policies include extra expense insurance, negative film risk insurance, completion guarantees and bonds, weather insurance and film producer's indemnity insurance.

4.2.6 Foreign development expenditure

Expenditure on development work undertaken outside of Malaysia cannot be counted as part of QMPE for the purposes of FIMI.

Examples of development expenditure include:

- location surveys and other activities undertaken to identify and assess locations for possible use
- storyboarding and script writing
- research
- casting actors
- developing a budget; and
- developing a shooting schedule.

4.2.7 Foreign-held copyright acquisition

Expenditure incurred in licensing and/or acquiring pre-existing copyright from a non-Malaysian resident is not QMPE. Expenditure of commissioning music or a score for a film is not considered to be expenditure in acquiring pre-existing copyright. Such expenditure will not be considered QMPE.

4.2.8 Format Franchise Costs

Format franchise costs, especially but not restricted to Game or Reality Shows are not QMPE.

4.2.9 Publicity and promotion expenditure

Publicity and promotion expenditure including press expenses, still photography, video tapes, public relations and other similar expenses in relation to the production — is not QMPE.

4.2.10 Distribution expenditure

Expenditure on distribution of the production is not QMPE in any circumstances.

4.2.11 Deferments and profit participation

QMPE is limited to expenditure that is independent of a production's commercial performance and its earnings. Therefore, payments which are deferred until the production provides financial returns through box office receipts, earnings or profits are excluded from QMPE.

4.2.12 Residuals

QMPE also excludes amounts payable in relation to the residual rights of cast and non-cast members concerning the commercial exploitation of the Project through future exhibition and distribution.

4.2.13 Advances

All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals (as described above) are excluded from QMPE.

4.2.14 Acquisition of depreciating asset

Other than expenditure incurred to acquire copyright (outlined in Section 4.1.4 of this Guidelines), costs incurred in acquiring a depreciating asset and any capital costs invested in that asset are not regarded as QMPE.

4.2.15 Foreign pilot expenditure (only for a television series)

Where the production is a television series, expenditure on a pilot that is incurred outside of Malaysia is not regarded as QMPE. For avoidance of doubt, expenditure on a pilot in Malaysia is considered QMPE.

4.3 Minimum Work Week Rule for non-cast members

In order for costs associated with any crew member to be considered QMPE a non-cast member must work in Malaysia on the film for at least ("Minimum Period") two cumulative calendar weeks (seven cumulative days for documentaries or commercial). If the crew member works on the film for less than the Minimum Period, that person's remuneration, travel expenses/accommodation and per diems are not considered QMPE. This restriction is aimed at maximizing the impact of FIMI on the Malaysian film industry by encouraging producers either to employ Malaysian residents to work on the production or to increase the amount of time non-residents work on the Project in Malaysia. No Minimum Period requirement in Malaysia applies to any cast members.

SECTION 5: Specific expenditure issues and FAQ

This section outlines particular requirements that you must follow in preparing your application. It also explains the treatment of certain items of expenditure, based on rulings or determinations issued by FIMO that are often queried by applicant producers.

5.1 Arm's length expenditure

The basis of the arm's length principle is to ensure that amounts charged between the applicant producer company and any related companies (including parent and subsidiary companies) for the provision of goods/services are commercially reasonable. Where the applicant producer company incurs expenditure under a non-arm's length arrangement which inflates the cost of a particular good/service in relation to the Project, only the commercial rate for that good/service will be counted towards production expenditure for the purposes of FIMI. The amount of expenditure is based on what each collaborating party would ordinarily charge an unrelated party.

This principle applies to the actual arrangement under which the applicant producer company incurs expenditure and also to any act or transaction directly or indirectly connected with incurring said expenditure. For example, even if the applicant producer company itself was dealing at arm's length to obtain the goods/services, the principle still applies if a non-arm's length deal between others could otherwise inflate the cost.

The most common form of arm's length arrangements occurs in the context of an applicant producer company hiring or leasing equipment or facilities from a parent company or purchasing other services from a parent or sister company.

In assessing how to set an arm's length charge for a depreciating asset, a company related to an applicant producer company should take into account:

- a depreciation charge, and
- a mark up to cover overheads, holding costs and profit.

As a matter of commercial reality, FIMO would not expect a leasing charge to be substantially different to what it would cost the lessee to have held the asset themselves. This cost would effectively represent the depreciation on the asset attributable to the film and a holding cost (interest on a loan). Alternatively, a lease charge could be the ordinary commercial cost of leasing the asset from an unrelated party.

In some cases FIMO may request further information beyond what is usually required of an applicant producer where an arm's length arrangement is identified. For example, if FIMO has any doubts about the commercial reasonability of an arm's length charge claimed as QMPE, FIMO may require an applicant producer to furnish valuations or quotes on leasing charges from genuinely arm's length goods or service providers for equivalent assets.

The applicant producer company will be required to provide details of all providers of goods/services that are used in making the production where the providers are associated with the applicant or any of its associate companies. This will assist in the process of assessing the extent to which costs charge between related goods/services providers are at the appropriate commercial level.

In some circumstance, FIMO may request information on how the quantum of the charge was calculated, potentially including, but not limited to, quotes or valuations from non-related parties for the same or equivalent service or good.

5.2 Currency exchange

All production expenditure and QMPE incurred in foreign currencies must be converted into Ringgit Malaysia at such conversion rate published by Bank Negara of Malaysia at the time production expenditure is incurred or the average exchange rate between the first and last in-country spend transaction.

Official published exchange rates are available from Bank Negara of Malaysia at www.bnm.gov.my/statistics/exchangerates.php.

Details of the foreign exchange rate on the date of commencement, the average currency exchange rate and the source from which the rates were derived must be included in the Application Form. All foreign currency expenditure must be converted to Malaysian Ringgit.

5.3 Transfer pricing

Malaysia's transfer pricing rules are set out in Transfer Pricing Guidelines dated 20 July 2012 ("2012 Guidelines"), replacing the 2003 Transfer Pricing Guidelines. The 2012 Guidelines are intended to help explain administrative requirements pertaining to Section 140A of the Malaysian Income Tax Act 1967 and the Income Tax (Transfer Pricing) Rule 2012. In particular, Section 140 allows the Director General of the Inland Revenue Board Malaysia (IRB) to disregard transactions believed not to be at arm's length and make the necessary adjustments to revise or impose tax liability on the persons concerned. With effect from 1 January 2009, Section 140A was introduced to specifically address transfer pricing issues.

The section requires taxpayers to determine and apply the arm's length price on controlled transactions.¹

The above rulings, determinations and other related IRB publications on transfer pricing issues can be accessed on the IRB website at www.hasil.gov.my

¹Inland Revenue Board Malaysia, "IRBM Transfer Pricing Guidelines 2012," downloadable at: <http://www.hasil.gov.my/pdf/pdfam/MalaysianTransferPricingGuidelines2012.pdf>

5.4 Treatment of pilot episodes

A pilot (if there is one) is considered to be part of the television series. However, expenditure on a pilot is excluded from being production expenditure unless it meets the requirements of QMPE, in which case such expenditure is both QMPE and production expenditure.

Also, for the purposes of the timeframe requirements noted above in Section 2 of these Guidelines, time taken shooting a pilot is excluded and the timeframe test only includes production of the series without the pilot.

You must note on your Application Form if expenditure on the pilot is QMPE. Note that if expenditure on a pilot is not identified as QMPE it is also excluded from the production expenditure calculation.

SECTION 6: Provisional certification process

6.1 Application

The application process for both production and post-production (if production is outside Malaysia) are the same. The process will commence with FIMO's "date of receipt" of the completed Provisional Certificate Application Form together with all relevant supporting documents. The Provisional Application Form is found at: <http://www.filminmalaysia.com/index.php/incentive1>.

To apply for a Provisional Certificate, you must fill in the Provisional Certificate Application Form and submit all relevant supporting documents (as indicated in "Appendix A: Checklist") to FIMO.

The applicant producer is required to apply for a Provisional Certificate 3 months before shooting prior to commencement of pre-production or post-production (for post-production FIMI only) expenditure. The Provisional Certificate Application Form must include your best estimates as to the likely production expenditure and QMPE.

A Provisional Certificate will state that, based on the information and projected budget presented in the application, the proposed Project would meet the core eligibility requirements. Applicant producers will be advised in writing of any projected budget items that have been included in their application for provisional certification that would not be considered as (post) production expenditure or QMPE for the purposes of FIMI. A Provisional Certificate does not provide a guarantee of receiving a Final Certificate. It will, however, provide an indication of eligibility and the extent to which the projected expenditure on a Project can be counted towards QMPE or, for post-production, qualifying post-production expenditure. The Applicant Producer must apply for final certification once the Project is completed in order to claim the FIMI.

FIMO and the Approval Committee members, as appointed by FINAS ("Committee"), will assess your application and will either issue or decline to issue the Provisional Certificate.

6.2 Eligible Applicant Producers

Producers must ensure that they are Eligible Applicant Producers prior to submission of the provisional application. For post-production activity, an applicant producer may be a company that is responsible for carrying out the post-production work in Malaysia for the qualifying formats outlined in Sections 2 and 3.

Details of the registered name of the applicant producer company, company number, registered address, and names and addresses of the company directors are to be provided in Provisional Certificate Application Form together with the incorporation documents, which may include the Memorandum and Articles of Association, Forms 9, 24, 44 and 49, of the Malaysian production company and its equivalent for the foreign production company, where relevant. The relevant documents verifying this information must be submitted with the Provisional Certificate Application Form.

If the production company has taken over responsibility for the production from a previous company this must also be evidence by the relevant legal agreement or documentation attached to your application and documentation establishing the production company.

Applicant producers should refer to Section 5 of these Guidelines regarding arm's length expenditure requirements. To the extent that they have been finalized applicant producers for Provisional Certificates must note all providers of goods and services that are associated with the production company or any of its associated companies.

6.3 Projected provisional expenditure statements

In order to facilitate the assessment of likely QMPE and production (or post-production) expenditure for FIMI, you must fill in each item for the projected expenditure for which you intend to claim the rebate in the Provisional Certificate Application Form.

Please refer to Section 4 of these Guidelines for explanations as to the meaning of production expenditure and QMPE. Section 3 of these Guidelines provides guidance on post-production for post-production activity. Also, ensure you attach a copy of the Project's projected expenditure.

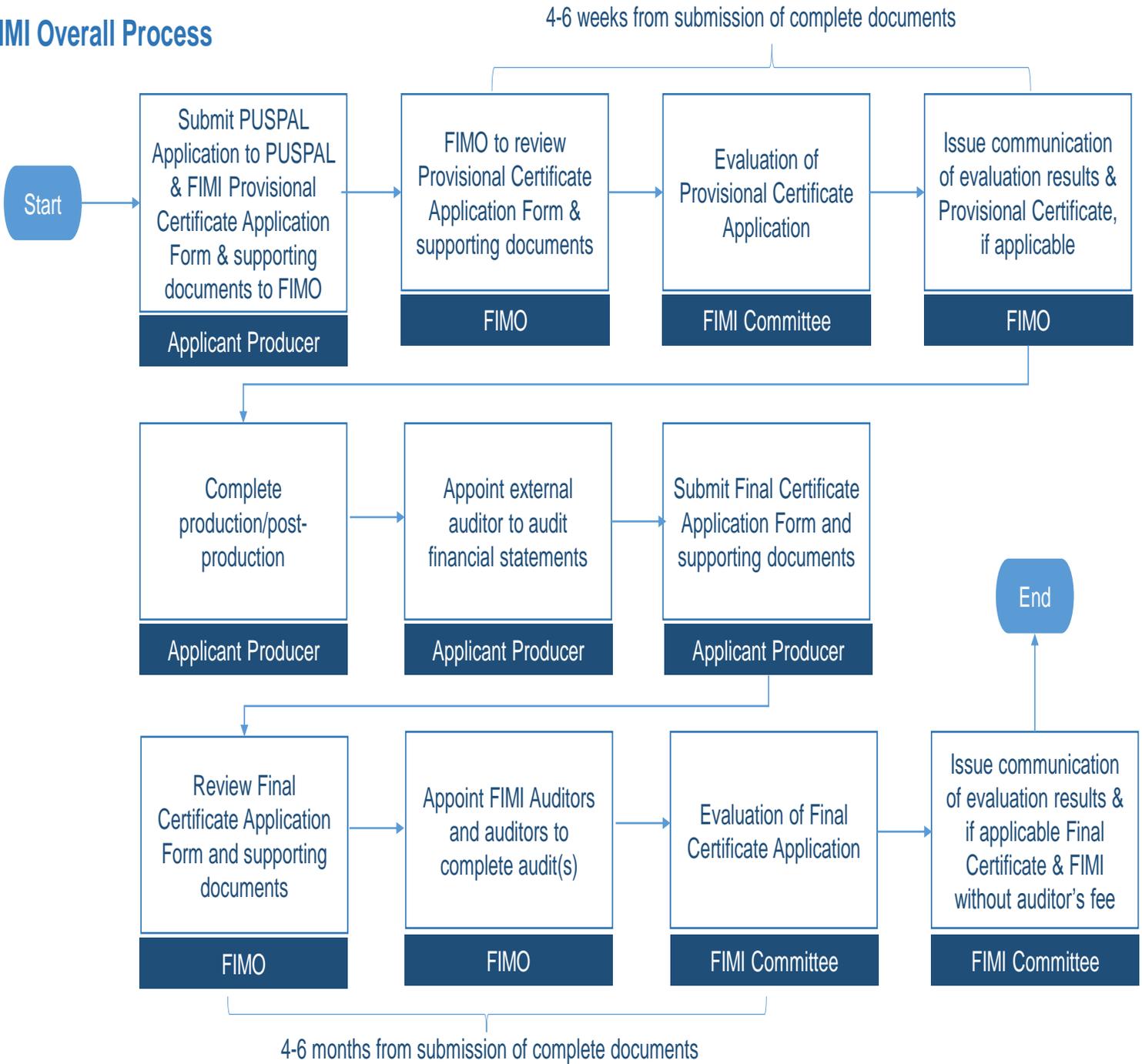
If you intend to claim Malaysian copyright expenses as QMPE and if that copyright has been acquired you must attach agreements verifying the transfer of ownership of the copyrighted material or documents that establish that copyright in such material is held by a Malaysian resident.

6.4 Approval of Provisional Certificate Application

Once an application has been received by FIMO, the application will be processed and provided to the FIMI Approval Committee ("Committee") as appointed by FINAS. This Committee will assess the application and determine whether to issue or decline to issue the Provisional Certificate.

6.5 The Application for Provisional Certificate process chart

FIMI Overall Process



SECTION 7: Final certification process

As outlined previously the issuing of a Final Certificate (as opposed to provisional) for FIMI is the central requirement for payment of a rebate. The first step in obtaining a certificate for FIMI is to submit the Final Certificate Application Form and attach the relevant documentation to FIMO.

Certification is subject to FIMO's discretion and consideration. FIMO will consider the advice of the FIMI Approval Committee when deciding whether to certify a production and when determining the value of a production's eligibility against the relevant expenditure threshold and the final rebate amount.

7.1 Application

The application processes for both production and post-production (if production is outside Malaysia) are the same and commence with FIMO's "date of receipt" of the Final Certificate Application Form and complete supporting documentation. The Final Certificate Application Form is available at <http://www.filminmalaysia.com/index.php/incentive1>.

The date on which an applicant producer may submit the form depends on the type of production the application relates to:

For production:

- the application may be submitted within 60 days after the completion date specified in the Provisional Certificate Application Form. Any QMPE incurred after this date will not qualify for FIMI.

For post-production:

- the application may be submitted within 60 days after the completion date as specified in the Provisional Certificate Application Form. Any QMPE incurred after this date will not qualify for FIMI.

In the case where both production and post-production is conducted in Malaysia, only one application is required and the application may be submitted within 60 days after the completion date as specified in the Provisional Certificate Application Form. Any QMPE incurred after this date will not qualify for FIMI.

All information submitted to FIMO must comply with requirements in this Guideline and the General Terms and Conditions. Failure to provide all relevant supporting documents (per Section 7.2) and any additional documents as requested by FINAS will possibly result in the Due Diligence process taking longer than an estimate of 4 months. The Committee may decide to end the Due Diligence process if it takes longer than the estimate time from the beginning of the due diligence.

Agreements relating to the international distribution or broadcast or transmission (in addition to release in Malaysia, Brunei and Indonesia) will be required for all Projects at final certification.

You must also attach relevant agreements, Daily Production Reports (DPRs), call sheets and the Production schedule to your Final Application Form.

7.2 Supporting Documents for Final Certificate Application Form

Any QMPE incurred must be substantiated with relevant supporting documents. Documents required include, but not limited to the following:

- a) All relevant agreements, stamped with the Malaysian Stamp Office , which comes under the purview of the Inland Revenue Board
- b) Daily Production Reports
- c) Call-sheets
- d) Production schedule(s)
- e) Invoices by suppliers
- f) Official receipts
- g) Individual audited expenditure statement (prepared by the Applicant Producers appointed auditors)
- h) Independent auditors' statement verifying the particulars of the production expenditure detailed in your application
- i) Production General Ledger (electronic)
- j) Travel spreadsheets
- k) Contracts of key personnel, cast and crew

Where necessary, invoices from any supplier used should be broken down to show Malaysian and non-Malaysian activity with computerized accounts formatted to accept the information in this form. This will also facilitate the independent audit of the expenditure statements.

Please refer to Appendix A: Checklist for further information.

7.3 Due Diligence by Independent External Auditors

FIMO will appoint an independent external auditor for FINAS' Audit Panel to perform independent verification on the QMPE incurred. All audits will be conducted in accordance to all applicable accounting standards, including any standards relating to the individual auditors.

7.4 Due Diligence by Independent Film Production Consultant(s)/Legal Auditors

FIMO will assess and evaluate whether the application satisfies the requirements for the issuance of a certificate and will provide a written report of its assessment. FIMO may request for further information to assist in the assessment and report of an application.

In due process and if necessitates, FIMO will seek the advice of one or more Independent Film Production Consultants (IFPCs) from a panel of FINAS approved consultants to:

- provide an independent assessment of whether specific items claimed in an expenditure statement are 'reasonably attributable' to production expenditure, QMPE and/or QMPE incurred in relation to post production;
- assess whether costs charged for specific items are made on an 'arm's length' basis;
- assess the accuracy and details of the application; and
- provide advice on the extent to which costs between subsidiary companies and parent/associate companies are commercially reasonable.

This assessment will be undertaken on a strictly commercial-in-confidence basis and the IFPC(s) will be subject to a contractual duty of confidentiality. Two IFPCs may be retained for larger production applications.

Further information may be required to assist the IFPC's assessment. Where this information relates to 'arm's length' issues the IFPCs may seek information on the process and methodologies adopted to show that the financial components and services charged are in accordance with the 'arms' length' principle. The IFPCs may contact an applicant producer directly for this or for other reasons and, if so, the applicant producer should cooperate with the IFPC's requests.

7.5 Payment for Due Diligence

All relevant professional fee and out of pocket expenses for FIMO's appointed auditor, a member of FINAS' Audit Panel shall be borne by the Applicant Producer. Payment shall be deducted from the FIMI amount due to the Applicant Producer. The deducted amount shall be specified in an official document from FINAS.

7.6 Consideration by the FIMI Approval Committee

Once an application has been received by FIMO it will be processed and provided to the FIMI Approval Committee in FINAS for consideration and approval or rejection.

7.7 Notification, statement of reasons and appeal of decision

FIMO will consider all relevant reports and make determinations on whether or not to certify the production and the level of QMPE.

Where FIMO certifies a production for FIMI, the applicant producer company will be notified in writing of this decision, including the determination of QMPE and amount of FIMI provided. Where FIMO refuses to issue a certificate the applicant producer company will be notified in writing of this decision (including reasons for the decision).

A statement of reasons or review of a decision may be sought in relation to:

- a decision not to issue a certificate (that is, declining to certify a production),
- a determination of the amount of QMPE or qualifying post-production expenditure, or

- a decision to revoke a certificate (see below).

The result of FIMO's assessment and evaluation shall be issued in writing, within six (6) weeks from the verification of compliance with these Guidelines. All decisions made by FIMO shall be final. Appeals, if any, shall be considered at FIMO's sole discretion. In the event that FIMO considers any appeals and makes a decision, such decision shall be final and there shall be no further appeal in respect of FIMO's decision.

7.8 Revocation of a certificate

The applicant producer and its board of directors are responsible for ensuring that all content, documents and information submitted in its application is true, accurate, reliable and complete and shall confirm that the same via a statutory declaration. FIMO may revoke a certificate where any part of the information and/or documentation was obtained by fraud, material inaccuracies or misrepresentation and will notify the applicant producer in writing of this decision (including reasons for the decision to revoke the certificate). A certificate may also be revoked if the applicant producer fails to provide FIMO with a copy of the completed production (outlined below in Section 7.9).

A "Statement of Reasons" may be sought in relation to the decision to revoke a certificate. Review of the decision may also be sought and should a review of the decision be considered, FIMO's decision during said review shall be final.

7.9 Copy of the complete production

Within 30 days of a certified production's completion, meaning that the production material is in a state where it could be reasonably regarded as ready to be distributed, broadcast or exhibited to the general public, the applicant producer must submit a DVD copy of the completed production of the Project or other proof/evidence acceptable to FIMO.

The copy of the production is proof of completed production. It verifies that the production is ready for distribution or exhibition to the general public and it also confirms other details of the production.

If an applicant producer fails to provide this, the applicant producer risks having the certificate revoked by FINAS. Should the final production version vary significantly from the submitted documentation in a manner that contains content which damages the image of Malaysia and FIMI has already been paid, FINAS has the right to commence recovery of the amount paid as a debt due and owing and FINAS reserves the right to include the directors of the applicant producer company in such action or proceedings.

It is not anticipated that FINAS will revoke a certificate on this ground without first contacting the applicant producer (although FINAS is empowered to do so). Should an applicant producer have any concerns regarding either provision of an expected date of completion or a DVD copy of the film, they should relate these concerns to FIMO when making their application. FIMO, acting as an agent for FINAS, will consider such concerns on a case-by-case basis.

SECTION 8: General

There are a number of considerations to be taken into account when completing your Provisional and Final Application for the FIMI.

8.1 Submitting your application

Prior to submitting your application you are strongly recommended to contact FIMO to ensure that you are submitting all the necessary information. Contact information is set out below.

You can submit an application in hardcopy on the relevant Application Form. You should send your original Application Form including all supporting documents as one (1) hardcopy set and one (1) softcopy set to FIMO.

8.2 Attached documentation

You will be required to attach a range of documentation to support your application including copies of legal documents relating to, for example, the establishment of the applicant producer company, legal agreements to verify the fact of Malaysian copyright ownership and confirmation of distribution and exhibition arrangements. A checklist of these documents is included in **Appendix A: 'Checklist prior to submitting your application'** on page 43 of these Guidelines. All legal agreements made between any Malaysian party and the applicant producer are required to be stamped with the Malaysian Stamp Office, which comes under the purview of the Inland Revenue Board.

8.3 Further information from the applicant producer

FINAS reserves the right to require any additional information it deems necessary in order to issue a certificate. For instance, where an application is incomplete FINAS may require the applicant producer, at the applicant producer's expense, to provide further information. This information must be provided within 28 days of the request, although the applicant producer may write to FINAS seeking an extension of time and such extension shall be given at FINAS' discretion.

8.4 Statutory declaration

The information and documentation provided in your application must be certified in a statutory declaration in accordance with the Malaysian Statutory Declaration Act 1960 by an authorized person from the applicant producer company – either the Producer or the Chief Executive Officer. The statutory declaration must be signed before a commissioner of oath (if affirmed in Malaysia) or a notary public (if affirmed outside Malaysia). The penal consequence for making a false declaration in respect of the above may include imprisonment, a fine and/or both pursuant to the provisions of the Malaysian Statutory Declarations Act 1960 and the Penal Code.

FIMO reserves the right at any time, in its sole and absolute discretion, to reject an application that FIMO believes, in its sole and absolute discretion, is not in compliance with these Guidelines, or which has made a false or misleading statement on the application or otherwise, and reserves the right to pursue all other rights and remedies available at law in the event of such rejection.

8.5 Malaysian Cultural, Social & Religious Sensitivity Declaration

Applicant producers will be held responsible for the acts and omissions of all cast and crew members of the production of the Project throughout their stay in Malaysia and the producers are to ensure that the acts and behavior of the cast and crew members during the production of the Project are in no way considered to infringe on the sensitivity of the Malaysian cultural, social and religious practices.

8.6 Confidentiality

Please note that all information provided by the applicant producer will be held by FIMO on a strictly commercial-in-confidence basis. Information will only be provided to the Committee and an Independent Film Production Consultant if necessary.

All bodies that are privy to confidential information will be bound by Malaysian Government confidentiality provision which treat all such information as commercial-in-confidence and, where appropriate, will be subject to contractual duties of confidentiality.

8.7 Liability

FIMO reserves the right in its discretion to modify the terms of these Guidelines as may be necessary from time-to-time. Neither FIMO nor any of the FIMI Approval Committee members, its agents and representatives will be liable for any injury, loss or damage of any nature whatsoever (including but not limited to indirect or consequential loss) which is suffered or sustained as a result of or in connection with the applicant producer's application for FIMI.

8.8 Further information and contacts

Prior to applying for FIMI, applicant producers are advised to read these Guidelines and the General Terms and Conditions carefully. It is also recommended that applicant producers make contact with FIMO to discuss any issues regarding their application before preparing it.

For pre-application advice or access to the General Terms and Conditions, Application Forms and Provisional Application Forms, you should contact FIMO via:

Address: Film In Malaysia Office (FIMO)
National Film Development Corporation Malaysia
Kompleks Studio Merdeka
Lot 1662, Batu 8
Jalan Hulu Kelang
68000 Ampang, Selangor
Malaysia

Telephone: +603 4104 1362 / 1456 / 1387 / 1307 / 1475 / 1527
Fax: +603 4106 8509
Website: www.filminmalaysia.com

For other FIMI - specific matters pertaining to commencing business in Malaysia, filing business activity statements and taxes please seek independent and professional advice from qualified professionals including accountants, auditors, company secretaries, lawyers and tax advisors. Please note that tax deductions are not under the purview of FIMI.

Appendix A: Checklist prior to submitting your application

Document	Provisional	Final
<input type="checkbox"/> Have you completed each page of the Application Form?	•	•
<input type="checkbox"/> Have you attached the Company Registration Number, registered address, names and addresses of directors?	•	•
<input type="checkbox"/> Have you attached a document verifying the status of the applicant producer company—that is, the legal agreement with a parent/associate company and/or establishing the applicant producer company?		
<input type="checkbox"/> If the Project is a co-production, please attach a copy of the co-production agreement.	•	
<input type="checkbox"/> Have you attached documents confirming the applicant producer’s responsibility for all the activities required to make the production OR post production in Malaysia (including responsibility for costs incurred by non-Malaysian companies for activities in Malaysia)	•	•
<input type="checkbox"/> Have you attached a synopsis of the Project?	•	•
<input type="checkbox"/> Copy of the script and its source material OR previous script if it is a rewritten work	•	•
<input checked="" type="checkbox"/> If part of a -series, indicate relevancy and significant creative similarities & differences between the Project and previous season’s concept, characters, settings, production locations and crew. Please supply a DVD copy of the previous season for comparative purposes.	•	
<input type="checkbox"/> A copy of all of the documents relating to the “Chain of Title” and underlying rights.	•	
<input type="checkbox"/> If applicable, evidence of expenditure on development of the Project, script and company’s trustee status.	•	•
<input type="checkbox"/> Relevant document indicating creative contributions, recoupment and returns.	•	•
<input type="checkbox"/> Have you attached a copy of the PUSPAL approval for filming in Malaysia?	•	•
<input type="checkbox"/> Have you completed and attached a ‘travel spreadsheet’ for travel into and out of Malaysia?		•
<input type="checkbox"/> Have you attached fully executed contracts for key personnel, cast and crew detailing work conducted in and outside Malaysia and for any person remunerated other than by salary (e.g. where travel for a partner is part of remuneration)?		
<input type="checkbox"/> If applicable, have you attached agreements verifying the transfer of ownership in copyright, which identifies the copyright owner at the time of the application? Note: this is only relevant where purchase or licensing of Malaysian copyright is being claimed as QMPE including copyright in promotional material.	•	•
<input type="checkbox"/> Have you attached a proforma statement as an estimated Project Budget?	•	
<input type="checkbox"/> Have you attached an independently audited expenditure statement?		•
<input type="checkbox"/> Have you attached the production’s general ledger (electronically)?		•
<input type="checkbox"/> Have you attached call-sheets, Daily Production Reports (DPRs) and the Production Schedule (preferably electronically)?		•
<input type="checkbox"/> Have you attached the statutory declaration made by an authorized signatory?	•	•
<input type="checkbox"/> Have you attached the Auditor’s Statement?		•