

## **PUBLIC NOTICE–CAVCO 2004-001**

### RECOGNITION OF OFFICIAL TREATY CO-PRODUCTION STATUS OUTSIDE OF THE CERTIFICATION PROCESS FOR TAX CREDIT PURPOSES

#### **Preamble**

1. The Canadian Film or Video Production Certificate (“CPTC Certificate”) is issued by the Minister of Canadian Heritage under the provisions of the *Income Tax Act* (“Act”) for the purpose of qualifying under the Canadian Film or Video Production Tax Credit (“CPTC”) Program. Under the draft Income Tax Regulations, productions produced under a co-production treaty are automatically eligible for the CPTC. The CPTC Certificate has, therefore, been used by some Canadian funding programs and regulatory authorities as the official recognition that a production has been granted official treaty co-production status.

2. However, there may be cases where a project is not eligible for the CPTC Certificate but, nonetheless, still qualifies as an official treaty co-production. For example, a co-production may fall outside of the time limits imposed by the Act to obtain the CPTC Certificate, or a Canadian co-producer may elect to claim the Film or Video Production Services Tax Credit.

3. The Minister of Canadian Heritage acknowledges that formal recognition of a production as an official treaty co-production is distinct from the issuance of a CPTC Certificate. In cases where a CPTC Certificate will not be issued, upon request by a qualifying Canadian co-producer, and further to a recommendation for final approval issued by Telefilm Canada, the Minister may issue a letter to the producer, in lieu of a CPTC Certificate, indicating that the project has achieved official treaty co-production status.

#### **Background**

4. The Government of Canada has entered into numerous co-production treaties with other countries. Telefilm Canada, on behalf of the Government of Canada, administers all international agreements governing treaty co-productions. Telefilm receives and evaluates applications for certification of productions as official treaty co-productions and recommends to the Minister of Canadian Heritage either approval or denial of the applications. Certification policies, requirements and conditions are set out on Telefilm’s Web site ([www.telefilm.gc.ca](http://www.telefilm.gc.ca)).

5. Qualifying official treaty co-productions are considered to be national productions in participating countries. They are entitled to access federal and provincial public programs reserved for Canadian productions. These programs include qualification for Canadian content designation established by the Canadian Radio-television and Telecommunications Commission (CRTC) for broadcasting purposes. To be eligible, the

production must also meet the regulatory and administrative requirements and deadlines for these programs.

### **Procedure**

6. After the Minister of Canadian Heritage has received a recommendation from Telefilm Canada for final approval of a project that does not qualify for the CPTC, a Canadian producer may request, in writing to the Canadian Audio-Visual Certification Office (CAVCO), that the Minister issue a letter recognizing that the production has achieved the status of an official treaty co-production. If the Minister issues a letter to that effect, the letter may then be filed with other authorities according to their specific procedures and requirements. For instance, the CRTC will require that the producer or broadcaster file with the Commission the letter issued by the Minister (bearing a new identification number), in lieu of the CPTC Certificate numbers normally issued by CAVCO.

### **Appeal procedure**

7. The decision to recognize a production as an official treaty co-production rests ultimately with the Minister of Canadian Heritage. Should the Minister decide that the production does not meet the necessary conditions to be recognized as such, the producer will be so advised, in writing. The producer may appeal the decision, within 30 days of the issuance of a notice to that effect, by submitting additional information for consideration. The Minister's final decision will be rendered in due time thereafter.