



New film rules in Spain: reform of the
support scheme

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Overview

The reform of the Spanish film support scheme has just been completed with the enactment of a new Royal Decree¹ developing the Cinema Act and two Ministerial Orders relating to (i) the regulatory framework for film subsidies², and (ii) the recognition of film costs and producer's investment³ respectively.

These regulations develop the recent reform of the Spanish Cinema Act⁴, which took place last May and introduced a new financing model for the production of feature films. In particular, under this reform the repayments aid system has been deleted and replaced with a system of upfront production subsidies based on the specific project. The aid will be allocated before the production begins according to objective criteria and paid out gradually. This change will allow the progressive financing of film productions during the production process and not two years after the film release, as before. Accordingly, producers can now be aware of how much they will receive before the production commences.

This system is to be applied as from January 2016. However, in order to provide financial certainty to the film sector, a three-year transitory period (until 2018) has been established. During this period, the new film financing model will coexist with the former repayments aid system.

A summary of the key developments introduced by these new regulations is included below.

Royal Decree developing the Spanish Cinema Act

The Government has announced that the new Royal Decree aims at reducing administrative burdens for citizens (simplifying the administrative procedure in the film production, distribution and exhibition chain) and establishing a more efficient and effective system of public funding for film production.

Among other aspects, the Royal Decree regulates the Spanish nationality certificate, film age rating, the regime for international co-productions and film distribution and exhibition.

¹ Royal Decree 1084/2015, of 4 December, developing Cinema Law 55/2007, of 28 December; *Real Decreto 1084/2015, de 4 de diciembre, por el que se desarrolla la Ley 55/2007, de 28 de diciembre, del Cine*. Published in the Spanish Official Gazette on 5 December 2015.

² Ministerial Order ECD/2796/2015, of 18 December, establishing the regulatory bases of the subsidies foreseen in Chapter III of the Cinema Law 55/2007, of 28 December, and determining the structure of the Administrative Register of Film and Audiovisual Companies; *Orden ECD/2796/2015, de 18 de diciembre, por la que se establecen las bases reguladoras de las ayudas previstas en el Capítulo III de la Ley 55/2007, de 28 de diciembre, del Cine, y se determina la estructura del Registro Administrativo de Empresas Cinematográficas y Audiovisuales*. Published in the Spanish Official Gazette on 23 December 2015.

³ Ministerial Order ECD/2784/2015, of 18 December, regulating the recognition of film costs and the producer's investment; *Orden ECD/2784/2015, de 18 de diciembre, por la que se regula el reconocimiento del coste de una película y la inversión del productor*. Published in the Spanish Official Gazette on 23 December 2015.

⁴ Royal Decree-law 6/2015, of 14 May, modifying Cinema Law 55/2007, of 28 December, granting several extraordinary funds and supplement credits in the State budget and other tax measures are adopted; *Real Decreto-ley 6/2015, de 14 de mayo, por el que se modifica la Ley 55/2007, de 28 de diciembre, del Cine, se conceden varios créditos extraordinarios y suplementos de créditos en el presupuesto del Estado y se adoptan otras medidas de carácter tributario*. Published in the Spanish Official Gazette on 15 May 2015.

Spanish Nationality Certificate

- The new legislation regulates the procedure for assigning Spanish nationality to TV series.
- The requirement to obtain the nationality certificate as a condition to access the aid system is strengthened. Failure to obtain the certificate entails the obligation to refund the aid received.

Film classification: Age rating

- Age rating procedures are simplified. The Royal Decree implements a single age classification regardless of the format in which the film or audiovisual work is distributed. Thus, it is no longer required to apply for a new certificate for distribution in video-graphic format.
- The requirement to obtain the classification before the film or audiovisual work is distributed, disseminated or advertised is reinforced.

Co-productions with foreign producers

- The requirement that the application for approval of co-production projects is compulsorily filed before shooting begins is reinforced.
- In cases of a minority contribution of the Spanish co-producer, the effective contribution as regards staff must be proportionate to the percentage of the Spanish contribution to the co-production.

Difficult audiovisual works

- The Royal Decree introduces a definition of “difficult audiovisual work”, which is relevant for the purposes of determining the maximum amount of aid which can be received.
- Difficult audiovisual works are (i) those productions directed by a new filmmaker with a production budget not exceeding EUR 300,000, (ii) short films and (iii) works filmed in co-official languages other than Castilian Spanish.
- The rate of aid intensity cannot exceed 70%, 75% and 65% respectively.

Commercialization and exhibition

- The requirement under which granting aid was conditional on the film not being sold on video graphic format for a certain period of time following its commercial premiere in cinemas is deleted.
- The procedure for film distribution is simplified. The distribution certificate required as a prerequisite prior to the commercialization of films for cinema exhibition is no longer required.

Ministerial Order establishing the regulatory framework for film subsidies

This Order establishes the common regulatory bases for State subsidies to the film and audiovisual industry. It also regulates the specific criteria for general and selective support to the production of both feature films and short films, to distribution, to the participation of Spanish films in festivals as well as the organization of the festivals and competitions.

The main modifications relate to the requirements for access to the subsidies and the role of the beneficiary.

In addition, the structure of the Register of Film and Audiovisual Companies is also regulated.

General subsidies

- The minimum cost to access to the subsidies for feature films based on the project is modified and set at EUR 1.3 Million.
- In case of international co-productions with foreign companies, the minimum cost is reduced to EUR 700,000. Under the former model, this minimum cost was set at EUR 1.5 Million.
- The minimum cost for documentary films is reduced to EUR 400,000. It must be borne in mind that, in case of selective subsidies, the reserve for documentary films (i.e. percentage of aid to be devoted to these projects) remains between 15% and 25%.
- In addition, the financing requirement (i.e. the need to prove a minimum percentage of guaranteed financing when applying for the subsidy) is reduced from 40% to 35%.
- The requirement of theatrical release (i.e. that the release takes place simultaneously in a certain number of theatres) is modulated depending on the cost of the film. The requirement of release in 40 movie theatres remains for films exceeding EUR 2 Million, but it is reduced to 20 theatres for films with lower costs. It is also reduced to 20 theatres for feature films with original version in co-official languages other than Castilian Spanish. In these cases, the film in original version must be released at least in 10 theatres. In case of documentary films the requirement is reduced to 7.
- The concept of beneficiary is modified, The requirement of a single beneficiary in case of co-productions is deleted and each beneficiary will collect according to his percentage of participation in the film. This percentage will be reviewed in the final payment to adjust it to the final title.
- As regards the scoring criteria, specific criteria to assess solvency in case of animation films have been established, considering that production processes are much longer in these cases. Consequently, evaluations must be made over a longer period of time (8 years). In addition, the importance of the participation of animation films in festivals is reduced, being replaced with the experience in animation production.
- Hiring Spanish digital staff for visual effects is also valued.

- The maximum amount to be received is increased to EUR 1.3 Million (as long as such amount does not exceed 40% of the recognized cost) but, in order to access to 100% of the subsidy, a minimum of 80 points are required. On the other hand, only those projects that have obtained a minimum of 35 points may access to support.
- Those cases of eventual refund of the subsidy are regulated in more detail, determining the revenue derived from the exhibition in theatres once all expenses of taxes, exhibitors or distributors are deducted, and fixing refund percentages according to the revenues.

Selective subsidies

- As regards the access requirements, the fact that the release in the required movie theatres is simultaneous is no longer mandatory.
- The maximum cost to access to the subsidies is increased to EUR 1.8 Million.
- The minimum scoring to access from the first to the second stage of the process of granting the aid is reduced from 30 to 20 points. In order to facilitate the access of a higher number of films, the points have also been reweighted.

Ministerial Order on the recognition of film costs and producer's investment

This Order clarifies the items and expenses recognizable as eligible costs, introducing clarifications in a range of subjects: the executive producer's remuneration; if certain costs can be considered as general costs or not, depending on the moment they are incurred; the time limits to recognize the post-production, scenography and decoration costs; the way to justify certain monetary contributions in case of co-productions with foreign companies; or the possibility to modify the decision on the recognition of film costs if the conditions considered when it was adopted are altered.

The following aspects introduced by the Order merit particular attention:

- New items that may be eligible as costs are introduced. For instance, financial interests of loans granted by individuals or companies not related to the production company, or translation costs under certain circumstances.
- The Order intends to adjust the costs to the needs of the production process, including certain expenses incurred before and after the shooting as eligible (e.g. travels, accommodation).
- Invoicing between related companies is adjusted to the subsidies regulations. Limits are established in relation to the recognition of costs invoiced by companies related to the production company: expenses up to EUR 40,000 in feature films and up to EUR 20,000 in short films which are invoiced by related

companies will be considered as costs provided that they are incurred according to normal market conditions. Invoicing of higher amounts by related companies is excluded.

- In order to determine the existence of sub-contracting/outsourcing, account shall be taken of the corporate purpose of the producer to whom the services are intended to be outsourced. Outsourcing of any production activities or services to professionals or companies whose corporate purpose does not include film production is not considered as sub-contracting. Consequently, in these cases, invoicing will be fully admitted.
- Sub-contracting is permitted up to 40% of the total cost of the film in case of real image productions, provided that the relevant activities and services are sub-contracted with more than one company and, under no circumstances, may invoices relating to staff costs be included. In case of animation productions, sub-contracting is permitted up to 50%.
- In case of entirely Spanish real image productions or Spanish majority co-productions (above 70%), outsourcing of production services to non-EU countries which are not part of the co-production is permitted up to 20% of the cost of the Spanish participation.
- The ICAA may review the special audit reports proving the costs, and even request a supplementary report in order to verify the relevant costs.

This legal update was written in January 2016. It contains general information based on Spanish law and, although we endeavour to ensure that the content is accurate and up to date, users should seek appropriate legal advice before taking or refraining from taking any action. The contents of this guide should not be construed as legal advice and we disclaim any liability in relation to its use.

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Blanca has practiced law for more than 15 years in International Firms, advising clients operating in the communications, technology and media sectors. She advises different agents in the full value chain of the Communications industry, from the content producers to the network providers, including applications, software, web pages, service providers, distributors and manufacturers. Blanca is very familiar with the intersection between technology and content and she is passionate about advising on the best legal approach to achieve clients' objectives when launching innovations in these industries.

Her main areas of work include: regulatory and competition law day-to-day counseling; negotiation and drafting of sophisticated commercial agreements; and litigation and dispute resolution before national courts and sector specific regulators. She has also been involved in mergers & acquisitions proceedings and antitrust cases in these sectors before national and EU competition authorities.

Blanca Co-Heads the International Telecom Practice at Olswang.

In the Media and Entertainment sector, Blanca is very active in digital media. She has advised film makers and other content producers, TV and radio broadcasters, social media companies and content distributors providing services through different technologies. Blanca is a visiting professor of Media Law at the Carlos III University.

In the Technology industry, Blanca has wide experience in Internet and e-commerce as well as in negotiating and drafting sophisticated agreements such as outsourcing, software licenses, applications deployment, housing and hosting. She has dealt with complex privacy issues that arise in the provision of new services such as cutting edge electronic payment platforms and cloud computing. Blanca is currently very much involved in the liberalization of the online gambling industry in Spain.

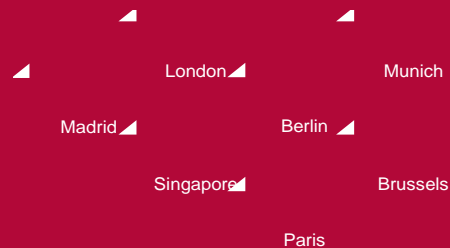
Blanca is a member of the Board of Professors of the Master's in European Law program at the Carlos III University. She is a regular speaker at conferences and has published several articles in Spanish and international publications on her fields of expertise.

After her degrees on European and International Law by KU Leuven (Belgium) and Carlos III Universities, her doctoral thesis was on Technology Transfer and competition law. She has been named as a leading individual in Communications/TMC by Chambers Global and Chambers Europe (all consecutive years since 2004), Legal 500, Best Lawyers and Who's Who Legal.

Languages: Blanca speaks Spanish and English.

Who are we?

We are a leading international full service law firm, famous for being industry experts in Technology, Media and Telecoms. Headquartered in London, Olswang serves clients across the globe with our network of offices and best friend firms.



Madrid Office

Having opened in September 2010, the Madrid practice is a boutique offering focussed on TMT & Intellectual Property. The office delivers legal and strategic advice to both domestic clients and local offices of international clients, drawing on the Olswang network to provide cross-practice, multi-jurisdictional support.

People

Our people are immersed in the TMT sector and have unrivalled knowledge and insight into the unique challenges faced by companies in this space. Our expertise is evident through our regular contributions to industry thought leadership and events, and through our client list which includes the leading names across Technology, Media and Telecoms. We are one of only a few firms in Europe to have IP specialists integrated into our firm, displaying our commitment to and knowledge of the field. The combination of this TMT Sector insight and IP expertise makes Olswang Madrid a unique and compelling offering to the market.

International Focus

Olswang has experienced rapid growth since its beginnings in 1981. Today, we have a team of almost 800 people including 120 partners across 8 international offices in London, Berlin, Brussels, Madrid, Munich, Paris, Singapore and Thames Valley. Our international reach is strengthened through Olswang's long-established best friends' network of leading independent law firms throughout the world.

Thanks to our connected, committed and commercial people, we have become the law firm of choice for multi-national and domestic clients internationally.

An Integrated IP Offering

We are recognised as being one of a small handful of "go to" firms for IP in Europe and Asia, and have the only truly full-service, cross-border IP team in Europe. IP is essential to our clients and is central to a large portion of the advice, transactions and disputes handled by our firm.

We have more than 100 lawyers and patent and trade mark attorneys across our 8 offices focused on TMT. Our Intellectual team specialises in advising both domestic and multinational companies in a vast array of areas.

We are instructed by clients on aspects ranging from trademarks, patents and unfair competition to know how and anti-counterfeiting. Most of our IP specialists who focus on protecting IP rights also have experience of litigation which ensures that our advice is pragmatic. Our unified service puts us in a unique position to advise on strategy, risk and freedom to operate.

We are especially well-regarded for our commercial awareness and deep client relationships and we have a rigorous approach to managing budgets to ensure a cost-effective and value-driven service.

Experts in Technology, Media & Telecoms

Olswang has built a reputation for having unrivalled sector knowledge to complement our legal excellence, and this is evident through our client list, our rankings and our activities within the industry. Our broad expertise means that we are able to provide legal and strategic support to our clients on a range of business areas but always with a TMT focus.

We work with local market leaders, from **Belgacom** in Belgium to **BBC** in the UK, and global household names from **Microsoft** to **21st Century Fox**.

Olswang is recommended in all three areas of TMT by Chambers & Partners Europe, with many of our lawyers being recognised as leading individuals in the space, including Blanca Escribano, TMT lead in the Madrid office.

Our people are fascinated by the TMT industry and the constant change it brings. The Madrid team at Olswang frequently share their insights through articles on The Guardian, Raconteur and other media outlets, as well as speaking at and attending the leading conferences in the sector, including the Annual Internet of Things Summit and the Mobile Roaming World Summit. Blanca serves as an officer to the Communications Law Committee of the International Bar Association.

TMT is at the heart of everything we do – we are immersed in the technology, media and telecommunication sectors and would welcome the opportunity to work with you, drawing on our international resources to bring value to your company and your industry as a whole.

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