Turning Paper Into Cash

creating cash flow, working with banks and bonds

Prepared by Bernie Stampfer of International Film Partners GmbH

for

Bauhaus University Weimar

2017

Cash Flow by definition

Sources:

Maude Leclair, Fortis Mediacom
Christian Kmiotek,Samsa Films
Mads Peter Olsen, Red Herring
Deutsche Bank
Film Finances Services
European Film Bond
own source materials

What is Production Cashflow and a Production Loan?

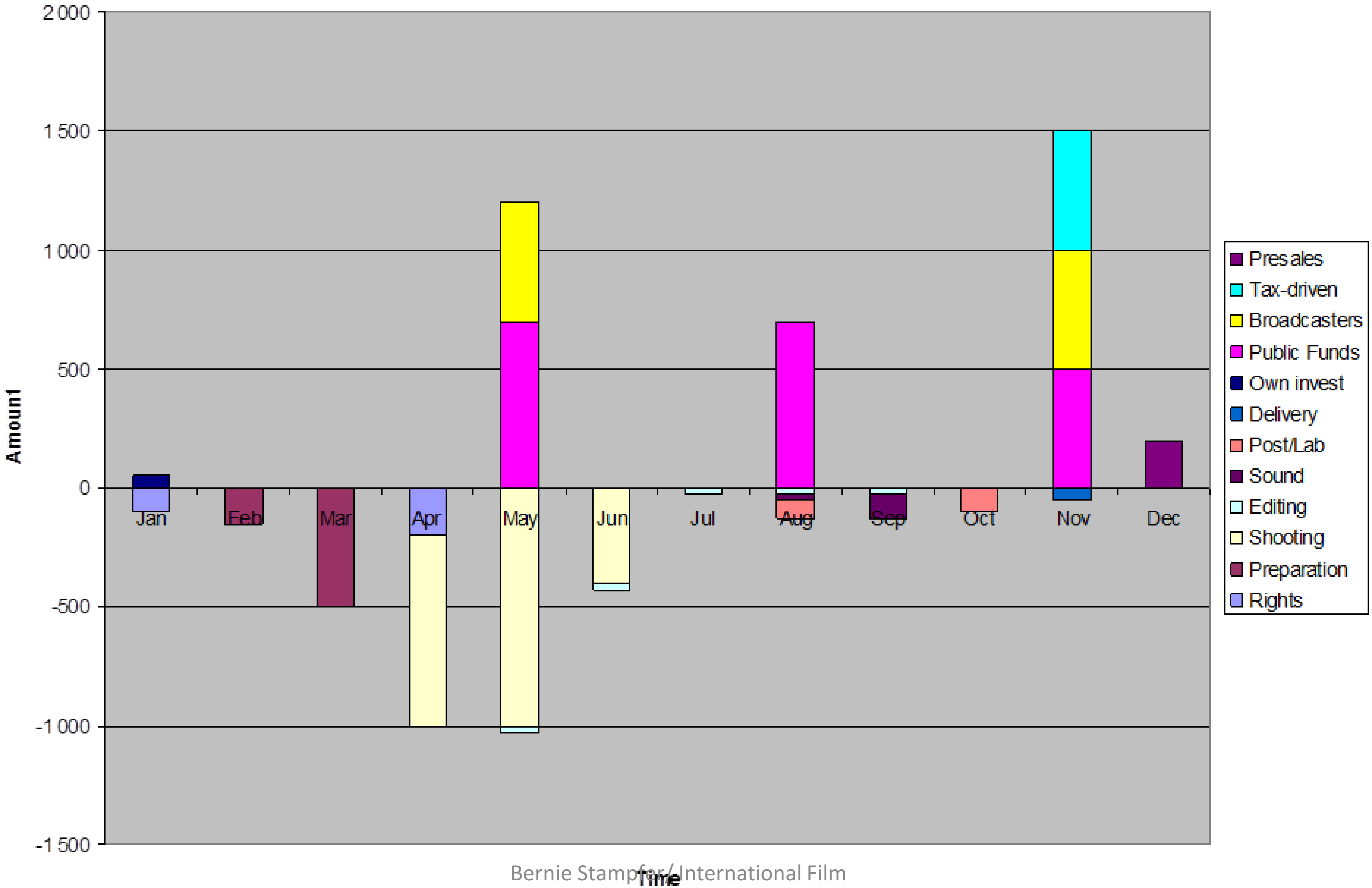
- The Production cashflow is the expression on a time frame of all expenses and finance available of a movie (i.e. cost and income)

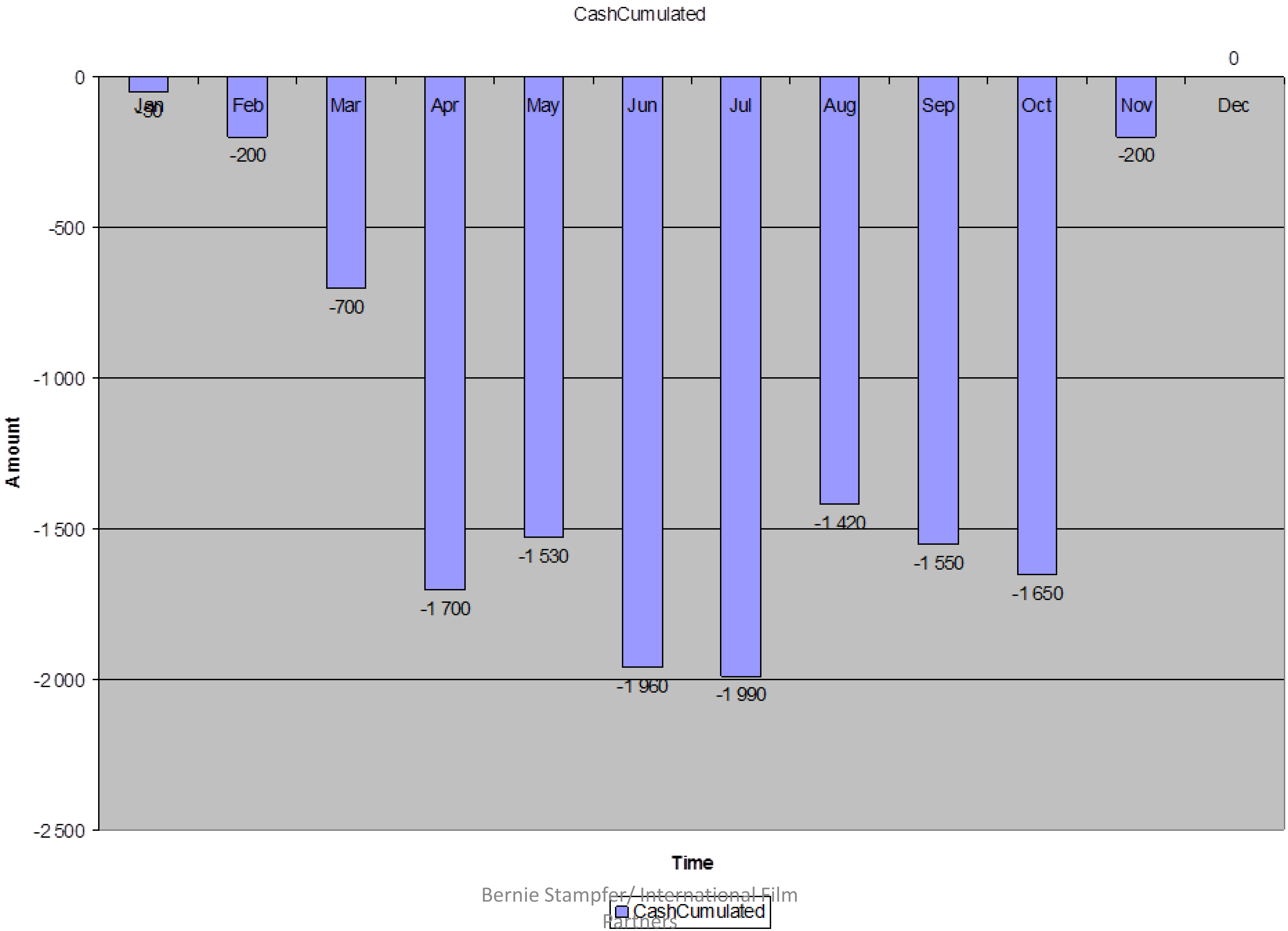
- To synchronize expenses and finance available you need a production loan to cover pre- production, production, post- production and to guarantee delivery of the film

- A production loan is the discounting of financing contracts to provide the production company with cash to cover the film's expenses at any time.

CASH-OUT	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTALS	Grand TTLs
Rights	-100			-200									**-300**	
Preparation		-150	-500										**-650**	
Shooting				-800	-1 000	-400							**-2 200**	
Editing					-30	-30	-30	-30	-30				**-150**	
Sound								-20	-100				**-120**	
Post/Lab								-80		-100			**-180**	
Delivery											-50		**-50**	**-3 650**
CASH-IN														
Own invest	50												**50**	
Public Funds					700			700			500		**1 900**	
Broadcasters					500						500		**1 000**	
Tax-driven											500		**500**	
Presales												200	**200**	**3 650**
														0
PERIOD	**-50**	**-150**	**-500**	**-1 000**	**170**	**-430**	**-30**	**570**	**-130**	**-100**	**1 450**	**200**	**0**	
CUMULATED	**-50**	**-200**	**-700**	**-1 700**	**-1 530**	**-1 960**	**-1 990**	**-1 420**	**-1 550**	**-1 650**	**-200**	**0**		
	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**		

CASH IN&OUT


2 000
1 500
1 000
500
0
-500
-1 000
-1 500
Amount
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Time
Presales
Tax-driven
Broadcasters
Public Funds
Own invest
Delivery
Post/Lab
Sound
Editing
Shooting
Preparation
Rights



CashCumulated
0
-500
-1 000
-1 500
-2 000
-2 500
Amount
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
-50
-200
-700
-1 700
-1 530
-1 960
-1 990
-1 420
-1 550
-1 650
-200
0
Time
CashCumulated

Definitions of Discounted Value

- Face value: 100% of contract value
- Present value: face value minus deductibles = Discounted value

„Discounted Value“: 100% of any advances,minimum guarantees, licence payments etc. payable under any approved agreement less the allowance made by the lender for:

i. interest up to the outside date for re- payment of the loan at a rate to be determined by the lender (including „cushion“ for the lender)
ii. The lender‘s fees, expenses, costs and legal fees
iii. Late payment provisions
iv. Withholding taxes
v. Any other matters affecting the value of the net revenues, minimum guarantees or advances
vi. Nota bene: the lender‘s certificate as to the discounted value will be final !

Typical initial requirements of discounting bank:

1) Budget top sheet in standard summary form
2) Synopsis of the screenplay
3) Details on main creative elements of the film, incl brief career resumees of the producers, director, main stars and other key personnel
4) Proposed production schedule
5) Cashflow schedule
6) Details of the borrower, usually a limited company and/or SPV
7) Details of the proposed security / collateral and repayment package. Summary of the pre- sales made to date, MG‘s, subsidies, tax incentives et al
8) Details of the estimated value of unsold rights (if any) and the sales agent handling distribution contracts
9) Details of the proposed completion bond guarantor
10) Details of the proposed insurance package

DOCUMENT	DOCUMENT SUMMARY	BANK'S REQUIREMENT
Offer Letter	**Drafted by bank**	Original
Loan Agreement and Security Assignment	**Drafted by bank's lawyers**	Original
Bank Mandate	**Form supplied by bank but authorised and signed by borrower**	Original
Cetrificate of Incorporation, Memorandum of Articles of Association, approving the terms of the loan, authorising the borrowing and execution of the loan etc	**Company / borrower**	Certified copies
Resolutions of the Board of Directors	**Company/ borrower**	Certified copies
Full and unfettered contracts of principal cast and crew and producers	**Confirming availability in accordance with the specifications of the film**	Originals
Full chain of title documentation	**Establishing that borrower owns all the rights necessary to complete and deliver the film**	Originals
Music synchronisation licences	**If pre- contracted**	Originals
Laboratory pledgeholder letter(s)	**Whereby the Laboratory holding the physical materials pledging to hold those materials to the order of the bank**	Originals
Distribution and sales agreements, soft money agreements	**With aggregate discounted value sufficient to cover the loean**	Originals
Letters of credit	**Securing payment by certain licencees (buyers)**	Originals
Notices to all distributors	**Notifying distributor(s) of assignment of advance(s) to the bank**	Copy

DOCUMENT	DOCUMENT SUMMARY	BANK'S REQUIREMENT
Achnowledgement from all producers	**Acknowlidging assignment and waiving set-off rights**	Original
Completion Guarantee	**Guranateeing completion and delivery if the film to the distributor, in aacordance with distribution agreements**	Original
Certificate of Endorsement	**Naming bank as additional insured party on all production insurances and E&O policy**	Original
Letter from bank holding production account	**Agreeing not to set off money in production account against any debts of Borrower and acknowledging bank's security interest in the production account**	Original
Interparty Agreement	**Adjusting and regulating the relationships between the producer, the bank, the principal distributors, thecompletion guarantor and any other secured parties with respect to security interestes, takeover rights, arbitration etc.**	Original
Mutual Funding Agreement	**Whereby any other financiers agree with Bank to make their advances when due**	Original

The Bank Analysis

Banks analyse major financial risks

- completion risk (delivery on time, on budget)
- lack of cash
- Creditworthiness of contractual partners and insolvency risk, country risk, currency risk
- Reality check: chain of title, cast and crew agreements
- Interparty agreements, collection agreements
- Insurances
- Completion bond
- Etc. (see list of documentation required, below)

DELIVERY RISK → COMPLETION RISK

The Delivery Risk

Many agreements with financiers of a film contain a clause as in „ payment is subject to delivery of the film“, - i.e the bank‘s security / collateral is equally subject to delivery.

major risk for the bank is delivery uncomplete or late delivery of the agreed items:

- Technical delivery is uncomplete or technically defaulted: can be corrected but has impact on delivery date and completion cost: if delivery date is exceeded contract may become nil and void !

- The film delivered doesn’t comply with the contractual definitions (director, lead cast, script, length, budget, rating, etc.)

- Conditions precedent are not met, e.g. payment of last instalment only upon guarantee of a theatrical release (Eurimages)

The Completion Risk

For a bank to cashflow a film, the budget needs to be fully financed. Yet, the bank (and the producer) carries the risk that the film may not be completed (> delivery risk). Typical risks:

- Film goes "over budget" and there are no additonal means to cover extra
- Film goes "over time" and delivery deadlines cannot be met
- Currency exchange rates are not hedged
- specific conditions which are not covered by customary insurances
- artistic (or psychological) aspects which can cause delays and extra costs
- Default of any of the financiers : mis- use of finance, insolvency of a partner, legal debates, non- communication, etc.

Default of a Discounted Financing Source

- the insolvency of the financing sources is a constant risk, especially if contractual partners are only paying upon delivery
- To mitigate such risks the banks need to be provided with financial statements, company documentation for them to analyse… (in your own best interest !)
- These risks are enhanced in co- productions as partners are often hesitant or even unable to provide such information (in an appropriate language)
- The bank can ask for letters of credit (L/C), bank guarantees, payment into escrow accounts
- Bank may only discount a certain percentage of a contract's "face value"
- MIND: to bond a picture, one or several banks need to guarantee the full strike price !

The Banks' Options

To mitigate or even exclude delivery and completion risks, banks may follow different ways to establish production cashflow:

- The "non specialized" bank : the bank will only discount contracts from their own country, language and jurisdiction, but will also ask for a personal guarantee from the producer himself (whether collateralised or not).

- the bank will ask for a completion bond in order to discount the contracts. Securities will only be taken on the agreements and the movie as an asset / recourse loan)

- France: Coficiné or Cofiloisirs will discount the contracts, no personal guarantee nor completion bond but (partial) default guarantee issued by IFCIC

- Europe: maybe "Media Guarantee Fund" default guarantee, but capped and subject to certain conditions which are not necessarily attractive for banks….

Secured Entertainmennnt Banking

Banks operate under the following scenario:

- Producer(s) establish a single purpose company (SPC or also: SPV) and enter into a Service Level Agreement between their own companies and such SPC to physically produce the film
- Ring- fenced production accounts (escrow accounts, dedicated productions accounts)
- Banks enter into Intercreditor Agreement
- All parties sign Inter Party Agreement (IPA)
- Strike price guaranteed
- Producers, SPC and bank(s) enter into a Completion Bond Agreement
- All parties enter into Collection Account Management Agreement (CAMA)

Banks active in this segment: Barclay's, Coutts, Banque Leumi, Commerzbank, DZ Bank, BNL PariBas but also institutionals like Prescience Film Finance, Ingenious Media, Goldcrest etc. and American banks, CIT, City Bank, City National Bank, Bank Of America, California Bank & Trust, Union Bank of California, Comerica, and certain hedge funds

Pro’s and Con’s

Pro‘s:

- several banks can co- operate under the same terms and conditions
- Peace of mind: once all contracts closed, cash flow and completion and delivery of the film is guaranteed and the producer(s) can focus on the actual making of the movie …. (☺)
- Enhance producer’s reputation (“bond approved”)
- Easier access to banks and finance

Con‘s:

- Timing : no cash before closing, often only at the eve of or even into shooting. Pre-production cash- flow may need (expensive) bridge financing or strong partner(s)
- Establishing a Completion Bond Guarantee is costly: legal fees, premium, contingency. Very time consuming.
- Bond comes in last: all other Agreements need to be in place before…. (see list).

French Particularities: IFCIC

- IFCIC is a private financial institution founded in 1983 in France by the Ministry of Culture with a goal to facilitate access to bank loans for the whole Culture industry. It is a private/public body that manages public funding

- IFCIC provides a loan guarantee to the lending bank. The IFCIC guarantee is a 55 %- risk sharing agreement with the bank (i.e. a " credit default guarantee"). Cost factopr is 1% on the guaranteed loan amount

- The bank presents the loan application to IFCIC Committee for productions which are eligible for CNC backing on European productions. Requires a French co- producer.

- This guarantee is usually pre- requisite condition for French banks to enter into loan procedures. No Completion Bond required !

- Nota Bene: the "Creative Europe" programme has set out a similar scheme called " Media Guarantee Fund", managed by the European Investment Bank. It ran through a test period, and is now expected start in January 2016. (see also: http://www.ifcic.eu/loans-to-european-film-production/european-cinema-guarantee-fund.html

Widening the Scope: working with banks

Bank Borrowing, loan classifcation

Application of „ P A R T S „ - rules

P urpose	must be plausibe and acceptable
A mount	specific and required
R epayments	cashflow forecast and assumptions
T erm	specific and consistent with the purpose of the loan
S ecurity	depends on length and purpose

1. Overdraft — temporary finance, repayble on demand, seasonal peaks in working capital, no security generally
2. Term Loan — medium or long term, fixed interest rate of floating, security required plus (often) personal guarantee
3. Syndicated Loan — term loans, revolving credit facility, asset backed, cross-selling/ additional product (IPO, swaps, wealth management, pension accounts…)
4. Leasing — mostly long term, hard ware, tax driven
5. Asset Backed Securities — lending against assets and resulting cash- flow, rating is an issue, secutitisation provess/ valuations
6. DCM (debt capital Markets): warrants, bonds (convertible, high yield etc.), romissary notes

Loan finance and equity finance compared:

Equity	Loan
Ownership from the outset (possibly)	No ownership at outset, ownership only in default situation
Creative control or at least significant creative input	Banks will normaly have rights of approval but will not exercise creative control
Credit (titles)	Credits discretionary
Ownership and income continue after recoupment	Security (i.e. potential ownership) ceases on repayment. Right to income ceases on repayment

E & O Insurance and Completion Bonds

ERRORS & OMISSIONS Insurance / E&O

Errors & omissions insurance covers liability to others which arises from:

- defamation or malicious falsehood
- infringement of any intellectual property rights (including copyright) or an act of passing off
- breach of confidence or infringement of any rights of piracy
- misuse of any information which is either confidential or subject to statutory restrictions of its use
- claims against purchasers or distributors of your productions when issued with a certificate

NB: E&O is most often only need if the filmis to be distributed in the US. It then becomes an essential delivery item !)

COMPLETION BOND GUARANTY

A motion picture completion guaranty is a written contract that guarantees a motion picture will be finished and delivered on schedule and within budget.

A producer usually secures a completion guaranty for the benefit of the bank or other financiers who agree to make the necessary production funding strike price available to the producer.

In general, a completion guaranty assures banks and financiers that:

I. The producers will complete and deliver the film in keeping with the screenplay, budget and production schedule that the bank or financiers approved; or
II. The completion guarantor will complete and deliver the film in keeping with such pre-approved screenplay and production schedule, and advance such sums in excess of the pre-approved budget necessary to do so; or
III. In the event production of the film is abandoned, the completion guarantor will fully repay all sums invested in the film by the bank or financiers.

The “Strike Price“

The “strike price,” is the amount that the completion guarantor believes will be needed in order to complete and deliver the film.

The strike price will generally comprise

(1) the budgeted “above the line” and “below the line” production costs, including fringes and insurance costs;
(2) (2) interest and financing costs, if applicable;
(3) (3) the completion guarantor’s fee; and
(4) (4) the contingency allowance. For the completion guaranty to be effective, the full amount of the strike price must be made available for production of the film.

The first proceeds from distribution will go to pay off any loss of the bonding company.

The Completion Bond Agreements

1. **Completion Agreement -** This is the agreement between the Guarantor and the production company (or companies) for the film. The Completion Agreement sets forth the obligations of the production company with respect to the production of the film and provides for the take-over rights and other remedies and security for the Guarantor.

2. **Completion Guaranty** The Guaranty is the agreement between the Guarantor and the financier(s) of the film and it sets forth the terms and conditions of the completion and delivery of the film.

Downloads: http://www.filmfinances.com/pdf/Completion%20Agreement.pdf
http://www.filmfinances.com/pdf/Completion%20Guaranty.pdf

Pr**ocedure (I)**

In order to determine whether a proposed film project presents an acceptable production risk, the completion guarantor will carefully examine and evaluate all significant factors facing the production. This process begins with the producer submitting to the completion guarantor the following main elements:

script, budget, shooting schedule, résumés of key crew and descriptions of the project’s financiers and their respective financing commitments.

Generally, completion guarantors prefer that the film's distributors and financiers approve these key elements before they are submitted, however most bond companies are prepared to thoroughly evaluate them beforehand.

After reviewing these main elements, the completion guarantor will want to meet with members of the production team, such as the individual producer, director and production manager, to obtain their views about the production budget, shooting schedule and other production matters.

Sometimes, the producer chooses to adjust elements in light of recommendations made by the risk manager. On the basis of these meetings and the final materials submitted, the completion guarantor determines whether the production can be produced, completed and delivered as presented. If the submission is approved, the completion guarantor will prepare the completion guarantee agreement and other necessary legal documents.

Procedures (II)

Once the completion guarantor determines that the production can be produced, completed and delivered as presented, the producer will need to enter into a producer completion agreement.

In this agreement, the producer makes representations and agreements concerning the production and grants the completion guarantor certain rights to monitor and oversee the production to ensure that the film will be completed and delivered in accordance with the approved screenplay, budget, production and delivery schedules.

If there are conflicts between the rights and obligations of the producer, distributor, completion guarantor and financiers under the various contracts relating to the production and delivery of the film, those parties will usually enter into an

> Inter-Party Agreement to resolve such inconsistencies. The inter-party agreement, if applicable, is usually prepared by the principal financier’s legal counsel. The producer will be asked to furnish certain required documents and contracts to the completion guarantor for its review and approval.

Procedures (III)

The completion guarantor will require the producer to include an adequate contingency allowance in the budget. The contingency allowance may be a flat sum, but in most instances it is a fixed percentage of direct production costs (i.e., all production costs other than the contingency, interest and finance costs and the completion guaranty fee).

Various factors will determine what amount the completion guarantor will find adequate for any particular film, however the contingency is normally 10% of direct production costs.

The contingency allowance will be included in the strike price and accordingly, the completion guarantor will only be responsible for cost overruns after the financiers have made the contingency allowance available to the producers to cover the budgeted cost of production, completion and delivery. In certain situations, producers and others may agree to defer all or part of their fees if needed to fund the contingency allowance.

The completion guarantor must be satisfied that the production stays within budget and on schedule. Accordingly, the completion guarantor is given certain rights to monitor and oversee the production of the film.

The producer will be required to furnish the completion guarantor with cost reports, production reports, cost projections and other customary motion picture measures of progress.

Procedures (IV)

If at any time the completion guarantor expects that the film will not be produced, completed and delivered as promised, it may place a representative at the production site.

Or, usually as a last resort, the completion guarantor may assert its right to "take over" some or all aspects of the production in an effort to minimize the risk of incurring liability under the completion guaranty.

If a production is not progressing within budget and on schedule, the Guarantor will strive to take a course of action that is least intrusive to the creative process of producing the film.

In most cases, the course of action taken is determined only after meeting with the filmmakers and there has been an open exchange of ideas leading to sound, collaborative solutions.

Bernie Stampfer

International Film Partners
IFP Entertainment GmbH

+49 152 57049355
Bernie.stampfer@film-partners.com
www.film- partners.com