# Independent Film Producer’s Business and Legal Affairs Checklist

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INTRODUCTION

The purpose of this checklist is limited to serving as a comprehensive reminder to independent film producers of many of the business and legal tasks and sub-tasks (i.e., projects and sub-projects) that they may find necessary to undertake, or have someone handle for them, in the process of financing, developing, producing and distributing one or more feature-length motion pictures. Not all tasks listed will be necessary or appropriate for each project (see “Alternative Tasks” below).

Specific Limitations:

1. Business and Legal Not Creative – This checklist is first limited to those matters falling into the business and legal affairs category as opposed to the creative aspects of a feature film for which a producer may shoulder overall responsibility.

2. No Definitions of Terms – Second, no attempt has been made here to explain or define many of the technical terms used in creating this checklist, since, after all, it is merely a checklist. If you are not familiar with any of the terms used here, look them up in the Dictionary of Film Finance and Distribution or other published resources cited in the Checklist Bibliography starting on page 30.

3. No Explanation of Law – The very nature of a checklist is merely to remind users of the tasks involved in accomplishing a project. Thus, no attempt is made here to explain the underlying laws, rules or regulations that may make such tasks necessary or prudent. For additional information in that regard see the several books cited in the Checklist Bibliography that cover the broad topic of entertainment law.

4. No Checklists for Specific Agreements – Although the specific agreements to be used are often named in parenthesis following many of the points made in the checklist, and listed alphabetically starting on page 26, this checklist is limited in the sense that it does not attempt to go into the detail (with a few exceptions) that may be associated with similar but more narrow checklists commonly created by or used by entertainment attorneys in conjunction with each of the specific contracts typically negotiated and drafted as part of a motion picture project. For additional detail regarding the contents of such contracts see the 100 or more samples of such agreements in the book Film Industry Contracts cited in the Bibliography starting on page 26, along with the other entertainment law related books cited in the Bibliography that may contain additional sample agreements.

Alternative Tasks – Not all of the tasks listed in this checklist are necessary to perform in conjunction with every film project, specifically because there is such a wide variance in film budgets and forms or combinations of film finance. Thus, some tasks are listed as alternatives which create choices to be made by the producer. A producer using this list must, in each instance, determine whether it is necessary to perform a specific task listed for his or her film project.
Producer Support Services – Further, the comprehensive nature of this checklist does not suggest that each of the listed tasks necessarily need to be performed directly by a film’s producer. Many other specialists may be enlisted by a producer to perform certain tasks. Such professionals may include entertainment attorneys, securities attorneys, executive producers, tax incentive consultants, foreign sales agents, entertainment lenders, production accountants, screenwriters, directors, casting directors, line producers, insurance brokers, producers representatives, profit participation auditors and so forth. How much help a producer may have often depends, once again, on the level of budget involved, and the background and expertise of the producer. For a comprehensive listing and descriptions of hundreds of film industry jobs see Introduction to the Motion Picture Industry – A Guide for Filmmakers, Students & Scholars also cited in the Bibliography starting on page 30.

Chronological Order – Although the checklist is intended to be presented in an approximate chronological order, some tasks are performed at varying times on certain film projects either because of the personal preferences of the individuals involved or because producers tend to do what they can when they cannot control the timing of all or related events. For that reason, some redundancy is built into the checklist since certain tasks may be performed at varying times, as chosen by the producer, during the life of a film.

Usefulness Beyond Producers – Based on the assumption that most film personnel are hired by and/or supervised by the producer to some extent, it would be beneficial to all filmmakers to develop a better understanding of what tasks producers are responsible for moving forward in these limited areas of business and legal affairs, so that they might better work together as a team in seeking to accomplish their overall goal of owning, producing and benefitting from a quality motion picture that may be of interest to distributors and movie-going audiences.

Names of Agreements – The names of the many agreements that may be generated during the development, production and distribution of a motion picture are set out with initial capital letters in the text of the checklist. An alphabetical list of 140+ such agreements appears at the end of the checklist just before the Bibliography. If nothing else, that list of agreements should make it clear that the development, production and/or distribution of a motion picture is a document-intensive endeavor. Thus, whoever sets out to engage in such activities must be capable of managing the creation and use of such documents. This leads us to one of the very first tasks to undertake:
BUSINESS AND LEGAL AFFAIRS CHECKLIST

- Determine who among the producer group will be primarily responsible for business and legal affairs related matters.

SETTING UP A FILM DEVELOPMENT OR PRODUCTION COMPANY

- Determine whether a company is needed at the current stage in the filmmaker’s career.

  - If so, ascertain whether the company being created is to serve as an ongoing operating company or as an investment vehicle used to fund one or more projects.

  - Decide whether the company will focus on development, production or distribution.

- Discuss with various attorneys whether your needs require the assistance of an entertainment attorney, securities attorney or general business attorney and the nature of the specific tasks to be accomplished.

  - Determine whether you want to work with the attorney or attorneys selected on an hourly fee basis, flat fee basis or some other arrangement (Attorney Engagement Letter).

- Establish the form of doing business for the operating company (sole proprietorship, general partnership, corporation or member-managed LLC).

  - If sole proprietorship or general partnership, determine if Fictitious Name Filing is necessary.

    - If so, execute Fictitious Name Filing (dba).

  - If general partnership, arrange for drafting of General Partnership Agreement.

  - If a corporation, determine if regular “C” corporation or “S” corp is desired and arrange for the preparation and filing of the Articles of Incorporation with Secretary of State in the selected state.

    - If a corporation, also arrange for the preparation of the Minutes for the shareholders’ meeting and the board of directors’ meeting, along with the corporate Bylaws (Certificate of Adoption of Corporate Bylaws).

  - If a member-managed LLC, arrange for preparation and filing of the Articles of Organization with the Secretary of State in the selected state.
If a member-managed LLC, arrange for preparation of the LLC Operating Agreement for member approval.

Determine who the owner or owners of the member-managed LLC will be.

Determine in which state the business is to be formed and based.

Discuss with the attorney or attorneys when it would be best to form the company for legal reasons and then with an accountant for the tax aspects.

Contact the IRS and obtain the Federal Tax ID number (aka Employer Identification number or EIN) for the company.

Establish relationship with an accountant or accountants and discuss the services provided.

Hire a general business accounting firm (Accountant Engagement Letter).

Seek out the more focused production accounting firms or services and determine whether their services may be needed on a specific project.

Hire a production accounting firm, if needed, prior to the start of the film’s production.

If the accountant appears to go beyond accounting matters and provides what should be more fairly characterized as legal advice, double check such matters with an attorney.

Discuss and determine the insurance needs of the company or project with insurance agents or brokers.

Determine whether the company will maintain physical offices and where.

Consider an office-in-the-home arrangement or an executive suite as the initial office.

Arrange for a phone, fax and e-mail for the company.

Consider creating business cards, letterhead and envelopes.

Develop a company logo, if needed.

Consider whether to trademark the company logo, and discuss with an attorney.
Determine whether to create a website to promote the company and how best to go about creating such a website.

PROTECTING THE CHAIN OF TITLE TO INTELLECTUAL PROPERTY

Pitching An Idea

- Study and implement a plan to protect ideas through contractual means (implied-in-fact agreement; see entertainment law texts).
- Put the idea into a written form (Treatment or Script) that can be registered with the U.S. Copyright Office.
- If pitching an idea for a film to a production company creative executive, seek to have an agent or entertainment attorney negotiate a waiver of the production company’s Submission Release.
- In the pitch meeting, try to get the production company to agree that the owner of the concept will be reasonably compensated if the idea is used by the production company (implied-in-fact-agreement).
- Confirm implied-in-fact contract for an idea pitched to a creative executive with Written Confirmation after the pitch meeting (Implied-in-Fact Contract Confirmation Letter).

Using an Existing Screenplay

- Determine whether an existing screenplay is to be optioned and/or acquired, or draft agreement to do both (Option/Acquisition Agreement).

Hiring a Screenwriter to Write an Original Script

- Ascertain whether a screenwriter needs to be hired to write a Script.
- If so, work with entertainment attorney in drafting a Screenwriter’s Agreement and negotiate the terms of the agreement.
- If the screenwriter is a member of the Writers Guild of America, make sure the production company is a WGA signatory and that other WGA requirements are observed.
- Make sure Screenwriter Agreement has work-made-for-hire language when appropriate.
Make sure the contract is signed by the employee and/or independent contractor.

By having the screenwriter sign a properly drafted Certificate of Authorship, confirm that the Script’s structure, plot, scenes, characters and dialogue are original with the screenwriter, if that is the case.

If the Screenplay is based in part on someone else’s copyrighted work, have an entertainment attorney help determine whether permission is needed (Copyright License).

If such script elements were taken from another copyrighted work, have entertainment attorney verify the screenwriter had the right to create a derivative work based on that source.

For fictional films, check all character names to make sure no one in the real world shares the names or the names are those that many people share.

Once completed, have the screenwriter or screenwriters sign a Certificate of Authorship, to begin the Script’s chain of title.

Adapting the Work of Another

Determine whether a book, short story, essay or article is to be adapted into a screenplay.

If so, check to see if an underlying work to be used is in the public domain.

If another person’s work is being adapted, obtain permission to do so (Copyright License Request Letter).

Investigate the status of the copyrights for all source material used as a basis for writing the Script.

More specifically, if a Screenplay is to be adapted from an existing literary property: identify the owner, cross check owner information with the copyright office, contact the owner and negotiate a deal, obtain a Copyright Search Report, negotiate and draft the Literary Property Acquisition Agreement and sign.

If appropriate, hire a professional copyright research company to conduct a full copyright search and prepare the Copyright Search Report.

Life Story Rights

Determine whether someone’s life story needs to be acquired.
If so, acquire life story rights (Life Rights Consent and Release).

Obtain required written Consents and Release for all depicted individuals.

Seek to avoid libel and defamation claims by ensuring that all portrayals and discussions about individuals are true and accurate.

Seek to avoid invasion of privacy claims by making sure the Script is not prying into someone’s personal life in an overly intrusive manner.

**Fair Use Considerations**

- Determine whether using portions of an underlying work constitutes fair use (i.e., the circumstances of the use rise to the level of an acceptable exception to the prohibition against the use of another’s copyrighted work) per the four following court guidelines.

- Determine whether the use is a non-profit educational use as opposed to a commercial use (i.e., purpose and character of the work).

- Determine whether the work being borrowed from is non-fiction (i.e., scientific, biographical or historical) as opposed to fiction and/or more oriented toward entertainment (i.e., nature of the copyright work).

- Determine the approximate percentage of the portion being used as compared to the whole of the copyrighted work, and the percentage of the copyright work used as compared to the whole of new work.

- Determine whether the use will have any adverse economic impact on the market for or value of the copyrighted work, and if so, what level of impact.

- Recognize, of course, that it is generally preferable to stay out of court altogether due to the time, expense and uncertainty of outcome on such questions, and the best way to avoid court is to obtain the written permission of the copyright holder to use the work.

**Writer Collaboration**

- Determine whether it may be helpful to collaborate with another writer.

- If collaborating on development of a Script with one or more other writers, negotiate and draft a Writers Collaboration Agreement.

- If collaborating with one or more other writers, form a suitable company for the business.
In writer collaboration situations, once the Script is registered with the U.S. Copyright Office, see that the copyrights are assigned to the company formed by the collaborating writers (Copyright Assignment).

Also register this assignment with the U.S. Copyright Office.

Have each collaborating screenwriter sign the Certificate of Authorship to begin the Script’s chain of title.

Copyrights

See that all steps involved in properly registering the Script with the U.S. Copyright Office are taken.

Always display the proper copyright notice on the cover of all copies of the Script.

Complete the property copyright form for registration and pay the fee when submitting the Script to the U.S. Copyright Office.

Work with entertainment (production) attorney to negotiate and draft appropriate agreements that relate to the transfer of the Script’s copyrights.

Make sure that the contracts transfer copyrights from the writer, screenwriter or literary property owner to the production company intending to produce the film.

Make sure all purported copyright transfers are in writing and signed by the owner or the owner’s agent.

Make sure that all Copyright Transfers and Assignments are recorded with the U.S. Copyright Office in a timely manner.

Organizing the Chain of Title

Create a file, file folder or binder in which to keep all copies of the Script’s and film’s Chain of Title Documents, organized chronologically, with no time gaps.

Start the Chain of Title with the Certificate of Authorship.

Make sure there are no undocumented gaps in the time-line for the Script’s and film’s chain of title (otherwise, the film may not be accepted for distribution).
Be prepared to present the complete Chain of Title for the Script and film (in chronological order) to SAG, the film’s errors and omissions insurance company and distributors upon request.

HIRING MEMBERS OF THE PRODUCTION COMPANY’S PROFESSIONAL TEAM

Determine if and for which tasks the assistance or advice of one or more attorneys is required or would be helpful (for example):

- Protecting the Chain of Title to intellectual property;
- Negotiating and/or drafting Acquisition of Rights Agreements;
- Assistance with development financing;
- Forming the production company;
- Preparing internal company documents;
- Providing advice regarding employees and independent contractors;
- Assistance with film production financing activities;
- Federal and state securities laws compliance;
- Preparing a Screenplay Clearance Report;
- Drafting and/or negotiating key Cast and Crew Agreements;
- Drafting or consulting on other production related agreements;
- Advising on union issues;
- Setting up and managing actor/director escrow accounts (Escrow Agreements);
- Negotiating, advising and/or drafting Distribution Agreements;
- Filing a lawsuit against a distributor (Complaint).

Decide when and for what specific tasks to hire an entertainment attorney (or securities attorney) to help with development, production and/or distribution matters.

Determine and set out in the Attorney Engagement Letter exactly what tasks are to be performed.

Determine on what basis the attorney will be paid (hourly, flat fee, etc.).

Negotiate and sign Attorney Engagement Letter.

Determine which tasks require the assistance of one or more accountants or profit participation auditors (for example:

- General business accounting;
- Tax advice and tax return preparation;
- Production accounting;
- Film performance and profit participation monitoring;
Profit participation demand on distributor;
Expert testimony in lawsuit against distributor.

☐ Determine whether you will need to hire a profit participation auditor.

☐ Identify entertainment industry insurance agents/brokers with whom to discuss insurance needs.

☐ Determine what kinds of insurance coverage are required or recommended (Insurance Policy).

☐ Once production financing is in place, pay premium for Insurance Policies.

☐ Determine if a completion bond company will be part of the professional team and whether to obtain a Completion Bond.

☐ Obtain a copy of one or more completion bond applications and/or checklists to determine whether the production company is able and willing to comply with all of its requirements.

☐ If so, arrange for Completion Guarantor’s Letter of Intent and then when appropriate sign the Completion Bond Producer’s Agreement.

☐ Also sign the Guarantor’s Takeover Agreement which under certain circumstances allows the completion bond company to takeover production of the film.

ARRANGING FOR DEVELOPMENT FINANCING

☐ Determine whether financing is needed for the development phase of one or more films and whether development financing can or should be raised separately from production financing.

☐ To do that, determine whether the costs associated with the acquisition of underlying rights, developing the Script or attaching elements to create a producer’s package (i.e., at least the Script, budget and attached elements) can be handled out-of-pocket or must be raised from third-party sources.

☐ If development financing is needed, determine which development phase tasks need to be undertaken (acquisition of rights, development of script, attaching elements and/or marketing the completed package to production financing sources).

☐ Decide if a fully developed package (i.e., at least Script, budget and attached
elements) is required to access the desired form of production financing (e.g., production-financing/distribution deal, negative pickup deal or foreign pre-sales).

- Consider hiring the services of a casting director to help determine the costs of attaching elements (Casting Director Agreement).
- Note that a certain amount of money is generally required in order to obtain a firm commitment (including specified dates) from actors and a director.
- Also, determine offering costs for subsequent investor offering for production funds, if needed.
- If so, include adequate funds to cover cost of promoting project to production financing sources in Development Budget.
- Determine how development funds are to be raised (gifts, grants, lender, active investors, passive investors, industry sources, etc.).
- Once development funds are available, perform each of the development tasks as needed.

- If a development deal at a studio is sought, see that ideas to be pitched are contractually protected through an implied-in-fact contract, subsequently confirmed in writing.
- Determine the necessary elements of an Implied-in-Fact Contract in a story idea pitch situation.

**DEVELOPMENT PHASE TASKS**

- Rights Acquisition – If underlying rights need to be acquired, acquire rights to material such as book, short story, stage play, life story, essay, treatment, concept and/or previously produced film (i.e., for film remake).
  - Make sure production company is acquiring rights from all owners of the underlying rights (Acquisition Agreement).
  - Secure all necessary rights before writing the Script.

- Hiring Screenwriter – If a screen writer is to be hired, negotiate and draft the Writer’s Service Agreement.
  - Work with entertainment attorney to determine the form or forms of compensation to be paid to the writer, recognizing that there are only two forms of compensation: fixed and contingent, and that the contingent category includes
deferred, profit participations, bonuses, etc.

☐ Hire one or more screen writers to write the Script.

☐ If the production company needs to hire a writer or buy a Script from a writer who is a WGA member, the production company needs to become a signatory with that union.

☐ Make sure Writer Service Agreement contains “work-made-for-hire” language in addition to writer’s assignment of all copyrights to the resulting Script to the production company.

☐ If the screenwriter is writing with another writer, negotiate and draft a Writers Collaboration Agreement.

☐ Life Story Rights – If script is to be based on someone’s life story, secure the rights to that life story (Life Rights Consent and Release).

☐ Make sure a Life Rights Consent and Release is signed by every individual whose lives may be portrayed in the motion picture.

☐ If someone does not consent, write them out of the movie or change the character so substantially that they are not recognizable.

☐ Script Development – Hire a producer and/or director to work with the screenwriter in developing the Script.

☐ If an existing Script is purchased, see that a copyright search is performed to confirm whether the Script is in the public domain and/or to confirm ownership.

☐ To punch up a Script or make it more commercial, if desired, hire a script doctor to polish the Script.

☐ Have screenwriter(s) sign Certificate of Authorship to start chain of title.

☐ Register the Script with the U.S. Copyright Office when completed.

☐ See that Script copyrights are assigned to the production company that is producing the film (Copyright Assignment).

☐ See that the owner of the Script assists the production company in registering the assigned copyrights to the Script.
Make sure the production company has a signed contract granting it the right to make a motion picture (Acquisition Agreement).

As each new document conveying rights to the Script or film is created, record each with the U.S. Copyright Office so as to maintain the unbroken record of the motion picture’s ownership (i.e., Chain of Title).

Budget – Create preliminary Production Budget.

Hire line producer to prepare Budget based on Script and Script Breakdown (Line Producer Employment Agreement).

In the alternative, utilize available computer software to prepare Budget.

Packaging – Engage in packaging activities (i.e., make offers in effort to attach director and talent for lead roles).

Use a casting director to help identify suitable and available talent, and develop offers.

Submit the Script through an agent or an entertainment attorney to possible directors and lead talent.

Determine whether full pay or play offers to talent or non-refundable deposits based on a percentage of their salary can be funded with development budget.

Work with casting director to conduct auditions for selected roles.

Determine whether one or more recognizable “name” actors or actresses are to be hired.

Have entertainment attorney draft Talent Deal Memos for use in packaging talent.

ARRANGING FOR PRODUCTION FINANCING

Determine whether one or a slate of films will be produced.

Determine estimated production cost and costs of obtaining financing.

Determine which form or forms of film finance are most likely to successfully fund production costs of the current project (gifts, grants, lender, investor, tax incentives, studio/industry, foreign options).
If gifts, review tax consequences of gift giving and start identifying, then asking prospective gift givers.

If grants, start researching possible grant sources and prepare Grant Applications.

If bank loan without distribution deal, consider possible collateral options.

If seeking financing from people or companies in the film industry, use Producer’s Package, not a Business Plan.

If seeking bank loan supported by distribution agreement and guarantee (Negative Pickup Distribution Agreement), start approaching distributors, entertainment lenders and completion guarantors with Producer’s Package.

Include Cash Flow Schedule in package prepared for entertainment lenders.

If negative pickup deal is available, review and sign Interparty Agreement and the bank’s Loan and Security Agreement.

If seeking foreign pre-sales, arrange for representation by foreign sales agent (Foreign Sales Agency Agreement).

If foreign pre-sales are sought, create Package and Promotional Materials in consultation with foreign sales agent, then approach entertainment lenders and completion guarantors.

With respect to the various forms of lender financing, determine whether a Completion Bond will be needed.

If so, study requirements of completion guarantors and apply for the Completion Bond.

If a studio P-F/D deal is sought (Production-Financing Distribution Agreement), create Producer’s Package to present to studio executives.

If investor financing, determine whether active or passive investors are to be approached.

If active investors with knowledge and experience in the film industry, provide information through a Business Plan, accompanied by appropriate active investor investment vehicle.
Consider which of the four active investor investment vehicles may work best for this project: Investor Financing Agreement, Joint Venture Agreement, the initial incorporation scenario or the member-managed LLC.

Identify finders who may be able to introduce the producer to prospective active investors (Finder’s Agreement) in a non-securities transaction.

If active investors with little knowledge or experience of the film industry, arrange for the securities attorney to prepare a Securities Disclosure Document and advice with respect to otherwise complying with the federal and state securities laws, since a security is being sold.

If passive investors, discuss the proposed offering with an experienced securities attorney, since again, a security is being sold.

Determine which of the passive investor investment vehicles would be advantageous for this particular project: offering of corporate stock in an existing corporation, units in a limited partnership or units in a manager-managed LLC.

Investigate the rules relating to the use of finders in a securities offering, noting that such rules are different from the use of finders in active investor offerings and their participation is very limited.

Work with securities attorney in preparing required Securities Disclosure Document (e.g., Private Placement Offering Memorandum, Offering Circular or Prospectus).

If a limited partnership is the investment vehicle, work with the attorney in drafting the Limited Partnership Agreement, Securities Disclosure Document and Subscription Documents.

If a limited partnership, consult with the securities attorney to determine when it is best to file the limited partnership’s Articles of Organization.

If a manager-managed LLC is the investment vehicle, work with the attorney in drafting the LLC Operating Agreement, Securities Disclosure Document and Subscription Documents.
☐ If a manager-managed LLC, consult with the securities attorney to determine when it is best to file the LLC’s Articles of Organization.

☐ Work with securities attorney, accountant, consultant or others in preparing Financial Projections for the offering.

☐ Make sure that Financial Projections are prepared in compliance with existing SEC guidelines.

☐ If tax incentives are to be relied upon, investigate available federal, state and international programs.

☐ Also investigate the availability of companies to provide production advances against prospective tax incentives.

FINANCING OF NON-PRODUCTION BUDGET ITEMS

☐ Determine whether funds will be need for various non-production budget items and determine which line item descriptions to use in the use of proceeds presentation.

☐ Determine whether funds are needed to maintain the single purpose financing vehicle, if used (e.g., maintaining the LLC).

☐ If so, add a “maintaining the LLC” line item (for example) to the use of proceeds section of the financing materials, separate from the production budget section.

☐ Determine whether funds are needed for marketing the completed film to distributors (e.g., film festivals, distributor screenings or DVD; see below).

☐ If so, add a “marketing to distributors” line item to use of proceeds section of financing materials, separate from the production budget section.

☐ Review distributor’s Delivery Schedule or an example of a distributor’s delivery schedule.

☐ Determine whether any non-production funds are needed to cover costs of preparation and delivery of “delivery items” to distributor.

☐ If so, add a “distributor delivery items” to the use of proceeds section of financing documents, separate from the production budget.

☐ Also, estimate those delivery costs and arrange to include this line item in
the effort to raise funds for the project.

☐ Investigate whether funds may be needed to later hire a profit participation auditor.

☐ If so, the cost of hiring a profit participation auditor may also need to be included in the use of proceeds section of the financial documents, separate from the production budget.

PRE-PRODUCTION ACTIVITIES

☐ Confirm that production financing is in place.

_Hiring Producers_

☐ If not already on board, hire the producer or additional producers (Producer’s Service Agreement).

☐ In recognition of the fact that film production is a document-intensive endeavor, look for a producer with experience in film contract negotiations, if possible.

☐ Make sure everyone understands exactly what duties are expected of each producer.

☐ Define the producer’s specific duties in the Producer’s Service Agreement.

☐ Set out in the Producer’s Service Agreement what rights to the film property the producer has, if any.

☐ Negotiate, draft and execute the Producer’s Service Agreement.

☐ Work with entertainment attorney to determine form or forms of compensation to be paid to the producer, recognizing (again) that there are only two forms of compensation: fixed and contingent, and that the contingent category includes deferred, profit participations, bonuses, etc.

☐ When a production company is in charge, make sure a specific production company executive is responsible for supervising the work of the producer(s).

_Hiring a Director_

☐ Begin the process of selecting the director for the film.

☐ After the Creative Producer has reviewed the reels and resumes of various director
candidates, confirm the reported credits of the preferred director candidates.

☐ Interview director candidates and decide on selection.

☐ Negotiate, draft and execute a Director’s Service Agreement (i.e., hire the director).

☐ Determine whether the director is working as an employee or independent contractor.

☐ Determine if the director is working through a loan-out company.

☐ If so, see that the Director’s Service Contract is drafted using the proper loan-out company language, including an inducement clause (Loan-Out Agreement).

☐ Work with entertainment attorney to determine form or forms of compensation to be paid to the director, recognizing that there are only two forms of compensation: fixed and contingent, and that the contingent category includes deferred, profit participations, bonuses, etc.

☐ Make sure the Director’s Service Agreement clearly sets out how creative approvals are to be handled, delivery requirements for the film and the director’s obligations on reshoots and other post-production tasks.

☐ Work with the director in selecting and hiring the director of photography (Director of Photography Service Agreement), and other key individuals the Director needs or wants for the project.

**Script Work**

☐ Continue polishing the Script.

☐ Have entertainment attorney review and clear the Script (Script Clearance Report) for all references that may be libelous or defamatory, invade the privacy of others, infringe copyrights of others or infringe or tarnish someone else’s trade or service marks.

☐ Make sure the Script Clearance Report is completed well before shooting begins so the production company will have time to secure the needed Consents or make necessary changes to the Script.

☐ Breakdown the Script.

☐ Scout and establish shooting locations.
☐ Prepare Shooting Schedule.

☐ Determine whether Storyboards would be helpful for this particular project and consider hiring storyboard artist to create.

Stock Footage

☐ Determine what shots, if any, would be cheaper to buy from a stock footage company.

☐ If stock footage or film clips are to be used, obtain rights where appropriate (Film Clip License Agreement).

Hiring Cast and Crew

☐ Start casting activities (i.e, break-down script for descriptions of actors needed, review portfolios with casting director, post casting calls and plan auditions/interviews).

☐ Try to begin negotiating Cast and Crew Service Agreements as early as possible in the pre-production phase so as to avoid loss of leverage when time is running out, and to leave time for alternative possibilities.

☐ Determine whether the shoot will be union or non-union.

☐ If SAG, consider assigning one or two producers the task of ensuring that the production company complies with SAG rules and labor laws.

☐ Become familiar with SAG, WGA, DGA, IATSE or other guild rules and see that they are observed.

☐ If working with SAG, determine which SAG contract is to be used.

☐ Determine rules associated with specific SAG contract and observe.

☐ Be sure and have production company become SAG signatory before signing any SAG actors (Guild Signatory Agreements).

☐ Contact assigned SAG representative for assistance.

☐ Submit the required SAG Forms at least one month prior to working with SAG actors.

☐ Determine the most effective method to use in submitting the project to talent.
☐ Locate prospective actors through casting director and their agents.

☐ Make arrangements to get Scripts to selected talent.

☐ Pitch the project to the agent first, not the actor.

☐ Consider submitting Scripts to talent through the entertainment attorney or casting director.

☐ If production financing is not entirely in place, consider whether obtaining Letters of Intent/Interest from prospective talent is possible and/or useful.

☐ Hire or obtain Letters of Intent/Interest from creative personnel.

☐ Work with your entertainment attorney to determine the form or forms of compensation to be paid to the cast and crew, recognizing that there are only two forms of compensation: fixed and contingent, and that the contingent category includes deferrals, profit participations, bonuses and residuals.

☐ Have entertainment attorney check to make sure the terms of Talent Agreements are consistent with SAG requirements.

☐ Also, have entertainment attorney check to see that Cast and Crew Agreements are consistent with federal and state labor and employment laws.

☐ Start hiring cast (Actor Service Agreements).

☐ Negotiate and draft Performer’s Service Agreements.

☐ In negotiating with talent, be sure to keep budget limitations in mind and know the point beyond which you cannot go.

☐ Determine whether cast or crew members are working through loan-out companies and whether they can be treated as independent contractors so that agreements can be drafted accordingly.

☐ If required, post Bond with SAG to secure the actors’ payroll.

☐ Also, determine whether the SAG contract being used allows use of SAG and non-SAG actors.

☐ Have Cast and Crew Service Agreements signed by cast and crew members.
Create a restatement of all contractual credit provisions so as to prevent conflicts, by having someone review all Cast and Crew Agreements specifically with respect to credit obligations.

If credit conflicts are discovered, negotiate to resolve by amending agreements.

**Hiring Child Actors**

If hiring child actors, review special legal requirements.

- Determine if child labor laws may restrict the planned Shooting Schedule.
- For child actors, make sure the parents give their signed Consent to allow their children to appear in scenes dealing with adult situations (Minor Release).
- Determine whether use of child actor requires court approval of their contract.
- If so, obtain court approval (Court Order).
- Determine whether use of one or more child actors requires establishing a trust fund for a portion of their salary (Trust Fund Agreement).
- If so, set up trust fund.

**Dealing With Nudity On the Set**

- Determine if any roles require nudity.
  - If so, be sure to let the actors know before they audition for the part.
  - If nudity is required of an actor, see that a Nudity Rider is attached to that actor’s contract (Nudity Rider).
  - If nudity is required, limit the people on the set to those required for the shoot.
  - Talk to the crew prior to a shoot involving nudity and remind them to behave professionally.
  - Do not take still photographs of nude scenes without the prior written permission of the actors (Photo Release).

**Miscellaneous Pre-Production Issues**
If animals are to be used be sure to follow all appropriate rules and guidelines.

Contact the American Humane Association: Film and TV Unit for information on best practices for dealing with animals on the set.

Obtain any necessary Shooting Permits and determine whether security deposits are required.

Determine if Architectural Releases are needed for external shots including buildings.

If a planned scene involves the use of pyrotechnics have the entertainment attorney obtain Special Permits, as needed.

Discuss music needs for the film and how those will be met.

Determine whether pre-existing music will be licensed for the film (Music Licensing Agreement), whether one or more pre-existing musical compositions need to be re-recorded for use in the film or whether music needs to be composed for the film (Composer’s Service Agreement), or some combination.

Because of the complexities involved in licensing music, consider hiring an attorney with expertise in music licensing or hiring a music clearance service (aka music permissions and licensing service).

Finalize the production budget.

Start planning to hire post-production staff.

PRINCIPAL PHOTOGRAPHY PERIOD ACTIVITIES

Insurance – Contact an insurance agent to add local government entities and others as additional insureds to Insurance Policies, as needed.

Shooting Permits – Identify situations where local government Shooting Permits are required.

Negotiate and have the authorized person sign the required Shooting Permits.

Determine and pay the required Shooting Permit fees.

Determine whether any Security Deposit or Bond is required, how much it is and pay it.

Note and observe all local rules applying to the location.
Don’t forget to recover the Bond payment if no damage is caused during the location shoot.

Location Agreements – Identify situations in which Location Agreements are necessary.

Negotiate and draft Location Agreements, and have them signed.

Watch for situations on location where someone else’s copyrighted work may appear in a scene.

Artwork License – Determine whether any scenes involve the appearance of the copyrighted works of others.

Either get permission through an Artwork License, to use the copyrighted works of others that may appear in your film, or avoid their use.

Have the entertainment attorney negotiate and/or draft Artwork Licenses where needed.

Trademarks – Determine whether any scenes involve the appearance of one or more trademarks of another, and therefore, may create potential liability for trademark infringement or tarnishment.

If so, avoid shooting trademarks on the set or work with the entertainment attorney to obtain permission of the owner (Trademark Clearance Letter).

Work with entertainment attorney in drafting and obtaining a signed Trademark Clearance Letters, if needed.

Make sure to clear all copyright and trademark protected materials appearing in the film.

Depiction Releases – Identify situations in which Depiction Releases (aka Extra Agreement and Extra Release) need to be signed by extras.

Have production attorney provide Depiction Release forms for extras to sign.

Make sure to include language in the Depiction Release describing how the footage will be used.

Have entertainment attorney prepare Depiction Releases to use with passers-by and business patrons who may appear in a scene.
Consider use of a Group Release for small groups that may appear in a scene.

Post a Notice Release outside the entrance to any location involving large crowds.

Shoot footage of some of the crowd walking past the Notice Release to serve as evidence of its posting.

Legal Liability – Seek to avoid creating liability for the production company for specific causes of action (i.e., potential lawsuits).

Avoid photographing people on private property when they have a reasonable expectation of privacy.

While shooting on location, try to avoid creating any substantial or unreasonable interference with the use and enjoyment of anyone’s private property.

Work with an entertainment attorney to avoid violating anyone’s rights of publicity, privacy and moral rights, as well as avoiding defamation.

POST-PRODUCTION ACTIVITIES

Review and plan for post-production.

Hire the post-production company, staff or team.

Make sure work-made-for-hire and assignment of rights language appears in agreements with post production company, staff and team to insure that their contributions are entirely owned by the production company (Post Production Service Agreement).

Determine screen credits for the film and make consistent with applicable guild rules.

Make sure that the film’s credit roll conforms to the credit clauses in all contracts.

If WGA writers were used in writing the Script, send the Notice of Tentative Writing Credits, Final Shooting Script, Production Company’s Proposed Credits and source material for the Script to the WGA and all writers.

Music --Finalize plans for the film’s musical soundtrack and implement.

If not already accomplished, license the needed music that has already been recorded (Music License Agreement).
☐ Hire a composer if music needs to be commissioned (Composer’s Service Agreement).

☐ If using a composer, also have the composer sign a Certificate of Authorship.

☐ Make arrangements to re-record an existing song if necessary.

☐ Place a proper copyright notice near the film’s title and with the credits.

☐ Also see that a disclaimer re the fictitious nature of the persons depicted appear in the film’s credits, when appropriate.

☐ Register the completed film with the U.S. Copyright Office.

☐ Give cast and crew copies of the finished film on DVD with permission to incorporate portions into their reels.

**MARKETING TO DISTRIBUTORS**

☐ Register the film with *The Hollywood Reporter* for their “Films In Production” list.

☐ Consider hiring a producer’s representative to help in obtaining a distribution deal (Acquisition/Distribution Agreement and/or International Distribution Agreement).

☐ Determine which of the three methods for marketing a completed to a film distributor is most likely to be successful: (1) film festivals, (2) screenings or (3) sending a DVD copy directly to distributors.

☐ Submit the completed film to selected film festivals/markets.

☐ Develop promotional materials to give out to potential buyers at festivals and markets (Note: The cost of such materials may be a non-production budget item, but it may be smart to raise funds specifically for this task as part of the “marketing to distributors” line item) when seeking production financing.

☐ Arrange to screen the film at selected film festivals/markets.

☐ In the alternative, arrange to screen the film for distributor representatives at a theatre in Los Angeles or New York.

☐ Develop a list of distributors who may be interested in your film.

☐ Send invitations for the film’s screening to distributor representatives.
In the alternative, prepare DVD copies of the completed film and deliver to distributors with information about the film.

**DISTRIBUTION-RELATED ACTIVITIES**

- Obtain a copy of an E&O insurance policy application and make sure the production company can meet all of its obligations as per the application.

- Review the film’s Chain of Title to make sure it is complete, organized chronologically and ready to present to a prospective distributor.

- Review all Talent Agreements for publicity restrictions, likeness approvals, credit and billing obligations and publicity obligations, if any.

- Distribution Agreement – If getting a distributor for the film is a possibility, study and determine the various types of Distribution Agreements that may be available for completed films (e.g., Acquisition/Distribution Agreement or International Distribution Agreement).

- Develop an understanding of the special vocabulary used in Distribution Agreements and relating to the film’s revenue stream.

- Work with an entertainment attorney in negotiating the terms of the Distribution Agreement.

- Check the Distribution Agreement for who pays the cost of delivery items and what delivery items are specifically required, and when.

- If delivery of delivery items is to be paid for by the producer, re-estimate the cost.

- Develop a Cash Flow Chart (financial projections) based on the specific form of film finance used and the specific Distribution Agreement obtained, if any.

- Determine how the actual terms of the Distribution Agreement differ from the related assumptions used in the film’s Financial Projections.

- Add the distribution company as an additional insured on the production company’s E&O Insurance Policy.

- If the production company is a SAG signatory, have the distributor sign the SAG Assumption Agreement re the payment of performer residuals.
☐ Check the Distribution Agreement to see if a general assumption provision is included, calling on the distributor to handle calculation and payment of all cast and crew profit participations.

☐ If desired, negotiate for a provision to have the distributor assume the obligation for payment of all profit participants including SAG actor residuals.

☐ If required, execute Laboratory Access Letter for the distributor, giving permission to the distributor to deal directly with the film lab.

☐ If appropriate for this project, seek to exploit the film in all available markets and media.

☐ Depending on what markets and media are taken by distributor, seek to exploit the other markets and media.

☐ If the film’s distribution arrangements are not adequate, consider raising P&A funds (i.e., for distribution expenses) and seek a rent-a-distributor deal.

☐ In the alternative, consider self-distribution, including four-walling.

**FILM PERFORMANCE MONITORING**

☐ Arrange for accountant or others to monitor the performance of the film in the marketplace.

☐ Check the Distribution Agreement to determine when profit participation statements are due.

☐ Carefully review the distributor’s Profit Participation Statements for accuracy.

☐ Hire a profit participation auditor to audit the books of the distributor, if necessary (as authorized per the audit paragraph in the distribution agreement).

☐ Arrange for the profit participation auditor to send a Demand Letter to the distributor on behalf of all profit participants, if appropriate.

☐ Hire an experienced litigation attorney with no distributor conflicts of interest to make further demands on the distributor, and sue if necessary (Complaint; aka Plaintiff’s Complaint).

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LIST OF DOCUMENTS

The following is an alphabetical listing of many (but not all) of the documents (or as is the case with a film’s chain of title or a producer’s package -- a collection of documents) that may be generated in the financing, development, production and distribution of a motion picture. Slightly differing names may be used for some of such documents. As can be easily seen by reviewing this list of documents associated with filmmaking, it is fair to say that filmmaking is not only a collaborative endeavor, it is also document-intensive. A review of this list also provides filmmakers with a quick overview and better understanding of much of the work engaged in or services provided by entertainment attorneys, securities attorneys, completion guarantors, entertainment lenders, producers, distributors and others who may be asked to help in financing, developing, producing and/or distributing a motion picture, along with the preparation of the documents needed to support such activities. Examples of many of the agreements listed below can be found in three books more fully described in the Bibliography: Film Industry Contracts, Dealmaking in the Film and Television Industry and The Pocket Lawyer for Filmmakers.

1. Accountant Engagement Letter
2. Acquisition/Distribution Agreement (aka Distribution Rights Acquisition Agreement)
3. Actor Service Agreement (aka Actor Employment Agreement or Talent Agreement)
4. Actor (Loanout) Employment Agreement
5. Architectural Release
6. Articles of Incorporation
7. Artwork License
8. Assumption Agreement
9. Attorney Engagement Letter (aka Attorney-Client Agreement)
10. Board of Directors Meeting Minutes
11. Budget
12. Business Plan
13. Cash Flow Schedule
14. Casting Director Agreement
15. Cease and Desist Letter
16. Certificate of Adoption of Corporate Bylaws
17. Certificate of Authorship
18. Certificate of Corporate Resolution
19. Chain of Title Documents
20. Consent and Release
21. Complaint
22. Completion Bond
23. Completion Bond Producer’s Agreement
24. Completion Guarantor’s Letter of Intent
25. Composer’s Service Agreement (aka Composer Employment Agreement)
27. Copyright Assignment

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28. Copyright License
29. Copyright License Request Letter
30. Copyright Search Report
31. Corporate Bylaws
32. Court Order for Child Services
33. Crew Service Agreement (aka Crew Member Agreement)
34. Deal Memo
35. Delivery Schedule
36. Demand Letter
37. Depiction Release (aka Extra Agreement and Extra Release)
38. Development Budget
39. Director of Photography Service Agreement (aka DP Employment Agreement)
40. Director’s Service Agreement (aka Director’s Employment Agreement)
41. Distribution Rights Acquisition Agreement
42. Distribution Agreement
43. Distributor’s Acceptance
44. Escrow Agreements
45. Extra Agreement with Extra Release (aka Depiction Release)
46. Fictitious Name Filing
47. Film Clip License Agreement
48. Final Shooting Script
49. Financial Projections
50. Finder’s Agreement
51. General Partnership Agreement
52. Group Release
53. Guarantor’s Takeover Agreement
54. Guild Signatory Agreements
55. Implied-in-fact Contract Confirmation Letter
56. Insurance Policies
57. International Distribution Agreement (aka Foreign Distribution Agreement)
58. Interparty Agreement
59. Investor Financing Agreement
60. Joint Venture Agreement (aka Domestic Co-Production Agreement)
61. Laboratory Access Letter
62. Letter of Intent/Interest
63. Life Rights Consent and Release
64. Limited Partnership Agreement
65. Limited Partnership Articles of Organization
66. Line Producer Employment Agreement
67. Literary Property Acquisition Agreement
68. LLC Articles of Organization
69. LLC Operating Agreement
70. Loan and Security Agreement
71. Loan Out Agreement

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72. Location Agreement
73. Makeup and Special Effects Agreement
74. Master Use License
75. Minimum Basic Agreement
76. Minor Release
77. Minutes of Corporate Meeting
78. Minutes of Shareholder Meeting
79. Model’s Release
80. Modified Low Budget Agreement (SAG)
81. Mortgage of Copyright and Security Agreement
82. Motion Picture Consultant Agreement
83. Motion Picture Master Recording License
84. Motion Pictures Stills/Excerpts License Agreement
85. Music Assignment
86. Music Co-Administration Agreement
87. Music Licensing Agreement
88. Negative Pickup Distribution Agreement
89. Notice Release
90. Notice of Tentative Writing Credits
91. Nudity Rider
92. Offering Circular
93. Option Agreement
94. Option and Literary Purchase Agreement (aka Option/Acquisition Agreement)
95. Performance License
96. Performer’s Service Agreement (similar to Actor Service Agreement)
97. Personal Release
98. Photo Release
99. Post Production Service Agreement
100. Poster/Artwork Clearance and Release
101. Private Placement Offering Memorandum (PPM)
102. Producer’s Service Agreement (aka Producer Employment Agreement)
103. Producer’s Package (a collection of documents)
104. Product Placement Agreement
105. Production Account Takeover Letter
106. Production Company’s Proposed Credits
107. Production Budget
108. Production-Financing/Distribution Agreement (P-F/D)
109. Promissory Note
110. Property Release
111. Prospectus
112. Quitclaim License
113. Recording Artist Agreement
114. Rent-a-Distributor Distribution Agreement
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