

# Motion Picture Completion Guarantee Structure

Gary O. Concoff

**Rates.** The usual rates charged range between 2½% and 3% of the so-called "strike price," i.e., usually close to the final budget of the picture (described further below). In the past, these rates have been as high as 5%, but competition has reduced that percentage. At times, where the budget is \$20 million (U.S.) or over, the fee may be as little as 2%. While in the past there have also been arrangements under which 4% or 5% was charged, and a rebate of one-half of that rate would be made if the picture came in on budget, this has not been common of late.

**Full Funding.** Generally, cash funding must be in the hands of the producer or irrevocably available for financing of production as a pre-condition to the effectiveness of the completion bond. The term usually used as the base for the commitment of a completion bond is the "strike price." The strike price is substantially equivalent to the budget with certain exceptions, such as marketing and publicity costs, which might not be deemed guaranteed as part of the strike price by the completion guarantor.

*One caveat:* Some financing arrangements involve "in kind" provisions of studio facilities, post-production, editing, etc. In these cases, it may be necessary to demonstrate to the completion bonder that the entity providing the in-kind commitment is financially responsible and will actually reliably perform and provide the in-kind services or provision of facilities at the value ascribed thereto.

**Approvals.** The completion bonder usually has a right of approval of the producer, director, and lead cast. These are *not* creative approvals. Rather, such approvals relate to reliability, tendency to cause over-budget results, history of substance abuse or other personal habits that have raised other issues as to reliability. The director and producer will have to sign documents provided by the guarantor committing to do their best to keep the picture on budget, to comply with the producer's agreement with the completion guarantor, and otherwise to function professionally.

**Commitment.** The completion guarantor's commitment requires that the completion guarantor actually fund completion of the picture to the extent that the production cost exceeds the strike price. In the event of actual abandonment of the picture, the completion guarantor commits to repay the beneficiaries (i.e., lenders and investors), all subject to the possibility that production might be recommenced.

**Takeover Right.** The completion guarantor usually has a right of takeover in the event that the picture goes substantially overbudget, or threatens to be very substantially behind the shooting schedule. This takeover right is rarely exercised, in light of the consequent assumption and implied assumption of the producer's obligations to third parties due to takeover, should the completion guarantor actually take over the production of the picture. The completion guarantor will require customary and often extensive insurance as to all customary risks, such as liability, negative floater, fire, and errors and omissions insurance, all of which are subject to approval within customary parameters. The package of insurance is reviewed in advance by the

completion guarantor for adequacy. Policy limits will be affected as well, though subject to customary limits.

**Overbudget Costs.** If the completion guarantor is required to advance funding for overbudget costs, the normal arrangement is that the completion bonder recoups any such advance in a position subordinated to the initial lenders and/or investors, with interest. The completion guarantor usually takes a security interest (subordinated to priority lenders and investors and customary U.S. guild security interests (if any) required with respect to residuals, laboratory liens, etc.).

**Control.** It is often the case that the completion guarantor will employ and provide a representative who will have the right to be present at shooting of the picture and related proceedings, and the right to availability of all records, accountings, etc. Usually a weekly report by the production accountant is required showing the amount expended, cost to complete, etc. Though the completion guarantors resist "final cut" for directors, they will at times agree to a final cut provision which provides that the director loses any final cut right in the event that the picture threatens to go substantially over budget (or even at times as tight as over 50% into the budgeted contingency). There are a number of other detailed conditions as to "final cut," such as adherence to the screenplay and avoidance of delay of release of the picture.

There are times when the producer and director are considered so highly reliable in the view of the completion bonder that a representative may not be required to be present at all times.

Completion guarantors keep track of the on-budget track record of producers and directors and, it seems, cross-check with each other as to substance abuse or other extreme conduct relating to actors.

**Delivery Schedules.** The completion guarantor normally reviews the schedule of delivery items required both by major U.S. distributors and by foreign distributors, territory by territory. Some rather significant negotiations can take place with regard to overdetailed or burdensome delivery schedules, which at times occur vis-à-vis the studios. At least in one territory (Germany) there have been concerns as to overly detailed and technical delivery requirements, which can cause delivery problems for the completion guarantor. In light of the common requirement of assignment and notice of assignment as to advances and other proceeds requiring direct payment to a bank or other lender (and, at times, to an equity investor) from foreign distributors, the requirement that the completion guarantor meet delivery obligations can be extremely important to the lender, investor and producer.

**Financial Guarantee Not Given.** Completion guarantors are generally not able to provide a "financial guarantee," which primarily relates to the initial budgetary financing of the strike price.

**Delivery Dispute.** In the event of a dispute regarding delivery, it is customary that the completion guarantee provide for arbitration resolution designed to avoid delay. For example, an issue occasionally raised by a distributor is whether or not the screenplay was substantially shot as written and approved by the distributor(s) in advance. The arbitration provision usually provides for an "A" or "non-A" decision. That is, either the picture complies with the delivery requirements, or it does not. If it does not, the arbitrator is required to provide the reasons for

which the picture does not comply. The completion guarantor would then be required to make corrections as to any such failure and, to the extent any such corrections are not covered by the budget, would be required to advance the funds necessary to do so. There can be substantial disputes in this area, but such disputes are usually resolved by settlement.

**Financial Backing of Guarantor.** In each case, it is important that the lender or equity financier require that the completion guarantee is backed or provided by a financially responsible party. One or two guarantors are directly backed by A+ or AA-rated insurance companies. In other cases, the completion guarantor is backed by an insurance company or syndicate of insurance companies, which has often been Lloyds of London. In these latter cases, the adequacy of the "cut-through" commitment by the insurance company or syndicate of insurance companies which is standing behind the guarantee must to be carefully vetted.

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