

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

ARRANGEMENT OF SECTIONS

National Film Authority

Section

1. Establishment of the National Film Authority
2. Objects of the Authority
3. Functions of the Authority
4. Governing body of the Authority
5. Tenure of office of members of the Board
6. Meetings of the Board
7. Disclosure of interest
8. Establishment of Committees
9. Allowances for members of the Board

Registration and Licensing of Premises

10. Prohibition to hold film exhibition without licence
11. Prohibition to operate film rental library and sales outlet without licence
12. Application for licence
13. Inspection of premises for the purpose of a licence
14. Issuance of licences
15. Registration with Copyright Administrator
16. Transfer of licence
17. Revocation or suspension of licence
18. Notice of operating under a licence
19. Classification of film
20. Pornographic films
21. Posters and advertisement of film exhibition
22. Exhibition of films
23. Attendance at film exhibition
24. Distribution and marketing
25. Exportation and importation of educational films
26. Power of entry
27. Offences and penalties
28. Forfeiture of equipment

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Film Development Fund

29. Film Development Fund
30. Objects of the Fund
31. Eligibility criteria
32. Financial commitment
33. Guidelines or criteria for application
34. Sources of money for the Fund

Administration, Financial and Miscellaneous provisions

35. Executive Secretary
36. Appointment of other staff
37. Accounts and audit
38. Annual report and other reports
39. Regulations
40. Interpretation
41. Repeal and saving

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

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ENTITLED

DEVELOPMENT AND CLASSIFICATION OF FILM
ACT, 2016

AN ACT to provide the legal framework for the production, regulation, nurturing and development of the Ghanaian film industry, and for the distribution, exhibition and marketing of films and for related matters.

PASSED by Parliament and assented to by the President:

National Film Authority

Establishment of National Film Authority

1. (1) There is established by this Act a body corporate with perpetual succession to be known as the National Film Authority.

(2) For the performance of its functions, the Authority may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is hindrance to the acquisition of property, the property may be acquired for the Authority under the State Lands Act, 1962, (Act 125) and the cost shall be borne by the Authority.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

The objects of the Authority

2. The objects of the Authority are to
 - (a) evolve a dynamic, economically self-sustaining and culturally conscious film industry in the country in the national interest;
 - (b) promote the creation of a conducive environment for the local production, distribution, exhibition and marketing of films;
 - (c) encourage the use of films to project the identity and image of the Republic and its people within and outside the country;
 - (d) promote and facilitate co-production between local and foreign producers; and
 - (e) regulate foreign participation in the Ghanaian film industry to ensure its benefit to Ghanaian film practitioners.

Functions of the Authority

3. To achieve the objects the Authority shall
 - (a) advise the Minister on matters affecting the film industry;
 - (b) facilitate the establishment of a circuit for the distribution and marketing of locally produced films throughout the country, Africa in general and the world at large;
 - (c) promote the use of films for public education on national integration, unity and cohesion and the mobilisation of the people for behavioural and attitudinal change to enhance national development;
 - (d) represent the country in its relations with other countries in matters related to the film industry;
 - (e) ensure
 - (i) the development and administration of a code of ethics for the film industry;
 - (ii) the establishment and maintenance of a National Film Archive;
 - (iii) the maintenance of optimal technical standards for productions;
 - (iv) compliance with the laws regulating copyright and disbursement of royalties in conjunction with the Copyright Administrator;

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

- (f)* conduct or commission research that is necessary on films and the film industry in the country and the world at large;
- (g)* set standards for training and accreditation of practitioners in the film industry;
- (h)* oversee the Film Development Fund;
- (i)* act as an arbiter in disputes related to the production, distribution, exhibition and marketing of films;
- (j)* promote the distribution, exhibition and marketing abroad of local films;
- (k)* establish a committee to pass and classify films before the films are distributed, exhibited or marketed;
- (l)* register and license
 - (i)* premises intended for the exhibition of films; and
 - (ii)* libraries and shops which sell or rent out films;
- (m)* determine the registration and licensing fees to be paid with the approval of Parliament;
- (n)* discourage the exhibition of films that expose children and other vulnerable groups to physical or moral hazards;
- (o)* ensure that films do not portray any race, nationality, ethnic, religious or vulnerable groups like persons with disability, the aged, women or children in a demeaning manner;
- (p)* ensure that films do not offend the sensibilities of any section of the society or arouse ethnic, social or religious misunderstanding or hostility;
- (q)* regulate the importation, distribution and marketing of foreign films;
- (r)* take steps to safeguard the interests of authors and rights owners in respect of the downloading and use of their films and related products on the internet; and
- (s)* exploit the potential of film as an awareness-building medium to encourage the creation of a common identity for Ghanaians, Africans and people of African descent, throughout the world by
 - (i)* ensuring that scripts and productions reflect the dignity and pride of African people and promote the positive aspects of their culture,

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

- (ii) inculcating in citizens and the African, the spirit of heroism in persons who can serve as role models for people in different areas of human endeavour,
- (iii) encouraging the use of local and African languages, customs, music, dance and other national symbols in film production,
- (iv) making training institutions link up with second cycle and tertiary institutions in film education,
- (v) training film critics, and
- (vi) supporting the making of films that take cognisance of our positive cultural practices and traditions.

Governing body

4. (1) The governing body of the Authority is a Board consisting of
- (a) a chairperson, who is a well-qualified film practitioner with notable experience and an expert in the Ghanaian film industry;
 - (b) one representative of the Copyright Office nominated by the Attorney-General and Minister for Justice;
 - (c) one representative from each of the following nominated by the Minister
 - (i) Ministry of Tourism, Culture and Creative Arts,
 - (ii) Ministry of Communications, and
 - (iii) National Film and Television Institute;
 - (d) one representative from each of the following nominated by the organisations
 - (i) Ghana Actors' Guild,
 - (ii) Film Producers' Association of Ghana,
 - (iii) Ghana Academy of Film and Television Arts,
 - (iv) Women in Film and Television,
 - (v) Collective Management Organisation of Audio Visual Rights Owners,
 - (vi) Film Managers Association of Ghana, and
 - (vii) Film Crew Association of Ghana;
 - (e) one representative nominated by the television stations; and
 - (f) the Executive Secretary.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.
- (3) The Board shall perform the functions of the Authority.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Tenure of office of members of the Board

5. (1) A member of the Board shall hold office for a period of not more than three years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Executive Secretary.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Executive Secretary of the Authority, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member on the written advice of a majority of the Board.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 7 (2),

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy nominated by the representative body, and in the case of the Ministry and Government appointees by their Heads of Department.

Meetings of the Board

6. (1) The Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is seven members of the Board or a greater number determined by the Board in respect of an important matter.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

Disclosure of interest

7. (1) A member of the Board who has an interest in a matter for consideration

(a) shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) shall not participate in the deliberations of the Board in respect of that matter.

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and that member

(a) fails to disclose that interest, or

(b) participates in the deliberations of the matter.

Establishment of committees

8. (1) The Board may establish committees consisting of members of the Board or non-members with identifiable expertise or both to perform a function.

(2) Without limiting subsection (1) the Board shall have a Film Classification Committee consisting of

(a) the Minister or a representative of the Minister as chairperson; and

(b) one representative from each of the following:

(i) the Information Services Department,

(ii) the National Commission on Culture,

(iii) National Film and Television Institute,

(iv) the Film Producers Association of Ghana,

(v) a senior officer of the Ghana Police Service, not below the rank of Assistant Superintendent of Police,

(vi) the Copyright Office,

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

- (vii) the Christian Council of Ghana,
- (viii) Federation of Muslim Councils,
- (ix) Traditional Religious Authorities,
- (x) the Ministry of Gender, Children and Social Protection, and
- (xi) one representative of the House of Chiefs or Association of Queen Mothers.

(4) The Committee may co-opt other individuals for the purpose of pre-viewing films for classification.

(5) Section 7 applies to members of committees of the Board.

Allowances for members of the Board

9. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Registration and Licensing of Premises

Prohibition to hold film exhibition without licence

10. A person shall not exhibit or allow to be exhibited on any premises a film to which persons are admitted on the payment of a fee or any other consideration, unless that person has registered with the Copyright Administrator and holds a licence for the purpose issued in respect of the premises by the Board.

Prohibition to operate film rental library and sales outlet without licence

11. A person shall not display for renting or rent out, sell or distribute any film unless that person holds a licence issued by the Authority for that purpose.

Application for licence

12. (1) A person who intends to obtain a licence
- (a) may apply in the prescribed form to the Board,
 - (b) shall submit the application through the Information Services Department in the district where the applicant intends to operate,
 - (c) shall possess an identification number allocated to the person under the Tax Payers Identification Numbering System Act, 2002 (Act 632), and
 - (d) shall pay the prescribed fee.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

(2) Where the application relates to a licence for a film library, the applicant shall also submit a list of the films intended to be held in the library to the Board through the Information Services Department.

(3) The Board may invite an applicant to provide additional information where the Board considers it necessary.

Inspection of premises for the purpose of a licence

13. (1) The Board shall appoint an inspection team to inspect the premises within four weeks after receipt of an application.

(2) The inspection team shall comprise representatives of each of the following agencies in the district where the premises are situated:

- (a) the Ghana Police Service;
- (b) the Environmental Health Office;
- (c) the Ghana National Fire Service;
- (d) the Electricity Company of Ghana;
- (e) the Information Services Department;
- (f) the Town and Country Planning Department; and
- (g) the Metropolitan, Municipal or District Assembly.

(3) The inspection team shall inspect the premises in respect of which an application for exhibition is made under this Act and shall satisfy itself as to the adequacy on the premises as regards

- (a) ventilation;
- (b) fire protection;
- (c) adequate sanitary facilities;
- (d) entrances and exits; and
- (e) other facilities concerned with health and safety.

(4) A person who provides service to the public shall ensure that there are facilities and equipment to make the service available and accessible to a person with disability.

(5) The inspection team shall submit its report including its recommendations in writing to the Board within fourteen working days after it has been appointed.

Issuance of licences

14. (1) The Board shall issue a licence to the applicant after conditions for the issue of a licence in respect of the premises have been complied with.

(2) Where an application relates to a licence for the exhibition of films and the inspection report recommends approval of the application, the Board shall issue the licence within seven working days after it has received the inspection report.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

(3) Where the application is for a licence to operate a film library, the licence shall be issued by the Board within fourteen working days after the application has been received.

(4) Where verification of the list of films submitted by the applicant is required, the licence shall be issued by the Board within twenty-eight working days after the application has been submitted.

(5) A licence is valid for a period of twelve months subject to renewal and may be subject to conditions that the Board may determine.

(6) The issue and renewal of a licence shall attract fees prescribed by the Board.

(7) Where the Board, for any reason, does not approve the grant of a licence, the Board shall inform the applicant of that decision within thirty working days after receipt of the application.

(8) Failure by the Board to inform the applicant of its decision on an application shall be construed to be a grant of a licence to the applicant.

(9) An applicant dissatisfied with the decision of the Board may petition the Minister for a review of the decision.

(10) Where an applicant is dissatisfied with the decision of the Minister in respect of a petition for a review, the applicant may apply to the High Court for a judicial review of the decision of the Minister.

Registration with Copyright Administrator

15. A person shall not be issued a licence to operate under this Act unless that person registers the content of the property of that person with the Copyright Administrator.

Transfer of licence

16. A licence issued under this Act shall not be transferred without the prior written consent of the Board.

Revocation or suspension of licence

17. The Board shall revoke or suspend a licence if satisfied that
- (a) the holder of the licence has contravened or failed to comply with the conditions of the licence;
 - (b) the holder of the licence has been convicted of an offence under this Act or under the Copyright Act, 2005 (Act 690);
or
 - (c) it is in the public interest to do so.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Notice of operating under a licence

18. (1) The licensed operator of a cinema theatre shall display in a conspicuous place on the premises and in legible and bold writing a notice that it is a licensed facility.

(2) The notice shall state the hours of operation and the fees chargeable for entry.

(3) A right owner, licensee or assignee who exhibits a film or operates a cinema theatre shall advertise the film.

(4) The advertisement of the film shall state the classification of the film with the appropriate warning.

(5) The licensed operator of a cinema theatre shall display publicity materials in relation to a film in front of the theatre or premises where the film is to be exhibited.

Classification of film

19. (1) The Film Classification Committee shall preview and classify any feature film, documentary and advert that is intended for exhibition.

(2) A right owner, licensee or assignee who desires to exhibit a film shall submit the film to the Film Classification Committee for examination and classification at least thirty working days before the intended exhibition.

(3) The Film Classification Committee shall within fourteen working days after receipt of a film, preview it and determine whether it is suitable for exhibition.

(4) Where the Film Classification Committee determines that a film is suitable for exhibition, the Committee shall classify the film as follows:

- (a) U - Universal for all categories of persons;
- (b) PG - to be watched under Parental Guidance;
- (c) 12 - for persons of twelve years and above;
- (d) 15 - for persons of fifteen years and above;
- (e) 18 - for persons of eighteen years and above; or
- (f) NS - not suitable for Television.

(5) Where the Film Classification Committee determines in a preview that parts of a film are not suitable for exhibition on television

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

and in movies, it shall recommend that the Board direct the person who submitted the film to excise those parts of the film it considers unsuitable for exhibition and re-submit the film for classification.

(6) Where the Film Classification Committee determines that a film as a whole is not suitable for exhibition, it may recommend that the Board refuse to pass the film for exhibition and classify it as "NS" meaning "not suitable".

(7) The Film Classification Committee on the review and classification of a film may recommend that the Board fix to the film or part of the film, an identification mark according to the decision of the Film Classification Committee as provided in subsections (4), (5) and (6) and the Board shall issue a certificate of the classification to the person who submitted the film.

(8) The Board shall inform the person who submitted the film for preview and classification of a decision through the Film Classification Committee within twenty-one working days after the submission of the film.

(9) Free-on-air television stations shall set up in-house committees to preview films intended for exhibition in accordance with guidelines issued by the Board.

Pornographic films

20. The Board shall not approve for exhibition, a film which it considers to be pornographic.

Posters and advertisement of film exhibition

21. (1) The Film Classification Committee shall recommend a poster intended to be used for the advertisement of a film exhibition to the Board for approval.

(2) The recommendation for approval to the Board shall be before the poster is displayed.

(3) A person who intends to display a poster for the purpose of advertising a film exhibition shall submit the poster at the same time that the film to which it relates is submitted to the Film Classification Committee for preview and classification.

(4) The Board shall within twenty-one days after it has received a poster from the Film Classification Committee, approve or disapprove the poster and inform the person who submitted the poster accordingly.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

(5) A person shall not display a poster unless the poster has been approved by the Board or Film Classification Committee for the purpose of advertising a film exhibition.

(6) Where a poster has been approved by the Board a person shall not display that poster unless that poster has clearly and boldly printed or embossed on it the classification mark recommended by the Film Classification Committee for the film to which the poster relates.

(7) A poster intended for the advertisement of a film exhibition shall only be displayed at places recommended by the Film Classification Committee and as prescribed by the Board.

(8) The Committee shall make the rules for classification known to the public.

Exhibition of films

22. (1) A person shall not exhibit or cause to be exhibited a film unless the film has been passed and classified by the Board.

(2) At a film exhibition, the exhibitor shall at the beginning of the film show the classification symbol box and consumer advice depicting the certificate of classification granted by the Board, before showing the main credit title of the film.

(3) An exhibitor shall only sell tickets under the supervision of a representative of the Ghana Revenue Authority.

Attendance at film exhibitions

23. (1) A person shall not attend a film exhibition which that person is not qualified to attend by virtue of the classification of the film under section 19 (4).

(2) A person who exhibits a film under a licence issued under this Act, shall not permit another person who is disqualified by virtue of classification of film to enter or remain on the premises where the exhibition is taking place.

(3) Where the exhibitor of a film is of the opinion that a person who wishes to enter or remain on the premises or theatre for the exhibition is disqualified by virtue of the classification, the exhibitor shall refund the entrance fee paid by that person and send that person away from the premises or theatre.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Distribution and marketing

24. (1) A person shall not distribute or market a film unless that person has a licence issued by the Board.

(2) The distribution and marketing of films is reserved for citizens of Ghana.

(3) A company registered in this country to distribute and market films shall have the majority of its shares owned and controlled by citizens of Ghana.

(4) The Board may establish a network to co-ordinate the distribution and marketing of locally produced films throughout the country, Africa and the world at large.

Exportation and importation of educational films

25. (1) The Board may permit a person to import a foreign film or export a film produced in Ghana on written application that the film is an educational film.

(2) Despite subsection (1), an individual may also export a locally produced film or import a foreign film into the country whenever an application is approved by the Board.

(3) In furtherance of subsection (1) or (2), the Board may certify the film if satisfied with the status of the film and request an applicant to pay the prescribed fee.

Power of entry

26. (1) An authorised officer of the Authority may enter premises whether licensed or not at any time

(a) to ascertain whether the provisions of this Act have been or are being complied with, or

(b) if the officer has reason to believe that an exhibition is being or is about to be held in the premises without a licence.

(2) An authorised officer shall produce to the occupier of the premises or theatre a personal identification card if so required and cause the arrest of the offender.

Offences and penalties

27. A person who

(a) exhibits a film on unlicensed premises;

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

- (b) rents out a film contrary to section 11;
 - (c) obstructs a person lawfully authorised under section 13, or 26 from entering and inspecting the premises or theatre;
 - (d) is a distributor or exhibitor and fails to submit a film to the Board for preview and classification, contrary to section 19;
 - (e) fails to display
 - (i) a notice on the licensed premises or theatre, and
 - (ii) the publicity materials in front of the theatre or premises
- contrary to section 21;
- (f) exhibits a film during the hours prohibited by the Board;
 - (g) admits a person declared by this Act to be ineligible for admission on licensed premises or into a theatre; or
 - (h) does any act contrary to this Act,

commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units, or imprisonment for a term of not more than three years or to both and in the case of a continuing offence to a further fine of one hundred penalty units for each day that the prohibited act continues.

Forfeiture of equipment

28. (1) Where a person

- (a) exhibits a film which has not been passed and classified by the Board for exhibition, or
- (b) exhibits a pornographic film

the Board shall seize the film and the equipment used for the exhibition without limiting criminal proceedings that may be instituted against the exhibitor and apply to the High Court for forfeiture to the State of both the film and the equipment.

(2) A seizure of the film and equipment is not a bar to any criminal proceedings that may be instituted against the exhibitor.

Film Development Fund

Film Development Fund

29. (1) There is established by this Act a Fund to be known as the Film Development Fund.

(2) The moneys for the Fund may be applied to fund viable enterprises that are mostly in their primary stages of development, but in some limited cases, in advanced stages of development.

(3) The Fund shall be managed by the Board.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Objects of the Fund

30. (1) The objects of the Fund are to provide financial support for
- (a) the development and production of
 - (i) full-length feature films which are the central focus of the Fund,
 - (ii) short and medium-length feature films,
 - (iii) creative documentaries and animated films for public education, on attitudinal change,
 - (b) television productions, television genres including drama, animated serials, sitcoms, soaps and comedy designed to facilitate attitude and behaviour change of the citizenry;
 - (c) cinema theatre development in the regional and district capitals;
 - (d) the promotion of the release of feature films in terms of publicity materials and on radio and television advertisement; and
 - (e) support the training of professionals for the industry in both public and private training institutions.
- (2) The administrative and any other expenses related to the management of the Fund are charged to the Fund.

Eligibility criteria

31. (1) A person is not eligible to benefit from the Fund unless that person is
- (a) a cinema theatre developer;
 - (b) a film maker, producer, distributor, marketer or television practitioner;
 - (c) a television production company; or
 - (d) a film production company.
- (2) In addition, a person is not eligible to benefit from the Fund unless that person
- (a) is a member of an identifiable professional group in the industry; and
 - (b) registered under the Ghana Revenue Authority Act, 2009 (Act 791).

Financial commitment

32. The Board shall approve up to sixty percent of the total budget estimates submitted by eligible applicants for financial support from the Fund.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Guidelines or criteria for application

33. Guidelines and criteria for application to the Fund shall be provided by the Board.

Sources of money for the Fund

34. The sources of money for the Fund include:

- (a) grants and loans;
- (b) donations;
- (c) periodic contributions to be agreed by the Board from individual film production houses;
- (d) charges on services rendered by the Authority;
- (e) a percentage of rental fees paid by members of the industry for production or exhibition in national facilities; and
- (f) funds from the organisation of special events and other activities organised by the Authority.

Administration, Financial and Miscellaneous Provisions

Executive Secretary

35. (1) The President shall in accordance with article 195 of the Constitution appoint an Executive Secretary who shall be responsible for the day to day administration of the Authority.

(2) The Executive Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Executive Secretary is the secretary to the Board.

Appointment of other staff

36. (1) The Board shall appoint other staff of the Authority that are necessary for the proper and effective performance of the functions of the Authority.

(2) Other public officers may be transferred or seconded to the Authority or may otherwise give assistance to it.

(3) The Authority may engage the services of advisers on the recommendations of the Board.

Accounts and audit

37. (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall within three months after the end of the financial year submit the accounts of the Authority to the Auditor-General for audit.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Authority shall be the same as the financial year of the Government.

Annual report and other reports

38. (1) The Board shall within one month after the receipt of the audit report submit an annual report to the Minister covering the activities and the operations of the Authority for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Regulations

39. (1) The Minister may on the advice of the Board, by legislative instrument, make Regulations to prescribe generally for the effective implementation of this Act.

(2) Without limiting the scope of subsection (1), Regulations may provide for

- (a) the safety precautions to be observed on licensed premises or a theatre;
- (b) the storage of films, motion pictures and other related audio visual materials; and
- (c) making appropriate regulations for foreigners seeking to shoot films in the country.

(3) A person who commits an offence under the Regulations is liable on summary conviction to a fine of not more than five thousand penalty units.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Interpretation

40. In this Act, unless the context otherwise requires
- “animated film” means cartoon;
 - “adult” means a person of eighteen years and above;
 - “authorised officer” means a person authorised by the Board in accordance with this Act or Regulations to exercise functions under this Act;
 - “Board” means the governing body of the Authority;
 - “cinema theatre” means building or outdoor area for showing films;
 - “Copyright Administrator” means the officer in charge of the Copyright Office;
 - “Authority” means the National Film Authority;
 - “film exhibition” includes a public display or showing of films and television broadcast;
 - “film” includes a recording on any medium from which a motion picture may be produced and audio visual products;
 - “feature film” means a film of some length on a specific subject;
 - “filmlet” means short motion picture;
 - “film library” means a place where films are kept for hire, sale, archival and preservation purposes;
 - “Fund” means the Film Development Fund established under section 29;
 - “Minister” means the Minister responsible for Tourism, Culture and Creative Arts;
 - “Ministry” means the Ministry of Tourism, Culture and Creative Arts;
 - “premises” includes a theatre, cinema house, video centre, building, land, caravan, tent, or other structure to which persons are admitted for a film exhibition;
 - “occupier” includes the person managing or receiving rent from the premises concerned;
 - “publicity materials” includes an advert, feature article, banner, handout, brochure, poster, billboard, picture commentary, radio broadcast and television programme which show portions of film;

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

“right owner” means a person in whom a copyright is vested;

“sitcom” means a situation comedy;

“special event”

(a) includes a procession, parade, carnival, street dance, celebration of traditional custom, outdoorings of traditional ruler, demonstration, public meeting and similar event but,

(b) excludes a religious meeting, charitable, social or sporting event, and any lawful public entertainment or meeting;

“television genres” mean kind of style typical with television; and

“television practitioner” means a person who works in or with television production.

Repeal and savings

41. (1) The Cinematography Act, 1961 (Act 76) and the Cinematography Amendment Decree, 1975 (NRCD 350) are hereby repealed.

(2) Despite the repeal under subsection (1), any Regulations made and any licence or certificate issued under the repealed Acts and in force immediately before the commencement of this Act, shall continue in force as if made or issued under the corresponding provisions of this Act until revoked, suspended, cancelled or otherwise dealt with under this Act.

Date of *Gazette* notification: 22nd January, 2016.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

MEMORANDUM

Film making in Ghana has been rather erratic. It showed some promise in the early post-independence period with the establishment of the Ghana Film Industry Corporation which was meant to spearhead what was envisioned to be a vibrant Film Industry in the country. The Ghana Film Industry Corporation was established to be a centre for research for filmmakers to obtain the right and quality information and also to archive all films and preserve them for posterity reasons. The Film Industry was established to contribute thirty percent of the country's gross domestic product. The State, through the Ghana Film Industry Corporation, funded the production of a number of films. Later some private film producers, both Ghanaians and foreigners, also came along and over time, Ghana became a preferred location for co-productions between Ghanaian and foreign film producers. Deteriorating economic and political conditions in Ghana in the 1970s, however led to a downward trend in the development of film making in Ghana.

With the sale of the Ghana Film Industry Corporation to the Malaysian investors in 1996 in line with the government policy of privatization of State Corporations and companies and the conversion of the many cinema exhibition halls dotted over the country into churches or for other uses, the film industry in Ghana suffered a serious setback. Due to technological changes, young Ghanaian filmmakers employed simple VHS technology, which formed the genesis of the current trend of the use of video cameras internationally for film making. The general lack of appropriate infrastructure such as well-equipped modern studios, exhibition theatres, adequate funding and capital and a legal framework among other things have led to a degeneration in the quality and quantity of film production in Ghana.

The potential benefits to be derived from a vibrant film industry are immense. It is a major tool for job creation especially for the youth in areas such as writing, performing arts, set designing, visual arts, costume designing and production, lighting, cinematography, editing and sound technology among others. Its ability to contribute to economic development for individuals, society and the nation at large through individual incomes, revenues and taxes cannot be over emphasised.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Films are used to affirm, enrich and preserve the socio-cultural beliefs of the people. It is a major tool for contributing to national cohesion and for the safeguarding and promotion of the moral, ethical and aesthetic values of the society. Films are also viable for the projection of the image of the country on the global stage and for the promotion of tourism. It is however imperative that any motion picture appearing on the screens should be educative.

The purpose of this Bill is to revise the Cinematography Act, 1961 (Act 76) to provide for the machinery to deal with the production, distribution, exhibition and marketing of films and also to strengthen regulatory policies or rules.

The Ghana Film Bill seeks to provide the legal framework for the development of a congenial environment in Ghana as a major film base for local productions and to also make Ghana a preferred location for international as well as co-productions between Ghanaian and foreign producers. The Ghanaian film industry is to feed Ghanaian television with Ghanaian movies that are educative, informative and also portray Ghanaian culture.

Ghana is abundant in creativity and talent. The film industry could become a major contributor to national development with adequate state support and encouragement of the private sector, such as the banks and other financial institutions, to direct investment to the sector, as is done in other sectors. The critical challenge, however, is to ensure that the industry is orderly and regulated, as is the case in other professional disciplines and occupations. This would eliminate the unsavoury, distasteful and unprofessional conduct and practices now prevalent in the industry and which has negatively characterised Ghanaian films as sub-standard.

The Act now in force, Act 76 was enacted over fifty two years ago. This was at a time when the exhibition of films was not very widespread and technology was not advanced. With the radical global changes in

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

the nature of the film industry worldwide; with improvement in the technology of film production and exhibition through the use of the computer and the internet, it has become necessary to re-enact a law to cater for the appropriate development of the industry in Ghana. This is also to regulate its appropriate use and to ensure that it contributes positively to socio-cultural and overall national development.

Act 76 has also been found to be grossly inadequate to control the spate of indecent, pornographic, violent, morally and culturally unacceptable films being exhibited on our screens, in public cinemas, video theatres and on television. This has generated negative public reaction to the industry. It is a well known fact that our society is vulnerable to many vices that may negatively affect the youth and undermine the cultural identity of the nation. It is therefore necessary in the public interest to protect the people of this country from exposure to films that may exacerbate social vices.

The Bill establishes the National Film Authority as a corporate body with perpetual succession and provides for its functions, registration and the licensing of premises.

The Bill establishes the Film Development Fund and has administrative, financial and miscellaneous provisions.

Clause 1 is on the establishment of the National Film Authority. The objects of the Authority are in *clause 2*. The objects of the Authority are principally to evolve a dynamic, economically self-sustaining and culturally-conscious film industry in the country. The Authority is also to promote the use of films for national development, integration and cohesion and protect the country's image and identity. *Clause 3* deals with the functions of the Authority. These include, to advise the Minister on matters affecting the film industry, represent the country in its relations with other countries in matters related to the film industry and ensure the development and administration of a code of ethics for the film industry. It is also to conduct or commission research on films and the film

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

industry and set standards for the training and accreditation of practitioners in the film industry, oversee the Film Development Fund and ensure the establishment and maintenance of national film archives.

It is also to act as an arbiter in disputes, related to the production, distribution, exhibition and marketing of films and is to ensure the maintenance of optimal technical standards for productions and promote the distribution, exhibition and marketing of local films abroad, among others.

Clause 4 spells out the membership of the governing body of the Authority, which is a Board of specified persons from the film industry and other government and private sector organisations. Members of the Board are appointed by the President in accordance with article 70 of the Constitution.

Clauses 5 to 7 outline the standard provisions related to the Board. *Clauses 8 and 9* relate to the Film Classification Committee and the payment of allowances to members of the Board as well as members of committees of the Board. *Clause 10* prohibits the exhibition of films without a licence. *Clauses 11 and 12* deal with the prohibition to operate a film rental library and sales outlet without a licence and prohibits the screening of films, the operation of a film library and the sale of films without a licence. The Bill enjoins applicants to apply for a licence to exhibit films and stipulates conditions to be met before a licence is issued by the Board, *clause 12*. The inspection of premises for the purpose of a licence is provided for under *clause 13*. The purpose of the inspection is to ensure that a person who provides a service to the public, has in place the necessary facilities and equipment that will make the service available and also accessible to a person with a disability. The conditions for the issue of a licence under the Bill includes regulations and byelaws in respect of the safety of premises. An applicant who is dissatisfied with the decision of the Board on the issue of a licence or the decision of the Minister may apply to the High Court for a review, *clause 14*. *Clause 15* enjoins an applicant to register with the Copyright Administrator before the applicant is issued with a licence to operate.

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

Under *clauses* 16 and 17, the transfer of a licence is prohibited and the Board may revoke a licence if the Board is satisfied that the holder of the licence has contravened or failed to comply with the conditions of the licence, or the holder has been convicted of an offence under this Act.

Clause 18 requires the operator of a theatre to display the licence to operate in a conspicuous place on the premises.

Under *clause* 19, the Film Classification Committee established in *clause* 8 classifies films either as 'U' Universal; suitable for everyone; "PG" to be watched under parental guidance; "12" suitable for persons aged 12 years and over; "15" suitable for persons aged 15 years and over; "18" suitable for persons aged 18 years and above and "NS" meaning "not suitable". *Clause* 20 prohibits the Board from approving the exhibition of pornographic films.

Under *clause* 21, the Film Classification Committee has the sole responsibility to approve the content of a film, a poster or inlay card intended for the advertisement of a film before it is displayed after a reasonable period of twenty-one working days. The hours for the exhibition of a film are to be determined by the Board in consultation with the Classification Committee, *clause* 22. *Clause* 23 provides for attendance at film exhibitions. A person is not to attend a film exhibition which that person is not qualified to attend by virtue of the classification of the film. The distribution and marketing of a film is reserved for Ghanaian citizens, *clause* 24. The Board may allow the importation and exportation of educational films upon payment of the prescribed fee, *clause* 25.

Clause 26 enables an authorised officer of the Authority to enter a premises at anytime, where it is believed the provisions of this Bill are not being complied with, or the officer has reason to believe that an exhibition is about to be held without a licence.

Offences are provided in *clause* 27 of the Bill. The minimum penalty is a fine of one thousand penalty units or a term of imprisonment of not more than three years or both. Where a person exhibits a

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

film which has not been passed and classified by the Board or exhibits a pornographic film, the Board shall seize the film and the equipment used for the exhibition and apply to the Court for forfeiture to the State, without limiting criminal proceedings that may be instituted against the exhibitor, *clause 28*.

Clause 29 establishes a Film Development Fund, to provide financial support for films that are the central focus of the Fund. It is also to provide financial support for short and medium length feature films, creative documentaries and animated films, to facilitate behaviour and attitudinal change of the citizenry. Furthermore, the Fund is to encourage financial support to promote the release of feature films, in terms of publicity materials and radio and television adverts, *clause 30*.

Eligibility criteria, financial commitment, guidelines or criteria for application and sources of money for the Film Development Fund are provided for in *clauses 31, 32, 33 and 34* respectively. The Film Development Fund is to be managed by the Authority.

The final group of clauses deals with administration and ancillary matters. The President in accordance with article 195 of the Constitution is to appoint an Executive Secretary who is responsible for the day-to-day administration of the Fund. Provision is made for the appointment of other staff, *clause 36*. Standard provisions related to the finances of the Authority are in *clauses 37 and 38*.

Under *clause 39*, the Minister is empowered to make Regulations and in particular on the safety precautions in licensed premises or theatres and conditions under which motion pictures and other related audio-visual materials used in connection with films are stored.

The interpretation clause is *clause 40* and provision for repeal and savings is in *clause 41*. Despite the repeal of Act 76, Regulations made and a licence or certificate issued under the repealed Act and in force

DEVELOPMENT AND CLASSIFICATION OF FILM BILL, 2016

immediately before the commencement of this Bill are to continue in force as if made or issued under Act 76 until revoked, suspended, cancelled or otherwise dealt with in this Bill.

HON. ELIZABETH OFOSU-ADJARE (MRS.)
Minister for Tourism, Culture and Creative Arts

Date: 20th November, 2015.