Film Licensed Investment Company Act 1998

Act No. 107 of 1998 as amended

[Note: This Act was repealed by Act No. 58 of 2005 on 27 June 2005]

This compilation was prepared on 30 June 2005
taking into account amendments up to Act No. 58 of 2005

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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Notes 35
An Act to establish the film licensed investment company scheme, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Film Licensed Investment Company Act 1998.

2 Commencement [See Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Overview

(1) This Act sets up a pilot scheme. The purpose of the pilot scheme is to encourage investment in qualifying Australian films.

(2) Under the scheme, a company may apply for a concessional capital licence. The shareholders in the licensed companies (FLICs) are able to obtain a 100% tax deduction for money invested in the companies if that money is then invested in qualifying Australian films.

(3) The scheme operates during the period commencing on the day that the Minister grants the first licence (which will occur during the 1998-99 financial year) and ending on 30 June 2003. During the licence period, up to $40 million will be able to be raised for investment in qualifying Australian films.

Note: For qualifying Australian film see subsection 6(1).

4 Objects of the pilot scheme

The objects of the scheme are as follows:
Section 5

(a) to encourage the production of qualifying Australian films which portray Australian perspectives and Australia’s cultural diversity;

(b) to encourage the production of qualifying Australian films which are of a high standard and are likely to be commercially successful;

(c) to support and promote the ongoing development of the Australian film industry through encouraging the use of Australia’s creative resources and industry expertise;

(d) to ensure that the level of the Commonwealth’s assistance to the Australian film industry is quantifiable, accountable, and transparent.

5 Extraterritorial operation

Subparagraph 25(a)(v), section 27, Part 3 and the Schedule extend to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

6 Definitions

(1) In this Act, unless the contrary intention appears:

allowable deduction percentage has the meaning given in section 37.

Application rules means the rules made by the Minister under section 9.

bank includes but is not limited to a body corporate that holds an authority under subsection 9(3) of the Banking Act 1959.

concessional capital means money paid to a FLIC by a person for the issue, during the FLIC’s licence period, of shares to that person.

concessional capital licence means a licence granted by the Minister under section 16.

film licensed investment company means a company that has been granted a concessional capital licence under section 16 (whether or not the licence has ceased to be in force).

FLIC means a film licensed investment company.
**Part 1**

Section 7

**invested in a film** has the meaning given in subsection (2).

**licence period**, in relation to a FLIC, means the period commencing on the day on which the FLIC was granted a concessional capital licence and ending:

(a) if the licence is revoked—on the day specified by the Minister under section 33 as the day on which it is revoked; or

(b) otherwise—on 30 June 2000.

**non-concessional capital** means capital raised by the FLIC after the end of the licence period.

**period of the scheme** means the period commencing on the day the Minister grants the first licence under the scheme and ending on 30 June 2003.

**provisionally certified film** means a film that has been issued with a provisional certificate under section 124ZAB of the *Income Tax Assessment Act 1936*.

**qualifying Australian film** has the same meaning as it has in Division 10BA of Part III of the *Income Tax Assessment Act 1936*.

**Secretary** means the Secretary to the Department.

**Selection Advisory Panel** means a body established under the Application rules to advise the Minister in respect of applications for a concessional capital licence.

(2) For the purposes of this Act, money is **invested in a film** if it is:

(a) spent by a FLIC as a contribution to the cost of producing the film for the purpose of becoming the first owner, or one of the first owners, of the copyright in the film when the copyright comes into existence; or

(b) if the FLIC has contributed to the cost of production of a film for the purpose set out in paragraph (a)—spent by a FLIC as a contribution to the cost of marketing and distributing the film.

7 Application of the Criminal Code

Chapter 2 of the *Criminal Code* applies to all offences against this Act.
Part 2—The pilot scheme

Division 1—Overview

8 Overview of Part

(1) This Part sets out the pilot scheme. Division 2 provides for the Minister to make rules that apply to the application process and to determine criteria and procedures for making decisions as to the grant of licences.

(2) Division 3 provides for the application process.

(3) Under Division 4, the Minister:

(a) determines which applicants to license as FLICs and how much of the $40 million in concessional capital to allocate to each FLIC to raise during the licence period; and

(b) grants the licences.

(4) The conditions that attach to the scheme are set out in Division 6 (although section 22 provides for the Minister to determine further conditions of the scheme in a disallowable instrument).

(5) Division 7 sets out how a breach of a condition is to be dealt with.

(6) Division 8 deals with information and reporting requirements.

(7) Division 9 deals with a purported transfer of a licence and the allowable deduction percentage.
Division 2—Minister to make certain determinations concerning the application process and decision-making criteria

9 Application rules

The Minister must, in writing, determine rules concerning the application process under the scheme. The rules may provide for all or any of the following matters:

(a) the method of calling for applications;
(b) the closing date for a round of applications;
(c) the form of the application and the documentation that must accompany an application;
(d) the establishing of a Selection Advisory Panel to advise the Minister in respect of the applications including the membership of the panel and tenure of panel members;
(e) the rules governing the operation of the Selection Advisory Panel;
(f) any other matter relevant to the application process under the scheme.

Note: A determination is a disallowable instrument (see section 43).

10 Minister must determine decision-making criteria and procedures

(1) The Minister must, in writing, determine criteria to be applied and procedures to be complied with by the Minister in deciding:

(a) whether to grant a concessional capital licence under the scheme; and
(b) how many licences to grant under the scheme; and
(c) how much concessional capital to allocate to each FLIC to raise during the licence period.

Note: A determination is a disallowable instrument (see section 43).

(2) The Minister must also determine the weight to be given to each criterion.
Division 3—The application process

11 Rounds of applications

(1) The Minister may call for applications for a concessional capital licence under the scheme from interested persons.

(2) If, in the first round of applications, the Minister does not allocate all of the concessional capital specified in subsection 14(2), the Minister may call for one further round of applications.

12 Applications

(1) A company may apply for a licence to raise concessional capital under the scheme.

(2) The application must:
   (a) be in the form specified in the Application rules; and
   (b) provide such information as is required by the Application rules; and
   (c) be given to the Minister.

13 Further information

(1) The Minister may ask the applicant, in writing, to give to the Minister, within the period specified in the request, further information about the application.

(2) The Minister may refuse to consider the application unless the applicant provides the information within the period specified in the request.
Division 4—Grant of licence

14 Minister to determine number of licences to be granted and amount of concessional capital FLICs are licensed to raise

(1) After receiving applications in respect of the scheme, the Minister must determine:
   (a) how many licences to grant under the scheme; and
   (b) the amount of concessional capital that each FLIC will be allocated to raise during the licence period.

   Note: Section 10 requires the Minister to comply with criteria and procedures determined under that section when making a determination under this section.

(2) The total amount of concessional capital allocated by the Minister to FLICs to raise on or before 30 June 2000 must not exceed $40 million.

(3) The amount allocated to a FLIC under paragraph (1)(b) does not have to be the amount applied for by the FLIC in its application for a licence.

(4) The total amount of concessional capital allocated by the Minister to FLICs to raise on or before 30 June 1999 must not exceed $20 million.

(5) In respect of each FLIC, the Minister must determine the amount of concessional capital that the FLIC is licensed to raise on or before 30 June 1999.

(6) In an application round, the Minister may decide:
   (a) not to grant any licences; and
   (b) not to allocate all of the concessional capital available to be allocated.

(7) A determination of the Minister must be in writing.

15 Conditions on grant of licence

A company may only be granted a concessional capital licence under the scheme if all of the following conditions are met:
Part 2  The pilot scheme
Division 4  Grant of licence

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(a) the company is registered under the Corporations Act 2001;
(b) the company has not commenced business or exercised any borrowing power;
(c) the company’s central management and control is ordinarily exercised in a place in Australia;
(d) the chair of the company (however described) and all of the directors of the company are Australian citizens;
(e) the company’s constitution provides that all of the shares in the company are to be fully paid and of the same class.

16 Grant of concessional capital licence

(1) Subject to this Part, the Minister may grant a company a licence to raise concessional capital.

(2) A company that has been granted a licence is a film licensed investment company (FLIC).

17 Form of licence

(1) A licence under the scheme must:
   (a) be in writing; and
   (b) state that the FLIC is licensed to raise the amount of concessional capital determined by the Minister under paragraph 14(1)(b) in respect of the company during the licence period; and
   (c) state that the FLIC is licensed to raise the amount of concessional capital determined by the Minister under subsection 14(5) in respect of the company during the period commencing on the day the FLIC’s licence is granted and ending on 30 June 1999; and
   (d) state the conditions of the scheme to which a FLIC is subject; and
   (e) state that the conditions of the scheme determined by the Minister under section 22 may be altered at any time after consultation with the FLICs.

8 Film Licensed Investment Company Act 1998
18 Minister is to have regard to recommendations of Selection Advisory Panel

The Minister must have regard to the recommendations of the Selection Advisory Panel in deciding:

(a) whether to grant a licence under the scheme; and

(b) the amount of concessional capital to be allocated to each FLIC to raise during the licence period.

Note: For Selection Advisory Panel see subsection 6(1).

19 Notice of refusal to grant licence

(1) If the Minister refuses to grant an application for a concessional capital licence, the Minister must notify the applicant in writing of the refusal.

(2) The notice must include the reasons for the decision.
Part 2  The pilot scheme
Division 5  Term of licence

Section 20

Division 5—Term of licence

20  Term of licence

A concessional capital licence comes into force when granted and remains in force until:

(a) if it is revoked—the day specified by the Minister under section 33 as the day on which it is revoked; or

(b) otherwise—30 June 2000.
Division 6—Conditions of scheme

21 General

(1) The conditions of the scheme may be found in:
   (a) sections 23 to 28; and
   (b) a determination made under section 22.

(2) The conditions apply for the period of the scheme.

Note: The scheme ends on 30 June 2003.

22 Conditions in a disallowable instrument

(1) The Minister may determine in writing conditions that are to apply to all FLICs under the scheme.

Note: A determination is a disallowable instrument (see section 43).

(2) The Minister may revoke or vary these conditions (including adding new conditions) at any time after consulting each of the FLICs.

23 Fundraising conditions

A FLIC must comply with the following conditions as to raising capital:

(a) the FLIC must not raise more than the amount of concessional capital it is licensed to raise (whether in respect of the licence period or the period commencing on the day on which the FLIC’s licence is granted and ending on 30 June 1999);

(b) the FLIC must not issue debentures or convertible notes;

(c) the FLIC must not borrow money during the licence period except during the 1998-99 financial year and then only for the short-term purpose of meeting the costs of its administrative expenses;

(d) the FLIC may raise non-concessional capital but not before 1 July 2000.
Section 24

24 Investment conditions

A FLIC must comply with the following conditions as to investment of capital raised under the scheme:

(a) the FLIC must invest in provisionally certified films an amount equal to the amount of concessional capital raised by the FLIC less the allowable deduction percentage;

(b) the amount must be so invested on or before 30 June 2002;

(c) if the FLIC invests concessional capital in a film, the FLIC must not also invest non-concessional capital in that film.

Note 1: The Minister determines an allowable deduction percentage under section 37.

Note 2: For provisionally certified film see subsection 6(1).

25 Film conditions

A FLIC must comply with the following conditions in respect of a film it invests in under the scheme:

(a) the film must not be developed or produced by a person who is:

(i) the holder of a licence allocated by the Australian Broadcasting Authority under the Broadcasting Services Act 1992; or

(ii) the provider of a broadcasting service in accordance with a class licence determined by the Australian Broadcasting Authority under section 117 of the Broadcasting Services Act 1992; or

(iii) the Australian Broadcasting Corporation; or

(iv) the Special Broadcasting Service; or

(v) an associate of one of the persons mentioned in subparagraph (i) or (ii); and

(b) the film must receive a final certificate under section 124ZAC of the Income Tax Assessment Act 1936 on or before 30 April 2003.

Note: For associate (and for other definitions relevant to the definition of associate) see Schedule 1.
26 Preconditions and conditions in the Minister’s determination under section 22

A FLIC must:
(a) continue to comply with the conditions on grant set out in paragraphs 15 (a), (c), (d) and (e); and
(b) comply with the conditions set out in a determination made under section 22.

27 Ownership condition

(1) A FLIC must not have an unacceptable level of foreign ownership or an unacceptable level of individual ownership.

(2) For the purposes of this Act, a FLIC has an unacceptable level of foreign ownership if a group of foreign persons hold, in total, a particular stake in the FLIC of 33% or more.

(3) For the purposes of this Act, a FLIC has an unacceptable level of individual ownership if a person holds a particular stake in the FLIC of 33% or more.

(4) Schedule 1 sets out definitions of expressions used in this section.

Note 1: The limits on the ownership of a FLIC relate to a person’s stake in the FLIC.

Note 2: For stake see Schedule 1.

28 Other conditions

A FLIC must comply with the following conditions:
(a) the FLIC must not purport to transfer its licence to another person;
(b) the FLIC must comply with the reporting requirements set out in the determination made under section 34;
(c) the FLIC must notify each shareholder in writing of any decision taken by the Minister in relation to the FLIC under section 32 in respect of a breach of a condition;
(d) the FLIC must maintain a separate bank account for its concessional capital.

Note: For bank see subsection 6(1).
Division 7—Breach of conditions

29 Minister to notify FLIC of suspected breach of conditions

If the Minister is of the opinion that there may be grounds for deciding that a FLIC is in breach of a condition of the scheme, the Minister must:

(a) give the FLIC written notice of the Minister’s opinion specifying the reasons for the opinion; and

(b) invite the FLIC to make a written submission to the Minister within 28 days.

Note: The conditions of the scheme may be found in sections 23 to 28 and a determination made under section 22.

30 Minister may seek information

The Minister may ask the applicant, in writing, to give to the Minister, within the period specified in the request, information for the purposes of making a decision under section 32.

31 Minister must consider FLIC’s submission and information

In making a decision under section 32 in respect of a FLIC, the Minister must have regard to the matters raised in the FLIC’s submission (if any) and any information received by the Minister under section 30.

32 Powers of the Minister in relation to breaches of conditions

(1) If the Minister is satisfied that a FLIC has breached a condition of the scheme the Minister may decide:

(a) not to take any action in respect of the breach (other than to take the breach into account in determining a course of action in respect of any further breaches of conditions by the FLIC); or

(b) to take action under the following subsections.

Note: A decision of the Minister under this section is a reviewable decision (see section 42).
(2) The Minister may take any or all of the following actions in respect of the breach:
   (a) give the FLIC written notice of a day by which the breach of condition must be remedied;
   (b) if the breach occurred during the licence period—revoke the licence;
   (c) decide to remove the concessional status of shares that were issued to shareholders by the FLIC during the licence period.

Note: Section 375-865 of the *Income Tax Assessment Act 1997* provides that shareholders whose shares are affected by a decision under this paragraph lose their entitlement to a deduction for the shares.

(3) If a FLIC that has been notified of a day under paragraph (2)(a) does not remedy the breach of condition by that day, the Minister may make such decision under subsection (1) as the Minister thinks appropriate.

(4) If the Minister, in respect of a breach of condition by a FLIC:
   (a) makes a decision under paragraph 32(1)(a); or
   (b) revokes the FLIC’S licence; or
   (c) decides to remove the concessional status of shares in the FLIC;

the Minister must, within 28 days of making the decision, notify the Commissioner of Taxation in writing of the decision.

(5) Written notice of a decision of the Minister under this section must:
   (a) be given to the FLIC concerned; and
   (b) include reasons for the decision.

Note: A FLIC is required as a condition of the scheme to notify each of its shareholders if the Minister makes a decision under section 32 in respect of a breach by the FLIC of a condition (see paragraph 28(c)).

(6) If the Minister’s decision in respect of a FLIC is to revoke the FLIC’s licence, the notice under subsection (5) must also specify the day on which the revocation takes effect.

33 Revocation of licence

(1) The revocation of a licence takes effect on a day specified in writing by the Minister.
Section 33

(2) The day specified by the Minister must not be a day earlier than the seventh day after the day on which the Minister makes a decision under section 32 to revoke the licence.

(3) If:
   (a) the Minister decides to revoke a FLIC’s licence under section 32; and
   (b) the FLIC has, at the day of the revocation, raised an amount of concessional capital;
the revocation of the licence does not of itself remove the concessional status of shares issued by the FLIC before the revocation.
Division 8—Information and reporting requirements

34 Reporting requirements

(1) For the purposes of:
   (a) monitoring compliance with the Act; and
   (b) evaluating the scheme;
the Minister may in writing determine reporting requirements that a FLIC must comply with.

Note: A determination of the Minister is a disallowable instrument (see section 43).

(2) The Minister may only require a FLIC to give a report on 31 December 1998 and at 6 monthly intervals after that.

(3) The Minister may ask the FLIC in writing to give to the Minister, within the period specified in the request, further information concerning the FLIC’s report.

36 Provision of information to the Commissioner of Taxation

(1) The Secretary must advise the Commissioner of Taxation as soon as possible after the end of a financial year of the following information in respect of a FLIC:
   (a) the name and registered address of the FLIC;
   (b) the details of any breach of conditions by the FLIC during the year;
   (c) the details of a decision taken by the Minister under section 32 in respect of the breach;
   (d) all other matters that:
      (i) the Secretary and the Commissioner of Taxation agree are to be provided; and
      (ii) are necessary to the administration of Subdivision 375-H of the Income Tax Assessment Act 1997.

(2) The Secretary must advise the Commissioner of Taxation as soon as possible after the end of the 1998-99 and the 1999-2000 financial years of the following information in respect of a FLIC:
   (a) the number of shares issued during the year by the FLIC; and
Part 2  The pilot scheme

Division 8  Information and reporting requirements

Section 36

(b) the names and addresses of the shareholders to whom the
shares were issued and the amount paid by each shareholder
for the shares.

(3) The Secretary’s advice must be in writing.
Division 9—Other requirements

37 Minister may determine allowable percentage for administrative costs

(1) The Minister may, in writing, in respect of each FLIC, determine an allowable deduction percentage.

(2) The allowable deduction percentage is a percentage of the concessional capital raised by a FLIC that may be used by the FLIC to meet the costs of the FLIC’s administration.

38 Transfer of licence void

The purported transfer of a licence is void.
Section 39

Part 3—Offences concerning ownership restrictions

39 Meaning of terms used in this Part

Schedule 1 sets out definitions of expressions used in this Part.

40 Acquisitions of shares

If:

(a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and

(b) the acquisition has the result, in relation to a FLIC, that:

(i) an unacceptable foreign ownership situation comes into existence in relation to the FLIC; or

(ii) if an unacceptable foreign ownership situation already exists in relation to the FLIC because there is a group of foreign persons who hold, in total, a particular type of stake in the FLIC of 33% or more—there is an increase in the total of any type of stake held by any group of foreign persons in the FLIC; or

(iii) an unacceptable individual ownership situation comes into existence in relation to the FLIC; or

(iv) if an unacceptable individual ownership situation already exists in relation to the FLIC because there is one or more individuals who hold a particular type of stake in the FLIC of more than 33%—there is an increase in the type of stake held by any of those persons in the FLIC; and

(c) the person or persons mentioned in paragraph (a) were reckless as to whether the acquisition would have that result;

the person or persons mentioned in paragraph (a) are guilty of an offence.

Penalty: 400 penalty units.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.
41 Anti-avoidance

(1) If:
(a) one or more persons enter into, begin to carry out or carry out a scheme; and
(b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the restriction on ownership levels set out in section 27; and
(c) as a result of the scheme or a part of the scheme, a person (the stakeholder) increases the stakeholder’s stake in a FLIC; the Minister may give the stakeholder a written direction to cease holding that stake within a specified time.

(2) A person is guilty of an offence if the person contravenes a direction under subsection (1).

Penalty: 400 penalty units.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.
Part 4—General administrative matters of the scheme

42 Review of decisions

A person whose interests are affected may apply to the Administrative Appeals Tribunal for review of a decision of the Minister:

(a) under paragraph 32(1)(a), not to take any action in respect of a breach (other than to take the breach into account in determining a course of action in respect of any further breaches of conditions); and

(b) under paragraph 32(2)(a), to impose a day by which a breach of a condition must be remedied; and

(c) under paragraph 32(2)(b), to revoke a licence; and

(d) under paragraph 32(2)(c), to remove the concessional status of shares that were issued to shareholders by the FLIC during the licence period.

43 Disallowable instruments

Determinations made under sections 9, 10, 22 and 34 are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

44 Delegation

The Minister may, by instrument in writing, delegate to:

(a) the Secretary to the Department; or

(b) an SES employee, or acting SES employee, in the Department;

the Minister’s powers under sections 13 and 30 and under subsection 34(3) to ask a FLIC for further information.
Schedule 1—Ownership definitions

1 Object

The object of this Schedule is to define terms used in the conditions of the scheme set out in subparagraph 25(a)(v) (which deals with film making restrictions), section 27 (which deals with ownership restrictions) and in Part 3 (which sets out offences concerning ownership restrictions).

2 Definitions

In subparagraph 25(a)(v), section 27, Part 3 and in this Schedule, unless the contrary intention appears:

acquisition includes an agreement to acquire, but does not include:
(a) an acquisition by will or by devolution by operation of law;
or
(b) an acquisition by way of enforcement of a loan security.

aggregate substantial interest, in relation to a trust estate, has the meaning given by clause 13.

agreement means any agreement, whether formal or informal and whether express or implied.

arrangement has the meaning given by clause 4.

associate has the meaning given by clause 5.

company means a body corporate.

constituent document, in relation to a company, means:
(a) the memorandum and articles of association of the company;
or
(b) any rules or other documents constituting the company or governing its activities.

direct control interest has the meaning given by clause 12.

director includes any person occupying the position of director of a company, by whatever name called.
Clause 2

**discretionary trust** means a trust where:

(a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and

(b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:

(i) the identities of those who may benefit under the trust;

(ii) how beneficiaries are to benefit, as between themselves, under the trust.

**foreign citizen** means an individual who is not an Australian citizen.

**foreign company** means a company incorporated outside Australia.

**foreign person** means:

(a) a foreign citizen not ordinarily resident in Australia; or

(b) a company where:

(i) a foreign citizen not ordinarily resident in Australia; or

(ii) a foreign company;

holds a particular type of stake in the company of 33% or more; or

(c) a company where a group of 2 or more persons, each of whom is either:

(i) a foreign citizen not ordinarily resident in Australia; or

(ii) a foreign company;

holds, in total, a particular type of stake in the company of 33% or more; or

(d) the trustee of a trust estate in which a foreign citizen not ordinarily resident in Australia or a foreign company holds a substantial interest; or

(e) the trustee of a trust estate in which 2 or more persons, each of whom is either a foreign citizen not ordinarily resident in Australia or a foreign company, hold an aggregate substantial interest.

**group** includes:

(a) one person alone; or
Clause 2

(b) a number of persons, even if they are not in any way associated with each other or acting together.

increase, in relation to a stake in a company, includes an increase from a starting point of nil.

interest in a share has the meaning given by clause 8.

lending money includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

loan security means a security held solely for the purposes of a moneylending agreement.

moneylending agreement means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

officer, in relation to a company, includes:

(a) a director, secretary or employee of the company; or
(b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
(c) a liquidator of the company appointed in a voluntary winding-up.

ordinarily resident in Australia has the meaning given by clause 3.

ownership provisions means subparagraph 25(a)(v), section 27, Part 3 and this Schedule.

power to appoint a director of a company has a meaning affected by clause 6.

relative, in relation to a person, means:

(a) the person’s spouse; or
(b) another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person; or
(c) a parent or remoter lineal ancestor of the person; or
(d) a son, daughter or remoter issue of the person; or
(e) a brother or sister of the person.
Clause 3

scheme means:
(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

share, in relation to a company, means a share in the share capital of the company, and includes:
(a) stock into which any or all of the share capital of the company has been converted; or
(b) an interest in such a share or in such stock.

stake, in relation to a company, has the meaning given by clause 11.

substantial interest, in relation to a trust estate, has the meaning given by clause 13.

voting power has the meaning given by clause 10.

3 When foreign citizens are ordinarily resident in Australia

For the purposes of the ownership provisions, a foreign citizen is ordinarily resident in Australia at a particular time if, and only if:
(a) the foreign citizen has been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and
(b) at that time, one of the following subparagraphs applies:
   (i) the foreign citizen is in Australia and has permission to remain in Australia indefinitely;
   (ii) the foreign citizen is not in Australia but has a right to re-enter Australia and, on re-entry, to be granted permission to remain in Australia indefinitely;
   (iii) the foreign citizen is in Australia and has a special category visa under section 32 of the Migration Act 1958;
   (iv) the foreign citizen is not in Australia and, on re-entry to Australia, would have the right to be granted a special category visa under section 32 of the Migration Act 1958.
4 Entering into an agreement or arrangement

(1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.

(2) A reference in the ownership provisions to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.

(3) A reference in the ownership provisions to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:

(a) entering into an agreement; or

(b) creating a trust, whether express or implied; or

(c) entering into a transaction;

and a reference in the ownership provisions to an arrangement is to be construed accordingly.

(4) A reference in the ownership provisions to an arrangement does not include a reference to a moneylending agreement.

5 Associates

(1) For the purposes of the ownership provisions, the following persons are associates of a person:

(a) a relative of the person;

(b) a partner of the person;

(c) a company of which the person is an officer;

(d) if the person is a company—an officer of the company;

(e) an employee or employer of the person;

(f) an officer of a company of which the person is an officer;

(g) an employee of an individual of whom the person is an employee;

(h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or
Clause 6

otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;

(i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;

(j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;

(k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 33%;

(l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 33%;

(m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).

(2) If a person (the first person) enters, or proposes to enter, into an arrangement with another person (the second person) that relates to any of the following matters:

(a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;

(b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;

(c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;

then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned.

6 Power to appoint director

(1) A reference in the ownership provisions to a power to appoint a director includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
(2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if:
   (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
   (b) a person’s appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

7 Meaning of entitled to acquire

For the purposes of the ownership provisions, a person is entitled to acquire anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

8 Meaning of interest in a share

(1) Subject to this clause, for the purposes of the ownership provisions, a person holds an interest in a share if the person has any legal or equitable interest in the share.

(2) For the purposes of the ownership provisions, a person is taken to hold an interest in a share if:
   (a) the person has entered into a contract to purchase the share; or
   (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
   (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
   (d) the person is otherwise entitled to acquire the share or an interest in the share; or
   (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to
Clause 9

exercise or control the exercise of a right attached to the share.

(3) Subclause (2) does not, by implication, limit subclause (1).

(4) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.

(5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(6) An interest in a share is not to be disregarded only because of:
   (a) its remoteness; or
   (b) the manner in which it arose; or
   (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

9 Certain interests in shares to be disregarded

(1) For the purposes of the ownership provisions, an interest in a share held by a person whose ordinary business includes the lending of money (if the person holds the interest as a loan security) must be disregarded.

(2) For the purposes of the ownership provisions, if:
   (a) a person holds an interest in a share as a loan security; and
   (b) the ordinary business of the person includes the lending of money; and
   (c) the loan security is enforced; and
   (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
   (e) the person holds the share for a continuous period (the holding period) beginning at the time when the security was enforced;
the person’s interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
   (f) the period of 90 days beginning when the security was enforced; or
(g) if the Minister, by written notice given to the person, allows a longer period—the end of that longer period.

10 Voting power

(1) A reference in the ownership provisions to the voting power in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
   (a) the making of distributions of capital or profits of the company to its shareholders;
   (b) the constituent document of the company;
   (c) any variation of the share capital of the company.

(2) A reference in the ownership provisions to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
   (a) whether or not having legal or equitable force; and
   (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this clause.

(4) If a company:
   (a) is limited both by shares and by guarantee; or
   (b) does not have a share capital;
   this clause has effect as if the members or policy holders of the company were shareholders in the company.

11 Stake in a company

(1) A particular type of stake that a person holds in a company at a particular time is the aggregate of:
   (a) the direct control interests in the company of that type that the person holds at that time; and
   (b) the direct control interests in the company of that type held at that time by associates of the person.
Clause 12

(2) In calculating the stake that a person holds in a company, a direct control interest held because of subclause 12(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

(3) For the purpose of calculating the total of the stakes of a particular type that a group of persons holds in a company, if a particular stake that a person holds in a company would be counted more than once because the person is an associate of one or more other persons in the group, that interest is to be counted only once.

12 Direct control interests in a company

(1) A person holds a direct control interest in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.

(2) A person also holds a direct control interest in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.

(3) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(4) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(5) Subject to subsection (6), if:

(a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (the first level company); and

(b) the first level company holds the same type of direct control interest in another company (the second level company);
the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage $\times$ Second level percentage

where:

*first level percentage* means the percentage of the direct control interest held by the person in the first level company.

*second level percentage* means the percentage of the direct control interest held by the first level company in the second level company.

(6) In determining, for the purposes of subsection 27(2) or subparagraph 40(b)(ii), the total of the stakes of a particular type that a group of foreign persons holds in a FLIC, if:

(a) a foreign company (the *first company*) holds that type of direct control interest in the FLIC; and

(b) in a case where that interest is held because of subclause (5)—that interest was not worked out under that subclause on the basis that one or more foreign companies were interposed between the first company and the FLIC; and

(c) apart from this subclause, a foreign person other than the first company would be taken under subclause (5) to hold that type of direct control interest in the FLIC equal to a particular percentage; and

(d) the direct control interest mentioned in paragraph (c) was worked out under subclause (5) directly or indirectly by reference to the direct control interest mentioned in paragraph (a);

the direct control interest mentioned in paragraph (c) is not to be counted.

(7) For the purposes of subclause (6), a *foreign company* is a company that is a foreign person.

13 **Substantial interests in trust estates**

(1) For the purposes of the ownership provisions:
Clause 13

(a) a person is taken to hold a *substantial interest* in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 33% of the corpus or income of the trust estate; and

(b) 2 or more persons are taken to hold an *aggregate substantial interest* in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 33% of the corpus or income of the trust estate.

(2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.
Notes to the *Film Licensed Investment Company Act 1998*

**Note 1**

The *Film Licensed Investment Company Act 1998* as shown in this compilation comprises Act No. 107, 1998 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

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Notes to the *Film Licensed Investment Company Act 1998*

**Act Notes**

(a) The *Film Licensed Investment Company Act 1998* was amended by Schedule 1 (item 480) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

1. In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
2. Subject to this section, this Act commences at the commencing time.

(b) The *Film Licensed Investment Company Act 1998* was amended by Schedule 2 (item 1) only of the *Taxation Laws Amendment Act (No. 3) 2000*, subsection 2(3) of which provides as follows:

3. Schedule 2 is taken to have commenced on 7 December 1998.

(c) The *Film Licensed Investment Company Act 1998* was amended by Schedule 1 (item 39) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

1. Subject to this section, this Act commences at the latest of the following times:
   a. immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;


(d) The *Film Licensed Investment Company Act 1998* was amended by Schedule 3 (item 186) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

3. Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(e) The *Film Licensed Investment Company Act 1998* was repealed by the *Film Licensed Investment Company (Consequential Provisions) Act 2005* before the amendments made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* commenced.
### Table of Amendments

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Table A

Table A

Application, saving or transitional provisions

Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001 (No. 5, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.