

Feature Film Production Investment FAQs

as at February 2025

For questions relating to:

- Development: contact development@nzfilm.co.nz
- Production : contact production@nzfilm.co.nz
- Contracting and Legal: contact businessaffairs@nzfilm.co.nz
- Co-production: contact co-productions@nzfilm.co.nz
- Our systems and Tomo Mai, funding portal, functionality: contact funding@nzfilm.co.nz

Q. What essential costs must be included in the production budget?

NZFC Development Grants:

NZFC's development grants are not repayable to us, however you must still include the amount of these grants in your budget (and finance plan). These amounts will be treated as "producer equity".

Test Screening costs:

A DCP for any test screening will need to be created at the filmmakers' expense, and should be included in the film's budget. Other reasonable costs will be covered by us. For any further information, please contact marketing@nzfilm.co.nz.

If a test screening will be held, we will agree with you which cut of the film will be shown, and the timing of the test screening. The production schedule should take into account that there may be a test screening held and a period for feedback. We recommend generally factoring in three weeks for this, typically around the fine cut stage.

NZFC Deliverables:

When applying to NZFC feature film production investment, you must include the cost of NZFC delivery materials ([listed on our website](#)) in your budget.



Māori/English Translations:

Where applicable, you must budget for translations to capture the film's authentic essence and to help with sales and distribution in other countries.

Market Partners Deliverables:

Your sales agent, distributor and broadcaster will generally require the completed film to be provided in particular formats, along with publicity materials and documentation. You must review your sales agency agreement, distribution agreement, and/or broadcaster licence very carefully to ensure you have budgeted for and can deliver all required items (including documentation). If you do not have a sales agent or distributor attached to your film at the time of your application, you still need to budget for what these items are likely to cost when you attach market partners at a later date.

Marketing and Publicity:

At a minimum, your marketing and publicity budget must include the costs of:

- a unit publicist;
- a stills photographer;
- the trailer;
- key art e.g. poster design; and
- EPK/DVD footage.

However, if your distributor or sales agent is paying for the trailer and key art, and you provide us with written confirmation of this from them, then you do not need to include these items in your budget.

We also offer grants for the domestic distribution of New Zealand feature films in New Zealand. These grants are normally applied for by the film's distributor when the film is completed.

Please refer to our website for more information <http://www.nzfilm.co.nz/distribution/new-zealand/film-distribution-grants>.

Rights Acquisition:

You must budget for any music and/or footage clearance fees, and any fees associated with the use of underlying materials for your film. All rights should be cleared and paid for worldwide, in all media, in perpetuity, and for out-of-context use.

Legal Fees:

You need to adequately budget for the production's legal fees. This needs to cover the preparation and negotiation of chain of title documents and legal opinion, production contracts (e.g. cast and crew contracts, music licenses, footage licenses), market agreements, leading and managing the closing process, negotiating the terms of the NZFC Investment Agreement and ancillary contracts on the producer's behalf for closing, and providing general legal advice to the production during production and delivery.

Given the nature of the work involved, we recommend you engage an entertainment lawyer for specialised advice.

Financing Fees:

You need to budget for interest and any legal and/or administration fees charged by your NZSPR lender or any other lender.





NZSPR Audit Fees:

For NZSPR films, you need to budget for NZSPR audit costs. If you are seeking a Provisional NZSPR Certificate for your NZSPR lender, you also need to budget for the costs of an auditor's expenditure certificate.

Foreign Currency Hedging:

Note that our funding cannot be used to cover foreign exchange shortfalls. If your budget or finance plan contains foreign currency items, we expect you to take out forward cover if an exchange risk exists.

Contingency:

You will need us and any completion guarantor to approve the level of contingency allocated in the budget. The industry norm for contingency is 10% of the below-the-line budget. You need to include this amount as contingency in your budget.

Overheads and Fees:

Production company overheads and above-the-line fees (e.g. script development, writers, directors, producers, and key cast) should be:

- relative to the film's budget;
- consistent with industry norms; and
- reflect the level of experience for relevant personnel.

If your film qualifies for the NZSPR, please also ensure your budget complies with the NZSPR requirements, particularly in regards to the caps on qualifying expenditure around financing costs and any fees related to financing the film.

Completion Guarantor Fees

When a completion guarantor is required, their fees must be included in the budget.

OTHER COSTS



Tax

Regardless of a film's size, specialist tax advice will likely be required to ensure adequate planning for the relevant tax implications, particularly if your finance structure is complex, and/or if part of your production financing comes from offshore sources. Our answer here should not be considered tax advice.

The two taxes that most commonly need factoring into your finance plan at an early stage are GST and withholding tax.

GST

We expect the special purpose vehicle production company making the film (**SPV**) to be GST-registered from the outset. Our practice is to attach GST to our equity investment or grant. We require a valid tax invoice for each instalment of our investment or grant. In some instances, offshore finance will not have GST attached. You need to prepare the cash flow schedule with this in mind.





Withholding tax

Sales advances and distributor minimum guarantees sourced from offshore will usually be subject to a withholding tax. Your budget (and finance plan) should be based on the net amount that will be received, not the gross amount offered.

Q: How should the Cash flow and Drawdown Schedule be presented?

Your cash flow schedule needs to reflect the actual cash needs of the production over the course of production and until all budgeted costs are paid.

Your drawdown schedule sets out when each instalment or drawdown of finances will be paid by the financiers to the production, and you'll need to obtain our approval to this.. For an equity investment, we generally pay in instalments, as set out in the Terms of Trade.

To receive payment, you will need to submit a **valid tax invoice for the instalment, an up-to-date narrative production report, and an up-to-date cost report and balance sheet with notes**, at least 3-4 days prior to payment.

Q: If a completion guarantor is required, what document is expected?

If your film requires a completion guarantor, you must include in your application a letter of interest from an established completion guarantor. The letter of interest must reference the same budget, production schedule and script/treatment as part of your application.

Q: What should be included in the Finance Plan?

Your finance plan needs to include all sources of investment or financing being used to meet the film's budget.

Generally speaking, all elements of the finance plan must be paid or guaranteed at the time of financial close. You will need to obtain our approval to the terms of all finance provided by parties who are not party to the NZFC Investment Agreement, including private investors. We may also request to review the terms of finance provided by parties who are a party to the NZFC Investment Agreement.

Outside of NZFC equity financing, your finance plan may include:

Private Investment


We encourage private investment in New Zealand productions.

If your finance plan includes private investment, you must include in your application a letter of interest from those investors. These letters of interest must include the proposed terms on which they would be providing financing (e.g. equity investment, loan, grant, payment timing, recoupment expectations) and any additional conditions of their financing.

Market Money

If your sales agent and/or distributor agrees to provide a minimum guarantee or advance, this should be included in your finance plan.





Your finance plan (and cash-flow arrangements) should only include **the net amounts being contributed towards the budget (for example, you should exclude any withholding tax being deducted from foreign sales advances or minimum guarantees).**

In-Kind Deals / Sponsorship

In-kind deals or sponsorship (in exchange for a recoupment position) cannot be recouped ahead of our equity investment. If you propose to attach a recoupment or profit position to such arrangements, they must be arms-length and on commercially reasonable terms. We may require you to provide quotes for comparable goods and/or services, or other documentation, to support the stated value of such arrangements. All non-monetary transactions must be supported by contractual agreements recording the transaction and the value associated with it.

Usage of Fees

There are three main ways budgeted fees can be included in the Finance Plan:

1. **Reinvestment:** a portion of the fees that are payable from the budget is invested into the production as an equity investment. This must be reflected in the budget and finance plan, and in a written agreement with the entity or individual making the investment.
2. **Holdbacks:** a portion of the fees are “held back” against a third-party drawdown, scheduled at a later stage of production (eg NZSPR unbonded portion, distributor minimum guarantee). This must be reflected in the cashflow and drawdown schedule, and in a written agreement with the entity or individual who is agreeing to receive those fees at that later stage.
3. **Deferrals:** a portion of the fees not payable from the budget but received from collected gross receipts in the recoupment schedule (eg cast fees). Deferrals are not included in the budget nor the finance plan but are reflected as a recoupment position in the recoupment schedule.

These financial arrangements are contracted during the film closing stage but should be outlined at the application stage.

Q: What is a recoupment schedule?

The recoupment schedule for a film outlines to whom, and in what order, film income is distributed. This is subject to our approval.


We are committed to producers receiving a share of film income, balanced with our right to earn income from our investment in the film. Generally, we expect to recoup our investment and receive a share of any profit alongside other government funding and similar equity investors, including related parties.

For films with more complex financial structures, the recoupment schedule (including the position of the producer’s NZSPR equity) will be negotiated on a case-by-case basis between the financiers and the producers.

Q: How does the film closing process work?

If our Board approves a NZFC investment in your film, you will receive a **Letter of Conditional Offer**. This letter will identify the conditions that apply to the investment including (but not limited to) the key people, the financial structure, the various approvals required and the expiry date. It





will also identify any specific conditions that must be met before contractual close can commence. These are known as the pre-closing conditions.

You must provide a chain of title legal opinion before the start of close. The legal fees to prepare this opinion can be included in your pre-closing advance (see Terms of Trade). For more details on Chain of Title and Legal Opinion, please consult the [Chain of Title Information Sheet](#).

Once those conditions are met, the film closing process starts.

During this process, you will need to provide a number of background documents for review and approval. These generally relate to production matters and are sourced or provided in the first instance by the producer.

In addition to the required production documents, a number of contracts will need to be prepared, negotiated and signed by various parties, including the NZFC, the SPV, the other financiers involved in the project, the completion guarantor (if applicable) and any other parties (for example, the sales agent, distributor, broadcaster and/or production bank). At the start of the closing process, each party (particularly the financiers and the completion guarantor, if applicable) will advise exactly what contracts they require, and the parties will establish who is responsible for preparing each contract.

SPV

The role of the SPV is to hold all contractual rights and intellectual property rights necessary to produce the film. A stand-alone, single purpose company structure is used to protect the production from the risk of third party liabilities that are not connected with the production, which could otherwise jeopardise the production and/or place the investors' finances at risk.

We are comfortable in principle with the SPV transferring its rights and obligations to another company and closing the SPV down one year after the film's delivery. However, the SPV must get our written consent before making any transfers or closing down.

Documents

As each project is unique, when we start the closing process for each film, the production's legal counsel will issue a [transaction checklist](#) outlining the documents required to close with us. Unless we advise otherwise, each of these documents will need to be reviewed and approved by us.

Following our review, we may require changes to some of the documents. Note that other financiers may need different documents, so it is up to you and your legal team to formulate a complete checklist of documents required for closing that incorporates the requirements of each of your financiers.

You need to provide or source the following **key documents**:

- final script (or treatment, if the film is a documentary);
- final budget;
- cash flow and drawdown schedule;
- production schedule;
- any cultural agreements or MOUs with Māori collaborators;
- crew contract template;
- key cast contracts;
- details of all insurances, including insurance certificates;
- provisional co-production certification (if applicable);
- provisional NZSPR certification (if applicable);



- post-production facility access letter;
- health and safety report(s); and
- cultural plan and reporting for liaison, on set monitoring for reo/tikanga, translations and specialist advice (if applicable).

Post Production Facility Access Letter

You will need to provide a post-production facility letter (sometimes referred to as a Laboratory Pledgeholder Agreement) from the post-production facility for your film.

We have a template form for this letter that we can provide on request businessaffairs@nzfilm.co.nz.

Health and Safety Reports

Every film production must comply with all health and safety laws and regulations. You must have a health and safety policy and procedures for your SPV's operations. (Refer to www.screensafe.co.nz for guidance and templates). You will need to provide us with an independently commissioned health and safety report identifying specific hazards related to the script or treatment. The report must outline the steps the production will take or the measures the production will put in place to avoid or mitigate those potential hazards during the production.

Contracts

As each project is unique, the contracts required for any given project will vary. When we start the closing process for each film, the various parties involved will advise which contracts will be required, and which party is responsible for preparing each contract.


However, most projects will require the following key contracts to be negotiated and signed alongside the NZFC Investment Agreement for the film's financial closing:

- other investor agreements (if not included in the NZFC Investment Agreement as the primary investment agreement);
- loan/facility agreement (for cash-flowing of NZSPR and any market money);
- completion bond and related documents (e.g. producer's/supervision deed, inducement letters, notices of assignment, or a deed of delivery and arbitration);
- bank account deed;
- security deeds;
- sales agency agreement;
- New Zealand only or Australasian distribution agreement; and
- collection agreement/collection terms.

Where there are other financiers investing in the film, they will either be party to the primary NZFC Investment Agreement (the Production Financing Agreement or the Interparty Agreement), or they will sign a separate financing agreement with the SPV. You will need to obtain our approval to the terms of all finance provided by parties who are not party to the NZFC Investment Agreement, including private investors. We may also request to review the terms of finance provided by parties who are a party to the NZFC Investment Agreement.

Cast Contracts

Copies of contracts with writers, producers, director, key cast, or documentary subjects must be provided as part of closing. We may request to review your cast template



We expect that all cast members will be engaged using the Individual Performance Agreement agreed between SPADA and NZ Actors' Equity for New Zealand-based productions. Producers and crew must adhere to the *Blue Book* as published by [The Screen Guild](#).

All cast and crew contracts should reflect that the SPV will have the ultimate decision on the final cut of the film.

Market Agreements

The terms of any market agreements (e.g. sales agency agreement, distribution agreement, broadcast licence) must not conflict with one another in terms of territory licensed, rights licensed, or when the film may be released by each party.

Please note that before any market agreements are signed (including deal memos or MOUs), we need to review and approve these agreements, including the commercial terms proposed (e.g. payment triggers, splits, fees/commission, expenses, holdbacks etc.) and the legal terms (e.g. default and termination provisions, assignment, audit rights etc.).

Sales Agent

The sales agent should demonstrate genuine market confidence in the production and have terms that are acceptable to the other investors in the film (particularly any gap financier). You will need to obtain our approval to the sales agent's terms (but we do not need to be party to the agreement).

If you have a sales agent attached to your film, you must include their letter of offer or deal memo with your NZFC investment application. Their offer must include the following:

- the sales territory;
- the key commercial terms of the deal including the sales advance or minimum guarantee amount (if applicable), licensed rights, licence period, as well as any essential elements (for example, cast, director, etc) and corresponding approval and/or termination rights; and
- Ask and Take estimates.



Please note that the sales agency agreement must allow:


- for us to directly receive (or allow the producer to provide to us) any sales and distribution reports or statements; and
- for us, or for the producer (including at our request), to audit the sales agent.

The producer is primarily responsible for maintaining the relationship with the sales agent. This includes ensuring that the sales agent reports to us regularly on markets, sales, festivals, distribution, audits and royalties.

Australasian Distributor

All films which receive NZFC investment require a theatrical release in New Zealand by an established theatrical distributor. The distributor's letter of offer, deal memo or distribution agreement must include:

- the distribution territory – that is New Zealand or New Zealand and Australia;
 - the key commercial terms of the deal including the minimum guarantee amount if applicable, licensed rights, licence period as well as any essential elements (for example, cast, director, etc) and corresponding approval and/or termination rights;
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- their endorsement of the producer's audience engagement plan submitted with the NZFC investment application; and
 - an outline of the film's anticipated distribution release plan including the anticipated number of screens on release.

While it is the producer's responsibility to attach a distributor to their project, the distribution terms are subject to our approval as an investor. You must include the distributor's letter of offer in your application. We are available to discuss with you any offers you are considering, at any stage of your conversations with distributors.

You need to obtain our approval to the Australasian distributor and their terms (but we do not need to be party to the agreement).

Please note that the distribution agreement must provide:

- for us to directly receive (or allow the producer to provide to us) any sales and distribution reports or statements;
- for us, or for the producer (including at our request), to audit the distributor; and
- for a theatrical release in New Zealand.

Please ensure any Australasian distributor is aware that if their recoupment of their marketing and sales expenses from New Zealand and Australia are crossed in the distribution agreement (i.e the distributor intends to be able to recoup its marketing expenses incurred in the Australian territory from sales in the New Zealand territory), the distributor will not be able to access the NZFC Print & Advertising grant.

Completion Bond and Related Documents

Where a completion guarantor is appointed, there will be a suite of contracts to record their obligations to the financiers and their relationship with the producer. The contracts include a guarantee with each financier, the producer's/supervision deed, inducement letters, and, in relation to market partners, separate notices of assignment and/or deeds of delivery and arbitration. Each financier will need to review and approve the terms of the contracts relevant to them.



Loan/Facility Agreement (for cash flowing of NZSPR and any minimum guarantees or advances):


Where the NZSPR or any market money is being cash flowed to the production by a commercial lender, they will require the SPV to sign a loan agreement or facility agreement that sets out the terms on which the lender will cash flow and will require repayment. We will not be a party to that agreement but we may need to review and approve its terms to ensure they are acceptable and consistent with other closing contracts.

Security agreements

When we invest in a film project, we have specific requirements to protect our investment. Each project is unique, so additional requirements may apply, but generally our security requirements include:

Assignment of Copyright





Unless otherwise agreed with other financiers, to provide security for the delivery of the film, the NZFC Investment Agreement provides that the SPV assigns to the NZFC an appropriate share (relative to the NZFC's investment) of:

- the copyright in the film; and
- the producer's right to net proceeds.

Copyright is automatically assigned back to the SPV production company once the film is delivered. However, we will retain security over the producer's right to net proceeds until we have recouped our investment.

General Security Agreement

We require the SPV to enter into a general security deed, granting the NZFC a security interest over all of the SPV's assets. Our security will be pro-rata and in order of priority as agreed with other investors in the NZFC Investment Agreement (if applicable). This:

- provides security for our investment against other parties who may have a claim on or interest in the SPV's assets; and
- helps ensure the production company meets its obligations under the NZFC Investment Agreement and any other closing contracts.

Bank Account Deed

The SPV's bank must be put on formal notice that we have a security interest over the assets of the SPV, including the amounts in the SPV's production bank accounts. This typically takes the form of a bank account deed. This deed (or formal notice) must be in place before production begins. We recommend you discuss this specific requirement when selecting your production bank. The bank must:

- acknowledge the nature of the NZFC's security interest in writing;
- agree that it will not exercise any right of set-off against the production bank account; and
- if the completion guarantor issues a takeover letter, transfer all amounts to the completion guarantor's account and close the production account.

Monitoring / Reporting

The frequency of reporting will vary, at our discretion, depending on the type of film and the scale and complexity of the production.


For example, when a completion guarantor is appointed, we would expect to see the reporting sit against the specific production milestones.

However, the NZFC Investment Agreement allows us to:

- receive a copy of, or electronic access to, weekly and monthly producer narrative reports, cost reports and balance sheets;
- monitor the production and cash drawdowns from the production account; and
- audit the books and/or examine the financial statements of the SPV.

Producer Narrative Reports





We expect this to be an overview of the preceding period, identifying progress the production is making, any financing partner engagement (i.e. sales agent or distributor) and any unexpected changes or challenges. Each report should specifically mention whether there have been any concerns or incidents regarding health and safety issues and cultural engagement. The producer's report should sit alongside the cost report and also speak to any movements within budget lines and contingency allocation.

Cost Reports

The frequency of cost reports depends on the complexity and structure of the production. On a scripted drama, we expect to see cost reports when payment is due. In the case of a co-production, we expect to see the cost report from the co-producing country as well as the New Zealand cost report although at different time periods.

Rushes

Our access to rushes will vary, at the NZFC's discretion, depending on the type of film and the scale and complexity of the production. On a drama shoot, we may ask to receive rushes (via a protected digital link). On a documentary, we may ask to review any set pieces or drama elements alongside any key interviews.

Archiving

Once your film is complete, you must submit it to Ngā Taonga for archiving purposes. You must send us confirmation of this before you receive your final delivery payment. You also have to confirm what the status is of any submitted film when you next apply to us for development funding or production investment.

NZFC Promotional and Exhibition Rights

Under our NZFC Investment Agreement, we require certain rights to use excerpts from the film to promote the NZFC, New Zealand films, New Zealand locations, and any filmmakers, cast and crew. We also require certain rights to show the film in its entirety, generally for NZFC screenings, Parliamentary screenings, and cultural events in New Zealand only. The NZFC Investment Agreement sets out the detail of these requirements. You will need to make your sales agent and Australasian distributor aware of these limited promotional and exhibition rights.

NZFC VOD Player

Our expectation is that all films we finance can be included in the catalogue of films available to purchase for viewing on the NZFC's Video on Demand platform *NZ Film on Demand*, provided that any such arrangement would not be detrimental to the film's commercial prospects. You must agree to consider and discuss with the NZFC in good faith the possibility of the film being included on *NZ Film on Demand* on the NZFC site. To that end, when negotiating and entering into any distribution agreements and sales agency agreements for the film, you must try to keep internet or VOD rights non-exclusive. When non-exclusive rights cannot be negotiated, please discuss alternative arrangements with us.

Audience Research

We may conduct research on the audience of the film in any manner we choose, and can use the outputs of such research at our discretion.

