

Golden Globes and Silver Linings: an introduction to film investment for private investors



People decide to invest in film for many reasons, and few of those reasons are related to the certainty of a return. Many people are seeking to diversify and support the arts community, some people are hoping for an invitation to a red carpet and a few are just after a meeting with a star. Film continues to have a reputation for unpredictability for private investors, but that does not mean it should not be considered at all. There are several things however, that a private investor must consider if they are considering investing in the production of a film.

What does private investment in film look like?

Unsurprisingly, investing in film can look and feel a lot like investing in a company. The investor can take an active role, or be a passive contributor, as they see as appropriate. The end goal is to have the film seen by as wide an audience as possible, so that it turns a profit which is then returned to the investors. Whilst this sounds simple, the complexity of film as a 'collaborative work' and the subjective taste of film audiences does mean that investment in film can be tricky and more than a little intimidating.

Choosing a film project

In the same way that a private investor will undertake a large amount of due diligence when choosing whether or not to invest in a start-up company, it is imperative that one undertakes thorough research on the creative team to see if they are capable of undertaking the production on time, in quality, and within budget.

The creative team will comprise one or more of the following people: a writer, a producer and possibly a director. In the early days, it is unusual to have on-screen talent attached to the project – the investment funds will be needed to get any A list (and even B list) stars to even read and consider the script before they agree to sign on. Investors are often keen to attach themselves only after talent is agreed, for obvious reasons. Known actors can generate revenue, even if a film is a turkey! So one needs to assess the team that does exist. What have they done previously? In this region, there are a few real producers that have a long list of feature films to present, but they should have made content, and you can certainly view it. Asking to speak to previous investors in other projects is extremely prudent.

Assessing the creativity and audience appeal of a project is hard even for the experts. Ultimately you need to consider who will actually want to watch the film. The film industry itself releases very little information that can be used to gauge a film's potential success or otherwise. For this reason investors tend to invest in projects that they themselves would like to watch. With little information to guide you, you may indeed feel that this can be as good a reason as any.

It can be helpful also to invest in a project that already has interested distributors signed up to 'buy' the film before the production starts. In the past, pre-sales of film were a way to secure most of the production budget but, these days, with such heavy diversification of media outlets for consumers, pre-sales are more rare and so can be viewed as a positive sign that someone, at least, believes in the film's potential. Whilst even the largest players very often get it wrong, a choice by a North American distributor to pick up theatrical rights, or for an OTT operator to get global rights might reasonably be considered a healthy sign. Otherwise, it pays to be ruthless in analysing any potential spreadsheets with projected return on investment figures. If there is no contract with an advance or a minimum guarantee, then the figures are likely to be no more than an educated guess, at best. Carefully scrutinise claims about YouTube revenue or iTunes fees; in reality these are invariably low. A film without a sales agent or distributor on board may sink without a trace. It is worth noting that a good sales agent can assist in estimating the returns for a film project before it is produced. An experienced producer will be likely to be working with one early in the development of the film. Do remember that each film genre will have different potential for returns. For example, comedy can be very regional and may not translate well to international audiences. But everyone, globally, can understand horror.

Budgets and other myths?

Producers have to produce budgets as well as films. Budgets will, in the early stages, be rough because the talent and possibly the director are not yet confirmed and these two items will comprise a substantial part of the budget and can vary widely depending on the pedigree of the people involved. As it is with all investment, it is important for an investor to understand the offer that is being made to you on a percentage basis. If you are putting up 20 per cent of the initial budget, do you expect to retain a 20 per cent stake in the backend? Surprisingly, film revenue sharing does not always work out to be so mathematically clean, as we touch on below.

One pitfall in budgeting can be the marketing spend – film rarely makes money if the general public do not know about it, so a well-crafted media plan is essential, but that can come at considerable cost. Do check to see what the producer is budgeting for this vital expense.

Do also carefully assess the fees that are being paid to the producers and other core production team members. Budgets have been spotted with one person filling, and being paid for, half a dozen different roles and taking over 25 per cent of the total budget. Look for people who might be siblings or spouses taking key budgeted roles. Consider whether the producer should, in fact, be granted a share of revenue at all if they are being well paid so well within the budget.

Passive or active investment?

Passive investment is as easy as it sounds. The money is handed over for a percentage of the profits of the project. No decisions are made by the investor, leaving the (hopefully experienced) production team to do the job they are hired to do.

Active investment can be more difficult, not only to obtain but to put into effect. Remembering that film is a collaborative process and a creative one at that, adding extra people to the approval and production process can add a burden that not all producers are happy to accept. Similarly, film is a lengthy process and signing up to active involvement will mean taking time to be involved for a few years.

How many films?

With so many new and hungry content outlets now available globally (think Netflix, Apple TV, Amazon Prime, Starz Play and Disney+ for a start), there are now more entities seeking to obtain finance for a slate of films. A slate comprises several films that will be paid for out of a common fund and, importantly, will recoup investment by cross collateralising against each other's revenue streams. The main appeal for this is that, if one film becomes a break-out hit, it will likely pay for itself and the other films, allowing a return on investment for all investors. There are commercial film funds being established globally (and in the region) that can assist investors with finding the correct fit for their goals and budgets.

Investing in a slate through a film fund can also increase an investor's chances of investing in a film with top talent. These films, if produced independently, will be more likely to seek revenue from an established fund than by waiting for a single production company to secure the revenue itself.

Production accounts and collection accounts?

Film production companies will often run two separate bank accounts – one for investors to deposit their investment funds into and one that is exclusively for collecting revenue from the exploitation of the film. This wisely separates the money from the budget from any revenue that should be split, but smaller producers may not always be able to do this or may not wish to do so. An investor does have the right to help the money (or place it in escrow) until certain steps are taken in the film's progress. For example, some money may be provided before pre-production, then another tranche on the first day of filming, with the final amount provided on first day of post-production.

Tax breaks?

Private investors often seek film projects that will assist them with tax relief – there are incentives across many countries that are available for investors. These vary from country to country and, to access these benefits, it is crucial to work with a producer that is experienced (or working with professional advisers that are experienced) so one can be sure that the tax credit or incentive can in fact be claimed. Governments granting such benefits do require the producer to comply with all requirements and prerequisites, and they expect all the paperwork to be completed on time. Any failure by the producer to do so may lose the benefit for all stakeholders. Do make sure to consult with trusted advisers if this element is important for you!

What is waterfall?

Film investment is complex, often involving several partners who are providing money on different terms and from different sources. There may be private investors, a government investor, pre-sales and a distribution advance. Given each has different priorities, they will be treated differently within the waterfall.

Investors generally share in the first returns on a pro-rata basis. Once that is recouped, then the second returns are split among different parties (perhaps actors who have deferred compensation as part of their fees) and so on, until everyone is accounted for. But as an investor, be sure you understand your position within the waterfall. Contingent compensation can be tricky – whilst it is a nice problem to have, your position in the waterfall will alter if the film makes a certain amount at the global box office, or perhaps wins an award as these people will be likely to be paid ahead of you if you have already recouped your investment.

Remember that a waterfall can change over time. You may be the only private investor at the start and so have priority on recoupment from 100 per cent of the first returns, but gap finance might be needed to pay for that marketing plan that they under budgeted six months back. Gap finance will usually alter your position in the waterfall. Make sure you understand that because the project may fail if you refuse to alter your position and agree to the gap finance. A pre-sale, whilst an excellent sign for the success of the project, will likely mean that the revenue secured from that territory will now no longer be available to the general pool of investors. Actors may come in and demand a percentage of the film – they often demand a share of the gross revenue rather than the backend, and this is often agreed if the name is enough to warrant the sacrifice.

Whatever is agreed, it is imperative to have the waterfall checked thoroughly by an experienced lawyer.

Timing

Film investment requires patience. Funds can take a few years to collect; the film production process itself grinds along at snail's pace, the editing process can take months and then finally, once the film hits the screen, it can take anywhere up to two years to get a return, if one is going to come. It is not for the faint hearted investor however, the upside of being involved in the production of a creative work and being close to an industry that has such a public profile can be enough of a reward for some investors.

Al Tamimi & Company's [Technology, Media & Telecommunications team](#) advises on content finance issues for film and other media. For further information, please contact [Fiona Robertson](#) (f.robertson@tamimi.com).