

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MANAGEMENT AND INVESTMENT COMPANIES BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Science
and Technology, the Hon Barry O Jones, MP)

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TABLE OF CONTENTS

	PAGE
GENERAL OUTLINE	1
Clause	
PART I - PRELIMINARY	
1. Short title	4
2. Commencement	4
3. Interpretation	4
4. Prescribed interests	4
PART II - MANAGEMENT AND INVESTMENT COMPANIES LICENSING BOARD	
5. Establishment and constitution of Board	5
6. Additional functions and powers of Board	5
7. Membership of Board	5
8. Remuneration and allowances	5
9. Leave of absence	5
10. Resignation	5
11. Termination of appointments	5
12. Pecuniary interests	6
13. Acting members	6
14. Meetings	6
15. Delegation	6
16. Staff	7
17. Policies and practices of Board	7
18. Total approved capital of licensees	7
19. Disclosure of information	7
PART III - MANAGEMENT AND INVESTMENT COMPANIES	
<u>Division 1 - Management and Investment Company Licences</u>	
20. Application for grant of licence	8
21. Grant of licence	8

	PAGE
22. Furnishing of information to Board	9
23. Revocation of licence	9
24. Suspension of licence	10
25. Renewal of licence	10
26. Alternative to revocation, &c.	10
27. Publication of Board's decisions	10
28. Calls paid during suspension	10
<u>Division 2 - Certification of Eligible Business Entities</u>	
29. Certification	11
30. Cancellation of certification	12
<u>Division 3 - Financial Matters</u>	
31. Prohibition	12
32. Prescribed interests in an eligible business entity	13
33. Ownership interests in an eligible business entity	13
34. Loan interests in eligible business entities	14
35. Guarantor interests in eligible business entities	14
36. Prescribed interests in business entities that cease to be eligible	14
37. Other investments approved by Board	15
38. Share capital	15
39. Borrowing by licensees	16
40. Banks may hold shares in licensees	16
<u>Division 4 - Administrative Matters</u>	
41. Annual return	16
42. Share register	16
43. Changes to be notified	16

X

	PAGE
44. Acquisition of substantial ownership interest to be approved	16
45. Cross ownership to be notified	16

PART IV - MISCELLANEOUS

46. Annual report	17
47. Review of certain decisions of the Board	17
48. Statement to accompany notice of reviewable decisions	17
49. False or misleading statements	17
50. Validity of acts done in contravention of Act	17
51. Service	17
52. Regulations	17



MANAGEMENT AND INVESTMENT COMPANIES BILL 1983

GENERAL OUTLINE

The purpose of the Management and Investment Companies Bill is to encourage the formation and development of Australian businesses which utilize innovative technology, have the potential for rapid growth, are skill intensive, export oriented, internationally competitive and are significant generators of employment in Australia.

This is to be achieved through the establishment under this Bill of Management and Investment Companies (MICs) licensed by a Board to raise venture capital for investment in, and to provide management guidance to such businesses.

The main elements of this Bill are based on the principal recommendations of the High Technology Financing Committee of the Australian Academy of Technological Sciences (Espie Committee).

The recommendations of this Committee were developed after an analysis of the experiences and performance of a broad range of young Australian high technology companies and after considering the initiatives that have been developed overseas to encourage the establishment and growth of such companies.

An essential purpose of the Bill is to attract investment in MICs by offering a tax deduction of 100 per cent for equity investment in licensed MICs. The implementation of this feature and a number of other aspects relating to the tax deduction will be implemented through amendments to the Income Tax Assessment Act 1936.

This Bill:

- . establishes an independent Management and Investment Company Licensing Board;
- . requires the Board to report to the Minister;
- . authorises the Board to issue, suspend, revoke and renew the licences of MICs;
- . authorises the Board to approve the amount of tax deductible capital each MIC may raise;
- . provides for the Board to be advised of the total amount of MIC capital which may be approved during each financial year;
- . establishes the criteria by which the Board is to assess applications for MIC licences;
- . establishes the broad terms and conditions under which MICs may operate;
- . authorises MICs to take equity in, and provide loans and loan guarantees to, eligible businesses;

- . authorises the Board to certify the eligibility of those businesses in which MICs are seeking to invest, prior to any investment by the MICs; and
- . establishes the criteria by which the Board is to determine the eligibility of businesses for MIC investments.

The Main Features of the Program

The Board will comprise persons with relevant business backgrounds possessing a range of skills and expertise.

The Board will advertise for applications for MIC licences, set a closing date for receipt of applications and announce the successful applicants as soon as possible thereafter. Applicants for an MIC licence are required to provide the Board with information on their management structure, major shareholders, proposed investment policy and to satisfy the Board as to their bona fides and expertise. Only an Australian company as defined in sub-clause 3(1) may apply for a licence. This specifically does not include partnerships, trusts and sole traders. Each MIC is required to have a minimum capitalisation of \$5 million.

Licences will be issued and reviewed annually and existing licence holders may seek Board approval for to increase their capitalisation. Within the allocation set by the Government the Board will determine the total amount of approved capital which may be raised by new and by existing MICs.

MIC licences may be revoked or suspended by the Board for non-compliance with this Bill or the regulations or for knowingly giving false or misleading information.

An MIC may be a subsidiary of another company and shares held in an MIC may be held by individuals, companies, or trusts. MICs are to be Australian companies and foreign shareholdings are therefore limited to less than 15 per cent by the Foreign Takeovers Act 1975.

MICs are required to provide the Board with a copy of their initial share register.

Businesses eligible for MIC investment include manufacturing, telecommunications, certain aspects of consulting and technical services, computer software and certain primary industry activities.

In addition, in order to maximise the benefits of the Bill a business will normally have to meet certain criteria designed to limit the scheme to smaller businesses with high growth potential to be eligible for MIC funding. The criteria for the businesses include:

- . a projected average annual sales growth of more than 20 per cent over the next three years of operation;

- . less than 100 employees or less than \$6 million net worth;
- . operation for less than 10 years in the business area in relation to which MIC investment is being sought; and
- . principal production and/or research and development operations are carried on in Australia.

MICs are specifically prohibited from investing in other MICs and in businesses whose principal activity is:

- (a) to lend money;
- (b) to invest in debentures, stocks or shares; or
- (c) to invest in real estate.

The total financial outlay of an MIC in one eligible business is not to exceed 20 per cent of the MIC's approved capital or shareholders' funds, whichever is the greater. Also, the maximum equity investment by an MIC in a single eligible business is not to exceed 51 per cent of the equity capital of that business.

The remainder of this explanatory memorandum deals sequentially with each clause of the Bill.

PART 1 PRELIMINARYClause 1 - Short Title

When enacted the Bill will be cited as the Management and Investment Companies Act 1983.

Clause 2 - Commencement

This Bill will come into operation on a date to be fixed by Proclamation.

Clause 3 - Interpretation

This provision defines terms used throughout the Bill.

For example, approved capital is defined for the purposes of this Bill as being that amount of an MIC's nominal share capital which is approved by the Board.

Clause 4 - Prescribed interests

For the purposes of the Bill, a person has a prescribed interest in a business - whether it is a company, partnership or unit trust - where he is an owner or part owner of the business, or has made a loan or loan guarantee to the business. It also establishes the method for determining the amount of this interest.

Sub-clause 4(9) establishes that a person has a substantial ownership interest in a business where he has at least 15 per cent interest in the business.

Sub-clause 4(10) provides that where a prescribed interest in a business is held jointly by two or more people, each is, for the purposes of the Bill, deemed to hold the whole of that interest in the business.

Sub-clause 4(11) provides that a person holds an interest in a share where he has a legal or equitable interest in the share, and deems that a person who has entered into a contract to purchase a share, or is entitled to control the exercise of a right attached to a share, holds an interest in that share.

PART II MANAGEMENT AND INVESTMENT COMPANIES LICENSING BOARDClause 5 - Establishment and constitution of Board

This provision establishes the Management and Investment Companies Licensing Board.

Clause 6 - Additional functions and powers of Board

The Board will establish effective communication with MICs so as to encourage the creation and development of eligible business as defined in paragraph 29(6)(f). The Board will also advise the Minister on matters relating to this Bill.

Clause 7 - Membership of Board

The Board will comprise a Chairman, an officer of the administering Department and between four and six other members.

Except for the Departmental member, all members will be part time and appointed by the Governor-General. The Departmental member will be designated by the Minister.

Appointees must have knowledge of or experience in industry, commerce, finance, marketing, management, public administration or a field of technology. Also, at any time the Board will comprise no more than one person appointed for his knowledge of or experience in public administration.

The effect of this provision is to ensure that the Board comprises members who possess a range of skills and experience and that its membership is weighted towards relevant business experience.

Members are appointed for no more than three years but may be re-appointed.

Clause 8 - Remuneration and allowances

The Remuneration Tribunal will determine the remuneration and allowances payable to appointed members.

Clause 9 - Leave of absence

The Minister may grant a member leave of absence from Board meetings.

Clause 10 - Resignation

An approved member may resign from the Board by notice in writing to the Governor-General.

Clause 11 - Termination of appointments

The Governor-General may terminate the appointment of a member for misbehaviour or for physical or mental incapacity. The Governor-General is required to terminate the appointment of a member for bankruptcy or insolvency, absence without leave from three consecutive meetings, or for failing to comply with his obligations under this Bill.

Clause 12 - Pecuniary interests

Members must disclose to the Board any direct or indirect pecuniary interest in any matter under consideration or about to be considered by the Board (sub-clause 12(1)).

Where a member has such an interest he is not to be present at any deliberations and may not take part in any decision by the Board in respect of that matter, unless the Minister or the Board determines that he may take part (sub-clause 12(2)).

While the Board is considering whether a member may take part in its deliberations and decisions on an issue where that member has a pecuniary interest, the member is not to be involved in such deliberations (sub-clause 12(3)).

The purpose of this provision is to ensure all members avoid any situation which may place them in a position of compromise or conflict of interest.

Clause 13 - Acting members

This provision sets out the terms and conditions for filling the position of Chairman or member on an acting basis.

The Minister may appoint any appointed Board member, except the departmental member or an acting member, to act as Chairman in the absence from duty of the Chairman, or where the position is vacant (sub-clause 13(1)).

The Minister may appoint an acting member where a vacancy occurs due to the absence of a member or where a member acts as Chairman (sub-clause 13(2)).

Clause 14 - Meetings

The Board may hold meetings as required (sub-clause 14(1)) and must do so if so directed by the Minister (sub-clause 14(2)).

Sub-clause 14(5) provides for Board meetings to have three members present for a quorum, for decisions to be carried by a majority vote of members present and for the member presiding to also have a casting vote where the voting is tied.

Clause 15 - Delegation

The Board may delegate to a member or acting member any of its powers, except for the power to issue, revoke or refuse to renew an MIC licence, or to certify a business as being eligible under sub-clause 29(7).

Sub-clause 15(3) enables the Board to revoke its delegation and to exercise the power itself even where that power has been delegated.

Clause 16 - Staff

The staff assisting the Board will be appointed or employed under the Public Service Act 1922.

Clause 17 - Policies and practices of Board

The Minister may give written directions to the Board regarding its policies and operations. The Board must comply with any such directions (sub-clause 17(1)), which will be published in the Gazette (sub-clause 17(2)).

The Minister may not direct the Board in relation to a particular business (sub-clause 17(3)).

The purpose of this provision is to enable the Minister to direct the Board to follow any policies determined by the Government while maintaining the independence of the Board to deal with individual applications of that policy.

Clause 18 - Total approved capital of licensees

The Minister may specify the total amount of capital of licensees that the Board may approve in any financial year (sub-clause 18(1)). The effect of this sub-clause is to enable the Government to limit the amount of revenue forgone through tax deductions.

Sub-clause 18(2) enables the Minister to notify the Board of increases to the amount of approved capital which may be allocated in any financial year.

Sub-clause 18(4) enables this Bill to be operational during the financial year in which it is proclaimed.

Clause 19 - Disclosure of information

This provision creates a duty on Board members and staff assisting the Board not to disclose information acquired under the provisions of the Act except for the purpose of the Act or as otherwise required by law. The penalty for disclosure in contravention of this clause is provided by section 70 of the Crimes Act 1914.

The effect of this clause is to ensure that, while information falling under sections 43 and 45 of the Freedom of Information Act 1982 is protected, other information may be accessible.

Nothing in this provision precludes a person from providing information to the Commissioner of Taxation or a Taxation Board of Review.

PART III MANAGEMENT AND INVESTMENT COMPANIES

Division 1 - Management and Investment Company Licences

Clause 20 - Application for grant of licence

Applications for licences are made to, and are either granted or refused by the Board in accordance with this clause.

Any Australian company (as defined in clause 3 of this Bill which specifically does not include partnerships, trusts and sole traders) may apply for a licence in response to notices appearing in the Gazette and in newspapers calling for applications by a specified date.

The purpose of this provision is to ensure that all companies wishing to apply for a licence are aware that applications are being called for.

Applications must include full details of the applicant, its officers, its nominal ordinary share capital, the amount of approved capital being sought, the names of substantial shareholders, the applicant's investment plans and any other matters considered relevant by the applicant or by the Board.

The purpose of this provision is to require information that will enable the Board to determine the suitability and competence of applicants and the viability of their business plans before granting a licence.

Sub-clause 20(3) provides that an applicant for a licence that does not have a minimum paid-up capital of \$5 million, or whatever other amount is prescribed by the Board must have written undertakings by persons to subscribe the required amount if a licence is granted.

This provision ensures that sufficient initial funds are available to the MIC to make substantial investments in a range of eligible businesses and has the resources to support the required level of professional management.

Clause 21 - Grant of Licence

The Board has the power to grant or refuse a licence. Where a licence is granted, the Board will specify the amount of approved capital (sub-clause 21(1)).

The Board may not grant an MIC licence to a company where either its paid-up capital is less than \$200 000 or where the company has not complied with an order under Part II of the Foreign Takeovers Act 1975.

The purpose of the minimum paid-up capital is to establish the bona fides of the applicant and to ensure that funds are immediately available for initial administrative costs.

Sub-clause 21(3) provides for the Board to grant licences to those applicants most likely to be successful in assisting the formation and development of businesses as described in clause 29(6)(f).

The purpose of this provision is to ensure that the best use is made of the total amount of approved (tax-deductible) capital made available under this legislation.

All MIC licences are renewable on the 31 October following their date of issue unless revoked earlier (sub-clause 21(4)).

The Board may impose conditions on an MIC when it grants a licence and may vary or revoke these conditions or impose further conditions (sub-clause 21(5)).

Clause 22 - Furnishing of information to Board

This provision enables the Board to obtain information for the purposes of this Bill.

Clause 23 - Revocation of licence

This provision empowers the Board to revoke an MIC licence. It sets out the procedure to be followed by the Board in taking such an action.

A licence can be revoked where:

- . the MIC has contravened the Bill or the regulations;
- . the MIC has not complied with one or more of the conditions under which the licence was granted;
- . the MIC has not complied with a direction of the Board for the MIC to take appropriate action in respect of a contravention or to furnish information to the Board;
- . the MIC has failed to make adequate use of the licence; or
- . because of changes in its management, the officers of the MIC no longer have the appropriate qualifications and experience to manage the MIC effectively.

Sub-clause 23(2) provides for the Board to revoke an MIC's licence when so requested by the MIC.

The Board must give 14 days notice before revoking an MIC's licence and allow an MIC to provide a written submission on the matters specified in the notice.

Sub-clause 23(4) requires the Board, when revoking a licence to give reasons for the decision.

Clause 24 - Suspension of licence

Sub-clause 24(1) empowers the Board to suspend an MIC's licence for up to 2 months for any of the grounds listed under sub-clause 23(1). It may also suspend a licence where the Board is satisfied that a contravention of the Act or the regulations is likely to occur. The Board must provide reasons for suspending a licence.

Clause 25 - Renewal of licence

This provision sets out the procedure to be followed for the renewal of an MIC's licence.

Sub-clause 25(1) requires that the application for renewal be lodged at least 28 days before the current licence is due to expire.

Sub-clause 25(2) provides for the renewal application to include appropriate details regarding the MIC's operations and activities.

Sub-clause 25(3) empowers the Board, to refuse to renew a licence only on any of those grounds listed under sub-clause 23(1).

Sub-clause 25(4) requires the Board, before refusing to renew a licence, to allow the MIC at least 14 days to provide written submissions relating to why the Board is proposing not to renew its licence.

Sub-clause 25(5) requires the Board to give written notice to an MIC of the outcome of an application to renew a licence. Where the Board decides to refuse to renew a licence it will include in the notice the reasons for the decision.

Sub-clause 25(6) provides for all renewed licences to expire on 31 October after the renewal unless revoked prior to that date.

Clause 26 - Alternative to revocation, &c.

This clause enables the Board, where it has grounds to suspend or revoke an MIC's licence or refuse its renewal because of a contravention of this Bill, to direct the MIC to take action in relation to the contravention. Where the MIC takes appropriate action the Board will not proceed.

Clause 27 - Publication of Board's decisions

The Board must publish details of the suspension, revocation or non-renewal of any licence in the Gazette.

Clause 28 - Calls paid during suspension

Sub-clause 28(1) provides that where an MIC's licence is suspended it may not issue shares, call up share capital or accept any amount unpaid on shares except where the date for payment on the call was set prior to the date of the suspension.

Sub-clause 28(2) provides that where an MIC whose licence has been suspended has a call on unpaid shares it is to repay the amounts received as soon as possible.

This prevents an MIC from raising capital while its licence is suspended and serves to protect investors in the MIC.

Division 2 - Certification of Eligible Business Entities

Clause 29 - Certification

Sub-clause 29(1) provides for an MIC to apply to the Board for certification of the eligibility of a business in which it is proposing to invest.

The purpose of this provision is to ensure that the business is of a type which the Bill aims to encourage and that it is certified as an eligible business before any funds are committed.

Sub-clause 29(3) provides for the Board to either certify, or refuse certification, or request further information within ten working days of receiving an application from an MIC to certify the eligibility of a business.

Paragraph 29(6)(a) describes the types of activities in which businesses eligible for MIC investment may be engaged. The areas of business activity in which eligible businesses may operate include manufacturing, telecommunications, certain aspects of consulting and technical servicing, computer software and certain primary industry activities.

Paragraph 29(6)(b)-(e) specify detailed conditions which would normally be required for a business to be deemed an eligible investment. These are that the business would:

- (a) normally carry on or propose to carry on its principal production or research and development in Australia. (The purpose of this provision is to maximise the benefit of the program to Australia while recognising that some companies may need to establish overseas operation for their viability);
- (b) at the time an application for certification is made, have not more than 100 employees or a net worth of not more than \$6 million. (The program is designed to help small businesses to grow);
- (c) have projected average sales growth of more than 20 per cent for the next three years. (This provision is to ensure that only those businesses with high growth potential can attract MIC investment); and
- (d) where its primary business activity at the time of application is one of those listed in sub-clause 29(6)(a) have conducted this activity for ten years or less. (The ten year limit is to encourage young businesses. Without this provision it would be possible for MICs to invest, at very little risk to the MIC, in older businesses with substantial existing assets, which may not generally suffer from a lack of capital).

The overall effect of the sub-clause is to direct MIC funding into high risk businesses which have prospects for high growth.

Paragraph 29(6)(f) requires that eligible businesses be substantially businesses that utilise innovative technology, are export oriented and internationally competitive, and have the potential for rapid growth and for creating significant employment opportunities in Australia.

Sub-clause 29(7) empowers the Board to certify the eligibility of a business which does not comply with the criteria set out in paragraphs 29(6)(a)-(e) but which is a business of the kind described in paragraph 29(6)(f).

The effect of this provision is to give the Board some discretion to enable it to permit MIC investment in businesses whose activities are broadly consistent with paragraph 29(6)(f), but which fail to comply strictly with the specific criteria of paragraph 29(6)(a)-(e).

Sub-clause 29(8) provides that a business will not be certified as eligible where an officer of the MIC was at any time over the previous twelve months an officer of that business.

Clause 30 - Cancellation of certification

The Board may cancel a certificate of eligibility of a business issued under clause 29.

Sub-clauses 30(1) and (2) empowers the Board to cancel the certificate of eligibility of a business where:

- the business is engaged primarily in a business other than a business referred to in paragraph 29(6)(a);
- the business does not carry on its principal business activities or research and development in Australia;
- an officer of the business has furnished false or misleading information to the Board; or
- the Board is satisfied that an eligible business is not, or will not be engaged in a business substantially of the kind described in paragraph 29(6)(f).

Certification of an eligible business ceases when the revocation of the licence of the MIC in relation to which the eligible business is certified.

Division 3 - Financial Matters

Clause 31 - Prohibition

MICs may only acquire and hold interests in business certified by the Board and in such other investments which are approved by the Board.

Sub-clause 31(2) provides that where an MIC acquires voting shares in an eligible business they must be newly issued shares.

This provision is intended to ensure that MIC funding is used for development of an eligible business and, for example, is not diverted to purchase the interest of existing owners of the business.

Clause 32 - Prescribed interests in an eligible business entity

This clause limits the investment held by an MIC in a single eligible business to 20 per cent of either the MIC's approved capital or shareholders' funds, whichever is the greater.

The purpose of this provision is to require MICs to develop diversified portfolios of investments in order to spread the risks involved in individual investments.

Clause 33 - Ownership interests in an eligible business entity

Sub-clause 33(1) limits an MIC to owning a maximum of 50 per cent of any single eligible business, except with the prior permission of the Licensing Board.

This provision limits the level of ownership in an eligible business and which may be acquired with tax deductible capital.

Sub-clause 33(2) provides that where a MIC owns more of an eligible business than permitted by the Board under sub-clause 33(1) because other shareholders have failed to pay calls on partly paid shares, the MIC is to notify the Board and submit for approval a plan to reduce its ownership to the permitted limit.

Sub-clause 33(3) provides that where the Board approves a plan presented by an MIC to divest itself of sufficient ownership interests to reduce its ownership to the limit set under sub-clause 33(1), the Board is to indicate the date by which the MIC's ownership must be reduced. It also provides for the Board to permit the MIC to hold more than the permitted limit of equity in the business entity until the date specified in the notice.

Sub-clause 33(4) provides for the situation where, at the time of a proposed acquisition, a person with a substantial ownership interest in an MIC has a substantial interest in an eligible business. In such circumstances, the MIC may not invest in that eligible business

- . where the proposed acquisition is on other than ordinary commercial terms,
- . where the total shareholdings of the MIC and persons with a substantial ownership interest in it would exceed 50 per cent (or such other limit determined by the Board) of the eligible business after the investment is made, or
- . where it would result in the total of the MIC's holding of such interests in all eligible businesses exceeding 20 per cent of either the MIC's approved capital, or shareholders' funds whichever is the greater.

This provision limits the proportion of an MIC's funds which may be used to finance projects in which the MIC's substantial shareholders have a major interest.

Sub-clause 33(5) requires that the ownership held in an eligible business by the substantial owners of an MIC or their associates whether through the MIC or otherwise, may exceed ninety per cent of the shares in an eligible business only where there is an opportunity for the existing entrepreneur in the business to retain a meaningful equity interest for ten years after the initial investment.

Sub-clause 33(6) establishes that where an associate of a substantial owner of an MIC has a substantial interest in an eligible business then the MIC owner is considered to hold, for the purposes of the Bill, the ownership interest in the eligible business. This prevents a person from dealing through an associate such as a relation or business partner to circumvent the provisions of the Bill.

Sub-clause 33(7) defines associates of a person for the purposes of the Bill.

Clause 34 - Loan interests that may be held in eligible business entities

This clause restricts the amount of loans made by an MIC in eligible businesses to 20 per cent of its shareholders' funds.

The purpose of this provision is to maintain the primary emphasis on equity funding while allowing the MIC some flexibility in its investment strategy.

Clause 35 - Guarantor interests that may be held in eligible business entities

Sub-clause 35(1) limits loans which an MIC may guarantee to an amount equal to the MIC's shareholders' funds.

Sub-clause 35(2) requires an MIC to hold an amount equal to 10 per cent of the value of all loan guarantees in an account set up for this purpose.

Sub-clause 35(3) permits an MIC to invest monies held in this special purpose account only in approved financial instruments as defined in sub-clause 37(1).

This clause limits an MIC's exposure to potential losses should any of its eligible businesses default on loans which it has guaranteed. It also ensures that some money is set aside to meet defaults on loan guarantees and is invested in secure assets.

Clause 36 - Prescribed interests in business entities that cease to be eligible

Sub-clause 36(1) provides that where the certificate of eligibility of a business entity has been cancelled or where it expires, the Board may allow the MIC to retain its existing interest in the eligible business. The Board may also approve further investments in such a business in certain circumstances.

The overall effect of this provision is to prevent funds being retained in or diverted to a business which is no longer of a type which the Bill aims to encourage. However, the provision allows sufficient flexibility to enable an MIC to retain an investment, or to make an additional investment where an eligible business in which it had previously invested.

Paragraph 36(1)(b) empowers the Board to give approval to an MIC to invest in a business whose eligibility has been revoked where it is to protect the MIC's existing interest and where no other finance is available.

The purpose of this provision is to allow sufficient flexibility to enable a MIC to make an investment where an eligible business in which it had previously invested would otherwise be seriously disadvantaged financially - for example to save a business from bankruptcy.

Sub-clause 36(2) allows the Board to determine a date by which an MIC shall dispose of interests in a business whose eligibility has been cancelled or has expired.

Clause 37 - Other investments approved by Board

Sub-clause 37(1) permits MICs to invest in a wide range of short-term financial instruments.

It recognises that MICs will have a need to invest funds retained to cover the day-to-day running of the MIC and funds held prior to their investment in an eligible business.

Sub-clause 37(2) gives the Board the discretion to allow an MIC to invest other than in ownership interests in certified eligible businesses or in approved short-term financial instruments, but only with the prior written approval of the Board.

In addition, this sub-clause prohibits an MIC from investing in:

- other MICs. (The purpose of this provision is to avoid a double tax deduction for funds invested in MICs); and
- businesses whose principal activity it is to lend money, to invest in debentures, stocks or shares or to invest in real estate. (These investments are not consistent with the purpose of the Bill).

Sub-clause 37(3) takes effect after an MIC has had a licence for 18 months. The MIC may not, for any subsequent consecutive 180 day period, hold more than 30 per cent of its total assets other than in the ownership of eligible businesses.

The purpose of this provision is to provide the MIC with an 18 month settling in period to develop its investment strategy and to identify suitable businesses for investment. This limit is intended to ensure that MICs do not unduly delay investing in eligible businesses.

Clause 38 - Share capital

The Board may invite licensed MICs to lodge applications for an increase in their approved capital (sub-clause 38(1)). The Board may increase the amount of capital specified in an MIC licence, after having considered all applications for new licences and all applications for increases in approved MIC capital (sub-clause 38(2)). An MIC must maintain a nominal share capital of at least \$5 million or such other amount as is prescribed by the Board (sub-clause 38(3), and must inform the Board after calling up any share capital.

This provision is designed to ensure the ongoing investment viability of MICs, with appropriate capitalisation.

Sub-clause 38(5) restricts an MIC's paid up capital to the amount of approved capital.

This provision ensures that all the capital invested in an MIC is tax deductible thus enabling the Board to monitor the MIC's investments as required by this Bill.

Clause 39 - Borrowing by licensees

This clause enables an MIC to borrow moneys, but where it borrows from an MIC shareholder it may only do so on ordinary commercial terms.

Clause 40 - Banks may hold shares in licensees

This clause requires Banks to obtain the approval of the Reserve Bank when seeking to invest in an MIC.

Division 4 - Administrative Matters

Clause 41 - Annual return

This clause requires a company which was licenced as an MIC for some or all of a financial year, to lodge a return with the Board within 2 months of the end of the financial year giving full details of the its operations.

Clause 42 - Share register

An MIC must provide the Board, within 10 days of obtaining a licence, with a copy of its register of shareholders. The MIC will also advise the Board of any change in this register within 10 days of any change occurring. Persons acquiring or disposing of shares in an MIC must advise the Board within 10 days of the transaction being completed.

Clause 43 - Changes to be notified

When a person becomes an officer of an MIC, the Board must be provided with full details of that person. The Board must be advised when a person ceases to be an officer of an MIC.

The purpose of this provision is to assist the Board to monitor the operation of an MIC.

Clause 44 - Acquisition of substantial ownership interest to be approved

The Board must approve the acquisition of a substantial ownership interest in an MIC by any person.

Clause 45 - Cross ownership to be notified

This clause requires a person who acquires substantial ownership in an eligible business certified in relation to an MIC, and who at the same time holds or acquires a substantial ownership interest in the same MIC, to notify the MIC of this acquisition. It also provides that the MIC must be notified where a person acquires a substantial ownership interest in an MIC while holding or acquiring a substantial interest in an eligible business which is certified in relation to that MIC.

PART V MISCELLANEOUSClause 46 - Annual Report

The Board must provide an annual report to the Minister at the end of the financial year setting out the names of all MICs which held licences during that year and the names of all eligible businesses certified during the year, as well as the particulars of any directions given by the Minister to the Board. The report will be tabled in both Houses of Parliament.

Clause 47 - Review of certain decisions of the Board

An MIC may appeal to the Administrative Appeals Tribunal where the Board refuses to renew or revokes the MIC's licence.

Decisions by the Board to grant MIC licences or set the approved capital level of an MIC may not be reviewed by the Tribunal. Such decisions require the exercise of judgement requiring a high level of relevant experience and constitute a major part of the role for which the specially constituted, independent Board is to be established.

Clause 48 - Statement to accompany notice of reviewable decisions

Where the Board has revoked or refused to renew an MIC's licence the Board will advise the MIC that it and any other person affected by the decision has the right to appeal to the Administrative Appeals Tribunal.

Clause 49 - False or misleading statements

It is an offence for any person to make a false or misleading statement in a document lodged with or furnished to the Board.

Clause 50 - Validity of acts done in contravention of Act

An act which contravenes this Act or regulations made under this Act is not made invalid by reason only of that contravention.

Clause 51 - Service

This clause defines the circumstances in which a notice is to be served for the purposes of this Bill, that is, when it is delivered, posted or left at the address of the person or company on whom the notice is being served.

Clause 52 - Regulations

The Governor-General may make regulations pursuant to this Bill.

