



## Government Inquiry into Foreign Trust Disclosure Rules

### Minute 1

#### Background

1. The procedure and conduct of the an inquiry under the Inquiries Act 2013 (**the Act**) is to be such as the Inquiry considers appropriate, subject to the requirements of the Act and to the terms of reference of the Inquiry.
2. The Inquiry must comply with the principles of natural justice and must have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses or other persons participating in the Inquiry.
3. The Inquiry has no power to determine the civil, criminal or disciplinary liability of any person (s11(1) of the Act).
4. Recognising these legal requirements, and in the interests of transparency, the Inquiry has decided to issue this Minute to provide guidance to participants in the Inquiry and to the public on how it is intended that that the Inquiry will be conducted.
5. The Minute also records the orders made in relation to the restrictions on access to certain evidence or submissions presented to the Inquiry as required by the terms of reference of the Inquiry.
6. This Minute is subject to and should be read having regard to the Act. In order to allow the Inquiry to operate in accordance with legal requirements, and in a manner that is effective and flexible, the procedures set out in this Minute may need to be adapted from time to time, and are not intended to cover every eventuality.

#### Process of Inquiry

7. The Inquiry will take the following approach-
  - 7.1 Establish the existing disclosure rules and their practical application. The Inquiry will review the legislation, supporting regulations and commentaries, and obtain evidence from the government agencies responsible for administration and enforcement.
  - 7.2 Establish New Zealand's obligations under international agreements relevant to the protection of its reputation as a country that cooperates with other jurisdictions to deter abusive tax practices and money laundering. The Inquiry will consider the relevant agreements and interview Officials involved with servicing New Zealand's obligations under them.
  - 7.3 Identify parties who have expressed an interest in the matter of the Inquiry, and invite written submissions. Other parties are also welcome to make written submissions. The deadline for receiving written submissions is 20 May 2016 although the Inquiry may extend this deadline if considered appropriate.
  - 7.4 Consider the adequacy of existing disclosure rules in the context of the relevant international agreements, taking into account the issues identified by the 'Panama Papers'.

- 7.5 Identify options for enhancement of the existing rules or enforcement of them, or other actions that could be taken.
8. Where appropriate the Inquiry will meet with external parties who have expertise in areas relevant to the Inquiry to clarify the existing rules and their practical application.

#### **No public hearings**

9. The Inquiry has decided not to conduct public hearings but to receive submissions by way of written submissions only. The Inquiry will however meet with parties who make submissions if the Inquiry deems it necessary to do so in order to obtain further evidence or clarification. In reaching this conclusion it has taken into account the criteria as set out in s 15(2) of the Act. The Inquiry has particularly taken into account the following factors –
  - (a) The highly technical nature of the issues the Inquiry is required to consider.
  - (b) The requirement to report by 30 June 2016 and the resulting need to use the available time in evaluating focussed submissions, which are most efficiently obtained through the written submission process.
  - (c) The ability to meet with parties who make submissions, and others where appropriate, to obtain further evidence on issue within the terms of reference.
10. The inquiry accordingly orders under s 15(1)c of the Act that the information gathering aspects of the inquiry will be held in private.

#### **Taking of evidence**

11. The Inquiry does not anticipate using its powers to compel attendance or to seek sworn evidence. However, if considered necessary the Inquiry will do so.
12. Any participant providing information, submissions and correspondence should identify at that time any information that the participant does not wish to be made public and the grounds for that, for example, individual privacy or safety or security.

#### **Transcripts of interviews**

13. The Inquiry does not anticipate that it will be recording any interviews, for the reasons set out in paragraph 9 under the heading “No public hearings”. However if any recording of interviews is undertaken then transcripts of those interviews will be produced. Subject to the requirements of the terms of reference and to any orders made by the Inquiry under s 15 of the Act, those transcripts may be made public but not until after the Inquiry has reported.
14. A participant will upon request be provided with a copy of the transcript of their interview for review.
15. The participant will return the transcript to the Inquiry with a list of any requests in relation to the transcript. Those requests may include requests for:
  - (a) Corrections to the transcripts (where it has inaccurately recorded what has been said).
  - (b) Orders to be made under s 15(1) of the Act on the grounds of privacy, or any other statutory ground.
16. The list will identify the relevant passage(s) in the transcript and the reason(s) in support of any publication restriction that is sought.
17. If the Inquiry is satisfied that publication restrictions should be imposed, it will make formal orders. If not, the Inquiry will consult with the participant. If the Inquiry remains unpersuaded to impose orders, it will provide the participant an opportunity to file a formal application.

### **Restrictions on access to inquiry – s 15(1) orders**

18. As required by the terms of reference and s 15(3) of the Act, and to recognise the long standing statutory limitation applicable to provision of information from or on behalf of the Commissioner of Inland Revenue, the Inquiry makes orders under s 15(1)(b) of the Act restricting public access to any evidence or submissions received by the Inquiry from and on behalf of the Commissioner of Inland Revenue which identifies any person or their affairs or which the the Commissioner otherwise identifies as confidential, as if sections 81 and 87 of the Tax Administration Act 1994 applied to the evidence or submission.

### **Non-publication orders under s 15(1)**

19. For the same reasons as set out in paragraph 18 under the heading “Restrictions to access to inquiry – s 15(1) orders”, the Inquiry will not identify in its report, nor will it otherwise disclose or report (including to appointing Ministers), the identity of any persons whose affairs may have been disclosed by the Commissioner of Inland Revenue as part of any evidence or submission or disclose confidential evidence or submissions from the Commissioner.
20. The Inquiry accordingly makes orders under s 15(1)(a) of the Act forbidding:
  - (a) The publication of the identity of any persons whose affairs may have been disclosed by the Commissioner of Inland Revenue as part of any evidence or submission.
  - (b) Publication of confidential evidence or submissions from the Commissioner of Inland Revenue.
21. If any participant wishes to seek publication restrictions under s 15(1) of the Act, notice should be provided to the Inquiry as soon as possible. The notice should identify the reason(s) why the non-publication order is being sought and in doing so it should address the factors as set in section 15(2) of the Act.

### **Management of Inquiry records**

22. In accordance with s 32 of the Act, all documents generated or received by the Inquiry will be subject to the Official Information Act 1982 after the Inquiry has reported, with two exceptions:
  - (a) Material over which the Inquiry has made non-publication orders under s 15(1) of the Act.
  - (b) Documents that relate to the internal deliberations of the Inquiry.
23. Any orders that the Inquiry ultimately makes for restrictions on publication will attach only to the release of documents held in the Inquiry’s own record, and will not apply to copies of the same documents independently held by participants to which the Official Information Act 1982 may apply. Requests for access to such documents from relevant state sector agencies will need to be directed to the relevant agency under the Official Information Act 1982.



John Shewan

Inquiry Chair

**9 May 2016 at Wellington**