Annex: Supplementary note in response to specific questions

A number of the shares plus submissions have asked us to provide further information on the following issues:

(a) Whether the constitutions of the MOM companies can be amended prior to each IPO to enable the directors of those companies to act in the best interests of the appointing shareholder;

The principal duty of a director under the Companies Act is to act in good faith and in what the director believes to be the best interests of the company when exercising powers or performing duties as a director.

The Companies Act provides, however, that this duty can be modified for wholly-owned subsidiaries, subsidiaries that are not wholly-owned and joint venture companies. In the case of a subsidiary that is not wholly-owned, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company, even though it may not be in the best interests of the company, if permitted to do so under the company's constitution and with the prior agreement of the shareholders of the company other than the holding company. Similarly, in the case of a company that is carrying out a joint venture between the shareholders a director may, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

The Crown is required to hold at least 51% of the ordinary shares in each MOM company. However, in our view the Crown is not a holding company and therefore the MOM companies are not subsidiaries of the Crown. So directors cannot be authorized by the constitution of a MOM company to act in the best interests of the Crown, rather than the company.

The MOM companies will be listed companies with a large number of shareholders, the vast majority of whom will not be parties to any shareholder agreement. So in our view a MOM company will not be carrying out a joint venture between the shareholders of that company, in the relevant sense.

As a result, none of the permitted modifications under the Companies Act appear to apply to the MOM companies and therefore directors will be required to act in the best interests of the company rather than an appointing shareholder, and the constitution of a MOM company cannot alter this requirement.

(b) Whether the ability of the Crown to enter into voting agreements with iwi after an IPO will be prohibited or restricted, for example under the NZSX Listing Rules

In our view the Crown will be able to enter into voting agreements with iwi after an IPO without being in breach of any applicable regulatory provisions. Depending on the precise nature of any such voting agreement, it may be necessary to amend Part 5A of the Public Finance Act 1989 to clarify that Maori interests do not acquire a "relevant interest" in the Crown's shares as a result of entering into such an agreement, and therefore breach the 10% limit on shareholdings by persons other than the Crown.

Voting agreements can take a variety of forms and any decision to explore this option further would require the Crown and iwi to work through a number of secondary legal issues.

(c) Whether the Crown may be restricted in any way from buying back MOM shares following an IPO to give proper effect to the Shares Plus concept.

Following completion of the IPO, the Crown will be subject to the restrictions imposed by the Takeovers Code should it wish to buy further shares in the MOM companies to give effect to the shares plus concept. The Crown will, however, be able to buy additional shares if:

- it makes a full or partial takeover of a MOM company in accordance with the Code

- its shareholding increases by no more than 5% of the total voting rights in the company in any 12 month period (acquiring shares in this manner is known as "creeping"), or

- shareholders approve the purchase by ordinary resolution (the Crown would not be able to vote on such a resolution).

Alternatively the Crown could fund iwi to purchase the shares directly, or transfer to iwi any shares it retains in excess of the 51% minimum holding.