

Mixed Ownership Model Consultation with Māori

Why the Government is consulting

- The Crown is committed to maintaining its obligations under the Treaty
- s27 of the SOE Act to be replicated in the new mixed ownership model legislation
- Three options for expressing broader Treaty obligations
 - Include s9 of the SOE Act, in relation to the Crown's shareholding in these companies
 - Include a new, more specific Treaty clause that clarifies the Crown's obligations
 - No general Treaty clause
- Understand Māori views before making final decisions

The mixed ownership model

- Float up to 49% of four State Owned Enterprises
 - Genesis Power, Meridian Energy, Mighty River Power, Solid Energy
- Government retains control
- Minority shareholdings limited to 10%
- New Zealanders will be at the front of the queue
- List the companies on the stock exchange

Benefits of mixed ownership

- The Government will borrow \$5-7 billion less, reducing its indebtedness to the rest of the world
- \$5-7 billion in proceeds will be invested in high priority assets including schools, hospitals and public infrastructure, through the Future Investment Fund
- New Zealanders will be able to invest in large and proven companies. This will strengthen the stock market and improve New Zealand's savings culture
- The companies will have sharper incentives to perform well. They will be able to raise capital for growth more easily

The legislation

- Remove the four companies from the SOE Act
- Put them under the Public Finance Act (PFA), with new controls that
 - Require the Crown to retain 51% of the shares
 - Limit other individual shareholdings to 10%
- Replicate s27A-D in the PFA
- Consulting on the treatment of s9 in the PFA
- s9 will remain in the SOE Act
- Technical consequential changes to some settlement acts

Māori rights and interests

- Māori rights and interests protected in a number of ways
- Within the SOE Act

- s9 provides a general, non-specific protection

“Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”

- s9 was the basis for the *Lands* case, in which the Court of Appeal articulated the principles of the Treaty for the first time
- The *Lands* case also resulted in s27A-D of the SOE Act
- s27A-D protect land owned by SOEs that is subject to Treaty claims. The Tribunal can order the Crown to resume (buy back) the land for use in settlements

Māori rights and interests

- Beyond the SOE Act there are other layers of protection
 - Direct contractual relationships with the companies in respect of commercial arrangements and modes of operating in the community
 - Statutory processes under the Resource Management Act and other legislation
 - The Crown and Māori's collaborative, good faith approach to policy making across a broad range of economic and social fronts – Fresh Start for Fresh Water, emissions trading scheme, local government, Whanau Ora

Māori rights and interests

- The mixed ownership model will not affect
 - Māori rights and interests in water
 - The SOEs do not own water, so water is not being sold
 - Clarification of Māori rights and interests will continue through the water reform process
 - The Treaty settlement process, which will continue

Investment opportunities

- Investment opportunities are not affected by the legislation so are not part of the formal consultation
- Investment opportunity arises during the marketing of each company in the run up to its float
 - Individuals, including Māori, can invest through the public pool or through share brokers
 - Institutions, including iwi and other Māori entities, can invest through the book build
- Mighty River Power to be floated around the third quarter of 2012, subject to market conditions

Three specific questions

- 1 What rights and interests do Māori have in the Mixed Ownership Model Companies that are not protected by the section 27A-D memorials regime, or by other legislation?
- 2 How would any rights and interests identified in question 1 be protected by continued application of section 9 of the State-Owned Enterprises Act 1986?
- 3 Could any rights and interests identified in question 1 be protected by an alternative, more specific, formulation of the Crown's obligations under the Treaty?

Consultation process

- Written submissions, 1-22 February
- Hui, 8-16 February
- Consultation with specific groups as necessary
- Legislation introduced in March

Submissions

- Deadline **5pm, Wednesday 22 February 2012**
- Late submissions won't be considered
- Send to
 - mixed-ownership-consultation@treasury.govt.nz, or
 - FreePost Authority No. 126395
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Discussion and questions