

# The Treasury

## Mixed Ownership Model for Crown Commercial Entities: Treasury Advice and Cabinet Material relating to Consultation with Māori Information Release

### Release Document

5 April 2012

[www.treasury.govt.nz/publications/reviews-consultation/mixed-ownership/advice](http://www.treasury.govt.nz/publications/reviews-consultation/mixed-ownership/advice)

Key to sections of the Official Information Act 1982 under which information has been withheld.

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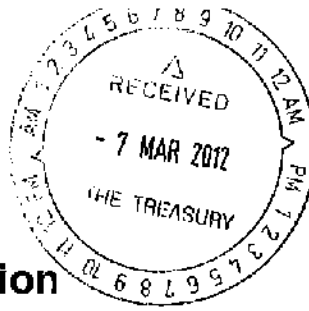
- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [3] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [4] 9(2)(h) - to maintain professional legal privilege
- [5] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [3] appearing where information has been withheld in a release document refers to section 9(2)(g)(i).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.



**Cabinet**



**CAB Min (12) 7/6B**

Copy No: 16

**Minute of Decision**

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## **Mixed Ownership Model: Results of Consultation with Maori and Final Policy Approvals for Legislation**

**Portfolio: Finance**

On 5 March 2012, following reference from the Cabinet Economic Growth and Infrastructure Committee (EGI), Cabinet:

- 1 **noted** that on 14 December 2011, Cabinet:
  - 1.1 **agreed** in principle to the main policy parameters for the Mixed Ownership Model (MOM) programme, subject to the results of consultation with Maori;
  - 1.2 **authorised** the Minister of Finance and the Minister for State Owned Enterprises to make minor policy decisions relating to the draft MOM legislation, and make any urgent decisions relating to the MOM programme that may arise prior to further Cabinet consideration in late January 2012;
- [CAB Min (11) 43/2]
- 2 **noted** the results of the consultation with Maori, which are summarised in paragraphs 10-34 of the paper under EGI (12) 14 and set out in greater detail in the Annex to that paper;
- 3 **agreed** that a clause similar to section 9 of the State Owned Enterprises Act 1986 (SOE Act) be included in the new Part of the Public Finance Act 1989, which will apply to the MOM companies once they have been removed from the SOE Act;
- 4 **agreed** that this clause provide that nothing in that Part of the Public Finance Act permits the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi;
- 5 **agreed** that the definition of the "Crown" in Part 5A of the Public Finance Act be the same as that used in the SOE Act;
- 6 **agreed** that further clarification be included with the section 9 type clause by confirming in a sub-clause that, for the avoidance of doubt, the section 9 type clause does not apply to persons other than the Crown;

- 7 **noted** that Maori rights and interests in MOM companies and the resources used by those companies can be protected through, *inter alia*:
- 7.1 the proposed Treaty clause;
  - 7.2 the continuation of sections 27A-27D of the SOE Act;
  - 7.3 Treaty settlements;
  - 7.4 the application of existing legislation, such as the Resource Management Act 1991;
  - 7.5 other existing policy development processes, such as the *Fresh Start for Fresh Water* programme;
- 8 **confirmed** the in principle policy decisions referred to in paragraph 1.1 above, namely:
- 8.1 the removal of the MOM companies from Schedules 1 and 2 of the SOE Act;
  - 8.2 the continued application of sections 22 to 30 of the SOE Act, which set out the process for the transfer of assets and land by the Crown to State enterprises;
  - 8.3 the removal of Solid Energy New Zealand Limited from Schedule 1 of the Official Information Act 1982 and, potentially, the removal of all the MOM companies from the Ombudsmen Act 1975;
  - 8.4 consequential or related amendments to other legislation, including the continued application of the Public Records Act 2005 in respect of old records;
  - 8.5 a restriction on reducing the Crown's shareholding in the MOM companies below 51 percent;
  - 8.6 a maximum size limit on non-Crown individual entity shareholdings of 10 percent;
- 9 **confirmed** the following minor policy decisions made by the Minister of Finance and the Minister for State Owned Enterprises in accordance with paragraph 1.2 above:
- 9.1 that the 10 percent and 51 percent restrictions be calculated on the basis of voting rights rather than the total percentage of all securities held (including those with non-voting rights);
  - 9.2 that the MOM Bill make provision for the disposal of shareholdings that are held by any person in excess of the 10 percent restriction, and that voting rights attaching to any shareholding which exceed 10 percent are not exercisable;
  - 9.3 that the MOM Bill make provision for trustee corporations and nominee companies to be exempt from the 10 percent restriction, but should be required to monitor transactions and report to the MOM company when a person has breached the 10 percent restriction;
  - 9.4 that the MOM companies should be removed from the ambit of the Official Information Act 1982 and the Ombudsmen Act 1975;

- 10 10.1 **noted** that Air New Zealand Limited is already a mixed ownership company and is listed on the Stock Exchange;
- 10.2 **directed** officials to provide further advice to the Minister of Finance, Minister for State Owned Enterprises and the Prime Minister on the implementation of the MOM policy in respect of Air New Zealand given the greater complexity around Air New Zealand's existing shareholding;
- 11 **agreed** that the government remains committed to retaining at least 51 percent of Air New Zealand Limited;
- 12 **agreed** that the MOM Bill include the following consequential amendments to other enactments:
- 12.1 the continued application of the Public Records Act 2005 in respect of records that relate to the company's affairs before it ceased to be a State Owned Enterprise, (regardless of when the records of those affairs are created);
- 12.2 amendments to the Income Tax Act 2007 to reflect that specific tax rules for State enterprises and special corporate entities no longer apply, and to ensure that loss grouping is not permitted among companies whose common ownership is determined by a significant Crown interest in them (ie State Owned Enterprises, MOM companies, and companies in an equivalent position (currently Air New Zealand Limited));
- 12.3 an additional paragraph in subsection 1A(2) of the Public Finance Act 1989 which provides that a purpose of that Act is to regulate the ownership of companies named in Schedule 5;
- 13 **agreed** that the MOM Bill provide that the constitution of a MOM company is not prevented from also providing for the consequences of a person exceeding the 10 per cent limit (either to implement, or in addition to, the consequences set out in the MOM Bill);

[2]

[2]

- 17 **invited the Minister of Finance and the Minister for State Owned Enterprises to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs.**

Secretary of the Cabinet

Reference: CAB (12) 56; EGI Min (12) 2/9

*Secretary's Note: . This minute replaces EGI Min (12) 2/9. Cabinet amended paragraph 10.*

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**Distribution (see over):**

