THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Air New Zealand: Constitution

Date:	15 November 2001	**Treasury Priority:**	High
Security Level:	Commercial Sensitive	**Report No:**	T2001/1877

Action Sought

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Treasurer/Minister of Finance	Note	ASAP
Associate Minister of Finance (Hon Trevor Mallard)	Note	ASAP

Contact for Telephone Discussion (if required)

Name	**Position**	**Telephone**		**1st Contact**
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15 November 2001 GD/44/1

Treasury Report: Air New Zealand: Constitution

Purpose of Report

1. The Air New Zealand Constitution has been revised where necessary to reflect the severing of Ansett and recent decisions taken by the Government for the bail out of Air New Zealand.

Analysis

2. Changes to the Air NZ Constitution have been agreed in principle between the Board of Air NZ and officials from the Treasury and the Ministry of Transport.

3. Government responsibility for consenting to the proposed Constitution rests with the Kiwi Shareholder (the Minister of Transport). We understand he is likely to seek your views next week on the proposed changes before he provides his consent.

4. The Ministry of Transport is due to report to the Minister of Transport on the changes to the Constitution on Thursday 14 November. The Minister of Transport may wish to talk to you about the changes.

Process

5. The proposed Constitution has been developed from the New Zealand Stock Exchange's (NZSE) template of a company constitution as a base. It has been amended to reflect the particular circumstances of Air NZ, in particular the protection of bilateral air traffic rights and ownership circumstances.

6. Air NZ will seek the NZSE's approval to the Constitution. While it differs from the standard NZSE template, difficulties with approval are not expected.

7. Following Kiwi Shareholder and NZSE approval (subject to any amendments required by those parties being agreed by the Board of Air NZ), the proposed Constitution will go to Air NZ shareholders for resolutions to be passed at the AGM, scheduled for late December (the proposed AGM date was 19 December, we understand that date may be extended to 28 December but this has yet to be confirmed).

Proposed Changes to Current Constitution

8. The material changes to the current Air NZ Constitution are:

Ownership

- the Minister of Finance will approve the appointment of the Chairperson while the Government holds more than 5 percent of voting rights in Air NZ;

- reducing the Board to seven members plus the Managing Director if appropriate with a minimum number of five members and the actual number to be set by shareholder resolution; and

- the process for appointing Board members is the standard one prescribed by the Stock Exchange – the directors are to be elected by the majority vote of shareholders; the Crown can vote at those meetings for all, some or none.

Regulatory (Protection of Bilateral Air Traffic Rights)

- removing requirements for 'A' and 'B' shares and inclusion of provision that allows Air NZ to require shareholders to provide statutory declarations as to nationality if needed by Air NZ to demonstrate ownership and control rests with New Zealand nationals.

Ongoing Provisions

9. The Constitution continues to provide for the following material provisions that are intended to protect bilateral air traffic rights:

- share ownership for airlines, or persons associated with airline businesses, requires the prior approval of the Kiwi Shareholder (this provision is underpinned by the regulatory regime that any one airline cannot own more than 25% of shares in Air NZ, and all airlines cannot own more than 35%);

- a majority of directors plus the Chairperson are required to be New Zealand citizens;

- the Chair is to be elected by the Board;

- requirement to trade under the name "Air New Zealand" for international services, have its principal place of business in New Zealand, be incorporated in New Zealand and have its Head Office in New Zealand;

- no person that is not a New Zealand national may hold equity, or an interest in equity, that gives them 10 percent or more of the voting rights in Air New Zealand without the written consent of the Kiwi Shareholder; and

- any shareholdings that are found to exist that put Air NZ's bilateral air traffic rights at risk can be determined to be "affected equity securities" by the Board or the Kiwi Shareholder and the holder will not be entitled to vote those shares, the votes being transferred to the Chair of Air NZ. The holder will have three months from notification that the shares are "affected equity securities" to dispose of the shares. We note that, in the unlikely event this provision is triggered, it would most probably be as a result of a bilateral partner demonstrating that Air NZ was not effectively controlled or substantially owned by New Zealand nationals that would put air traffic rights at risk.

Recommended Action

10. It is recommended that you:

a **note** the proposed substantive changes to the Air NZ Constitution contained in this report;

b **note** that the provisions that relate to ownership are:

- the Minister of Finance to approve the appointment of Chair to the Board while the Government holds 5 percent or more of the voting rights in Air NZ; and

- the Board of Air NZ be reduced to seven plus the Managing Director if appropriate.

c **note** the Minister of Transport may wish to discuss the proposed changes to the Air NZ Constitution with you next week.

Ivan Kwok
Treasury Solicitor
for Secretary to the Treasury

Hon Dr Michael Cullen
Treasurer/Minister of Finance