

The Treasury

Project Korimako - Tranche Two Release of Advice

April 2023

This document has been proactively released by the Treasury/Minister of Finance (Hon Grant Robertson) and Minister for State Owned Enterprises (Hon Dr Duncan Webb) on the Treasury website at

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Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

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Subscription Agreement

in relation to Kiwi Group Capital Limited

Kiwi Group Capital Limited (the **Company**)

The Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for State-Owned Enterprises (the **Crown**)

Subscription Agreement

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Details

Date 23 November 2022

Parties

Name **Kiwi Group Capital Limited**
 Short form name the **Company**
 Notice details Attention: The Chair
 Email: [23]
 Address: Level 9, 20 Customhouse Quay, Wellington 6011

Name **The Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for State-Owned Enterprises**
 Short form name the **Crown**
 Notice details Attention: Secretary to the Treasury / Treasury Solicitor
 Email: caralee.mcliesh@treasury.govt.nz /
 legalmailbox2@treasury.govt.nz
 Address: 1 The Terrace, Wellington Central, Wellington

Background

- A The Company was incorporated on or about the date of this Agreement.
- B The Company is expected to be nominated as a purchaser under the sale and purchase agreement for shares in Kiwi Group Holdings Limited (**KGH**) dated 19 August 2022, between ACC, NZ Post, NZSF Tui, NZSF and the Crown (the **SPA**).
- C The Crown has agreed to provide funding to the Company:
- a. to allow it to meet its obligations as a purchaser under the SPA; and
 - b. for operational purposes,
- by subscribing for securities in the capital of the Company on the terms and conditions set out in this Agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement, unless the context otherwise requires, capitalised undefined terms have the meaning given to them in the SPA and:

Act means the *Companies Act 1993*.

[25]

Agreement means this Agreement.

Business Day means any day (other than a Saturday, Sunday and statutory holiday) on which registered banks in New Zealand are open for general banking business in Auckland and Wellington.

Completion has the meaning given in the SPA.

Completion Date means the date on which Completion occurs.

Encumbrance means a security interest, mortgage, charge, lien, pledge, option, first right of refusal, right of pre-emption or any other adverse interest of any nature.

Expiry Date has the meaning given in clause 3.2.

Law includes:

- (a) principles of law or equity established by decisions of the courts of New Zealand or any other relevant jurisdiction;
- (b) statutes, regulations or by-laws of any government agency; and
- (c) requirements and approvals (including conditions) of any government agency that have the force of law.

Ministers means the Minister of Finance and the Minister for State Owned Enterprises and **Minister** means each of them.

New Shares means each of the Adjustment Shares, the Operational Shares and the SPA Shares.

Nomination Deed means the Nomination Deed dated on or about the date of this Agreement between the Crown and the Company.

Operational Shares means 300,000 new ordinary shares to be issued by the Company at \$1.00 per share and subscribed for by the Crown under clause 4.

Operational Shares Issue Date means the Completion Date or such other date agreed between the Crown and the Company.

Operational Shares Subscription Price means \$300,000 representing 300,000 Operational Shares.

Purchase Price has the meaning given in the SPA.

SPA has the meaning given in Background B above, as that document is amended from time to time.

SPA Shares means new ordinary shares to be issued by the Company at \$1.00 per share and subscribed for by the Crown under clause 5, of a number equal to the SPA Shares Subscription Price.

SPA Shares Subscription Price means an amount equal to the amount the Company is required to pay to the Vendors as the Purchase Price on Completion under the SPA, rounded up to the nearest dollar.

Subscription Price means the Adjustment Shares Subscription Price, the Operational Shares Subscription Price, and/or the SPA Shares Subscription Price, as applicable.

Tax Act means the *Income Tax Act 2007*.

Vendor has the meaning given in the SPA.

Vendor's Bank Account means the bank account of the relevant Vendor with the details set out in the Schedule.

1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires, references to:
- (i) one gender includes the other;
 - (ii) the singular includes the plural and *vice versa*;
 - (iii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iv) a month or a year are references to a calendar month or calendar year (as the case may be);
 - (v) any enactment includes statutes or statutory provisions or orders or regulations made under that enactment, and includes:
 - (aa) that statute, provision, order or regulation as amended, modified re-enacted or replaced from time to time (whether before or after the date of this Agreement); and
 - (bb) any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation;
 - (vi) a party to this Agreement includes, so far as is consistent with the provisions of this Agreement, that party's executors, administrators, successors in title and assigns;
 - (vii) NZ\$, dollar or \$ are references to New Zealand currency;
 - (viii) time is to New Zealand time; and

- (ix) a clause is a reference to a clause in this Agreement.
- (b) Headings are for ease of reference only and do not affect the interpretation of this Agreement.
- (c) The meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar.

2. Consent as a shareholder

The Crown consents for all purposes (including for the purposes of section 50 of the *Companies Act 1993*) to being a shareholder of the Company and its name being entered in the share register of the Company in respect of the New Shares.

3. Conditions precedent

3.1 Conditions precedent

This Agreement will not take effect unless:

- (a) the Crown has received a duly executed copy of each of this Agreement and the Nomination Deed;
- (b) the Crown has issued the Nominated Purchaser Notice nominating the Company as a nominated purchaser for the purposes of the SPA; and
- (c) the Company has confirmed in writing to the Crown that all authorisations necessary for its entry into this Agreement (if any) have been obtained, including a Board resolution of the Company in the form agreed with the Crown.

3.2 Failure to satisfy conditions

If any of the conditions set out in clause 3.1 have not been satisfied by the Company or waived by the Crown by on which the SPA is voided by the Crown or the Vendors in accordance with clause 6(e) of the SPA (or such other date agreed in writing by the parties) (the **Expiry Date**), the Crown may cancel this Agreement by notice in writing to the Company.

3.3 Waiver

The conditions precedent in this clause 3 are for the sole benefit of the Crown and may only be waived by notice from the Crown to the Company.

4. Subscription for Operational Shares

4.1 Agreement to subscribe

The Crown agrees to subscribe for, and the Company agrees to issue, the Operational Shares on the Operational Shares Issue Date, to be held in equal proportions by each Minister.

4.2 Consideration

The consideration for the issue by the Company of the Operational Shares is the Operational Shares Subscription Price, to be satisfied by the Crown in accordance with clause 4.3.

4.3 Payment for Operational Shares

Subject to the other provisions of this Agreement, the Crown must pay the Operational Shares Subscription Price in cleared, freely available funds for value on the Operational Shares Issue Date to the bank account notified by the Company to the Crown.

4.4 Issue of Operational Shares

Following receipt by the Company of the Operational Shares Subscription Price for the Operational Shares in accordance with clause 4.3, the Company will issue the Operational Shares to the Crown, to be held in equal proportions by each Minister.

5. Subscription for SPA Shares

5.1 Agreement to subscribe

The Crown agrees to subscribe for, and the Company agrees to issue, the SPA Shares on the Completion Date, to be held in equal proportions by each Minister.

5.2 Consideration

The consideration for the issue by the Company of the SPA Shares is the SPA Shares Subscription Price, to be satisfied by the Crown in accordance with clause 5.3.

5.3 Payment for SPA Shares

Subject to the other provisions of this Agreement, the Company directs the Crown to pay the SPA Shares Subscription Price in cleared, freely available funds for value on the Completion Date, to each Vendor, in an amount that reflects the relevant Vendor's Proportion, to the relevant Vendor's Bank Account or another account notified by the Company or the relevant Vendor to the Crown in writing prior to the Completion Date.

5.4 Issue of SPA Shares

Following payment by the Crown of the SPA Shares Subscription Price for the SPA Shares in accordance with clause 5.3, the Company will issue the SPA Shares to the Crown, to be held in equal proportions by each Minister.

[25]

[25]

7. Lowest Price

For the purposes of the financial arrangements rules in the Tax Act, the parties agree that:

- (a) the relevant Subscription Price is the lowest price that they would have agreed for the sale and purchase of the New Shares at the time this Agreement was entered into if payment had been required in full at the time at which the first "right" (as defined in section YA 1 of the Tax Act) in the New Shares was transferred;
- (b) the relevant Subscription Price contains no capitalised interest and is the value of the New Shares; and
- (c) they will compute their taxable income for the relevant period on the basis that the relevant Subscription Price includes no capitalised interest and they will file their tax returns accordingly.

8. Terms applicable to the issue of all New Shares

8.1 All Shares rank equally

The New Shares issued pursuant to this Agreement will rank equally with all other shares on issue as to voting, distribution and all other rights.

8.2 No Encumbrances

The Company must issue any New Shares pursuant to this Agreement to the Crown on the relevant issue date:

- (a) free of all Encumbrances; and
- (b) together with all rights attaching to the other ordinary shares in the Company at the time of issue.

9. Representations and warranties

9.1 Capacity and powers

Each party represents and warrants to the other party that each of the following statements is true and accurate as at the date of this Agreement:

- (a) if it is a body corporate, it is validly existing under the laws of its place of incorporation or registration;

- (b) it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) its obligations under this Agreement are legal, valid, binding and enforceable against it in accordance with their terms; and
- (e) it has entered into this Agreement on the basis of its own independent investigation and assessment and after making its own enquiries in relation to the financial, legal and tax effect of entering into and complying with the terms of this Agreement.

10. Term and termination

10.1 Term

This Agreement takes effect on the date of this Agreement and will continue until the earlier to occur of the Expiry Date and the date this Agreement is terminated in accordance with clause 10.2.

10.2 Termination by Company

The Company may terminate this Agreement at any time by giving written notice to the Crown specifying a Termination Date which is not later than the Expiry Date.

10.3 Consequences of termination

Clauses 10 to 14 of this Agreement survive termination.

11. Confidentiality and OIA requests

11.1 Confidentiality

Subject to clauses 11.2, 11.3 and 11.4, each party must treat the terms of this Agreement and all information made available by or on behalf of any other party in connection with this Agreement as strictly confidential.

11.2 Exceptions

The obligation of confidentiality under clause 11.1 does not apply to:

- (i) information that is generally available to the public at the date of this Agreement or subsequently becomes so available other than by reason of breach of any obligation of confidentiality;
- (ii) any disclosure of information that is necessary to comply with any law, the order of any Governmental Agency or the rules of any stock exchange;
- (iii) information disclosed to a party's employees, officers or advisers (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure, the relevant party notifies the Recipient of the confidential nature of the information to be disclosed.

In the event any such announcement or disclosure is required by law, the order of any Governmental Agency or by any stock exchange, the parties agree to consult with each other regarding the contents of any such announcement or disclosure prior to that announcement.

11.3 Announcements

No party will (except in accordance with clause 11.2) make any public announcement regarding the terms of this Agreement except in a form and manner and at such time as the parties agree.

11.4 Constitutional or parliamentary convention

The parties acknowledge and agree that nothing in clause 11.1 restricts any party's ability to meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown.

11.5 Official Information requests

Information provided to a party may be official information in terms of the Official Information Act and, in line with the purpose and principles of the Official Information Act, such information may be released to the public unless there is good reason, in terms of the Official Information Act, to withhold it. Following receipt of a request under the Official Information Act relating to such information, the party (as applicable) will:

- (i) consult with the other party as to whether the information sought is official information (as defined in the Official Information Act) and, if so, whether there are valid grounds under the Official Information Act for withholding it; and
- (ii) notify the parties if, regardless of any party's views, the party (as applicable) determines that sufficient grounds do not exist under the Official Information Act for withholding the information.

12. Assignment

12.1 Successors

This Agreement will be binding on, and enure for the benefit of, the parties and their respective successors and their permitted assignees, nominees or transferees.

12.2 Parties may not assign

Neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party.

13. Notices

13.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (a **Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in the Parties section of this Agreement, as varied by any Notice given by the recipient to the sender.

13.2 Effective on receipt

A Notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post, on the third Business Day after the date of posting to an address within the country in which the notice was sent (or on the seventh Business Day after the date of posting if posted to or from a place outside the country from which the notice was sent); or
- (c) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that email was sent to the email address of the addressee notified for the purposes of this clause 13), but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00 p.m. (addressee's time), it is deemed to have been received at 9.00 a.m. on the next Business Day.

14. Miscellaneous

14.1 Severability

If any provision of this Agreement (including to avoid doubt any provision in clause 9.1) is held to be or becomes invalid or unenforceable under the Law, but would be valid or enforceable under the Law if that provision was read down, then that provision must be read down to the minimum extent necessary to achieve that result. If that provision cannot be read down, then that provision may be severed from this Agreement and the parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

14.2 Costs

Each party is to pay its own costs and expenses incurred in connection with the preparation and execution of this Agreement and the transactions contemplated under it.

14.3 Counterparts

This Agreement may be executed in counterparts and all executed counterparts constitute one document. The parties agree for the purposes of Part 4 of the *Contract and Commercial Law Act 2017* to be bound by any agreement reached through electronic means.

14.4 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by it.

14.5 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with their subject matter and supersede all previous agreements or understandings between the parties in connection with their subject matter.

14.6 Relationship

Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

14.7 Alterations

This Agreement may be altered only in writing signed by each party.

14.8 Governing law

This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. Each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of

New Zealand in respect of all matters arising out of this Agreement and waives any right that party may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

Schedule – Each Vendor’s Bank Account Details

Vendor	Bank Account Details
Accident Compensation Corporation	[25]
New Zealand Post Limited	[25]
NZSF Tui Investments Limited	[25]

Signing page

EXECUTED as an agreement

SIGNED by KIWI GROUP CAPITAL LIMITED

[23]

Signature of director

David McLean
[23]

Signature of director

Sir Brian Roche

SIGNED by THE SOVEREIGN IN RIGHT OF
NEW ZEALAND ACTING BY AND THROUGH
THE MINISTER OF FINANCE AND THE
ACTING MINISTER FOR STATE OWNED
ENTERPRISES

Signature of Hon Grant Robertson, the Minister
of Finance

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises

Signature of witness

Signature of witness

Name of witness

Name of witness

Occupation of witness

Occupation of witness

City/town of residence

City/town of residence

Signing page

EXECUTED as an agreement

SIGNED by **KIWI GROUP CAPITAL LIMITED**

Signature of director

David McLean

Signature of director

Sir Brian Roche

SIGNED by **THE SOVEREIGN IN RIGHT OF
NEW ZEALAND ACTING BY AND THROUGH
THE MINISTER OF FINANCE AND THE
ACTING MINISTER FOR STATE OWNED
ENTERPRISES**



Signature of Hon Grant Robertson, the Minister
of Finance
[23]

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises

Signature of witness

Amando Wilson

Name of witness

Private Secretary

Occupation of witness

Wellington

City/town of residence

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signing page

EXECUTED as an agreement

SIGNED by **KIWI GROUP CAPITAL LIMITED**

Signature of director

David McLean

Signature of director

Sir Brian Roche

SIGNED by **THE SOVEREIGN IN RIGHT OF
NEW ZEALAND ACTING BY AND THROUGH
THE MINISTER OF FINANCE AND THE
ACTING MINISTER FOR STATE OWNED
ENTERPRISES**



Signature of Hon Grant Robertson, the Minister
of Finance

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises
[23]

Signature of witness

Signature of witness

Name of witness

Amanda Wilson

Name of witness

Occupation of witness

Private Secretary

Occupation of witness

City/town of residence

Wellington

City/town of residence