

The Treasury

Project Korimako - Tranche Two Release of Advice

April 2023

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Treasury Report: Kiwi Group Capital Limited: Proposed Fees for Directors

Date:	3 November 2022	Report No:	T2022/2361
		File Number:	CM-0-2-24

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree to the proposed fees for Kiwi Group Capital Limited Directors and sign updated APH Committee documentation for submission to Cabinet Office	Wednesday 9 November to allow updated APH documentation to be lodged with Cabinet at 10.00am on Thursday 10 November 2022.
Acting Minister for State Owned Enterprises (Hon David Parker)	Agree to the proposed fees for Kiwi Group Capital Limited Directors and sign updated APH Committee documentation for submission to Cabinet Office	Wednesday 9 November to allow updated APH documentation to be lodged with Cabinet at 10.00am on Thursday 10 November 2022.

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Olivia Paterson	Principal Advisor, Commercial and Institutional Performance	[39]	N/A (mob) ✓
Stella Kotrotsos	Manager, Governance & Appointments	[35]	

Minister's Office actions (if required)

If agreed, **sign** and **lodge** updated APH documentation with Cabinet Office by 10.00am on Thursday 10 November for consideration at APH Committee on Wednesday 16 November and at Cabinet on Monday 21 October 2022.

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

[22.11 KGC Updated Combined APH Memo Appointments and Fees 2022 \(Treasury:4715686v1\)](#)

Treasury Report: Kiwi Group Capital: Proposed Fees for Directors

Executive Summary

Cabinet agreed to establish Kiwi Group Capital Limited (KGC), a company to be owned by the Crown, incorporated under the Companies Act 1993 and listed on Schedule 4A of the Public Finance Act 1989 (PFA) to hold the Crown's shares in Kiwi Group Holdings Limited (KGH).

KGC is being set up to hold the Crown's (indirect) 100% interest in Kiwibank Limited (Kiwibank) and The New Zealand Home Loan Company Limited (NZHL) and, through those subsidiaries, to carry on and develop the group's banking and financial services business.

The shares in the holding company will be held equally by the Minister of Finance and the Minister of State Owned Enterprises.

Appointment of at least one director to the KGC Board is required prior to its incorporation, enabling KGC to purchase KGH shares by the end of November 2022.

The KGC appointment process has been expedited and consultation is underway on two potential KGC directors. It is expected that these appointments will be considered by the Appointment and Honours Committee on 16 November 2022 and Cabinet on 21 November 2022 (T2022/2324 refers).

The KGC board is expected to have four directors including the Chair. The demands on these directors, particularly the Chair, during the establishment phase of KGC will be significant. In order to deliver on the Crown's goals, KGC needs outstanding directors with excellent governance skills, banking sector experience, strong financial acumen, the ability to manage diverse stakeholders, experience leading transformations/innovations and support Te Ao Māori principles.

As a PFA Schedule 4A company, KGC board fees are covered by the Treasury's Fees Methodology (Fees Methodology). We have assessed KGC in accordance with the Fees Methodology and current market data (minus 10 percent). On this basis we propose that the annual fee for the Chair is \$125,000, deputy chair \$78,100 and directors \$62,500. We have provided updated APH documentation which includes the proposed board fees (Annex One).

Given the significant establishment requirements for the new entity we propose that you approve KGC accessing special purpose fees for the first seven months of operation. Special purpose fees can be sought for a limited period where directors are required to contribute additional time over and above what would be considered an ordinary commitment, such as establishing or restructuring a company, during a major acquisition or where there is significant change. It is estimated that all directors will need to contribute an additional 50 per cent of their time resulting in an additional fee pool of \$100,000 to 30 June 2023.

We require urgent decisions from you on the proposed fee structure for KGC so the fees can be considered at the same time as the board appointments going to Cabinet on 21 November 2022, which will enable fees to be included in the Letters of Appointment. If you agree, please sign and lodge the attached updated APH committee documentation.

Recommended Action

We recommend that you:

- a **note** it is expected that the KGC board will have four directors including the Chair who will oversee the investment in its subsidiaries to carry on and develop the group's banking and financial services business
- b **note** that appointment of at least one director to the KGC board is required prior to incorporation of KGC, enabling the purchase of KGH shares by KGC at the end of November 2022
- c **agree** to the proposed fees for the KGC chair of \$125,000, deputy chair of \$78,100 and \$62,500 for directors pursuant to the Treasury Fees Methodology

Agree/disagree.

Minister of Finance

Agree/disagree.

Acting Minister for State Owned Enterprises

- d **agree** to a pool of Special Purpose Fees of \$100,000 to 30 June 2023, given the significant additional time commitment required of directors during the establishment phase of KGC.

Agree/disagree.

Minister of Finance

Agree/disagree.

Acting Minister for State Owned Enterprises

- e **agree** to submit updated APH documentation for consideration by the Appointments and Honours Committee on 16 November 2022 and Cabinet on 21 November 2022 which sets out proposed board fees, two priority appointments to KGC's board and a pool of Special Purpose Fees.

Agree/disagree.

Minister of Finance

Agree/disagree.

Acting Minister for State Owned Enterprises

Stella Kotrotsos

Manager, Governance & Appointments

Hon Grant Robertson
Minister of Finance

_____/_____/_____

Hon David Parker
Acting Minister for State Owned Enterprises

_____/_____/_____

Treasury Report: Proposed Fees for Kiwi Group Capital Limited Directors

Purpose of Report

1. This report seeks your agreement to the proposed fees for Kiwi Group Capital Limited (KGC) and to sign and send updated Appointment and Honours Committee (APH) documentation to Cabinet by 10.00am, Thursday 10 November 2022.

Background

2. KGC will be a limited liability company incorporated under the Companies Act 1993, and will be listed on Schedule 4A of the Public Finance Act 1989 (PFA). The shares will be held by the Minister of Finance and the Minister for Stated Owned Enterprises.
3. KGC is being set up by the Crown to hold the Crown's (indirect) 100 per cent interest in Kiwibank Limited (Kiwibank) and the New Zealand Home Loan Company Limited (NZHL).
4. The purpose of KGC as a holding company will be to oversee the investment in subsidiaries (including Kiwibank and NZHL) and indirectly, through those subsidiaries, to carry on and develop the group's banking and financial services business.
5. It is expected that the KGC board will have four directors including the Chair.
6. You are looking to appoint at least one director to the KGC board before the end of November 2022, to ensure that KGC can be incorporated in time to acquire Kiwi Group Holdings Limited (KGH) shares.
7. The KGC appointment process has been expedited and consultation is underway on two potential KGC directors. It is expected that these appointments will be considered by APH on 16 November 2022 and Cabinet on 21 November 2022 (T2022/2324 refers).
8. As a PFA Schedule 4A company, KGC board fees are covered by the Treasury's Fees Methodology (Fees Methodology). Ideally fees will be considered alongside the appointment process to ensure that they can be included in Letters of Appointments.
9. We have provided updated APH documentation which sets out proposed board fees as well as two priority appointments to KGC's board now we have completed the fees assessment in accordance with the Fees Methodology.

The importance of a strong board for KGC

10. It is critical for the KGC board to have highly skilled directors who can navigate the complex financial, operational and policy issues associated with successfully establishing a new entity within a Crown context.
11. KGC, itself a start-up entity, will be the indirect holding company of Kiwibank, New Zealand's fifth largest bank. Over the next three years the board will need to implement systems, processes, and structures to manage the governance and oversight risks that entails.

12. [25], [33], [37]
13. The acquisition of KGH and its subsidiaries (Kiwibank and NZHL) will provide some unique opportunities and challenges for the Crown:
- The acquisition effectively represents the ownership of a bank within the core Crown, rather than through a commercial or investment entity.
 - Ownership of a bank has some specific requirements of the Board, recognising that KGC is not Kiwibank's operational board, but as the indirect holding company will be ultimately responsible. These characteristics include the highly regulated nature of the retail banking sector, and the critical role that bank boards have in setting risk culture.
 - Kiwibank itself represents \$31.5 billion of total assets and \$29.3 billion of liabilities, and customer relationships with over one million New Zealanders. KGC will need to oversee the balancing of Kiwibank's objectives and commercial performance in a highly competitive sector.
 - KGC is being established at the same time that Kiwibank is in the critical phase of its major [25] Te Ara Hou transformation programme with the inherent risks that ambitious IT transformation programmes represent.
14. The Board is responsible for leadership, governance, and oversight, particularly supporting Kiwibank to identify strategic opportunities that will challenge the market share of the four Australian-owned banks (which currently account for about 84% of the banking market), and increasing its strengths as a major and New Zealand-owned alternative in the banking sector.

Treasury's Fees Methodology

15. In 2003 Cabinet established the Fees Methodology for setting directors fees for Crown companies which are not covered by the Cabinet Fees Framework (CFF). Under the Fees Methodology ordinary fees are set by shareholding Ministers.
16. Fees are benchmarked at 90% of comparable private sector fees i.e. paying reasonably similar fees for the experience sought by private firms for directors, but at a 10% discount to recognise a public service element.
17. The Fees Methodology uses nine factors, similar to those used under the CFF, to determine and review the points attributed to each board. The factors include Complexity of the Operating Environment, Innovation / Technology / Intellectual Complexity, Board Discretion / Autonomy, Stakeholder Management, Revenue / Capital Risk, Liability Risk to Organisation, Public Perception / Organisation Profile Risk, Organisation Revenues, and Organisation Total Assets.
18. Ordinary fees cover the full 'normal' contribution of each director, including attendance at board and committee meetings, meeting preparation and travel time, stakeholder management, and any other agreed tasks.
19. Fees are allocated at a rate of two times the standard director rate for the chair and 1.25 times for deputy chairs. There are no additional fees included in the pool for board sub-committee meetings, which are increasingly common in the private sector. Ordinary fees cover the full expected duties of a director.

20. Fees and member-related expenses are paid out of the organisation’s own budget and the amount paid on director development and training should be published in annual reports.

Proposed Ordinary KGC Fees

21. We applied the Fees Methodology to KGC and recommend that the fees for KGC directors are:

Table 1: Proposed KGC Fee Structure

Role	Proposed Annual Fee	Fees Methodology	Estimated Working Days Per Annum
Chair	\$125,000	2x Director Rate	50
Deputy Chair	\$78,100	1.25 Director Rate	35
Director	\$62,500	-	30

Is there a case for Special Purpose Fees for KGC directors in the short term?

Special Purpose Fees

22. Consistent with the CFF, the Fees Methodology allows Special Purpose Fees to be sought where companies have a greater than ordinary workload. Special purpose fees, if requested by a company, are subject to approval by the responsible Minister and Cabinet.

23. Special purpose fees are considered in exceptional circumstances and for a limited period only where directors are required to contribute additional time over and above what would be considered an ordinary commitment. Exceptional circumstances could be where:

- significant director involvement is required in a specific and time-limited major issue, such as establishing or restructuring a company, a major acquisition, or where changes in legislation lead to significant change
- directors represent the company on relevant industry committees or boards, where the commitment is significant, or
- additional contributions are made by directors relating to lengthy travel requirements (where the director’s presence is essential, and the circumstances are exceptional).

24. Requests for special purpose fees include a per diem rate and the total amount to be paid based on equivalent director fee levels. Special purpose fees must only be used for the purpose for which they were approved.

25. We consider that there is a strong case for additional fees to be paid during the establishment phase of KGC. The amount of \$100,000 is proposed as a total pool available to cover this additional workload for the period up to 30 June 2023. This amount was calculated on the basis that the proposed new Chair and Deputy Chair allocation of an additional 50 per cent of their time from 1 December 2022 to 30 June 2023 and two new board members, once appointed allocating an additional 50 percent of their time from 1 April 2023.

Risks

26. Setting board fees for newly established companies at 90% of current market rates creates inequities with board fees allocated to existing Crown company and entity, that have not been adjusted for a number of years. It is expected that fee gaps will be addressed over time and it is critical for KGC to have directors with outstanding governance capabilities. There is precedent to support fees in accordance with current market rates, for example fees approved for Auckland Light Rail board members and the establishment board for the Reserve Bank of New Zealand.
27. If fees do not reflect current market rates, the level of risk and increasing statutory compliance requirements for directors means that we may not be able to attract and retain directors with sufficient skills and experience to position KGC for success from its establishment.

Next Steps

28. If you agree, please sign and lodge attached updated APH documentation with Cabinet Office by 10.00am on Thursday 10 November for consideration at the APH Committee on Wednesday 16 November and at Cabinet on Monday 21 October 2022.

Attachments

- Annex 1: APH Documentation