

# The Treasury

## Project Korimako - Tranche Two Release of Advice

**April 2023**

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### Cabinet Document Details

Title: **Cabinet Paper: LEG-22-SUB-0221: Public Finance (Kiwibank Capital Limited) Order 2022**

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Office of the Minister for State Owned Enterprises

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Minister of Finance  
Minister for State Owned Enterprises

Chair  
Cabinet Legislation Committee

## **PUBLIC FINANCE (KIWI GROUP CAPITAL LIMITED) ORDER 2022**

### **Proposal**

1. This paper seeks the Committee's authorisation to submit the attached Order in Council to the Executive Council to insert the name Kiwi Group Capital Limited into Schedule 4A of the Public Finance Act 1989 (the **PFA**).

### **Policy**

2. On 4 July 2022, Cabinet agreed to establish a limited liability company under the name Kiwi Group Capital Limited to be added to Schedule 4A of the PFA [DEV-22-MIN-0146 and CAB-22-MIN-0250 refers].
3. On 31 October 2022, Cabinet agreed that sections 161 to 165 of the Crown Entities Act 2004 (the **CEA**) should not apply to Kiwi Group Capital Limited, and that this will be recorded in its listing in Schedule 4A of the PFA [DEV-22-MIN-0245 and CAB-22-MIN-0466 refers].
4. Kiwi Group Capital Limited was incorporated and registered with the Companies Office on or about 22 November 2022.
5. The Order in Council will add Kiwi Group Capital Limited to Schedule 4A of the PFA (as set out in DEV-22-MIN-0146). The Order in Council will not apply any of sections 161 to 165 of the CEA (which place restrictions on the ability to acquire financial products, borrow, give guarantees and indemnities, and use derivatives) to Kiwi Group Capital Limited.
6. Schedule 4A companies must comply with certain provisions of the CEA, as set out in section 45OA of the PFA. These include obligations to provide information to shareholding Ministers, to prepare a statement of intent, to be a good employer, to give effect to directions to support a whole of government approach, and reporting obligations. The provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will also apply to Kiwi Group Capital Limited.
7. The Public Finance (Kiwi Group Capital Limited) Order 2022 is necessary to implement previous Cabinet decisions and does not require any new policy decisions to be made.

### **Timing and 28-day rule**

8. A waiver of the 28-day rule is sought on the grounds that the Order has little or no effect on the public and that the establishment of Kiwi Group Capital Limited has already been well publicised, including through the Minister of Finance's announcement on Kiwi Group Capital Limited's proposed acquisition of Kiwi Group Holdings Limited.
9. The Order could not be made until after Kiwi Group Capital Limited was incorporated and exists as a company. Because Kiwi Group Capital Limited has already been incorporated, has received or will soon receive some initial Crown funding, and has acquired or will soon acquire the shares in Kiwi Group Holdings Limited, it should be included in Schedule 4A of the PFA as soon as possible.

## **Compliance**

10. The Order complies with each of the following:
  - a. principles of the Treaty of Waitangi;
  - b. the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - c. principles and guidelines set out in the Privacy Act 1993;
  - d. relevant international standards and obligations; and
  - e. the *Legislation Guidelines* (2021 Edition), which are maintained by the Legislation Design and Advisory Committee.
11. Section 3AB(1) of the PFA authorises the Governor-General by Order in Council made on the recommendation of the Minister of Finance to add the name of a company to Schedule 4A to the PFA.
12. Section 3AB(1) of the PFA provides that such an Order in Council may be made only if the following requirements are met:
  - a. more than 50% of the issued ordinary shares in the capital of the company to which the Order relates are held by Ministers of the Crown on behalf of the Crown;
  - b. shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and
  - c. the company is not a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.
13. These requirements have been met. Kiwi Group Capital Limited was incorporated under the Companies Act 1993 on or about 22 November 2022, with the Minister of Finance and Minister for State Owned Enterprises, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company.

## **Regulations Review Committee**

14. There are no grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 327.

## **Certification by Parliamentary Counsel**

15. Parliamentary Counsel has certified the Order as being in order for submission to Cabinet except that the Order will come into force earlier than the 28th day after its notification in the Gazette (as explained at paragraph 8 above).

## **Regulatory impact analysis**

16. The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

## **Publicity**

17. The Order will be notified in the *New Zealand Gazette*.

## **Proactive release**

18. This Cabinet paper and associated Cabinet minutes are being considered for proactive release in due course.

## Consultation

19. In the course of developing the policy work to establish the company, which includes the policy implemented by the Order, consultation was undertaken with the Public Service Commission. The Department of the Prime Minister and Cabinet was informed.

## Financial implications

20. The Order has no financial implications.

## Legislative implications

21. The Order amends the Public Finance Act 1989.

## Recommendations

It is recommended that the Cabinet Legislation Committee:

1. **note** that on 4 July 2022 Cabinet agreed to the establishment of Kiwi Group Capital Limited as a limited liability company under the Companies Act 1993 and agreed that Kiwi Group Capital Limited be added to Schedule 4A to the Public Finance Act 1989;
2. **note** that on 31 October 2022 Cabinet agreed that sections 161 to 165 of the Crown Entities Act 2004 should not apply to Kiwi Group Capital Limited;
3. **note** that the Public Finance (Kiwi Group Capital Limited) Order 2022 gives effect to the decisions referred to in paragraphs 1 and 2 above;
4. **note** that section 3AB(1) of the Public Finance Act 1989 provides that an Order in Council may be made under that section only if: more than 50% of the issued ordinary shares in the capital of the company to which the Order relates are held by Ministers of the Crown on behalf of the Crown; shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and the company is not a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986;
5. **note** that the requirements in paragraph 4 above have been met;
6. **note** that Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, the Official Information Act 1982 and the Ombudsmen Act 1975;
7. **note** that a waiver of the 28-day rule is sought:
  - 7.1. so that the Order can come into force as soon as possible;
  - 7.2. on the grounds that the Order has little or no effect on the public;
8. **agree** to waive the 28-day rule so that the Order can come into force on the day after the date of its notification in the Gazette; and
9. **authorise** the submission to the Executive Council of the Public Finance (Kiwi Group Capital Limited) Order 2022 inserting the name of Kiwi Group Capital Limited into Schedule 4A of the Public Finance Act 1989.

Authorised for lodgement

Hon Grant Robertson  
Minister of Finance

Date:

Hon Dr David Clark  
Minister for State Owned Enterprises

Date: