



## COVERSHEET

<b>Minister</b>	Hon Shane Jones	<b>Portfolio</b>	Regional Economic Development
<b>Title of Cabinet paper</b>	Provincial Growth Fund Limited: Orders in Council	<b>Date to be published</b>	31 October 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
24 September 2019	Provincial Growth Fund Limited: Orders in Council	Office of Minister for Regional Economic Development
24 September 2019	Provincial Growth Fund Limited: Orders in Council <i>LEG-19-MIN - 0149</i>	Office of Minister for Regional Economic Development

### Information redacted

**YES / NO** (*please select*)

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IN-CONFIDENCE

Office of the Minister of Revenue  
Office of the Minister for Regional Economic Development

Chair, Cabinet Legislation Committee

## **PROVINCIAL GROWTH FUND LIMITED: ORDERS IN COUNCIL**

### **Proposal**

- 1 This paper seeks the Committee's authorisation to submit the attached Orders in Council to the Executive Council to:
  - 1.1 add Provincial Growth Fund Limited (PGFL) to Schedule 4A of the Public Finance Act 1989 (PFA) and;
  - 1.2 add PGFL to the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007.

### **Background**

- 2 On 10 April 2019, the Cabinet Economic Development Committee agreed to establish PGFL as a Schedule 4A company under the PFA [DEV-19-MIN-0084]. PGFL is being established as an asset holding company to hold loan and equity investments made through the Provincial Growth Fund (PGF).
- 3 Establishing PGFL as a Schedule 4A company was considered the most appropriate form of Crown entity to provide the necessary structure and flexibility to best manage loan and equity investments beyond the life of the PGF.
- 4 The purpose of PGFL will be to:
  - 4.1 act solely as the nominated legal entity for taking assignment of PGF debt and equity investments;
  - 4.2 act at all times in accordance with its constitution and its management agreement with the Provincial Development Unit (PDU) in relation to any matter relating to those investments;
  - 4.3 subject to compliance with the Companies Act 1993, distribute the receipts or proceeds of any PGF investments to Shareholding Ministers, as agents of the Crown, unless otherwise agreed between PGFL, the PDU and Shareholding Ministers.
- 5 PGFL will have no operational role in the day-to-day management and administration of PGF investments. PGFL will outsource these functions to the PDU through a management agreement. Decision making responsibilities on PGF investments will remain unchanged.

- 6 Existing investments are currently being managed by the PDU, and will be novated or transferred to PGFL once it is established and operational. Thereafter, new investments will be novated to PGFL once executed.
- 7 On 1 July 2019, Cabinet noted the appointment of Mr Rodger Finlay (as Chair of the Board), Mr Neville Harris QSO and Mr Graeme Mitchell as directors of PGFL [CAB-19-MIN-0320.01]. PGFL directors commenced their three year term on 1 August 2019.
- 8 On 3 September 2019, PGFL was incorporated with the Companies Office with the Minister of Finance and Minister for Regional Economic Development, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company.
- 9 The authorisation of the attached Orders in Council is now required to implement PGFL's addition to Schedule 4A of the Public Finance Act 1989 and Schedule 35 of the Income Tax Act 2007. Such authorisation does not require any new policy decisions to be made.

#### **Public Finance (Provincial Growth Fund Limited) Order 2019**

- 10 This Order in Council will add PGFL to Schedule 4A of the PFA and apply certain financial power restrictions on PGFL under section 161 to 165 of the Crown Entities Act 2004. This Order will place restrictions on PGFL to borrow (section 162) and use derivatives (section 164) while restrictions on acquiring financial products (section 161) and giving guarantees and indemnities (section 163), and requirements to pay net surplus to the Crown (section 165) will not apply.
- 11 Applying only some of the restrictions to PGFL will provide flexibility and avoid any potential issues that would prevent PGFL from carrying out activities aligned with the company's intended role and purpose such as holding loan agreements. Regardless of the form and structure of the investment, PGFL will only be accepting and holding investments once they have proceeded through the standard PGF approval process.
- 12 Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, as set out in section 45OA of the PFA. These provisions 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 PGFL.
- 13 The PFA provides that the Governor General by Order in Council, made on the recommendation of the Minister of Finance, may amend Schedule 4A of the PFA to add the name of a company that meets the following criteria:
- 13.1 Ministers of the Crown hold, on behalf of the Crown, more than 50% of the issued ordinary shares in the capital of the company; and
- 13.2 shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and

13.3 the company is not a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

14 These requirements have been met. PGFL was incorporated under the Companies Act 1993 on 3 September 2019, with the Minister of Finance and Minister for Regional Economic Development, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company.

### **Income Tax (Provincial Growth Fund Limited) Order 2019**

15 The Income Tax Act 2007 authorises the Governor General by Order in Council made on the recommendation of the Minister of Revenue to add the name of a company to the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007.

16 The Minister of Revenue has agreed that PGFL should be added to Schedule 35 of the Income Tax Act 2007 on the basis that it meets the following criteria outlined in that Act:

16.1 the company is listed in Schedule 4A or it is a subsidiary of a company listed in Schedule 4A;

16.2 Ministers of the Crown hold, on behalf of the Crown, more than 50% of the voting interests in the company;

16.3 all other voting interests, if any, in the company are held by local authorities; and

16.4 the company's primary purpose is the carrying out of a public policy objective of the Government of New Zealand.

17 The first criterion will have been met by the time the Income Tax (PGFL) Order 2019 is made, as the Public Finance (PGFL) Order 2019 would have inserted PGFL into Schedule 4A of the PFA.

18 The other criteria have already been met, the Minister of Finance and Minister for Regional Economic Development each hold, on behalf of the Crown, 50% of the voting shares in PGFL, and the company has the primary purpose of investing in regional economic development in New Zealand, a public policy objective of the Government.

19 The effect of PGFL's addition to the list of public purpose Crown-controlled companies in Schedule 35 is that the company will be exempt from income tax, better enabled to claim back the goods and services tax paid on its purchases, and be eligible for a resident withholding tax exemption certificate.

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

20 A waiver of the 28 day rule is sought. The proposals outlined have little or no impact on the public. The Orders will be adding PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007. PGFL itself will play a limited role in managing the investments that have already been approved through the PGF.

- 21 A waiver will allow PGFL to be established and operational as soon as possible for investments to be novated to the company.

### **Compliance**

- 22 The Orders comply with or have no implications for:
- 22.1 the principles of the Treaty of Waitangi;
  - 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 22.3 the principles and guidelines set out in the Privacy Act 1993;
  - 22.4 relevant international standards and obligations;
  - 22.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

- 23 There are no grounds for the Regulations Review Committee to draw the Orders to the attention of the House under Standing Order 319.

### **Certification by Parliamentary Counsel**

- 24 The Orders have been certified by Parliamentary Counsel as being in order for submission to Cabinet, subject to a waiver of the 28-day rule.
- 25 Further, they are certified on the basis that the Public Finance (PGFL) Order 2019, which inserts PGFL into Schedule 4A of the PFA, is made (signed) first. This is necessary because one of the criteria for the making of the Income Tax (PGFL) Order 2019 is that PGFL is listed in Schedule 4A.

### **Regulatory Impact Analysis**

- 26 A Regulatory Impact Statement is not required for the proposals in this paper.

### **Publicity**

- 27 The Orders will be notified in the *New Zealand Gazette*.

### **Proactive release**

- 28 We plan to proactively release this Cabinet paper without redaction, once the Orders in Council have been gazetted.

### **Consultation**

- 29 The following agencies have been consulted on this paper: Department of the Prime Minister and Cabinet, the Treasury, and State Services Commission.

## Recommendations

We recommend that the Cabinet Legislation Committee:

- 1 **note** that on 10 April 2018 the Cabinet Economic Development Committee agreed to establish PGFL as a Schedule 4A company under the Public Finance Act 1989 [DEV-19-MIN-0084];
- 2 **note** that the Public Finance (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 1 above;
- 3 **note** the Minister of Finance has agreed to recommend that Provincial Growth Fund Limited be added to Schedule 4A of the Public Finance Act 1989;
- 4 **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;
- 5 **authorise** the submission to the Executive Council of the Public Finance (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited to Schedule 4A of the Public Finance Act 1989 and applying sections 162 and 164 of the Crown Entities Act 2004 to Provincial Growth Fund Limited;
- 6 **note** that on 21 August 2019 the Minister of Revenue agreed that Provincial Growth Fund Limited should be added to Schedule 35 of the Income Tax Act 2007;
- 7 **note** that the Income Tax (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 6;
- 8 **authorise** the submission to the Executive Council of the Income Tax (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited into Schedule 35 of the Income Tax Act 2007;
- 9 **note** that a waiver of the 28-day rule is sought:
  - 9.1 so that the Orders can come into force as soon as possible;
  - 9.2 on the grounds that the Orders have little or no effect on the public.
- 10 **agree** to waive the 28-day rule so that the regulations can come to force on the day after the date of their notification in the Gazette.

Authorised for lodgement

Hon Stuart Nash  
**Minister of Revenue**

Hon Shane Jones  
**Minister for Regional Economic Development**