



## BRIEFING

### Further matters requiring Ministerial approval to establish Provincial Growth Fund Limited

<b>Date:</b>	16 August 2019	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	0398 19-20

Action sought		
	Action sought	Deadline
Hon Grant Robertson <b>Minister of Finance</b>	<p><b>Sign</b> the consent form which will confirm the Minister of Finance as a shareholder for Provincial Growth Fund Limited (PGFL)</p> <p><b>Agree</b> to the proposed company constitution for PGFL</p> <p><b>Agree</b> that under the Crown Entities Act 2004 sections 162 and 164 apply to PGFL and that sections 161, 163 and 165 do not apply</p> <p><b>Agree</b> that PGFL will initially be 100 per cent financed by equity and shall have uncalled capital of \$186 million comprised of ordinary shares</p>	21 August 2019
Hon Shane Jones <b>Minister for Regional Economic Development</b>	<p><b>Sign</b> the consent form which will confirm the Minister for Regional Economic Development as a shareholder for Provincial Growth Fund Limited (PGFL)</p> <p><b>Agree</b> to the proposed company constitution for PGFL</p> <p><b>Agree</b> that under the Crown Entities Act 2004 sections 162 and 164 apply to PGFL and that sections 161, 163 and 165 do not apply</p> <p><b>Agree</b> that PGFL will initially be 100 per cent financed by equity and shall have uncalled capital of \$186 million comprised of ordinary shares</p> <p><b>Agree</b> to forward this briefing and appended documents to the Minister of Finance</p>	19 August 2019

Fletcher Tabuteau <b>Parliamentary Under-Secretary to the Minister for Regional Economic Development</b>	<b>Note</b> the contents of this briefing for your information	None
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Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Karen Walfisch	General Manager, Strategy, Planning and Performance	Privacy of natural persons	<input checked="" type="checkbox"/>
Levi Rona	Senior Policy Advisor		

The following departments/agencies have been consulted
The Treasury

**Minister's office to complete:**

- ☐ Approved  
☐ Noted  
☐ Seen  
☐ See Minister's Notes

- ☐ Declined  
☐ Needs change  
☐ Overtaken by Events  
☐ Withdrawn

**Comments**

## BRIEFING

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#### Purpose

To seek approval, in your role as shareholding Ministers of the Provincial Growth Fund Limited (PGFL), to final operational matters required to establish PGFL.

#### Executive summary

Cabinet has agreed to establish PGFL as a Schedule 4A company. It is being established as an asset holding company to hold loan and equity investments made through the Provincial Growth Fund (PGF) while outsourcing the management and administration functions associated with these investments to the Provincial Development Unit (PDU).

Following the recent appointment of PGFL directors, the company can be registered with the Companies Office. Shareholding Ministers are required to sign the shareholders' consent form and approve the proposed company constitution for PGFL.

The constitution was developed by Chapman Tripp under the instructions of PDU. The Treasury were consulted on the constitution. The constitution is similar to those for other Schedule 4A companies and intends to confirm or modify the rights and powers for PGFL and shareholding Ministers as set out in the Companies Act 1993 in accordance with the intended purpose and objectives for PGFL.

This briefing also seeks joint Ministers' approval to two matters required to progress the Order in Council to add PGFL under Schedule 4A of the Public Finance Act 1989 (PFA) and the Management Agreement between PDU and PGFL. These are:

- 1) To inform the Order in Council, an assessment needs to be made on which provisions of the Crown Entities Act 2004 related to financial power restrictions (sections 161-165) apply to PGFL to ensure that the restrictions under these provisions would not prevent PGFL from undertaking investment-related activities. These provisions are outlined in Annex One. Officials recommend that sections 162 and 164 apply to PGFL (restrictions on borrowing and using derivatives) and sections 161, 163 and 165 do not apply (restrictions to acquire financial products, giving guarantees and indemnities, and requirements to pay net surplus to the Crown).
- 2) To inform the Management Agreement between PDU and PGFL, we recommend that PGFL is 100% financed by equity to hold and manage PGF investments and that capital be provided as ordinary shares consistent with some other Schedule 4A companies.

Subject to approval, officials will finalise the documentation for PGFL to be registered with the Companies Office. Over the next few weeks, officials will continue to work on the Order in Council and LEG paper for Cabinet Legislation Committee, the Management Agreement and provide you with draft Letters of Expectation to the PGFL Board. Once these aspects have been confirmed and

approved, and the Order in Council has been authorised by Cabinet, PGFL investments will then be able to be novated or transferred to PGFL.

## Recommended actions

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that Cabinet agreed to establish PGFL as a Schedule 4A company *Noted*
- b **Note** that on 1 August 2019 directors were appointed to the PGFL board *Noted*
- c **Note** that Cabinet agreed to delegate authority to the Minister of Finance and the Minister for Regional Economic Development to make decisions on the final design and operation of PGFL *Noted*
- d **Note** that Cabinet directed PDU to report back to shareholding Ministers on the final constitution for PGFL *Noted*

### *Hon Shane Jones*

- e **Agree** to sign the consent form in Annex Two confirming the Minister for Regional Economic Development as a shareholder of PGFL under the Companies Act 1993 *Agree / Disagree*
- f **Agree** to the proposed company constitution for PGFL in Annex Three *Agree / Disagree*
- g **Note** that to include PGFL in Schedule 4A of the PFA, consideration needs to be given to the financial power provisions under the Crown Entities Act 2004 *Noted*
- h **Agree** for PGFL to be exempt from the following restrictions relating to financial powers:
  - acquiring financial products (section 161)
  - giving guarantees and indemnities (section 163)*Agree / Disagree*
- i **Agree** that restrictions on borrowing (section 162) and using derivatives (section 164) will apply to PGFL *Agree / Disagree*
- j **Agree** that section 165 relating to net surplus does not apply to PGFL, consistent with other Schedule 4A companies *Agree / Disagree*
- k **Note** that decisions under recommendations (h), (i) and (j) be included in the Order in Council to add PGFL to Schedule 4A of the PFA *Agree / Disagree*
- l **Agree** that PGFL will initially be 100 per cent financed by equity and carry no debt *Agree / Disagree*

m **Agree** that PGFL shall have uncalled capital of \$186 million, comprised of ordinary shares

*Agree / Disagree*

n **Note** that should the circumstances of PGFL change in the future, shareholding Ministers can reconsider PGFL's capital structure

*Noted*

o **Agree** to forward this briefing and appended documents to the Minister of Finance for approval

*Agree / Disagree*

**Hon Grant Robertson**

p **Agree** to sign the consent form in Annex Four confirming the Minister of Finance as a shareholder of PGFL under the Companies Act 1993

*Agree / Disagree*

q **Agree** to recommendations (f) to (n) above

*Agree / Disagree*

Privacy of natural persons

Karen Walfisch  
**General Manager, Strategy, Planning and  
Performance**  
Provincial Development Unit, MBIE

16 / 8 / 19

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

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Hon Grant Robertson  
**Minister of Finance**

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## Background of Provincial Growth Fund Limited

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1. Cabinet has agreed to establish PGFL as a schedule 4A company under the PFA [DEV-19-MIN-0084]. It is being established as an asset holding company to hold loan and equity investments made through the PGF. Existing investments are currently being managed by 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.
2. The purpose of PGFL will be to:
  - a. act solely as the nominated legal entity for taking assignment of PGF debt and equity investments
  - b. act at all times in accordance with its constitution and its management agreement with the PDU in relation to any matter relating to those investments
  - c. subject to compliance with the Companies Act 1993, distribute the receipts or proceeds of any PGF investments to the Crown<sup>1</sup>, unless otherwise agreed between PGFL, PDU and shareholding Ministers.
3. 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.

### State of play relating to PGFL's establishment

4. PGFL directors have been appointed and their three year term has commenced as of 1 August 2019 [MBIE Briefing 0186 19-20 refers]. The directors are Mr Rodger Finlay (as Chair of the Board), Mr Neville Harris QSO and Mr Graeme Mitchell.
5. The next steps are for PGFL to be registered with the Companies Office for the company to be "established" under the Companies Act 1993. The Companies Act 1993 requires a company to have at least one director before it can be registered (PGFL's proposed constitution requires that there be a minimum of two directors).
6. Subject to approval of this briefing, officials will issue drafting instructions for Parliamentary Counsel Office to prepare an Order in Council to add PGFL into Schedule 4 of the PFA and Schedule 1 of the Ombudsman Act 1975. A LEG paper will then be prepared for Cabinet to authorise the Order in Council. We are also working with IRD on another Order in Council to authorise an income tax exemption for PGFL which will be progressed at the same time.

### Further matters for joint Ministers to consider

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7. This briefing asks shareholding Ministers of PGFL to sign the consent form to register the company and seeks your approval to the proposed constitution for PGFL. This briefing also seeks your approval to the financial powers available to PGFL under the Crown Entities Act 2004 and the capital structure for how PGFL should be funded. Confirming these two matters are required to progress the Order in Council to include PGFL on Schedule 4A of the PFA and the Management Agreement respectively.

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<sup>1</sup> The proposed constitution for PGFL states that the company distributes proceeds from any PGF investment to shareholding Ministers, as agents of the Crown. Shareholding Ministers then have the discretion as to how those proceeds are distributed further. Cabinet agreed that returns on PGF investments that arise within the three year period of the fund (before 30 June 2021) be returned to the PGF for reinvestment while returns received after the three year period be decided at a later time [DEV-19-MIN-0084]. Shareholding Ministers will therefore act in accordance with Cabinet approval and redirect proceeds back to the PGF for reinvestment.



## **We ask you to sign the consent form to register PGFL with the Companies Office**

8. Following the recent appointment of directors, officials can now register and incorporate PGFL with the Companies Office. The Companies Act 1993 requires shareholding Ministers and PGFL directors to sign consent forms.
9. The briefing asks joint Ministers to each sign a shareholders consent form (see Annex Two and Annex Four). Signing these forms confirms that you agree to being shareholders of PGFL and to hold 50 shares each.
10. Once PGFL has been registered with the Companies Office, a Certificate of Incorporation will be provided and the company's details will become publicly available on the Companies Office Register. PGFL will also be subject to the Companies Act 1993 meaning the company, the board, each director and each shareholder of the company will be subject to the rights, powers, duties and obligations as outlined in the Act.

## **We recommend that you approve the proposed company constitution for PGFL**

11. Cabinet directed PDU to report back to shareholding Ministers on the final constitution for PGFL [DEV-19-MIN 0084]. A company constitution for PGFL has been prepared for your consideration and is appended to this briefing (see Annex Three).
12. Companies that do not have a constitution are simply governed by the Companies Act 1993. So the purpose of the constitution is to confirm or modify the rights, powers, duties and obligations of the company, the board, each director and each shareholder as set out in the Companies Act 1993 in accordance with the intended purpose and objectives of PGFL.
13. The constitution was developed by Chapman Tripp under the instructions of PDU. Chapman Tripp also prepared the constitution for New Zealand Green Investment Finance Limited (NZGIFL). The proposed constitution for PGFL is very similar to NZGIFL, with the exception of some bespoke elements (primarily in Clause 6 which outlines the purpose of PGFL).
14. Should shareholding Ministers decide to expand the mandate, or change the structure, of PGFL, this could be accommodated through changes to the Company's constitution and changes to its capability and governance. Such changes would require Cabinet approval.
15. Officials will report back periodically on the pipeline of deals and the appropriateness of PGFL's arrangements. Cabinet has directed PDU to report back to DEV before April 2020 on whether the arrangements for PGFL are fit for purpose.
16. Officials recommend that Ministers approve the proposed company constitution for PGFL. Subject to your approval, the constitution will be included in the documentation for registering PGFL. For convenience, key clauses of the constitution have been summarised in the table below.

<b>SUMMARY OF PGFL'S PROPOSED CONSTITUTION</b>	
<b>Part A: Introduction</b>	
<b>Purpose of company (clause 6)</b>	
Clause 6.1 states the rationale for PGFL within the context of the PGF's objectives and processes while noting that primary responsibility for management and administration of PGF investments remains with the Crown.	
Clause 6.2 outlines the various purposes of PGFL which primarily relates to:	
<ul style="list-style-type: none"><li>• entering into and acting in accordance with a Management Agreement with MBIE, and supervising and monitoring the performance of MBIE's obligations under the Agreement</li><li>• acting as the nominated entity for taking novation of MBIE's rights, benefits, liabilities and obligations and any securities held under Investment Agreements that MBIE has entered into.</li><li>• subject to compliance with the Act, distribute the proceeds received from any Investment to Shareholding Ministers, unless otherwise agreed between the Company, MBIE and Shareholding Ministers.</li></ul>	
<b>Nature of company (clause 7)</b>	

Clause 7.1 states that from the time PGFL is incorporated until a special resolution of shareholders is passed under Clause 7.2:

- a. the company is not expected to generate profits in the short to medium term
- b. it is an objective of the company to seek profitability in the long term, but only to the extent that the objective is consistent with clause 6.1

Clause 7.2 states that until a special resolution of shareholders is passed under Clause 7.3, the company prepares to operate in accordance with Clause 7.3 e.g. implements necessary procedures and operational changes, changes to the constitution. Directors will then notify shareholders when it considers the company is ready to operate in accordance with Clause 7.3.

Clause 7.3 states that upon notification above, shareholders may bring Clause 7.3(a) into effect via special resolution

- a. PGFL is intended to operate as a successful business and to this end profitable and efficient

The clause also states that PGFL is a Crown-owned company, listed in Schedule 4A of the PFA and Schedule 1 of the Ombudsmen Act 1975.

#### **Part B: Shares and Shareholders**

##### **Shares (clauses 9-14)**

At the time of registration, PGFL will have 100 shares at \$1 per share, with the period of notice for calls on the 100 shares issued on registration to be 20 working days. At least 50% of the Shares in the Company must be held by the Crown via two or more Ministers. Shareholders must authorise any issuing of shares.

##### **Meetings of shareholders (clauses 16-19)**

The board must call an annual meeting of shareholders no later than 6 months after the balance date of the company and no later than 15 months after the previous annual meeting. The board can call special meetings of shareholders and a written resolution can also be passed instead of holding a meeting.

#### **Part C: Directors**

##### **Appointment and Removal (clauses 20-22)**

The number of directors shall not be fewer than 2 or more than 7 but is ultimately decided by Shareholding Ministers. Shareholding Ministers may choose to appoint or reappoint a director or chairperson for PGFL via written notice for a maximum of three years at a time. Ministers may also choose to remove any director from office. Directors can choose to resign via a signed notice.

##### **Interested Directors (clause 28)**

Directors interested in transactions the Company enters into may not vote on a matter relating to the transaction but may attend a meeting of directors, sign a document relating to the transaction on behalf of PGFL or anything else as if they are not interested in the transaction. Shareholding Ministers are able to subject or relax this prohibition via written notice.

##### **Remuneration (clause 29)**

Remuneration or other benefits payable to the Company must be done by Shareholding Ministers.

#### **Part D: General**

##### **Indemnity and Insurance for Directors and Employers (clauses 32-33)**

PGFL may indemnify a director or employee for any liabilities for which a director or employee may be indemnified under the Act. This also applies to insurance.

17. The constitution has been drafted to work alongside the Management Agreement between PGFL and PDU. The constitution limits PGFL's role to effectively overseeing the obligations of PDU under the Management Agreement which outsources to PDU the day-to-day management and administration of PGF investments, including the exercise of any rights under the investment agreements and securities.
18. The draft Management Agreement is currently with directors for consultation. Officials will provide Ministers the final version of the Management Agreement for your information once it has been jointly approved by PDU and PGFL.



**We recommend that restrictions on acquiring financial products, giving guarantees and indemnities, and requirements to pay net surplus to the Crown do not apply to PGFL**

19. The Crown Entities Act 2004 contains financial power provisions that place constraints on Schedule 4A companies to carry out certain investment-related activities.
20. By default, restrictions are placed on Schedule 4A companies to acquire financial products (section 161), to borrow (section 162), to give guarantees and indemnities (section 163) and to use derivatives (section 164) unless an exemption or specific authority is provided under section 160(1)(b) of the Act by the Minister of Finance. Schedule 4A of the PFA also includes section 165 which relates to requiring Crown owned entities to pay net surpluses to the Crown. Annex One outlines all of these provisions in more detail.
21. To inform the Order in Council to include PGFL in Schedule 4A of the PFA, consideration needs to be given to these provisions to ensure that the above restrictions would not prevent PGFL from undertaking activities that it is expected to carry out.
22. Schedule 4A of the PFA, copied below, lists the Schedule 4A companies along with the financial power provisions that apply to each company (signalled by a tick) for your information.

**Schedule 4A**

**Non-listed companies in which Crown is majority or sole shareholder**

ss 3AB, 45OA

Schedule 4A: inserted, on 18 July 2013, by section 56 of the Public Finance Amendment Act 2013 (2013 No 50).

Note: A tick alongside the name of a company means that the section of the Crown Entities Act 2004 that appears above the tick applies to that company.

Company	Sections of Crown Entities Act 2004 (relating to financial powers)				
	161	162	163	164	165
City Rail Link Limited	✓	✓	✓	✓	
Crown Asset Management Limited		✓	✓	✓	
Crown Infrastructure Partners Limited					
Education Payroll Limited	✓	✓	✓	✓	
Health Benefits Limited	✓	✓	✓	✓	
New Zealand Green Investment Finance Limited	✓	✓	✓	✓	
Ōtākaro Limited	✓	✓	✓	✓	
Predator Free 2050 Limited	✓	✓	✓	✓	
Research and Education Advanced Network New Zealand Limited	✓	✓	✓	✓	
Southern Response Earthquake Services Limited	✓	✓	✓	✓	
Tāmaki Redevelopment Company Limited	✓	✓	✓	✓	
The Network for Learning Limited					

Schedule 4A: amended on 31 May 2019, by clause 3 of the Public Finance (New Zealand Green Investment Finance Limited) Order 2019 (L1 2019 106).

23. Officials recommend that an exemption is provided for PGFL to relax the restrictions to acquire financial products (**section 161**) and giving guarantees and indemnities (**section 163**). This assessment is based on the current PGF investment activity and along with what investment-related activities were intended to be undertaken under the PGF.
24. PDU has interpreted loans to fit within the definition of financial products, in particular debt securities. Once PGFL is fully established, approved loan agreements will be transferred to PGFL to hold and manage. In addition, guarantees are one of the funding instruments anticipated for possible use under the PGF. Relaxing restrictions for PGFL to carry out these activities will provide flexibility and avoid any potential issues that would prevent PGFL from accepting investment agreements.
25. PGF investments will vary in terms of scale and complexity. Regardless of the form and structure of the investment, PGFL would only be accepting and holding investments once they have been executed. This is in line with PGFL's role as outlined in the proposed constitution and draft Management Agreement.
26. Before being executed, all investments are reviewed and approved by Ministers. For example, under the loan delegation instrument that has been developed, RED Ministers

provide an in-principle approval to the broad parameters of the investment and are then notified of the intention for PDU to execute the loan along with the key terms. Shareholding Ministers' approval will also be sought for investments to be novated over to PGFL.

27. **Section 165** of the Crown Entities Act 2004 requires a Crown owned entity to pay the whole or part of any net surpluses back to the Crown. Officials also recommend that section 165 does not apply to PGFL. This power is generally required for Crown companies where the Crown or the Minister of Finance is not the majority shareholder and requires this power for net surpluses to be requested.
28. As illustrated on the previous page, no Schedule 4A companies have this requirement in place as the Crown is a majority shareholder for these companies and the Minister of Finance does not require this power to make requests under this provision. In addition, the proposed constitution for PGFL states that the company distributes the proceeds received from any investment to shareholding Ministers (including the Minister of Finance) unless otherwise agreed between the Company, PDU and shareholding Ministers.
29. We consider that PGFL will not need an exemption to borrow (**section 162**) or use derivatives (**section 164**), meaning that PGFL would be subject to those provisions.

**We recommend that PGFL should be 100 per cent financed by equity**

30. Operating and monitoring costs associated with PGFL will be met from the PGF. Based on initial costings for the establishment, administration and management of PGFL, \$1 million of operational expenditure in 2019/20 and 2020/21 has been appropriated into baselines for this purpose. An operational funding agreement is being developed to outline the operating model for providing funding to PGFL. This agreement will be appended to the Management Agreement.
31. A \$186 million appropriation in 2019/20 is also in place to support capital investment by the PGF [MBIE Briefing 3900 18-19 refers]. This amount represents the loans and equity investments made through the PGF that are currently approved for negotiation.
32. Because PGFL is intended to be an asset holding, management and realisation company, it makes sense for it to be 100 per cent financed by equity because this will:
  - cap the Crown's maximum financial exposure at \$186 million, consistent with the amount appropriated;
  - keep the PGFL company's structure and operations as simple as possible;
  - avoid the need for PGFL to pay interest on loans, for which its revenue source (from interest on loans it provides and dividends from equity investments it makes) could be relatively uncertain;
  - be consistent with the capital structure of Crown Asset Management Ltd (CAML), which is a Schedule 4A Company tasked with managing and realising the assets of some former finance companies where the Crown had provided a guarantee under the Crown's Retail Deposit Guarantee Scheme; and
  - be consistent with the capital structure of Crown Infrastructure Partners Ltd (CIPL), which is a Schedule 4A company that was originally set up to manage and finance building the Ultra-fast Broadband Network.
33. Consistent with the arrangements for CAML and CIPL, we propose that capital be provided as ordinary shares. When funds need to be returned to the Crown in the future (as PGFL's loans and equity investments are realised) then this can be achieved by either:
  - paying dividends to the Crown; and/or

- conducting a share buyback (whereby the Crown's shares would be repurchased and cancelled by PGFL in exchange for cash paid to the Crown by PGFL).
34. Another option would be for PGFL to issue redeemable preference shares to the Crown, which could be redeemed as funds permit in future. However, we see no advantage from such an arrangement because it is not intended for PGFL to issue any financial instruments which the Crown's investment in PGFL would need to rank ahead when the company is eventually wound up.
35. Should the circumstances of PGFL materially change in the future, then shareholding Ministers can reconsider PGFL's capital structure at that point.

## Consultation

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36. The Treasury was consulted on this briefing. MBIE Legal, and Entity Performance & Investment teams were also consulted.

## Next steps

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37. Subject to the signing of the consent forms and the approval of the proposed constitution, officials will finalise the documentation for PGFL to be registered with the Companies Office.
38. Subject to the approval of the financial powers under the Crown Entities Act 2004, officials will reflect these decisions in drafting instructions for PCO to finalise the Order in Council to add PGFL into Schedule 4 of the PFA and Schedule 1 of the Ombudsman Act 1975. We will be seeking a waiver to the 28 day rule so that the Order can come into force sooner.
39. A LEG paper will then be prepared for Cabinet Legislation Committee to approve the Order in Council and authorise the submission to the Executive Council. We are also working with IRD to progress another Order in Council at the same time to authorise an income tax exemption for PGFL.
40. MBIE will soon provide a draft Letter of Expectation from you to the Board of PGFL for your consideration and signature.
41. Officials are also working on confirming the Management Agreement which is being consulted with the directors. As part of this work, we are developing an operational funding agreement outlining the mechanism for funding PGFL. Confidential advice to Government
42. Once the management agreement has been confirmed and approved along with all the above aspects, PGF investments will then be able to be novated to PGFL. Officials are expecting this to occur in October 2019.

## Annexes

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Annex One: Financial Power Restrictions under the Crown Entities Act 2004

Annex Two: PGFL shareholder consent form – Minister for Regional Economic Development

Annex Three: Proposed company constitution for PGFL

Annex Four: PGFL shareholder consent form – Minister of Finance

## Annex One: Financial Power Restrictions under the Crown Entities Act 2004

Acquisition of financial products, borrowing, guarantees, indemnities, and derivatives
<p><b>Section 160 Further provision relating to acquisition of financial products, borrowing, guarantees, indemnities, and derivatives rules</b></p> <p>(1) Sections 161 to 164 apply subject to</p> <ol style="list-style-type: none"> <li>any regulations made under this Part; and</li> <li>any approval given jointly by the entity's responsible Minister and the Minister of Finance; and</li> <li>an entity's Act; and</li> <li>an exemption granted in Schedule 1 or Schedule 2.</li> </ol> <p>(2) Sections 161 to 164 apply to a Crown entity subsidiary in the same way as they apply to its parent.</p> <p>(3) The Minister of Finance must notify in the Gazette an approval given under subsection (1)(b).</p>
<p><b>Section 161 - Restriction on acquisition of financial products</b></p> <p>must not acquire financial products other than:</p> <ol style="list-style-type: none"> <li>a debt security denominated in New Zealand dollars that is issued by a registered bank, or by any other entity, that satisfies a credit-rating test that is specified in either regulations made under this Part or a notice in the Gazette published by the Minister of Finance;</li> <li>a public security;</li> </ol> <p>(2) This section does not apply to any money, financial product, or credit balance in a bank account held by a Crown entity on trust for any purpose or for another person.</p> <p>(2A) This section does not apply to derivatives.</p> <p>(3) This section does not prohibit a Crown entity from acquiring subsidiaries or shares if <u>section 96</u> or, as the case may be, <u>section 100</u> allows the acquisition</p>
<p><b>Section 162 - Restriction on borrowing</b></p> <p>must not borrow from any person, or amend the terms of any borrowing, other than as provided in <u>section 160</u>.</p>
<p><b>Section 163 - Restriction on giving of guarantees and indemnities</b></p> <p>must not, with or without security, give a guarantee to, or indemnify, another person, or amend the terms of any such guarantee or indemnity, other than as provided in <u>section 160</u>.</p> <p>(2) This section does not apply if the other person is—</p> <ol style="list-style-type: none"> <li>a member, office holder, committee member, employee, or other individual indemnified by the board in relation to any claim or proceeding under— <ol style="list-style-type: none"> <li><u>section 122</u> of this Act; or</li> <li><u>section 162</u> of the Companies Act 1993; or</li> <li>the entity's natural person powers or other powers in the entity's Act;</li> </ol> </li> <li>a delegate or agent indemnified by the board under its natural person powers, or the common law, in relation to any claim or proceeding.</li> </ol> <p>(3) This section does not apply to any guarantee or indemnity that is implied at law or arising from any transactions that may be authorised under regulations made under this Part</p>
<p><b>Section 164 - Restriction on use of derivatives</b></p> <p>must not enter into an agreement constituting a derivative, or amend the terms of that agreement, other than as provided in <u>section 160</u>.</p>
Miscellaneous
<p><b>Section 165 - Net surplus payable by certain statutory entities and Crown entity companies</b></p> <p>(1) Unless an exemption is granted in Schedule 1 or Schedule 2, the Minister of Finance may, in writing, require a statutory entity or Crown entity company to pay to the Crown a sum equal to the whole or any part of a net surplus of the statutory entity or Crown entity company, or its Crown entity group, as determined in accordance with generally accepted accounting practice or any other basis that may be agreed between that Minister and the entity.</p> <p>(2) In this section, net surplus includes both an annual profit and an accumulated surplus.</p> <p>(3) Before the Minister of Finance issues a requirement under this section,—</p> <ol style="list-style-type: none"> <li>the Minister of Finance must consult with each responsible Minister; and</li> <li>a responsible Minister must consult with the Crown entity.</li> </ol> <p>(4) This section does not limit any provision for the payment of an annual distribution or similar payment to the Crown under the entity's Act.</p> <p>(5) This section does not limit the need for a Crown entity company to comply also with the provisions of the Companies Act 1993 (or its constitution, if relevant) relating to distributions.</p>

**Annex Two: PGFL shareholder consent form – Minister for Regional  
Economic Development**

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PROACTIVELY RELEASED





**NEW ZEALAND**  
COMPANIES OFFICE

**COMPANIES**  
REGISTER

Page 1 of 1

**Form 3**

Form version | October 2017

**IMPORTANT!** This document must be uploaded online **OR** faxed to 0508 266 736 (0508 CONSENT) or +64 9 913 4213  
**Please do not return this document by post.**

## Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

Provincial Growth Fund Limited

Name reservation number

14679054

Proposed company number

Shareholder's full legal name

Minister for Regional Economic Development

Shareholder's address

1 Molesworth Street, Pipitea, Wellington, 6011, New Zealand

Number of shares held

50

Shareholder's consent

I consent to act as shareholder of the above proposed company and to taking the number of shares specified.

Signature

Name of signatory

Honourable Shane Jones

Date

### IMPORTANT INFORMATION

Shareholders

- A trust, whether expressed, implied or constructive, cannot be entered on the share register. Where, for example, shares are held by a family trust the name of the trustees must be entered individually as members of a share parcel.
- Initials of the person's name are not allowed. The full legal name must be provided.
- A postal address, private bag or DX number is not permitted for the shareholder's address.
- Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated. To obtain more information on this process including a sample authorisation form then visit our website.
- If this form is signed under power of attorney, the attorney must provide a Certificate of Non-Revocation. To obtain more information on this process then visit our website.

Completed by

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PROACTIVELY RELEASED

# Constitution of Provincial Growth Fund Limited

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## CONTENTS

<b>PART A: INTRODUCTION</b>	<b>1</b>
<b>INTERPRETATION</b>	<b>1</b>
1 Defined terms	1
2 Construction	2
<b>THE RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE ACT</b>	<b>2</b>
3 Effect of the Act on this constitution	2
4 Effect of this constitution	2
5 Shareholders may alter or revoke this constitution	2
<b>PURPOSE AND NATURE OF COMPANY</b>	<b>3</b>
6 Purpose of Company	3
7 Nature of Company	4
8 Application of Crown Entities Act generally	5
<b>PART B: SHARES AND SHAREHOLDERS</b>	<b>5</b>
<b>SHARES</b>	<b>5</b>
9 Company's Shares	5
10 Board to issue Shares	5
11 No statutory pre-emptive rights	6
12 Board may make calls	6
13 Redeemable Shares	6
14 Purchase by the Company of its own shares	6
<b>DISTRIBUTIONS</b>	<b>7</b>
15 Shares in lieu of dividends	7
<b>MEETINGS OF SHAREHOLDERS</b>	<b>7</b>
16 Company must hold annual meeting of shareholders	7
17 Company may hold special meetings of shareholders	7
18 Written shareholders' resolution instead of holding a meeting	7
19 Proceedings at meetings of shareholders	8
<b>PART C: DIRECTORS</b>	<b>8</b>
<b>APPOINTMENT AND REMOVAL</b>	<b>8</b>
20 Number of directors	8
21 Appointment of directors and chairperson and deputy chairperson	8
22 Removal of directors	8
<b>VACATION OF OFFICE</b>	<b>9</b>
23 Office of director vacated in certain cases	9
24 Directors' resignation procedure	9
<b>PROCEEDINGS OF THE BOARD</b>	<b>9</b>
25 Meetings of the Board	9



26	Written resolutions of Board permitted	10
27	Committee proceedings	10
<b>INTERESTED DIRECTORS</b>		<b>10</b>
28	Interested director may not vote	10
<b>REMUNERATION</b>		<b>10</b>
29	Board's power to authorise remuneration and other benefits is limited	10
<b>PART D: GENERAL</b>		<b>11</b>
<b>CHANGE OF COMPANY NAME</b>		<b>11</b>
30	A director may apply to change Company name	11
<b>CHANGE OF REGISTERED OFFICE OR ADDRESS FOR SERVICE</b>		<b>11</b>
31	Board to notify shareholders of change of registered office or address for service	11
<b>INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES</b>		<b>11</b>
32	Company may indemnify directors and employees for certain liabilities	11
33	Company may effect insurance for directors and employees	12
<b>GOVERNANCE</b>		<b>12</b>
34	Good employer	12
<b>MANNER OF CONTRACTING</b>		<b>12</b>
35	Manner of execution of contracts by the Company	12
<b>PROVISIONS RELATING TO CROWN'S SHAREHOLDINGS</b>		<b>13</b>
36	Crown's shareholdings	13
37	Appointment of representative	14
<b>LIQUIDATION</b>		<b>14</b>
38	Distributions on liquidation	14
<b>REMOVAL FROM THE NEW ZEALAND REGISTER</b>		<b>14</b>
39	Board may remove Company from register	14
<b>FIRST SCHEDULE: CALLS ON SHARES</b>		<b>16</b>
<b>SECOND SCHEDULE: PROCEEDINGS OF THE BOARD</b>		<b>18</b>



## CONSTITUTION OF PROVINCIAL GROWTH FUND LIMITED

### PART A: INTRODUCTION

#### INTERPRETATION

##### 1 Defined terms

- 1.1 Unless the context otherwise requires, in this constitution the following expressions have the following meanings:

*Act* means the Companies Act 1993;

*Company* means the company whose name is Provincial Growth Fund Limited at the date of this constitution, whether or not the company subsequently changes its name;

*constitution* means this constitution as it may be altered from time to time in accordance with the Act;

*Crown* means the Sovereign in right of New Zealand;

*Crown Entities Act* means the Crown Entities Act 2004;

*good employer* has the same meaning as in section 118 of the Crown Entities Act;

*Investment Agreement* means any agreement between MBIE and a Recipient under which MBIE has agreed to advance debt or equity funding from the PGF;

*Investments* means any debt or equity funding that MBIE has provided, or agreed to provide, to a Recipient in accordance with an Investment Agreement;

*Management Agreement* means the management agreement to be entered into between MBIE and the Company (as amended from time to time) under which MBIE and the Company agree to the novation of MBIE's rights, benefits, liabilities and obligations under an Investment Agreement, and MBIE agrees to manage and administer all Investments on behalf of the Company;

*MBIE* means the Crown acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment and includes any person to whom the Chief Executive has delegated any of his or her functions or powers in accordance with the State Sector Act 1988;

*PGF* means the Provincial Growth Fund;

*Public Finance Act* means the Public Finance Act 1989;

*Recipient* means a person with whom MBIE has entered into an Investment Agreement;



*Share* means a share in the capital of the Company, whether called or uncalled;

*Shareholding Minister* means a Minister of the Crown by and through whom the Crown acts as holder of Shares in the Company in terms of clause 36;

*written or in writing* in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

- 1.2 Unless the context otherwise requires, expressions which are defined in the Act (whether in section 2, or elsewhere for the purposes of a particular subsection, section or sections) have in this constitution the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

## **2 Construction**

- 2.1 Headings appear as a matter of convenience and do not affect the interpretation of this constitution.
- 2.2 The singular includes the plural and vice versa, and words importing one gender include the other genders.
- 2.3 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- 2.4 The schedules form part of this constitution.

## **THE RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE ACT**

### **3 Effect of the Act on this constitution**

Without limiting any other enactment, the Company, the board, each director, and each shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

### **4 Effect of this constitution**

This constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

### **5 Shareholders may alter or revoke this constitution**

The shareholders may alter or revoke this constitution by special resolution.

## PURPOSE AND NATURE OF COMPANY

### 6 Purpose of Company

- 6.1 The overall objective of the Crown, via the PGF, is to invest in regional economic development in New Zealand, by providing various forms of financial support for recipients in regional New Zealand. The Crown's decision making in relation to PGF investments is governed by the criteria for PGF decision-making published by MBIE from time to time, which includes non-financial criteria. The Crown wishes to hold its interests in certain PGF investments through a limited liability company, but in doing so the Crown wishes to ensure that the primary responsibility for management and administration of PGF investments remains with the Crown.
- 6.2 Having regard to clause 6.1, the purpose of the Company is to:
- (a) enter into the Management Agreement and any ancillary agreement with MBIE and/or Shareholding Ministers as is reasonably required to give effect to the Company's purpose and overall objective;
  - (b) act as the nominated legal entity for:
    - (i) taking, and must take, novation of MBIE's rights, benefits, liabilities and obligations; and
    - (ii) accepting, and must accept, transfer of any securities held, or which would otherwise be held, by MBIE,under an Investment Agreement in relation to the relevant Investment and in accordance with the Management Agreement;
  - (c) supervise and monitor the performance of MBIE's obligations under the Management Agreement;
  - (d) otherwise act at all times in accordance with the Management Agreement;
  - (e) subject to compliance with the Act, distribute the proceeds received from any Investment to Shareholding Ministers, unless otherwise agreed between the Company, MBIE and Shareholding Ministers; and
  - (f) carry out all incidental matters that are required to be carried out by the Company by law or under, and in accordance with, this constitution, the Management Agreement and any ancillary agreement referred to in clause 6.2(a).
- 6.3 The Company may exercise its rights, powers and privileges only for the Company's purpose.

## 7 Nature of Company

- 7.1 The following clauses 7.1(a) to 7.1(b) inclusive shall have effect from the incorporation of the Company until the time specified in a special resolution of shareholders passed under clause 7.2, and shall cease to have effect from the time so specified:
- (a) the Company is not expected to generate profits which may result in distributions being made to shareholders in the short to medium term; and
  - (b) it is an objective of the Company to seek profitability in the long term, but only to the extent that this objective is consistent with the Company's purpose as stated in clause 6.1
- 7.2 The following clauses 7.2(a) to 7.2(d) inclusive shall have effect from the time specified in a special resolution of shareholders expressly bringing them into effect and shall cease to have effect from the time specified in a special resolution of shareholders passed under clause 7.3:
- (a) the Company shall prepare to operate in accordance with clause 7.3(a);
  - (b) the board shall implement such procedures and operational changes as, in its opinion, may be necessary or desirable, in order for the Company to operate in accordance with clause 7.3(a);
  - (c) the board shall advise the shareholders what, if any, changes it considers are required to the constitution of the Company for it to operate in accordance with clause 7.3(a);
  - (d) the board shall notify the shareholders when it considers the Company is ready to operate in accordance with clause 7.3(a); and
  - (e) nothing in this clause requires the Company to seek to amend or renegotiate existing contractual or other obligations which are binding upon it.
- 7.3 Following receipt of a notice from the board under clause 7.2(d), the shareholders may pass a special resolution bringing the following clause 7.3(a) into effect from the time specified in the resolution:
- (a) the Company is intended to operate as a successful business, and to this end, be profitable and efficient.
- 7.4 The Company is a Crown-owned company and is a company named in Schedule 4A of the Public Finance Act and listed in Schedule 1 of the Ombudsmen Act 1975.
- 7.5 The Company must operate in a financially responsible manner.
- 7.6 Under the Public Audit Act 2001 the Controller and Auditor-General is to be the auditor of the Company.

- 7.7 The Company is an employer for the purposes of sections 84 to 84B of the State Sector Act 1988.

## **8 Application of Crown Entities Act generally**

- 8.1 For the avoidance of doubt, any sections of the Crown Entities Act 2004 that apply to the Company by virtue of the Public Finance Act 1989, this constitution, or otherwise, will apply to the Company as if references in those sections to:

- (a) Crown entity company were to the Company;
  - (b) responsible Ministers were to the Shareholding Ministers;
  - (c) Crown entity group were to the Company and its subsidiaries;
  - (d) the board were to the board of the Company; and
  - (e) members were to the directors of the Company,
- respectively.

## **PART B: SHARES AND SHAREHOLDERS**

### **SHARES**

## **9 Company's Shares**

- 9.1 At the time of registration, the Company has 100 Shares, which have been issued for a consideration of \$1.00 per Share, payable in accordance with clause 12.
- 9.2 For the purposes of clause 3 of the First Schedule, the period of notice for calls on the 100 Shares issued on registration is 20 working days.

## **10 Board to issue Shares**

- 10.1 At least 50 per cent of the Shares in the Company must be held by the Crown acting by and through two or more Ministers of the Crown, one of whom must be the Minister of Finance.
- 10.2 Neither the board nor any other person may issue any Shares, or securities convertible into Shares, or options to acquire Shares, in the Company unless the issue and the terms of such issue are expressly authorised in writing by the Shareholding Ministers.
- 10.3 Subject to clause 10.2, the board may issue further Shares that rank as to voting or distribution rights, or both, equally with or prior to any existing Shares in the Company. Any such issue will not be treated as an action affecting the rights attached to the existing shares.





**11 No statutory pre-emptive rights**

Section 45 of the Act does not apply to the Company.

**12 Board may make calls**

The board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares. The First Schedule governs any such calls on Shares.

**13 Redeemable Shares**

**13.1 The Company may:**

- (a) subject to compliance with applicable provisions of this constitution, issue redeemable Shares; and
- (b) redeem redeemable Shares in accordance with the Act and the terms of issue of the redeemable Shares; and
- (c) exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares, in accordance with the Act and the terms of issue of the redeemable Shares.

**13.2 If redeemable Shares are to be issued, the terms of issue of the redeemable Shares must make provision for the redemption of each redeemable Share by the Company:**

- (a) at the option of the company; or
- (b) at the option of the holder of redeemable Shares; or
- (c) on a specified date,

for consideration that is:

- (d) specified; or
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

**14 Purchase by the Company of its own shares**

The Company may purchase or otherwise acquire its own Shares in accordance with and subject to sections 58 to 62, 107 and 108 of the Act.



## **DISTRIBUTIONS**

### **15 Shares in lieu of dividends**

The board may not exercise the powers under section 54 of the Act except in accordance with a written authority to do so signed by the Shareholding Ministers.

## **MEETINGS OF SHAREHOLDERS**

### **16 Company must hold annual meeting of shareholders**

16.1 Subject to section 120(2) of the Act, the board must call an annual meeting of shareholders to be held:

- (a) not later than 6 months after the balance date of the Company; and
- (b) not later than 15 months after the date of the previous annual meeting of shareholders.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 18.

16.2 The Company must hold the meeting on the date on which it is called by the board to be held.

### **17 Company may hold special meetings of shareholders**

Without limiting section 121 of the Act, a special meeting of shareholders entitled to vote on an issue:

- 17.1 may be called at any time by the board or by any shareholder; and
- 17.2 must be called by the board on the written request of any shareholder.

### **18 Written shareholders' resolution instead of holding a meeting**

18.1 Without limiting section 122 of the Act, a written resolution signed by at least 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, and who together hold at least 75 percent of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several copies of the resolution, each signed by one or more shareholders. A copy of a resolution, which has been signed and sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

18.2 Unless this constitution expressly provides otherwise, the powers reserved to the shareholders of the Company by this constitution or the Act may be exercised only:

- (a) at a meeting of shareholders pursuant to clauses 16 or 17; or



- (b) by a resolution in lieu of a meeting pursuant to clause 18.

**19 Proceedings at meetings of shareholders**

The First Schedule to the Act governs the proceedings at meetings of shareholders.

**PART C: DIRECTORS**

**APPOINTMENT AND REMOVAL**

**20 Number of directors**

The number of directors shall be determined by the Shareholding Ministers, and may be varied from time to time by the Shareholding Ministers, but shall not be fewer than 2 nor more than 7.

**21 Appointment of directors and chairperson and deputy chairperson**

- 21.1 The Shareholding Ministers may at any time or times by written notice signed by them to the address for service of the Company, appoint or reappoint —

- (a) any natural person as a director, and
- (b) any director as the chairperson or deputy chairperson of directors,

and any such appointment or reappointment of a director or of a chairperson or deputy chairperson of directors shall be effective from the time specified in the notice or, if no such time is specified, from the time the notice is received at the address for service of the Company.

- 21.2 Every appointment of a director or chairperson or deputy chairperson of directors shall be for such term (if any) as is specified in the notice of appointment, but no such term shall exceed 3 years unless the Shareholding Ministers consider it necessary or desirable in any particular case (in which case the term shall not exceed 3 years and 3 months).

- 21.3 At the end of their term of appointment, any director shall be eligible for reappointment.

- 21.4 If there is a deputy chairperson of directors, he or she may, in the absence of the chairperson, act as the chairperson, and any reference in this constitution to a chairperson shall include a reference to the deputy chairperson acting as chairperson in accordance with this clause.

**22 Removal of directors**

The Shareholding Ministers may at any time or times by written notice signed by them to the address for service of the Company, remove any director from office.

**VACATION OF OFFICE****23 Office of director vacated in certain cases**

23.1 The office of director is vacated if the term of appointment of the person holding that office expires, or if:

- (a) that person dies;
- (b) that person is unable to perform the functions of the office due to physical and/or mental incapacity;
- (c) that person becomes disqualified from being a director pursuant to section 151 of the Act;
- (d) that person resigns that office in accordance with clause 24; or
- (e) that person is removed from office in accordance with this constitution or the Act.

23.2 A director holds office at the pleasure of the shareholders. Shareholding Ministers may terminate that office at any time and entirely at their discretion, by written notice signed by them and sent to the address for service of the Company stating that the office shall be vacated.

23.3 The office of chairperson or deputy chairperson is vacated if the term of appointment of the person to that office expires, or if that person ceases to hold office as a director.

**24 Directors' resignation procedure**

24.1 A director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

24.2 Forthwith on receiving notice of resignation from a director in accordance with clause 24.1, the Company shall give written notice of such resignation to the Shareholding Ministers.

**PROCEEDINGS OF THE BOARD****25 Meetings of the Board**

The Second Schedule governs the proceedings at meetings of the board. The Third Schedule to the Act does not apply to proceedings of the board.

**26 Written resolutions of Board permitted**

- 26.1 A resolution in writing signed or assented to by all of the directors then entitled to receive notice of a meeting of the board shall be as valid and effective as if it had been passed at a meeting of the board duly convened and held.
- 26.2 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.
- 26.3 A copy of any such resolution must be entered in the minute book of the board proceedings.

**27 Committee proceedings**

The provisions of this constitution relating to proceedings of the board shall, insofar as they are not altered by regulations made by the board, also apply to proceedings of any committee of directors.

**INTERESTED DIRECTORS****28 Interested director may not vote**

- 28.1 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may not (subject to clauses 28.1(a) and 28.2) vote on a matter relating to the transaction, but may:
- (a) vote on any matter to which either of clauses 32 or 33 apply;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises, and be included among the directors present at the meeting for the purpose of a quorum;
  - (c) sign a document relating to the transaction on behalf of the Company; and
  - (d) do anything else as a director in relation to the transaction,
- as if he or she were not interested in the transaction.
- 28.2 The Shareholding Ministers may suspend or relax the prohibition on interested directors voting to any extent in respect of any particular transaction by written notice signed by them to the address for service of the Company.

**REMUNERATION****29 Board's power to authorise remuneration and other benefits is limited**

- 29.1 Subject to clause 29.3 but notwithstanding section 161(1) of the Act, the amount of remuneration or other benefits payable by the Company to directors for services as



a director, or in any other capacity, shall be determined by the Shareholding Ministers from time to time by written notice signed by them to the address for service of the Company.

29.2 Subject to clause 29.3, the power of the board to authorise:

- (a) the making of loans by the Company to a director or the giving of guarantees by the Company for debts incurred by a director; and
- (b) the entering into of a contract to do any of the things set out in this clause 29,

is subject to the written approval of the Shareholding Ministers.

29.3 The board may authorise the reimbursement by the Company of reasonable travelling, hotel, and other expenses incurred by directors in attending meetings of the board or shareholders or in relation to any other affairs of the Company.

29.4 The board shall not authorise the payment of any compensation or other payment or benefit to a director for loss of office as a director.

#### **PART D: GENERAL**

##### **CHANGE OF COMPANY NAME**

30 **A director may apply to change Company name**

A director may apply to the Registrar of Companies to change the name of the Company if:

- 30.1 the board has approved the director doing so; and
- 30.2 the Shareholding Ministers have given written approval of the change of name.

##### **CHANGE OF REGISTERED OFFICE OR ADDRESS FOR SERVICE**

31 **Board to notify shareholders of change of registered office or address for service**

Whenever the board gives notice to the Registrar of Companies of a change in the registered office or the address for service of the Company, the board must at the same time give written notice of the change to the shareholders.

##### **INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

32 **Company may indemnify directors and employees for certain liabilities**

32.1 The Company may indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be

indemnified under the Act. The board may determine the terms and conditions of any such indemnity.

- 32.2 The directors shall comply with section 162 of the Act in respect of any indemnity given under clause 32.1.

### **33 Company may effect insurance for directors and employees**

- 33.1 The Company may, with the prior approval of the board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The board may determine the amounts and the terms and conditions of any such insurance.

- 33.2 The directors shall comply with section 162 of the Act in respect of any insurance effected under clause 33.1.

## **GOVERNANCE**

### **34 Good employer**

- 34.1 The Company will, if it employs employees:

- (a) operate a personnel policy that complies with the principle of being a good employer;
- (b) make that policy (including the equal employment opportunities programme) available to its employees; and
- (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.

- 34.2 For the purposes of clause 34.1, "*equal employment opportunities programme*" has the meaning set out in section 118 of the Crown Entities Act.

## **MANNER OF CONTRACTING**

### **35 Manner of execution of contracts by the Company**

- 35.1 A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, is, by law, required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
  - (i) two or more directors;

- (ii) a director, or any person authorised by the board for that purpose, whose signature must be witnessed; or
  - (iii) one or more attorneys appointed by the Company in accordance with section 181 of the Act;
- (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

35.2 Clause 35.1 applies to a contract or other obligation:

- (a) whether or not that contract or obligation was entered into in New Zealand; and
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.

#### **PROVISIONS RELATING TO CROWN'S SHAREHOLDINGS**

#### **36 Crown's shareholdings**

36.1 Shares in the Company held by the Crown acting by and through a person described as the holder of a specified Ministerial portfolio shall be held by the Crown acting by and through the person for the time being holding that portfolio. A Minister of the Crown by and through whom the Crown acts as holder of Shares in the Company shall be entitled to exercise all rights and powers in relation or attaching to those Shares, on behalf of the Crown, as if that Minister was the person registered in the Company's share register as the holder of those Shares.

36.2 The Prime Minister may at any time or times, by written notice to the address for service of the Company which specifies the existing Ministerial portfolio and the new Ministerial portfolio, change the Ministerial portfolio by and through which the Crown acts in relation to any Shares in the Company and any such change shall have effect from the date specified in the notice (or, if no date is specified, from the date on which the notice is received by the Company).

36.3 It shall not be necessary to complete or register a transfer of Shares in the Company consequent upon a change in the person holding a Ministerial portfolio as contemplated by clause 36.1 or upon a change in a Ministerial portfolio as contemplated by clause 36.2; and the new person or holder of the new Ministerial portfolio may, on behalf of the Crown, act in relation to the Shares as if the person or holder was registered in the Company's share register as the person by and through whom the Crown acts in relation to the Shares.

### 37 **Appointment of representative**

A Shareholding Minister of the Crown may at any time or times, by written notice to the address for service of the Company, authorise (on such terms and conditions as are specified in the notice) such person as the Shareholding Minister thinks fit to act as the Crown's representative at any or all of the meetings of shareholders of the Company, and any person so authorised shall be entitled to exercise at the meeting or meetings the same powers as the Crown acting by and through that Shareholding Minister could exercise if present in person at the meeting or meetings.

## **LIQUIDATION**

### 38 **Distributions on liquidation**

38.1 Subject to the terms of issue of any Shares in the Company and to clause 38.2, on the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding-up the Company (*surplus assets*) shall be distributed among the shareholders in proportion to their shareholding provided however that the holders of Shares not fully paid up shall only receive a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the Shares either under this constitution or pursuant to the terms of issue of the Shares.

38.2 On a liquidation of the Company, the liquidator, with the sanction of a special resolution and any other sanction required by law, may divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair on any property to be divided and may determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees on such trusts for the benefit of the shareholders as the liquidator thinks fit, but so that no shareholder shall be compelled to accept any Shares or other securities on which there is any liability.

## **REMOVAL FROM THE NEW ZEALAND REGISTER**

### 39 **Board may remove Company from register**

39.1 In the event that:

- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
- (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the Company into liquidation;



the board may in the prescribed form request the Registrar of Companies to remove the Company from the New Zealand register.

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**FIRST SCHEDULE: CALLS ON SHARES****INTERPRETATION****1 Clause references**

Unless stated otherwise, references to clauses are references to clauses in this schedule.

**CALLS ON SHARES****2 Shareholders must pay calls**

Every shareholder on receiving written notice in accordance with clause 3 specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that the shareholder holds. The board may revoke or postpone a call, or require a call to be paid by instalments.

**3 Period of notice for calls**

The period of notice required for a call on Shares shall be that prescribed in the terms of issue of the Shares. Where no such period is specified in the terms of issue, the period of notice shall be such period as is agreed between the shareholders and the directors or, in the absence of agreement, 12 months.

**4 Call made when Board resolution passed**

A call is regarded as having been made at the time when the board resolution authorising the call was passed.

**5 Joint holders are jointly and severally liable**

The joint holders of a Share are jointly and severally liable to pay all calls for that Share.

**6 Unpaid calls will accrue interest**

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the board and calculated from the time specified for payment until the day of actual payment. The board may waive some or all of the payment of that interest.

**7 Amounts payable under terms of issue treated as calls**

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of a Share or under a contract for the issue of a Share, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will





apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

**8 Board may differentiate between holders as to calls**

On the issue of Shares, the board may differentiate between the holders of Shares as to the amount of calls to be paid and the times of payment.

**9 Board may accept payment in advance for calls**

Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share or Shares of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the board and that shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.

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## **SECOND SCHEDULE: PROCEEDINGS OF THE BOARD**

### **NOTICE OF MEETING**

#### **1 Director or employee under director's instructions to convene meetings**

A director, or an employee of the Company at the request of a director, may convene a meeting of the board by giving written notice in accordance with this schedule.

#### **2 Notice to contain certain details**

The notice of meeting must include the date; time and place of the meeting and the matters to be discussed.

#### **3 Period of notice required to be given to directors**

At least 5 working days' notice of a meeting of the board must be given to every director. Where the chairperson or, in the event of the chairperson's incapacity, any other director believes it is necessary to convene a meeting of the board as a matter of urgency, shorter notice of the meeting of the board may be given, so long as at least 1 working day's notice is given.

#### **4 Notice to be sent to director's address**

The notice of meeting must be sent to the address, or email address or facsimile number, which the director provides to the Company for that purpose, but if an address, or email address or facsimile number, is not provided, then to his or her last place of employment or residence, or email address or facsimile number, known to the Company.

#### **5 Directors may waive irregularities in notice**

Any irregularity in the notice of a meeting is waived if all directors attend the meeting without protest as to the irregularity, or if all directors agree to the waiver.

### **MEETING AND QUORUM**

#### **6 Methods of holding meetings**

A meeting of the board may be held either:

- 6.1 by a number of directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 6.2 by means of audio, or audio and visual, communication by which a quorum of directors participating can simultaneously hear each other throughout the meeting.

**7 Quorum for Board meeting**

The quorum necessary for the transaction of business at a meeting of the board is a majority of the directors. Subject to clause 8 of this schedule, no business may be transacted at a meeting of the board unless a quorum is present.

**8 Meeting adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting of the board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present will constitute a quorum.

**CHAIRPERSON**

**9 Chairperson or deputy chairperson to chair meetings**

The chairperson of directors (or if there is no chairperson or the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the deputy chairperson of directors) will chair each meeting of the board at which he or she is present.

**10 Directors may appoint chairperson of meeting if neither chairperson nor deputy chairperson is present**

If at a meeting of the board no chairperson or deputy chairperson of directors is present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may appoint one of their number to be chairperson of the meeting.

**VOTING**

**11 Voting on resolutions**

Each director has one vote. A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it. A director present at a meeting of the board may abstain from voting on a resolution, and any director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

**12 Chairperson has casting vote**

In the case of an equality of votes, the chairperson of directors has a casting vote, except when only two directors vote.



## **MINUTES**

### **13 Board must keep minutes of proceedings**

The board must ensure that minutes are kept of proceedings at meetings of the board and that a record is kept of all written resolutions of directors. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

## **OTHER PROCEEDINGS**

### **14 Board may regulate other proceedings**

Except as set out in this schedule, the board may regulate its own procedure.

PROACTIVELY RELEASED

## Annex Four: Financial Power Restrictions under the Crown Entities Act 2004

Acquisition of financial products, borrowing, guarantees, indemnities, and derivatives
<b>Section 160 Further provision relating to acquisition of financial products, borrowing, guarantees, indemnities, and derivatives rules</b>
<p>(1) Sections 161 to 164 apply subject to</p> <ol style="list-style-type: none"> <li>any regulations made under this Part; and</li> <li>any approval given jointly by the entity's responsible Minister and the Minister of Finance; and</li> <li>an entity's Act; and</li> <li>an exemption granted in Schedule 1 or Schedule 2.</li> </ol> <p>(2) Sections 161 to 164 apply to a Crown entity subsidiary in the same way as they apply to its parent.</p> <p>(3) The Minister of Finance must notify in the Gazette an approval given under subsection (1)(b).</p>
<b>Section 161 - Restriction on acquisition of financial products</b> must not acquire financial products other than: <ol style="list-style-type: none"> <li>a debt security denominated in New Zealand dollars that is issued by a registered bank, or by any other entity, that satisfies a credit-rating test that is specified in either regulations made under this Part or a notice in the Gazette published by the Minister of Finance;</li> <li>a public security;</li> </ol> <p>(2) This section does not apply to any money, financial product, or credit balance in a bank account held by a Crown entity on trust for any purpose or for another person.</p> <p>(2A) This section does not apply to derivatives.</p> <p>(3) This section does not prohibit a Crown entity from acquiring subsidiaries or shares if <u>section 96</u> or, as the case may be, <u>section 100</u> allows the acquisition</p>
<b>Section 162 - Restriction on borrowing</b> must not borrow from any person, or amend the terms of any borrowing, other than as provided in <u>section 160</u> .
<b>Section 163 - Restriction on giving of guarantees and indemnities</b> must not, with or without security, give a guarantee to, or indemnify, another person, or amend the terms of any such guarantee or indemnity, other than as provided in <u>section 160</u> . <p>(2) This section does not apply if the other person is—</p> <ol style="list-style-type: none"> <li>a member, office holder, committee member, employee, or other individual indemnified by the board in relation to any claim or proceeding under— <ol style="list-style-type: none"> <li><u>section 122</u> of this Act; or</li> <li><u>section 162</u> of the Companies Act 1993; or</li> <li>the entity's natural person powers or other powers in the entity's Act;</li> </ol> </li> <li>a delegate or agent indemnified by the board under its natural person powers, or the common law, in relation to any claim or proceeding.</li> </ol> <p>(3) This section does not apply to any guarantee or indemnity that is implied at law or arising from any transactions that may be authorised under regulations made under this Part</p>
<b>Section 164 - Restriction on use of derivatives</b> must not enter into an agreement constituting a derivative, or amend the terms of that agreement, other than as provided in <u>section 160</u> .
Miscellaneous
<b>Section 165 - Net surplus payable by certain statutory entities and Crown entity companies</b> <p>(1) Unless an exemption is granted in Schedule 1 or Schedule 2, the Minister of Finance may, in writing, require a statutory entity or Crown entity company to pay to the Crown a sum equal to the whole or any part of a net surplus of the statutory entity or Crown entity company, or its Crown entity group, as determined in accordance with generally accepted accounting practice or any other basis that may be agreed between that Minister and the entity.</p> <p>(2) In this section, net surplus includes both an annual profit and an accumulated surplus.</p> <p>(3) Before the Minister of Finance issues a requirement under this section,—</p> <ol style="list-style-type: none"> <li>the Minister of Finance must consult with each responsible Minister; and</li> <li>a responsible Minister must consult with the Crown entity.</li> </ol> <p>(4) This section does not limit any provision for the payment of an annual distribution or similar payment to the Crown under the entity's Act.</p> <p>(5) This section does not limit the need for a Crown entity company to comply also with the provisions of the Companies Act 1993 (or its constitution, if relevant) relating to distributions.</p>

## **Annex Four: PGFL shareholder consent form – Minister of Finance**

PROACTIVELY RELEASED





**IMPORTANT!** This document must be uploaded online **OR** faxed to 0508 266 736 (0508 CONSENT) or +64 9 913 4213  
**Please do not return this document by post.**

## Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

Provincial Growth Fund Limited

Name reservation number

14679054

Proposed company number

Shareholder's full legal name

Minister of Finance

Shareholder's address

1 Molesworth Street, Pipitea, Wellington, 6011, New Zealand

Number of shares held

50

Shareholder's consent

I consent to act as shareholder of the above proposed company and to taking the number of shares specified.

Signature

Name of signatory

Honourable Grant Robertson

Date

### IMPORTANT INFORMATION

Shareholders

- A trust, whether expressed, implied or constructive, cannot be entered on the share register. Where, for example, shares are held by a family trust the name of the trustees must be entered individually as members of a share parcel.
- Initials of the person's name are not allowed. The full legal name must be provided.
- A postal address, private bag or DX number is not permitted for the shareholder's address.
- Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated. To obtain more information on this process including a sample authorisation form then visit our website.
- If this form is signed under power of attorney, the attorney must provide a Certificate of Non-Revocation. To obtain more information on this process then visit our website.

Completed by

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New Zealand