



BRIEFING

Provincial Growth Fund Limited: Appointment Process for the Board

Date:	14 June 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3743 18-19

Minister	Action sought	Deadline
Hon Shane Jones Minister for Regional Economic Development	Agree to the proposed appointment process for the new Provincial Growth Fund Limited Board and refer a copy of this briefing to the Minister of Finance for his signature	21 June 2019
Hon Grant Robertson Minister of Finance	Agree to the proposed appointment process for the new Provincial Growth Fund Limited Board.	28 June 2019

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Michael Bird	General Manager, Entity Performance and Investment, MBIE	Privacy of natural persons	✓
James Cunningham	Performance Advisor, MBIE		

The following departments/agencies have been consulted
The Treasury

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

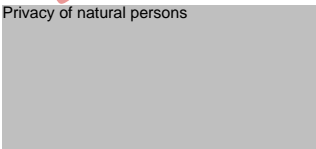
To seek your agreement to an appointment process for the board of a company to be called Provincial Growth Fund Limited (PGFL).

Recommended action

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

- a **Note** three directors will be required for the PGFL Board. *Noted*
- b **Note** that the Minister for Regional Economic Development has proposed to appoint Mr Rodger Finlay, Mr Neville Harris OSO and Mr Graeme Mitchell to the Board of PGFL. *Noted*
- c **Note** that should all the proposed appointments proceed, this would not be consistent with the Government's diversity policy for Crown boards. *Noted*
- d The **Minister for Regional Economic Development to Agree** to the proposed appointment process for suitable candidates for the PGFL Board and refer a copy of this briefing to the Minister of Finance for his signature. *Agree / Disagree*
- e The **Minister of Finance to Agree** to the proposed appointment process for suitable candidates for the PGFL Board. *Agree / Disagree*

Privacy of natural persons



Michael Bird
General Manager, Entity Performance and Investment Branch
Labour, Science and Enterprise, MBIE
..... / /

Hon Shane Jones
Minister for Regional Economic Development
..... / /

Hon Grant Robertson
Minister of Finance
..... / /

Background

1. Provincial Growth Fund Limited (PGFL) is the company being established to hold loans and/or equity investments being made through the Provincial Growth Fund. Such loans and/or equity investments are presently being managed by the Provincial Development Unit (part of the Ministry of Business, Innovation and Employment – MBIE) and will be novated (transferred) to PGFL after it has been established.
2. Cabinet has agreed that PGFL will be established as a “Schedule 4A” Crown entity company under the Public Finance Act 1989 – Cabinet Economic Development Committee Minute DEV-19-MIN-0084 refers. A Schedule 4A company was deemed the most appropriate form of Crown entity to undertake the tasks required to be performed by PGFL.
3. An Order In Council will be required to establish the Schedule 4A company and MBIE has organised for the Parliamentary Counsel Office to draft this.
4. The final steps to establish PGFL cannot then be completed until after directors have been appointed to PGFL. This is because the Companies Act 1993 requires a company to have at least one director (and PGFL’s draft Company Constitution requires that there are a minimum of two directors).
5. In the meantime, the name of the company has been reserved at the Companies Office, pending the appointment of the directors to PGFL.

The PGFL Board

The PGFL Board’s role will be very limited

6. PGFL’s role will be somewhat different from that of most Schedule 4A Crown entity companies. In particular:
 - PGFL will be established as an asset holding company – to hold legal and beneficial title to investment assets and to make and receive payments in relation to some of the projects the PGF has invested in.
 - PGFL will have no operational role in analysing or providing advice on project application, or for managing investments after Ministerial decisions have been made.
 - Investment operational responsibilities will be undertaken by the Provincial Development Unit (PDU), which is part of MBIE.
 - MBIE will undertake most of the tasks required to manage the PGF investments that are transferred to PGFL under a Management Agreement between PGFL and MBIE.
7. Accordingly, the PGFL directors’ roles will be limited to:
 - Managing the agreement between PGFL and MBIE – which will outline the roles and responsibilities of both parties.
 - Providing the Accountability Documents required by the Companies Act 1993 and the Crown Entities Act 2004. These include:
 - Statement of Intent (SOI), which needs to be updated at least once every three years.
 - Annual Statement of Performance Expectations (SPE).
 - Annual Report, which includes audited financial statements.
 - Providing regular reporting to shareholding Ministers on a quarterly basis, in common with the arrangements for other Crown entities and State-owned enterprises.

- Undertaking any other tasks necessary to govern the company in accordance with its Company Constitution and legislation.

A small board needs to be appointed to govern PGFL

8. As the shareholding Ministers, you need to appoint directors with appropriate knowledge, skills and experience, following consideration by the Cabinet Appointments and Honours Committee and then agreement by the full Cabinet.
9. The Board is responsible to you as the shareholding Ministers for its performance. MBIE will monitor PGFL's performance and advise you on any issues related to the performance of the Board and PGFL as a company.
10. Board appointments are your principal mechanism for ensuring that the Board is well-placed to undertake the tasks required by PGFL's Company Constitution.
11. We recommend a board of three directors be appointed of which one director will become the Chair. Having three directors should ensure that there will always be at least two directors in place to govern the company, in accordance with PGFL's Company Constitution and good governance practice.

Skills and experience required for the board

The Member Position Specification sets out the competencies and attributes required of directors

12. The core competencies and attributes for all Board members are described in the Member Position Specification (**Annex One**) and include:
 - having a strategic perspective and the ability to take a wide range of issues into account when making decisions, whilst recognising that the decisions required to be made by the PGFL Board will be very limited
 - an ability to work in a team toward consensus decision making
 - significant experience in the accounting, legal, banking and/or actuarial valuation field/s
 - an understanding of the public sector
 - a good understanding of governance responsibilities under the Companies Act 1993 and the Crown Entities Act 2004
 - an appreciation of the role of the Crown as an investor, and the need to maximise the value to New Zealand from the Provincial Growth Fund's debt and equity investments.
13. The Chair will have specific responsibility for providing effective leadership of the PGFL Board and liaising with the Crown, via MBIE. In addition to the competencies described above the Chair should:
 - have extensive governance experience and experience in Charing organisations
 - be well respected in the business community.
14. Ideally, shareholding Ministers should also look to achieve balanced representation on the Board in terms of gender, ethnicity and geographic representation. However, for such a small board this is not always possible to achieve.

The proposed appointment process

15. Ordinarily, we would recommend undertaking a targeted search for two members and a Chair with the requisite skills required to govern PGFL. Such a targeted search would consist of searching The Treasury's director candidates' database and/or approaching individuals who are already known by MBIE and The Treasury to have the requisite skills.
16. In addition, shareholding Ministers would be free to nominate candidates and you would typically seek nominations from the Labour, New Zealand First and Green Party caucuses.
17. However, given the very limited role the PGFL Board will have, the Minister for Regional Economic Development has indicated he would like to consider two appointees from the Provincial Growth Fund's Independent Advisory Panel (the IAP), provided any conflicts of interest can be appropriately managed.
18. The advantage of such appointees is that they will already be familiar with the operation of the PGF and the loans and/or equity investments that will be novated to PGFL. This approach should also assist in minimising costs to the Crown in managing the appointment process and on an ongoing basis.
19. The suggested appointees from the IAP are:
 - Mr Rodger Finlay, the current Chairperson of the IAP.
 - Mr Neville Harris QSO, a current member of the IAP.
20. In addition, the Minister for Regional Economic Development has indicated that the third appointee should have accounting and auditing expertise and has proposed Mr Graeme Mitchell as a candidate. Mr Mitchell is a former Audit and Assurance Partner at Deloitte and the former Chair of the External Reporting Board, amongst other positions.
21. Short biographies of Messrs Finlay, Harris and Mitchell are attached in **Annex Two**.
22. These candidates are all well qualified to be directors, although we note that should all the proposed appointments proceed, this would not be consistent with the Government's diversity policy for Crown boards.

Potential conflicts of interest for IAP members

23. The directors of PGFL will have a duty "*to act in good faith and in the best interests of the company*" (section 131 of Companies Act 1993 refers), whereas the members of the IAP have a duty to act in the best interests of the PGF under the terms of reference for the IAP. Given the close relationship between the role of the IAP and PGFL, this creates the potential for conflicts of interest for IAP members who will also be PGFL directors.

24. Legal professional privilege

25.

26.

27. Legal professional privilege

The level of Board fees proposed

28. Given the very limited role of the PGFL Board, we expect it will only meet approximately four to six times per year.
29. Confidential advice to Government
30. As a "Schedule 4A" Crown entity company, the proposed director fees will need to be guided by The Treasury's Commercial Operations Group's Fees Methodology for Crown-entity companies and State-owned enterprises.
31. MBIE has completed an assessment using that methodology, resulting in an ordinary director rate of \$23,000 per annum. The Chair would receive a rate of \$34,500 per annum.
32. MBIE and The Treasury review the fees paid to members from time to time and if the nature of PGFL's activities were to change in the future, the level of fees could be reviewed.

Timetable for appointment process

We anticipate completing the appointment process by 1 October 2019

33. The first step will be for your office to arrange any consultation you wish to undertake on the proposed candidates with Ministerial colleagues and coalition support partners.
34. Subject to your agreement, we will then contact the proposed candidates and discuss the proposed PGFL director roles.
35. We will obtain up-to-date Curriculum Vitae from each of the candidates and provide them with a copy of the draft PGFL Company Constitution and the proposed Management Agreement between the PGFL and the PDU.
36. We will interview the candidates and undertake due diligence and background checks including identifying any conflicts of interest.
37. We will then make final recommendations on preferred candidates to you to consider for appointment.
38. We will prepare a Cabinet paper to be considered by the Cabinet Appointments and Honours Committee (APH) after you have confirmed which candidates to appoint.
39. We expect to be able to complete the appointment process in time for the appointments to take effect on 1 October 2019. The actions and timetable for the process are shown in the table below.

Event	Weeks	Due Date
Minister consults on candidates	2	15 July 2019
Minister confirms candidates for appointment	1	22 July 2019
Interviews, due diligence and background checks	3	12 August 2019
Draft APH Cabinet paper to Minister	1	19 August 2019
APH Cabinet paper lodged with recommended appointments	1	29 August 2019
APH considers appointments	1	11 September 2019
Decision confirmed by Cabinet	1	16 September 2019
Minister signs letters of appointment for new directors	1	23 September 2019
Appointees notified	1	25 September 2019
Appointments take effect	1	1 October 2019

Next Steps

40. With your agreement, we will run the appointment process as described above.
41. We are happy to meet with you to discuss any aspect of the above process should you wish to.

Annexes

- Annex One: Member Position Specification
- Annex Two: PGFL Board Candidate Biographies

Annex One: Member Position Specification

PROACTIVELY RELEASED

Provincial Growth Fund Limited (PGFL) Board Member Position Specification

Establishment of the Board

The PGFL Board is expected to be established on 1 October 2019 when the company's incorporation is completed.

The PGFL Board will be comprised of a Chair and members appointed by the shareholding Ministers, for a term of up to three years. The Chair and members of the PGFL Board may be reappointed on the expiry of their term.

Role of the PGFL Board

The PGFL Board will be responsible for governing the company being established to hold loan and/or equity investments being made by the Provincial Growth Fund. Such loans and/or equity investments are presently being managed by the Provincial Development Unit (part of the Ministry of Business, Innovation and Employment – MBIE) and will be novated (transferred) to PGFL in due course.

The PGFL Board is to perform the functions and duties of the Board in accordance with the Companies Act 1993, the Crown Entities Act 2004 and the Company's Constitution.

The Provincial Development Unit (part of MBIE), will provide services to PGFL under a Management Agreement.

The PGFL Board will have access to a budget to enable the Board to carry out its functions.

Expectations of PGFL board members

PGFL Board members can expect a workload of approximately 8-12 working days per year in preparing for and attending meetings. In addition to preparing for those meetings, PGFL Board members may also participate in ad hoc decision-making during the year.

The duties of individual board members are described in the Companies Act 1993 and the Crown Entities Act 2004. In addition, candidates should have backgrounds that demonstrate strong personal integrity and ethics that will enable them to meet their obligations as a Board member.

Skills and experience of board members

The core competencies and attributes for all board members are:

- strategic perspective and the ability to take a wide range of issues into account when making decisions, whilst recognising that the decisions required to be made by the PGFL Board will be very limited
- an ability to work in a team toward consensus decision making
- significant experience in the accounting, legal, banking and/or actuarial valuation field/s
- an understanding of the public sector
- a good understanding of governance responsibilities under the Companies Act 1993 and the Crown Entities Act 2004
- an appreciation of the role of the Crown as an investor, and the need to maximise the value to New Zealand from the Provincial Growth Fund's debt and equity investments.

Attributes required of the Chair

The Chair will have specific responsibility for providing effective leadership of the PGFL Board and liaising with the Crown, via MBIE. In addition to the competencies described above the Chair should:

- have extensive governance experience and experience in Chairing organisations
- be well respected in the business community.

Eligibility for membership

The following persons are not eligible for membership of the Board:

- a) a member of Parliament
- b) a person who is an undischarged bankrupt
- c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993
- d) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988
- e) a person in respect of whom a personal order has been made under any Act that reflects adversely on the person's —
 - i) competence to manage his or her own affairs in relation to his or her property; or
 - ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare
- f) a person who has been convicted of an offence punishable by imprisonment for a term of two years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person
- g) a person who is disqualified under any Act.

Remuneration

Members of the PGFL Board are entitled to receive remuneration at a rate determined by the shareholding Ministers in accordance with The Treasury's Commercial Operations Group's Fees Methodology. Members are paid a fee of \$23,000 per annum. The Chair is paid a fee of \$34,500 per annum.

MBIE reviews the fees paid to members from time to time, in consultation with The Treasury.




All fees are stated as inclusive of tax, including GST where applicable.

Responsible to the shareholding Ministers of PGFL (currently the Minister for Regional Economic Development and the Minister of Finance)

The PGFL Board is responsible to the shareholding Ministers for its performance and will provide Quarterly Reports to them on its performance.

Annex Two: PGFL Board Candidate Biographies

(NB: Based on publicly-available information as we do not hold CVs for these candidates)

Name	Biographical information	Location and Proposed Term
<p>Mr Rodger Finlay (Proposed Chair)</p> 	<p>Mr Finlay is an experienced Director and is currently the Chairperson of the Provincial Growth Fund's Independent Advisory Panel (IAP).</p> <p>He is a Fellow of Chartered Accountants Australia & New Zealand and a Chartered Fellow of the Institute of Directors. For the past 11 years, Mr Finlay has been solely engaged in governance. He is currently Chair of PGG Wrightson Ltd, a Governor of Radio New Zealand Ltd, Deputy Chair of Rural Equities Ltd, a director of Ngai Tahu Holdings Corporation Ltd and Moeraki Ltd.</p>	<p>Christchurch</p> <p>1 Oct 2019 – 30 Sept 2022</p>
<p>Mr Neville Harris QSO (Proposed Director)</p> 	<p>Mr Harris was an experienced New Zealand public servant and is currently a member of the Provincial Growth Fund's Independent Advisory Panel (IAP).</p> <p>He has worked in the public service for 39 years with prominent roles in the management and supervision of the regulatory framework for corporations, securities, insolvency, intellectual property rights and Crown mineral estate. He was the Registrar of Companies from 1989 to 2013, Director of the Government's Rugby World Cup 2011 Office and is also on the board of the Christchurch Stadium Trust.</p>	<p>Lower Hutt</p> <p>1 Oct 2019 – 30 Sept 2022</p>
<p>Mr Graeme Mitchell (Proposed Director)</p> 	<p>Mr Mitchell is a former Audit and Assurance Partner at Deloitte and the former Chair of the External Reporting Board.</p> <p>He is currently a director of Retirement Income Group Ltd (trading as Lifetime Retirement Income) and is Deputy Chair of the National Provident Fund Board of Trustees, amongst other positions. He also has experience on the Audit and Risk Committees of various government and council entities.</p> <p>Mr Mitchell is also the Honorary Consul General for Norway.</p>	<p>Lower Hutt</p> <p>1 Oct 2019 – 30 Sept 2021</p>