



BRIEFING

Provincial Growth Fund Limited: Subscription Agreement for Shareholding Ministers' Approval

Date:	10 February 2020	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2157 19-20

Action sought		
	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to sign the proposed Subscription Agreement for Provincial Growth Fund Limited (PGFL) in Annex One as Shareholding Minister of PGFL	17 February 2020
Hon Shane Jones Minister for Regional Economic Development		17 February 2020
Fletcher Tabuteau Parliamentary Under-Secretary to the Minister for Regional Economic Development	Note the contents of this briefing for your information.	None

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
David van der Zouwe	Head of Investment, Provincial Development Unit	-	Privacy of natural persons	✓
Levi Rona	Senior Policy Advisor, Provincial Development Unit	Privacy of natural persons	-	

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 Withdrawn |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

BRIEFING

Provincial Growth Fund Limited: Subscription Agreement for Shareholding Ministers' Approval

Date:	10 February 2020	Priority:	High
Security classification:	In Confidence	Tracking number:	2157 19-20

Purpose

To seek Shareholding Ministers' approval to the proposed Subscription Agreement for Provincial Growth Fund Limited (PGFL).

Executive summary

PGFL is now formally established as a Schedule 4A company. PGFL will act as an asset holding company to hold loan and equity investments made through the Provincial Growth Fund (PGF). The PGFL will outsource the management and administration functions associated with these investments through a management agreement to the Provincial Development Unit (PDU).

PGFL now needs to enter into funding arrangements with the Crown via a Subscription Agreement. This briefing seeks Shareholding Ministers' approval to the proposed Subscription Agreement for PGFL.

The proposed Subscription Agreement has been signed by the PGFL Board. It confirms the details of capitalisation for PGFL and the process for making calls on shares in alignment with PGFL's constitution. The proposed Subscription Agreement states that the Crown agrees to subscribe for, and PGFL agrees to issue 186,000,000 ordinary shares at a price of \$1.00 per share. This is in alignment with previous Shareholding Ministers' decisions.

The proposed Subscription Agreement also contains a clause to allow the value of uncalled capital and the number of shares to be varied if required in the future. The current value, and the number of shares being subscribed for, is aligned with the \$186 million capital appropriation that is in place to support the capital investment in PGFL.

The current value of the appropriation represents the value of investments that were approved through the PGF process as at June 2019 and intended to be transferred to PGFL. The PDU will increase the capital appropriation in the March Baseline Update process to reflect those investments that have been made since June 2019 through to 31 January 2020. But on the basis of the loan and equity cash payment profile the PDU considers that the current level of appropriation is sufficient to meet PGFL's immediate cash requirements.

Subject to the Shareholding Ministers' approval of the Subscription Agreement, PGFL will then be able to make its first call on uncalled capital. This will ensure that the Company will have the funding to make payments when the investment agreements are novated to PGFL. PGFL Directors will pass a resolution to make the first call on capital and a briefing will then be sent to Shareholding Ministers to approve the payment of the call against the uncalled capital facility.

Once funds have been made available to PGFL to make payments to recipients, the PDU will commence the novation of investments to PGFL. We are expecting this to occur Commercial Information, subject to confirmation of other operational arrangements.

Recommended action

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

- a **Note** that Provincial Growth Fund Limited (PGFL) is formally established as a Schedule 4A company under the Public Finance Act 1989. *Noted*
- b **Note** that the Management Agreement which confirms the roles and responsibilities of both MBIE and PGFL in terms of managing and administering PGF investments has been signed by both parties. *Noted*
- c **Note** that the novation of investments cannot occur until PGFL has entered into funding arrangements, through a subscription agreement, with the Crown to meet its obligations under the investment agreements it will hold. *Noted*
- d **Note** that Shareholding Ministers agreed that PGFL Commercial Information shall have uncalled capital of \$186 million, comprised of ordinary shares. *Noted*
- e **Agree** to sign the proposed Subscription Agreement for PGFL in Annex One. *Agree / Disagree*

David van der Zouwe
Head of Investment
Provincial Development Unit, MBIE

..... / /

Hon Grant Robertson
Minister of Finance

..... / /

Hon Shane Jones
Minister for Regional Economic Development

..... / /

Background on Provincial Growth Fund Limited

1. On 3 September 2019, Provincial Growth Fund Limited (PGFL) was formally established as a company upon registration and incorporation with the Companies Office. On 24 September 2019, Cabinet agreed to add PGFL to Schedule 4A of the Public Finance Act 1989 (PFA) and Schedule 35 of the Income Tax Act 2007, establishing PGFL as a Schedule 4A company with an income tax exemption [LEG-19-MIN-0149].
2. PGFL was established as an asset holding company to hold loan and equity investments made through the Provincial Growth Fund (PGF). PGFL will have no operational role in the day-to-day management and administration of PGF investments. PGFL will outsource these functions to the Provincial Development Unit (PDU) within the Ministry of Business, Innovation and Employment (MBIE) through a management agreement, authorising it to act on behalf of the Company. Decision making responsibilities on PGF investments will remain unchanged.
3. Existing investments are currently being managed by the PDU, and will be novated (or transferred) to PGFL once the Company is fully operational. Once they have been novated, the PDU will still manage these investments but on the PGFL's behalf. Thereafter, new investments will be novated to PGFL once executed.

State of play relating to PGFL's operational establishment

4. On 10 December 2019, the Minister of Finance granted an indemnity to PGFL under the PFA [briefing T2019/2540 refers]. The indemnity will protect Directors against any liability or losses that may arise from holding investments that they have no ability to influence, assess or approve.
5. Following the granting of the indemnity, the PGFL Board then signed the Management Agreement between MBIE and PGFL on 18 December 2019. The Management Agreement was subsequently signed by the Head of the PDU on behalf of MBIE on 22 January 2020.
6. The Management Agreement confirms the roles and responsibilities of both MBIE and PGFL in terms of managing and administering PGF investments. It essentially outsources these functions to MBIE, authorising it to act on behalf of the Company. The Management Agreement also outlines the high level process for novating PGF investments to PGFL.
7. Although the Management Agreement has been signed by both parties, the Management Agreement states that the novation of investments cannot occur until PGFL has entered into funding arrangements with the Crown to meet its obligations under the investment agreements it will hold. This briefing seeks Shareholding Ministers' approval to the proposed Subscription Agreement for PGFL which provides certainty of those funding arrangements between Crown and PGFL where the Crown will capitalise the Company in the form of equity.

Proposed Subscription Agreement for PGFL

8. A \$186 million appropriation for the 2019/2020 year is in place to support the capital investment into PGFL associated with the transfer of PGF investment agreements [briefing 3900 18-19 refers]. This amount represents the loans and equity investments made through the PGF that were approved for negotiation at the point the appropriation was established in June 2019.
9. To allow PGFL to advance payments to recipients and carry out its functions, Shareholding Ministers agreed that PGFL would initially be 100 per cent financed by equity and carry no debt [briefing 0398 19-20 refers]. Shareholding Ministers also agreed that PGFL shall have uncalled capital of \$186 million, comprised of ordinary shares, funded through the \$186

million capital appropriation. This will allow PGFL to draw-down equity funding from the Crown (in tranches, or otherwise) as and when it is required.

The PDU recommends that you approve the proposed Subscription Agreement for PGFL

10. The proposed Subscription Agreement for PGFL has been prepared for your consideration and is appended to this briefing (see Annex One). The Subscription Agreement was developed by Chapman Tripp under the instructions of the PDU. On 18 December 2019, the PGFL Board passed a resolution to agree to the proposed Subscription Agreement and have signed the attached version. Officials recommend that Shareholding Ministers approve the proposed Subscription Agreement.
11. The Subscription Agreement is intended to confirm the details on capitalising PGFL by uncalled capital and the process for making calls on those shares in alignment with PGFL's constitution¹. This will allow PGFL to be funded to make payments to recipients and meet its commitments under PGF investment agreements.
12. Clause 2 of the Subscription Agreement states that the Crown agrees to subscribe for, and PGFL agrees to issue 186,000,000 ordinary shares at a price of \$1.00 per share. The terms on which the shares will be issued are listed in Schedule One of the Subscription Agreement and are as follows:
 - a. The Shares will be issued as uncalled shares;
 - b. The Shares are held in equal proportions by the two Shareholding Ministers on behalf of the Crown;
 - c. The Shares rank equally with all other ordinary shares of the Company as to voting, distribution and all other rights;
 - d. The consideration for Shares is payable in accordance with clause 12 of the PGFL constitution [which states that the PGFL Board may make calls on any Shareholder for any money that is unpaid on that Shareholder's shares];
 - e. The period of notice for calls on the 186,000,000 shares to be issued shall be 20 working days.
13. Clause 6 of the Subscription Agreement states that if PGFL requires additional equity funding to accept further novation of investment agreements, the Crown and PGFL may agree in writing for the Crown to subscribe for, and PGFL to issue an additional number of shares. The PGFL Board requested that this clause be added to the Subscription Agreement prior to their approval.
14. As noted earlier, the \$186 million share value (and associated capital appropriation) was based on the value of the PGF loan investments that were approved as at June 2019. Based on the loan agreements signed to date, there is a requirement to increase the share value. The increase will be processed as part of the March Baseline Update and reflect a more up to date value of approved investment.
15. As at 31 December 2019, 17 loans had been signed at a value of \$82.3 million. These investments are ready to be novated to the Company once it has been funded. A further 50 loans and equity investments at a total value of \$425.5 million have been approved through the PGF process but have not yet been contracted.

¹ The First Schedule of the PGFL constitution notes the provisions that govern the calling of shares, for example, that Shareholding Ministers must pay calls once the PGFL Board passes a resolution to make a call on capital.

16. The PGFL will need to increase its share capital to cover the expected value of investments that will be novated across to it in future. In the interim however, the \$186 million is sufficient to cover the required payments to recipients with whom the PDU has contracted.
17. Clause 6 of the Subscription Agreement (as per para. 13 above) ensures that there is a mechanism to amend the amount of uncalled capital and the number of shares to allow for any changes to the level of the capital appropriation.

Next steps

18. Subject to Shareholding Ministers' approval of the Subscription Agreement, PGFL will be able to make its first call on uncalled capital. This will ensure that PGFL will have the funding to make payments once the investment agreements are novated to PGFL.
19. Once the PGFL Board has passed a resolution to make the first call on capital, a briefing will be sent to Shareholding Ministers to approve the payment of the call against the uncalled capital facility. As noted above, the period of notice for calls is 20 working days.
20. Once funds have been made available to PGFL to make payments to recipients, the PDU will commence the novation of investments to PGFL. It is expected that this will occur in March 2020, subject to confirmation of other operational arrangements.

Annexes

Annex One: Proposed Subscription Agreement for PGFL

Annex One: Proposed Subscription Agreement for PGFL

PROACTIVELY RELEASED

Subscription Agreement

Provincial Growth Fund Limited (the
Company)

The Sovereign in Right of New Zealand acting
by and through the Minister of Finance and
the Minister for Regional Economic
Development (the *Crown*)



CONTENTS

1	DEFINITIONS AND CONSTRUCTION	4
1.1	Defined terms	4
1.2	Construction	4
2	SUBSCRIPTION FOR SHARES	5
2.1	Agreement to Subscribe	5
2.2	Issue of Shares	5
2.3	Terms of Shares	5
2.4	Entry on register	6
3	NO ENCUMBRANCES	6
4	COMPLETION	6
4.1	Completion Date	6
4.2	Completion obligations	6
4.3	Interdependent obligations	6
5	ENTITLED PERSONS AGREEMENT AND MAJOR TRANSACTION APPROVAL	6
5.1	Entitled persons agreement	6
5.2	Authorisation of issue in accordance with Constitution	7
5.3	Approval of major transaction	7
6	ADDITIONAL FUNDING	7
7	GENERAL	7
7.1	Amendment	7
7.2	Further assurances	7
7.3	No waiver	7
7.4	No assignment	7
7.5	Severability	7
7.6	Entire agreement	8
7.7	Governing law/jurisdiction	8
7.8	Counterparts	8
7.9	Costs	8
	EXECUTION	8
	SCHEDULE 1: CONDITIONS OF SHARES	10



SUBSCRIPTION AGREEMENT

Date: 2019

PARTIES

Provincial Growth Fund Limited (the *Company*)

The Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for Regional Economic Development (the *Crown*)

Each a *Party* and, together the *Parties*

BACKGROUND

- A The New Zealand Government has allocated three billion dollars over a three year term to invest in regional economic development through the Provincial Growth Fund (*PGF*) which aims to lift productivity potential in New Zealand's provinces. The PGF is administered by the Provincial Development Unit which was established in 2018 within the Ministry of Business, Innovation and Employment (*MBIE*).
- B In the course of administering the PGF, MBIE may enter into agreements under which MBIE agrees to advance debt or equity funding from the Fund (the *Investment Agreements*, and the transactions contemplated by the Investment Agreements, the *Investments*).
- C The Company was incorporated for the purpose of allowing the Crown to hold its interests in certain Investments through a limited liability company, whilst ensuring that the primary responsibility for management and administration for the Investments remains with the Crown. To this end, the Company was incorporated to act as the nominated legal entity for:
- C.1 taking novation of MBIE's rights, benefits, liability and obligation; and
 - C.2 accepting transfer of any securities held, or which would otherwise be held, by MBIE,
- under an Investment Agreement in relation to the relevant Investment.
- D To allow the Company to accept the novations of certain Investment Agreements and associated transfers of securities, the Crown has agreed to provide equity capital to fund the Company. Accordingly, the Crown and the Company wish to record the manner in which the Company will issue, and the Crown will subscribe for, 186,000,000 ordinary shares to be held in equal proportions by each Minister.

THE PARTIES AGREE as follows:



1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Act means the Companies Act 1993;

Aggregate Subscription Amount has the meaning given to that term in clause 2;

Completion means the fulfilment of the completion obligations of the parties set out in clause 4;

Completion Date means a date to be agreed by the Company and The Treasury (acting on behalf of the Ministers) in writing;

Conditions means the terms and conditions applicable to the Shares as set out in Schedule 1;

Constitution means the constitution of the Company from time to time;

Encumbrance means a security interest, mortgage, charge, lien, pledge, option, first right of refusal, right of pre-emption or any other adverse interest of any nature;

Investment Agreements has the meaning given to that term as defined in Recital B;

Investments has the meaning given to that term as defined in Recital B;

Issue Price means \$1.00 per Share;

MBIE has the meaning given to that term as defined in Recital A;

Ministers means the Minister of Finance and the Minister for Regional Economic Development and *Minister* means each of them; and

Shares means ordinary shares in the Company to be issued on terms set out in the Conditions, each to be issued for the Issue Price.

1.2 Construction

In the construction of this agreement, unless the context requires otherwise:

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;



Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this agreement;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this agreement;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: 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; and

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

2 SUBSCRIPTION FOR SHARES

2.1 Agreement to Subscribe

The Crown agrees to subscribe for, and the Company agrees to issue, the number of Shares at the Issue Price for the aggregate subscription amount set out in the table below (*Aggregate Subscription Amount*), to be held in equal proportions by each Minister on the terms and conditions set out in this agreement.

Number of Shares	Aggregate Subscription Amount
186,000,000	\$186,000,000

2.2 Issue of Shares

On the Completion Date, the Company shall issue the Shares to the Crown, to be held in equal proportions by each Minister.

2.3 Terms of Shares

The Shares will be issued on, and subject to, the terms set out in the Conditions.



2.4 **Entry on register**

The Company must ensure that each Minister's name is entered in the register of shareholders of the Company as holders of the Shares on Completion.

3 **NO ENCUMBRANCES**

The Company must issue the Shares to the Crown on the Completion Date:

- (a) free of all Encumbrances; and
- (b) together with all rights attaching to the Shares at the time of issue.

4 **COMPLETION**

4.1 **Completion Date**

Completion will occur on the Completion Date.

4.2 **Completion obligations**

At Completion, the Company must:

- (a) deliver to the Crown a copy of a valid resolution of the directors of the Company:
 - (i) approving the creation and issue of the Shares to the Crown; and
 - (ii) directing that each Minister's name be entered into the Company's share register in respect of the Shares; and
- (b) issue the Shares to the Crown by procuring the entry of the name of each Minister in the Company's share register in respect of the Shares; and
- (c) provide the Crown with evidence satisfactory to the Crown that the Ministers are the holders of the Shares.

4.3 **Interdependent obligations**

The Parties' obligations on the Completion Date are interdependent and Completion will not occur until the Parties have complied with all of their obligations set out in clause 4.2 and, once all such obligations have been complied with, Completion will be deemed to have occurred.

5 **ENTITLED PERSONS AGREEMENT AND MAJOR TRANSACTION APPROVAL**

5.1 **Entitled persons agreement**

The Ministers, being the "entitled persons" (as defined in section 2(1) of the Act) in relation to the Company, agree that the Company may issue the Shares to the Ministers on the terms and conditions set out in this agreement, and that in issuing the Shares the Company need not comply with sections 42, 44 or 45 of the Act pursuant to section 107(2) of the Act.



5.2 **Authorisation of issue in accordance with Constitution**

The Ministers expressly authorise the issue of the Shares on the terms and conditions set out in this agreement, for the purposes of clause 10.2 of the Constitution.

5.3 **Approval of major transaction**

The Ministers, being the only shareholders of the Company, approve the Company's issue of the Shares on the terms and conditions set out in this agreement as a major transaction if and to the extent required by and for the purposes of section 129(1) of the Act.

6 **ADDITIONAL FUNDING**

To the extent that the Crown and the Company agree that the Company requires additional equity funding to accept further novations of Investment Agreements and associated transfers of securities, the Parties may agree in writing, at any time, for the Crown to subscribe for, and the Company to issue, an additional number of Shares at the Issue Price, to be held in equal proportions by each Minister and on the same terms and conditions set out in this agreement.

7 **GENERAL**

7.1 **Amendment**

No amendment to this agreement or the Conditions will be effective unless it is in writing and executed by the Company and the Crown.

7.2 **Further assurances**

Each of the Parties must do any thing, including execute and deliver any documents, as may reasonably be required by any other party to obtain the full benefit of this agreement according to its true intent.

7.3 **No waiver**

A waiver of any provision of this agreement will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by any Party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

7.4 **No assignment**

No Party shall transfer, assign, dispose of or create any Encumbrance over or deal in any manner with the benefit or burden of this agreement, without obtaining the prior consent in writing of the other Party.

7.5 **Severability**

If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement which shall remain in full force.



7.6 **Entire agreement**

This agreement constitutes the entire agreement between the Parties relating to the subscription for, and issue of, the Shares. The agreement supersedes and extinguishes all earlier agreements, whether oral or written, between the Parties relating to the subscription for, and issue of, the Shares.

7.7 **Governing law/jurisdiction**

This agreement and the rights of the parties are governed by and construed in accordance with the laws of New Zealand. Each of the Parties irrevocably agrees that the Courts of New Zealand have non-exclusive jurisdiction to hear any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this agreement and for such purposes irrevocably submits to the jurisdiction of such Courts.

7.8 **Counterparts**

This agreement may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart will be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

7.9 **Costs**

The Parties will meet their own costs relating to this agreement.

EXECUTION

For and on behalf of **Provincial Growth Fund Limited** by:

Name: Rodger John Findlay

Title: Director



Signed by The Sovereign in Right of New Zealand acting by and through the Minister of Finance including as an entitled person and shareholder of the Company in the presence of:

Signature of the Minister of Finance

Witness' name:

Witness' occupation:

Witness' address:

Signed by The Sovereign in Right of New Zealand acting by and through the Minister for Regional Economic Development including as an entitled person and shareholder of the Company in the presence of:

Signature of the Minister for Regional Economic Development

Witness' name:

Witness' occupation:

Witness' address:

PROACTIVELY RELEASED

SCHEDULE 1: CONDITIONS OF SHARES

- 1 The consideration for which each Share will be issued is \$1.00 per Share (being \$186,000,000 for 186,000,000 Shares to be issued).
- 2 The terms on which the Shares will be issued are as follows:
 - 2.1 the Shares will be issued as uncalled shares;
 - 2.2 the Shares shall be held in equal proportions by the Shareholding Ministers on behalf of the Crown;
 - 2.3 the Shares shall rank equally with all other ordinary shares of the Company as to voting, distribution and all other rights;
 - 2.4 the consideration for the Shares shall be payable in accordance with clause 12 of the Constitution;
 - 2.5 for the purposes of clause 3 of the First Schedule of the Constitution, the period of notice for calls on the 186,000,000 Shares to be issued shall be 20 working days.