

IN-CONFIDENCE  
Office of the Minister of Revenue

Chair  
Cabinet Legislation Committee

## **ORDERS IN COUNCIL FOR NEW ZEALAND GREEN INVESTMENT FINANCE LIMITED**

### **Proposal**

1. This paper seeks the Committee's authorisation to submit the attached Orders in Council to the Executive Council to:
  - a. add New Zealand Green Investment Finance Limited (NZGIF) to Schedule 4A of the Public Finance Act 1989 (PFA); and
  - b. add NZGIF to schedule 35 of the Income Tax Act 2007.

### **Background**

#### *The Public Finance (New Zealand Green Investment Finance Limited) Order 2019*

2. On 7 November 2018 the Cabinet Economic Development Committee agreed that NZGIF be established as an independent 100% Crown-owned company listed in Schedule 4A of the Public Finance Act 1989 (DEV-18-MIN-0257). The purpose of the company will be to accelerate domestic, lower emissions investment.
3. The Company was incorporated and registered with the Companies Office on 12 April 2019.
4. The Order in Council will add NZGIF to Schedule 4A of the PFA and apply to NZGIF certain financial powers restrictions under section 161 to 164 of the Crown Entities Act 2004.
5. NZGIF will need the ability to invest in equity and debt securities, may need to borrow, give guarantees and/or indemnities and possibly use derivatives. Once NZGIF has established appropriate risk management frameworks it will apply to its shareholding Ministers for joint approval to exercise the financial powers it requires.
6. Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, as set out in section 45OA of the PFA. These include obligations to provide information to shareholding Ministers, to prepare a statement of intent, to be a good employer, to give effect to directions to

support a whole of government approach, and reporting obligations. The provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will also apply to NZGIF.

7. The Public Finance (NZGIF) Order 2019 is necessary to implement previous Cabinet decisions and does not require any new policy decisions to be made.

*The Income Tax (New Zealand Green Investment Finance Limited) Order 2019*

8. On 29 March 2019 I agreed that NZGIF should be added to Schedule 35 of the Income Tax Act 2007 on the basis that it met the necessary criteria outlined in that Act (see paragraph 15).
9. The effect of NZGIF's addition to Schedule 35 is that it will be exempt from income tax, better enabled to claim back the goods and services tax paid on its purchases and be eligible for a resident withholding tax exemption certificate.
10. The Income Tax (NZGIF) Order 2019 is necessary to implement the NZGIF's addition to Schedule 35 and does not require any new policy decisions to be made.

**The Public Finance (New Zealand Green Investment Finance Limited) Order 2019**

11. Section 3AB(1) of the PFA authorises the Governor-General by Order in Council made on the recommendation of the Minister of Finance to add the name of a company to Schedule 4A to the PFA and to apply to the company any provision of the Crown Entities Act 2004 that appears in Schedule 4A of the PFA.
12. Section 3AB(1) of the PFA provides that such an Order in Council may be made only if the following requirements are met:
  - a. more than 50% of the issued ordinary shares in the capital of the company to which the Order relates are held by Ministers of the Crown on behalf of the Crown;
  - b. shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and
  - c. the company is not a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.
13. These requirements have been met. NZGIF was incorporated under the Companies Act 1993 on 12 April 2019, with the Minister of Finance and Minister for Climate Change, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company.

## **The Income Tax (New Zealand Green Investment Finance Limited) Order 2019**

14. Section CW 38B of the Income Tax Act 2007 authorises the Governor-General by Order in Council made on the recommendation of the Minister of Revenue to add the name of a company to Schedule 35 of the Income Tax Act 2007.
15. Certain criteria must be met before a company is added to Schedule 35. These criteria are that:
  - a. the company is listed in Schedule 4A or it is a subsidiary of a company listed in Schedule 4A;
  - b. Ministers of the Crown hold, on behalf of the Crown, more than 50% of the voting interests in the company;
  - c. all other voting interests, if any, in the company are held by local authorities; and
  - d. the company's primary purpose is the carrying out of a public policy objective of the Government of New Zealand.
16. The first criterion will have been met by the time the Income Tax (NZGIF) Order 2019 is made, as the Public Finance (NZGIF) Order 2019 will have inserted NZGIF into the list in Schedule 4A of the PFA. The other criteria have already been met, with the Minister of Finance and Minister for Climate Change each holding, on behalf of the Crown, 50% of the voting shares in NZGIF. NZGIF has the primary purpose of accelerating and facilitating low emissions investment, a public policy objective of the Government.

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

17. It is proposed that the 28-day rule be waived for both Orders, on the grounds that the Orders have little or no effect on the public and that the establishment of NZGIF has already been well publicised, including by proactive release of the relevant Cabinet Economic Development Committee paper.

### **Compliance**

18. The Orders comply with the:
  - a. LAC guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislation Advisory Committee;
  - b. New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - c. principles and guidelines set out in the Privacy Act 1993;

- d. relevant international standards and obligations; and
- e. principles of the Treaty of Waitangi.

### **Regulations Review Committee**

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

### **Certification by Parliamentary Counsel**

#### *The Public Finance (NZGIF) Order 2019*

- 20. Parliamentary Counsel has certified the Order as being in order for submission to Cabinet:
  - a. except that the Order will come into force earlier than the 28th day after its notification in the Gazette (as explained at paragraph 17 above); and
  - b. provided that a recommendation has been given in accordance with section 3AB of the PFA – the Minister of Finance will provide such a recommendation to the Governor General.

#### *The Income Tax (NZGIF) Order 2019*

- 21. Parliamentary Counsel has certified the Order as being in order for submission to Cabinet:
  - a. except that the Order will come into force earlier than the 28th day after its notification in the Gazette (as explained at paragraph 17 above); and
  - b. provided that a recommendation has been given in accordance with section CW 38B of the Income Tax Act 2007 – the Minister of Revenue will provide such a recommendation to the Governor General; and
  - c. provided that the Order will not be made until after the Public Finance (NZGIF) Order 2019 has been made (as explained at paragraphs 15 and 16)

### **Regulatory Impact Analysis**

- 22. A Regulatory Impact Statement has not been prepared because the proposals are exempt from Regulatory Impact Analysis requirements.

### **Publicity**

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

## **Proactive release**

24. We plan to proactively release this Cabinet paper, without redaction, and associated Cabinet minutes once the Orders in Council have been gazetted.

## **Consultation**

25. The following agencies have been informed of this paper: The Auditor General, the Department of the Prime Minister and Cabinet, the State Services Commission.

## **Financial implications**

26. The Orders have no financial implications.

## **Legislative implications**

27. The Orders amend the Public Finance Act 1989 and the Income Tax Act 2007.

## **Recommendations**

It is recommended that the Cabinet Legislation Committee:

1. **note** that on 7 November 2018 the Cabinet Economic Development Committee agreed that NZGIF be established as an independent 100% Crown-owned company listed in Schedule 4A of the Public Finance Act 1989 (DEV-18-MIN-0257);
2. **note** that NZGIF will initially be subject to the financial powers restrictions in sections 161 to 164 of the Crown Entities Act 2004;
3. **note** that once NZGIF has established appropriate risk management frameworks it will apply to its shareholding Ministers for joint approval to exercise the financial powers it requires;
4. **note** that the Public Finance (New Zealand Green Investment Finance Limited) Order 2019 gives effect to the decisions referred to in paragraphs 1 and 2 above;
5. **note** that section 3AB(1) of the Public Finance Act 1989 provides that an Order in Council may be made under that section only if: more than 50% of the issued ordinary shares in the capital of the company to which the Order relates are held by Ministers of the Crown on behalf of the Crown; shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and the company is not a

Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986;

6. **note** that the requirements in paragraph 5 above have been met by NZGIF and accordingly the Minister of Finance has recommended that the company be added to schedule 4A of the Public Finance Act 1989;
7. **note** that Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, the Official Information Act 1982 and the Ombudsmen Act 1975;
8. **authorise** the submission to the Executive Council of the Public Finance (New Zealand Green Investment Finance Limited) Order 2019 inserting the name of NZGIF into Schedule 4A of the Public Finance Act 1989 and applying sections 161,162,163 and 164 of the Crown Entities Act 2004 to NZGIF;
9. **note** that on 29 March 2019 the Minister of Revenue agreed that NZGIF should be added to Schedule 35 of the Income Tax Act 2007;
10. **note** that the Income Tax (New Zealand Green Investment Finance Limited) Order 2019 gives effect to the decision referred to in paragraph 9;
11. **note** that section CW 38B of Income Tax Act 2007 provides that an Order in Council may be made under that section only if: the company is listed in Schedule 4A or it is a subsidiary of a company listed in Schedule 4A; Ministers of the Crown hold, on behalf of the Crown, more than 50% of the voting interests in the company; all other voting interests, if any, in the company are held by local authorities; and the company's primary purpose is the carrying out of a public policy objective of the Government;
12. **note** that NZGIF meets the criteria in paragraph 11;
13. **authorise** the submission to the Executive Council of the Income Tax (New Zealand Green Investment Finance Limited) Order 2019 inserting the name of NZGIF into Schedule 35 of the Income Tax Act 2007;
14. **note** that a waiver of the 28-day rule is sought:
  - a. so that the Orders can come into force as soon as possible;
  - b. on the grounds that the Orders have little or no effect on the public;  
and

15. **agree** to waive the 28-day rule so that the Orders can come into force on the day after the date of their notification in the Gazette.

Hon Stuart Nash  
**Minister of Revenue**

Date: