

# **Hon Stuart Nash, Minister of Revenue**

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

### **Information Release**

#### **Provincial Growth Fund Limited Orders in Council**

**January 2020**

#### **Availability**

This information release is available on Inland Revenue's Tax Policy website at <http://taxpolicy.ird.govt.nz/publications/2020-ir-cab-leg-19-sub-0149/overview>.

The individual documents were published in 2019 on the Ministry of Business, Innovation and Employment and Grow Regions websites.

#### **Documents in this information release**

1. IR2019/481 MBIE 0634 19-20 – Joint briefing: Draft Cabinet paper for authorising the Orders in Council for Provincial Growth Fund Limited (4 September 2019)
2. LEG-19-SUB-0149 – Cabinet paper: Provincial Growth Fund Limited Orders: Orders in Council (24 September 2019)
3. LEG-19-MIN-0149 – Minute: Provincial Growth Fund Limited Orders (24 September 2019)

#### **Additional information**

The Cabinet paper was considered by the Cabinet Legislation Committee on 24 September 2019 and confirmed by Cabinet on 30 September 2019.

Two attachments to the Cabinet paper are publicly available:

- Income Tax (Provincial Growth Fund Limited) Order 2019.
- Public Finance (Provincial Growth Fund Limited) Order 2019.

#### **Information withheld**

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people

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## JOINT BRIEFING

### Draft Cabinet paper for authorising the Orders in Council for Provincial Growth Fund Limited

|                                 |                  |                         |                               |
|---------------------------------|------------------|-------------------------|-------------------------------|
| <b>Date:</b>                    | 4 September 2019 | <b>Priority:</b>        | High                          |
| <b>Security classification:</b> | In Confidence    | <b>Tracking number:</b> | MBIE 0634 19-20<br>IR2019/481 |

| Action sought   |  |                  |
|---|--|------------------|
|   | Action sought  | Deadline         |
| Hon Grant Robertson<br><b>Minister of Finance</b>   | <p><b>Agree</b> to recommend that the Governor General, by Order in Council, add Provincial Growth Fund Limited (PGFL) to Schedule 4A of the Public Finance Act 1989 (PFA).</p> <p><b>Agree</b> to the attached draft Cabinet paper authorising the Orders in Council for PGFL.</p> <p><b>Agree</b> for the Minister of Revenue and the Minister for Regional Economic Development to take the final Cabinet paper to Cabinet Legislation committee.</p> | 9 September 2019 |
| Hon Stuart Nash<br><b>Minister of Revenue</b>   | <p><b>Agree</b> to the attached draft Cabinet paper authorising the Orders in Council for PGFL.</p>  | 9 September 2019 |
| Hon Shane Jones<br><b>Minister for Regional Economic Development</b>  | <p><b>Agree</b> to circulate the Cabinet paper to your Ministerial colleagues for consultation.</p> <p><b>Agree</b> to take the final Cabinet Paper authorising the Orders in Council for PGFL to Cabinet Legislation committee.</p>   |                  |
| Fletcher Tabuteau<br><b>Parliamentary Under-Secretary to the Minister for Regional Economic Development</b> | <p><b>Note</b> the contents of this briefing for your information.</p>   | None             |



| <b>Contact for telephone discussion (if required)</b> |   |   |                    |
|---|---|---|--------------------|
| <b>Name</b>   | <b>Position</b>   | <b>Telephone</b><br><small>Privacy of natural persons</small> | <b>1st contact</b> |
| Karen Walfisch  | General Manager,<br>Strategy, Planning and<br>Performance |   | ✓                  |
| Levi Rona   | Senior Policy Advisor                                     |   |                    |
| Peter Frawley   | Policy Manager, Policy<br>and Strategy, Inland<br>Revenue |   |                    |

| <b>The following departments/agencies have been consulted</b>                            |
|--|
| The Department of Prime Minister and Cabinet, The Treasury and State Services Commission |

**Minister's office to complete:**

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

- Declined
- Needs change
- Overtaken by Events
- Withdrawn

**Comments**

## JOINT BRIEFING

### Draft Cabinet paper for authorising the Orders in Council for Provincial Growth Fund Limited

|                                 |                  |                         |                          |
|---------------------------------|------------------|-------------------------|--------------------------|
| <b>Date:</b>                    | 4 September 2019 | <b>Priority:</b>        | High                     |
| <b>Security classification:</b> | In Confidence    | <b>Tracking number:</b> | 0634 19-20<br>IR2019/481 |

#### Purpose

The purpose of this briefing is to:

- seek approval from the Minister of Finance to recommend that the Governor General, by Order in Council, add Provincial Growth Fund Limited (PGFL) to Schedule 4A of the Public Finance Act 1989 (PFA);
- seek agreement from the Minister of Revenue and the Minister for Regional Economic Development to take the attached Cabinet paper (Annex One) to the Cabinet Legislation Committee meeting on 24 September 2019. The paper seeks Cabinet authorisation of Orders in Council to add PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007 as a public purpose Crown-controlled company.

#### 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 registration of PGFL with the Companies Office on 3 September 2019, PGFL needs to be added to Schedule 4A of the PFA by the Governor General, via Order in Council on the recommendation of the Minister of Finance. This briefing therefore seeks approval from the Minister of Finance to recommend an Order in Council to add PGFL to Schedule 4A of the PFA.

A draft Cabinet paper (Annex One) has been prepared for Cabinet to authorise an Order in Council by the Executive Council to make that addition. The paper also seeks Cabinet authorisation to a second Order in Council that will add PGFL to the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007, therefore making PGFL exempt from income tax. The Minister of Revenue has agreed to recommend this Order [IR2019/380 refers].

This briefing seeks joint Ministers approval to the draft Cabinet paper for Ministerial consultation which authorises the Orders in Council that will add PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007.

Subject to approval of this briefing, and following Ministerial consultation, officials will finalise and lodge the Cabinet paper for the Cabinet Legislation Committee meeting on 24 September 2019. The draft Cabinet paper seeks a waiver of the 28-day rule, this will allow PGFL to be established and operational as soon as possible.

## Recommended action

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The Ministry of Business, Innovation and Employment and the Inland Revenue Department recommend that you:

- a **Note** that Cabinet agreed to establish PGFL as a Schedule 4A company. *Noted*
- b **Note** that two Orders in Council are required to add PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007. *Noted*
- c **Note** that the Minister of Revenue has agreed that PGFL should be added to Schedule 35 of the Income Tax Act 2007 [IR2019/380 refers]. *Noted*

### Hon Grant Robertson

- d **Agree** to recommend that the Governor General, by Order in Council, add PGFL to Schedule 4A of the PFA. *Agree / Disagree*
- e **Agree** to the attached draft Cabinet paper (Annex One) authorising the Orders in Council for PGFL. *Agree / Disagree*
- f **Agree** for the Minister of Revenue and the Minister for Regional Economic Development to take the final Cabinet paper to Cabinet Legislation Committee. *Agree / Disagree*

### Hon Stuart Nash and Hon Shane Jones

- g **Agree** to the attached draft Cabinet paper authorising the Orders in Council for PGFL. *Agree / Disagree*
- h **Agree** to circulate the draft Cabinet paper to your Ministerial colleagues for consultation. *Agree / Disagree*
- i **Agree** to take the final Cabinet Paper authorising the Orders in Council for PGFL to Cabinet Legislation Committee on 24 September 2019. *Agree / Disagree*
- j **Agree** to the release of the attached Cabinet paper and associated minutes, without redaction, once the Orders in Council have been gazetted. *Agree / Disagree*
- k **Note** that officials are seeking a waiver to the 28-day rule so that the Orders in Council can come into effect as soon as possible. *Noted*

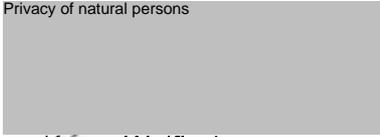


PROVINCIAL  
DEVELOPMENT  
UNIT



Inland Revenue  
Te Tari Taake

Privacy of natural persons



Karen Walfisch  
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Privacy of natural persons



Peter Frawley  
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4, 9, 19  
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Hon Grant Robertson  
**Minister of Finance**

..... / ..... / .....

Hon Stuart Nash  
**Minister of Revenue**

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

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PROACTIVELY RELEASED

## **Background on Provincial Growth Fund Limited**

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1. On 10 April 2019, Cabinet agreed to establish Provincial Growth Fund (PGFL) as a Schedule 4A company under the Public Finance Act 1989 (PFA) [DEV-19-MIN-0084]. PGFL is being established as an asset holding company to hold loan and equity investments made through the Provincial Growth Fund (PGF).
2. Establishing PGFL as a Schedule 4A company was considered the most appropriate form of Crown entity to provide the necessary structure and flexibility to best manage loan and equity investments beyond the life of the PGF.
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 Provincial Development Unit (PDU) through a management agreement. Decision making responsibilities on PGF investments will remain unchanged.
4. Existing investments are currently being managed by the PDU, and will be novated (or transferred) to PGFL once it is established and operational. Thereafter, new investments will be novated to PGFL once executed.

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

5. Following the approval of PGFL's constitution and the signing of the shareholders' consent forms [MBIE briefing 0398 19-20 refers], PGFL was registered and incorporated with the Companies Office on 3 September 2019 for the company to be "established" under the Companies Act 1993.
6. The next steps are for PGFL to be added to Schedule 4A of the PFA. A paper has been prepared (see Annex One) for Cabinet Legislation Committee to authorise the Executive Council to make that addition via an Order in Council.
7. The paper also seeks Cabinet authorisation for an Order in Council to authorise an income tax exemption for PGFL by adding the company to the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007. The Minister of Revenue has agreed that PGFL should be added to Schedule 35 of the Income Tax Act 2007 [IR2019/380 refers].
8. This briefing seeks approval:
  - a. from the Minister of Finance to recommend that the Governor General, by Order in Council, adds PGFL to Schedule 4A of the PFA;
  - b. to the draft Cabinet paper for Ministerial consultation which authorises the Orders in Council that will add PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007.

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

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### **Adding PGFL to Schedule 4A of the PFA will make the company subject to various provisions**

9. Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, as set out in section 45OA of the PFA. These provisions relate to obligations primarily associated with the accountability and reporting of the company. Adding PGFL to Schedule 4A of the PFA will also make PGFL subject to certain restrictions on its financial powers, under section 161 to 165 of the Crown Entities Act 2004.

10. On 2 September 2019, the Minister of Finance and the Minister for Regional Economic Development agreed that restrictions on borrowing (section 162) and using derivatives (section 164) would apply to PGFL [MBIE briefing 0398 19-20 refers]. It was also agreed that PGFL would not be subject to the restrictions on acquiring financial products (section 161) and giving guarantees and indemnities (section 163), and the requirements to pay net surplus to the Crown (section 165). This decision has been reflected in the Order in Council.
11. Applying only some of the restrictions to PGFL will provide flexibility and avoid any potential issues that would prevent PGFL from carrying out activities aligned with the company's intended role and purpose such as holding loan agreements.
12. As a Schedule 4A company, the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will apply to PGFL.

**We recommend that the Minister of Finance agree to add PGFL to Schedule 4A of the PFA**

13. The PFA provides that, on the recommendation of the Minister of Finance, the Governor General may by Order in Council, amend Schedule 4A of the PFA to add the name of a company if it meets the following criteria:
  - a. Ministers of the Crown hold, on behalf of the Crown, more than 50% of the issued ordinary shares in the capital of the company;
  - 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.
14. PGFL was incorporated under the Companies Act 1993 on 3 September 2019, with the Minister of Finance and Minister for Regional Economic Development, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company. In addition, the shares will not be listed on a registered market and PGFL is not named in Schedule 1 of the State-Owned Enterprises Act 1986.
15. Since the requirements have been met, the Minister of Finance can recommend that the Governor General, by Order in Council, adds PGFL to Schedule 4A of the PFA.
16. A draft of the Public Finance (PGFL) Order 2019 is included in Annex Two.

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

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17. On 21 August 2019, the Minister of Revenue agreed that PGFL 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 [IR2019/380 refers], that is:
  - 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.

18. The first criterion will be met by the time the Income Tax (PGFL) Order 2019 is made, as the Public Finance (PGFL) Order 2019 would have inserted PGFL into Schedule 4A of the PFA.
19. The other criteria have already been met, the Minister of Finance and Minister for Regional Economic Development each hold, on behalf of the Crown, 50% of the voting shares in PGFL and the company has the primary purpose of investing in regional economic development in New Zealand, a public policy objective of the Government.
20. The effect of PGFL's addition to the list of public purpose Crown-controlled companies in Schedule 35 is that the company will be exempt from income tax, better enabled to claim back the goods and services tax paid on its purchases, and be eligible for a resident withholding tax exemption certificate.
21. A draft of the Income Tax (PGFL) Order 2019 is included in Annex Three.

## **Officials are seeking a waiver to the 28-day rule for the Orders**

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22. The draft Cabinet paper will be seeking a waiver of the 28-day rule. This is on the basis the Orders in Council will have little or no impact on the public. The Orders will be essentially adding PGFL to Schedule 4A of the PFA and Schedule 35 of the Income Tax Act 2007. PGFL itself will play a limited role in managing the investments that have already been approved through the PGF.
23. A waiver will allow PGFL to be established and operational as soon as possible. If Cabinet does not approve the waiver then the Orders will take effect in late October 2019 depending on date the Orders are considered by Cabinet. This will delay investments from being novated to PGFL.

## **Consultation**

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24. The Department of Prime Minister and Cabinet, the Treasury and State Services Commission have been consulted on this joint briefing and the draft Cabinet paper.

## **Next steps**

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25. Subject to your approval, and following Ministerial consultation, officials will finalise and lodge the Cabinet paper for the Cabinet Legislation Committee meeting on 24 September 2019.
26. The draft Cabinet paper seeks a waiver of the 28-day rule, to allow PGFL to be established and operational as soon as possible. Subject to Cabinet considering the Orders on 24 September 2019 and approving a waiver to the 28-day rule, the Orders will come into force on 4 October 2019. If Cabinet does not approve a waiver then the Orders will come to force on 28 October 2019.
27. Subject to the approval of the Minister of Revenue and the Minister of Regional Economic Development, the final Cabinet paper and associated minutes will be proactively released once the Orders in Council have been gazetted.
28. Alongside this process, MBIE officials are working on confirming the Management Agreement between PGFL and the PDU and are consulting with PGFL directors on it. Once the agreement has been jointly agreed, 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: Draft Cabinet Paper: Provincial Growth Fund: Orders in Council

Annex Two: Draft Public Finance (Provincial Growth Fund Limited) Order 2019

Annex Three: Draft Income Tax (Provincial Growth Fund Limited) Order 2019

PROACTIVELY RELEASED

# Annex One: Draft Cabinet Paper: Provincial Growth Fund: Orders in Council

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PROACTIVELY RELEASED

## IN-CONFIDENCE

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

Chair, Cabinet Legislation Committee

### PROVINCIAL GROWTH FUND LIMITED: ORDERS IN COUNCIL

#### Proposal

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

#### Background

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

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

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

- 10 This Order in Council will add PGFL to Schedule 4A of the PFA and apply certain financial power restrictions on PGFL under section 161 to 165 of the Crown Entities Act 2004. This Order will place restrictions on PGFL to borrow (section 162) and use derivatives (section 164) while restrictions on acquiring financial products (section 161) and giving guarantees and indemnities (section 163), and requirements to pay net surplus to the Crown (section 165) will not apply.
- 11 Applying only some of the restrictions to PGFL will provide flexibility and avoid any potential issues that would prevent PGFL from carrying out activities aligned with the company's intended role and purpose such as holding loan agreements. Regardless of the form and structure of the investment, PGFL will only be accepting and holding investments once they have proceeded through the standard PGF approval process.
- 12 Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, as set out in section 45OA of the PFA. These provisions include obligations to provide information to shareholding Ministers, to prepare a statement of intent, to be a good employer, to give effect to directions to support a whole of government approach, and reporting obligations. The provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will also apply to PGFL.
- 13 The PFA provides that the Governor General by Order in Council, made on the recommendation of the Minister of Finance, may amend Schedule 4A of the PFA to add the name of a company that meets the following criteria:
- 13.1 Ministers of the Crown hold, on behalf of the Crown, more than 50% of the issued ordinary shares in the capital of the company; and
  - 13.2 shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and
  - 13.3 the company is not a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

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

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

- 15 The Income Tax Act 2007 authorises the Governor General by Order in Council made on the recommendation of the Minister of Revenue to add the name of a company to the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007.
- 16 The Minister of Revenue has agreed that PGFL should be added to Schedule 35 of the Income Tax Act 2007 on the basis that it meets the following criteria outlined in that Act:
- 16.1 the company is listed in Schedule 4A or it is a subsidiary of a company listed in Schedule 4A;
  - 16.2 Ministers of the Crown hold, on behalf of the Crown, more than 50% of the voting interests in the company;
  - 16.3 all other voting interests, if any, in the company are held by local authorities; and
  - 16.4 the company's primary purpose is the carrying out of a public policy objective of the Government of New Zealand.
- 17 The first criterion will have been met by the time the Income Tax (PGFL) Order 2019 is made, as the Public Finance (PGFL) Order 2019 would have inserted PGFL into Schedule 4A of the PFA.
- 18 The other criteria have already been met, the Minister of Finance and Minister for Regional Economic Development each hold, on behalf of the Crown, 50% of the voting shares in PGFL, and the company has the primary purpose of investing in regional economic development in New Zealand, a public policy objective of the Government.
- 19 The effect of PGFL's addition to the list of public purpose Crown-controlled companies in Schedule 35 is that the company will be exempt from income tax, better enabled to claim back the goods and services tax paid on its purchases, and be eligible for a resident withholding tax exemption certificate.

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

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

## **Compliance**

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

## **Regulations Review Committee**

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

## **Certification by Parliamentary Counsel**

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

## **Regulatory Impact Analysis**

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

## **Publicity**

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

## **Proactive release**

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

## **Consultation**

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

## Recommendations

We recommend that the Cabinet Legislation Committee:

- 1 **note** that on 10 April 2018 the Cabinet Economic Development Committee agreed to establish PGFL as a Schedule 4A company under the Public Finance Act 1989 [DEV-19-MIN-0084];
- 2 **note** that the Public Finance (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 1 above;
- 3 **note** the Minister of Finance has agreed to recommend that Provincial Growth Fund Limited be added to Schedule 4A of the Public Finance Act 1989;
- 4 **note** that Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, the Official Information Act 1982 and the Ombudsmen Act 1975;
- 5 **authorise** the submission to the Executive Council of the Public Finance (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited to Schedule 4A of the Public Finance Act 1989 and applying sections 162 and 164 of the Crown Entities Act 2004 to Provincial Growth Fund Limited;
- 6 **note** that on 21 August 2019 the Minister of Revenue agreed that Provincial Growth Fund Limited should be added to Schedule 35 of the Income Tax Act 2007;
- 7 **note** that the Income Tax (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 6;
- 8 **authorise** the submission to the Executive Council of the Income Tax (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited into Schedule 35 of the Income Tax Act 2007;
- 9 **note** that a waiver of the 28-day rule is sought:
  - 9.1 so that the Orders can come into force as soon as possible;
  - 9.2 on the grounds that the Orders have little or no effect on the public.
- 10 **agree** to waive the 28-day rule so that the regulations can come to force on the day after the date of their notification in the Gazette.

Authorised for lodgement

Hon Stuart Nash  
**Minister of Revenue**

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

**Annex Two: Draft Public Finance (Provincial Growth Fund Limited)  
Order 2019**

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PROACTIVELY RELEASED

# IN CONFIDENCE

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

Governor-General

### Order in Council

At Wellington this                      day of                      2019

Present:  
in Council

This order is made under section 3AB(1) of the Public Finance Act 1989 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance.

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|   | 2  |
|   | <b>New item inserted in Schedule 4A of Public Finance Act 1989</b> |

### Order

- 1      Title**  
This order is the Public Finance (Provincial Growth Fund Limited) Order 2019.
- 2      Commencement**  
This order comes into force on 4 October 2019.

**3 Schedule 4A of Public Finance Act 1989 amended**

In the Public Finance Act 1989, Schedule 4A, insert in its appropriate alphabetical order the item set out in the Schedule of this order.

**Schedule**

**New item inserted in Schedule 4A of Public Finance Act 1989**

| Company                        | Sections of Crown Entities Act 2004 (relating to financial powers) |     |     |     |     |
|--------------------------------|--|-----|-----|-----|-----|
|                                | 161  | 162 | 163 | 164 | 165 |
| Provincial Growth Fund Limited |  | ✓   |     | ✓   |     |

Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 4 October 2019, inserts the name Provincial Growth Fund Limited into Schedule 4A of the Public Finance Act 1989. Adding Provincial Growth Fund Limited to Schedule 4A means that, under section 45OA of the Public Finance Act 1989, certain provisions of the Crown Entities Act 2004 apply to the company as if it were a Crown entity company under that Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Treasury.

**Annex Three: Draft Income Tax (Provincial Growth Fund Limited)  
Order 2019**

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PROACTIVELY RELEASED

**IN CONFIDENCE**

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

Governor-General

**Order in Council**

At Wellington this                      day of                      2019

Present:  
in Council

This order is made under section CW 38B(4)(a) of the Income Tax Act 2007 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Revenue.

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| 1 | Title                                      | 1    |
| 2 | Commencement                               | 1    |
| 3 | Schedule 35 of Income Tax Act 2007 amended | 2    |

**Order**

**1 Title**

This order is the Income Tax (Provincial Growth Fund Limited) Order 2019.

**2 Commencement**

This order comes into force on 4 October 2019.

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

cl 3

**3 Schedule 35 of Income Tax Act 2007 amended**

In the Income Tax Act 2007, Schedule 35, insert in its appropriate alphabetical order:

Provincial Growth Fund Limited

Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 4 October 2019, inserts the name Provincial Growth Fund Limited into Schedule 35 of the Income Tax Act 2007. Adding Provincial Growth Fund Limited to Schedule 35 makes it a public purpose Crown-controlled company under that Act.

Public purpose Crown-controlled companies have their own income tax exemption. They are also public authorities under the Goods and Services Tax Act 1985, which helps to ensure that they can claim goods and services tax input credits.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Inland Revenue Department.





## COVERSHEET

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

| <b>List of documents that have been proactively released</b> |  |  |
|--|--|--|
| <b>Date</b>  | <b>Title</b>   | <b>Author</b>  |
| 24 September 2019  | Provincial Growth Fund Limited: Orders in Council                          | Office of Minister for Regional Economic Development |
| 24 September 2019  | Provincial Growth Fund Limited: Orders in Council <i>LEG-19-MIN - 0149</i> | Office of Minister for Regional Economic Development |

### **Information redacted**

**YES / NO** (please select)

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IN-CONFIDENCE

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

Chair, Cabinet Legislation Committee

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

### **Proposal**

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

### **Background**

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

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

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

- 10 This Order in Council will add PGFL to Schedule 4A of the PFA and apply certain financial power restrictions on PGFL under section 161 to 165 of the Crown Entities Act 2004. This Order will place restrictions on PGFL to borrow (section 162) and use derivatives (section 164) while restrictions on acquiring financial products (section 161) and giving guarantees and indemnities (section 163), and requirements to pay net surplus to the Crown (section 165) will not apply.
- 11 Applying only some of the restrictions to PGFL will provide flexibility and avoid any potential issues that would prevent PGFL from carrying out activities aligned with the company's intended role and purpose such as holding loan agreements. Regardless of the form and structure of the investment, PGFL will only be accepting and holding investments once they have proceeded through the standard PGF approval process.
- 12 Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, as set out in section 45OA of the PFA. These provisions include obligations to provide information to shareholding Ministers, to prepare a statement of intent, to be a good employer, to give effect to directions to support a whole of government approach, and reporting obligations. The provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will also apply to PGFL.
- 13 The PFA provides that the Governor General by Order in Council, made on the recommendation of the Minister of Finance, may amend Schedule 4A of the PFA to add the name of a company that meets the following criteria:
- 13.1 Ministers of the Crown hold, on behalf of the Crown, more than 50% of the issued ordinary shares in the capital of the company; and
- 13.2 shares in the company are not listed on a registered market (within the meaning of the Securities Markets Act 1988); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Compliance**

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

### **Regulations Review Committee**

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

### **Certification by Parliamentary Counsel**

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

### **Regulatory Impact Analysis**

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

### **Publicity**

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

### **Proactive release**

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

### **Consultation**

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

## Recommendations

We recommend that the Cabinet Legislation Committee:

- 1 **note** that on 10 April 2018 the Cabinet Economic Development Committee agreed to establish PGFL as a Schedule 4A company under the Public Finance Act 1989 [DEV-19-MIN-0084];
- 2 **note** that the Public Finance (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 1 above;
- 3 **note** the Minister of Finance has agreed to recommend that Provincial Growth Fund Limited be added to Schedule 4A of the Public Finance Act 1989;
- 4 **note** that Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, the Official Information Act 1982 and the Ombudsmen Act 1975;
- 5 **authorise** the submission to the Executive Council of the Public Finance (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited to Schedule 4A of the Public Finance Act 1989 and applying sections 162 and 164 of the Crown Entities Act 2004 to Provincial Growth Fund Limited;
- 6 **note** that on 21 August 2019 the Minister of Revenue agreed that Provincial Growth Fund Limited should be added to Schedule 35 of the Income Tax Act 2007;
- 7 **note** that the Income Tax (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 6;
- 8 **authorise** the submission to the Executive Council of the Income Tax (Provincial Growth Fund Limited) Order 2019 adding Provincial Growth Fund Limited into Schedule 35 of the Income Tax Act 2007;
- 9 **note** that a waiver of the 28-day rule is sought:
  - 9.1 so that the Orders can come into force as soon as possible;
  - 9.2 on the grounds that the Orders have little or no effect on the public.
- 10 **agree** to waive the 28-day rule so that the regulations can come to force on the day after the date of their notification in the Gazette.

Authorised for lodgement

Hon Stuart Nash  
**Minister of Revenue**

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



## COVERSHEET

|                               |   |                             |                               |
|-------------------------------|---|-----------------------------|-------------------------------|
| <b>Minister</b>               | Hon Shane Jones                                   | <b>Portfolio</b>            | Regional Economic Development |
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# Cabinet Legislation Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Provincial Growth Fund Limited Orders

**Portfolios**                      **Revenue / Regional Economic Development**

On 24 September 2019, the Cabinet Legislation Committee:

- 1        **noted** that on 10 April 2018, the Cabinet Economic Development Committee agreed to establish PGFL as a Schedule 4A company under the Public Finance Act 1989 [DEV-19-MIN-0084];
- 2        **noted** that the Public Finance (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 1 above;
- 3        **noted** that the Minister of Finance has agreed to recommend that Provincial Growth Fund Limited be added to Schedule 4A of the Public Finance Act 1989;
- 4        **noted** that Schedule 4A companies must comply with certain provisions of the Crown Entities Act 2004, the Official Information Act 1982 and the Ombudsmen Act 1975;
- 5        **authorised** the submission to the Executive Council of the Public Finance (Provincial Growth Fund Limited) Order 2019 [PCO 22348/3.0] adding Provincial Growth Fund Limited to Schedule 4A of the Public Finance Act 1989 and applying sections 162 and 164 of the Crown Entities Act 2004 to Provincial Growth Fund Limited;
- 6        **noted** that on 21 August 2019, the Minister of Revenue agreed that Provincial Growth Fund Limited should be added to Schedule 35 of the Income Tax Act 2007;
- 7        **noted** that the Income Tax (Provincial Growth Fund Limited) Order 2019 gives effect to the decision referred to in paragraph 6;
- 8        **authorised** the submission to the Executive Council of the Income Tax (Provincial Growth Fund Limited) Order 2019 [PCO 22352/3.0] adding Provincial Growth Fund Limited into Schedule 35 of the Income Tax Act 2007;
- 9        **noted** that a waiver of the 28-day rule is sought:
  - 9.1      so that the Orders can come into force as soon as possible;
  - 9.2      on the grounds that the Orders have little or no effect on the public;

1

- 2 **agreed** to a waiver of the 28-day rule so that the regulations can come to force on the day after the date of their notification in the Gazette.

Gerrard Carter  
Committee Secretary

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**Present:**

Rt Hon Winston Peters  
Hon Andrew Little  
Hon Chris Hipkins (Chair)  
Hon David Parker  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Damien O'Connor  
Hon Tracey Martin  
Hon Shane Jones  
Hon Eugenie Sage  
Hon Julie Anne Genter  
Michael Wood, MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

**Hard-copy distribution:**

Minister of Revenue  
Minister for Regional Economic Development

PROACTIVELY RELEASED