



COVERSHEET

Minister	Hon Stuart Nash	Portfolio	Economic Regional Development
Title of Cabinet paper	Crown Regional Holdings Limited: Orders in Council	Date to be published	16 August 2021

List of documents that have been proactively released

Date	Title	Author
July 2021	Crown Regional Holdings Limited: Orders in Council	Office of Minister for Economic Regional Development
1 July 2021	LEG-21-MIN-0099 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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IN-CONFIDENCE

Office of the Minister for Economic and Regional Development

Chair, Cabinet Legislation Committee

CROWN REGIONAL HOLDINGS 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:
 - a. substitute the name of Crown Regional Holdings Limited (CRHL) in place of Provincial Growth Fund Limited (PGFL) on Schedule 4A of the Public Finance Act 1989 (PFA); and
 - b. substitute the name of CRHL in place of PGFL on the list of public purpose Crown-controlled companies in Schedule 35 of the Income Tax Act 2007 (ITA).

Background

2. On 2 February 2021, Cabinet agreed to change the name of PGFL to CRHL [CBC-21-MIN-0006]. The name change recognises the greater range of investments the company now holds from several regional economic development funds¹.
3. PGFL is a Schedule 4A asset holding company that holds investments made through the Provincial Growth Fund (PGF) and other regional economic development funds. The purpose of the company is to:
 - a. act solely as the nominated legal entity for taking assignment of investments (debt, equity or any other asset, tangible or non-tangible);
 - b. act at all times in accordance with its constitution and its management agreement with the Provincial Development Unit (PDU) in relation to any matter involving those investments;
 - c. subject to compliance with the Companies Act 1993, distribute the receipts or proceeds of any investments to Shareholding Ministers, as agents of the Crown, unless otherwise agreed between PGFL, the PDU and Shareholding Ministers.
4. The company has no decision-making mandate to originate the investments that it holds. Once investments are novated (transferred), it has no operational role in the day-to-day management and administration of its investments. These management functions of investments are outsourced to the PDU through a Management

¹PGFL currently holds investments from four funds. These are the Regional Investment Opportunities Fund – part of the NZ Upgrade programme (RIO), the COVID-19 Response and Recovery Fund Infrastructure Reference Group (IRG) and the Strategic Tourism Assets Protection Programme (STAPP).

Agreement which authorises it to act on the Company's behalf. Since its establishment, the company holds a greater range of investments, in terms of type, volume and complexity than was expected.

5. On 24 September 2019, the Cabinet Legislation Committee agreed to PGFL being added to Schedule 4A of the PFA and Schedule 35 of the ITA, establishing PGFL as a Schedule 4A company with an income tax exemption [LEG-19-MIN-0149]. The authorisation of the attached Orders in Council are now required to implement the name change.
6. The Orders in Council ensure that CRHL is referenced in Schedule 4A of the PFA and Schedule 35 of the ITA - allowing it to continue to operate as a Schedule 4A company with an income tax exemption.
7. Such authorisation does not require any new policy decisions to be made.

Public Finance (Crown Regional Holdings Limited) Order 2021

8. This Order in Council will substitute the name of CRHL in place of PGFL on Schedule 4A of the PFA. The restrictions on financial powers that applied to PGFL under section 161 to 165 of the Crown Entities Act 2004 will continue to apply to the company under the new name. Therefore the Order will place restrictions on CRHL 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.
9. Applying the same restrictions to CRHL will continue to provide flexibility and avoid any potential issues that would prevent CRHL from carrying out activities aligned with the company's current and future role and purpose.
10. 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 to report as required. The provisions of the Official Information Act 1982 and the Ombudsmen Act 1975 will also apply to CRHL.
11. The PFA provides the Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, amend Schedule 4A of the PFA to substitute the name of a company in recognition of a change in its name.
12. For a company to be listed as a Schedule 4A company, it must meet 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; and
 - 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 will continue to be met. PGFL was incorporated under the Companies Act 1993 on 3 September 2019. The Minister of Finance and Minister for Economic and Regional Economic Development are Shareholding Ministers, on behalf of the Crown, each holding 50% of the issued ordinary shares in the capital of the company. The company name change to Crown Regional Holdings Limited was authorised with the Companies Office on 24 June 2021.

Income Tax (Crown Regional Holdings Limited) Order 2021

14. The ITA authorises the Governor-General, by Order in Council made on the recommendation of the Minister of Revenue, to substitute the name of a company on the list of public purpose Crown-controlled companies in Schedule 35 of the ITA in recognition of a change in its name.

15. The Minister of Revenue has agreed that the list of public purpose Crown-controlled companies in Schedule 35 of the ITA should be updated to reflect the name change of PGFL to CRHL.

16. For a company to be listed on Schedule 35 of the ITA, it must meet the following criteria:

- 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.

17. The first criterion will have been met by the time the Income Tax (Crown Regional Holdings Limited) Order 2021 is made, as the Public Finance (Crown Regional Holdings Limited) Order 2021 would have substituted the name of CRHL in place of PGFL on Schedule 4A of the PFA.

18. The other criteria have already been met. The Minister of Finance and Minister for Economic and Regional 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 substituting CRHL in place of PGFL on the list of public purpose Crown-controlled companies in Schedule 35 is that the company will continue to be exempt from income tax, continue to be able to claim back the goods and services tax paid on its purchases, and remain eligible for a resident withholding tax exemption certificate.

Timing and 28-day rule

20. A waiver of the 28 day rule is not being sought. Therefore, the Orders will come into force 28 days after authorisation from the Executive Council and notification in the Gazette.

Compliance

21. The Orders comply with or have no implications for:
- a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 2020;
 - d. relevant international standards and obligations;
 - e. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

22. There are no grounds for the Regulations Review Committee to draw the Orders to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

23. The Orders have been certified by Parliamentary Counsel as being in order for submission to Cabinet.
24. Further, they are certified on the basis that the Public Finance (Crown Regional Holdings Limited) Order 2021, which inserts CRHL 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 (Crown Regional Holdings Limited) Order 2021 is that CRHL is listed in Schedule 4A.

Regulatory Impact Analysis

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

Financial implications

26. This change will have no financial implications.

Publicity

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

Proactive release

28. I 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: Inland Revenue, Department of the Prime Minister and Cabinet, the Treasury, and the Public Service Commission.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 24 September 2019, Cabinet agreed to PGFL being added to Schedule 4A of the PFA and Schedule 35 of the ITA, establishing PGFL as a Schedule 4A company with an income tax exemption [LEG-19-MIN-0149];
2. **note** that on 26 January 2021, the Cabinet Business Committee agreed to change the name of Provincial Growth Fund Limited to Crown Regional Holdings Limited [CBC-21-MIN-0013];
3. **note** that the Minister of Finance has agreed to recommend that the name of Crown Regional Holdings Limited be substituted in place of Provincial Growth Fund Limited on Schedule 4A of the Public Finance Act 1989 in recognition of its change in name;
4. **note** that the Public Finance (Crown Regional Holdings Limited) Order 2021 will give effect to the decision referred to in recommendation 2 above;
5. **authorise** the submission to the Executive Council of the Public Finance (Crown Regional Holdings Limited) Order 2021 inserting Crown Regional Holdings Limited into Schedule 4A of the Public Finance Act 1989 and applying sections 162 and 164 of the Crown Entities Act 2004 in place of Provincial Growth Fund Limited;
6. **note** that the Minister of Revenue has agreed to recommend that the name of Crown Regional Holdings Limited be substituted in place of Provincial Growth Fund Limited on Schedule 35 of the Income Tax Act 2007 in recognition of its change in name;
7. **note** that the Income Tax (Crown Regional Holdings Limited) Order 2021 gives effect to the decision referred to in recommendation 2 above;
8. **authorise** the submission to the Executive Council of the Income Tax (Crown Regional Holdings Limited) Order 2021 inserting Crown Regional Holdings Limited into Schedule 35 of the Income Tax Act 2007 in place of Provincial Growth Fund Limited;

Authorised for lodgement

Hon Stuart Nash
Minister for Economic and Regional Development