MIXED OWNERSHIP PROGRAMME

Questions and Answers

Will the Section 9 wording be exactly the same in the mixed ownership legislation as it is in the SOE Act?
The bill replicates the wording of Section 9, with the exception that "Act" is replaced with "Part". It also adds: *"For the avoidance of doubt, subsection 1 does not apply to persons other than the Crown."* The Treaty clause applies only to the new part of the Public Finance Act relating to mixed ownership companies and not the whole Act.

Why does the Treaty clause apply only to the Crown?
The Treaty is an agreement between the Crown and iwi. Therefore, it is not possible to bind non-Crown groups to Treaty provisions. Under the SOE Act, section 9 applies only to the Crown, and not to the SOEs themselves. Similarly, the Treaty clause in the Public Finance Act will apply to the Crown and not to the mixed ownership companies or minority shareholders.

What about Maori rights or claims on water and other natural resources?
It's important to note that the mixed ownership companies do not own the water or geothermal resources they use, so the sale of a minority shareholding in the companies is not a sale of water or geothermal resources.

Maori rights and interests in water and other resources are covered in other ways, including:

- The Resource Management Act
- The Fresh Start for Fresh Water consultation process for developing water policy, which includes direct engagement with iwi leaders.
- Treaty settlements with individual iwi and hapu, dealing with the management of water.

Why will the 51 per cent and 10 per cent shareholding caps be measured by voting shares?
The legislation will require the Government to maintain at least 51 per cent of the voting shareholding in each of the mixed ownership energy companies, and it will restrict other shareholders from holding more than 10 per cent of the voting shareholding. This is the best way to measure ownership, as voting shareholding determines the ability to control the companies. Under current legislation, SOEs can issue other equity instruments such as equity bonds, which do not carry voting rights. More detailed provisions to monitor and enforce these ownership limits will be included in the constitutions of the mixed ownership companies.

When will the Government make decisions about Air New Zealand?
Before making decisions about Air New Zealand, Ministers are seeking further commercial advice on implementing the government's policy with respect to

Air New Zealand. Currently 27 per cent of Air New Zealand is held by private investors, with a 10 per cent restriction on any non New Zealand shareholder.

Why are the mixed ownership companies being removed from the Official Information Act and the Ombudsmen Act?
As is now the case with Air New Zealand, Ministers' policy decisions as majority owners of the four mixed ownership companies will remain subject to the Official Information Act and departments will remain subject to both Acts. However, the operations of the companies themselves will be excluded – as already happens with Air New Zealand. The mixed ownership companies operate in a competitive environment, and, once listed, will have comprehensive continuous disclosure requirements under stock exchange rules. Customers have contractual and consumer law remedies available to them, as well as the ability to take their business to a competitor – the same rules applying to their private sector competitors. Until each SOE is in the share offer process, they will remain in the SOE Act as at present.

Why are trustee corporations and nominee companies exempt from the 10 per cent maximum shareholding cap?
Trustee corporations and nominee companies hold shares on behalf of other investors. The 10 per cent shareholding limit will still apply to the investors for whom trustee corporations and nominee companies hold shares. They will also be required to monitor these shareholdings to ensure they comply with the shareholding cap.

How will directors' duties change under mixed ownership companies – particularly with respect to the companies acting in a commercial manner around issues such as selling assets?
Directors' duties are not affected by the mixed ownership legislation. SOEs are already subject to the Companies Act and the boards of SOEs must meet all of their obligations under that Act – and the mixed ownership companies will continue to be subject to the Companies Act. These obligations are on the directors of companies, not the shareholders.

Why does the legislation not set out details of the partial share floats – for example, how New Zealanders will be at the front of the queue for shares?
Ministers will determine arrangements for share allocations as part of each initial public offering of shares to ensure that New Zealanders are at the front of the queue. Ministers have yet to make decisions about these details and they don't need to be set out in the legislation.

Why does the legislation not contain a specific social responsibility clause as in the SOE Act?

Like most companies listed on the New Zealand Stock Exchange, , the mixed ownership companies will build stakeholder trust and public support for their activities in a number of ways, one of which could be a statement of corporate social responsibility.