

Date: 22 February 2012
To: Gabriel Makhoulf, Secretary to the Treasury
Cc: Executive Leadership Team
From: John Crawford, Deputy Secretary, Commercial Transactions

Governance of the Mixed Ownership Programme

Purpose of Paper

This noting paper summarises Treasury's governance of the mixed ownership programme.

Analysis

The mixed ownership programme is a key initiative of the Government. It carries significant commercial risk for the Crown and accordingly, we have put in place a governance structure that enables strong oversight of the work, while enabling the commercial transactions to be completed efficiently and in a timely manner, in accordance with the Government's objectives for the programme.

The following key features of the governance are explained in more detail below:

- Treasury MOM Steering Committee
- Regular reporting to Ministers
- Led by a Deputy Secretary-level programme director
- A dedicated senior-level commercial transactions team with strong management oversight and engagement, embedded within the Treasury corporate infrastructure
- Specialist advisors engaged to assist with the programme
- A commercial IPO process that integrates with Treasury governance
- Probity as an explicit element of the programme
- Ongoing evaluation and learning

There have been two main phases to the work to date: the preparatory phase (from the Government announcements in the 2011 Budget through until the November election) and the execution phase (following the Government decisions after the election).

Treasury MOM Steering Committee

The Treasury MOM Steering Committee, which was formed specifically for the mixed ownership programme, is a subcommittee of Treasury's Executive Leadership Team, reporting directly to the Secretary to the Treasury. It comprises the Deputy Chief Executive (chair), 3 Deputy Secretaries (including the Mixed Ownership programme director), Treasury Solicitor, an in-house expert on commercial transactions (who is not involved with the programme on a day-to-day basis) and an independent external expert.

The main roles of this committee are to advise the Secretary to the Treasury, to maintain strategic oversight of progress on the programme, including risks, and to approve major procurements. Its terms of reference have evolved as the programme has developed and moved from preparation to execution.

Reporting

During the execution phase, Ministers are receiving weekly written reports on the programme, including: progress on the various transaction work streams for the Mighty River Power IPO (such as due diligence, offer structure, corporate finance, logistics, marketing and communications) and programme-wide issues (such as procurement activity, consultation and legislation); a risk management dashboard; and a schedule of recently completed reports to Ministers. There are also regular meetings with Ministers.

Deputy Secretary Leadership

The programme is being led and overseen by the Treasury Deputy Secretary, Commercial Transactions. He heads the Commercial Transactions Group, within which the mixed ownership programme is a primary output responsibility. He reports directly to the Deputy Chief Executive.

Commercial Transactions Team within Treasury

A team has been established to undertake the mixed ownership programme with two Managers and a Director, all reporting to the Deputy Secretary. They have a team of financial, legal and policy staff who have been selected and assembled specifically for the mixed ownership programme. They include senior Treasury employees with relevant expertise, secondments from other agencies, and fixed-term employees engaged specifically for the programme.

The Commercial Transactions Team is supported by Treasury's infrastructure of supporting systems (including corporate leadership, finance, human resources, technology and business support) and policies (including delegations, security and conflicts of interest).

Specialist Advisors

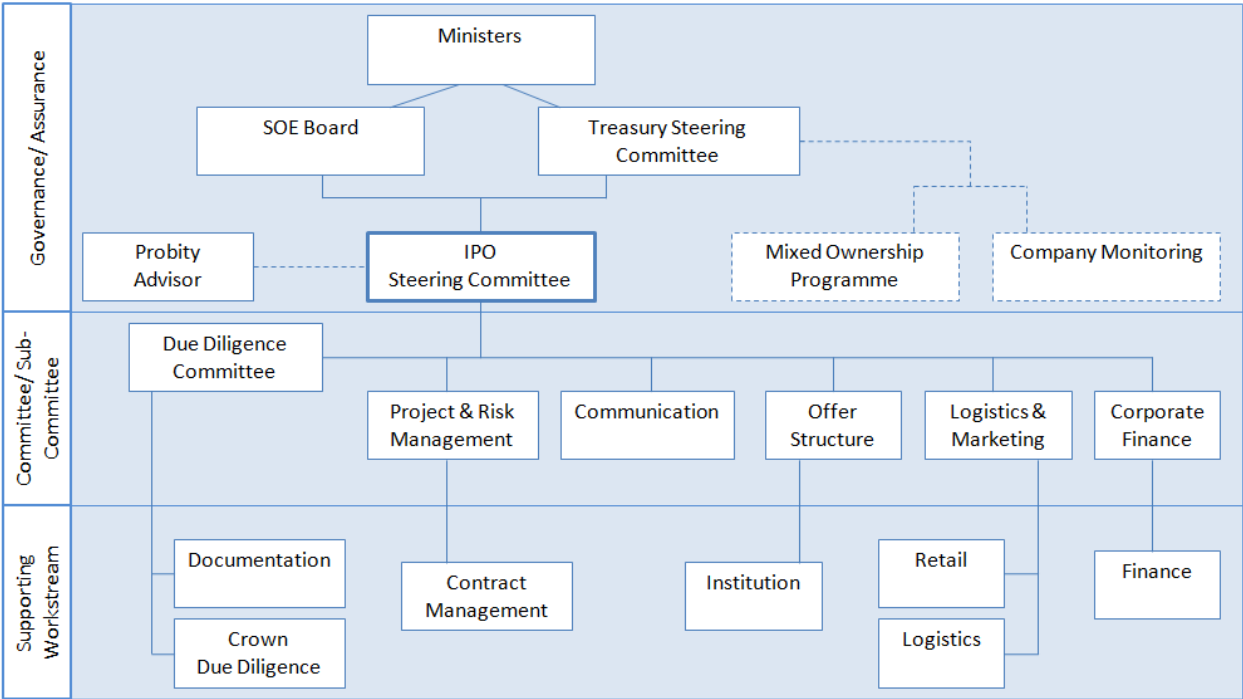
The Treasury appointed Deutsche Bank/Craigs as the Crown Advisor, to provide specialist investment banking expertise and advice on the programme and its implementation. An additional firm, Lazard, has been engaged to provide independent advice on specific elements of the programme. Panels of experts, including legal firms, accounting and tax advisors, were also appointed by the Treasury to provide pools of specialist commercial resource that could be drawn upon as required. In addition, during the preparation phase, Scoping Study Advisors were appointed to complete scoping studies of

the four SOEs in the programme. Following the Government decision after the election to go ahead with the programme, a panel of Joint Lead Managers was appointed. Other programme appointments were also made, including for technology, logistics, communications and marketing. All of the above appointments were carried out through GETS.

Commercial IPO Process

Following the decision by the Government to go ahead with a public offering of shares in Mighty River Power Limited, a commercial IPO process was set in train, with Joint Lead Managers being appointed from the panel referred to above.

The IPO process is being run jointly by the Crown and the company, since both are responsible for the offer. A standard committee structure, as set out in the diagram below, has been established that is appropriate to this commercial transaction. Its key forum is the IPO Steering Committee, co-chaired by the Treasury and the MRP Board Chair. It has a commercial imperative for strong governance in that both the Crown and the directors of the company are liable under securities law for the offer.



Probity

Probity assurance is an essential element of the programme. During the preparatory phase and early parts of implementation, the main focus of probity was on procurement of services. All significant procurements were run as tenders on GETS, the Government Electronic Tender System. A firm specializing in public procurement probity was engaged to provide probity advice during the preparatory phase. A commercial barrister was engaged to provide probity advice for the implementation procurements.

Systems have also been put in place to manage conflicts of interest and to ensure the protection of confidential information.

Ongoing Evaluation and Learning

Prior to commencement of work, Treasury engaged with other governments that had recently undertaken major sales of commercial assets, including the Queensland State Government sale of QR National. This provided strong insights into how to run the programme in New Zealand.

The election and subsequent government decision to go ahead with the programme was a key checkpoint in the process. Deloitte, the firm which carries out Treasury's internal audit function, is being engaged to carry out an evaluation of the preparation phase up to that point.