

15 October 2019

██████████  
Communications, Research and Policy Advisor  
Office of Hon Paul Goldsmith MP  
Parliament Buildings  
Wellington 6160

By email: ██████████

Dear ██████████

### **REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982**

Thank you for your request dated 18 September 2019 made pursuant to the Official Information Act 1982 ("OIA").

#### **Your Request**

You have requested a copy of all letters the Guardians of New Zealand Superannuation has sent to and received from the Minister of Finance in relation to the Venture Capital Fund in the period 1 March 2019 to 18 September 2019.

#### **Our Response**

Two letters are covered by your request. They are a letter from the Guardians to the Minister on 19 July 2019 and a letter from the Minister to the Guardians dated 12 August 2019.

The letters have been released in full and are attached. No information has been withheld in relation to this request.

Please note that we may choose to publish our response to your request on our website at [www.nzsuperfund.co.nz](http://www.nzsuperfund.co.nz).

Yours sincerely



Matt Whineray  
Chief Executive Officer

### **C3 - Restricted Confidential**

19 July 2019

Hon Grant Robertson  
Minister of Finance  
Parliament  
Wellington

[By email]

Dear Minister

#### **NEW VENTURE CAPITAL FUND**

I write in regard to the Venture Capital Fund Bill which is being put to Cabinet.

We have been in discussion with Treasury and the Ministry of Business, Innovation and Employment (MBIE) as the policy initiative and draft Bill have been developed. We appreciate the opportunity to be consulted and the manner in which Treasury engaged with us during this process. We also appreciate that many of our suggestions have been taken into account in the draft Bill and will continue to work with officials with the aim of making this initiative a success.

Nevertheless, we remain concerned about several key aspects of the legislation: the legislation architecture (use of a Policy Statement) the speed of implementation and the fact that the new Venture Capital Fund (VCF) will be subject to taxation.

#### **Legislation architecture**

As drafted the legislative framework consists of a Bill (containing high level mandate settings) and a supporting Policy Statement from the Minister (containing key obligations for investing the VCF and key definitions to support the legislative purpose).

The reasons for this approach are:

- It was not possible to get all the complex elements of the policy expressed accurately in the draft Bill in the tight timeframe set. The view was that some decisions could be made at a later stage in the context of the Policy Statement - for example, the definitions of venture capital, New Zealand funds and New Zealand entities.
- The Policy Statement provides for flexibility, in that it can be changed more easily than legislation.

We have raised two key concerns with this legislative architecture with officials.

1. The approach of defining fundamental concepts outside the primary legislation has been criticised by the Regulations Review Committee in other contexts, and creates a risk that the policy statement is susceptible to judicial review if it conflicts with the legislation. For the Guardians, the use of a Policy Statement also leaves an element of uncertainty.
2. Using a Policy Statement is inconsistent with the fundamental design settings of the Guardians. Guardians was intentionally formed to operate with a high level of independence from the Government/Crown in respect of investment decisions. The Policy Statement cuts across this independence by requiring the Guardians to “give effect to” certain Ministerial directions regarding the VCF (the Guardians is currently only required to “have regard to” directions). This also represents a drift away from the principles we agreed with officials at the outset of this process (attached as the Appendix to this letter) and that Policy Statements are more appropriate for core

### **C3 - Restricted Confidential**

Crown / Crown agencies (which are set up to implement Government policy) rather than an autonomous Crown Entity such as the Guardians.

We would also note that the Policy Statement requires the Minister to decide key matters that will influence the ability to achieve returns and the longer term market development aspect of the policy. As such, the Minister assumes a high level of accountability for investment performance and responsibility for meeting the legislative purpose.

The alternative approach would be to allow officials more time up front to enable key concepts to be properly developed and defined in the legislation. The Guardians would then implement the mandate on an independent quasi-commercial basis, leveraging existing professional capabilities and expertise. The Policy Statement concept could be retained, but specify matters the Guardians would “have regard to” in fulfilling the mandate.

#### **Execution risk**

Treasury have asked us to comment on our confidence on the legislation. Treasury and MBIE have had to work to a very tight timeline and, while we have assisted in the process as far as possible in the time available, we are concerned that significant and complex drafting matters have had to be rushed or deferred to the Policy Statement. The consequence is that there is a material risk that the policy will not be executed as effectively as it may be with more time for development of key concepts.

#### **Taxation Status of the VCF**

The proposed tax treatment of the VCF is inconsistent with the tax treatment of other special-purpose funds that have been established. The Government has recently exempted its wholly-owned \$100m New Zealand Green Investment Finance Fund (NZGIF) from tax. The criteria for that tax exemption is that the organisation is effectively Crown owned and controlled and its primary purpose is the carrying out of a public policy objective of the Government of New Zealand. NZGIF's tax exemption and the concept of public purpose controlled entities are directly relevant to the VCF and provide a precedent as to its tax treatment. The VCF will be wholly owned by the Crown and its primary purpose is to strengthen and deepen New Zealand's venture capital market.

The decision to tax the VCF is inconsistent with the policy intention. If the VCF were taxed, the funds available to invest in New Zealand capital markets would be reduced. In particular, this could affect the amount of follow-on funding available for successful VC companies. Even if the amount of tax is small, the compliance processes involved add to our costs. We note for completeness that your own tax policy officials consider it unlikely that the VCF will in fact pay any tax based upon the framework they want to adopt. The Guardians' sole focus for the VCF should be on meeting its objective / mandate, not meeting unnecessary tax compliance obligations. These compliance obligations represent a loss to the Crown.

If our submission above not be accepted and the VCF is not exempted from tax, then our view is that the same tax regime should apply to the VCF as applies to the Guardian's other mandate NZSF given efficiencies will arise by using our current tax processes and procedures. We understand Officials are supportive of this approach.

#### **Requirement to appoint NZVIF**

Our usual due diligence and conviction assessment in respect of NZVIF are underway, and will continue in parallel with the legislative process. NZVIF is currently re-building its fund of funds team following a period of staff turn-over, so final outcomes are not known.

### C3 - Restricted Confidential

Under the Bill, the Guardians is required to appoint NZVIF as the initial investment manager regardless of our confidence in NZVIF as the best manager of a fund of funds. As such, Parliament is ultimately responsible for this decision to appoint NZVIF and the Minister may impose a contract if we fail to agree on contractual provisions with NZVIF. We will therefore obviously report back to Treasury on our due diligence findings to ensure decision makers have all relevant information in this regard.

Please note that our feedback is based upon the draft Bill dated 11 July 2019, and assumes that certain important updates we have discussed with officials have been reflected in the Bill as presented to Ministers. We have not received the draft Bill as presented to Ministers.

We would be pleased to discuss these matters with you or provide more information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Whineray', written in a cursive style.

Matt Whineray  
Chief Executive Officer

## Appendix

1. **Transparency and clarity.** There should be full transparency and clarity on the scope of responsibilities of various parties, and accountability against these.
2. **Certainty over a commercial contract.** Certainty should be provided to the market over each party's accountability, and these accountabilities should not present inconsistencies across mandates/constitutions.
3. **Efficiency.** Within the range of choices provided by Cabinet, the implementation model should be as efficient as possible, considering the possible duplication of resources and overall cost (and effectiveness) of fees paid relative to operating expenses.
4. **Leverage existing skills and frameworks.** Existing skills and processes should be used, wherever possible, to simplify the construction and delivery of the new mandate. The model is expected to be additive to existing mandates and should avoid unintended consequences on existing funds.
5. **Cost Recovery.** Operating costs for each party should be funded through a transparent process that considers the ring-fencing of the NZSF and, should Ministers agree, the Seed Capital Investment Fund (SCIF). Performance should be reported separately.
6. **Legislative change required.** To the extent the Guardians is required to act outside the existing mandate, this will require authorisation by way of legislation. To the extent that NZVIF's constitution is inconsistent with the commercial contract with the Guardians, the constitution would be reviewed.
7. **Maintain the Guardians compliance with the Santiago Principles.** The essential element from these principles for the present topic is the importance of clarity of purpose, ownership and governance.
8. **Maintain independence of investment decisions.** The independence of Guardians' decision-making for the New Zealand Super Fund (NZSF) and NZVIF's decision making for the new Venture Fund.
9. **Ring-fencing.** The new mandate should be completely ring-fenced from the NZSF, including in being self-funding with no cross-subsidy from the NZSF.

# Hon Grant Robertson

MP for Wellington Central

Minister of Finance

Minister for Sport and Recreation

Minister Responsible for the Earthquake Commission

Associate Minister for Arts, Culture and Heritage



12 AUG 2019

Matt Whineray  
Chief Executive Officer  
NZ Super Fund  
PO Box 106 607  
AUCKLAND 1143

Dear Matt

Thank you for your letter to express the Guardians' views alongside Ministers' review of the draft Venture Capital Fund (VCF) Bill. I am pleased with the progress towards implementation and acknowledge the Guardians' contribution in developing the VCF Bill. I am writing to respond to some of the concerns you have raised in your letter, dated 19 July 2019.

### ***Legislation Architecture:***

The recommendation for a Policy Statement has been welcomed by Ministers as an appropriate tool to sit alongside the development of an immature market. The rationale for this approach is not related to the timeframes to lock down legislation but rather to support the long term delivery of this policy, which may require some flexibility over time. The Policy Statement allows:

- key definitions that are not appropriate to include in legislation, such as the definition of venture capital and the stage of venture investment, ie. defining series A and B capital markets
- flexibility to development these definitions over time, and
- flexibility to change other high level policy settings if the desired objectives are not being delivered, such as the scale of international versus domestic investment that might be required to support the development of New Zealand's market.

I acknowledge that the approach of defining fundamental concepts outside the primary legislation has been criticised by the Regulations Review Committee in other contexts. However, in my view, the main concepts of the legislation are contained within the Bill to the extent appropriate. Officials have worked closely with the Parliamentary Counsel Office to ensure there is comfort on this point and will continue to work closely with you and your team as the Policy Statement is developed.

It is expected that any future change to the Policy Statement would be consulted on, with protections for the Guardians already included in the legislation for where Ministers must consult. If a future Minister were to attempt to include a matter in the Policy Statement that was inappropriate to the purpose of the legislation, judicial review would be available as an avenue to challenge the Minister's actions. This would be quite appropriate.

You also raise a concern that using a Policy Statement is inconsistent with the fundamental design settings of the Guardians. Namely, the level of autonomy in executing the Guardians functions.

I note that the Bill has been specifically drafted in a way that avoids any impact on the Guardians' independence in respect of the NZ Super Fund. In the case of the Venture Capital Fund, we see it as vital that the Guardians skills are brought into this system, but, unlike the New Zealand Super Fund, which has a very long term objective, the Crown should have the opportunity to be responsive to the effectiveness of policy. I also acknowledge that any flexibility is future focussed only.

My Officials have been conscious to work with your staff to minimise the potential inconsistencies with entity form. The Guardians feedback on this front has resulted in an improved product, and, while not necessarily a perfect fit for an autonomous Crown Entity, it helps the Crown to achieve its objectives, is transparent for the Guardians and allows changes to settings where Ministers consider appropriate to achieve the policy objective.

Further to the choice to introduce a Policy Statement, we have been pushing hard to introduce the VCF Bill as quickly as practicable. We are conscious that this can increase execution risk, but feel we need to balance this risk with the benefits of addressing the venture capital gap currently being experienced by New Zealand firms as quickly as possible.

***Taxation:***

Thank you for your comments on the tax status of the VCF. We have considered your comments and decided to change the position in the Bill so the tax treatment of the VCF will mirror that of the NZ Super Fund. There will be no requirement that the VCF meet additional requirements that apply to portfolio investment entities. This will be reflected in the Bill as introduced.

I also note that in the refreshed Government Tax Policy Work Programme, published recently (see <http://taxpolicy.ird.govt.nz/work-programme>), there is a workstream covering tax exemptions. I would encourage your team to engage with Inland Revenue Officials as this workstream is developed.

Finally, I would like to acknowledge and thank you and your team for your hard work and constructive approach taken to the work on the VCF Bill. I appreciate you taking the time to raise your concerns with me.

Yours sincerely



Hon Grant Robertson  
**Minister of Finance**

cc: Hon Phil Twyford, Minister for Economic Development  
Hon David Parker, Associate Minister of Finance