

Telecom, Kiwishare and TSO obligations

Following the de-merger of Telecom into two completely separate network (Chorus2) and retail (Telecom2) businesses, the Kiwishare obligations in regards to **foreign ownership restrictions** will remain with Chorus2.

This is because Chorus2 will be the monopoly infrastructure business, while Telecom2 will be a retailer. Telecom2 will be competing with other retailers like Vodafone and TelstraClear which do not have any foreign ownership restrictions and it is appropriate that it operate under the same set of rules.

Provisions in the Kiwishare pertaining to the provision of certain telecommunications services – like **free local calling** and **rural services** – have been superseded by provisions in the Telecommunications Act. These are known as the Telecommunications Service Obligation (TSO).

The TSO obligations will not change. The obligations will be split, as appropriate between Chorus2 and Telecom2. These separate sets of obligations will be comprehensive and enforceable by the Crown directly against the relevant party

There would be tax consequences for Telecom's Australian resident shareholders if the current Kiwishare continues in its present form during de-merger. Therefore it will be converted to an Ordinary share and Chorus2's Kiwishare obligations will instead be provided for in its constitution and in a Deed with the Crown. The Government will also own a small number of ordinary shares in Chorus2 so that it can protect its rights as a shareholder.

Questions and answers

Q: What are the ownership restrictions currently on Telecom?

A: Currently, no single shareholder may own more than 10% of the shares without the approval of the Kiwi shareholder (who is the Minister of Finance). And no person who is not a NZ national may own more than 49.9% of the shares unless the Kiwi shareholder agrees. These restrictions have been in place since 1990.

There are also restrictions on how the board conducts its meetings and a requirement that at least half the directors must be NZ citizens.

Q: What changes are proposed after Telecom de-mergers?

A: There will be two changes:

- Telecom2 will not be subject to any particular foreign ownership provisions, apart from those that apply in general to all businesses. This is because Telecom2 will be a retailer competing with other retailers like Vodafone and TelstraClear which do not have any foreign ownership restrictions and it is fair that everyone operate under the same rules.
- The current Kiwishare provisions will be replicated in Chorus2 as it will be the key infrastructure provider in New Zealand. However, the mechanism to do this will not be a special rights share, but rather will be a combination of constitutional

requirements on the company, a small parcel of ordinary shares held by the Government, and a Deed between the company and the Government.

Q: What are the Australian tax consequences and what impact could they have

A: Under Australia's tax code, a de-merger will result in capital gains tax being paid by shareholders unless the shareholders of the de-merged entities are identical to the parent company which is de-merging. This would not be possible for the Kiwishare, and therefore if it were to continue, Australian resident Telecom shareholders would face paying tax as a result of the de-merger. As they represent a blocking minority of Telecom shareholders, the de-merger would most likely fail to win shareholder support.

Q: If you are removing the KiwiShare from Telecom2 will this mean that they will also not be required to provide free local calling and serve all rural customers?

A: These obligations will remain. They form part of the Telecommunications Service Obligation (TSO), will be split appropriately between Chorus2 and Telecom2, and remain enforceable by the Crown