



MĀORI INCORPORATIONS

TETURE WHENUA MĀORI ACT 1993

Te Kooti Whenua Māori



Māori Land Court

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The Māori Land Court (Te Kooti Whenua Māori) is the New Zealand court that hears matters relating to Māori land. The special bond between Māori people and the land is recognised by the Māori Land Court, and the records held by this Court form an invaluable part of the whakapapa of all Māori. The Māori Land Court operates under the provisions of the Te Ture Whenua Māori Act 1993 (referred to as 'the Act' throughout this booklet).

Māori Incorporations is one of a series of Māori Land Court booklets designed to help Māori – and anyone else with an interest – to gain a fuller understanding of current Māori land matters.

Important changes to the rules governing Māori incorporations were brought about by Te Ture Whenua Māori Act 1993 and the Māori Incorporations Constitution Regulations 1994. Māori incorporations constituted under earlier acts continue under the Act. The order of incorporation continues to operate (including any restrictions imposed by that order), but only in accordance with the Act and the Māori Incorporations Constitution Regulations 1994. The regulations quoted throughout this booklet are contained in the Māori Incorporations Constitution Regulations 1994.

Because many matters governing Māori incorporations are found in the Regulations rather than in the Act, every member of a committee of management of a Māori incorporation should obtain a copy of, and become familiar with, the Regulations. You can obtain a copy from any Māori Land Court office (see page 17 for your nearest office).

Māori incorporations

Summary

A Māori incorporation is a structure similar to a company. Its purpose is to facilitate and promote the use and administration of Māori freehold land¹ on behalf of the owners.

Māori incorporations are designed to manage whole blocks of land and are the most commercial of all Māori land management structures. Whānau, pūtea², and kaitiaki³ trusts can operate under the umbrella of a Māori incorporation.

Almost anything that is legally in order can be achieved by a Māori incorporation. However, the sale of an incorporation's land can be carried out only under very stringent rules. These rules ensure that the Act's

kaupapa is met – to promote the retention of Māori land in the hands of its owners and their whānau and hapū⁴ and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners and their whānau and hapū.

Establishing a Māori incorporation

To establish a Māori incorporation, landowners need to apply to the Māori Land Court. They need to:

- hold a meeting, in accordance with Part 9 of the Act, at which they pass a resolution to establish a Māori incorporation or
- have 15 percent of the total shareholding consent and
- send an application with a copy of the minutes of the meeting to the Māori Land Court.

If the Māori Land Court is satisfied with the application, it will issue an order of incorporation and appoint the initial committee of management.

Land that can be included in a Māori incorporation

A Māori incorporation can include one or more blocks of Māori freehold land, so long as at least one of the blocks has more than two owners.

Once a Māori incorporation has been constituted, it can acquire any type of land – not just Māori freehold.

Constitutions

Māori incorporations must have a constitution. The constitution for every Māori incorporation is set out in the First Schedule to the Regulations and includes such requirements as:

- general meetings of shareholders
- voting
- committees of management
- shares.

Changes to the constitution

Section 253A of the Act and Rule 4(1) (h) of the constitution allow shareholders to alter the constitution by putting further restrictions on the powers of the committee of management. The shareholders cannot alter the constitution to give the Māori incorporation wider powers than those included in the Māori Incorporations Constitution Regulations 1994. Any alteration is by a special resolution passed by the shareholders, as set out in the constitution.

Interim committee of management

When the Māori Land Court establishes a Māori incorporation, it will appoint an interim committee of management.

In appointing the interim committee, the Court will consider (but will not be bound by) any nominations made by, or on behalf of, the owners. Any committee must consist of at least three members, and no more than seven.

Term of office

The interim committee of management's term of office expires after the first annual

general meeting is held. That meeting is to be held within six months after the Māori incorporation's financial year ends.

At the first annual general meeting, the shareholders must elect a new committee of management. Members of the interim committee may stand for election to the new committee of management.

Committee of management

Nominations

Shareholders nominate and elect committee members. Nominations should be made in writing, signed by the shareholder making the nomination, and accepted in writing by the person nominated.

Nominations should be lodged at the registered office of the Māori incorporation at least three clear days (ie there must be three full days between the day on which the nomination is lodged and the day of the meeting) before the date fixed for the shareholders' meeting to consider nominations.

Shareholders need to carefully choose suitable people and should ensure that the committee members have appropriate skills to protect the assets and provide a return to the shareholders.

Footnotes

1 Land whose beneficial ownership the Māori Land Court has determined by freehold order (that is, the Court has created a title for the land and determined the beneficial owners to that land). Freehold titles are often divided by partition order. The land retains the status of Māori land. The status of the land will continue to be Māori land unless

and until the Māori Land Court makes an order changing the status of the land.

2 Literally, a "basket". In the context of a trust, it is the concept of several people, collectively, filling a basket by contributing communally with money and other assets.

3 A trustee/guardian – in this context, of a minor or person unable for any reason to fully manage his or her own affairs.

4 A subtribe or kin group that is linked by a common ancestor.

Committee of management appointments

Anyone can be appointed or elected to the committee of management. A member need not be a shareholder in the Māori incorporation.

No one, though, can be appointed or continue to be a member who is or becomes:

- subject to a compulsory treatment order made under Part II of the Mental Health Act 1992
- a bankrupt who has not been discharged
- convicted of any offence punishable by imprisonment for a term of six months or more, unless that sentence has been served.

Term of office

Members of the committee hold office for up to three years. If a vacancy occurs (because someone dies, resigns, or is removed), the shareholders may elect a replacement. That person will continue in office for the remainder of the term for which his or her predecessor was appointed.

A committee member who is due to retire from the committee is automatically nominated for re-election unless that person declines the nomination at least seven clear days before the meeting.

Notifying the Māori Land Court

The Act gives shareholders of Māori incorporations the freedom to elect their own committee members without requiring the Māori Land Court to confirm them. However, the Māori incorporation must notify the Māori Land Court of new memberships.

The chairperson and the secretary of the committee of management

The committee of management appoints a chairperson and a secretary. The chairperson is one of the committee's members; the secretary does not have to be a member.

The interim committee of management must hold its first meeting within one month after the date of its appointment. The chairperson and secretary are appointed at this meeting. The committee also appoints a place that will be the registered office of the Māori incorporation.

Within two weeks after this meeting, the committee must inform the Māori Land Court of:

- the name, occupation, and address of the appointed chairperson
- the name, occupation, and address of the appointed secretary
- the place appointed as the registered office of the Māori incorporation.

The committee must review these appointments annually.

Payments to members of the management committee

Members may be entitled to receive reasonable fees and reimbursement of expenses, including travelling costs. The shareholders will decide how much is to be paid and may establish fixed fees and expenses.

Committee members employed by the incorporation – conflict of interest

A committee member may be employed by, or make a contract⁵ with, the Māori incorporation. However, because of the potential for a conflict of interest, Rule 24(2)

of the constitution does not allow that committee member to take part in any of the committee's discussions or votes about the business where the conflict exists.

Committee members must declare any conflicts of interest to the committee. They should also carefully consider their future involvement on the committee.

Removing a member of the committee

Any shareholder can apply to the Māori Land Court to remove any member or members from the committee, provided that there are grounds for removal. Reasons to remove a member could be that:

- the member has failed to carry out his or her duties satisfactorily
- the member has contravened any part of the Māori incorporation's constitution or has acted in a manner that is not compatible with membership of the committee
- it is in the best interests of the Māori incorporation that the member be removed from office.

Investigating the election of members to the committee

If a shareholder is unhappy about the way an election was conducted, he or she can apply to the Māori Land Court for an investigation.

Following its investigation, the Court may:

- confirm the appointment of the person(s)

- declare the election invalid and order a new election to be held.

There may be costs for an investigation.

Borrowing money from the Māori incorporation

Committee members may not borrow money from the Māori incorporation. The Act specifically prohibits loans to committee members.

Quorums for a committee of management meeting

A quorum⁶ is established by three members if the committee numbers three, four or five members in total, or by four members if the committee numbers six or seven in total. If the committee consists of only three members, then all must agree to any decisions.

In order to facilitate the establishment of a quorum, telephone conferences are an acceptable way to hold a committee of management meeting.

Māori incorporation land

Gifting or selling

The Māori incorporation can transfer any Māori freehold land vested⁷ in it provided that:

- a special resolution passed by the shareholders has agreed to it
- shareholders owning at least 75 percent of the shares agree

5 An agreement between two parties that is intended to be enforceable at law. Contracts are usually written, but a spoken agreement can also be a contract.

6 The minimum number of members that must be present at a meeting to make proceedings valid.

7 A change of ownership of land gives the recipient of that interest the ownership and its associated rights (land may be vested in a trustee, or shares may be vested in another person).

- the land is first offered to members of the preferred classes of alienees⁸ (primarily members of the hapū associated with the land in terms of tikanga Māori⁹)
- any transfer of land is confirmed by the Māori Land Court.

Where a transfer of land is primarily a small adjustment of boundaries, the Māori Land Court has the power to confirm a transfer without the above points being satisfied.

If the Māori incorporation holds land that has been determined to be “investment land” in terms of section 256 of the Act, it may gift or sell that land without restriction.

Granting a lease

The Māori incorporation can grant a lease of any land it holds, but any lease over Māori freehold land for a term of more than 52 years must be agreed to by a resolution passed by the shareholders owning at least 50 percent of the shares and approved by the Māori Land Court. A copy of any lease exceeding 21 years must be submitted to the Registrar of the Māori Land Court for noting. The Māori Land Court has no role in checking or confirming the terms of any lease.

The Māori incorporation is not required to first offer the lease of Māori land to the preferred classes of alienees. The Māori incorporation does not have to inform the Māori Land Court that it is leasing investment land.

Mortgaging Māori land

Māori incorporations can mortgage Māori land unless the Māori Land Court has ordered otherwise or the shareholders have passed a resolution that the land cannot be mortgaged.

A copy of any mortgage needs to be submitted to the Registrar of the Māori Land Court for noting. The Court has no role in checking or confirming the terms of any mortgage.

There is a risk, however, with mortgaging Māori land. Should the Māori incorporation fail to meet the loan repayments, the mortgagee (lender) is permitted to sell the land on the open market without consulting the Māori incorporation or the shareholders. There is no requirement to refer a mortgagee sale to the Māori Land Court.

Investment land

Land acquired by the Māori incorporation after the Māori incorporation was established may remain as investment land and be held by the Māori incorporation as general land¹⁰.

The Māori incorporation is free to buy, sell, and mortgage investment land and to generally treat it in a businesslike way, free of restrictions imposed by the Act. The Māori incorporation may ask the Court to declare additional land to be corpus¹¹ land instead of investment land.

Māori incorporation shares

Calculating shares

When the Māori incorporation is established, the Māori Land Court will determine the total number of Māori incorporation shares.

Where more than one block is included in the Māori incorporation, each shareholder will be allocated a number of shares based on the value of any land interests and other net assets that he or she has contributed to the Māori incorporation.

Minimum shareholding

The Māori incorporation may decide to set a minimum shareholding. This may affect a shareholder who wishes to transfer only part of his or her shares to the Māori incorporation. Gifts or transfers under section 264 below this minimum can be refused by the incorporation. The shareholder could establish a whānau trust¹² with the shares.

However, the registration of a Court order cannot be refused, regardless of the number of shares involved.

Share registers

The Māori incorporation is required to establish a share register as an official record of the shareholders. The share register must list the names of the shareholders, the shares held by each shareholder, and the address of each shareholder.

The secretary for the Māori incorporation will maintain the share register by noting any share transfers or successions¹³ processed by the Māori Land Court. Shareholders can inspect the share register. The Māori incorporation may charge a fee to anyone other than a shareholder, or his or her agent, for inspecting the share register.

Shares held in a pūtea or whānau trust

If Māori incorporation shares are held in a pūtea or whānau trust, the names of the trustees¹⁴ can be entered on the share register as the owner of those shares.

The committee of management needs to know that the shares belong to the trust and that trustees have been duly appointed by the Māori Land Court. The Māori Land Court will give a copy of the Court orders¹⁵ to the Māori incorporation.

Once the trust is entered in the share register, the trustees will receive notices of Māori incorporation shareholders' meetings. Trustees of whānau trusts vote on behalf of the beneficiaries¹⁶ of those shares. Trustees of pūtea trusts do not have the power to vote. Voting for pūtea trusts is carried out by the owners who contributed shares to the trust.

Māori Land Trusts includes a section on whānau and pūtea trusts. This booklet is available from Māori Land Court offices.

Share certificates

On request, the Māori incorporation can provide to any shareholder a share certificate that shows the number of shares held by that shareholder at the date on which the certificate is issued.

8 Section 4 of the Act lists the preferred classes of alienees in relation to any alienation. In considering applications relating to alienations, the Māori Land Court must be satisfied that the preferred classes of alienees have been granted an opportunity to exercise the first right of refusal.

9 Māori custom.

10 This term covers land that is not Māori land that has been alienated from the Crown and land that is no longer Crown or Māori land

and is owned by Māori (see next item).

11 This term covers land that, in broad terms, is not Māori land and is not Crown land.

12 A trust in terms of section 214 of the Act where interests are held for the benefit of the descendants of a particular family member or tipuna.

13 The process of transferring the assets of a deceased person to the persons entitled to receive those assets.

14 A person bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing him/her as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

15 A formal document, signed by a Judge or senior Court official and stamped with the Court's official seal, to give effect to a decision of a Judge of the court.

16 Person(s) who benefit from a trust.

Shareholder liability

A shareholder in a Māori incorporation cannot be held personally responsible for any liabilities incurred by the Māori incorporation.

However, if the Māori incorporation is wound up with large debts, the shareholders could lose the assets that they contributed to the Māori incorporation because those assets could be used to offset the debts.

The shareholders should be aware that if Māori land has been mortgaged, it can be sold to settle that mortgage.

Transfer shares

A shareholder may transfer (that is, sell, gift, or exchange) shares provided that:

- the shares to be transferred do not result in a shareholding less than any minimum set by the Māori incorporation
- the shares are transferred to a member of the preferred classes of alienees.

The shares can be offered to the Māori incorporation as a last resort.

Shares can also be transferred from a parent to his or her children, grandchildren, or more distant relatives. A spouse¹⁷ or civil union partner of a shareholder can acquire shares only if he or she is a member of the preferred classes of alienees. (A spouse or civil union partner may be entitled to a life interest¹⁸ should the shareholder die.)

Share transfers can be arranged directly with the Māori incorporation or by an order of the Māori Land Court. However, the Māori Land Court only deals with Māori incorporation share transfers where successions or trusts are concerned. The transfer of live shares is dealt with directly by the incorporation.

(There is a sample share transfer form at the back of the Regulations.)

Succession to shares

Shares in a Māori incorporation are deemed to be shares in Māori land, and succession is arranged in the same way as for Māori land. Where a grant of letters of administration¹⁹ or probate²⁰ has been issued, the executor²¹ may apply directly to the Māori incorporation to transfer the deceased's shares to the successors²².

For more information about succession, please refer to *Succession*, available from Māori Land Court offices.

Whānau and pūtea trusts

If the shares are owned by a whānau trust, the trustees will receive the notice of the meeting and vote for those shares. If the shares are owned by a pūtea trust, the trustees will receive the notice of the meeting, but the people who contributed the shares, not the trustees, will vote.

General meetings of shareholders

General meetings of shareholders must be called and conducted as required in terms of the Act and the constitution. The Māori Land Court may direct that a special meeting of shareholders be held.

Notification of a shareholders' meeting

At least 14 days before the meeting, shareholders should receive written notification of any meeting, detailing where and when the meeting will be held and what issues are to be discussed. Where a special resolution is to be discussed, the notice of the meeting must be sent at least 21 days before the meeting.

If shareholders' addresses are unknown, the Māori incorporation can place a notice in local newspapers.

Attendees

Any shareholder may attend and vote at any meeting, either personally or by a proxy²³.

Where a shareholder has appointed a proxy, notification of the appointment must be lodged at the office of the Māori incorporation at least 48 hours before the meeting takes place or at a time allowed by the chairperson of the committee of management.

Voting on resolutions

Every shareholder present in person, or by proxy, shall have one vote only (for each proxy that they hold) for each resolution. Any resolution will be carried if a majority of the votes are in favour of it.

Proxy voting

Where a proxy is appointed, that person is entitled to vote for the person for whom the proxy acts (there is a sample proxy form at the back of the Regulations).

Demanding a poll

Alternatively, it can be demanded that voting

is counted by way of shares. This demand can be made by at least five people at the meeting with a right to vote, or by voters with at least one-tenth of the total votes. This is called demanding a poll.

Appointments by proxy

The shareholder can appoint anyone as his or her proxy, with the exception of current members of the committee of management or anyone currently nominated for election to the committee of management.

Postal voting

Postal voting may be accepted, provided that the shareholders have decided this by special resolution at a previous general meeting. Any shareholder can cast a postal vote on all, or any, matters to be voted on at the meeting.

If postal votes are going to be accepted, the notice of the meeting must state the name of the person who the committee of management has authorised to receive and count postal votes at the meeting.

If no one has been authorised to receive and count the postal votes, the secretary of the committee will be the authorised person (the authorised person's duties are set out in Rule 20 of the constitution).

17 A legal wife or husband.

18 A life interest (or life estate) gives a person (usually a surviving spouse) the right to receive income from the estate of a deceased person. That person is called the "life tenant". When the life tenant dies, their right to life interest finishes. Many life interests state that the life interest will terminate if the life tenant remarries. The life interest does not entitle the life tenant to any other portion of the estate. It is limited to income (eg rents or interest) and excludes capital (eg purchase money or compensation for land).

19 A grant of administration from the High Court is generally required to enable the assets of a deceased person to be transferred to those entitled to the assets.

20 When the High Court confirms the appointment of an executor to administer the will of a deceased person, the Court's authority for that person to act is given in a grant of probate (see also executor, footnote 21).

21 A person appointed to carry out certain duties under the last will of a deceased person. The deceased will have named the executor in his/her will, and the appointment

of that person is confirmed by the High Court. When an executor is confirmed by the High Court, that Court issues probate in his/her favour. If the will does not name an executor, then the person who is appointed by the High Court to administer the estate is called an administrator. The feminine form for executor is executrix.

22 A person who receives, as of right, a share of a deceased person's estate.

23 The authority given by an owner of an interest in land to another person to vote on their behalf.

To submit a postal vote, the shareholder is required to send a notice about how his or her shares are to be voted to the person authorised to receive and count the votes. The notice is to be sent to that person not less than 48 hours before the start of the meeting (there is a sample of a postal vote form at the back of the Regulations).

Quorums

The quorum for general meetings is 20 shareholders, or the number of shareholders equal to two-thirds of the total number of shareholders (whichever is less). Some Māori incorporations may need to pass a special resolution to vary this quorum.

A meeting cannot be considered to have been properly constituted unless three shareholders are present in person throughout the meeting.

A shareholder who casts a postal vote will not be counted for the purposes of determining the quorum.

Special resolution matters

The following matters must be dealt with by a special resolution:

- whether to include the owners of additional Māori freehold land in the Māori incorporation
- whether to amalgamate the Māori incorporation with any other Māori incorporation
- whether to transfer any Māori freehold land vested in the Māori incorporation
- whether to grant a lease, licence, or forestry right over any Māori freehold land vested in the Māori incorporation for a term of more than 21 years
- whether to sell or make a gift of any Māori freehold land vested in the Māori incorporation (taking into account the fact that the sale or gifting of such land requires 75 percent of the shareholders to vote in favour)

- whether to set aside any Māori incorporation property or income²⁴ for charitable trust purposes
- whether to restrict or prohibit the powers, rights, or privileges of members of the committee of management
- whether to alter the constitution of the Māori incorporation
- whether to wind up the Māori incorporation
- whether to support an application for a partition order, an amalgamation²⁵ order, or an aggregation order²⁶
- other matters specified in the constitution as matters to be dealt with by special resolution (eg fixing a quorum for general meetings).

Submitting a special resolution

Any shareholder can submit notice of a special resolution in writing to the committee of management.

The special resolution has to be attached to the written notice of the general meeting or of the next available meeting of shareholders. No special resolution can be moved at any general meeting unless a notice of the resolution has been included in the notice of the meeting.

Māori incorporation finances

Accounts

Every Māori incorporation is required to keep proper sets of accounts including full, true, and complete financial accounts of the Māori incorporation.

The committee of management is also required to file a copy of the accounts with the Māori Land Court in which district the land is situated within 14 days after the general meeting of shareholders.

Informing shareholders

The committee of management should submit to a general meeting of shareholders a profit and loss account detailing income received and expenditure incurred together with all current financial statements and a balance sheet.

The committee of management must provide this information within 18 months of the Māori incorporation being established and at least once every year after that.

The shareholders are allowed to inspect the accounts of the Māori incorporation. The incorporation may charge a fee for inspecting the accounts. Copies of accounts filed in the Māori Land Court are available for inspection at the Court.

Auditor

An auditor²⁷ must be appointed by the shareholders at each annual general meeting. The term of office for an auditor is from the end of the meeting at which they were appointed to the end of the next annual general meeting. A Māori incorporation does not have to appoint an auditor if its gross revenue was \$25,000 or less in its previous financial year.

An auditor must be a member of the New Zealand Society of Accountants or a member,

fellow, or associate of an approved association of accountants constituted in some part of the Commonwealth outside New Zealand.

Duties

At the annual general meeting, the auditor is required to report to the shareholders on the Māori incorporation's accounts and should state:

- whether all the information and explanations that the auditor has required have been provided
- whether proper sets of accounts have been kept by the Māori incorporation
- whether:
 - 1) the balance sheet is properly drawn up and gives a true and fair view of the state of the Māori incorporation's affairs
 - 2) the profit and loss account is properly drawn up and gives a true and fair view of the results of the Māori incorporation for that financial year
 - 3) the share register has been duly and correctly kept.

Access to the Māori incorporation's records

To enable auditors to perform their duties, they have the right of access at all times to the books and papers of the Māori incorporation.

Auditors are also entitled to any other information from the committee of management and any other officers of the Māori incorporation as necessary.

24 Money that is derived from assets held and earnings (such as rent and interest) but not "purchase money" (land converted into money).

25 Amalgamation of titles occurs when the titles of two or more blocks of land are cancelled

and a single title is issued for the whole of the area. The blocks of land are no longer separate (refer to section 307 of the Act).

26 Aggregation of titles occurs when two or more separate blocks of land share a common ownership list. The titles remain

separate, but there is only one common ownership list for all the aggregated land (refer to section 308 of the Act).

27 A person who checks and examines accounts.

Costs

It is the responsibility of the Māori incorporation to meet any costs incurred by the appointment of an auditor.

Share valuer

A share valuer must be appointed by the shareholders at each annual general meeting. The term of office for a share valuer is from the end of the meeting at which they were appointed to the end of the next annual general meeting.

A share valuer must be a member of the New Zealand Society of Accountants or a member, fellow, or associate of an approved association of accountants constituted in some part of the Commonwealth outside New Zealand. The auditor may also act as the share valuer.

Duties

Where required, the share valuer assesses the value of the shares in the Māori incorporation.

In assessing a fair share value, the share valuer will take into account:

- any change in the current market value of the Māori incorporation's assets since the last balance date
- any money paid to the shareholders since the last balance date
- the estimated financial results of the Māori incorporation for the current financial year
- anything else that might affect the equity value of the Māori incorporation.

Costs

It is the responsibility of the Māori incorporation to meet any costs incurred by the appointment of a share valuer.

Māori incorporation income

Spending income

There are four areas in which Māori incorporation income can be spent. These are:

- to meet any costs that the Māori incorporation incurs, including any capital works or capital investment
- setting aside cash reserves
- payment of dividends²⁸ to shareholders
- as authorised by a resolution of the shareholders for the purposes specified in the resolution.

Lending and investing money

Committees of Māori incorporations are bound to exercise diligence, prudence, and care in dealing with shareholders' funds. The Act has a specific ban against Māori incorporations lending money to members of its committee of management.

Dividend amounts

The amount that can be paid as a dividend is recommended by the committee of management and passed by resolution of shareholders.

In setting aside an amount for paying a dividend, the committee of management must ensure that adequate provision has been made for meeting costs incurred by the Māori incorporation, for setting aside cash reserves, and for meeting unclaimed dividends. Please note that dividends are paid only from the Māori incorporation's profits (including accumulated profits and realised capital profits).

Unclaimed dividends

Dividends become unclaimed after they have been held by the Māori incorporation for ten years without being claimed by

the shareholder or by anyone else entitled to them.

Within twelve months after dividends becoming unclaimed, the Māori incorporation must compile a list of shareholders to whom the unclaimed dividends are payable, showing the amount of dividend payable. That list must be sent to the Māori Land Court. The Māori Land Court will include this list in the register of Māori incorporations and have the list available for public inspection.

If, within twelve months after the list has been included in the register of Māori incorporations, no claim has been lodged for unclaimed dividends, the committee of management may authorise the transfer of those dividends to the Māori incorporation absolutely, and they may be used as if they were income derived from the operations of the Māori incorporation.

If a shareholder at any time legally establishes a right to unclaimed dividends, the amount claimed is payable by the Māori incorporation to the shareholder. Māori incorporations are not bound to pay interest on unclaimed dividends.

Māori Land Court duties

Register of Māori incorporations

Each Māori Land Court office is required to maintain a register of Māori incorporations within its district. The register is available for inspection. The Māori Land Court may charge a fee for inspecting the Māori incorporations register.

The register must include:

- the name of the Māori incorporation and the date of the court order establishing the Māori incorporation
- the name, or description of, and the area of the lands vested in the Māori incorporation
- the names, occupations, and addresses of the members of the committee of management, the chairperson, and the secretary of the committee
- the location of the office of the Māori incorporation
- any orders made in relation to the Māori incorporation
- the date that the annual accounts are filed in the Māori Land Court
- all lists of unclaimed dividends
- all special resolutions.

Special resolutions

When a special resolution is made at a shareholders' meeting, the secretary is required, within 21 days after the meeting, to send a copy of the special resolution and details of the date and place of the meeting to the Māori Land Court.

Alienation

The Māori Land Court will also include in its title²⁹ records, any alienation³⁰ that it has noted in terms of section 150B(3) of the Act.

28 A payment made to shareholders.

29 The legal ownership of property and the legal evidence of a person's ownership rights.

30 Alienation is when landowners grant certain rights of their land to another person. For example, selling land gives the new owner the ownership rights; leasing land gives the lessee a limited right to occupy land in return

for payment of rent (and other conditions); mortgaging land gives the mortgagee the right to sell the land if the mortgage is not repaid (refer to section 4 of the Act).

Accounts

The Māori Land Court is required to make Māori incorporation accounts available for public inspection, and it may charge a fee for this service.

Māori Land Court powers

Mismanagement by a Māori incorporation member

The Māori Land Court has the power to require any member of a Māori incorporation to appear in Court to explain any of the following:

- failure to file a list of unclaimed dividends with the Māori Land Court
- failure to keep accounts
- failure to submit a balance sheet, profit and loss account, and any other relevant documentation to shareholders at a general meeting
- failure to file a balance sheet and other documents with the Māori Land Court
- failure to appoint an auditor
- failure to send a copy of special resolutions to the Māori Land Court
- failure to keep a share register
- failure to hold annual general meetings of shareholders
- failure to disclose a conflict of interest
- making payments from the funds of the Māori incorporation that are not authorised.

Māori Land Court decisions

If the Court is not satisfied with the explanations provided, it may:

- remove any member of the committee of management or the secretary of the Māori incorporation

- suspend the powers of the members of the committee of management and appoint someone more competent to exercise all the powers of the committee
- impose restrictions on, conditions on, or exceptions to the powers of the Māori incorporation
- give directions for operating the Māori incorporation
- suspend all or any provisions of the constitution of the Māori incorporation
- order the winding up of the Māori incorporation
- refer any matters to the Attorney-General to consider whether prosecution should commence.

The Court can exercise these powers as it sees fit and for any period of time it considers appropriate.

Investigating the affairs of a Māori incorporation

An investigation of the Māori incorporation can be requested:

- on application to the Māori Land Court by shareholders who together own at least one-tenth of the shares; or
- by a special resolution passed at a general meeting of the shareholders.

Investigator

The Court will appoint the investigator (also referred to as the “examining officer”).

Costs

There are costs associated with requesting an investigation. The Māori Land Court, before appointing an investigator, may require the applicant to pay a deposit for security of costs for the investigation.

During, or on completion of, the investigation, the Court may make an order for the payment of a reasonable sum to meet the costs of the investigation. The Court will decide which party has to pay.

During an investigation

The committee of management will be required to:

- produce all books and papers relating to the investigation and give all assistance they can to the investigator
- provide explanations, at the direction of the Māori Land Court, on anything referred to in any report of the investigator.

If the committee does not comply with any request from the investigator, the Māori Land Court can enquire further and hear any witnesses concerning the matter.

The Court may hold any committee member guilty of contempt of court if they refuse to co-operate.

Inquiry into the investigator's report

After the Māori Land Court considers the investigator's report, the Court may decide to hear the matter in open court. It will issue directions for serving notice of the Court sitting and any other matters to be dealt with.

Mismanagement

If it is found that there have been episodes of mismanagement in the operations of the Māori incorporation, the Court may take any of the actions listed on page 14 under Māori Land Court decisions.

Committee of management vacancies

If any members of the committee are removed following an investigation, the Court may:

- order an election to fill the vacancy/vacancies
- fill the vacancy/vacancies with any qualified person
- order that the vacancies remain unfilled pending a further order by the Court.

Winding up a Māori incorporation

Reasons to wind up a Māori incorporation

A Māori incorporation can be wound up for any of the following reasons:

- upon an investigation of the operation of the Māori incorporation
- by a special resolution, passed by the shareholders at a general meeting, recommending that the Māori incorporation be wound up
- if the committee of management has not filed the annual reports (including the balance sheet and other documents) with the Court
- if the number of shareholders in the Māori incorporation is reduced to below two
- if the Māori incorporation cannot pay its debts
- in the opinion of the Court, it is just and fair that the Māori incorporation be wound up.

When a Māori incorporation is wound up

On winding up a Māori incorporation, the Māori Land Court will appoint a liquidator. The authority of the committee of management will cease, and the liquidator will have the powers to manage the Māori incorporation and sign documents.

Liquidator

Duties

Depending on the Court's directions, the liquidator can sell or otherwise dispose of the assets of the Māori incorporation other than Māori freehold land (investment land can be sold). Any proceeds from the sale of the assets will be held by the liquidator pending further orders from the Court.

The liquidator may, with the permission of the Court, also lease any Māori freehold land vested in the Māori incorporation for a period not exceeding seven years, including any terms of renewal, on any conditions and at a rental that the liquidator sees fit.

When the liquidator has wound up the Māori incorporation, he or she must file in the Māori Land Court a full statement of account about the winding up of the Māori incorporation.

If the Court is satisfied that the Māori incorporation has been wound up properly, it will issue an order dissolving the Māori incorporation.

Payment

The Court may set the liquidator's payment rate. The costs will be met from the income and assets of the Māori incorporation.

Vesting the land

If the land has not been sold, the Court will make an order vesting the land in the people who are beneficially entitled. They will usually be the Māori incorporation's shareholders.

More information

For more information about Māori incorporations please write to, phone, fax,

email, or visit a Māori Land Court office. Staff will be pleased to assist you and discuss any matters with you.

www.justice.govt.nz/maorilandcourt

Māori Land Court offices

Te Taitokerau District

Registry Office
2nd Floor, Manaia House, Rathbone Street
AX10086, Whangārei 0140
T (09) 983 9940
F (09) 983 9941
E mlctaitokerau@justice.govt.nz

Auckland Information Office

135 Kolmar Road
EX10912, Papatoetoe 2155
T (09) 279 5850
F (09) 279 5852
E mlcpapatoetoe@justice.govt.nz

Waikato Maniapoto District

Registry Office
Level 2, BNZ Centre, 354-358 Victoria Street
GX10101, Hamilton 3240
T (07) 957 7880
F (07) 957 7881
E mlcwaikato@justice.govt.nz

Waiariki District

Registry Office
Hauora House, Haupapa Street
JX10529, Rotorua 3046
T (07) 921 7402
F (07) 921 7412
E mlcwaiariki@justice.govt.nz

Aotea District

Registry Office
Ingestre Chambers, 74 Ingestre Street
PX10207, Whanganui 4541
T (06) 349 0770
F (06) 349 0771
E mlcaotea@justice.govt.nz

Tākitimu District

Registry Office
2nd floor, Heretaunga House
Cnr Lyndon and Warren Streets
MX10024, Hastings 4156
T (06) 974 7630
F (06) 974 7631
E mlctakitimu@justice.govt.nz

Te Tairāwhiti District

Registry Office
Cnr Reads Quay and Lowe Street
(entrance on Reads Quay)
PX10106, Gisborne 4040
T (06) 869 0370
F (06) 869 0371
E mlctairawhiti@justice.govt.nz

Te Waipounamu District

Registry Office
76 Peterborough Street
WX11124, Christchurch 8140
T (03) 962 4900
F (03) 962 4901
E mlctewaipounamu@justice.govt.nz

National Office & Office of the Chief Registrar

Fujitsu Tower
141 The Terrace
SX11203, Wellington 6140
T (04) 914 3102
F (04) 914 3000
E mlcnationaloffice@justice.govt.nz

Use the X number as you would a PO Box number.