

Guidelines for Transfer of Interest, Change of Control, Dealings, or Change of Operator

This guideline explains the legislative requirements to apply for a Transfer of Interest, Change of Control, Dealings, or Change of Operator in relation to a permit, which are set out in the relevant sections of the Crown Minerals Act 1991 (the “**Act**”) and the Minerals Programme for Minerals (excluding Petroleum) 2013 (the “**Minerals Programme**”).

Applications must contain the information in the Act and Minerals Programme, and may be made using the applicable form that is available on the NZP&M website or the Online Permitting System.

LEGISLATIVE CONTEXT

The Act and the Minerals Programme specify what permit participants, permit operators, or permit holders must include in an application to the Minister of Energy and Resources. The Minister must consent to any transfer of interest, change of control, dealing, or change of operator in relation to a permit.

DESCRIPTION	SECTION OF THE ACT	CLAUSES OF THE MINERALS PROGRAMME
Transfer of Interest	Section 41	Clause 12.9
Change of Control	Section 41A	Clause 12.10
Dealings	Section 41B	Clause 12.11
Change of Operator	Section 41C	Clause 12.8

Section 41D of the Act and Clause 12.12 of the Minerals Programme set out the general provisions on transfers and dealings.

Meaning of terms

The following terms are used in the Act and Minerals Programme:

PERMIT HOLDER	The person who is the sole permit participant or all of the permit participants if there is more than one participant.
PERMIT PARTICIPANT	A person who holds a participating interest in a permit.
PARTICIPATING INTEREST	An individual share of a permit that is expressed as a percentage on the permit certificate.
PERSON	This includes a natural person or a company (a corporation sole, a body corporate, and an unincorporated body).
PERMIT OPERATOR	The person who is responsible, on behalf of the permit holder, for the day-to-day management of activities under the permit. The permit operator must have a participating interest in the permit.

SECTION 41: TRANSFER OF INTEREST IN A PERMIT

The transfer of interest in a permit is when an existing permit participant enters an agreement to transfer all or part of their individual share in a permit to another person. This agreement may take different forms, including a sale and purchase agreement, deed of assignment or joint venture agreement. In most cases this occurs when a permit is sold from one person to another.

All transfers of interest require the consent of the Minister of Energy and Resources. The Minister must be satisfied that the proposed permit participant is likely to be able to comply with the conditions of the permit and give proper effect to the permit. The Minister may request a statement of financial capability and supporting information from the proposed permit participant.

A transfer of a permit from a parent company to a subsidiary is a transfer of interest, and a change of operator application under section 41C is required for a transfer of a 100% participating interest in a permit.

Considerations

Under Clause 12.9 of the Minerals Programme, the Minister will at least take into account whether:

- (a) the permit holder, following the transfer, will continue to have the financial and technical capability to give proper effect to the permit¹
- (b) the prospecting, exploration or mining activities that the transferee (or a related company) is involved with, in New Zealand or internationally, may affect the proposed permit participant's capability to meet its obligations under the permit.

Considerations for transfer of a Coal Mining Licence

Transfer of a Coal Mining Licence (CML) is complicated by Ministerial consents that may be attached to the CML and by the bonds that are attached to the CML that are held by NZP&M².

On receiving an application to transfer a CML, NZP&M will determine the appropriate Minister's consent that is required to the transfer. NZP&M will also write to the appropriate regional and/or local council to review the level of the bond. A replacement bond must be received within three months of the transfer being granted or the transfer will be revoked. Once the transfer is finalised, the original bond is released to the previous CML holder.

Timeframe

A transfer of interest application must be made within 3 months after the date of the agreement that contains the transfer.

Obligations on new permit participant

After a permit interest is transferred, the new permit participant obtains the rights and obligations of the permit. Any non-compliance record of the previous permit holder remains

¹ Financial and technical capability are the subject of separate guidelines.

² These are not the same as bonds held by regional or local councils under the Resource Management Act 1991.

on the permit record. Former permit participants, despite having transferred their interest, continue to have obligations concerning any breaches of permit conditions that happened before the date of the transfer.

Examples

A permit is held by Company A and Company B which both hold a 50% participating interest. Company A is also the permit operator.

TRANSFER OF INTEREST	A transfer of interest is when Company A transfers its interest in the permit to Company B (or another company). Company A remains the permit operator.
TRANSFER OF INTEREST AND CHANGE OF OPERATOR	A transfer of interest and change of operator is when Company A transfers its interest in the permit to Company B and Company B becomes the permit operator.

SECTION 41A: CHANGE OF CONTROL

A change of control is when there is a 50% or more change in the ownership of a company that is either a permit participant ("**permit participant company**") or has provided a guarantee for a permit participant's obligations under a permit ("**guarantor company**").

Common examples are when a company is bought by another person or company or when more than 50% of the voting rights in a company are sold to one or more companies or people (see the examples below).

A permit participant must notify the Minister if a permit participant company or a guarantor company undergoes a change of control.

This notification must be accompanied by a copy of any agreement or documents that specified the change of control and a statement from either the permit participant or the guarantor (as relevant) that it has the financial capability to meet its obligation under the permit or guarantee.

Considerations

The Minister considers the financial capability of the person acquiring control. If the Minister requires, a permit participant must provide to the Minister information or documents relevant to that person's financial capability.

The Minister cannot decline a change of control. However, after the change of control, if the Minister is not satisfied that the permit holder is capable of meeting its financial obligations under the permit, the Minister may revoke the permit under section 39 of the Act.

The power to revoke will be used very sparingly because of the effect on other permit participants. It will only be used if, in the Minister's view, the change of control results in significant risk that the permit holder will not be able to meet its financial obligations under the permit (see clause 12.10(6) of the Minerals Programme).

Timeframe

A permit participant must notify the Minister within 3 months of the change of control occurring.

NZP&M needs only be notified after a change of control has occurred, rather than the date that an agreement about a change of control is signed (the change of control may occur from the date the agreement is signed).

Examples

PERMIT PARTICIPANT COMPANY	Company A holds a permit and is a wholly owned subsidiary of Company B. Company B sells Company A to Company C.
CHANGE OF CONTROL	Company A holds a permit and is owned in 33.3% shares by Company B, Company C and Company D. Company B buys both Company C and D's shares. Company B now has a 100% share in Company A.
GUARANTOR COMPANY	Company A holds a permit and has a financial guarantee from Company B. Company B is owned by Company C. Company C sells Company B to Company D.

SECTION 41B: DEALINGS

Permit participants may enter into a dealing. A dealing is any agreement with a permit participant that relates to the sale or profits of production and is either:

- › not on a fair market basis (that is, the parties are not objectively independent or on equal footing, or the terms of the agreement do not objectively show that, or otherwise); or
- › the term of the agreement is for 12 months or longer.

Dealings include (without limitation) mineral sales agreements and overriding royalty agreements but do not include a transfer of a participating interest, or a mortgage or other charge on a permit.

Dealings that relate to a Tier 1 permit must have the Minister's consent otherwise they have no legal effect. If you are a permit participant and are uncertain whether or not an agreement is a dealing, you should apply to the Minister for consent or discuss it with NZP&M staff.

Clause 12.11 of the Minerals Programme sets out the detailed provisions on dealings. Clause 12.12 of the Minerals Programme sets out the general provisions on transfers and dealings.

SECTION 41C: CHANGE OF PERMIT OPERATOR

A permit must have a permit operator and the permit operator must be a permit participant. Proposed permit operators may therefore only be another permit participant or a new permit participant. This means that a permit operator cannot hold a 0% interest in the permit. For a proposed permit operator who will also be a new permit participant, an application for a transfer of interest must also be made under section 41.

All changes of permit operators must have the prior consent of the Minister. This consent is to ensure that the Minister is satisfied that the permit holder is likely to comply with and give effect to the work programme, relevant legislation, and health, safety and environmental requirements.

A change of operator application is not required if a permit operator hires a contractor to carrying out work on a permit but the permit operator retains the oversight and day-to-day management of the permit operation.

Considerations

The Minister may consent to the change under section 41C only if the Minister is satisfied that the permit holder (not the operator) is likely to comply with and given proper effect to the permit's work programme and comply with obligations in the Act or regulations for reporting and paying fees and royalties.

For Tier 1 exploration or mining permits, the Minister may give consent only if WorkSafe is satisfied that the proposed operator has met or is likely to meet any requirements of the Health and Safety in Employment Act 1992, or regulations made under that Act that the proposed operator must meet before carrying out day-to-day management of activities under the permit.

Timeframe

There is no timeframe for when a Change of Operator application must be submitted to NZP&M. For proposed permit operators who will also be a new permit participant, the transfer of interest application must be made within 3 months of the agreement.

Examples

A permit is held by Company A and Company B who both hold a 50% participating interest. Company A is also the permit operator.

CHANGE OF OPERATOR	A change of operator is when the permit operator changes from Company A to Company B.
CHANGE OF OPERATOR AND TRANSFER OF INTEREST	A transfer of interest and change of operator is when Company A transfers its interest in the permit to Company B and Company B becomes the permit operator.

Disclaimer

This document is a guideline only and is not intended to cover every possible situation. If this guideline is inconsistent with the Act, relevant Minerals Programme or relevant regulations, the Act, Programme and regulations prevail. This guideline has no binding legal effect and should not be used as a substitute for obtaining independent legal advice.

New Zealand Petroleum and Minerals (NZP&M) is not responsible for the results of any action taken on the basis of information in this guideline, or for any errors or omissions in this guideline. NZP&M may vary this guideline at any time without notice.

There may be factors taken into account in any application process, transaction or decision that are not covered by this or any other guideline.

Adherence to this guideline does not guarantee a particular outcome. NZP&M retains the discretion to decline any application where the statutory requirements for that application are not met.



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NZP&M is a division of the Ministry of Business, Innovation and Employment. We lead and actively manage New Zealand's petroleum and minerals portfolio ensuring the country's economic interests and assets are comprehensively protected. Our goal is to use our wider understanding of the energy and resources sector to increase national and regional prosperity via petroleum and minerals exploration and production.

As a government agency, we engage with Councils, iwi and communities about petroleum and minerals development and regulation of the industry. We manage compliance and revenue collection on behalf of the Crown and aim to maximise the return that these important industries deliver for the benefit of all New Zealanders.

We report to the New Zealand public through the Minister of Energy and Resources.