

MĀORI INCORPORATIONS

Te Kooti Whenua Māori – Māori Land Court

For more information, go to maorilandcourt.govt.nz

Te Kooti Whenua Māori – Māori Land Court (MLC) is the New Zealand Court that hears matters relating to Māori land. The unique relationship between Māori and whenua is recognised by the MLC, and the records held by the Court form an invaluable part of the whakapapa of all Māori people. The MLC operates under the provisions of Te Ture Whenua Māori Act 1993 ('the Act').

Important changes to the rules governing Māori incorporations were brought about by the Act and the Māori Incorporations Constitution Regulations 1994 ('the Regulations').

The order of incorporation¹ continues to operate (including any restrictions imposed by that order), but only in accordance with the Act and the Regulations.

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 get a copy from any MLC office. For contact details, see the back page of this factsheet or **go online to** maorilandcourt.govt.nz/contact-us

What is a Māori incorporation?

A Māori incorporation is a structure similar to a company. Its purpose is to facilitate and promote the use and administration of Māori freehold land² 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. Whānau³, pūtea⁴ and kaitiaki⁵ trusts can operate under the umbrella of a Māori incorporation.

Almost anything that's 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.

1. The Court may, if it considers it is in the interests of the owners to do so, make an order incorporating as a Māori incorporation the owners of any one or more areas of Māori freehold land, of which at least one area is owned for a legal estate in fee simple by two or more owners (whether any such owner is entitled beneficially or as trustee).

2. 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.

3. A trust in terms of section 214 of Te Ture Whenua Māori Act 1993, where interests are held for the benefit of the descendants of a particular family member or tipuna.

4. 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.

5. In the context of a trust, a trustee or guardian of a minor or person unable for any reason to fully manage their own affairs.

These rules ensure that the Act's intent is met – to promote the retention of Māori land in the hands of its owners and their whānau and hapū⁶ 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 MLC. 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
- send an application with a copy of the minutes of the meeting to the MLC showing there is a sufficient degree of support for the proposal, and that sufficient notice of the proposal had been given.

If the MLC 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, as 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 constitution⁷. The constitution for every Māori incorporation is set out in Schedule 1 of 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 Regulations allow shareholders to alter the constitution by putting further restrictions on the powers of the committee of management.

The shareholders can't alter the constitution to give the Māori incorporation wider powers than those in the Regulations. Any alteration is by a special resolution passed by the shareholders, as set out in the constitution.

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

7. The powers and duties that the incorporation must comply with, in this case the constitution for incorporations constituted by the Māori Land Court are the Māori Incorporations Constitution Regulations 1994.

INTERIM COMMITTEE OF MANAGEMENT

When the MLC establishes a Māori incorporation, it will appoint an interim committee of management and consider (but isn't 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 (AGM) is held.

The AGM must be held within six months after the Māori incorporation's financial year ends.

At the first AGM, 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 (that is, 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 committee members have the appropriate skills to protect the assets and provide a return to shareholders.

COMMITTEE OF MANAGEMENT APPOINTMENTS

Anyone can be appointed or elected to the committee of management. A member does not need to 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 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992
- a bankrupt who hasn't been discharged
- convicted of any offence punishable by imprisonment for a term of six months or more, unless sentence has been served.

TERM OF OFFICE

Members of the committee hold office for up to three years. If there's a vacancy (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 their predecessor was appointed.

A committee member who is due to retire from the committee is automatically nominated for re-election unless they decline 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 MLC to confirm them. However, the Māori incorporation must notify the MLC of new memberships.

CHAIRPERSON AND COMMITTEE SECRETARY

The committee of management appoints a chairperson and a secretary. The chairperson is one of the committee's members; the secretary doesn't 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 MLC of:

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

The committee must review these appointments annually.

PAYMENTS TO COMMITTEE MEMBERS

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 contract⁸ with, the Māori incorporation. However, because of the potential for a conflict of interest, Rule 24(2) of the Regulations 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.

Māori incorporations must maintain an interests register to record for each member of the management committee the details of their interest in the Māori land incorporated and their dealings in the interest. The register can be physical or electronic form and must be available to shareholders.

Committee members must make an annual declaration of their interests and dealings at the end of each financial year.

REMOVING A MEMBER OF THE COMMITTEE

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

- the member has failed to carry out their 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.

⁸. 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.

INVESTIGATING THE ELECTION OF MEMBERS TO THE COMMITTEE

If a shareholder is unhappy about the way an election was conducted, they can apply to the MLC for an investigation.

Following its investigation, the MLC may:

- confirm the appointment of the person(s)
- declare the election invalid and order a new election be held.

There may be a fee for an investigation.

BORROWING MONEY FROM THE MĀORI INCORPORATION

Committee members can't borrow money from the Māori incorporation; the Act specifically prohibits loans to members.

QUORUMS

A quorum⁹ 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, 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 vested¹⁰ in it provided that:

- a special resolution agreeing to it has been passed by shareholders
- shareholders owning at least 75 percent of the shares agree the land is first offered to members of the preferred classes of alienees¹¹ (primarily members of the hapū associated with the land in terms of tikanga Māori¹²)
- any transfer of land is confirmed by the MLC.

Where a transfer of land is primarily a small adjustment of boundaries, the MLC 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 shares and approved by the MLC.

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

10. 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.)

11. Section 4 of Te Ture Whenua Māori Act 1993 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 alienee have been granted an opportunity to exercise the first right of refusal.

12. Māori custom.

A copy of any lease exceeding 21 years must be submitted to the registrar of the MLC for noting. The MLC has no role in checking or confirming the terms of any lease.

The Māori incorporation doesn't need to first offer the lease of Māori land to the preferred classes of alienees. It also doesn't have to inform the MLC that it's leasing investment land.

MORTGAGING MĀORI LAND

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

A copy of the mortgage must be submitted to the registrar of the MLC for noting. The Court has no role in checking or confirming the terms of any mortgage.

However, if the Māori incorporation fails to meet the loan repayments, the mortgagee (lender) can sell the land on the open market without consulting the Māori incorporation or shareholders. There's no requirement to refer a mortgagee sale to the MLC.

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 land¹³.

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 corpus¹⁴ land instead of investment land.

Māori incorporation shares

CALCULATING SHARES

When the Māori incorporation is established, the MLC 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 they have contributed to the Māori incorporation.

MINIMUM SHAREHOLDING

The Māori incorporation may decide to set a minimum shareholding. This may affect a shareholder who wants to transfer only part of their shares to the incorporation.

Gifts or transfers made under section 264 of the Act below this minimum can be refused by the incorporation. The shareholder could establish a whānau trust with the shares but the registration of a court order can't 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.

13. In broad terms, land that is not Māori land and is not Crown land (see next item).

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

The secretary for the Māori incorporation will maintain the share register by noting any share transfers or successions¹⁵ processed by the MLC. Shareholders can inspect the share register.

The Māori incorporation may charge a fee to anyone other than a shareholder, or their agent, to inspect the 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 trustees¹⁶ can be entered on the share register as the owner of those shares.

The committee of management needs to know the shares belong to the trust and trustees have been duly appointed by the MLC.

The MLC will give a copy of the court orders¹⁷ to the Māori incorporation.

Once the trust is entered in the share register, trustees will receive notices of Māori incorporation shareholders' meetings.

Trustees of whānau trusts vote on behalf of the beneficiaries¹⁸ of those shares. Trustees of pūtea trusts don't have the power to vote.

Voting for pūtea trusts is carried out by the owners who contributed shares to the trust.

SHARE CERTIFICATES

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

SHAREHOLDER LIABILITY

A shareholder in a Māori incorporation can't be held personally responsible for any liabilities incurred by the Māori incorporation. But if the incorporation is wound up with large debts, shareholders could lose the assets they contributed to the incorporation because those assets could be used to offset the debts.

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.

Shares can be offered to the Māori incorporation as a last resort. Shares can also be transferred from a parent to their children, grandchildren or more distant relatives. A spouse¹⁹, or civil union or de facto partner, of a shareholder can acquire shares only if they are a member of the preferred classes of alienees.

A spouse, or civil union or de facto partner, may be entitled to a right to income from the land or a right to occupy the family home on the land should the shareholder die.

Share transfers can be arranged directly with the Māori incorporation or by an order of the MLC. However, the MLC 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's a sample share transfer form at the back of the Regulations.)

Read our separate factsheet [Transferring Māori Land Shares](#) for more information. To download it, **go online to** maorilandcourt.govt.nz/about-mlc/publications

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 administration²⁰ or probate²¹ has been issued, the executor²² may apply directly to the Māori incorporation to transfer the deceased's shares to the successors²³.

To find out more about Succession **go online to** maorilandcourt.govt.nz/your-maori-land/succession

WHĀNAU AND PŪTEA TRUSTS

If the shares are owned by a whānau trust, trustees will receive the notice of the meeting and vote for those shares.

If the shares are owned by a pūtea trust, 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 Regulations. The MLC may direct a special meeting of shareholders be held.

19. A legal wife or husband.

20. When the High Court appoints a person to administer the estate of a deceased person (generally where there is no will or if the will does not name an executor), the Court's authority for that person to act is given in a grant of letters of administration.

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

22. A person appointed to carry out certain duties under the last will of a deceased person. The deceased will have named the executor in their will. Appointment of the executor is confirmed by the High Court when the value of the assets is substantial, or where the type of assets requires this (see page 2). When an executor is confirmed by the High Court, that court issues probate in their 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).

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

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

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

17. 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.

18. Owner(s) of shares of land held within a trust. Beneficiaries are also called the beneficial owners.

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 proxy²⁴.

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's 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

Shareholders can appoint anyone as their 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 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 Regulations).

To submit a postal vote, the shareholder is required to send a notice about how their 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 can't be considered to have been properly constituted unless three shareholders are present in person throughout the meeting.

A shareholder who casts a postal vote won't be counted for the purposes of determining the quorum.

SPECIAL RESOLUTION MATTERS

The following matters must be dealt with by special resolution:

- whether to include the owners of additional Māori freehold land in the Māori incorporation
- whether to amalgamate²⁵ 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 income²⁶ 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 amalgamation order or an aggregation²⁷ order
- matters specified in the Regulations as matters to be dealt with by special resolution (like fixing a quorum for general meetings).

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 Te Ture Whenua Māori Act 1993).

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

27. 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 Te Ture Whenua Māori Act 1993).

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

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. This includes a record of dividends²⁸ paid to shareholders, including shareholder name, the amount and the date the payment was made.

The committee of management is also required to file a copy of the accounts with the MLC in the 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 MLC are available for inspection at the Court.

AUDITOR

An auditor²⁹ must be appointed by the shareholders at each AGM. 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 AGM.

A Māori incorporation does not have to appoint an auditor if its gross revenue was \$25,000 or less in its previous financial year.

The auditor must be a member of Chartered Accountants Australia and New Zealand 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 AGM, 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.

COSTS

The Māori incorporation is responsible for meeting any costs incurred by the appointment of an auditor.

SHARE VALUER

A share valuer must be appointed by the shareholders at each AGM. 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 AGM.

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

The Māori incorporation is responsible for meeting 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 the Māori incorporation incurs, including any capital works or capital investment
- setting aside cash reserves
- payment of dividends to shareholders
- as authorised by a resolution of the shareholders for the purposes specified in the resolution.

28. A payment made to shareholders.

29. A person who checks and examines accounts.

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.

Dividends are paid only from the Māori incorporation's profits.

UNCLAIMED DIVIDENDS

Dividends become unclaimed after they have been held by the Māori incorporation for 10 years without being claimed by the shareholder or by anyone else entitled to them.

Within 12 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.

The list must be sent to the MLC; the Court will include it in the register of Māori incorporations and be available for public inspection.

If, within 12 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 these 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 MLC office is required to maintain a register of Māori incorporations within its district and make it available for the public to inspect; the Court may charge a fee for this. 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 the annual accounts are filed in the MLC
- 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 MLC.

ALIENATION

The MLC will also include in its title³⁰ records, any alienation³¹ that it has noted in terms of section 150B(3) of the Act.

ACCOUNTS

The MLC is required to make Māori incorporation accounts available for the public to inspect; the Court may charge a fee for this.

Māori Land Court powers

MISMANAGEMENT BY A MĀORI INCORPORATION MEMBER

The MLC 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 MLC
- 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 MLC
- failure to appoint an auditor
- failure to send a copy of special resolutions to the MLC
- failure to keep a share register
- failure to hold AGMs of shareholders
- failure to disclose a conflict of interest
- making unauthorised payments from the funds of the Māori incorporation.

MĀORI LAND COURT DECISIONS

If the Court isn't 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

³⁰ The legal ownership of property and the legal evidence of a person's ownership rights.

³¹ 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 Te Ture Whenua Māori Act 1993).

- suspend all or any provisions of the constitution of the Māori incorporation
- order the Māori incorporation be wound up
- 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 MLC 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 (the 'examining officer').

Costs

The MLC, 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 who 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 MLC, on anything referred to in any report of the investigator.

If the committee doesn't comply with a request from the investigator, the MLC 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 cooperate.

Inquiry into the investigator's report

After the MLC 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's found there have been episodes of mismanagement in the operations of the Māori incorporation, the Court may take any of the actions listed on page eight 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
- fill the vacancy with any qualified person
- order the vacancy remains unfilled while the Court considers issuing another order.

Winding 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 shareholders at a general meeting, recommending it be wound up
- if the committee of management hasn't filed annual reports (including the balance sheet) with the Court
- if its shareholders number fewer than two
- if it can't pay its debts
- in the opinion of the Court, it's just and fair that it be wound up.

On winding up a Māori incorporation, the MLC 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, they must file in the MLC 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 hasn't 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

To find out more about Māori incorporations, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations

Or you can visit your local MLC office or attend an offsite clinic. We have nine offices across Aotearoa New Zealand, which are open between 10am and 4pm on normal weekdays. You don't need to make an appointment. Contact details follow or **go online to** maorilandcourt.govt.nz/contact-us

Contact the Māori Land Court

The DX number is the postal address.

Taitokerau District	Level 3, Manaia House Rathbone Street, Whangārei 0110 DX Box AX10086, Whangārei Phone 09 983 9940 Email mlctaitokerau@justice.govt.nz
Auckland Information Office	Ground floor, Building B 65B Main Highway, Ellerslie Auckland 1051 DX Box EX10912, Auckland Phone 09 279 5850 Email mlctamakimakaurau@justice.govt.nz
Waikato-Maniapoto District	Level 2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email mlcwaikato@justice.govt.nz
Wairiki District	Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email mlcwaairiki@justice.govt.nz
Aotea District	Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email mlcaotea@justice.govt.nz
Tākitimu District	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
Tairāwhiti District	Ngā Wai e Rua Building Cnr Reads Quay and Lowe Street Gisborne 4010 DX Box PX10106, Gisborne Phone 06 869 0370 Email mlctairawhiti@justice.govt.nz
Te Waipounamu District	Level 1, CJESP 20 Lichfield Street, Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz
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