

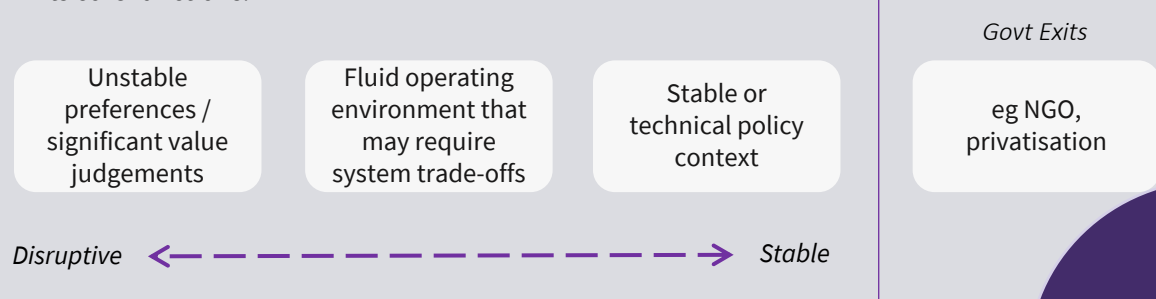
# A framework for organising mixed commercial and public policy functions in the executive branch of government

Where there is a clear reason to place functions at arm's length from government (ie not in a department), commercial functions typically belong in companies whereas public benefit functions belong in Public Service agencies. Where there is a mix of commercial and public benefit functions, their comparative significance should be considered with the aid of the 4 boxes below. Within each box, departments and other Public Service agencies are more suited to the circumstances described on the left, and the company forms for those described more to the right.

The operating context may change over time. For example, if greater ministerial influence is required, then the benefits of the company form to achieve commercial objectives may be lost. A company with commercial objectives receiving significant public funds may require greater Crown influence and scrutiny. Changes to form can be disruptive and costly. Te Kawa Mataaho and the Treasury consider that the rationale for entity form change – as opposed to other options – needs to be clearly specified, with any new entity form seen as likely to be enduring.

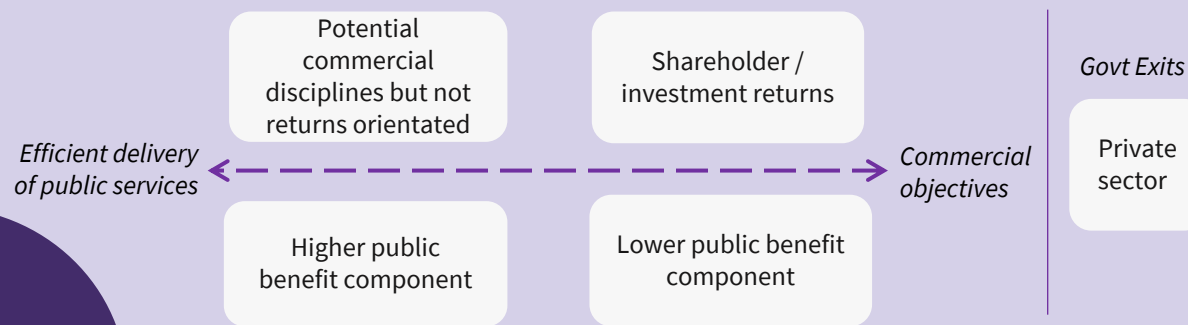
## Public policy context

- The greater the instability in policy preferences, and the more significant the level of value judgements involved, the closer the functions should be to ministerial influence.
- Arm's-length entities (both public benefit and commercial) perform better in a stable policy and funding environments.
- Entity's objectives and functions should support the broader policy outcomes sought by Government.
- Government may choose to exit a particular market or sector if it is not seen to support its core functions.



## Commercial context

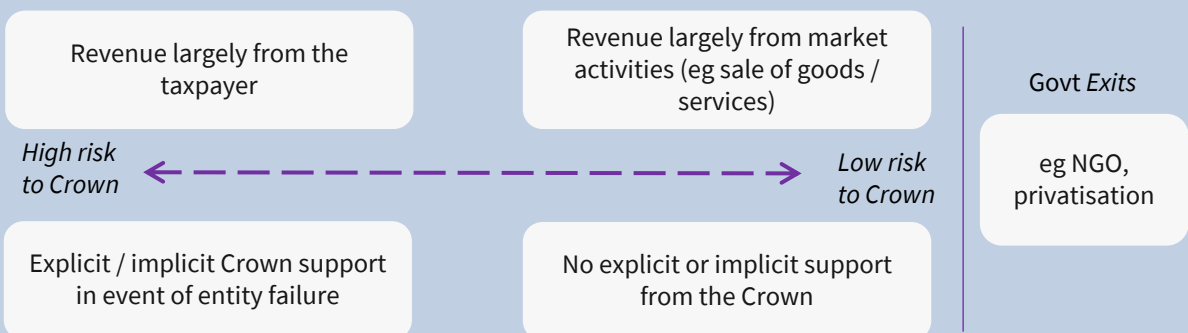
- An entity with commercial objectives will focus on shareholder / investment returns and is likely to have few, if any, public policy goals (although the Crown may have a purchase interest).
- Where an entity is focused solely on returns, the policy rationale for Crown ownership needs to be considered and market tested.
- Commercial operations and disciplines can also be used by public service agencies to efficiently deliver their functions.



## The framework

## Risk to the Crown

- Where an entity is an important vehicle for delivering government policy – particularly where that policy is supported by high levels of public funding – the Crown is unlikely to allow the entity to fail. This suggests a need for greater ministerial influence and oversight.
- Where risk transfer to, or competitive neutrality with, the private sector is sought, the Crown would typically not provide explicit or implicit support.



## 'Independence' and government control

- The nature of independence – from who/what, and for what purpose – needs to be clearly established. 'Operational autonomy' does not equal independence from government policy.
- Independence for specific functions can be achieved within any form of the executive branch of government.
- The duty of a company director under the Companies Act is to act in good faith and in the best interests of the company (not shareholders). This may conflict with the wider interests of government.

