

1 December 2014

Mr Rob Everett
Chief Executive Officer
Financial Markets Authority
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz & simone.robbers@fma.govt.nz

Dear Rob

Draft Corporate Governance in New Zealand Principles and Guidelines

Thank you for the opportunity to provide comment on the FMA's draft revision of its handbook for directors, executives and advisors, *Corporate Governance in New Zealand Principles and Guidelines*.

We strongly support the publication of guidance to help improve corporate governance and to support directors in their roles. We also support the FMA's initiative to revise the handbook to ensure it is up to date.

By way of general comment the FMA currently has published a number of concurrent consultation papers with similar deadlines within the last months. In the case of the re-drafted *Principles* and other matters affecting directors we encourage the FMA to stagger consultation and involve key parties at an earlier stage, perhaps by reference panel, so that we can contribute in a more substantive way to the development of a revised draft.

In our consideration of the revised handbook we have sought feedback from IoD members. This letter discusses enhancing governance best practice, remuneration guidelines and reporting requirements. We also include some minor points and recommendations for change in the attached feedback form.

About the Institute of Directors

The Institute of Directors in New Zealand (IoD) is a non-partisan voluntary membership organisation committed to raising governance standards in New Zealand. We aim to help businesses understand governance and concurrently assist skilled and experienced directors with vision and independence of thought to work with management to achieve better business performance.

We represent a diverse membership of just under 7,000 members drawn from NZX-listed corporations, unlisted companies, private, closely held companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Director professionalism

In 2014 the IoD launched a chartered membership pathway, which raises the bar for New Zealand directors. To maintain a 'chartered' designation IoD members must commit to continuing professional development. The 'chartered' designation also offers stakeholders an assurance that chartered members and fellows have met professional standards of knowledge and skill to support them to carry out their duties as directors.

Improving director professionalism helps underpin good corporate governance and the IoD sees recognition of the chartered member pathways as a step toward better governance in New Zealand.

Governance best practice

We suggest enhancing commentary in the handbook on the following topics to better support governance best practice:

- The Board's strategic role
- Diversity
- Conflicts of interest and related parties

Board's strategic role

The board has a critical role in defining purpose and setting the strategic direction of the organisation. There is an opportunity to expand FMA commentary about this under *Principle 2: Board evaluation and performance*.

The board's strategic role in balancing and managing opportunities and risks could also be expanded in *Principle 6: Risk management*.

Diversity

There is little commentary on diversity in the handbook despite its recognised importance and development in recent times. Evidence is clear that diversity is a governance issue. For example, since 2013 NZX has required NZSX listed companies to report on the gender breakdown of Directors and Officers in their annual reports. NZX also issued guidance encouraging issuers to adopt a diversity policy to help improve performance.

Diversity encompasses a wide range of dimensions other than gender such as ethnicity, age, culture, disability and skills. The IoD champions the value of *diversity of thought* as part of greater board effectiveness and improved company performance. This notion could be emphasised more in *Principle 2: Board composition and performance*, and elsewhere in the handbook where relevant.

Conflicts of interest and related parties

Conflict of interests is a major issue in good governance. The commentary on conflicts of interest and related parties should be enhanced to recognise this, and particularly that a director should be able to identify and deal with a conflict of interest. These are important areas which need guidance and clarity, both in regard to legislation, company constitutions and best business practice and convention. For example, more commentary in *Principle 1: Ethical standards*, and *Principle 4: Reporting and disclosure*, would be helpful.

Principle 5: Remuneration

Remuneration is a key consideration in attracting, motivating and retaining quality directors. Transparency and fairness are important aspects of this principle but we suggest also including comment that it is the role of the board to make decisions about remuneration that will best meet the needs of the organisation and its objectives.

We found the guidelines (Paras 5.1 to 5.4) on remuneration confusing because they tended to mix executive director and non-executive director remuneration with that of executives remuneration. These are quite different issues. We suggest clarifying by having separate guidelines about:

- Clear policies
- Disclosure
- Executive remuneration
- Board remuneration, including for the Chair
- Executive directors – generally do not receive director fees as they are paid employees

Maori or iwi controlled entity references

We have had feedback from IoD members that, notwithstanding the broad reach of the document, the consultation draft of the Principles makes no reference to Maori or iwi controlled entities.

Reporting requirements

Simplifying and clarifying reporting requirements would be helpful, including to avoid potential for duplication with other corporate governance reporting.

We support the inclusion of online reporting as an option. However the guidance is not clear about when this may be a choice. For example there are specific references to reporting in the annual report (1.5, 2.11, 7.6 and 9.3), to reporting annually (4.7, 6.3 and 9.3) and to online reporting (3.2 and 5.2).

Para 4.7 also refers to reporting on the implementation of the principles and any departures from them, which repeats some of what is covered in the 'How to report against the principles' section on pages 10-11.

We suggest reporting is dealt with clearly and succinctly in one place only. For example this could include a table showing assessment and reporting requirements for each principle, including required form of reporting (and if there is a choice), how reporting for each principle aligns/fits with other corporate reporting (e.g. legislative requirements and NZX rules), and potentially which principles could be covered by a board evaluation.

Broader implications of the review

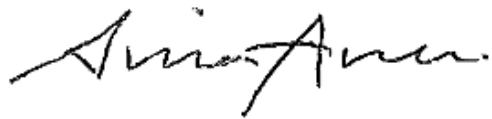
The duplication and risk of multiple reporting platforms also featured in member feedback. It was suggested that in the long term stakeholders in corporate governance such as the IoD, FMA and NZX should give consideration to broader reform by discussing the possibility of a collective and standardised set of corporate governance principles on which all agree.

Conclusion

We support the updating of the *Corporate Governance in New Zealand Principles and Guidelines*, and encourage the FMA to make the enhancements outlined in our submission to help reflect best practice in governance.

We welcome the opportunity to discuss our submission and to assist the FMA in its development of this and future governance guidance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Arcus', written in a cursive style.

Simon Arcus

Manager, Governance Leadership Centre

Feedback: Corporate Governance Handbook – Principles and Guidelines

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Corporate Governance Handbook – Principles and Guidelines' in the subject line. Thank you.

Submissions close at 5.00pm on Monday 1 December.

Date: 1 December 2014 Number of pages: 4 (including letter)

Name of submitter: Simon Arcus

Company or entity: Institute of Directors in New Zealand

Organisation type:

Contact name (if different): Felicity Caird

Contact email and phone: felicity.caird@iod.org.nz 04 470 2663

Para or Question #	Comment	Recommendation
Page 8	<i>Need to clarify the application of the principles to Maori and Iwi owned corporations</i>	<i>Include Maori and Iwi owned corporations in the list of types of entities in first paragraph</i>
Page 13		<i>Suggest include reference to the IoD Code of Practice for Directors in the ethics section e.g. in the FMA commentary or under the benefits of a code of ethics. The IoD code is available here</i>
Para 2.10, page 16	<i>Evaluation of boards</i>	<i>Include at 2.10 end of first sentence, 'including the Chair' after individual directors</i>
Pages 15 18	<i>Point about CEOs not going on to be Chairs</i>	<i>We suggest clarifying that it is not poor practice for a CEO to become Chair and it does happen. It is best to have a sufficient interval between the roles, and the length of time is a matter for the board to determine.</i>
Page 19	<i>The section headed up 'Nomination committees' is much broader than the heading suggests</i>	<i>Could change heading to 'Board composition' Could also include a comment about the value of diversity (see attached letter)</i>
Para 3.1, page 20 and final para on page 21	<i>Need to clarify committees and decision making. 3.1 refers to 'safeguarding the ultimate decision making authority of the board as a whole' whereas the final paragraph on page 21 refers to 'decisions of the committee'</i>	<i>Need to be very clear about whether a board has delegated decision making to a committee as generally committee activities should result in recommendations for the full approval of the board.</i>
Page 21	<i>Editorial point in first paragraph re wording: "...any director who is not</i>	<i>Change board to committee</i>

	<i>on the board...”</i>	
<i>Para 4.3, page 22</i>	<i>Why does the need for effective internal control systems and reliable financial reporting only refer to issuers?</i>	<i>If only issuers ‘must’ then suggest could include ‘and all other entities should’</i>
<i>Para 8.2, page 32</i>	<i>We question the requirement to publish ‘strategies’ on a website as some strategies contain business plans eg with commercially sensitive information</i>	<i>Change ‘strategies’ to strategic objectives</i>
<p>Feedback Summary – <i>if you wish to highlight anything in particular</i></p> <p>Please see attached letter also.</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		