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Secretariat of the OECD Corporate Governance Committee
Organisation for Economic Co-operation and Development
2 rue Andre Pascal
75775 Paris Cedex 16
France

By email: dafca.contact@oecd.org

Dear Secretariat of the OECD Corporate Governance Committee

2014 Review of the *OECD Principles of Corporate Governance*

Thank you for the opportunity to provide comment on the revised *OECD Principles of Corporate Governance* (the Principles).

We recognise and support the important role of the Principles to help improve the legal, regulatory and institutional frameworks of corporate governance and to contribute to economic efficiency, sustainable growth and financial stability.

We strongly support the publication of guidance to help improve corporate governance and to support directors in their roles. The 2004 Principles are well known in the New Zealand corporate governance environment and we welcome this update.

The board of directors plays a central role in corporate governance. This submission discusses the New Zealand context, and provides general comments on the role of the board in good corporate governance, enhancing effective boards and curbing short-termism. We also include specific suggestions for changes in the wording of some of the guidance.

Summary of suggestions:

- Include a concise summary of the key principles, for example as per the 6 chapters, with a high level supporting statement for each. A 'one-pager' summary could be used for ready reference to reinforce key messages and convey the essence of the Principles.
- Re-order the chapters by moving chapter VI, *The responsibilities of the board*, to be the second chapter in the Principles.
- Include discussion about the types of values and principles that should guide the behaviour of directors of boards, for example promoting integrity.
- Provide greater emphasis to the:
  - importance of appropriate governance behaviour and boardroom dynamics in the Principles; and
  - role of the Chair in the effective functioning of the board and influence on board culture.
- Emphasise the role of boards to consider developing and disclosing a clear framework for managing long-term value creation and curbing excessive short-termism.

- Emphasise that shareholders and institutional investors be aware of balancing short-term and longer-term interests
- Page 6 - add the words "relating to stock market listings" to the end of statement (F) to avoid the potential of the exchange of information being interpreted more widely than is outlined in the commentary in Para 12.
- Page 32, Para 110 - clarify the reference to 'key executives' as in some countries (including New Zealand) the usual model is for the board to only appoint and manage the CEO, who in turn appoints and manages senior executive staff as a delegated function.
- Page 32, Para 112 - amend wording as in New Zealand, like many other countries, board members are appointed and do not have 'employment contracts' and are not covered by our employee legislation.

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

The IoD Chartered Membership Pathway (introduced in 2014) aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Global Network of Director Institutes

The IoD is a founding member of the Global Network of Director Institutes (GNDI), founded in 2012. The GNDI brings together member-based director associations from around the world with the aim of furthering good corporate governance. The GNDI member institutes together represent more than 100,000 directors from a wide range of organisations around the world.

The GNDI will shortly publish a perspectives paper on the guiding principles of good governance. We commend this to you as a useful resource.

Corporate governance developments in New Zealand

The corporate governance framework in New Zealand is underpinned by a combination of a rules-based and principles-based approach. There has been significant reform in New Zealand in recent years following the global financial crisis and its specific implications for our economy.

The legal duties for directors are embodied in statute, for example the Companies Act 1993 requirement to act in good faith and in the best interests of the company. Legal obligations for directors are also included in laws relating to financial markets and financial reporting - both of these areas of legislation were revised in 2013.

Other developments include the establishment in 2011 of the Financial Markets Authority (FMA) (replacing the Securities Commission). The FMA regulates New Zealand financial markets and its main objective is to promote and facilitate the development of fair, efficient and transparent financial markets.

The New Zealand Stock Exchange (NZX) Listing Rules, include a Corporate Governance Best Practice Code. The Rules and associated guidance are regularly updated for example continuous disclosure guidance was updated in 2014. In addition, since 2012 companies on the NZX main board have been required to report annually on the gender breakdown of directors and officers.

The 2004 *Corporate Governance in New Zealand Principles and Guidelines* are currently being updated by the FMA.

The *Code of Practice for Directors* for IoD members has been supplemented by the introduction of the IoD Chartered Membership Pathway in October 2014. In addition to raising the bar on the professionalism of directors, for example through continuing professional development, Chartered Members and Fellows of the IoD must uphold the *Charter of the Institute of Directors in New Zealand* and confirm their good character.

Comments on the revised OECD Principles

By way of general comment the 2014 revised document, although shorter than the 2004 version is still long and detailed for a publication on principles. We encourage the OECD to continue streamlining and clarifying the Principles to enable greater understanding of, and commitment to, good corporate governance.

- We suggest the OECD include a concise summary of the key principles, for example as per the 6 chapters, with a high level supporting statement for each. A 'one-pager' summary could be used for ready reference to reinforce key messages and convey the essence of the Principles.

The role of the board

The Principles contain considerable focus on promoting the interests of shareholders, institutional investors and the role of stakeholders. The chapter on *the responsibilities of the board* is the last chapter in the Principles. Given the nature of the board's core leadership role in good corporate governance there is a logical flow for the chapter on the board to follow the first chapter, *Ensuring the basis for an effective corporate governance framework*.

The board is also a key enabler in the achievement of the objectives set out in the other chapters. Setting out the board's responsibilities earlier in the Principles would provide useful context to other content, for example on the rights of shareholders, role of stakeholders and disclosure. This order would also align well with that in the OECD's *Corporate Governance Factbook*, published in February 2014.

- We suggest re-ordering the chapters by moving chapter VI, *The responsibilities of the board*, to be the second chapter in the Principles.

Effective boards

We welcome the inclusion of point 4 on page 36 which provides greater emphasis on the need for boards to carry out board evaluations to appraise performance and assess whether they possess the right mix of backgrounds and competencies. Assessing board and individual director performance is a critical enabler to creating and maintaining effective boards.

Board composition is a direct contributor to board performance and a number of factors contribute to a high performing board.

We also welcome the inclusion of the additional commentary on diversity of thought in Para 129 and the inclusion of Para 130 which encourages initiatives to enhance gender diversity on boards.

Appropriate governance behaviour plays a key role in effective corporate governance. Core values that guide the behaviour and performance of directors include integrity, enterprise, fairness, transparency, accountability and efficiency. There is limited coverage of behavioural expectations of directors in the Principles. For example while there is reference to promoting the integrity of professions such as analysts, brokers, rating agencies and proxy advisors in the corporate governance framework (Para 54) there is no reference to directors needing to act with integrity to promote good corporate governance.

The discussion on page 31 (C) *The board should apply high ethical standards. It should take into account the interests of stakeholders,* could be expanded to include more discussion about behavioural expectations of directors.

- We suggest that, without being prescriptive or directive, the OECD include discussion about the types of values and principles that should guide the behaviour of directors of boards, for example promoting integrity.

Board dynamics and the role of the Chair is also critical to the effective functioning of the board and has a pivotal influence on board culture.

- We suggest the OECD provide greater emphasis to the:
  - importance of appropriate governance behaviour and boardroom dynamics in the Principles; and
  - role of the Chair in the effective functioning of the board and influence on board culture.

Short-termism

There is increasing recognition of the need to balance stewardship and long-term interests with short-term objectives. For example pressure from shareholders/investors, or short-term remuneration drivers, can influence business, investment and financial decision-making in favour of short-term objectives. We encourage the OECD to place more emphasis on longer-term considerations in corporate decision-making.

We note the discussion in Para 111 on *aligning key executive and board remuneration with the longer term interests of the company and its shareholders*.

However greater emphasis is needed on the role of boards and shareholders in balancing short-term and long-term interests.

- We suggest the OECD emphasise the role of boards to consider developing and disclosing a clear framework for managing long-term value creation and curbing excessive short-termism.
- We also suggest the OECD emphasise that shareholders and institutional investors be aware of balancing short-term and longer-term interests

The GNDI published a perspectives paper, *Curbing Excessive Short-Termism*, in May 2014 which provides further commentary and is available at http://www.gndi.org/.

Specific comments:

Chapter I. Ensuring the basis for an effective corporate governance framework.

We note the inclusion of Para 12 and statement (F) - *Cross-border cooperation should be enhanced, including through bilateral and multilateral arrangements for exchange of information*.

- We suggest adding the words "relating to stock market listings" to the end of statement (F) to avoid the potential of the exchange of information being interpreted more widely than is outlined in the commentary in Para 12.

Chapter VI. The Responsibilities of the board

Para 110 and key function 3 – *Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning*.

- We suggest clarifying the reference to 'key executives' as in some countries (including New Zealand) the usual model is for the board to only appoint and manage the CEO, who in turn appoints and manages senior executive staff as a delegated function.

Para 112 refers to 'employment contracts for board members and key executives'.

- We suggest amending this wording as in New Zealand, like many other countries, board members are appointed and do not have 'employment contracts' and are not covered by our employee legislation.

Conclusion

We encourage the OECD to make the enhancements outlined in this submission and we would welcome the opportunity to provide any further input if required.

Yours sincerely

Simon Arcus
Acting Chief Executive
Institute of Directors in New Zealand