



February 2018

FMA, 2018a

FMA Corporate Governance Handbook 2018 – summary of submissions

This document summarises the key themes from the submissions to our consultation for the updated Corporate Governance Handbook, and our response to them. It also includes the individual submissions.

We received 27 formal written submissions. No submitters requested their submissions remain confidential. We have the right to withhold information under the Official Information Act 1982 and Privacy Act 1993.

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www.fma.govt.nz

AUCKLAND OFFICE | Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON OFFICE | Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

Introduction

We would like to thank all submitters for their feedback. We received submissions from a wide range of stakeholders, including listed issuers, registered banks, law firms, industry bodies, corporate governance groups and professional services firms. We acknowledge the points raised and the effort put into these submissions.

The main themes that emerged from the submissions were:

1. strong support for our overall approach to refocus away from listed companies
2. request for clarity on the appropriate balance of independent and non-independent directors on boards and subsidiary boards
3. to increase prominence on non-financial information in reporting and disclosures, and environmental, social and governance ('ESG') factors
4. to provide more guidance on remuneration
5. to provide more guidance on auditor independence and audit committees
6. guidance on shareholder relations and stakeholders.

Feedback themes

1. Strong support for our overall approach to refocus away from listed companies

We received strong support for our overall approach to move our focus away from listed issuers. Submitters felt this would avoid overlap, confusion and unnecessary duplication with the NZX's updated corporate governance code (the NZX Code).

The submissions focused mainly on minor refinements to the guidelines and commentary under each principle. However, some submitters thought a more substantial rewrite of the handbook would be useful.

While we have refreshed the 2014 version of our corporate governance handbook to incorporate the most up-to-date standards for corporate governance, our view is that its high-level nature and established presence in New Zealand (it was first published in 2004) provides the appropriate level of assistance to benefit a wide range of companies and entities. This refreshed version does not restate legal requirements nor seek to explain the full suite of technical legal requirements for companies. We have tried to strike that balance in the rewrite, while signposting to other sources of information.

2. Request for clarity on the appropriate balance of independent and non-independent directors

Submitters asked for clarity on the guidelines and commentary relating to the balance of independent and non-independent directors on boards. In particular, submitters questioned the requirement for director independence in respect of subsidiary boards and if this independence standard should apply to those perceived to be publicly accountable due to their role in the financial markets. The recommendations on independence for subsidiary boards in the updated handbook remain the same as in the 2014 version, in that we encourage entities to include directors who meet the criteria for formal independence. However, to provide clarity we have removed references to 'publicly accountable' in the introduction and in Principle 2 (Board composition and performance).

For wholly-owned subsidiary boards that report against Principle 2, we recognise a 'one-size-fits-all' approach may be inappropriate for independent director recognition. We invite entities with wholly-owned subsidiary boards to explain their approach when they report against the principles.

3. To increase prominence on non-financial information and environmental, social and governance (ESG) factors

For Principle 4 (Reporting and disclosure), submitters supported our updated guidelines and commentary on non-financial information. However, submitters requested we add non-financial reporting to the description of the principle.

Submitters also requested we update our commentary on non-financial reporting to include references to materiality, overall strategy, and highlight the connection between ESG factors and financial information.

We agreed with all of this feedback, and we have updated the principle's description and commentary in these areas. The commentary on ESG in Principle 6 (Risk management) has also been updated to align with Principle 4 changes.

4. To provide more guidance on remuneration

For Principle 5 (Remuneration), submitters asked for more guidelines and commentary about remuneration. However, we think this needs to be balanced with the high-level nature of the handbook. Therefore, we have made minor updates to Principle 5, for example to ensure the linkages to strategy and performance are clear, and have also sign-posted where to find other industry guidance on this topic.

The current trend is towards greater transparency on all aspects of remuneration and incentives for directors and executives. The handbook encourages companies to consider how to meet stakeholder expectations in this area.

5. To provide more guidance on auditor independence and audit committees

For Principle 7 (Auditors), we received feedback that our guidance should be extended to cover all assurance providers, and that we should update the information on fees.

Related to this, for Principle 3 (Board committees), we received feedback suggesting an appropriate timeframe for our guideline relating to the chairperson of the audit committee not have a longstanding association with the external audit firm.

Based on these submissions, we have refreshed our commentary on non-assurance work and our guideline relating to the chairperson of the audit committee. We have also referenced our director's guide to audit quality, published in November 2017.

6. Guidance on shareholder relations and stakeholders

To align with the NZX Code, and as signalled in our consultation, Principle 9 has been removed. Stakeholder considerations are vitally important, so they have been incorporated into all eight principles (in particular Principle 4 on reporting and disclosure, and Principle 8 on shareholder relations and stakeholder interests).

Submissions

- [Accident Compensation Corporation](#)
- [ANZ Bank New Zealand Limited](#)
- [BDO New Zealand Ltd](#)
- [Bell Gully](#)
- [Booster Investment Management Limited](#)
- [Chapman Tripp](#)
- [Cygnus Law](#)
- [D'Souza Associates](#)
- [Governance New Zealand Incorporated](#)
- [Institute of Directors](#)
- [International Integrated Reporting Council](#)
- [Kensington Swan](#)
- [Medical Assurance Society New Zealand Limited](#)
- [Milford Asset Management Limited](#)
- [MinterEllisonRuddWatts](#)
- [New Zealand Bankers Association](#)
- [New Zealand Guardian Trust trading as Perpetual Guardian](#)
- [NZ Superannuation Fund](#)
- [Oyster Management Limited](#)
- [Proxima Consulting](#)
- [Public Trust](#)
- [PwC](#)
- [Risk Management Ltd](#)
- [Spark New Zealand Limited](#)
- [Trustees Executors](#)
- [University of Otago](#)
- [Personal submission](#)

Feedback form

Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. Submissions close on Friday, 8 December 2017.

Date: Number of pages: December 12, 2017, 3 pages

Name of submitter: [REDACTED]

Company or entity: Department of Accountancy and Finance

Organisation type: University of Otago, Dunedin

Contact name (if different): Contact email and Phone: [REDACTED]
[REDACTED]

Q1. Moving the focus away from listed firms is fine however I think that the listing requirements still set a precedent for disclosure expectations and it is valuable to track how listed versus non-listed firms comply with NZX standards.

Q2. I think the guidance is sufficient at present. Clearly a firm intending to list must meet all the listing requirements however the FMA guidance does run parallel to the listing requirements and by meeting these the firm has to some degree already met requirements around listing.

Q3. Some of the communication is very general. Perhaps more specific lists about the detail that will enhance transparency and increase readability for relevant stakeholders would be beneficial. For example, Principle 5 refers to: The board should have a clear policy for setting executive remuneration, including executive directors and non-executive directors. Remuneration should be fair and reasonable in a competitive market for the skills, knowledge and experience required in the first point. However, while this may be a clear policy statement the relevant information is often not disclosed in the detail useful for a stakeholder to be able to determine with confidence how policy is set, how incentives are determined and linked back to performance and alignment of short- and long-term incentives to shareholder value. Without more explicit detail the firm can meet the general requirements of this criteria but still limit transparency to the user of the information. This is something that the guidelines need to explicitly address.

Q4. Details about remuneration disclosure should be more specific. All firms should be required to disclose explicit remuneration policies and amounts paid under them to shareholders regardless of the size of the shareholder base. Executive (including executive director) remuneration packages should include an element dependent on entity and individual performance that is adjusted for overall industry or market change so that executives are not rewarded on the basis of overall sector performance but for their individual

contribution and specific skills in leading change within their organisation (Principle 5: Remuneration). Shareholders should be informed about the criteria and key performance indicators used to set and measure how short and long-term incentives are being awarded. Any changes from the original contract should also be carefully disclosed. Shareholders need adequate disclosure around compensation practice to be able to verify and question the type and amount of compensation being paid to the CEO and other executive directors and board members. Rather than just requiring compensation policy to be disclosed, actual details about compensation setting practice, measurement and determination of pay out needs to be more transparent.

One serious gap in the current disclosure regime concerns those CEOs who are NOT board members. These individuals do not have to have their compensation disclosed under the Companies Act because they are not directors. This means that often it is very difficult to determine exactly how much they are paid in any given year. In these cases the readers of the annual report have to rely on the disclosures for employees earning more than \$100,000 that are given in \$10,000 bandwidths. However it might be that the highest paid individual reported in this list is not necessarily the CEO. It could be another executive manager (e.g. the CFO) or the highest amount that is paid out actually includes compensation for retirement or redundancy purposes for the CEO or some other individual. The case is even more complex when a CEO is only in office for a short time and enters during a financial year or is replaced very close to the end of a financial year. For example, Neil Cowie who was the CEO of Pumpkin Patch, appointed on September 11, 2012 and resigned on July 30, 2013. If you read the 2012 and 2013 annual reports there is no transparency concerning what Mr Cowie was paid in either 2012 when he replaced Maurice Prendergast or in 2013 when he was placed by Di Humphries as CEO.

More disclosure requirements need to be introduced for cases where the CEO is not a board member and is therefore not required to report compensation as deemed for board members according to the Companies Act.

Q5. I think the guidelines overall match up well with the overall practice of firms both listed and unlisted in NZ.

Q6. The reporting function can be very time consuming and expensive, especially under the regulations that require auditors to be replaced. This may be particularly onerous and costly for smaller firms, particularly concerning disclosures of non-audit items. Also these requirements will be harder for small firms to meet due to their size and financial constraints to remain sustainable. It is important that the guidelines are not so demanding that cost of implementation removes or prohibits the disclosure benefits sought from this exercise.

Feedback summary – if you wish to highlight anything in particular

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.

Thank you for your feedback – we appreciate your time and input.

Feedback form

Feedback: FMA Corporate Governance handbook

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Date: 7 December 2017

Number of pages:

Name of submitter:

Company or entity: Self Employed

Organisation type:

Contact name (if different):

Contact email and

Question
number:

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

Q1

Directors and Officers

In view of the regular reappearance of "shady" directors I feel a section of the website should cover Barred Directors and officers.

The Register should show the date when their bar expires.

It should also state the last major organisation with which they were registered as a Director or Officer (which presumably is the reason for their being barred).

For website logistical purposes I suggest a minimum company reported equity size of NZ\$20million.

I also suggest that for all Directors of companies with a reported equity base of \$20million or larger that each director be allocated a **permanent** Director Registration Nr. This would also facilitate website searches to ensure that invalid Directors are not trying to operate as current directors

Q2

[Return to list of submitters](#)

Q3	
Q4	
Q5	
Q6	

Feedback summary – *Too often shareholders are in ignorance of directors' past performances.*

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Thank you for your feedback – we appreciate your time and input.

