NZ | CORPORATE GOVERNANCE | FORUM

19 June 2024
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NZX Limited
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Dear Kristin,

RE: Director Independence – Second Consultation

The New Zealand Corporate Governance Forum (**NZCGF**) comprises many of New Zealand's major institutional investors and is committed to promoting good corporate governance of New Zealand companies for the long-term health of the capital market.

The NZCGF's members include Crown Financial Institutions (CFIs), and large and small, privately-owned, NZ-based institutional investors who manage money for their clients and customers on a wholesale, retail and Kiwisaver basis. All members of the NZCGF are conscious of their responsibilities as institutional investors, and it is largely on this basis that we engage with the NZX and other important institutions and regulators within the NZ equity market.

Over the last decade, including with the support of the NZCGF, NZ shareholders have become more focused on corporate governance and been instrumental through engagement and voting in improving independence, diversity, skills as well as succession planning on NZ boards; focus on independence, including tenure, has helped to improve the NZX50 director pool.

Again, we acknowledge NZX's efforts in undertaking a review of director independence settings and its constructive engagement with the NZCGF, including through the NZX Corporate Governance Institute, in response to our advocacy on this issue.

We set out below our more general feedback under headings which largely correspond to the key areas covered in the consultation paper, and then we respond to the more specific consultation questions.

Background

The NZCGF is committed to promoting good corporate governance in NZ companies for the long-term health of the capital markets. Corporate governance is primarily concerned with maximising corporate performance and minimising the inherent agency costs that arise within corporations.

These agency costs arise from disparate interests between i) shareholders and management or ii) between shareholders generally and particular shareholders (or shareholder groups), such as a controlling shareholder[1]. Dr Geng, in his work commissioned by the NZ Corporate Governance Institute, also discussed agency conflicts, and we commend NZX for commissioning this work.[2]

[1] The agency issue is perhaps more pronounced in a NZ context, with approximately 1/3 of issuers having a 30% or greater shareholder, according to NZX's data.
[2] Available at: https://www.nzx.com/regulation/nzx-policy/consultations

Second Consultation Key Proposals

NZX is proposing certain amendments to the NZX Corporate Governance Code (**Code**) and the NZX Listing Rules (**Rules**). According to the NZX, the key proposals are:

1. Inclusion of a statement as to the purpose of the director independence requirements in the Code.
2. No change to the "Disqualifying Relationship" definition contained in the Rules.
3. Changes to the Code recommendations relating to the composition of an issuer's Audit and Risk Committee, and Nominations Committee.
4. Additional requirements relating to the information to be included in notices of meeting, and announcements of a board's determination of a director's independence.
5. Not to introduce additional minority shareholder protections to provide minority shareholders with greater control over the appointment of independent directors.

We discuss each of these key proposals in our answers to the consultation questions in the remainder of this letter.

Purpose of the Requirements

The proposed purpose statement is found in the *NZX Corporate Governance Code – Exposure Draft: Director Independence Review*, p.13 in the commentary to Recommendation 2.4 and is as follows:

"The purpose of these composition requirements is to ensure that there are a sufficient number of directors on an issuer's board who do not have relationships or interests that would reasonably cause them to be, or perceived to be, aligned with management or a particular shareholder group in a material way. These settings provide additional confidence for shareholders that an issuer's board is comprised of members who do not have interests or relationships that could reasonably be considered (or could reasonably be perceived) to materially affect their capacity to bring an independent perspective to board decision making – noting that both independent and non-independent directors are subject to duties to act in the best interests of the company which are owed equally to all shareholders."

1. Do you have any comments in relation to the proposed amendments to the Code commentary in relation to the purpose of the director independence requirements?

In our first submission on director independence settings, the NZCGF argued that "the Code should set out the underlying fundamental purpose of director independence (i.e. the appropriate management of the conflicts…)" Therefore, we thank the NZX for incorporating the purpose statement above into the Code.

As previously stated, the NZCGF believes that corporate governance is primarily concerned with delivering good long-term performance of corporations and long-term value to shareholders. Corporate governance includes minimising the agency costs within corporations including managing conflicts detrimental to minority shareholders. Independent directors are a critical element of good governance, and the principal purpose of independence is to ensure the impartial management of conflicts.

We consider that the concept of director independence as used in the market generally is not well-defined or well-interpreted. Market practice often focuses on the ability of individual directors to effectively manage the conflicts arising from relationships while effectively ignoring

the definitions of disqualifying relationship and independence which clearly refer to the relationships (not the ability of individual directors to manage them).

The two most critical conflicts that shareholders rely on boards to manage relate to the agency issues identified above and are:

i. conflicts between management and shareholders (i.e. agency issues addressing the conflicts of interest which sit at the nexus of corporate governance); and
ii. conflicts between shareholder groups which have disparate interests – most commonly between a dominant (often controlling) shareholder and other shareholders more generally.

The rules around director independence should therefore be concerned with ensuring that the relevant independent directors are free from the relationships or interests which would influence (or be perceived to influence) their ability to effectively present the interest of non-conflicted shareholders to enable the board to manage those conflicts.

That said we note that there are specific (and economically important exceptions) where independent directors manage the conflicts directly e.g. where the non-independent directors are recused or where the independent directors have specific roles (e.g. assurance regarding conditions of NZX waivers). Again, it is critical that the independent directors as a group has the ability to meet these obligations.

Therefore, we propose amending the drafted purpose statement on director independence to the following:

"Directors (whether independent or non-independent) are subject to duties to act in the best interests of their shareholders and the company. The key purpose of director independence settings is to ensure that boards have (and are perceived to have) the ability to fairly consider the interests of all shareholders and effectively manage the resulting conflicts of interest – most importantly related to management/Board-shareholder agency costs and minority shareholder rights."

This is why the definition of Disqualifying Relationship focuses on relationships or interests that would reasonably cause them to be, or perceived to be, aligned with management or a particular shareholder group in a material way.

2. Do you consider that any amendments should be made to the definition of the term 'Disqualifying Relationship' in light of the proposed statement?

The definition of Disqualifying Relationship is as follows:

Disqualifying Relationship

means any direct or indirect interest, position, association or relationship that could reasonably influence, or could reasonably be perceived to influence in a material way the Director's capacity to:

a) bring an independent view to decisions in relation to the issuer,
b) act in the best interests of the issuer, and
c) represent the interests of the issuer's financial product holders generally,

including having regard to the factors described in the NZX Corporate Governance Code that may impact director independence, if applicable.

We ask NZX to urgently review the current market practice regarding the classification of independence. We are aware of the argument that issuers and their counsels in many cases may focus on the capacity of boards to manage the resulting conflicts rather than the existence of the relationships and potential conflicts. If this argument holds, we suggest this market practice may contradict the Rules, and there may be a case for the definition to be clarified and clear guidance to be provided.

In the initial consultation, we stated that "[t]he definition of Disqualifying Relationship could also explicitly recognise the matters that could impact on the director's capacity to represent the interests of minority (non-conflicted) shareholders."

In the Second Consultation Paper, our proposal was summarised by the NZX to be advocating for "narrowing the Disqualifying Relationship test". To clarify, the Forum is **not** proposing that the definition is narrowed, but rather that it is clarified to focus issuers on relationships so that boards fairly represent the interest of all shareholders and can effectively manage agency conflicts.

We suggest that the reference to "represent the best interests of the issuer's *financial product holders* generally" could be improved by referring to the "issuer's *shareholders* generally" as holders of other financial products (such as debt securities) are protected in other ways.

We acknowledge the helpful commentary in the consultation paper noting that in NZX's view it is important to recognise that the "focus of the definition is on the material *influence* of a relationship or interest on the Director's *capacity* to act in a manner outlined [in the limbs of the definition]".

We suggest that this sentiment be baked into the commentary on Code Recommendation 2.4, but with the addition that it also specifically highlights that the assessment should extend to the existence of a reasonably "*perceived*" influence.

Furthermore, we ask NZX to provide guidance on what perceived means in this context – is it the perception of the board making the classification, or the shareholders, as the parties intended to be protected by the independence determination, or some reasonable man test (and if so how would NZX guide issuers and NZ RegCo to apply that)?

Finally, we note that some members of the Forum were for removing limb a).

3. Do you consider that there would be merit in re-naming the definition of 'Disqualifying Relationship' to better reflect that non-independent directors are able to act in the best interests of an issuer? If so, do you have a preferred term (e.g. 'Restricting Relationship', 'Constraining Relationship')?

No.

Independence assessment and Code Factors

The NZCGF notes that it would be supportive of adding cross directorships into the factors contained in Table 2.4. We believe that directors with several cross directorships may have a conflict of interest, or be perceived to have a conflict of interest, of acting in the interest of other issuers of which they are a director, or of all shareholders' interests across all their boards. Its addition would ensure boards address the cross shareholdings and provide disclosure to shareholders as to why the appointee is still considered independent despite cross-directorships.

We note that NZX has suggested that the cross-directorship factor is not required because the "close personal relationships (including close social or business connections) factor" introduced into the Code at the 2022 review may somewhat address the concern". However, we would argue that the new factor is limited to a relationship "with anyone in the categories listed above" which does not include other board members.

The Code is proposed to be changed such that a director may be deemed independent (if they have no disqualifying relationship under the rules and they do not satisfy another factor in Table 2.4, or have any other issues concerning their independence) when they have "… a relevant interest in 10% or more of a class of the issuer's quoted equity securities (10% holder), or is a senior manager of, or person otherwise associated with, a 10% holder."

The NZCGF maintains that 5% remains an appropriate threshold at which a board should start to actively consider the effect of the shareholding on a director's independence. We note that the 5% limit is also in-line with the limit at which shareholders must disclose their substantial holding and consider that it would be parsimonious to keep these limits the same. The proposal would create a misalignment between what NZX suggests is a level of shareholding questioning a disqualifying relationship and what NZ legislation defines as a substantial holding that needs to be reported to the market.

The consultation paper notes that ASX is currently consulting on changing its equivalent test to refer to 10% or greater holders. However, we also note that international best practice advocacy groups, such as the International Corporate Governance Network (ICGN), have submitted that they do not support the proposal (as have a range of other organisations including investors and accountancy firms).

We note there have been earlier concerns from NZX and submitters (including the NZCGF) regarding the rigid application of code factors in a box ticking manner (and not necessarily consistent with the holistic approach that is intended by the Rules). Given this context, we strongly support framing the factors at levels that prompt consideration and disclosure. If the tests are calibrated at 10%, we have a concern that where a directors' smaller interests (e.g. 9.9%) actually do compromise independence, such holdings may not be considered in the manner intended by the definition in the Code, resulting in misclassifications and inadequate disclosures to shareholders.

Finally, the NZCGF agrees with the NZX's view that the interests and relationships which directors are required to disclose for the purpose of Interests Register are narrower than those which would indicate a Disqualifying Relationship. This provides support for the notion that director independence settings are intended to expand upon existing legislation, with the aim of further reducing instances of poor corporate governance in NZ listed companies.

4. Do you consider that a factor relating to a director's personal financial exposure to an issuer, such as investment exposure should be included in the Code, noting that Code factor 2 addresses revenue derived from an issuer?

Yes, we believe that a director's assets and revenues are both relevant in determining whether a director has a conflict of interest. The NZCGF maintains that 5% remains an appropriate threshold at which a board should start to actively consider the effect of the shareholding on a director's independence.

5. Should we propose a Rule requirement or include in the Code that long tenured (12 years or more) directors stand for re-election on an annual basis? Should this only apply to directors who have been determined to have no Disqualifying Relationship?

In accordance with its guidelines, the NZCGF supports this Rule requirement or Code inclusion and considers that long-tenured directors which the Board has determined to have no Disqualifying Relationship should stand for re-election on annual basis. This may at least incentivise such directors to reclassify themselves as non-independent. Regardless, NZCGF considers directors with tenures of 12+ years should be classified as non-independent.

Given the introduction of the "explain" obligations arising from the strengthened Recommendation 2.4 from financial years ending 31 March 2025, we ask NZX to provide guidance regarding what is a reasonable explanation for overriding the Recommendation 2.4 factors when a director is classified. Specifically, we believe that NZX should clarify that the relationship and associated conflicts are relevant to the classification whereas the director's ability to manage the resulting conflict is not in and of itself sufficient to support the classification of independence.

The NZCGF continues to advocate for approximately 9-10 years as the point in a director's tenure at which they become non-independent, which is consistent with ASX guidance, the NZCGF guidance, and the UK Corporate Governance Code, which are all set at nine years. We believe that a shorter timeframe than 12 years is entirely appropriate as this is effectively the trigger for boards to begin explaining to shareholders why they have decided on independence.

If NZX does not change settings, we recommend that NZ RegCo closely monitors director independence assessments and reports to the market on quantitative metrics regarding the number of long tenured directors and the proportion of such directors that have been classified as independent and non-independent.

6. Is it common practice for issuers to seek a self-attestation from directors, or director candidates, in relation to whether or not the director or director candidate has a Disqualifying Relationship?

N/A.

Composition Settings

NZCGF advocated for a change to Code recommendation 3.1 in our first submission so that one member of an Audit Committee is both a financial expert and is an Independent Director. We are pleased that the NZX has elected to amend recommendation 3.1 in this manner.

The NZCGF welcomes that the NZX is considering changing Code recommendation 3.4 to recommend that a nomination committee is comprised only of independent directors. We note that the Code is on a comply-or-explain basis and so this would, at the very least, lead to additional disclosure surrounding director appointments.

7. What would the benefits be to the integrity of an Audit Committee if the member who has an accounting or financial background, was also an independent director rather than a non-independent director?

This would further enhance the protections which an Audit Committee provides to all shareholders. Shareholders would have greater confidence in the Audit Committee, and its ability to effectively monitor financial risks and financial disclosures, if one independent director had accounting and/or financial competence.

8. How difficult would it be for issuers to adopt the amended recommendation 3.1 so that one member was both an independent director and had an accounting or financial background, noting this would operate on a 'comply or explain' basis?

N/A.

9. Do you consider that NZX's current audit committee composition settings are appropriate from a market integrity perspective?

We believe that ideally all directors on the Audit Committee should have either accounting or financial competence. However, we appreciate the practical constraints and that this may be challenging in the context of smaller issuers and therefore the amendment proposed in item 8 is in our view appropriate for the current state of the market and director pool.

10. Are there any changes that you would propose to NZX's current audit committee composition settings? If so, how would those changes support market integrity, and enable greater compliance?

In the immediate consultation the Forum supports the proposed recommendation that the committee includes at least one member who is both independent and has an accounting or financial background. However, the commentary could note that ideally all members of the Audit Committee should have either accounting or financial competence.

11. What would the benefits be to the integrity of the director appointment and independence assessment process if the Code recommended that an issuer's Nomination Committee was solely comprised of independent directors?

If the Code recommended that an issuer's Nomination Committee was solely comprised of independent directors, and these directors' independence classifications were appropriate, then this could provide additional confidence that controlling shareholders were not unduly influencing director appointments.

However, we have reservations that this change goes too far, is out of step with requirements in other markets and may be impractical to implement. For issuers with a controlling shareholder, the controlling shareholder still ultimately has voting rights, and likely determinative voting power, for board appointments. At a practical level, we anticipate this means directors would be unwilling to be put forward if there was a material prospect that a majority shareholder would vote against them.

The Forum considers that the issues relating to independence as they relate to issuers with a controlling shareholder are better addressed by clarifying the definition of independence and through a code recommendation (or stronger formulation) that a director is not classified as independent unless supported by a majority of minority shareholders.

12. Do you agree with the proposed changes to the Code commentary to recommendation 3.6 relating to the composition of takeover committees?

The Forum reiterates that independence from the bidder is critical when considering a takeover offer but maintains that having no disqualifying relationship is also important. Director independence is important because, by way of example, shareholder groups may have different interests (e.g. be a supplier, have a marketing arrangement, have other industry interests) and shareholders and management are likely to have divergent interests in respect of the offer. We would therefore reverse the proposed commentary for recommendation 3.6 and explain that the committee would ideally be comprised of independent directors.

Disclosures

The NZCGF has argued previously that the disqualifying relationships outlined in Table 2.4 of Recommendation 2.4 of the Code should be considered holistically, and that boards should be continually interrogating and disclosing directors' conflicts of interest. The Forum continues to support better disclosure around the nature of a director's interests and how the board has formed a view that the director does not have a disqualifying relationship both in Annual reports and in the relevant notice of meeting.

As argued above, we recommend that NZX analyses how the current regulatory settings are working as we believe that a material clarification of the definition and clear guidance are required.

We recommend that NZ RegCo / NZX actively monitors director independence assessments to ensure that boards are undertaking a holistic and meaningful assessment of independence. NZ RegCo / NZX should publish examples of good and bad practice, and quantitative information around determinations (see above regarding board tenure). Over time this could lead to a greater body of acceptable market practice, particularly given there is a requirement for issuers to publish their rationale where they determine that a director is independent notwithstanding that one of the indicia in Recommendation 2.4 of the Code applies, from the 31 March 2025 financial year.

At the 2022 Code Review, NZX mandated issuers disclose the reasons the board has determined a director, or director candidate, has no disqualifying relationship if one of the Code factors contained in Table 2.4 is present. We support those changes.

Furthermore, the Forum supports the current proposal that the reasons, and the nature of the interest or relationship that triggered the factor, is to be disclosed:

- in a notice of meeting relating to the appointment, election, or re-election of that director, and
- in a market announcement relating to a director's independence status.

This change has the potential to change market practice, but only if there is strong guidance regarding acceptable "explains" and active monitoring.

13. Are there any practical concerns about this proposal from an issuer's perspective. What, if any, changes to existing processes and practices would issuers need to make in order to comply with the increased proposed disclosure obligations?

We do not consider that there would be any practical concerns which could not be overcome in this matter. We support the proposal.

14. Are there any practical concerns from a director or candidate perspective around the proposals to include greater disclosure requirements on issuers in relation to the assessment of a director's independence as described above?

N/A

15. If NZX introduces requirements for greater disclosure as set out above, for notices of meetings and market announcements, should Recommendation 2.4(c) be elevated to a Rule requirement to require this information also to be included in a notice of meeting, rather than reported against on a 'comply-or explain' basis which is the current setting.

The Forum would prefer that Recommendation 2.4 c) be elevated to a Listing Rule. We consider disclosures regarding directors' independence classifications to be of high importance.

Minority shareholder protections

NZX notes that minority shareholder protections are "one of the most controversial aspects of the review…" Respectfully, we disagree as such protections have existed to some degree on many stock exchanges over time. Protection of minority shareholder rights is an underpinning principle for corporate governance in listed markets, and a common element of governance arrangements in unlisted companies.

We consider it important that minority protections in the NZ market are strengthened. Under current settings there is the potential that minority shareholders are vulnerable when exposed to a majority shareholder with divergent interests.

The Forum notes that existing NZX settings provide certain rights to minority shareholders, in particular the right to force a controlling shareholder(s) to a public shareholder poll/vote on all key issues e.g. transactions (including capital raisings). Public accountability is valuable – in some circumstances minority shareholders have voting power (e.g. when the major holder is excluded from voting), in others the public accountability forces disclosure and "social monitoring", i.e. such public shareholder votes could be averse to controlling shareholders because of potential media coverage and reputational damage. Additionally, the rights of shareholders to elect directors and vote on major and related party transactions, for instance, are conditions on which shareholders depend.

Shareholders commit capital because of these protections provided by the Rules. We believe that the Listing Rules/Code/Guidance Notes should also provide shareholders with the assurance that at least two directors can fairly present their interests without the perception they have relationships which compromise this ability. The current application of current Listing Rules/Code/Guidance Notes does not provide this level of protection in our opinion. This base level of protection is critical as is evidenced by examples of the protections exercised, value created (or value destruction avoided) by strong independent directors.

We especially argue that additional protections are required when an issuer has a majority and/or controlling shareholder(s) that could blunt the ability of minority shareholders to exercise their rights. Control of the Board enables the majority and/or controlling shareholder(s) to potentially have influence greater than their proportional shareholding when it comes to determining company strategy, which transactions should be considered and executed, and what proposals should be put to shareholder vote.

We acknowledge the submission, that if directors and Boards were to discharge their obligations, free of conflicts from the relationships in the definition of disqualifying relationship, and act in the best interests of the issuer, there would be no need for minority shareholder protections. If that logic were extended to its logical conclusion, there would be no need for many corporate governance protections at all. The Forum maintains that regulatory settings which seek to prevent or minimise such outcomes (and agency costs) are preferrable, and hence why the NZCGF advocates for enhanced minority shareholder protections. Furthermore, it appears to the Forum that given the high proportion of controlled companies on the NZ exchange, that protections for minority shareholders of NZ listed companies is especially important.

But while the NZCGF believes that a vast majority of directors do act in such a manner, we recognise that there have been instances over time where this has not been, or has not been perceived, to be the case and minority shareholders have considered that they have incurred agency costs. This is also demonstrated by the academic work NZX commissioned from Dr Geng. In addition, the improper management of the conflict does not depend upon directors neglecting their responsibilities. For example, minority shareholders may reasonably wish to

ensure that for the independent directors as a group to be classified as independent, those directors have the appropriate skills and experience to effectively address agency conflicts with a controlling shareholder.

In our first submission on director independence, the Forum noted that "…the dominant shareholder(s) has determinative power to appoint and remove the directors, which creates a structural alignment/incentive that can influence (or be perceived to influence) the director where there is a conflict of interest between the dominant/controlling shareholder and minority shareholders. Non-conflicted shareholders have no ability to influence either the selection of the independent directors or their classification."

We noted in our last submission that there was general support in the Forum for a proposal that for "…issuers with a dominant shareholder(s), there be a requirement for one or more directors to be appointed (or, in a weaker formulation, classified as Independent) … [and] be supported by a majority of minority shareholders (i.e. shareholders other than the dominant shareholder(s)). This ensures that boards are comprised of at least one or two directors whom minority shareholders believe can fairly present their interests to the board. Directors which have the support of the minority shareholders are often referred to in the literature as having 'enhanced independence'." For completeness, the Forum also considered whether a 'Minority Shareholders Committee' could also provide a solution in the case where there are controlling shareholder(s).

The Forum is disappointed that the NZX did not seek to consult further on such proposals, particularly as we were open to these additional minority shareholder protections being added to the Code, i.e. to enter the regulatory settings on a 'comply-or-explain' basis. That is, they would not be mandatory for Issuers with controlling shareholder(s).

We note that one of NZX's reasons for not considering the proposal further is that in NZ there are shareholder approval rights in respect of Major and Related Party Transactions. However, we disagree this is a sufficient protection for shareholders because:

- Those approval rights also exist in other regimes where there are also greater minority shareholder protections (e.g. the UK). While there is a current consultation regarding the removal of certain shareholder approval rights, this is being strongly opposed by investor groups.
- Most board decisions do not relate to Major and Related Party Transactions, for instance due to the relatively large materiality thresholds that apply or due to certain exclusions that depend on (in some cases) certification by independent directors.
- NZ RegCo grants waivers in respect of Major and Related Party Transactions and, in the Forum's experience, relies extensively on confirmations provided by (independent) directors in doing so (though we note and commend NZX for the materially higher thresholds at the last review).

While our preference remains for a minority shareholder regime to be included and, given NZX is not intending to progress this, we now advocate that the Code should be amended so that in the case of a controlled company (sum of associated substantial holdings >30%) the Board should disclose the voting results for the election of (at least two) independent directors excluding the votes cast by substantial-shareholders, and the basis on which the board has determined those directors to be independent (noting the purpose statement around independence in the Code). This would result in the Board disclosing whether such independent directors would have satisfied the 'enhanced independence' criterion. As this disclosure would be made on a 'comply-or-explain' basis, in the case that issuers did not comply this would mandate that directors explain why the board has not disclosed whether the independent directors met the enhanced independence criterion.

Counterarguments against this proposal may centre on the 'one-share, one-vote' principle and the idea that Boards are best placed to determine director independence. A key reason for 'one share, one vote' is to counter undue influence from shareholders under systems where there are shareholders with more than 'one vote per share'. Our proposal aims to manage undue influence of major shareholders that de-facto may have more influence over the board's composition than their holding entitles them.

We consider that the movement to a comply-or-explain disclosure requirement on minority shareholder voting with respect to directors' independence classification is an appropriate, small-step in this direction for the NZ listed market.

Director residence

16. Do you consider that it would be helpful for NZX to develop additional guidance as to how the term 'ordinarily resident' should be interpreted? If so, do you consider the proposed factors to be appropriate?

The NZCGF considers that it would be helpful for NZX Policy to define for NZ RegCo the term 'ordinarily resident'. We consider that the test for tax purposes (physical presence in New Zealand for at least 183 days in a 12-month period) to be appropriate.

17. Do you consider that the residency requirements should be amended so that an issuer is required to have two directors who are resident in New Zealand or Australia?

The NZCGF does not consider that residency requirements need to be amended; they remain appropriate in our view. We do not believe that there is such a dearth of NZ-resident directors that this could be a significant issue, even during the Covid pandemic.

18. Do you consider that the residency requirements should be amended so that an issuer is required to have only one director who is ordinarily resident in New Zealand?

No, for the same reasons as given in our answer to Q17. New Zealand is a small place, but it is not that small – and the population has increased materially over recent decades.

* * *

Once again, we welcome the opportunity to provide feedback in this second consultation on director independence settings that are contained in the NZX Corporate Governance Code and NZX Listing Rules. We acknowledge NZX's constructive engagement through the NZX Corporate Governance Institute and with the NZCGF in response to our advocacy on this issue.

Please note that individual Forum members may make their own submissions directly to NZX, and this submission will be published on our website (www.nzcgf.org.nz) and LinkedIn page.

Yours sincerely,

Dr Samuel M. Porath
Chair
NZCGF