

## NZSA Policy No 21 – Independent Advice for the Board

Application: This policy applies to all NZX listed companies.

Purpose: NZSA maintains a range of policies to positively influence the behaviour of all participants in the NZX listed company sector. These policies should be read in the context of the NZSA Policy Framework Statement.

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### **Statement No 21:**

This policy document is a new policy following an evolution of the former Policy 11 (Role of the Company Secretary). This recognises the broadening of the roles played by multiple internal executives and external professionals in ensuring the Board receives effective assurance in the governance of key risks associated with an organisation.

### **1.0 Policy: Independent Advice to the Board**

- 1.1 NZSA expects that the key business and financial risks faced by an organisation are clearly identified, with regular Board-level assurance activity in place to encourage risk mitigation.
- 1.2 Nothing should stand in the way of the Board’s ability to receive **independent, impartial and high-quality** information in relation to governing those risks, nor should there be any hindrance to those providing it.
  - a) NZSA expects that any Board member of a listed organisation has access to independent advice from specialists and/or executives within the company they are governing, as a means of receiving assurance information.
  - b) Similarly, relevant staff within the organisation should have unfettered access to Board members at any time and without reference to the CEO (regardless of reporting line).
- 1.3 NZSA will look to the company’s Board Charter and Annual Report disclosures for evidence to determine the extent to which Board members have the ability to secure independent advice, either from internal, external or co-sourced resources.
- 1.4 We expect that the Audit and Risk Committee (ARC) of the Board will supervise financial information flows to ensure accuracy and objectivity of financial summaries.

1.5 NZSA expects that the ARC Chair is not the Chair of the Board.

## 2.0 Advocacy

2.1 NZSA will continue to encourage a 'broader' interpretation of s128 of the Companies Act 1993, which states that "*The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company.*"

- a) In practice, this sees the Board appoint the CEO.
- b) There may be other internal assurance roles, such as Internal Audit or General Counsel, that a Board may require as 'dotted-line' reporting to offer greater independent insight.

## 3.0 Commentary

3.1 We note that 'assurance' is a key activity for a Board member, as defined within the NZ Institute of Director's '4 Pillars' framework.

3.2 'Assurance' is predicated on an organisation having a clear understanding of its key risks, from a corporate, operational or financial perspective. This implies an organisation-specific approach as to the types of independent advice required by a Board.

3.3 Board members will use a range of internal and external sources to gather assurance information for company proposals and activities or provide support to the Board. Notwithstanding the commentary in section 3.2, typical roles may include a Company Secretary, General Counsel and Internal Auditor.

- a) External Board advisors (including lawyers or consultants) are likely to play some role in supporting assurance activity.
- b) NZSA recognises that assurance roles within an organisation are likely to be contained within an organisation structure reporting to company executives.
- c) Nonetheless, regardless of reporting line, it is likely that key assurance roles will have access to the Board – in some cases, supported by 'dotted-line' or dual-reporting relationships with the Board.
- d) NZSA notes that the key objective is to ensure independence of advice – this is a primary consideration that transcends reporting line.

3.4 The core support provided to a Board may include:

- a) Review and improvement of governance and corporate policies (for example, the development of corporate policies required to satisfy the demands of investors or stakeholders).

- b) Reviewing company and/or external proposals (including Takeover proposals).
  - c) Understanding and mitigating core organisational risks.
  - d) Performing critical transactional tasks (such as corporate filings or market releases) to maintain compliance.
- 3.5 NZSA recognises that a Board Audit and Risk Committee may also work closely with the company's internal audit function in order to support assurance and independent advice to the full Board or Chair.
- a) We note that some issuers have adopted a “co-sourcing” approach to internal audit activities; ie, utilising both internal and external resources, to support delivery of an internal audit plan agreed by the Audit and Risk Committee (ARC).
  - b) While cost may be a concern for some issuers, NZSA is generally supportive of initiatives that improve independent assurance.
- 3.6 We recognise that in some cases, it may be difficult for staff within an organisation to provide impartial advice to the Board, due to a potential conflict of interest as a result of their reporting line to another executive (eg, CFO or CEO).
- a) NZSA encourages an open culture of dialogue between Board members and staff, insofar as encouraging the free flow of impartial and high-quality information.
  - b) Where it becomes untenable or difficult for this to occur, we expect that staff may be considered as a protected person under the Protected Disclosures Act 2000 (ie, ‘whistleblowing’).

## **4.0 Key Regulatory Requirements**

### 4.1 Protected Disclosures Act 2000

## **References**

[Governance NZ](#)

[NZ Institute of Directors](#)

**Definitions**

none

**Related Policies**

Policy 4 – Employee Engagement and Whistleblowing

Policy 6 – Independent Directors

**Document Control**

This document was approved by the NZSA Board:	<b>April 2022</b>
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