

## NZSA Policy No 1 – Director Fees

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 1:**

This policy document replaces the previous NZSA policy document dated July 2018. It aims to set out best-practice conduct in terms of director fee disclosure and the process associated with changes in non-executive director's fees. Key changes in this update include recognition of the maturity of listed entities and their impact on director fee payments.

The scope of the policy applies to non-executive directors, unless otherwise stated. Non-executive directors can be either non-independent or independent, depending on factors contained within the NZX Code of Corporate Governance. Non-executive directors do not hold a usual executive role within the organisation.

## **1.0 Policy: Director Fees**

### **Director Fee Payments**

- 1.1 Director fee pools or the amount approved for each individual non-executive director role must be clearly and comprehensively disclosed in companies' annual report.
- 1.2 Shareholders expect non-executive director fee pools to include all amounts paid to them including any superannuation contribution and the value of share-based payments
  - a) NZSA expects director fee pools approved by shareholders to include both cash amounts paid to directors and the value (at award) of any non-cash payments.
- 1.3 Companies should not accrue retirement benefits for non-executive directors.
- 1.4 Companies should not award options or other share-based payments for non-executive directors.
- 1.5 A policy exception relating to the award of options or other share-based payments will be

considered by NZSA for companies at an early stage of their life-cycle and for US-based directors. Any such award should require shareholder approval.

- a) As per section 1.1, any options, share-based or non-cash payments to non-executive directors should be included in both the limits set by the directors fee pool and the disclosure of actual fees paid to directors.
  - b) For any options or share-based payments for Directors, NZSA expects disclosure of the methodology used to support the incentive – including metrics, weightings, targets and the level of achievement.
  - c) We expect any company paying share options to directors to disclose an assessment of the dilutionary impact on shareholders as part of the explanatory notes for any resolution proposed for approval.
  - d) Share options are expected to be long-term in nature, with an assessment period over at least 2 years. We also expect that the holder is subject to an escrow period of one year post-vesting.
- 1.6 Special exertion benefits, additional to director fees, may be acceptable in limited circumstances. Companies should conform to NZX guidelines.
- a) As per section 1.1, the sum of special exertion benefits paid to non-executive directors should fall within the cap of any explicit ‘headroom’ approved by shareholders within the Director Fee Pool (as per 2.11.1 of the NZX Listing Rules).
  - b) We expect both the amount and the reason for any special exertion benefits paid to individual directors to be disclosed
- 1.7 In considering circumstances where special exertion payments may be acceptable, NZSA will consider:
- a) the extent of disruption facing the organisation
  - b) step-change internal development
  - c) additional effort associated with Schemes of Arrangement and/or Takeovers as a ‘target’
- 1.8 Shareholders expect that companies with an executive Chair (a dual role we do not favour) should have a significantly lower total fee pool than their peers.

### ***Director Fee Increases***

- 1.9 In seeking an increase for the director fee pool, companies should state the percentage increase sought as well as the amount in dollars and should outline the distribution of pool funds, including the level of proposed fees for each director (or position in the case of committee chairs yet to be appointed) for the next financial year. NZSA continues to support individual Board judgements as to individual fee allocations.
- 1.10 In addition, companies should assess whether they have an optimal board size. On

occasion it may be more appropriate to reduce the number of directors rather than seek an increase in fees.

- 1.11 The proposed fee pool, and the fees paid to individual directors and the Chair, must be reasonable and supported by some form of independent benchmarking.
- 1.12 While NZSA recognises the relationship between Directors Fees and Market Capitalisation, we understand that market capitalisation may not be the sole factor determining fee levels.
- 1.13 Where independent consultant and/or benchmarking reports are used to justify fee increases, the NZSA expects that at least the executive summary from the full report should be made available to shareholders as part of normal disclosure. This should include:
  - a) a summary of the methodology used;
  - b) the actual company comparators or market parameters used to develop the proposed remuneration;
  - c) where a 'peer group' comparator set of companies is used, those companies should be of a similar market capitalisation;
  - d) If relevant, a transparent appraisal around the complexity of the organisation compared with benchmarks.
- 1.14 Where the company constitution allows a pro-rata to increase in the director's fee pool for any appointment made between Annual General Meetings, companies should refrain from seeking fee increases in advance based on the possibility of an increase in board numbers during the year.
- 1.15 The directors must consider the overall performance of the company prior to approaching shareholders for a fee increase. This should include an assessment of relative share price performance.

## **2.0 Commentary**

- 2.1 Unless otherwise specified, our policy statements apply to non-executive directors.
- 2.2 Companies listed on the NZX are required to obtain shareholder approval by ordinary resolution for increases in their total non-executive director fee pools, with the exception of a pro-rate increase where the total number of directors on a Board have increased.
- 2.3 Due to an inherent and unavoidable conflict of interest, directors most often refrain from making a recommendation to shareholders on how to vote on these resolutions.
- 2.4 Directors often seek reports from independent consultants regarding appropriate fee levels.

- a) NZSA notes the inherent conflict caused by the board being the very group that appoints and pays the consultant and the potential difference in recommendations when two consultants have reported on the same company.
- b) We also note the different methodologies used by different consultants. Approaches may include a selected comparator group ('sampling') or a comparison with a full 'population' based off defined parameters.
- c) NZSA notes that a pure comparative approach may result in a reflexive, 'increasing spiral' of director fee levels.
- d) Companies sometimes claim that they are prevented from releasing a report due to the intellectual property rights (IP) asserted by the consultant. NZSA does not believe that a summary disclosure creates any issue with proprietary knowledge of the consultant, and that companies seeking an independent report should ensure that they retain the ability to release a summary excerpt disclosing NZSA requirements outlined in section 1.12 when engaging the consultant.

2.5 Given that there is no formal independent oversight of proposed increases in fee pools, it is important that shareholders exercise their judgement on these resolutions.

2.6 The Companies Act 1993 requires directors to act in the best interests of the company (regardless of remuneration methodology).

2.7 In the UK, a recent case (see 'References') highlighted this by overturning the payment of excessive fees to Directors (representing majority shareholders) during a period where the company chose not to pay dividends to minority shareholders. That formed a series of useful guidelines that NZSA considers applicable within NZ:

- a) Companies should provide clarity on the value of the services they are providing;
- b) Director remuneration should be considered alongside the trading conditions of the company;
- c) There should be transparency (ie, clear disclosure) of fees and payments;
- d) Fees should be supported by documentation, review and appropriate approvals;
- e) Objective commercial criteria should be used to support the payment of Directors Fees.

2.8 NZSA recognises that retirement benefits for directors are not a common feature of the listed company landscape in New Zealand, with such benefits requiring approval from shareholders.

- a) Nonetheless, we note that many company constitutions continue to explicitly allow for retirement benefits.

- b) It can also be difficult for shareholders to re-visit prior disclosures and approved resolutions from previous years.
- c) We consider it a simple matter for listed entities to include a short statement within their remuneration reports.

2.9 The payment of share-options to independent directors is not generally acceptable in a New Zealand context.

- a) We note, however, that this is relatively commonplace in the United States. NZSA does not consider this best practice as it potentially impacts a director's independence and creates a potential for misalignment between director incentives and shareholder interest
- b) However, we also recognise that it may be advantageous for certain companies to retain a US-based director and that this may not be possible without offering appropriate terms.
- c) We also recognise some examples of NZ-listed 'startup' companies paying options to directors as a method of saving all-important cash in the short-term. This represents a valid trade-off for shareholders, balancing short-term cash preservation with long-term dilution.
- d) For the reasons outlined in 2.9(c), in that non-cash awards to directors are used as an alternative to cash payments, we would expect to see companies director fee pools cover the total value of director's remuneration (not just the cash component).
- e) Where share options are paid to directors, we expect alignment with the long-term interests of shareholders.

2.10 NZSA notes the differing global approaches to the inclusion of share-based payments within independent director remuneration.

2.11 For example, while there is some acceptance of option payments within a UK context in support of incentivising long-term performance, the UK's Financial Reporting Council does not support such payments for non-executive directors. Similarly, share-based payments for non-executive directors are not supported by ASIC guidelines in Australia or by other bodies/exchanges in Asia-Pacific.

2.12 We also note that there is some risk, with a majority-owned company, of executive remuneration incentives being aligned with those of the majority shareholder, with a potential detrimental impact on minority holders. NZSA will consider this within its executive remuneration policy, although we will retain awareness of this situation in examining director remuneration practices.

2.13 We note the recent emergence of Australian company benchmarks used in reports to assess the validity of directors fees for New Zealand-listed entities. In general, NZSA is unlikely to support this as a comparable benchmark for most NZX-listed entities.

2.14 We may consider this an appropriate benchmark in situations where the company's production or administrative base is heavily concentrated within Australia,

### **3.0 Key Regulatory Requirements**

3.1 NZX Listing Rules and Code of Corporate Governance specify disclosure requirements and guidelines for NZX-listed entities.

### **References**

Companies Act 1993

[UK Corporate Governance Code](#) 2018 (Financial Reporting Council)

[NZ FMA Guidelines](#)

[Australian Institute of Company Directors](#)

OECD – [Corporate Governance Board Practices](#) (2011)

Chapman Tripp – [Code Comparison](#), Oct 2019

[Summary of the Booth Case \(UK\)](#) 2016

[Malaysia Stock Exchange Corporate Governance Guide](#)

### **Definitions**

none

### **Related Policies**

Policy 5 – Executive Remuneration

Policy 6 – Independent Directors

Policy 13 – Remuneration Report

Policy 17 – Board Composition

**Document Control**

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