

# ***NZX Corporate Governance Code 2017***

A one stop guide to the remuneration  
related aspects of the new NZX Code



## Introduction

The updated NZX Corporate Governance Code (the Code) was published on 10 May 2017 after extensive consultation by NZX with stakeholders. The expressed purpose of the Code is to promote good corporate governance and ensure a single source of recommendations for New Zealand listed issuers, recognising that boards are in place to protect the interests of shareholders and to provide long term value.

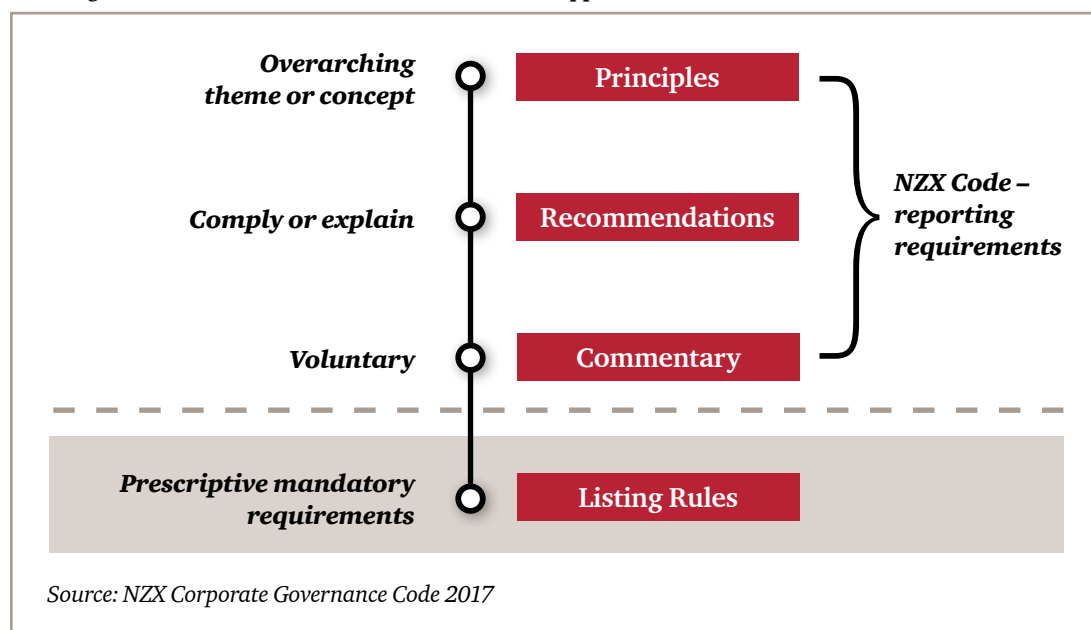
The updated code will take effect from 1 October 2017, so that it must be reported against for reporting periods ending 31 December 2017 and beyond.

## How to apply the Code

It is important to understand the status of the various components of the Code.

The Code is set out in Appendix 16 to the NZX Main Board Listing Rules which all listed issuers must report against, and sets out recommendations and commentary for complying with eight overarching corporate governance principles. The Listing Rules prescribe mandatory requirements for listed issuers and encourage but do not mandate adopting recommendations in the Code. Boards therefore have the flexibility to choose not to adopt the Code's recommendations where a recommendation is considered not appropriate or fit for that organisation's circumstances (under a "comply or explain" approach). If a recommendation is not adopted for any part of the reporting period, the listed issuer must however issue a statement separately identifying that recommendation and what (if any) corporate governance arrangements it has adopted in lieu of the recommendation during the period.

The diagram below summarises how the Code is to be applied.



A key objective of the Code is to encourage issuers to think of disclosure on an ongoing basis rather than as an annual event, and the recommendations have been drafted so as to provide flexibility between disclosure in an annual report or on an issuer's website.

While adoption of the commentary to the code is voluntary we envisage that many organisations will adopt these voluntary actions as best practice. There is already market evidence suggesting that some institutional shareholders are approaching the commentary on a similar "comply or explain" basis to that required in relation to the Code's recommendations.

## Implications of the Code for remuneration related governance

We have prepared this paper as a “one stop” guide to the remuneration related aspects of the Code to assist listed companies (and others wanting to voluntarily align with the Code’s principles) understand and apply the Code in the context of their remuneration practices.

The table below summarises the remuneration related principles and key recommendations outlined in the Code. The rest of this guide then steps through the recommendations, and the commentary which summarises the voluntary actions that can be adopted by listed organisations to give effect to the recommendations.

**Table: Remuneration related principles and key recommendations**

Principle		Key recommendations
<b>3. Board Committees</b> ‘The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.’	<b>3.3 Remuneration committee</b>	<ul style="list-style-type: none"> <li>• An issuer should have a remuneration committee (unless this is carried out by the whole board).</li> <li>• The remuneration committee should operate under a written charter.</li> <li>• At least a majority of the remuneration committee should be independent directors.</li> <li>• Management should only attend remuneration committee meetings at the invitation of the remuneration committee.</li> </ul>
<b>5. Remuneration</b> ‘The remuneration of directors and executives should be transparent, fair and reasonable.’	<b>5.1 Director remuneration</b>	<ul style="list-style-type: none"> <li>• Director remuneration should be recommended by an issuer to shareholders for approval in a transparent manner.</li> <li>• Actual director remuneration should be clearly disclosed in the issuer’s annual report.</li> </ul>
	<b>5.2 Remuneration policy</b>	<ul style="list-style-type: none"> <li>• An issuer should have a remuneration policy for remuneration of directors and officers, which outlines the relative weightings of remuneration components and relevant performance criteria.</li> <li>• The remuneration policy should be disclosed on the issuer’s website (recommendation 4.2).</li> </ul>
	<b>5.3 CEO remuneration</b>	<ul style="list-style-type: none"> <li>• The remuneration arrangements in place for the CEO should be disclosed in the issuer’s annual report.</li> <li>• This should include disclosure of the base salary, short term incentives and long term incentives and the performance criteria used to determine performance based payments.</li> </ul>

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## **Principle 3 - Board Committees**

### **Recommendation 3.3**

- An issuer should have a remuneration committee which operates under a written charter (unless this is carried out by the whole board). At least a majority of the remuneration committee should be independent directors. Management should only attend remuneration committee meetings at the invitation of the remuneration committee.

#### **Key aspects of the commentary**

- The remuneration committee's role is to recommend remuneration packages for directors for consideration by shareholders and to recommend to the board a policy for the CEO and senior management remuneration.
- Issuers should identify in *both annual reports and their website*, the members of the remuneration committee.
- The remuneration committee's written charter should outline the role and responsibilities of the committee, and be made available on the issuer's website (recommendation 4.2). The charter should include the following:
  - the remuneration committee's authority.
  - the requirements relating to its composition (for example, whether a minimum number of Independent Directors are required).
  - the committee's duties and responsibilities.
  - the committee's relationship with the board.
- Issuers can choose *not* to have a remuneration committee, however they should in such instances, under the "comply or explain" approach, explain the alternative measures in place.
- A nomination committee can be chosen to recommend director appointments to the board or otherwise this function can be performed by the remuneration committee.

## **Principle 5 - Remuneration**

### **Recommendation 5.1**

- An issuer should recommend director remuneration to shareholders for approval in a transparent manner. Actual director remuneration should be clearly disclosed in the issuer's annual report.

#### **Key aspects of the commentary:**

- Director remuneration should be approved by shareholders.<sup>1</sup>
- Remuneration proposed for approval should be clearly expressed so that shareholders have a clear understanding of why directors are being paid a particular amount as compensation for their contribution to an issuer.
- Disclosure should outline what individual directors are proposed to be paid and disclose separately amounts payable for committee work.
- Actual director remuneration should be clearly disclosed to shareholders in the issuer's annual report as follows:

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#### **Director remuneration - example disclosure**

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Remuneration for individual directors	disclose (\$) amount for fees and benefits
Fees for committee work	disclose (\$) amount for each committee role
Fees / benefits for any other services provided	disclose (\$) amount for fees and benefits

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<sup>1</sup> Director Remuneration must be approved under Listing Rule 3.5.1

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## **Recommendation 5.2**

- An issuer should have a remuneration policy for remuneration of directors and officers, which outlines the relative weightings of remuneration components and relevant performance criteria.

### **Key aspects of the commentary**

- A board should have a clear policy which sets remuneration at levels that are fair and reasonable in a competitive market (CEO remuneration is addressed specifically under recommendation 5.3 on the next page).
- The issuer's remuneration policy should be made available on its website under recommendation 4.2.
- Executive and non-executive director remuneration should be clearly differentiated in the policy.

The following elements of remuneration should be considered within the remuneration policy framework:

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#### **Executive / Officer remuneration**

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<b>Fixed remuneration</b>	Fixed remuneration should be fair and based on the scale and complexity of the role and should reflect performance requirements and expectations attached to the role.
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<b>Performance based remuneration</b>	Executive remuneration packages should generally contain an element that is determined based on the issuer's performance and the individual's performance.  Performance based remuneration should be linked to clear targets aligned with the issuer's performance objectives and appropriate to its risk profile.
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<b>Equity-based remuneration schemes</b>	Should be carefully designed to support a long term approach and not promote undue risk taking.
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#### **Non-Executive Director remuneration**

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<b>Fixed fees</b>	Levels should reflect the time commitment and responsibilities of the role.
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<b>Performance based remuneration</b>	Fees should not include performance based remuneration as this may lead to bias in decision making.
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<b>Equity-based remuneration</b>	Equity based remuneration is generally acceptable, and non-executive directors may receive securities as part of their remuneration to align their interests with the interests of other security holders.
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<b>Retirement payments</b>	Retirement payments should not be provided other than superannuation.
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- Remuneration consultants used by an issuer should be independent (which for this purpose means not subject to any influence from management, any board member or other party in relation to the work undertaken), engaged by the board, and should sign a declaration of independence. Remuneration consultants should report to the board in relation to CEO and director remuneration, however the board may determine it is appropriate that advice for other (non-CEO) executive remuneration is reported to the CEO, provided that senior management are not in a position to make decisions on their own remuneration outcomes.
- If an issuer publically states that it is relying upon a remuneration consultant's independent remuneration report in respect of decisions relating to *director* remuneration, then a summary of the findings of the report along with the remuneration consultants' attestation of independence should be made public.



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### **Recommendation 5.3**

- An issuer should disclose the remuneration arrangements in place for the CEO in its annual report. This should include disclosure of the base salary, short term incentives and long term incentives and the performance criteria used to determine performance based payments.

#### **Key aspects of the commentary**

- Issuers should disclose information relating to the CEO's remuneration (the general policy and the actual amounts of the remuneration package) and the criteria that the CEO must fulfil to be compensated based on performance.
- The CEO remuneration policy should outline each component of remuneration, such as base salary, short term incentive and/or long term incentive (and can be part of the broader policy under recommendation 5.2).
- Material performance hurdles in relation to incentive payments should be disclosed, together with the details of timing for when share entitlements will vest. An issuer *need not disclose* the precise details of targets (which are typically commercially sensitive) as long as sufficient information is provided as to the type of hurdle that applies e.g. based on 'total shareholder return', 'operational performance' or 'qualitative factors'.
- Issuers should disclose any remuneration payments in their annual report and disclosure should relate to a clearly defined period which is comparable with historical disclosures.
- Disclosure of remuneration payments should be made clearly so that a person can reasonably understand the levels of remuneration that have been earned or have vested for the period, including key performance criteria or hurdles which have been met to warrant the payments or vesting of shares.
- The different components of the remuneration package should be disclosed annually as follows:
  - Target amounts set for the year, and actual short term incentive payments made in the year.
  - Long term incentive grants made and vested in the year.
- Details of long term incentives granted and paid (cash or shares) should be disclosed in the years in which they are granted or vest, together with the basis upon which the incentives have been granted or vested and the period to which they relate.
- Privacy concerns and issues around the disclosure of the CEO's remuneration should be addressed by issuers by obtaining the consent of the CEO to such disclosure on an annual basis or by including consent to such disclosure in the CEO's employment agreement.

***If you have any questions in relation to the Code and its application from a remuneration perspective, please contact one of our remuneration experts to discuss how we can help you.***



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