26 March 2020

Finance and Expenditure Committee
Parliament Buildings
Wellington
New Zealand

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Submission on the Financial Markets (Conduct of Institutions) Amendment Bill

The Institute of Directors (IoD) appreciates the opportunity to submit on the Financial Markets (Conduct of Institutions) Amendment Bill (Bill) which introduces a conduct licensing regime for banks, insurers and non-bank deposit takers. Last year we submitted on the Ministry of Business, Innovation and Employment's options paper on regulating the conduct of financial institutions which has led to the Bill.

Boards are ultimately accountable for what goes on in their organisations and they have a core role in leading and overseeing corporate culture and conduct. Culture and conduct has been a key theme for our membership at our events and in our publications and it remains a priority. The IoD supports boards focusing on long-term sustainability, ethical behaviour, good customer and shareholder outcomes, and a healthy culture for staff.

In our submission we support the intent of the Bill to improve culture and conduct in organisations. However, we also raise concerns around matters associated with the Bill including director responsibilities and personal liability. Notwithstanding our comments here, the IoD may make further comments as this Bill and related matters progress.

About the Institute of Directors

The IoD is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future powered by best practice governance.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development requirements.

The IoD's Code of Practice for Directors provides guidance to directors to assist them in carrying out their duties and responsibilities with high professional standards. All IoD members sign up to the Code.

Overview of the Bill

The Bill introduces a conduct licensing regime for banks, insurers and non-bank deposit takers and includes requirements for:

- financial institutions and intermediaries to comply with a 'fair conduct principle' to treat consumers fairly including by having regard to their interests
- financial institutions to establish, implement, and maintain an effective 'fair conduct programme' which operationalises the fair conduct principle through policies, processes, systems, and controls throughout the business (from the governance level to day-to-day interactions with consumers)
- financial institutions and intermediates to comply with the fair conduct programme (and that financial institutions ensure that intermediaries comply)
- financial institutions and intermediaries to comply with regulations in relation to incentives based on volume or value sale targets.

In addition to the requirements for institutions, the Cabinet paper on the conduct of financial institutions indicates that new accountability requirements for directors and senior managers of deposit takers and insurers in respect of conduct will likely be introduced to supplement the proposed changes in the Bill. The government is also currently consulting on proposed changes to the accountability of directors under a new Deposit Takers Act (replacing the Reserve Bank of New Zealand Act 1989). At this stage, it is not clear how the accountability regimes will work together.

IoD comment

We support the intent of the Bill to improve culture and conduct in organisations. However, we are concerned about matters associated with the Bill including the introduction of greater director responsibilities and personal liability in the near future as signalled by the government. It is important that the Committee is aware of these developments and that they may have significant and adverse effects on fostering good governance and on New Zealand's prosperity and wellbeing.

Boards have to be across an array of complex and diverse issues, and they are current governing through extraordinary times due to COVID-19. They also need to be responsive to increasing stakeholder demands and expectations. New laws targeting directors personally are adding to an already large legal onus and there is greater accountability with active regulators and liquidators and the growth in litigation funding. At the same time, the role of boards is now more important than ever in guiding companies to deliver sustainable success for stakeholders and shareholders. It is critical that boards continue to attract highly skilled, experienced, and responsible stewards for New Zealand's wellbeing and prosperity.

However, our 2019 Director Sentiment Survey (Survey) found that the scope of director responsibilities is more likely to deter directors from taking on governance roles now than 12 months ago (40%, up from 33% in 2018).

The Survey also found that 80% of directors said they spent more time on compliance related activities than in the previous year (up from 71% in 2018). There was also an increase in the proportion of directors (47%, up from 39% in 2018) who agree they are more cautious in business decision-making due to increased personal liability. The impact of increased director liability adds to boards' growing regulatory burden and means they can spend disproportionally more time on compliance rather than performance and strategy.

We are very concerned about the increasing trend of laws and regulations extending director responsibilities and personal liability and the potential unintended negative consequences. This includes discouraging well-qualified people from joining boards, distracting attention from long-term business goals, dampening innovation and ultimately diminishing corporate governance.

Conclusion

We support the intent of the Bill to improve culture and conduct in financial institutions in New Zealand. However, we are concerned about proposals to increase director responsibilities and personal liability. The Committee should be aware of these proposals and they may have significant and adverse effects on fostering good governance and on New Zealand's prosperity and wellbeing. The IoD will continue to engage with policymakers and stakeholders on the design and scope of a director accountability regime in financial institutions including to ensure that any proposed responsibilities and liability of directors are proportionate and appropriate.

We appreciate the opportunity to comment on behalf of our members.

Yours sincerely

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