Corporate Governance Charter

Kidman Resources Limited

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Corporate Governance Charter

Definitions

ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691.
ASX Listing Rules or **Listing Rules**	the Official Listing Rules of the ASX as amended or replaced from time to time.
Audit & Risk Management Committee	that Committee charged with determining, implementing and assessing controls for financial management, financial reporting and risk management generally for the Company.
Board	board of directors of the Company.
Charter	the charter of any Committee set out in this Corporate Governance Charter.
Committee	each committee created by the Board in accordance with this Corporate Governance Charter including without limitation, the Audit & Risk Management Committee and the Remuneration and Nomination Committee.
Company	Kidman Resources Limited ACN 143 526 096
Corporate Ethics Policy	the policy set out in Section E setting out directors' duties given their position with the Company, obligations with respect to trading in securities and general disclosure obligations.
Corporate Governance Principles and Recommendations	*the Corporate Governance Principles and Recommendations 2nd Edition* issued by the ASX Corporate Governance Council in 2007.
Corporate Governance Charter	the policies, procedures and charters set out in this document.
Corporations Act	the *Corporations Act 2001 (Cth)* as amended or replaced from time to time.
Constitution	the constitution of the Company.
Independent Director	a Director who has a sufficient level of independence to the Company, determined in accordance with Section A.1(c) of this document.
Management	the executive directors and senior managers of the Company.
Standing Rules	the general and procedural rules of each Committee set out in Section D of this Corporate Governance Charter.

Section A – Principles of Corporate Governance – Kidman Resources Limited (Company)

A.1 Board of Directors

(a) General

This document sets out the main principles adopted by the Board of the Company in order to implement and maintain a culture of good corporate governance both internally and in its dealings with outsiders.

The Board of the Company is committed to administering the policies and procedures with openness and integrity, pursuing the true spirit of corporate governance commensurate with the Company's needs.

The matters set out in this document are subject to the *Corporations Act*, the Constitution and the ASX Listing Rules.

The purposes of preparing and disclosing the matters set out in this document are to:

(i) formalise procedures to ensure the Company and the Board act in a transparent and appropriate manner in both its internal and external dealings;

(ii) ensure that appropriate checks, balances and procedures are in place to monitor the operations of the Company and those charged with its management; and

(iii) provide a transparent method for shareholders to evaluate the performance of the Company from a corporate governance perspective.

In preparing and implementing this Corporate Governance Charter, the Company and the Board are mindful of the Corporate Governance Principles and Recommendations.

(b) Functions, Powers and Responsibilities of the Board

Generally, the powers and obligations of the Board are governed by the *Corporations Act* and the general law.

Without limiting those matters, the Board considers itself to be responsible for the following:

(i) Ensuring compliance with the *Corporations Act*, ASX Listing Rules and all other relevant laws;

(ii) Developing, implementing and monitoring operational and financial targets for the Company;

(iii) Appointment of appropriate staff, consultants and experts to assist in the Company's operations, including the selection and monitoring of a chief executive officer;

(iv) Ensuring appropriate financial and risk management controls are implemented;

(v) Approving and monitoring financial and other reporting;

(vi) Setting, monitoring and ensuring appropriate accountability for directors' and senior managers' remuneration;

(vii) Establishing and maintaining communications and relations between the Company and third parties, including its shareholders and ASX;

(viii) Implementing appropriate procedures to monitor performance of the Board in implementing its functions and powers;

(ix) Oversight of the Company including its framework of control and accountability systems to enable risk to be assessed and managed;

(x) Input into and final approval of Management's development of corporate strategy and performance objectives;

(xi) Reviewing and ratifying systems of risk management and internal compliance and control, codes of conduct and legal compliance;

(xii) Monitoring Management's performance and implementation of strategy and ensuring appropriate resources are available;

(xiii) Approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestitures;

(xiv) Approval of the annual budget; and

(xv) Liaising with the Company's external auditors.

(c) **Structure of the Board**

The structure of the Board is determined in accordance with the following principles:

(i) to aim for, so far as is practicable given the size of the Company and its operational requirements for the time being, a majority of the Board being Independent Directors;

(ii) to aim for, so far as is practicable given the size of the Company and its operational requirements for the time being, the appointment of a chairperson who is an Independent Director;

(iii) to aim for, so far as is practicable given the size of the Company and its operational requirements for the time being, a chairperson who is not the Managing Director or chief executive officer;

(iv) to have at least three directors; and

(v) each Director will have a written agreement setting out the terms of their employment.

In assessing the independence of directors, the Company has regard to Principle 2 of the Corporate Governance Principles and Recommendations and, generally, will regard an Independent Director as a non-executive director (that is, not a member of management) who:

(i) is not a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;

(ii) within the last three years has not been employed in an executive capacity by the Company or another group member, or been a director after ceasing to hold any such employment;

(iii) within the last three years has not been a principal of a material professional advisor or a material consultant to the Company or another group member, or an employee materially associated with the service provided;

(iv) is not a material supplier or customer of the Company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer; and

(v) has no material contractual relationship with the Company or another group member other than as a director of the Company.

In an effort to ensure that the Board comprises members with a broad range of experience, expertise and skills relevant to the Company, the Board may establish a Nomination Committee if required.

A.2 **The Chairperson**

The Chairperson is responsible for leadership of the Board, for efficient organisation and conduct of the Board's meetings and the briefing of all Directors in relation to issues arising. The Chairperson is responsible for arranging Board performance evaluation and, with the Chief Executive Officer/Managing Director, is also responsible for shareholder communications.

A.3 **Chief Executive Officer/Managing Director**

The Chief Executive Officer or Managing Director is responsible for conducting the affairs of the Company under delegated authority from the Board and implementing the policies and strategies set by the Board. In carrying out his/her responsibilities, the Chief Executive Officer or Managing Director must report to the Board in a timely manner and ensure all reports to the Board present a true and fair view of the Company's financial position and operating results.

The Chief Executive Officer or Managing Director (together with the Chief Financial Officer, if there is one, or other person who performs that function) are required to declare in writing to the Board each year that the financial records have been properly maintained and that the financial statements and notes of the Company for the financial year give a true and fair view of the financial position and performance of the consolidated entity and comply with relevant accounting standards.

The Chief Executive Officer or Managing Director (together with the Chief Financial Officer, if there is one, or other person who performs that function) is required to assure the Board in writing each year that the declaration provided in accordance with section 295A of the *Corporations Act* is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.

A.4 **Company Secretary**

The Company Secretary is directly accountable to the Board, through the chair, on all matters to do with proper functioning of the Board

A.5 **Corporate Code of Conduct**

(a) **Introduction**

This code of conduct sets out the standards which the Board, management and employees of the Company are encouraged to comply with when dealing with each other, shareholders, and the broader community.

(b) **Commitment of the Board and Management to Corporate Code of Conduct**

The Board and Management approve and endorse this code of conduct.

The Board and Management encourage all staff to consider the principles of the code and use them as a guide to determine how to respond when acting on behalf of the Company.

(c) **Responsibilities to Shareholders and the Financial Community Generally**

The Company aims:

(i) to increase shareholder value within an appropriate framework which safeguards the rights and interests of the Company's shareholders and other stakeholders;

(ii) comply with systems of control and accountability which the Company has in place as part of its corporate governance; and

(iii) to act with honesty, integrity and fairness.

(d) **Responsibilities to Clients, Customers and Consumers**

The Company is to comply with all statutory and common law requirements which affect its business.

(e) **Employment Practices**

The Company will employ the best available staff with skills required to carry out their roles.

The Company will ensure a safe work place and maintain proper occupational health and safety practices commensurate with the nature of the Company's business and activities.

(f) **Responsibility to the Community**

The Company will recognise, consider and respect legal requirements impacting upon its operations and comply with all applicable legal requirements.

The Company will act with honesty, integrity and fairness in all dealings with the community.

(g) **Responsibility to the Individual**

The Company recognises and respects the rights of individuals and to the best of its ability will comply with the applicable legal rules regarding privacy, privilege and confidential information.

The Company will maintain the confidentiality of the Company's and our shareholders', customers' and suppliers' information unless required to be disclosed by law.

(h) **Obligations Relative to Fair Trading and Dealing**

The Company will deal with others in a way that is fair and will not engage in misleading or deceptive practices or conduct.

(i) **Conflicts of Interest**

The Board, Management and employees must not involve themselves in situations where there is a real or apparent conflict between their interest as individuals and the interest of the Company. Where a real or apparent conflict of interest arises the matter should be immediately brought to the attention of the Chairperson, in the case of a Board member, or the Managing Director or Chief Executive Officer, in the case of a member of Management who is not a director, or an immediate supervisor in the case of any other employee, so that it may be considered and dealt with in an appropriate manner.

(j) **Compliance with the Code**

Any breach or non-compliance with this code is to be reported directly to the Chairperson or, if he is unavailable, another director.

(k) **Periodic Review of Code**

The Board will monitor compliance with the code and will review the terms of the code at regular intervals Suggestions for improvements or amendments to the code can be made to the Company Secretary at any time.

(l) **Code of Conduct for employees (and contractors)**

The Company shall ensure that the above principles are implemented and adopted by employees and contractors of the Company by importing the following principles into the terms of such engagements:

(i) To actively promote the highest standards of ethics and integrity in carrying out their duties for the Company;

(ii) Disclose any actual or perceived conflicts of interest of a direct or indirect nature of which they become aware and which they believe could compromise in any way the reputation or performance of the Company;

(iii) Respect confidentiality of all information which is acquired in the course of the Company's business and which is not then in the public domain and not disclose or make improper use of such confidential information to any person unless specific authorisation is given for disclosure or disclosure is legally mandated;

(iv) Deal with the Company's customers, suppliers, competitors and each other with the highest level of honesty, fairness and integrity and to observe the rule and spirit of the legal and regulatory environment in which the Company operates;

(v) Protect the assets of the Company to ensure availability for legitimate business purposes and ensure all corporate opportunities are enjoyed by the Company and that no property, information or position belonging to the Company or opportunity arising from these are used for personal gain or to compete with the Company;

(vi) The Company is committed to the ideal of equal employment opportunity and to providing a workplace that is free of harassment and discrimination. To this end the Company will observe the rule and spirit of the legal and regulatory environment in which the Company operates;

(vii) Report any breach of this code of conduct, and the Company will treat such reports made in good faith with respect and in confidence.

A.6 **Selection of External Auditor and rotation of Audit Engagement Partner**

(a) **Responsibility**

The Board is responsible for the initial appointment of the external auditor and the appointment of a new external auditor when any vacancy arises. Any appointment made by the Board must be ratified by shareholders at the next annual general meeting of the Company.

(b) **Selection Criteria**

Mandatory criteria

Candidates for the position of external auditor of the Company must be able to demonstrate complete independence from the Company and an ability to maintain independence through the engagement period. Further the successful candidate must have arrangements in place for the rotation of the audit engagement partner on a regular basis.

Other criteria

Other than the mandatory criteria mentioned above, the Board may select an external auditor based on criteria relevant to the business of the Company such as experience in the industry in which the Company operates, references, cost and any other matters deemed relevant by the Board.

(c) **Review**

The Audit and Risk Management Committee will review the performance of the external auditor on an annual basis.

A.7 **Committees**

One of the functions of the Board is to form and monitor any special purpose Committees considered necessary or desirable to better implement this Corporate Governance Charter.

As at the date of adoption of this Corporate Governance Charter, the Board has determined to establish the following Committees for this purpose:

(i) An Audit & Risk Management Committee; and

(ii) A Nomination and Remuneration Committee.

The Charters of each of these Committees are set out in this document.

Section B – Audit & Risk Management Committee Charter

B.1 Committee Members

The Board has established an Audit & Risk Management Committee. The Corporate Governance Principles and Recommendations require the Audit & Risk Management Committee to be structured so that it:

(a) Consists only of non-executive Directors;

(b) Consists of a majority of Independent Directors;

(c) Is chaired by an Independent Chairperson who is not the Chairperson of the Board; and

(d) Has at least three members.

Each member of the Audit & Risk Management Committee is to be financially literate and at least one member of the Committee should have accounting or related financial management experience.

The company secretary and representatives of the auditors may be invited to attend meetings of the Audit & Risk Management Committee from time to time.

B.2 Purpose

(a) This Audit & Risk Management Committee Charter (the **Charter**) sets out the role, responsibilities, composition, authority and membership requirements of the Audit & Risk Management Committee of the Company.

(b) The Charter will be made publicly available, ideally by posting it to the Company's website in a clearly marked corporate governance section. The Charter is available to shareholders of the Company upon request to the Company Secretary.

B.3 Definition and Objectives of the Committee

(a) The Audit & Risk Management Committee (**Committee**) is a Committee of the Board.

(b) The Committee's primary function is to assist the Board in discharging its responsibility to exercise due care, diligence and skill in relation to the Company by:

Audit Related

(i) ensuring that the quality of financial controls is appropriate for the business of the Company;

(ii) reviewing the scope and results of external and internal audits;

(iii) monitoring corporate conduct and business ethics, including Auditor Independence and ongoing compliance with laws and regulations;

(iv) maintaining open lines of communication between the Board, Management and the external auditors, thus enabling information and points of view to be freely exchanged;

(v) reviewing matters of significance affecting the financial welfare of the Company;

(vi) ensuring that systems of accounting and reporting of financial information to shareholders, regulators and the general public are adequate;

(vii) reviewing the Company's internal financial control system;

(viii) considering the appointment of the external auditor and approving the remuneration and terms of engagement of the external auditor;

(ix) monitoring and reviewing the external auditor's independence, objectivity and effectiveness, taking into consideration relevant professional and regulatory requirements; and

(x) developing and implementing policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm.

Risk Related

(i) ensuring the establishment of an appropriate risk management policy framework that will provide guidance to Management in developing and implementing appropriate risk management practices and systems;

(ii) periodically reviewing Management's implementation of risk management practices and systems;

(iii) clearly communicating the Company's risk management philosophy, policies and strategies to Directors, Management, employees, contractors and appropriate stakeholders;

(iv) ensuring that Management establishes a risk aware culture which reflects the Company's risk policies and philosophies;

(v) reviewing methods of identifying broad areas of risk and setting parameters or guidelines for business risk reviews; and

(vi) making informed decisions regarding business risk management, internal control systems, business policies and practices and disclosures.

(c) Membership of the Committee and the qualifications of the members will be disclosed in the Annual Report.

B.4 **Reporting**

(a) Proceedings of all meetings are minuted and signed by the Chairperson.

(b) The Committee, through its Chairperson, is to report to the Board at the earliest possible Board meeting after each Committee meeting. Minutes of all Committee meetings are to be circulated to the Board. The report should where applicable include but is not limited to:

(i) the minutes of the Committee and any formal resolutions;

(ii) information about the audit process including the results of internal and external audits;

(iii) an assessment of:

(A) whether external reporting is consistent with Committee members' information and knowledge and is adequate for shareholder needs; and

(B) the management processes supporting external reporting;

(iv) procedures for the selection and appointment of the external auditor and for the rotation of external audit engagement partners;

(v) recommendations for the appointment or, if necessary, removal of an auditor;

(vi) an assessment of the performance and independence of the external auditor and whether the Committee is satisfied that independence of this function has been maintained having regard to the provision of non-audit services;

(vii) assessment of the performance and objectivity of the internal audit function;

(viii) results of its review of risk management and internal compliance and control systems;

(ix) any matters that in the opinion of the Committee should be brought to the attention of the Board and any recommendations requiring Board approval and/or action; and

(x) at least annually, a review of the formal written Charter and its continuing adequacy, and an evaluation of the extent to which the Committee has met the requirements of the Charter.

(c) In addition, the Chairperson of the Committee must submit an annual report to the Board (at the Board meeting at which the year end financial statements are approved) summarising the Committee's activities during the year. The report must include:

(i) the number of meetings held during the relevant period and the number of meetings attended by each member;

(ii) details of any change to the Independent status of any member during the relevant period, if applicable; and

(iii) details of any determination by the Audit & Risk Management Committee regarding the external auditor's independence.

B.5 **Risk Management Policies**

The Committee will ensure that the risk management policies of the Board are implemented by:

(a) devising a means of measuring the effectiveness of risk management and internal compliance and control systems; and

(b) reviewing, at least annually, the effectiveness of Management's implementation of the risk management system.

B.6 **Attendance at Meetings**

(a) Other Directors (executive and non-executive) have a right of attendance at meetings. However, no Board Director is entitled to attend that part of a meeting at which an act or

omission of that Director or a contract, arrangement or undertaking involving or potentially involving that Director or a related party of that Director is being investigated or discussed.

(b) Notwithstanding clause B.6(a) , if in the opinion of the Committee, their investigation or discussion will be assisted by hearing from the interested Director, the Committee may invite that Director to address the Committee. The Committee will give fair consideration to that address. The Director will not, however, be invited to take part in the deliberations following that address.

B.7 **Access**

(a) The Committee shall have unlimited access to the external and internal auditors, and to senior management of the Company and any subsidiary. The Committee shall also have the ability and authority to seek any information it requires to carry out its duties from any officer or employee of the Company and such officers or employees shall be instructed by the Board to co-operate fully in provision of such information.

(b) The Committee also has the authority to consult independent experts where they consider it necessary to carry out their duties. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

B.8 **Application of Standing Rules**

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the express terms in this Charter.

Section C– Nomination and Remuneration Committee Charter

C.1 Committee Members

The Board has established a Nomination and Remuneration Committee. The Corporate Governance Principles and Recommendations require the Nomination and Remuneration Committee to be structured so that it:

(a) Consists of a majority of Independent Directors;

(b) Is chaired by an Independent Director; and

(c) Has at least three members.

The company secretary and representatives of the auditors may be invited to attend meetings of the Nomination and Remuneration Committee from time to time.

C.2 Purpose

(a) This Nomination and Remuneration Committee Charter (the **Charter**) sets out the role, responsibilities, composition, authority and membership requirements of the Nomination and Remuneration Committee of the Company.

(b) This Charter or key features of this Charter will be made publicly available, ideally by posting it to the Company's website in a clearly marked corporate governance section. The Charter is available to shareholders of the Company upon request to the Company Secretary.

C.3 Definition and Objectives of the Committee

(a) The Nomination and Remuneration Committee (**Committee**) is a Committee of the Board.

(b) The Committee's primary function is to assist the Board in discharging its responsibility to exercise due care, diligence and skill in relation to the Company by:

General Functions

(i) review and make recommendations to the Board on remuneration packages and policies related to the Directors and Management;

(ii) ensure that the remuneration policies and practices are consistent with the Company's strategic goals and human resources objectives;

(iii) review and make recommendations in relation to the composition and performance of the Board and its Committees; and

(iv) ensure that adequate succession plans are in place (including for recruitment and appointment of Directors and Management).

The Nomination and Remuneration Committee may seek independent advice where it considers appropriate.

Senior executive remuneration and performance review function

The Nomination and Remuneration Committee has the following specific responsibilities with respect to members of the Board and Management:

(a) Policies and structures:

- recommending remuneration policies and procedures for Management to the Board;
- recommending various remuneration structures, incentive programs and performance measures for Management to the Board;
- recommending various recruitment, retention and termination policies and procedures to the Board; and
- subject always to the limit approved for the time being by the shareholders, reviewing and making recommendations in relation to the remuneration arrangements and policies applicable to the non-executive directors.

(b) Monitoring and review:

- monitoring and reviewing the remuneration and incentive programs established by the Board and making recommendations to the Board as to any desirable changes;
- facilitating the evaluation of the performance of the Board, it's committees and individual directors
- monitoring the performance of Senior Executives and Management against any applicable, performance hurdles or other performance measures; and
- no Director shall be responsible for appraising his or her own performance or solely responsible for recommending his or her own level of remuneration for Board approval.

Board nominations function

The Nomination and Remuneration Committee also has responsibility for the following:

(a) developing suitable criteria (as regards experience, skills, qualifications, contacts or other qualities) for the selection and appointment of new Board members and for the selection, appointment and dismissal of the Managing Director and making recommendations from time to time as to changes that the Committee believes to be desirable in the size of the Board;

(b) identifying individuals who, by virtue of their experience, expertise, skills, qualifications, contacts or other qualities, are suitable candidates for appointment to the Board or to any relevant management position;

(c) recommending individuals for consideration by the Board as prospective Directors;

(d) recommending Board members qualified to fill vacancies on any Committee of the Board;

(e) developing and implementing a plan for identifying, assessing and enhancing Director competencies;

(f) creating succession plans to maintain the appropriate balance of skills, expertise and experience on the Board; and

(g) reviewing the overall performance of the Board using measureable and qualitative indicators.

C.4 **Reporting**

(a) Proceedings of all meetings are minuted and signed by the Chairperson.

(b) The Committee, through its Chairperson, is to report to the Board at the earliest possible Board meeting after each Committee meeting. Minutes of all Committee meetings are to be circulated to the Board. The report should include but is not limited to:

(i) the minutes of the Committee and any formal resolutions;

(ii) recommendations for the remuneration arrangements;

(iii) any matters that in the opinion of the Committee should be brought to the attention of the Board and any recommendations requiring Board approval and/or action; and

(iv) at least annually, a review of the formal written Charter and its continuing adequacy, and an evaluation of the extent to which the Committee has met the requirements of the Charter.

(c) In addition, the Chairperson of the Committee must submit an annual report to the Board (at the Board meeting at which the year end financial statements are approved) summarising the Committee's activities during the year. The report must include:

(i) the number of meetings held during the relevant period and the number of meetings attended by each member; and

(ii) details of any change to the Independent status of any member during the relevant period, if applicable.

C.5 **Attendance at Meetings**

(a) Other Directors (executive and non-executive) have a right of attendance at meetings. However, no Board Director is entitled to attend that part of a meeting at which an act or omission of that Director or a contract, arrangement or undertaking involving or potentially involving that Director or a related party of that Director is being investigated or discussed.

(b) Notwithstanding clause C.5(a), if in the opinion of the Committee, their investigation or discussion will be assisted by hearing from the interested Director, the Committee may invite that Director to address the Committee. The Committee will give fair consideration to that address. The Director will not, however, be invited to take part in the deliberations following that address.

C.6 **Application of Standing Rules**

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the express terms in this Charter.

Section D – Standing Rules of Committees

D.1 Application

These Standing Rules apply to, and are deemed to be incorporated into the Charter of each Committee, except where the terms of these Standing Rules conflict with those of the relevant Charter.

D.2 Composition

(a) The composition of each Committee will be determined in accordance with the following principles:

(i) each Committee will aim to have membership which comprises only non-executive Directors, if so required by the Corporate Governance Principles and Recommendations, save where the Board, acknowledging the requirement to explain any departure from those Principles and Recommendations in its annual Corporate Governance Statement, considers that to do so for a particular Committee or Committees would be impracticable, unnecessary or undesirable;

(ii) each Committee will aim to have a majority of its members as Independent Directors, if so required by the Corporate Governance Principles and Recommendations, save where the Board, acknowledging the requirement to explain any departure from those Principles and Recommendations in its annual Corporate Governance Statement, considers that to do so for a particular Committee or Committees would be impracticable, unnecessary or undesirable;

(iii) each Committee will aim to have a Chairperson who is an Independent Director, if so required by the Corporate Governance Principles and Recommendations, save where the Board, acknowledging the requirement to explain any departure from those Principles and Recommendations in its annual Corporate Governance Statement, considers that to do so for a particular Committee or Committees would be impracticable, unnecessary or undesirable; and

(iv) the Committee shall comprise at least three members if so required by the Corporate Governance Principles and Recommendations, save where the Board, acknowledging the requirement to explain any departure from those Principles and Recommendations in its annual Corporate Governance Statement considers that to do so for a particular Committee or Committees would be impracticable, unnecessary or undesirable.

(b) Membership of each Committee will be disclosed in the Annual Report of the Company.

(c) Committee members are appointed by the Board.

(d) The term of appointment as a member is for a period of no more than one year, with Committee members generally being eligible for re-appointments for so long as they remain Directors of the Board. The effect of ceasing to be a Director of the Board is the automatic termination of appointment as a member of each Committee.

(e) Membership of each Committee should be confirmed annually by the Board.

(f) Each Director may attend meetings but will have no voting rights unless he/she is a member of the relevant Committee.

D.3 **Chairperson**

(a) The Chairperson of each Committee is selected by the Board.

(b) Should the Chairperson be absent from a meeting and no Deputy Chairperson been appointed, the members of the relevant Committee present at the meeting have authority to choose one of their number to be Chairperson for that particular meeting.

D.4 **Meetings**

(a) Each Committee will meet at such intervals as required to fulfil its obligations but must be at least twice annually.

(b) In addition, the Chairperson is required to call a meeting of each Committee if requested to do so by any Committee member or the Chairperson of the Board.

(c) The Company Secretary will act as Secretary to each Committee and shall be responsible:

(i) in conjunction with the Chairperson, for drawing up the agenda, supported by explanatory documentation, and circulating it to the relevant Committee members prior to each meeting; and

(ii) for keeping the minutes of meeting of each Committee and circulating them to Committee members and to the other members of the Board.

(d) A quorum shall consist of two members.

(e) The Chairperson shall report to the Board following each meeting.

D.5 **Fees**

Unless otherwise determined by the Board, Committee members are not entitled to receive additional remuneration for their services as members of any Committee.

D.6 **Review Of Charter**

(a) Each Charter is to be reviewed annually by each relevant Committee to ensure it remains consistent with the Committee's authority, objectives and responsibilities.

(b) Changes to the Charter recommended by the relevant Committee will require approval by the Board.

D.7 **Duties and Responsibilities**

(a) The duties and responsibilities of a Director who is a member of a Committee are in addition to those duties set out for a Director of the Board.

(b) The duties and responsibilities of a member of each Committee are set out in each Charter.

Section E - Corporate Ethics Policy

E.1 Introduction

Directors of the Company are subject to certain stringent legal requirements regulating their conduct both in terms of their internal conduct as directors of the Company and in their external dealings with third parties both on their own behalf and on behalf of the Company.

To assist directors in discharging their duties to the Company and in compliance with relevant laws to which they are subject, the Company has adopted the following Corporate Ethics Policy (Policy).

This Policy sets out rules binding Directors in respect of:

(a) a Director's legal duties as an officer of the Company;

(b) a Director's obligations to make disclosures to the ASX and the market generally; and

(c) dealings by Directors in shares in the Company.

E.2 Directors' Powers and Duties

Each Director of the Company is required to comply strictly with the legal, statutory and equitable duties as an officer of the Company. Broadly, these duties are:

(a) to act in good faith and in the best interests of the Company;

(b) to act with due care and diligence;

(c) to act for proper purposes;

(d) to avoid conflicts of interest or duty; and

(e) to refrain from making improper use of information gained through the office of Director, or taking improper advantage of the office of Director.

E.3 General

Directors of companies owe a variety of duties to those companies which may impact upon the appropriateness of their attendance and participation in meetings of the board of directors. These duties arise as a result of the general law and also under the Corporations Act.

Directors should be aware that if they breach their fiduciary duties to the company, they may be liable to account to the entity for any profit they derive or indemnify the entity against any loss their breach has caused.

Breaches of the Corporations Act duties may also give rise to an action for damages, fines and penalties or disqualification.

Common Law Fiduciary Duties

A director is said to be in a fiduciary, as opposed to an arm's length, relationship with the Company. As such a director will owe various fiduciary duties to the Company which underlie matters relating to the conduct of a director, including attendance and participation at meetings. The positive duties of a director include the duty to act in good faith in the best

interests of the Company, to act for proper corporate purposes and to give adequate consideration to matters for decision and to keep discretions unfettered.

Corporations Act

A director of a corporation will also be subject to duties imposed by the *Corporations Act*. They include the duty to exercise care and diligence, to exercise their powers in good faith and for a proper purpose and not to misuse their position or information obtained from their position to gain an advantage for themselves or others or cause detriment to the company.

E.4 **General Duties of Directors**

(a) **Proper Corporate Purpose**

General law duty - to act for proper corporate purposes.

The duty to act for proper corporate purposes requires directors to exercise the powers granted to them for the purpose for which they were given, not for collateral purposes.

(b) **Adequate Consideration**

General law duty – to give adequate consideration and duty not to fetter a director's discretion

The duty to give adequate consideration to matters for decision and to keep discretions unfettered requires directors to give adequate consideration to matters when exercising their discretions. They must take positive steps to inform themselves about matters and not simply acquiesce in the decision making process.

(c) **Care and diligence**

General law and Corporations Act duty – to act with a reasonable degree of care and diligence in exercising a director's powers and discharging a director's duties

Under the *Corporations Act*, a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

(i) were a director of a corporation in the same circumstances as the Company; and

(ii) occupied the same office and had the same responsibilities as the director.

Case law on these provisions illustrates that the scope of the obligation of care and diligence will depend upon the nature of the director's role and their position with the Company. For instance, generally executive directors will be subject to a higher standard of care and it has been held that a Chairperson of a Company who is also Chairperson of the Audit & Risk Management Committee may have a higher duty of care than a mere non-executive.

Apart from the *Corporations Act* obligation, a failure of a director to act with a reasonable degree of care and diligence is also likely to be considered negligent.

Business Judgment Rule

The *Corporations Act* provides for a mechanism for directors to avoid a breach of their duty of care and diligence where certain parameters are met. This is known as the "business judgment rule". All directors of the Company are expected to be familiar with this rule.

In summary, a director who makes a business judgment is taken to meet the duty of care and diligence (whether under statute or the general law) if they:

(i) make the judgment in good faith and for a proper purpose;

(ii) do not have a material personal interest in the subject matter of the judgment;

(iii) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and

(iv) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless that belief is one that no reasonable person in their position would hold.

A 'business judgment' is any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

Whilst the business judgment rule assists directors to avoid a breach of their duty of care and diligence both under the *Corporations Act* or under the general law, it does not relieve breaches of the other duties of directors, whether under the *Corporations Act* or otherwise, described above.

(d) **Act in Good Faith**

General law and Corporations Act duties:

(i) *To act in good faith in the best interests of the Company*

(ii) *To act for a proper purpose*

(iii) *Not to improperly use the director's position*

(iv) *Not to improperly use information obtained by virtue of the director's position*

The duty to act in good faith in the best interests of the company requires directors to use their discretions honestly and with reasonable care and diligence for the purposes for which they were conferred. Directors must not promote his or her personal interest by making or pursuing a gain in circumstances in which there is a conflict, or a real possibility of a conflict, between his or her personal interests and those of the company. Additionally, a director must not act to promote the interest of a third person where there is a conflict, or a real possibility of conflict, between duties owed by the fiduciary, on the one hand, to the company and on the other, duties owed to the third person.

E.5 **Avoiding Conflicts**

Attending and Participating in Board Meetings

The duties in relation to conflict are of particular importance when a director is considering whether or not they should attend and participate in Board meetings.

This rule requires a director to avoid situations in which there is a "real and sensible possibility" of conflict between the director's personal interests and the company's interests. This duty is also of particular significance where directors hold multiple directorships. Whilst merely holding multiple directorships, even in competing companies, is not a breach of the rule against conflict,

the rule will be breached if the director discloses confidential information which the director has gained as a result of their directorship of the other company.

Consequently, if a director has a conflicting personal interest, whether direct or indirect, in a matter to be discussed at a board meeting, they should firstly disclose this matter to the Board and secondly consider whether participating in the matter would result in a breach of their fiduciary duties.

Material Personal Interest

A director who has a material personal interest in a matter that relates to the affairs of the Company is required to disclose this to the Company.

Directors of the Company who have a material personal interest in a matter generally must not attend a directors meeting while the matter is being considered or vote on the matter. However, a director may do these things if a resolution of the Board is passed to this effect or if ASIC consents.

Despite this, the same cautions must be exercised as discussed above if the other directors consent to a conflicting director participation in the meeting. The conflicting director should ensure that participation won't be in breach of their fiduciary duties or the duties imposed by the Corporations Act.

Common Directorships

These duties become particularly relevant where companies have directors in common and a decision involving a potential conflict of interest is required to be taken by one of the companies. In this case it is prudent for the common directors not to participate in the relevant Board's decision making process on that matter.

Directors Providing Services to the Company

In order to capitalise on the professional/technical expertise or experience of directors of the Company from time to time (other than in their capacity as directors), the Company may engage the services of that director (or a firm associated with the director) **only** on the following terms and conditions:

(a) the scope of the consultancy (or other services) is identified, together with a schedule of estimated costs and charge out rates to be incurred with the director or their firm;

(b) the other directors seek additional quotations for the same services and do such other things as may be necessary to satisfy themselves that the provision of services falls within an exception to Chapter 2E of the *Corporations Act* (Related Party Transactions); and

(c) the consultancy services are approved by the other directors after compliance with section 195 of the *Corporations Act.*

E.6 **Confidentiality**

Directors of the Company will have access to any information which the Directors may consider necessary to perform their responsibilities and exercise their independent judgment when making decisions. All information received by a Director in these circumstances must be considered confidential and at all times remains the property of the Company.

Any confidential information of the Company acquired by a Director during the Director's appointment must not be disclosed by the Director, or the Director must not allow it to be disclosed, to any other person unless the disclosure is authorised by the chairperson or is required by law or regulatory body (including a relevant stock exchange).

E.7 **Independence**

The Board is required to regularly assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgment, or could reasonably give the impression that the Director's independence has been compromised.

Directors are required to co-operate fully with any assessment process and give all reasonable information requested.

Directors are required to fully and frankly tell the Board about anything that:

(a) may lead to an actual or potential conflict of interest or duty;

(b) may lead to a reasonable perception of an actual or potential conflict of interest or duty;

(c) interferes with a Director's unfettered and independent judgment; or

(d) could reasonably give the impression that a Director's independence has been compromised.

Directors are also required to tell the Company about any interest which they may have in securities of the Company (or of a related body corporate) or interest in any contract relating to those securities. This is discussed in greater detail below.

E.8 **Dealings by Directors and Senior Executives in Securities of the Company**

The Company encourages its directors and employees to hold securities in the Company. However, when a director or senior executive trades in securities of the Company it is important to ensure that these transactions do not reflect badly on either the director, senior executive or the Company. This Policy is designed to ensure that directors or senior executives do not deal in securities of the Company at inappropriate times or in inappropriate circumstances.

When buying or selling securities in the Company, directors and senior executives must ensure that they do not contravene the insider trading provisions contained in Part 7.10 of the *Corporations Act 2001* (Cth). Inside information is information that is not generally available which could reasonably be expected to have a material effect on the price or value of securities of a body corporate. Information is taken to have a "material effect" on the price or value of a security if it would be likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy, or sell the securities. Thus, to constitute inside information the information must be both price sensitive and not generally available.

It is readily apparent that directors and senior executives of the Company in the course of carrying out their duties often possess information which would be regarded as inside information under the *Corporation Act*. The following are non-exhaustive examples of information which could be regarded as inside information:

(a) proposed strategic business acquisition;

(b) financial records not yet released to the market; and

(c) a proposed takeover not yet announced to the market.

Where directors and senior executives possess inside information, they must not engage in dealings with the securities of the Company and cannot, either directly or indirectly, communicate the inside information to other persons. Directors and senior executives can be liable for insider trading if they recommend the Company's securities to other persons while they are in possession of price sensitive information which is undisclosed to the general public. Directors and senior executives should be aware that they can be liable for insider trading by communicating inside information to other persons, for example their spouse, family or friends. This liability arises notwithstanding the fact that the director or senior executive has not dealt with the securities of the Company. Spouses, family or friends who become aware of inside information and subsequently act on it before the information becomes public can also be held liable for insider trading.

It is therefore essential that all directors and senior executives avoid direct or indirect communication of price sensitive information before it enters the public domain. It is equally essential that directors and senior executives refrain from trading in securities of the Company whilst they possess such information.

E.9 **Restrictions on Directors' Dealings with Company Shares**

As a general policy, before engaging in transactions involving the securities of the Company outside of the black out periods, a director and senior executive must notify the Chairperson or Company Secretary of the intended transaction at least 24 hours beforehand. It is then a matter for the Chairperson or Company Secretary to advise other directors of the intended course of action.

The Company's policy regarding dealings by directors and senior executives in the Company's securities is that directors and senior executives should never engage in short term trading and should not enter into transactions in the following circumstances:

(a) When they are in possession of price sensitive information not yet released by the Company to the market; or

(b) Even if not in possession of such information, for a period of twenty-one (21) days prior to release by the Company of half yearly and annual reports **and** fourteen (14) days prior to the release by the Company of the quarterly cashflow and activities report **or** such shorter period as may be approved by the Board in writing after receipt of notice of intention to buy or sell by a director and senior executive to the other members of the Board.

Directors and senior executives are also prohibited from trading during these periods in financial products issued or created over or in respect of the entity's securities.

Should a director or senior executive wish to trade within these black out periods, then this must first be approved by the Board in writing.

E.10 **Trading Not Subject to the Policy**

The Board may contemplate that there may be trading that the Company excludes from the operation of the Policy. This may be appropriate, for instance, where the trading results in no change in beneficial interest in the securities, where trading occurs via investments in a scheme or other arrangement where the investment decisions are exercised by a third party, where the restricted person has no control or influence with respect to trading decisions, or where the trading occurs under an offer to all or most of the security holders of the entity.

For the purposes of this Policy, some examples of trading that the Company may consider excluding from the operation of the Policy are:

(a) transfers of securities of the entity already held into a superannuation fund or other saving scheme in which the restricted person is a beneficiary;

(b) an investment in, or trading in units of, a fund or other scheme (other than a scheme only investing in the securities of the entity) where the assets of the fund or other scheme are invested at the discretion of a third party;

(c) where a restricted person is a trustee, trading in the securities of the entity by that trust provided the restricted person is not a beneficiary of the trust and any decision to trade during a prohibited period is taken by the other trustees or by the investment managers independently of the restricted person;

(d) undertakings to accept, or the acceptance of, a takeover offer;

(e) trading under an offer or invitation made to all or most of the security holders, such as, a rights issue, a security purchase plan, a dividend or distribution reinvestment plan and an equal access buy-back, where the plan that determines the timing and structure of the offer has been approved by the board. This includes decisions relating to whether or not to take up the entitlements and the sale of entitlements required to provide for the take up of the balance of entitlements under a renounceable pro rata issue;

(f) a disposal of securities of the entity on a case by case basis, that is the result of a secured lender exercising their rights, for example, under a margin lending arrangement. On a case by case basis the Board will assess the rules that are applicable to key management personnel with respect to entering into agreements that provide lenders with rights over their interests in the Company's securities;

(g) the exercise (but not the sale of securities following exercise) of an option or a right under an employee incentive scheme, or the conversion of a convertible security, where the final date for the exercise of the option or right, or the conversion of the security, falls during a prohibited period and the entity has been in an exceptionally long prohibited period or the Company has had a number of consecutive prohibited periods and the restricted person could not reasonably have been expected to exercise it at a time when free to do so; and

(h) trading under a non-discretionary trading plan for which prior written clearance has been provided in accordance with procedures set out in this Policy and where:

  (i) the restricted person did not enter into the plan or amend the plan during a prohibited period;

  (ii) the trading plan does not permit the restricted person to exercise any influence or discretion over how, when, or whether to trade; and

  (iii) the entity's trading policy does not allow the restricted person to cancel the trading plan or cancel or otherwise vary the terms of his or her participation in the trading plan during a prohibited period other than in exceptional circumstances (as set out below).

E.11 **Exceptional Circumstances**

A restricted person, who is not in possession of inside information in relation to the Company, may be given prior written clearance to sell or otherwise dispose of the Company's securities during a prohibited period under the Policy where the restricted person is in severe financial hardship or there are other exceptional circumstances.

A person may be in severe financial hardship if he or she has a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant securities in the Company. For example, a tax liability of such a person would not normally constitute severe financial hardship unless the person has no other means of satisfying the liability. A tax liability relating to securities received under an

employee incentive scheme would also not normally constitute severe financial hardship or otherwise be considered an exceptional circumstance for the purpose of obtaining prior written clearance to sell or otherwise dispose of securities during a prohibited period.

The Company may consider it an exceptional circumstance if the person is required by a court order, or there are court enforceable undertakings, for example, in a bona fide family settlement, to transfer or sell the securities of the Company or there is some other overriding legal or regulatory requirement for him or her to do so.

E.12 **Financial Hardship**

The determination of whether the person in question is in severe financial hardship or whether a particular set of circumstances falls within the range of exceptional circumstances identified in the Policy can only be made by the Board. In recognition of the case that exceptional circumstances, by their nature, cannot always be specified in advance, it is envisaged that there may be other circumstances, which have not been identified in this Policy, that may be deemed exceptional by the Chairman or the Managing Director (where the Chairman is involved) and whereby prior written clearance is granted to permit trading. The person seeking clearance to trade must satisfy the Chairman or the Managing Director that they are in severe financial hardship or that their circumstances are otherwise exceptional and that the proposed sale or disposal of the relevant securities is the only reasonable course of action available.

If the Chairman or Managing Director is in any doubt in making such determinations on behalf of the entity, consideration should be given to the purpose of the listing rules and the discretion should be exercised with caution.

E.13 **Price Sensitive Information**

In relation to “price sensitive information”, all directors and senior executives will be conscious of the fact that as the Company is a listed company, it has an obligation under Chapter 3 of the Listing Rules to make continuous disclosure. Briefly stated, that is an obligation to advise the market as soon as events and developments occur which result in the information that a reasonable person would expect to have a material effect on the price or value of the Company’s securities.

The obligation is not absolute and there are a number of exceptions to when “price sensitive information” need not be disclosed, which are addressed below. Accordingly, there will be occasions where price sensitive information is in the possession of some or all of the directors and not yet released to the market, nor required to be released.

In relation to the half-yearly and annual reports, it is apparent that these reports will contain financial information concerning the Company. That information will be collated by the Company's auditors based on management accounts. It is a notorious fact that at some time before preparation of the audited yearly and annual reports, some or all of the directors will have access to the financial figures based on the data coming from the management accounts. That being so, that material may, in appropriate circumstances, be price sensitive information, not yet released. For example, a company may have glowing half year profit at the commencement of the half year and then find, based on its management accounts that it fell well behind or will fall well behind (as the case may be) those profit forecasts. That would classically be a case when any directors in possession of such information could not deal in the Company securities.

E.14 **Permitted Trading**

Unless in the possession of other price sensitive information which has not been released to the market, directors will generally be permitted to engage in trading (subject to due notification being given to the Chairperson) at the following times:

(a) For a period commencing one (1) business day after the release of the quarterly, half yearly and annual reports to the market;

(b) For a period commencing one (1) business day following the release of price sensitive information to the market which allows a reasonable period of time for the information to be disseminated among members of the public; and

(c) Where the proposed acquisition of securities is under:

(i) a bonus issue made to a class of security holders;

(ii) a dividend reinvestment or top up plan available to a class of security holders; or

(iii) an employee share option plan.

E.15 **Notification to ASX of Directors' Interests**

Directors must also be aware that pursuant to the provisions of the Corporations Act 2001 (Cth) they are obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the Corporations Act 2001 (Cth), directors must notify the ASX of their:

(a) relevant interests in securities of the Company or of a related body corporate;

(b) contracts:

(i) to which the director is a party or under which the director is entitled to a benefit; and

(ii) that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate.

Directors must also ensure that the above interests are notified to the ASX in accordance with Listing Rule 3.19A. This Rule requires the Company, not the particular director, to notify the ASX of the above interests.

Accordingly, the Company is to enter into an agreement with each of its directors under which the directors are obliged to provide the necessary information to the Company. An agreement of this nature, recognises that much of the information required by the ASX, under section 205G, is held by the directors, by virtue of their position and role within the Company. By entering into a formal agreement, the Company ensures that the directors of the Company have been notified of their disclosure obligations under the Corporations Act 2001 (Cth) and the directors authorise the Company to give the information provided by directors to ASX on their behalf and as their agent.

In particular, Listing Rule 3.19A provides that:

(a) where a director is appointed – the Company must notify the ASX of the above interest within five (5) business days after the appointment (the appropriate form is Appendix 3X). Accordingly, directors will provide the following information as at the date of their appointment as a director:

(i) details of all securities registered in their name, including the number and class of the securities;

(ii) details of all securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and

(iii) details of all contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the director's interest under the contract.

(b) where a change in the above interests of a director occurs – the Company must outline the change in the director's interests to the ASX no more than 5 business days after the change occurs (the appropriate form is Appendix 3Y). Directors will need to provide to the Company on an on-going basis, as soon as reasonably possible after the date of the change and, in any event, no later than three (3) business days after the date of the change:

(i) details of changes in securities registered in the director's name, including the following:

(A) date of change

(B) number and class of securities held before and after the change

(C) nature of change (eg, on-market, off-market)

(D) consideration paid or received in connection with the change

(E) if off-market, the value of the securities the subject of the change;

(ii) details of changes in securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the following:

(A) date of change

(B) number and class of securities held before and after the change

(C) name of the registered holder before and after the change

(D) circumstances giving rise to the relevant interest

(E) nature of change (eg, on-market, off-market)

(F) consideration paid or received in connection with the change

(G) if off-market, the value of the securities the subject of the change; and

(iii) details of all changes to contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the following:

(A) date of change

(B) number and class of the shares, debentures or interests to which the interest relates before and after the change

(C) name of the registered holder if the shares, debentures or interests have been issued

(D) nature of your interest under the contract.

(c) where a director ceases to be a director – the Company must notify the ASX of the interests of the director at the time the director ceases to be a director, no more than five (5) business days after the director ceases to be a director (the appropriate form is Appendix 3Z). Directors must supply to the Company as soon as reasonably possible after the date of ceasing to be a director and, in any event no later than three (3) business days after the date of ceasing to be a director, the following information:

(i) details of all securities registered in the director's name, including the number and class of the securities;

(ii) details of all securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and

(iii) details of all contracts to which the director is a party or under which he/she is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the director's interest under the contract.

Directors should also be aware of the substantial shareholder provisions contained in section 671B of the *Corporations Act* which require certain notices to be served on the Company and the ASX when a shareholder is entitled to at least 5% of the issued shares in the Company and any change of more than 1% to those holdings occurs.

E.16 **The Company's Obligation of Disclosure**

(a) The Listing Rules

As a listed entity, the Company must comply with certain continuous disclosure obligations imposed by the *Corporations Act)* and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires the Company to provide the ASX with immediate notice of certain material information.

The general disclosure rule imposed on the Company is contained in clauses 3.1 and 3.1A of the ASX Listing Rules:

"3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

3.1A Listing Rule 3.1 does not apply to particular information while each of the following are satisfied:

3.1A.1 A reasonable person would not expect the information to be disclosed

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential

3.1A.3 One or more of the following applies

- *It would be a breach of a law to disclose the information.*
- *The information concerns an incomplete proposal or negotiation.*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*
- *The information is generated for the internal management purposes of the entity.*
- *The information is a trade secret."*

There is also the "false market"/"rumours" disclosure rule in clause 3.1B as follows:

"*3.1B If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market.*"

The provisions of Chapter 3 are reinforced by Chapter 6CA of the *Corporations Act*. In particular, section 674(2) provides that:

"If:

(a) [provisions of the listing rules of a listing market in relation to an entity require an entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market]; and

(b) the entity has information that those provisions require the entity to notify to the market operator; and

(c) that information:

(i) is not generally available; and

(ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity;

the entity must notify the market operator of that information in accordance with those provisions."

It is therefore essential that directors acquaint themselves not only with their personal obligations of disclosure, but also the disclosure obligations imposed on the Company.

(b) The Disclosure Obligation

Under the provisions of Listing Rule 3.1, the Company is required to **immediately notify the ASX of any information concerning the Company of which it is, or becomes, aware, and**

which a reasonable person would expect to have a material effect on the price and value of the Company shares.

(i) **When is the Company aware of information**

The Listing Rules provide that the Company is aware of information if a Director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a Director or executive officer of the Company.

An "executive officer" of the Company means a person who is concerned in, or takes part in, management of the Company. A person can be an executive officer regardless of his or her designation, and irrespective of whether or not the person is a Director.

(ii) **What information has a material effect on price?**

The effect of information on the price or value of the Company shares is to be judged by the expectations of a "reasonable person". A reasonable person would expect information to have a material effect on the price or value of the Company shares if the information would, or would be likely to, influence investors who commonly invest in shares in deciding whether or not to deal in the Company shares.

The Company and each director should be aware of ASX policy with respect to the disclosure of material information relating to the:

- financing arrangements of the Company; and
- existence and terms of any finance arrangements that may be in place in relation to director's shareholdings (for example margin loans).

Finance Arrangements

Where the Company has in place or enters into new material financing arrangements or alters existing material financing arrangements which include terms that may be activated upon the occurrence of certain events (particularly those beyond the control of the Company, such as market events) disclosure may be required under Listing Rule 3.1 at the time any such term is activated or becomes likely to be activated.

The disclosure required may include the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company's relationship with its bankers, or financial position or financial performance. It may also be appropriate in some circumstances for the Company to request a trading halt if the Company is unable to immediately release the information.

Unless the exceptions in the Listing Rule 3.1 apply to the terms of the Company's material financial arrangements, the Company should disclose to the ASX, upon entering into the arrangements, the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company's relationship with its bankers, or financial position or financial performance.

Margin Loans

Listing Rule 3.19A and 3.19B require the Company to disclose the notifiable interests of a director within five business days of the appointment or resignation of the director or a change to the notifiable interests occurring. Information about shareholders and their shareholdings can be material under Listing Rule 3.1 and require immediate disclosure.

Where a director has entered into a margin loan or similar funding arrangements for a material number of securities, Listing Rule 3.1 in appropriate circumstances, may operate to require the Company to disclose the key terms of the arrangements, including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details. Whether a margin loan arrangement is material is a matter which the Company must decide having regard to the nature of its operations and the particular circumstances of the Company.

Listing Rule 3.1B applies where the ASX considers that there is or is likely to be a false market, and in such circumstances the Company must disclose information necessary to correct or prevent a false market. This requirement may arise even though the Company is not aware of any information that would be required to be disclosed under Listing Rule 3.1.

A Director must disclose to the Company any financial arrangements or margin loan the Director has entered into in respect of any securities which the Director holds in the Company. Such disclosure by the Director should be on entering into the arrangements and should include key terms of the arrangements, including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details.

(c) Ramifications of Failing to Comply

The ramifications of failing to comply with the continuous disclosure obligations under Listing Rule 3.1 are extremely serious, and may result in the following actions being taken:

(i) **Removal from the ASX**

The ASX may at any time remove an entity from the Official List of the ASX if the entity breaks a Listing Rule.

(ii) **Criminal Liability**

Under the *Corporations Act*, a failure to make a disclosure under Listing Rule 3.1, intentionally or recklessly, amounts to a criminal offence, and may result in a fine of $100,000 for a corporation.

In addition, individuals who are “involved” in the contravention (who would include officers or advisers who aid, abet, counsel, procure or are knowingly concerned in the contravention) are also liable. The maximum penalty for individuals is $20,000, or imprisonment for five years, or both.

A negligent failure to make a disclosure under Listing Rule 3.1 is a contravention of the *Corporations Act*, but will not amount to a criminal offence.

(iii) **Civil Liability**

Civil liability arises if the failure to disclose is intentional, reckless or negligent. A person who suffers loss or damage as a result of such failure may recover that loss or damage from the Company, or against "any person involved in the contravention". This could include the directors or executives officers of the Company.

(d) Exemption from Disclosure

The Listing Rules provide that the Company does not need to disclose information under Listing Rule 3.1A if each of the following is satisfied:

(i) A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1); **and**

(ii) The information is confidential (Listing Rule 3.1A.2); **and**

(iii) One or more of the following applies (Listing Rule 3.1A.3)

(A) It would be a breach of a law to disclose the information;

(B) The information concerns an incomplete proposal or negotiation;

(C) The information comprises matters of supposition, or is insufficiently definite to warrant disclosure;

(D) The information is generated for internal management purposes of the Company; or

(E) The information is a trade secret.

It must be noted that the above exemption from the requirement to make disclosure **only operates while all three elements are satisfied. If any of the requirements cease to be satisfied, the entity must disclose the information immediately**.

By way of example, if information that has not been disclosed by relying on the exemption becomes known in some way to participants in the market, then it **must** be given to the ASX for release to the market, as it would no longer satisfy the confidentiality requirement. If does not matter how the matter became known in the market.

Looking at each of the three elements that must be established for information to be exempt from disclosure:

(i) A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1)

A reasonable person would not expect information to be disclosed if the result would be to cause unreasonable prejudice to the entity. Similarly, a reasonable person would not expect disclosures of an inordinate amount of detail.

(ii) **Confidentiality** (Listing Rule 3.1A.2)

Listing Rule 3.1A.2 requires that the information that is not to be disclosed be confidential. "Confidential" in this context has the sense of secret, and generally implies control by the Company of the use that can be made of the information.

The mere fact that a confidentiality agreement has been entered into will not automatically satisfy this element. Confidential means that no one in possession of the information is entitled to trade in the Company's shares. Unusual activity in the Company's shares may suggest that the information is no longer confidential.

The ASX accepts that confidentiality is not breached if information is given to the Company's advisers, a person with whom the Company is negotiating, or other regulatory authorities, if it is given on a basis which restricts its use to the stated purpose.

(iii) **One of the Elements in Listing Rule 3.1A.3**

One of the five elements in Listing Rule 3.1A.3 must also be established. These elements are:

(A) It would be a breach of the law to disclose the information;

(B) The information concerns an incomplete proposal or negotiation;

(C) The information comprises matters of supposition, or is insufficiently definite to warrant disclosure;

(D) The information is generated for internal management purposes of the Company; or

(E) The information is a trade secret.

(e) Applying the Exemption in Practice

The exemption from disclosure would apply, for example, to information which is confidential, which a reasonable person would not expect to be disclosed, and which falls within any one of the following descriptions:

(i) Proposed acquisitions or disposals or other commercial arrangements in the process of negotiation;

(ii) Internal budgets and forecasts;

(iii) Management accounts;

(iv) Business plans;

(v) Internal market intelligence;

(vi) Information prepared for lenders;

(vii) Dispute settlement negotiations.

It is possible to foresee, however, matters which are commercially sensitive, the disclosure of which would be **detrimental** to the Company, which may be required to be disclosed because they do not fall within the exemptions. For example:

(i) A serious claim against the company prior to the commencement of proceedings;

(ii) An investigation or allegation by a regulatory body (that is not being disputed by the company);

(iii) Information about a "complete" proposal;

(iv) Terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality;

(v) Material terms of a trading agreement with a major supplier.

Whether these sorts of matters will fall within any of the exceptions will depend on, and require, an assessment of particular facts.

The Listing Rules and Guidance Note issued by the ASX provide a number of examples of matters that may require disclosure.

(f) ASX Policy

The ASX has issued a Guidance Note in relation to Listing Rule 3.1A. The ASX states that the guidance note is only a guide to ASX practice, and that entities should contact the ASX to discuss their particular circumstances and the application of the Listing Rules. Set out below is a brief summary of some of the more pertinent aspects of the Guidance Note.

(i) **Prime Importance**

The ASX states that timely disclosure of relevant information is of prime importance to the operation of an efficient market. The fundamental principle under which the Listing Rules operate is that "*timely disclosure must be made of information in which security holders, investors and ASX have a legitimate interest*".

(ii) **Continuous Disclosure Practice**

The Listing Rules make it clear that all Listing Rules (including Listing Rule 3.1A) must be complied with in the "spirit" of continuous disclosure. The ASX states that the Listing Rules are not intended to be interpreted in a legalistic or restrictive manner.

(iii) **Market Speculation**

The ASX notes that from time to time it may be necessary to respond to speculation in order for the market to remain properly informed.

The ASX states that it does not expect companies to respond to all comments make in the media, or to respond to all market speculation. However, when the comment or speculation becomes reasonably specific, or the market moves in a way that appears to be referable to the comment or speculation, the company should make a statement in response to ensure the market remains properly informed.

It is ASX policy that whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market.

(iv) **Disclosure of Information to Brokers and Press**

Listing Rule 15.7 has the effect that the Company must not release information which is for release to the market to any person (including the media, even on an embargoed

basis) until it has given the information to the ASX, and has received an acknowledgement that the ASX has released it to the market.

With respect to analysts, the ASX states that a company must only disclose public information in answering analysts' questions, or reviewing analysts' draft reports. The ASX states that it is inappropriate for a question to be answered, or a report corrected, if doing so involves providing material information that is not public. The ASX states that when analysts visit the company, care should be taken to ensure that they do not obtain material information that is not public.

(v) **Internal Disclosure**

Employees will have access to information that is confidential. The employees with such access should be made aware of its confidential nature. The ASX notes that companies should ensure that confidential information does not find it was into "in house" publications.

(g) Analyst and Institutional Briefings

In November 1999 ASIC issued its draft "Heard it on the Grapevine …" Guidance Paper dealing with the selective disclosure of information to institutional investors and analysts.

This Guidance Paper addresses ASIC's concern that "ordinary" shareholders have a perception that significant information is disclosed by listed companies to analysts and institutions such that they can profit by trading on that information at the expense of the "ordinary" shareholders. ASIC is concerned that this perception could cause "ordinary" shareholders to lose trust in the fairness of the market place.

In this regard, ASIC notes that documents lodged with the ASX are often supplemented with more comprehensive background information provided to analysts and institutions at private briefings.

ASIC specifically identifies the following situations at which there is a risk that selective disclosure may occur:

(i) Analyst briefings, roadshows and presentations;

(ii) Individual analyst briefings;

(iii) Ad hoc communications with analysts and institutions;

(iv) Reviewing draft analyst reports;

(v) Informal social events.

ASIC states that it wishes to see companies exploring ways of improving investor access, both to:

(i) their ASX announcements; and

(ii) all significant information provided at private briefings to analysts or institutions (regardless of whether it is viewed as price sensitive)

To this end, ASIC suggests:

(i) Information disclosed to the ASX be added to the releasing company's web site (following ASX acknowledgement of receipt and release to the market);

(ii) Non-material information and supplementary material made available to institutions and analysts to be made available to shareholders and the wider investment community on the disclosing company's web site.

ASIC notes that some companies are giving investors access via the internet to live broadcasts of analyst briefings and are posting transcripts of briefings (including questions and answers) on their web sites. ASIC states that it encourages other companies to follow these practices. ASIC in its Paper suggests a number of procedures to ensure that:

(i) price sensitive material is disclosed to the ASX;

(ii) briefings do not disclose price sensitive material that has not been released; and

(iii) information disclosed at private briefings is captured for disclosure to "ordinary investors",

such that there is equal access to information for all investors. Certain of these ASIC suggestions are incorporated in the Disclosure Programme set out in (h) below.

ASIC's focus is on giving investors access to all significant information disclosed to analysts or institutions that is not already publicly available, regardless of whether it is considered price sensitive. ASIC considers it is good practice to provide shareholders with access to all significant background information that is provided to analysts and institutions.

(h) Information Disclosure Programme Procedures

As will be apparent from the above, it is essential for the Company to design a disclosure system to ensure:

(i) a breach of Listing Rule 3.1A does not occur; and

(ii) that information is made available to all investors equally.

(iii) **Directors and Executive Officers**

Each of the following personnel (the "Reporting Group") will need to participate in the "continuous disclosure" system, because information in their possession will need to be considered in order to comply with the continuous disclosure obligation:

(A) the Chairperson

(B) the Managing Director

(C) the Company Secretary

(iv) **Overseeing and Co-ordinating Disclosure**

The Chairperson, Managing Director and Company Secretary will be responsible for:

(A) ensuring the Company complies with its continuous disclosure obligations;

(B) overseeing and co-ordinating disclosure of information to the ASX; and

(C) reviewing information to be provided to analysts, brokers, the media and the public, in order to ensure any market sensitive material has first been released to the ASX.

(v) **Information Collecting Procedures to ensure Listing Rule 3.1A (market sensitive information) is identified**

The responsibilities of each member of the Reporting Group are:

(A) To ensure all notifiable (market sensitive) information is kept confidential within Reporting Group;

(B) To collect and forward to the other members of the Reporting Group all information which is, or may be required to be disclosed, and consult with those other members if in doubt;

(C) To make other senior personnel within his or her area of responsibility aware of the Company's disclosure obligations to ensure that all relevant information is provided to him or her in the first place.

(vi) **Releasing Information to the ASX**

The system for releasing information to the ASX is as follows:

(A) When any member of the Reporting Group becomes aware of information which he or she believes may need to be disclosed on the basis of the principles described in this document, he or she should immediately contact and give full details to each of the other members of the Reporting Group.

(B) The Reporting Group will take the following steps in relation to information received by them:

- Assess whether disclosure is required;
- Consult legal and other advisers (including the ASX) as necessary;
- Prepare an announcement for release to the ASX; and
- Forward the release to the ASX.

(C) For each meeting of the Board, there should be an agenda item entitled "Continuous Disclosure". In the Minutes of each Board meeting, the Company Secretary should either:

- record that there was no material known to or brought to the attention of the Reporting Group for disclosure since the previous meeting; or
- briefly outline material which has been disclosed.

(vii) **Company Spokespersons**

In order to maintain control over disclosures, the following persons only will be authorised to speak on the Company's behalf to analysts, brokers and institutional investors, and to respond generally to shareholder queries:

(A) The Chairperson;

(B) The Managing Director;

(C) The Company Secretary; and

(D) Any other person who has been given express prior authority by the Chairperson.

In order to safeguard against inadvertent disclosure of non-public information to brokers, investors, analysts and institutions prior to it being disclosed to the ASX, contact must be made with each member, or each other member, of the Reporting Group prior to making contact with these persons in order to clear the provision of the proposed information to them.

(viii) **Authorising Disclosures in Advance**

Again, in order to avoid an inadvertent breach of the continuous disclosure obligations, materials to be presented and issues to be discussed at any external presentation must be discussed with each member, or each other member, of the Reporting Group prior to presentation in order to confirm that no non-public material information is being disclosed.

(ix) **Maintenance of Released Material**

The Company Secretary will maintain a register of information disclosed to the ASX and also register of information disclosed on the Company web site.

(x) **the Company Website**

It is intended to implement the inclusion of information released to the ASX on the Company website. In addition, it is intended to add to the website:

(A) Other materials presented to analysts and institutions; and

(B) A summary of briefings made to analysts and institutions.

(xi) **Handling Rumours, Leaks and Inadvertent Disclosures**

It should be noted that any unauthorised leak of information may place the Company in breach of the Listing Rules and could expose persons to allegations of insider trading.

If external contact is made seeking clarification of a rumour in the market place, the enquiry should be referred to the Chairperson or, in his absence, any other member of the Reporting Group. The recommended response to such query is that "the Company does not respond to market rumours". Consideration will then be given by the Reporting Group as to whether a public announcement is required.

The Reporting Group should be made aware of any unauthorised disclosure of information (even if regarded as non-public sensitive). Consideration will then be given to the need to make an ASX disclosure.

(xii) **Reviewing Discussions**

In order to ensure no price sensitive material has been inadvertently disclosed, each member of the Reporting Group should be kept appraised of the contents of any substantive contact with analysts, brokers and institutional investors.

(xiii) **Draft Financial Statement and Reports**

Typically, analysts will seek to obtain Management's review of draft analyst reports. It is permissible to comment on errors in factual information and underlying assumptions, but comment on price sensitive information should be avoided.