

**METALS FINANCE CORPORATION
CORPORATE GOVERNANCE CHARTER**

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TABLE OF CONTENTS

SECTION A - PRINCIPLES OF CORPORATE GOVERNANCE – Metals Finance Corporation (COMPANY)	1
A.1 BOARD OF DIRECTORS	1
A.2 THE CHAIRPERSON	3
A.3 CHIEF EXECUTIVE OFFICER/MANAGING DIRECTOR	3
A.4 CORPORATE ETHICS	3
A.5 CORPORATE CODE OF CONDUCT	4
A.6 SELECTION OF EXTERNAL AUDITOR AND ROTATION OF AUDIT ENGAGEMENT PARTNER.....	6
A.7 COMMITTEES.....	6
SECTION B - CORPORATE GOVERNANCE COMMITTEE CHARTER	7
B.1 COMMITTEE MEMBERS.....	7
B.2 PURPOSE	7
B.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE	7
B.4 POWERS AND AUTHORITY OF THE COMMITTEE.....	8
B.5 REPORTING	8
B.6 APPLICATION OF STANDING RULES	9
SECTION C - AUDIT & RISK MANAGEMENT COMMITTEE CHARTER	10
C.1 COMMITTEE MEMBERS.....	10
C.2 PURPOSE	10
C.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE	10
C.4 REPORTING	11
C.5 RISK MANAGEMENT POLICIES	12
C.6 ATTENDANCE AT MEETINGS	13
C.7 ACCESS.....	13
C.8 APPLICATION OF STANDING RULES	13
SECTION D - REMUNERATION COMMITTEE CHARTER	14
D.1 COMMITTEE MEMBERS.....	14
D.2 PURPOSE	14
D.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE	14
D.4 REMUNERATION POLICIES	16
D.5 APPROVAL.....	16
D.6 REPORTING	16
D.7 MEETINGS.....	17
D.8 ATTENDANCE AT MEETINGS	18
D.9 APPLICATION OF STANDING RULES	18
SECTION E – STANDING RULES OF COMMITTEES	19
E.1 APPLICATION	19
E.2 COMPOSITION	19
E.3 CHAIRPERSON	19
E.4 MEETINGS	19
E.5 FEES	20
E.6 REVIEW OF CHARTER.....	20
E.7 DUTIES AND RESPONSIBILITIES	20
SECTION F - CORPORATE ETHICS POLICY	21
F.1 INTRODUCTION	21
F.2 DIRECTORS' POWERS AND DUTIES	21
F.3 GENERAL	21
F.4 GENERAL DUTIES OF DIRECTORS	22
F.5 AVOIDING CONFLICTS	22
F.6 CONFIDENTIALITY	23
F.7 INDEPENDENCE	24
F.8 DEALINGS BY DIRECTORS IN SECURITIES OF THE COMPANY	24
F.9 RESTRICTIONS ON DIRECTORS' DEALINGS WITH COMPANY SHARES	25
F.10 NOTIFICATION TO ASX OF DIRECTORS' INTERESTS.....	26
F.11 THE COMPANY'S OBLIGATION OF DISCLOSURE	28

DEFINITIONS

Articles	the Articles of the Company.
ASIC	the Australian Securities and Investments Commission.
ASX	the 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 and financial reporting generally for the Company.
Board	board of directors of the Company.
<i>Business Corporations Act</i>	the <i>Business Corporations Act (British Columbia)</i> as amended or replaced from time to time.
Charter	the charter of any Committee set out in this Corporate Governance Charter.
Committee	each committee created by the Board including without limitation, the Nominations Committee, the Remuneration Committee, the Corporate Governance Committee and the Remuneration Committee.
Company	Metals Finance Corporation ARBN 127 131 604
Corporate Ethics Policy	the policy set out in Section F setting out directors' duties given their position with the Company, obligations with respect to trading in securities and general disclosure obligations.
Corporate Governance Committee	the Committee charged with reviewing compliance by the Board with amongst other matters, the provisions of this document.
Corporate Governance Charter	the policies, procedures and charters set out in this document.
<i>Corporations Act</i>	the <i>Corporations Act 2001 (Cth)</i> as amended or replaced from time to time.
Independent	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 management of the Company.
Nominations Committee	the Committee for assisting the Board in relation to the appointment of members to the Board and of senior management and in assessing the performance of such individuals.
<i>Principles of Good Corporate Governance</i>	the <i>Principles of Good Corporate Governance and Best Practice Recommendations of the ASX Governance Council</i> as amended or replaced from time to time.
Standing Rules	the general and procedural rules of each Committee set out in Section E of this Corporate Governance Policy.

SECTION A - PRINCIPLES OF CORPORATE GOVERNANCE – METALS FINANCE CORPORATION (COMPANY)

A.1 BOARD OF DIRECTORS

(a) General

This document sets out the main principles adopted by the Board of directors 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 logically, subject to the *Business Corporations Act*, the *Corporations Act*, the Articles and the ASX Listing Rules.

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

In preparing and implementing these strategies, the Company and the Board are mindful of the *Principles of Good Corporate Governance and Best Practice Recommendations* of the ASX Corporate Governance Council released in March 2003.

(b) Functions, Powers and Responsibilities of the Board

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

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

- (i) Ensuring compliance with the *Business Corporations Act*, ASX Listing Rules (where appropriate) and all 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 executive officers' remuneration;

- (vii) Establishing and maintaining communications and relations between the Company and third parties, including its shareholders and ASX;
- (viii) Implementing appropriate strategies 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) Appointing and removing the chief executive officer;
- (xi) Ratifying the appointment and, where appropriate, removal of the chief financial officer and the Company secretary;
- (xii) Input into and final approval of the management's development of corporate strategy and performance objectives;
- (xiii) Reviewing and ratifying systems of risk management and internal compliance and control, codes of conduct and legal compliance;
- (xiv) Monitoring senior management's performance, implementation of strategy and ensuring appropriate resources are available;
- (xv) Approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestitures;
- (xvi) Approval of the annual budget;
- (xvii) Monitoring the financial performance of the Company;
- (xviii) Liaising with the Company's external auditors;
- (xix) Monitoring, and ensuring compliance with, all of the Company's legal obligations;
- (xx) Approving and monitoring financial and other reporting;
- (xxi) Appointing and overseeing Committees where appropriate to assist in the above functions and powers.

(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, a majority of the Board being independent directors;
- (ii) to aim for, so far as is practicable given the size of the Company, 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, a chairperson who is not the chief executive officer; and
- (iv) to have at least three directors.

In assessing the independence of directors, the Company has regard to Principle 2 of the *Principles of Good Corporate Governance and Best Practice Recommendations* and regards an independent director as a non-executive director (that is, not a member of management) who:

- (v) is not a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;
- (vi) 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;
- (vii) 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;
- (viii) 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;
- (ix) has no material contractual relationship with the Company or another group member other than as a director of the Company;
- (x) has not served on the Board for a period which could, or could reasonably be perceived to, materially interfere with the directors' ability to act in the best interests of the Company;
- (xi) is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the directors' ability to act in the best interests of the Company.

A.2 THE CHAIRPERSON

The Chairperson is responsible for leadership of the Board, for efficient organisation and conduct of the Board's function and the briefing of all directors in relation to issues arising at Board meetings. The Chairperson is also responsible for shareholder communication and arranging Board performance evaluation.

A.3 CHIEF EXECUTIVE OFFICER/MANAGING DIRECTOR

The Chief Executive Officer or Managing Director (if any) is responsible for running the affairs of the Company under delegated authority from the Board and to implement 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 (if any) (together with the Chief Financial Officer, if there is one) shall be required to state in writing to the Board that the financial reports of the Company represent a true and fair view in all material respects, of the Company's financial conditions and operating results and are in accordance with relevant accounting standards.

A.4 CORPORATE ETHICS

The Company has adopted a separate Corporate Ethics Policy which has been agreed to by each member of the Board, setting out, in addition to these principles, the obligations of integrity and honesty on each member of the Board and their obligations with respect to trading in Securities in the Company and disclosure to the ASX.

In addition to the Corporate Ethics Policy, the Company also adheres to the following statement of principles and responsibilities with respect to both its internal dealings with employees and consultants, and external dealings with shareholders and the community at large.

A.5 **CORPORATE CODE OF CONDUCT**

(a) **Introduction**

This code of conduct sets out the standard 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 the financial community;
- (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 legislative and common law requirements which affect its business. Any transgression from the applicable legal rules is to be reported to the Management as soon as a person becomes aware of such a transgression.

(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, privileges, private and confidential information.

The Company and the Board will maintain the Company's and our shareholders', customers' and suppliers' information confidentiality 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 deceptive practices.

(i) **Conflicts of Interest**

The Board, Management and employees must not involve themselves in situations where there is a real or apparent conflict of interest between them as individuals and the interest of the Company (excluding those matters which may be subject to legal professional privilege). Where a real or apparent conflict of interest arises the matter should be brought to the attention of the Chairperson in the case of a board member or the Managing Director (if any), the Managing Director or Chief Executive Officer in the case of a member of Management and a supervisor in the case of an employee, so that it may be considered and dealt with in an appropriate manner for all concerned.

(j) **Compliance with the Code**

Any breach of compliance with this code is to be reported directly to the Chief Executive Officer, Managing Director or Chairperson, as appropriate.

(k) **Periodic Review of Code**

The Company will monitor compliance with the code periodically by liaising with the Board, Management and staff especially in relation to any areas of difficulty which arise from the code and any other ideas or suggestions for improvement of the code. Suggestions for improvements or amendments to the code can be made 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 of a confidential nature which is acquired in the course of the Company's business 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 to Management, who will treat reports made in good faith of such violations 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 arrangement 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**

As set out in Section A.1(b), one of the functions of the Board is to form and monitor any special purpose Committees established to review certain aspects of the operations of the Company, having regard to these principles.

The Company has established the following Committees for this purpose:

- (i) Corporate Governance Committee;
- (ii) Audit & Risk Management Committee; and
- (iii) Remuneration Committee;

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

SECTION B - CORPORATE GOVERNANCE COMMITTEE CHARTER

B.1 COMMITTEE MEMBERS

The initial members of the Corporate Governance Committee are:

- (a) Bayne Boyes;
- (b) Tony Treasure;
- (c) Andrew Neale; and
- (d) Geoffrey Hill.

B.2 PURPOSE

- (a) The Corporate Governance Committee Charter (the **Charter**) sets out the role, responsibilities, powers, authority and membership requirements of the Corporate Governance Committee of the Company.
- (b) Key features of the Charter will be outlined in the Annual Report. The Charter is available to shareholders of the Company upon request.

B.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE

- (a) The Corporate Governance Committee (the **Committee**) is a Committee of the Company's Board (the **Board**) and other persons appointed by the Board from time to time.
- (b) The Committee is responsible for:
 - (i) ensuring performance of members of the Board is reviewed;
 - (ii) reviewing the compliance by the Company with the provisions of the Corporate Governance Policy;
 - (iii) ensuring an appropriate Board and Committee structure is in place so that the Board can perform a proper review function;
 - (iv) assessing the adequacy and quality of information provided to the Board prior to and during its meetings;
 - (v) reviewing periodically the Company's Corporate Ethics Policy and any other issues related to corporate governance, and recommending any proposed changes to the Board for approval;
 - (vi) ensuring that the necessary controls are in place for risk management to be maintained;
 - (vii) conducting an annual performance self-evaluation of the Committee;
 - (viii) apprising the Board regularly of significant developments in the course of performing the above duties, including reviewing with the full Board any issues that arise; and
 - (ix) ensuring, so far as is practicable having regard to the size of the Company and its operations, compliance by the Company and the Board with the *Principles of Good Corporate Governance and Best Practice Recommendations*.
- (c) The purposes and provisions specified in this Charter are meant to serve as guidelines, and the Committee is delegated the authority to adopt such additional procedures and standards

as it deems necessary from time to time to fulfil its responsibilities. Nothing in this Charter is intended to expand applicable standards of liability under the *Business Corporations Act (British Columbia)* for directors of a corporation.

B.4 POWERS AND AUTHORITY OF THE COMMITTEE

- (a) The Committee has the ability to direct any special investigations deemed necessary and to consult independent experts where considered necessary to carry out its duties and has the authority to retain persons having special competencies (including, without limitation, legal or other consultants and experts) to assist the Committee in fulfilling its responsibilities.
- (b) The costs of consultations commissioned by the Committee will be borne by the Company.
- (c) The Committee has been, and shall be, granted by the Board unrestricted access to all information and all employees have been, and shall be, directed to cooperate as requested by members of the Committee.

B.5 REPORTING

- (a) Proceedings of all meetings are to be 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 the Committee meeting. Minutes of all Committee meetings are to be circulated to the Board. The report shall include but is not limited to:
 - (i) the minutes of the Committee meetings and any formal resolutions;
 - (ii) information about any examination or assessment carried out by the Committee including the results of such assessments;
 - (iii) an assessment of:
 - (A) the Board and Committee structure;
 - (B) the adequacy and quality of information provided to the Board prior to enduring its meetings;
 - (C) the various Charters;
 - (D) the adequacy of controls in place for risk management;
 - (E) the effectiveness of the Committee;
 - (iv) any recommendation of change to procedures implemented by the Company, the Board or any Committee;
 - (v) 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
 - (vi) 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 (and where appropriate, any interim report) must include:
 - (i) a summary of the Committee's main authority, responsibilities and duties;

- (ii) biographical details of the Committee's members, including expertise, appointment, dates and terms of appointment;
- (iii) details of meetings, including the number of meetings held during the relevant period and the number of meetings attended by each member;
- (iv) explanation of any departures from the best practice recommendations under the *Principles of Good Corporate Governance*;
- (v) details of any change to the Independent status of each member during the relevant period, if applicable; and
- (vi) details of any determinations made by the Committee in satisfying its objectives.

B.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 terms of this Charter.

SECTION C - AUDIT & RISK MANAGEMENT COMMITTEE CHARTER

C.1 COMMITTEE MEMBERS

The Board has established an Audit & Risk Management Committee. The Audit & Risk Management Committee is to consist of the following:

- (a) Only non-executive directors;
- (b) A majority of independent directors;
- (c) An Independent Chairperson; and
- (d) Three members - where there are not three or more non-executive directors of the Company, the Board may appoint executive directors to the Committee.

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

The initial members of the Audit & Risk Management Committee are:

- (a) Bayne Boyes; and
- (b) Geoffrey Hill.

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

C.2 PURPOSE

- (a) The 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) Key features of the Charter will be outlined in the Annual Report. The Charter is available to shareholders of the Company upon request.

C.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE

- (a) The Audit & Risk Management Committee (the **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 to approve the remuneration and terms of engagement of the external auditor;
- (ix) monitor and review 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 provisions of non-audit services by the external audit firm.

Risk Related

- (xi) ensuring the development of an appropriate risk management policy framework that will provide guidance to Management in implementing appropriate risk management practices throughout the Company's operations, practices and systems;
 - (xii) defining and periodically reviewing risk management as it applies to the Company and clearly identify all stakeholders;
 - (xiii) ensuring the Committee clearly communicates the Company's risk management philosophy, policies and strategies to directors, Management, employees, contractors and appropriate stakeholders;
 - (xiv) ensuring that directors and Management establish a risk aware culture which reflects the Company's risk policies and philosophies;
 - (xv) reviewing methods of identifying broad areas of risk and setting parameters or guidelines for business risk reviews;
 - (xvi) making informed decisions regarding business risk management, internal control systems, business policies and practices and disclosures;
 - (xvii) considering capital raising, treasury and market trading activities with particular emphasis on risk treatment strategies, products and levels of authorities.
- (c) Membership of the Committee will be disclosed in the Annual Report.

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) 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 partners;
 - (v) recommendations for the appointment or removal of an auditor;
 - (vi) any determination by the Committee relating to the 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 (and where appropriate, any interim report) must include:
- (i) a summary of the Committee's main authority, responsibilities and duties;
 - (ii) biographical details of the Committee's members, including expertise, appointment, dates and terms of appointment;
 - (iii) member and related party dealings with the Company;
 - (iv) details of meetings, including the number of meetings held during the relevant period and the number of meetings attended by each member;
 - (v) explanation of any departures from best practice recommendations 4.1, 4.2, 4.3, 4.4 or 4.5 of the *Principles of Good Corporate Governance*;
 - (vi) details of any change to the Independent status of each member during the relevant period, if applicable; and
 - (vii) details of any determination by the Audit & Risk Management Committee regarding the external auditor's independence.

C.5 RISK MANAGEMENT POLICIES

The Committee will ensure that the necessary controls are in place for risk management policies to be maintained by:

- (a) devising a means of analysing the effectiveness of risk management and internal compliance and control system and of the effectiveness of their implementation; and
- (b) reviewing, at least annually, the effectiveness of the Company's implementation of the risk management system.

C.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 C.4(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.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.

C.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 terms in this Charter.

SECTION D - REMUNERATION COMMITTEE CHARTER

D.1 COMMITTEE MEMBERS

The initial members of the Remuneration Committee are:

- (a) Bayne Boyes; and
- (b) Geoffrey Hill.

D.2 PURPOSE

- (a) The Remuneration Committee Charter (the **Charter**) sets out the role, responsibilities, composition, authority and membership requirements of the Remuneration Committee of the Company.
- (b) Key features of the Charter will be outlined in the Annual Report. The Charter is available to shareholders of the Company upon request.

D.3 DEFINITION AND OBJECTIVES OF THE COMMITTEE

- (a) The Remuneration Committee (the **Committee**) is a Committee of the Board.
- (b) The Committee is responsible for reviewing the remuneration policies and practices of the Company and making recommendations to the Board in relation to:
 - (i) executive remuneration and incentive plans:
 - (A) including, but not limited to, pension rights and compensation payments and any amendments to that policy proposed from time to time by Management;
 - (B) review of the on-going appropriateness and relevance of the executive remuneration policy and other executive benefit programs;
 - (C) consideration of whether to seek shareholder approval of the executive remuneration policy;
 - (D) overseeing the implementation of the remuneration policy; and
 - (E) review and approval of the total proposed payments from each executive incentive plan.

In respect of such executive remuneration, review the competitiveness of the Company's executive compensation programmes to ensure:

- (F) the programmes are attractive, with a view to ensuring the retention of corporate officers;
 - (G) the motivation of corporate officers to achieve the Company's business objectives; and
 - (H) the alignment of the interests of key leadership with the long term interests of the Company's shareholders.
- (ii) the remuneration packages for Management, directors and the Managing Director (if any):
 - (A) consider and make recommendations to the Board on the entire specific remuneration for each individual of Management (including fixed pay, incentive

payments, equity awards, retirement rights, service contracts) having regard to the executive remuneration policy; and

- (B) consider whether shareholder approval will be required;
- (iii) non-executive director remuneration:
 - (A) in developing the structure, consider the *Principles of Good Corporate Governance*, Recommendation 9.3, in that:
 - (1) non-executive directors should normally be remunerated by way of fees (in the form of cash, non-cash benefits, superannuation contributions or equity);
 - (2) non-executive directors should not participate in schemes designed for the remuneration of executives; and
 - (3) non-executive directors should not receive options or bonus payments or retirement benefits (other than statutory superannuation),
 - (B) ensure that the fees for non-executive members of the Board are within the aggregate amount approved by shareholders;
 - (C) overview the application of the Retirement Allowance for non-executive members of the Board;
 - (D) provide, in the corporate governance section of the Annual Report, any departures from Recommendation 9.3 if necessary;
- (iv) the Company's recruitment, retention and termination policies and procedures for senior management;
- (v) incentive plans and share allocation schemes:
 - (A) review and approve the design of all equity based plans;
 - (B) keep all plans under review in light of legislative, regulatory and market developments;
 - (C) for each equity based plan, determine each year whether awards will be made under that plan;
 - (D) ensure that the equity based executive remuneration is made in accordance with the thresholds set in plans approved by shareholders;
 - (E) review and approve total proposed awards under each plan;
 - (F) in addition to considering awards to executive directors and direct reports to the Managing Director, review and approve proposed awards under each plan on an individual basis for executives as required under the rules governing each plan or as determined by the Committee; and
 - (G) review, approve and keep under review performance hurdles for each equity based plan,
- (vi) superannuation arrangements;
- (vii) remuneration of members of other Committees of the Board.

D.4 REMUNERATION POLICIES

- (a) The Committee should design the remuneration policy in such a way that it:
 - (i) motivates directors and management to pursue the long-term growth and success of the Company within an appropriate control framework; and
 - (ii) demonstrates a clear relationship between key executive performance and remuneration.
- (b) In performing its role, the Committee is required to ensure that:
 - (i) the remuneration offered is in accordance with prevailing market conditions, and that exceptional circumstances are taken into consideration;
 - (ii) contract provisions reflect market practice; and
 - (iii) targets and incentives are based on realistic performance criteria.
- (c) The Committee will also:
 - (i) overview the application of sound remuneration and employment practices across the Company; and
 - (ii) ensure the Company complies with legislative requirements related to employment practices.

D.5 APPROVAL

- (a) The Committee must approve the following prior to implementation:
 - (i) changes to the remuneration or contract terms of executive directors and direct reports to the Managing Director;
 - (ii) the design of new, or amendments to current, equity plans or executive cash-based incentive plans;
 - (iii) total level of award proposed from equity plans or executive cash-based incentive plans; and
 - (iv) termination payments to executive directors or direct reports to the Managing Director, including consideration of early termination, except for removal for misconduct, termination payments to other departing executives should be reported to the Committee at its next meeting.

D.6 REPORTING

- (a) Proceedings of all meeting of the Committee are to be 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 the 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) information about the review process undertaken by the Committee;
 - (iii) an assessment of:

- (A) executive remuneration and incentive plans;
 - (B) remuneration packages for senior management, directors and the managing director (if any);
 - (C) non-executive director remuneration;
 - (D) the Company's recruitment and retention and termination policies and procedures for senior management;
 - (E) incentive plans and share allocation schemes;
 - (F) superannuation arrangements;
 - (G) remuneration of members of other Committees of the Board;
- (iv) recommendations for setting remuneration levels for directors, senior managers and Committees;
 - (v) any matter that in the opinion of the Committee should be brought to the attention of the Board and any recommendation requiring Board approval and/or action; and
 - (vi) 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 (and where appropriate, any interim report) must include:
- (i) a summary of the Committee's main authority, responsibilities and duties;
 - (ii) biographical details of the Committee's members, including expertise, appointment, dates and terms of appointment;
 - (iii) details of meetings, including the number of meetings held during the relevant period and the number of meetings attended by each member;
 - (iv) explanation of any departure from principle 9.3 of the *Principles of Good Corporate Governance*; and
 - (v) details of any change to the Independent status of each member during the relevant period, if applicable.

D.7 MEETINGS

- (a) Despite the Standing Rules, there is no requirement that the Remuneration Committee meet a set number of times or intervals during a year. Rather, the Committee will meet at such intervals as required to fulfil its obligations.
- (b) In addition, the Chairperson is required to call a meeting of the Committee if requested to do so by any Committee member, the internal or external auditors, the Chairperson of the Board or other Board member.
- (c) The Committee shall have access to employees of the Company and appropriate external advisers. The Committee may meet with these external advisers without Management being present.

- (d) The Committee may also seek input from individuals on remuneration policies but no individual should be directly involved in deciding his/her remuneration.

D.8 ATTENDANCE AT MEETINGS

Other directors (executive and non-executive) have a right of attendance at meetings. However, no director is entitled to attend that part of a meeting at which the remuneration of that director or a related party of that director is being discussed.

D.9 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 terms in this Charter.

SECTION E – STANDING RULES OF COMMITTEES

E.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.

E.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, save where the Board considers that to do so for a particular Committee or Committees would be unnecessary or undesirable;
 - (ii) of the members of the Committee, the Committee will aim to have a majority of the members being independent directors (where appropriate, given the size of the Company and the Board);
 - (iii) provided the Committee can contain at least one independent director, the Chairperson of the Committee shall be Independent; and
 - (iv) the Committee shall comprise three members. Where there is not three or more non-executive directors of the Company, the Board may, despite this requirement, appoint one or more executive directors to the Committee.
- (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.

E.3 CHAIRPERSON

- (a) The Chairperson of each Committee is selected by the Board.
- (b) Should the Chairperson be absent from a meeting and no Acting 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.

E.4 MEETINGS

- (a) Each Committee will meet at such intervals as required to fulfil its obligations but must be at least three (3) times annually.
- (b) In addition, the Chairperson is required to call a meeting of each Committee if requested to do so by any Committee member, the external auditors, the internal auditors, the Chairperson of the Board or other Board member.

- (c) The Chairperson will appoint an executive to act as Secretary to each relevant Committee who 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.

E.5 FEES

Committee members are entitled to receive remuneration as determined from time to time by the Remuneration Committee.

E.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) Significant changes to the Charter must be recommended by the relevant Committee and approved by the Board.

E.7 DUTIES AND RESPONSIBILITIES

- (a) The duties and responsibilities of a member of each 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 F - CORPORATE ETHICS POLICY

F.1 INTRODUCTION

Directors of the Company are subject to certain stringent legal requirements regulating the 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 duty 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:

- (i) a director's legal duties as an officer of the Company;
- (ii) a director's obligations to make disclosures to the ASX and the market generally; and
- (iii) dealings by directors in shares in the Company.

F.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:

- (i) to act in good faith and in the best interests of the Company;
- (ii) to act with due care and diligence;
- (iii) to act for proper purposes;
- (iv) to avoid conflicts of interest or duty; and
- (v) to refrain from making improper use of information gained through the office of director, or taking improper advantage of the office of director.

F.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 *Business 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 *Business 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.

Business Corporations Act

A director of a corporation will also be subject to duties imposed by the *Business 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.

F.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 Business Corporations Act duty – exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,

Under the *Business Corporations Act*, a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonably prudent individual would exercise in comparable circumstances.

(d) Act in Good Faith

General law and Business Corporations Act duties - To act honestly and in good faith with a view to the best interests of the company.

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.

F.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.

Disclosable Interest

A director who has a disclosable 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 disclosable 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.

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) (where considered necessary or appropriate) the directors seek additional quotations for the same services; and
- (c) the consultancy services are approved by the directors.

F.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 judgement 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).

F.7 INDEPENDENCE

The Board is required to regularly assess the independence of directors to ensure that directors do not have any relationships or interests that interfere with their unfettered and independent judgement, or could reasonably give the impression that the director's independence has been compromised.

Set out in Section B is a Charter applying to the Corporate Governance Committee, which is charged with assessing the independence of directors on behalf of the Board.

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:

- (i) may lead to an actual or potential conflict of interest or duty;
- (ii) may lead to a reasonable perception of an actual or potential conflict of interest or duty;
- (iii) interferes with a director's unfettered and independent judgement; or
- (iv) 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.

F.8 DEALINGS BY DIRECTORS IN SECURITIES OF THE COMPANY

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

When buying or selling shares in the Company, directors must ensure that they do not contravene the insider provisions contained in *Business Corporations Act* or the *Corporations Act*. 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 of the Company in the course of carrying out their duties often possess information which would be regarded as inside information under the *Business Corporations Act*. The following are examples of information which could be regarded as inside information:

- (a) proposed strategic business acquisition;
- (b) financial records not yet released to the market;
- (c) a proposed takeover not yet announced to the market.

Where directors 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 can be liable for insider trading if they recommend the Company's shares to other persons while they are in possession of price sensitive information which is undisclosed to the general public. Directors 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 has not dealt with the securities of the Company. Spouses, family or friends who learn 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 avoid direct or indirect communication of price sensitive information before it enters the public domain. It is equally essential that directors refrain from trading in shares of the company whilst they possess such information.

F.9 RESTRICTIONS ON DIRECTORS' DEALINGS WITH COMPANY SHARES

As a general policy, before engaging in transactions involving the shares of the Company, a director must notify the Chairperson of the intended transaction at least 24 hours **beforehand**. It is then a matter for the Chairperson to advise other directors of the intended course of action.

The Company's policy regarding dealings by directors in the Company's shares is that directors 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) For a period of twenty-one (21) days prior to release by the Company of half yearly and annual reports **or** such shorter period as may be approved of by the Board of directors after receipt of notice of intention to buy or sell by a director to other members of the Board.

In relation to "price sensitive information", all directors 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 shares.

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 certain 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.

However, 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 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; *(It is strongly recommended that at least one (1) business day be allowed)*
- (c) Where the proposed acquisition of securities is under:
 - (i) a bonus issue made to all shareholders;
 - (ii) a dividend reinvestment or top up plan available to all shareholders;
 - (iii) an employee share plan.

F.10 NOTIFICATION TO ASX OF DIRECTORS' INTERESTS

Directors must also be aware that pursuant to Listing Rule 3.19A the Company is obliged to provide the ASX with appropriate notifications of their interests in the Company.

The Company must notify the ASX of their directors:

- (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.

Accordingly, the Company is to enter into an agreement with 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 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 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 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 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 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.

F.11 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 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."

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.

(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 2001 (Cth)*, 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. It 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 as 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 made 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 its way 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 item F.11(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 (“**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 directors
- (B) Managing Director or Chief Executive Officer
- (C) Chief Financial Officer and Company Secretary

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

The Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary will be responsible for:

- (A) Ensuring the Company complies with its continuous disclosure obligations (ie. Market sensitive material);
- (B) Overseeing and co-ordinating disclosure of information to the ASX;
- (C) Reviewing information to be provided to analysts, brokers, the media and the public, in order to be able to ensure any market sensitive material has been released to the ASX.

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

The responsibility 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 Chairperson, Managing Director or Chief Executive Officer and Company Secretary all information which is, or may be required to be disclosed, and consult with him if in doubt;

- (C) To make 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.

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

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

- (A) When any of the Reporting Group becomes aware of information which they believe may need to be disclosed on the basis of the principles described in this document, they should immediately contact and give full details to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary.
- (B) Chairperson, Managing Director or Chief Executive Officer and Company Secretary will take the following steps in relation to information forwarded to them:
 - Assess whether disclosure is required;
 - Consult the Chairperson and other advisers (including the ASX) as necessary;
 - Prepare a market release for provisions to the ASX;
 - Inform the Managing Director or Chief Executive Officer;
 - Forward the release to the ASX.
- (C) Prior to each Board Meeting, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should contact the executive members of the Reporting Group to confirm that there is no material requiring disclosure.
- (D) For each set of Board Papers, there should be an agenda item entitled "Continuous Disclosure". In this item, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should either:
 - Confirm that there was no material brought to his attention requiring disclosure for the preceding month; or
 - 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) Chairperson
- (B) Managing Director or Chief Executive Officer
- (C) Chief Financial Officer and Company Secretary
- (D) Where appropriate, Chairperson-appointed non executive directors

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 the Chairperson, Managing Director (or Chief Executive

Officer) and Company Secretary prior to making contact with these persons in order that he may provide a briefing of what has been disclosed by the Company to the ASX.

(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 external presentation must be discussed with the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary prior to presentation in order that he may confirm 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 web site. In addition, it is intended to add to the web site:

- (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, Managing Director or Chief Executive Officer and Company Secretary. The recommended response to such query is that “**the Company does not respond to market rumours**”. Consideration will then be given by the Chairperson, Managing Director or Chief Executive Officer and Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Chairperson, Managing Director or Chief Executive Officer and Company Secretary 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, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should be kept apprised 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 the Chief Financial Officer’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.