

**ORION METALS LIMITED**  
ABN 89 096 142 737

**CORPORATE GOVERNANCE CHARTER**

## SECTION A - PRINCIPLES OF CORPORATE GOVERNANCE

### 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 subject to the Corporations Act, the Company's Constitution 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 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 *Corporate Governance Principles and Recommendations* of the ASX Corporate Governance Council ("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 expressly considers itself responsible for the following:

- (i) Ensuring compliance with the Corporations Act, ASX Listing Rules and all relevant laws and regulations;
- (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 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) Establishing guidelines for and 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) Appointing and overseeing Committees where appropriate to assist in the above functions, powers and responsibilities.

(c) **Structure of the Board**

The structure of the Board is determined in accordance with the following principles which aim for, so far as is practicable given the size of the Company:

- (i) a majority of the Board being independent directors;
- (ii) the appointment of a Chairman who is an independent director;
- (iii) a Chairman who is not the Chief Executive Officer; and
- (iv) to have at least three directors.

It is noted however, as at the date of adoption of this Charter given the stage of development of the Company and on the basis that it wishes to direct as much of its capital towards its exploration programme at this stage, it is more appropriate that the Board be constituted by a majority of appropriately qualified and experienced non-independent directors.

In assessing the independence of directors, the Company has regard to Principle 2 of the Recommendations and regards 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;
- (v) has no material contractual relationship with the Company or another group member other than as a director of the Company;
- (vi) 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;
- (vii) 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 CHAIRMAN**

The Chairman 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 Chairman 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 annual and half-yearly 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**

This Charter includes a Corporate Ethics Policy setting out the obligations of integrity and honesty required of 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 Code of Conduct detailing statements 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 to the 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 & the Financial Community**

The Company aims to:

- (i) 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) act with honesty, integrity and fairness.

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

The Company endeavours to comply with all legislative and common law requirements and obligations which affect its business. Any transgression from the applicable legal rules is to be reported to the Board as soon as a person becomes aware of such event.

**(e) Employment Practices**

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

The Company will strive to 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's Board and management 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 the shareholders', customers' and suppliers' information confidentially unless required to be disclosed by law.

**(h) Obligations Relative to Fair Trading & 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 interests 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 Chairman in the case of a Board member or the Managing Director or Chief Executive Officer in the case of a member of management or 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 Chairman, as appropriate.

(k) **Periodic Review of Code**

The Company will monitor compliance with the Code of Conduct 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 can be made at any time.

(l) **Code of Conduct for Employees & 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 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 Board will consider the performance of the external auditor on an annual basis.

## **SECTION B - CORPORATE ETHICS POLICY**

### **B.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 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.

### **B.2 DIRECTORS' POWERS & 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.

### **B.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.

### **B.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 chairman of a company who is also chairman 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 Judgement Rule**

The Corporations Act provides for a mechanism for director's to avoid a breach of their duty of care and diligence where certain parameters are met. This is known as the "business judgement 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 judgement 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 their personal interest by making or pursuing a gain in circumstances in which there is a conflict, or a real possibility of a conflict, between their 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.

**B.5 AVOIDING CONFLICTS**

**Attending & 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 a 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.

## **B.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 Chairman or is required by law or regulatory body (including the ASX).

## **B.7 INDEPENDENCE**

The Board is encouraged to occasionally assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgement, or could reasonably give the impression that any 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:

- (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.

## **B.8 DEALINGS BY DIRECTORS IN SECURITIES OF THE COMPANY**

The Company 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 trading provisions contained in Part 7.10 of 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 the Company. 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 Corporation 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.

## B.9 RESTRICTIONS ON DIRECTORS' DEALINGS WITH COMPANY SHARES

As a general policy, before engaging in transactions involving the shares of the Company, a Director, employee or consultant must notify the Chairman of the intended transaction at least 24 hours beforehand. It is then a matter for the Chairman to advise other Directors of the intended course of action.

The Company's policy regarding dealings by Directors, employees and consultants in the Company's shares is that they 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 after receipt of notice of intention to buy or sell from a Director, employee or consultant.

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 ASX 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 accountants based on management accounts. It is a fact that at some time before preparation of the audited half-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, such information may, in appropriate circumstances, be price sensitive information, not yet released. For example, a company may have a glowing half-year profit forecast 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 probably be a situation when any Directors in possession of such information could not deal in the Company's securities.

However, Directors, employees and consultants will generally be permitted to engage in trading (subject to due notification being given to the Chairman) 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 on the basis that under the Corporations Act, Directors will only be protected following disclosure to the market of price sensitive information, if that information has become generally available. The Corporations Act contains no specific definition, but does indicate that information is "generally available" if it has been made known in a manner that would or would be likely to bring it to the attention of persons who commonly buy and sell shares in companies of

a kind whose price or value might be affected by the information that has been released.)

- (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.

The Company's policy also generally prohibits Directors, employees and consultants entering into transactions or arrangements which operate to limit the economic risk of their holdings in the Company's securities and any unvested entitlements under any equity-based compensation schemes.

#### **B.10 NOTIFICATION TO ASX OF DIRECTORS' INTERESTS**

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

Pursuant to section 205G of the Corporations Act, 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 must 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, 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 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 their interests within five (5) business days after the appointment (using 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 interests of a Director occurs – the Company must outline the change in the Director's interests to the ASX no more than five (5) business days after the change occurs (using 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 (using 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 changes of more than 1% to those holdings.

## B.11 COMPANY'S OBLIGATION OF DISCLOSURE

### (a) ASX Listing Rules & Corporations Act

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 Rules 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 Listing Rule 3.1B under which if ASX considers that there is or is likely to be a false market in a company's securities and asks the company 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).

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 ASX 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 ASX 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.

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 by the Company for release to the market, as the Company would no longer satisfy the confidentiality requirement. It does not matter how the information became known in the market.

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

(i) **Reasonable person expectation** (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)

This Rule 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) **Elements applying** (Listing Rule 3.1A.3)

One of the five elements in this Rule must also be established for exemption from disclosure to apply.

(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:

- (viii) A serious claim against the company prior to the commencement of proceedings;
- (ix) An investigation or allegation by a regulatory body (that is not being disputed by the company);
- (x) Information about a "complete" proposal;

- (xi) Terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality;
- (xii) Material terms of a trading agreement with a major supplier.

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

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

(f) **ASX Policy**

The ASX has issued Guidance Note 8 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 & 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, of 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 explore 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 that is made available to institutions and analysts to be also 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 and in a 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 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:

- (A) a breach of Listing Rule 3.1A does not occur; and
- (B) that information is made available to all investors equally.

**(i) 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 Directors
- (B) Managing Director or Chief Executive Officer
- (C) Chief Financial Officer and Company Secretary

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

The Chairman, 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 prior released to the ASX.

**(iii) Information Collecting Procedures**

To ensure Listing Rule 3.1A (market sensitive) information is identified the responsibility of each member of the Reporting Group is:

- (A) To ensure all notifiable (market sensitive) information is kept confidential within the Reporting Group;
- (B) To collect and forward to the Chairman, Managing Director or Chief Executive Officer and Company Secretary all information which is, or may be required to be disclosed, and consult with them 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.

(iv) **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 Chairman, Managing Director or Chief Executive Officer and Company Secretary.
- (B) The Chairman, 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 Chairman and other advisers (including the ASX) as necessary;
  - Prepare a market release for provision to the ASX;
  - Inform the Managing Director or Chief Executive Officer;
  - Forward the release to the ASX.
- (C) Prior to each Board Meeting, the Chairman, 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 is an agenda item entitled "Continuous Disclosure". In this item, the Chairman, 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.

(v) **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) Chairman
- (B) Managing Director or Chief Executive Officer
- (C) Chief Financial Officer and Company Secretary
- (D) Where appropriate, Chairman-nominated 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 Chairman, Managing Director (or Chief Executive Officer) and Company Secretary prior to making contact with these persons in order that one of them may provide a briefing of what has been disclosed by the Company to the ASX.

(vi) **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 Chairman, Managing Director (or Chief Executive Officer) and Company Secretary prior to presentation in order that they may confirm no non-public material information is being disclosed.

(vii) **Maintenance of Released Material**

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

(viii) **Company Web site**

Information released to the ASX is made available on the Company's web site. In addition, the following may be added to the web site:

- (A) Other materials presented to analysts and institutions;
- (B) A summary of briefings made to analysts and institutions.

(ix) **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 Chairman, 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 Chairman, Managing Director or Chief Executive Officer and Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Chairman, 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.

(x) **Reviewing Discussions**

In order to ensure no price sensitive material has been inadvertently disclosed, the Chairman, 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.

(xi) **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 must be avoided.

## B.12 APPLICATION OF POLICY

Notwithstanding anything else contained in this Corporate Ethics Policy, this Policy, to the extent applicable and/or relevant, shall also apply to all executives, employees or consultants, whether employed as officers or staff of the Company, full time or part time, or engaged under contract.